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# TANZANIA HUMAN RIGHTS REPORT 2019

State Of Human Rights In  
Tanzania Mainland: Key  
Issues and Highlights for The  
Year 2019

*For a Just and Equitable Society*



STATE OF HUMAN RIGHTS IN  
TANZANIA MAINLAND: KEY ISSUES  
AND HIGHLIGHTS FOR THE YEAR  
2019

Tanzania Human Rights Report 2019



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***For a Just and Equitable Society***



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**Adv. Anna Aloys Henga**  
**LHRC Executive Director**



## About LHRC

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

*Vision:* The LHRC envisages a just and equitable society, in which the three arms of the State, as well as non-state actors, practice accountability, transparency and there is the rule of law; and where there is public awareness, respect and engagement for human rights and good governance; where justice and respect for human dignity are reality.

*Mission:* To empower the public, promote, reinforce and safeguard human rights and good governance in Tanzania through legal and civic education and information; sound legal research and advice; monitoring and following-up on human rights violations; and advocacy for reforms of policies, laws and practices in conformity with international human rights standards.

*LHRC's Values:* Integrity; Equality; Transparency; Accountability; Professionalism; and Voluntarism and Volunteerism.



# Introduction

## Major Developments in 2019

◦ Introduction of the plea-bargaining law in the criminal justice system
◦ PCCB's study on sexual corruption
◦ Appointment of the Chairperson of the Commission for Human Rights and Good Governance and human rights commissioners
◦ Launch of mobile court services and the Judicial Statistics Dashboard System (JSDS-2),
◦ Amendment of the Statistics Act of 2015 to safeguard freedom of expression
◦ Amendment of the Non-Governmental Organisations Act
◦ Amendment of the Tanganyika Law Societies Act
◦ Mental health problem and alarming suicide rates
◦ Congestion in prisons due to a large number of remandees
◦ Court of Appeal of Tanzania affirming High Court's position that child marriage needs to be outlawed
◦ Tanzania's Withdrawal of Individuals and NGOs' access to the African Court on Human and Peoples' Rights
◦ Intensified efforts in infrastructural development
◦ East African Court of Justice's ruling on Tanzania's Media Services Act
◦ High incidence of sexual violence against children, especially rape and sodomy
◦ High incidence of child pregnancy
◦ 2019 Local Government Elections and opposition boycott of the elections
◦ Update of voter register as Tanzania heads towards elections
◦ Killings of bodaboda drivers by unknown assailants
◦ Increased incidents of women killed due to jealousy (physical violence against women)
◦ Brutal killings of innocent children in Njombe Region
◦ African Court's decision on the mandatory death penalty
◦ Introduction of the Judicature and Application of Laws (Practice and Procedure of Cases Involving Vulnerable Groups) Rules to fast-track cases involving vulnerable groups.
◦ Launch of Sector Skills Councils to bridge acute skills gap among university graduates.
◦ Harmonisation and formalization of sign language

### Scope and Nature of the Report

This report looks at key rights in three generations of human rights, namely the first generation of human rights, which focuses on civil and political rights; the second generation of human rights, which focuses on economic, social and cultural rights; and the third generation



of human rights, which are collective rights. The rights covered in this report are: right to life; freedom of expression; rights to equality before the law and effective remedy; right to liberty and personal security; freedoms of assembly and association; right to take part in governance; right to education; right to health; right to water; right to work; right to development; right to enjoy and benefit from natural resources; freedom from discrimination; freedom from torture; and freedom from violence. Moreover, the rights of specific groups and issues that affect effective realization and enjoyment of their rights are also discussed in this report. Specific groups covered are: women, children, persons with disabilities, the elderly and persons living with HIV/AIDS.

### **Objectives of the report**

The main objective of this report is to highlight some key issues that affected human rights, whether positively or negatively, in Tanzania for the year 2019. Another objective is to make comparisons between the situation in 2019 and previous years to determine whether improvements have been made in safeguarding human rights. The report can also be used as an advocacy tool to inform the public of relevant human rights standards, remind state actors of their human rights obligations, promote behaviour change in the society and provide key data on human rights issues to inform interventions by government and non-governmental actors. This report is also a tool for raising awareness and promote understanding of human rights and human rights issues and act as a starting point in human rights-related researches.

### **Methodology**

Both primary and secondary sources of data were employed in preparation of this report, but the study was largely based on secondary data. Primary data were obtained through LHRC's interaction with stakeholders, especially from beneficiaries of its projects, as well as the network of paralegals and human rights monitors working with LHRC, who are situated in all districts of Tanzania Mainland. Primary data obtained through LHRC's Human Rights and Business Survey conducted in 2019 is also used in this report.

This report is also informed mainly by government reports, including parliamentary reports; budget speeches' ministry reports; reports by law enforcement organs; reports and speeches by the Judiciary; and police data. Further, the reported benefited a lot from previous LHRC



reports; reports by local and international CSOs; domestic, regional and international human rights instruments; and decisions of regional and international human rights bodies. LHRC's media survey has provided an important source data for this report, particularly on issues around socio-economic rights and violence against women and children.



## Report Structure

### **Chapter 1:** Contextual Overview

Provides a short introduction to Tanzania, constitutional and human rights developments and government structure.

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### **Chapter 2:** Civil and Political Rights

Covers situation of key civil and political rights, including freedoms of association, assembly and expression; rights to equality before the law and effective remedy; and right to life.

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### **Chapter 3:** Economic, Social and Cultural Rights

Covers economic, social and cultural rights, including right to work, right to education, right to health and right to water.

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### **Chapter 4:** Collective Rights

Looks at and discusses realisation of rights to development and right to benefit from natural resources.

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### **Chapter 5:** Rights of Vulnerable Groups

Covers rights of women, children, PWDs, the elderly and PLHIVs.

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### **Chapter 6:** Human Rights Mechanisms

Looks at human rights mechanisms at domestic, regional and international levels and discusses their role in human rights protection.

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### **Chapter 7:** Conclusion and Recommendations

Provides general conclusion and recommendations to enhance promotion and protection of human rights in Tanzania.

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## List of Abbreviations

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



◦ NFRA	◦ National Food Reserve Agency
◦ PCB	◦ Prevention of Corruption Bureau
◦ PCCA	◦ Prevention and Combating of Corruption Act
◦ PLHIV	◦ Persons living with HIV/AIDS
◦ PWAs	◦ Persons with Albinism
◦ PWDs	◦ Persons with Disabilities
◦ RC	◦ Regional Commissioner
◦ SDG	◦ Sustainable Development Goal
◦ TANROADS	◦ Tanzania Roads Agency
◦ TARURA	◦ Tanzania Rural and Urban Roads Agency
◦ TECMN	◦ Tanzania Ending Child Marriage Network
◦ THIS	◦ Tanzania HIV Impact Survey
◦ THRDC	◦ Tanzania Human Rights Defenders Coalition
◦ TLS	◦ Tanganyika Law Society
◦ TPS	◦ Tanzania Prisons Services
◦ UDHR	◦ Universal Declaration of Human Rights
◦ UN	◦ United Nations
◦ UNESCO	◦ United Nations Educational, Scientific and Cultural Organization
◦ UPR	◦ Universal Periodic Review
◦ URT	◦ United Republic of Tanzania
◦ UTSS	◦ Under the Same Sun
◦ VAW	◦ Violence against Women



# Executive Summary

## Introduction

LHRC has been preparing the human rights report, covering the situation of human rights in Tanzania Mainland, since 2002. The 2019 report is the 18th report to be produced by LHRC and looks at some key issues that either positively or negatively impacted human rights in Tanzania Mainland in the year 2019. The focus of the report is civil and political rights; economic, social and cultural rights; collective rights; rights of vulnerable groups; and human rights mechanisms.

The Tanzania Human Rights Report 2019 is divided into seven chapters. Chapter One provides a contextual overview of Tanzania, while Chapter Two touches on civil and political rights. Chapter Three is on economic, social and cultural rights, which are to be realised progressively depending on availability of resources, in line with the International Covenant on Civil and Political Rights of 1966. Chapter Four covers collective rights, particularly right to development and right to enjoy and benefit from natural resources; Chapter Five is on rights of vulnerable groups, which are women, children, PWDs, the elderly and PLHIVs. Chapter Six examines human rights mechanisms at national, regional and international levels. Lastly, Chapter Seven provides conclusion and overall recommendations to improve human rights situation in Tanzania.

## Methodology

Information used to prepare this report was obtained from primary and secondary sources. Primary data was mainly obtained through LHRC's engagement with its beneficiaries, its network of paralegals, the human rights monitoring system, as well as data obtained through human rights and business survey conducted in June and July 2019. Secondary data was obtained through review of various credible sources, including reports and statements by government and non-government actors. LHRC's media survey also provided an important data source for this report and laid a foundation for further research.

## Key Findings

### Civil and Political Rights

#### *Right to life*

Right to life continued to be threatened by incidents of mob violence,



extrajudicial killings, violence against law enforcement officers, witchcraft-related killings, attacks of PWAs, death penalty, road accidents, killings motivated by belief in witchcraft and killings of women motivated by jealousy.

Mob violence and killings: Although the trend shows a decline in the number of reported mob violence and killing incidents since 2015, the rate of such incidents is still high. Most recent police data of June 2018 shows that a total of 385 incidents were reported, equal to an average of 76 people killed each month. In 2019, LHRC could not obtain police data on mob violence incidents, but documented at least 8 incidents reported in Kagera, Shinyanga, Dar es Salaam, Ruvuma, Mtwara and Dodoma Regions.

Extrajudicial killings and violence against law enforcement officers: Fewer incidents of extrajudicial killings (3) were reported in 2019, compared to 5 incidents reported in 2018. These incidents were reported in Kilimanjaro, Geita and Pwani Regions. One incident of violence against law enforcement officers was reported in Geita Region, whereby three police officers from the Nyang'hwale District Police Station were injured by an angry mob after trying to intervene to prevent them from killing a suspected robber.

Witchcraft-related killings and violence against PWAs: The number witchcraft-related killings have also declined in recent years, owing to police action in regions such as Tabora and Shinyanga, which are had been known to be notorious in such killings. Last recorded police data of 2018 indicated 106 killings by the month of June, an average of 17 people per month. In 2019, LHRC recorded 6 incidents of witchcraft-related killings reported in Mbeya, Dar es Salaam, Iringa, Simiyu, Tabora and Shinyanga. Killings of children in Njombe, which began towards the end of 2018, were also said to be mainly motivated by witchcraft beliefs.

Persons with albinism (PWAs) continued to live in fear, owing to attacks motivated by beliefs in witchcraft. Attacks against PWAs usually intensify during election periods, but in 2019 – the year of Local Government Elections – only two incidents of attacks against PWAs were reported, including one PWA grave vandalism/violation. No killings were reported. However, PWAs continue to live in great fear as Tanzania heads towards the General Elections of 2020.



Death penalty: In 2019 death sentences documented by LHRC were 18, which are 13 more than those reported in 2018. Currently, over 480 prisoners are on death row, majority of them (90%) male. This increase of death sentences comes in the wake of the ruling against death penalty in Tanzania, issued by the African Court on Human and Peoples' Rights in November 2019. The African Court directed Tanzania to remove the mandatory death penalty from its penal law as it contravenes the African Charter on Human and Peoples' Rights.

Road accidents: The year 2019 witnessed reduced incidents of road accidents and resulting deaths. 1,610 road accidents and 781 deaths occurred by June 2019, compared to 2,220 road accidents and 1,051 deaths which occurred by June 2019. However, this rate is still high as the numbers mean that an average of 268 accidents and 130 resulting deaths occurred each month in 2019. Most road accidents are caused by high speed, alcoholism, substance abuse, not wearing headgear for motorcycles and not wearing a seat belt. In other cases, bad road conditions have also contributed to road accidents.

Brutal killings of children in Njombe: Children's right to life was jeopardized by killings of children in Njombe Region, which began in late 2018, resulting in deaths of ten children. Some of the bodies of the children were found without body parts, including private parts. Among those killed were three children of the same family. The killings are believed to be motivated by witchcraft beliefs.

Killings of women motivated by jealousy: The year 2019 also witnesses increased incident of women, motivated by jealousy. Recent UNODC report on violence against women, released in 2018, indicates that home has become the most-dangerous place for women due to gender-related violence and killings. In 2019, LHRC recorded eight killings women motivated by jealousy.

### ***Freedom of Expression***

In 2019, freedom of expression was boosted by the decision of the East African Court of Justice, which ruled that the Media Services Act of 2016 contains provisions that constitute violation of freedom of expression and the Treaty for the Establishment of the East African Community. The Court directed the Government of Tanzania to make the relevant amendments to bring the Media Services Act in line with



the Treaty.

The year 2019 also witnessed amendment of the Statistics Act of 2015 to safeguard freedom of expression. The restrictive law was finally amended to remove provisions which severely hinder realisation of freedom of expression, including those prohibiting publishing statistics without National Bureau of Statistics (NBS) approval/permission and publishing findings different from official statistics.

However, despite these positive developments, the situation of freedom of expression continued to slightly deteriorate, owing to existence and implementation of restrictive laws; ban and suspension of media outlets; and arbitrary arrests; and/or detention of journalists. These factors have negatively affected Tanzania's performance in World Press Index 2019, as it further dropped 25 places to sit at 118th position in the world rankings, compared to 93rd in 2018. Restrictive laws that continue to hinder effective realisation of freedom of expression include the Media Services Act of 2016, the Cybercrimes Act of 2015, and the Electronic and Postal Communications (Online Content) Regulations of 2018. Existence and implementation of these laws continued to contribute to shrinking civic space in 2019.

Arbitrary arrests and/or detention of journalists reported in 2019 include that of Erick Kabendera and Joseph Gandye. THDRC documented thirteen more arbitrary arrests reported in the period of January to September 2019. Four media outlets reportedly faced ban or fine punishment for allegedly contravening the Online Content Regulations, which have been criticised for not meeting international standards on freedom of expression. The media outlets are The Citizen Newspaper, Kwanza Online TV, Watetezi TV and Ayo TV.

### ***Rights to Equality before the Law and Effective Remedy***

Rights to equality before the law and effective remedy include right to access to justice, right to legal representation, right to presumption of innocence, right to fair trial and right to effective remedy. In 2019, protection of the rights to equality before the law and effective remedy was boosted by actions of government and non-government actors in various ways. They include: the use of ICT to expedite dispensation of justice and reduce costs of attending court sessions; introduction and operationalisation of rules of aimed at accelerating cases involving vulnerable groups; development of sentencing guidelines; provision



of legal aid; and introduction of plea-bargaining law.

However, various challenges continued to hinder effective realisation of the rights to equality before the law and effective remedy. These challenges include: parading of suspected criminals before the media by law enforcement officers, in violation of the principle and right to presumption of innocence; delays and constant adjournment of cases in the criminal justice system; limited access to legal aid by people residing in rural areas; congestion in prisons; shortage of judicial workers, magistrates and judges; and corruption within the judicial system. Congestion/overcrowding in prisons is contributed by the fact that 54% of people in prisons currently have not been convicted by courts of law (remandees) and delays and adjournment of cases. Shortage of judicial workers, magistrates and judges stands at 42.5%.

### ***Right to Liberty and Personal Security***

In 2019, the situation of right to liberty and personal security slightly deteriorated due to: attacks and killings of bodaboda drivers; abductions; arbitrary arrests and detentions; denial of bail; concerns over fabrication of cases against innocent civilians; and prosecution before completion of investigation. A total of 2,329 incidents of motorcycle theft were recorded by police from January to June 2019, and throughout the year LHRC recorded four killings of bodaboda drivers – attacked by unknown people, reported from Mbeya (3) and Shiyanga (1) Regions. In Songwe, the incident of abduction of a political activist, Mdude Nyagali, was reported. He was found after going missing for four days, appearing weak and to have been heavily beaten. There were no updates on Azory Gwanda and Ben Saanane who went missing in 2017 and 2016 respectively.

Incidents of arbitrary arrests and/or detention recorded by LHRC increased from 8 incidents in 2018 to 17 incidents in 2019, including arbitrary arrest and detention of LHRC staff member, Tito Magoti. The arrests were mainly characterized by failure of arresting officers to properly introduce themselves, including showing relevant IDs; failure on the part of arresting officers to state reasons for arrest; denial of legal representation during interrogations; denial of bail pending trial and failure to bring accused person promptly before a judge or judicial officer. There is also a problem of prosecution before completion of investigation, which contributes to the predicament of prison overcrowding. As indicated above, more than half of people



in prison are yet to be convicted by courts of law, which points to the problem of prosecution before completion of investigation.

### ***Freedoms of Assembly and Association***

In 2019, the freedoms of assembly and association continued to suffer due to various factors, including amendment of the Political Parties Act to introduce provisions which do not conform to international standards on freedoms of association and assembly; amendments of the Non-Governmental Organisations Act and Tangayika Law Society Act; and arbitrary restrictions on political assemblies. Major concerns regarding the amendment include: lack of clarity in some provisions, which leaves loopholes for abuse of powers and creation of fear; sweeping discretionary powers granted to the Registrar, which seriously affect autonomy of political parties; and severe penalties for breaching the law.

Like the amendment of the Political Parties Act, amendments of the Non-Government Organisations Act and the Tanganyika Law Society Act also raised various human rights concerns. In the former, major concerns include too much powers vested in the NGO Registrar, automatic de-registration; extensive reporting requirements; and certificate renewal requirements. The provisions are not in line with regional and international standards on freedoms of association and assembly. In the latter, major concerns are interference with the right of TLS to manage its own affairs and freedom of association; and undermining the independence of TLS as a bar association.

Regarding political assemblies, opposition political parties continued to lament arbitrary restrictions on such assemblies, which are not in line with international standards on freedom of assembly, including ban on political assemblies outside one's constituency. They also complained about the amendments of the Political Parties Act because they infringe on their rights to freedoms of assembly and association.

### ***Right to Take Part in Governance***

The major activity relating to the right to take part in governance for the year 2019 was the Local Government Elections, which took place in November 2019. Key Issues which arose with regards to the elections include voter registration and turnout; civic and voter education; complaints about candidate nomination and disqualification;



complaints about denial of accreditation to observe elections; and concerns regarding some of the provisions of the regulations governing the elections. The major highlight of the elections was the massive withdrawal of eight political parties, including major opposition parties, from the elections for what they called unfair treatment and deliberate disqualification. Opposition parties that boycotted the LGE of 2019 were ACT Wazalendo, CHADEMA, CUF, NCCR-Mageuzi, CHAUMA, CCK, UMD, NLD and UPDP. ACT Wazalendo indicated that 96% of its candidates were disqualified, while NCCR-Mageuzi complained that 90% of its candidates were disqualified. For CHADEMA, the number of disqualified candidates was over 1570. Most of the CCM candidates were unopposed, hence elections did not take place in most parts of Tanzania Mainland. The ruling party won 95% of the seats unopposed. The massive party withdrawal was a big dent on the 2019 Local Government Elections, putting its credibility into question.

The year 2019 also witnessed decisions of the High Court and Court of Appeal regarding the provisions of the National Elections Act allowing district executive directors, town directors, municipal directors and city directors to be returning officers during general elections. In May 2019, the High Court found such provision to contravene, declared them void for being unconstitutional and thus proceeded to strike them out. However, in its judgement delivered in October 2019, the Court of Appeal overturned the High Court's decision and reinstated the directors as returning officers. The constitutional case was filed in 2018 by Bob Chacha Wangwe, raising concerns over impartiality of the directors as returning officers during elections.

## **2. Economic, Social and Cultural Rights**

### ***Right to Education***

While the Government continued to take various measures to ensure the progressive realisation of the right to education, including implementation of the fee-free education policy, various challenges continued to hinder the effective realisation of this fundamental right in 2019. These challenges include: insufficient budget for the education sector; delayed disbursement of funds; shortages of toilet holes, classrooms and dormitories; shortage of teachers; long-distance to school; acts of violence against children perpetrated by male teachers at schools; and absenteeism among teachers.

- Education stakeholders continued to raise concerns over



budget allocated for education, which is insufficient and not in line with international standards, particularly the Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4. Disbursement of funds was also raised as a concern. For instance, for the financial year 2018/19, by March 2019, the funds disbursed were 64.2% of funds allocated for development expenditure and 73.1% for recurrent expenditure.

- Shortages of toilet holes, classrooms and dormitories are key challenges affecting schools in Sub-Saharan Africa, including Tanzania. Deficit of classrooms exists in high, moderate and low performing regions.
- While the official Government standard in Tanzania for latrines in schools is one pit latrine/toilet per 20 girl pupils (1:20) and one per 25 boy pupils (1:25), an average pupil to latrine ratio in surveyed primary schools is 58:1. Lack of hygiene facilities, such as sufficient number of toilets and changing rooms, cause girls to be very uncomfortable during menstruation while at school and some to miss class or even stay at home during days of heavy flow. Inadequate access to clean toilets can seriously interfere with children's education as it can accelerate the spread of infectious diseases such as diarrhea and fungal infections which in turn makes many children sick and can cause them to miss school regularly.
- Regarding shortage of teachers, it was revealed in 2019 that teachers are needed across the country to address the problem of shortage of teachers.
- On the issue of acts of VAC perpetrators by male teachers, it was reported that a total of 162 teachers were dismissed from July 2016 to 2019 for engaging in sexual relationships with female school children. In 2018 and 2019, LHRC documented a total of 24 cases of teachers implicated in sexual VAC, who were either arrested and sent to court or found guilty and imprisoned, three of which were headteachers
- Incidents of children having to walk for up to 24km and 30km to reach school were reported in areas such as Siha District in Kilimanjaro and Handeni and Muheza Districts in Tanga respectively. Long distance to school puts children at greater risk of violence, especially girls, and is among factors contributing to child pregnancy and dropping out of school.
- Regarding absenteeism among teachers, recent study by the



World Bank (2018) indicates that teacher absenteeism is a big problem in East Africa, including in Tanzania, with teachers in Tanzania using only 55% of the time officially allocated to teach to actually teach. In 2019, it was revealed that 76% of complaints against teachers in Tanzania received by the Teachers Service Commission from July 2016 to 2019 were on teacher absenteeism.

Another key issue which hindered effective realisation of the right to education in 2019, particularly for girls, was the predicament of child pregnancy and expulsion of pregnant schoolgirls. In 2018 and 2019 alone, LHRC documented more than 2,540 cases of schoolgirls who became pregnant. Bodaboda drivers and male teachers to be major perpetrators of child pregnancy.

Additionally, concerns over literacy and numeracy levels of pupils came to light in 2019. While trends show a continuing trend of improvement in the level of literacy in Swahili, literacy in English is low and declining, with few pupils able to read a Standard 2 level story in English, according to Twaweza's learning assessment report of 2019. Shortage of teachers, shortage of classrooms, lack of meals at school, lack of parents' participation, teacher-pupil ratio, and a shortage of toilet holes affect the learning environment, and consequently the quality of education.

### **Right to Health**

As is the case with the right to education, the major challenge that was found to affect effective realisation of the right to health in 2019 was insufficient budget allocated for the health sector. Concerns over budgetary allocation for the health sector include low budget allocation and partial and delayed disbursements. For instance, for the financial year 2018/19, by March 2019, only 39% of the funds had been disbursed to MOHCDGEC. Another key challenge that came to light in 2019 is shortage of health workers. Shortage of doctors is particularly a bigger issue, as it was revealed that while the WHO guidelines indicate that one doctor should attend 10,000 patients per year, one doctor in Tanzania attends up to 22,000 patients per year.

Alarming suicide rates also emerged as a threat to the right to health in the year 2019. The 2018 report on suicides by the WHO indicates that close to 800 000 people in the world die due to suicide every year and 79% of global suicides occur in low-income and middle-



income countries. In Tanzania, it was reported that 666 Tanzanians were reported to have committed suicide from 2016 to 2019. For the year 2019, there were 105 reported cases of people committing suicide by hanging themselves, 8 by drinking poison, and 2 by shooting themselves. Reasons for people to commit suicide include relationships/love, family quarrels/conflicts, problems/stress at workplaces, and life/economic hardships.

### **Right to Water**

Right to water is a key socio-economic right that needs to be realised daily. In 2019, it was revealed that about 60% of Tanzanians have access to improved water; and it was reported that various measures were undertaken by the Government to ensure access to clean and safe water.

Various challenges were identified to hinder effective and progressive realisation of the right to water, including budgetary allocation and delayed disbursement of funds. By April 2019, the Ministry of Water had only received 51% of its development budget for the financial year 2018/19, contributing to some of the projects not being implemented and others not completed in time. Other challenges are shortage of experts in water sector; inability to effectively implement water projects and failure to complete projects in time; non-payment of water bills by government institutions; little investment in water projects by the private sector; water leakages and loss; lack of sustainability of water projects; and challenges faced by Basin Water Boards, such as including shortage of funds, shortage of experts and shortage of equipment.

- Shortage of experts in the water sector stands at 38%.
- From 2016 to 2019, regional capitals' water authorities lost an average of Tshs. 51 billion per year and experienced 33% water loss. For DAWASA, the water loss was 43%, while the amount lost was Tshs. 80 billion.
- By April 2019, government institutions owed a total of Tshs. 21.84 billion in water bills.

### **Right to Work**

Right to work includes right to gain living by work and right to just and favourable working conditions. In 2019, enjoyment of the right to work was affected by various factors, including unemployment and lack of employability skills; unpaid staff claims, especially for teachers;



the burden of excessive deductions, including PAYE and loan board repayments; shortage of workers in key sectors such as health, water and educations; and violations of labour rights, especially for workers in private companies and industries.

- Lack of relevant employability skills among college and university graduates prompted establishment of the Sector Skills Council, launched in 2019. A 2014 study conducted by the Inter-University Council of East Africa had revealed that over 50% of college and university graduates in Tanzania lack relevant employability skills; and in 2019, it was revealed that at least 45% of graduates in the telecommunication and information technology (ICT) industry lack skills and experience to grab employment opportunities in the growing competitive sector.
- For the financial year 2017/2018, CAG report indicated outstanding staff claims and salary arrears in 22 LGAs amounted to Tshs. 11,141,505,574. In 2019, the Government acknowledged that it owes a total of 86,000 teachers unpaid staff claims. The teachers are entitled to a total of Tshs. 43 billion, including salaries and leave allowances.
- While the Specified Officers (Debt Recovery) Act No.7 of 1970 requires employees not to receive less than one third of their basic salaries, in practice some of them continue to be subjected deductions beyond this limit. Increase of loan board repayment rate from 8% to 15% has significantly contributed to this problem. Excessive deductions may adversely affect employees' performance and their well-being and leave them vulnerable to fraudulent practices and misappropriation of public funds or abuse of office, which will affect service delivery.
- Shortage of workers in health, water and educations sectors creates a huge burden on the existing workers and affects their basic human rights such as right to adequate rest and right to health, as they are forced to work harder in order to meet performance expectations.
- Violations of labour rights for workers in private companies and industries in 2019 included; poor remuneration/inadequate wages; restrictions on freedom of association and collective bargaining; low awareness about labour laws, rights and duties; violation of employment contracts; denial of written employment contracts and copies of contracts; overtime work without pay or adequate pay; poor labour inspection; shortage or lack of personal protective equipment (PPE); leave granted as



privilege in some private companies; discrimination of women and PWDs at workplaces; and inadequate rest for workers.

### **3. Collective Rights**

#### ***Right to Development***

Right to development includes participation in contribution to and enjoyment of economic, social, cultural and political development. While economic development continued to improve in 2019, mainly due to infrastructural development, political, social and human development stalled. Translating economic growth into poverty reduction continued to be a challenge and budgetary constraints and delayed disbursements of funds in education, health and water sector affected social development. Political development stalled due to restrictions on participation rights (freedoms of expression, assembly and association).

#### ***Right to Enjoy and Benefit from Natural Resources***

Several challenges continued to affect realisation of the right to enjoy and benefit from natural resources, including corruption; tax evasion and avoidance; tax incentives; transfer pricing; and loopholes in mining and natural resources laws.

### **4. Rights of Vulnerable Groups**

#### ***Women's Rights***

In 2019, Women's rights were mainly affected by acts of VAW, especially physical and sexual VAW. Key findings relating to the situation of VAW in Tanzania Mainland in 2019 were:

- Collective efforts to combat VAW by government and non-government actors have led to increased reporting of such incidents.
- Despite efforts, to combat VAW, effective realisation of women's rights continues to be hindered by VAW, especially physical and sexual VAW.
- More than 88,612 GBV incidents were recorded by police 2017 to June 2019.
- By June 2019, a total of 3,709 incidents of rape of women and children were reported to police stations.
- In 2019 women in Kigoma were terrorized by a group of men known as 'Teleza,' whose members would break into women's homes and rape them, some of them repeatedly. Gang leader was arrested in June 2019.



- Home has become the most dangerous place for women, according to UNODC report released in 2018. According to the report, more than 50% of women in Africa are killed by intimate partner or family member and 35% are killed by current or intimate partner.
- Vulnerable groups such as young and adolescent women, elderly women, and women with disabilities are more vulnerable to certain types of violence, including physical and sexual violence.
- In 2019 LHRC recorded at least 14 incidents of physical VAW, of which 12 were killings. Out of the 12 killings of women by their spouses, 8 were motivated by jealousy.
- Budget allocated for implementation of NPA-VAWC. Budget for Social Welfare department decreased by 19.3% in the financial year 2019/20 compared to financial year 2018/19.

### **Children's Rights**

In 2019, freedom from violence for children continued to be the most violated children's right, owing to an alarming rate of VAC. The following key findings regarding the situation of VAC in Tanzania Mainland came to light in 2019:

- Collective efforts to combat VAC and VAW by government and non-government actors have led to increased reporting of such incidents.
- Physical and sexual VAC are on the rise. Physical VAC incidents include wave of attacks of children, which began in late 2018 in Njombe Region, ten children were brutally killed, with some of them found without some of the organs of their body, including private parts. The killings were mainly motivated by witchcraft beliefs. 16% of incidents of VAC incidents recorded by LHRC in 2019 were physical VAC; and Physical VAW caused serious physical injuries and even deaths to children. From January to December 2019, LHRC documented 26 child killings caused by VAW.
- High rates of sexual violence against children were reported in various parts of the country. From January to June 2019, a total of 3,709 rape incidents were recorded by police, 126 more than those reported during the same period in 2018. During this same period of 2019, a total of 688 sodomy incidents were recorded by police, 141 more than those recorded in 2018.
- LHRC's media survey revealed that 84% of VAC incidents reported by media in 2019 were sexual VAC incidents and they



were reported mainly in Tabora, Njombe, Geita, Songwe, Simiyu, Pwani, Ruvuma, Kilimanjaro, Katavi, Mara, Dodoma, Kagera, Mwanza, Iringa, Morogoro, Mbeya, Lindi, Manyara, Arusha Morogoro, Tanga, Singida, Rukwa and Dar es Salaam Regions. Incidents included a gang-rape to death of a Standard Seven pupil at Mahina Primary School in Mwanza.

- LHRC survey in 2019 also revealed that most sexual VAC acts are perpetrated in home, street and school settings.
- Main perpetrators of sexual VAC in 2019 included male teachers, bodaboda drivers and male parents, implicated in various acts of sexual VAC, including rape, sodomy, sexual harassment and engaging in sexual relationships with schoolgirls. In the period of 2018 to 2019, documented a total of 24 cases of teachers implicated in sexual VAC, who were either arrested and sent to court or found guilty and imprisoned. Of these, three were headteachers.
- Factors contributing to sexual VAC include: long distance to school, which puts children, especially girls, at at greater risk of sexual VAC, including rape and sodomy; slow pace of investigation and prosecution of perpetrators; and gap in parenting; tendency of community and family members being reluctant or deliberately undermining the proceedings in court by refusing to testify or convincing a VAC victim to become a hostile witness, due to what they call ‘concealing family shame;’ low awareness about access to justice; poverty; corruption; and beliefs in witchcraft.
- Child pregnancy continued to be a big challenge in 2019 as more cases were reported. In 2019, LHRC documented over 836 incidents of child pregnancy reported in different parts of Tanzania. For the period of 2018 and 2019 LHRC recorded more than 2,543 incidents of child pregnancy. Pregnant schoolgirls continued to face expulsion, discrimination and exclusion.
- Child pregnancy means children are subjected to unprotected sexual activity. Child pregnancy, sodomy and rape put them at increased risk of HIV infection, which in turn affects the 90-90-90 target to help end the AIDS epidemic.

### ***Rights of Persons with Disabilities***

- Discrimination of children with disabilities continues to be a problem, especially in rural areas. Parents tend to lock these children in their homes, denying them their fundamental



rights under the Law of the Child Act of 2009, including right to education.

- PWDs, especially those who are mentally challenged, are more vulnerable to different forms of violence, including sexual violence.
- Witchcraft-related attacks and killings continued to be a threat for PWAs in 2019. Despite progress in protection of PWAs, they continue to be vulnerable to attacks and live in great fear, which affects their ability to fully enjoy their fundamental human rights.
- Very few teachers are trained in any kind of special needs education. A recent report by Twaweza indicates that only 13% of all teachers interviewed during its learning assessment study were trained in any kind of special needs education.
- Access to social services, especially education, continued to be a challenge for children with disabilities. This is mainly contributed by inadequate infrastructure. Lack of friendly infrastructure, including hostels, contributes to absenteeism among the children with disabilities.

### ***Rights of the Elderly***

Fewer incidents of violence against the elderly were reported in 2019. However, the elderly continued to be subjected to attacks and violence, including sexual violence. In one incident a 77-year-old woman, Jema Macheho, was raped, an act that resulted into her death.

### ***Rights of Persons Living with HIV/AIDS***

- Stigma and discrimination continued to be a major factor violating the right of PLHIVs. Women and girls are disproportionately affected by the stigma and discrimination associated with HIV infection, facing discrimination in settings such as family, community, school and workplace.
- HIV and AIDS affect women and girls disproportionately. More than half of PLHIVs in Sub-Saharan Africa are women and girls and 59% of them are in Eastern and Southern Africa. Moreover, more than half of the new infections in Africa occur in women.
- Rate of new infections among young women aged 15-22 is as high as 66%; and young women aged 15-24 in Sub-Saharan Africa are 2.5 times more likely to be infected with HIV than men. AIDS-related illnesses are the second leading cause of death for



young women aged 15–24.

## Human Rights Mechanisms

### **National Human Rights Mechanisms**

Challenges faced by the national human rights mechanisms include corruption; delays in investigation and prosecution of cases; poor working environment due to shortage of equipment; shortage of law enforcement officers and judicial officers; overcrowding in prisons; budgetary constraints; shortage of facilities; poor knowledge about human rights and essence of procedural safeguards; and corruption and unethical conduct within the Tanzania Police Force.

### **Regional and International Human Rights Mechanisms**

- Enforcement of decisions/judgements of the regional and international human rights mechanisms in domestic jurisdictions usually depends on the political will. This has become a challenge in Tanzania.
- Tanzania became the second African State to withdraw its declaration allowing individuals and NGOs access to the African Court on Human and Peoples' Rights after Rwanda did the same in 2016.

## Key Recommendations

### **1. Civil and Political Rights**

#### **State actors**

- Being a de facto abolitionist state, the Government, through the Ministry of Constitutional and Legal Affairs, should move to declare a state of moratorium and improve death row conditions and prepare to abolish death penalty.
- The Ministry of Constitutional and Legal Affairs to spearhead amendments of restrictive laws restricting freedoms of expression, association and assembly, including the Online Content Regulations and Political Parties Act.
- The Government to amend Media Services Act of 2016 in line with the decision of the East African Court of Justice.
- The Police Force to speed up investigation of cases to safeguard rights to liberty and personal security and right to equality before the law.
- The Police Force to ensure police officers use their powers under the Police Force and Auxiliary Services Act in relation to freedom of assembly objectively, ensuring that any denial of assembly is



lawful, reasonable and necessary.

- The Government, through the Ministry of Constitutional and Legal Affairs, to create a police oversight body to ensure and promote accountability in law enforcement.
- The Commission for Human Rights and Good Governance (CHRAGG) and the Police Force to ensure police officers at all levels are regularly trained on the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials and human rights in general, in an effort to address extrajudicial killings.
- The Police Force should ensure police officers refrain from conducting arbitrary arrests and arbitrarily detain suspected criminals instead of sending them court within a specified period of time (usually 24 hours) as required by the law, to the right to liberty. Police officers implicated in this behaviour should be held accountable.
- The Police Force to ensure police officers refrain from fabricating cases against innocent civilians; and those responsible should be charged with malicious prosecution.
- The Government should ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) to safeguard freedom from torture.

### **Non-state actors**

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



## **Members of the public**

- To refrain from taking the law into their own hands and seek remedies at higher levels of the justice system where they are not happy with the outcome of a case.
- Religious leaders and traditional leaders to use their platforms to speak against violations of civil rights, especially the right to life, freedom of expression and freedom from torture, as a way of promoting these rights.
- Community members to expose and report violations of human rights, especially the right to life, and ensure the perpetrators are brought to justice.

## **2. Economic, Social and Cultural Rights**

### **State actors**

- The Government, through the Ministry of Finance and Planning, to increase budgetary allocations for education, water and health sectors in accordance with the international standards and ensure full and timely disbursement of funds for these sectors.
- The Government, through the Ministry of Finance and Planning, to increase budgetary allocation for the agriculture sector, which is the leading employer, in order to boost the right to development and right to work. It should also and increase investment in irrigation farming to boost food production and improve accessibility.
- The Ministry of Education, Science and Technology should address challenges faced by teachers to ensure they work in favourable conditions, as key measure in improving quality of education and achieving key targets under SDG 4 and the Tanzania Development Vision 2025.
- The Ministry of Education, Science and Technology to devise strategies of preventing VAC perpetrated by male teachers in schools.
- The Government should ensure its institutions pay water bills on time in order to water authorities to effectively implement their activities and maintain water infrastructure.
- The Ministry of Water should enhance efforts to address the problem of water leakages, which lead to water loss, and costs water authorities billions of monies.
- Regarding pregnant girls, LHRC continues to urge the



Government to reconsider its stance to protect right to education for girls in line with the Constitution of the United Republic of Tanzania of 1977 and regional and international conventions.

- Ministry of Education, Science and Technology to improve access to education for children with disabilities by ensuring availability of relevant infrastructure, teachers and learning tools.

### **Non-state actors**

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

### **Members of the public**

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



- Community members should also mobilize themselves and help the Government in addressing some key challenges in the education sector, such as shortage of desks and shortage of toilets/toilet holes.

### **3. Collective Rights**

#### **State actors**

- The Government should address corruption in the mining sector, which is threatening the right to development and the right to enjoy and benefit from natural resources.
- The Ministry of Natural Resources should ensure effective implementation of natural resources laws.
- The Government to ensure respect of human rights in the course of attracting investment and ensure investors comply with Tanzanian laws and respect human rights in their operations.
- The Government to address tax evasion and avoidance in the mining sector and ensure companies which evade tax are held accountable.

#### **Non-state actors**

- CSOs and the Commission for Human Rights and Good Governance (CHRAGG) to raise public awareness on the right to development and the right to benefit from natural resources.
- CSOs should identify gaps in realization of natural resources and engage and advise the government accordingly.
- CSOs should collaborate with the Government to ensure companies comply with their corporate social responsibilities. CSOs can also advocate for CSR to be mandatory for other companies, following amendments to the Mining Act of 2010, which have made CSR a legal requirement for companies in the mining sector.
- Members of the public
- Community members are encouraged to preserve and protect natural resources, which is their constitutional duty.
- Community members are also encouraged to pay their taxes, since these are essential in realization of social and economic rights.



## 4. Rights of Vulnerable Groups

### State actors

- The Government, through the Ministry of Constitutional and Legal Affairs, to ensure enactment of a specific and comprehensive law on gender-based violence as the current legislations do not adequately address gender-based violence issues.
- The Government, through the Ministry of Constitution and Legal Affairs and the Law Reform Commission, to review, amend and repeal all discriminatory laws which continue to deprive women of their rights and which are contrary to fundamental principles of human rights as provided for in various regional and international conventions ratified by Tanzania.
- The Government through the Ministry of Education, Science and Technology to integrate gender education in learning curriculums from elementary to higher learning.
- The Government, through the Ministry of Finance and Planning and the Ministry of Home Affairs, should increase funding for the police gender desk to enable it to effectively address gender-based violence and violence against children.
- The Government to fulfill its obligation under the regional and international children rights treaties to end child marriage and confirm the age of 18 as the minimum age for marriage, through a legislative action to amend the Law of Marriage Act 1971.
- The Government, through the Ministry of Constitutional and Legal Affairs, to facilitate amendment of the Law of Marriage Act of 1971 as required by the Court of Appeal decision of 2019 in the Rebeca Gyumi case.
- The police and courts of law to increase the pace of investigation and prosecution of cases of violence against children and women.
- The Government, through the Ministry of Home Affairs, should ensure that the elderly are protected from all forms of violence, particularly witchcraft-related killings, through investigation and prosecution of cases of violence against them.
- The Government, through the Ministry of Constitution and Legal Affairs, to table a bill in Parliament to propose enactment of a specific law to cater for the promotion and protection of the elderly.
- The Government, through the Ministry of Health, Community



Development, Gender, Elderly and Children, to spearhead the enactment of the law on elderly rights and protection to complement the National Age Policy.

- The Ministry of Health, Community Development, Gender, Elderly and Children to fast-track the process of introducing pension for the elderly.
- The Government, through the Ministry of Finance and Planning, to increase the budget for implementation of the NPA-VAWC to address VAC and VAW, which have reached alarming levels.

### **Non-state actors**

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

### **Members of the public**

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



accountable and justice is achieved.

## 5. Human Rights Mechanisms

### State actors

- The Government should strengthen national human rights mechanisms to ensure better protection of human rights. Adequate budget should be allocated for CHRAGG as the national human rights institution, to enable it to effectively carry out their mandate.
- The Government, through the Prevention and Combating of Corruption Bureau (PCCB), should move to address corruption in the justice system to boost protection of human rights and their ability to ensure justice.
- The Government to reconsider its decision to withdraw access to the African Court on Human and Peoples' Rights for NGOs and individuals.
- The Government should enforce decisions of the African Court on Human and Peoples' Rights on mandatory death sentence and that of the East African Court of Justice on the Media Services Act of 2016.

### Non-state actors

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



regional and international human rights mechanisms.

### ***Members of the public***

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



## Chapter 1 Contextual Overview

### Historical Overview

By the 10<sup>th</sup> Century, Tanganyika (now known as Tanzania Mainland), had interacted with other parts of the world. The Bantu-speaking people of Tanganyika were then living with traders from Asia and the Arab world before the Portuguese came in the 15<sup>th</sup> Century. In the 1880s there was the scramble for and partition of Africa in Berlin, Germany. Following this scramble and partition, Tanganyika was placed under the German colonial rule in 1885 but was later taken over by the British after the First World War. After the Second World War, Tanganyika was declared by the United Nations as a trust territory, with the British maintaining control until 1961 when Tanganyika gained its independence.

During German colonial rule, there was a blatant disregard of natives' human rights, which met with stiff resistance. Most of the uprisings came from chiefdoms notably Chief Mirambo of the Nyamwezi Tribe, Chief Mkwawa of the Hehe, Mangi Meli of the Chagga and Abushiri of Pangani. In 1905, the German colonial administration faced another uprising, popularly known as the *Majimaji* Uprising. The *Majimaji* uprising was under the traditional and spiritual leadership of Kinjekitile Ngwale. The Uprising involved different tribes in southern and eastern parts of Tanganyika. It was believed that Kinjekitile Ngwale could turn bullets into the water, hence the phrase "Majimaji Uprising" (*maji* is a Swahili word meaning water). As for the British, they too did not fare any better in protecting and respecting natives' human rights. As a result, the people of Tanganyika had to stand up and struggle for their independence, seeking to realize the right to self-determination.

The struggle for independence was led by the Tanganyika African National Union (TANU) party. TANU was born in 1954 even though it traces its origin to the Tanganyika African Association (TAA) established in 1929. The struggle intensified in the 1950s, and during this time, there were other parties, such as the United Tanganyika Party (UTP) and the African National Congress (ANC). However, it was TANU under the leadership of Julius Kambarage Nyerere, which led Tanganyika to independence in 1961. Nyerere, who would later be



known as the father of the nation, became Tanganyika's first Prime Minister. In the same year of 1961, the Independence Constitution was adopted. This would later be known as the first constitution of Tanganyika/Tanzania. By then, it must be remembered, the Governor-General was still representing the Queen of England as Head of State. It was until 1962 when Tanganyika became a republic and Nyerere its first president.

In 1962, Tanganyika adopted the second constitution which established Tanzania as a republic state. Specifically, it made the President the head of state, the head of government and the commander in chief of the army. Further, the constitution made the President part of parliament, without whose assent a bill could not become law. Further developments took place in 1964 when Tanganyika merged with the neighbouring Zanzibar to form the United Republic of Tanzania. Zanzibar had gained its independence from Britain in 1963 and overthrown the Sultan of Zanzibar (from Oman) in January 1964. As a result of the union, the third constitution, the Union Constitution, was born. It established union of two-governments led by TANU in Tanzania Mainland (Tanganyika) and Afro-Shirazi Party (ASP) in Zanzibar. Shortly after that, another constitution, an Interim Constitution, was enacted in 1965. This constitution brought to an end multiparty system in Tanzania. It declared TANU as the sole political party in Tanzania Mainland and ASP for Zanzibar. Noteworthy is the fact that the 1965 Constitution was enacted by an ordinary Act of Parliament, contrary to principles of constitutionalism and people participation. The most notable constitutional development in the country, however, came in 1977 when TANU and ASP merged to form Chama cha Mapinduzi (CCM). As a result of this merger, a permanent constitution was enacted and is still in force to date. Tanzania remained a one-party state until 1992 when the multiparty political system was re-introduced through constitutional amendments.

Like the many African States, post-colonial Tanzania did not prioritize human rights, seeing them as 'delaying' economic development. The promotion and protection of human rights was not considered necessary in the process of economic development. But the constitutional amendments of 1984, which saw the incorporation of the Bill of Human Rights into the Constitution of Tanzania, gave a new hope of human rights-based approach to development and increased protection of human rights in Tanzania. This was a remarkable



achievement, after a long struggle demanding for its inclusion.

## Geography and Population

Tanzania is in Eastern part of Africa between longitudes 29° and 41° East, and Latitude 1° and 12° South.<sup>1</sup> Topographically, the country is endowed with beautiful scenery, with mountain ranges and valleys, and many unique natural geographic features. Tanzania is home to Mount Kilimanjaro, the highest free-standing mountain in the world and the highest mountain in Africa (referred to as the roof of Africa). It is also blessed with beautiful national parks, game reserves and conservations areas which attract hundred thousand tourists yearly. Specifically, Tanzania has more than 15 national parks, including Ruaha National Park, Serengeti National Park, Katavi National Park, Mikumi National Park, Saadani National Park and Lake Manyara National Park. Apart from national parks, Tanzania has the abundancy of other natural resources such as minerals (such as Tanzanite, Gold, Diamond, Copper and Iron) and natural gas. For example, vast reserves of natural gas have been discovered in southern regions of Mtwara and Lindi where it is estimated that there is a reserve of 1 trillion Cubic metres of natural gas.<sup>2</sup>

As for water resources, they are available in plenty in Tanzania. On the western part, there is Lake Tanganyika (the deepest lake in Africa) bordering Zambia, Democratic Republic of Congo (DRC) and Burundi. Lake Victoria (the largest lake in Africa and the source of the Great Nile River) lies in the northern part of the country, bordering Uganda and Kenya. In the West South lies Lake Nyasa, bordering Zambia, Malawi and Mozambique. There are also plenty of rivers running across the country, including the significant ones such as Rufiji, Ruvuma, Malagarasi, Kagera, Pangani, Wami, Ruvu, Ruaha, Kilombero and Mara.

The Indian Ocean forms the Eastern border of the country with four major ports of Dar es Salaam; Mtwara; Tanga; and Bagamoyo (Mbegani area). These ports have been vital in boosting the country's economic growth. They have also been useful to the landlocked neighbouring countries which depend on Tanzania for exportation

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

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



and importation of goods.<sup>3</sup> For example, Tanzania agreed with Uganda in 2016 to construct an oil pipeline which will run from Uganda to the Tanga Port.<sup>4</sup> The pipeline will be vital in transporting oil from landlocked Uganda to overseas through the Tanga port. Tanzania is also planning to construct a standard gauge railway line which will connect the landlocked neighbouring countries of Uganda, Rwanda, Burundi and the Democratic Republic of Congo.<sup>5</sup>

Tanzania has a tropical climatic condition with the highland temperatures ranging between 10°C to 20°C during the cold and hot seasons, respectively. The temperature around the rest of the country does not fall below 20°C. Usually, Tanzania is hot around from October to February especially in the coastal regions of Dar es Salaam, Pwani, Tanga, Lindi and Mtwara. Cold season runs from May and August, particularly in the highlands areas where temperatures may fall below 10°C.

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

The country's climatic condition further attracts the generation of alternative energy such as solar energy and wind energy. There are constant sunshine and speedy wind that can generate electricity

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

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

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

6 See [www.meteo.go.tz](http://www.meteo.go.tz), accessed on 10<sup>th</sup> December, 2017.

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

8 Ibid.



throughout the year. For instance, wind resource could produce energy throughout the Rift Valley, in the highland plains and along the coast of the Indian Ocean.<sup>9</sup> However, there is a minimum investment in alternative sources of energy so far.

**The Population** of the country is rapidly growing at a rate of 2.7 per annum. Estimation of the population according to the National Population and Housing Census of 2012 is 43,625,354 in Mainland Tanzania and 1,303,569 in Zanzibar. Women are making the majority at 51.3% and male at 48.7%.<sup>10</sup> In 2016 the population projection was at a total of 50,144,175, with 24,412,889 males and 25,731,286 females.<sup>11</sup> 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, equivalent to 66.6% of the total number of households. In urban areas, there are 3,098,792 households, equivalent to 33.4% of the total number of households. 4.7 persons occupy the average household.

As for non-Tanzanians, an estimated 662,287 are living and working in Tanzania.<sup>12</sup> The number has grown as a result of increased foreign direct investments and corporations. On the other hand, the number of Tanzanians living and working abroad (Diaspora) is estimated at 421,456.<sup>13</sup>

The country's literacy rate is 71% 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 at 94.6%. The number of girls enrolled in primary schools has vastly increased compared to the situation in the early 1960s up to 1990s.

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

10 URT 2012, the National Population and Housing Census.

11 See National Bureau of Statistics (NBS), Sub-Divisional Population Projection for Year 2016 and 2017 based on 2012 Population and Housing Census, available at [http://www.nbs.go.tz/nbs/takwimu/census2012/Tanzania\\_Total\\_Population\\_by\\_District-Regions-2016\\_2017r.pdf](http://www.nbs.go.tz/nbs/takwimu/census2012/Tanzania_Total_Population_by_District-Regions-2016_2017r.pdf), accessed 18<sup>th</sup> December 2017.

12 Ibid.

13 Ibid.



## Economic Situation

The Gross Domestic Product (GDP) in Tanzania has expanded to 6.80% in the third quarter of 2018 over the same quarter of the previous year. Annually, GDP annual growth rate in Tanzania has averaged at 6.76% from 2012 up to 2018. The GDP growth rate reached an all-time high at 11.90% within the first quarter of 2007 and an all-time low at 2.60% in the third quarter of 2009.<sup>14</sup> Services sector account for 40% of GDP, while the primary sector accounts for 30% of GDP.



SOURCE: TRADINGECONOMICS.COM | NATIONAL BUREAU OF STATISTICS (NBS) - TANZANIA

Figure 1: GDP annual growth rate

Economic growth in Tanzania is affected by both internal and external factors. Internal factors include inadequate funds; land ownership conflicts; insufficient participation of the private sector; high rate of population growth; environmental degradation and climate change. As for the external factors, they include regional and global economic and political shocks; natural calamities and spatial politics that can breed wars and conflicts.<sup>15</sup>

<sup>14</sup> See *Tanzania GDP Annual Growth Rate* available at <https://tradingeconomics.com/tanzania/gdp-growth-annual> , accessed on 10<sup>th</sup> March, 2019

<sup>15</sup> See Samuel Kamndaya "Eight major risks to Tanzania's economic growth in 2018/19" *The Citizen Newspaper*; 14 June 2018 [online], at <https://www.thecitizen.co.tz/News/1840340-4612022-10008rz/index.html> accessed 13<sup>th</sup> March 2019.



## Political and Governance Systems

### *Political Background*

Since 1964, Tanzania has had five presidents. These are the late Julius Kambarage Nyerere (1962-1985), Ali Hassan Mwinyi (1985-1995), Benjamin William Mkapa (1995-2005), Dr. Jakaya Mrisho Kikwete (2005-2015) and Dr. John Pombe Magufuli (2015-to date).

### *Governance System*

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

#### **The Executive**

The Executive arm of the state is composed of the President, who is the Head of State, Head of Government and the Commander in Chief of the Armed Forces and the cabinet.<sup>16</sup> The Government of the United Republic of Tanzania is in charge of all union matters and all non-union matters for Tanzania Mainland.<sup>17</sup> The Cabinet includes the Vice-President, the Prime Minister, the President of Zanzibar and all ministers. The Vice-President assists the President with all union matters. Zanzibar has a semi-autonomous government that has the power over non-union matters in the Isles. Details on Zanzibar are provided in Part Two of this report.

#### **The Legislature**

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

The National Assembly has legislative powers concerning all Union Matters and also concerning all other matters concerning Mainland

<sup>16</sup> Article 33 of the Constitution of the United Republic of Tanzania 1977.

<sup>17</sup> Ibid, Article 34.



Tanzania. Legislative powers on issues which are not Union Matters are vested in the House of Representative (please refer to Part Two of this report for detailed information on Zanzibar). The laws passed by the National Assembly apply in Zanzibar if they address specifically designated union matters and have been presented to the Zanzibar House of Representatives by the responsible minister.<sup>18</sup>

The majority of MPs are elected members of their constituencies.<sup>19</sup> Other members are of the special seat category appointed by political parties based on the proportion of votes won on Parliamentary election.<sup>20</sup> The President also has the power to appoint ten members of his choice, while five members come from elected members of the House of Representative.<sup>21</sup> The Attorney General of Tanzania is also a Member of Parliament by his/her office.<sup>22</sup> The term of office for members of Parliament is five (5) years.

The Zanzibar House of Representatives has jurisdiction over all non-union matters, that is, matters that do not pertain to foreign affairs, citizenship, higher education, and other matters set out by the Constitution as under the power of the entire Union.<sup>23</sup> The House has powers to enact laws for Zanzibar on non-union matters without the approval of the union government. The term of office for the Zanzibar President and House of Representatives is also five (5) years. The relationship between Zanzibar and Mainland Tanzania is a relatively unique system of government. More information about Zanzibar can be found in Part Two of this report.

## The Judiciary

The Judiciary is a constitutional organ and an arm of the State. The Judiciary is the authority with the final decision in the dispensation

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

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

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

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

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

23 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 1<sup>st</sup> Schedule.



of justice in the United Republic of Tanzania.<sup>24</sup> Tanzania's legal system is based on English common law, whereby judicial functions are administered by various courts established under the law.<sup>25</sup> The judicial hierarchy in Tanzania Mainland (in descending order) consists of the following courts: the Court of Appeal, which is the highest court in the country; the High Court of Tanzania; Resident Magistrates Courts; District Courts; and Primary Courts. The adjudicators in the Court of Appeal and High Court are Judges while in other courts are magistrates.

Judges are appointed by the President, in consultation with the Judicial Service Commission of Tanzania,<sup>26</sup> while magistrates are appointed directly by the Judicial Service Commission.<sup>27</sup> The High Court of Tanzania has divisions dealing with land, labour and commercial matters. In 2016, the law amended the Economic and Organised Crime Control Act of 1984 to establish the Economic, Corruption and Organised Crime Court (*Mahakama ya Mafisadi*).<sup>28</sup>

Tanzania also has a court-martial process (military tribunal) meant to deal with cases related to armed forces personnel.<sup>29</sup> There is also a special Constitutional Court, which is an *ad hoc* court with a sole function of interpretation of the *Constitution of the United Republic of Tanzania, 1977* over a dispute between the Government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar.<sup>30</sup> The Constitutional Court is composed of members half of whom appointed by the Government of the United Republic of Tanzania and the other half by the Revolutionary Government of Zanzibar. Apart from courts of laws, there are also Tribunals established under various laws to decide on other matters, including labour, taxes and land issues.<sup>31</sup>

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

25 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].

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

27 *Ibid*, Article 113(1).

28 Section 3 of the Economic and Organized Crimes Act.

29 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].

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

31 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



Zanzibar has its judicial system consisting of (in descending order): The Court of Appeal of Tanzania; the High Court of Zanzibar; Regional and District Magistrate Courts; Primary Courts; *Kadhi* Appeal Courts; and *Kadhi* Courts. These courts have jurisdiction over cases arising in Zanzibar that involve non-union matters.<sup>32</sup> 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 arising from a magistrate court is slightly different, as some of the cases may be appealed to the High Court of Zanzibar and then appealed again to the Court of Appeal of Tanzania.

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adjudicate tax issues. Land matters are adjudicated by tribunals established under the Court (Land Disputes Settlements) Act, 2002.

- 32 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.



## Chapter 2 Civil and Political Rights

### 2.1 Overview

Civil and political rights are rights that protect peoples' freedoms from infringement by governments, institutions and individuals. They guarantee citizens' free participation in civil and political life. Thus, among others, civil and political rights protect individuals' freedoms from interference by state actors, promote involvement in civil society and are an essential component of democratic governance. They are also known as the first generation of human rights and found under international/UN instruments such as the International Covenant on Civil and Political Rights (ICCPR) of 1966, the Universal Declaration of Human Rights (UDHR) of 1948, the UN Convention on the Rights of Persons with Disabilities (CRPD) of 2006, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) of 1979, the UN Convention on the Rights of the Child of 1989, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984.

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

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



This chapter discusses key issues affecting Right to Life, Freedom of Expression, Right to Equality before the Law and Effective Remedy, Right to Liberty and Personal Security, Freedoms of Assembly and Association, and Right to Take Part in Governance for the year 2019.

## 2.2 Right to Life

### 2.2.1 Legal Framework

The right to life is fundamental for the enjoyment of other human rights. Because of its importance, it is the most guaranteed and protected right in all major human right treaties. These include, for example, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the Convention on the Rights of Persons with Disabilities (CRPD) of 2006 and the Convention on the Rights of the Child (CRC) of 1989. Others are the African Charter on Human and Peoples' Rights (ACHPR) of 1981, the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003, and SADC Protocol on Gender and Development of 2008.<sup>33</sup> This right is also contained in the Universal Declaration of Human Rights (UDHR) of 1948.<sup>34</sup> Domestically, right to life is also guaranteed and protected under the Constitution of the United Republic of Tanzania of 1977.

### 2.2.2 Key Issues

For the year 2019, key issues affecting the right to life included mob violence, extrajudicial killings, violence against law enforcement officers, witchcraft-related killings, death penalty, road accidents, brutal killings of children in Njombe Region, and jealousy-motivated killings.

#### 2.2.2.1 Mob Violence

For the past three years, incidents of mob violence documented by the Police Force of Tanzania have exceeded 500 per year. For instance, for the years 2015 and 2016, there were a total of 997 and 912 incidents reported, respectively. As of June 2018, a total of 385 mob killings had already been documented by the Police Force. This number represents an average of 76 people killed by angry mobs in

<sup>33</sup> See Article 6 of ICCPR; Article 10 of CRPD; Article 6(1) of CRC; Article 4 of ACHPR; Article 5(1) of ACRWC; Article 4(1) of Maputo Protocol; Article 4(2) of the SADC Protocol on Gender and Development.

<sup>34</sup> Article 3 of UDHR.



every month, which this report opines to be high and unacceptable.

For the year 2019, mob violence and killings incidents were also reported in various parts of Tanzania Mainland, including Kagera, Shinyanga, Dar es Salaam, Dodoma, Mtwara and Ruvuma Regions. Reasons for such killings include theft, witchcraft suspicions, or cases of victims of mob violence being accused of other persons. Below are incidents of mob violence and killings documented by LHRC from January to December 2019.

Table 1: Incidents of mob violence and killings documented by LHRC – January to December 2019

◦ Incident	◦ Report Date
◦ <b>Muleba, Kagera:</b> Colletha Francis (65) was killed by an angry mob after accusing her of being a witch and killing a 7-year-old boy, Ismail Hamisi, whose body was found buried in her property with some of the body parts missing.	◦ 20 Apr 2019
◦ <b>Shinyanga Town, Shinyanga:</b> An angry mob killed Esther Samwel (35) after being accused of stealing some greens and vegetables at a marketplace.	◦ 21 Jun 2019
◦ <b>Dar es Salaam:</b> Jumanne Kategile, accused of being a notorious thief, was beaten and torched to death by an angry mob on 31 <sup>st</sup> May 2019.	◦ 8 Jun 2019
◦ <b>Shinyanga:</b> Esther Samweli (35) was reportedly attacked with sticks and killed by an angry mob.	◦ 21 Jun 2019
◦ <b>Tunduru, Ruvuma:</b> Angry mob attacked Said Matumla (27), whom they accused of stealing a motorcycle, leading to his death upon arrival at the hospital. The incident occurred in Ausilinda Village.	◦ 11 Apr 2019
◦ <b>Masasi, Mtwara:</b> Issa Hasimu (26), resident of Nyasa Ward in Masasi District, was brutally attacked and killed by an angry mob near a police station, where he was running to surrender himself. He was reported to be killed because he was caught stealing solar power equipment.	◦ 12 Sep 2019
◦ <b>Dodoma:</b> In July 2019, Dodoma Regional Police Commander, RPC Gilles Muroto, reported that one unknown man, estimated to be 25 years old, was beaten and killed by an angry mob after raping two children and one older woman (80) in June and July 2019.	◦ 6 Jul 2019
◦ <b>Masasi, Mtwara:</b> In August 2019, Juma Lugomba (61), resident of Chiwata Village in Masasi District, was attacked, killed and torched by an angry mob after he had attacked and killed his wife, Yolenda Milanzi (59), using an axe.	◦ 25 Aug 2019

*Source: LHRC Media Survey 2019 & Human Rights Monitoring*



As indicated in the table above, LHRC documented eight incidents of mob violence and killings reported by sources other than the Police Force. However, these are only a small fraction of incidents usually reported to the police. It is dangerous and contrary to human rights principles when people decide to take matters on their own hands. However, such decisions could also be an indicator of a lack of faith in the justice system or low awareness of the criminal justice system. For example, it would appear many do not understand the concept of bail in criminal offences which allow suspects to return to civilian life pending police investigation or court proceedings.

### **2.2.2.2 Extrajudicial Killings and Violence against Law Enforcement Officers**

#### **A.Extrajudicial Killings**

Tanzania is obligated under regional, continental and international human rights treaties to safeguard the lives of its citizens as well as foreigners. It does so through its law enforcement and security officials. The United Nations Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when it is strictly necessary and to the extent required for the performance of their duty.<sup>35</sup> In other words, use of force must be proportionate to the objective intended. The use of firearms, therefore, should be permitted only when a suspect is armed, and when there is an imminent threat to the lives or properties of others. However, it is not unusual to witness cases where law officials disregard the proportionate use of force. When that happens, and as a result, there is a loss of life, then law officials are said to have committed extrajudicial killings. In other words, extrajudicial killings happen when law enforcement officers use excessive force against civilians or suspected criminals, resulting in their deaths.

For the year 2019, LHRC documented a total of 3 incidents of extrajudicial killings, reported in Kilimanjaro, Geita and Pwani Regions. These are two incidents fewer than those recorded in the year 2018. It is not easy to obtain information of this nature from the law enforcement officials because they are the ones who are implicated in extrajudicial killings. It is easier to obtain such information through media survey

<sup>35</sup> See Article 3 of the Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly in resolution 34/169 of 17 December 1979 at New York, at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>, accessed 10<sup>th</sup> December 2017.



and fact-finding missions.

Table 2: Incidents of extrajudicial killings documented by LHRC – January to December 2019

Incident	Report Date
<ul style="list-style-type: none"> <li>◦ <b>Moshi, Kilimanjaro:</b> Waziri Mlacha (18) was reportedly killed while in police custody. Relatives refuted police claims that he died because he had epilepsy and claimed that the deceased's body had injuries and bruises, which indicated that he received a heavy beating. It was reported that in June 2019, the accused officer was charged in the court of law for the alleged killing.</li> </ul>	<ul style="list-style-type: none"> <li>◦ 22 Apr 2019</li> </ul>
<ul style="list-style-type: none"> <li>◦ <b>Geita:</b> Jackson Charles (24) from Nyakafuro Village in Geita was reportedly beaten by police, leading to his death.</li> </ul>	<ul style="list-style-type: none"> <li>◦ 24 Apr 2019</li> </ul>
<ul style="list-style-type: none"> <li>◦ <b>Pwani:</b> Police in Pwani Region arrested two forest guards, accused of killing Emmanuel Yusup (36) in Kifuru Village in Kisarawe District. They allegedly used excessive force in handling the victim, accused of trespassing into reserve area.</li> </ul>	<ul style="list-style-type: none"> <li>◦ 20 May 2019</li> </ul>

*Source: LHRC Media Survey 2019 & Human Rights Monitoring*

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

### B. Violence against Law Enforcement Officers

On the other hand, for the year 2019, LHRC documented one incident of violence against law enforcement officers. The incident occurred in on 30<sup>th</sup> March 2019 in Geita Region, where an angry mob injured three police officers from the Nyang'hwale District Police Station. This incident happened when the police intervened to prevent the crowd from killing a suspected robber. One of them was seriously injured and had to be rushed to Bugando Hospital in Mwanza Region. Fortunately, there was no loss of life of police officers in the incident.<sup>36</sup>

<sup>36</sup> LHRC Media Survey 2019.



**LHRC's call:** Community members to refrain from attacking law enforcement officers as it is contrary to the law and human right principles. Further, it is dangerous for the community members to attack law enforcement officers because the law permits them to use force proportionally. As a result, police officers may find it necessary to defend their lives using force, which may risk the life of the attacking citizens.

### **2.2.2.3 Witchcraft-related Killings and Violence against PWAs**

#### **A. Witchcraft-related Killings**

Beliefs in witchcraft are high in Tanzania and continue to be one of the significant issues affecting human rights. These beliefs have resulted in witchcraft-related killings, either perpetrated against suspects of witchcraft or against other people whose body parts are believed to be vital for success through potions created by witchdoctors. Primary victims or targets of such killings continue to be the elderly, especially older women; children; and persons with albinism

Recent statistics indicate a slight decrease in reported incidents of witchcraft-related killings. There is a decline from 425 killings in 2015 to 307 in 2017. In 2018, only 106 such killings were recorded by June, compared to 115 during the same period in 2017.<sup>37</sup> In the past three years (2016 to 2018), the notorious regions for such killings include Tabora, Shinyanga, Mwanza, Geita, Mbeya, Njombe and Songwe.<sup>38</sup>

For the year 2019, LHRC documented six incidents of witchcraft-related killings, reported in Tabora, Shinyanga, Mbeya, Dar es Salaam, Iringa and Simiyu Regions. These incidents are recorded in the table below.

<sup>37</sup> LHRC (2019), Mid-Year Human Rights Report 2019.

<sup>38</sup> See LHRC & ZLSC (2017), Tanzania Human Rights Report 2016; LHRC & ZLSC (2018), Tanzania Human Rights Report 2017; and LHRC & ZLSC (2019), Tanzania Human Rights Report 2018, at [www.humanrights.or.tz](http://www.humanrights.or.tz).



Table 3: Incidents of killings motivated by belief in witchcraft documented by LHRC – January to December 2019

◦ Incident	◦ Report Date
◦ <b>Chunya, Mbeya:</b> The Police Force reported that Tenson Meta (54), resident of Kibaoni area in Chunya was killed by his relatives and a witchdoctor on witchcraft suspicion.	◦ 27 May 2019
◦ <b>Dar es Salaam:</b> Police arrested a man for selling his six-year-old daughter to be killed so that her body parts could be used in a potion to make him rich. The child's body was found decapitated in Mbeya Region, with the right foot amputated.	◦ 11 May 2019
◦ <b>Iringa:</b> Police in Iringa Region arrested a man and his wife, accused of removing part of their child's facial skin to be used to make a petition, as requested by a witchdoctor.	◦ 14 Jul 2019
◦ <b>Lamadi, Simiyu:</b> A body of a woman was found in an abandoned building with her private parts and left breast amputated.	◦ 17 Feb 2019
◦ <b>Igunga, Tabora:</b> Police in Igunga District arrested three people, residents of Kitangili Village, in connection with the murder of a 55-year-old woman. The arrested person had on 28 <sup>th</sup> July 2019 allegedly killed Veronica Makumbi on witchcraft accusations.	◦ 19 Aug 2019
◦ <b>Kahama, Shinyanga:</b> Hamis Salehe (58), resident of Nyambukwa, Ngogwa Ward, was brutally killed by a group of unknown assailants. The unknown assailants broke into his home, grabbed him from his bed and started attacking him with sharp objects until his death. Police said the initial investigation showed the killing was motivated by witchcraft beliefs. It was believed that the late Hamis Salehe was responsible for the lightning which allegedly killed his relative called Mhoja Salehe (45) and his wife Pili Mabula (36) in February 2019.	◦ 8 Aug 2019

Source: LHRC Media Survey 2019 & Human Rights Monitoring

### B. Violence against PWAs

Among the victims of witchcraft-related violence and killings are persons with albinism (PWAs). They are usually targeted for their body parts, which are traditionally used by witchdoctors to 'help people achieve something' or 'become rich.' Recent history suggests that attacks against PWAs usually intensify during election periods. However, coordinated efforts by the Government, Judiciary, NGOs, the Police Force of Tanzania and other stakeholders have seen a significant decline in attacks and killings of PWAs. For instance, in 2016 and 2017, there were no reported killings of PWAs. According



to the Under the Same Sun Tanzania (UTSS),<sup>39</sup> the last recording PWA killing in Tanzania was in February 2015.<sup>40</sup> So far, UTTSS has documented 194 reports of PWA attacks. These attacks include 76 killings, 89 survivors, one missing PWA, 25 grave violations and three asylums.<sup>41</sup> Judicial action against perpetrators of PWA attacks has also helped to improve the situation.

In 2018, there was one incident of violence against PWAs. This incident was reported in Singida, whereby unknown people who had visited from Dar es Salaam plotted to kill the man at a traditional liquor bar.<sup>42</sup>

Recent UTSS report on PWA attacks shows that in the year 2019, two cases of PWA attacks were reported in Tanzania Mainland. One case involved a violation of the PWA while the other was on the vandalism of one PWA's grave.<sup>43</sup> The first case happened in June and November 2019 involving a 6-year-old PWA boy, Junior

Attacks and killings of PWAs are motivated by belief in witchcraft. Some people believe that PWA body parts can be used to make a magic potion that will bring them good luck or make them rich.

John Japheth, resident of Mhongolo Ward, Kahama District in Shinyanga Region. Junior survived two dangerous attempts to abduct him from his home. At first in June 2019, three suspicious people wearing coats and masks knocked on the door at survivor's house demanding to be let inside. The survivor's mother refused to open the door. She would hear the assailants saying since she had refused to open the door, they would return another day and 'show her.' The second attempt to abduct Junior was in November 2019. Two unknown people knocked again on the door, demanding that the survivor's mother open the door, calling her 'a woman with a child

39 A charitable organization that promotes the wellbeing and rights of persons with albinism in Tanzania.

40 See UTSS (2020), Reported Attacks of Persons with Albinism (PWA), at <https://underthesamesun.com/sites/default/files/Attacks%20of%20PWA%20-%20extended%20version.pdf>, accessed 3rd March 2020.

41 Ibid.

42 LHRC & ZLSC (2019), Tanzania Human Rights Report 2018, at [www.humanrights.or.tz](http://www.humanrights.or.tz)

43 UTSS (2020), Reported Attacks of Persons with Albinism (PWA), at <https://underthesamesun.com/sites/default/files/Attacks%20of%20PWA%20-%20extended%20version.pdf>, accessed 3rd March 2020.



with albinism.' When she realized that things were getting worse and her son was in grave danger, the mother eventually confided in one of her relatives who alerted UTSS and local authorities.<sup>44</sup> The parents remain very concerned with the safety of their child.

The second case happened in November 2019, where a grave of a woman with a disability who passed away in 2013, one Alatupela Joel Fute, was found violated and vandalised.<sup>45</sup> The incident occurred in Igula Village, Ilembula Ward in Wanging'ombe District, Njombe Region. The assailants, however, did not manage to get to the deceased's body and left their digging tools at the gravesite. The incident has left the deceased's family shattered, especially the deceased's brother, Ayoub Joel Fute, who stated that he has ever since been living in great fear following the incident. Initial police investigations indicated the possible involvement of close relatives in the criminal offence.<sup>46</sup>

Although there have been no PWA killings since 2015, attacks against PWAs have continued to occur, leaving them in great fear to such an extent that some have sought asylum outside Africa. For instance, in June 2017, two PWAs were granted asylum in Vancouver, Canada and Chicago in the U.S.A. A year earlier, in July 2016, two sisters with albinism were granted asylum in California, U.S.A, after they had suffered a brutal attack and discrimination because of their albinism.<sup>47</sup>

**LHRC's call:** Increased protection for PWAs as the country heads towards the General Elections of 2020. Coordinated efforts between the government and non-government actors, including CSOs, are needed. Awareness-raising campaigns should be intensified on the rights of PWAs and misconceptions about the role of PWA body parts for political success or wealth creation.

#### **2.2.2.4 Death Penalty: More Death Sentences Imposed in 2019**

Death penalty is one of the punishments under the Penal Code (Cap 16). The last recorded execution of death penalty in Tanzania was during the second phase government led by President Ali Hassan Mwinyi in the 1990S, more than 20 years ago. For this reason, Tanzania is recognized as a de facto abolitionist state and considered to be

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44 Ibid.

45 Ibid.

46 Ibid.

47 Ibid.



in a state of moratorium. Presidents Benjamin William Mkapa and Jakaya Mrisho Kikwete never authorized executions; and in 2017, Hon. President John Pombe Magufuli followed suit, declaring that he would not sign any death warrant to order the execution of death row inmates.

Despite the reluctance to carry out the executions, death sentences continue to be imposed by courts of law on people convicted of committing grievous offences such as murder. Currently, there are over 480 death row inmates, the majority of them (over 90%) are male. For the year 2019, LHRC recorded a total of 18 death sentences, which are 13 more than those recorded in 2018.

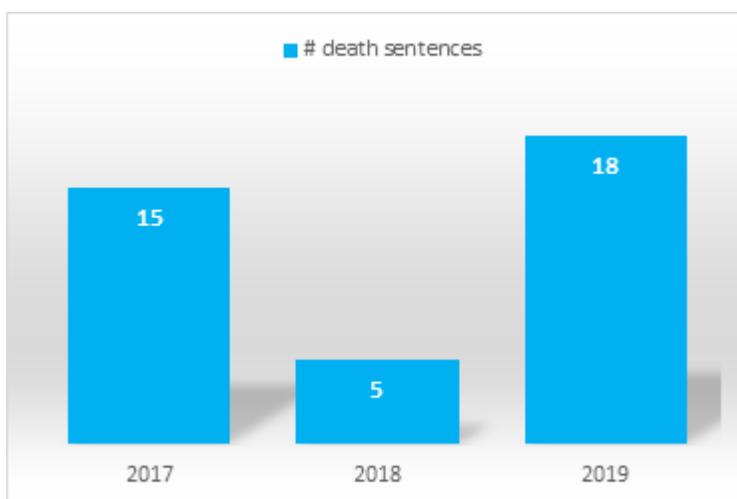


Figure 2: Death sentences recorded by LHRC – 2017 to 2019

Table 4: Death sentences recorded by LHRC – January to December 2019

Incident	Report Date
<b>Moshi, Kilimanjaro:</b> High Court of Tanzania sentenced to death one Hamis Chacha in the murder case of a 16-year-old, Humphrey Makundi, who was a student at Scholastica Secondary School.	4 Jun 2019
<b>Dar es Salaam:</b> High Court of Tanzania sentenced to death one Masamba Musiba (39), after convicting him of killing his lover, Bertha Mwarabu.	1 Apr 2019



<b>Bukoba, Kagera:</b> High Court of Tanzania, sentenced five people to death by hanging after being convicted of the murder of a husband of one of the accused. The sentenced accused were Bymatozi John Byeya (32), Isaya Kakuru (45), Dastan Makwaya (44) and Jovith Mtagahwa (39) and Hilda Innocent (30).	16 Jun 2019
<b>Mbeya:</b> In October 2019, the High Court in Mbeya sentenced, Gideon Mwakiwamba (61) and Andrea Mwasijinga (23) to death after convicting them of the murder of a 3-year-old child. They committed the offence on 20 <sup>th</sup> April 2017 in Rungwe District.	24 Oct 2019
<b>Mbeya:</b> In September 2019, the High Court in Mbeya imposed death sentences on Nathan Elias, Moses Kasitu and Elias Mzumbwe after convicting them of killing Vasko Njowela, who was working as a shopkeeper, and robbing him of Tshs. One million in July 2014.	19 Sep 2019
<b>Musoma, Mara: Mara:</b> In September 2019, the High Court in Mara sentenced to death three people (Musiba Maregeba, Abeid Casimil and Ndaru Sumuni), residents of Musoma Rural, after convicting them of murdering Tabu Makanya (58) in 2013.	15 Sep 2019
<b>Mtwara:</b> The High Court of Tanzania imposed a death sentence on Mohamedi Omari (45), after convicting him of murdering Andrew Ndemba in April 2016. He had reportedly killed him because he denied him some chicken soup.	27 Sep 2019
<b>Moshi, Kilimanjaro:</b> Mariki Ulomi (50) was sentenced to death by hanging after he was convicted of sodomizing an 11-year-old child and causing his death.	14 Sep 2019
<b>Dar es Salaam:</b> In November 2019, Kisutu Resident Magistrate with extended jurisdiction sentenced to death by hanging Esther Lyimo (47), after finding her guilty of murdering her niece, Naomi John (7), in early 2019.	9 Nov 2019

*Source: LHRC Media Survey 2019 & Human Rights Monitoring*

The imposition of death sentence contradicts the most fundamental human rights, right to life, which is protected by the Constitution of the United Republic of Tanzania of 1977,<sup>48</sup> regional human rights instruments,<sup>49</sup> and international human rights instruments.<sup>50</sup> The death penalty also amounts to cruel, inhuman and degrading punishment under the Convention against Torture (CAT).<sup>51</sup>

48 See Constitution of Tanzania, Article 14.

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

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

51 Amnesty International, The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment, 1 May 1995, ASA/22/03/95, available at: <https://www.refworld.org/docid/3ae6a9dd4.html> [accessed 10 March 2020]



**LHRC's view:** Death penalty constitutes a violation of the fundamental right to life; and its introduction has not made any impact in Tanzania in terms of acting as a deterrent, as is the case in other parts of the world. That is the reason why many countries around the globe continue to abolish it. It has also been found that some of the accused persons who are convicted and sentenced to death are later proved to have been innocent. Ms Rose Yona Malle (25), who was sentenced to death after she was convicted of murdering a *bodaboda* driver is a good example.<sup>52</sup>

In 2012, a *bodaboda* driver who had dropped her at her place was later found dead. Being the last person to be seen with the deceased, she was arrested, prosecuted of a murder case and sentenced into death by hanging. Fortunately, she was able to appeal against the conviction. The appellate court found out that she was wrongly convicted and therefore set her free.<sup>53</sup> Rose's case is an eye-opener: it is not unlikely to wrongfully convict an innocent person. And that means the execution of death penalties could mean killing innocent lives, a grave violation to the right to life.

#### 2.2.2.5 The African Court's decision against the mandatory death penalty in Tanzania

In November 2019, the African Court on Human and Peoples' Rights issued its judgement on mandatory death sentence in Tanzania. It declared the mandatory death penalty a violation of the African Charter on Human and People's Rights (ACHPR) of 1981. It further directed the Government of Tanzania to take necessary measures within one year from the date the judgement is notified to remove mandatory death sentence because it removes the discretion of the judicial officer.<sup>54</sup>

The Court made this landmark decision in the case of ***Ally Rajabu***

52 See Janeth Joseph "Hukumu ya kunyongwa ilivyobadili maisha ya Rose aliyekutana na mumewe aliyefungwa kimakosa" Mwananchi Newspaper, 14 July 2019 [online], at <https://www.mwananchi.co.tz/habari/kitaifa/-Hukumu-ya-kunyongwa-ilivyobadili-maisha-ya-Rose-1597296-5195770-dgjo69z/index.html>.

53 Ibid.

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



**and Others v. the United Republic of Tanzania.**<sup>55</sup> The Applicants, in this case, were Ally Rajabu, Angaia Kazeni, Geoffrey Stanley, Emmanuel Michael and Julius Petro, who had been sentenced to death for murder and are currently detained at the Arusha Central Prison.<sup>56</sup>

### **What did the applicants allege?**

In their application, the applicants alleged violations of the **right to be tried within a reasonable time; right to be heard; right to be heard by a competent court; right to life** and **right to dignity**.<sup>57</sup>

### **What did the court say?**

Right to be tried within a reasonable time: The Court found that the Court of Appeal of Tanzania needed some minimum time to deliver the judgment in a case of the death penalty. Further, it also found that scheduling constraints in the domestic judicial system should be considered when determining whether a trial is within a reasonable time. The Court, therefore, found that the Respondent State did not violate the Applicants right to be heard within a reasonable time protected under Article 7(1)(d) of the ACHPR.

Right to be heard: The Court found that both the High Court and the Court of Appeal undertook a proper examination in respect of identification, and the Applicant did not prove that investigation by a single police officer breached domestic law. The Court further found that the Court of Appeal corrected the irregularities in the proceedings before the High Court, which sentenced the Applicants before convicting them. The Court consequently found that there was no manifested error that occasioned a miscarriage of justice and found that the Respondent State did not violate the Applicants' right to be heard as protected in Article 7(1) of the ACHPR.

Right to be heard by a competent court: The Applicants had alleged

<sup>55</sup> APPLICATION No. 007/2015.

<sup>56</sup> See PRESS RELEASE JUDGMENT SUMMARY, ALLY RAJABU AND OTHERS V UNITED REPUBLIC OF TANZANIA APPLICATION No. 007/2015 JUDGMENT ON MERITS AND REPARATIONS

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS, 28 November 2019 at [https://en.african-court.org/images/Cases/Judgment/Judgment\\_Summary\\_Application\\_007-2015-Ally\\_Rajabu\\_and\\_Others\\_v\\_Tanzania\\_Final.pdf](https://en.african-court.org/images/Cases/Judgment/Judgment_Summary_Application_007-2015-Ally_Rajabu_and_Others_v_Tanzania_Final.pdf), accessed 5th March 2020.

<sup>57</sup> Ibid.



that the fact that both the preliminary hearing and trial were presided over by two different judges constituted a violation of their right to be heard by a competent court. The Respondent State submitted that the Applicants' failed to properly interpret the provisions of the law, and in any event, they should have raised this issue before domestic courts. The Court held that the Applicants did not have a proper understanding of the law, which does not make it compulsory for the same judge to preside over both the preliminary hearing and the trial. The Court, therefore, found that the Respondent State did not violate the Applicants' right to be heard by a competent court as guaranteed under Article 7(1)(a) of the ACHPR.

Right to life: The Court first set out that the Applicants' claim related to the violation of Article 4 of the ACHPR. The main issue was whether the mandatory imposition of the death penalty under Section 197 of the Tanzanian Penal Code constituted an arbitrary deprivation of the right to life. The Court relied on the jurisprudence of the African Commission on Human and Peoples' Rights to establish three criteria for assessment on whether it is imposed arbitrarily:

1. Firstly, the death penalty must be provided for by law;
2. Secondly, it must be imposed by a competent court; and
3. Finally, it must abide by due process.

Having established that the death penalty is provided for in the Tanzanian Penal Code; and that both the High Court and Court of Appeal were competent to impose the sentence, the Court proceeded to examine whether the imposition, as provided, observed the due process. On that point, the Court referred to a joint reading of Articles 1, 7(1) and 26 of the Charter to find that due process encompasses not only procedural rights but also any rights related to the sentencing process, especially the discretion of courts to take into account the particular circumstances of the accused. The Court found on the following regarding the mandatory imposition of the death penalty:

1. Firstly, it is automatic and mechanical as applied by the High Court in the case of the Applicants.
2. Secondly, it does not permit the consideration of mitigating factors.
3. Thirdly, it applies to accused persons without any distinction.



4. Fourthly, it takes away the discretion inherent in the exercise of the judicial function; and
5. Lastly, it does not observe the proportionality between the facts and the penalty.

Consequently, the Court found that the mandatory provision and imposition of the death sentence under the Respondent State's Penal Code does not uphold fairness and due process as guaranteed under Article 7(1) of the Charter.

In light of the finding above, the Court further found that lack of mention of the death penalty in Article 4 of the Charter and the strongly worded provision for the right to life therein is to the effect that the failure of the mandatory death sentence to pass the test of fairness renders the penalty contrary to the right to life under Article 4 of the ACHPR. Considered against the abolition of the death penalty in some circumstances by the Second Optional Protocol to the ICCPR; the African Charter on the Rights and Welfare of the Child; the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the Court held that the mandatory death sentence for murder in Section 197 of the Tanzanian Penal Code constitutes an arbitrary deprivation of the right to life and therefore that the Respondent State has violated Article 4 of the Charter.

Right to dignity: The Court found that the methods used to carry out the death penalty amounted to torture and inhuman and degrading treatment. Further, due to the arbitrary nature of the mandatory imposition of the death penalty, its execution by hanging is consequently and inevitably in violation of the right to dignity in respect of the prohibition of torture and inhuman and degrading treatment. The Court, therefore, found that the Respondent State had violated Article 5 of the ACHPR.

### **What were the Court's orders?**

- Bring the Penal Code in line with the ACHPR.
- Publish the Judgment on the websites of the Judiciary and the Ministry for Constitutional and Legal Affairs and avail it for at least one year after the date of publication within three (3) months of the notification of the Judgment.
- The State of Tanzania to submit to it within six (6) months from the date of notification of this judgment, a report on the status of implementation of the decision set forth herein and



thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

**LHRC's view:** It must be recalled that the Constitution of Tanzania is founded on the principle of democracy and social justice as Article 8 of the Constitution shows. It would be converse to maintain mandatory death penalty in a democratic society like ours without interfering with the very foundations of the Constitution. Likewise, our Constitution is based on freedom of individuals and thereby requiring the state authorities to direct their policies towards ensuring that human dignity, and other human rights are respected and cherished, and that human dignity shall be preserved and upheld in accordance with the spirit of the *Universal Declaration of Human Rights* as per *Article 9(a) and (f) of the Constitution*. If the state keeps retaining the mandatory death penalty and executing those condemned to death, it would be a total infringement of the constitutional foundations and principles as plainly as such.

**LHRC's call:** Tanzania is already an abolitionist state in practice and should take a step further and sign and ratify the Second Optional Protocol to the International Covenant and Political Rights on the abolition of the death penalty 1991. There is also a worldwide trend of the abolition of the death penalty, and Tanzania should follow suit. As of December 2017, a total of 106 countries around the world had abolished the death penalty, including neighbours Mozambique and Rwanda.<sup>58</sup> Most recently, other African countries such as Madagascar (2015), Benin (2016), Guinea (2017) and Burkina Faso (2018), have also abolished the death penalty.<sup>59</sup> Only about 53 countries in the world have retained the death penalty and execute death row inmates, while 29 are abolitionist in practice,<sup>60</sup> including Tanzania.

#### 2.2.2.6 Road Accidents: Fewer Accidents and Resulting Deaths

In the past two years, trends show that road accidents and resulting

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

59 See Oliver Smith "Mapped: The 53 places that still have the death penalty – including Japan" The Telegraph Newspaper, 6 July 2018 [online] at <https://www.telegraph.co.uk/travel/maps-and-graphics/countries-that-still-have-the-death-penalty/>.

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



deaths are decreasing. For instance, police data for the year 2017 recorded a total of 6,022 accidents resulting in 2,705 deaths. In contrast to 2016, there was a decrease from 10,297 road accidents and 3,381 deaths. From January to June 2018, a total of 2,220 accidents occurred, resulting in 1,051 deaths. In 2019, recorded road accidents decreased to 1,610 with 781 results deaths.

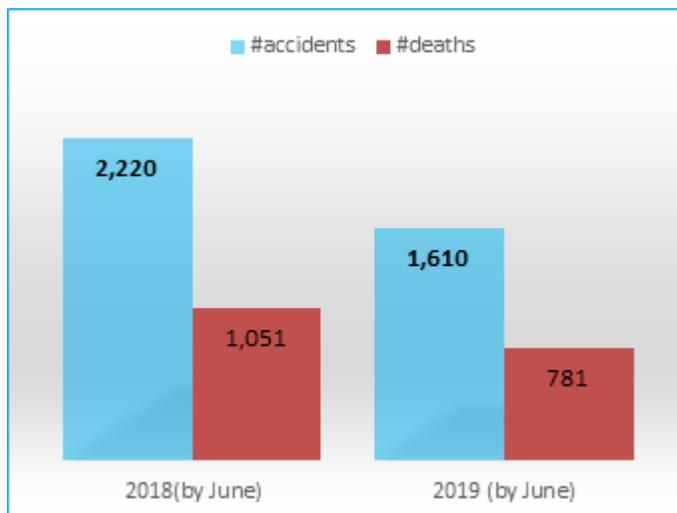


Figure 3: Recorded incidents of road accidents and resulting deaths – January to June 2018 & 2019

*Source: Police Force Data, 2018 & 2019*

Moreover, in 2019 the then Minister of Home Affairs, Hon. Kangi Lugola, revealed in the ministry budget speech for the financial year 2019/20, that from July 2018 to March 2019, a total of 2,593 road accidents were recorded by the police, while 4,180 such accidents were recorded from July 2017 to March 2018.<sup>61</sup> He added that the reported deaths resulting from the accidents had decreased by 38.7%.<sup>62</sup> LHRC commends the Tanzania Police Force for its efforts to reduce road accidents.

Where road accidents result from negligence or reckless driving, they become a human rights issue. Police Force reports indicate that most accidents in Tanzania could have been avoided had the

61 See HOTUBA YA WAZIRI WA MAMBO YA NDANI YA NCHI MHE. KANGI ALPHAXARD LUGOLA (MB.), AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2019/20 at <https://www.moha.go.tz/sw/blog/2019-04-25/hotuba-ya-waziri-wa-mambo-ya-ndani-ya-nchi-mhe-kangi-alphaxard-lugola-mb>.

62 Ibid.



drivers not been careless. In September 2019, the Deputy Minister of Home Affairs Hamad Masauni mentioned that most road accidents result from high speed, alcoholism, substance abuse, not wearing headgear for motorcycles and not wearing a seat belt.<sup>63</sup> He further pointed out that accidents affect the economy by reducing an able workforce. Moreover, such accidents rob the nation of its future generation. For example, in November 2019, the Traffic Police Commander, Fortunatus Muslim, revealed that 56 pupils and students that died because of road accidents from January to September 2019.<sup>64</sup>

**LHRC's call:** Community members to abide by the road traffic laws and regulations and to refrain from practices and behaviours that cause road accidents, such as drink-driving, speeding, reckless overtaking and not wearing seat belts. Awareness-raising is also essential. The Police Force could do this awareness in collaboration with CSOs and other interested stakeholders.

Further, some accidents are caused by damaged roads, so it is also important for TANROADS to ensure that roads are well maintained and repaired, especially the highways, to help in reducing accidents.

#### *2.2.2.7 Brutal killings of children in Njombe Region*

One of the events that shocked the nation in 2019 is the brutal killings of children in Njombe Region. About ten bodies of children were reported to have been found in different parts of Njombe, with some of their body parts/organs, including private parts, removed. Among those killed were three children of the same family. The murders constitute a grave violation of children's right to life and freedom from violence. These murders are discussed in detail under a sub-chapter on children's rights (5.3) below.

#### *2.2.2.8 Killings of women motivated by jealousy (intimate partner femicides)*

Intimate partner femicide (IPF) refers to killing of women by their intimate or former intimate partners, including former or current boyfriends and husbands. In 2019, LHRC observed an increase of reported killings of women, which are motivated by jealousy. These killings constitute a violation of women's right to life as well as freedom from violence, guaranteed under the Constitution of the United

<sup>63</sup> LHRC Media Survey 2019.

<sup>64</sup> Ibid.



Republic of Tanzania and regional and international instruments on women's rights, including CEDAW of 1979 and Maputo Protocol of 2003. These killings are discussed in detail under the sub-chapter on women's rights (5.2) below.

## 2.3 Freedom of Expression

### 2.3.1 Legal Framework

Freedom of expression is guaranteed and protected under all major human rights instruments. These include the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, the UN Convention on the Rights of the Child (CRC) of 1989, Convention on the Rights of Persons with Disabilities (CRPD) of 2006 the African Charter on Human and Peoples' Rights (ACHPR) of 1981, and African Charter on the Rights and Welfare of the Child (ACRWC) of 1990. Tanzania has ratified ICCPR, CRC, CRPD, ACRWC, and ACHPR, thus bound by them; and is obligated to protect rights which constitute customary international law under the UDHR. This right is defined as **freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.**<sup>65</sup> Domestically, it is guaranteed and protected under the United Republic of Tanzania Constitution of 1977.

Freedom of expression is one of the participation rights - rights essential for the enjoyment of the right to participate in governance - others being freedom of assembly and freedom of association. According to the Human Rights Committee, this right 'is a **necessary condition for the realization of the principles of transparency and accountability** that are, in turn, essential for the promotion and protection of human rights.'<sup>66</sup>

Freedom of expression includes **press/media freedom**, the **right to information** and **freedom of opinion**. This freedom may only be curtailed if restrictions are provided by law and necessary for "respect of the rights or reputation of others" and "for protection of national

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

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



security or of public order (*ordre public*), or public health or morals.”<sup>67</sup> If restrictions do not pass this three-part test, then they are considered to be arbitrary.

### 2.3.2 Key Issues

Freedom of expression in Tanzania is mainly affected by the introduction of various pieces of legislation in the past five years. These legislations have led to stringent regulation of the internet, harassments and threats to journalists, increased self-censorship and fear of exercising freedom of expression due to severe punishment for contravention of freedom of expression laws and regulations.

#### 2.3.2.1 Legislation restricting Media Freedom: East African Court of Justice’s Ruling against the Media Services Act of 2016

On 28<sup>th</sup> March 2019, the East African Court of Justice (EACJ) issued its judgement on a landmark case of Tanzania’s Media Services Act of 2016.<sup>68</sup> The decision followed a petition filed by the Media Council of Tanzania (MCT), Legal and Human Rights Centre (LHRC) and Tanzania Human Rights Defenders Coalition (THRDC) in 2017, challenging restrictive sections of the Media Services Act, 2016.

The petition was filed on 11<sup>th</sup> January 2017, in accordance with Articles 6(d), 7(2), 8(1)(c), 27(1) and 30(1) of the Treaty for the Establishment of the East African Community and Rule 24 of the East African Court of Justice Rules of Procedure of 2013.<sup>69</sup> The Applicants generally argued that in its current form, the Media Services Act is an unjustified restriction to the freedom of expression, which is the cornerstone of the principles of democracy, the rule of law, accountability, transparency and good governance.<sup>70</sup> They specially challenged the alleged violation of Articles 6(d), 7(2) and 8(1) (c) of the Treaty establishing the East African Community.<sup>71</sup>

<sup>67</sup> See Article 19(3) of ICCPR.

<sup>68</sup> See Committee to Project Journalists “East African court rules that Tanzania’s Media Services Act violates press freedom” 28 March 2019 at <https://cpj.org/2019/03/east-african-court-rules-that-tanzanias-media-serv.php>, accessed 20th February 2019.

<sup>69</sup> See the Media Council of Tanzania, Legal and Human Rights Centre & Human Rights Defenders Coalition versus The Attorney General of the United Republic of Tanzania, Reference No. 2 of 2017, Judgement of the Court, 28th March 2019 at <http://eacj.eac.int/wp-content/uploads/2019/03/Referene-No.2-of-2017.pdf>, accessed 20th February 2020. [EACJ MSA Judgement of March 2019]

<sup>70</sup> Ibid, para 5.

<sup>71</sup> Ibid, para 6.



### **What were the key issues for determination?**

The EACJ framed the following issues:

- Issue No. 1: Whether the Court has jurisdiction to hear and determine the Reference;
- Issue No. 2: Whether the cited provisions of the Act are a violation of the cited Articles of the Treaty; and
- Issue No. 3: Whether the Parties are entitled to the Remedies Sought.

### **What did the Applicants contend?**

The Applicants contended that:

- i. Sections 7(3)(a), (b), (c), (f), (g), (h), (i) and (j) of the Act violate freedom of expression by restricting the type of news or content without reasonable justification.
- ii. The Act introduces the mandatory accreditation of journalists and gives powers to the Board of Accreditation to cancel the same under sections 13, 14, 19, 20 and 21 of the Act, in violation of Articles 6(d), 7(2) and 8(1)(c) of the Treaty.
- iii. The Act, under sections 35, 36, 37, 38, 39 and 40 provides for criminal penalties when defamation is established, thereby restricting freedom of expression and the right to access information.
- iv. The Act, in sections 50 and 54 criminalises publication of false news and rumours, thereby restricting freedom of expression, and the right to access information.
- v. The Act, in sections 52 and 53, criminalises seditious statements, thereby restricting freedom of expression and the right to access information.
- vi. The Act, in sections 58 and 59 vests the Minister with absolute powers to prohibit the importation of publications or sanction media content, which is unjust and restrictive of freedom of expression and access to information.

### **What did the Court say?**

- Regarding Section 7 of the Act, the Court referred to the High Court of Kenya case of **CORD vs. The Republic of Kenya and Others HC Petition No. 628 of 2014** and other relevant authorities to conclude that the impugned provisions under this section fail the first test of the three-part test.<sup>72</sup> The test

<sup>72</sup> EACJ MSA Judgement of March 2019, para 73.



demands that limitation must be prescribed by law in the sense that it must be part of a Statute, and must be clear and accessible to citizens so that they are clear on what is prohibited. The Court held that the failure is because of broad and imprecise wording used in the sections, with the result that the provisions do not make it clear to citizens what exactly is prohibited, such that they may regulate their actions. The Court found this to constitute a violation of the right to press freedom and freedom of expression. The Court further found that the Respondent had failed to establish that there was a legitimate aim being pursued by the State in enacting the limitations, nor did it show that the limitations are proportionate to such aim. The Court, therefore, concluded that the cited provisions of Section 7 of the Act violate Articles 6(d) and 7(2) of the Treaty establishing the East African Community.<sup>73</sup>

- Regarding sections 13, 14, 19, 20 and 21 of the Act, the EACJ found that the provisions of section 19 on accreditation of journalists to be problematic as they do not meet the three-tier test for restriction of freedom of expression. Among other things, the Court agreed with the Applicants' submission that the definition of 'journalist' is too broad, "to provide sufficient provision to allow an individual to foresee what activities they are forbidden from performing without accreditation."<sup>74</sup> The Court however, indicated that it did not see anything objectionable to sections 13 and 14.<sup>75</sup>
- Regarding sections 20 and 21, the EACJ stated that they relate to section 19 of the Act and found all these three provisions to violate Articles 6(d) and 7(2) of the Treaty.<sup>76</sup>
- In determining the provisions relating to defamation, the Court found that the Respondent did not make substantive submissions in defence or justification of the introduction of the law on criminal defamation.<sup>77</sup> The respondent's submission was that "**any reasonable government should have the protection of its society at the forefront.**" Applying the three-tier test, the Court found that the definition of defamation under section 35 of the Act is not sufficiently precise to enable a journalist

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73 Ibid, para 75.

74 Ibid, para 79.

75 Ibid, para 77.

76 Ibid, paras 81 & 82.

77 Ibid, para 86.



or other person to plan their actions within the law and that the definition makes the offence continuously elusive because of subjectivity.<sup>78</sup> The Court also found that the legitimate aim test was also not met in creation of the offence of defamation.<sup>79</sup> Furthermore, the Court found the third test of proportionality was also not met.<sup>80</sup> In reaching this conclusion, the Court referred to the case of the **Federation of African Journalists vs. The Republic of The Gambia EWC/CCJ/JUD/04/18**. In this case, the ECOWAS Court of Justice held that “The practice of imposing criminal sanctions on sedition, defamation, libel and false news publication has a chilling effect that may unduly restrict the exercise of freedom of expression of journalists.”<sup>81</sup> It further held that “the application of these laws will amount to a continued violation of internationally guaranteed rights of Applicants.”<sup>82</sup> The Court, therefore, concluded that provisions relating to defamation under sections 35, 36, 37, 38, 39 and 40 violate Articles 6(d) and 7(2) of the Treaty.<sup>83</sup>

- Regarding offences relating to media services under section 50 of the Act, the Court found subsection 1(c) to be problematic, in the sense that it fails to meet the three-part test for being too broad and imprecise to enable a journalist or other person to regulate their actions.<sup>84</sup>
- Regarding section 54 (publication likely to cause fear and alarm), the EACJ agreed with the Applicants’ submission that the phrase “likely to cause fear and alarm to the public or to disturb the public peace” is too vague and does not enable individuals to regulate their conduct.<sup>85</sup> Consequently, the Court found sections 50, section 50(1)(c)(i), and 54 of the Act, particularly to be in violation of Articles 6(d) and 7(2) of the Treaty.<sup>86</sup>
- Regarding sections 52 and 53 on sedition, the Court agreed with the Applicants’ submission that section 52(1) fails the test of clarity and certainty, which is the first of the three-part

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78 Ibid, para 87.

79 Ibid, para 89.

80 EACJ MSA Judgement of March 2019, para 90.

81 Ibid, para 91.

82 Ibid, para 91.

83 Ibid.

84 Ibid, para 94.

85 Ibid, para 95.

86 Ibid, para 96.



test on restrictions of freedom of expression.<sup>87</sup> It particularly pointed out to the problem of subjectivity with regards to definitions of sedition and the vagueness of the phrase “the consequences which would naturally follow” under section 52(3).<sup>88</sup> The EACJ referred to the ECOWAS case (cited above), in which the Court stated that “The restrictions and vagueness with which these laws have been framed and the ambiguity of the *mens rea* (seditious intention) makes it difficult to discuss with any certainty what constitutes seditious offence.”<sup>89</sup> It also referred to the case of **Andrew Mujuni Mwenda and Others vs. Attorney General, UGCC 5(2010)** in which the Constitutional Court of Uganda struck down the impugned seditious laws

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

for among other things being vague and overly broad.<sup>90</sup>

Moreover, the Court stated that imposition of custodial sentences under section 53(d) of the Act contravenes international standards on freedom of

expression, particularly the one which requires violations on the law on freedom of speech and the press not to be sanctioned by custodial sentences, except for very serious circumstances such as incitement to international crimes, public incitement to hatred, and discrimination or violence against a person or a group of people, because of specific criteria such as race, colour, religion or nationality.<sup>91</sup> Consequently, the EACJ found sections 52 and 53 to violate Articles 6(d) and 7(2) of the Treaty.<sup>92</sup>

- Regarding sections 58 and 59 (powers of the Minister), the Court concurred with the Applicants’ submission that these two sections contain provisions that constitute disproportionate limitations on freedom of expression. It noted that the absolute nature of the discretion granted to the Minister, as well as lack

87 Ibid, para 99.

88 Ibid.

89 Ibid, para 100.

90 Ibid, para 101.

91 Ibid, para 102.

92 Ibid, para 103.



of clarity on the circumstances in which the Minister would impose a prohibition, make the provisions objectionable relative to the rights being restricted.<sup>93</sup> Consequently, the Court found sections 58 and 59 of the Act to constitute a violation of Articles 6(d) and 7(2) of the Treaty.<sup>94</sup> In reaching this decision, the Court pointed out the Minister's subjectivity and unfettered discretion in exercising his powers<sup>95</sup>. It referred to the case of Media Rights Agenda and **Constitutional Rights Project vs. Nigeria, COM NO.105/93-128/94-152/96**. In this case, the African Commission on Human and Peoples' Rights stated concerning a similar provision granting the Government power to prohibit publication that it invites censorship and seriously endangers the rights of the people to receive information under the African Charter on Human and Peoples' Rights of 1981.<sup>96</sup>

### **What did the court order?**

Having decided that the provisions of the Media Services Act of 2016 discussed above violate freedom of expression and the Treaty establishing the East African Community, the EACJ made the following orders:<sup>97</sup>

- It declared that the provisions of sections 7(3) (a), (b), (c), (f), (g), (h), (i) and (j); sections 19,20 and 21; sections 35,36,37,38,39 and 40; sections 50 and 54; sections 52 and 53; and sections 58 and 59 of the Act violate Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community.
- It directed the United Republic of Tanzania to take such measures as are necessary, to bring the Media Services Act into compliance with the Treaty for the Establishment of the East African Community.
- It directed that each party bear their costs.

**LHRC's call:** The Government and the Parliament to facilitate amendment of the Media Services Act of 2016 in line with the judgement of the East African Court of Justice of March 2019 discussed above, to safeguard freedom of expression in Tanzania.

93 EACJ MSA Judgement of March 2019, para 110.

94 Ibid, para 111.

95 Ibid, para 108.

96 Ibid, para 109.

97 See the EACJ MSA Judgement of March 2019 at <http://eacj.eac.int/wp-content/uploads/2019/03/Referene-No.2-of-2017.pdf>, accessed 20<sup>th</sup> February 2020.



### 2.3.2.2 Performance in World Press Freedom Index: Tanzania dropping further in the rankings

Media freedom has been in decline, with existing laws instilling fear into journalists and forcing them into self-censorship. The 2018 World Press Freedom Index Report by Reporters Without Borders (RSF) shows that Tanzania has dropped ten places in the world rankings, from 83<sup>rd</sup> in 2017 to 93<sup>rd</sup> in 2018. In the World Press Freedom Index of 2019, Tanzania has further dropped 25 places to sit at the 118<sup>th</sup> position in the world rankings. <sup>98</sup>

**118**  
in the 2019 World Press  
Freedom Index

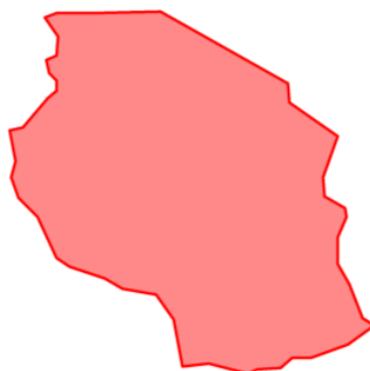
#### RANKING

↓ **-25**  
93 in 2018

#### GLOBAL SCORE

↓ **+5.63**  
30.65 in 2018

🕒 Ranking since 2013



Picture 1: Tanzania's rank and score in press freedom in 2019  
*Source: World Press Freedom Index 2019*

### 2.3.2.3 Amendment of the Statistics Act of 2015 to safeguard freedom of expression

In 2015, the Parliament of Tanzania passed the Statistics Act, which became operational in November 2015 through Government Notice No. 491 of 30<sup>th</sup> October 2015. The law was meant to regulate and modernize the Tanzania's statistics system, but was heavily criticised by stakeholders within and outside Tanzania for introducing some radical changes to the law on generating and communicating statistics.<sup>99</sup> The law has six parts. Part I covers preliminary provisions, including the application of the law and interpretation of key terms

<sup>98</sup> See 2019 World Press Index at [https://rsf.org/en/ranking\\_table](https://rsf.org/en/ranking_table), accessed 20<sup>th</sup> February 2020.

<sup>99</sup> LHRC & ZLSC (2016), Tanzania Human Rights Report 2015, p.61.



used in the law. PART II re-establishes the National Bureau of Statistics (NBS) and the Governing Board and provides their functions and composition. PART III is on the collection and dissemination of information. PART IV covers financial provisions. PART V provides for offences and penalties; and lastly, PART VI is miscellaneous provisions, including powers to make regulations.

The Statistics Act of 2015 was amended by the Written Laws (Miscellaneous Amendments) (No. 3) Act of 2018. The amended provisions were Sections 3, 17, 18, 19, 20, 22, 24A and 24B; and 27. These changes raised concerns amongst stakeholders, including REPOA, Twaweza and LHRC over the impact on freedom of expression.<sup>100</sup> The international community also expressed concerns with some of the provisions in the Act. In October 2018, the World Bank issued a statement “regarding recent developments related to Tanzania’s 2015 Statistics Act,” expressing concern about the developments, “which are out of line with international standards such as the UN Fundamental Principles of Official Statistics and the African Charter on Statistics.”<sup>101</sup> The World Bank warned that “the amendments if implemented, could have serious impacts on the generation and use of official and non-official statistics, which are a vital foundation for the country’s development.”<sup>102</sup> Major concerns regarding the amendments included prohibiting dissemination of statistics that invalidate, distort or discredit official statistics by the National Bureau of Statistics (NBS), and publishing statistics without the approval of the bureau.<sup>103</sup>

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100 See Alex Malanga “Researchers urge govt to amend Statistics Act 2015” The Citizen Newspaper, 22 November 2018 at <https://www.thecitizen.co.tz/News/Researchers-urge-govt-to-amend-Statistics-Act/1840340-4863334-j21masz/index.html>, accessed 29th December 2018; Twaweza, Amendment of the Statistics Act: Analysis, at <https://twaweza.or.tz/go/amendment-of-the-statistics-act-analysis-twaweza>, accessed 30<sup>th</sup> December 2018; Sharon Sauwa “Wadau walia marekebisho ya Sheria ya Takwimu” Mwananchi Newspaper, 21 August 2018, at <https://www.mwananchi.co.tz/habari/Wadau-walia-marekebisho-ya-Sheria-ya-Takwimu/1597578-4722132-pin309/index.html>, accessed 30<sup>th</sup> December 2018;

101 See World Bank Statement on Amendments to Tanzania’s 2015 Statistics Act issued on October 2, 2018 at <https://www.worldbank.org/en/news/statement/2018/10/02/world-bank-statement-on-amendments-to-tanzanias-2015-statistics-act>, accessed 30<sup>th</sup> December 2018.

102 Ibid.

103 LHRC & LHRC (2019), Tanzania Human Rights Report 2018, pp. 36 & 37.



However, in 2019, the Government and Parliament made further amendments of the Statistics Act of 2015, through the Written Laws (Miscellaneous Amendments) (No. 3) Act of 2019. This Act amended sections 3, 6, 19, 24A, 24B, and 37. As a result of these amendments, it is no longer a criminal offence to publish statistics without NBS approval, and there is no need to seek the permission of NBS to use its official statistics. The changes also provide a **right to publish findings different from official statistics** under section 24E (1)<sup>104</sup> and **right to challenge NBS statistics** under section 24D.<sup>105</sup> These are positive developments, and LHRC welcomes them.

Nevertheless, despite these positive amendments to safeguard freedom of expression, there are some few concerns that could be addressed to further safeguard this essential freedom. The main concern is with regards to the right to publish findings different from official statistics. NBS is allowed to challenge such findings by issuing a statement pointing out all the areas of disagreement or refer the matter to the Technical Committee for determination.<sup>106</sup> The Committee is allowed to publish its findings after determining the matter before it and the law now stipulates that the Committee's decision shall be final and conclusive.<sup>107</sup> Making the Committee's decision final and conclusive violates the principles of natural justice and denies the right of appeal and judicial review. This is not in line with international standards on freedom of expression.

Additionally, there is a concern with regards to the composition and independence of the Statistics Technical Committee established under section 24A.<sup>108</sup> All committee members are Minister appointees, and there is no room for consultation with stakeholders such as CSOs in the process. Best practice would be for the Minister to consult stakeholders to enhance the independence of the Committee in performing its functions.

#### *2.3.2.4 Other Laws that Continue to Curtail Freedom of Expression*

In 2019, freedom of expression continued to be affected by restrictive laws such as the Media Services Act of 2016, Cybercrimes Act of 2015,

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<sup>104</sup> See section 59 of the Written Laws (Miscellaneous Amendments) (No. 3) Act of 2019.

<sup>105</sup> Ibid.

<sup>106</sup> Section 24E (2) of the Statistics Act of 2015 (as amended in 2019).

<sup>107</sup> Ibid, section 24F (2).

<sup>108</sup> See Section 59 of the Written Laws (Miscellaneous Amendments) (No. 3) Act of 2019.



Statistics Act of 2015 and the Electronic and Postal Communications (Online Content) Regulations of 2018. These laws contain various provisions which hinder the effective realization of freedom of expression and do not conform to international standards on freedom of expression. The table below provides a summary of some of the critical concerns in with regards to these laws.

Table 5: Some of the laws and regulations affecting freedom of expression in Tanzania

Law/Regulations	Problematic Concerns	Provisions/Key	Standards not Met
Media Services Act, 2016	<ul style="list-style-type: none"> <li>◦ Accreditation (licensing) of journalists</li> <li>◦ Editorial and publication powers of the Minister</li> <li>◦ Government control over content to be published by media houses</li> <li>◦ Vague provisions on restrictions based on national security and hate speech</li> <li>◦ Establishment of non-independent media regulatory bodies</li> <li>◦ Criminalization of defamation</li> <li>◦ Seditious offences</li> <li>◦ Licensing of print media</li> <li>◦ Criminalization of false statement, rumor or report likely to cause fear and alarm</li> </ul>		<ul style="list-style-type: none"> <li>◦ UDHR</li> <li>◦ ICCPR</li> <li>◦ ACHPR</li> <li>◦ Constitution of Tanzania</li> <li>◦ AU Declaration of Principles on Freedom of Expression in Africa 2002</li> <li>◦ African Declaration on Internet Rights and Freedoms</li> <li>◦ Johannesburg Principles of National Security, Freedom of Expression and Access to Information of 1995</li> </ul>
Cybercrimes Act of 2015	<ul style="list-style-type: none"> <li>◦ Publication false information</li> <li>◦ Lack of clear definition of key terms, phrases and offences (e.g. misleading information, "inaccurate information,")</li> <li>◦ Offences and severe punishments</li> <li>◦ Extensive search and seizure powers for law enforcement officers</li> <li>◦ Intentionally and unlawfully receiving unauthorized computer data</li> <li>◦ Responsibility of hosting provider to take down offending information</li> </ul>		<ul style="list-style-type: none"> <li>◦ UDHR</li> <li>◦ ICCPR</li> <li>◦ ACHPR</li> <li>◦ Constitution of Tanzania</li> <li>◦ AU Declaration of Principles on Freedom of Expression in Africa 2002</li> </ul>



<p>Access to Information Act of 2016</p>	<ul style="list-style-type: none"> <li>◦ Access to Information Act of 2016 Access only to information held by public authorities and private bodies utilizing public funds</li> <li>◦ Access to information limited to Tanzanian citizens</li> <li>◦ Narrow scope of information required to be published</li> <li>◦ Vague exceptions to disclosure of information</li> <li>◦ Long time for responding to information request</li> <li>◦ Information holder's mandate to transfer request to another body</li> <li>◦ Deferral of access (provision broad and open to abuse)</li> <li>◦ Vague terms and phrases (e.g. "distortion of information")</li> <li>◦ Review of decisions of information holder (Minister's decision generally final, no further avenue for appeal/judicial review)</li> <li>◦ Appeal for refusal to give access to information requested</li> <li>◦ Independent information commission missing in the Act</li> <li>◦ Severe Punishment for Releasing Exempt Information</li> <li>◦ The Act does not Override other Laws on Access to Information</li> <li>◦ Lack of promotion and monitoring of access to information</li> <li>◦ UDHR</li> <li>◦ ICCPR</li> <li>◦ ACHPR</li> <li>◦ Constitution of Tanzania</li> <li>◦ AU Declaration of Principles on Freedom of Expression in Africa 2002</li> <li>◦ AU Model on Freedom of Expression Law</li> <li>◦</li> </ul>	<ul style="list-style-type: none"> <li>◦ UDHR</li> <li>◦ ICCPR</li> <li>◦ ACHPR</li> <li>◦ Constitution of Tanzania</li> <li>◦ AU Declaration of Principles on Freedom of Expression in Africa 2002</li> <li>◦ AU Model on Freedom of Expression Law</li> </ul>
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<p>Electronic and Postal Communications (Online Content) Regulations of 2018</p>	<ul style="list-style-type: none"> <li>◦ Vague and ambiguous terms and phrases susceptible to abuse by authorities (e.g. 'hate material,' 'hate speech,' 'internet café,' 'obscene content,' 'prohibited content,' 'bad language')</li> <li>◦ Powers of registration and ordering removal of content of the regulatory authority (not meeting three-part test on lawful restrictions to be legitimate)</li> <li>◦ Registration and licensing requirements (mandatory registration and licensing for bloggers)</li> <li>◦ Fees (fees are excessive, a burden for online content providers)</li> <li>◦ Difficult requirements for internet café owners, including installing surveillance cameras to record the activities of Internet users inside the café</li> <li>◦ Severe punishment (Tshs. 5 million, 1-year imprisonment)</li> <li>◦ Complaints handling (disregard of principles of natural justice, no avenue for appeal/judicial review)</li> <li>◦ Broad language and unclear terms on obligations of online content providers and users (e.g. 'objectionable content,' 'cultural sensitivities')</li> <li>◦ Vague and overboard obligations for online content providers and hosts (e.g Regulations 5, 8 and 12)</li> <li>◦ Obligations of application service licensees in relation to prohibited content (content removal within 12 hours, content removal procedure not confirming to international standard)</li> </ul>	<ul style="list-style-type: none"> <li>◦ UDHR</li> <li>◦ ICCPR</li> <li>◦ ACHPR</li> <li>◦ African Declaration on Internet Rights and Freedoms</li> <li>◦ Joint Declaration on Freedom of Expression and the Internet of 2011</li> </ul>
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Most of these concerns result from the lack of definitions of key terms, the existence of vague terms and phrases, severe punishment and overly broad definitions (open to abuse). Most of these provisions do not meet the three-part test for limitation of freedom of expression under the ICCPR of 1966.

In ***Legal and Human Rights, Media Council of Tanzania and Tanzania Human Rights Defenders Vs. Attorney General and other Miscellaneous Civil Cause NO. 20 of 2018*** instituted in High Court Mtwara Registry which parties were challenging the power of the Minister of Information, Culture and Sports acted *ultra vires* power in promulgating the Electronic and Postal Communications (Online Contents) Regulation, 2018 the court ruled that the term “content” in the regulation is broader than what is provided under the law, hence the Minister exceeded his power.

**LHRC’s call:** Government and Parliament to facilitate the amendment of these laws to conform with international standards on freedom of expression. LHRC and other CSOs are ready to assist with the reconstruction of problematic provisions so that they are in line with these standards and ensuring that imposed limitations meet the three-part test under the ICCPR.

#### **2.3.2.5 Ban and suspension of media outlets**

In 2019, incidents of ban and suspension of media outlets included suspension of publication of *The Citizen* Newspaper, suspension of Kwanza Online TV and imposition of fines on two other online media, Watetezi TV and Ayo TV. In February 2019, The Citizen Newspaper indicated that it had been suspended for seven days (both print and online publications) effective from 27<sup>th</sup> February 2019, following publication of a story titled: “Closely monitor falling shilling.”<sup>109</sup> The seven-day ban raised new concerns over the media landscape and proportionality of the ban.<sup>110</sup> The Tanzania Communications Regulatory Authority (TCRA) claimed

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109 See “Tanzania government suspends publication of the The Citizen Newspaper” The Citizen Newspaper, 27th February 2019 at <https://www.thecitizen.co.tz/News/Tanzania-government-suspends-publication-of-The-/1840340-5002262-234c2mz/index.html>.

110 See “Diplomats question Tanzania newspaper suspension” The East African Newspaper [online] 1 March 2019 at <https://www.theeastafrican.co.ke/news/ea/Diplomats-question-Tanzania-newspaper-suspension/4552908-5005338-kj4v5hz/index.html>; Amnesty International, Tanzania 2019, at <https://www.amnesty.org/en/countries/africa/tanzania/report-tanzania/>.



that the newspaper had violated reporting standards.<sup>111</sup>

In September 2019, TCRA imposed a six-month ban on privately owned internet-based broadcaster Kwanza Online TV, and fines on two other online platforms, Watetezi TV and Ayo TV, accusing them of failing to comply with the Online Content Regulations by failing to publish user/editorial policies and guidelines.<sup>112</sup> Kwanza Online TV was also accused of airing misleading information.<sup>113</sup> Watetezi TV and Ayo TV were each fined five million Tanzanian shillings.<sup>114</sup> Kwanza Online TV and Watetezi TV disputed the claims made by TCRA and appealed against the decision. The appeal by the Kwanza Online TV was rejected by the Fair Competition Tribunal in November 2019, while the appeal by Watetezi TV was expected to be set in January 2020.<sup>115</sup>

**LHRC's call:** There is need to amend the Online Content Regulations, which have been identified to contain provisions that are not in line with international standards on freedom of expression but continue to be a basis for ban and suspension of media outlets, including online media.

#### *2.3.2.6 Arbitrary arrests, harassments and/or detention of journalists*

Arbitrary arrests and/or detention of journalists has been reported to be among challenges facing press freedom in 2019. In this reporting period, such incidents include that of Erick Kabendera and Joseph Gandy. These incidents are discussed in detail in sub-section on the right to liberty and personal security (2.5) below. According to the Tanzania Human Rights Defenders Coalition (THRDC), there had also been other incidents of harassment or arbitrary arrests of 13 other journalists from January to September 2019.

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111 Amnesty International, Tanzania 2019, at <https://www.amnesty.org/en/countries/africa/tanzania/report-tanzania/>; "Tanzania imposes 7-day publication ban on The Citizen" Committee to Protect Journalists, 1 March 2019 at <https://cpj.org/2019/03/tanzania-citizen-7-day-publication-ban.php>.

112 "Tanzanian authorities ban online TV station, fine 2 others" Committee to Protect Journalists, 8 January 2020 at <https://cpj.org/2020/01/tanzanian-authorities-ban-online-tv-station-fine-2.php>; "Tanzania slaps harsh sanctions on three online TV channels" Reporters Without Borders, 30 September 2019 at <https://rsf.org/en/news/tanzania-slaps-harsh-sanctions-three-online-tv-channels>

113 Ibid.

114 Ibid.

115 Ibid.



### 2.3.2.7 Shrinking civic space/Fear of Exercising Freedom of Expression

Existence of restrictive laws and regulations above has negatively impacted civic space in Tanzania. For journalists, the restrictions imposed by the Media Services Act of 2016 have proven too much, leading to increased self-censorship and fear of being targeted and punished, owing to the vague provisions, which are open to misinterpretation and abuse, and severe penalties. For people using the internet, they are not sure what content would be infringing the laid down laws and regulations due to key provisions within the laws and regulations being overly broad and open to abuse.

LHRC is therefore concerned that continued restrictions of freedom of expression, which are not in line with the international standards on freedom of expression, including the three-part test under the International Covenant on Civil and Political Rights, largely contribute to reduced civic space in Tanzania.

**LHRC's call:** Government and Parliament to facilitate the amendment of all laws and regulations that have contributed to reduced civic space in Tanzania so that they conform with international standards on freedom of expression. Freedoms of expression, assembly and association for civil society are essential for social, economic, political and cultural development. An active and vibrant civil society can also be a huge asset as Tanzania seeks to become a middle-income country through industrialisation and infrastructural development.

## 2.4 Rights to Equality before the Law and Effective Remedy

### 2.4.1 Legal Framework

Rights to equality before the law and effective remedy are guaranteed and protected under various regional, continental and international human rights instruments. These include the Universal Declaration of Human Rights (UDHR), the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR).<sup>116</sup> According to the Constitution of Tanzania, 'all persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.'<sup>117</sup> The right to an effective remedy is necessary when there is a

<sup>116</sup> Article 3 of ACHPR; Article 14 of ICCPR; and Article 10 of UDHR.

<sup>117</sup> Article 13(1) of the Constitution of the United Republic of Tanzania of 1977.



violation of other rights.<sup>118</sup> Rights derived from these two rights (rights to equality before the law and effective remedy) include the right to access to justice, the right to legal representation,<sup>119</sup> the right to presumption of innocence and the right to a fair trial.<sup>120</sup>

### **Access to justice**

Access to justice means access to **formal** (such as courts and tribunals) or **informal** institutions tasked with the delivery of justice. This access enables people whose rights are violated or jeopardized to seek remedy from these institutions, where their grievances can be heard and determined. Access to justice is a key component of the rule of law and the international community has recognized **“the right to equal access to justice for all”** and committed itself to **“taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid.”**<sup>121</sup>

### **Presumption of innocence**

Presumption of innocence is a crucial principle in criminal justice. The right to be presumed innocent until proven guilty is an established principle under domestic, regional and international law. According to the Constitution of Tanzania, “no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence.”<sup>122</sup> This right is also guaranteed under the ICCPR and UDHR.<sup>123</sup>

### **Right to legal representation**

Right to legal representation is stipulated under Article 13 of the Constitution of the United Republic of Tanzania 1977, and is critical in ensuring administration and access to justice. This means the right of an accused person to a lawyer, who will help to defend them in the

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

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

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

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

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

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



court of law. In criminal justice, Tanzania is required under domestic, regional and international law to ensure an attorney is appointed for the defendant where the defendant cannot afford one. Article 14(3) of ICCPR – which Tanzania has ratified – clearly stipulates this obligation on the part of States.

### **Rights to fair trial and effective remedy**

Rights to a fair trial and effective remedy are also known as **rights to due process**. They include the right to legal representation, right to be heard, right to be presumed innocent until proven guilty and the right to be tried without undue delay by **an independent, impartial and competent tribunal**.<sup>124</sup> Right to an effective remedy is closely associated with the right to the fair trial; and is also protected under the Constitution of Tanzania<sup>125</sup> and international human rights instruments, including ICCPR.<sup>126</sup>

#### **2.4.2 Key Issues**

##### **2.4.2.1 Parading of suspected criminals before the media by law enforcement officers: The Chief of Police Speaks Out**

In July 2019, LHRC issued a statement condemning circulation of pictures of suspected criminals on social media. The pictures were suspected of having been shared by some of the police officers of Mburahati Police Station in Dar es Salaam. They showed women who had been arrested and their corresponding offences. In the press statement, LHRC highlighted that circulation of such pictures is against the law and contradicts the principle of presumption of innocence, which states that everyone should be presumed innocent until proven guilty by a court of law.

In September 2019, the Inspector General of Police (IGP), Simon Sirro, warned against the tendency of some Regional Police Commanders (RPCs) parading/displaying accused persons, reminding them that they are still suspects and only the court of law can determine their innocence or guilt.<sup>127</sup> He reminded the police commanders to

<sup>124</sup> See Article 14 of ICCPR; Article 13 of Tanzania Constitution; & Article 7 of ACHPR.

<sup>125</sup> Article 13(6) (a) of the Constitution of the United Republic of Tanzania 1977.

<sup>126</sup> Article 2(3)(b) of ICCPR.

<sup>127</sup> See “SIRRO SCORNS POLICE COMMANDERS OVER CORRUPTION, HYPOCRISY” DAILYNEWS Newspaper, 25 September 2019 [online] at <https://dailynews.co.tz/news/2019-09-255d8b147d35ddd.aspx>, accessed 2nd March 2020; “‘I am the Inspector General of Police,’ Sirro tells officers” The Citizen Newspaper, 25 September 2019 [online], at <https://www.thecitizen.co.tz/news/-I-am-the-Inspector-General-of-Police---Sirro-tells-offi->



maintain a high level of professionalism in executing their duties and called upon them to refrain from assuming the role of the Judiciary.<sup>128</sup> Among the RPCs implicated in the practice of parading criminal suspects include Dodoma's RPC Gilles Muroto and Dar es Salaam's Special Zone Commander, Lazaro Mambosasa, who were warned against prejudices<sup>129</sup>

The IGP's statement reminds us of a key principle in the criminal justice system and the world of human rights, the principle of presumption of innocence. As already stated above, this principle is now an established under domestic, regional and international law. The practice of parading suspected criminals before the media has faced condemnation in different parts of the world, most recently in Nigeria, Ghana and the Philippines.

In **Ghana** in January 2018, a Senior State Attorney, Marie-Louise Simmons, called upon the police to stop the practice of parading suspected criminals before media cameras.<sup>130</sup> She noted that the practice is not helpful as some people might be looking to settle personal scores and urged the investigators to do their job thoroughly so that innocent people do not suffer punishment.<sup>131</sup>

In **Uganda** in July 2019, it was revealed that parading of suspects by police might put suspects' families at considerable risk.<sup>132</sup> It was stated that the practice has a high impact on police investigations and public perceptions. In one incident that occurred in June 2019, police arrested one of the persons suspected to have killed a *bodaboda* driver and then paraded him before the media – which sparked a public reaction in his home district. Residents in the district attempted to lynch the suspect's family, which was saved by the police.<sup>133</sup>

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[cers/1840340-5286700-1bcsp/index.html](https://www.cers/1840340-5286700-1bcsp/index.html), accessed 2nd March 2020.

128 Ibid.

129 Ibid.

130 See "Stop the practice of parading suspects before the media" GhanaWeb, 12 January 2018 at <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Stop-the-practice-of-parading-suspects-before-the-media-616987>, accessed 2nd March 2020.

131 Ibid.

132 See Ramathan Shafi "Parading of suspects by police puts their families at great risk" Daily Monitor Newspaper [online], 29 July 2019, at <https://www.monitor.co.ug/OpEd/Letters/Parading-of-suspects-by-police-puts-their-families-at-great-risk/806314-5213582-yjs9iiz/index.html>, accessed 2nd March 2020.

132 Ibid.

133 Ibid.



In the **Philippines**, the Philippine National Police (PNP) took action to protect the rights of criminal suspects as the PNP chief, Oscar Albayalde, issued a directive in June 2018 prohibiting police from parading criminal suspects in front of the media.<sup>134</sup> The nation's national human rights institution, the Philippine Commission on Human Rights commended the decision and applauded it as supportive of “**due process and presumption of innocence.**”<sup>135</sup> PNP's Human Rights Affairs Office had ruled in 2008 that the practice of parading suspected criminals constituted a violation of the Philippine Bill of Rights.<sup>136</sup> Recently, in September 2019, one of the senators within the Senate of the Philippines, Senator Leila M. de Lima, filed a bill seeking to penalize public presentation of crime suspects and the release of their private information to the media before guilt is proven in court as a measure to safeguard the **constitutional right to presumption of innocence.**<sup>137</sup> The senator remarked that the practice also besmirches the suspect's name and that of their family even before probable cause is established and subjects them to prejudgement by the public.<sup>138</sup>

Based on the experiences of other countries above, parading of suspected criminals is thus clearly a human rights issue. **LHRC commends the Chief of Police, IGP Simon Sirro, for seeing this practice as a problem and a criminal justice and human rights issue, and for speaking out against the practice, which had started to take roots amongst police commanders.** Presumption of innocence is a fundamental principle in the criminal justice system and safeguarding human rights, especially of the accused person. Only the court of law has the mandate to determine the innocence or guilt of an accused person; and until the court delivers a guilty verdict, every accused person should be treated as innocent.

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134 See Carlos H. Conde, Philippine Police Chief Halts Crime Suspect 'Perp Walks', Human Rights Watch, 14 June 2018 at <https://www.hrw.org/news/2018/06/14/philippine-police-chief-halts-crime-suspect-perp-walks>, accessed 2nd March 2020.

135 Ibid.

136 Ibid.

137 See the Senate of the Philippines, De Lima seeks to prohibit public presentation of crime suspects, Press Release, 9 September 2019, at [https://www.senate.gov.ph/press\\_release/2019/0909\\_delima2.asp](https://www.senate.gov.ph/press_release/2019/0909_delima2.asp), accessed 2nd March 2019.

138 Ibid.



**LHRC's call:** Police officers, especially Regional Police Commanders (RPCs), to refrain from the habit of parading accused persons before the media. Instead, they should respect their rights as accused persons who are still innocent. **In dealing with accused persons, the principle of presumption of innocence should always be considered.**

#### *2.4.2.2 Government and Judiciary Effort to Improve Access to Justice*

For people to have meaningful access to justice, certain conditions must exist. These conditions include the availability of independent and impartial courts and tribunals; good laws; independent courts/tribunals to be accessible and have enough resources to administer justice; availability of qualified lawyers for legal representation; and fair trial and timely justice. These conditions are international standards contained in various human rights instruments, including the International Covenant on Civil and Political Rights of 1966 and the African Charter on Human and Peoples' Rights of 1981.

For the year 2019, the Government and Judiciary continued to take various measures to improve access to justice. These measures include:

- the launch of mobile court services and the Judicial Statistics Dashboard System (JSDS-2);
- the construction of court buildings and renovation of old court buildings;
- the expediting dispensation of justice and reducing costs of attending court sessions;
- the conducting judicial inspections;
- the developing the Second National Human Rights Action Plan 2019-2023; and
- the introduction of integrated Justice Centres.

#### ***Construction of court buildings and renovation of old court buildings***

For the financial year 2018/2019, the Ministry of Constitutional and Legal Affairs continued to work with the Judiciary to construct courts in different parts of the country. These include two High Court buildings under construction in Kigoma and Mara Regions. There are also plans to build others in Morogoro, Mwanza, Dodoma and Singida.<sup>139</sup> In his

<sup>139</sup> See HOTUBA YA MHESHIMIWA PROF. PALAMAGAMBA JOHN AIDAN MWALUKO KABUDI (MB), WAZIRI WA KATIBA NA SHERIA AKIWASILISHA BUNGENI MPANGO NA MAKADIPIO YA BAJETI YA WIZARA KWA MWAKA WA FEDHA 2018/2019 at <https://www.parliament.go.tz/uploads/budgetspeeches/1524220963-Hotuba%20ya%20Bajeti-%20>



Ministry's budget speech for the financial year 2018/2019, the then Minister of Constitutional and Legal Affairs, Hon. Prof. Palamagamba John Aidan Mwaluko Kabudi (MP), remarked that the Government was also planning to construct 32 district courts and 20 primary courts.<sup>140</sup>

In the ministry budget speech for the financial year 2019/2020, the Minister of Constitutional and Legal Affairs, Hon. Ambassador Dr. Augustine Phillip Mahiga (MP), revealed that construction of High Court buildings in Kigoma and Mara Regions had reached 85% and they are operational.<sup>141</sup> He also revealed that construction of District Courts in Kilwa, Ruangwa, Bukombe, Geita and Chato Districts are complete, while the construction of Resident Magistrate Courts in Manyara is in the final stages.<sup>142</sup> He added that construction of Resident Magistrate Courts in Simiyu, Njombe, Katavi and Lindi, as well as construction of District Courts of Longido, Kondoa, Sikonge, Kilindi, Kasulu, Ruangwa, Rugwe, Budna, Makete, Wangingombe and Chunya were ongoing.<sup>143</sup> Constructions of Primary Courts in Ngerengere, Mangula na Mlimba (Morogoro) Mkunya (Newala), Laela, Msanzi na Mtowisa (Rukwa), Mtae (Lushoto) and Uyole (Mbeya) were also ongoing.<sup>144</sup> In February 2020, the Chief Justice, Prog. Ibrahim Juma also revealed that construction of 33 court buildings for District Courts and Primary Courts were underway.<sup>145</sup> In December 2019, the Chief Justice launched the Geita Resident Magistrate Court building, whose construction is complete.<sup>146</sup> In 2020, LHRC will embark to check whether the courts are indeed in place and report the status in its Tanzania Human Rights Report of 2020.

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Katiba%20na%20Sheria.pdf, accessed 2nd March 2020.

140 Ibid.

141 See HOTUBA YA MHESHIMIWA BALOZI DKT. AUGUSTINE PHILLIP MAHIGA (MB) WAZIRI WA KATIBA NA SHERIA AKIWASILISHA BUNGENI MPANGO NA MAKADIRIO YA BAJETI YA WIZARA KWA MWAKA WA FEDHA 2019/2020

142 Ibid.

143 Ibid.

144 Ibid.

145 See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA KWENYE KILELE CHA WIKI YA ELIMU NA SIKU YA SHERIA JIJINI DAR ES SALAAM, TAREHE 06 FEBRUARI, 2020, at <https://www.judiciary.go.tz/web/index.php?r=site%2Fpdf&id=26>, accessed 2nd March 2020.

146 See HOTUBA YA MHE. JAJI MKUU PROF IBRAHIM HAMIS JUMA, KWENYE UFUNGUZI WA JENGO LA MAHAKAMA YA HAKIMU MKAZI GEITA, TAREHE 19 DESEMBA, 2019, at <https://www.judiciary.go.tz/web/index.php?r=site%2Fpdf&id=23>, accessed 2nd March 2020.



## **Using ICT to expedite dispensation of justice and reduce costs of attending court sessions**

For the financial year 2018/2019, among other things, the Ministry of Constitutional and Legal Affairs planned to work with the Judiciary to use ICT to improve judicial services. The use of ICT would include putting in place mechanisms to enable electronic registration and determination of cases and enhance documentation and communication of judicial functions.<sup>147</sup> The Ministry had also planned to work with the Judiciary to create the e-justice system to expedite the determination of cases and reduce case backlog.<sup>148</sup>

In the ministry budget speech for the financial year 2019/2020, the Minister of Constitutional and Legal Affairs, Hon. Amb. Dr. Augustine Phillip Mahiga (MP), revealed that the Ministry continued to take various measures to enhance use of ICT in justice delivery. Such measures, for example, included the use of ICT during the determination of cases. The Minister further noted that the Judiciary had officially started using the e-justice system from District Courts to the Court of Appeal.<sup>149</sup> He added that the e-justice system also enables citizens to register cases electronically instead of being physically at the court, hence improving access to judicial services.

In February 2020, the Chief Justice of Tanzania, Prof. Ibrahim Juma, also indicated that the use of ICT had become an essential part of the justice system, helping to bring judicial services closer to the citizens.<sup>150</sup> He remarked that the Judicial Statistics Dashboard System (JSDS-2), launched by Hon. President John Magufuli in 2018, has helped to expedite dispensation of justice and enhance access to justice.<sup>151</sup> With

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147 See HOTUBA YA MHESHIMIWA PROF. PALAMAGAMBA JOHN AIDAN MWALUKO KABUDI (MB), WAZIRI WA KATIBA NA SHERIA AKIWASILISHA BUNGENI MPANGO NA MAKADIRIO YA BAJETI YA WIZARA KWA MWAKA WA FEDHA 2018/2019 at <https://www.parliament.go.tz/uploads/budgetspeeches/1524220963-Hotuba%20ya%20Bajeti-%20Katiba%20na%20Sheria.pdf>, accessed 2nd March 2020.

148 Ibid.

149 See HOTUBA YA MHESHIMIWA BALOZI DKT. AUGUSTINE PHILLIP MAHIGA (MB) WAZIRI WA KATIBA NA SHERIA AKIWASILISHA BUNGENI MPANGO NA MAKADIRIO YA BAJETI YA WIZARA KWA MWAKA WA FEDHA 2019/2020.

150 See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA KWENYE KILELE CHA WIKI YA ELIMU NA SIKU YA SHERIA JIJINI DAR ES SALAAM, TAREHE 06 FEBRUARI, 2020, at <https://www.judiciary.go.tz/web/index.php?r=site%2Fpdf&id=26>, accessed 2nd March 2020.

151 Ibid.



the support of the World Bank, the Judiciary of Tanzania has been implementing the Citizen-Centric Judicial Modernization and Justice Service Delivery Project, which seeks to transform and modernize justice delivery in Tanzania. This project, launched in 2016, is in line with the Judiciary's five-year strategic plan, which includes using ICTs to improve access to justice in Tanzania. This is a positive step as digitalization of judicial services will help in fast-tracking judicial proceedings. Through its engagement with the Judiciary, particularly through its legal aid programme, LHRC has verified that indeed the Judiciary has started using ICT in dispensation of justice, having witnessed the ICT facilities in use at Kisutu Resident Magistrate Court in Dar es Salaam.

### **Introduction and operationalization of mobile courts**

In February 2019, mobile courts were launched, seeking to bring judicial services closer to the people.<sup>152</sup> The Minister of Constitutional and Legal Affairs, Hon. Hon. Amb. Dr. Augustine Phillip Mahiga (MP), revealed that Magistrates and other relevant stakeholders had received training to operate with the mobile courts. In 2018, the Judiciary had announced its plan to introduce pilot mobile courts, to take justice delivery closer to the people.<sup>153</sup> Pilot study areas were identified in Dar es Salaam and Mwanza Regions. The mobile courts will mainly entertain smaller claims and family-related issues at the primary court level.<sup>154</sup> The Chief Justice revealed that mobile courts services would first be provided in different areas of Dar es Salaam (Kinondoni, Ilala and Ubungo Districts) and Mwanza (Buswelu, Buhongwa and Igoma) Regions. The expansion of mobile courts of other parts of the country will depend on the availability of the required resources.<sup>155</sup> He also remarked that Tanzania is the first country in Africa to introduce mobile court services.<sup>156</sup> Two vehicles to facilitate the mobile court services have been procured so far. However, LHRC did not find evidence of

<sup>152</sup> See HOTUBA YA MHESHIMIWA BALOZI DKT. AUGUSTINE PHILLIP MAHIGA (MB) WAZIRI WA KATIBA NA SHERIA AKIWASILISHA BUNGENI MPANGO NA MAKADIRIO YA BAJETI YA WIZARA KWA MWAKA WA FEDHA 2019/2020.

<sup>153</sup> Gadiosa Lamtey "Mobile courts set for roll-out under pilot scheme in Tanzania" The Citizen Newspaper, 28 June 2018, at <https://www.thecitizen.co.tz/News/1840340-4637000-1nd4w4z/index.html>, accessed 29th December 2018.

<sup>154</sup> Ibid.

<sup>155</sup> See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA KWENYE KILELE CHA WIKI YA ELIMU NA SIKU YA SHERIA JIJINI DAR ES SALAAM, TAREHE 06 FEBRUARI, 2020, at <https://www.judiciary.go.tz/web/index.php?r=site%2Fpdf&id=26>, accessed 2nd March 2020.

<sup>156</sup> Ibid.



operationalisation of the mobile courts in 2019. Reports documented by LHRC suggest that the courts started operating in January 2020.

### **Introduction of rules to fast-track cases involving vulnerable groups**

In 2019, the Minister of Constitutional and Legal Affairs, Hon. Ambassador Dr. Augustine Mahiga (MP), relieved that the Chief Justice had prepared rules geared towards fast-tracking cases involving vulnerable groups (including women, children, the elderly and PWDs).<sup>157</sup> He noted that the Chief Justice had made the Judicature and Application of Laws (Practice and Procedure of Cases Involving Vulnerable Groups) Rule No. 110 of 1<sup>st</sup> February 2019.<sup>158</sup>

The rules require courts to determine cases for no longer than six months.<sup>159</sup> LHRC's media survey on sexual violence against children indicates that the Judiciary is making strides in fast-tracking such cases, although challenges remain in investigation and prosecution of such cases, including victim's family members colluding with perpetrators to frustrate the prosecution of cases.

### **Judicial inspections**

In the ministry budget speech for the financial year 2019/2020, the Minister of Constitutional and Legal Affairs, Hon. Ambassador Dr. Augustine Phillip Mahiga (MP), stated that for the fiscal year 2018/2019, the Judiciary conducted inspections of at all 14 High Courts, 717 Primary Courts (85%), 97 District Courts (89%), and 25 Resident Magistrate Courts (89%).<sup>160</sup> The exercise was meant to ensure accountability in justice delivery and improve the quality of judicial services, in order to enhance the performance of the Judiciary.<sup>161</sup> He further remarked that in 2019, a total of 2,435 cases were registered electronically and that the Judiciary has started using video conferencing during the determination of cases at High Courts in Dar es Salaam, Bukoba and Mbeya. Additionally, the Chief Justice stated that video conference facilities had also been installed at the Kisumu Resident Magistrate

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157 HOTUBA YA MHESHIMIWA BALOZI DKT. AUGUSTINE PHILLIP MAHIGA (MB) WAZIRI WA KATIBA NA SHERIA AKIWASILISHA BUNGENI MPANGO NA MAKADIRIO YA BAJETI YA WIZARA KWA MWAKA WA FEDHA 2019/2020.

158 Ibid.

159 Ibid.

160 See HOTUBA YA MHESHIMIWA BALOZI DKT. AUGUSTINE PHILLIP MAHIGA (MB) WAZIRI WA KATIBA NA SHERIA AKIWASILISHA BUNGENI MPANGO NA MAKADIRIO YA BAJETI YA WIZARA KWA MWAKA WA FEDHA 2019/2020.

161 Ibid.



Court and Keko Prison in Dar es Salaam, as well as the Institute of Judicial Administration in Lushoto – Tanga.<sup>162</sup> The Court of Appeal has heard sixty cases using the video conferencing system.<sup>163</sup>

### **Developing the Second National Human Rights Action Plan 2019-2023**

In the ministry budget speech for the financial year 2019/2020, the Minister of Constitutional and Legal Affairs, Hon. Amb. Dr. Augustine Phillip Mahiga (MP), revealed that the Ministry was in the process of developing the Second National Human Rights Action Plan 2019-2023.<sup>164</sup> He noted that the Ministry has been working with different stakeholders to develop the plan, which will guide human rights issues that need to be prioritized and on the implementation of recommendations accepted by the Government under the Universal Periodic Review.<sup>165</sup>

**LHRC's call:** The Ministry of Constitutional and Legal Affairs to fast-track finalisation of the Second National Human Rights Action Plan 2019-2023, as we are already past its projected starting year, 2019.

### **Introduction of integrated Justice Centres**

In February 2020, the Chief Justice, Prof. Ibrahim Juma pointed out that the Judiciary had planned to construct Integrated Justice Centres (ICJs) in Dar es Salaam (Kinondoni and Temeke), Mwanza (Ilemela), Dodoma, Morogoro and Arusha. In each centre there will be judicial services at High Court, Resident Magistrate, District and Juvenile Court levels.<sup>166</sup> He added that within the ICJ building there will also be offices for prosecutors, social welfare officers and advocates.<sup>167</sup> The goal is to enhance access to justice by enabling accessibility to as many judicial services at the centre as possible.<sup>168</sup>

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<sup>162</sup> Ibid.

<sup>163</sup> Ibid.

<sup>164</sup> See HOTUBA YA MHESHIMIWA BALOZI DKT. AUGUSTINE PHILLIP MAHIGA (MB) WAZIRI WA KATIBA NA SHERIA AKIWASILISHA BUNGENI MPANGO NA MAKADIPIO YA BAJETI YA WIZARA KWA MWAKA WA FEDHA 2019/2020.

<sup>165</sup> Ibid.

<sup>166</sup> See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA KWENYE KILELE CHA WIKI YA ELIMU NA SIKU YA SHERIA JIJINI DAR ES SALAAM, TAREHE 06 FEBRUARI, 2020, at <https://www.judiciary.go.tz/web/index.php?r=site%2Fpdf&id=26>, accessed 2nd March 2020.

<sup>167</sup> Ibid.

<sup>168</sup> Ibid.



## **Reducing the backlog of cases**

To reduce the backlog of cases, in 2019 the Minister of Constitutional and Legal Affairs, Hon. Ambassador Dr. Augustine Phillip Mahiga (MP), exercised his powers granted by law, to provide extended jurisdiction to 195 Magistrates to enable them to determine cases that would otherwise be determined by the High Court.<sup>169</sup> In February 2020, the Chief Justice, Prof. Ibrahim Juma, revealed that 98 Magistrates with extended jurisdiction were able to decide a total of 1,132 High Court cases in 2019.<sup>170</sup>

According to the Chief Justice, for the year 2019, the Judiciary was able to decide all cases registered in the same year (100% clearance rate).<sup>171</sup> The Chief Justice noted that while the Judiciary had registered a total of 272,326 cases in 2019, there was a total of 67,881 pending from 2018, thus making a total of 340,137 pending cases.<sup>172</sup> By the end of December, only 68,648 cases were pending out of which only 3,677 (5% ) cases were more than two years old.<sup>173</sup>

## **Developing Sentencing Guidelines**

In February 2020, the Chief Justice of Tanzania stated that stakeholders in the legal sector have been collaborating with the British High Commission to develop Sentencing Guidelines guide Magistrates on sentencing to.<sup>174</sup> These Guidelines, which are expected to be launched in 2020, will help to harmonize sentencing practices and enhance access to justice.<sup>175</sup>

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169 See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA KWENYE KILELE CHA WIKI YA ELIMU NA SIKU YA SHERIA JIJINI DAR ES SALAAM, TAREHE 06 FEBRUARI, 2020, at <https://www.judiciary.go.tz/web/index.php?r=site%2Fpdf&id=26>, accessed 2nd March 2020.

170 Ibid.

171 See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA KWENYE KILELE CHA WIKI YA ELIMU NA SIKU YA SHERIA JIJINI DAR ES SALAAM, TAREHE 06 FEBRUARI, 2020, at <https://www.judiciary.go.tz/web/index.php?r=site%2Fpdf&id=26>, accessed 2nd March 2020.

172 Ibid

173 Ibid

174 See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA KWENYE KILELE CHA WIKI YA ELIMU NA SIKU YA SHERIA JIJINI DAR ES SALAAM, TAREHE 06 FEBRUARI, 2020, at <https://www.judiciary.go.tz/web/index.php?r=site%2Fpdf&id=26>, accessed 2nd March 2020

175 Ibid



### 2.4.2.3 Right to legal aid for people residing in rural areas

Legal aid is essential for members of the public who cannot afford an effective legal representation. According to the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.<sup>176</sup> The Principles provide that States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution.<sup>177</sup> States are further required to consider the provision of legal aid their duty and responsibility and enact relevant legislation and regulations to ensure there is a comprehensive legal aid system that is accessible, effective, sustainable and credible, as well as allocating the necessary human and financial resource to the system.<sup>178</sup>

It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid.

Principle 3 (23) of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

In 2017, the Legal Aid Act 2017 was enacted, seeking to enhance access to justice for the financially challenged people. Inter alia, the law provides for the legal recognition of paralegals and now regulates and coordinates their operations. The enactment of this law was followed by the adoption of the Legal Aid Regulations in 2018. The Regulations provide for the administration and coordination of legal aid providers; registration of legal aid providers and paralegals; legal aid to indigent persons and persons in lawful custody; record

<sup>176</sup> Principle 1 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2013.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid, Principle 2(15).



management of legal aid provision; monitoring and evaluation of legal aid providers; management of appeals and other complaints; and some miscellaneous provisions, including on legal aid providers' forum and continuous legal education.

In 2019, legal aid providers, including the Government through the Ministry of Constitutional and Legal Affairs, civil society and paralegals, continued to provide legal aid services in line with the Legal Aid Act of 2017 and its 2018 Regulations. As of September 2019, Legal Services Facility (LSF) reported that more than 5 million Tanzanians from poor households had received legal aid.<sup>179</sup> On its part, LHRC continued to provide legal assistance to its clients at its Kinondoni Legal Aid Clinic and the Arusha sub-office. It also offered mobile legal aid in different parts of the country. Legal aid was also provided to Tanzanians during the commemorations of the Law Week 2019 and the Legal Aid Week in October 2019 – commemorated by the Ministry of Constitutional and Legal Affairs in collaboration with the Tanganyika Law Society (TLS) with other legal aid providers.

Despite all these efforts to promote and ensure the realization of the right to legal aid, there is a growing concern that legal aid is more concentrated in urban areas and semi-urban areas.<sup>180</sup> In October 2019, citizens in Tabora Region requested institutions that provide legal aid to reach out more to people in rural villages, who are in pressing needs of legal assistance. However, legal aid providers, especially those at the grassroots level, are faced with the challenge of limited resources, hence finding it difficult to reach remote areas.

**LHRC's call:** Key government and non-government actors providing legal aid, CHRAGG, ,paralegal centres, TLS; TANLAP; WLAC; WiLDAF; TAWLA and LHRC itself to expand and/or intensify efforts of legal aid provision for people residing in rural areas in order to enhance their access to justice. Working in coordination, rather than isolation, could help to improve the situation of access to justice in rural areas.

#### **2.4.2.4 Congestion in Prisons**

In 2019, congestion in prisons emerged as a vital issue. In July 2019, Hon. President John Magufuli visited Butimba Prison in Mwanza Region

<sup>179</sup> LHRC Media Survey 2019.

<sup>180</sup> LHRC Media Survey 2019.



and found out various challenges at the prison, including congestion of prisoners and remandees. He mentioned that while some of the people had been arrested on trumped-up charges, others stay in prison as remandees for a long time without being sent to court.<sup>181</sup> The President ordered the responsible government actors, including the Judiciary, to take the relevant measures to address these problems in prisons, particularly reducing congestion. In July 2019, the Principal Judge, Dr Eliezer Feleshi, issued a judicial order to all courts of law to improve access to justice, including imposing alternative sentences and granting bail for bailable offences.<sup>182</sup>

**LHRC's view:** The problem of congestion in prisons is contributed mainly by the criminal justice system in the country, which remands accused persons in jail for lengthy periods, usually pending the completion of investigations. Investigations appear to take too long to complete and there are constant adjournments of cases as a result. Recently, in February 2020, the Tanzania Prisons Service (TPS) Chief, CGP Suleiman Mzee, mentioned that there are currently **14,502 prisoners and 17,396 remandees** in all prisons.<sup>183</sup> The Minister of Home Affairs, Hon. George Simbachawene (MP), has also recently acknowledged the magnitude of the problem contributed mainly by the presence of too many remandees compared to the convicted.



**LHRC's call:** Since more than half of the people in prison are remandees, the Government should consider criminal justice reforms, including granting bail for all offences, as is the case in Zanzibar and Kenya, reserving the right to deny bail for Magistrates and Judges under very exceptional circumstances clearly defined in the law. This will help to reduce congestion in prisons.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> See TPS, WAZIRI SIMBACHAWENE AWATAKA POLISI KUACHA KUZALISHA MAHABUSU MAGEREZANI, at <http://magereza.go.tz/index.php/habari/240-waziri-simbachawene-awataka-polisi-kuacha-kuzalisha-mahabusu-magerezani>, accessed 3rd March 2020.



### 2.4.2.5 Introduction of the plea-bargaining law in the criminal justice system

In September 2019, the Written Laws (Miscellaneous Amendments (No. 4) Act of 2019 amended the Criminal Procedure Act (Cap 20). Under PART IV, the Act amends several provisions of the CPA, including by adding some new provisions, to introduce plea-bargaining.

#### What sections have been amended?

The amended sections are:

- section 3 (adding definitions of “plea agreement” and “plea bargaining”)
- section 194 (adding sections 194A, 194B, 194C, 194D, 194E, 194F, 194G and 194H)
- section 219 (deleting words “criminal lunatic” and replace them with “mentally disordered offender”)

#### What has changed?

##### 1. Addition of definitions of “plea agreement” and “plea bargaining”

Following the recent amendments, a plea agreement is defined as “an agreement entered into between the prosecution and the accused in a criminal trial in accordance with sections 194A, 194B and 194C.”<sup>184</sup>

Plea bargaining is defined as “a negotiation in a criminal case between a prosecutor and the accused whereby the accused agrees to-

- plead guilty to a particular offence or a lesser offence or a particular count or counts in a charge with multiple counts; or
- cooperate with the prosecutor in the provision of information that may lead to a discovery of other information relating to the offence or count charged, in return for concession from the prosecutor which may lead to a lenient sentence or withdrawal of other counts.”<sup>185</sup>

##### 2. Powers of the public prosecutor to enter a plea-bargaining agreement with an accused person, advocate or any other person representing them

Section 194A provides that a public prosecutor is allowed to enter

<sup>184</sup> Section 15 of the Written Laws (Miscellaneous Amendments (No. 4) Act of 2019.

<sup>185</sup> Ibid.



a plea-bargaining arrangement with an accused person, after consultation with the victim or investigator where the circumstances permit. The agreement can be made with the accused person and their lawyer, or if not represented, together with a relative, a friend or any other person legally competent to represent them. Either party is allowed to initiate a plea-bargaining by notifying the court about their intention to negotiate a plea agreement. The court shall not participate in the negotiations. Moreover, if the prosecution has begun a plea agreement can only be concluded with the written consent of the Director of Public Prosecutions (DPP).

### **3. Consequences of plea-bargaining**

The amendments also suggest what may happen once a plea-bargaining arrangement has been concluded.

- One, the accused person may be charged with a lesser offence or prosecutor may withdraw other counts or take other measures as seen appropriate, depending on the circumstances.
- Two, the accused person may enter a guilty plea to the offence charged or to a lesser offence or to a particular count or counts in a charge with multiple counts in exchange for the withdrawal of other counts.
- Three, an accused person may be ordered to pay compensation or make restitution or be subjected to forfeiture of the proceeds and instruments used to commit the crime in question.

### **4. Requirements of plea agreement**

For a plea bargain to be valid, the following conditions are mandatory.

- It must be concluded in writing and witnessed by the accused's advocate or lawyer or any other representative legally competent to represent the accused.
- The terms of the agreement must be stated in full, including substantial and relevant facts and admissions made.
- The accused persons must read the agreement, and have it explained in a language they understand.
- The accused persons must accept and sign the agreement.
- The prosecutor must also sign the agreement.
- In cases where interpreters are involved, they must certify of their competence in the language in question and attest to the accuracy of the interpretation.
- The DPP or an authorized officer must consent to the agreement in writing.



## 5. Registration of plea agreement

All plea agreements must be registered by the court of law, after satisfying itself that agreement was voluntarily obtained, and the accused was competent to enter into such agreement. However, the court is granted powers to reject the plea agreement if it has sufficient reasons to do so, but the parties to the agreement are not barred from any subsequent negotiations. The court may also pronounce a judgement based on the plea agreement. If the court accepts the agreement, then the agreement becomes binding upon the parties and becomes part of the court's record.

## 6. Procedures for registration of plea agreement

Following the amendments, the CPA also provides procedures for registration of a plea agreement.

- Firstly, the accused must be placed under oath before the court can record a plea.
- Secondly, the court must address the accused person in a language they understand and inform them of their rights.
- Thirdly, the court must inform the accused person that by accepting the plea agreement, they are waiving their right to a full trial.
- Fourthly, the accused person must be informed that they are also waiving the right to appeal, except as to the extent or legality of the sentence.
- Fifthly, in the case of prosecution for perjury or false statement, the prosecution has the right to use any statement contained in the agreement against the accused person.

## 7. Offences for which a plea agreement may not be entered

The CPA now contains a list of offences that are not subject to plea-bargaining. These offences are:

- Sexual offences whose punishment exceeds five years or involving victims under eighteen years;
- Treason and treasonable offences;
- Possession or trafficking in narcotics drugs whose market value is above Tshs. Twenty million;
- Terrorism;
- Possession of Government trophy whose value is above Tshs. Twenty million without the DPP's written consent.

Additionally, the Minister has powers to prescribe any other offence



which shall not be subject to plea bargaining, upon consultation with the relevant authority and publish the order in the *Gazette*.

## **8. Application to set aside conviction and sentence relating to plea bargaining**

Parties to the plea-bargaining agreement may move the court to set aside a sentence entered through the agreement if there was any fraud or misrepresentation.

## **9. Powers of the Chief Justice to make rules relating to plea-bargaining**

Under the plea-bargaining law, the Chief Justice has the mandate to make rules and give directives relating to plea-bargaining.

### ***What are the implications of the amendments?***

The major implication is that anyone who is accused of committing a criminal offence can now enter a plea-bargaining agreement. Consequently, the agreement may get the accused persons released or face lesser charges, as long as they follow the requirements above and the offence for which they are prosecuted does not fall within the list of offences cited above. In short, it means:

- Plea bargaining is a contract between the prosecutor and the accused person/defendant
- The defendant can receive a lighter sentence.
- The defendant does not have to ‘gamble’ with the trial, which could go either way and become a lengthy process, depending on the offence.
- Time can be saved, for the defendant, prosecutor and the court.
- The accused person can save a considerable amount of money in the form of advocate/lawyer fees.
- There is a reduction of caseload for prosecutors and courts (Magistrates and Judges) – essentially less work and increased ‘efficiency.’
- There are fewer people in prison (remandees), if plea-agreement results into a release or lesser offence which is bailable.
- The accused person may provide information in exchange for the plea deal that may lead to the apprehension of ‘bigger fish’ or discovery of more information relevant to the case

### ***What is the state practice?***

In practice, the trial waiver systems, including plea-bargaining, are



widely used in different parts of the world, including in U.S.A, Russia, Scotland, Australia, China, Colombia, Nigeria, Italy, Spain, Poland, Estonia, England and India. In July 2006, India introduced the plea-bargaining concept, hailed as a progressive piece of legislation that would result in speedy disposal of cases.<sup>186</sup> It was believed that the law would bring relief of tens of thousands of prisoners.

In July 2017, a human rights organization called Fair Trials<sup>187</sup> released its report on trial wavers/plea-bargaining called “The Disappearing Trial.”<sup>188</sup> The report provides a detailed analysis of practice, advantages and disadvantages of plea deals. One of the findings of the report is that out of the 90 countries that were sampled for the study, 66 are using the plea-bargaining or trial waver systems and that use of trial-waver procedures has increased worldwide since 1990 by 300%.<sup>189</sup>

### **What are the concerns?**

- Coercion of accused persons (the distinction between voluntary confession and one made under pressure).
- Irrelevance of innocence because the accused person is unsure of facing a Magistrate or a Judge and risking unfavourable decision.
- Bad advice from an accused’s lawyer.
- Leverage on the part of the prosecutor (threatening accused person to seek maximum sentence if they do not take the plea, possible claims or vulnerability to corruption).
- People may be encouraged to plead guilty for crimes they did not commit; and consequently, the real culprit may continue to terrorize the community.
- The reduced role of Magistrates/Judges and public defenders in the dispensation of justice and more power for prosecutors.
- Accused’s name may not be cleared since one’s innocence or guilt does not matter.
- Less focus on the victim of a crime.
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186 See “India introduces plea bargaining” BBC News [online], 5 July 2006, at [http://news.bbc.co.uk/2/hi/south\\_asia/5149338.stm](http://news.bbc.co.uk/2/hi/south_asia/5149338.stm), accessed 2nd March 2020.

187 A global criminal justice watchdog (<https://www.fairtrials.org/>).

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

189 See Report Key Stats at <https://www.fairtrials.org/campaign/disappearing-trial>, 2nd March 2019.



In the U.S.A, it is estimated that over 90% of felony convictions are a result of plea bargains.<sup>190</sup> Some of the critics of plea bargaining claim that although it has helped to expedite the disposal of cases, it has also resulted into accused persons being coerced into confessing or pleading guilty to the crime they did not commit in exchange for leniency<sup>191</sup> and plea deals are often misused.<sup>192</sup>

A judge was quoted in a law-review article that “Horse trading [between prosecutor and defense counsel] determines who goes to jail and for how long. That is what plea bargaining is. It is not some adjunct to the criminal justice system; it is the criminal justice system.”<sup>193</sup> The critics of the plea-bargaining system in the U.S.A also argue that resolving cases through plea deals jeopardise constitutional rights of accused persons, as they may be pressured to admit guilt, regardless of whether they are guilty or not.<sup>194</sup>

The Disappearing Trial Report of 2017 by Fair Trials indicates that although there are some distinct advantages in using trial

waiver systems, for example the ones highlighted above. It notes that when such systems are used properly they are not a bad thing, as they can help

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

***Fair Trials’ Disappearing Trial Report, 2017***

to reduce waiting times, help to reduce pre-trial detention, are less costly and can offer protection to vulnerable victims, in the sense that they do not have to relive their ordeals in court. However, such

190 See Emily Yoffe, Innocence Is Irrelevant, The Atlantic, September 2017 Issue, at <https://www.theatlantic.com/magazine/archive/2017/09/innocence-is-irrelevant/534171/>, accessed 2nd March 2020; “‘Global epidemic’ of US-style plea bargaining prompts miscarriage warning” The Guardian, at <https://www.theguardian.com/law/2017/apr/27/traditional-trial-rights-renounced-as-countries-adopt-us-style-plea-bargaining>, accessed 2nd March 2020.

191 Ibid.

192 See Gretchen Gavett “The Problem With Pleas” 31 October 2011, at <https://www.pbs.org/wgbh/frontline/article/the-problem-with-pleas/>, accessed 2nd March 2020.

193 Emily Yoffe, Innocence Is Irrelevant, The Atlantic, September 2017 Issue, at <https://www.theatlantic.com/magazine/archive/2017/09/innocence-is-irrelevant/534171/>, accessed 2nd March 2020

194 See Gretchen Gavett “The Problem With Pleas” above.



systems also come with drawbacks, including higher chances misuse. For instance, the report points out that in some countries such as Argentina and South Africa, there is a tendency of prosecutors using plea agreements to improve conviction or performance rates, including in courts which judges tend to acquit. The report further indicates that plea deals can also produce miscarriages of justice and damage or undermine public trust; and that accepting trial waivers means people give up their rights to be tried by an impartial court and have actions of the police scrutinised, which are important procedural safeguards.

- Fair Trials insists that the dangers of trial waivers must be recognised and legal systems employing such waivers should be accompanied by adequate safeguards that protect the accused person. It proposes the following safeguards:
- *Mandatory access to a lawyer*: An accused person must speak to a lawyer before agreeing to waive their right to a trial
- *More disclosure*: Accused persons should know the case against them and be able to scrutinize prosecution's case
- *Timing of agreements*: Accused person should be afforded time to think and make a decision (no coercion)
- *Judicial oversight*: Judges should be involved in negotiations, as is the case in Singapore. In our case, as indicated above, the court (meaning magistrates and judges) is barred from participation in the negotiations
- *Enhanced recording/data collection*: Record of negotiations should be kept to improve transparency. Shining a light on deals done by prosecutors behind closed doors would help the public to trust the system and the outcome, and avoid claims of corruption
- *Limitations of benefits*: There should not be a big difference between the sentence if one goes to trial and the sentence for a guilty plea as it can distort how people act.<sup>195</sup> Significant sentence differential between a trial waiver and an actual trial may lead to undue influence of the defendant's will.

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<sup>195</sup> According to Fair Trials, in Germany, courts and legislators have identified that a significant sentence differential between agreement and trial can act as an 'illegal influence' on the defendant's free will.



### **So how do we proceed? LHRC's position**

If we are to proceed with the plea-bargaining system, we must proceed with caution to balance the scale, in the sense that the rights of all parties involved are safeguarded, but especially those of the accused person. The safeguards provided by *Fair Trials* highlighted above are a good starting point to achieve this. Accused persons should not be coerced in anyway and the law should not be applied discriminatively in anyway.<sup>196</sup>

#### **2.4.2.6 Delays and Constant Adjournment of Cases in the Criminal Justice System**

Despite the notable improvements made in 2019, seeking to enhance access to justice, LHRC has observed with concern that delays and constant adjournment of cases continued to be a thorn in the criminal justice system in this reporting period. The delays are usually in the investigation part (police/prosecution investigation), whereby prosecutors often tend to appear in court and claim that 'investigation has not been completed' and then proceed to ask for an adjournment of the case. The case involving LHRC staff member Tito Elias Magoti provides a good case in point.

In December 2019 Tito was arrested and charged with money laundering offence, among others. Since then, his case continues to be continuously adjourned because of an incomplete investigation. The adjournments continue despite the prosecution informing the court that investigation 'is at a good stage.' Delays and adjournments negatively affect the right to a fair trial and infringe on the right to liberty. Additionally, this practice contributes to the congestion in prisons, whereas this report has noted, the majority of inmates are remandees. The practice also contributes to the backlog of cases, as a long time is spent on a single case.

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<sup>196</sup> See LHRC's statement on plea bargaining issued on 25th September 2019 at <https://www.humanrights.or.tz/posts/b/news/ufafanuzi-wa-kisheria-kuhusu-makubaliano-ya-kukiri-kosa-plea-bargaining>, accessed 2nd March 2019.





#### COURT ORDERS PROSECUTORS TO FINALIZE INVESTIGATION OF MAGOTI AND THEODORY CASE

By LHRC Civic Space , Freedom of expression , Democracy , Human Rights , Accountability , Good Governance , Access to Justice

48 days behind bars, pending investigation of the economic crime case No. 137, 2019 against Tito Magoti and Theodory Giyani;

05 FEB 2020

LHRC is concerned with delays and adjournments in courts of law, in the absence of bail, which are detrimental to administration of justice

In July 2019, the Chief Justice of Tanzania recommended that all offences be bailable. He also suggested there should be a limitation on the length of time to conduct and complete investigation, after the lapse of which courts should be allowed to strike out cases.<sup>197</sup> He stated that the law should clearly state by when investigations should be completed. These measures, the Chief Justice opined, will help to speed up proceedings in courts and dispensation of justice overall.

**LHRC's call:** The Ministry of Constitutional and Legal Affairs should take measures to address this problem, including requiring completion of investigation before a case is brought to court and demanding increased pace of investigations. LHRC also supports the Chief Justice's recommendation that the law should stipulate time to complete investigations. This will help to safeguard the rights of accused persons and prevent them from languishing in jail and contribute to prison overcrowding. *Justice delayed is justice denied.*

#### 2.4.2.7 Shortage of judicial workers, Magistrates and Judges

Shortage of judicial staff re-emerged as a key issue in 2019. According to the Chief Justice, Prof. Ibrahim Juma, the Judiciary need a total of 10,351 workers. Currently, however, there are only 5,947, hence the shortage of 4,404 workers (equivalent to 42.5%).<sup>198</sup> From January to

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

<sup>198</sup> See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA KWENYE KILELE CHA WIKI YA ELIMU NA SIKU YA SHERIA JIJINI DAR ES SALAAM, TAREHE 06 FEBRUARI, 2020, at <https://www.judiciary.go.tz/web/index.php?r=site%2Fpdf&id=26>, accessed 2nd



December 2019, a total of 258 have vacated their positions, whereby 192 retired, 39 passed away, and 27 did quit their jobs. On the other hand, the Judiciary employed 137 people the year 2019 to fill the gap.

The Chief Justice of Tanzania has also revealed that the caseload for High Court Judges and Court of Appeal Justices is still high despite recent appointments of Judges.<sup>199</sup> He noted that currently, the workload for each Judge is 513 cases, decreasing from 585 cases in 2018.<sup>200</sup> He added that in 2019, five Judges retired and four are expected to retire in 2020.<sup>201</sup>

42.5%

## Judiciary

Shortage of judicial workers.

### 2.4.2.8 Corruption within the Judicial System

A 2017 corruption study by REPOA and AfroBarometer, indicated corruption to be a significant issue in the justice system, implicating police, magistrates and judges.<sup>202</sup> Past reports on corruption, including PCCB's report of 2015,<sup>203</sup> have indicated that within the Judiciary corruption is more pervasive in lower courts. In 2018, eight cases of corruption involving magistrates were reported.<sup>204</sup> In 2019, LHRC was able to document corruption cases against magistrates in Shinyanga and Dar es Salaam Regions.

In October 2019, it was reported that PCCB in Shinyanga had arrested a Primary Court Magistrate, Benjamin Mhangwa, accused of receiving

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March 2020

199 Ibid.

200 Ibid.

201 Ibid.

202 Lulu Olan'g and Jamal Msami, In Tanzania, anti-corruption efforts seen as paying dividends, need citizen engagement, Afrobarometer Dispatch No. 178, 6 December 2017 at [http://www.repoa.or.tz/images/uploads/AD178-Corruption\\_in\\_Tanzania-Afrobarometer\\_dispatch-4dec17.pdf](http://www.repoa.or.tz/images/uploads/AD178-Corruption_in_Tanzania-Afrobarometer_dispatch-4dec17.pdf), accessed 10th December 2017.

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

204 See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA SIKU YA SHERIA, DAR ES SALAAM, TAREHE 06 FEBRUARI, 2019, at <http://www.tanlap.or.tz/sites/default/files/HOTUBA%20YA%20MHESHIMIWA%20JAJI%20MKUU%20SIKU%20YA%20SHERIA%20TRH%206%20FEBRUARI%2C%202019.pdf>, accessed 28th February 2019.



a bribe of Tshs. 200,000. He had asked for a bribe of Tshs. 300,000 from a parent whose child had been raped, in order to decide the case in their favour. In September 2019 PCCB in Dar es Salaam charged a magistrate from Magomeni Primary Court, Omary Abdallah (40), accused of seeking and receiving a bribe of Tshs. 703,000 in March 2017.

## 2.5 Right to Liberty and Personal Security

### 2.5.1 Legal Framework

Right to liberty and personal security is an essential human right, guaranteed under regional and international human rights instruments, including UDHR and ICCPR.<sup>205</sup> It is also guaranteed and protected under the Constitution of the United Republic of Tanzania of 1977.<sup>206</sup> This right includes freedom from arbitrary arrest and detention, right to personal security and right to bail. Obviously, arrests lead to the denial of individual liberty. Accordingly, the Criminal Procedure Act requires any arrested person to be brought before a court of law within 24 hours.<sup>207</sup> Further, detained persons are entitled to bail<sup>208</sup> unless they have committed nonbailable offences. The right to personal security creates an obligation on the Government of Tanzania to ensure that reasonable and appropriate measures are taken to protect detained and non-detained persons.

Deprivation of liberty is only justified if it is **in accordance with the law** (principle of legality) and **not arbitrary**. There is a violation of the principle of legality if a person is arrested or detained on grounds which are not clearly stated in domestic law. Arrest/detention may also be arbitrary when it is not appropriate, it is unjust, or it is done in disregard of due process of law. Arrest and detention of a person must thus be not only lawful but also reasonable and necessary under the circumstances, for instance, to prevent flight, interference with evidence or recurrence of crime. An accused person must not be discriminated against, must be allowed to communicate with family, and presumed innocent until proven guilty in court.<sup>209</sup> Moreover,

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

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

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

208 Ibid, section 48

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



detaining an accused person under police custody for more than twenty-four hours after an arrest without charging him or her in a court of law amounts to arbitrary detention.<sup>210</sup>

The Criminal Procedure Act requires police officers or other people carrying out an arrest to use a reasonable force during arrest (no more than is necessary to prevent escape).<sup>211</sup> A person being arrested should not be subjected to more force than is necessary to make the arrest.<sup>212</sup>

## 2.5.2 Key Issues

In 2019, several issues emerged concerning the right to liberty and personal security. Key among them included killings of *bodaboda* drivers by unknown assailants; and abduction of a political activist, Mdude Nyagali; arbitrary arrests and detentions; prosecution before the completion of investigations; and concerns over the fabrication of cases against innocent civilians.

### 2.5.2.1 Attacks and killings of *bodaboda* drivers: A personal security concern

In its 2018 Tanzania Human Rights Reports, LHRC reported about growing concern over killings of motorcycle drivers, popularly known as *bodaboda* drivers. These killings are perpetrated by unknown assailants, who target the drivers, kill them and leave with their motorcycles. In 2019, theft of motorcycles and personal security of *bodaboda* drivers continued to be an issue of concern. The police data on the theft of motorcycles from January to June 2019 reports a total of 2,329 incidents. During the same period in 2018, a total of 2,510 incidents were reported.

**2,329**  
Number of incidents of  
motorcycle theft from  
January to June 2019.

In this reporting period, killings of *bodaboda* drivers were reported in Mbeya Region. For instance, in April 2019, unknown assailants attacked and killed a *bodaboda* driver, Aidan Chongola (27), before leaving with his motorcycle.<sup>213</sup> In June 2019, Omary Kandonga (25), a

<sup>210</sup> Ibid.

<sup>211</sup> Section 12 of the Criminal Procedure Act, CAP 20.

<sup>212</sup> Ibid, Section 21

<sup>213</sup> LHRC Media Survey 2019.



*bodaboda* driver based in Chunya, Mbeya, was reportedly strangled to death by unknown people, before leaving with his motorcycle. The local government showed concern with the trend of the killings, noting that a total of 3 *bodaboda* drivers had been killed by June 2019.<sup>214</sup>

In Shinyanga Region, it was reported in January 2019 that a *bodaboda* driver, Eliud Johnstone (30), resident of Nyahanga Ward in Kahama Town Council, was attacked with machetes by unknown assailants and killed at Nyakato area in Nyasubi Ward. It was reported that two people, pretending to be passengers, boarded the *bodaboda*, then attacked and killed the driver, before taking his motorcycle.<sup>215</sup>

#### **2.5.2.2 Abduction of a political activist, Mdude Nyagali**

In 2018, several incidents of kidnapping were reported, including that of a business mogul, Mohammed Dewji. Fewer incidents of abductions were reported in 2019, including the abduction of Mdude Nyagali

On 4<sup>th</sup> May 2019, Mdude Nyagali (popularly known as Mdude Chadema), a member of an opposition political party (CHADEMA),) was reported missing. It later transpired that he was abducted by unknown people, forcing him into their car, a white Nissan with no registration number. Eyewitnesses reportedly stated that they heard Mr. Mdude crying out for help as he was taken away. Four days later, he was found alive but very weak. He appeared to have been beaten heavily.

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214 Ibid.

215 Ibid.





Picture 2: Mduke Nyagali taken to a hospital for medical attention after he was found

Source: The Citizen Newspaper (online) – 9 May 2019

#### *2.5.2.4 Azory Gwanda and Ben Saanane still missing*

As of December 2019, Azory Gwanda – a journalist with Mwananchi Communications Ltd – was still missing since his first disappearance in late 2017. Ben Saanane, a member of an opposition political party (CHADEMA), was also still missing since his disappearance was first reported in 2016. There are no new updates as to their whereabouts. These incidents have had a huge impact on the right to liberty and personal security.

#### *2.5.2.4 Arbitrary Arrests and Detentions: Reflection on the Arrest and Detention of LHRC's Tito Magoti*

In recent years, arbitrary arrests and detentions have been key human rights and criminal justice concerns in Tanzania. In 2017, more than 13 incidents of arbitrary arrests were reported in different parts of the country, including arbitrary arrests of ten journalists in Arusha.<sup>216</sup> In 2018, at least eight such incidents were reported, including arbitrary

<sup>216</sup> See LHRC & ZLSC (2018), Tanzania Human Rights Report 2017, p. 57.



arrests ordered by RCs and DCs.<sup>217</sup>

In 2019, arbitrary arrest and detention knocked on LHRC's doors, as Tito Magoti – a programme officer at the Centre - was arbitrarily arrested in December 2019. An account of what transpired can be summarily explained as follows:

- In the morning of 20<sup>th</sup> December 2019, LHRC received information that at around 10 am Mr. Tito Magoti arrived at Mwenge area in Dar es Salaam, where he had gone to buy a mobile phone, when unknown people arrived in a car, Toyota Harrier model, and forcibly took him into their car.<sup>218</sup>
- The eyewitnesses, including the *bodaboda* driver who had carried Mr. Tito Magoti, revealed that the car headed for the Alli Hassan Mwinyi Road leading to the city centre area in Dar es Salaam.<sup>219</sup>
- Shortly after the incident, reports circulated on social media, with fears that Tito Magoti had been abducted.
- On the same day, LHRC issued a statement strongly condemning the abduction and calling for the safe return of one of its staff members.<sup>220</sup> The incident was also condemned by other stakeholders, in Tanzania and beyond, including human rights defenders.
- However, on the same day in the evening, as reports of Tito's abduction continued to circulate on social media, the Dar es Salaam Special Zone Police Commander, Lazaro Mambosasa, issued a rather contradicting statement. He informed the public that Mr. Tito Magoti had not been abducted, but was instead in police custody together with three other people.<sup>221</sup> He noted that the four people had been arrested on unspecified charges and were being interrogated on the criminal charges they were facing.<sup>222</sup>

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217 See LHRC & ZLSC (2019), Tanzania Human Rights Report 2018, p. 55.

218 See LHRC's statement, TAMKO KUHUSU KUTEKWA KWA MFANYAKAZI WA KITUO CHA SHERIA NA HAKI ZA BINADAMU, BW. TITO MAGOTI issued on 20th December 2019 at [www.humanright.or.tz](http://www.humanright.or.tz).

219 Ibid.

220 Ibid.

221 See Khalifa Said "Police confirm they are holding human activist Tito Magoti" The Citizen Newspaper [online], 20 December 2019, at <https://www.thecitizen.co.tz/news/Breaking--Police-says-it-is-holding-human-activist-Tito-Magoti/1840340-5393274-2cd9mrz/index.html>, accessed 2nd March 2020.

222 Ibid.



- Upon receiving the police information, the LHRC, Tito Magoti’s family and relatives, as well as other stakeholders, went to various police stations in search of Tito to no avail, as police refused to disclose where he was being held.<sup>223</sup>
- The LHRC and THRDC then decided to file a *habeas corpus* application against the Dar es Salaam Special Zone Police Commander and the Attorney General, in an attempt to get access to Tito Magoti and secure his bail.<sup>224</sup>

### Why was the arrest arbitrary?

Tito Magoti was not informed about the reasons for his arrest. According to the ICCPR, **“Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”**<sup>225</sup>

*A person deprived of his or her liberty must be promptly informed of the reasons thereof, in a language which he or she understands and in sufficient detail so as to be enabled to request a prompt decision by a judicial authority on the lawfulness of his or her deprivation of liberty.*

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

Therefore, before his arrest, Tito Magoti was entitled to a right to be promptly informed of reasons for arrest and detention and any charges against him. This right is also protected under the ACHPR, the Constitution of Tanzania and the Criminal Procedure Act.

The UN Body of Principles for the Protection for All Persons under any Form of Detention or Imprisonment of 1988 is also relevant in Magoti’s case in that he was neither told the reasons for his arrest nor his rights and how to avail himself of such rights.

<sup>223</sup> Asna Kaniki & Louis Kolumbia “Tito Magoti: Case filed against Dar Police Chief and the AG over his detention” The Citizen Newspaper [online], 23 December 2019, at <https://www.thecitizen.co.tz/news/1840340-5395848-9wuo31/index.html>, accessed 2nd March 2020.

<sup>224</sup> Ibid; See also JOINT PRESS STATEMENT ON ARBITRARY ARREST AND UNLAWFUL DETENTION OF AN ACTIVIST, TITO MAGOTI, issued by LHRC, THRDC and WHRDs on 23rd December 2019 at <https://thrdc.or.tz/wp-content/uploads/2019/12/JOINT-PRESS-STATEMENT-ON-THE-ARBITRARY-ARREST-AND-UNLAWFUL-DETENTION-OF-ACTIVIST-AND-HRD-TITO-MAGOTI.pdf>.

<sup>225</sup> See Article 9(2) of ICCPR of 1966.



*Principle 10 Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.*

*Principle 13 Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.*

### **Why was the detention arbitrary?**

Apart from not being informed about reasons for arrest, Mr Tito was interrogated without the presence of his lawyers, nor was he informed of his rights. The right to legal representation is well established under Tanzanian and international laws.<sup>226</sup> Further, the UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment<sup>227</sup> provides that “a detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.”<sup>228</sup> Therefore, in this case, Mr. Tito Magoti’s right to access to and assistance of lawyer was infringed.

Moreover, Mr. Tito Magoti was not promptly brought before a judge or other judicial officer. Anyone arrested or detained on a criminal charge must be brought promptly before a judge or other officer authorized by law to exercise judicial power.<sup>229</sup>

Mr. Tito Magoti was held by police for more than three days. This violated his right to trial within a reasonable time or to release on bail pending trial. Since his arrest on 20<sup>th</sup> December 2019, he did not appear before a court of law until 24<sup>th</sup> December 2019.<sup>230</sup> He was charged with:

- Leading organized crime in terms of paragraph 4 (1)(a) of the First Schedule to and Sections 57 (1) and 60(2) of the Economic

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

227 Adopted by General Assembly resolution 43/173 of 9 December 1988.

228 Principle 11(1) of the UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment of 1988.

229 Article 9(3) of ICCPR; Article 7(1) of ACHPR.

230 See Hadija Jumanne “Tito Magoti ashtakiwa kwa utakatishaji fedha” Mwananchi Newspaper [online], at <https://www.mwananchi.co.tz/habari/kitaifa/1597296-5397062-37j9viz/index.html>, accessed 20th February 2020.



- and Organized Crimes Control Act, [Cap 200 R.E 2002];
- Possession of a computer program designed to commit an offence in terms of Section 10 (1)(a) of Cyber Crimes Act, No. 14 of 2015 as read with paragraph 36 of the First Schedule to, and Sections 57 (1) and 60(2) of the Economic and Organized Crimes Control Act, [Cap 200 R.E 2002]; and
  - Money laundering in terms of Sections 12(d) and 13(a) of the Anti- Money Laundering Act,2006 read together with paragraph 22 of the First Schedule to, and Sections 57(1) and 60 (2)of the Economic and Organized Crimes Control Act, [Cap 200 R.E 2002] as amended.

The UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment of 1988 provides that **“Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.”**<sup>231</sup> ICCPR, which Tanzania has ratified, requires **“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”**<sup>232</sup> Tanzanian laws allow the police force to detain a person for no longer than 24 hours before presenting such person to court. Tito was held and interrogated for more than 90 hours, in violation of his right to be presented in court promptly, right to counsel/representation and right to bail.

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231 Principle 2 of the UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment of 1988.

232 Article 9(3) of ICCPR.





Picture 3: Tito Magoti and Theodory Giyan during one of the court sessions at Kisutu Magistrate Resident Court in Dar es Salaam  
*Picture by: EATV*

### **Key messages:**

- An accused person has the right to be told reasons for the arrest
- An accused person has the right to be promptly informed about charges against him or her
- An accused person has the right to access to and assistance of a lawyer
- An accused person has the right to be presented before the court promptly (within 24 hours)
- An accused person has the right to bail pending trial
- An accused person right to be informed about his rights by arresting officer and how to avail himself or herself of such rights
- An accused person has the right to be presumed innocent until proven guilty by a court of law
- An accused person right to raise objections to the behaviour of courts and law enforcement authorities
- An accused person has the right to a fair trial and effective remedy
- Justice delayed is justice denied



## **Other reported incidents of arbitrary arrests and detention in 2019**

For the year 2019, other incidents of arbitrary arrest and detention included that of Theodory Giyan and Erick Kabendera. Theodory Giyan was arrested in connection with Tito Magoti. These two people were treated similarly with Tito Magoti, in the sense that due process was not followed in their arrest and detention as required under national and international standards on the right to liberty and personal security.

### Erick Kabendera's case.

Erick Kabendera is a freelance journalist. He was taken from his home in July 2019 in Mbweni area – Dar es Salaam. Eye witness accounts indicate that about six men forcibly grabbed him and said they were taking him to Oysterbay Police Station.<sup>233</sup> However, they did not produce any identification a fact, which raised fear among those who witnessed the ordeal.<sup>234</sup> On 30<sup>th</sup> July 2019, the Dar es Salaam Special Zone Police Commander, Lazaro Mambosasa, held a press conference and informed the public the journalist had been arrested because he had refused to obey the summons and was being questioned about his citizenship by police and immigration officials.<sup>235</sup> Following the journalist arrest, which was deemed arbitrary, there was a public outcry in Tanzania and beyond over how he was arrested and detained.<sup>236</sup> Like it was the case for Tito Magoti and Theodory Giyan, Kabendera was also initially denied access to and assistance of a lawyer and his right to be visited by family, in violation of his rights to liberty and due process. He was also arbitrarily detained and denied bail for about seven days.<sup>237</sup>

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233 See Nipasheonline “Mwandishi wa habari za uchunguzi Erick Kabendera akamatwa Tanzania” at <https://www.nipasheonline.com/mwandishi-wa-habari-za-uchunguzi-erick-kabendera-akamatwa-tanzania/>, accessed 2nd March 2020.

234 Committee to Protect Journalists “Tanzania detains freelancer Kabendera over ‘citizenship’” 30 July 2019, at <https://cpj.org/2019/07/tanzania-erick-kabendera-citizenship-retaliation-detained.php>, accessed 2nd March 2020.

235 Ibid.

236 Ibid.

237 See LEGAL OPINION ON THE ARREST OF ERICK KABENDERA AND PRESS FREEDOM IN TANZANIA

<https://www.humanrights.or.tz/posts/b/news/legal-opinion-on-the-arrest-of-erick-kabendera-and-press-freedom-in-tanzania>.



### Joseph Gandy's case

In another incident of August 2019, Joseph Gandy, an editor of online television called Watetezi TV – owned by the Tanzania Human Rights Defenders Coalition (THRDC), was reportedly arbitrarily arrested after publishing news about allegations of police brutality over suspects in custody in Iringa Region. It was reported that police had arrested the journalist on suspicion of publishing false news in contravention of the Cyber Crimes Act.<sup>238</sup> Following his arrest, there were calls from different stakeholders, local and international, for his release and safe return.

The three cases are just a few examples of arbitrary arrests. According to THRDC, 13 other journalists had been arbitrarily arrested and/or harassed from January to September 2019.

**LHRC's call:** Law enforcement officers to refrain from arbitrarily arresting and detaining people they accuse of committing crime. Law enforcement officers who engage in such practice, in disregard of procedural safeguards, should also be held accountable. It is high time we have in place an independent police oversight body to check on the conduct of law enforcement officers.

#### *2.5.2.5 Right to Bail: Chief Justice proposes all offences to be bailable*

In July 2019, stakeholders called upon the Government to initiate the process of amending criminal laws to ensure the provision of bail for all criminal offences, including murder and money laundering.<sup>239</sup> This followed a similar statement made by the Chief Justice of Tanzania, Prof. Ibrahim Juma, two days earlier.<sup>240</sup> The Chief Justice remarked that bail should be available for all offences<sup>241</sup> like in Kenya, and the Judiciary should be left with the mandate to regulate bail.<sup>242</sup> He also mentioned that delays in investigations (by police) is one of the factors contributing to delays in the determination of cases, hence

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238 See Committee to Protect Journalists "Tanzania detains Watetezi TV journalist over investigation of police" 23 August 2019 at <https://cpj.org/2019/08/tanzania-detains-watetezi-tv-journalist-over-inves.php>, accessed 23rd February 2019.

239 LHRC Media Survey 2019.

240 Ibid.

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

242 See "Wadau wamtaka Jaji Mkuu kuanza kurahisisha masharti ya dhamana" Mwananchi Newspaper, 22 July 2019.



the increased number of remand prisoners.<sup>243</sup>

In July 2019, the Minister of Constitutional and Legal Affairs, Hon. Ambassador Dr. Augustine Mahiga, mentioned that during his various prison visits, he has realized that overcrowding is a big problem, as demand for space in prisons exceeds the capacity for prisoners.<sup>244</sup> The call for bail of all offences is very important as this will also reduce the number of people in prisons and hence the issue of overcrowding in the prisons will end.

#### *2.5.2.6 Prosecution before completion of investigation*

In 2019, the prosecution of accused persons before the completion of investigations re-emerged as a key issue of criminal justice and human rights concern. LHRC's Tito Magoti was also faced with this predicament, as his case continued to be mentioned and adjourned because the prosecution had not completed investigation. While it is allowed to prosecute some cases, for instance, money laundering, before completion of an investigation, this practice contravenes the principle of presumption of innocence established under the Constitution of the United Republic of Tanzania as well as regional and international human rights instruments. The fact that over 50% of people who are in our prisons in Tanzania are not convicts attests to this problem. As discussed above, delays in investigations contribute to delays in dispensation of justice and prison overcrowding.

To remedy this situation, LHRC reiterates the recommendations made by the Chief Justice, Prof. Ibrahim Juma, that one; the Government should consider the possibility of granting bail for all offences, and two; that the law should stipulate for how long investigations may continue before the court is allowed to strike out a case for want of evidence.

#### *2.5.2.7 Concerns over fabrication of cases against innocent civilians*

The LHRC's Tanzania Human Rights Report of 2018 noted the continued worries over police fabrication of cases against innocent civilians. Such concerns were raised in different parts of Tanzania Mainland. As a result, the then Minister of Home Affairs, Hon. Kangi

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<sup>243</sup> Mary C. Gwera "JAJI MKUU APENDEKEZA MAKOSA YOTE KUWA NA DHAMA-NA" Judiciary of Tanzania, 26 July 2019, at <https://www.judiciary.go.tz/web/index.php?r=posts%2Fwebview&id=78>

<sup>244</sup> Ibid.



Lugola warned the Police Force against such practices. Such warnings were reiterated even during parliamentary sessions. The Prevention and Combating of Corruption Bureau (PCCB) also called for the Police Force to put a stop to harassment, arbitrary arrests and beatings of citizens.

Fabrication of cases continued to be an issue of concern in 2019. For example, Hon. President John Magufuli visited Butimba Prison in Mwanza in July 2019. Among other challenges, he witnessed the congestion of prisoners and remandees. In his remarks, he noted that some of the people had been arrested on fabricated charges, while others remain in prisons for a long time without trial.<sup>245</sup> Recently, the Minister of Home Affairs, Hon. George Simbachawene, has also warned against police fabrication of cases and called upon the police chiefs to address the matter, including interviewing arrested/remanded persons to check if they deserve to be locked up.<sup>246</sup>

**LHRC's call:** Police officers to refrain from fabricating cases and charges and adhere to professionalism, criminal procedures, human rights and PGOs in carrying out their work. Removing or reducing restrictions on bail could also help to reduce the injustices cases by fabrication of cases.

## 2.6 Freedoms of Assembly and Association

### 2.6.1 Legal Framework

States are obligated to respect and refrain from interfering with freedom of assembly under international human rights law, including the International Covenant on Civil and Political Rights (ICCPR) and African Charter on Human and Peoples' Rights (ACHPR).<sup>247</sup> In 1984, the Government incorporated the bill rights, including freedom of assembly, into the Constitution of United of Tanzania of 1977.

Freedom of Association ensures one the right to form and participate in association, either formally or informally. It covers any form of organized groups and professional organizations like political parties, trade

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<sup>245</sup> LHRC Media Survey 2019

<sup>246</sup> See Felix Mwangara "Simbachawene aanza mkakati kuwachomoa wanaobambikiwa kesi" Mwananchi Newspaper [online], 19 February 2019, at <https://www.mwananchi.co.tz/habari/kitaifa/Simbachawene-aanza-mkakati-kuwachomoa-wanaobambikiwa-kesi/1597296-5461650-bpuxmv/index.html>, accessed 2nd March 2020.

<sup>247</sup> Article 20(1) of UDHR; Article 22 of ICCPR; and Article 11 of ACHPR.



unions, public associations and non-governmental organisations.<sup>248</sup> This right is guaranteed under the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples Rights (ACHPR), and the African Charter on Democracy, Elections and Governance, among other human rights instruments.<sup>249</sup> In Africa, States have an obligation to enact a national legislation on freedom of association that facilitates and encourages the establishment of associations and promotes their abilities to pursue their objectives. Members have a choice of joining and leaving associations.<sup>250</sup>

The only restrictions on freedoms of assembly and association allowed are those prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, protection of public health or morals or protection of the rights and freedoms of others, according to ICCPR.<sup>251</sup> Restrictions must be necessary to achieve the desired purpose and must be proportionate to the need on which the limitation is based. Together with freedom of expression, freedoms of assembly and association are fundamental for the realization of the right to participate in governance (participation rights).

### 2.6.2 Key Issues

For the year 2019, key issues affecting freedoms of assembly and association included continued limitation on political meetings, the threat posed by the amended Political Parties Act, amendment of the Non-Governmental Organizations, amendment of the Tanganyika Law Society Act, complaints of arbitrary restrictions on political assemblies and concerns over securing relevant permits from authorities on the part of CSOs.

### 2.6.3 Amendment of the Political Parties Act of 1992

In January 2019, the Parliament of Tanzania passed the Political Parties (Amendment) Bill,<sup>252</sup> which was later signed by the President

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

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

250 ACHPR: Guidelines on Freedom of Association and Assembly in Africa at [http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines\\_on\\_freedom\\_of\\_association\\_and\\_assembly\\_in\\_africa\\_eng.pdf](http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf) accessed on 26th February 2019

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

252 See Sharon Sauwa “Muswada wa Vyama vya Siasa wapita wabunge wa CCM, upinzani



into law.<sup>253</sup> The law has been faulted by stakeholders within and outside Tanzania for giving the Registrar of political parties excessive and intrusive powers over political parties and failing to conform to international standards on freedom of association.

Some of the provisions within the law would severely cripple political development by criminalising political activities and arbitrarily restricting constitutionally guaranteed freedom of association. For example, the law grants the Registrar excessive powers to interfere with the internal affairs of a political party. Such powers, for instance, allow the registrar to strip and individuals of party membership or to remove them from a leadership position.<sup>254</sup> In an analysis of the Act submitted to the Parliamentary Committee on Legal and Constitutional Affairs on January 17, 2019, some stakeholders pointed out the main concerns to be:<sup>255</sup>

- The lack of clarity in some provisions which leaves loopholes for abuse of powers and creation of fear,
- The sweeping discretionary powers granted to the Registrar which seriously affect the autonomy of political parties,
- The criminalisation or regulation of legitimate political activities and expression,
- Severe penalties for breaching the regulations, which are not proportional to the administrative offences; and
- Limited checks and balances on the work of the Registrar.<sup>256</sup>

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

253 Elias Msuya “Magufuli asaini sheria ya vyama vya siasa, Chadema watoa neno” Mwananchi Newspaper [online] 22 March 2020, at <https://www.mwananchi.co.tz/habari/kitaifa/1597296-5037704-4xgk4oz/index.html>, accessed 6th March 2020.

254 Fumbuka Ng’wanakilala “Tanzania MPs grant government sweeping powers over political parties” Reuters 30 January 2019.

255 The stakeholders were the LHRC, Twaweza East Africa, Tanganyika Law Society (TLS), Media Council of Tanzania (MCT), Waandishi wa Habari za Maendeleo Zanzibar (WA-HAMAZA) and Centre for Strategic Litigation

256 See LHRC, Analysis of the Political Parties (Amendment) Act 2018 at <https://www.humanrights.or.tz/posts/b/news/analysis-of-the-political-parties-amendment-act-2018>, accessed 6th March 2020; Analysis of the Political Parties (Amendment) Act, 2018 by Twaweza East Africa, Legal and Human Rights Centre (LHRC), Tanganyika Law Society (TLS), Media Council of Tanzania (MCT), Waandishi wa Habari za Maendeleo Zanzibar (WAHAMAZA) and Centre for Strategic Litigation, Submitted to the Parliamentary



**LHRC's view:** The implementation of the Political Parties (Amendment) Act, will serve to further curtail the freedom of association of political parties. Restrictions imposed on freedom of association of political parties do not meet the three-part test under the ICCPR of 1966. Other essential standards that have not been met include the African Charter on Human and Peoples' Rights of 1981 and the Guidelines on Freedom of Association and Assembly in Africa, published by African Commission on Human and Peoples' Rights on 10<sup>th</sup> November 2017.

**LHRC's call:** The Government and Parliament to facilitate further amendment of the Political Parties Act to bring it in line with regional and international standards on freedom of expression, including the Banjul Charter and the Guidelines on Freedom of Association and Assembly in Africa.

### *2.6.3.1 Amendments of the Non-Governmental Organisations Act 2002 and Tanganyika Law Society Act 1954 and their impact on Freedom of Association for Civil Society*

#### **A. Amendment of the Non-Governmental Organisations Act**

In June 2019, the Non-Governmental Organizations Act (Cap 56) was amended through the Written Laws (Miscellaneous Amendments) Act (No. 3) of 2019. The amended sections are: section 2; section 4; section 8; section 11; section 17; section 29 and section 31.

#### **What has changed?**

Under section 25 of the Written Laws (Miscellaneous Amendments) Act (No. 3) of 2019, section 25 of the NGOs Act is amended by deleting the definition of NGO and replacing it with a new definition. The new definition to NGO means “a voluntary grouping of individuals or organizations which is, non-partisan or non-profit sharing established and operates for the benefit or welfare of the community or public organized at the local, national or international levels for the purpose of enhancing or promoting economic, environmental, social or cultural

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Committee on Legal and Constitutional Affairs on January 17 2019 at <https://www.humanrights.or.tz/assets/images/upload/files/JointAnalysis%2BPreamble-FINAL17012019.pdf>, accessed 6th March 2020; See also JOINT SUBMISSION OF POLITICAL PARTIES (AMENDMENT) BILL 2019 TO THE PARLIAMENTARY COMMITTEE, BROUGHT JOINTLY BY TANLAP AND 13 OTHER CSOS at <https://www.tanlap.or.tz/sites/default/files/POLITICAL%20PARTIES%20%28AMENDMENT%29%20BILL%20ANALYSIS-%20TANLAP.pdf>, accessed 6th March 2020.



development or protecting environment, lobbying or advocating on such issues.” The definition includes CBOs, but excludes a company; a trustee; a trade union; a religious or faith propagating organisation; a cooperative society; an agricultural association; a society; a political party; a microfinance group (VICOBA); a sports association; and any organisation which the Minister may declare not to be an NGO.

Section 26 amends section 4 of the NGOs Act by adding two functions or powers of the Director/Registrar. Firstly, the registrar may suspend the operation of any NGO which violates NGOs Act provisions pending a determination of the board. Secondly, the registrar may monitor and evaluate NGO activities quarterly.

Section 27 amends section 4 of the NGOs Act by adding section 4A titled “Power to investigate.” It grants the Registrar powers to investigate any matter when carrying out his duties, in collaboration with law enforcement organs. The Registrar also has powers to require any law enforcement organ or public entity to provide relevant facilities and services of its employees to assist him in performing his functions.

Section 28 amends section 8 of the NGOs Act by adding section 8A titled “De-registration of Non-Government Organization.” It provides for the automatic de-registration of NGOs after two months since the law comes into force.

Section 29 amends section 11 of the NGOs Act by deleting subsections (3), (4), (5) and (6).

Section 30 amends sections 17 of the NGOs Act by adding a requirement of renewal of the certificate of registration of an NGO after ten years. NGOs must apply to renew their certificates six months before the expiry of their current ones.

Section 31 amends section 29 of the NGOs Act by adding the words “and shall be made available to the public” at the end of subsections (1)(b).

Section 32 amends section 31 of the NGOs Act by adding a duty to adhere to the principles of transparency and accountability as prescribed under other written laws.



## Concerns

Despite containing some positive aspects, there are several concerns which have arisen in the wake of recent amendments of the NGO law. These concerns are highlighted below.

- **NGO definition not including aspects of democracy and service delivery**

Although the recent amendments of the NGO law have provided a broader definition of NGO, it is also essential to include democracy and service delivery as key concepts on the work of NGOs. This will help to broaden the scope of the definition to cover NGOs that promote democracy and others which provide services to the community. It would also help to avoid ambiguities and misinterpretation. The more detailed the definition brings clear and a better understanding of the defined concept.

The definition also provides for levels of NGO organization and operations, namely local, national and international levels. However, the law could go further to define each level clearly, as it is the case for Uganda. For instance, the Uganda NGO policy provides definitions of “Non-Governmental Organization,” “National Non-Governmental Organization,” and “Regional Non-Governmental Organization (RENGO).”<sup>257</sup> This would help to provide a more precise understanding of the meaning and nature of NGO across different stakeholders.<sup>258</sup>

- **Too much powers vested in the NGO Registrar**

These provisions remain as they were in the proposed Bill, despite calls by LHRC and other CSOs for their amendment. As determined by LHRC and other CSOs during the bill analysis, these two additional functions in Section 26 vest too much power in the Registrar. They may be open to abuse.<sup>259</sup> The powers vested in the Registrar are also not necessary as we already have a functioning justice system

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257 See Tanzania Human Rights Defenders Coalition (2018), Compendium of Laws and Policies: Legal and Policy Issues Affecting Civil Society Organizations in Tanzania, THRC, at [https://thrc.or.tz/wp-content/uploads/2019/04/Compendium-of-Laws-Governing-CSOs-in-Tanzania\\_VOL2\\_Version-8-1.pdf](https://thrc.or.tz/wp-content/uploads/2019/04/Compendium-of-Laws-Governing-CSOs-in-Tanzania_VOL2_Version-8-1.pdf).

258 Ibid.

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



established by the Constitution of the United Republic of Tanzania to address any possible concerns.<sup>260</sup>

There is also an issue of separation of powers which is a fundamental principle in our constitution, vis-à-vis the NGO Coordination Board and NACONGO, if the Registrar is given powers to suspend NGOs.<sup>261</sup> Suspension of an NGO can have a wide-ranging impact on the beneficiaries of their work and services. Further, NGOs contribute in terms of employment and consumption of goods and services in areas where NGOs operate. Careful consideration should thus be made before granting such powers to the Registrar.

Another power granted to the Registrar of NGOs, as indicated above, is to conduct quarterly monitoring and evaluation of NGO activities and report to the Board. Quarterly monitoring of NGOs is too excessive and may sometimes cause unnecessary interference with NGO work and reduce effectiveness. It is also not feasible to conduct four visits each year to over 3000 registered NGOs. This is also not sustainable on the part of the Government. It creates a massive burden in terms of human and financial resources. It is more likely that these visits will instead be selectively conducted.<sup>262</sup>

- ***Registrar's powers to demand law enforcement organs to assist him in performing his functions pose a threat to the independence of law enforcement organs***

The Registrar being allowed to use the law enforcement organs or public entities to assist in performing his duties contravenes the constitutionally established criminal justice system and strips off the independence of law enforcement organs and therefore is unnecessary in a democratic society.<sup>263</sup> This may also lead to suppression of freedoms of association and expression amongst CSOs by creating fear due to the involvement of law enforcement officials where no crime has been established and halt or delay operations of NGOs.

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<sup>260</sup> Ibid.

<sup>261</sup> Ibid.

<sup>262</sup> Ibid.

<sup>263</sup> See the Consolidated Analysis of the Written Laws (Miscellaneous Amendments) (No.3) Act, 2019 Bill by LHRC and other CSOs, at <https://www.twaweza.org/uploads/files/Amendments%20Consolidated%20Analysis%20Final%20-%2023June2019.pdf>, accessed 3rd March 2020.



- **Reporting Requirements, not in line with international standards on freedom of association**

The reporting requirements under the NGO law do not conform with the Guidelines on Freedom of Association and Assembly in Africa of 2017,<sup>264</sup> which, among other things, provide that:

- reporting requirements should be constructed based on the presumed lawfulness of associations and their activities and should not interfere with the internal management or activities of associations;<sup>265</sup>
- reporting requirements should be simple, not overly burdensome, entirely laid out in a single piece of legislation and only required to a single state body;<sup>266</sup>
- any reporting requirements should not require extensive details, but rather aimed at ensuring financial propriety;
- right to confidentiality and privacy of associations, their members and those on whose behalf they work should be respected throughout the reporting process;<sup>267</sup>
- reporting requirements should be proportionate to the size and scope of the organization and, as far as possible, should be facilitated, inter alia, through the provision of templates, information technology tools, and other measures;<sup>268</sup> and
- reporting requirements should “not be used as a way to limit or target associations, including, inter alia, by utilizing the information therein to publicly condemn associations or by attempting to sanction or punish associations merely for altering their activities in relation to the objectives they originally set out.”<sup>269</sup>

Right to confidentiality is also not guaranteed in the NGOs Act following the amendment of section 29. There is also no provision on how the Registrar will facilitate the reporting process in the ways

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264 Adopted at the Commission’s 60th Ordinary Session held in Niamey, Niger, from 8 to 22 May 2017; further to Resolution 319 (LVII) 2015 which mandated the Study Group on Freedom of Association and Assembly to develop the said guidelines, under the supervision of the Special Rapporteur on Human Rights Defenders in Africa.

265 Article 47 of the Guidelines on Freedom of Association and Assembly in Africa.

266 Ibid, Article 48.

267 Ibid.

268 Ibid.

269 Ibid.



proposed under the Guidelines. There is also no provision protecting NGOs from reporting requirements being used to limit or target an NGO, including using its information to condemn it.

- ***Automatic de-registration threatening NGOs' freedom of association***

As indicated above, the amended NGO law now provides for automatic de-registration after two months have elapsed since the new provision comes into operation. This is contrary to international standards on freedom of association, including the ICCPR of 1966, the ACHPR of 1981 and the Guidelines on Freedom of Association and Assembly in Africa of 2017.

The Guidelines on Freedom of Association and Assembly in Africa provide that governments should not compel associations to register in order to be allowed to exist and to operate freely and that informal (de facto) associations should not be punished or criminalized under the law or in practice on the basis of their lack of formal (de jure) status.<sup>270</sup> They also provide the right of associations to acquire legal personality and consequent benefits,<sup>271</sup> and demand that registration should be governed by a notification rather than an authorization regime, such that legal status is presumed upon receipt of notification.<sup>272</sup> The Guidelines also provide that associations should not be required to register more than once or to renew their registration.<sup>273</sup>

NGOs need time to travel to Dodoma to make follow-ups with the Registration to complete registration. This also creates a time and financial burden on NGOs. Two months is thus insufficient time.

- ***Certificate renewal requirement contravening international standards on freedom of association***

The need to re-register after every ten years and renew NGO certificates violates international standards on freedom of association, including the three-part test on limitation of the right under the ICCPR.<sup>274</sup> The Guidelines on the Freedom of Association and Assembly in Africa, adopted by the African Commission on Human and Peoples' Rights

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<sup>270</sup> Article 11 of the Guidelines on Freedom of Association and Assembly in Africa.

<sup>271</sup> Ibid, Article 12.

<sup>272</sup> Ibid, Article 13.

<sup>273</sup> Ibid, Article 17.

<sup>274</sup> Article 22(2) of the International Covenant on Civil and Political Rights of 1966.



in 2017, prohibit mandatory re-registration requirement,<sup>275</sup> stating that “**Associations shall not be required to register more than once or to renew their registration.**”<sup>276</sup>

Moreover, the requirement of seeking re-registration or renewal of the certificate is unnecessary and creates a burden on the NGOs, financially and administratively.<sup>277</sup> It is also a burden for the Office of the Registrar to re-register many NGOs that exist and continue to be established.

### **What else needs amendment?**

One of the provisions in the NGO law which have not been amended but needs to is section 35 of the Act. The section provides a list of offences and punishment for such offences, which is a fine not exceeding five hundred thousand shillings or to imprisonment not exceeding one year or to both fine and imprisonment. However, imposing criminal sanctions in the NGOs Act is not in line with international standards of freedom of expression. The Guidelines on Freedom of Association and Assembly in Africa, provide that states should not impose criminal sanctions in the context of laws governing not-for-profit associations, and that criminal sanctions should be specified within the penal code and not elsewhere.<sup>278</sup> They also provide that sanctions should only be applied in narrow and lawfully prescribed circumstances, should be strictly proportionate to the gravity of the misconduct in question, and should only be applied by an impartial, independent and regularly constituted court, following a full trial and appeal process.<sup>279</sup>

**LHRC’s call:** The Government to amend the NGOs Act to conform to international standards on freedom of expression.

## **B. Amendment of Tanganyika Law Society Act**

The Tanganyika Law Society Act (Cap 307) has been amended twice in the last 24 months. The first amendment was through the

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275 See Article 17 of the Guidelines on Freedom of Association and Assembly in Africa.

276 Ibid.

277 See Tanzania Human Rights Defenders Coalition (2018), Compendium of Laws and Policies: Legal and Policy Issues Affecting Civil Society Organizations in Tanzania, THRDC, at [https://thrdc.or.tz/wp-content/uploads/2019/04/Compendium-of-Laws-Governing-CSOs-in-Tanzania\\_VOL2\\_Version-8-1.pdf](https://thrdc.or.tz/wp-content/uploads/2019/04/Compendium-of-Laws-Governing-CSOs-in-Tanzania_VOL2_Version-8-1.pdf).

278 Article 55 of the Guidelines on Freedom of Association and Assembly in Africa.

279 Ibid, Article 56.



Miscellaneous Amendments) (No. 2) Act of 2018, which amended section 15, by adding section 15A, and repealed and replaced section 31. The second amendment was through the Written Laws (Miscellaneous Amendments) (No. 8) of 2019. This Act amended sections 2,4,6,8,9,15,16, 19, 21 and 22, as well as PART V of the Act.

### **What has changed?**

The 2019 amendments have made several changes in the TLS Act, including: introducing TLS Secretariat CEO; making changes in the composition of the Council and terms of Council members; changing the way Annual General Meeting (AGM) is convened; and introducing the requirement of submission of reports, accounts and minutes to the Minister responsible for legal affairs.

### **Concerns**

The major concern with the amendments of the TLS Act is interference with the independence of TLS as a bar association, which is important for the enjoyment of the right to freedom of association and expression for lawyers.

### ***The amendments interfere with TLS's right to manage its affairs and its freedom of association***

International standards require an executive body of the professional associations to be allowed to exercise its functions **without external interference**.<sup>280</sup> States are obligated to abstain from interfering in the establishment and work of professional associations of lawyers.<sup>281</sup> It then follows that there was no need to enact a law directing TLS to employ a CEO. This matter should be left to TLS and its members to decide, in line with their freedom of association protected under various instruments,<sup>282</sup> including the UN Basic Principles on the Role of Lawyers of 1990.<sup>283</sup> This sort of interference does not meet the three-part test of limitation of freedom of association, thus not justified. The same applies to change of the composition of the Council by

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280 Principle 24 of the UN Basic Principles on the Role of Lawyers of 1990.

281 See International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, adopted by the International Commission of Jurists at <https://www.refworld.org/pdfid/4a7837af2.pdf>.

282 See Article 10 of the African Charter on Human and Peoples' Rights, Article 20 of the Universal Declaration of Human Rights, Article 22 of the International Covenant on Civil and Political Rights, Article 7(c) of the Convention on the Elimination of All Forms of Discrimination Against Women.

283 Principle 3 of the UN Basic Principles on the Role of Lawyers of 1990.



increasing the number of members and introducing term limits. Based on recent amendments, the Council is not composed of eight other members, apart from the President, Vice-President and Honorary Treasurer, who are to be elected during the general election and are eligible for re-election for one further term, unlike the top three members of the Council. The eight members include seven zonal leaders and one member representing an association of young lawyers.<sup>284</sup> These amendments affect the smooth operation of TLS and undermine the independence of the TLS and its governing council. The changes will mainly serve to stifle the freedom of association of the bar association and constitute unnecessary interference with the management of TLS affairs, contrary to international standards provided under instruments such as the ICCPR of 1966, the ACHPR of 1981, the UN Basic Principles on the Role of Lawyers of 1990, the International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, Guidelines on Freedom of Association and Assembly in Africa. Indeed, even the current Governing Council expressed concern over the proposed amendments as “detrimental to the Society” when the Bill was introduced.<sup>285</sup>

### ***The amendments also undermine the independence of TLS***

The 2019 amendments have also changed the way TLS AGM is convened. It is now possible to conduct AGM by representation.<sup>286</sup> With these changes, AGM is limited to the following:

- Council members;
- Members of all Standing Committee;
- All Chapter leaders, including members of their standing committees;
- Four members from each Chapter comprising of representatives of young lawyers, female lawyers, senior lawyers and persons with disabilities, all elected annually by chapter members in the chapters’ general meetings;
- Members of the Zonal Executive Committees;
- Two members from the Chapter zones elected from the zone members during zonal annual general meetings; and
- Any other person, as the Council may consider necessary to invite.<sup>287</sup>

284 See section 52 of the Written Laws (Miscellaneous Amendments) (No. 8) of 2019.

285 See TLS’s “CALL FOR COMMENTS ON THE TANGANYIKA LAW SOCIETY BILL” of 21st November 2019 at <https://tls.or.tz/call-for-comments-on-the-tanganyika-law-society-bill/>.

286 See section 57 of the Written Laws (Miscellaneous Amendments) (No. 8) of 2019.

287 section 21(4) of the TLS Act (as amended in 2019).



Again, these changes constitute unnecessary interference with TLS's right to manage its affairs. The new restrictions do not meet a three-part test on limitation of its right to freedom of association, hence not consistent with international standards. There is also interference with the right of TLS members to elect their leaders, thus undermining the independence of the bar association. International standards on freedom of association require restrictions on an association's freedom of association to be minimal and meet the three-part test under the Article 22(2) of the International Covenant on Civil and Political Rights of 1966. The restrictions imposed by the amendments are not minimal and do not meet the test.

Additionally, requiring TLS to submit reports, accounts and minutes to the Minister responsible for legal affairs creates a picture of TLS being under the Minister, instead of being an autonomous association of lawyers managing its affairs under the laws of the land. This undermines the independence of the bar association, hence not consistent with the international standards on freedom of association.

**LHRC's call:** The Government to amend the TLS Act to conform with international standards on freedom of association for lawyers. TLS should be allowed to manage its own's affairs and State's interference with its freedom of associations should only be minimal and meet the three-part test on restricting such freedom.<sup>288</sup> Independence of TLS as a bar association should be guaranteed.

### ***2.6.3.2 Complaints of Arbitrary Restrictions on Political Assemblies***

In 2019 the major obstacle in the realization of freedoms of assembly and association for political parties, particularly the opposition, was the ban on political assemblies outside one's constituency. Opposition parties continued to lament this move, noting that they are not free to conduct political assemblies – which affects their chances in the upcoming elections. They also complained of the police use of their powers under the Police Force and Auxiliary Services Act of 2002 to interfere with their meetings and related political activities. Coupled with the amended Political Parties Act, this law has been cited to be among the legislations restricting freedoms of association and assembly for political parties. Below are some case examples.

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<sup>288</sup> See Article 22(2) of the International Covenant on Civil and Political Rights of 1966.



**Iringa:** In October 2019, the Police Force in Iringa blocked a political assembly of the Iringa Urban Member of Parliament (Chadema), Reverend Peter Msigwa, because there were not enough police officers to attend the assembly and ensure safety and security.<sup>289</sup> The Regional Police Commander, Juma Bwire, mentioned that most police officers were deployed to schools where national Forum Two and Form Four examinations were taking place. He also mentioned that the police force had received information/intelligence on possible breach of peace during the assembly.<sup>290</sup>

**Mbeya:** In July 2019, the Member of Parliament of Mbeya Urban Constituency (Chadema), Joseph Mbilinyi, complained that the Police Force was preventing him from conducting political assemblies in his constituency.<sup>291</sup>

LHRC reiterates its previous position, that the limitation of the right to political assembly is not consistent with international standards on freedoms of association and assembly, including under the ICCPR of 1966. The limitation does not meet the three-part test under Article 22(2) of ICCPR.<sup>292</sup> The Guidelines on Freedom of Association and Assembly in Africa also provide for the test, stating that “*Any limitations imposed by states shall be in accordance with the principle of legality, have a legitimate public purpose, and be necessary and proportionate means of achieving that purpose within a democratic society, as these principles are understood in the light of regional and international human rights law.*”<sup>293</sup> Growth of political parties, especially the small ones like CHAUMA and TLP, is hindered by the current restrictions on political assembly, considering that most of them have not won many constituencies, and will need to conduct political rallies in order to get people to know and join their parties..

**LHRC’s call:** The Police Force and Auxiliary Services Act should not be used as a weapon to block or disperse political assemblies arbitrarily.

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289 LHRC Media Survey 2019.

290 Ibid.

291 Ibid.

292 No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others

293 Guideline 24.



The primary responsibility of the police should be to protect the assemblies and to ensure peace and safety instead of blocking the meetings altogether. Whenever necessary, the reasons for blocking such meetings must be clearly communicated in writing and should be consistent with international standards on limitation of freedom of assembly. Additionally, the government should lift all bans on political meetings.

## 2.7 Right to Take Part in Governance

### 2.7.1 Legal Framework

Right to take part in governance is also known as the right to take part in public affairs or the right to participate in the government.<sup>294</sup> It includes the right for citizens to vote and be voted for public office and the right to participate in political life.

Everyone, either directly or through a chosen representative, has a right and opportunity to take part in the public affairs of the state.<sup>295</sup> Public participation enhances the promotion of democracy and the rule of law. Individuals have to be allowed to draw attention in case there is any aspect of work that may likely impede the realization and promotion of human rights in the country.<sup>296</sup> Restrictions should not be imposed when a citizen is about to participate fully in the process leading to the matters affecting his wellbeing or that of the nation where there is no reasonable justifications for such restrictions.<sup>297</sup>

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

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

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

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

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



analysis on a timely and regular manner.<sup>298</sup>

## 2.7.2 Key Issues in the 2019 Local Government Elections

### 2.7.2.1 Legal Framework

#### A. National legal framework

The legal framework for the elections in Tanzania Mainland are:<sup>299</sup>

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

#### B. Regional and International standards for elections

At the regional level, major standards for elections are:

- The African Charter on Human and Peoples Rights (ACHPR) of 1981

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<sup>298</sup> Donald Mmari. Et al, Limits To Citizen Engagement And Downward Accountability In The Context Of Decentralization By Devolution In Tanzania, REPOA Brief No. 10 of April 2018 at [http://www.repoa.or.tz/documents/Limits\\_to\\_citizen\\_engagement\\_and\\_downward\\_accountability\\_in\\_the\\_context\\_of\\_decentralization\\_by\\_devolution\\_in\\_Tanzania.pdf](http://www.repoa.or.tz/documents/Limits_to_citizen_engagement_and_downward_accountability_in_the_context_of_decentralization_by_devolution_in_Tanzania.pdf) accessed on 27th February, 2019.

<sup>299</sup> See COMPENDIUM OF ELECTORAL LAWS AND REGULATIONS OF TANZANIA, Prepared by the Judiciary of Tanzania with Support from the United Nations Development Programme (UNDP) November, 2016, at <https://www.undp.org/content/dam/tanzania/docs/Success%20Stories/Good%20Governance/Compendium%20of%20Electoral%20Laws%20and%20Regulations%20Tanzania%202016.docx.pdf>, accessed 5th March 2020.



- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003
- African Charter on Democracy, Elections and Governance of 2007
- The NEPAD Declaration on Democracy, Political, Economic and Corporate Governancesigned by Heads of State and Government of the Members States of the African Union of 2002
- AU Declaration on the Principles Governing Democratic Elections in Africa of 2002

At the international level, major standards for elections include:<sup>300</sup>

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

<sup>300</sup> See Compendium of International Standards for Elections, at <https://www.ec-un-dp-electoralassistance.org/wp-content/uploads/2018/08/undp-contents-publications-compendium-of-int-standards-for-elections-English.pdf>, accessed 5th March 2020.



and Consolidating Democracy)

### 2.7.2.2 Pre-election period

#### **A.Election management and preparations**

The 2019 Local Government Elections were organized, managed and regulated by the President's Office Regional Administration and Local Government (PO-RALG) in line with the Local Government (District Authorities) Act and the Local Government (Urban Authorities) Act. The PO-RALG Minister is granted powers under these laws to regulate (administration and provision of guidelines) election of political office bearers at neighbourhoods, villages and hamlets levels.<sup>301</sup>

On 23<sup>rd</sup> August 2019, the Government introduced the 2019 Local Government Elections Notice, which was made 90 days before the election date as required by law. Then Notice revealed that the Election Day was scheduled for 24<sup>th</sup> November 2019 from 0800 to 1600 hours and the elections would take place in 12,319 villages, 4,264 streets and 64,384 hamlets. Among other things the GN outlined essential aspects of the electoral process, including providing directives to elections stakeholders regarding their respective expected role. The outlined issues included:

- The positions to be contested by elective office contenders,
- The voting mechanism and instruments,
- Sponsorship of candidates (political parties)
- The appointment of Returning Officers and Assistant Returning Officers
- The circulation and coverage of the government notice
- The names and boundaries of election areas
- The elections instructions and guidelines
- Appointment of Voters' Registration Clerk
- The duration and time of voters' registration
- Location of Registration and Polling Stations
- Candidates Nomination
- Expiry of Leaders' Tenure
- Date of Nomination Day
- Appointment of Elections Appeals Committee
- The procedure for the application of election observation

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301 See section 56 (3) of the Local Government (District Authorities) Act, CAP 287 RE 2002; sections 16 (4) and 19 (4) of the Local Government (Urban Authorities) Act, CAP 288 RE 2002.



- accreditation
- The procedure for the application of conducting Voter Education
- Campaign Duration and Dates

The GN was published in the newspapers circulating nationwide in both Kiswahili and English not less than 90 days before the election date, as required by the law.

PO-RALG took various measures to prepare for the elections, including the appointment of the Returning Officers (ROs) – who in turn were given powers to appoint Assistant Returning Officers (AROs), Voters Registration Clerks and Polling Station Supervisors. Appointed ROs were civil servants and operated at every LGA. At the same time, AROs were required to work at Ward, Village or Street levels. These were Ward Executive Officers, Village Executive Officers, or Street Executive Officers. PO-RALG also ensured ROs took oaths to manage elections faithfully, an exercise that was conducted on 12<sup>th</sup> September 2019.<sup>302</sup> ROs, AROs and other people involved in managing and supervising the elections were granted immunity for their actions in the course of carrying out their duties, shielding them from criminal or civil liability.<sup>303</sup>

On 23<sup>rd</sup> August 2019, PO-RALG Minister, Hon. Selemani Jaffo (MP), unveiled the Local Government Elections Schedule and introduced GNs 371, 372, 373 and 374, which outlined administrative, procedural and legal proceedings of the 2019 elections. Additionally, PO-RALG organized and oversaw the training of voter registration clerks in October 2019. The main topics covered during the training were: Local Government Elections Regulations 2019; Election Timetable; Election regulations for various posts; Election duration; and Forms used during elections (from nomination forms to elections results declaration form).

Additionally, the PO-RALG produced the voter list, displayed on notice boards, affording voters and political parties an opportunity to review the list and verify voter details. This exercise took place from 15<sup>th</sup> to 21<sup>st</sup> October 2019. Seven days before the date for nomination of candidates, Regional Administrative Secretaries (RASs) appointed members of

<sup>302</sup> See President's Office Regional Administration and Local Government "Wasimamizi wa Uchaguzi Ngazi ya Wilaya Waapishwa" 12 September 2019 at <http://www.tamisemi.go.tz/new/wasimamizi-wa-uchaguzi-ngazi-ya-wilaya-waapishwa>, accessed 5th March 2020.

<sup>303</sup> See Regulations 46, 48 and 49 of the Local Government Election Regulations of 2019.



the Election Matters Appeals Committees, comprising of: District Administrative Secretary to be the Chairperson; Four civil servants from institutions within the district not working under the council; four civil servants from institutions within the district not working under the council; and one non-voting or ex-officio civil servant to be the Secretary to the Committee.<sup>304</sup> Generally, preparations for the 2019 Local Government Elections went smoothly.

## B. Voter registration

From 8<sup>th</sup> to 14<sup>th</sup> October 2019, voter registration continued in different parts of the country as the Local Government Elections neared. According to the regulations governing the 2019 elections, voter registration exercise was supposed to be conducted for forty-seven (47) days before the Election Day. Registration took place for seven consecutive days, including weekends, from October 8<sup>th</sup> to 14<sup>th</sup> 2019. However, due to low turnout the registration deadline was extended to 17<sup>th</sup> October 2019.<sup>305</sup> Voter registration venues were located at the Sub-village (hamlet) level for areas under the jurisdiction of District Councils and Townships and at the Street level for areas under the jurisdiction of Towns, Municipals and Cities. Further, as required by law, the registration would take place in the public buildings or any other venue agreed upon by Assistant Returning Officers, the Voters Registration Clerks and representatives of political parties.

**19,681,259**

Number of people registered to vote during the Local Government Elections of 2019.  
- PO-RALG 2019

PORALG had targeted to register 22,916,412 voters out of eligible voters estimated at 26,960,485. On 8<sup>th</sup> October 2019 the PORALG Minister, Hon. Selemani Jafo (MP), announced 19,681,259 (9,529,992 male and 10,151,267 female) voters, equal to 86%, had been registered to vote,<sup>306</sup>

304 LHRC Media Survey 2019

305 See Bakari Kiango "Tamisemi yaongeza siku tatu kujiandikisha Daftari la Wapiga kura" 13 October 2019, at <https://www.mwananchi.co.tz/habari/kitaifa/Tamisemi-yaongeza-siku-tatu-kujiandikisha-Daftari-la-Wapiga-kura/1597296-5309708-bcc0rw/index.html>, accessed 5th March 2020.

306 See PO-RALG statement "Undikishaji wa Wapigakura Wavunja Rekodi" of 18 October 2019 at <http://www.tamisemi.go.tz/new/undikishaji-wa-wapigakura-wavunja-rekodi>, accessed 5th March 2020.



shooting from only 20% before the 3-day registration extension. However, Hon. Minister provided no statistics of registered voters among people living with disabilities, youth or those with little or no formal education. The Government would rather do more gender data disaggregation of registered voters. Generally, voters complied with the registration process.

### **Complaints during voter registration**

Complaints regarding the conduct of some of the registration officers, registration of voters who are not residents of a particular area, attempts to bribe party agents and/or influence voter registration were reported in different areas, including Geita Urban (Geita), Kasulu Rural (Kigoma), Mbarali (Mbeya) and Nzega (Tabora).<sup>307</sup> There were also reported dissatisfactions the appeal process and the outcomes, and political parties made complaints about unnecessary bureaucracy, errors, and missing names and their members in various regions, including Dare es Salaam, Mwanza, Mbeya, Arusha and Dodoma. These complaints later contributed to the withdrawal of most opposition parties from the elections.

### **C. Party registration**

The following parties were registered to participate in the 2019 Local Government Elections.

Table 6: Political parties registered to participate in the 2019 Local Government Elections

s/n	Political Party	Acronym	Year of est.
1	Chama Cha Mapinduzi	CCM	1977
2	Tanzania Democratic Alliance	TADEA	1990
3	Chama cha DemokrasianaMaendeleo	CHADEMA	1992
4	Civic United Front	CUF	1992
5	NCCR-Mageuzi	NCCR-M	1992
6	National League for Democracy	NLD	1993
7	National Reconstruction Alliance	NRA	1993
8	Tanzania Labour Party	TLP	1993

<sup>307</sup> LHRC Media Survey 2020; Human Rights Monitoring 2019.



9	Union for Multiparty Democracy	UMD	1993
10	United People's Democratic Party	UPDP	1993
11	United Democratic Party	UDP	1994
12	Attentive Democracy Party	MAKINI	2001
13	Democratic Party	DP	2002
14	People's Voice	SAU	2005
15	Alliance for Tanzanian Farmers Party	AFP	2009
16	Social Party	CCK	2012
17	Party for People's Redemption	CHAUMMA	2013
18	Alliance for Change and Transparency	ACT	2014

Source: PO-RALG

### **D.Candidate nomination and disqualification**

Criteria for the nomination of candidates in the 2019 Local Government Elections were provided in the Local Government Elections Regulations of 2019. According to the regulations, any person seeking nomination must:

- Be a citizen of the United Republic of Tanzania.
- Be 21 years or above.
- Have the ability to read and write Kiswahili or/and English.
- Have a lawful income generating activity.
- Be a resident of the area she or he is aspiring to vie.
- Be a member of a political party and sponsored by that party to vie the position.
- Have not been convicted of crimes five years before Election Day.
- Be of sound mind and verified by a recognized practicing physician registered and licensed by relevant bodies.

### **Nominations at the party level (Intra-party nominations)**

As discussed above, preparations for the 2019 elections generally went well. The nominations at party level also went well, with candidates collecting nomination forms between the 29th October and the 4th November 2019. Candidates officially cleared by parties obtained and filled-in the nomination forms, which were later endorsed by nominating parties with official seal and signature. Among the personal particulars filled in the forms were details about



candidates' LGA, full name, citizenship, date of birth, sex, residence/physical address, phone number, occupation, literacy status, political party name, membership card number, date of issue and place of issue, voted position, and signature of a party leader who is mandated to append a signature and seal to confirm the sponsorship. A duly filled form had to bear three signatures – of the candidate, leader of a sponsoring party and that of the Assistant Returning Officer. The latter determined the destiny of one's candidature. The table below presents political parties whose candidates picked the nomination forms from Assistant Returning Officers.

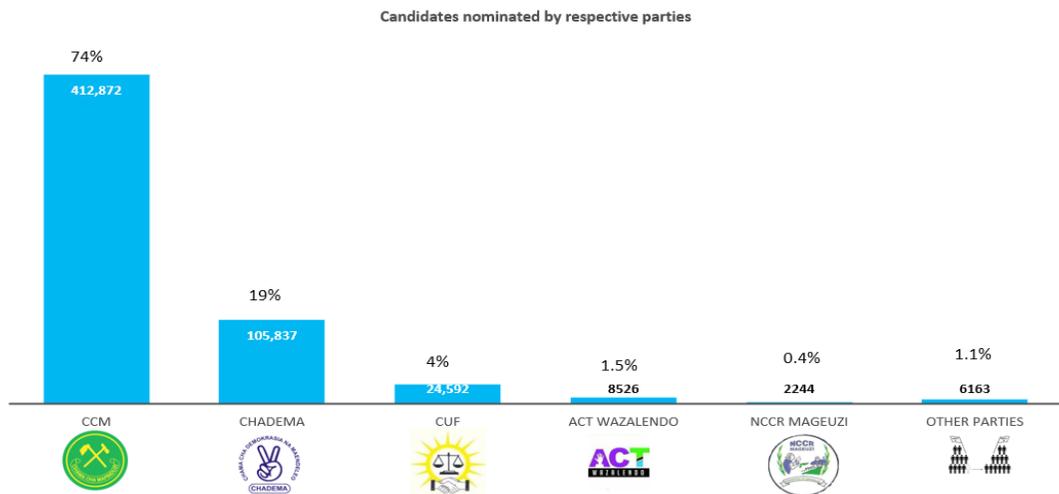


Figure 4: Political parties whose cleared candidates picked the nomination forms  
 Source: PO-RALG

Though not as widespread as complaints regarding nomination at PO-RALG level, LHRC received or documented reported complaints regarding nomination at party level from different parts of the country. Such complaints included some aspirants dissatisfaction with party nomination process, disregard of internal nomination procedures, bribery and inducement, marginalisation/discrimination of female aspirants, and interference by religious leaders.<sup>308</sup> Such complaints were made in some of the areas in regions such as Dodoma, Geita, Kagera, Kigoma, Mbeya, Mwanza, Pwani, Dodoma, Pwani, Shinyanga,

<sup>308</sup> LHRC Media Survey 2019; Human Rights Monitoring 2019.



Simiyu and Tabora.<sup>309</sup> As discussed in this report (subchapter on women's rights), sexual corruption is also a challenge to women seeking leadership positions and nominations within political parties, apart from workplaces and at higher learning institutions.

### **Nomination at PO-RALG level**

However, more problems started to arise during the second stage of the nomination of candidates – done by PO-RALG. The exercise was mainly characterized by the disqualification of many candidates from opposition political parties for failure to conform to election rules and regulations, especially relating to filling in of forms. This was when complaints of irregularities and unfair treatment or foul play by opposition parties started to emerge. The media, including social media widely reported these complaints of opposition political parties.

The Regulations provided an avenue for any person with objections on a person seeking to contest to file objections with the Appeals Committee. Consequently, a total of 15,380 objections and appeals were received by the Appeals Committee, whereby 4,921 were successful (32%) were successful and 10,459 (68%) were unsuccessful.<sup>310</sup> Opposition political parties accused AROs of making it difficult for their candidates to participate and contest during the 2019 elections. Some of the complaints involved the AROs absence in office when they were required to attend opposition nominees (avoiding them), keeping their offices closed and pretending to be away, being rude and lacking of discipline, kidnapping/disappearance of contestants, refusing to provide nomination forms or delaying provision of such forms.<sup>311</sup>

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309 Ibid.

310 PO-RALG 2019; LHRC Media Survey 2019.

311 See Markus Mpangala "Siasa za Tanzania: Kujitoa uchaguzi serikali za mitaa ni mwisho wa uvumilivu wa chama cha siasa" BBC, 23 November 2019, at <https://www.bbc.com/swahili/habari-50513117>, accessed 5<sup>th</sup> March 2020; "ACT-Wazalendo wajitoe Uchaguzi Serikali za Mitaa" EATV 8 November 2019, at <https://www.eatv.tv/news/current-affairs/act-wazalendo-wajitoe-uchaguzi-serikali-za-mitaa>, accessed 5<sup>th</sup> March 2020; Bakari Kiangoo & Daniel Mjema "VIDEO: Uchaguzi wa viongozi wa Serikali za mitaa, Ngoma bado mbichi" Mwananchi Newspaper [online] 11 November 2019 at <https://www.mwananchi.co.tz/habari/kitaifa/Uchaguzi-wa-viongozi-wa-Serikali-za/1597296-5344806-i9x8a1z/index.html>, accessed 5<sup>th</sup> March 2020; "Tanzania holds local elections boycotted by the opposition" Africa News, 24 November 2019, at <https://www.africanews.com/2019/11/24/tanzania-holds-local-elections-boycotted-by-the-opposition/>, accessed 5<sup>th</sup> March 2020.



Some of the opposition political parties, including CHADEMA and ACT Wazalendo, and their members revealed that their nominees were harshly punished with disqualification for trivial error such as grammatical errors, misspelling of names, the omission of punctuations or use of wrong parts of speech.<sup>312</sup> They also complained that most of their appeals to the Committee were unsuccessful. To the contrary, most of the appeals filed by the ruling party were successful. Disqualification of the majority of their candidates was the primary reason for withdrawal by some political parties.<sup>313</sup>

In November 2019, the PO-RALG Minister, Hon. Selemani Jafo revealed that despite some of the opposition political parties announcing to boycott the elections, the elections would proceed as planned.<sup>314</sup> He faulted the opposition parties for deciding to withdraw from the elections and for failing to adequately prepare their party nominees for the elections, including providing them training on proper filling-in of forms.<sup>315</sup>

### **E. Challenge of voter education for PWDs**

Civic and voter education was provided by government and non-government actors. However, voter education for PWDs was reported to be a challenge by various stakeholders of PWD rights, as it appeared, there were no concrete plans to effectively engage them and provide them with civic and voter education.<sup>316</sup> Most voter education programmes were not tailored to include PWDs.

### **F. Campaigns and campaign environment**

In November 2019, the PO-RALG Principal Secretary, Joseph Nyamuhanga, revealed that the LGE campaigns were to start on 17<sup>th</sup> November 2019, except for areas where the candidates had not been opposed.<sup>317</sup> Indeed the elections began that day and ended on 23<sup>rd</sup> November 2019.

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312 Ibid

313 Ibid; LHRC Media Survey 2019; Human Rights Monitoring 2019.

314 Markus Mpangala “Siasa za Tanzania: Kujitoa uchaguzi serikali za mitaa ni mwisho wa uvumilivu wa chama cha siasa” BBC, 23 November 2019.

315 Ibid.

316 LHRC Human Rights Monitoring 2019.

317 Bakari Kiango “Kampeni uchaguzi wa serikali za mitaa kuanza kesho” Mwananchi Newspaper [online], 16 November 2019, at <https://www.mwananchi.co.tz/habari/kitaifa/Kampeni-uchaguzi-wa-serikali-za-mitaa-kuanza-kes-ho/1597296-5351376-8u5d54/index.html>, accessed 5<sup>th</sup> March 2020.



Most of the campaigns were reportedly conducted within the time stipulated in the election laws and regulations. Very few cases of conducting elections outside the specified time were reported, including in the Lake Zone and Dar es Salaam.

Corruption, including food bribes, and inducement of voters by some nominees and political parties during campaigns, were among issues raised by political parties. These issues usually occur during the elections, and during the 2019 Local Government Elections such cases, though few, were reported – with the ruling party mainly implicated. Some public officials and religious leaders were also faulted by some community members and political party leaders for openly campaigning for political parties or candidates. At the same time, police officers were accused by some of the opposition leaders, including ACT Wazalendo's Zitto Kabwe, of arbitrarily restricting political activities/rallies during the campaign period.

Issues of violence, such as threatening language against women, were reported in some areas, such as Mara and Simiyu. Further, there were complaints of restriction of political rallies and intimidation – partly caused by heavy police/security presence in areas such as Dar es Salaam, Dodoma, Tanga, Mwanza, Mtwara and Katavi. Apart from these challenges, no other significant reports of violence were reported by media and political parties during LGE campaigns.<sup>318</sup> Nevertheless, the campaigns lacked vibrancy and aura of participation, unlike previous elections. Laws and policies restricting participation rights and civic space affected the right to participate in political life in 2019, including during LGE. The campaigns for local government elections were thus marred by pre-campaign squabbles, agitations, accusations and counter-accusations involving bipolar protagonists – parties, candidates on the one hand, and PO-RALG agents on the other.

## **G. Media coverage**

Media coverage of the Local Government Elections of 2019 was generally high.<sup>319</sup> Through media survey, LHRC found that the media, including social media played a significant role in covering the elections before, during and after the election day, assisting with communication between different parties, such as the Government, political parties and members of the public. Media outlets are key

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<sup>318</sup> LHRC Media Survey 2019.

<sup>319</sup> LHRC Media Survey 2019; Human Rights Monitoring 2019.



players in agenda-setting. During the LGE of 2019 the media, including community media, played a vital role as facilitator, promoter and enabler of communication of election messages and information from source to the recipient, and vice-versa. They provided an essential link between political parties and the voters. They also played a key role in voter education and mobilizing citizens in different parts of the country to register.<sup>320</sup> Local and international media covered the LGE of 2019.<sup>321</sup>

However, as discussed in 2.3 above, media freedom in Tanzania is affected by restrictive freedom of expression laws, such as the Media Services Act, the Cybercrimes Act and the Online Content Regulations, forcing journalists into self-censorship. In LHRC's view, this might have affected media reporting of the 2019 Local Government Elections. Another challenge was the delays by PO-RALG in releasing essential documents relevant to the LGE, such as the Regulations for conducting the said elections, before the electoral process began, affecting preparations on the part of the media.

#### **H. Domestic observation: The usual/key players missing out on election observation**

Under the Local Government (District Authorities) Act, Cap 287 RE 2002 and the Local Government (Urban Authorities) Act, Cap 288 RE 2002, PO-RALG is granted powers to provide accreditations for observing elections.<sup>322</sup> Between 27th August and 16th September 2019 the window for Civil Society Organisations (CSOs) to apply for election observation accreditations was open. LHRC was looking forward to being granted another opportunity to observe elections in Tanzania. However, for reasons not disclosed, accreditation was not granted to LHRC.

Consequently, LHRC could not observe the conduct of LGE of 2019 in different parts of Tanzania, which was a massive blow, considering the preparations which had been made in anticipation of accreditation

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<sup>320</sup> Ibid.

<sup>321</sup> Key media outlets that covered the LGE of 2019 include: Uhuru Media; The Citizen; the Guardian; Rock FM; Uplands FM; Nyembo FM; Rasi FM/Radio DDM; Orkonerei FM, Majira Newspaper, Zanzibar Leo, Mwananchi Newspaper, Mtanzania Newspaper, Full Shangwe Blog, Mwananchi Blog, Kilosa FM, Lindi FM, Star TV, BBC Swahili and Tanzania Daima Newspaper. Others were HABARILEO Newspaper, Pemba Today, Jamii Mkoani, Radio ZBC and Channel Ten.

<sup>322</sup> See section 50 of the Local Government (Urban Authorities) Act, Cap 288 RE 2002; section 47(1) of Local Government (District Authorities) Act, Cap 287 RE 2002.



and complying with the requirements for securing accreditation. But this was also a denial of LHRC to get firsthand information of the elections which is important for the credibility of the elections.

### 2.7.2.3 Election Day

#### A. Party participation and withdrawals

The major opposition political parties boycotted the LGE of 2019 for what they called ‘systemic disqualification of opposition contestants.’ The LGE of 2019 witnesses unprecedented levels of withdrawal of opposition political parties and candidates, leaving over 90% of CCM candidates elected unopposed. Opposition parties that boycotted the LGE of 2019 were ACT Wazalendo, CHADEMA, CUF, NCCR-Mageuzi, CHAUMA, CCK, UMD, NLD and UPDP. Their respective chairpersons publicly announced their withdrawals between 8<sup>th</sup> and 15<sup>th</sup> November 2019.<sup>323</sup>

Summarising the reasons for withdrawing ACT-Wazalendo’s withdrawal from LGE of 2019, Zitto Kabwe, Party Supreme Leader speaking to the Press said 96% of contestants sponsored to contest the election by ACT-Wazalendo were disqualified. AROs nominated only 6,944 out of 173,593 contestants.<sup>324</sup>

CHADEMA Chairman, Freeman Mbowe, revealed that his party withdrew from the election race because the majority of its contestants had been massively disqualified on feeble or not well-understood grounds.<sup>325</sup> According to Freeman Mbowe, the 2019 local government

323 See Markus Mpangala “Siasa za Tanzania: Kujitoa uchaguzi serikali za mitaa ni mwisho wa uvumilivu wa chama cha siasa” BBC, 23 November 2019, at <https://www.bbc.com/swahili/habari-50513117>, accessed 5<sup>th</sup> March 2020; “ACT-Wazalendo wajitoe Uchaguzi Serikali za Mitaa” EATV 8 November 2019, at <https://www.eatv.tv/news/current-affairs/act-wazalendo-wajitoe-uchaguzi-serikali-za-mitaa>, accessed 5<sup>th</sup> March 2020; Bakari Kiango & Daniel Mjema “VIDEO: Uchaguzi wa viongozi wa Serikali za mitaa, Ngoma bado mbichi” Mwananchi Newspaper [online] 11 November 2019 at <https://www.mwananchi.co.tz/habari/kitaifa/Uchaguzi-wa-viongozi-wa-Serikali-za/1597296-5344806-i9x8a1z/index.html>, accessed 5<sup>th</sup> March 2020; “Tanzania holds local elections boycotted by the opposition” Africa News, 24 November 2019, at <https://www.africanews.com/2019/11/24/tanzania-holds-local-elections-boycotted-by-the-opposition/>, accessed 5<sup>th</sup> March 2020.

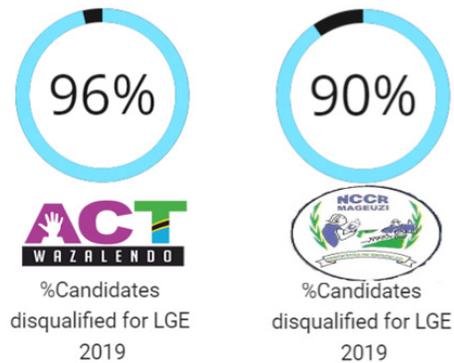
324 See “ACT-Wazalendo wajitoe Uchaguzi Serikali za Mitaa” EATV 8 November 2019.

325 See LHRC Media Survey 2019; Markus Mpangala “Siasa za Tanzania: Kujitoe uchaguzi serikali za mitaa ni mwisho wa uvumilivu wa chama cha siasa” BBC, 23 November 2019, at <https://www.bbc.com/swahili/habari-50513117>, accessed 5<sup>th</sup>



electoral process had been marred by unprecedented irregularities. Citing examples, Mr Mbowe said 1000 of its sponsored aspirants in Mwanza Region alone had been disqualified unduly. Similarly, 570 contestants had been disqualified in Dar es Salaam. Further, 25% of its members were denied nomination forms.<sup>326</sup>

On his part, Prof Ibrahim Lipumba, Chairman of The Civic United Front (CUF), attributed his party's decision to withdraw from participating in the 2019 elections to the deficit of democracy in the entire electoral process because most of his party's members had been disqualified on flimsy grounds.<sup>327</sup>



James Mbatia, Chairman of NCCR-Mageuzi, also announced his party's withdrawal from elections citing reasons like those of his peers, specifically saying more than 90% of NCCR-Mageuzi candidates had been disqualified by Returning Officers on questionable grounds.<sup>328</sup> On 10th November 2019, the PO-RALG Minister, Hon. Selemani Jafo responded to massive withdrawals of the opposition from the 2019 local government elections race. The minister refuted allegations advanced by opposition top leadership attributing the disqualification of opposition candidates to strict enforcement of Regulations citing GN 371 Sections (14 and 15); and 372, 373 and 374 Sections (15 and 16). Specifically, he mentioned reasons such as some candidates sponsoring themselves, contrary to regulations; some candidates presenting inconsistent names; some candidates failing to fill in the candidature forms correctly; and some candidates presenting wrong dates of birth. The PO-RALG Minister also pledged opposition parties

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March 2020.

<sup>326</sup> Ibid.

<sup>327</sup> See Bakari Kiango & Daniel Mjema "VIDEO: Uchaguzi wa viongozi wa Serikali za mitaa, Ngoma bado mbichi" Mwananchi Newspaper [online] 11 November 2019 at <https://www.mwananchi.co.tz/habari/kitaifa/Uchaguzi-wa-viongozi-wa-Serikali-za/1597296-5344806-i9x8a1z/index.html>, accessed 5<sup>th</sup> March 2020.

<sup>328</sup> Ibid.



to return and participate in the elections, but they held on to their decision to boycott the elections.

## **B. Voter turnout**

Since many opposition candidates and parties had boycotted the LGE of 2019, the voter turnout at poll stations was expectedly low, as reported by various media outlets in Tanzania, including social media, that circulated at different poll stations on election day to cover the elections. There were also reports that most women and youth did not show up to vote on election day.<sup>329</sup>

On the Election Day, national wide, most of the polling stations were closed, and there was no voter turnout at all, since most CCM candidates were unopposed. In Tanga, Katavi, Ruvuma and Njombe Regions, no elections took place since all seats were taken by CCM unopposed.<sup>330</sup>

## **C. Election preparedness**

Media outlets covering areas where LGE was held in November 2019 generally reported that the ROs and AROs were prepared in terms of having in place the relevant facilities ready to receive voters. These include voter register, ballot papers, a table used for vote counting, transparent ballot boxes, big bags to store the votes after elections, election results recording forms, village stamp pad, and Street or Ward stamp pad. However, since most LGAs did not conduct the elections due to withdrawal of major opposition parties, coordinating and preparing for the elections was easier than during the previous elections.

## **D. Voting process**

On election day, voting continued only at places where the CCM candidates had been opposed. Polling stations where there were unopposed candidates did not open. Most voters did not therefore participate in the elections and it was a rather disappointing scenario as Tanzania head towards the General Elections of 2020. In some few areas, the voting process was disrupted by shortage of ballot papers

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329 LHRC Media Survey 2019; Human Rights Monitoring 2019.

330 See Ofisi ya Rais Tawala za Mikoa na Serikali za Mitaa “Jafo atangaza matokeo ya Uchaguzi wa Serikali za Mitaa, 2019” 27 November 2019, at <https://www.tamisemi.go.tz/new/jafo-atangaza-matokeo-ya-uchaguzi-wa-serikali-za-mitaa-2019>, accessed 5<sup>th</sup> March 2020.



and delays in opening and closing polling stations.

## E.Violence

Conducting of credible elections requires peaceful and a non-violent political environment. The election day of the LGE 2019 was predominantly peaceful, though it was tainted by irregularities which drove opposition parties to boycott the elections. There were only some few reported incidents of supporters of one party destroying a banner or a poster of another party.<sup>331</sup>

## F. Announcement of results: Majority of CCM candidates winning unopposed

On 27<sup>th</sup> November 2019, the PO-RALG Minister, Hon. Selemani Jafo, announced the results of LGE 2019, noting that the ruling party CCM had won the elections by 99.7%, by winning in 12,260 villages (99.9%), 4,263 hamlets (100%) and 63,970



neighbourhoods (99.4%).<sup>332</sup> He noted that LGE of 2019 involved a total of 332,160 seats in 12,262 villages, 4,263 hamlets, 63,992 neighbourhoods, 106,622 committee members (women only) and 145,021 committee members (mixed membership); and that CCM had won 316,474 seats unopposed.<sup>333</sup> He further stated that CCM had won seats unopposed at all levels in Tanga, Katavi, Ruvuma and Njombe Regions; and that CUF had won one seat at the village level, three seats of committee members (women) and 14 seats of committee members (mixed membership).<sup>334</sup> CHADEMA had won one seat at the village level, no seats at the hamlet level, 19 seats at the street level, 39 seats of committee members (women) and 71 seats of committee members

331 LHRC Media Survey 2019; Human Rights Monitoring 2019.

332 See Ofisi ya Rais Tawala za Mikoa na Serikali za Mitaa "Jafo atangaza matokeo ya Uchaguzi wa Serikali za Mitaa, 2019" 27 November 2019 at <https://www.tamisemi.go.tz/new/jafo-atangaza-matokeo-ya-uchaguzi-wa-serikali-za-mitaa-2019>, accessed 5<sup>th</sup> March 2020.

333 Ibid.

334 Ibid.



(mixed membership).<sup>335</sup> ACT Wazalendo won one seat at street level, one seat of committee members (women), 11 seats of committee members (mixed membership). UDP won one seat of committee members (women) and DP won one seat.<sup>336</sup> The LGE 2019 election results are summarized in the tables below.

Table 7: LGE 2019 winning unopposed structure

s/n	Seats won unopposed	CCM	CHADEMA	CUF	ACT-W	TOTAL
1	Street Chairperson	4,207	0	0	0	4,207
2	Sub-village Chairperson	63,927	0	0	0	63,927
3	Village Chairperson	12,028	0	0	0	12,028
4	Committee Members (Mixed Membership)	131,359	42	5	11	131,417
5	Committee Members (Women Only)	105,953	27	3	1	105,984
	TOTAL	317,474	69	8	12	

Source: PO-RALG

Table 8: Final tally of the November 24th, 2019 election results

s/n	Contested seat won by Political Party	CCM	CHADEMA	CUF	UDP	DP	ACT	TOTAL
1	Street Chairperson	4,263	19	0	0	0	1	4,283
2	Sub-village (hamlet) Chairperson	63,970	0	0	0	0	0	63,970
3	Village Chairperson	12,260	1	1	0	0	0	12,262
4	Committee Members (Mixed Membership)	144,925	71	14	0	0	11	145,021
5	Committee Members (Women Only)	106,577	39	3	1	1	1	106,622
	TOTAL	331,995	130	17	1	1	13	

<sup>335</sup> Ibid.

<sup>336</sup> Ibid.



Source: PO-RALG

#### 2.7.2.4. Post-election period

##### **A. Complaints and appeals**

Complaints regarding the conduct of LGE 2019 continued after the election day from the opposition, but no appeals were reported to have been made in the post-election period. But since most opposition parties had boycotted the elections and over 90% of ruling party won seats unopposed, it was expected that appeals would less likely be made.

##### **B. Violence**

No incident of post-election violence or protest was reported following the declaration of LGE results by PO-RALG. But the results were not met with jubilation by the opposition parties, the majority of whom had boycotted the elections, mainly due to unfair treatment and disqualifications during the pre-election period.

##### **C. The Credibility of the elections**

Massive party withdrawal was a big dent on the LGE of 2019. In the wake of many opposition political parties boycotting the elections, including the major opposition parties, and majority of people missing out in exercising their right to vote, the LGE of 2019 cannot be viewed as popular. This puts its credibility into question, considering Tanzania is a multiparty state since the 1990s.

In LHRC's views minor technicalities and errors, claimed to be the reasons for disqualification of many candidates/nominees from opposition political parties should not have been enough reasons to deny the constitutional rights to vote and be voted for.

In the criminal justice system of Tanzania, one of the factors that have been threatening access to justice is constant preliminary objections due to procedural irregularities. For a long time, this loophole has been used to frustrate and delay justice in civil and criminal proceedings. However, in 2018, the Appellate Jurisdiction Act was amended to add a provision called "overriding objective of Act," which is to facilitate the just, expeditious, proportionate and affordable resolution of all matters governed by the Appellate Jurisdiction Act.<sup>337</sup> In exercising their powers or interpreting provisions of the law, courts of law are

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<sup>337</sup> Section 3A (1) of the Appellate Jurisdiction Act, CAP 141, as amended in 2018.



required to give effect to the **overriding objective**.<sup>338</sup> They ought to hand all matters presented before them with a view of attaining a just determination of proceedings, focusing on attainment of substantive justice and not being overly reliant on procedural technicalities.<sup>339</sup> In the same spirit, minor technicalities in elections, such as a candidate not filling their name on the form correctly should not defeat the right to be voted for. The overriding objective of elections in a democratic society is, among other things, to ensure popular participation in line with regional and international standards on elections. Based on the assessment made by LHRC, the LGE of 2019 largely failed to conform to international standards on elections highlighted above.

#### *2.7.2.5. Need to ratify the African Charter on Democracy, Elections and Governance of 2007*

As a way forward and in preparations for the General Elections of 2020, LHRC calls for the Government to ratify the African Charter on Democracy, Elections and Governance of 2007, which is a critical standard for elections. This AU instrument will help to enhance the credibility of elections in Tanzania and improve legal framework governing elections and governance.

#### *2.7.2.6. Concerns*

Several concerns are arising from the conduct of LGE 2019. These include;

- The extensive powers and limited accountability of ROs and AROs as they had immunity which appears to be almost absolute,
- Lack of clear election funding transparency,
- Limited role played by CSOs, largely contributed to by the denial of relevant accreditations to key and experienced players, including TACCEO,
- The exclusion of opposition candidates in the election process,
- Peoples' attitude towards elections, as fewer people continue to show interest in elections, indicating diminishing faith in electoral process;
- Impartiality of PO-RALG and Appeals Committee in regulating elections, taking into consideration the principles of natural justice, composition and affiliation to the Central Government;

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<sup>338</sup> Ibid, Section 3.A (2).

<sup>339</sup> Objects and purpose of the amendment in the amendments Bill.



- Applicable laws and regulations being released too late and containing harsh provisions;
- Election regulations not promoting meaningful consultation or consensus building among stakeholders, and
- Questionable behaviors and impartiality of personnel directly responsible for managing elections.

The best practices emphasize the law and regulatory framework for managing elections to promote equality of stakeholders, empowerment of stakeholders, transparency and accountability regarding decision-making and execution of operations, and cordial behaviours of officials, staff and personnel. The current laws and regulations deviated from the standard requirements.

#### *2.7.2.7. Recommendations*

As a way forward, LHRC makes the following recommendations regarding the LGE 2019 and previous elections.

##### **To the Government**

- The overall legal, institutional, administrative and operational architecture of the local government elections management should be revisited and redesigned to ensure it complies well with the standards and codes for conducting democratic elections that guarantee electoral process transparency and fairness, dissuade all forms of disenfranchisement of the electorate (unopposed winning of elections), reinforce systemic accountability of EMB, promote stakeholders' participation, and enhance competence and impartiality of EMB.
- Development and provision of voter/civic education to the electorate or conducting independent election observations are prerogatives of the voluntary sector, therefore should not be subjected to deadweight loss and ineffective rigorous watertight controls of EMB but rather there should be a simple but mandatory, less bureaucratic administrative mechanism meant to ensure transparency and accountability of CSOs/NGOs providing voter/civic education or undertaking election observation to share information and do the necessary documentation for policy review and learning facilitation purposes.
- Being aware that holding of elections is synonymous to protecting the heart and decorum of democracy thence sustain the social and economic development of the country. It suffices



to appreciate that holding of local government elections should not be relegated to an *ad hoc* status phenomenon; therefore calling upon the Government to underscore the rationale, including the generated political and economic efficiency and effectiveness benefits, underlying shifting of coordination of local government elections operations to the National Electoral Commission (NEC) – the Tanzania official EMB.

### **To Political Parties**

- The political parties should invest more in building and reinforcing capacities of their respective institutional brands, ideological clarity, administrative competence and communication with members at the grassroots level.

### **To Stakeholders (All)**

- Stakeholders should work together in harmony with a common purpose of establishing the constitutionality and legality of the critical provisions in the 2019 Local Government Elections Regulations such as granting immunity to election officials and personnel and the reasons (nomination forms) advanced to disqualify candidates so as to undo the committed anomalies in the light of the Constitution and existing laws.
- The entireties of 2019 local government elections stakeholders have the duty to heal political and partnership wounds caused by poor management of the elections; they should take the initiative and commit to undertake joint evaluation of the botched elections, establish causes, agree on the corrective measures then design a political and stakeholder reconciliation programme targeting remedies for holding of democratic elections in the future.
- Electoral stakeholders – CSOs, media and political parties – should be agile enough to appreciate the necessity of setting joint and collaborative mechanism promoting stakeholders working together, mobilising and reinforcing awareness of their respective backyard members to take an effective part in efforts directed to review the existing legal, institutional and regulatory frameworks so that the latter comply with standards and codes for conducting democratic local government elections.



## 2.7.3 Concerns over directors being returning officers during elections: Reflection on the Bob Chacha Wangwe case

### What was the case about?

This case was about the constitutionality of provisions within the National Elections Act allowing District Executive Directors, Town Directors, City Directors and Municipal Directors to be returning officers during General Elections. In 2018, Bob Chacha Wangwe petitioned the High Court, challenging the constitutionality of Sections 6(1), 7(1) and (3) of the National Elections Act, [Cap. 343 R.E. 2002].<sup>340</sup> He argued that the provisions are unconstitutional for offending articles 21(1), (2) and 26 (1) of the Constitution of the United Republic of Tanzania, 1977. In May 2019, the High Court of Tanzania delivered its judgment, holding that the provisions of s. 7(1) and (3) of the National Elections Act violate articles 21(1), (2) and 26(1) of the Constitution and therefore declared them void for being unconstitutional and thus proceeded to strike them out.<sup>341</sup> Aggrieved by the High Court's decision, the Government appealed against the decision at the Court of Appeal of Tanzania. The main argument by the petitioner was that argued that returning officers were likely to favour their appointing authority during polls.

### What were the grounds of appeal?

The following eleven grounds of appeal were laid down by the Government during the appeal:

- The learned Judges erred in law and fact by declaring the provisions of Section 7(1) and 7(3) of the National Elections Act [Cap. 243 R.E. 2015] unconstitutional based on Article 74(14) of the Constitution which was neither pleaded as a violated Article nor made part of the reliefs sought by the Petitioner.
- The learned Judges erred in law and fact by declaring the provisions of section 7(1) and 7(3) of the National Elections Act [Cap. 343 R.E. 2015] unconstitutional based on Article 74(14) of

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340 See Court of Appeal Judgement, Attorney General and 2 Others vs. Bob Chacha Wangwe. Civil of Appeal No. 138 of 2019, at <https://tanzlii.org/tz/judgment/court-appeal-tanzania/2019/346/CIVIL%20OF%20APPEAL%20NO.%20138%20OF%202019%20-%20%20ATTORNEY%20GENERAL%20AND%20%20OTHERS%20VS.%20BOB%20CHACHA%20WANGWE%20-%20MWARIJA%2C%20J.A.%20NEW..pdf>.

341 Ibid; See also Christopher Kidanka "Tanzanian court annuls presidential appointees' role in elections" The East African Newspaper [online], 10 may 2019, at <https://www.theeastafrican.co.ke/news/ea/Tanzanian-court-bars-presidential-apointees-in-poll-role/4552908-5110006-ulyp57z/index.html>.



the Constitution which does not fall under Part III of Chapter One of the Constitution.

- The learned Judges erred in law and in fact in finding that City Director, Municipal Director and District Executive Director upon appointment automatically become Returning Officers for purpose of conducting elections.
- The learned Judges erred in law and in fact for determining and assessing the provisions of section 7(1) and 7(3) of the National Elections Act, [Cap. 343 R.E. 2015] in isolation of other provisions of the same Act and the entire scheme of the whole electoral management process.
- The learned Judges erred in law and fact in failing to properly assess the prohibitions under Article 74(14) and the safeguards set out in the National Elections Act, [Cap. 343 R.E. 2015] and its regulations, Public Service Act, [No. 8 of 2002] and its regulations as well as other laws and regulations relating to the conduct and management of elections.
- The learned Judges erred in law and in fact by failing to appreciate the legal effect of oath of secrecy and declaration of withdrawal of membership from a political party or not to be a member of a political party taken by Returning Officer before assuming office.
- The learned Judges erred in law and in fact by failing to properly indicate how the provisions of section 7(1) and (3) of the National Elections Act [Cap. 343 R.E. 2015] violate Article 21(1), (2) and 26(1) of the Constitution of the United Republic of Tanzania, 1977 (as amended).
- The learned Judges erred in law and in fact by failing to establish the relevance, admissibility, authenticity reliability and probative value of the evidence adduced in the affidavit relating to the allegations that some Returning Officers are members and supporters of the ruling party.
- The learned Judges erred in law and in fact by failing to take into account the positive role of the impugned Returning Officers in the electoral management processes.
- The learned Judges erred in law and in fact by usurping legislative powers reserved for parliament in striking out the impugned provisions of section 7(1) and (3) of the National Elections Act, Cap. 343 R.E. 2015.
- The learned Judges erred in law and in fact by not affording time to the appellants to rectify the defects found in the National



Elections Act [Cap. 343 R.E. 2015] before declaring the provisions of section 7(1) and (3) of the same Act unconstitutional.”

### **What were the key issues for determination?**

The Court of Appeal determined the grounds of appeal above, all relating to the constitutionality of Sections 7(1) and 7(3) of the National Elections Act [Cap. 243 R.E. 2015].

### **What did the Court say?**

- In its judgement delivered on 15<sup>th</sup> October 2019, the Court of Appeal:
- Agreed with the appellants that the High Court erred in holding that, upon their appointments, the Directors automatically become Returning Officers. It noted that it is not disputed that before assumption of their functions as Returning Officers, the Directors must comply with the provisions of s. 7(5) of the NEA and reg. 16(1) of the Regulations. S. 7(5) of the NEA.
- Said that since it is a mandatory requirement that the Returning Officers must comply with the conditions stated above, the finding by the High Court that the Directors automatically become Returning Officers upon their appointment was with profound respect, erroneous.
- Did not find merit in the 9<sup>th</sup> ground of appeal, noting that even though the use of Directors as Returning Officers has positive impact in the management of electoral processes, those functions must be exercised in accordance with the provisions of article 74(14) of the Constitution.
- Agreed with the appellants that the High Court erred in holding that the Directors who were Returning Officers for Kinondoni Constituency during the February 2018 bye-elections were active CCM members at the time when they were exercising those functions.
- Argued that the evidence relied upon by the High Court in its finding that the 75 Directors who were Returning Officers during the 2015 General Elections were CCM members fell short of reliability as argued by the learned counsel for the appellants. Since therefore, he did not disclose the source of information for those facts which could not be from his own knowledge, the High Court erred in acting on those bare allegations. It therefore found merit on the 8<sup>th</sup> ground of appeal.
- Agreed with the appellants that the argument that since the



Directors are appointed by the President, they cannot abide by the Constitutional requirement of being impartial is speculative and based on apprehension.

- Ruled that by acting on the provisions of reg. 16 (1) (a) and (b) of the Regulations, the Directors are deemed to have done so under the NEA and therefore the argument that the measures taken to ensure that there is compliance with article 74 (14) of the Constitution are insufficient is, with respect, not sound.
- Found merit in the appeal based on grounds 3, 4, 5, 6 and 8 of appeal.

### **What did the court order?**

The Court of Appeal of Tanzania allowed the appeal and proceeded to set aside the ruling and drawn order of the High Court.<sup>342</sup>

### **So, what is next?**

The respondent of the appeal case indicated that in light of the Court of Appeal's judgement he would consider available options, including existing regional human rights mechanism, which provide avenue for appeal on human rights-related matters.

**LHRC's view:** The judgement delivered by the High Court in May 2019 was in line with the election standards under regional and international frameworks on elections, which seek to guarantee free and fair elections. The reversal in the Court of Appeal judgment is unfortunate considering the principles of natural justice, which raise concerns over impartiality when applied to the use of district executive directors, town directors, municipal directors and city directors as returning officers during elections. In line with the principles of natural justice, it is hard for directors who also party cadres to maintain impartiality in carrying out their duties as returning officers. In the wake of the High Court judgment in May 2019, the former NEC Deputy Chairperson and Chief Justice, Justice Augustino Ramadhani, revealed that the issue of independent returning officers was raised and included in the NEC General Elections Report of 1995. He noted that it is important that

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<sup>342</sup> See Court of Appeal Judgement, Attorney General and 2 Others vs. Bob Chacha Wangwe. Civil of Appeal No. 138 of 2019; See also James Magai "Court of Appeal reinstates DEDs as electoral body's returning officers" The Citizen Newspaper [online] 17 October 2019, at <https://www.thecitizen.co.tz/news/Court-of-Appeal-reinstates-DEDs-as-electoral-body-s-returning-officers-1840340-5314394-format-xhtml-kqa5ne/index.html>.



returning officers are independent and not members/cadres of any political party.<sup>343</sup>

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343 LHRC Media Survey 2019.

***For a Just and Equitable Society***



## Chapter 3 Economic, Social and Cultural Rights

### Overview

International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, ratified by Tanzania in 1976, guarantees economic, social and cultural rights. States have to ensure the progressive realization of these rights.<sup>344</sup> Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic, social and cultural rights recognized in the present Covenant to non-nationals.<sup>345</sup> Social and economic rights enhance individual's protection by the state, for the dignity, freedom and well-being of individuals. The State is duty-bound to support the provision of entitlements to the basic needs such as education, food, public health care, housing, and other social goods to the maximum of the available resources.<sup>346</sup> Right to education, right to health, right to social security, right to food, right to clean water and sanitation and the right to an adequate standard of living are commonly identified as the entitlements upon which states should accord their citizens to improve and maintain their social lives.

At the international level, economic, social and cultural rights are mainly guaranteed and protected under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). At regional/continental level, they are provided for and protected under the African Charter on Human and Peoples' Rights (ACHPR),<sup>347</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)<sup>348</sup> and the African Charter on the Rights and Welfare of the Child (ACRWC).<sup>349</sup> Tanzania is duty-bound under the ICESCR, ACHPR, Maputo Protocol and ACRWC to progressively realize these rights for its citizens to the maximum of its available resources.

Economic and social rights, such as the right to work and right to own property, are also enshrined in the Constitution of the United Republic of Tanzania.<sup>350</sup> These rights are also provided for under key

<sup>344</sup> Article 2(1) of ICESCR.

<sup>345</sup> Ibid, Article 2(3).

<sup>346</sup> Dawood, A. et al (2017) Social and Economic Rights, International Institute for Democracy and Electoral Assistance (IDEA) 2<sup>nd</sup> Ed, Stockholm Sweden

<sup>347</sup> See for example Articles 15, 16(1) and 17(1) of ACHPR;

<sup>348</sup> See for example Articles 12(1), 14 15 and 16 of Maputo Protocol.

<sup>349</sup> Articles 11 and 14 of ACRWC.

<sup>350</sup> See for example Articles 22, 23 and 24 of the Constitution of the United Republic of Tanzania, 1977



Act of 2004, the Land Act of 1999 and the Village Land Act of 1999.

## Right to Education

### 3.2.1 Legal Framework

As stated above, States are duty-bound under international human rights treaties to ensure the progressive realization of social rights, including the right to education. This right has to be implemented by member states without any discrimination as to race, colour, origin and sex since it is one of the most basic human rights as guaranteed by the international covenants.<sup>351</sup> This right is also guaranteed under the Constitution of the United Republic of Tanzania of 1977, which stipulates that *“the authority shall make appropriate provision for realizations of person’s right to self-education.”*<sup>352</sup> **Right to education is essential for the effective realization of all other human rights**, including the right to take part in governance. Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESR) of 1966 explicitly provides for the right to education as one of the basic human rights. Right to education entails the right to access education and the right to quality education.

### 3.2.2 Key Issues and Challenges in the Education Sector

In 2019, key issues affecting the right to education included: Government action to ensure the progressive realization of the right to education; Increased enrolment in basic education as government implements fee-free education policy; improved performance by ward secondary schools; budgetary allocation for the education sector; challenges of shortages of toilets and classrooms; shortages of teachers; long distance to and from school; menstrual hygiene facilities at school; increased incidents of male teachers raping and impregnating girls at school; the alarming rate of child pregnancy forcing girls to drop out of school; violence against children affecting their concentration and performance at school; concerns over the quality of education in some of the primary schools; truancy and other ethical issues amongst teachers; and employability of graduates.

#### 3.2.2.1 Government action to ensure the progressive realization of the right to education

In 2019, the Government continued to take steps to ensure

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<sup>351</sup> Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESR) of 1966

<sup>352</sup> Article 11 of the Constitution of the United Republic of Tanzania, 1977



the progressive realisation of the right to education, including implementation of education sector programmes and setting of the budget for the education sector. Other actions taken by the Government during the reporting period include employment of teachers, provision of loans for higher education students, renovation and construction of schools. For instance, in June 2019, the Government reported that during the financial year 2017/2018 and 2018/2019 it employed a total of 14,422 teachers, 10,695 of which are for primary schools and 3,727 for secondary schools.<sup>353</sup> In September 2019, it was reported that the Government had spent Tshs. Sixty-five billion to renovate sixty public schools in different parts of the country. According to the Communications Manager at the Ministry of Education, Science, Technology and Vocational Training, Sylvia Lupembe, the schools are part of the 88 identified schools that require renovation. She noted that by the end of the financial year 2019/2020, all 88 schools will have been renovated.<sup>354</sup>

In October 2019, the Higher Education Students' Loans Board (HESLB) revealed that a total of 30,675 students of higher learning institutions received higher education loans, totalling Tshs. 113.5 billion. For the financial year 2019/2020, the amount set aside for higher education loans is Tshs. 450 Billion, accommodating a total of 128,285 beneficiaries. Later that month, HESLB announced that in the second batch of students granted loans, a total of 11,378 students received loans totalling Tshs 35 billion for the financial year 2019/2020, taking the total number of beneficiaries to 42,053 and the amount disbursed to Tshs. 148.56 billion. On 7<sup>th</sup> December 2019, HESLB released a statement indicating that a total of 698 students had won their appeals against the Board's decision to refuse them loans) and were now entitled to a total of Tshs. 2.46 billion as loans. In total, therefore, 49,485 benefited from HESLB loans.<sup>355</sup> As for the whole financial year of 2018/2019, a total of 427.5 billion was

49,485

HESLB

Beneficiaries of higher education loans as of 7th December 2019.

353 LHRC Media Survey 2019.

354 Ibid.

355 See HESLB statement "Wanafunzi 698 washinda rufaa na kupangiwa mikopo yenye thamani ya TZS 2.46 bilioni" issued on 7<sup>th</sup> December 2019 at [https://www.heslb.go.tz/Post/view\\_post?post=19](https://www.heslb.go.tz/Post/view_post?post=19), accessed 6<sup>th</sup> March 2020.



granted to 123,285 students, including, 41,285 first-year students.<sup>356</sup>

### 3.2.2.2 Increased enrolment in basic education as the government implements fee-free education policy

In 2019, the Government continued with the implementation of fee-free education policy, which has led to increased access to basic education to Form Four level.<sup>357</sup> Authorities at district and ward levels have been active to ensure parents comply with the law by sending their children to school or face legal action.

However, increased enrolment has means higher demand for classrooms, which has been reported to be a challenge in some parts of the country, as discussed below. There is also a concern of capitation grants not being administered equitably, especially between rural and urban schools. As a result, some schools do not receive sufficient funding.<sup>358</sup>

### 3.2.2.3 Improved performance by ward secondary schools

In July 2019, it was reported that out of 100 schools that did well in Form Six National Examinations, 52 were ward secondary schools. The schools have done well despite the many challenges they face.<sup>359</sup> LHRC commends efforts made by all stakeholders in supporting these schools to improve academic performance, considering that they are hit the hardest by problems such as shortage of teachers, classrooms, toilet holes and learning materials.

### 3.2.2.4 Budgetary Allocation for the Education Sector - key for the realization of SDG 4

Like in other key sectors such as the health sector, the budgetary allocation has always been an issue for the education sector in terms of complying with the minimum standards under commitments by States at regional and international levels. Budgetary allocation is essential for the implementation and progressive realisation of the right to education, in line with the International Covenant on Civil and

356 See "WANAFUNZI 11, 378 MWAKA WA KWANZA WAPEWA MIKOPO" HABARILEO Newspaper [online] 27 October 2019 at <https://www.habarileo.co.tz/habari/2019-10-275db5403d33b69.aspx>, accessed 6<sup>th</sup> March 2020.

357 See Uwezo (2019): *Are Our Children Learning? Uwezo Tanzania Learning Assessment Report*. Dar es Salaam: Twaweza East Africa.

358 See Education Sector Budget Analysis 2018/19 by Policy Forum, STIPRD and Save the Children at <https://www.policyforum-tz.org/sites/default/files/Policy%20Forum%20-%20Education%20Budget%20Analysis%20%202018...%20Save%20the%20Children.pdf>, accessed 7<sup>th</sup> March 2020

359 LHRC Media Survey 2019.



## Political Rights of 1966.

In May 2015, the World Education Forum (WEF) adopted the Incheon Declaration, named after the city where it was adopted, Incheon, in the Republic of Korea.<sup>360</sup> The Declaration addressed five themes, namely: the right to education; equity in education; inclusive education; quality education; and lifelong learning. 184 States around the world, including Tanzania, made commitments under this Declaration. One of the commitments is to allocate at least 15-20% of their national budgets on education, to achieve SDG 4 targets by 2030.<sup>361</sup> In this Declaration, States recognized that the success of the Education 2030 agenda requires sound policies and planning as well as efficient implementation arrangements and collectively agreed that SDG 4 cannot be realized without a significant and well-targeted increase in financing, particularly in those countries furthest from achieving quality education for all at all levels. They, therefore, agreed to and showed determination to increase public spending on education in accordance with the country context and allocate at least 4 – 6% of Gross Domestic Product and/or up to 20% of total public expenditure to education, as the benchmark.<sup>362</sup>

In April 2019, *Hakielimu*, a right to education NGO based in Tanzania, called upon the Government to increase the education budget to 20% of the overall budget, in line with the Incheon Declaration.<sup>363</sup> The calls followed the recent trends in the education sector, which saw the budget decrease from 16.1% (including national debt) in 2016/17 to 15% in 2017/18 and dropping to 14% for the 2018/19 fiscal year.<sup>364</sup> For the financial year 2018/19, the budget for the Ministry of Education, Science and Technology was Tshs. 1.4 trillion for both recurrent and development expenditure.

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<sup>360</sup>The full name of the Declaration is Incheon Declaration and Framework for Action for the implementation of Sustainable Development Goal 4 Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all, at <https://unesdoc.unesco.org/ark:/48223/pf0000245656>.

<sup>361</sup> Ibid; see also UNESCO. 2019. Beyond commitments – How countries implement SDG 4. Paris, UNESCO., at [https://reliefweb.int/sites/reliefweb.int/files/resources/UNESCO-2019-HLPE\\_Beyond-en-v7.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/UNESCO-2019-HLPE_Beyond-en-v7.pdf), accessed 7<sup>th</sup> March 2020.

<sup>362</sup> Ibid.

<sup>363</sup> LHRC (2019), Mid-Year Human Rights Report 2019; Hakielimu Annual Report 2018 [http://hakielimu.org/files/publications/HakiElimu%20Annual%20Report%202018\\_Aug%202019.pdf](http://hakielimu.org/files/publications/HakiElimu%20Annual%20Report%202018_Aug%202019.pdf), accessed 7<sup>th</sup> March 2020.

<sup>364</sup> Ibid.



Another concern with budgets is the delayed disbursement or non-disbursement of budget funds.<sup>365</sup> For instance, for the financial year 2018/19, only 64.2% of funds allocated for development expenditure and 73.1% for recurrent expenditure were disbursed as of March 2019, three months before the end of the financial year.<sup>366</sup> There is also a concern that the ministry's budget is overwhelmed with higher learning student loans.<sup>367</sup>

### 3.2.2.5 Shortages of toilet holes, classrooms and dormitories

Shortages of toilet holes, classrooms and dormitories are key challenges affecting schools in Sub-Saharan Africa, including Tanzania. For example, the CAG report for the financial year 2016/17 shows that in 2017, the shortage of dormitories in secondary schools stood at 88%.<sup>368</sup> These shortages affect the learning environment and contribute to school dropout. In 2019, shortages of toilets and classrooms were reported in different parts of Tanzania Mainland, especially in the Lake Zone regions of Geita, Mwanza and Bukoba.<sup>369</sup> Shortage of dormitories was reported in Tunduru-Ruvuma Region. The table below presents some of the reported cases of shortages of toilet holes, classrooms and dormitories documented by LHRC in 2019.

Table 9: Reports of shortages of toilet holes, classrooms and dormitories documented by LHRC in 2019

Report	Date
<b>Geita:</b> More than 4000 pupils of Ihunamilo Primary School and Mwaloni Primary School are reportedly forced to use toilets of nearby residents due to shortage of toilet holes at their schools.	28 May 2019

<sup>365</sup> See Hakielimu (2019). *Exploration of factors that hinder and facilitate best performance in Primary School Leaving Examinations in Tanzania: Lessons from poor and best performing regions.*, at <http://www.hakielimu.org/files/publications/HakiElimu%20-%20Poor%20Performance%20REPORT%20A4%20-%2012Dec2019.pdf>, accessed 7<sup>th</sup> March 2020.

<sup>366</sup> See HOTUBA YA WAZIRI WA ELIMU, SAYANSI NA TEKNOLOJIA MHESHIMIWA PROF. JOYCE LAZARO NDALICHAKO (MB) AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2019/20, April 2019 at <http://www.moe.go.tz/en/component/jdownloads/send/26-budget-bajeti/387-hotuba-ya-bajeti-2019-20.html>, accessed 7<sup>th</sup> March 2020.

<sup>367</sup> See Education Sector Budget Analysis 2018/19 by Policy Forum, STIPRD and Save the Children at <https://www.policyforum-tz.org/sites/default/files/Policy%20Forum%20-%20Education%20Budget%20Analysis%202018...%20Save%20the%20Children.pdf>, accessed 7<sup>th</sup> March 2020.

<sup>368</sup> See Hakielimu Annual Report 2018 at [http://hakielimu.org/files/publications/HakiElimu%20Annual%20Report%202018\\_Aug%2009.pdf](http://hakielimu.org/files/publications/HakiElimu%20Annual%20Report%202018_Aug%2009.pdf), accessed 7<sup>th</sup> March 2020.

<sup>369</sup> LHRC Media Survey 2019.



<b>Mwanza:</b> Shortage of toilet holes was reported at Kanindo Primary School, whereby it was reported in February 2019 that there were only six toilet holes at the school, serving more than 2500 pupils.	13 February 2019
<b>Sengerema, Mwanza:</b> In October 2019, it was reported that 220 students of Bukokwa Secondary School in Sengerema District were sharing one toilet with their 11 teachers. It was revealed that the school has no toilet for teachers.	27 Oct 2019
<b>Buhigwe, Kigoma:</b> In July 2019, it was reported that Muyegera Primary School in Buhigwe District was faced with a shortage of toilets, leading to infections and truancy amongst students. The school has ten toilets, which are used by 927 students. It was also reported that there is a shortage of 256 desks at the school.	30 Jul 2019
<b>Mwanza:</b> Shortage of classrooms was reported at Kanindo Primary School, forcing 2,615 pupils to go to school in shifts.	13 February 2019
<b>Bukoba, Kagera:</b> It was reported in January 2019 that a total of 866 students could not join secondary school due to a shortage of classrooms at schools in Bukoba Rural. It was reported that there was shortage of 21 classrooms, which were under construction, expected to be completed by March 2019.	6 Jan 2019
<b>Bukoba, Kagera:</b> In October 2019, it was reported that 141 primary schools in Bukoba District were facing a shortage of 2,236 toilet holes. According to the District Chairperson, Mursida Ngeze, there is need for 3,603 toilet holes, but currently there are only 1,367 holes.	1 Oct 2019
<b>Longido, Arusha:</b> In October 2019, it was reported that donors from Germany had built nine classrooms to accommodate 1,000 pupils of Oldonyo was and Engikaret Wards in Longido District.	3 Oct 2019
<b>Lindi:</b> More than 50 students at Mingoyo Secondary School are reportedly forced to use physics lab as a class due shortage of classrooms at the school.	11 May 2019
<b>Tunduru, Ruvuma:</b> Form Four students at Ligoma Secondary School in Tunduru District were said to sleep on the floor due to a shortage of beds at their dormitory. It was also revealed that there is also shortage of dormitories, as there is only one dormitory, which accommodates 114 students, while it can accommodate only 45 students. Because of a shortage of dormitories, one of the classes has been used as a dormitory.	28 Oct 2019

*Source: LHRC Media Survey 2019 & LHRC Human Rights Monitoring 2019*

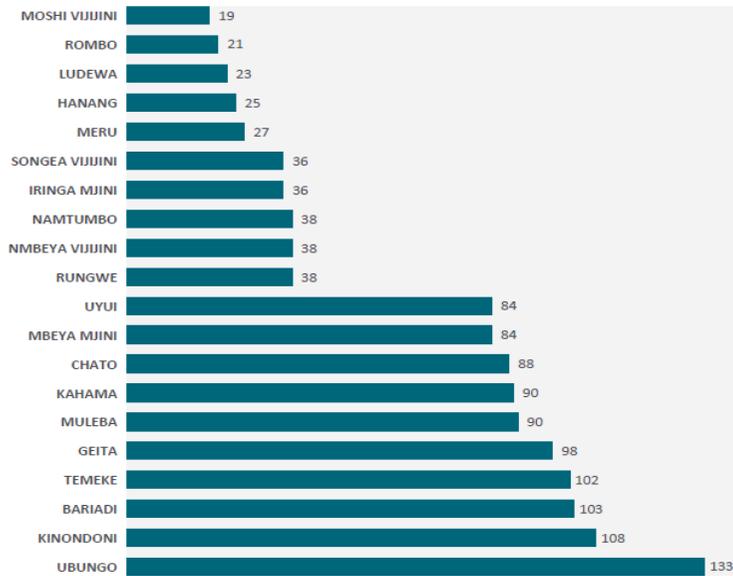
The presence of sufficient dormitories helps pupils not to walk long distances to and from school. As a result, the pupils are protected from acts of violence, including sexual violence. Having more dormitories in place will significantly reduce risk of VAC.

In 2019, *Twaweza* released its report on learning assessment in



primary schools.<sup>370</sup> The report is the result of the learning assessment conducted in 56 districts of Tanzania Mainland in 2017. Pupil-toilet ratio was one of the things assessed. The assessment found that while the official Government standard in Tanzania for latrines in schools is one pit latrine/toilet per 20 girl pupils (1:20) and one per 25 boy pupils (1:25),<sup>371</sup> an average latrine to pupil ratio in surveyed primary schools is 1:58.<sup>372</sup> The ratio for boys was found to be 1:60, while for girls it was 1:56.<sup>373</sup>

FIGURE 29: HIGHEST AND LOWEST TOILET RATIO FOR BOYS BY DISTRICT, 2017



Source: Calculated from data from the 2017 Uwezo learning assessment.

Figure 5: Highest and lowest toilet to pupil ratio for boys by district, 2017  
 Source: Twaweza's Uwezo Learning Assessment Report 2019

The figure above shows the situation of toilets in some of the surveyed districts in terms of the highest and lowest toilet ratio for boys. Moshi Vijijini (Moshi DC) has the best toilet to pupil ratio as one toilet is used by 19 boys (1:19), followed by Rombo District, where one toilet was found to be used by an average of 21 pupils (1:21). Moshi Vijijini, Rombo,

370 Uwezo (2019): Are Our Children Learning? Uwezo Tanzania Learning Assessment Report. Dar es Salaam: Twaweza East Africa

371 See MOEST Guideline School WASH, 2016; see also World Health Organisation (WHO) guidelines for School WASH (2009).

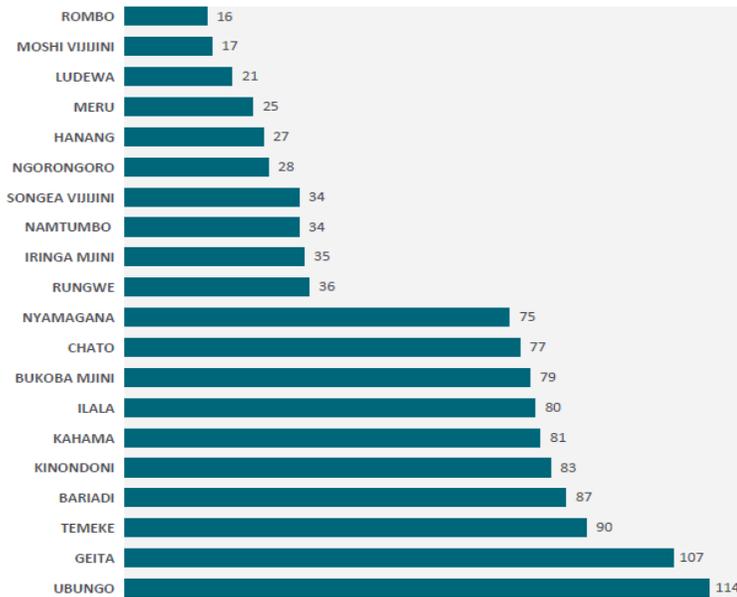
372 Uwezo (2019): Are Our Children Learning? Uwezo Tanzania Learning Assessment Report. Dar es Salaam: Twaweza East Africa

373 Ibid.



Luewa, Hanang, Meru, Songea Vijijini, Iringa Mjini, Namtundo, Mbeya Vijijini, and Rungwe are the top ten performing districts in terms of toilet to pupil ratio for boys. On the other hand, the situation is not good in Uyui, Mbeya Mjini, Chato, Kahama, Muleba, Geita, Temeke, Bariadi, Kinondoni and Ubungo Districts, where the toilet to pupil ratio ranges from one toilet per 84 pupils to one toilet per 133 pupils. The situation is worst in Ubungo District, with the ratio of one toilet for 133 pupils (1:133). Based on the figure above, only Moshi Vijijini, Rombo, Ludewa and Hanang Districts were found to comply with the official government standard toilet to pupil ratio for boys (1:25).

**FIGURE 30: BOTTOM AND TOP TEN DISTRICTS HIGHEST AND LOWEST TOILET RATIO FOR GIRLS BY DISTRICTS, 2017**



Source: Calculated from data from the 2017 Uwezo learning assessment.

Figure 6: Bottom and top ten districts highest and lowest toilet to pupil ratio for girls by district, 2017

Source: *Twaweza's Uwezo Learning Assessment Report 2019*

The figure above shows the situation of toilets in some of the surveyed districts in terms of the highest and lowest toilet ratio for girls. It shows that Rombo District has the best toilet to pupil ratio for girls, whereby one toilet is used by an average of 16 girls (1:16), followed by Moshi Vijijini (Moshi DC), where one toilet is used by 17 girls (1:17). Rombo, Moshi Vijijini, Ludewa, Meru, Hanang, Ngorongoro, Songea Vijijini, Namtumbo, Iringa Mjini, and Rugwe Districts are the top ten performing districts in terms of toilet to pupil ratio for girls.



On the other hand, the situation is not good in Nyamagana, Chato, Bukoba Mjini, Ilala, Kahama, Kinondoni, Bariadi, Temeke, Geita and Ubungo Districts, where surveyed schools recorded the toilet to pupil ratio for girls ranging from one toilet per 75 pupils to one toilet per 114 pupils. They sit at the bottom ten, with Ubungo again performing the worst, with the toilet to pupil ratio of one toilet for 114 schoolgirls (1:114). Based on the figure above, only Rombo and Moshi Vijijini were found to comply with the official government standard toilet to pupil ratio for girls (1:20).

In 2019, *Hakielimu* also released its education-related report, following a study conducted in ten regions of Tanzania Mainland, namely: Geita, Iringa, Dar es Salaam, Mbeya, Mara, Pwani, Songwe, Dodoma, Singida and Mtwara Regions.<sup>374</sup> The study sought to explore factors which enable some school, districts and regions in Tanzania to perform repeatedly better in PSLE while others frequently perform poorly. The study focused on high, moderate and low performing regions.<sup>375</sup> Regarding classrooms' deficit, the study found out deficiencies exist in all regions and do not necessarily determine academic performance.<sup>376</sup> For instance, Geita Region (one of the high performing regions), has a deficit of classrooms and desks at 56% and 36% respectively. The figure below shows the deficits in some of the studied areas.<sup>377</sup>

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<sup>374</sup> See Hakielimu (2019). Exploration of factors that hinder and facilitate best performance in Primary School Leaving Examinations in Tanzania: Lessons from poor and best performing regions., at <http://www.hakielimu.org/files/publications/HakiElimu%20-%20Poor%20Performance%20REPORT%20A4%20-%2012Dec2019.pdf>, accessed 7th March 2020.

<sup>375</sup> Ibid.

<sup>376</sup> Ibid.

<sup>377</sup> Ibid.



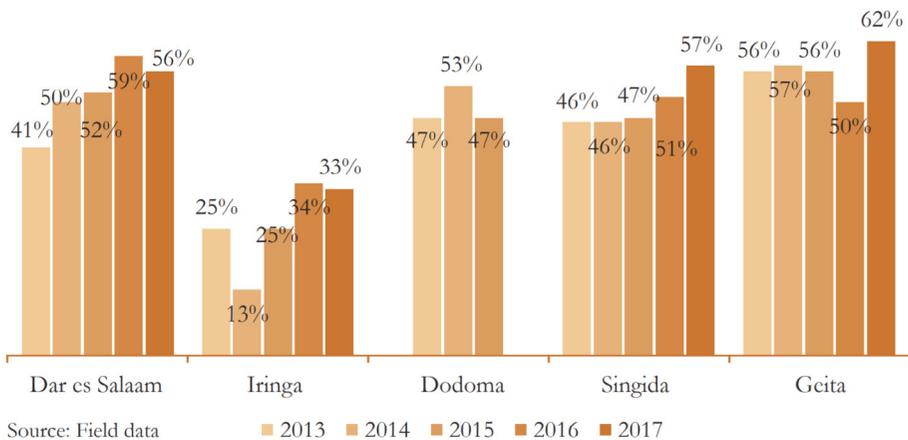


Figure 7: Average deficit of classrooms, 2013-2017 by region  
 Source: *Hakelimu's PSLE performance assessment Report 2019*

The recent CAG report for the financial year 2016/17 has also indicated a shortage of classrooms.<sup>378</sup> According to the CAG report, shortage of classrooms in primary schools stood at 85% in 2017, while in secondary schools it stood at 52%.<sup>379</sup>

According to *Hakelimu*, the problem of shortage of classrooms has been exacerbated by increased enrolment, which does not match with an increase in funds to facilitate the expansion of infrastructure, teaching staff and learning and teaching materials.<sup>380</sup> It notes that while on average enrolment rate had increased by 17% since 2016, by 2018 the number of schools, both primary and secondary, had risen by an average of 1%.<sup>381</sup>

**LHRC's call:** The Government to intensify efforts to improve the learning environment at public schools. As for the private sector, it can assist the Government in addressing challenges affecting the learning environment at public schools, particularly shortages of

378 See LHRC & ZLSC (2018), Tanzania Human Rights Report 2017, at [www.humanrights.or.tz](http://www.humanrights.or.tz); see also *Hakelimu Annual Report 2018*, at [http://hakelimu.org/files/publications/HakiElimu%20Annual%20Report%202018\\_Aug%2009.pdf](http://hakelimu.org/files/publications/HakiElimu%20Annual%20Report%202018_Aug%2009.pdf), accessed 7th March 2020.

379 Ibid.

380 *Hakelimu Annual Report 2018*.

381 Ibid.



toilet holes, classrooms and dormitories

### *3.2.2.6 Shortage of teachers and teachers' houses*

Shortage of teachers and teachers houses in both primary and secondary schools also re-emerged as a key issue in 2019 as the increased enrolment continues to affect teacher-pupil ration. For example, even though the education policy of 2014 indicates that the ratio should be one teacher for 40 pupils, the CAG audit report for the financial year 2016/17 showed that in 2017 shortage of teacher houses in primary schools stood at 66%.<sup>382</sup> It also showed that a shortage of teacher houses in secondary schools stood at 85% in secondary schools.<sup>383</sup> This shortage overwhelms with a large number of pupils and students. For instance, in June 2019, it was reported in Lushoto, Tanga Region, that Bumbuli District Council has a shortage of 581 teachers. It had also experienced a shortage of classrooms.<sup>384</sup> Further, it was also reported in June 2019 in Bukombe (Geita region) that teachers of primary and secondary schools in Geita had requested the Government to build houses for them so that they do not have to waste so much time walking from home to school. By then, the reports indicated a shortage of 1,879 teacher houses for primary schools and 462 for secondary schools.<sup>385</sup> Even the Government had acknowledged the magnitude of this problem. In May 2019, for example, it was reported that 80,000 teachers are needed across the country to address this problem.

### *3.2.2.7 Long distance to and from school*

Long distance to and from school is a big challenge for school children in rural areas. For parents who are a bit well of, they usually buy bicycles for their children to help them get to school. But for children from low-income families, most of which reside in rural areas, they are usually forced to walk long-distances, sometimes for more than 24km, to get to school. For the year 2019, long distance to and from school continued to be a challenge in various parts of Tanzania Mainland. In May 2019, Students residing in Biriri and Songu Wards in **Siha District**, were reportedly walking up to 24 km to reach their respective schools, Kilingi and Nuru Secondary Schools, which are

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<sup>382</sup> See Hakielimu Annual Report 2018.

<sup>383</sup> Ibid.

<sup>384</sup> LHRC Media Survey 2019.

<sup>385</sup> Ibid.



located in Sanyajuu and Makiwaru Wards respectively. In June 2019, 294 children from the pastoralist families in Mzeri Village in **Handeni**, Tanga were reportedly not going to school for among other reasons, long distances.

In September 2019, it was reported in Muheza, Tanga, that some students of Misozwe Secondary School in Muheza District are forced to walk more than 30 kilometres to get to the school, something that has led to some of them dropping out of school. Misozwe Ward Executive Officer, Judith Madudu, mentioned that the school lack of dormitories which would have helped to address the problem of long-distance to school. She also noted that the dormitories would help to rescue female students from the bodaboda drivers who offer lifts to and from school in exchange for sex, leading to teenage pregnancies and dropping out of school.<sup>386</sup>

### **3.2.2.8 Menstrual hygiene facilities at school**

In 2013, the United Nations Children’s Fund (UNICEF) commissioned a study<sup>387</sup> on menstrual hygiene at schools in Burkina Faso and Niger, seeking among other things, to examine menstrual hygiene practices in schools.<sup>388</sup> Key findings of the study were:

- School WASH (water, sanitation and hygiene) facilities are currently inadequate for girls to safely manage their menses;
- School children lack knowledge and information on menstruation; and
- Menstruation affects girls’ participation and performance at school.

In Niger, more than 70% of girls at schools revealed that they were not able to change sanitary pads at school, while more than 80% revealed they could not do so in Burkina Faso. When asked whether they feel stressed at school during menstruation, 80% of girls in Burkina Faso and close to 65% in Niger were in affirmative. Key quotes from the Burkina Faso and Niger study include:

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<sup>386</sup> Ibid.

<sup>387</sup> Study organized by the WASH and Education sections of UNICEF West and Central Africa (WCA) Regional Office.

<sup>388</sup> See Laura Toubale, Menstrual Hygiene in Schools in 2 Countries of Francophone West Africa: Burkina Faso and Niger 2013 Case Studies, 2nd MHM Virtual Conference, 21 November 2013 [PPT], at [https://www.unicef.org/wash/schools/files/10\\_UNICEF\\_Laura\\_PPT\\_\(Final\).pdf](https://www.unicef.org/wash/schools/files/10_UNICEF_Laura_PPT_(Final).pdf), accessed 7th March 2020.



- Menstruation remains a taboo here. Even mothers do not talk about it with their daughters. (*Male education official, Niger*)
- I don't want to go to the blackboard. I'm ashamed. I'm afraid to have stains. (Girl in Burkina Faso)
- It is sometimes difficult to get even pieces of cloth and they are old and dirty. Even our mothers do not always have enough of them. (*Girls' FDG in Burkina Faso*)
- My hijab helps to protect me, nobody can see any stains. (*Girl in Niger*)

In Tanzania, a baseline survey on menstrual hygiene at schools, conducted by SNV, revealed a situation like that of Burkina Faso and Niger. The study, conducted in Sengerema, Mufindi and Chato Districts, revealed that most schools lack sufficient WASH facilities in terms of water, privacy and adequate waste disposal.<sup>389</sup> It also revealed

that 48% missed class due to menstruation, 36% stayed at home during days of heavy flow and 12% did not attend school at all during menstruation.<sup>390</sup> A 2015 study on menstrual hygiene management in schools conducted by Tanzania Water and Sanitation Network (TAWASANET) in Temeke and Kilombero Districts revealed that girls have limited access to sanitary pads and menstrual hygiene affects their academic performance.<sup>391</sup>

**Menstrual hygiene facilities are important in keeping girls in schools.**

In 2018, it was revealed that lack of or limited access to menstrual sanitary pads significantly affects girls' education and that girls may miss up to four classes each

Lucy Odiwa - WomenChoice, 2018

"Girls (in Tanzania) face embarrassment during menstruation and most will have their first period while at school, which can be very frustrating."

<sup>389</sup> See TAWASANET, Study Report: Improvement of Menstrual Hygiene Management in Schools in Tanzania, at <http://www.tawasanet.or.tz/files/TAWASANET%20MHM%20Study%20Report%20-%202015.pdf>, accessed 7th March 2019; See also Fact Sheet, Menstrual Hygiene Management (MHM) to school girls at <http://www.tawasanet.or.tz/files/Fact%20Sheet%20MHM%20Tanzania.pdf>.

<sup>390</sup> Ibid.

<sup>391</sup> Ibid.



month during their menses if they do not have meaningful access to menstrual hygiene facilities.<sup>392</sup> In this year, tax on menstrual products was also scrapped, a measure that was welcomed by girls' rights and education stakeholders as it would boost access to sanitary pads for girls. However, in 2019 the Ministry of Finance and Planning, Hon. Phillip Mpango, revealed in his budget speech that the Government was reintroducing tax on menstrual products because the retailers had not reduced the price of the sanitary pads following the tax exemption introduced in 2018.<sup>393</sup> In LHRC's view re-introduction of tax on menstrual products/sanitary pads is a backward step on the part of the government and affects effective enjoyment and realisation of girls' rights. Women and girls in rural areas will suffer more as a result of this move.

In 2019 menstrual hygiene continued to be an issue that affected girls' pursuit of education in primary and secondary schools. In August 2019, female pupils at Kelezange Primary School in Kivule Ward, Ilala District, requested the Government to help build for them girls' changing room, to help them during menstruation.<sup>394</sup>

**LHRC's call:** The Government and other stakeholders to intervene and address menstrual hygiene issues at school in order to keep girls at school, including ensuring there are changing rooms and girls have access to sanitary pads and are well informed about menstruation.

Inadequate access to clean toilets can seriously interfere with children's education as it can accelerate the spread of infectious diseases such as diarrhea and fungal infections which in turn makes many children sick and can cause them to miss school regularly. Girls often may miss school when they are in their menstrual period because of embarrassment and the lack of private places to change and maintain their hygiene/cleanliness.  
*Twaweza's Uwezo Tanzania Learning Assessment Report 2019*

<sup>392</sup> See The World Bank "Keeping Tanzania's Girls in School: Investing in Menstrual Hygiene" 12 December 2019, at <https://www.worldbank.org/en/news/feature/2018/12/12/keeping-tanzanias-girls-in-school-investing-in-menstrual-hygiene>, accessed 7th March 2020.

<sup>393</sup> LHRC Media Survey 2019.

<sup>394</sup> Ibid.



Addressing the problem of shortage of toilet holes is also important in menstrual hygiene management in schools. Tax exemption menstrual products is important in safeguarding girls' rights to health and education.

### *3.2.2.9 Increased incidents of male teachers raping and impregnating girls at school*

A wave of male teachers raping, engaging in sexual relationships with female pupils and students, and impregnating girls at school is making some of the schools in Tanzania a less safe place for children, hence threatening children's welfare in Tanzania. According to the Teachers Service Commission (TSC), 162 teachers have been dismissed since July 2016 for engaging in sexual relationships with schoolgirls. In 2018 and 2019, LHRC documented a total of 24 cases of teachers implicated in sexual VAC. These teachers were either arrested and sent to court or found guilty and imprisoned. Three of them were headteachers. These cases are discussed in detail in sub-chapter 5.3 (Children's Rights) below.

### *3.2.2.10 The alarming rate of child pregnancy, forcing girls to drop out of school*

In 2019, child pregnancy continued to be among major issues hindering effective realisation of children's rights. In 2018 and 2019, LHRC documented more than 2,540 cases of child pregnancy. Since pregnant girls are currently not allowed to continue with school, many girls' journey in education ends when they become pregnant. Information gathered by LHRC in 2019 indicated that *bodaboda* drivers and male teachers were among the major contributors to the problem of child pregnancy. *Bodaboda* drivers take advantage of long distance to school and poverty to lure girls, while teachers use their position of power to prey on young girls at school. Cases of child pregnancy are discussed in detail under Chapter 5, subchapter 5.3, below.

### *3.2.2.11 Violence against children affecting their concentration and performance at school*

Many studies on VAC have confirmed psychological harm as one of the effects of domestic VAC. Acts of VAC can significantly affect a child's education. Acts of VAC such as food denial, verbal abuse/insults, sexual harassment, rape, sodomy, threats and humiliation and beatings may result in psychological harm, emotional harm,



physical pain or injury, lack of self-confidence and lack of self-esteem on the child, affecting their wellbeing and ability to concentrate in class. Eventually, children who are subjected to constant abuse lose interest in education and live a worrisome life. Children who are victims of abuse find it difficult to adjust and concentrate in school, hence affecting their social and educational development. In most cases they become loners, constantly worrying about the abuse which they might suffer again.

In 2018 and 2019 incidents of VAC in Tanzania, including domestic violence, significantly increased, as discussed in Chapter Five below. Violence experienced by children in their home settings affects their ability to learn and understand what they are taught at school. Combating VAC, especially in home and school settings, is therefore essential in safeguarding children's right to education. VAC situation and incidents are discussed in detail in Chapter Five of this report.

### *3.2.2.12 Concerns over the literacy and numeracy levels of pupils: A look at Uwezo Tanzania Learning Assessment Report 2019*

In October 2019, it was reported that 18 students of Form One and Form Two at Lugulu Secondary School in Same District, Kilimanjaro Region, were found to be incapable of reading and writing.<sup>395</sup> The school teachers reportedly requested the Government to review the way the national examinations are prepared and reduce the number of multiple-choice questions in order to ensure the children have understood key concepts instead of guessing the correct answers.<sup>396</sup>

The *Twaweza* report on learning assessment, released in 2019, can help to shed light on key issues of concern regarding the quality of education. We should remember that under the ICESCR and CRC, right to education entails not only access to education, but also right to quality education. The *Twaweza* report is based on the study conducted in 2017 in 56 districts of Tanzania, building up on and making comparisons to the 2015 learning assessment.<sup>397</sup> The study revealed a continuing trend of improvement in the level of literacy in Swahili observed among children in standard three.<sup>398</sup> As indicated

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395 LHRC Media Survey 2019.

396 Ibid.

397 See Uwezo (2019): Are Our Children Learning? Uwezo Tanzania Learning Assessment Report. Dar es Salaam: Twaweza East Africa.

398 Ibid.



in the figure below, there is significant improvement of 62% in 2017, compared to 29% in 2011. However, 14% of Standard 7 children were found to be leaving primary school unable to read a standard two story.<sup>399</sup>



Figure 8: Twaweza’s Uwezo learning assessment findings on ability to read a Swahili story

*Source: Uwezo Learning Assessment Report 2019*

The Uwezo Learning Assessment Report also indicates that **literacy in English is low and declining**. Only a few pupils (15% of Standard three and 47% of Standard seven) could read a Standard 2 level story in English. In 2014, literacy in English amongst Standard 7 pupil was 56%,<sup>400</sup> hence a decline of 7% in 2017. The Twaweza report further indicates that rates of numeracy have fluctuated over time with little improvement. The pass rates for the numeracy test among Standards 7 pupils are going down from 88% in 2014 to 80% in 2017. The overall rates of literacy and numeracy among children have improved a little between 2011 and 2017, at 42% and 45% respectively. Another key issue observed is the sharp disparities in learning outcomes between districts, in terms of children who passed literacy and numeracy tests, with 73% in Meru District and 24% in Nzega District.

Another key issue raised in *Twaweza’s Uwezo Learning Assessment Report* is that school children cannot effectively learn on empty

<sup>399</sup> Ibid.

<sup>400</sup> Ibid.



stomachs. According to the report, only 1 out of 4 schools provide meals to children (23%). Meal programmes at school are essential for sustaining attendance and improving school performance. Parents and communities should collaborate with the Government to ensure children are provided with meals in order to safeguard their right to quality education, considering the capitation grants provided under the fee-free policy do not cover for meals.<sup>401</sup> And as indicated in this report above, most children, especially in rural areas, are forced to walk long distances to school. This means they even need more food to regain that energy required to enable them to concentrate in class.

**50%**  Parents who visit their children's teachers to check on their progress at school

Parents' participation in their children's schooling was also identified as an issue of concern. Parents were asked whether they check their children's exercise books or read books with their children during the previous week and whether they had visited teachers to follow up on their children's progress at school.<sup>402</sup> 66% of parents reported having read a book with their children. Only 21% had checked the exercise of their children during the week before the Uwezo assessment. Regarding visiting schools to check on their children's progress, only 50% of parents indicated they visit the teachers to do so.<sup>403</sup>

**LHRC's View:** Unsatisfactory literacy and numeracy levels are also attributed to factors such as gaps in teacher skills and motivation and motivation contribute to lower literacy and numeracy levels. An education report by the World Bank of 2018 shows that most teachers do not have sufficient mastery of concepts they teach, meaning their knowledge levels are lower than expected of them.<sup>404</sup> It suggests that there is acute shortage of qualified teachers, especially in low-income countries; and that teachers often lack motivation as they educate

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401 Ibid.

402 Ibid.

403 Ibid.

404 See The World Bank, The World Development Report 2018 (WDR 2018)—LEARNING to Realize Education's Promise at <https://www.worldbank.org/en/publication/wdr2018> accessed 19th March 2020.



the education systems do little to support and motivate them.<sup>405</sup>

**LHRC's call:** The Government and other stakeholders to work together and address challenges hindering the effective realisation of the right to quality education. Addressing issues discussed above is essential for achieving key targets relating to education under SDG 4 and the Tanzania Development Vision 2025.

### *3.2.2.13 Teacher absenteeism*

A 2018 education report by the World Bank indicated that teacher absenteeism is a big problem in East Africa, including in Tanzania.<sup>406</sup> The report indicates that a lot of official teaching time is lost and shows that teachers in Tanzania use only 55% of the time officially allocated to teach to actually teach.<sup>407</sup> The report indicates that in Africa teachers are often absent from school or absent from classroom even when they are at school.<sup>408</sup>

In Tanzania teacher absenteeism also emerged as an issue of concern for the right to education in 2019. In November 2019, the Secretary of the Teachers Service Commission (TSC), Winfrida Rutaindurwa, revealed that since TSC was established in July 2016, it has received 7,123 complaints on teachers' conduct. The complaints include on absenteeism, violation of code of conduct and engaging in sexual relationship with female school children. Majority of the complaints, 76%, were on teacher absenteeism.

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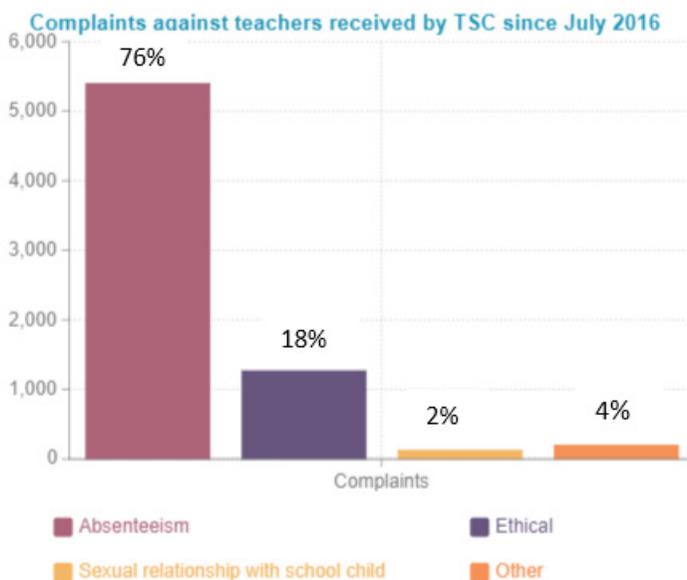
405 Ibid.

406 See The World Development Report 2018 (WDR 2018)—LEARNING to Realize Education's Promise.

407 Ibid.

408 Ibid.





Teachers have a duty under the Law of the Child Act to 2009 to ensure the progressive realisation of children’s right to education. Absenteeism therefore constitutes a violation of school children’s right to education, which is also protected under the UN Convention on the Right of the Child of 1989 and the African Charter on the Rights and Welfare of the Child of 1990.

**LHRC’s call:** Teachers to abide by the Law of the Child Act of 2009 and their code of ethics in order to safeguard children’s right to education and ensure best interests of the child takes precedence above everything else. The Government should also conduct a study to explore the reasons for the absenteeism among teachers and come up with a strategy to address the problem.

### 3.2.2.14 Employability of graduates

Employability skills of university graduates came into the spotlight again in 2019. In October 2019, Ruse Telecom Learning Centre, an institution based in Dar es Salaam that provides training on telecommunication and ICT, revealed that least 45% ICT graduates lack skills and experience to grab employment opportunities.<sup>409</sup> According to these findings, the fastest growth in technology is leaving behind

<sup>409</sup> LHRC Media Survey 2019.



graduates of the two professions hence making them uncompetitive. It thus recommended for initiatives to improve the employability of indigenous graduates.<sup>410</sup> Similarly, a 2014 study by the Inter-University Council for East Africa (IUCEA) – a body that regulates higher education in East Africa – more than 50% of university graduates are half-baked, in the sense that they lack the necessary employability skills and not adequately prepared for the job market.<sup>411</sup> Tanzania ranked second, behind Uganda (63%), with 61% of university graduates deemed lacking in relevant skills employers demand. Increased enrolment not mirrored by the increase of tutors was mentioned as one of the factors contributing to the problem. Some of the employers revealed that some most graduates lack the self-confidence that is required and finds it difficult to express themselves.<sup>412</sup>

According to Tanzania Private Sector Foundation (TPSF), for years employers have been raising concerns that the education which is provided on colleges and higher-level institutions does not match with the market demand something which creates a burden on employers as they are forced to spend a lot of money to train employees on the relevant skills.<sup>413</sup> To help address this problem, in August 2019, TPSF and the Ministry of Education, Science and Technology launched the Sector Skills Council.<sup>414</sup>

The report points out to the many improvements achieved in the area of the right to education but with vast challenges which must be addressed if the right to education is to be meaningful to the children and youth of Tanzania.

### 3.3 Right to Health

#### 3.3.1 Legal framework

Right to health is a key for the realization of other rights, including the fundamental right to life. This right means that hospitals, clinics, medicines and doctors' services must be accessible, available, acceptable, and of good quality for everyone on an equitable basis,

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<sup>410</sup> Ibid.

<sup>411</sup> LHRC & ZLSC (2018), Tanzania Human Rights Report 2019.

<sup>412</sup> Ibid.

<sup>413</sup> See TPSF "Tanzania Launches Sector Skills Councils to bridge acute Skills Gap" 19 August 2019, at <https://tpsftz.org/tanzania-launches-sector-skills-councils-to-bridge-acute-skills-gap/>, accessed 7th March 2020.

<sup>414</sup> Ibid.



where and when needed. This right is guaranteed and protected under the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises enjoyment of the highest attainable standard of physical and mental health.<sup>415</sup> States parties to the ICESCR are required to take several steps towards the full realization of the right to health, including creating conditions which would assure to all medical services and attention in the event of sickness and prevention, treatment and control of epidemic, occupational and other diseases.<sup>416</sup> States thus have a primary duty take measures to protect the health of their people and to ensure that they receive medical attention when they are sick.<sup>417</sup> This right is also guaranteed under regional treaties that Tanzania is bound to, such as the African Charter on Human and Peoples' Rights (ACHRPR), African Charter on the Rights and Welfare of the Child (ACRWC) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).<sup>418</sup> Right to health includes the right to access health services and the right to quality health services.

### 3.3.2 Key Issues

In 2019, key issues affecting the right to health included: Government action to ensure the progressive realisation of the right to health; challenges of shortage of healthcare workers; budgetary allocation for the Health Sector; mental health and high suicide rates; children's mental health affected by the alarming rate of VAC; the challenge of access to health services; lack and shortage of toilets for patients; and shortage of buildings and beds at health facilities.

#### 3.3.2.1 Government action to ensure the progressive realization of the right to health

In 2019, the Government continued to take various actions to ensure the progressive realisation of the right to health, as required under the International Covenant on Economic, Social and Cultural Rights (ICCPR) of 1966, ratified by Tanzania in 1976. Measures taken included allocating budget for relevant programmes geared towards improving health services, construction and repair of health facilities; provision of essential medical equipment and supplies; and improving HIV-related health services. For instance, in April 2018, it was reported

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<sup>415</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1977

<sup>416</sup> See Article 12(2) of ICESCR.

<sup>417</sup> Article 16(2) of the African Charter on Human and People's rights, 1981.

<sup>418</sup> See Article 16(1) of ACHRPR; Article 14 of ACRWC; and Article 14 of Maputo Protocol.



that 13 new health centres were constructed in Mtwara Region in the past 18 months; and a total of 352 new health centres were reportedly constructed across the country within that period. In the same month, the Government completed construction of a health centre in Mkasale Village in Tunduru District, Ruvuma Region.<sup>419</sup>

In April 2019, it was also reported that a health centre built by the Government with the support of the Japan Embassy, was launched in Arusha District Council.<sup>420</sup> The centre is expected to provide health services to about 10,000 people. Similarly, the Government announced that over 200 health facilities in Tanzania would benefit from USD 3 million medical technology investment project between the Gradian Health Systems – a US-based medical technology company - and the Muhimbili University of Health and Allied Sciences (MUHAS).<sup>421</sup> The 200+ health facilities will be equipped with high tech anaesthesia machines, called Universal Anaesthesia Machine (UAM), which are said to help save time, money and lives during surgery. They can generate medical oxygen and work without power.

In June 2019, it was reported that the Minister responsible for regional administration and local government, Hon. Selemani Jafo, had ordered new equipment to be installed at 352 health centres built or renovated across the country.<sup>422</sup> In the same month, the Government informed the public of the progress of the construction of the Southern Zone referral hospital in Mtwara. Plans are to have it completed by 31st August 2020. Further, Dar es Salaam Regional Commissioner, Hon. Paul Makonda revealed that construction of a maternal and child health building at Mwananyamala Hospital is expected to be completed by 30th December 2019.<sup>423</sup> He noted that the five-storey building costs Tshs. 2.1 billion and will help to address the challenge of women sleeping on the floor. The building will enable the hospital to attend up to 60,000 women for pre and post-delivery services.<sup>424</sup>

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419 LHRC Media Survey and Human Rights Monitoring 2019.

420 Ibid.

421 See “\$3million medical tech investment benefits 200 health facilities in Tanzania” The Citizen Newspaper [online] 8 April 2019 at <https://www.thecitizen.co.tz/news/-3million-medical-tech-investment-benefits-200-health-/1840340-5061234-c0t0hs/index.html>, accessed 7th March 2020.

422 LHRC Media Survey 2019

423 Ibid.

424 Ibid.



Regarding improving HIV-related health services, it was reported in Dodoma in October 2019 that the Fourth Health Sector Strategic Plan shows that Tanzania has made strides in the health sector. The rate of mother-to-child HIV infection is also in decline.<sup>425</sup> HIV counselling and testing stations have increased from 5,555 stations in 2015 to 6,370 stations in March 2019. Population estimated to be HIV-positive in the country and those who are aware of their situation (first 90 goals) has increased from 1,038,603 in 2017 to 1,126,366 people at the end of March 2019 which equals to 75 per cent of 1,500,000 people estimated to be HIV positive country.<sup>426</sup>

### **3.3.2.2 Shortage of healthcare workers**

In 2019, the shortage of healthcare workers continued to linger in the minds of the public. In May 2019, MOI department within the Muhimbili National Hospital reported a shortage of doctors. By then, according to Dr. Respicius Boniface, there were only 150 doctors instead of the required 2000. These numbers mean one doctor would attend up to 600,000 patients per year.<sup>427</sup> In September 2019, the President of the Medical Association of Tanzania, Dr Elisha Osati noted that while there are many medical doctor graduates, one doctor attends an average of 22,000 patients per year. The WHO guidelines indicate that one doctor should attend 10,000 patients per year.<sup>428</sup>

### **3.3.2.3 Budgetary Allocation for the Health Sector**

As it is the case with the education sector, challenges in the health sector relate mainly to budgetary allocation not being in line with international standards and delays in disbursement of funds. *Sikika's* analysis of the 2019/2020 budget for the health sector revealed persistent low budget allocation and partial and delayed disbursements, which continued to be barriers in achieving health sector targets.<sup>429</sup>

For the financial year 2019/20, the total budget allocated for the health sector was Tshs. 1,950 billion, of which 49.15% was allocated for the MOHCDGEC. 42% of the Tshs. 1,950 billion was for the development

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425 Ibid.

426 LHRC (2019), Mid-Year Human Rights Report 2019.

427 LHRC Media Survey 2019.

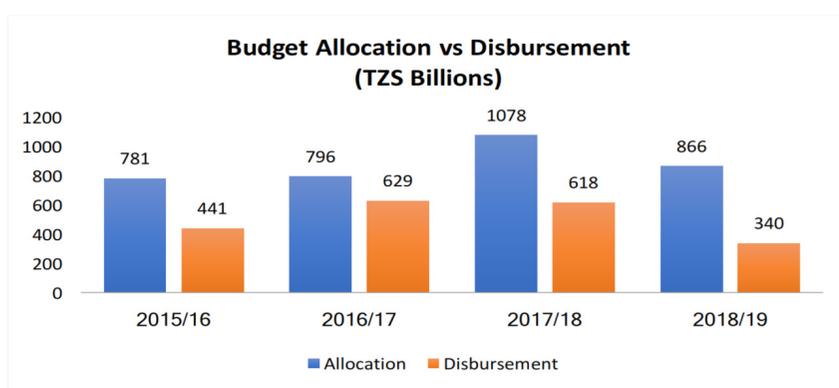
428 Ibid.

429 See Policy Forum, HEALTH SECTOR: BUDGET ALLOCATION & EXECUTION MUST BE IN LINE WITH STRATEGIC PLAN COSTING, Brief 5.19 at <https://www.policyforum-tz.org/sites/default/files/brief%205.19.pdf>, accessed 7th March 2020.



budget, while the remaining 58% was for the recurrent budget. As for the financial year 2018/19, the development and recurrent budgets were 40% (Tshs. 822 billion) and 60% (Tshs. 1,232 billion) respectively.<sup>430</sup> According to Sikika, the total budget for the Health Sector constitutes only 40.6% of the costed amount in the HSSP-IV for the financial year 2019/20.<sup>431</sup>

Concerning budget disbursement for the financial year 2018/19, Sikika's analysis shows that by March 2019, only 39% of the funds had been disbursed to MOHCDGEC, and there were no guarantees the 61% would be disbursed in full in the remaining three month, based on the trends of disbursements in the past.



**Figure 2: Budget Allocation vs. Disbursement**

**Source: Minister for Health Budget Speeches, 2015/16, 2017/18, 2018/19, 2019/20, Budget Books 2018/19**

Figure 9: MOHCDGEC budget allocation & disbursement, 2015/16 – 2018/19  
*Source: Sikika Health Sector Budget Analysis for FY 2019/20*

**LHRC's call:** The Government to increase the budget for the health sector in line with its international commitments. Increasing the budget for this key sector is also essential for achieving key SDGs targets relating to health and those under the Tanzania Development Vision 2025, including high quality livelihood and industrialisation. A healthy workforce is needed to achieve industrialisation policy objectives. The government must also disburse the allocated funds in time for its use to make it meaningful.

<sup>430</sup> Ibid.

<sup>431</sup> Ibid.



### 3.3.2.4 Mental Health and High Suicide Rates

In 2019, mental health and suicide rates became issues of great concern at global and national levels.<sup>432</sup> In September 2019, the World Health Organisation (WHO) released its factsheet on global suicide rates, which shows that close to 800 000 people die due to suicide every year. The report also reveals that for every suicide there are many more people who attempt suicide every year;<sup>433</sup> and that a prior suicide attempt is the most critical risk factor for suicide in the general population.<sup>434</sup> Additionally, according to WHO, suicide is the third leading cause of death in 15-19-year-olds. Common methods of suicide are ingestion of pesticide, hanging and use of firearms.

79%

of global suicides occur in  
low- and middle-income  
countries

Groups of people commonly associated with suicidal behaviour include those who have depression or severe stress, consume alcohol excessively, are in deep trouble financially, have experienced a relationship breakup, have chronic pain and illness, have suffered abuse or violence and have a sense of isolation.<sup>435</sup> Challenges in addressing suicide include stigma (preventing people with suicidal thoughts from seeking help), lack of suicide prevention programmes, and data quality gaps.<sup>436</sup>

**Suicide is a serious public health problem; however, suicides are preventable with timely, evidence-based and often low-cost interventions.**  
WHO

<sup>432</sup> Suicide is one of the priority conditions in the WHO Mental Health Gap Action Programme (mhGAP) launched in 2008, which provides evidence-based technical guidance to scale up service provision and care in countries for mental, neurological and substance use disorders. In the WHO Mental Health Action Plan 2013–2020, WHO Member States have committed themselves to working towards the global target of reducing the suicide rate in countries by 10% by 2020.

<sup>433</sup> See WHO Suicide Factsheet at <https://www.who.int/news-room/fact-sheets/detail/suicide>, accessed 7th March 2019

<sup>434</sup> Ibid.

<sup>435</sup> Ibid.

<sup>436</sup> Ibid.



Currently, in the global suicide rates, Tanzania ranks 126th with a suicide rate of 5.4 per 100,000 people. The rate is high among males (7.7) than female (3.2).<sup>437</sup> During the commemoration of the World Suicide Prevention Day (WSPD) in Dar es Salaam in September 2019, Police Spokesperson, David Misime reported that 666 Tanzanians had committed suicide from 2016 to 2019. The spokesperson stated that out of the 666 cases, 219 people committed suicide by stabbing, 376 by hanging, 75 by poisoning and 5 by shooting.<sup>438</sup> For the year 2019, he mentioned that the Police had so far documented 105 reported cases of people committing suicide by hanging, 8 poison, and 2 by shooting. For the year 2018, 90 people committed suicide by hanging, 21 by poisoning and 2 by shooting. For the year 2017, 88 people killed themselves by shooting themselves, 71 by hanging themselves, 16 by drinking poison and 1 by stabbing themselves. For the year 2016, there were 131 suicide incidents, of which 101 were of people who hanged themselves and 30 of people who drank poison. The police spokesperson stated that reasons for people committing suicide include relationships/love, family quarrels/conflicts, problems/stress at workplaces, and life/economic hardships. He expressed that stress caused by these issues drives people to take their own lives.<sup>439</sup> Below are some of the suicide incidents LHRC documented in 2019.

Table 10: Reported incidents of suicides recorded by LHRC, Jan – Dec 2019

Incident	Date
<b>Ilala, Dar es Salaam:</b> One person identified by the name of Paschal (24) reportedly killed his lover, Rosemary Gallus (34), resident of Gongo la Mboto area, before committing suicide. The reason for the killings is jealousy. The man accused the woman of being unfaithful.	26 Nov 2019
<b>Meru, Arusha:</b> Faisal Salim (19), shot himself on the head and died due to stress caused by substance/drug abuse. The incident occurred in August 2019.	19 Aug 2019
<b>Nkasi, Rukwa:</b> Rafael Leonard (49), resident of Bumanda Village in Korongwe Ward, Nkasi District, hanged himself to death using a nylon rope after waking up and finding that his wife was not on the bed. It was reported that he killed himself after realizing that his wife had left in the middle of the night to be with another man.	30 Nov 2019

<sup>437</sup> See World Population Review, Suicide Rate By Country 2020, at <http://worldpopulation-review.com/countries/suicide-rate-by-country/>, accessed 7th March 2020.

<sup>438</sup> LHRC Media Survey 2019.

<sup>439</sup> Ibid.



<b>Morogoro:</b> A 12-year-old boy, resident of Morogoro Municipality and Standard Six pupil at Uhuru Primary School, was found dead in a bathroom, where he had hanged himself.	21 Jul 2019
<b>Morogoro:</b> In March 2019, a Form Three student at Lupanga Secondary School, shot and killed himself in Kola area in Morogoro.	21 Jul 2019
<b>Unknown area:</b> A man identified as Evarist Massawe, reportedly killed himself. In his suicide note, he explained that the reason for taking such a decision was Tshs. 6 million that he owed people.	6 Jul 2019
<b>Ludewa, Njombe:</b> A police officer from Mlangali Police Post in Mlangali Ward, Ludewa District, Livin Urrio (37), committed suicide by shooting himself on the head at the police post.	18 Sep 2019
<b>Mwanza:</b> In September 2019, a 94-year-old person reportedly committed suicide by hanging himself in his house.	11 Sep 2019

*Source: LHRC Media Survey 2019 & Human Rights Monitoring 2019*

### **3.3.2.5 Children's mental health affected by the alarming rate of violence against them**

As indicated in this report, under subchapter 5.3 below, incidents of VAC have reached an alarming rate in the past three years, including 2019. Sexual violence in the form of rape and sodomy are becoming a common occurrence in different parts of the country, leaving the children damaged psychologically and putting their mental health at huge risk. Children who cannot easily access GBV-related health services, including counselling, are at higher risk of their mental health being severely affected. As discussed above, people who have mental health issues and those who have experienced serious acts of abuse or violence are more vulnerable to suicide. Addressing VAC is thus important in safeguarding a child's right to mental health. It is also important to ensure that children who are VAC victims are exposed to relevant health services to help them heal and continue with their lives.

### **3.3.2.6 Challenge of access to health services**

Another key issue regarding health that arose in 2019 was access to health services, particularly in terms of the proximity of health facilities. For instance, CCM Council member, Gibson Rwegasira revealed in May 2019 that in Muheza, Tanga, pregnant women and sick people in Amani Division in Muheza District had to travel by lorries to go to Muheza District Hospital due to lack of ambulance.<sup>440</sup> In July 2019,

<sup>440</sup> LHRC Media Survey 2019.



it was reported in Butiama, Mara that more than 80,000 residents of Nyakiswa Village, Kyanyari Ward in Butiama District, especially women, were forced to walk for up to 60 kilometres to access health services.<sup>441</sup> Previous LHRC reports have also indicated the proximity of health facilities as a challenge in some of the rural areas of Tanzania Mainland.<sup>442</sup>

### **3.3.2.7 Lack and shortage of toilets in health facilities and households: Mara Region**

Shortage of toilets was an issue that was especially reported in Mara Region. For instance, in February 2019, A health centre in Buchanchari Village in Serengeti District reportedly stopped providing health services due to lack of toilet for patients.<sup>443</sup> In July 2019 it was revealed by a health officer from the Regional Commissioner's Office, Bumija Mhando, that a total of 22,547 households in Mara Region do not have toilets, putting the health of household members at risk. The Government is conducting a campaign to promote toilet use called "*Usichukulie poa, nyumba ni choo.*"<sup>444</sup>

### **3.3.2.7 Shortage of buildings and beds at health facilities**

Shortages of buildings and beds were reported in various areas in the country including areas such as Igunga in Tabora, Sumbawanga in Rukwa and Kinondoni in Dar es Salaam. In November 2019, it was reported that some women gave birth on the floor at Igunga District Hospital, due to shortage of buildings and beds. A patient at the hospital mentioned that a shortage of beds at the hospital is a big challenge, and in most cases two women share a single bed. Igunga DMO, Ruta Deus, confirmed that women have to share beds due to shortage of beds. He further noted that the ward could accommodate only 18 patients per day, but on average they receive about 40 patients per day. In September 2019, it was reported that Sumbawanga Referral Hospital was facing a problem of patient overload in the children's ward, causing the hospital to place more than one child on a single bed.<sup>445</sup>

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441 Ibid.

442 See LHRC & ZLSC (2018), Tanzania Human Rights Report 2017; LHRC & ZLSC (2019), Tanzania Human Rights Report 2018.

443 LHRC Media Survey 2019.

444 Ibid.

445 Human Rights Monitoring 2019; Media Survey 2019.



In Dar es Salaam, in October 2019, Dar es Salaam Regional Commissioner, Paul Makonda, revealed that construction of a maternal and child health building at Mwananyamala Hospital is expected to be completed by 30th December 2019. He noted that the five-storey building would help to address the challenge of women sleeping on the floor. The building is expected to enable the hospital to attend up to 60,000 pre-natal and post-natal women.<sup>446</sup>

### 3.4 Right to Water

#### 3.4.1 Legal framework

The UN Committee on Economic, Social and Cultural Rights defines the right to water as the right of everyone to **sufficient, safe, acceptable** and **physically accessible** and **affordable** water for personal and domestic uses.<sup>447</sup> It is also known as the right to water and sanitation and is essential and indispensable in ensuring life with dignity.<sup>448</sup> While not covered under the International Covenant on Economic, Social and Cultural Rights (ICESCR), this right is implied under the right to adequate standard of living – which is provided for in the ICESCR – and it is also covered under key human rights instruments such as the UN Convention on the Rights of the Child (CRC) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).<sup>449</sup> Moreover, in 2010 the UN General Assembly declared the right to clean drinking water and sanitation a human right essential in full realization of other human

**The human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity”**  
– *Human Rights Council*

<sup>446</sup> Ibid.

<sup>447</sup> See UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), 20 January 2003, E/C.12/2002/11, available at: <http://www.refworld.org/docid/4538838d11.html> [accessed 17 December 2017].

<sup>448</sup> Article 1.1 of the General Comment No. 15. The right to water, UN Committee on Economic, Social and Cultural Rights, November 2002,

<sup>449</sup> Article 24(2) of CRC & Article 14(2) of CEDAW.



rights, especially right to life. Domestically, the Constitution of the URT 1977, under its Article 14, provides for the right to life and security of that life, which implies that the right to water promotes the right to life. There is also the National Water Policy of 2002 and the Water Resources Management Act of 2009, which recognizes the right to clean and safe water in the country.

### 3.4.2 Key Issues

In 2019, key issues affecting the progressive realisation of the right to water included: government action to ensure provision of clean and safe water; budgetary allocation for the water sector; and various challenges affecting provision of clean and safe water to Tanzanians.

#### 3.4.2.1 Government action to ensure the progressive realization of the right to water

In 2019, the Government continued taking various measures to facilitate the progressive realisation of the right to water, as obligated under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Constitution of the United Republic of Tanzania of 1977. In the ministry budget for the financial year 2019/20, the Minister of Water, Hon. Prof. Makame Mbarawa (MP), revealed that for the financial year 2018/19, the Government continued implementing various water projects to increase access to water in rural and urban areas.<sup>450</sup> Among other initiatives, the Government continued with management and development of water resources; continued developing Integrated Water Resources Management and Development Plans (IWRMDP); establishment of National Multi-Sectoral Water Resources Management Forum, bringing together water experts, institutions in the water sector, higher learning institutions, sectoral ministries, research institutions, development partners and journalists; implementation of Water Safety Plan; implementation of the National Guidelines for Monitoring Drinking Water Quality and Reporting; and implementation of water supply projects in rural areas.<sup>451</sup> Hon. Prof. Makame Mbarawa also noted that the ministry had facilitated the training of 1,069 workers within the

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<sup>450</sup> See HOTUBA YA WAZIRI WA MAJI, MHE. PROF. MAKAME MBARAWA (MB), AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA YA WIZARA YA MAJI KWA MWAKA 2019/2020 at file:///C:/Users/Fundikila%20Wazambi/Downloads/sw1557212587-HOTUBA%20YA%20WIZARA%20YA%20MAJI%202019-2020.pdf, accessed 7th March 2020.

<sup>451</sup> Ibid.



ministry, including sending some of them outside the country for relevant trainings.<sup>452</sup>

Among the key water projects implemented in 2019 was the Lake Victoria Water Project.<sup>453</sup> In April 2019, it was reported that about 291,000 people in Tabora Municipal Council were expected to access clean and safe water by June 2020 upon completion of the ongoing Lake Victoria water project, according to TUWASA – the regional water authority.<sup>454</sup> In October 2019, it was reported in Sumbawanga, Rukwa, that Hon. President John Magufuli launched a Tshs. 35-billion-dollar water project in Sumbawanga District. The project is expected to produce 20 litres of water per day, exceeding the daily required amount, which is 13 litres.<sup>455</sup>

### 3.4.2.2 Budgetary Allocation for the Water Sector

For the financial year 2018/2019, the Ministry of Water was allocated Tshs. 697,577,902,677, of which Tshs. 24,363,869,000 was for recurrent expenditure and Tshs. 673,214,033,677 for development expenditure. By April 2019, the Ministry had received only 68% of the recurrent budget and 51% of the development budget.<sup>456</sup> It was revealed that, this lack of adequate funds for the Ministry led to failure in completing some of the water projects in time and implementing new projects.<sup>457</sup>

### 3.4.2.3 Access to Water

#### TAWASANET'S Water Equity Report 2019

**60%** Tanzanians with access to improved water

In the ministry budget speech for the financial year 2019/20, the Minister of Water, Hon. Prof. Makame Mbarawa (MP), revealed that access to water at regional capitals stands at 80%,<sup>458</sup> an increase of 2% compared to the financial year

452 Ibid.

453 Ibid.

454 LHRC Media Survey 2019.

455 Ibid.

456 See HOTUBA YA WAZIRI WA MAJI, MHE. PROF. MAKAME MBARAWA (MB), AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA YA WIZARA YA MAJI KWA MWAKA 2019/2020.

457 Ibid.

458 See HOTUBA YA WAZIRI WA MAJI, MHE. PROF. MAKAME MBARAWA (MB), AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA YA WIZARA YA MAJI KWA MWAKA 2019/2020.



2018/19.<sup>459</sup> The goal is to reach 95% by the year 2020. He also revealed that in district capitals, townships and areas where national projects are implemented, access to water is 64%, which is an increase of 4% compared to the financial year 2018/19.<sup>460</sup> He mentioned that the goal is to reach 90% by the year 2020. In rural areas, the Minister mentioned that the water access stands at 64.8%, while the goal is to reach 85% by the year 2020.

#### **3.4.2.4 Challenges hindering the effective provision of clean and safe water**

Despite the various measures taken to safeguard the right to water, access to clean and safe water continues to be a challenge in various parts of the country. Mtwara is one of the regions where access to water continues to be a big challenge. In October 2019, it was reported that access to clean and safe water is a big challenge in Nanguruwe Village in Mtwara Region. Balbina Chikwemba, resident of the village, said that for more than six months they have not had access to clean and safe water, hence they had no choice but to use water from unsafe sources.<sup>461</sup> According to TAWASANET, only 60% of water points are functional, and Tanzanians typically spend 5% of their household expenditure on water compared to the global norm of 2%.<sup>462</sup>

In the budget speech of the Ministry of Water, the Minister of Water, Hon. Prof. Makame Mbarawa (MP), pointed out several challenges that hinder the effective provision of clean and safe water, as follows:<sup>463</sup>

#### **Insufficient budget allocated for the water sector**

As discussed above, by April 2019, the Ministry of Water had only received 51% of its development budget; and that contributed to some of the projects not being implemented and others not completed in time. This presents a challenge in ensuring the progressive realisation of

459 See HOTUBA YA WAZIRI WA MAJI NA UMWAGILIAJI, MHE. ENG. ISACK ALOYCE KAMWELWE (MB), AKIWASILISHA BUNGENI MAKADIPIO YA MAPATO NA MATUMIZI YA FEDHA YA WIZARA YA MAJI NA UMWAGILIAJI KWA MWAKA 2018/2019.

460 See the two budget speeches above.

461 LHRC Media Survey 2019.

462 See TAWASANET (2019) No-one left behind: Putting the water Sector to Work for Inclusive Growth and Sustainable Industrialization, Water Sector Equity Report 2019 at <http://www.tawasanet.or.tz/files/TAWASANET%20Equity%20Report%202019.pdf>, accessed 7th March 2020

463 See HOTUBA YA WAZIRI WA MAJI, MHE. PROF. MAKAME MBARAWA (MB), AKIWASILISHA BUNGENI MAKADIPIO YA MAPATO NA MATUMIZI YA FEDHA YA WIZARA YA MAJI KWA MWAKA 2019/2020



the right to water and sanitation, which is essential for human life with dignity, and a key factor for the realisation of the right to an adequate standard of living. International standards require Tanzania to spend between 0.64 % to 1.4 % of its GDP on the provision of safe water, sanitation, and water resource management, a target that has not been reached since 2016.<sup>464</sup>

### ***Shortage of experts in the water sector***

Like it was indicated in the 2018/19 budget speech, the shortage of experts remained a challenge in the financial year 2019/20. While the number of experts needed is 10,287, there are only 6,377, which equals to a shortage of 38%. Shortage of experts has led to poor or lack of supervision and management of some of the water projects.

### ***Inability to effectively implement water projects and failure to complete projects in time.***

Because of inefficiencies in the management of water projects, some projects were poorly implemented by contractors and experts, while some could not be completed on time. There were also instances of deceit and corrupt practices. For those implicated, legal actions were taken. Delays in completion of the projects without valid reasons hinder effective implementation of the Second Water Sector Development Programme (WSDP II).

### ***Non-payment of water bills by government institutions***

Government institutions were again implicated in non-payment of water bills as it was in the financial year 2018/19. By April 2019, government institutions owed a total of Tshs. 21.84 billion in water bills.

### ***Little investment in water projects by the private sector***

Despite an increase in demand for improved water and irrigation services and the existence of the enactment of the National Public-Private Partnership Policy of 2009 and the Public-Private Partnership Act of 2010, the contribution of the private sector to investments in providing water services remained unsatisfactory.

### ***Water leakages and Loss***

Water leakages are among the key challenges which faced the water

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<sup>464</sup> See TAWASANET (2019) No-one left behind: Putting the water Sector to Work for Inclusive Growth and Sustainable Industrialization, Water Sector Equity Report 2019.



sector in 2019. From 2016 to 2019, regional capitals' water authorities lost an average of Tshs. 51 billion per year and experienced a 33% water loss. For DAWASA, the water loss was 43%, while the amount lost was Tshs. 80 billion. Reasons for water leakages and loss include infrastructure being in dilapidated condition (characterized, among others, by weakened iron pipes), bypass and illegal water connection, vandalism of water equipment and tampering with water meters.

### **Lack of sustainability of water projects**

Most of the projects in rural areas lack sustainability due to the lack of effective management of the projects and maintenance of water sources and equipment. There are also weak structures to oversee revenue collection.

### **Challenges of Basin Water Boards**

Basin Water Boards face several challenges, including a shortage of funds, lack of experts and shortage of equipment. These challenges negatively impact management and supervision of water resources, leading to invasion and destruction of water sources, conflicts over water sources and misuse of water.

## **3.5 Right to Work**

### **3.5.1 Legal framework**

Right to work is provided for under the various international instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and The African Charter on Human and Peoples' Rights (ACHPR).<sup>465</sup> It allows an individual to gain a living by work they freely choose or accept.<sup>466</sup> An emphasis is made for governments to set up social, civil, political and economic mechanisms to enable the full and progressive realization of the right to work.<sup>467</sup> Right to work includes right to gain living by work and right to just and favourable working conditions.

The International Labour Organization (ILO) emphasises on the commitment of member states to adhere to and respect four categories of rights in enhancing the realization of the right to work. These are: freedom of association and recognition of the right to the

<sup>465</sup> Article 15 of ACHPR.

<sup>466</sup> Article 6(1) of the International Covenant on Economic, Social and Cultural Rights, 1966

<sup>467</sup> Ibid 6(2)



collective bargaining, elimination of all forms of discrimination in employment, elimination of child labour and elimination of forced and compulsory labour.<sup>468</sup> The United Republic of Tanzania under its Constitution, provides for the right to work on article 22. Sub article (1) is clear that “Every person has the right to work” and sub article (2) states that “Every citizen has the right to equal opportunity with equal terms to acquire any work position or any other undertaking in the country.” Article 23 and 24 provide for the right and fair remuneration for work done without any discrimination whatsoever. There is the Employment and Labour Relations Act of 2004, which sets the required standards for employment and labour rights in the country.

### 3.5.2 Key Issues

In 2019, key issues which affected the right to work for Tanzanians included: unemployment and underemployment; unpaid staff claims for teachers; PAYE and loan board payments burden for workers; shortage of workers in health, water and education sectors; poor working conditions; inadequate rest for workers; employability of university graduates and violations of labour rights of workers, especially in private companies.

#### 3.5.2.1 Unemployment and underemployment.

In 2019 unemployment and underemployment continued to be a challenge, especially for youth and university graduates. Factors contributing to unemployment, particularly among youth, include lack of employability skills among university graduates.<sup>469</sup> According to the Inter-University Council of East Africa, up to 50% of graduates are unemployable.<sup>470</sup> It is also observed that many youths are not prepared for self-employment as most university graduates rely on formal employment upon finishing their studies even though trends show a decline in formal employment. To make matters worse for the fresh university graduates who are now burdened with repayment of loans upon completing their education, most employers ‘want’ people who have working experience, usually of not less than three

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468 ILO Declaration on Fundamental Principles and Rights at Work, Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Annex revised 15 June 2010)

469 See “Over 50 per cent of EA graduates half-baked” The East African Newspaper, 12 June 2014, available at <http://www.theeastafrican.co.ke/news/Over-50-per-cent-of-EA-graduates-half-baked/2558-2345578-jw87c4/index.html>, accessed 21st January 2018;

470 The study showed that over 60% of university graduates in Tanzania lack the necessary employability skills, hence not prepared for the job market.



years in the relevant field.

In Tanzania, the agricultural sector continues to be the biggest employer, employing over 65% of people. The services industry employs 26.95%, while the industrial sector employs about 7.3% of the working force.<sup>471</sup> According to the Integrated Labour Force Survey of 2014, the formal sector only employs 5% of the labour force.

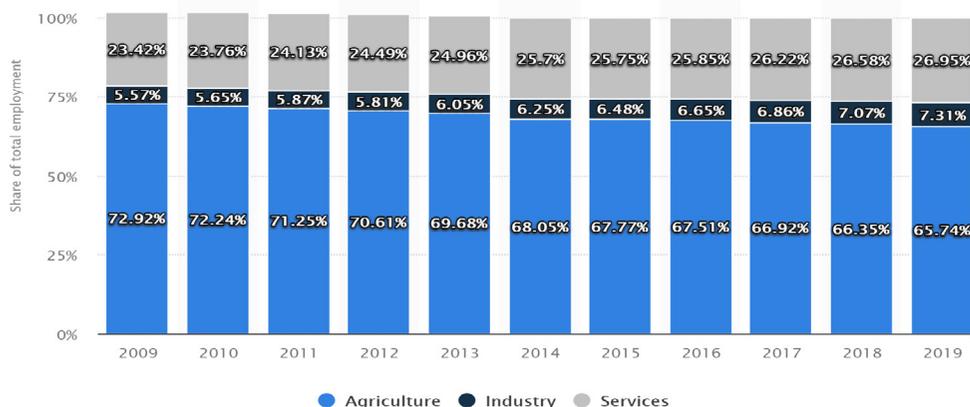


Figure 10: Distribution of employment by economic sector in Tanzania  
*Source: H. Plecher, 2020*

### 3.5.2.2 Unpaid staff claims for teachers and LGA civil servants

The Annual General Report on the Audit of the Local Government Authorities (LGAs) for the financial year 2017/2018 revealed that the outstanding staff claims and salary arrears in 22 LGAs amounted to Tshs. 11,141,505,574.<sup>472</sup> These claims, including salaries, leave, acting allowances and subsistence, remained outstanding for more than 12 months without being paid.<sup>473</sup> It was noted that these outstanding claims demoralize employees in the delivery of effective and efficient services to the community.<sup>474</sup> One of the groups of workers who have been the victims of unpaid staff claims is teachers.

471 H. Plecher (2020) : Employment by economic sector in Tanzania 2009 to 2019 available at <https://www.statista.com/statistics/447731/employment-by-economic-sector-in-tanzania/> accessed on 9th March 2020

472 See ANNUAL GENERAL REPORT ON THE AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES (LGAs) FOR THE FINANCIAL YEAR 2017/2018 at [http://www.nao.go.tz/?wpfb\\_dl=291](http://www.nao.go.tz/?wpfb_dl=291), accessed 10th April 2019.

473 Ibid.

474 Ibid.



During one of the parliamentary sessions in April 2019, the PO-RALG Deputy Minister, Hon. Mwita Waitara, acknowledged that the Government owes a total of 86,000 teachers unpaid staff claims of Tshs. 43 billion for, among others, salaries and leave allowances.<sup>475</sup>

**LHRC's call:** The Government to fast-track the process of paying the teachers their unpaid staff claims. Teachers are an important component for ensuring the right to quality education. Their working conditions must be good to facilitate a conducive learning environment. Not paying them their entitlements in time demoralises them and constitutes a violation of their right to work as well as their right to fair remuneration. Teachers are also essential in achieving key targets under SDG 4 and education-related targets under the Tanzania Development Vision 2025.

### **3.5.2.3 PAYE and loan board payments burden for workers**

According to the 2016/2017 CAG report on local government authorities, a total of 4,830 employees in 58 local government authorities (LGAs) received less than one-third of their basic salaries. This is contrary to the Specified Officers (Debt Recovery) Act No.7 of 1970 as emphasized in circular with Ref. No.CE.26/46/01/1/66 of 28th November 2012.<sup>476</sup> The CAG noted that excessive deductions significantly increased during the financial year 2016/2017 due application of the new rate of 15% to employees who are beneficiaries of Higher Education Students' Loans Board (HESLB), instead of 8% used to be charged previously.<sup>477</sup> The CAG warned that these excessive deductions might adversely affect employees' performance and their well-being and leave them vulnerable to fraudulent practices and misappropriation of public funds or abuse of office, which will affect service delivery. He recommended that "in future that any amendments to the law by the Government should apply prospectively in order to avert negative impact to parties that had already contracted using the Act before its amendments."<sup>478</sup> As for the year 2017/18, the CAG report showed

475 See Sharon Sauwa "Serikali ya Tanzania yabainisha mabilioni inayodaiwa na walimu" Mwananchi Newspaper, [online] 15 April 2019, at <https://www.mwananchi.co.tz/habari/kitaifa/Serikali-ya-Tanzania-yabainisha-mabilioni-inayodaiwa-na-walimu/1597296-5073172-erOppqz/index.html>, accessed 7th March 2020.

476 See THE ANNUAL GENERAL REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE AUDIT OF LOCAL GOVERNMENT AUTHORITIES FOR THE FINANCIAL YEAR 2016/2017 at [http://www.nao.go.tz/?wpfb\\_dl=257](http://www.nao.go.tz/?wpfb_dl=257), accessed 30th December 2018.

477 Ibid.

478 Ibid.



that basic salaries of 6,800 employees in 53 LGAs were subjected to deductions exceeding two-thirds of their salaries.<sup>479</sup>

In 2019, workers in both public and private sector continued to be burdened by the combined effect of PAYE, loan board payments and other loan repayments and monthly deductions. PAYE constitutes 30% of monthly pay, while loan board repayment currently constitutes 15% of monthly pay, rising from 8%, following amendment of the law in January 2017.

*Where any specified officer is liable for a debt, the proper authority may, without prejudice to any other means that may be available for the recovery of such debt, authorize the recovery of the debt by deductions from the specified officer's salary by monthly instalments not exceeding one-fourth of his monthly salary and the remittance of the sums deducted to the authority or corporation entitled to the payment of the debt provided that where a specified officer is liable for payment of two or more debts the total amount authorized to be deducted from his/her salary in any month shall not exceed two-third of the salary payable in that month.*

### **Section 3 of the Specified Officers (Debt Recovery) Act, 1970**

#### **3.5.2.4 Shortage of workers in health, water and education sectors**

CAG audit reports on local government authorities (LGAs) for the financial years 2016/2017 and 2017/2018 reveal an inadequate staff in LGAs. For the financial year 2017/2018, the CAG revealed a shortage of 37,544 staff (47%) in the health sector (hospitals, health centres and dispensaries) in 155 LGAs, shortage of 58,057 staff (29%) in primary education in 146 LGAs and shortage of 21,257 staff (24%) in secondary education in 146 LGAs.<sup>480</sup> The CAG indicated that the shortage of workers creates a burden for existing employees who have to work

<sup>479</sup> See ANNUAL GENERAL REPORT ON THE AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES (LGAs) FOR THE FINANCIAL YEAR 2017/2018 at [http://www.nao.go.tz/?wpfb\\_dl=291](http://www.nao.go.tz/?wpfb_dl=291), accessed 10th April 2019.

<sup>480</sup> See ANNUAL GENERAL REPORT ON THE AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES (LGAs) FOR THE FINANCIAL YEAR 2017/2018 at [http://www.nao.go.tz/?wpfb\\_dl=291](http://www.nao.go.tz/?wpfb_dl=291), accessed 10<sup>th</sup> March 2020.



harder to meet performance expectations. He warned that this negatively affects efficiency and effectiveness of service delivery and could result in mental and physical health problems and lower morale and job satisfaction. Further, longer working hours may contravene labour laws requirements.

#### ***3.5.2.5 Poor working conditions***

Poor working conditions constituted a violation of the right to work, specifically the right to just and favourable working conditions. In 2019, poor working conditions continued to exist in several areas such as schools as discussed above. For instance, shortages of classrooms, teacher houses, desks and unpaid staff claims constituted poor working condition. For workers in the private sector, LHRC's Human Rights and Business Report of 2018/19 revealed that poor working conditions in privately-owned companies to be among issues affecting human rights in Tanzania,

#### ***3.5.2.6 Inadequate rest for workers***

As discussed above, the shortage of workers in key sectors such as health and education create a burden for the available workers to work beyond the required time to meet performance expectations. This creates a toll on workers and leaves them without adequate rest, which is their entitlement under labour and human rights laws. Inadequate rest may also lead to a violation of the right to spend adequate time with family.

#### ***3.5.2.7 Employability of College and University Graduates***

As discussed under subchapter 3.2 above, the employability of university graduates emerged as an issue in 2019. Limited employability skills among graduates have been mentioned as one of the key factors affecting the chance of employment for a fresh graduate. Lack of these skills denies youth an opportunity to realise their right to work and earn a living. As discussed above, over 50% of graduates lack the necessary employability skills, including the ability to express themselves.

In August 2019, the Tanzania Private Sector Foundation (TPSF) revealed that each year about 900,000 graduates enter the job market. However, the market generates only about 50000 to 60,000 jobs. According to TPSF, for years employers have been raising concerns that the education which is provided on colleges and higher-level



institutions does not match with the market demands. The mismatch creates a burden on employers as they are forced to spend a lot of money to train employees on the relevant skills.<sup>481</sup> To help address this problem, in August 2019, TPSF and the Ministry of Education, Science and Technology launched the Sector Skills Council.<sup>482</sup> This is what was seen as a solution as the Government partnered with TPSF to address the skills gap.

### *3.5.2.8 Violations of labour rights of workers in private companies*

In 2019, LHRC released its Human Rights and Business Report of 2018/19. The report is a result of human rights and business survey conducted at private companies in 15 regions of Tanzania Mainland to check, among other things, compliance with labour and human rights laws. Key findings of the study included; poor remuneration/inadequate wages; restrictions on freedom of association and collective bargaining; low awareness about labour laws, rights and duties; violation of employment contracts; denial of written employment contracts and copies of contracts; overtime work without pay or adequate pay; poor labour inspection; shortage or lack of personal protective equipment (PPE); leave granted as a privilege in some private companies; discrimination of women and PWDs at workplaces; and inadequate rest for workers. All these constituted the violation of the right to work.

In 2019, LHRC continued with provision of legal aid to indigent persons through its legal aid offices in Dar es Salaam and Arusha, as well as through legal aid and its network of paralegals and human rights monitors. Based on the data on legal aid provided to the indigent persons, 29% of complaints by clients related to employment, preceded only by 36% of cases – which were on land-related issues.<sup>483</sup> Although the legal framework seems to be adequate for the realisation of the right to work in Tanzania, the report reveals areas where more needs to be done, especially on the practice side of employers. The issues which burden employees should be addressed and for those who are owed have to be paid while the Government need to employ more staff in the sectors which experience a shortage.

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481 See TPSF “Tanzania Launches Sector Skills Councils to bridge acute Skills Gap” 19 August 2019, at <https://tpsftz.org/tanzania-launches-sector-skills-councils-to-bridge-acute-skills-gap/>, accessed 7<sup>th</sup> March 2020.

482 Ibid.

483 LHRC Legal Aid Data 2019.



## Chapter 4 Collective Rights

### 4.1 Overview

Collective rights are the rights that belong to the group of people as opposed to individual rights. An individual enjoys collective rights as part of a group. Collective rights include the right to self-determination, the right to clean and safe environment, the right to natural resources, the right to peace and the right to development. These rights are enshrined in various international human rights instruments including the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966; the African Charter on Human and People's Rights (ACHPR) of 1981 and the United Nations Charter of 1945. For a right to be recognised as a collective right, the holder of the right should be collective or affirm the collective identity of groups in society, the exercise of the right pertains to a legally protected collective good, the interest of a right is of a collective nature.<sup>484</sup>

### 4.2 Right to Development

#### 4.2.1 Legal Framework

The United Nations (UN) has defined development as “...**an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.**”<sup>485</sup>

The rule of law, good governance, the participation of people and respect for human rights are key for the realization of the right to development, which is essential in enjoyment of other fundamental human rights guaranteed under the ICCPR and the ICESCR. The Government must involve community members in creating development plans and policies,<sup>486</sup> as well as ensuring a fair distribution of the benefits. As indicated in the UN Declaration on the Right to Development, development is not just economic, but also social, cultural and political.<sup>487</sup>

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484 Andrea, N. (2018) *Collective Rights: In The United Nations Declaration On The Rights of Peasants And Other People Working In Rural Areas*, Fian International available at [https://www.fian.org/fileadmin/media/publications\\_2018/Reports\\_and\\_guidelines/droits\\_collectifs\\_UK\\_web.pdf](https://www.fian.org/fileadmin/media/publications_2018/Reports_and_guidelines/droits_collectifs_UK_web.pdf), accessed on 18<sup>th</sup> March 2019.

485 Article I of the UN Declaration on the Right to Development, A/RES/41/12, 4 December 1986, available at <http://www.un.org/documents/ga/res/41/a41r128.htm>, accessed 27<sup>th</sup> December 2017.

486 In Tanzania, we have the Tanzania Development Vision 2025, which is an essential tool that guides the development process in the country.

487 Article I of the UN Declaration on the Right to Development.



Governments are also obligated to formulate appropriate national development policies that seek to improve the well-being of the entire population as well as of individuals to ensure meaningful participation in development and fair distribution of benefits resulting from such development.<sup>488</sup> The Declaration further provides for states' duty to co-operate with each other in ensuring development and eliminating obstacles to development.<sup>489</sup>

## 4.2.2 Key Issues

### 4.2.2.1 Positives in infrastructural development, indicating progress in the realization of the right to development

In the past 15 years, Tanzania has made significant progress in infrastructural development. According to the African Development Group, considerable progress has been in the development of transport infrastructure, especially in the road subsector.<sup>490</sup> In recent years, the Government has invested a lot in infrastructural development, especially of roads, railway, water, air and pipelines.

In 2019, the Government continued implementing various projects geared towards improving infrastructure in different parts of Tanzania in line with the Tanzania Development Vision 2025. The projects include the construction of bridges and flyovers and the expansion and construction of roads, especially in rural areas. The key players in these projects are the Ministry of Works, Transport and Communications, Tanzania National Roads Agency (TANROADS) and Tanzania Rural and Urban Roads Agency (TARURA).

According to the Minister of Works, Transport and Communications, Hon. Eng. Isack Aloyce Kamwelwe (MP), by March 2019, the Ministry had received 60.98% of the budget allocated for implementation of development projects for the financial year 2018/2019.<sup>491</sup> He noted that by March 2019, the transport sector had received Tshs. 1,205,175,488,808.07, of which Tshs. 404,029,032,387.7 had been allocated for the road subsector.<sup>492</sup> He mentioned various infrastructural

488 Ibid, Article 2(3).

489 Ibid Article 3(3).

490 See African Development Bank Group, *TANZANIA: Transport Sector Review*, September 2013, at [https://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Tanzania\\_-\\_Transport\\_Sector\\_Review.pdf](https://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/Tanzania_-_Transport_Sector_Review.pdf), accessed 4<sup>th</sup> March 2020.

491 See HOTUBA YA WAZIRI WA UJENZI, UCHUKUZI NA MAWASILIANO MHESHIMIWA MHANDISI ISACK ALOYCE KAMWELWE (MB), AKIWASILISHA BUNGENI MPANGO NA MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA WA FEDHA 2019/20 at <http://mwtc.go.tz/>, accessed 5<sup>th</sup> March 2020.

492 Ibid.



projects that have been completed and are ongoing. These include road, flyover and bridge construction projects. According to the Minister, during the financial year 2018/19, through TANROADS, the ministry had planned to construct tarmac roads of a total of 597.10 km. By March 2019, 190.59 km were already complete.<sup>493</sup> He also mentioned that 36km of tarmac roads had been maintained.<sup>494</sup> He further mentioned the implementation of ongoing projects in Dar es Salaam to reduce traffic congestion in the city. These include the Ubungo Interchange, the construction of Salender Bridge, Morocco – Mwenge road expansion, and Kimara – Kibaha road expansion.<sup>495</sup> Other key infrastructure projects in the country include completion of construction of Terminal 3 of the Julius Nyerere International Airport (JNIA), which was officially opened by Hon. President John Magufuli in August 2019,<sup>496</sup> maintenance of Mtwara Airport, completion of construction of TRC Dar es Salaam – Morogoro 300km railway, ongoing construction of Morogoro-Makutupora 422km railway, maintain of Tanga-Same 199km railway. Further, the constructions of bridges in Mara, Singida, Ruvuma, Pwani, Manyara and Kagera are complete.



Picture 4: The Ubungo Interchange in Dar es Salaam, due to be completed end of 2020

Source: MWTC

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493 Ibid.

494 Ibid.

495 Ibid.

496 LHRC Media Survey 2019.



For the financial year 2019/20, the budget speech of the Ministry of Works, Transport and Communications indicates that the Government will continue implementing various infrastructural development projects.<sup>497</sup> These projects include those aimed at reducing traffic congestion in Dar es Salaam City, including the ongoing construction of Kibamba – Kisopwa – Kwembe – Makondeko km 14.66 road, Banana – Kitunda – Kivule – Msongola km 14.7 road, and Goba – Makongo km 4 road.<sup>498</sup>

Infrastructural development has also contributed to economic growth, with Tanzania enjoying substantial and stable economic growth in recent years. According to the Bank of Tanzania (BoT), real GDP grew by 7.0% in 2018, faster than the 6.8% for the year 2017. The growth was driven mainly by investment in social and physical infrastructure, agriculture, manufacturing, and trade.<sup>499</sup> The BoT report shows that the fastest-growing activities were agriculture, construction, and transport.<sup>500</sup> Developing infrastructure is also key for attracting investment and supply of goods and services.



Figure 11: Real GDP Growth Tanzania

Source: Bank of Tanzania (BoT) 2019

However, despite the achievements in the development of infrastructure, concerns such as quality of some of the projects and corruption have continued to linger. Timely completion of projects has

<sup>497</sup> See HOTUBA YA WAZIRI WA UJENZI, UCHUKUZI NA MAWASILIANO MHESHIMIWA MHANDISI ISACK ALOYCE KAMWELWE (MB), AKIWASILISHA BUNGENI MPANGO NA MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA WA FEDHA 2019/20.

<sup>498</sup> Ibid.

<sup>499</sup> See Bank of Tanzania, ANNUAL REPORT 2018/19, at <https://www.bot.go.tz/Publications/EconomicAndOperationsAnnualReports/ANNUAL%20REPORT%202018-19%20SIGNED.pdf>, accessed 3<sup>rd</sup> March 2020.

<sup>500</sup> Ibid.



also proven to be too big a task. For the road sector, challenges include overloaded vehicles, which damage roads, and poor maintenance.

#### *4.2.2.2 Concerns over human development*

Despite the growth experienced in terms of economy, the main challenge for Tanzania remains to translate such growth into poverty reduction to boost human development. Majority of the people still live under or slightly above USD 1 per day. Lack of modernization of the agricultural sector is also a challenge for economic development in Tanzania, considering that it employs more than 65% of Tanzanians. The AU Maputo Declaration on Agriculture and Food Security of 2003 requires that at least 10% of the total budget should be allocated for agriculture, but this has not been realised. In most cases, the less-approved budgeted funds are also not timely disbursed; hence impacting economic development significantly.

#### *4.2.2.3 Concerns over political development*

Political development means greater participation in political life. Participation rights (freedoms of expression, assembly and association) are essential in participating in political life. However, as discussed in 2.3 and 2.6 above, participation rights continued to stall, owing to the existence of restrictive provisions in laws governing such rights, exacerbated by various amendments of laws made in 2019.<sup>501</sup> Consequently, as civic space continued to shrink, political development was negatively impacted in 2019.

#### *4.2.2.4 Social development*

Social development entails the effective realisation of key social rights such as the right to education, right to health, right to water and right to an adequate standard of living. Tanzania's Development Vision 2025 seeks to achieve high-quality livelihood for Tanzanians. To meet this goal, several strategies are in place including ensuring food self-sufficiency and security, universal primary education, access to quality primary health care, absence to abject poverty and universal access to safe water.

As discussed in Chapter 3 above, significant steps have been taken to ensure the progressive realisation of social rights in 2019. For instance, in education, the Government continued to implement the fee-free

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<sup>501</sup> See Chapter Two of this report.



education policy, which has significantly improved access to education for children. However, several challenges continued to hinder the effective realisation of the right to education in 2019, including a shortage of relevant resources, VAC, shortage of classrooms, and a shortage of toilet holes.

In the health sector, the Government continued with its efforts to enhance access to health, including through construction and maintenance of health facilities, as discussed in 3.3 above. However, challenges such as shortage of budget, shortage of healthcare workers and shortage of health facilities, were reported in different parts of the country.

Progressive realisation of social rights requires adequate revenue collection. The realisation of these second-generation human rights requires taxation to enable the Government to provide basic social services such as food, water, clothing, shelter and healthcare for its people, especially the poorer section of the society. It is, therefore, necessary for businesses and individuals to pay their taxes to contribute to their well-being by enabling the Government to progressively realise social and economic rights, which in turn brings about social development. This is a duty for every Tanzanian and business operating in the country because the Government need taxes as the most sustainable source of revenue, to ensure the progressive realization of social and economic rights.<sup>502</sup>

Human rights obligations related to taxation exist under various regional and international instruments, including under the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, the UN Declaration on the Right to Development, and the UN Guiding Principles on Extreme Poverty and Human Rights. The Principles provides for an obligation for States to “make certain that adequate resources are raised and used to ensure the realization of the human rights of persons living in poverty.”<sup>503</sup> The collection of taxes and allocation of resources is **essential to the realization of**

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502 See Sebastián López Nieto, Beretta Godoy, Taxation as a human rights issue, International Bar Association, September 2016 at <https://www.ibanet.org/Article/Detail.aspx?ArticleUId=4d8668cb-473a-44ea-b8be-1327d6d9d977>, accessed 20th January 2019.

503 See Office of United Nations High Commissioner for Human Rights, UN Guiding Principles on Extreme Poverty and Human Rights at [https://www.ohchr.org/Documents/Publications/OHCHR\\_ExtremePovertyandHumanRights\\_EN.pdf](https://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf), accessed 20th January 2019.



**the right to development** and requires efficient and equitable State action.

In recent years, the Government has taken steps to increase revenue collection. However, factors such as tax evasion, tax avoidance and corruption, continue to affect revenue collection. For instance, in 2019, the Government battled with Acacia Mining Company over allegations of tax evasion and corruption.

### 4.3 Right to Enjoy and Benefit from Natural Resources

#### 4.3.1 Legal Framework

The African Charter on Human and People's Rights of 1981 provides that "all people shall freely dispose of their wealth and natural resources" and importantly that "this right shall be exercised in the exclusive interest of the people."<sup>504</sup> The right is also covered under the UN General Assembly Resolution 1803 of 1962 which calls for "permanent sovereignty over natural resources." Domestically the Constitution of the United Republic of Tanzania provides for the right to natural resources under Article 9. This article provides that "the use of natural resources places emphasis on the development of people and in particular is geared towards the eradication of poverty, ignorance and disease." Nevertheless, this provision is unenforceable as it is not in the Bill of Rights within the URT Constitution.

Natural resources are important for the generation of revenue and employ many Tanzanians. A good example is in the tourism industry. The mining industry is another area where natural resources generate revenue and provide employment where both local and foreign investors have invested in it. Duty bearers are required to ensure permanent sovereignty over the natural resources to enhance national development and wellbeing of the people, ensure respect of the rights and interests of the indigenous people, equitable sharing of transboundary natural resources and protection and conservation of the natural resources.<sup>505</sup> Under the Constitution of the United Republic of Tanzania, the State authority and agencies are required to direct policies and programmes in ensuring that the use of natural wealth places emphasis on the development of the people and

<sup>504</sup> Article 21(1).

<sup>505</sup> Christina, V. International Environmental Law: Sovereignty over Natural Resources and Prohibition of Transboundary Harm available at <https://www.uio.no/studier/emner/jus/jus/JUS5520/h14/undervsiningsmateriale/3.-sovereignty-over-natural-resources.pdf>, accessed on 9<sup>th</sup> March 2020.



geared towards eradication of poverty, ignorance and disease.<sup>506</sup>

### 4.3.2 Key Issues

#### 4.3.2.1 Action to safeguard the right to enjoy and benefit from natural resources

Since 2017, the Government has taken various measures to safeguard the right to right to enjoy and benefit from natural resources. These include taking legislative action to protect natural resources; enhance monitoring of companies in the extractive sector – especially the mining sector; and taking action to address tax evasion. The legislative action included the amendment of the Mining Act of 2010. The amendments included making corporate social responsibility (CSR) mandatory in the mining sector; ban of export mineral concentrates; probe into mineral exports; holding senior energy and mineral sector officials to account; probe into Diamond and Tanzanite mining operations; introduction of new natural resources laws,<sup>507</sup> which have led to a renegotiation of MDAs, most notably with Acacia Mining Company and later Twiga Minerals Corporation (under Barrick Gold Corp.) Earlier, the CAG report released in March 2017 had revealed that there were significant weaknesses in several Mining Development Agreements (MDAs). For example, it has been revealed that one MDA with Acacia Mining Company contained “terms which undermine public interests” and that the Government mainly relied on prospecting and feasibility reports by license applicants.<sup>508</sup>

In his ministry’s budget for the financial year 2019/2020, the Minister of Constitutional and Legal Affairs, Hon. Amb. Dr. Augustine Mahiga (MP), revealed that in ensuring effective implementations of the new natural resources’ laws enacted in 2017, his ministry was developing a draft joint strategy for implementation of the laws, which would soon be shared with stakeholders for inputs.<sup>509</sup>

In October 2019, the Barrick Gold Corporation issued a press release announcing that it had reached an agreement with the United Republic of Tanzania to settle all disputes between the Government

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506 Article 9(i) of the Constitution of the United Republic of Tanzania, 1977

507 Natural Wealth and Resource Contracts (Review and Renegotiation of Unconscionable Terms) Act 2017 and the Natural Wealth and Resources (Permanent Sovereignty) Act of 2017.

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

509 See HOTUBA YA MHESHIMIWA BALOZI DKT.AUGUSTINE PHILLIP MAHIGA (MB) WAZIRI WA KATIBA NA SHERIA AKIWASILISHA BUNGENI MPANGO NA MAKADIRIO YA BAJETI YA WIZARA KWA MWAKA WA FEDHA 2019/2020.



and companies formerly operated by Acacia Mining Company but now managed by Barrick.<sup>510</sup> Barrick indicated that the final agreements had been submitted to the AG for review and legalization. It further revealed that the agreement included a payment of \$300 million to settle all outstanding tax and other disputes and the lifting of the concentrate export ban<sup>511</sup> – which the Government had imposed in 2017. Following this agreement, Tanzania will be entitled to the sharing of future economic benefits from the mines on a 50/50 basis and a 16% stake in each of the mines.<sup>512</sup>

Moreover, the Barrick press release revealed that the agreement included what it calls the ‘Africa-focused international dispute resolution framework’ and that Twiga Minerals Corporation would now manage the mines formerly operated by Acacia Mining Company – Bulyanhulu, North Mara and Buzwagi mines. Additionally, Barrick revealed that the agreement includes the Government of Tanzania receiving its half of the economic benefits from taxes, royalties, clearing fees and participation in all cash distributions made by the mines and Twiga.

**LHRC’s call:** While the action to safeguard the right of the State and Tanzanians to enjoy and benefit from natural resources through legal and policy reforms is commendable, the Government has a duty to ensure that the people at a grassroots level, especially those residing near the natural resources, genuinely enjoy the benefits. Also, the making of key pieces of legislation such as those on natural resources should employ a wider stakeholder involvement approach to guarantee the effectiveness of the legislation as a policy instrument. Transparency and Parliamentary scrutiny of MDAs are also important in safeguarding the right to enjoy and benefit from natural resources.

#### *4.3.2.2 Challenges in the realization of the right to enjoy and benefit from natural resources*

In 2019, several challenges continued to affect the realisation of the right to enjoy and benefit from natural resources. These challenges include corruption; tax evasion and avoidance; tax incentives; transfer

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510 See Barrick’s press release, “The Launch of Twiga Minerals Heralds Partnership Between Tanzanian Government and Barrick” at <https://www.barrick.com/English/news/news-details/2019/The-Launch-of-Twiga-Minerals-Heralds-Partnership-Between-Tanzanian-Government-and-Barrick/default.aspx>, accessed 9<sup>th</sup> March 2020.

511 Ibid.

512 Ibid.



pricing;<sup>513</sup> and loopholes in mining and natural resources laws.<sup>514</sup> Different methods are used to avoid tax, including non-payment of taxes through agreements with governments, subsidies, loopholes, tax havens, creative accounting practices, “transfer-pricing”, and others.<sup>515</sup> In July 2018, Hon. President John Magufuli revealed the main methods used to avoid tax in Tanzania, including transfer pricing.<sup>516</sup> He noted that subsidiary companies tend to seek loans from foreign parent companies and engage in intra-firm transactions to increase costs of production as a way of avoiding tax.<sup>517</sup> In June 2019, the President held a meeting with businesspersons from 139 districts of Tanzania Mainland, during which he revealed that he had obtained a list of 17,446 companies implicated in tax evasion and gave them 30 days to pay their tax dues.<sup>518</sup>

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513 See LHRC (2019), Human Rights and Business Report 2018/19, at [www.humanrights.or.tz](http://www.humanrights.or.tz).

514 See analysis by HakiRasilimali at <https://www.hakirasilimali.or.tz/tamko-rasmi-la-hakirasilimali-juu-ya-miswa-da-ya-tasnia-ya-madini/>.

515 See Mauricio Lazala “Tax avoidance: the missing link in business & human rights?” at <https://www.business-humanrights.org/en/tax-avoidance-the-missing-link-in-business-human-rights>, accessed 10<sup>th</sup> March 2020.

516 See LHRC (2019), Human Rights and Business Report 2018/19, at [www.humanrights.or.tz](http://www.humanrights.or.tz).

517 Ibid.

518 Ibid.



## Chapter 5 Rights of Vulnerable Groups

### 5.1 Introduction

Vulnerable groups are groups within the society which are more likely to be victims of violations of fundamental human rights than others. In Tanzania, vulnerable groups include women, children, persons with disabilities (PWDs), the elderly and persons living with HIV/AIDS. These groups require special protection as they are more likely to face human rights violations than others. There is special protection, which is guaranteed under laws and conventions that specifically provide for rights of these groups, seeks to ensure they enjoy and realize fundamental human rights equally with others.

### 5.2 Women's Rights

#### 5.2.1 Legal Framework

As human beings, women enjoy human rights guaranteed and protected under key human rights conventions that form the international bill of rights, namely the Universal Declaration of Human Rights (UDHRC), International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social and Cultural Rights (ICESCR). However, some treaties specifically provide for women's rights, namely the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 and Protocol Additional to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003. Another key convention that provides for rights of women is the SADC Protocol on Gender and Development of 2008.

The principle of non-discrimination takes centre stage when discussing women's rights. Domestically, the Constitution of the United Republic of Tanzania of 1977 guarantees human rights generally under the bill of rights in the constitution and specifically the right to equality before the law, which prohibits any form of discrimination, including based on sex and gender.<sup>519</sup> Under CEDAW, Maputo Protocol and SADC Protocol on Gender and Development, Tanzania is obligated to pursue all appropriate means to eliminate discrimination against women and promote and ensure gender equality. In the country, there are also several laws which provide for and protect women's rights, including the Land Act and Village Land Act of 1999, which provide for the right of women to own land, and the Penal Code,

<sup>519</sup> See Article 13 of the Constitution of the United Republic of Tanzania 1977.



which protects women against sexual harassment, FGM and human trafficking, to mention but a few. In the same legal framework, there are laws which do not protect women from discrimination or abuses such as the Laws of inheritance (especially the Codified Customary Laws of 1963) and the Law of Marriage Act 1971.

### **5.2.2. Key Issues**

For the year 2019, key issues that affected women's rights included: government and CSO action to address VAW; increased reporting of GBV and VAW incidents; physical, sexual and psychological violence against women; sexual corruption; gender inequality; and budget for NPA-VAWC.

#### **5.2.2.1 Government and CSO action to address VAW**

In 2019, efforts by government and non-government actors in addressing VAW included the implementation of the NPA – VAWC, enhancing access to legal aid for different groups, including women, arrest and prosecution of perpetrators of VAW, enhancing the capacity of police gender and children desks, and continuing implementing with women's empowerment programmes. These efforts are key to achieving SDG 2030 goals relating to gender equality and health, as well as the target of high-quality livelihood under the Tanzania Development Vision 2025; and are further discussed in 5.3 below.

#### **5.2.2.2 Increased reporting of GBV and VAW incidents**

Collective efforts to combat VAC and VAW by government and non-government actors have led to increased reporting of such incidents. In December 2019, Assistant Commissioner of Police Zuberi Chembera, revealed that establishment of one-stop centres, which address GBV, has led to increased understanding of VAC and VAW, as well as reporting of such incidents.<sup>520</sup>

CSO work has also significantly contributed to increased reporting of GBV and VAW. LHRC and other CSOs such as Twaweza, TNGP, Equality for Growth (EfG), TAWLA, WILDAF and WLAC continued to promote women's rights. These included the promotion of freedom from violence, empowering women legally and economically, and raising community awareness on GBV and its impact on women, communities and national development. As a result, there has been

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<sup>520</sup> LHRC Media Survey 2019.



increased awareness and reporting of VAW incidents.

### **5.2.2.3 The alarming rate of violence against women**

Violence against women (VAW) refers to any act of violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women.<sup>521</sup> It includes threats which such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Examples of VAW include: rape, sexual harassment at work, trafficking in women and girls, forced prostitution, trafficking in women, beatings, torture, sextortion, and harmful traditional practices such female genital mutilation (FGM). VAW is a form of discrimination and constitutes human rights violation,<sup>522</sup> violating rights such as the right to life; right to physical integrity; right to liberty and personal safety; right against torture or cruel, inhuman or degrading treatment or punishment; and right to health.<sup>523</sup>

### **African context**

The 2018 report on the state of women in Africa by the State of the African Woman Campaign Project,<sup>524</sup> brings into light the current situation of VAW in the African context. The State of African Women Report indicates that:

- One in three African women experience VAW in their life and lifetime prevalence of some of physical and/or sexual violence among women by an intimate partner is around 36.6%.
- One in three African women experience VAW in their life and lifetime prevalence of some of physical and/or sexual violence

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521 See the United Nations Declaration on the Elimination of Violence against Women of 1993.

522 United Nations Human Rights, Office of the High Commissioner, Violence Against Women, Information Series on Sexual and Reproductive Health and Rights, available at [http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO\\_VAW\\_WEB.pdf](http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_VAW_WEB.pdf), accessed 30th December 2018.

523 See Nieves Rico, Gender-Based Violence: A Human Rights Issue, available at <http://www.cepal.org/mujer/noticias/paginas/9/27409/genderbasedviolence.pdf>, accessed 30th December 2018; Amnesty International, Violence Against Women Information, available at <https://www.amnestyusa.org/our-work/issues/women-s-rights/violence-against-women/violence-against-women-information>, accessed 30th December 2018.

524 Campaign funded by the European Union and implemented by the International Planned Parenthood Federation Africa Region (IPPF Africa Region) – sexual and reproductive health rights organization based in Nairobi, Kenya – in collaboration with five other organisations. The campaign is based on advocacy, communication and awareness-raising and seeks to convert policies on the protection of women’s rights in Africa into reality.



among women by an intimate partner is around 36.6%.

- Vulnerable groups such as young and adolescent women, elderly women, and women with disabilities are more vulnerable to certain types of violence, including physical and sexual violence.
- Persisting gender norms, beliefs and practices that tolerate VAW contribute to general acceptance of VAW among men and women in Africa.
- There are gaps in legal frameworks on VAW for East African Countries, although to a slightly lesser extent in Tanzania. Tanzania was also identified as one of the countries which lack legislation prohibiting marital rape. Only 14 countries in Africa have legislation that prohibits marital rape, namely: Benin, Burkina Faso, Cape Verde, Comoros, The Gambia, Ghana, Kenya, Lesotho, Namibia, Rwanda, São Tomé and Príncipe, Sierra Leone, South Africa and Zimbabwe.
- There are several key gaps that hinder effective protection of women's rights and rights of VAW survivors in African countries, including access to justice. These gaps are lack of a comprehensive legal framework on VAW; lack a holistic approach to GVAW in the spirit of the required state response as articulated in the Maputo Protocol; financial and human resource constraints; and patriarchal and gender norms.

### **Tanzanian context**

Despite efforts, to combat VAW, effective realisation of women's rights continues to be hindered by VAW, especially physical and sexual VAW. In October 2019, the National Head of Police Gender and Children Desk, Deputy Commissioner of Police (DCP) Mary Nzuki, revealed that GBV incidents registered by police gender and children desks in Tanzania increased from 41,416 in 2017 to 43,487 in 2018, an increase of 2,071.<sup>525</sup> In 2019, police data indicates that by June, a total of 3,709 incidents of rape of women and children were

**88,612+**

Number of GBV incidents recorded by police from 2017 to June 2019.

<sup>525</sup> LHRC Media Survey 2019; See also "Ukatili wa kijinsia wazidi kushika kasi" Nipashe Newspaper, 12 October 2019.



reported to police stations.<sup>526</sup>

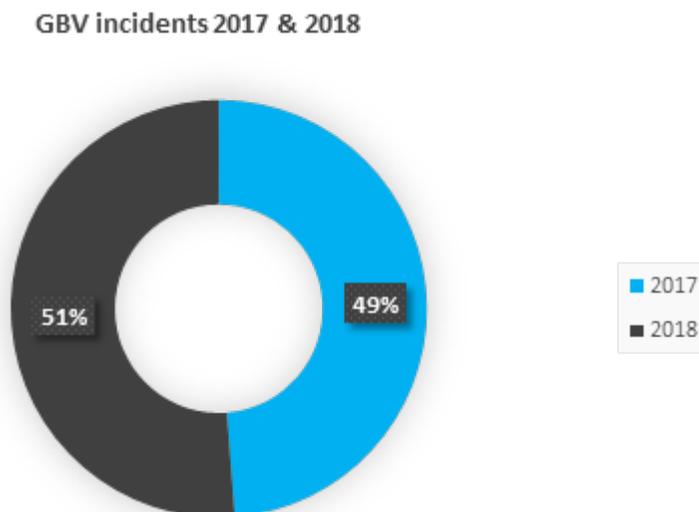


Figure 12: GBV incidents recorded by police in 2017 & 2018 (n=84,903)

Source: *Police data 2017 & 2018*

### **Violence and killings, including killings motivated by jealousy**

Through its media survey and human rights monitoring, in 2019 LHRC recorded at least 14 incidents of physical VAW, of which 12 were killings. Out of the 12 killings of women by their spouses, eight were motivated by jealousy. The table below provides a summary of incidents of physical VAW that LHRC documented in 2019. It should be known that these are few incidents which the LHRC could record, but there are many incidents which are recorded by the police and many more which go unreported for various reasons. Unfortunately, for the year 2019 LHRC could not obtain the relevant data from the Police Force.

Table 12: Incidents of physical violence against women documented by LHRC – Jan to Dec 2019

Reported Incident	Month
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<sup>526</sup> See police data at <https://www.polisi.go.tz/#1572254410984-8dc61ebe-94a9>, accessed 2nd March 2020.



<b>Muleba, Bukoba:</b> Police are looking for a resident of Mlela Village, Eliud Gervas, who is accused of killing his wife due to jealousy, accusing her of adultery.	April
<b>Monduli, Arusha:</b> Another woman, Anastazia Paulo (62), has been found dead in her house under suspicious circumstances at <i>Mto wa Mbu</i> area, presumed killed. She was the tenth woman to be killed under suspicious circumstances in the period of 3 years in the area, believed to be motivated by witchcraft belief/suspicion, alcoholism, jealousy and gender-based violence.	April
<b>Morogoro:</b> Leonora Ogora (37), the wife of Michael Mwandu (54), resident of Dumila, was killed by the husband after she confessed to having an affair with another man. The husband killed himself after the incident.	May
<b>Shinyanga:</b> Zainab Shija (28) was reportedly killed by her spouse because of jealousy.	June
<b>Kyela, Mbeya:</b> Hawa Kamwela (32) is said to have been killed by her husband for allegedly forcing him to send their child to begin secondary education.	January
<b>Shinyanga:</b> Maselle Mheziwa (40) was reportedly strangled to death by her husband, Omary Juma (46), after accusing her of having an extra-marital affair with a man who bought her a drink.	February
<b>Kiteto, Manyara:</b> Eva Ndalw (20) of Kwamamba Kiteto District is said to have been stabbed to death by her husband after he accused her of having an extra-marital affair with her brother-in-law (jealousy).	June
<b>Serengeti, Mara:</b> of his wife Mkami Mwitonyi (22) the wife of one Mbuge Magori was accused by the said husband of losing his phone. What the husband did was to beat and cut both her ears. It was reported that he wanted to slaughter her (commit homicide), but their child begged him not to do it, hence decided to tie her with a rope and cut her ears instead.	October
<b>Tunduru, Ruvuma:</b> Police in Ruvuma arrested a PCCB officer, James Paul (27), accused of shooting and killing his wife due to jealousy. On 20 <sup>th</sup> October 2019 a woman was said to have been shot dead by one James Paul, a PCCB officer due to being jealous. The man was arrested after the incident.	October
<b>Ukerewe, Mwanza:</b> A 19-year-old, Neema Kabulu, said to be the lover of one Joseph Msafiri a teacher at Namagubu Primary School in Ukerewe District, was attacked with a machete and injured severely after being accused by the lover of being unfaithful. The teacher was arrested by the Police after the incident.	October
<b>Arusha</b> Lydia Kiwale, the wife of Amir Hassan is said to have been killed by the husband who was jealous. The husband, who is so accused, was arrested by the Police.	October



<p><b>Dodoma:</b> Police reported that on 28<sup>th</sup> June 2019, Mkame Wambura (28) and her 3-month-old baby were severely injured after her husband and father of the child, Elias Warioba (30), poured petrol on the two and torched them. It was reported that the cause of the quarrel was jealousy, and the husband was drunk when he committed this inhumane act.</p> <p>The Police Force in the region also mentioned that in the first half of 2019 GBV incidents increased by 343 incidents.</p>	July
<p><b>Handeni, Tanga:</b> Amina Hussein (38), the wife of Juma Hemedi (45), resident of Malezi area in Handeni District, died and the husband was arrested by police, accused of brutally killing her on 8<sup>th</sup> July 2019 due to jealousy.</p>	July
<p><b>Shinyanga:</b> Suzana Bundala (21) is said to have been hit by a heavy object on her head causing her death., after her brother found her sleeping with her lover in their house. The incident occurred in July 2019 in Bugoshi Village, Uyogo Ward and Police in Shinyanga were looking for a man called Daudi Bundala, who was accused of attacking his sister</p>	July
<p><b>Maswa, Simiyu:</b> A female teacher at Shanwa Seminary Secondary School is said to have been murdered by her husband one Emmnuel Nyandu (35), resident of Majengo Street in Maswa District, who stands charged for murder.</p>	July
<p><b>Ukerewe, Mwanza:</b> , Jenifa Julias (30) a pregnant wife of Celestine Masatu (39), resident of Kagera Village in Ukerewe District, , was stabbed brutally with a knife on different parts of her body, including her stomach, before the husband cutt his own throat due to jealousy. The husband died enroute to hospital and the Jenifa the wife, was rushed to Bugando Hospital, in critical condition.</p>	July

Source: LHRC Media Survey 2019 & Human Rights Monitoring 2019

## Sexual VAW

Sexual VAW concerns and incidents were raised and reported in different parts of the country in 2019. In May 2019 the Deputy Minister of the Ministry of Health, Community Development, Gender, Elderly and Children, Dr. Faustine Ndugulile, expressed concerns over the increasing rate of rape despite the existence of strict laws.<sup>527</sup> A month later, in June 2019, the police gender desk senior officer, SACP Renatha Mzinga, acknowledged that incidents of rape and sodomy are a big challenge in the society.<sup>528</sup>

In July 2019, **Dodoma** RPC, Gilles Muroto, revealed that GBV incidents

<sup>527</sup> LHRC Media Survey 2019.

<sup>528</sup> See "Ukatili wa kijinsia watesa Jeshi la Polisi" Rai Newspaper, 27 June 2019, at <http://www.rai.co.tz/ukatili-wa-kijinsia-watesa-jeshi-la-polisi/>, accessed 2nd March 2019.



in the first half of the year had increased from 174 in 2018 to 517 in 2019. He noted that there had been many reported incidents of rape, sodomy and other forms of GBV, an increase of 343. The Dodoma RPC also mentioned that more people are now reporting GBV incidents. He added that prosecution of sexual offences is affected by some of the witnesses colluding with perpetrators to destroy evidence. In Chamwino District, Dodoma, women lawyers were urged to visit rural areas and provide mobile legal aid to women who are victims of gender-based violence. Paralegals in the region were s faced with various challenges, including a lack of funds to enable them to travel and reach remote areas. It was in this District where it was reported in August 2019 that Police had arrested Mazengo Shilatu (28), resident of Manchali Village in Chamwino District, who was accused of breaking into the house of his own mother and sodomized her. It was reported that his actions were contributed by alcoholism and motivated by witchcraft beliefs.<sup>529</sup>

In **Kigoma**, Kigoma District Commissioner, Hon. Samson Hanga, announced in April 2019 that the authorities in the region had commenced a hunt for men who rape women at their homes, popularly known as ‘Teleza.’ In June 2019, it was reported that the leader of the *Teleza* gang, Hussein Hamis, popularly known as Orosho, had been arrested in Kigoma. Until then, nine suspects have been arrested in connection with the raping of women in Kigoma.<sup>530</sup>

In, **Dar es Salaam**, in March 2019, Saidi Mahfudhi (25) was brought before the Kinondoni Resident Magistrate Court, accused of raping a 25-year-old woman. In another incident of June 2019, Sharifa Seleman (25) accused co-housemate and neighbour, Finyiasi Didas, of sexually assaulting her and attempting to rape her. In August 2019, one man, Ahmed Mohamed, resident of the city, was arrested, accused of raping women, in the region. He used to lure women to or at hotels, intoxicate them then rape and sodomize them; he did this even to other people’s wives. He also sued to steal their belongings. Moreover, George John (20), Sudi Musa (27) and Gerald Joh (32) were accused of breaking into a house (armed robbery) and raping a woman.<sup>531</sup>

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529 LHRC Media Survey 2019.

530 Ibid.

531 LHRC Human Rights Monitoring 2019.



In Mbalizi, **Mbeya**, A man was arrested by police in March 2019 for raping a woman who was looking for a house to rent. He took her to his house, claiming there are rooms for rent. The accused raped the woman who was still carrying a baby on her back. Upon hearing her screaming, neighbours rescued her.<sup>532</sup>

In **Mpanda, Katavi**, in July 2019, a 90-year-old Chubwa Venance, resident of Kanoge Village in Mpanda District, was arrested and charged of raping a mentally disabled woman in an abandoned house on 2<sup>nd</sup> July 2019.<sup>533</sup>

### **Teleza nightmare for women in Kigoma**

In early 2019 it reports of a gang of men invading homes and raping women in Kigoma emerged. LHRC and *Twaweza* joined hands in a fact-finding mission. The shared stories, and fact-finding conducted by LHRC, Tamasha, Change Tanzania, the Centre for Strategic Litigation, JamiiForums, and *Twaweza* revealed that scores of women in Kigoma were living in fear since 2016 because of an organised crime phenomenon known as Teleza. Women, particularly those who live without men in their homes, were at risk of having their homes broken into by unknown men and then being raped or, if they resist, faced violent retaliation.<sup>534</sup> The organisations identified and document over 45 stories and incidents dating back from 2016 to 2019. The rapes were said to be perpetrated against women who are living without men in the house (widows, divorcees, young girls, older women, or even women whose husbands are travelling). The men are armed, often with *pangas* to threaten their victims. The study learnt many victims do fight back and suffer severe injuries as a result. Those who stay silent to minimize personal injury are often targeted again and again. The impact of this phenomenon includes the death of victims; destruction of relationships; economic deprivation; and risk of infection of sexually transmitted diseases, including HIV/AIDS.<sup>535</sup> The NGOs issued a joint-statement calling for the Government and police to take action; and the pressure exerted by the NGOs and the media led to arrest of the gang leader and other members of the ganga. In June 2019, it was reported that the leader of the Teleza gang, Hussein Hamis, popularly known as Orosho, was arrested in Kigoma. By this

<sup>532</sup> LHRC Media Survey 2019.

<sup>533</sup> Ibid.

<sup>534</sup> See LHRC (2019), Mid-Year Human Rights Report 2019, at [www.humanrights.or.tz](http://www.humanrights.or.tz).

<sup>535</sup> Ibid.



month, 9 suspects have been arrested in connection with the raping of women in Kigoma.<sup>536</sup>

### **Home the most dangerous place for women - UNODC**

In early 2019, the United Nations Office on Drugs and Crime (UNODC) launched its report titled “GLOBAL STUDY ON HOMICIDE: Gender-related killing of women and girls.”<sup>537</sup> The study focused on gender-related killing of women and girls in different parts of the world, providing an in-depth analysis of killings perpetrated within family circles.<sup>538</sup> It declared that with the majority of homicide victims worldwide being killed by partners or family, home had become the most dangerous place for women.<sup>539</sup>



According to the UNODC study, a total of 87,000 women were intentionally killed in 2017, with the majority of them (58%) killed by intimate partner or family members.<sup>540</sup> This translates to 137 women across the world being killed by a member of their own family every day. The study further reveals that 30,000 women out of the 87,000 women intentionally killed, were killed by their current or former intimate partner.<sup>541</sup> This constitutes 35% of women intentionally killed across the world.

Additionally, 20,000 of all women killed worldwide by intimate partners or family in the year 2017 were from Asia, followed by Africa

<sup>536</sup> Ibid.

<sup>537</sup> See UNODC (2018), Global Study on Homicide: Gender-related killing of women and girls, (Vienna, 2018), at [https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18\\_Gender-related\\_killing\\_of\\_women\\_and\\_girls.pdf](https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf), accessed 2nd March 2019.

<sup>538</sup> Ibid.

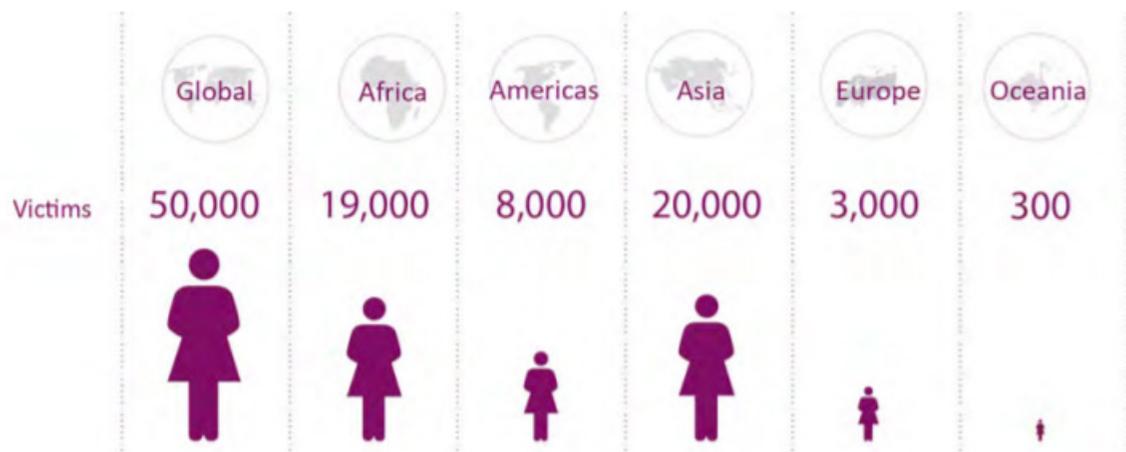
<sup>539</sup> See UNODC, Home, the most dangerous place for women, with majority of female homicide victims worldwide killed by partners or family, UNODC study says, Press Release, 25 November 2019, at <https://www.unodc.org/unodc/en/press/releases/2018/November/home--the-most-dangerous-place-for-women--with-majority-of-female-homicide-victims-worldwide-killed-by-partners-or-family--unodc-study-says.html>, accessed 2nd March 2020.

<sup>540</sup> UNODC (2018), Global Study on Homicide: Gender-related killing of women and girls, (Vienna, 2018).

<sup>541</sup> Ibid.



with 19,000 killings.<sup>542</sup> However, women in Africa were found to be in the greatest risk of becoming victims of such killings, with the homicide rate of 3.1. per 100,000 female population, followed by Americas with the homicide rate of 1.6 per 100,000 female population.<sup>543</sup>



Picture 5: Rates of women killed by intimate partners or family in 2017

One in three African women experience VAW in their life in Africa; and the lifetime prevalence of some of physical and/or sexual violence among women by an intimate partner is around 36.6%.  
**The State of African Women Report 2018**

#### 5.2.2.4 Discrimination of women workers at workplaces

In 2019, discrimination of women at workplace continued to emerge. For example, in August, the Tanzania Union of Government and Health Employees (TUGHE) in Morogoro reported having received complaints of discrimination at the workplace. The complaints concerned private dispensaries, health centres and hospitals in the region. The major concern was the discrimination and mistreatment of women workers, especially when they become pregnant, including by unfairly terminating their contracts or dismissals.<sup>544</sup> In its report on human rights and business 2018/19, LHRC found discrimination

<sup>542</sup> Ibid.

<sup>543</sup> Ibid.

<sup>544</sup> LHRC Media Survey 2019.



of women based on gender being a challenge in when seeking jobs and promotion in the private sector.<sup>545</sup> For instance, in Mtwara, pregnancy, menstrual cycle, delivery and breastfeeding were cited as reasons why some of the employers are reluctant to hire women. It was further stated that when a female employee gets pregnant, it usually signals the end of their employment.<sup>546</sup> The human rights and business report also revealed discrimination of women workers in the mining sector.<sup>547</sup> Further research is needed to determine the extent of discrimination of women at workplaces in Tanzania.

Low awareness about labour laws, rights and duties contributes to continued violations of women's rights in the employment sector, especially in private industries. Consequently, they are usually vulnerable to the violation of their labour and human rights and unfair dismissal.

**LHRC's call:** Employers to adhere to labour laws and regulations and refrain from discriminating women in employment. Discrimination against women constitutes a violation of the Constitution of the United Republic of Tanzania of 1977, which categorically prohibits discrimination of any form and contravenes the Employment and Labour Relations Act of 2004, which prohibits discrimination at workplace. It also contravenes women's rights conventions such as CEDAW, Maputo Protocol and SADC Protocol on Gender and Development.

#### *5.2.2.5 Sexual Corruption in the job market, at work, at higher learning institutions and in politics*

Sexual corruption in the job market, at work, at higher learning institutions and in politics re-emerged as a key issue in the public debate. For example, in September 2019, the PCCB Commander of Temeke District in Dar es Salaam, Donasian Kessy, revealed that sexual corruption is a big challenge for women engaging in politics. He mentioned that there had been allegations of sexual corruption in some of the political parties. In those cases, women have to provide sex in exchange for nominations in different leadership positions or nomination to contest in elections, especially for the positions of ward

<sup>545</sup> LHRC (2019), Human Rights and Business Report 2018/2019.

<sup>546</sup> Ibid.

<sup>547</sup> Ibid.



councilor and Member of Parliament. As Tanzania heads towards elections, he urged women who are asked for sex bribe to call PCCB authorities through a hotline 113 in order to nail the perpetrators. PCCB also revealed plans to collaborate with other stakeholders to conduct a study on sexual corruption in different areas, starting at higher learning institutions.

Moreover, during this reporting period, it was revealed by the Tanzania Media Women's Association (TAMWA), about 89% of women in the public sector have experienced sexual harassment when seeking jobs, promotion or services.

#### *5.2.2.6 Gender Equality and achievement of SDG goals*

Gender equality refers to equal enjoyment of rights and access to opportunities and outcomes, including resources, by women, girls and boys.<sup>548</sup> Rights to gender equality and non-discrimination are recognized under CEDAW, the Maputo Protocol and SADC Protocol on Gender and Development. One of the key principles of promoting gender equality is ensuring women hold at least 50% of decision-making positions in the public and private sectors.<sup>549</sup>

Goal 5 of the **Sustainable Development Goals (SDGs)** calls for **achieving gender equality and empowering all women and girls**. To achieve this goal, the Government of Tanzania needs to end all forms of discrimination against women and girls;<sup>550</sup> eliminate all forms of violence against women and girls;<sup>551</sup> ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.<sup>552</sup> To achieve gender equality and empower women and girls, the Government also needs to undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources.<sup>553</sup>

Alarming rates of violence against women hinder the achievement

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548 Article 1(2) of the SADC Protocol on Gender and Development 2008.

549 Ibid, Article 12(1).

550 Goal 5.1 of the SDGs.

551 Goal 5.2 of the SDGs.

552 Goal 5.5 of the SDGs.

553 Goal 5.a of the SDGs.



of key SDG and targets under the Tanzania Development Vision 2025.

### 5.2.2.7 Budget for NPA – VAWC

The National Plan of Action to End Violence Against Women and Children in Tanzania 2017/18 – 2021/22 contains eight thematic areas, namely: Household Economic Strengthening; Social norms and values; Safe Environment in Public Spaces; Parenting Family support and relationships; Implementation and Enforcement of Laws; Response and support services; Safe schools and life skills; and Coordination.<sup>554</sup> The 2019 analysis of the budget allocated for implementation of NPA-VAWC by Policy Forum revealed some budgetary concerns, which may affect efforts to combat VAW and VAC.<sup>555</sup> The analysis indicates that while the overall budget for the MOHCDGEC increased by 10.7% for the financial year 2019/20 compared to that of financial year 2018/19, the budget allocation for Community Development related activities at the ministerial level experienced a reduction of 1.9%.<sup>556</sup> It also shows that sub-budget for Social Welfare within the budget for Community Development has decreased by 19.3% in the financial year 2019/20 compared to 2018/19.<sup>557</sup> There are also budget execution concerns, with the MoHCDGEC receiving only 54% of the total budget allocated for the financial year 2018/19 under Community Development.<sup>558</sup>

For the NPA-VAWC budget at PO-RALG level, the thematic area one, on economic strengthening, receives more funds than any other thematic area, mainly due to the mandatory budget allocation for groups of women (4%), youth (4%) and people living with disabilities (2%).<sup>559</sup> For the financial year 2018/19, execution of the planned budget for NPA-VAWC for all LGAs was only 44%. For the financial year 2019/20, the PO-RALG budget for Health, Social Welfare and Nutrition services decreased by 58% compared to the financial year 2018/19 (from Tshs. 10.594 billion to Tshs. 4.450 billion), and even then, most of the funds are spent on health issues.<sup>560</sup>

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554 See the National Plan of Action to End Violence Against Women and Children in Tanzania 2017/18 – 2021/22, p. 15.

555 See Policy Forum's NPA-VAWC BUDGET ANALYSIS BRIEF, at <https://www.policyforum-tz.org/sites/default/files/Brief%206.19.pdf>, accessed on 2nd March 2020.

556 Ibid.

557 Ibid.

558 Ibid.

559 Ibid.

560 Ibid.



**LHRC's call:** The Government to increase budget for the Community Development, particularly the Social Welfare item, to boost the implementation of NPA-VAWC. This is because VAC and VAW are not only a human rights concern, but also a health concern as well, with wider consequences for society. There is also a need to fence all NPA-VAWC related budget, as the case for the economic strengthening thematic area. MoHCDGEC should also consider strengthening partnerships with CSOs and CBOs to support effective implementation of the NPA-VAWC. More efforts should also be geared on addressing mental health risks which trigger excessive abuse and spousal violence.

## 5.3 Children's Rights

### 5.3.1 Legal Framework

Children's rights in Tanzania are protected at international, continental and domestic levels. They are guaranteed and protected under the UN Convention on the Rights of the Child (CRC) of 1989 and the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990. The instruments require Tanzania to take all appropriate measures to protect children within its territory from all forms of abuse such as torture; violence; inhuman or degrading treatment; and especially sexual abuse and exploitation.<sup>561</sup> Further, Tanzania must protect female children from harmful practices that affect their welfare, dignity, normal growth and development, such as female genital mutilation and child marriage.<sup>562</sup> Tanzania has enacted a Law of the Child Act in 2009 which has considered most of the rights provided for in the international and regional instruments.<sup>563</sup>

### 5.3.2 Key issues

For the year 2019, key issues affecting children's rights included: government action to prevent and combat VAC; CSO intervention in addressing VAC; increasing reporting of VAC incidents; brutal killings of children in Njombe Region; high rates of sexual VAC; cases of teachers raping and impregnating school children; physical and psychological VAC; Court of Appeal decision in Rebeca Gyumi child

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561 Articles 5 & 6 of Maputo Protocol; Articles 6, 19 & 34 of the Convention on the Rights of the Child; Article 16 of the African Charter on the Rights and Welfare of the Child.

562 Article 5 of Maputo Protocol; Article 21 of the African Charter on the Rights and Welfare of the Child.

563 See The Law of the Child Act number 21 of 2009



marriage case; the predicament of child pregnancy; vulnerability of children to HIV infection; child exploitation and labour; and right to education.

### **5.3.2.1 Government and CSO Action in Preventing and Combating Violence against Women and Children**

In 2019, the Government continued with the implementation of the National Plan of Action on Ending Violence against Women and Children (NPA-NAWC) in collaboration with various stakeholders, including the Tanzania Police Force, through the Police Gender and Children Desk, and CSOs. The Government set aside a budget to implement the NPA-VAWC, although there is a concern of sufficiency of such budget as discussed in 5.2 above. Various measures were taken by the Government and Judiciary efforts to enhance access to justice, as discussed in 2.4 above, might help to boost efforts to combat VAC.

The Police Force of Tanzania continued arresting and bringing to justice alleged perpetrators of VAC, and through its gender and children desk, continued working with other stakeholders to address VAC. In October 2019, the National Head of Police Gender and Children Desk, Mary Nzuki, revealed that the Tanzania Police Force had trained a total of 7000 police officers on VAC and there are currently 450 gender and children desks.<sup>564</sup> One-stop centres also continued to operate and provide GBV related services, but more one-stop centres are needed in different parts of the country.

The Judiciary continued to take legal action against perpetrators of VAC. Prison sentences of up to life imprisonment were issued by courts of law to convicted perpetrators of VAC, especially sexual abuse, in different regions. These regions include, Kilimanjaro, Dar es Salaam, Tanga, Simiyu, Mbeya, Tabora, Kigoma, Mwanza, Geita, Singida, Lindi and Morogoro.<sup>565</sup> From January to June 2019, LHRC documented 53 cases of VAC sentences, including ten life imprisonment sentences.<sup>566</sup>

In 2019, the Minister of Constitutional and Legal Affairs, Hon. Ambassador Dr. Augustine Mahiga (MP), announced that the Chief Justice had prepared rules geared towards fast-tracking cases

<sup>564</sup> LHRC Media Survey 2019.

<sup>565</sup> LHRC Media Survey 2019.

<sup>566</sup> LHRC Media Survey 2019 & Human Rights Monitoring 2019.



involving vulnerable groups (including women, children, the elderly and PWDs).<sup>567</sup> He noted that the Chief Justice had made the Judicature and Application of Laws (Practice and Procedure of Cases Involving Vulnerable Groups) Rule No. 110 of 1<sup>st</sup> February 2019.<sup>568</sup> The rules require courts to determine cases for no longer than six months,<sup>569</sup> and to LHRC's understanding, the rules are being implemented, despite the various challenges faced in prosecution of cases involving members of such groups, especially sexual violence cases.

LHRC and other NGOs operating at national level such as Msichana Initiative continued to work with human rights clubs at schools, as part of strategies to combat VAC. Other CSOs working on children's issues, include CDF, WLAC, Twaweza, Hakielimu, TAWLA, TAMWA, Save the Children, UNICEF and Plan International, continued working with government and non-government actors to address VAC, including supporting the work of police gender and children desks. For instance, in October 2019, a new police gender and children desk was launched at Kawe Police Station in Dar es Salaam, supported by Save the Children.<sup>570</sup> Earlier, in June 2019, it was reported that CDF had provided training to 270 police officers (118 female and 152 male) to boost the capacity of police gender and children desks to address VAC and provide related services.<sup>571</sup> The police officers trained were from Mara, Dar es Salaam, Dodoma, Manyara and Kigoma Regions.<sup>572</sup> CDF also supported the work of police gender and children desk in Tarime by providing working facilities. It was also revealed that UNFPA supported the construction of police gender desks and provided facilities for 22 such desks.<sup>573</sup> On its part, LHRC also continued to raise awareness about VAC and VAW through different platforms, including print and television media, publications, as well as social media.

At the grassroots level, CBOs paralegals, human rights monitors and other human rights defenders continued to provide legal aid for

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567 HOTUBA YA MHESHIMIWA BALOZI DKT. AUGUSTINE PHILLIP MAHIGA (MB) WAZIRI WA KATIBA NA SHERIA AKIWASILISHA BUNGENI MPANGO NA MAKADIRIO YA BAJETI YA WIZARA KWA MWAKA WA FEDHA 2019/2020.

568 Ibid.

569 Ibid.

570 LHRC Media Survey 2019.

571 See "Ukatili wa kijinsia watesa Jeshi la Polisi" Rai Newspaper [online], 27 June 2019, at <http://www.rai.co.tz/ukatili-wa-kijinsia-watesa-jeshi-la-polisi/>, accessed 2nd March 2019..

572 Ibid.

573 Ibid.



people, including VAC victims and to provide education and raise awareness on VAC. The organisations also continued playing a key role in raising awareness around VAC and taking action to prevent and address VAC incidents.<sup>574</sup>

Social welfare officers continued to work with police gender and children desks and NGOs to address VAC and intervene to protect children. However, they continue to face various challenges, mainly contributed by budgetary deficits. This is also an issue for NGOs, as their interventions continue to be affected by limited budgets. Limited resources and relatively poor coordination have been observed to be among challenges affecting efforts to combat VAC and VAW, from the national to grassroots levels.

Initiatives by the Government and non-government actors in addressing and combating VAC and VAW are important in achieving SDG goals, particularly SDG F on gender equality and SDG 4 on quality education. Target 5.2 of **SDG 5** is to eliminate all forms of violence against all women and girls in public and private spheres, including trafficking and sexual and other types of exploitation. Target 4.1 of **SDG 4** is to ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes by 2030.

Combating VAW and VAC is also essential in achieving the Tanzania Development Vision 2025, including the target of High-Quality Livelihood (Target 3.1). Strategies to achieve this target include ensuring adequate access to information and attainment of tertiary education; and achieving gender equality and the empowerment of women in all socio-economic and political relations and cultures.

**LHRC's call:** The Government to increase the budget for implementation of the NPA-VAWC and all stakeholders involved in the protection of children and addressing VAC and VAW to enhance coordination. There is also a need to continue strengthening child protection systems at all levels. Relevant is also the need for concerted efforts and coordination among actors from grassroots to national level to leverage efforts and resources in combating VAC/W.

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574 LHRC Media Survey 2019.



### **5.3.2.2 Increased reporting of VAC incidents**

Collective efforts to combat VAC and VAW by government and non-government actors have led to increased reporting of such incidents. In December 2019, Assistant Commissioner of Police Zuberi Chembera, revealed that establishment of one-stop centres, which address GBV, has led to increased understanding of VAC and VAW, as well as reporting of such incidents.

A similar statement was made earlier in June 2019 by the Njombe RPC, ACP Salum Hamduni, during a meeting with CSOs. Speaking about the VAC situation in his region, he expressed that increased awareness about VAC has led to increased reporting of such incidents.<sup>575</sup>

### **5.3.2.3 Brutal Killings of Children in Njombe Region**

Safety of children in Njombe Region became an issue of great concern in the period of January to June 2019. This is due to brutal attacks and murders of children in the region since late 2018. News of disappearances of children, who were later found dead, circulated in the social media and were reported by the mainstream media. About ten bodies of children were found in different parts of Njombe. Some bodies had some parts/organs, including private parts, removed. Among those killed were three children of the same family. The murders were reportedly mainly motivated by a belief in witchcraft, whereby witchdoctors demanded body parts for money rituals.<sup>576</sup>

The brutal killings of children in the region were widely condemned by stakeholders at both domestic and international levels, including by the United Nations (UN), which issued a statement condemning the murders of innocent children and called for the Government to ensure that homes, schools and communities are safe spaces for children.<sup>577</sup>

In February 2019, LHRC assembled a team that went to Njombe to conduct a fact-finding mission on the murders of innocent children. The main objective was to ascertain the truth behind the killings of children in Njombe and determine the causes of such killings. LHRC met with the regional police officers, victims' families, local government officials, community members, school children, teachers, and social

575 See "Ukatili wa kijinsia watesa Jeshi la Polisi" Rai Newspaper, 27 June 2019, at <http://www.raico.tz/ukatili-wa-kijinsia-watesa-jeshi-la-polisi/>, accessed 2nd March 2019.

576 LHRC (2019), Mid-Year Human Rights Report 2019.

577 Ibid.



welfare officers. The regional police confirmed the murders and noted that 28 suspects had been arrested in connection with the killings. Witchdoctors in the region were also rounded up by police for questioning. The LHRC fact-finding team confirmed that the killings were mainly motivated by witchcraft beliefs. Other factors include family conflicts and business-related disputes. It was found out that the children in the region are very scared following the murders of fellow children, to the extent that parents are forced to escort their children to and from school and are even afraid of leaving the children alone at home. Children became very scared of people, especially strangers. For example, some of the school children ran away when they saw LHRC vehicle approaching.

LHRC and 24 other NGOs issued a statement. They strongly condemned the killings of children in Njombe and other parts of Tanzania, which are unacceptable and in violation of their fundamental human rights, including the right to life and freedom from violence.<sup>578</sup> The NGOs reminded Tanzanians of their obligations to protect children and respect their rights, including the right to life, under the Constitution of the United Republic of Tanzania of 1977, the Law of the Child Act of 2009 and regional and human rights instruments, including the Universal Declaration of Human Rights of 1948.<sup>579</sup> Community members were also advised to refrain from beliefs that may lead to violation of children's rights and called for collaborative efforts between the Government and other stakeholders in addressing violence against children.<sup>580</sup>

#### *5.3.2.4 High Rates of Sexual Violence against Children in various Parts of the Country*

In the year 2018, police data and LHRC's media survey indicated that sexual violence, especially incidents of rape and sodomy, had significantly increased.<sup>581</sup> In 2019, police data for the period of January to June 2019, indicated that rape incidents, including rape of children, have increased by 126 incidents compared to the same period in 2018.

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578 See TAMKO LA ASASI ZA KIRAIA KULAANI MAUAJI YA WATOTO 10 MKOANI NJOMBE, issued 31st January 2019, at <https://www.humanrights.or.tz/posts/b/news/tamko-la-asa-si-za-kiraia-kulaani-mauaji-ya-watoto-10-mkoani-njombe>.

579 Ibid.

580 Ibid.

581 See LHRC & ZLSC (2019), Tanzania Human Rights Report 2018, at [www.humanrights.or.tz](http://www.humanrights.or.tz)



Sodomy incidents also increased, by 141 incidents, as indicated in the figure below.

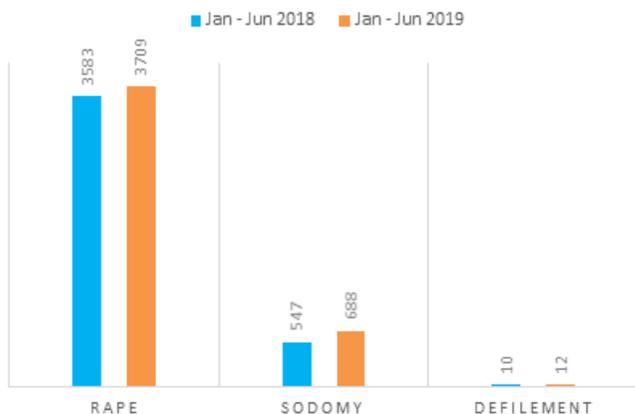


Figure 13: Incidents of rape, sodomy and defilement recorded by police – Jan to Jun 2018 & 2019

Source: Tanzania Police Force

Police data from 2016 to 2019 indicate a trend of increasing incident of VAC. For instance, in 2016, a total of 10,551 VAC incidents were recorded at police stations, while in 2017 the number rose to 13,457 incidents. In 2018, total VAC incidents recorded by police were 14,419, an increase of 7.7%, compared to those recorded in 2017. In 2019, from January to June, police had recorded 4,397 incidents of child rape and sodomy alone. The trend also shows an increase in rape and sodomy incidents as shown in the figure below.

**42,824+**  
Number of VAC  
incidents recorded by  
police, 2016 - 2019



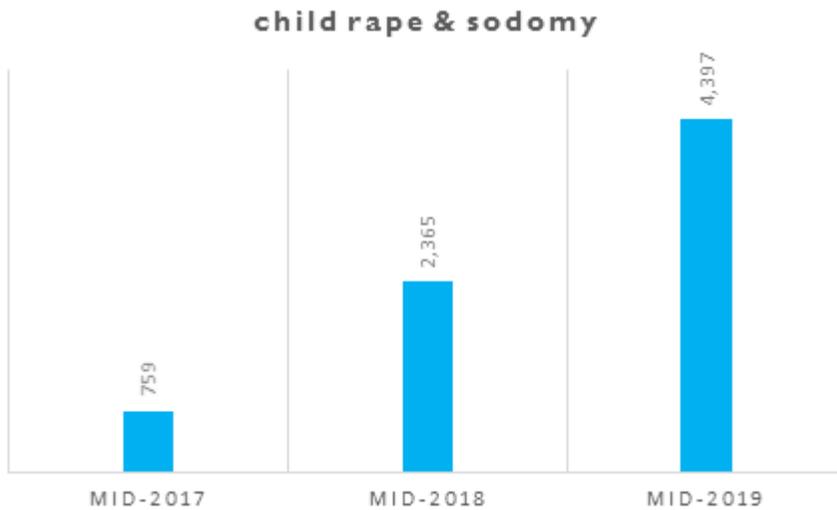


Figure 14: Child rape and sodomy incidents mid-2017 to mid-2019  
*Source: Police data, 2017 - 2019*

***LHRC’s media survey 2019: Findings on VAC***

LHRC’s Media Survey of 2019 has also revealed a significant increase in incidents of violence, mainly rape, against children. Close relatives, teachers, male parents and bodaboda drivers emerged as major perpetrators of sexual violence against children in 2019. The survey findings show that 84% of VAC incidents reported by media in 2019 were sexual VAC, while 16% were physical violence incidents. Majority of these incidents (over 90%) were rape and sodomy cases.<sup>582</sup> In 2018, 66% VAC incidents reported by media were VAC incidents.<sup>583</sup>

<sup>582</sup> LHRC Media Survey 2019.  
<sup>583</sup> LHRC Media Survey 2018.



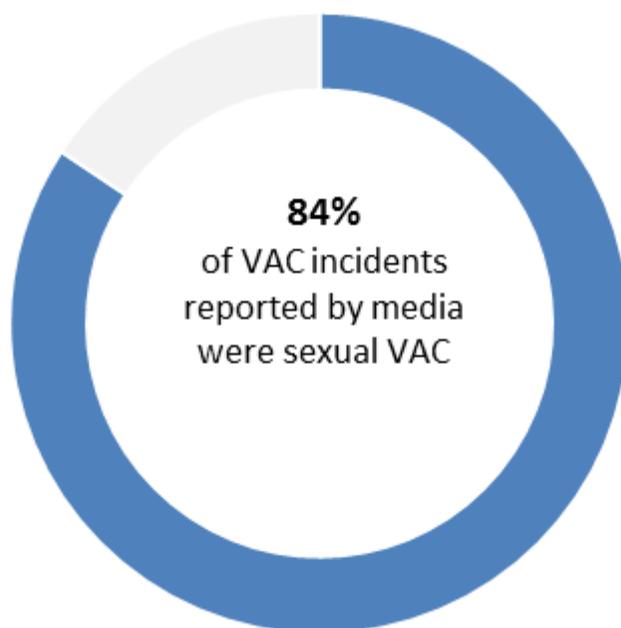


Figure 15: % of physical and sexual incidents of VAC reported by media (N=319)

Source: LHRC Media Survey 2019

The VAC incidents were reported in Tabora, Njombe, Geita, Songwe, Simiyu, Pwani, Ruvuma, Kilimanjaro, Katavi, Mara, Dodoma, Kagera, Mwanza, Iringa, Morogoro, Mbeya, Lindi, Manyara, Arusha, Tanga, Singida, , Rukwa and Dar es Salaam Regions. As indicated above, most of the reported VAC incidents were sexual VAC. These incidents were more prominent in some areas and regions compared to others. For instance, the Inspector General of Police (IGP) stated that in the **Njombe** Region, rape had become a common occurrence, most of the perpetrators being relatives.<sup>584</sup> In **Mwanza**, sodomy became prevalent, especially in 17 wards, including Igofo, Igoma and Nyegezi. Reports indicated incidents of children on children sodomy. In **Geita**, incidents of violence against children appear to be on the rise in Geita District. The police gender and children desk officer, Christina Gabriel, reported that a total of 21 children were raped in the past three months, the majority of the perpetrators being close relatives and people who children know and trust. **Morogoro** Region has also recorded many incidents of VAC. For instance, according to the social

<sup>584</sup> LHRC Media Survey 2019.



welfare department in the region, a total of 396 GBV incidents, 297 incidents of VAC and 194 incidents of child pregnancy were reported from January to March 2019.<sup>585</sup>

In June 2019, the Regional Police Commander of **Njombe**, ACP Salum

In September 2019, a Standard Seven pupil at Mahina Primary School was reportedly raped to death by three assailants in Mwanza Region (gangrape).

LHRC Media Survey 2019

Hamduni, revealed that in his region a total of 429 VAC incidents had been reported from January to May 2019, while for the same period in 2018 a total of 423 such incidents had been reported.<sup>586</sup>

In **Kilimanjaro**, Mawenzi Referral Hospital confirmed a total of 127 cases of sexual violence against children from January to September 2019, of which 90 were rape cases, and 37 were sodomy cases. Dr. Boniface Masau noted that there is an alarming rise of sexual violence against children, particularly rape and sodomy cases, noting that for the year 2018, reported cases of sexual violence against children were 151, of which 122 were rape cases and 29 sodomy cases.<sup>587</sup> A report by the Tanzania Association of Social Workers (TASWO), however, painted a darker picture. According to the information provided by TASWO official, Furaha Dimitrios, from January to September 2019 a total of 157 cases of violence against children were reported in Moshi Municipality, 53% of which were sexual violence cases.<sup>588</sup>

In **Lindi**, it was reported in October 2019 that a total of 84 female children in primary and secondary schools of Kilwa District had been subjected to acts of violence, including rape, sodomy and child pregnancy from January to September 2019. The Kilwa District Commissioner, Hon. Chistropher Ngubiagai, reported that out these incidents, 24 were rape incidents.

585 Ibid.

586 See "Ukatili wa kijinsia watesa Jeshi la Polisi" Rai Newspaper, 27 June 2019, at <http://www.raico.tz/ukatili-wa-kijinsia-watesa-jeshi-la-polisi/>, accessed 2nd March 2019.

587 LHRC Media Survey 2019.

588 Ibid.



## **IGP, Minister responsible for gender and children, Head of Police Gender and Children Desks speak out**

In June 2019, the Inspector General of Police (IGP), Simon Sirro, revealed that violence against women and children had become a big problem in Tanzania.<sup>589</sup> He noted that that instead of being a safe place for children and women, homes have become a more dangerous place for the safety and welfare of women and children.<sup>590</sup> This revelation is concurrent with the report on sexual violence against children released by the Tanzania Police Force in September 2016, which revealed that 49% of sexual VAC incidents were perpetrated at home, while 23% and 15% are perpetrated in streets and at school respectively.<sup>591</sup> Reports by LHRC have also indicated that most acts of VAC are perpetrated by people close to children, at home and street settings. Teachers and bodaboda drivers have also been cited amongst perpetrators of VAC.<sup>592</sup>

Most VAC acts are perpetrated at home, in streets/neighbourhoods and at schools

In October 2019, the Minister of Health, Community Development, Gender, Elderly and Children, Hon. Ummu Mwalimu, revealed that police data showed an increase of 1,034 VAC incidents in 2018, compared to 2017. She revealed that there had been 14,419 reported incidents of VAC in 2018, while in 2017 13,457 such incidents had been reported, an increase of 7.7%.<sup>593</sup>

In October 2019, the National Head of Police Gender and Children Desk, DCP Mary Nzuki, revealed that GBV incidents in Tanzania had increased from 41,416 in 2017 to 43,487 in 2018. She noted that the incidents were recorded in police gender and children desks scattered in different parts of the country.<sup>594</sup>

589 See "Ukatili wa kijinsia watesa Jeshi la Polisi" Rai Newspaper, 27 June 2019, at <http://www.rai.co.tz/ukatili-wa-kijinsia-watesa-jeshi-la-polisi/>, accessed 2nd March 2019.

590 Ibid.

591 See LHRC & ZLSC (2017), Tanzania Human Rights Report 2016, at [www.humanrights.or.tz](http://www.humanrights.or.tz).

592 See LHRC & ZLSC (2019), Tanzania Human Rights Report 2018, at [www.humanrights.or.tz](http://www.humanrights.or.tz).

593 See "Watu 1,034 wamefanyiwa ukatili wa kijinsia – Waziri Ummu" Mtazania Newspaper, 23 October 2019, accessed 2nd March 2019.

594 See "Ukatili wa kijinsia wazidi kushika kasi" Nipashe Newspaep, 12 October 2019.



## What are the challenges in combating VAC?

Common challenges in combating VAC include slow pace of investigation and prosecution of perpetrators; and the gap in parenting – whereby there is a tendency of parents not being close to their children to make or enable the children to tell them their problems and worries. LHRC has also observed that parents being busy with economic activities and having little time with children contributes to VAC.<sup>595</sup> This problem is prominent for single-parent families.

Another challenge is the tendency of community and family members being reluctant or deliberately undermining the proceedings in court by refusing to testify or convincing a VAC victim to become a hostile witness, due to what they call ‘concealing family shame.’ Sometimes, parents or relatives of VAC victims tend to collude with perpetrators by receiving money from perpetrators and settle the matter out of court at the expense of the child. The fact that the VAC victim usually returns to the same home settings where they experienced violence due to **lack of fit persons** exacerbates the situation.

Low awareness about access to justice, poverty and corruption have also been cited as challenges of addressing VAC and VAW. For example, the Social Welfare Officer of Mpwapwa in Dodoma, Sophia Swai, had pointed out that low awareness about access justice, poverty and community members’ reluctance to provide testimony in courts, were among factors contributing to GBV cases, including rape cases, being struck out or dismissed by courts of law.<sup>596</sup> In October 2019, PCCB in Singida reported that it had sent to court, Juma Salim, accused of demanding a bribe of Tshs. 2 million from a man who had committed sexual violence against his daughter.<sup>597</sup>

Additionally, belief in witchcraft has emerged as another factor contributing to VAC. For instance, in 2016, this factor was said to largely contribute to increased incidence of child rape in Iringa Region.<sup>598</sup> The killings of children in Njombe Region between late 2018 and early

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595 See also LHRC & ZLSC (2017), Tanzania Human Rights Report 2016, at [www.human-rights.or.tz](http://www.human-rights.or.tz).

596 LHRC Media Survey 2019.

597 Ibid.

598 See LHRC & ZLSC (2017), Tanzania Human Rights Report 2016, at [www.humanrights.or.tz](http://www.humanrights.or.tz).



2019 were also linked to witchcraft beliefs.<sup>599</sup> In January 2019, it was reported in Mbeya that Gilbert Sanga, resident of Mikoroshini area, was accused of raping his 14-year-old daughter. His wife caught him in the act, and there had been rumours that he was sleeping with his daughters as a condition for him to get rich (witchcraft beliefs).<sup>600</sup>

### 5.3.2.5 Cases of teachers raping and impregnating school children

**162** number of teachers dismissed by TSC for engaging in sexual relationships with female school children since 2016.

In November 2019, the Secretary of the Teachers Service Commission (TSC), Winfrida Rutaindurwa, revealed that 4,046 teachers of primary and secondary school were dismissed for different reasons, including truancy, violating code of conduct

and engaging in sexual relationships with students.<sup>601</sup> She noted that since its establishment in July 2016, the TSC has received 7,123 complaints. As a result of these complaints, 4,046 teachers were dismissed. Out them, 162 were dismissed on the grounds of sexual activities with students.<sup>602</sup> Engaging in sexual relationships with students and rape are crimes under penal and education laws.

From 2018 to 2019, LHRC has observed an increasing number of male teachers implicated in sexual violence against children, including engaging in sexual relationships with them, raping and impregnating them. Some of them have been convicted by courts and sentenced to up to 50 years in prison. For the two years, LHRC has documented a total of **24 cases** of teachers implicated in sexual VAC, who were either arrested and sent to court or found guilty and imprisoned. Of these, 3 were headteachers.<sup>603</sup> The table below indicates the reported cases.

Table 13: Incidents of sexual VAC perpetrated by teachers and judicial action against them recorded by LHRC in 2018 and 2019

599 See LHRC (2019), Mid-Year Human Rights Report 2019, at [www.humanrights.or.tz](http://www.humanrights.or.tz).

600 Ibid.

601 LHRC Media Survey 2019.

602 Ibid.

603 LHRC Media Survey 2018 & 2019.



Incident/Judicial Action	Month & Year
<b>Loliondo, Arusha:</b> A secondary school teacher, Erick Kaliache, reportedly raped and impregnated his student in March 2018.	July 2018
<b>Kiteto, Manyara:</b> A teacher at Engusero Secondary School, Henry Michael (30), was brought before Kiteto Resident Magistrate Court, accused of raping a Form Two students aged 16 years.	August 2018
<b>Serengeti, Mara:</b> A teacher at Nyibereka Primary School, Sokoine Francis (28), was brought before a court in Serengeti, accused of raping and impregnating a 15-year-old student in August 2018.	October 2018
<b>Babati, Manyara:</b> Police in Manyara arrested Charles Merikory (32), a primary school teacher, for sodomizing a Standard Five pupil in a dormitory at the school.	October 2018
<b>Misungwi, Mwanza:</b> Resident Magistrate Court of Misungwi sentenced a primary school teacher, Telesphory Revocatus (32), to 30 years in prison for raping and impregnating a primary school pupil.	October 2018
<b>Korongwe, Tanga:</b> Police opened investigations into three secondary school teachers accused of engaging in sexual relationships with students.	December 2018
<b>Nkasi, Rukwa:</b> A headteacher, Eradi Kapyela, reportedly fled from justice after impregnating a standard seven pupil at his school who was below the age of 14 years.	July 2018
<b>Maswa, Simiyu:</b> Maswa District Court has sentenced a teacher, Abubakari Katakweba (32) to 30 years in prison after he was convicted of raping a Form Two student.	April 2019
<b>Moshi, Kilimanjaro:</b> Fidelis Matemmu (60), a teacher at Uru Primary School, was sentenced to 20 years in prison for sexually assaulting an 11-year-old pupil in April 2018.	June 2019
<b>Kyela, Mbeya:</b> Alinani Mwakifuna (59), a teacher, raped his granddaughter when he was with her at his farm. He was caught when police set a trap following complaints from the victim.	February 2019
<b>Singida:</b> A 76-year-old madrasa teacher, Daudi Idd Karata, was sentenced to life in prison after the court convicted him on the charge of defiling a 9-year-old girl. He committed the offence in 2017.	May 2019
<b>Mara:</b> Police in the region arrested the headteacher of Bwai A Primary School, Lazaro Mmanga, accused of raping a 14-year-old Standard Seven pupil after teaching her Mathematics as part of her preparations for the national examinations.	September 2019
<b>Katavi:</b> Police in the region arrested two teachers of Kambuzi Primary School in Mpanda District, accused of raping standard seven pupil at the school and eventually impregnating her. The accused persons are Amukile Mwakapala (30) and John Ndenje.	July 2019



<b>Hai, Kilimanjaro:</b> Solomon Sirikwa (36), a teacher at Sawe Secondary School, was taken to court after he was charged with criminal offences of raping and impregnating a student.	July 2019
<b>Kiteto, Manyara:</b> Police in Kiteto District arrested Daniel Saulo, a teacher at Matui Primary School, on accusations of raping and impregnating a standard seven pupil.	August 2019
<b>Rorya, Mara:</b> A teacher at Bukula Secondary School in Rorya District has been accused of engaging in sexual relationships with female students and impregnating some of them. It is also believed that the teacher is HIV-positive.	August 2019
<b>Misungwi, Mwanza:</b> Resident Magistrate Court of Misungwi sentenced a primary school teacher, Telesphory Revocatus (32), to 30 years in prison for raping and impregnating a primary school pupil.	October 2018
<b>Maswa, Simiyu:</b> Maswa District Court has sentenced a teacher, Abubakari Katakweba (32) to 30 years in prison after he was convicted of raping a Form Two student.	April 2019
<b>Moshi, Kilimanjaro:</b> Fidelis Matemtu (60), a teacher at Uru Primary School, was sentenced to 20 years in prison for sexually assaulting an 11-year-old pupil in April 2018.	July 2019
<b>Iramba, Singida:</b> Two teachers of Kizaga Secondary School, Emmanuel (25) and Onesmo Bida (28), were sentenced to 30 years in prison after being found guilty of raping a student aged 15 years in 2018.	September 2019
<b>Manyara:</b> Resident Magistrate Court in Manyara sentenced Charles Msele, who was headteacher at Rift Valley Primary School, to life in prison, after finding him guilty of sodomizing an 11-year-old child, a pupil at his school, in September 2019.	August 2019

*Source: LHRC Media Survey 2018 & 2019 and Human Rights Monitoring*

**LHRC's call:** A school is a place where children need to feel safe; and teachers are children's second parents. Acts of violence at school are unacceptable. Teachers are reminded of their duties under the Education Act and the Law of the Child Act of 2009. Engaging in sexual relationships with children constitutes sexual VAC, as does rape, and both these offences attract a penalty of not less than 30-year-imprisonment under the Penal Code and Education Act. The Government must ensure teachers are well trained in ethics and responsibility they have to acquire before they are endowed with the noble profession of teaching. The Government also needs also to intensify community safety measures coordinated at LGA level. Additionally, adequate resources should be allocated for post care and support for children victims of VAC such as mental health care.



### 5.3.2.6 Physical Violence against Children

Apart from sexual violence, incidents of physical and psychological violence continued to be among issues affecting children's rights in 2019, although LHRC recorded fewer incidents compared to the year 2018. 16% of incidents of VAC incidents recorded by LHRC in 2019 were physical VAC.<sup>604</sup> These incidents are annexed to this report, and include killings of children in Njombe Region, which began in December 2018 and lasted 2019 in the early months, before police intervention which led to arrests of more than 15 individuals connected with the killings. Other notable incidents of physical VAC include a father who poisoned his two stepchildren in Tabora; a teacher in Rukwa, who caned a student on the face and caused him blindness; an elderly woman in Geita who burned her grandchild's hands and cutting him with a razor blade for allegedly eating most of the food in the house; a woman who killed and cooked her 6-month-old baby in Geita; a man who killed a 12-year-old child after quarrelling with his mother; a husband and wife who killed their own child and removing his facial skin to be used for witchcraft purposes in Iringa; and a man who **abducted** and killed an 8-year-old child because his parents failed to pay a ten million ransom in Mbeya.<sup>605</sup> Other child **abduction** incidents (majority) occurred in Njombe Region, leading, among other things, to the brutal killings discussed above.

**26** child killings caused by VAC recorded by LHRC in the period of January to December 2019.

Additionally, during this reporting period, children have been subjected to violence and even killed for losing cattle, not doing well in class, 'cooking too much mushroom,' sibling jealousy, and 'cooking

potatoes without stepmother's permission.' For instance, a pupil of Kashenge Primary School in Bukoba – Kagera, suffered violence at the hands of her stepmother, who poured hot water on her right hand, shoulder and breast, a for allegedly cooking sweet potatoes for breakfast without permission. In Tarime, Mara, Mniko Chacha (20), resident of Getenga Village, was sought by police for killing his

<sup>604</sup> LHRC Media Survey 2019 & Human Rights Monitoring 2019.

<sup>605</sup> Ibid.



7-year-old brother due to jealousy, claiming he was their parents' favourites. In Madaba, Ruvuma, A 10-year-old child, Eda John, was burned on her hands by her mother in June 2019 in Gumbilo Village for allegedly failing to secure a top 2 position in the class. She acquired the 10th position in her class. In Chamwino, Dodoma, A mother of three children, resident of Chalinze Village, Rehema Chiuyo, was accused of beating and biting her female child aged seven years on her back for allegedly eating sweet potatoes without her permission. In Tanganyika, Katavi, Lusambaja Bundala (7), resident of Ntongwe Ward, was hit with a sharp object on his head, stabbed with a knife on his chin and eventually killed by his uncle, Juma Lusambaje (28), for losing some of the cows that he was tasked with herding. In Babati, Manyara, Celina Haidau (66), resident of Sendoo Village, was accused of attempting to strangle her 7-year-old grandson for allegedly causing one of her goats to be eaten by a wild dog. The incident occurred on 23rd September 2019. Neighbours reported that the woman has been mistreating her grandchildren. In Mbogwe, Geita, Police arrested Tabitha Marco (38), resident of Lulembela Village, accused of beating her nephew, Charles Deongratias (7), to death for allegedly stealing Tshs. 2000.



Picture 6: A child getting medical attention at a hospital following physical abuse by her stepmother



These incidents also contribute to children running away from home and becoming street children. In the streets, children face even more violence. For instance, one example relates to an 8-year-old child, a pupil at Jitegemee Primary School in Igunga, Tabora. The child, running away from his grandfather due to regular beating, walked for more than 9 kilometres trying to reach his mother in Shelui, Singida Region. The child could have ended up in the streets and become even more vulnerable to violence, had it not been for the intervention by local authorities.

Physical VAC also harms a child's psychological welfare, and contravene protections afforded to children under the Law of the Child Act of 2009.

### *5.3.2.7 Court of Appeal affirms High Court's position that child marriage needs to be outlawed*

In a landmark decision in October 2019, the Court of Appeal of Tanzania upheld the landmark ruling of the High of Tanzania of 2016 on children marriage. That ruling held that children marriage, which the Law of Marriage Act of 1971 permits, contravene the Constitution of the United Republic of Tanzania of 1977. The Court declared the minimum age of marriage to be 18 years from the previous 14 and 15 for girls and boys respectively.<sup>606</sup> The case, filed by the Msichana Executive Director Ms Rebeca Gyumi in 2016, found its way at the Court of Appeal following the Government's appeal.<sup>607</sup>

### *Issues determined by the court*

The court determined the following four issues:<sup>608</sup>

- One: Whether the provisions of sections 12 and 17 of the LMA contravene the right to equality as provided under Article 12 of the Constitution;

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606 See Msichana Initiative "Tanzania Court of Appeal Upholds 2016 Ruling: Child Marriage Is Unconstitutional" at <https://msichana.or.tz/tanzania-court-of-appeal-upholds-2016-ruling-child-marriage-is-unconstitutional/>, accessed 3rd March 2020; Ettie Bailey-King "TANZANIA'S SUPREME COURT DECLARES CHILD MARRIAGE UNCONSTITUTIONAL" Girls Not Brides, 14 Nov 2016, at <https://www.girlsnotbrides.org/law-one-steps-ending-child-marriage-says-rebeca-gyumi-founder-msichiana-initiative-tanzania/>, accessed 3rd March 2020.

607 Ibid

608 See the Court of Appeal Judgement in The Attorney General vs. Rebeca Z. Gyumi, Civil Appeal No. 204 of 2017, delivered on 24th July and 23rd October 2019 at <https://tanzlii.org/tz/judgment/court-appeal-tanzania/2019/348-0>, accessed 3rd March 2020. [herein-after the Rebeca Gyumi Child Marriage Judgement]



- Two: Whether the provisions of section 13(1) and (2) of the LMA is a discriminatory provision, thus contravening the right against discrimination as provided for under Article 13(1), (2), (3), (4) and (5) of the Constitution;
- Three: Whether the provisions of section 17 of the LMA contravene the right to equality and dignity of a person, and a right to non-discrimination as provided for under Articles 12 and 13 of the Constitution; and
- Four: Whether the provisions of section 13(2) of the LMA is too vague and susceptible of being arbitrarily interpreted to deny female children their right to education, which is the cornerstone of the freedom of expression as provided for under Article 18 of the Constitution.

### **Grounds of appeal**

Five grounds of appeal were raised.

- The High Court erred in law in holding that sections 13 and 17 of the Law of Marriage Act [Cap 29 R.E. 2002] are discriminatory for providing preferential treatment regarding the eligible ages of marriage between girls and boys.
- The High Court erred in law in equating the age of the child with the age of marriage.
- The court erred in law by holding that customary and Islamic laws do not apply in matters of marriage stated in the Law of Marriage Act [Cap 29 R.E. 2002].
- The High Court erred in law by holding that with various legislative developments that have taken place; it is unexpected to have valid and competent applications filed in court seeking leave under sections 13(2) and 17(2) of the Law of Marriage Act [Cap 29 R.E. 2002].
- The High Court erred in law by holding that sections 13 and 17 of the Law of Marriage Act [Cap 29 R.E. 2002] have lost their usefulness thus, they deserve to be declared null and void.

### **Court's verdict**

Having considered the grounds of appeal above and taking into consideration various legislative developments relating to children's rights under domestic, regional and international law, the Court of Appeal found that the entire appeal had not merit, hence upheld the decision of the High Court.



In finding the second ground of appeal had no merit, the Court of Appeal agreed with the High Court that the impugned provisions (sections 13 and 17), provide for unequal treatment between girls and boys and that a child is a child whether they are married or not.<sup>609</sup> Further, among other things, the Court also stated:

For the foregoing, we find and hold that the entire appeal has not merit. The appellant was supposed to abide by the order of the High Court to cause the amendment of the LMA as directed. Having so stated, we dismiss the appeal in its entirety with no order as to costs.  
Court of Appeal Judgement, p. 51.

- girls cannot be protected from sexual activities by allowing them to get married at a younger age;<sup>610</sup>
- the impugned provisions have failed to uphold and appreciate the true intentions of the respective international, regional and sub-regional human rights instruments;<sup>611</sup>
- different treatment of the same persons promotes affirmative action, as contended by the appellant;<sup>612</sup>
- the fact that Tanzania has ratified and domesticated various regional and international human rights instruments, demonstrates that it has committed itself in enforcing them and should thus do so; and
- sections 13 and 17 of LMA cannot be interpreted in isolation, but rather in comparison to the instruments ratified by Tanzania.<sup>613</sup>

### **So, what is next?**

In the words of the Msichana Initiative Executive Director, Ms. Rebeca Gyumi, having the law changed is only the first step towards ending child marriage.<sup>614</sup> Now that child marriage has been outlawed, there is a need to change community behaviour at the grassroots level, thus need to focus on community-engagement and implement the law in

609 Rebeca Gyumi Child Marriage Judgment. 37.

610 Ibid, p. 36

611 Ibid, p. 32.

612 Ibid, p. 33.

613 Ibid, p. 29.

614 See Girls Not Brides "LAW IS ONLY ONE OF THE STEPS TO ENDING CHILD MARRIAGE, SAYS REBECA GYUMI FOUNDER OF MSICHANA INITIATIVE TANZANIA" 14 November 2019, at <https://www.girlsnotbrides.org/law-one-steps-ending-child-marriage-says-rebeca-gyumi-founder-msichiana-initiative-tanzania/>, accessed 3rd March 2020.



the smallest unit of society: family<sup>615</sup>

**LHRC's call:** The Government of Tanzania has to amend the Law of Marriage Act of 1971 in line with the decision of the Court of Appeal Decision on child marriage of October 2019 as soon as applicable.

### 5.3.2.8 The Predicament of Child Pregnancy

In 2018, LHRC recorded over 1000 incidents of child pregnancy, in just ten regions of Tanzania Mainland, including Mwanza, Kilimanjaro, Simiyu and Rukwa.<sup>616</sup> In 2019, through the Media Survey and other human rights monitoring mechanisms, LHRC documented over 836 incidents of child pregnancy reported in different parts of Tanzania.<sup>617</sup> From January 2018 to December 2019, more than 2,543 child pregnancy incidents have been reported in different regions of Tanzania Mainland.<sup>618</sup> Rukwa Region recorded the highest number of incidents, at 397+, followed by 366 in **Kagera** Region.<sup>619</sup>

In Bunda, **Mara**, it was reported in May 2019 that child pregnancy has become a big problem in the District and has been a significant factor hindering the realization of the right to education for girls. The Bunda District Commissioner,

Lydia Bupilipili, noted that during from January to April 2019, a total of 40 girls had their education interfered, because of pregnancy.<sup>620</sup>

In **Lindi**, it was reported in June 2019 that 65 girls from primary and secondary schools cut short their education journey because of child pregnancy in the period of January to June 2019. In **Njombe**, RC Christopher Ole Sendeka, mentioned in October 2019 that about 69 students were found pregnant in the region, an average of 12 for each

**2,543+**

Number of child pregnancy incidents documented by LHRC, in 2018 and 2019 through media survey and human right monitoring.

615 Ibid.

616 See LHRC & ZLSC (2019), Tanzania Human Rights Report 2018, at [www.humanrights.or.tz](http://www.humanrights.or.tz).

617 LHRC Media Survey 2019 & Human Rights Monitoring 2019.

618 Ibid.

619 Ibid.

620 Ibid.



district. In **Ruvuma**, Tunduru District Commissioner, Julius Mtatiro, revealed in October 2019 that more than 100 girls from different secondary schools in the district had dropped out of school because of pregnancy from January to July 2019. In **Shinyanga**, a social welfare officer in Shinyanga District Council, Deus Mhoja, mentioned in October 2019 that 71 girls dropped out of school because of child pregnancy. In **Iringa**, Regional Administrative Secretary Happiness Seneda, revealed in September 2019 that from July 2018 to June 2019, a total of 164 girls dropped out of school because of child pregnancy. She mentioned that child pregnancy is becoming a big problem in the region. In **Lindi**, in October 2019, it was reported that 60 girls, 23 attending primary school and 37 from secondary schools, dropped out of school because of pregnancy.<sup>621</sup>

### **Long distance to school contributes to child pregnancy**

In June 2019, during the visit by the Minister responsible for regional administration and local government, Hon. Selemani Jaffo, in Chifunfu Village in Sengerema District, the villagers complained of their children having to walk for about 19 kilometres to get to school, something that has contributed to the problem of child pregnancy in the village.<sup>622</sup> Similar observations were made in September 2019, at Nyamadoke Secondary School in Nyamadoke Village. In this village, there was a huge number of school dropouts due to pregnancies. One of the factors contributing to child pregnancy is children walking up to 16 kilometers to get to school.<sup>623</sup>

Long distance to school leaves children vulnerable to men, especially *bodaboda* (motorcycle) drivers, who lure them into engaging in sexual relationships with them by offering them lifts to school. It also leaves girls vulnerable to other men who offer them money to help board a means of transport to get to school. This is particularly a challenge in semi-urban and rural areas; and girls from poor households, in which parents struggle to meet their school needs, are at greater risk of being targeted by perpetrators of child pregnancy and hence more vulnerable to child pregnancy.

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621 Ibid.

622 LHRC Media Survey 2019 & Human Rights Monitoring 2019.

623 Ibid.



## **Expulsion of pregnant girls**

In June 2019, LHRC and the Center for Reproductive Rights filed a complaint challenging the expulsion and exclusion of pregnant schoolgirls from schools in Tanzania.<sup>624</sup> The Complaint was filed before the African Committee of Experts on the Rights and Welfare of the Child (ACERCW) on behalf of female students in Tanzania. It alleges violations of the African Charter on the Rights and Welfare of the Child and other international and regional human rights instruments ratified by the country.<sup>625</sup> The matter is still under consideration by the African Committee of Experts on the Rights and Welfare of the Child.

Expulsion from school denies girls who become pregnant while in school their constitutionally guaranteed right to education. As expressed by CHRAGG in 2016, no law says they should be expelled when they become pregnant.

**LHRC's call:** Government to change its practice/policy to allow pregnant girls to continue with education in line with international standards on the right to education. Denying a girl's right to education because of pregnancy amounts to discrimination and violates various international conventions that Tanzania has signed and ratified. Such conventions include the International Covenant on Civil and Political Rights, UN Convention on the Rights of the Child, Convention on the Elimination of all Forms of Discrimination Against Women- CEDAW, African Charter on the Rights and Welfare of the Child and Maputo Protocol. Denying a girl's right to education because of pregnancy limits her career options, reduces her ability to reach her full potential, and significantly decreasing her chances of employment and a better life in the future. Denial of education for these girls is even contrary to the CCM Election Manifesto of 2015.<sup>626</sup> Even girls who become pregnant while still in school, can play a role in industrialized Tanzania, if they will be provided with the chance to proceed with their education.

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624 See CENTER FOR REPRODUCTIVE RIGHTS AND THE LEGAL AND HUMAN RIGHTS CENTRE FILE A COMPLAINT CHALLENGING THE EXPULSION AND EXCLUSION OF PREGNANT SCHOOL GIRLS IN TANZANIA, statement issued on 17 June 2019 at <https://www.humanrights.or.tz/posts/b/news/center-for-reproductive-rights-and-the-legal-and-human-rights-centre-file-a-complaint-challenging-the-expulsion-and-exclusion-of-pregnant-school-girls-in-tanzania>, accessed 3rd March 2020.

625 Ibid.

626 See Para 52 of CCM Election Manifesto of 2015.



## **SDG and Vision 2025 concerns**

The predicament of child pregnancy is a threat to achieving key SDG goals and targets under the Tanzania Vision 2025. Relevant SDGs here include SDG 1 (reduce poverty), 4 (quality education) and SDG 5 (gender equality). Allowing these girls to continue with their education contributes to attaining these goals. The move will also help to achieve the Tanzania Development Vision 2025, mainly Target 3.1 (High quality Livelihood).

### **5.3.2.9 The vulnerability of Children to HIV Infection**

As discussed above, rates of sexual violence against children and child pregnancy are high. Child pregnancy means children are subjected to unprotected sexual activity. Child pregnancy, sodomy and rape put them at increased risk of HIV infection, which in turn affects the 90-90-90 target to help end the AIDS epidemic.<sup>627</sup>

### **5.3.2.10 Right to education and child labour concerns around mining areas: The case of Shinyanga Region**

In 2019, LHRC observed that effective realisation of the right to education around the Williamson Diamond Mine in Shinyanga, particularly concerning Mwadui DDC Primary School and Muungano Primary Schools in jeopardy.<sup>628</sup> It was observed that there

There are pupils whom we know are very smart, but surprisingly during their last examinations they performed so poorly, leaving all the teachers wondering what happened to them.  
A teacher at Mwadui DDC Primary School

was a tendency of school children dropping out of school or even deliberately failing their examinations so that they can go and engage in mining activities. The seemingly financial benefits of working at the mines around the schools has contributed to truancy at the schools and eventually dropouts among school children.<sup>629</sup> Some of the school dropouts go and work as artisanal miners, popularly

<sup>627</sup> By 2020, 90% of all people living with HIV will know their HIV status. By 2020, 90% of all people with diagnosed HIV infection will receive sustained antiretroviral therapy. By 2020, 90% of all people receiving antiretroviral therapy will have viral suppression.

<sup>628</sup> Human Rights and Business Survey 2018/19, Shinyanga Field Report.

<sup>629</sup> Ibid.



known as ‘wahabeshi’ – who also allegedly trespass into Williamson Diamond Mine and ‘steal’ sand believed to contain diamond.<sup>630</sup> Some of the children, however, continue with school, while working as ‘wahabeshi’ after school hours and during weekends.<sup>631</sup> Teachers around the mining areas remarked that some pupils working as ‘wahabeshi’ have been caught trespassing into mines and brought before legal bodies.<sup>632</sup>

Sometimes, the pupils get seriously injured while carrying out their ‘mining activities.’ A village official revealed that in one incident, a Standard Three pupil at Muungano Primary School reportedly failed to show up at school for more than four months, after he fell while in a mine and suffered a severe head injury. The child was treated at Bugando Hospital with the support of Williamson Diamond Mine.<sup>633</sup> One villager also remarked that children are used in mining activities, including trespassing into mines because those who send them believe the security guards at the mines will not shoot or harm children.<sup>634</sup>

There was also an observation of child labour in Mwakitolyo Ward – Shinyanga DC. Causes of child labour around the included poverty, death of parents, economic hardships, school dropout and family disputes.<sup>635</sup>

### **Other incidents of child labour in 2019**

LHRC’s Human Rights and Business Survey conducted in 2019 also revealed incidences of child labour in Dodoma, Geita and Arusha Regions.<sup>636</sup> Agriculture and fishery sectors are dominant in child labour. Most of the works under these sectors are hazardous under Tanzanian laws. According to the Food and Agriculture Organization of the United Nations (FAO), 108 million boys and girls in the world are engaged in child labour in farming, livestock, forestry, fishing or aquaculture, often working long hours and facing occupational hazards.

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630 Ibid.

631 Ibid.

632 Ibid.

633 Ibid.

634 Ibid.

635 LHRC Human Rights and Business Survey 2019, Shinyanga Field Report.

636 For details see LHRC (2019), Human Rights and Business Report 2018/19, at [www.humanrights.or.tz](http://www.humanrights.or.tz).





Picture 7: Children carrying bricks in Nkome Ward for payment of Tshs. 100 per 10 bricks in Geita

**LHRC's call:** Children should be left to study instead of being used as cheap labour and exploited. Child labour constitutes a violation of children's rights, including the right to education. It is prohibited under domestic laws – such as the Employment and Labour Relations Act of 2004 and the Law of the Child Act of 2009 – as well as under regional and international human rights instruments, including ILO conventions. The Government should also strengthen collaboration with other actors including CSOs and Development Partners to address challenges underpinning child labour in Tanzania.

## 5.4 Rights of Persons with Disabilities

### 5.4.1 Legal Framework

Rights of persons with disabilities (PWDs) are provided for under the Convention of the Rights of Persons with Disabilities (CRPD). These rights include the right to equality and non-discrimination, right to life, right to equality before the law, right to liberty and security of person, freedom from torture, freedom from violence, right to education, right to health and right to work and employment.<sup>637</sup> Tanzania is a party to this treaty and should take measures to safeguard the rights of PWDs. In Tanzania, the treaty was domesticated in 2010 through the Persons with Disabilities Act, No. 9 of 2010.

<sup>637</sup> See CRPD.



CRPD requires States to guarantee the right of PWDs to work on an equal basis with others and ensure their acceptance in the labour market and work environment that is open, inclusive and accessible to them.<sup>638</sup> This right is safeguarded through various measures, including prohibiting discrimination based on disability.<sup>639</sup>

Under the CRPD States are required to take all appropriate legislative, administrative, social, educational and other measures to protect PWDs from all forms of exploitation, violence and abuse, including GBV.<sup>640</sup> Like other groups, PWDs also face different forms of violence, including physical, psychological and sexual.

### 5.4.2 Key Issues

In 2019, key issues affecting the realisation of the rights of PWDs included: introduction of rules to expedite dispensation of justice for vulnerable groups; discrimination and violence; decision of the Committee on the Rights of Persons with Disabilities on violation of the rights of a woman with albinism from Kagera Region; access to social services;

#### 5.4.2.1 Introduction of Rules to Expedite Dispensation of Justice for Vulnerable Groups

In February 2019, the Judiciary published the Judicature and Application of Laws (Practice and Procedure of Cases Involving Vulnerable Groups) Rules, 2019,<sup>641</sup> a set of rules created by the Chief Justice of Tanzania, Hon. Prof. Ibrahim Juma, aimed at expediting dispensation of justice for vulnerable groups in Tanzania. The Rules were made under Section 4 of the Judicature and Application of Laws Act, Cap 358. The Rules are divided into two main parts. The first part, PART I, covers preliminary provisions, including the interpretation section. PART II provides for the practice and procedure to be adhered to when dealing with cases involving vulnerable groups, which include widows, children, elderly people and persons with disabilities.<sup>642</sup> The

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638 Article 27(1) of CRPD.

639 Ibid, Article 27(1)(a).

640 Article 16(1) of CRPD.

641 See the Rules at <https://tanzlii.org/content/judicature-and-application-laws-practice-and-procedure-cases-involving-vulnerable-groups>.

642 Rule 3 of the Judicature and Application of Laws (Practice and Procedure of Cases Involving Vulnerable Groups) Rules, 2019, Government Notice No. 110 published on 1/2/2019.



Rules are applicable in Tanzania Mainland, and seeks to accelerate the determination of cases involving vulnerable groups.<sup>643</sup>

### ***Time limit for determination of cases involving vulnerable groups***

In ensuring acceleration of determination of cases involving vulnerable groups, the Rules impose a time limit for determination of such cases by courts of law. Courts are required to finalise cases involving these groups within six (6) months since commencement of hearing and only allowed to extend the period by three months under exceptional circumstances.<sup>644</sup> The idea is for these cases to be given priority over all other cases.<sup>645</sup>

### ***Sign language interpreter in court***

Another key measure taken by the Judiciary to safeguard the right to access to justice of the vulnerable groups under the Rules is ensure availability of a sign language interpreter where a case involves a dumb person, in order to enable such a person to follow up the proceedings.<sup>646</sup> The Court is empowered to order hiring of a sign interpreter, who shall be paid by the Judiciary.

<sup>647</sup>

### ***Friendly court premises and a special person to handle cases of vulnerable groups***

Further, the Rules require courts of law to ensure court premises are friendly to accommodate vulnerable groups. Suitable arrangements must be made by presiding judge or magistrate to ensure persons from vulnerable groups are comfortable.<sup>648</sup> Additionally, the courts are required to designate a special person to handle cases involving vulnerable groups and ensure database of cases related to vulnerable groups is established and maintained.

### ***Judgement in braille format***

Another key aspect of the Rules to accelerate dispensation of justice for vulnerable groups is requirement of a judgement to be delivered in braille format. This requirement is applicable where a case involves a visually impaired person. The judgment must be delivered to

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<sup>643</sup> Ibid, Rule 2.

<sup>644</sup> Ibid, Rule 4.

<sup>645</sup> Ibid, Rule 5.

<sup>646</sup> Ibid, Rule 6.

<sup>647</sup> Ibid.

<sup>648</sup> Ibid, Rule 7.



the person free of charge and within 30 days since the date of the judgment.<sup>649</sup>

### **Right to legal aid**

The Rules also recognise the right to legal aid for vulnerable groups. Presiding judge or magistrate is required to facilitate access to legal aid for a person with vulnerability where it appears such person needs such aid. This should be done in accordance with the Legal Aid Act of 2017.

**LHRC's view & call:** Creating these Rules to expedite dispensation of justice for vulnerable groups is the first step towards safeguarding their right to access to justice. The next and most important step is to ensure effective implementation of the Rules so that cases involving members of vulnerable groups are accelerated and timely justice is achieved.

#### **5.4.2.2 Discrimination and violence**

In 2019, LHRC recorded several incidents of discrimination and violence against PWDs. In **Songwe**, Japhari Magwaza, a teacher from the department of children with visual impairment (blind), reported in June 2019 that some parents were hiding their children with disability for fear of 'shame.' He noted that having in place hostels could help curb that situation.<sup>650</sup> In February 2019, the Prime Minister, Hon. Kassim Majaliwa, warned that legal action would be taken against parents and guardians who hide their children with disabilities, denying them some of their rights.<sup>651</sup>

In May 2019, it was reported in Ileje, Songwe Region that six children with disabilities were found abandoned by their parents and guardians. It was further observed that Ileje was becoming notorious for abandonment/dumping of babies with disabilities.<sup>652</sup> In July 2019, it was reported that Sophia Yona, a 10-year-old child with disabilities and resident of Membe Ward in Chamwino District, had been locked inside her home for a long time because of her disability. Teachers from Member Primary School heard of her story and went to see her parents and talked to her parents, who claimed that they could not

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649 Rule 9.

650 LHRC Media Survey 2019.

651 Ibid.

652 Ibid.



take her to school due to her disability.

PWDs, especially those who are mentally challenged, are more vulnerable to different forms of violence, including sexual violence. In August 2019, the Resident Court in Manyara sentenced Emmanuel Samwel (19), after finding him guilty of raping a mentally challenged woman, Etropa Thomas (22), resident of Bashnet Village, in May 2018. For PWAs, physical violence, which threatens their right to life and right to liberty and personal security, continued to be a major challenge, despite a decrease of reported attacks and killings in recent years. As discussed in 2.2 above, two attacks on PWAs were reported in 2019, including vandalism of a grave of PWA. PWAs continued living in fear as they recall the past attacks which tended to intensify during election periods and the year. The year 2019, the saw the Local Government Elections take place in Tanzania, passed without incident but fear among PWAs continues as the country heads towards the General Elections of 2020.

#### ***5.4.2.3 Decision of the Committee on the Rights of Persons with Disabilities on violation of the rights of a woman with albinism from Kagera Region***

The Committee on the Rights of Persons with Disabilities is body of independent experts which monitors implementation of the Convention on the Rights of Persons with Disabilities (CRPD) of 2006.<sup>653</sup> States parties to the Convention are required to submit reports on the implementation of the CRPD.<sup>654</sup> The Committee reviews state reports and provides recommendations.<sup>655</sup> Additionally, the Optional Protocol to CRPD gives the Committee competence to examine individual complaints regarding the violations of CRPD. Tanzania is State party to CRPD and its Optional Protocol.

#### ***What was the case about?***

The case was about a woman with albinism, resident of Ntubeye Village in Kagera Region. In October 2008, she was attacked with machetes by two men at her home while sleeping with her 2-year-old son.<sup>656</sup> The two men cut off one of her arms and maimed the other.

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653 Article 34 of CRPD.

654 Article 35 of CRPD.

655 Article 36 of CRPD.

656 See Committee on the Rights of Persons with Disabilities, Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No.



She saw the attackers and recognised one of them as her neighbor; and when she screamed for help, the men fled with her arm. The other arm was later amputated at hospital; and when she was attacked, she was pregnant, but miscarried as a result of the attack. The attackers were eventually arrested in 2011 and sent to court, but the court acquitted the attackers, claiming that a person with a visual impairment could not correctly identify the people who attacked her. She also mentioned that her father was not allowed to testify; and that she was taken in by the District Commissioner, but continued to face harassment, discrimination and stigma, and, without her arms, she was unable to carry out personal routines such as bathing and feeding herself. She then decided to file a complaint at the Committee on the Rights of Persons with Disabilities in June 2014.<sup>657</sup>

### **What did the Applicant contend?**

The applicant contended violations of her following rights under the CRPD:

- Article 5 [*Equality and non-discrimination*]: She was discriminated against on the basis of her disability due to the State party's failure to take care of persons with albinism. Her attack is an illustration of a systematic practice against persons with albinism.
- Article 6 [*Women with disabilities*]: The State party has failed to take measures to protect women with disabilities and guarantee their rights and empowerment.
- Article 8 [*Awareness-raising*]: The State party did not carry out public awareness campaigns to ensure that the public understands the rights of persons with albinism.
- Article 10 [*Right to life*]: The State party failed to take measures of protection for persons with albinism, and that this failure amounts to a violation of her rights under article 10
- Article 15(1) [*Freedom from torture or cruel, inhuman or degrading treatment or punishment*]: The State party failed to protect her from violence and torture. She suffered double jeopardy, first as a woman and then as a person with albinism; and cutting off her arms clearly amounts to torture and degrading treatment.

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24/2014, Adopted by the Committee at its twenty-second session (26 August–20 September 2019).

657 Ibid.



- Article 16 [*Freedom from exploitation, violence and abuse*]: The State party failed to ensure that persons with albinism are protected from exploitation, violence and abuse.
- Article 17 [*Protecting the integrity of the person*]: The State party failed to protect her physical integrity, as well as taking effective measures to protect persons with albinism from attacks.

### **What were the key issues for determination?**

Key issues for determination were:

- Admissibility of the communication: The State party claimed that the communication is not admissible for various reasons, including non-exhaustion of local remedies.
- Whether Tanzania, as State party to CRPD, violated Articles 5, 6, 8, 10, 15(1), 16 and 17 of CRPD.

### **What did the Committee say?**

#### Admissibility of the complaint/communication

- The Committee considered the State party's submission that applicant did not exhaust local remedies, including filing a petition under the Basic Rights and Duties Enforcement Act and failing to initiate civil proceedings to request compensation for damages and harm. The Committee concluded that constitutional petition would have been an effective remedy in the applicant's case.
- The Committee also concluded that civil claim and award of compensation alone would not be an effective remedy for the purposes of article 2 (d) of the Optional Protocol. It therefore concluded that it was not precluded, under article 2 (d) of the Optional Protocol, from considering the communication.
- Having also considered claims of inadmissibility in relation to Articles 6, 8, 10 and 14 of CRPD, Committee declared the communication admissible and proceeded with its consideration of the merits.

#### Consideration of violations of violated Articles 5, 6, 8, 10, 15(1), 16 and 17 of CRPD

- The Committee concluded that the applicant had been a victim of direct discrimination based on her disability, in violation of article 5 of the Convention. It considered that the State part had failed to offer adequate protection to persons with albinism from acts of violence against them.



- The Committee concluded that, in the circumstances of the case, the State party violated the author's rights under article 15 (1) of the Convention, having considered that there was lack of action by the State party in order to allow effective prosecution of the suspected perpetrators of the crime.
- Committee also found that, in the circumstances of the case, the State party violated the author's rights under article 16 of the Convention.
- Committee considered that the failure by the State party to take all necessary measures to prevent acts of violence similar to those suffered by the author and to efficiently investigate and punish the perpetrators of these acts in the author's case amounts to a violation of the author's rights under article 17 of the Convention.
- The Committee generally concluded that State party failed to fulfil its obligations under articles 5, 15 (1), 16 and 17, read alone, and articles 6 and 8, read in conjunction with articles 5, 15 (1), 16 and 17, of CRPD.

### ***What were the Committee's Recommendations?***

The Committee made the following recommendations:

- Provide her with an effective remedy, including compensation, proper medical treatment, redress for the abuses suffered, support devices such as functional prostheses, rehabilitation, and the support necessary to enable her to live independently again.
- Conduct an impartial, prompt and effective investigation into the attack suffered by the author, and to prosecute and punish the perpetrators.
- Review and adapt legal frameworks as necessary to ensure that they encompass all aspects of attacks against persons with albinism, including regarding trafficking in body parts.
- Ensure prompt investigation and prosecution of cases of attacks against persons with albinism and trafficking in body parts and the punishment of those responsible.
- Ensure that the practice of using body parts for witchcraft-related practices is adequately and unambiguously criminalized in domestic legislation.
- Develop and implement sustained awareness-raising campaigns, based on the human rights model of disability and in compliance with the State party's obligations under article 8



of the Convention, and training for the general public, judicial officials, the police and all workers in the areas of education, health and justice to address harmful practices and rampant myths affecting the enjoyment of human rights by persons with albinism and to cover the scope of the Convention and its Optional Protocol.

- Publish the Committee's Views and circulate them widely in accessible formats so that they are available to all sectors of the population.
- Pursue rehabilitation measures for survivors of attempted killings and victims of mutilations.

In line with Article 5 of the Optional Protocol and rule 75 of the Committee's rules of procedure, the Committee noted that the State party (Tanzania), should submit to the Committee, within six months, a written response, including information on any action taken in the light of the present Views and the recommendations of the Committee.

#### **5.4.2.4 Access to Social Services**

Access to social services, especially education, continued to be a challenge for children with disabilities. This is mainly contributed to by inadequate infrastructure. In June 2019, it was revealed that lack of supportive infrastructure such as hostels, contributed to absenteeism among the 17 children with disability at Mwenge Primary School in Songwe. In Kigoma, it was reported in May 2019 that more than 3000 children with disabilities had no access to education due to the shortage of special schools for them.

Another issue affecting the right to education for children with disabilities is the lack of teachers trained on special needs education. *Twaweza's* Uwezo Learning Assessment Report 2019 indicates this problem to be huge, especially for children with disabilities in terms of an inclusive learning environment, including for those with sight or hearing problems.<sup>658</sup> Despite the introduction of the National Strategy for Inclusive Education in 2017,<sup>659</sup> this obstacle continues to contribute

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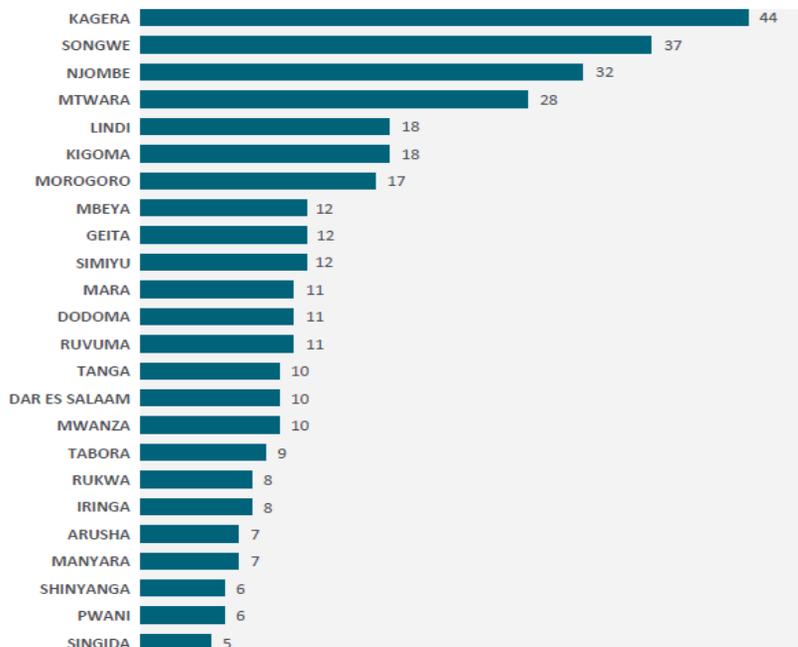
658 See Uwezo (2019): Are Our Children Learning? Uwezo Tanzania Learning Assessment Report. Dar es Salaam: Twaweza East Africa.

659 See the United Republic of Tanzania, Ministry of Education, Science and Technology, the National Strategy for Inclusive Education 2018-2021, December 2017 at <http://rodra.co.za/images/countries/tanzania/policies/National%20Strategy%20for%20Inclusive%20>



to lower participation in school among children with disabilities.<sup>660</sup> According to the Uwezo report, **only 13% of all interviewed teachers were trained in any kind of special needs education.**<sup>661</sup> The figure below shows the pupil-teacher ratio for children with special needs in surveyed regions.

FIGURE 27: PUPIL-TEACHER RATIO FOR CHILDREN WITH SPECIAL NEEDS, BY REGION, 2017



Source: Calculated from data from the 2017 Uwezo learning assessment.<sup>5</sup>

Figure 16: Pupil-teacher ratio for children with special needs by region, 2017

Source: Uwezo Tanzania Learning Assessment Report 2019

**LHRC’s call:** Improve relevant infrastructure at public and private institutions in order to enhance access to social services, especially education, for children with disabilities and other PWDs. This is essential in safeguarding their rights to education and health. Community stakeholders collectively to Increase awareness among community members to refrain from abandoning and neglecting children with disabilities.

Education\_version%20for%20signing.pdf, accessed 7th March 2020.

660 Uwezo (2019): Are Our Children Learning? Uwezo Tanzania Learning Assessment Report. Dar es Salaam: Twaweza East Africa.

661 Ibid.



#### 5.4.2.5 Integration of the sign language into the education system to safeguard the right to inclusive education

In September 2019, the Prime Minister, Hon. Kassim Majaliwa, launched the Tanzania Sign Language (TSL) Initiative, which will be implemented across the country.<sup>662</sup> The launch took place during the commemoration of the International Week of the Deaf, which seeks to promote the rights of the deaf community in Tanzania. The Initiative has enabled adoption of the sign language as the national language of education for the deaf and will be fully integrated into the education system. This is good news for children with disabilities and the initiative will help to promote their right to education. The Initiative is expected to support development of school curriculums and conduct training for special needs teachers.<sup>663</sup>

**LHRC's view:** The integration of the sign language into the education system will help to improve access and quality of education for children with disabilities. It will also boost efforts to achieve SDG 4 on ensuring inclusive and equitable quality education and promoting lifelong learning opportunities for all. However, as indicated above, there is shortage of teachers trained on special needs education, hence efforts must be made to provide training on special needs education to more teachers.

## 5.5 Rights of the Elderly

### 5.5.1 Legal Framework

Rights of the elderly are guaranteed and protected under various, regional, continental and international human rights instruments. These include the African Charter on Human and Peoples' Rights, the Maputo Protocol (for women elderly), ICCPR, ICESCR, and CRPD (for elderly PWDs). We are yet to have in place a convention on the rights of the elderly.

According to *HelpAge International*, elderly-specific human rights convention is needed because existing human rights mechanisms do not guarantee and provide for adequate protection and promotion of rights of older people.<sup>664</sup> It states that the convention should: provide

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<sup>662</sup> LHRC Media Survey 2019.

<sup>663</sup> Ibid.

<sup>664</sup> See HelpAge International "Towards a UN convention on the rights of older people" at <https://www.helpage.org/what-we-do/rights/towards-a-convention-on-the-rights-of-older-people/>, accessed 5th January 2019.



a comprehensive and systematic framework for the protection and promotion of all our human rights in older age; prohibit all forms of discrimination in older age in every aspect of our lives; articulate how each human right specifically applies to us in older age; and provide for a strong implementation, monitoring and accountability system.

According to the 2011 report of the Secretary General to the UN General Assembly, older persons around the world face four major challenges in terms of human rights.<sup>665</sup> These challenges are discrimination, poverty, violence and abuse and lack of specific measures and services.<sup>666</sup> The elderly in Tanzania also face similar challenges.<sup>667</sup> It is estimated that the number of elderly is over four million.

### 5.5.2 Key Issues

In 2019, the major issue in realisation of the rights of the elderly was violence against the elderly, including sexual and physical violence. There were also complaints about accessing health services in some areas of the country.

#### 5.5.2.1 Violence against the Elderly

Violence against the elderly reported in 2019 included incidents of killings and sexual violence. For instance, in April 2019 two men from Airport Village in Tunduru were accused of killing their uncle, Omari Mohamed Omari (60) following a dispute over land. In May 2019, an older man was found murdered with his head cut wide open in Njombe Region.<sup>668</sup> On 27<sup>th</sup> September 2019, Mkomangwa Lutemela (32), resident of Mwamakona area in Tabora, was arrested and sent to court, accused of killing an elderly person aged 104, Mwalu Nh'onda.<sup>669</sup>

LHRC also recorded two incidents of rape of older women. In the first incident, William Saimon (28) was arrested by police in February 2019 over allegations of raping a 77-year-old woman, Jema Macheho, resulting into her death.<sup>670</sup> The incident occurred in Bihawana Village

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665 See Follow-up to the Second World Assembly on Ageing: Report of the Secretary-General, Sixty-sixth session, A/66/173, 22 July 2011 at <https://undocs.org/A/66/173>, accessed 5th January 2019.

666 Ibid.

667 According to the Tanzania National Age Policy 2003, these are people who are 60 years and above.

668 LHRC Media Survey 2019.

669 Ibid.

670 Ibid.



in Dodoma Region. In the second incident, which also occurred in Dodoma in July 2019, police reported that an angry mob had killed an unknown man after he had raped three people, including an 80-year-old older woman in Mailimbili area.<sup>671</sup>

### 5.5.2.2 Access to Social Services

Complaints about access to social services emerged in Shinyanga Region, whereby the elderly people in Shinyanga rural have complained about the shortage of medicines at dispensaries and health centres, something which affects their access to quality health services. This was revealed in a report by the Elderly Council of Shinyanga District in July 2019.<sup>672</sup> They also requested for identification cards, as only 5,563 out of 12,922 elderly persons in the district have the IDs, making it difficult for the rest to access health services.<sup>673</sup> However, the Shinyanga DMO, Amos Mwenda, explained that the problem was not the shortage of medicines at the health facilities. Instead, he said, some medications may not be prescribed at dispensary and health centre level. In such cases, they can only be accessed at district and regional hospitals. He also mentioned a shortage of 68% of health workers, including specialists of diseases of the elderly.

Nevertheless, the Government continued to take measures to enhance access to social services for elderly persons. In May 2019, Deputy Minister of Health, Community Development, Gender, Elderly and Children, Dr. Faustine Ndugulile remarked that 40% of district/municipal councils had set aside special desks to attend the elderly.

**LHRC's call:** The Ministry of Health, Community Development, Gender, Elderly and Children to intensify efforts of enhancing access to social services, especially health services, to the elderly, including ensuring they all get the relevant identification cards to ease their access to such services.

<sup>671</sup> Ibid.

<sup>672</sup> Ibid.

<sup>673</sup> Ibid.

**44:1**      **5:1**  
in Kagera      in Singida  
Pupil-teacher ratio for special  
needs education  
*Uwezo Tanzania Learning Assessment  
Report 2019*



## 5.6 Rights of Persons Living with HIV/AIDS

### 5.6.1 Legal Framework

Like any other human being, rights of persons living with HIV/AIDS are provided for and protected under various regional, continental and international conventions, including the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the African Charter on Human and Peoples' Rights (ACHPR). In Tanzania, their rights are covered under the HIV and Aids (Prevention and Control) Act of 2008, which provides for the right to non-discrimination and right to access social services, among others.

### 5.6.2 Key Issues

In 2019, key issues affecting the rights of PLHIVs, including the right to access HIV-related health services were discrimination and stigma. Discrimination and Stigma

### *African context*

The 2018 State of African Women Report provides a key context and current situation of HIV and AIDS and rights of PLHIVs in Africa.<sup>674</sup> The report indicates that:

- In 2016 seven of the ten PLHIVs (25.6 million people) lived in the Sub-Saharan African region and 80% of them lived in Eastern or Southern Africa.
- More than half of PLHIVs in Sub-Saharan Africa are women and girls and 59% of them are in Eastern and Southern Africa.
- HIV and AIDS affect women and girls disproportionately, indicating that more than half of the new infections in Africa occur in women. It further shows that the rate of new infections among young women aged 15-22 is as high as 66%; and young women aged 15-24 in Sub-Saharan Africa are 2.5 times more likely to be infected with HIV than men. Additionally, the report indicates that AIDS-related illnesses are the second leading cause of death for young women aged 15–24.
- Women and girls are disproportionately affected by the stigma and discrimination associated with HIV infection, facing

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<sup>674</sup> See The State of the African Woman Campaign Project, The State of African Women Report, August 2018, at <https://www.ippfar.org/sites/ippfar/files/2018-09/SOAW-Report-FULL%20VERSION.pdf>.



discrimination in settings such as family, community, school and workplace.

Stigma and discrimination can limit women and girls' access to HIV prevention, treatment and care, as well as to SRH and other services. It can also lead to increased GVAW, and limit women and girls' educational attainment or make them lose their jobs, income or property rights.  
The State of African Women Report 2018

### **Tanzanian context in 2019**

A report released by the National Council of People Living with HIV (NACOPHA) in 2019 revealed that stigma and discrimination are the major challenges for PLHIVs and affect efforts to combat HIV/AIDS. Health workers were implicated in subjecting PLHIVs to stigma and discrimination, especially during the provision of HIV-related health services.<sup>675</sup> A senior legal officer at the Tanzania Commission for AIDS (TACAIDS), revealed that the Commission was planning to convene a meeting with healthcare workers, police officers and judicial officers to raise awareness about the HIV and Aids (Prevention and Control) Act of 2008, and human rights. It was further revealed that, despite discrimination and stigma being a criminal offence, there are very few cases because most victims decide not to report incidents because of feeling 'ashamed as a result of stigma.

**LHRC's view:** Increased incidence of violence against women and children, puts women and children, especially girls, at an increased risk of new HIV infections. Increase of child pregnancy cases, which suggests more girls engage in unprotected sex, is also a worrying sign in terms of combating HIV and AIDS and preventing new HIV infections, which is key in attaining the 90-90-90 targets and relevant and key SDGs, especially those relating to health and education.

**LHRC's call:** The Ministry of Health, Community Development, Gender, Elderly and Children to ensure health workers adhere to professionalism and comply with the HIV and Aids (Prevention and Control) Act of 2008 when dealing with PLHIVs and refrain from subjecting them to any acts of discrimination or stigma. Community members should also refrain from discriminating or stigmatizing

<sup>675</sup> LHRC Media Survey 2019.



PLHIVs and respect their rights as human beings. Deliberate efforts must also be made to address sexual VAC and VAW, as well as the predicament of child pregnancy, in order to prevent new HIV infections among women and children.



## Chapter 6 Human Rights Mechanisms

### 6.1 Overview

This chapter looks at local, regional and international human rights mechanisms in Tanzania. These human rights mechanisms comprise of laws and institutions that protect and promote human rights. The national mechanisms highlighted in this chapter are the national human rights institution (CHRAGG), the Judiciary and law enforcement organs. Regional and international human rights mechanisms covered in this chapter are the Universal Periodic Review (UPR) mechanism and mechanisms established by treaties, namely the Human Rights Committee, Committee on the Elimination of Discrimination Against Women, Committee on the Rights of the Child, and the African Committee on the Rights and Welfare of the Child.

### 6.2 National Human Rights Mechanisms

#### 6.2.1 Legal Framework

In Tanzania, key national human rights institutions include the Commission for Human Rights and Good Governance (CHRAGG), the Prevention and Combating of Corruption Bureau (PCCB) the Judiciary, the Tanzania Police Force and the Tanzania Prisons Services (TPS).

##### 6.2.1.1 *The Commission for Human Rights and Good Governance (CHRAGG)*

The Commission for Human Rights and Good Governance (CHRAGG) is an independent national human rights institution established under the Constitution of the United Republic of Tanzania of 1977.<sup>676</sup> It has an overall mandate to promote, protect, and safeguard human rights and good governance in Tanzania. Among the functions of CHRAGG are sensitizing people and institutions about the preservation of human rights and their duties. It is also mandated to receive complaints on human rights violations.<sup>677</sup> CHRAGG is also tasked with advising the Government and its institutions on issues of human rights and good governance.<sup>678</sup>

<sup>676</sup>See Article 129(1) of the Constitution of Tanzania 1977.

<sup>677</sup>Article 130(1) of the Constitution of Tanzania 1977.

<sup>678</sup>Ibid.



### 6.2.1.2 Judiciary

Judicial organs are key in the protection of human rights, interpretation of human rights laws, development of human rights jurisprudence, and providing remedies when human rights have been violated. The main judicial organs in this regard are courts of law, which deal with criminal and civil cases. In relation to criminal cases, courts have to ensure key human rights of the accused person such as rights to equality before the law, legal representation and bail are preserved and not breached. In civil cases, the courts and tribunals have a duty to ensure the rights of the parties involved are protected and provide the right to an effective remedy. They conduct a judicial review of laws and administrative actions. In this way, they have a role of ensuring that the Parliament and the Executive abide by the Constitution in order to protect people from laws and practices that infringe upon their human rights. Courts, particularly the High Court, provide a forum for people whose rights have been violated to seek remedies.

### 6.2.1.3 Law enforcement organs

Law enforcement organs, particularly the Tanzania Police Force (TPF) and the Tanzania Prisons Services (TPS) are provided by law an important role in protecting citizens and their properties. Police are supposed to ensure justice is done through conducting investigations and taking suspected criminals to face justice. Prisons are to protect the society from convicted criminals and act to reform such individuals so that they can fit in back into society, should they be released.

## 6.2.2 Key Issues

### 6.2.2.1 Action by national human rights mechanisms to promote and protect human rights

#### A. Police Force

The Tanzania Police Force continued to take action to protect citizens and their property in 2019, including arresting perpetrators of human rights violations, including those implicated in committing acts of violence against children and women. Police gender desks continued with documentation of incidents of violence against women and children.

#### B. Judiciary

As discussed in 2.4 above, the Judiciary took various measures to enhance access to justice. Some of the measures include the construction of court buildings and renovation of old court buildings;



using ICT to expedite dispensation of justice and reduce costs of attending court sessions; introduction and operationalization of mobile courts; conducting judicial inspections; introduction of integrated justice centres; reducing the backlog of cases, and developing sentencing guidelines.

### **C. CHRAGG**

In 2019, CHRAGG, which is the national human rights institution, continued carrying out its key functions, including sensitizing about the preservation of human rights and duties; receiving complaints in relation to the violation of human rights; conducting inquiries on matters relating to infringement of human rights and violation of principles of good governance; conducting research and disseminating education on human rights and good governance; inquiries into the conduct of any person or institution concerned in relation to performance of their duties or functions and abuse of office; and advising the Government, public institutions, and private sector on human rights and good governance issues.

The year 2019 was also a good one for CHRAGG as it got its new Chairperson and other commissioners. In September 2019, Hon. President John Magufuli appointed Judge (Rtd) Mathew Mwaimu to be its Chairperson. Mohamed Khamis Hamis, State Attorney from the Criminal Investigation Department office in Zanzibar, was appointed its Deputy Chairperson. Moreover, five Commissioners were appointed, namely Dr. Fatma Rashid Khalfani (Lecturer at the University of Zanzibar), Dr. Thomas Masanja (Lecturer at St. Augustine University of Tanzania), Amina Talib Ali (Senior Officer from the Second Vice-President Office, Zanzibar), Khatib Mwinyi Chande (Lecturer at the Open University of Tanzania) and Nyanda Josiah Shuli (Senior Officer from the Ministry of Finance and Planning).

In the ministry budget speech for the financial year 2019/2020, the Minister of Constitutional and Legal Affairs, Hon. Ambassador Dr. Augustine Mahiga (MP), revealed CHRAGG received a total of 6,928 complaints on violations of human rights and good governance from citizens at the end of the financial year 2018/2019. Out of those complaints, 564 had been investigated, while 211 were referred to institutions with appropriate mandate to address them.<sup>679</sup> CHRAGG

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679HOTUBA YA MHESHIMIWA BALOZI DKT. AUGUSTINE PHILLIP MAHIGA (MB) WAZIRI



also conducted inspections at nine prisons and police stations in Tabora, Singida, Kilimanjaro, Arusha, Shinyanga, Simiyu, Kagera, Geita, Njombe, Ruvuma, Morogoro and Dodoma, all in Tanzania Mainland. In Zanzibar, the Commission visited 9 correctional facilities, one approved school for juvenile delinquents and 32 police stations. Reports indicating findings and recommendations were sent to relevant authorities for action.<sup>680</sup>

Additionally, in 2019 CHRAGG continued implementing its sensitization and awareness-raising programmes in different parts of the country, through means such as the media, meetings, publications and seminars. In the process, CHRAGG also reached 468 citizens in Mara, Mtwara, Mbeya, Manyara, Shinyanga, Dodoma, Kagera, Kigoma, Tanga, Lindi, Kilimanjaro and Iringa Regions. It also reached 843 WEOs from Mara, Shinyanga, Mtwara, Mbeya and Manyara for training, to build their capacity on human rights issues and strengthen good governance.<sup>681</sup> During this reporting period CHRAGG also continued playing a leading role in developing the Second National Human Rights Action Plan 2019-2023.<sup>682</sup>

LHRC congratulates the newly appointed CHRAGG leadership and commends CHRAGG for its continued efforts to promote and protect human rights as well as promote good governance in Tanzania.

#### **D. PCCB**

In 2019, PCCB continued carrying out its mandate to prevent and combat corruption in different parts of the country, including raising awareness and investigating and prosecuting corruption cases. Investigated cases include that of the Magistrate of the Primary Court in Kishapu – Shinyanga, Benjamin Charles Mhangwa, who was accused and charged of soliciting a bribe of Tshs. 300,000 and receiving Tshs. 200,000 to decide in favour of the victim in a child rape case.<sup>683</sup> In October 2019, PCCB in Kagera apprehended three

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WA KATIBA NA SHERIA AKIWASILISHA BUNGENI MPANGO NA MAKADIRIO YA BAJETI YA WIZARA KWA MWAKA WA FEDHA 2019/2020.

680 Ibid

681 Ibid

682 Ibid

683 See PCCB Press Release “LEO TAREHE 09, OKTOBA, 2019 TAKUKURU SHINYANGA INA-TARAJIA

KUMFIKISHA MAHAKAMANI HAKIMU MKAZI WA MAHAKAMA YA MWANZO KISHAPU NDG. BENJAMIN CHARLES MHANGWA KWA KOSA LA KUOMBA NA KUPOKEA RUSHWA” at [http://www.pccb.go.tz/images/stories/joomlaart/press\\_releases/](http://www.pccb.go.tz/images/stories/joomlaart/press_releases/)



government officials, including a police officer and a military officer, accused of soliciting and receiving a bribe.<sup>684</sup> In May 2019, PCCB in Ilala, Dar es Salaam, held three people, including a CCM ward councillor, on corruption charges.<sup>685</sup>

Tanzania's performance in the Corruption Perceptions Index has indicated improvements in combating corruption, although corruption is still a big problem in Tanzania. In 2017, Tanzania scored 36 out of 100 in the index, rising thirteen spots compared to 2016. In 2018, Tanzania maintained the score of 36 out of 100 and climbed four places, ranked 99.th in 2019, Tanzania was ranked 96th out of 180 countries, climbed another three places after scoring 37 out 100 points.<sup>686</sup> The figure below shows the scoring trend from 2014 to 2019.

**CPI 100-point scale**  
0 is highly corrupt and 100 is very clean.



Figure 17: Tanzania's scores in the Corruption Perceptions Indexes 2014-2019

Source: *Corruption Perceptions Index 2019*

LHRC acknowledges the efforts made by the Government and PCCB to tackle corruption. However, corruption, both petty and grand, is

[HAKIMU%20MAHAKAMANI%20.pdf](#), accessed 5th March 2020.

684 LHRC Media Survey 2019.

685See PCCB Press Release "WATU WATATU AKIWEMO DIWANI WA CCM WASHIKILIWA NA TAKUKURU MKOA WA ILALA KWA TUHUMA ZA RUSHWA" at [http://www.pccb.go.tz/images/stories/joomlaart/press\\_releases/TAARIFA%20DIWANI%20UKONGA.pdf](http://www.pccb.go.tz/images/stories/joomlaart/press_releases/TAARIFA%20DIWANI%20UKONGA.pdf), accessed

686See Transparency International's Corruption Perceptions Index 2019, at <https://www.transparency.org/cpi2019>, accessed 5th March 2020.



still pervasive in different sectors. If Tanzania is to make significant strides in the fight against corruption, the role of the media and CSOs cannot be underestimated. A better landscape for the media and CSOs to operate in will yield better results in this noble fight against corruption. Whistleblowers may be discouraged by the restrictive provisions within the freedom of expression laws discussed under 2.3 above.

### **6.2.2.2 Corruption, budgetary constraints and other challenges**

Despite the good work done by the national human rights mechanisms, their work in 2019 continued to be affected by various challenges, including corruption and budgetary constraints.

#### **A. Corruption**

Corruption is one of the major challenges facing the Judiciary and law enforcement organs (especially the Police Force). This hinders the ability of these institutions to always protect human rights. Corrupt elements tend to bribe their way out of trouble or deliberately delay proceedings.

#### **B. Delays in investigation and prosecution of cases**

Delays during the investigation of cases by police and delays in proceedings in court undermine the efficiency of national human rights mechanisms to ensure the protection of human rights in Tanzania as well as timely dispensation of justice. Delays may be caused by factors such as corruption or poor working environment.

#### **C. Poor working environment due to shortage of equipment**

Police officers face a poor working environment, mostly contributed by insufficient and modern equipment. In 2019 IGP Simon Sirro revealed that most police officers struggle in investigating cybercrimes because they are not conversant with technology and RPCs have done little to address the problem.<sup>687</sup>

#### **D. Shortage of law enforcement officers and judicial workers**

This is particularly an issue for the Tanzania Police Force and the Tanzania Prisons Service (TPS), as the ratio of the officers to the people

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<sup>687</sup> See "SIRRO SCORNS POLICE COMMANDERS OVER CORRUPTION, HYPOCRISY" DAILY NEWS Newspaper [online] 25 September 2019 at <https://dailynews.co.tz/news/2019-09-255d8b147d35ddd.aspx>, accessed 5<sup>th</sup> March 2020.



they serve and supervise is higher than the ideal situation. Shortages of police stations have been reported in different parts of Tanzania, especially rural areas. As discussed in 2.4 above, the Judiciary also suffers staff shortage.

### **E. Overcrowding in prisons**

As discussed in 2.4 above, overcrowding in prisons continued to be a challenge in 2019. In April 2019, while reading his ministry's budget speech, the then Minister of Home Affairs, Hon. Kangi Lugola (MP), revealed that about 50% of people who are in prisons are remandees, something that has largely contributed to overcrowding in prisons.<sup>688</sup>

### **F. Budgetary constraints**

Budget constraints is another challenge for some of the national human rights mechanisms, such as the Commission for Human Rights and Good Governance (CHRAGG) – which makes it difficult for this national human rights institution to reach more segments of the society.

### **G. Shortage of facilities**

As discussed above, some areas do not have police posts/stations. There is a predicament of overcrowding in prisons. In some rural areas, people are forced to walk or travel a long distance to access police and court services, which affects access to justice. It also takes longer for police to reach the people when they need them.

### **H. Poor knowledge about human rights and the essence of procedural safeguards**

This is particularly a problem for police and prison officers. LHRC, through its engagement with these officers and received complaints from its clients, has observed that knowledge about human rights still lacks in the minds of most law enforcement officers, especially lower-ranking officers, who usually do not understand the essence of human rights and procedural safeguards. Comments like “Someone has been caught red-handed or at the scene of the crime, why do you (lawyers) defend an accused person?” are common among the lower-

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<sup>688</sup>See HOTUBA YA WAZIRI WA MAMBO YA NDANI YA NCHI MHE. KANGI ALPHAXARD LUGOLA (MB.), AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI YA FEDHA KWA MWAKA 2019/20 at <https://www.moha.go.tz/sw/blog/2019-04-25/hotuba-ya-waziri-wa-mambo-ya-ndani-ya-nchi-mhe-kangi-al-phaxard-lugola-mb>, accessed 5<sup>th</sup> March 2020.



ranking law enforcement officers.

## **I. Corruption and unethical conduct within the Tanzania Police Force**

In September 2019, the Inspector General of Police Simon Sirro raised several concerns regarding the conduct of police officers, including corruption and unethical conduct. He noted that such practices undermine the force's credibility. He also warned against parading of suspected criminals before the media cameras, in total disregard of the principle of presumption of innocence. He also lamented weak command as a problem for some of the high-ranking police officers.

### **6.3 Regional and International Human Rights Mechanisms**

#### **6.3.1 Legal Framework**

Tanzania is part of various regional and international human rights mechanisms. These include the Universal Periodic Review Mechanism (UPR) - whereby it submits its reports on protection and promotion of human rights; and bodies established under various human rights treaties.

Treaty bodies are established by the ratified human rights treaties to monitor the implementation of such treaties by States parties. The provisions of the treaties require States parties to submit to the treaty bodies periodic reports on their efforts to implement the treaties. The major international and regional treaty bodies are the Human Rights Committee (HRC), the UN Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of Persons with Disabilities, the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights, African Committee of Experts on the Rights and Welfare of the Child and the East African Court of Justice. Status of reporting to the treaty bodies is indicated in Annex section below.

UPR is a unique mechanism of the Human Rights Council (HRC) aimed at **improving the human rights situation on the ground** of each of the 193 United Nations (UN) Member States.<sup>689</sup> Under this mechanism, human rights situation of all UN Member States, Tanzania inclusive, is reviewed every five years to ascertain the

689 See United Nations Human Rights Office of the High Commissioner, *Universal Periodic Review*, at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>, accessed 29<sup>th</sup> December 2016.



extent states have taken action to improve human rights and fulfil their international human rights obligations.<sup>690</sup> The last UPR process was 2016, where Tanzania submitted its report and CSOs submitted shadow report. Several recommendations were made for Tanzania to improve human rights, where it accepted some and reject others.<sup>691</sup>

## 6.3.2 Key Issues

### 6.3.2.1 Difficulties in Enforcing Decisions of Regional and International Human Rights Mechanisms

Enforcement of decisions/judgements of the regional and international human rights mechanisms in domestic jurisdictions usually depends on the political will. For instance, in 2013, the African Court on Human and Peoples' Rights issued its judgement on the private candidate case filed by the late Christopher Mtikila. To date, Tanzania is yet to enforce the decision. Recently, the East African Court of Justice delivered its judgement on the Media Services Act of 2016, as discussed in 2.3 above. It remains to be seen whether the judgement will be enforced.

### 6.3.2.2 Tanzania's Reporting to the Committee on the Rights of Persons with Disabilities

In 2019, the Minister of Constitutional and Legal Affairs, Hon. Ambassador Dr. Augustine Mahiga (MP) revealed that Tanzania is preparing its report on implementation on the UN Convention of the Rights of Persons with Disabilities (CRPD) of 2006.<sup>692</sup>

### 6.3.2.3 Tanzania's Withdrawal of Individuals and NGOs' Access to the African Court on Human and Peoples' Rights

In December 2019, reports circulated that Tanzania had withdrawn individuals and NGOs access to the African Court on Human and Peoples' Rights by withdrawing its declaration under Article 34 of the Protocol Establishing the African Court on Human and Peoples' Rights of 1998.<sup>693</sup> However, in the Minister of Constitutional and Legal Affairs,

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690 Ibid.

691 See LHRC & ZLSC (2017), Tanzania Human Rights Report 2016.

692 HOTUBA YA MHESHIMIWA BALOZI DKT. AUGUSTINE PHILLIP MAHIGA (MB) WAZIRI WA KATIBA NA SHERIA AKIWASILISHA BUNGENI MPANGO NA MAKADIRIO YA BAJETI YA WIZARA KWA MWAKA WA FEDHA 2019/2020.

693 See International Justice Resource Center "AS AFRICAN COURT RELEASES NEW JUDGMENTS, TANZANIA WITHDRAWS INDIVIDUAL ACCESS" 5 December 2019 at <https://ijrcenter.org/2019/12/05/as-african-court-releases-new-judgments-tanzania-withdraws-individual-access/>; Asna Kaniki "Tanzania seeks with-



Hon. Amb. Dr. Augustine Mahiga gave a different version of the matter. He revealed that Tanzania had written to the Court because there is one protocol in the operations of the Court, which is contrary to Tanzanian laws. If the protocol remains unchanged, the Minister argued, only then would Tanzania proceed with its withdrawal.<sup>694</sup> Later, however, it was revealed that Tanzania had decided to withdraw, issuing a notice of withdrawal.<sup>695</sup> According to the notice, Tanzania's withdrawal was necessitated by the implementation of the Declaration contrary to advanced reservations.<sup>696</sup> Tanzania becomes the second African State to withdraw its declaration after Rwanda did the same in 2016.

**LHRC's view:** The withdrawal from the Court, which remove access to court for NGOs and individuals, is a backward step in the protection and promotion of human rights in Tanzania, especially access to justice. Unfortunately, Tanzanians will not have access to the Court hosted in its land, Arusha, Tanzania. Regional and international human rights mechanisms, such as the African Court, also play a key role in promoting accountability and good governance.

## Chapter 7 Conclusion and Recommendations

### 1.1 Conclusion

#### 1.1.1 Civil and Political Rights

In 2019, civil and political rights continued to be threatened by key issues such as mob violence, witchcraft-related killings, violence

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drawal of protocol at African court" The Citizen Newspaper, 2 December 2019, at <https://www.thecitizen.co.tz/news/1840340-5370318-9vj0ol/index.html>; Southern Africa Litigation Centre, STATEMENT CONDEMNING TANZANIA'S WITHDRAWAL OF INDIVIDUALS ACCESS TO THE AFRICAN COURT, 6 December 2019 at <https://www.southernafricalitigationcentre.org/2019/12/06/statement-condemning-tanzanias-withdrawal-of-individuals-access-to-the-african-court/>.

694 See Asna Kaniki "Tanzania seeks withdrawal of protocol at African court" The Citizen Newspaper, 2 December 2019, at <https://www.thecitizen.co.tz/news/1840340-5370318-9vj0ol/index.html>.

695 See NOTICE OF WITHDRAWAL OF THE DECLARATION MADE UNDER ARTICLE 34(6) OF THE PROTOCOLA TO THE AFRICAN CHARTE ON THE ESTABLISHMENT OF AN AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS at <https://www.southernafricalitigationcentre.org/wp-content/uploads/2019/12/Tanzania-Withdrawal-Article-36-4-African-Court.pdf>.

696 Ibid.



against PWAs, the death penalty, killings of children, gender-related killings, restrictive laws and amendments, arbitrary arrests and detention, violation of the right to presumption of innocence, limited access to legal aid by residents of rural areas and delays and constant adjournment of cases. Other key issues affecting the effective realisation of civil and political rights included the shortage of judicial personnel, corruption within the justice system, disregard of due process of the law, abductions of children, VAC, denial of bail, violations of the right to take part in governance, prosecution before completion of investigations and arbitrary restrictions on political assemblies.

On a positive note, the mandatory death sentence was found to constitute a violation of the African Charter on Human and Peoples' Rights by the African Court on Human and Peoples' Rights. Fewer incidents of road accidents and resulting deaths and injuries were reported in 2019. Also, the East African Court of Justice ruled that the Media Services Act of 2016 contains provisions which are arbitrarily restrictive and should be amended to conform to international standards. Amendment of the Statistics Act of 2015 was also a welcome development in 2019. Positive Government and Judiciary action to enhance access to justice was also a big positive in 2019.

### **7.1.2 Economic, Social and Cultural Rights**

For economic, social and cultural rights, key issues in 2019 included budgetary constraints in critical sectors such as education, health and water; challenges hindering effective learning environment at schools (including shortages of toilet holes, classrooms and dormitories, as well as school children having to walk long distances to reach schools) and VAC. Others include the lack of menstrual hygiene facilities at schools; the alarming rate of child pregnancy; lack of employability skills among graduates; shortage of healthcare workers; and high suicide rates. Further, other key issues included a shortage of buildings and beds at health facilities; shortage of experts in the water sector; unpaid staff claims for teachers; the burden of PAYE, loan board and other deductions for workers; poor working conditions; inadequate rest for workers in key sectors due to shortage of workers, and violations of labour and human rights for workers in private companies.

On a positive note, the Government continued to take various steps to



ensure the progressive realisation of socio-economic rights, including implementation of fee-free education policy and allocating budgets on key items.

### 7.1.3 Collective Rights

Right to development includes political development, social development, cultural development and economic development. All these developments are crucial in realizing the right to development. For the year 2019, the government continued taking various steps to improve the realisation of collective rights, especially the right to development in terms of economic development. However, major challenges were in human development, political development and social development. Challenge hindering the effective realisation of collective rights include mismanagement of natural resources, tax avoidance and evasion, corruption, tax incentives, and loopholes in mining and natural resources laws.

There is no realization of the right to development without taxes, as there is a strong link between taxation and human rights, especially social and economic rights. The Government needs taxes to realise social and economic rights progressively, and human rights obligations related to taxation exist under various regional and international instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966.

### 7.1.4 Rights of vulnerable groups

Vulnerable groups include women, children, PWDs, the elderly and PLHIVs. These are groups that are more likely to suffer human rights violations, which is why there are special protection mechanisms for them, including specific human rights instruments, save for the elderly who are yet to have a specific human rights convention. Indeed, in 2019 these groups suffered the most in terms of human rights violations. Violations of rights of vulnerable groups included acts of violence, including sexual violence, against women and children; witchcraft-motivated acts of violence and killings of children; limited access to social services by PWDs; jealousy-motivated killings of women; discrimination at workplaces; sexual corruption in the job market, at work, at higher learning institutions and in politics; and a limited budget for implementing NPA-VAWC. High rates of sexual violence, especial against children, and child pregnancy continued to be issues of major concern in 2019.



On a positive note, the Government, Judiciary and other stakeholders continued implementing the NAPA-VAWC and acted against perpetrators of violence. There have also been reports of increased reporting of VAC and VAW incidents. In October 2019, the Court of Appeal delivered its landmark judgement on child marriage, affirming the High Court's ruling that it needs to be outlawed in the Law of Marriage Act of 1971.

### 7.1.5 Human rights mechanisms

Key national human rights mechanisms are the law enforcement organs, mainly the Tanzania Police Force and the Tanzania Prison Services; the Judiciary; and the Commission for Human Rights and Good Governance (CHRAGG). Their role is to protect human rights under different capacities. In 2019 they continued to play this role in various ways, including bringing perpetrators of human rights violations to justice and taking various measure to enhance access to justice. However, key issues affecting their role in human rights protection included corruption, delays in investigation and prosecution of cases, poor working environment due to shortage of equipment, shortage of law enforcement officers and judicial workers, overcrowding in prisons, budgetary constraints, shortage of facilities, and poor knowledge about human rights and essence of procedural safeguards.

International, continental and regional human rights mechanisms include: Universal Periodic Review Mechanism, Human Rights Committee (HRC), the UN Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of Persons with Disabilities, the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights, African Committee of Experts on the Rights and Welfare of the Child and the East African Court of Justice. Tanzania is a party to all these mechanisms, some of which are based in Arusha – one of its regions. In 2019 key issues affecting the role of regional and international human rights mechanisms in the protection of human rights in Tanzania included difficulties in enforcing decisions of regional and international human rights mechanisms; Tanzania's reporting to the mechanisms; and Tanzania's withdraws of Individual



and NGO access to the African Court on Human and Peoples' Rights.

## 7.2 Recommendations

### 7.2.1 Civil and Political Rights

#### 7.2.1.1 State actors

- Being a de facto abolitionist state, the Government, through the Ministry of Constitutional and Legal Affairs, should move to declare a state of the moratorium and improve death row conditions and prepare to abolish death penalty.
- The Police Force should promptly respond to mob violence and witchcraft-related killings; and ensure the perpetrators are brought to justice.
- The Ministry of Home Affairs to ensure law enforcement officers who conduct extra-judicial killings are held accountable in accordance with the law
- The Ministry of Constitutional and Legal Affairs to spearhead amendments of restrictive laws restricting freedoms of expression, association and assembly, including the Online Content Regulations and Political Parties Act.
- The Government to amend the Media Services Act of 2016 as required by the decision of the East African Court of Justice.
- The Government officials to refrain from interfering with freedom of expression without reasonable ground stipulated by law; and stop threatening journalists.
- Freedom of expression should be effectively guaranteed, and citizens should be freely allowed to air their views on the governance issues.
- The Police Force to promptly and effectively investigate cases to safeguard the rights to liberty and personal security and the right to equality before the law.
- The Police Force to ensure police officers use their powers under the Police Force and Auxiliary Services Act in relation to freedom of assembly objectively, ensuring that any denial of assembly is lawful, reasonable and necessary.
- The Government authorities and police to refrain from suppressing opposition political parties through denial of political assembly.
- Government officials and members of political parties to exercise political tolerance in order to preserve peace and security.
- The Ministry of Home Affairs and the Police to ensure the police force responds timely to prevent mob violence and act against



- mob-killings, by ensuring the perpetrators are brought to justice.
- The Government, through the Ministry of Constitutional and Legal Affairs, to create a police oversight body to ensure and promote accountability in law enforcement.
  - The Commission for Human Rights and Good Governance (CHRAGG) and the Police Force to ensure police officers at all levels are regularly trained on the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials and human rights in general, in an effort to address extrajudicial killings.
  - The Judiciary and the Prevention and Combating of Corruption Bureau (PCCB) to closely work together to address corruption within the justice system in order to restore public faith in the system and reduce incidents of mob violence. Addressing judicial corruption will also contribute to safeguarding access to justice.
  - The Government and the Police Force to refrain from arbitrarily interfering with freedom of expression, including press freedom; freedom of assembly; and freedom of association.
  - The Police Force should refrain from conducting arbitrary arrests and arbitrarily detain suspected criminals instead of sending them to court within a specified time (usually 24 hours) as required by the law, to promote the right to liberty. Police officers implicated in this behaviour should be held accountable.
  - The Police Force should ensure police officers refrain from fabricating cases against innocent civilians; and those responsible should be charged with malicious prosecution.
  - The Government should move to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in order to safeguard freedom from torture.
  - The Police Force and courts of law to timely grant bail for all bailable offences.

#### 7.2.1.2 *Non-state actors*

- CSOs to intensify effort to raise public awareness on legal procedures and human rights, as well as to encourage community members to obey the law and respect human rights of others to preserve the right to life. In the case of mob violence, for example, members of the public should be made aware of bailable offences.
- CSOs and FBOs to use their platforms to speak against and raise



awareness about mob violence, the death penalty, witchcraft-related killings, attacks of PWAs and road accidents as well as their overall impact on human rights.

- CSOs to collaborate with CHRAGG to provide regular human rights trainings to judges, magistrates and other legal professionals to enhance with knowledge and understanding of human rights as a way of safeguarding the right to equality before the law and ensuring access to justice.

### **7.2.1.3 Members of the public**

- To refrain from taking the law into their own hands and seek remedies at higher levels of the justice system when they are not satisfied with the outcome of a case.
- Religious leaders and traditional leaders to use their platforms to speak against violations of civil rights, especially right to life, freedom of expression and freedom from torture, as a way of promoting these rights.
- Community members to expose and report violations of human rights, especially right to life, and ensure the perpetrators are brought to justice.

## **7.2.2 Economic, Social and Cultural Rights**

### **7.2.2.1 State actors**

- The Government, through the Ministry of Finance and Planning, to increase budgetary allocations for education, water and health sectors in line with international standards and ensure full and timely disbursement of funds for these sectors.
- The Government, through the Ministry of Finance and Planning, to increase budgetary allocation for the agriculture sector, which is the leading employer, to boost the right to development and right to work. It should also increase investment in irrigation farming to boost food production and improve accessibility.
- The Prime Minister's Office Labour, Employment, Youth and People with Disability should collaborate with the Ministry of Health, Community Development, Youth, Gender and Children to promote self-employment and entrepreneurship in order to address the problem of youth unemployment.
- The Ministry of Education, Science and Technology should address challenges faced by teachers to ensure they work in favourable conditions, as a key measure in improving quality of education and achieving key targets under SDG 4 and the



Tanzania Development Vision 2025.

- The Ministry of Education, Science and Technology to devise strategies of preventing VAC perpetrated by male teachers in schools.
- Local Government Authorities (LGAs), President's Office - Regional Administration and Local Government (PO-RALG) and President Office Public Service Management (PO PSM) in collaboration with Treasury to ensure that funds for settling staff claims are released without further delays to avoid the accumulation of debts; and ensure no new staff debts are created..
- As recommended by the CAG in the 2017/18 audit report on local government authorities (LGAs), management of the LGAs and the Government as a whole to ensure that there is sufficient budget allocation for staff appraisal activities and perform awareness program to LGAs' staff on the importance of staff appraisal to the government employees.
- Government to implement CAG recommendation of Managements of local government authorities (LGAs) to liaise with President's Office - Regional Administration and Local Government (PO-RALG) to speed up promotions of eligible officers and their salaries adjusted immediadely after being promoted.
- The Government, through the Ministry of Finance and Planning, to increase funding for the water projects, especially for rural areas, in a bid to improve accessibility and quality of water, which is essential to the Government's industrialisation drive.
- The Government should ensure its institutions pay water bills on time to water authorities so that they can implement their activities and maintain water infrastructure effectively.
- The Ministry of Water should enhance efforts to address the problem of water leakages, which lead to water loss, and costs water authorities billions of monies.
- Regarding pregnant girls, LHRC continues to urge the Government to reconsider its stance in order to protect right to education for girls in line with the Constitution of the United Republic of Tanzania of 1977 and regional and international conventions.
- Ministry of Education, Science and Technology to improve access to education for children with disabilities by ensuring the availability of relevant infrastructure, teachers and learning



tools.

### 7.2.2.2 *Non-state actors*

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

### 7.2.2.3 *Members of the public*

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



## 7.2.3 Collective Rights

### 7.2.3.1 State actors

- The Government should address corruption in the mining sector, which is threatening the right to development and the right to enjoy and benefit from natural resources.
- The Ministry of Natural Resources should ensure effective implementation of natural resources laws.
- The Government to ensure respect for human rights while attracting investment and ensure investors comply with Tanzanian laws and respect human rights in their operations.
- The Government to ensure effective implementation of corporate social responsibility (CSR) policy to ensure people in areas with a substantial investment such as mining benefit from their natural resources through improved social services.
- The Government to address tax evasion and avoidance in the mining sector and ensure companies which evade tax are held accountable.

### 7.2.3.2 Non-state actors

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

### 7.2.3.3 Members of the public

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

## 7.2.4 Rights of Vulnerable Groups

### 7.2.4.1 State actors



- The Government, through the Ministry of Constitutional and Legal Affairs, to ensure enactment of a specific and comprehensive law on gender-based violence as the current legislations do not adequately address gender-based violence issues.
- The Government, through the Ministry of Constitution and Legal Affairs and the Law Reform Commission, to review, amend and repeal all discriminatory laws which continue to deprive women of their rights and which are contrary to fundamental principles of human rights as provided for in various regional and international conventions ratified by Tanzania.
- The Government, through the Ministry of Constitutional and Legal Affairs and the Ministry of Foreign Affairs, to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa of 2018.
- The Government through the Ministry of Education, Science and Technology to integrate gender education in learning curriculums from elementary to higher learning.
- The Government, through the Ministry of Finance and Planning and Ministry of Home Affairs, should increase funding for the police gender desk to enable it to address gender-based violence and violence against children effectively.
- The Government, through the Ministry of Health, Community Development, Gender, Elderly, and Children, and the Ministry of Home Affairs, to ensure that acts of gender-based violence (violence against women) are prevented and investigated.
- The Judiciary to ensure that courts prosecute and punish acts of gender-based violence.
- The Government to consider gender parity and equality in leadership and decision-making positions in order to increase female representation.
- The Government to fulfil its obligation under the regional and international children rights treaties to end child marriage and confirm the age of 18 as the minimum age for marriage by amending the Law of Marriage Act 1971.
- The Government, through the Ministry of Constitutional and Legal Affairs, to facilitate the amendment of the Law of Marriage Act of 1971 in line with the Court of Appeal decision of 2019 in the Rebeca Gyumi case.
- The police and courts of law to increase the pace of investigation and prosecution of cases on violence against children and



women.

- The Judiciary to ensure that courts of law fast-track proceedings of violence against PWDs.
- The Government, through the Ministry of Home Affairs, should ensure that the elderly are protected from all forms of violence, particularly witchcraft-related killings, through investigation and prosecution of cases of violence against them.
- The Government, through the Ministry of Constitution and Legal Affairs, to table a bill in Parliament to propose enactment of a specific law to cater for the promotion and protection of the elderly.
- The Government, through the Ministry of Health, Community Development, Gender, Elderly and Children, to spearhead the enactment of a law on elderly rights and protection to complement the National Age Policy.
- The Ministry of Health, Community Development, Gender, Elderly and Children to fast-track the process of introducing pension for the elderly.
- The Government, through the Ministry of Finance and Planning, to increase the budget for implementation of the NPA-VAWC in order to address VAC and VAW, which have reached alarming levels.

#### 7.2.4.2 Non-state actors

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



### 7.2.4.3 Members of the public

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

## 7.2.5. Human Rights Mechanisms

### 7.2.5.1 State actors

- The Government should strengthen national human rights mechanisms to ensure better protection of human rights. An adequate budget should be allocated for CHRAGG as the national human rights institution, to enable it to carry out their mandate effectively.
- The Government, through the Prevention and Combating of Corruption Bureau (PCCB), should move to address corruption in the justice system to boost protection of human rights and their ability to ensure justice.
- The Government to reconsider its decision to withdraw access to the African Court on Human and Peoples' Rights for NGOs and individuals.
- The Government should enforce decisions of the African Court on Human and Peoples' Rights on, independent candidate, mandatory death sentence and that of the East African Court of Justice on the Media Services Act of 2016.

### 7.2.5.2 Non-state actors

- CSOs must collaborate with CHRAGG build capacity for law enforcement officials to apply a rights-based approach in their work
- CSOs could also collaborate with CHRAGG to prepare rights-



based approach guides for law enforcement officials.

- CSOs to engage human rights mechanisms at national, regional, continental and international levels as a way of promoting and protecting human rights. CSOs should apply for observer status at some of the human rights mechanisms, such as the African Committee of Experts on the Rights and Welfare of the Child and the African Commission on Human and Peoples' Rights.
- CSOs should engage regional and international human rights mechanisms as part of their regional and international level advocacy and influencing the Government to improve its human rights record and ratifying key human rights treaties that it is yet to ratify.
- The Media should report about different human rights mechanisms and how they can be engaged.
- CSOs should sensitize the public about different national, regional/continental and international human rights mechanisms.

#### **7.2.5.3 Members of the public**

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



## Annexes

### Annex 1: Status of International Human Rights Ratifications in 2019

As of December 2019, Tanzania has ratified 10 out of 18 international human rights treaties/conventions. The table below indicates the number of regional and international treaties ratified by Tanzania so far.

	Convention/Treaty	Ratification
International	Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979	1985
	Convention on the Elimination of All Forms of Racial Discrimination 1965	1972
	Convention on the Rights of the Child (CRC) 1989	1991
	International Covenant on Civil and Political Rights (ICCPR) 1966	1976
	International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966	1976
	Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005	2005
	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women 2000	2006
	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2002	2004
	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2002	2003
	Convention on the Rights of Persons with Disabilities 2008	2009
	Convention Relating to the Status of Refugees 1951	1983
	Optional Protocol on the Convention on the Rights of Persons with Disabilities 2008	2009
Regional	African Charter on Human and Peoples' Rights 1981	1984



	African Charter on the Rights and Welfare of the Child 1990	2003
	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2000 (Maputo Protocol)	2007
	Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights 1998	2006

Tanzania is yet to ratify the following treaties:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 2003.
- African Charter on Democracy, Elections and Governance. Date of Adoption: January 30, 2007.
- International Convention for the Protection of all Persons from Enforced Disappearance 2010.
- Optional Protocol to the International Covenant on Civil and Political Rights 1976.
- Second Optional Protocol to the International Covenant and Political Rights, aiming at the abolition of the death penalty 1991.
- Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2013.
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2006.
- Optional Protocol to the Convention on the Rights of the Child on a communications procedure 2011.
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa of 2018.

LHRC calls upon the Government to ratify the conventions which are yet to be ratified in order to safeguard human rights and strengthen human rights mechanisms in Tanzania.



## Annex 2: Status of Tanzania's Reportage to Treaty Bodies

The table below shows the status of Tanzania's reporting to the treaty bodies.

Treaty Body	Mandate	Tanzania Reports
Human Rights Committee	Monitoring implementation of the ICCPR (Article 40 of ICCPR)	First report submitted on 20th August 1979. Second report submitted on 4th June 1991. Third report submitted on 6th February 1997. Fourth and last report submitted on 8th October 2007. Fifth report was due on 1st August 2013.
Committee on Economic, Social and Cultural Rights	Monitoring implementation of ICESCR (Article 17 of ICESCR)	First report submitted on 10th September 1979. Second report submitted on 25th August 2009. Third report was due on 30th November 2017.
Committee on Elimination of Discrimination Against Women	Monitoring implementation of CEDAW (Article 18 of CEDAW)	First report submitted on 9th March 1988. Second report submitted on 25th September 1996. Third report submitted on 16th April 2007. Fourth and last report submitted on 10th November 2014.
Committee on the Elimination of Racial Discrimination	Monitoring implementation of CERD (Article 9 of CERD)	First report submitted on 22nd March 1976. Second report submitted on 29th January 1980. Third report submitted on 1st October 1982. Fifth report submitted on 17th July 1986. Sixth and last report submitted on 27th October 2004. Seventh report was due on 26th November 2007.
Committee on the Rights of Persons with Disabilities	Monitoring implementation of CRPD (Article 35 of CRPD)	Report was due on 10th December 2011, yet to be submitted.
Committee of the Rights of the Child	Monitoring implementation of CRC (Article 44 of CRC)	First report submitted on 20th October 1999. Second report submitted on 20th October 2004. Third report submitted on 13th January 2012. Next report due on 9th January 2020.



Committee on the Rights and Welfare of the Child	Monitoring implementation of the ACRWC (Article 43 of ACRWC)	Initial report submitted in December 2006. Consolidated 2nd, 3rd and 4th reports submitted in October 2015.
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The table above indicates the extent to which Tanzania has complied with its reporting obligations under the treaties it has ratified. While Tanzania has done well in its reporting obligations under the ICESCR, CEDAW, CRC, and ACRWC, it has not done so regarding its reporting obligations under the CRPD and recently under the ICCPR and CERD. LHRC calls upon the Government, under the Ministry of Constitutional and Legal Affairs to comply with its treaty reporting obligations by preparing and submitting timely reports on actions taken to improve, promote and protect human rights in Tanzania.

### Annex 3: List of International Human Rights Instruments

- » African Charter on Human and Peoples Rights (ACHPR) of 1981.
- » African Charter on the Rights and Welfare of the Child (ACRWC) of 1990.
- » African Declaration on Internet Rights and Freedoms.
- » AU Declaration of Principles on Freedom of Expression in Africa 2002.
- » AU Model on Freedom of Expression Law.
- » Code of Conduct for Law Enforcement Officials adopted by the UN General Assembly in resolution 34/169 of 17 December 1979.
- » Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984.
- » Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979.
- » Convention on the Rights of Persons with Disabilities (CRPD) of 2006
- » Declaration on the Elimination of Discrimination against Women of 1993.
- » Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144 Adopted at 85th plenary meeting 9 December 1998.
- » Guidelines on Freedom of Association and Assembly in Africa.
- » International Convention on the Elimination of all Forms of Racial Discrimination (CERD) of 1965.



- » International Covenant on Civil and Political Rights (ICCPR) of 1966.
- » International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966.
- » International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors of 2004.
- » Johannesburg Principles of National Security, Freedom of Expression and Access to Information of 1995.
- » Joint Declaration on Freedom of Expression and the Internet of 2011.
- » Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003.
- » Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa of 2018.
- » SADC Protocol on Gender and Development of 2008.
- » UN Basic Principles on the Role of Lawyers of 1990.
- » UN Convention on the Rights of the Child (CRC) of 1989.
- » Universal Declaration of Human Rights (UDHR) of 1948.



## Annex 4: Reported Incidents of Violence against Children

### Incidents of physical and sexual violence documented by LHRC – January to December 2019

Reported Incident	Date
<b>Tabora:</b> Salma Hassan, resident of Malolo Ward, was arrested by police, accused of burning a 3-year-old child on her thighs for allegedly wetting the bed.	16 May 2019
<b>Njombe:</b> More than 10 children were killed due to witchcraft since December 2018.	1 May 2019
<b>Urambo, Tabora:</b> Selemani Mashaka (31) was arrested and accused of poisoning his two stepchildren, leading to the death of one. He reportedly wanted them sent to their father.	1 May 2019
<b>Geita:</b> Rape incidence was reported to be on the rise in Geita, despite efforts to combat sexual violence. The police gender and children officer Christina Gabriel reported that in the past three months, a total of 21 girls were raped. It was revealed that some parents were accused of colluding with perpetrators to sabotage cases, after being bribed.	1 May 2019
<b>Songwe:</b> A five-year-old was reportedly raped.	3 May 2019
<b>Geita:</b> Selemani Marhias (35) was accused of raping his 4-year-old daughter after being left with the children following a quarrel with his wife.	10 Apr 2019
<b>Maswa, Simiyu:</b> Maswa District Court sentenced a teacher, Abubakari Katakweba (32) to 30 years in prison after convicting him of raping a form two student.	12 Apr 2019
<b>Kibaha, Pwani:</b> Police are holding Robert Enerst (33), accused of strangling his 6-month-old baby, claiming it is not his.	3 Apr 2019
<b>Tunduru, Ruvuma:</b> 3 people were accused of strangling a standard six pupil, Rarik Issa Mohammed, before disappearing with his bicycle.	3 April 2019
<b>Hai, Kilimanjaro:</b> Headmaster of Sawe Secondary School was accused of having carnal knowledge with and impregnating a form four student.	3 Apr 2019
<b>Igunga, Tabora:</b> Sagwa Shigela (35) was sent to court, accused of molesting his 13-year-old child in January 2019.	1 Apr 2019
<b>Mbeya:</b> Antony Mandava (58) was sentenced to 30 years imprisonment and 12 strokes after he was convicted of raping a student.	2 Apr 2019
<b>Muleba, Kagera:</b> A 7-year-old child, Ismail Hamisi, was found dead and buried with his private parts missing.	20 Aug 2019



Reported Incident	Date
<b>Kinondoni, Dar es Salaam:</b> Said Rashid (36) appeared before Kinondoni Resident Magistrate Court, accused of raping his daughter between 2016 and 2019 in Mbezi Juu area.	29 May 2019
<b>Nkasi, Rukwa:</b> Police arrested a teacher at Kati Secondary School, Peter Silamba, accused of severely canning a student, Nicholas Kwimba (17), including on the face, causing him blindness.	30 May 2019
<b>Geita:</b> An elderly woman, Magreth Digugulo, was accused of burning her grandchild's hands and cutting him with a razor blade for allegedly eating most of the food.	31 May 2019
<b>Ujiji, Kigoma:</b> A 7-year-old child, resident of Mwasenga area, was reportedly sodomized by an unknown man in the bush, who then inserted soil into her private parts, causing her some serious health risks and pain.	25 Jun 2019
<b>Geita:</b> Happynes Shadrack (36), resident of Buligi Village, was arrested for killing and cooking her 6-month-old baby in June 2019.	24 Jun 2019
<b>Dodoma:</b> Aisha Juma, a resident of Ndachi area in Dodoma Urban, was arrested and sent to court over allegations of burning hands of her child, Godfrey Bada (13), after accusing him of stealing meat in the kitchen.	9 May 2019
<b>Bukoba, Kagera:</b> A pupil of Kashenge Primary School suffered violence at the hands of her stepmother, who poured hot water on her right hand, shoulder and breast, for allegedly cooking sweet potatoes for breakfast without permission.	24 May 2019
<b>Nzega, Tabora:</b> Nzega Resident Magistrate Court sentenced Wilson Bernard (25) to 30 years in prison after convicting him of raping a 16-year-old girl in April 2019. He also received a sentence of 5 strokes.	23 May 2019
<b>Igunga, Tabora:</b> Police arrested and sent to court Nyalagi Simon (30), resident of Mwanzugi area, who was accused of burning his child's hands with a hot machete in March 2019, causing him severe pain.	1 Apr 2019
<b>Misungwi, Mwanza:</b> Stephano Richard (22), resident of Mwajombo Village, was sentenced to 30 years imprisonment after the court found him guilty of raping and impregnating a student on 15 <sup>th</sup> June 2019.	23 Jun 2019
<b>Bukoba, Kagera:</b> A pupil of Kashenge Primary School suffered violence at the hands of her stepmother, who poured hot water on her right hand, shoulder and breast, for allegedly cooking sweet potatoes for breakfast without permission.	24 May 2019
<b>Misungwi, Mwanza:</b> A 12-year-old child was reportedly killed by a man who has a sexual affair with his mother. He was killed with a sharp object after the man quarrelled with his mother.	1 Jun 2019
<b>Bariadi, Simiyu:</b> Pili Juma (30), resident of Nyang'aka area, was sentenced to 5 years in prison for attacking her 2-year-old stepson and throwing into the farm.	1 Jun 2019



Reported Incident	Date
<b>Kyela, Mbeya:</b> A police officer Constable Daniel Mlanda of Kyela District Police Station, was accused of raping a 14-year-old female student.	15 Jun 2019
<b>Mufindi, Iringa:</b> A husband and wife, residents of Kiengemabasi Village, were arrested by police, accused of killing their own child after removing his facial skin. They were arrested together with 3 other people, including 2 witchdoctors.	15 Jun 2019
<b>Bukombe, Geita:</b> Bukombe Resident Magistrate Court sentenced Juma John (25), resident of Masumbwe Ward, to life in prison after finding him guilty of raping a standard six pupil. He committed the offence in May 2019, after luring her to his farm. He was also accused of raping 2 other girls by using the same tactic.	15 Jun 2019
<b>Kinondoni, Dar es Salaam:</b> Vicent Marseli (37), was brought before the Kinondoni Resident Magistrate Court, accused of touching a 3-year-old child's private parts (child molestation).	13 Jun 2019
<b>Misungwi, Mwanza:</b> Jacob Shabani (30), resident of Wanzamiso Village, was sentenced to 30 years in prison for raping and impregnating his 16-year-old child. He committed the offence in 2018.	12 Jun 2019
<b>Maswa, Simiyu:</b> Domician Faustine (20), resident of Uzunguni area, was sentenced to 30 years in prison for impregnating a Form One student from Binza Secondary School.	20 Jun 2019
<b>Moshi, Kilimanjaro:</b> Fidelis Matemtu (60), a teacher at Uru Primary School, was sentenced to 20 years in prison for sexually assaulting an 11-year-old pupil in April 2018.	8 Jun 2019
<b>Siha, Kilimanjaro:</b> Seif Abdallah, resident of Karasini Village, was sentenced to 30 years imprisonment after being convicted of raping a form two student in January 2019.	5 Jun 2019
<b>Sengerema, Mwanza:</b> A 16-year-old boy was arrested by police, accused of raping and killing his cousin, Bertha Joseph (13) on 5 <sup>th</sup> June 2019 in Kishinda Village.	13 Jun 2019
<b>Ilemela, Mwanza:</b> John Samweli (18), resident of Ibanda area, was arrested by police, accused of molesting (sodomizing) a 2-year-old child and causing him severe pain, after luring him into his room on the promise of buying him sweets. The incident occurred on 10 <sup>th</sup> June 2019.	13 Jun 2019
<b>Tarime, Mara:</b> Mniko Chacha (20), resident of Getenga Village, is sought by police for killing his 7-year-old brother due to jealousy, claiming he was their parents' favourites.	30 Jun 2019
<b>Lamadi, Simiyu:</b> Joyce Joseph (8), standard two pupil at Lukungu Primary School, resident of Lukungu Village, was killed and her body dumped in an abandoned house.	13 Feb 2019



Reported Incident	Date
<b>Nyang'hwale, Geita:</b> Concerns over safety and security of children continues to grow after another child, Alex Pastory (16) was found dead in a farm, 500 hundred metres from his school. He disappeared on 1 <sup>st</sup> March 2019.	16 Mar 2019
<b>Kyela, Mbeya:</b> Gilbert Sanga, a resident of Mikoroshini area, was accused of raping his 14-year-old daughter. He was caught by his wife in the act; and there had been rumours that he was having carnal knowledge with his daughters as a condition for him to get rich (witchcraft beliefs).	9 Jan 2019
<b>Mpanda, Katavi:</b> 7 children were reportedly raped and sodomized, 3 of them in January 2019. Perpetrators had mainly been using the tactic of promising the victims some biscuits.	30 Jan 2019
<b>Serengeti, Mara:</b> A 21-year-old man was arrested by police for allegedly molesting an 8-month-old baby. The child was admitted at Nyerere Hospital.	21 Mar 2019
<b>Uvinza, Kigoma:</b> Makigo Maduhu (23) was sentenced to 30 years imprisonment and a fine of Tshs. 500,000 for raping a 13-year-old child.	30 Mar 2019
<b>Njombe:</b> Joel Nziku (35), Nasson Alfred Kaduma (39) and Alphonce Edward Danda (51), were brought before the Njombe Resident Magistrate Court for killing three children.	13 Feb 2019
<b>Kyela, Mbeya:</b> Alinani Mwakifuna (59), a teacher, raped his granddaughter when he was with her at his farm. He was caught when police set a trap following complaints from the victim.	21 Feb 2019
<b>Kyela, Mbeya:</b> Samwel Msukila (22), was arrested by police for raping his 9-year-old daughter. He committed the offence on 19 <sup>th</sup> February 2019.	21 Feb 2019
<b>Gairo, Morogoro:</b> A woman, Shani Suleymani (35), was arrested by police for indecent assault of a 12-year-old boy. She committed the offence on 13 <sup>th</sup> January, where she was found having sexual intercourse with the boy.	23 Feb 2019
<b>Siha, Kilimanjaro:</b> Elizabeth Mmari, resident of Kilingi Village, was sentenced to 6 months in prison for attempting to kill her 3-day-old baby with poison.	14 Jun 2019
<b>Hai, Kilimanjaro:</b> Police were reportedly in search of a man, Peter Kimaro, accused of cohabiting with 15 and 14-year-old girls, who were students at Kilimani Secondary School.	12 Apr 2019
<b>Singida:</b> A 76-year-old madrasa teacher, Daudi Idd Karata, was sentenced to life imprisonment after the court convicted him on the charge of defiling a 9-year-old girl. He committed the offence in 2017.	25 May 2019



Reported Incident	Date
<b>Makambako, Njombe:</b> Letisia Lusulile, was reported to have badly injured her child for allegedly cooking too much mushrooms. Neighbours claimed that they usually hear her beating her children and, in this incident, they claimed her mother tied her with a rope and started beating her using a stick, a knife and a machete. When the neighbours warned her against subjecting her children to the violence she usually insults them and tells them to mind their own business.	19 Apr 2019
<b>Mbeya:</b> Police in Mbeya were reportedly holding a man in connection with the killing of an 8-year-old child, Junior Siame, whom he allegedly abducted. He allegedly decided to kill him after parents failed to provide Tshs. 10 million as ransom.	16 Apr 2019
<b>Njombe:</b> Police in Njombe are holding 28 people, including six witchdoctors, in connection with killings of children in Njombe Region, which commenced in November 2018.	5 Feb 2019
<b>Makambako, Njombe:</b> In January 2019, a child, was reportedly abducted by unknown people while on her way to school, later she was abandoned and found unconscious by a good Samaritan. It was reported that more than 40 children had been reported to have disappeared in Makambako.	Jan 2019
<b>Biharamulo, Kagera:</b> Christopher, a resident of Ng'ambo area in Biharamulo District, was accused of raping his daughter, a grade five pupil, several times since February 2019.	Feb 2019
<b>Muheza, Tanga:</b> In June, Amiri Abdallah Kiroboto (68), resident of Muheza Town, reportedly raped a 10-year-old girl in Kivindo B Village. He lured the victim to 'collect mangos' in his farm, using the opportunity to rape her.	Jun 2019
<b>Madaba, Ruvuma:</b> A 10-year-old child, was burned on her hands by her mother in June 2019 in Gumbilo Village for allegedly failing to secure a top 2 position in school results. She acquired the 10 <sup>th</sup> position in her class.	Jun 2019
<b>Njombe:</b> A child aged 13 years, resident of Itunduma Village, was reportedly raped by a relative, Seti Mhema (45).	May 2019
<b>Bukoba, Kagera:</b> A 16-year-old girl, a grade seven pupil at Kashenge Primary School, was severely burned on different parts of her body after her stepmother poured hot water as punishment for cooking potatoes without her permission.	May 2019
<b>Ulanga, Morogoro:</b> Pius Mgombeli (37), was arrested following accusations of sodomizing a 4-year-old boy in Iragua Kidugulo Village.	May 2019
<b>Nyasa, Ruvuma:</b> A man was arrested and detained at Iluli Police Station, accused of hitting his child (son) with a sharp object and causing him severe injuries.	Mar 2019



Reported Incident	Date
<p><b>Kilimanjaro:</b> Mawenzi Referral Hospital reported that from January to September 2019, a total of 127 cases of sexual violence against children were confirmed, of which 90 were rape cases and 37 were sodomy cases. Dr. Boniface Masau noted that there is an alarming rise of sexual violence against children, particularly rape and sodomy cases, noting that for the year 2018, reported cases of sexual violence against children were 151, of which 122 were rape cases and 29 sodomy cases.</p> <p>A report by the Tanzania Association of Social Workers (TASWO), however, painted a darker picture. According to the information provided by TASWO official, Furaha Dimitrios, from January to September 2019 a total of 157 cases of violence against children were reported in Moshi Municipality, 53% of which were sexual violence cases.</p>	31 Oct 2019
<p><b>Igunga, Tabora:</b> A nurse at Igunga District Hospital was accused of raping a 16-year-old child for four hours outside the hospital after injecting her with a sleeping medicine. The incident was confirmed by hospital DMO, Dr. Ruta Deus, who mentioned that the accused person had committed a similar offence at a health centre in Igurubi Division. The incident occurred on 10<sup>th</sup> October 2019.</p>	17 Oct 2019
<p><b>Chamwino, Dodoma:</b> A mother of three children, resident of Chalinze Village, Rehema Chiuvo, was accused of beating her female child aged seven years on her back for allegedly eating sweet potatoes without her permission.</p>	16 Oct 2019
<p><b>Uvinza, Kigoma:</b> Dastan Elia (40), appeared before Kigoma District Court, accused of raping a child aged one year and seven months and caused the child severe bodily harm on 5<sup>th</sup> July 2019.</p>	8 Oct 2019
<p><b>Kigoma:</b> Venas Edward (48), a witchdoctor and resident of Ujiji area, was appeared before the Kigoma District Court, accused of raping an 8-year-old girl who had been sent to the witchdoctor for 'treatment.' The incident occurred on 23<sup>rd</sup> April 2019 at Kasoko-Ujiji area.</p>	3 Oct 2019
<p><b>Ubungo, Dar es Salaam:</b> Nicholoaus Makali (32), is under police investigation, accused of burning the hand of a 10-year-old child with a hot iron rod.</p>	15 Oct 2019
<p><b>Kinondoni, Dar es Salaam:</b> Rashid Omary (49), was sent before the Kinondoni Resident Magistrate Court, accused of defilement of an 11-year-old child. It was stated that he did so between 2016 and September 13 in 2019, forcing contact between his private parts and the child.</p>	10 Oct 2019
<p><b>Kilwa, Lindi:</b> A total of 24 girls, who are pupils and students of primary and secondary schools in Kilwa District were reportedly raped and sodomized from January to June 2019.</p>	28 Oct 2019
<p><b>Tanganyika, Katavi:</b> Lusambaja Bundala (7), resident of Ntongwe Ward, was hit with a sharp object on his head, stabbed with a knife on his chin and eventually killed by his uncle, Juma Lusambaje (28), for losing some of the cows that he was tasked with herding.</p>	19 Sep 2019



Reported Incident	Date
<b>Nkasi, Rukwa</b> <sup>7</sup> Nkasi District Court sentenced Ally Kibwe (20) to 50 years in prison after finding him guilty of raping and impregnating a 12-year-old Standard five pupil of Mkalinda Primary School.	10 Sep 2019
<b>Mara:</b> Police in the region arrested the headteacher of Bwai A Primary School, Lazaro Mmanga, accused of raping a 14-year-old standard seven pupil after teaching her Mathematics as part of her preparations for the national examinations.	9 Sep 2019
<b>Babati, Manyara:</b> Celina Haidau (66), resident of Sendoo Village, was accused of attempting to strangle her 7-year-old grandson for allegedly causing one of her goats to be eaten by a wild dog. The incident occurred on 23 <sup>rd</sup> September 2019. Neighbours reported that the woman has been mistreating her grandchildren.	27 Sep 2019
<b>Dodoma:</b> Police in the region reported that it had arrested four people, accused of raping a standard seven pupil and causing her death in August 2019. The accused persons are Sospeter Kazumari (37), Justine John (24), Amosi Andrea (36) and Rebeka Bukindu (35).	11 Sep 2019
<b>Mbogwe, Geita:</b> Police arrested Tabitha Marcko (38), resident of Lulembela Village, who was accused of beating her nephew, Charles Deongratias (7), to death for allegedly stealing Tshs. 2000.	5 Sep 2019
<b>Kilwa, Lindi:</b> Police in Kilwa District are looking for a man suspected of raping and impregnating a 13-year-old standard two pupil.	30 Sep 2019
<b>Rombo, Kilimanjaro:</b> Police arrested a 37-year-old man for attacking with a knife and killing his 5-year-old child.	17 Sep 2019
<b>Kinondoni, Dar es Salaam:</b> Omary Sadiki (27), appeared before the Kinondoni Resident Magistrate Court, accused of sodomizing a 6-year-old child in January 2019.	5 Jul 2019
<b>Kigoma Ujiji, Kigoma:</b> A 7-year-old child, resident of Mwasenga area, was reportedly sodomized by an unknown person in May 2019.	1 Jul 2019
<b>Katavi:</b> Police in the region arrested a pastor of FPCT Church, Boaz Yohane (56), accused of raping and impregnating his 17-year-old child.	17 Jul 2019
<b>Katavi:</b> Police in the region arrested two teachers of Kambuzi Primary School in Mpanda District, accused of raping Standard Seven pupil at the school and eventually impregnating her. The accused persons are Amukile Mwakapala (30) and John Ndenje.	17 Jul 2019
<b>Morogoro:</b> Said Kasti (35), resident of Kiroko Ward in Morogoro was arrested by police, accused of defiling/ sodomizing his 2-year-old and 8-year-old daughters.	14 Jul 2019
<b>Igunga, Tabora:</b> An 8-year-old child, a pupil at Jitegemee Primary School, walked more than 9 kilometres from the District, running from the beatings he was suffering at the hands of his grandfather, heading to his mother's home in Shelui – Singida Region. When he was interrogated, he mentioned that his grandfather beats him regularly and locks him in the house to make bricks.	29 Jul 2019



Reported Incident	Date
<b>Bunda, Mara:</b> A <i>bodaboda</i> driver, Boniphace Godfrey (24), resident of Kabrimu area in Bunda District, was arrested and sent to court, charged with raping and sodomizing girls below the age of ten, pupils at primary school in the district, in May and June 2019. He threatened to kill them if they tell anyone or scream, but one of the pupils told her parents, leading to his arrest.	20 Jul 2019
<b>Dar es Salaam:</b> Esther Lymo, was accused of torturing and beating her 9-year-old niece, Naomi John, to death.	20 Jul 2019
<b>Dodoma:</b> Police arrested Athumani Salimu (35) and Paulina Mazengo (45) in Dodoma in connection with sexual harassment of a 17-year-old child, daughter of the latter. The former was regularly sexually harassing the child, demanding that she sleeps with him and mother did not take action to protect her daughter.	21 Jul 2019
<b>Hai, Kilimanjaro:</b> Solomon Sirikwa (36), a teacher at Sawe Secondary School, was taken to court after he was charged with criminal offences of raping and impregnating a student.	11 Jul 2019
<b>Morogoro:</b> Saidi Kasti (35), resident of Diyovuva Village in Kimangakene area, was arrested by police, accused of raping and sodomizing his own daughter in July 2019.	11 Jul 2019
<b>Kinondoni, Dar es Salaam:</b> Jumanne Kunambi (27), appeared before the Kinondoni Resident Magistrate Court, charged with raping and sodomizing a 9-year-old child between September 2018 and May 2019.	6 Jul 2019
<b>Morogoro:</b> Police in the region arrested a man and his daughter aged 8 years, accused of killing a child from their neighbour's house aged one year and seven months by attacking the child with a machete.	25 Jul 2019
<b>Kibaha, Pwani:</b> Police arrested Dismas Sylvester (35), resident of Mlandizi area, who was accused of defiling/raping a child aged three years on 19 <sup>th</sup> August 2019. He reportedly took the child to a bush and committed the offence.	27 Aug 2019
<b>Nkasi, Rukwa:</b> Nkasi District Court sentenced Ally Kabwe (20), resident of Ninde Village, to 50 years imprisonment after finding him guilty of raping and impregnating a 12-year-old child, who was a pupil at Mkilinga Primary School.	18 Sept 2019
<b>Kiteto, Manyara:</b> Police in Kiteto District arrested Daniel Saulo, a teacher at Matui Primary School, on accusations of raping and impregnating a Standard Seven pupil.	5 Aug 2019
<b>Rorya, Mara:</b> A teacher at Bukula Secondary School in Rorya District has been accused of engaging in sexual relationships with female students and impregnating some of them. It is also believed that the teacher is HIV-positive.	12 Aug 2019
<b>Kinondoni, Dar es Salaam:</b> Amri Shekhe (25), resident of Manzese area, was taken to the Kinondoni Resident Magistrate Court, charged with impregnating a 17-year-old form three student.	6 Aug 2019



Reported Incident	Date
<b>Lindi:</b> Lindi District Court sentenced 51-year-old Issa Mpanyanje to 30 years imprisonment after finding him guilty of raping a 10-year-old child. He committed the offence on 14 <sup>th</sup> April 2019, after luring the child to his farm.	24 Aug 2019
<b>Nkasi, Rukwa:</b> Charles Bulinga (28), was arrested by police on accusations of raping and impregnating a 9-year-old Standard Four pupil.	19 Nov 2019
<b>Magu, Mwanza:</b> A 7-year-old child, Andrea Sekei, resident of Isangio Village, was found strangled to death by unknown assailants. They killed the child and stole 50 cattle that he was herding.	19 Nov 2019
<b>Mpanda, Katavi:</b> Mpanda District Court sentenced to life imprisonment Lazaro Charles (35), resident of Mji Mwema street in Mpanda Municipality, after finding him guilty of raping and impregnating his daughter, aged 14 years. He committed the offence of having carnal knowledge with his female child at different times in 2017 up to April 2019. He would wait for his wife to travel and then sneak into the daughter's room and force her to have sex with him.	1 Nov 2019
<b>Arusha:</b> A child, Sirlil John, resident of Arusha was reported to have been violently killed by unknown people in Katesh. The child was believed to have been attacked and eventually killed with an axe.	26 Nov 2019
<b>Serengeti, Mara:</b> Serengeti Resident Magistrate Court sentenced to life imprisonment Machaba Makoro (19), resident of Parknyigoti Village, after finding him guilty of raping a 10-year-old child, a pupil at Parknyigoti Primary School. He committed the offence on 20 <sup>th</sup> November 2019 and confessed in court.	23 November 2019
<b>Siha, Kilimanjaro:</b> Siha District Court sentenced to life imprisonment s one Godlizen Mosha (25), resident of Lomakaa Village, after finding him guilty of defiling and sodomizing a 4-year-old child. He committed the offence on 9 <sup>th</sup> April 2019.	10 Oct 2019

Source: LHRC Media Survey 2019 & Human Rights Monitoring 2019



## Judicial action against perpetrators of sexual violence – January to December 2019

Source: LHRC Media Survey 2019 & Human Rights Monitoring 2019

Reported Incident	Date
<b>Siha, Kilimanjaro:</b> Joseph Nkea (24) has been sentenced to 30 years imprisonment for raping/molesting a 2-year-old child. He committed the offence in October 2018.	20 May 2019
<b>Muheza, Tanga:</b> Resident Magistrate Court of Muheza sentenced to 60 years imprisonment, Salimu Idd, after convicting him of raping his daughter aged ten and daughter of his neighbour aged thirteen. He committed the crimes in October 2018.	8 April 2019
<b>Maswa, Simiyu:</b> Maswa District Court has sentenced a teacher, Abubakari Katakweba (32) to 30 years imprisonment after he was convicted of raping a Form Two student.	12 Apr 2019
<b>Mbeya:</b> Antony Mandava (58) was sentenced to 30 years imprisonment and 12 strokes after he was convicted of raping a student.	2 Apr 2019
<b>Nzega, Tabora:</b> Julias Katambi (65) was sentenced to life imprisonment and six strokes by Nzega Resident Magistrate Court for molesting a 6-year-old child. He did so in 2018.	20 May 2019
<b>Kigoma:</b> Kigoma District Court sentenced Sadik Amani (21) to life imprisonment after convicting him of raping a 5-year-old child in 2018.	28 May 2019
<b>Kinondoni, Dar es Salaam:</b> Said Rashid (36) was sent before Kinondoni Resident Magistrate Court, accused of raping his daughter between 2016 and 2019 in Mbezi Juu area.	29 May 2019
<b>Misungwi, Mwanza:</b> Julius John (21) was sentenced to 30 years in prison after the court found him guilty of raping and impregnating a student. He committed the offence in December 2018.	10 May 2019
<b>Nzega, Tabora:</b> Nzega Resident Magistrate Court sentenced Wilson Bernard (25) to 30 years imprisonment after convicting him of raping a 16-year-old girl in April 2019. He also received a sentence of 5 strokes.	23 May 2019
<b>Igunga, Tabora:</b> Police arrested and sent to court Nyalagi Simon (30), resident of Mwanzugi area, who was accused of burning his child's hands with a hot machete in March 2019, causing him severe pain.	1 Apr 2019
<b>Maswa, Simiyu:</b> 18 men have been sentenced to jail after being found guilty of impregnating female students and engaging in child marriage. They were sentenced between January 2018 and May 2019, of which 13 were sentenced in 2018 and 5 in 2019.	1 Jun 2019
<b>Misungwi, Mwanza:</b> Stephano Richard (22), resident of Mwajombo Village, was sentenced to a 30-year imprisonment after the court found him guilty of raping and impregnating a student on 15 <sup>th</sup> June 2019.	23 Jun 2019



Reported Incident	Date
<b>Bukombe, Geita:</b> Bukombe Resident Magistrate Court sentenced Juma John (25), resident of Masumbwe Ward, to life imprisonment after finding him guilty of raping a standard six pupil. He committed the offence in May 2019, after luring her to his farm. He was also accused of raping two other girls by using the same tactic.	15 Jun 2019
<b>Misungwi, Mwanza:</b> Jacob Shabani (30), resident of Wanzamiso Village, was sentenced to 30 years imprisonment for raping and impregnating his 16-year-old child. He committed the offence in 2018.	12 Jun 2019
<b>Maswa, Simiyu:</b> Domician Faustine (20), resident of Uzunguni area, was sentenced to a 30-year imprisonment for impregnating a Form One student from Binza Secondary School.	20 Jun 2019
<b>Moshi, Kilimanjaro:</b> Fidelis Matemtu (60), a teacher at Uru Primary School, was sentenced to 20 years in prison for sexually assaulting an 11-year-old pupil in April 2018.	8 Jun 2019
<b>Siha, Kilimanjaro:</b> Seif Abdallah, resident of Karasini Village, was sentenced to a 30-year imprisonment after being convicted of raping a Form Two student in January 2019.	5 Jun 2019
<b>Ilala, Dar es Salaam:</b> Ilala District Court sentenced Ombeni Said (30) to life imprisonment after finding him guilty of sodomizing a 4-year-old female child. He committed the offence in 2017.	7 Mar 2019
<b>Uvinza, Kigoma:</b> Makigo Maduhu (23) was sentenced to 30 years in prison and a fine of Tshs. 500,000 for raping a 13-year-old child.	30 Mar 2019
<b>Masasi, Mtwara:</b> Mussa Katambo(30), was sentenced to 30 years in prison for raping his 11-year-old daughter. He committed the offence in June 2018.	25 Feb 2019
<b>Tunduru, Ruvuma:</b> Tunduru Resident Magistrate Court has sentenced Yasini Mrope (47) to life imprisonment after he was found guilty of raping his 8-year-old stepdaughter. He committed the offence in December 2018.	1 Jan 2019
<b>Siha, Kilimanjaro:</b> Elizabeth Mmari, resident of Kilingi Village, was sentenced to a 6-month imprisonment for attempting to kill her 3-day-old baby with poison.	14 Jun 2019
<b>Mbeya:</b> Mbeya Resident Magistrate Court sentenced to 30-years in prison Anthony Mandava (58), after finding him guilty of raping and impregnating a student. He committed the offence in 2018.	2 Apr 2019
<b>Singida:</b> A 76-year-old madrasa teacher, Daudi Idd Karata, was sentenced to life imprisonment after the court convicted him on the charge of defiling a 9-year-old girl. He committed the offence in 2017.	25 May 2019
<b>Lindi:</b> Lindi District Court sentenced to a 60-year imprisonment Abubakari Kipande (58) after finding him guilty of raping an 11-year-old girl. He reportedly did so in 2018.	20 Apr 2019
<b>Ulanga, Morogoro:</b> Pius Mgombeli (37), was arrested following accusations of sodomizing a 4-year-old boy in Iragua Kidugulo Village.	May 2019



Reported Incident	Date
<b>Nkasi, Rukwa:</b> Nkasi District Court sentenced Ally Kabwe (20), resident of Ninde Village, to 50 years imprisonment after finding him guilty of raping and impregnating a 12-year-old child, who was a pupil at Mkilinga Primary School.	18 Sept 2019
<b>Lindi:</b> Lindi District Court sentenced 51-year-old Issa Mpanyanje to a 30-year imprisonment after finding him guilty of raping a 10-year-old child. He committed the offence on 14 <sup>th</sup> April 2019, after luring the child to his farm.	24 Aug 2019
<b>Serengeti, Mara:</b> Serengeti Resident Magistrate Court sentenced to life imprisonment Machaba Makoro (19), resident of Parknyigoti Village, after finding him guilty of raping a 10-year-old child, a pupil at Parknyigoti Primary School. He committed the offence on 20 <sup>th</sup> November 2019 and confessed in court.	23 November 2019
<b>Iramba, Singida:</b> Two teachers of Kizaga Secondary School, Emmanuel (25) and Onesmo Bida (28), were sentenced to 30-year imprisonments after being found guilty of raping a student aged 15 years in 2018.	8 Sep 2019
<b>Musoma, Mara:</b> Musoma District Court sentenced Nyamasheki Malima (41), resident of Musoma Municipality, following his conviction on the offence of sodomizing two male children aged 11 and 13. He committed the offence in 2017 and 2018.	1 Sep 2019
<b>Igunga, Tabora:</b> Igunga Resident Magistrate Court imprisoned Elius Mgashi (20), to 30 years after finding him guilty of raping a 14-year-old girl in September 2018.	24 Sep 2019
<b>Mara:</b> Resident Magistrate Court in the region imprisoned to 30 years a resident of Lyamugabo Village in Butiama District, Maulid Nyamono, after he was convicted of raping a 5-year-old child in late 2018.	16 Sep 2019
<b>Manyara:</b> Resident Magistrate Court in Manyara sentenced Charles Msele, who was headteacher at Rift Valley Primary School, to life imprisonment after finding him guilty of sodomizing an 11-year-old child, a pupil at his school, in September 2019.	10 Aug 2019
<b>Musoma, Mara:</b> Musoma District Court sentenced Maulid Nyamono to 30 years imprisonment after finding him guilty of raping a 50-year-old child in October 2018.	11 Sep 2019
<b>Siha, Kilimanjaro:</b> Siha District Court sentenced Godlizen Moshia (25), resident of Lomakaa Village, to life imprisonment after finding him guilty of defiling and sodomizing a 4-year-old child. He committed the offence on 9 <sup>th</sup> April 2019.	10 Oct 2019

*Source: LHRC Media Survey 2019 & Human Rights Monitoring 2019*





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