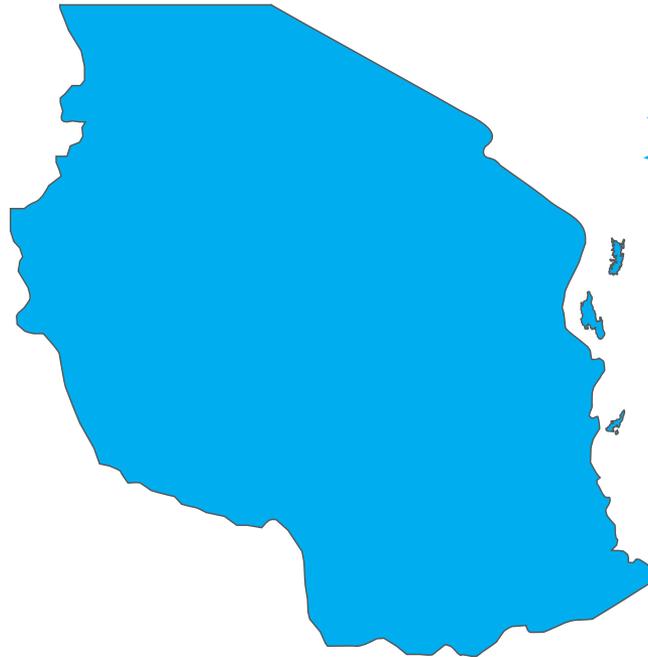


**LEGAL AND HUMAN RIGHTS CENTRE &
ZANZIBAR LEGAL SERVICES CENTRE**



Tanzania Human Rights Report - 2016

Mainland and Zanzibar



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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. It has a mission of empowering the people of Tanzania, so as to promote, reinforce and safeguard human rights and good governance in the country. The broad objective is to create legal and human rights awareness among the public and in particular the underprivileged section of the society through legal and civic education, advocacy linked with legal aid provision, research and human rights monitoring.

The LHRC was established in 1995 out of experiences and lessons generated from The Tanzania Legal Education Trust (TANLET) and the Legal Aid Committee of the Faculty of Law of the University of Dar es Salaam (UDSM). The founders of LHRC were lawyers who had participated in the legal Aid Committee of the Faculty of Law of the University of Dar-es-Salaam and its legal Aid camps.

The LHRC's operations mainly focus on Tanzania Mainland, with specific interventions in Zanzibar. LHRC is a member of different national, regional, and international NGO networks and human rights bodies. It has an observer status with the African Commission on Human and People's Rights.

Vision

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

Mission

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

LHRC's Values

LHRC's core values for its staff, board, and partners are: *Integrity; Equality; Transparency; Accountability; Professionalism; and Voluntarism and Volunteerism.*

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

Prof. Geoffrey Mmari
Chairperson
LHRC Board

Acknowledgement

In preparing the Tanzania Human Rights Report 2016, LHRC received cooperation from the Judiciary, the Legislature and the Executive arms of the State. Various reports from different government departments and research findings have greatly contributed to the finalization of this report. Hansards and judicial decisions form the basis of arguments and observations made by the LHRC. The information was gathered through official correspondences with the relevant authorities, while other information was obtained online through various websites. Therefore, LHRC acknowledges the continued collaboration with state actors to ensure that the report is released on a timely basis.

Contribution of CSOs, CBOs, FBOs, and academic institutions was also immense. The report also highlights comparative statistical information obtained from various international reports and briefs.

LHRC acknowledges the support of the media, both print and electronic, in preparation and dissemination of the report findings. Special recognition is extended to the contribution of the electronic media such as websites and blogs (social media).

We also acknowledge the contribution made by the Civil and Political Rights Tracking project (UHAKIKI). This project is funded with UK aid from the UK government. The inputs obtained through UHAKIKI project were vital in improving this year's report.

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Dr. Helen Kijo-Bisimba
LHRC Executive Director

Table of Contents

About LHRC.....	v
Acknowledgement.....	vi
Table of Contents.....	vii
List of Tables.....	xvi
List of Figures.....	xviii
List of Abbreviations.....	xx
Executive Summary.....	xxi
CHAPTER ONE: BACKGROUND INFORMATION ON TANZANIA.....	1
1.1 Political Background.....	1
1.2 Geography.....	1
1.3 Population.....	4
1.4 Economic situation.....	5
1.5 Historical Overview: Colonialism to Present.....	6
1.6 Governance System.....	7
1.6.1 The Executive.....	8
1.6.2 The Legislature.....	8
1.6.3 The Judiciary.....	9
CHAPTER TWO: CIVIL RIGHTS.....	12
2.1 Right to Life.....	12
2.1.1 Death Penalty.....	13
2.1.2 Mob Violence.....	16
2.1.3 Extrajudicial Violence and Killings.....	19
2.1.4 Witchcraft-related Violence and Killings.....	22
2.1.5 Violence against Persons with Albinism.....	26
2.1.6 Road Accidents.....	28
2.2 Freedom of Expression.....	30
2.2.1 Media Freedom.....	31
2.2.2 Freedom of Opinion.....	38

2.2.3	Right to Information.....	41
2.2.4	Conclusion and Recommendations.....	44
2.3	Rights to Equality before the Law and Effective Remedy.....	46
2.3.1	Access to Justice.....	46
2.3.2	Due Process of Law and Presumption of Innocence.....	49
2.3.3	Right to Legal Representation.....	50
2.3.4	Conclusion and Recommendations.....	51
2.4	Rights to Liberty and Bail.....	52
2.4.1	Conclusion and Recommendations.....	54
2.5	Freedom from Torture.....	55
2.5.1	Conclusion and Recommendations.....	56
	CHAPTER THREE: POLITICAL RIGHTS.....	57
3.1	Introduction.....	57
3.2	Freedom of Assembly.....	57
3.2.1	Limitations to Assemble.....	59
3.2.2	Arbitrary use of Force.....	65
3.3	Freedom of Association.....	67
3.3.1	Freedom of Association as Political Parties.....	67
3.3.2	Right to Take Part in Governance.....	69
	CHAPTER FOUR: SOCIAL RIGHTS.....	77
4.1	Right to Education.....	77
4.1.1	The 2014 Education and Training Policy: Free Basic Education.....	78
4.1.2	Financial Barriers.....	79
4.1.3	Gaps in School Budgets.....	79
4.1.4	Primary and Secondary School Enrollment in 2016.....	80
4.1.5	Conclusion and Recommendations.....	81
4.2	Right to Health.....	81
4.2.1	Equal Access to Health Facilities.....	83
4.2.2	Availability of Health Workers.....	83
4.2.3	Availability of Essential Medicines and Medical Supplies.....	83

4.2.4	Shortage of Medicine at the Medical Store Department (MSD).....	85
4.2.5	Funding of Health Care.....	86
4.3	Right to Water.....	86
4.3.1	Accessibility to Water.....	88
4.3.2	Quality of Water.....	88
4.3.3	Sufficiency of Water.....	88
4.3.4	Affordability of Water.....	88
4.4	Right to Adequate Standard of Living.....	89
4.4.1	Food Security and Freedom from Hunger.....	89
CHAPTER FIVE: ECONOMIC AND CULTURAL RIGHTS.....		95
5.1	Economic Rights.....	96
5.2	Right to Own Property.....	98
5.2.1	Human Rights Violations in Land-related Conflicts.....	99
5.3	Recommendations/Way Forward.....	102
CHAPTER SIX: RIGHTS OF VULNERABLE GROUPS.....		104
6.1	Women’s Rights.....	104
6.1.1	Violence against Women (VAW).....	105
6.1.2	Discrimination in Inheritance and Administration of Property.....	111
6.1.3	Gender Equality and Women’s Participation in Decision-Making....	112
6.1.4	Conclusion and Recommendations.....	114
6.2	Children’s Rights.....	115
6.2.1	Child Marriage and Pregnancy.....	115
6.2.2	Sexual Violence.....	118
6.2.3	Child Abuse and Torture.....	125
6.2.4	Female Genital Mutilation.....	127
6.2.5	Conclusion and Recommendations.....	129
6.3	Rights of Persons with Disabilities.....	130
6.3.1	Discrimination.....	131
6.3.2	Accessibility to Physical Environment, Facilities, and Services.....	133
6.3.3	Violence against PWDs.....	133

6.3.4	Conclusion and Recommendations.....	134
6.4	Rights of the Elderly.....	134
6.4.1	Violence and Discrimination.....	135
4.4.2	Social Protection.....	136
6.4.3	Conclusion and Recommendations.....	136
CHAPTER SEVEN: COLLECTIVE RIGHTS.....		138
7.1	Right to Enjoy Natural Resources.....	138
7.1.1	Right to Benefit from Natural Resources.....	139
7.2	Right to Development.....	140
7.2.1	Implementing the Sustainable Development Goals in Tanzania.....	141
7.3	Consumer Rights.....	144
7.3.1	The problem with counterfeit and substandard products.....	145
CHAPTER EIGHT: REVIEW OF TANZANIA’S ACTIONS TO IMPROVE HUMAN RIGHTS.....		147
8.1	Introduction.....	147
8.2	National Human Rights Mechanisms.....	147
8.2.1	The Commission for Human Rights and Good Governance(CHRAGG).....	147
8.2.2	Judicial Organs.....	156
8.2.3	Law enforcement organs.....	156
8.3	International and Regional Human Rights Mechanisms.....	158
8.3.1	Universal Periodic Review Mechanism.....	158
8.3.2	Human Rights Treaty Bodies.....	162
8.3.3	CHRAGG and CSO engagement.....	165
8.3.4	Status of Ratification of Key International Human Rights Treaties...168	
8.4	Conclusion and Recommendations.....	170
PART TWO: ZANZIBAR HUMAN RIGHTS REPORT.....		181
	LIST OF ABBREVIATIONS.....	183
	ACKNOWLEDGEMENTS.....	188
	PREFACE.....	189

CHAPTER ONE: GENERAL OVERVIEW OF ZANZIBAR.....	151
1.1 Introduction.....	191
1.2 Geography.....	195
1.3 The People.....	196
1.4 The Economy.....	198
1.4.1 Development of the Airways Services in Zanzibar.....	202
1.5 Political System.....	203
CHAPTER TWO: CIVIL RIGHTS AND LIBERTIES.....	205
2.1 Introduction.....	205
2.2 Right to Life.....	206
2.2.1 Road Accidents.....	208
2.2.2 Murder.....	209
2.2.3 Suicide.....	210
2.2.4 Mob Violence.....	211
2.2.5 Death Penalty.....	213
2.2.6 Extra-judicial Killings.....	215
2.3 Freedom from Torture.....	217
2.4 Equality before the Law.....	219
2.5 Equality before the Law and the Right to Legal Representation.....	220
2.5.1 Structure of the Zanzibar Courts System.....	221
2.5.2 Infrastructure of Courts.....	222
2.5.3 Manpower of the Zanzibar Judiciary.....	223
2.5.4 Independence and Impartiality of Judiciary.....	224
2.5.5 Delay of Cases.....	224
2.5.6 Legal Representation.....	225
2.5.7 Legal Aid.....	226
2.5.8 Paralegal Services.....	227
2.6 The Right to Freedom of Thought, Conscience and Religion.....	228
2.7 Freedom of Expression.....	229
2.7.1 Abuse of Freedom of Expression.....	231

2.8	Conclusion.....	232
CHAPTER THREE: POLITICAL RIGHTS.....		233
3.1	Introduction.....	233
3.2	Right to Participate in Governance.....	234
3.3	Election Rerun.....	236
3.4	The Aftermath of the Rerun Election.....	239
3.5	The Right to Peaceful Assembly and Association.....	241
3.6	Freedom of Association.....	244
3.7	Freedom of Association in Trade Unions.....	244
CHAPTER FOUR: SOCIAL RIGHTS.....		248
4.1	Introduction.....	248
4.2	Right to Education.....	248
4.1.1	Zanzibar Education Policy.....	249
4.2.1.	Achievements in Education Sector in 2016.....	249
4.2.2	Existing Challenges in Education Sector in Zanzibar.....	250
4.3	Right to Health.....	258
4.3.1	Improvement of Health Services in Zanzibar.....	260
4.3.2	Challenges Facing Health Sector.....	261
4.4	HIV/AIDS and Human Rights.....	264
4.4.1	HIV/AIDS Legal Framework.....	265
4.4.2	Institutional Framework.....	265
4.4.3	HIV/AIDS Situation in Zanzibar.....	266
4.4.4	Violation of the Rights of People living with HIV/AIDS in Zanzibar.....	266
4.5	Right to Clean Water.....	269
4.5.1	Current Situation of Provision of Right to Water in Zanzibar.....	270
4.5.2	Challenges Facing Water Supply.....	272
4.6	Right to Housing.....	273
4.7	The Youth and Society.....	273
4.8	Conclusion.....	274
CHAPTER FIVE: ECONOMIC AND CULTURAL RIGHTS.....		275

5.1	Introduction.....	275
5.2	Right to Property.....	276
5.2.1	Right to Acquire and Own Immovable Property.....	279
5.2.2	Limitation to the Right of Property.....	280
5.3	Challenges facing property ownership in Zanzibar.....	281
5.3.1	Destruction of Property.....	281
5.3.2	Change of Ownership after Transfer.....	282
5.4	Right to Work.....	282
5.4.1	State of Employment in Zanzibar.....	283
5.4.2	Salaries and Incentives Packages.....	284
5.4.3	Poor System of Social Protection.....	285
5.4.4	The Handling of Labour Disputes.....	286
5.5	Cultural Rights.....	287
5.5.1	Cultural festivals in Zanzibar.....	290
5.5.2	Stone Town as World Cultural Heritage.....	291
5.5.3	Zanzibar Handcrafts Activities.....	291
5.5.4	Traditional Healing and Medicine.....	292
5.6	Preservation of Cultural Heritage.....	295
5.7	Conclusion.....	297
CHAPTER SIX: THE RIGHT OF VULNERABLE GROUPS.....		298
6.1	Introduction.....	298
6.2	Patterns of Protection.....	300
6.2.1	Legal Framework for Protection of Women in Zanzibar.....	300
6.2.2	Institutional Framework for Protecting Women.....	301
6.2.3	Gender Based Violence (GBV).....	302
6.2.4	Domestic Violence.....	304
6.2.5	Women Participation in Decision Making.....	305
6.3	Children Rights.....	307
6.3.1	Legal Framework.....	307
6.3.2	Institutional Framework.....	308

6.3.3	Right to Life.....	309
6.3.4	Right to Grow and Develop.....	310
6.3.5	Child Labour.....	315
6.3.6	Maintenance of Children.....	316
6.4	Children in Conflict with the Law.....	317
6.5	Rights of the Elderly.....	318
6.6	Rights of Persons with Disabilities.....	319
6.6.1	Legal Framework.....	320
6.6.2	Institutional Framework.....	321
6.6.3	Challenging Facing People with Disabilities.....	321
6.7	Conclusion.....	322
CHAPTER SEVEN: COLLECTIVE RIGHTS.....		321
7.1	Introduction.....	321
7.2	Right to Development.....	324
7.3	Rights to the Environment and Sustainable Development.....	326
7.3.1	Improving Transportation.....	328
7.3.2	Noise Pollution.....	329
7.4	Right to Peace and Security.....	330
7.4.1	Stone Town Security.....	333
7.5	Conclusion.....	333
CHAPTER EIGHT: SMZ SPECIAL DEPARTMENT AND HUMAN RIGHTS.....		334
8.1	Introduction.....	334
8.2	The Jeshi la KujengaUchumi (JKU) (Economic Building Brigade).....	334
8.3	KMKM (Special Force for Prevention of Smuggling).....	335
8.4	Offenders Educational Centres (Prison Centres).....	335
8.5	Kikosi cha ZimamotoUokozi - KZU - (Fire and Rescue Brigade).....	336
8.6	Conclusion.....	336
CHAPTER NINE: CORRUPTION, ABUSE OF POWER AND HUMAN RIGHTS.....		337
9.1	Meaning of Corruption.....	337

9.2	International Instruments in Combating Corruption.....	337
9.3	Corruption and Human Rights.....	338
94.	Institutional Framework for Combating Corruption in Zanzibar.....	339
9.5	Legal Frame Work against Corruption in Zanzibar.....	340
9.6	Current Situation on Corruption in Zanzibar.....	341
9.6.1	Corruption in the Administration of Justice.....	341
9.7	Conclusion.....	342
CHAPTER TEN: HUMAN RIGHTS PROTECTION IN ZANZIBAR.....		343
10.1	Introduction.....	343
10.2	Incorporation of Bill of Rights in the Constitution of Zanzibar, 1984.....	343
10.3	Protection of Human Rights underthe Constitution of Zanzibar 1984.....	343
10.4	Protection of Human Rights under Constitution of United Republic of Tanzania 1977.....	344
10.4.1	Protection through the Court.....	345
10.4.2	Protection under the Human Rights Commission.....	345
10.5	Zanzibar Law Review Commission (ZLRC).....	346
10.6	The Office of the Director of Public Prosecution.....	347
10.7	Police Force and Human Rights in Zanzibar.....	348
10.8	Zanzibar Human Rights Guidelines (<i>Muongozo wa Haki za Binadamu Zanzibar</i>).....	349
10.9	Human Rights Day.....	350
10.10	Conclusion.....	351
LIST OF LEGISLATION.....		352
LIST OF INTERNATIONAL LEGAL INSTRUMENTS.....		354

List of Tables

Table 1:	Reported Death Penalty sentences in 2016.....	15
Table 2:	Some of the Incidents of mob violence reported by the media in 2016...18	
Table 3:	Incidents of extrajudicial killings 2016.....	20
Table 4:	Reported incidents of witchcraft-related killings in 2016.....	24
Table 5:	Incidents of attacks against PWAs reported by the media.....	27
Table 6:	Victims of road accidents 2014-2016.....	30
Table 7:	Media Outlets banned in 2016.....	38
Table 8:	Cases of Cybercrime Reported by the Media in 2016.....	39
Table 9:	Number of Courts to be built by 2018.....	47
Table 10:	LHRC Beneficiaries of Legal Aid in 2016.....	49
Table 11:	Reported Incidents of Unlawful Arrest and Detention.....	53
Table 12:	Example of political meetings that were banned by the police in 2016..	63
Table 13:	Budget Trend of the Essential Medicines and Medical Supplies 2010-2016.....	84
Table 14:	Budget Allocation vs Disbursement of Essential Medicines and Medical Supplies.....	85
Table 15:	Timeline over Pastoral Evictions carried out in Morogoro Region between 2009 - 2015.....	101
Table 16:	Incidents of Violence against Women Reported in 2016.....	107
Table 17:	Violence experienced by women aged 15 - 49.....	109
Table 18:	Women in Various Leadership Positions in 2015 & 2016.....	113
Table 19:	Reported Incidents of Sexual Violence against Children.....	120
Table 20:	Incidents of child abuse and torture reported in 2016.....	125
Table 21:	Unsuitable/counterfeit products (by tonnes) seized by TFDA in	

2013-2016.....	145
Table 22: Budgets for the Ministry of Constitutional and Legal Affairs 2012 - 2016.....	150
Table 23: NHRAP 2013-2017 Key Civil and Political Rights Objectives.....	150
Table 24: NHRAP 2013-2017 Key Economic, Social and Cultural Rights Objectives.....	152
Table 25: NHRAP 2-13-2017 Key Rights of Vulnerable Groups Objectives.....	154
Table 26: Key recommendations that were accepted, rejected or deferred during Tanzania’s UPR Review in 2016.....	159
Table 27: Status of Tanzania’s reporting to treaty bodies.....	163
Table 28: Summary of Key Recommendations made by CSOs during Tanzania UPR Process in 2016.....	167
Table 29: Human Rights Treaties Ratified by Tanzania as of December 2016.....	169
Table 30: Number of road accidents in Zanzibar from 2012 to 2016.....	208
Table 31: Records of the Serious Criminal Cases from January 2016 – December 2016.....	331
Table 32: Records of the Less Serious Criminal Cases from January 2016 – December 2016.....	332

List of Figures

Figure 1: Kitulo Plateau “the Garden of God”2

Figure 2: The Proposed Central Corridor Standard Gauge Railway Line.....3

Figure 3: Tanzania Judicial Hierarchy.....10

Figure 4: Numer of Inmates with Death Sentences 2014-2016.....14

Figure 5: Number of Death Penalty Sentences in Tanzania 2010-2016.....14

Figure 6: Killings Caused by Mob Violence 2011-2016.....17

Figure 7: Number of reported Witchcraft-related Killings 2012 - 2016.....23

Figure 8: Regions with most witchcraft-related killings July 2015 – March 2016..24

Figure 9: Number of Attacks and Killings of PWAs recorded by LHRC
2012-2016.....27

Figure 10: Road accidents, deaths, and injuries 2014-2016.....29

Figure 11: Motorcycle road accidents, deaths, and injuries 2014 - 2016.....29

Figure 12: BTI Index score Association/Assemble Rights.....59

Figure 13: Tanzania Civil and Political Rights Index 2016 results for Mainland..61

Figure 14: Timeline of events affecting right to assemble in 2016.....61

Figure 15: Number of students and pupils enrolled in 2015 and 2016.....80

Figure 16: Food Stocks Held by the National Food Reserve Agency.....92

Figure 17: GDP Growth Rates by Selected Economic Activities (%)77

Figure 18: Disputes Reported at LHRC Legal Aid Clinics in 201679

Figure 19: Incidents of violence against women and rape in 2015 & 2016.....106

Figure 20: Spousal Violence by Region.....110

Figure 21: Leadership Positions in Civil Service by Gender in 2016.....113

Figure 22: Regional Percentages of Child Marriage in Tanzania Mainland.....118

Figure 23: Reported Child Rape Incidents in 10 Regions from January to

June 2016.....	119
Figure 24: Percentage of women aged 15-49 who are circumcised.....	128
Figure 25: Regional Percentage of women aged 15-49 who are circumcised.....	129
Figure 26: Witchcraft-related killings of the elderly 2013-October 2016.....	135
Figure 27: Number of murders committed in Zanzibar in 2016.....	210
Figure 28: Incidences of Mob Violence in various regions of Zanzibar in 2016...	212
Figure 29: Tanzania Civil and Political Rights Index 2016 - Zanzibar Data on Mob Violence	212
Figure 30: Tanzania Civil and Political Rights Index 2016 – Zanzibar Data on Extrajudicial Killings.....	217
Figure 31: Freedom of Assembly - Best and Worst Performing Regions.....	243

List of Abbreviations

ACHPR	African Charter on Human and Peoples Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LHRC	Legal and Human Rights Centre
PWAs	Persons with Albinism
PWDs	Persons with Disabilities
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPR	Universal Periodic Review

Executive Summary

Legal and Human Rights Centre (LHRC) has been documenting human rights situation in Tanzania and producing the Tanzania Human Rights Report since 2002. In the preparation and production of this report LHRC collaborate with different stakeholders such as the Government and its agencies, the media, academic institutions, CSOs, researchers and community members as well as development partners.

The 2016 Tanzania Human Rights Report highlights the situation of human rights for this particular year. The report touches on civil, political, economic rights, social, cultural, and collective rights. The report also looks at the rights of vulnerable groups, namely women, children, Persons with Disability (PWDs), and the elderly.

This report has two parts; Part One and Part Two. Part One depicts the situation of human rights in Mainland Tanzania whereas Part Two depicts the situation in Tanzania Zanzibar. Part One thus has a total of eight chapters as follows: **Chapter One** of the Report provides background information on Tanzania. **Chapter Two** covers the situation of key civil rights, namely: right to life; freedom of expression; right to equality before the law; right to effective remedy; right to liberty; and right to freedom from torture. **Chapter Three** is about the situation of political rights, particularly freedom of assembly and freedom of association. **Chapter Four** examines the situation of social rights, particularly the quality and accessibility around rights to education, water and health. **Chapter Five** covers the economic and cultural rights such as right to property and right to adequate standard of living. **Chapter Six** highlights the rights of vulnerable groups, which are women, children, Persons with Disabilities (PWDs), and the elderly. **Chapter Seven** is on collective rights, particularly the right to development and the right to benefit from natural resources. **Chapter Eight** examines actions taken to improve human rights in Tanzania.

Methodology

In preparation of this report, the LHRC research team employed a number of methods to collect data, both primary and secondary. Data is collected from various credible sources, including government institutions, bodies and ministries; CSOs; judiciary; and the citizens. Primary data was obtained through a human rights survey conducted around the country in 10 regions, namely Iringa, Mbeya, Rukwa, Katavi, Kigoma, Kagera, Shinyanga, Tabora, Dodoma, and Kilimanjaro. During the survey questionnaires were distributed to a sample of respondents in one district of the 10 regions that were surveyed by the team. Questionnaires were designed to capture data

on availability and quality of social services as indicators of social rights; violence against women and children; civil and political rights; and general human rights.

Data was also obtained through interviews conducted with officials from various government institutions in the surveyed regions as well as key informants. Secondary data was obtained through desk review, including review and analysis of national, regional, and international legal and human rights documents. The research team also surveyed and analysed news reports by newspapers, televisions, and social media.

Data analysis was done through Microsoft Word and IBM's Statistical Package for Social Sciences (SPSS). The data is presented using tables and figures, showing frequency and percentages, summarizing information and trend of incidents concerning human rights.

Key Findings

I. Civil Rights

- A. In 2016 **Right to Life** continued to be threatened by death penalty, mob violence, extrajudicial violence and killings, witchcraft-related violence and killings, violence against persons with albinism (PWAs), and road accidents.
 - i. **Death Sentences** continued to be imposed, despite Tanzania maintaining the abolitionist status, whereby 19 people were sentenced to death, 14 more than those sentenced in 2015. This is despite the fact that the last recorded death sentence execution was carried in 1994;
 - ii. Statistics on **mob violence** indicate a slight decrease of incidents in 2016 compared to 2015, whereby **705** incidents were reported. However, these incidents were from January to August 2016 as LHRC could not obtain the statistics for the whole year. Among the mob violence incidents which shocked the nation was the killing of researchers and their driver in Dodoma by villagers in Mvumi Ward in Chamwino;
 - iii. Recent statistics by the police indicate fewer incidents of **extrajudicial killings**. In 2016, police reported only one incident by June 2016, but LHRC was able to document four incidents of alleged extrajudicial killings. There was a single positive development in 2016 towards holding people responsible for extrajudicial killings, where the High Court convicted a former police officer for the killing of a journalist, Daudi Mwangosi, in 2012;

- iv. **Witchcraft-related Killings** continue to show the long way we have in protecting the elderly, especially women. LHRC could only obtain data for January to June 2016, showing 394 killings. Compared to the killings in 2015, which were 425, the situation may have been worse in 2016. Data shows Tabora Region as the most notorious in these killings, followed by Mbeya and Shinyanga. In his 2016/17 Budget speech, the Minister for Home Affairs revealed that majority of the victims are older women, with at least 157 of them killed during the period of 2016/2017, compared to 71 men;
 - v. While 6 incidents of **killings of people with albinism (PWAs)** were reported in 2015, no such incidents were reported in 2016. However one incident of vandalism of a grave of PWA child and attempted abduction of two PWA children were reported by the media;
 - vi. **Road Accidents** showed a slightly decreased in the first half of 2016 compared to the same period in 2015. A total of 5,152 accidents were reported to the police from January to June 2016. However, statistics show that an average of 3000 lives is lost each year to road accidents since 2014.
- B. Freedom of Expression** was under much more pressure compared to 2015, through banning of media outlets and enactment and implementation of laws restricting such freedom. The *Media Services Act* was enacted in 2016, replacing the highly criticized *Newspapers Act, 1976*, but also containing restrictive provisions including accreditation (licensing) of journalists, and government control over content published by media outlets. The *Access to Information Act* was also enacted in 2016, but falls short of the standards of the African Model Law on Access to Information. Four media outlets were banned in 2016, two newspapers and two radio stations, for allegedly violating the *Newspapers Act*, without being given an opportunity to be heard as required under the principles of natural justice. The highly criticized *Cybercrimes Act* continued to be implemented in 2016, whereby at least 10 people were arrested and charged in court.
- C.** In 2016, enjoyment of the **rights to equality before the law and effective remedy** was boosted by improved access to justice through action by the Government and the Judiciary, but on the other hand these rights were curtailed through disregard of due process and threat to right to legal representation for suspected criminals. *Zero backlog* policy was implemented by the judiciary to address the problem of backlog of cases. Due process of law was disregarded

in the exercise of removing public officials and servants. Police threatened lawyers seeking to represent suspected criminals in Zanzibar and LHRC lawyer was arbitrarily arrested and detained for doing so in Tanzania Mainland.

D. Right to Liberty was threatened by denial of bail and unlawful and arbitrary arrest and detention. LHRC documented several cases of arbitrary arrest and detention as well as denial of bail. For instance, founder of a popular social network called *Jamii Forums* was arbitrarily arrested and detained by police for more than two days without being allowed bail and sent to court.

E. The Commission for Human Rights and Good Governance (CHRAGG) and LHRC received complaints of torture, violating the right to **freedom from torture**.

II. 2016 was an important year as far as **Political Rights** are concerned. This is because 2016 was the first year in which the newly elected government was taking helm, following the highly contested 2015 General Elections. In 2016 political rights were threatened as political conducts were limited:

A. Top government officials, led by the President himself made repeated statements suggesting **suspending political activities** until the year 2020 when the next elections will be conducted;

B. Freedom of Assembly: was mostly violated with the banning of assemblies, both public and indoor. This was done arbitrarily and without giving clear reasons. The banning of assemblies resulted to opposition parties calling for the nationwide protest in what was called the ‘protest against dictatorship’ acronym *UKUTA*;

C. The Police responded the call for protest by opposition parties by **excessive use of force** on their part. This was done in dispersing assemblies as was witnessed in the case of suspended rally at the very last meeting in Kahama Shinyanga. The meeting was organized by the CHADEMA opposition party. The Police Force also conducted what was called a ‘readiness exercise’ around the streets of the country, with full gear and armour. This intimidated citizens and in some cases preventing smooth running of daily routine. There were reports of people who were arrested for wearing and others for selling shirts with written words *UKUTA*.

D. Freedom of Association for political parties as well as civil society organisations was under threat. This followed the banning of both public

and indoor assemblies, jeopardizing the conduct of political parties and thus their very existence. In 2016 the very existence of political parties was in jeopardy following the banning of political rallies, both public and indoor. A good example is the banning of the workshop organized by ACT *Wazalendo* to discuss the 2016/17 proposed budget. Several civil society organizations were also de-registered by the government taming failure to adherence to set up procedures. However, LHRC is concerned that there is a need to address financial challenges facing these organisations as most of the organisations conduct their own funding which has been a challenge in the last five years.

- E. The Registrar of Political Parties** interfered with conduct of political parties instead of upholding the Constitution and the law and conduct as custodian of political parties. The Registrar took side with the government in banning of political activities, which was clearly a violation of the Constitution and the laws.
- F.** Political rights were further violated as the **right to take part in governance** was grossly abused. This was observed during the mayoral elections in Dar es Salaam, Kilombero and Tanga. In all these areas the due process was not observed leading to unnecessary violence and delay of the elections. In all these areas it was observed that the opposition UKAWA had a strong presence with majority of councillors.

III. Provision of **Social Rights** continued to be a challenge in 2016:

- A.** There was improvement in provision of education for all as the number of enrolled pupils and students increased as well as addressing the shortage of desks in schools. In 2016 the government began implementing the 2014 education and training policy *which* among other things advocate for Free Basic Education. Provision of free basic education means that the government has gone beyond its constitutional obligations which requires the government to provide free and quality primary education in line with the target of Sustainable Development Goal (SDG), which requires states to ensure that everyone completes free, equitable and quality primary and secondary education. However, there were challenges in implementing the policy as schools were overwhelmed with the number of pupils with limited school facilities to accommodate them.

- B.** The health sector experienced a lot of challenges in 2016. There was **shortage of health workers**, with reports showing that the shortage was at 51%. Reports further showed that 2000 health facilities were run by unskilled workers. Meanwhile, with all the shortage reported there were about 20,000 qualified personnel who had completed their studies and waiting for employment.

Availability of essential medicines was another big challenge experienced in 2016. Insufficient budget allocation caused insufficient supply and purchase of essential medicines. The shortage was very serious that it was reported that on 16th September, 2016 MSD had zero stock of the 47% of the medical items required. It was reported that out of the required 577 billion shillings in 2014/15 only 80.5 billion shillings was allocated. However in 2016/17 there was an increase in allocated budget at 251 billion shillings. The challenge remains that most of the allocated fund was used to pay overdue debt by the Government.

In 2016 the country experienced concerns over food security and availability. This was caused by the delayed rainfall experienced around the country. The concern was also caused by the fact that the National Food Reserve Agency (NFRA) had record low food stock in 2016 compared to previous years.

IV. Rights of Vulnerable Groups

A. Women's Rights:

- i. Women experienced several forms of **violence**, including sexual violence and domestic violence. Fewer incidents of violence against women were reported, 7,475 by June 2016, whereas a staggering 17,059 were reported in the whole of 2015. More than 2800 rape incidents were reported by June 2016. Rape incidents were on the rise in Dar es Salaam and Kilimanjaro. In Dar es Salaam rape incidents increased from 972 in 2015 to 1030 in 2016, while in Kilimanjaro they increased from 92 incidents in the period of March to August 2015 to 151 during the same period in 2016.
- ii. **Spousal Violence** is experienced by an average of 40% of women in Tanzania, with Mara and Shinyanga recording the highest rate of such violence, both with 78%.

- iii. Women continued to face discrimination in **inheritance and administration of property**. In 2016, Tanzania failed to implement the decision of the Committee on Elimination of Discrimination against Women in the case of *E.S and S.C v the United Republic of Tanzania* about two Tanzanian widows who had been denied inheritance under customary law. The decision constitutes an important jurisprudence on the rights of women of inheritance and owning property.
 - iv. **Gender Parity** was dealt a blow in 2016, with fewer women in leadership and decision-making positions in the 5th phase government compared to 2015 during the 4th phase government. Statistics show that only 28% of the leadership positions in civil service are held by women.
- B. Children's Rights:** Child rights were affected by child marriage and pregnancy, sexual violence, child abuse, and female genital mutilation (FGM).
- i. In 2016, the High Court of Tanzania ruled against **child marriage** in a landmark case declaring child marriage provisions within the *Law of Marriage Act* unconstitutional. The Government, however, decided to appeal against the decision as child marriage continues to deny girls their fundamental rights such as right to education, right to health, and right to equality. Currently, 2 out of 5 girls are forced into marriage before attaining the age of 18 years. Child marriage is most prevalent in Shinyanga, Tabora and Mara Regions.
 - ii. In 2016, Tanzania was ranked first on **child pregnancy** in East Africa and third in Africa. More than 300 child pregnancies (primary and secondary school girls) were reported in three regions of Dodoma, Kilimanjaro, and Mara alone.
 - iii. **Sexual Violence against Children** increased especially rape and sodomy. 2,571 incidents were reported from January to July 2016, Dar es Salaam Region leading with 345 incidents, followed by Mbeya (177) and Morogoro (160). In Arusha, Kilimanjaro, and Dar es Salaam Regions, many incidents of children sodomizing each other at school were also reported. LHRC Survey revealed that factors contributing to prevalence of sexual violence against children are slow pace of investigation and prosecution of perpetrators; gap in parenting; parents, guardians and relatives of

victims colluding with perpetrators; family and relatives seeking to conceal ‘family shame’; and belief in witchcraft.

- iv. LHRC was able to document at least eight incidents of **child abuse and torture** reported by the media.
- v. Government and CSO action helped to reduce **female genital mutilation (FGM)** in Tanzania by 5%. In 2016 FGM was stated to be prevalent in Manyara, Dodoma, Mara, and Singida Regions.

C. Rights of PWDs:

- i. In 2016, PWDs continued to face discrimination in work and employment, with very few employed in public and private companies and organizations. Only 0.7% of PWDs in Dar es Salaam were found to be employed in different companies and organizations.
- ii. PWDs also continued to face barriers to accessibility to physical environment, facilities and services open or provided to the public.

D. Rights of the Elderly: Major challenges faced by the elderly were violence, discrimination and lack of social protection.

- i. The elderly, especially older women are the major victims of **witchcraft-related killings**. In the period of July 2015 to March 2016 more than 120 older persons were killed.
- ii. Tanzania ranks 91st out of 96 countries on **the safety of lives of the elderly**, thus among least safe countries for the elderly to live in, violence against them being a major factor.
- iii. The elderly in Tanzania are not afforded **social protection**, with only 4% of them having **access to pension**. There is no universal pension scheme to help the elderly ease their economic hardships, but the Government mentioned that it is in the final process of introducing it.

V. Human Rights Mechanisms

- i. As the National Human Rights Action Plan 2013-2017 enters the final year of its implementation in 2017 most of the key objectives have not been achieved.

- ii. Tanzania was engaged in the Universal Periodic Review (UPR) process in 2016, whereby it rejected some key recommendations such as amending laws encouraging child marriage and ratifying the anti-torture Convention (CAT).

Key Recommendations

I. Civil and Political Rights

1. The Government, through the Ministry of Constitutional and Legal Affairs, to officially recognize the state of moratorium and initiate legal reforms to substitute death penalty with alternative sentences such as life imprisonment;
2. The Police Force to timely respond to mob violence and ensure the perpetrators are investigated and prosecuted in accordance with the law;
3. The Government, through the Ministry of Home Affairs and the Law Reform Commission, to ensure increased accountability for the police with regard to extrajudicial killings and initiate legal reforms to establish an independent police oversight body that investigates and holds accountable the police in case of misconduct such as extrajudicial killings;
4. Police and local security committees to increase efforts to locate, charge and prosecute perpetrators of witchcraft-related killings;
5. The Ministry of Home Affairs to ensure quick investigation and prosecution of perpetrators of attacks and killings of PWAs;
6. The Government to refrain from arbitrary interference with the freedom of expression;
7. The Government, through the Ministry of Constitutional and Legal Affairs, to initiate review and amendment of laws restricting freedom of expression, including the Cybercrimes Act and Media Services Act;
8. The Judiciary to fully and effectively implement the *zero backlog* policy to improve access to justice;
9. Government leaders and the police to follow due process of law in taking their actions in order to safeguard the right to equality before the law and uphold principles of natural justice;

10. Police to refrain from arbitrary arrests and detentions and to recognize and respect the right to bail for bailable offences in order to safeguard the right to liberty;
11. The Ministry of Home Affairs to ensure law enforcement officials to not resort to torture of suspected criminals and detained persons and ensuring accountability for those who resort to such act.

II. Political Rights

1. Police discretion to limit assemblies should be objectively: prevention and cancellation of assemblies should be done with clear justifications, timely and in writing. Prohibition of an assembly should be of last resort.
2. Police should focus more on providing security to assemblies: More than citing ‘intelligence’ tip leading to the cancelation and preventing assemblies. The police should remember that their legal obligation is to provide law and order to citizens and their property. Police should thus focus more on providing security to assemblies to ensure that they are conducted in a peaceful manner.
3. Mechanisms should be established and strengthened to hold police accountable: An independent constitutionally endorsed body should be established to provide objective oversight of the police, independent of the Government and party influences. The mandate of such a body would cover police action more broadly with significant consideration provided on how the police promote and protect human rights, including freedom of assembly.
4. Enhance the quality and availability of data: Data should be collected and recorded on the number of assemblies authorised, denied and cancelled. The data should as well collect the reasons for denial and cancellations. The data should be made available to the public to support open governance.
5. The President’s Office Regional Administration and Local Government should consider re-election of the Chairperson of the Kilombero district council and Tanga Municipal council to enhance democratic processes;
6. The Police Force should operate their mandate to protect people and their property regardless of their political affiliation. The police force should abstain from entertaining politically motivated charges against members of the opposition political parties as the same defeat justice in a democratic society.

III. Economic, Social And Cultural Rights

1. Economic empowerment to poor families to enable them meet the indirect education related costs;
2. Amendment of the Law of Marriage Act of 1971 and place the minimum age for marriage at 18 for both boys and girls;
3. Re-think on mandatory pregnancy tests performed by some schools which scare away girls from attending schools;
4. Institute government circular to allow girls who have been impregnated to attend school again after giving birth;
5. Abolishment of corporal punishment in schools and use alternative punishment instead;
6. Constitutional amendments to safeguard the right to education;
7. Legislative amendment to require not only to free education but free and quality education for all without any discrimination;
8. Status of teachers need to be improved by addressing teachers' motivation;
9. Children in rural areas are discriminated from accessing education due to inequality in resource allocations.

IV. Rights of Vulnerable Groups

1. The Ministry of Legal and Constitutional Affairs and the Law Reform Commission, to initiate legal reforms to protect women from violence and discrimination, including amendment of the Law of Marriage Act and repealing discriminatory customary laws denying women inheritance rights;
2. The Police Force and courts to conduct quick investigations and prosecution of perpetrators of violence against women;
3. The Government to implement gender parity and equality policies to increase female representation in decision-making policies and safeguard rights of women and girls;
4. The police and courts of law to increase the pace of investigation and prosecution of cases of violence against children;

5. The Government to fulfil its obligation under the regional and international children rights treaties to end child marriage through a legislative action to amend the Law of Marriage Act 1971;
6. The Ministry responsible for Policy Coordination, Parliamentary Affairs, Employment and Persons with Physical Disabilities to take action to ensure increased jobs and employment opportunities for PWDs;
7. Police Force to conduct timely investigations of cases of violence against PWDs, especially PWAs, and courts of law to fast-track such cases;
8. The Ministry of Home Affairs and Ministry responsible for the elderly, to increase their protection from all forms of violence, particularly witchcraft-related killings, including timely investigation and prosecution of cases of violence against the elderly people;
9. The Ministry of Health, Community Development, Gender, Elderly and Children to fast-track the process of introducing pension for the elderly.

V. Human Rights Mechanisms

1. The Government, through the Ministry of Constitutional and Legal Affairs, to increase the pace of implementing the accepted recommendations made during the UPR process in 2016 as well as those made during the previous process in 2011;
2. The Government to reconsider, accept and implement recommendations on safeguarding right to life, including abolishing death penalty; women's rights; and child rights, especially ending child marriage;
3. The Government to ratify and domesticate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

CHAPTER ONE

BACKGROUND INFORMATION ON TANZANIA

1.1 Political Background

The United Republic of Tanzania attained its independence in 1961 from Britain as protectorate state; thus in December 2016 the United Republic of Tanzania (Tanzania Mainland in particular) celebrated its 55th independence anniversary. Since its independence, Tanzania has been governed by five presidents, the first being the late Julius Kambarage Nyerere (1962-1985), followed by Ali Hassan Mwinyi (1985-1995), Benjamin William Mkapa (1995-2005), Dr. Jakaya Mrisho Kikwete (2005-2015) and currently Dr. John Pombe Magufuli (2015-2020).

The United Republic of Tanzania is a sovereign union government formed in 1964 following the union of Tanganyika and Zanzibar. In that regard there are two governments, legislatures and judiciary systems. The United Republic of Tanzania has mandate on union matters in Zanzibar whereas the Peoples Republic of Zanzibar is sovereign on non-union matters in part of Zanzibar.¹

1.2 Geography

Tanzania is located in Eastern part of Africa between longitudes 29^o and 41^o East, and Latitude 1^o and 12^o South.² Topographically, the country is endowed with beautiful scenery, with mountain ranges and valleys. Tanzania is home to Mount Kilimanjaro, the highest free standing mountain in the world and the highest mountain in Africa (referred as the roof of Africa).

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

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

2 LHRC & ZLSC (2012): Tanzania Human Rights Report, p. 1.

3 See <http://www.tanzaniatourism.com/en/destination/kitulo-national-park/P10> visited in December, 2016.

4 Ibid.

The Great Rift Valley provides ground for pastoralist activities and agriculture due to its fertile soil that supports growth of different crops. The Usangu Valley, famous for rice production in Mbeya Region lies within the path of the Great Rift Valley.



Figure 1: Kitulo Plateau “the Garden of God”

Tanzania is blessed with sufficient natural water sources. On the Western part lies Lake Tanganyika (the deepest lake in Africa), bordering Zambia, Democratic Republic of Congo (DRC) and Burundi; while Lake Victoria (the largest lake in Africa and the source of the Great Nile River) lies in the northern part of the country, bordering Uganda and Kenya. In the West South lies Lake Nyasa, bordering Zambia, Malawi and Mozambique. There are also plenty of rivers running across the country including the major rivers Rufiji, Ruvuma, Malagarasi, Kagera, Pangani, Wami, Ruvu, Ruaha, Kilombero and Mara.

The Indian Ocean forms the Eastern border of the country with four major ports of Dar es Salaam; Mtwara; Tanga; and Bagamoyo (Mbegani area). These ports have been vital in boosting the country’s economic growth as well as those of the landlocked neighbouring countries which depend on Tanzania for exportation and importation of goods.⁵ In 2016 Tanzania entered into agreement with Uganda to construct an oil pipeline which will run from Uganda to the Tanga port.⁶ The pipeline will be vital in transporting oil form 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.⁷

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

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

7 See <http://www.tanzaniainvest.com/transport/central-corridor-railway-construction> visited on

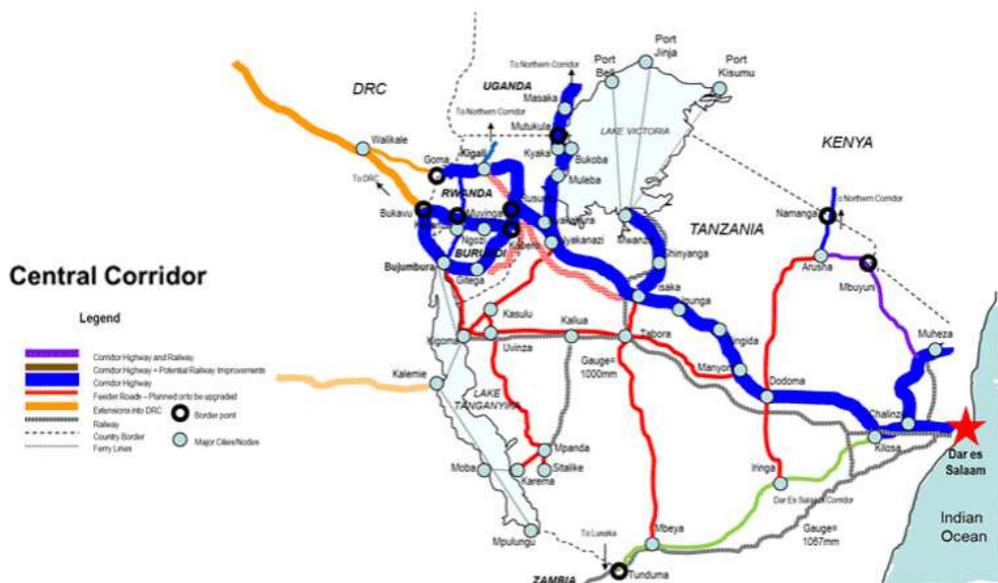


Figure 2: The Proposed Central Corridor Standard Gauge Railway Line⁸

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

Rainfall distribution is divided into unimodal and bimodal areas.⁹ The unimodal areas experience rainfall once per year whereas the bimodal areas experience rainfall two times a year.¹⁰ The bi-modal regions experience short rainfall (*vuli*) in the months of October to December and heavy rainfall season starts around the end of March to

January, 2017.

⁸ *Ibid.*,

⁹ www.meteo.go.tz, visited on December, 2016.

¹⁰ 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).

early June.¹¹ Unimodal regions experience heavy rainfall around November to April. Therefore, due to availability of sufficient rainfall, food security and availability have been satisfactory in recent years. Food crops produced in Tanzania are sold to the neighbouring countries as the internal market cannot absorb all available food crops.

The country's climatic condition further attracts generation of alternative energy such as solar energy and wind energy. There is reliable sunshine and speed wind that can generate energy throughout the year. For instance, wind resource is encouraging energy generation throughout the Rift Valley, in the highland plains and along the coast of the Indian Ocean.¹² However, there is minimum investment conducted in these areas to further tourism, agriculture and semi-processing industries especially in much needed rural Tanzania.

Further, Tanzania is endowed with abundant natural resources (living and non-living), with minerals such as Tanzanite, Gold, Diamond, Copper and Iron are found in abundant. Large reserves of natural gas have been discovered in southern regions of Mtwara and Lindi. It is estimated that there is a reserve of 1 trillion Cubic metres of natural gas in coastal regions.¹³ Further explorations for gas and oil are ongoing in different parts of the country attracting heavy foreign direct investment through exploration and manufacturing industry. A good example is the commission of the Dangote Cement plant in Mtwara in 2015, capable of producing high quality grade cement.¹⁴ The plant utilises natural gas as the main source of power generation. The discovered natural gas is aiming at generating power, with a major project of the Kinyerezi Power Plant.¹⁵

1.3 Population

The population of the country is rapidly growing, at the rate of 2.7 per annum. The National Population and Housing Census of 2012 estimated the population at 43,625,354 in Mainland Tanzania and 1,303,569 in Zanzibar, with women making the majority at 51.3% and male at 48.7%.¹⁶ In 2016 the population projection was at a total of 50,144,175, with 24,412,889 males and 25,731,286 females.¹⁷ Majority of the country's population resides in rural areas, where the number of households

11 Ibid.

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

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

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

15 See www.pesatimes.com/news/energy-mining/kinyerezi-power-plant-to-add-150-megawatts, accessed on December, 2016.

16 URT 2012: *The National Population and Housing Census*.

17 TBS 2016: *Tanzania Total Population Projection by District and Regions*.

found is high compared to urban areas. The number of households in rural areas is 6,192,303, which is equivalent to 66.6 percent of the total number of households, and that in urban areas is 3,098,792 households, which is only 33.4 percent. The average household is occupied by 4.7 persons.

There are estimated 662,287 non-citizens living and working in Tanzania.¹⁸ The number has grown as a result of an increased foreign direct investments and corporations. On the other hand, the number of Tanzanians living and working abroad (Diaspora) is estimated at 421,456.¹⁹

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

1.4 Economic situation

Currently, the country's economic growth rate is mainly driven by transport, communication, manufacturing, construction and agriculture sectors, which accounts for 70% of the Gross Domestic Product (GDP).²⁰ Therefore such initiatives have reduced donor dependency from 42% in 2005 to 15% in 2015.²¹

There are different initiatives that have been done by the Government to engineer the economy of the country. Such initiatives include the Big Results Now (BIG) model, adopted in 2013-2014 in order to further initiatives of the country in transition from lower to middle income.²² The Government also plays a vital role in implementing the *Five Year Development Plan 2016/17 - 2020/21*, the *National Strategy for Growth and Poverty Reduction Phase II* and the *ruling party CCM election manifesto 2015-2020*.

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

18 *Ibid.*

19 *Ibid.*

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

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

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

1.5 Historical Overview: Colonialism to Present

The history of present Tanzania can be traced back to the 1st Century Before Christ (B.C) through various historians. Tanzania (Tanganyika as was then known) was placed under German colonialist rule in 1885 and later under the British rule.²³ Zanzibar (Unguja and Pemba) was also colonized by the British.

Tanganyika's interaction with foreigners began long before colonial rule. From the historical perspective, in the 1st Century, B.C, the Cushiest from Ethiopia came and settled in Tanganyika. In 2nd Century A.D, the agriculturalist from Cameroon and Nigeria came to Tanganyika; and it is during this time when iron technology was developed. It has been documented that Swahili civilization along the coast of East Africa to the present Zanzibar and coast of Tanganyika began to develop in the 12th Century A.D. Due to the interaction and expansion of African tribes and movement of various groups, the local inhabitants started to develop chiefdoms and kingdoms around 15th Century A.D. It was during this Century that the long distance trade between the coastal city states and the Arabs thrived.²⁴

The scramble for and partition of Africa in 1884-85 saw Tanganyika become a Germany colony. The German rule met stiff resistance from well-established kingdoms, such as the Nyamwezi (under Chief Mirambo); the Hehe (under chief Mkwawa) the Chagga (Chief Mangi Meli) and the Swahili along the Coastal strip (led by Abushiri Bin Salim. One other stiff resistance against the German colonial rule was the *MajiMaji* uprising from 1905 to 1907. The uprising involved the tribes in southern and Eastern parts of Tanganyika against the strong Germany administrative base. The *MajiMaji* uprising was led by a traditional and spiritual leader one Kinjekitile Ngwale whose inspirational magic to turn "white man's bullets into water" inspired strong resistance.²⁵

The end of the First World War 1919 saw also the end of the German colonial rule in Tanganyika, with Germany on the losing side. Tanganyika (as other German colonial territories in Africa) was placed under the British rule under the League of Nations mandated territory. After the Second World War in 1945, Tanganyika became a United Nations Trust Territory, subject, again, to British control. Tanzania began demanding for self-governance and independence during this era.

The independence struggle was led by TANU under Julius Kambarage Nyerere leading to Tanganyika gaining independence on 9th December, 1961. Tanganyika became a Republic a year later, with Julius Kambarage Nyerere becoming its first President. Zanzibar, on the other hand, gained independence from the British on 10th December

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

24 www.fjibure.com/tang.html

25 LHRC & ZLSC (2012) Tanzania Human Rights Report, p. 6.

1963, but was still under the domination of the Sultan of Zanzibar. The Sultanate was subsequently overthrown on 12th January 1964 through the revolution led by the Afro-Shirazi Party (ASP). On 26th April 1964, the two independent states (Tanganyika and Zanzibar) merged to form the United Republic of Tanzania.

Examining Tanzania's history from a human rights perspective, there is no doubt that the German and British colonial spells in Tanganyika negated and suppressed human rights. When one state colonizes another, it violates the right to self-determination of the colonized people. There is no law that can justify colonialism. Colonial powers rarely allowed the colonized people to enjoy any human rights.²⁶

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

The independent Tanzania is a socialist-multiparty democratic country. Since its independence has been ruled by five presidents all of them from *Chama Cha Mapinduzi (CCM)*. In 2015 the general election was held and His Excellency President Dr. John Pombe Magufuli of CCM became the fifth president of United Republic of Tanzania. The human rights situation in post-colonial Tanzania, like in many other African states, has been overshadowed by the need for development. Nationalist leaders conceived the process of economic development to be one that did not necessarily promote or respect human rights.²⁷ The present government has also taken the stance of banning constitutionally recognised political activities alleging that politics delay attainment of development.²⁸ The adoption of a Bill of Rights designed to protect human rights was denied at first, apparently due to nationalistic ideas regarding the need for economic development.

1.6 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*

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

27 *Ibid.*

28 For further discussion on political rights and banning of political activities please refer Chapter Three of this report.

Tanzania of 1977. Equally the interim Constitution of United Republic of Tanzania, 1965 and the Union Constitution 1964 recognized the same structure of governance system. Chiefdoms were recognised and subsequently banned in 1963 with the *African Chiefs Ordinance*. The chiefs who were in power at that time were outraged by the abolition of chiefdoms. Hence, in 1963 the ruler of *Chagga Council*, Chief Thomas Marealle filed an application at the court praying for compensation for loss of office and he won. The Government was ordered to compensate him 45,000 pounds. The Government was not satisfied with the decision, hence moved the Parliament to pass another law called *The Chiefs (Abolition of Office) (Consequential Provisions) Act*, which barred any chief in Tanganyika to claim any relief from court a result of loss of office.²⁹

1.6.1 The Executive

The Executive arm of the state is made up of the President, who is the head of State, Government and the Commander in Chief of the Armed Forces.³⁰ The Government of the United Republic of Tanzania is vested with authority over all Union Matters in the United Republic and over all Matters of Mainland Tanzania.³¹ This authority is thus vested with the President of the United Republic.

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 composition of the current cabinet includes 19 ministries of which only 4 are female while 15 are male. There are 16 deputy ministers, of which only 5 are female and the rest 11 are male.³²

1.6.2 The Legislature

The Parliament of the United Republic of Tanzania consists of two parts; the President and the National Assembly. The National Assembly consists of Members of Parliament (MPs). The President as part of the Parliament performs his authority for that purpose as vested by the Constitution of the United Republic of Tanzania. The National Assembly is the principle organ of the United Republic with the authority to oversee and advise the Government and all its organs in discharge of their respective responsibilities.

29 Pius Msekwa, *Uongozi na Utawala wa Mwalimu Julius Kambarage Nyerere: Miaka 25 ya Utumishi wangu kwa Umma chini ya Uongozi wa Mwalimu Julius Kambarage Nyerere* (Dar es Salaam: Nyambari Nyangwine Publishers, 2012), pp. 71 & 72.

30 Article 33 of the Constitution of the United Republic of Tanzania.

31 Article 34 of the Constitution of the United Republic of Tanzania.

32 See www.ikulu.go.tz accessed on December 2016.

The Parliament is vested with Legislative powers in relation to all Union Matters and also in relation to all other matters concerning Mainland Tanzania. Legislative powers on matters which are not Union Matters are vested in the House of Representative (please refer to Part Two of this report for detailed information on Zanzibar). The laws passed by the National Assembly shall apply also in Zanzibar if they address specifically-designated union matters and have been presented to the Zanzibar House of Representatives by the responsible minister.³³

The majority of the MPs are elected members from their constituencies.³⁴ Other members are of the special seat category, appointed by political parties depending on basis of proportion of votes won on Parliamentary election.³⁵ The President also has power to appoint 10 members of his choice, while five members come from elected members of the House of Representative.³⁶ The Attorney General of Tanzania is a Member of Parliament by virtue of his/her office.³⁷ 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.³⁸ The House has powers to enact laws for Zanzibar on non-union matters without the approval of the union government. The term of office for the Zanzibar President and House of Representatives is also five (5) years. The relationship between Zanzibar and the Mainland Tanzania is a relatively unique system of government. More information about Zanzibar can be found in Part Two of this report.

1.6.3 The Judiciary

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

33 Article 64 of the United Republic of Tanzania; and Section 132 (1) and (2) of the Constitution of the Revolutionary Government of Zanzibar 1984,

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

35 Article 68 (1) (b) of the Constitution of the United Republic of Tanzania.

36 Article 68(1) (c) of the Constitution of the United Republic of Tanzania.

37 Article 68(1) (d) of the Constitution of the United Republic of Tanzania.

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

Tanzania.³⁹Tanzania's legal system is based on English common law, whereby judicial functions are administered by various courts established in accordance with the law.⁴⁰ 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.⁴¹ Magistrates are appointed directly by the Commission.⁴² The High Court of Tanzania has divisions dealing with land, labour and commercial matters. In 2016 the Economic and Organised Crime Act was amended to establish the Economic Crime Court (acronym *Mahakamaya Mafisadi*).⁴³

Tanzania also has a court martial process (military tribunal) meant to deal with cases related to armed forces personnel.⁴⁴ There is also a special Constitutional Court, which is an *ad hoc* court with a sole function of interpretation of the *Constitution of the United Republic of Tanzania, 1977* over dispute between the Government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar.⁴⁵ The Constitutional Court is composed of members, half of which appointed by the Government of the United Republic of Tanzania and the other half by the Revolutionary Government of Zanzibar. Tribunals have also been established under various laws to adjudicate on other matters, including labour, taxes and land issues.⁴⁶

Zanzibar has its own judicial system consisting of (in descending order): the Court of Appeal of Tanzania; the High Court of Zanzibar; Regional and District Magistrate Courts; Primary Courts; *Kadhi* Appeal Courts; and *Kadhi* Courts. These courts have jurisdiction over cases arising in Zanzibar that involve non-union matters.⁴⁷ The High

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

40 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].

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

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

43 Section 3 of the Economic and Organized Crimes Act.

44 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].

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

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

47 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

Court of Zanzibar is the highest court for matters originating from *Kadhi* Courts and the interpretation of the Constitution of Zanzibar. However, the appeal process for a case originating from a magistrate court is slightly different, as the case may be appealed to the High Court of Zanzibar and then appealed again to the Court of Appeal of Tanzania.

LHRC avers that, in order for the Judiciary to protect and promote human rights, it must be independent. As the process of constitution-making is in progress, guaranteeing judicial independence should be paramount. The current setting jeopardizes independence of the Judiciary as members of the Judiciary, the Chief Justice and all other judges, are Presidential appointees, with no subsequent approval of the National Assembly. This leaves a loop hole for abuse of power by the President for political biasness in appointing. Judges and should be as members of the Judiciary should be independent from any influence in order “to do justice without fear or favour, affection or ill will”.⁴⁸

affairs, security, police, citizenship, immigration, foreign trade, higher education, aviation and statistics.

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

CHAPTER TWO

CIVIL RIGHTS

Civil rights seek to ensure that actions by state and non-state actors, including private individuals, do not infringe on an individual's freedoms. They include right to life; freedom of opinion and expression; freedom of assembly; right to privacy; freedom from torture; right to fair trial; equality before the law; freedom from torture; and freedom of thought, conscience and religion. These rights and freedoms are protected under the International Civil and Political Rights (ICCPR) 1966, originating from the Universal Declaration of Human Rights (UDHR) of 1948. They are also protected under the continental treaties such as the African Charter on Human and Peoples' Rights (ACHPR) and domestically under the Constitution of the United Republic of Tanzania of 1977. This chapter focuses on the situation of right to life, freedom of expression, freedom from torture, right to liberty, right to equality before the law, and right to effective remedy for the year 2016.

2.1 Right to Life

In 2016, the right to life was jeopardized by the different types of violence perpetrated by state and non-state actors. Right to life is the most fundamental and basic human right, protected under the Constitution of the United Republic of Tanzania 1977, and various regional and international human rights instruments.⁴⁹ These instruments impose a number of obligations to states, mainly an obligation not to deprive anyone of their life except in limited circumstances in accordance with the law, and taking appropriate measures to safeguard the lives of people within them. In safeguarding the lives, they must: put in place effective criminal law to deter crimes; have in place a law enforcement body to prevent and sanction offences; taking measures to protect a person whose life is at risk from criminal acts or environmental hazards; and properly investigate and prosecute criminal offences causing death.

In 2016, this right to life in Tanzania continued to be threatened through the death penalty, mob violence, extrajudicial killings and violence, witch-craft-related violence and killings, and potential violence against of Persons with Albinism (PWAs).

⁴⁹ Article 3 of the Universal Declaration of Human Rights (UDHR); Article 6 of the International Covenant on Civil and Political Rights (ICCPR); Article 4 of the African Charter on Human and Peoples' Rights (ACHPR); Article 14 of the Constitution of the United Republic of Tanzania

2.1.1 Death Penalty

In 2016, Courts continued to impose death sentences to perpetrators of crimes such as murder and treason in line with sections 39 and 197 of the Penal Code. These sentences constitute an infringement of the right to life – protected under Article 14 of the Constitution and regional and international human rights treaties ratified by Tanzania.⁵⁰ Despite legal recognition of death penalty, Tanzania is considered to be an abolitionist state and is in a state of moratorium as the last recorded execution of death penalty was in 1994, which is among the reasons why LHRC and other human rights organizations across the country have been advocating for its abolition. LHRC's anti-death penalty stance is based on the fact that it violates right to life and constitutes a cruel, inhuman and degrading punishment under Article 13 (6)(e) of the Constitution.⁵¹ Imposition of death penalty goes against the state's obligation to preserve human life under the ICCPR and other regional and international human rights treaties.

In another development, in May 2016 the Prevention of Terrorism Act (CAP 19) was amended through the Written Laws (Miscellaneous Amendment) Act, No. 2 of 2016. Death penalty was added as a penalty for terrorism where the act causes death, referring to section 197 of the Penal Code, CAP 16, which provides for death penalty.⁵²

Recent statistics indicate an increase in the number of inmates with death sentences, as the figure below shows.⁵³ The total of inmates with death sentences increased from 410 in 2014 to 472 in 2015. LHRC could not obtain data on number of inmates in 2016 from the Tanzania Prisons Services.

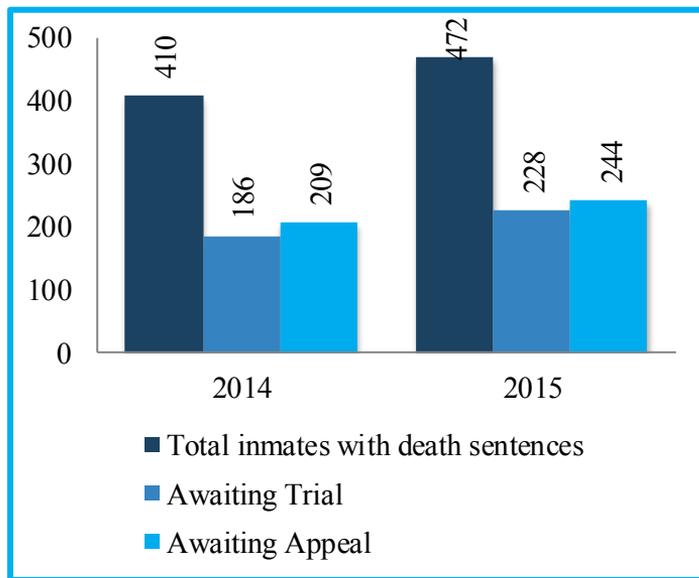
50 Most notably the African human rights Charter (Banjul Charter) and the UN civil and political rights treaty (ICCPR)

51 *See also* the decision of Justice Mwalusanya in the case of *Republic vs. Dominick Mnyaroje and Another*, High Court of Tanzania (Dodoma), Criminal Case No. 44 of 1991, declaring death penalty unconstitutional.

52 Section 55 of the Written Laws Miscellaneous Amendment Act, No. 2 of 2016.

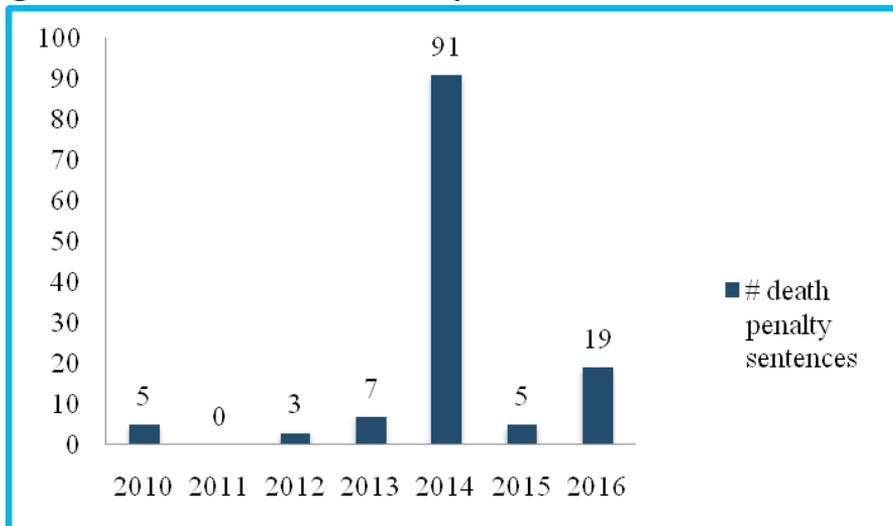
53 LHRC & ZLSC (2014 and 2015): Tanzania Human Rights Reports.

Figure 4: Number of Inmates with Death Sentences 2014-2016



Amnesty International tracks number of death sentences each year. The data from the past five years indicates that there have continued to be death sentences in Tanzania, with a surge in 2014. According to the 2016 data there were 19 death sentences issued in 2016. People known to be under death sentence at the end of 2016 are 491.⁵⁴

Figure 5: Number of Death Penalty Sentences in Tanzania 2010-2016



Source: Amnesty International (2010-2016)

54 Amnesty International Global Report, Death Sentences and Executions 2016 at <https://www.amnesty.org/en/latest/news/2017/04/death-penalty-2016-facts-and-figures/>

Table 1: Reported Death Penalty sentences in 2016

Description	Source	Date
Christopher Bageni – former Superintendent of Police (Kinondoni). He was charged for the murder of three businessmen and a taxi driver in 2006.	<i>Mwananchi</i> Newspaper	16 Sep 2016
The High Court in Bukoba Region sentenced to death two men, Lameck Bazil and Pankras Minago. They were charged with killing a PWA, Magdalena Andea in September 2008.	<i>Mwananchi</i> Newspaper	27 Oct 2016

Source: LHRC Media Survey

Public opinion on death penalty is still relatively divided, according to the most recent statistics released by the Constitutional Review Commission (CRC).⁵⁵ This presents a challenge to advocacy to abolish the death penalty. However, global trends suggest that there is an important movement internationally to abolish legislation on death penalty. All European states except Belarus have abolished death penalty;⁵⁶ and in Africa, more than 20 countries, including those that have experienced massacres at some point such as Djibouti, South Africa, Rwanda, and Congo, have abolished it.⁵⁷ Improving public awareness on the issue and situation of death penalty will thus help to steer the nation towards total abolition, being a *de facto* abolitionist state.

These sentences in 2016 – and the existing legislation - infringe the right to life, which is protected under Article 14 of the Constitution and regional and international human rights treaties ratified by Tanzania.⁵⁸ Furthermore, the death penalty also infringes Article 13 (6)(e) of the Constitution, which protects citizens from torturous, inhumane, or degrading punishment and/or treatment.

LHRC calls for absolute protection of right to life and has made a number of recommendations towards abolishing death penalty in Tanzania,⁵⁹ including:

- 55 Jamhuri ya Muungano wa Tanzania, *Takwimu za Ukusanyaji Maoni ya wananchi kuhusu Mabadiliko ya Katiba ya Jamhuri ya Muungano wa Tanzania*, December 2013, p. 58.
- 56 Speech by the Italian Ambassador in Tanzania, Hon. Roberto Mengoni, during LHRC's Commemoration of the World Day against Death Penalty at the British Council in Dar es Salaam on 20th October 2016
- 57 Speech by the Chairperson of the Commission for Human Rights and Good Governance (CHRAGG), Hon. Bahame Tom Nyanguda, during LHRC's Commemoration of the World Day against Death Penalty at the British Council in Dar es Salaam on 20th October 2016
- 58 Most notably the African human rights Charter (Banjul Charter) and the UN civil and political rights treaty (ICCPR)
- 59 See LHRC's Tanzania Human Rights Report 2015, p. 20; LHRC's Thematic Brief on Death Penalty 2015

- The government should officially recognise the state of moratorium in order to suspend the implementation of death penalty and transfer death sentences to life imprisonment;
- The Law Reform Commission should spearhead legal reform on sentencing in order to provide judges with an alternative to the death sentence.
- The Parliamentary Committee for Legal and Constitutional Affairs should amend the Constitution to ensure the absolute protection of the right to life in the Constitution;
- The Ministry of Legal and Constitutional Affairs should follow Rwanda and ensure Tanzania signs and ratifies the Second Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR) by [year] in order to abolish the death penalty;
- The Prisons Services should allow civil society access to statistics on death row inmates and their conditions immediately in order to better inform the public on death row numbers and conditions;
- CHRAGG should immediately conduct awareness to MPs and officials from responsible Ministries on the alternatives to the death penalty in order to pressure the government to abolish the death penalty;
- Civil society should continue to conduct public awareness on alternatives to death penalty over the next year in order to influence public to increase pressure on the government to abolish the government.

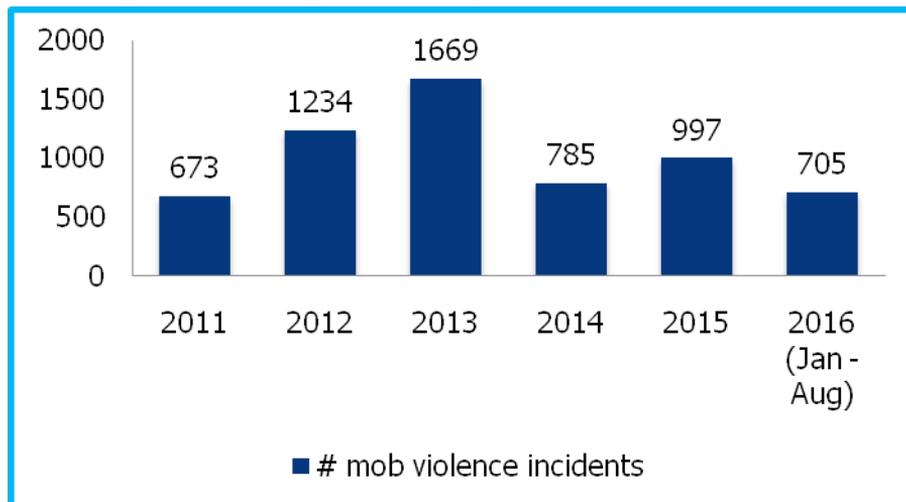
2.1.2 Mob Violence

In 2016, mob violence continued to be a key issue violating the right to life in Tanzania. According to the police records, **705 incidents of mob violence were reported from January to August 2016 and 339 suspects were sent to court.**⁶⁰ Mob violence denies suspected criminals the right to be heard and presumed to be innocent until proven otherwise by court was among the big threats to right to life in Tanzania. According to the police, **705 incidents of mob violence were reported from January to August 2016.** Compared to the previous years, however, the statistics indicate that there were fewer incidents in 2016. A total of 393 suspected perpetrators of mob violence were

⁶⁰ *HabariLeo* Newspaper “Makosa 705 ya kujichukulia sheria mkononi yari potywa” 5th October 2016, available at <http://habarileo.co.tz/index.php/habari-za-kitaifa/15619-makosa-705-ya-kujichukulia-sheria-mkononi-yari-potywa>

sent to court.⁶¹ The State has an obligation to take appropriate measures to safeguard the lives of those within its obligations to deter such offences, such as ensuring a responsive and adequate law enforcement machinery to prevent and sanction these offences, and to ensure offences are properly investigated.

Figure 6: Killings Caused by Mob Violence 2011-2016



Source: Tanzania Police Force

While the number of incidents of mob violence in 2016 is alarming, the trend over the past five years indicates that such incidents have been decreasing since a record high of 1669 incidents in 2013. Furthermore, the data indicates that the number of incidents decreased between 2015 and 2016. However, LHRC was only able to obtain data up to August 2016. As such, the total number of incidents for 2016 is not yet confirmed at the time of writing this report.

The table below highlights a sample of incidents of mob violence that were reported by the media in the year 2016.

61 Article 14 of ICCPR; Article 13(6)(a) & (b).

Table 2: Some of the Incidents of mob violence reported by the media in 2016

Description	Source	Date
Angry mob killed a thief allegedly a member of a notorious youth gang “ <i>panya road</i> ” in MbagalaZakhem area. Bystanders cited lack of police and court action as reason for resorting to mob violence, as perpetrators return to streets and continue to commit crimes.	<i>JamboLeo</i> Newspaper	16 Oct 2016
Angry mob killed beat to death one person, Saleh Hatibu, suspected of stealing a motorcycle (<i>bodaboda</i>) in Tanga.	<i>Mtanzania</i> Newspaper	15 Sep 2016
Angry mob in Korogwe District, Tanga Region killed SaleheHatibu, aged 52, whom they accused of selling drugs to youth.	<i>Majira</i> Newspaper	15 Sep 2016
A 30-year old man, resident of Kilosa District in Morogoro Region was killed by an angry mob. He was accused of raping, robbing, and assaulting people.	<i>Nipashe</i> Newspaper	17 Sep 2016
An angry mob in Sumbawanga – Rukwa Region killed and torched a fellow resident, Patrick Mwandaliwa, for allegedly killing his sister’s child. The victim was a witchdoctor and the killing of the child is believed to be connected to witchcraft belief.	<i>Mtanzania</i> Newspaper	6 Sept 2016

Source: LHRC Media Survey

Incident Report: Killings of Researchers

One of the mob violence incidents which shocked the nation in 2016 was the brutal killings of two researchers and their driver from the Arusha-based Selian Agricultural Research Institute (SARI), who were severely attacked with traditional weapons by villagers in Mvumi Ward - Chamwino, Dodoma Region, and torched to death. The victims were Teddy Lumanga, JaffariMafuru and Nicas Magazine; and were killed because they were suspected of being the so called blood suckers, popularly known as “*nyonyadamu*” in Tanzania.

The killings were widely condemned by human rights stakeholders across the country, including the Vice-President, Hon. SamiaSuluhu, and the Prime Minister, Hon. KassimMajaliwa. The government leaders promised justice for the victims and their families, stating that the Government will ensure the perpetrators face the wrath of the law. By October 2016, Regional police were holding 30 suspects in connection with the killings, including a local church pastor, Patrick Mgonela, who alerted the villagers to attack the “blood suckers/collectors.”



Picture 1: Remains of the torched bodies of the researchers and their car

Continued trend of mob violence suggests a general lack of public confidence in the police to bring suspected criminals to justice. Lack of or little police action against perpetrators has contributed to prevalence of mob violence. To address this problem, LHRC provides the following recommendations:

- The Ministry of Internal Affairs should take immediate measures to ensure the Regional Police Commanders (RPCs) instruct police officers to respond to incidents of mob violence in order to reduce the number of deaths and injuries caused by mob violence;
- Officers Commanding District (OCDs) and DPPs should ensure that suspected criminals are investigated, charged and tried in accordance with the law, in order to increase public confidence in the police and judiciary and reduce risk of mob violence;
- OCDs and DPPs should ensure perpetrators of mob violence are investigated, charged and tried in accordance with the law to deter mob violence;
- CSOs and FBOs should use existing forums to raise awareness among citizens about how mob violence is a violation of human rights, specifically the right to life.

2.1.3 Extrajudicial Violence and Killings

In 2016, extrajudicial violence and killings were among key issues affecting right to life in Tanzania. Acts of extrajudicial killings and violence are those committed

outside the realm of the court, usually by law enforcement and military officials, who steal the court's function of determining guilt and giving sentence. The state has a duty to protect right to life through its agents, which include the law enforcement officials, who must take suspected criminals to court to determine their guilt or innocence.

In LHRC's and ZLSC's Tanzania Civil and Political Rights Perceptions Index 2016 right to life in the context of extrajudicial violence killings ranks the lowest.⁶² Factors attributed to this include incidents of police brutality and excessive use of force during arrest.⁶³

Recent reports by the Police Force show fewer incidents of extrajudicial killings, although LHRC has been documenting other incidents or allegations of such killings. For instance for the year 2015 the police report indicated no such killings, but LHRC documented four allegations of extrajudicial killings by the police.⁶⁴ In 2016, LHRC recorded four incidents of extrajudicial killings, while the police reported one incident by June 2016. The table below indicates incidents recorded in 2016.

Table 3: Incidents of extrajudicial killings 2016

Description	Source	Date
One incident reported by the police by June 2016	Tanzania Police Force	20 Jun 2016
Two incidents of extrajudicial killings in Mtwara and Shinyanga Regions	LHRC Human Rights Monitoring Unit	May 2016
Three park rangers at SwagaSwaga Game Reserve in Kondoa District held by police over killing a villager from Olimba Village in Chemba District for allegedly carrying game meat.	MpekuziHuru website ¹	29 Dec 2016

In 2016, there were also statements issued by government officials promoting or condoning extrajudicial killings and violence. For instance, in August 2016 the Dar es Salaam Regional Commissioner was quoted at the funeral of four police officers killed by bandits in Dar es Salaam encouraging the police to use lethal force against suspects of police killings.⁶⁵ This statement may prompt the police to use excessive force when dealing with suspected criminals and lead to extrajudicial killings.

62 LHRC & ZLSC (2016), *Tanzania Civil and Political Rights Perceptions Index*.

63 Ibid.

64 See LHRC (2016), *Tanzania Human Rights Report 2015*, p. 26

65 LHRC & ZLSC (2016), *Tanzania Civil and Political Rights Perceptions Index*, p. 9.

On a positive note, the year 2016 saw the courts convict two former police officials accused of extrajudicial killings. The first case is that of Daudi Mwangosi, a journalist who was brutally killed using a tear-gas gun in 2012 in Iringa Region when he approached a group of police officers to ask why some journalist members of his press club had been arrested. The High Court in Iringa found Pacifius Simon, a police officer, guilty of killing Daudi Mwangosi and sentences him to 15 years in prison. The prosecution, however, has been criticized for not presenting a stronger case and the court has faced criticism for arriving at the verdict of manslaughter and not ensuring the officer police officers who surrounded the victim were charged.⁶⁶



Picture 2: Pacifius Simon (left) firing a teargas at the late Daudi Mwangosi in 2012

In another incident, the High Court found guilty and sentenced to death a former senior police official for his involvement in killing of businessmen in Dar es Salaam in 2006. Former Superintendent of Police, Christopher Bageni, was charged and convicted of the murders of three businessmen and a taxi driver.⁶⁷

66 See “Mwangosi verdict leaves a lot of questions, and a bitter taste” at <http://mtega.com/2016/07/mwangosi-verdict-leaves-a-lot-of-questions-and-a-bitter-taste/>

67 *The Citizen* Newspaper “Activists condemn death sentence” 17th September 2016.



Picture 3: Christopher Bageni during one of his hearings at the High Court in Dar es Salaam

Convictions of former police officials are good news in the fight against extrajudicial killings. However, more should be done in this regard to protect right to life. To address extrajudicial killings and violence, LHRC recommends the following:

- Government leaders should refrain from making public statements that encourage excessive and unnecessary use of force, which violate the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials, in order to reduce the number of extrajudicial violence and killing incidents; and
- The Law Reform Commission should use its mandate under the Law Reform Commission Act to push legal reforms that establish an independent police oversight body that investigates and hold accountable police for misconduct, in order to address extrajudicial killings and violence.

2.1.4 Witchcraft-related Violence and Killings

Witchcraft related violence and killings continued to be a key issue in Tanzania affecting citizens' right to life in 2016. The Government has an obligation to take appropriate measures to safeguard Tanzanians, and to put in place effective criminal law provisions to deter these offences.

394 witchcraft-related killings were reported from January to June 2016.

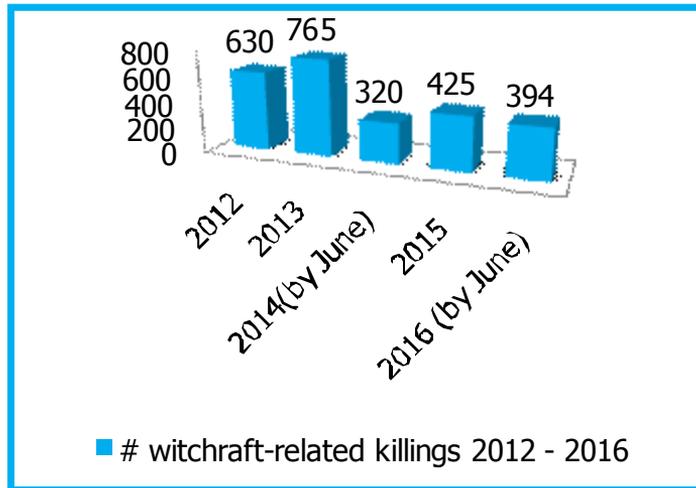
Recent statistics on witchcraft-related killings indicate an increasing trend after declining in 2014.⁶⁸ A total of 425 people were killed in 2015, police records indicate.⁶⁹ By June 2016, 394 killings had been reported. LHRC was not able to obtain statistics

68 Ibid, p.35.

69 Ibid.

for the full year by the time of completing this report. However, compared to the number of killings in the whole of 2015, this number of killings by midyear indicates that the situation might have been worse in 2016.

Figure 7: Number of reported Witchcraft-related Killings 2012 - 2016

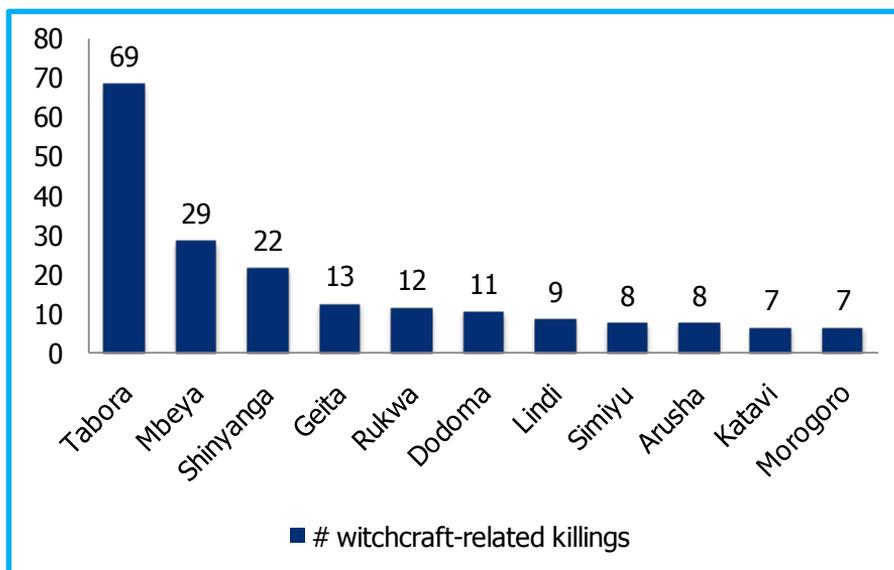


The budget speech for the Ministry of Home Affairs for the financial year 2016/2017 indicates that a total of 222 incidents of witchcraft-related killings, targeting the elderly, occurred during the period of July 2015 to March 2016.⁷⁰ Majority of the victims of these cruel attacks and killings are women, with 157 women killed during that period, compared to 71 men.⁷¹ Tabora Region leads in the number of killings, followed by Mbeya and Shinyanga, as indicated in the figure below.

70 See the budget speech by the former Minister of Home Affairs, Hon. Charles Muhangwa Kitwanga (MP) the financial year 2016/2017 at <http://www.parliament.go.tz/uploads/budgetspeeches/1463652632-HOTUBA%20YA%20BAJETI%202016.17.%20WIZARA%20MOHA%2010-05-2016..pdf>, accessed 12th January 2017.

71 Ibid.

Figure 8: Regions with most witchcraft-related killings July 2015 – March 2016



Source: Ministry of Home Affairs Budget Speech 2016/2017

Following these killings, 135 people were arrested and sent to court, 20 of them have been convicted, 15 have been acquitted, and 35 cases are still in court. One of the challenges of combating witchcraft-related killings is slow pace of investigation and bringing to justice perpetrators of such killings. LHRC calls for improved pace of investigation and prosecution of these cases.

Table 4: Reported incidents of witchcraft-related killings in 2016

Description	Source	Date
Kyela, Mbeya Region: Two elderly people were brutally attacked with a sharp instrument and killed in Bulinda area on suspicions of witchcraft, whereby they were suspected of bringing cholera to their village. Their home was thereafter torched. The victims were Geneli Kapwela (65) and Rahabu Bungulu (70). Two suspects were in police custody.	Press release by the Mbeya Regional Police	2 Feb 2016
Shiyanga Region: Seven elderly people killed in Kahama District between January and August 2016 after being suspected to practice witchcraft to harm others.	<i>Mwananchi</i> Newspaper	23 Aug 2016

Description	Source	Date
Sumbawanga, Rukwa Region: An older person, Fabiani Fungaleli (70), was brutally attacked with machete and killed in Sumbawanga on suspicion of practicing witchcraft.	<i>Habari Leo</i> Newspaper	27 Oct 2016
Geita, Geita Region In May 2016, it was reported that more than 19 people, mostly women, had been killed in the period of three months in one district within Geita Region.	<i>Mwananchi</i> Newspaper	6 Mar 2016
Shinyanga Region: According to the Shinyanga Regional Police Commander, Muliro Jumanne, 26 older women were killed on suspicion of practicing witchcraft from January 2015 to June.	<i>Mwananchi</i> Newspaper	19 Sep 2016
In September 2016, police in Shinyanga held five people from the same family who were allegedly involved in the killing of a 68-year old Veronica Mtaki, who had been accused by children of her brother in law of being a witch.	<i>The Guardian</i> Newspaper	13 Sep 2016

At the centre of these killings and attacks, which have become a common occurrence in Tanzania, is a strong belief in witchcraft within Tanzanian communities, whereby about 90% of Tanzanians believe in its existence. The so called witchdoctors, who tell their clients about who is “harming” them or their family or what needs to be done to get rich or be successful in their endeavours, also contribute to the killings and violence.

Prevalence of such killings is also attributed to other factors such as lack of education, poverty, and poor investigation and prosecution of perpetrators of such killings and violence. In Geita Region, traditional justice provided by the traditional council of elders known as *Dagashida* also contributes to witchcraft-related killings, with the traditional court allegedly issuing kill orders for people suspected of “bewitching” others, using a group of young men as executors.⁷² Elderly women with red eyes are the major victims, usually attacked or killed with machetes.⁷³

72 *Mwananchi* Newspaper “Chanzo cha mauaji ya mapanga mkoani Geita hiki hapa” 4th January 2016, at <http://www.mwananchi.co.tz/habari/habari-ya-ndani/Chanzo-mauaji-ya-mapanga-mkoani-Geita--hiki-hapa/1724700-3020906-k3fwb8/index.html>

73 Ibid; LHRC (2015, *Tanzania Human Rights Report 2014*).

The Government moved to ban witchdoctors in 2015 as part of the mission to protect victims of witchcraft belief and practices.⁷⁴ In **Kahama District – Shinyanga Region**, government authorities have taken measures to address the problem through conducting a special operation, targeting perpetrators of the killings, witchdoctors and fortune tellers. By October 2016, the crackdown led to arrest of 11 fortune tellers, who play a part of promoting such killings.⁷⁵ The operation also led to arrest of a network of 30 people, who specialize in killing people suspected of practicing witchcraft, some of them hailing from Tabora, as stated by the Kahama District Commissioner, Fadhili Nkurulu, during a press statement in October 2016.⁷⁶

The rate of incidents of witchcraft-related killings is very high, particularly in **Mbeya, Shinyanga and Tabora** Regions. Elderly women, especially those with red eyes, seem to be mostly targeted and witchdoctors and fortune tellers are at the centre of this wave of violence. For the case of Geita other elders (*Dagashida*) also promote violence against fellow elderly suspected of practicing witchcraft. To combat this problem, LHRC recommends:

- Police and local security committees to increase efforts to locate, charge and prosecute perpetrators of witchcraft-related killings;
- Sensitization to be done by government authorities and CSOs on the impact of such killings, special attention to be given to problematic regions of Geita, Shinyanga and Tabora Regions; and
- Religious leaders and faith-based organizations in the problematic regions to speak against and discourage mob violence and strengthen religious beliefs.

2.1.5 Violence against Persons with Albinism

Violence against PWAs in Tanzania is linked with the issue of witchcraft-related killings. As noted in the 2015 Tanzania Human Rights Report, belief in witchcraft is a key factor that motivates violence against PWA. Violence against PWA is an infringement of the right to life, and the State has a responsibility to put in place provisions to ensure people with albinism are safeguarded. The number of reported incidents is a key indicator to understand whether the situation is improving.

74 LHRC (2016), *Tanzania Human Rights Report 2015*, p. 34.

75 *HabariLeo* Newspaper “Washikili wamaauaji ya vikongwe” 29th October 2016, at <http://habarileo.co.tz/index.php/habari-za-kitaiifa/16773-washikiliwa-kwa-mauaji-ya-vikongwe>

76 *Majira* Newspaper “Mtandao mauaji ya vikongwe Shinyanga wadakwa” 11th October 2016, at <http://majira.co.tz/kitaiifa/mtandao-mauaji-ya-vikongwe-shy-wadakwa/>

The situation in 2016 indicates that violence against PWAs is declining, since no incidents have been reported, while a total of 6 incidents were reported in 2015, as the figure below indicates.

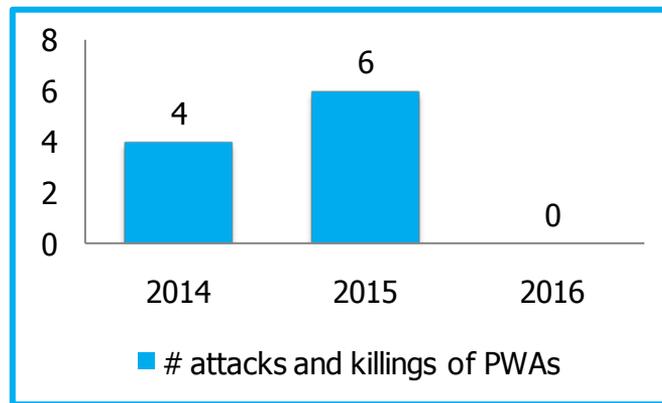


Figure 9: Number of Attacks and Killings of PWAs recorded by LHRC 2012-2016

Other sources of information have highlighted a few cases in 2016, presenting another perspective on the issue. The table below indicates two incidents of attacks against PWAs reported by the media.

Table 5: Incidents of attacks against PWAs reported by the media

Description	Source	Date
The grave of the deceased PWA child, Magufuli Bagumisa, was vandalized in Nyakashenyi Village in Kyerwa District – Kagera Region and body parts stolen.	<i>The Citizen</i> Newspaper	13 Jun 2016
Kulwa Jawilu (5) and Tausi Jawilu (8), escaped an abduction when their home was raided by unknown people in Bulunde Village in Tabora.	<i>The Citizen</i> Newspaper	13 Jun 2016

The Government, through the Commission of Human Rights and Good Governance (CHRAGG), has been collaborating with CSOs and the police force to adopt strategies of combating attacks against Persons with Albinism (PWAs). These coordinated efforts, which continued in 2016, have led to a decline of attacks and killings of PWAs since 2008, with fewer incidents reported in 2014, 2015 and 2016. In 2016, the Court also continued to take action against perpetrators of violence against PWAs. In Bukoba Region, for example, the High Court sentenced to death two men, Lameck

Bazil and Pankras Minago, who had been accused of killing a PWA, Magdalena Adrea, in September 2008.⁷⁷ This demonstrates that the State has put in place effective policy implementation that is achieving desirable results.

Although there has been a decline of incidents of attacks and killings of PWAs, the rate of conviction of perpetrators of such heinous crime has not been satisfactory, as highlighted by LHRC in its 2015 human rights report.⁷⁸ For instance, there was only one conviction in 2015.⁷⁹ LHRC provides the following recommendations to protect the right to life for PWAs as indicated in its 2015 human rights report:

- The Government, CHRAGG, to continue its collaboration with CSOs and the police; and adopt a national strategy on protecting and promoting rights of PWAs;
- Awareness raising sessions about PWAs and their rights to be conducted by Government, CHRAGG and CSOs, starting at primary school level;
- Establishment of centres for PWAs, where they can be afforded support and protection; and
- Quick investigation and prosecution of incidents of attacks and killings of PWAs.

2.1.6 Road Accidents

Road accidents slightly decreased in 2016 but continued to pose a big challenge on the right to life, whereby a total of 5,152 accidents were reported to the police from January to June 2016.⁸⁰ This is 1,115 accidents more than those reported during the same period in 2015.⁸¹ The accidents in 2016 have resulted into 3,256 deaths and 8,958,659 injuries, 212 deaths and 425 injuries less than in the year 2015. Accidents involving motorcycles, popularly known as *bodabodas*, from January to June 2016 were 1,356, resulting into 430 deaths and 1,147 injuries.⁸²

77 *The Citizen* Newspaper, 28th October 2016.

78 LHRC (2016), *Tanzania Human Rights Report 2015*, p. 44.

79 Ibid.

80 *TanzaniaDaima* Newspaper, 15th September 2016.

81 Ibid.

82 Ibid.

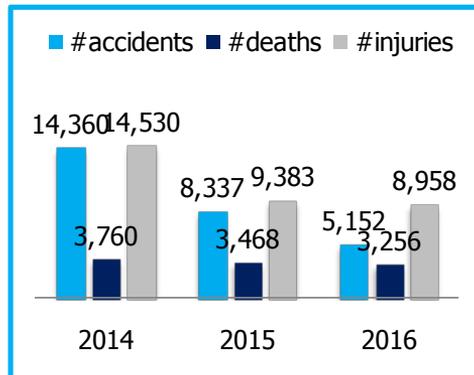


Figure 10: Road accidents, deaths, and injuries 2014-2016

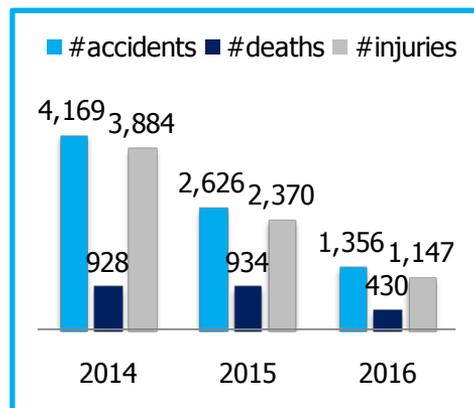


Figure 11: Motorcycle road accidents, deaths, and injuries 2014 - 2016



Picture 4: A road accident involving a Toyota Hiace in Nkasi – Rukwa Region in November 2016

Table 6: Victims of road accidents 2014-2016

Description	2014		2015		2016	
	Deaths	Injuries	Deaths	Injuries	Deaths	Injuries
Drivers	280	1,000	236	629	266	643
Passengers	1,222	6,790	1,117	4,621	988	4,593
Motorcycle drivers	795	3,359	828	2,106	739	1,866
Bicycle riders	343	579	281	319	261	242
Pedestrians	1,103	2,739	978	1,681	975	1,598
Cart driver	17	63	28	27	27	16
TOTAL	3,760	14,530	3,468	9,383	3,256	8,958

There were less accidents and deaths and injuries resulting from them in 2016. However, more than 3000 lives have been lost each year because of these accidents since 2014, which is still a very big number. Deliberate efforts must be done to address this problem. LHRC recommends:

- Drivers to avoid drinking and driving; and police to ensure that those who do not abide by this rule are dealt with in accordance with the traffic law;
- Tanzania Bus Owners Association (TABOA) to ensure that bus owners do not put pressure on the drivers to speed up so that they can reach destinations early, and they get enough rest; and
- Legal reforms are needed to ensure that traffic laws compel passengers of motorcycles (*bodaboda*) to wear helmet.

2.2 Freedom of Expression

In 2016, this freedom was under pressure with the closure and banning of media outlets and the enactment and implementation of legislation. Freedom of Expression is a fundamental civil right, and is the “freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”⁸³ It is guaranteed and protected under Article 18 of the Constitution of Tanzania of 1977 as well as under various regional and international human rights treaties ratified by Tanzania, including ICCPR⁸⁴ and ACHPR.⁸⁵ According to these treaties, the government has a responsibility to safeguard freedom of opinion, the freedom of the media, and the right to information.

83 Article 19 of UDHR.

84 Article 19.

85 Article 9.

With regard to freedom of expression, Tanzania as a State has obligations not to interfere with information flow and creating conducive environment for free and independent media. While the right to hold opinions is absolute,⁸⁶ the freedom to seek, receive and impart information and ideas may be subjected to restrictions.⁸⁷ The restrictions, however, must be in accordance with the law; must serve a legitimate aim; and necessary for protection or promotion of such aim.⁸⁸

The enactment of the Media Services Act and the implementation of restrictive laws on cybercrimes and statistics considerably restricted freedom of expression in 2016. Key recommendations on safeguarding freedom of expression provided during Tanzania's Universal Periodic Review (UPR) process in 2016 were rejected.⁸⁹

The impact of government action and legislation which restricts freedom of expression was noted at the regional levels. In the 2016 Civil and Political Rights Perception Index, Freedom of Expression in Tanzania (and mainland) was graded C by Monitors based in the regions. The Index presents an important perspective from the regional and community level. In terms of Freedom of Expression, there was perception that this right is not fully protected with some regions in mainland, such as Tabora and Songwe, scoring as low as D. Common factors contributing to grades in lower-graded regions include a perception that civil servants are unable to speak freely about political issues. Media freedom was also highlighted as a key issue (discussed further below), as well as limited participation of women in meetings and few opportunities for women to express their views.⁹⁰

While the enactment of the Access to Information Act is a positive step, the Act does not fully protect the right to access information as it contains a number of restrictions as discussed below.

2.2.1 Media Freedom

In 2016, Media Freedom was further restricted on account of the enactment of the Media Services Act in November 2016. This Act replaces the highly criticized Newspaper Act 1976. However, certain provisions in the Act present loopholes that can further restrict media freedom, and there do not safeguard Freedom of Expression as provided under Article 18 of the Constitution.⁹¹ Major restrictions to media freedom

86 Article 19(1) of ICCPR.

87 Article 19(3) of ICCPR.

88 Ibid.

89 See Chapter Ten on UPR.

90 LHRC & ZLSC, Tanzania Civil and Political Rights Perceptions Index 2016, p. 11.

91 This Act has been highly criticized in 2016 by civil society including LHRC, Tanzania Human Rights Defenders Coalition (THDRC), *Twaweza*, the Media Council of Tanzania (MCT),

in the Act include provisions on accreditation of journalists, licensing of print media, criminalization of defamation, and sedition offences. Furthermore, the Act establishes powers of the Minister responsible for media and non-independent regulatory bodies. Below is the analysis of the key issues of concern within the Media Services Act 2016.

1. Accreditation (licensing) of Journalists

The Act requires one to be accredited before they can practice journalism. **No one can practice journalism in Tanzania unless they apply and receive a license from accreditation board.**⁹² This restricts media freedom and right to seek, receive and impart information protected under the Constitution of Tanzania, and regional and international human rights treaties.⁹³ It also contravenes the commitment of the African Union member states under the AU Declaration of Principles of Freedom of Expression in Africa 2002, which prohibits licensing of print media.⁹⁴

“A person shall not practice as a journalist unless that person is accredited in accordance with the provisions of this Act.”
Section 19(1) of the Act

2. Editorial and Publication Powers of the Minister

The Act gives the Minister of Information, Culture, Arts and Sports the responsibility to prohibit importation of publication that in his opinion would be contrary to public interest and publication of any content that in his opinion jeopardizes public safety.⁹⁵ No definition of “public interest” has been provided and the Minister may use his powers under Section 59 to filter contents of print media.⁹⁶ Sections 58 and 59 echo provisions of the repealed Newspaper Act 1976 and do not conform to the Information and Broadcasting Policy of 2003.⁹⁷ These provisions restrict media freedom and thus contravene the Constitution and other human rights instruments cited above.

“The Minister shall have powers to prohibit or otherwise sanction the publication of any content that jeopardizes national security or public safety.”
Section 59 of the Act

and the Coalition on the Right to Information (CoRI).

92 Section 19(2) of the Media Services Act, No. 12 of 2016.

93 Article 18 of Tanzania Constitution of 1977; Article 9 of the ACHPR; Article 19 of ICCPR.

94 Principle I.

95 Sections 58 and 59 of the Media Services Act.

96 Media Council of Tanzania (December 2016), *Analysis of the Media Services Act, 2016*.

97 Ibid.

3. Government Control over Content to be Published by Media Houses

Under the Act, the Government may direct private media houses to broadcast or publish news or issues that it deems of national importance.⁹⁸ Again, this restricts media freedom and contravenes constitutionally guaranteed freedom of expression, which is also protected under the ACHPR and ICCPR.⁹⁹ This is because editorial independence of the media houses can be jeopardized, in direct contravention of its commitment to encourage a diverse, independent private broadcasting sector under the AU Declaration of Principles on Freedom of Expression of 2002.¹⁰⁰

“A media house registered under this Act or licensed under any other written law shall comply with the following obligations... in case of a private media house, to broadcast or publish news or issues of national importance **as the Government may direct.**”
Section 7(2) (b) (iv) of the Act

4. Vague Provisions on Restrictions based on National Security and Hate Speech

Some of the provisions contained in the Act are vague and likely to cause problems in application.¹⁰¹ For instance the media houses are not allowed to issue information which may undermine national security or constitute hate speech, but the Act does not state what information may jeopardize national security and what amounts to hate speech.¹⁰² This loophole may be used to restrict media freedom as the media houses may fear to broadcast or publish certain information thinking it may be taken to constitute hate speech or undermine national security.

“A media house shall, in the execution of its obligations, ensure that information issued does not undermine the national security of United Republic or does not constitute hate speech”
Section 7(3) (a) (i) & (c)

5. Establishment of Non-Independent Media Regulatory bodies

The Act establishes two bodies that regulate the media. One of them is the Journalists Accreditation Board, established under section 11(1) of the Act; and the other is the Independent Media Council, established under section 24 of the Act. The problem is that all members of the board are appointed by and accountable to the Minister responsible for media and the media council must consult the board in performing its

98 Section 7(2) (b) (iv) of the Media Services Act.

99 Article 9 of ACHPR; Article 19 of ICCPR.

100 Media Council of Tanzania (December 2016), *Analysis of the Media Services Act, 2016*.

101 Ibid.

102 Ibid.

functions.¹⁰³ The two regulatory bodies are thus not really independent as they have a government hand in them, bringing to an end long-standing culture of self-regulation as envisaged in the Information and Broadcasting Policy of 2003.¹⁰⁴ This contravenes Principle VII of the AU Declaration of Principles on Freedom of Expression of 2002, which emphasizes on independence of regulatory bodies¹⁰⁵ and states that **“the appointment process of members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.”**¹⁰⁶ The civil society is obviously not involved in appointments process and the ruling party has the final say on who becomes board member.

“The Board shall consist of seven members appointed by the Minister...”
Section 12(1) of the Act

6. Criminalization of Defamation

The Act provides for defamation under sections 35 and 36 and clearly stipulates that it may attract both civil and criminal liability under section 38(3). Criminal defamation severely curtails freedom of expression (media freedom) as it may lead to detention, harsh sanctions, jail term, suspension of license, or a heavy fine.¹⁰⁷ This is why even the United Nations recommended abolition of criminal defamation laws.¹⁰⁸ The provision violates the Constitution, ACHPR, and ICCPR.¹⁰⁹

“Nothing in this section shall exempt any person from any liability of a civil or criminal nature under any Part of this Act or under any other written law if the publication of a matter alleged to be absolutely privileged is prohibited or the relief to a person injured is available under the Constitution of the United Republic.”
Section 38(3) of the Act

7. Seditious Offences

The Act contains provisions on seditious offences, which also featured in the highly criticized and now repealed Newspapers Act of 1976. The provisions are vague and susceptible to wide interpretation, which political and government authorities may use to silence government critics, in this case the media. **Section 53(1)**, providing for seditious offences, reads:

103 Sections 12(1) and 26(a) of the Media Services Act.

104 Ibid.

105 Principle VII (1).

106 Principle VII (2).

107 Media Council of Tanzania (December 2016), *Analysis of the Media Services Act, 2016*.

108 Ibid.

109 Article 18 of the Constitution; Article 9 of ACHPR; and Article 19 of ICCPR.

“Any person who - does or attempts to do or makes any preparation to do, or conspires with any person to do, any act or omission with a seditious intention; utters any words with a seditious intention; publishes, sells, offers for sale, distributes or reproduces any seditious publication; or imports any seditious publication – unless that person has no reason to believe that is seditious, commits an offence and shall be liable upon conviction, in the case of the first offender to **a fine not less than five million shillings and not exceeding ten million shillings** or to **imprisonment for a term of not less than three years but not exceeding five years or to both**, and for a subsequent offence, to a fine not less than seven million shillings and not exceeding twenty million shillings or to imprisonment for a term of not less than five years but not exceeding ten years or to both.”

There is no definition of sedition but the Act defines seditious intention as an intention to:¹¹⁰

- ♦ Bring into hatred or contempt or to excite disaffection against the lawful authority of the Government of the United Republic;
- ♦ Excite any of the inhabitants of the United Republic to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the United Republic as by law established;
- ♦ Bring into hatred, contempt or to excite disaffection against the administration of justice in the United Republic;
- ♦ Raise discontent or disaffection amongst people or section of people of the United Republic; or
- ♦ Promote feelings of ill will and hostility between different categories of the population of the United Republic.

The set of seditious offences amount to restrictions on freedom of expression as they do not meet the restriction tests under the international standards of **legal certainty**, **legitimate interest** and **necessity** derived from Article 19(3) of ICCPR.¹¹¹ Some of the elements of the offences such as “hatred”, “contempt”, and “disaffection” are not defined, hence open to wide interpretation.¹¹² Bringing public authorities “into hatred or contempt” does not necessarily affect national security or public order, in line with Principle 2 of the Johannesburg Principles of National Security, Freedom of Expression and Access to Information of 1995.¹¹³

110 Section 52(1) of the Media Services Act 2016.

111 ARTICLE 19 (November 2014), *Tanzania: Sedition Offences in the Newspapers Act and Penal Code*, Legal Analysis, at <https://www.article19.org/data/files/medialibrary/37795/Tanzania-Legal-Analysis.pdf>

112 Ibid.

113 Ibid (The principles have been endorsed by the UN Human Rights Commission).

Seditious offences clearly infringe freedom of expression. LHRC recommends Tanzania to follow in the footsteps of countries such as the United Kingdom, New Zealand, Kenya and Uganda and abolish or amend the sedition law.

8. Licensing of Print Media

The Director of Information Services Department established under the Act is given mandate to license print media.¹¹⁴ **No person is allowed to publish, sell, offer for sale, import, distribute or produce print media in any manner unless such person is licensed;**¹¹⁵ and the Director of Information Services Department is given powers to reject license applications and suspend or cancel.¹¹⁶

“The functions of the Director of Information Services Department shall include to **license print media**”
Section 5(e) of the Act

Under international standards, licensing of print media is not legitimate¹¹⁷ as it only serves to curtail freedom of expression.¹¹⁸

9. Criminalization of False Statement, Rumour or Report Likely to Cause Fear and Alarm

The act criminalizes any statement, rumour or report that is published that may cause fear and alarm to the public or disturb public peace.¹¹⁹ Like other criminal offences stipulated in the Act, the offence carries a heavy penalty of jail term and/or fine. The only defence provided by this law is for the accused person to demonstrate that they took measures to verify the accuracy of such statement, rumour or report.¹²⁰ Again, this provision is vague and susceptible to wide interpretation, putting the media houses and journalists at risk, not knowing whether something

“Any person who publishes any false statement, rumour or report which is **likely to cause fear and alarm** to the public or to **disturb the public peace** commits an offence and shall be liable upon conviction to a **fine of not less than ten million shillings** but not exceeding **twenty million shillings** or to **imprisonment for a term of not less than four years and not exceeding six years or both.**”
Section 54(1) of the Act

114 Section 5(e) of the Media Services Act.

115 Ibid, section 8.

116 Ibid, section 9.

117 Centre for Law and Democracy (January 2017), *Tanzania: Note on Regulations to be adopted under the Media Services Act, 2016*, at www.law-democracy.org

118 Media Council of Tanzania (December 2016), *Analysis of the Media Services Act, 2016*.

119 Section 54(1) of the Media Services Act.

120 Ibid, section 54(2).

is safe or not to publish. The provision also strikes fear into the media houses and journalists, given the possibility of cancellation or suspension of licenses, heavy penalty, and heavy fine. The provision thus violates freedom of expression under the Constitution of Tanzania, the African human rights charter, and ICCPR.¹²¹

As highlighted above, through the UPR process the state was reminded of its obligations to safeguard media freedoms. Recommendations on the Media Services Bill, which centred mostly on ensuring its compliance with international human rights standards, were rejected on the basis that freedom of expression is already safeguarded through the Tanzania constitution.¹²²

In addition to the enactment of the Media Services Act, other issues affected media freedom in 2016. For example in January 2016 the *Mawio* Newspaper was permanently banned; and in August *Mseto* Newspaper was banned for three months, both for violating the highly criticized Newspapers Act 1976.¹²³ *Twaweza's* study on citizens and access to information indicates that **9 out of 10 citizens, equaling to 90%, think that Government should get court approval before banning a newspaper.**¹²⁴

In LHRC's view, banning these outlets without affording them the right to defend themselves contravenes the principles of natural justice. LHRC is also concerned with the statement by the Minister of Information during his press conference on banning of *Mawio* Newspaper, that the ban was in accordance with the *Newspapers Act* and he had to implement the law irrespective of whether it is a good or bad law.¹²⁵ Instead of implementing bad laws, the leaders of this country have a duty of pushing for their reforms instead of applying them even if they contravene the Constitution of the United Republic of Tanzania of 1977.

121 Article 18 of the Constitution of the United Republic of Tanzania 1977; Article 9 of ACHPR; Article 19 of ICCPR.

122 For further information on the UPR process sin regards to the Media Services Act see the Annex.

123 LHRC & ZLSC ,Tanzania Civil and Political Rights Perceptions Index 2016; *Twaweza*, Civic Space in Tanzania: A Review of international and national reports (200-2015)

124 *Twaweza* "Into the light: Citizens and access to information" SautizaWananchi, Brief No. 31, April 2016 at <http://twaweza.org/uploads/files/Access2Info-EN-FINAL.pdf>, accessed 20th January 2017.

125 See Mtanzania Newspaper "Nape aelezasababuzakufungiwaMawio" 18th January 2016 at <http://mtanzania.co.tz/nape-aeleza-sababu-ya-kufungiwa-mawio/>, accessed 20th December 2016.

Table 7: Media Outlets banned in 2016

Description	Source	Date
<p><i>Mawio</i> Newspaper: Banned permanently in January 2016</p> <p>Reasons: Writing and printing seditious articles that seek to threaten peace, order and security in the country. Ban issued under the highly criticized Newspaper Act, which has since been repealed by the Media Services Act 2016.</p>	<i>Mtanzania</i> Newspaper	18 Jan 2016
<p><i>Mseto</i> Newspaper: Banned in August 2016</p> <p>Reasons: Writing and printing false information that amounts to sedition, aimed at tainting President John Magufuli and his government. It allegedly violated the Newspapers Act in this regard.</p>	<i>Mwananchi</i> Newspaper	11 Aug 2016
<p><i>Radio 5</i>: Banned in August 2016 for 3 months and fined Tshs. 5 million</p> <p>Reasons: Broadcasting seditious content during its <i>Matukio</i> programme, in violation of the <i>Newspapers Act</i>.</p>	<i>The Citizen</i> Newspaper	30 Aug 2016
<p><i>Magic FM Radio</i>: Banned in August 2016</p> <p>Reasons: Airing content in <i>Morning Magic</i> programme that could result to breakdown of law and order, violating the <i>Newspapers Act</i>.</p>	<i>The Citizen</i> Newspaper	30 Aug 2016

In the 2016 Civil and Political Rights Perception Index, government control and unclear regulations and arbitrary limits were cited as key factors that limit media freedom in low-graded regions such as Songwe and Tabora. Across the majority of mainland regions, it was reported that journalists and media outlets restrict their reporting, either due to needing sign-off by authorities or self-censorship to avoid backlash from authorities.

2.2.2 Freedom of Opinion

In 2016, freedom of opinion was restricted due to the implementation of the Cybercrimes Act that was enacted in 2015. This Act has been criticized by various human rights stakeholders for containing several provisions which severely restrict freedom of expression through the internet, creating fear among social media and internet users.¹²⁶ LHRC's Tanzania Human Rights Report 2015 discusses in detail the loopholes in this

126 *Twaweza*, Civic Space in Tanzania: A review of international and national reports (200-2015); LHRC (2016), Tanzania Human Rights Report 2015, pp. 58-61

law and how they curtail freedom of expression.¹²⁷ In 2016, the implementation of this Act demonstrated how it restricts freedom of opinion in practice. By September 2016 at least 10 people had been arrested under the Cybercrimes Act for allegedly insulting President John Pombe Magufuli. The table below highlights some of the cases reported by the media on the application of the Cybercrimes Act in 2016.

Table 8: Cases of Cybercrime Reported by the Media in 2016

Description	Source	Date
In June 2016, Leonard Mulokozi Kyaruzi, was arrested in Dar es Salaam and charged with insulting President John Magufuli on <i>WhatsApp</i> social media. He was accused of creating this comment “ <i>Hivi huyu Pombe ni kwamba hana washauri? Hashauriki? Au ni zuzu? Bwege sana huyu jamaa, he doesn’t consider the law in practice before opening his mouth!.Au na yeye anaumwa ugonjwa wa Mnyika?</i> ”	LHRC Human Rights Monitoring Unit	20Dec 2016
In March 2016, Isaac Abakuki, a resident of Arusha, was arrested and charged with insulting President John Magufuli on his Facebook page after commenting “ <i>Hizi ni siasa za maigizo halafu mnafananisha huyu bwege na Nyerere wapi buana.</i> ” He was reacting to a comparison between the President and the founding father, the late Julius Nyerere, arguing that the President cannot be compared with Nyerere and referring to him as <i>bwege</i> , which can be translated to “imbecile.”	<i>The Citizen</i> Newspaper	22 Jun 2016
In June 2016, he was sentenced to three years in prison or pays a fine of Tshs. 7 million by the Arusha Resident Magistrate Court.		

127 Among the problematic provisions within the Cybercrimes Act include those penalizing any person who intentionally and unlawfully receives unauthorized information, while not defining “unlawful information”; giving extensive search and seizure powers to the police; and provisions containing vague phrases such as “unsolicited messages” and “deceptive, misleading and inaccurate information.”

Description	Source	Date
<p>In September 2016, an accountant at the St. Joseph Secondary School, Elizabeth Asenga, was arrested and charged with insulting President John Magufuli through <i>Whatsapp</i> social media after posting a comment that reads “<i>Good morning humu, hakuna rais kilaza kama huyu wetu duniani, angalia anavyompa Lissu umashuhuri fala lile, picha yake ukiiweka ofisini ni nuksi tupu, ukiamka asubuhi, ukikutana na picha yake kwanza, siku inakuwa mkosi mwanzo mwisho.</i>”</p>	<p>LHRC Human Rights Monitoring Unit</p>	<p>20Dec 2016</p>
<p>In September 2016, five people were charged and appeared before the Kisutu Resident Magistrate Court for allegedly insulting the President John Magufuli and police on social media. The accused persons were Dennis Temu, Suleiman Nassoro, Shakira Makame, Juma Mtatuu, and Dennis Mtegwa.</p> <p>Dennis Mtegwa posted an abusive and offensive comment on <i>WhatsApp</i> group, alleged the State Attorney, which loosely translates to “<i>I don’t know what is going on in JPM’s head...He doesn’t even know how to say sorry. We are at this stage because of one person who believes that what he thinks is always right.. He needs to understand that politics isn’t about resentment and the Opposition isn’t an enemy.. He should learn to compete with the Opposition on the basis of debate, not force.</i>”</p> <p>Dennis Temu, Suluiman Nassoro, Shakira Makame, and Juma Mtatuu shared a post on Facebook and WhatsApp that allegedly intended to turn the public against the Police Force. Part of the message reads “<i>While they are preparing to fight the Opposition, criminals are preparing to commit crime.</i>”</p>	<p><i>The Citizen</i> Newspaper</p>	<p>15 Sep 2016</p>

Source: LHRC Media Survey 2016

While the purpose of enacting the Cybercrimes Act 2015 was stated to be combating abuse of social media, so far the application of the Act seems to be protecting political leaders from potential abuse or criticism as attested by the cases filed under the law, including the one highlighted in the table above. The Act has provisions that could promote human rights, such as children rights to safeguard children against online child pornography. However, no reports of this have been cited.

LHRC reiterates its concerns over the Cybercrimes Act and calls upon the Government to review this law, addressing the loopholes that may lead to violations of human rights.

2.2.3 Right to Information

Access to Information Act was enacted in 2016, with the aim enabling citizens to access information as their right under Article 18 of the Constitution of the United Republic of Tanzania. This law has also been a requirement under the Open Government Partnership (OGP), aimed at promoting government transparency. This has been an ongoing recommendation by LHRC and other stakeholders, indicating a positive development in the government's responsibility to ensure access to information.

However, this law contains a number of limits and restrictions, which will restrict citizens in accessing information and denying non-citizens access. The law does provide certain limitations, such as who can access information, where to access information, the use of information, and acquiring information. The Act thus falls short of the standards of the African Model Law on Access to Information, according to the analysis by the Media Council of Tanzania in December 2016.

The following are the major human rights concerns identified in the Access to Information Act, 2016:

1. Access only to Information held by Public Authorities and Private Bodies Utilizing Public Funds

The Act only provides for the right to access information held by public authorities and registered private bodies which utilize public funds or are in possession of information which is of significant public interest.¹²⁸ This restricts access to information and contravenes Tanzania's commitment under the AU Declaration on the Principles of Freedom of Expression in Africa, 2002, which states that "everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right."¹²⁹

2. Access to Information Limited to Tanzanian Citizens

The Act only provides for the right to access information for Tanzanians.¹³⁰ It sidelines non-citizens, legal persons, societies, and international organizations, contrary

128 Section 2(2) of the Access to Information Act, No. 6 of 2016.

129 See Principle IV (2) of the AU Declaration of the Principles of the Freedom of Expression in Africa, 2002.

130 Section 5 of the Access to Information Act.

to international principles and standards on the right to access information.¹³¹ The Citizenship Act, 1995 refers to natural persons only.

“Every person shall have the right of access to information which is under the control of information holders.”

Section 5(1) of the Act

“For purposes of this section, “person” means a **citizen of the United Republic.**”

Section 5(4) of the Act

3. Narrow Scope of Information Required to be Published

The Act confers upon for the information holder an obligation to publish “a description of its structure, functions and responsibilities including those of any of its statutory officers or advisory committee; statutory officers or advisory committees; and a general description of categories of information held by such information holder.”¹³² However, this scope of information is considered to be narrow and as such other information such as budgets or financial arrangement, and contracts with third parties have been suggested to be included in the list of information that should be published.¹³³

4. Vague Exceptions to Disclosure of Information

The Act contains a number of exceptions on disclosure of information, allowing the information holder to withhold certain information under section 6. However, some of the exceptions have raised some eyebrows as they are too vague, particularly **section 6(1) (b)**, which allows information holder to withhold information if they determine that the disclosure of such information is not justified in the public interest. The Act does not define public interest.

5. Long Time for Responding to Information Request

Under the Act, information holder is a given a **time limit of thirty days**, upon receiving request for information, to notify the person requesting it if such information exists, whether the information or part of it will be provided, and **providing the information requested if available.**¹³⁴ This timeframe is too long as some information may be needed for immediate use, hence delayed access to information.¹³⁵

131 Media Council of Tanzania (December 2016), *Analysis of the Access to Information Act, 2016*.

132 Section 9(1) of the Access to Information Act.

133 See Media Council of Tanzania (December 2016), *Analysis of the Access to Information Act, 2016*.

134 Section 11(1) of the Access to Information Act.

135 Media Council of Tanzania (December 2016), *Analysis of the Access to Information Act, 2016*.

6. Information Access Fees

The Act introduces access fees and gives information holder mandate to charge such fees before for production of requested information.¹³⁶ The concern is that the provision does not stipulate how the fees are to be calculated and charged, leaving this exclusively to the information holder. This provision may be abused by information holders to delay information, deny information, or turn giving access to information into business.

7. Deferral of Access

The Act allows information holder to defer the provision of access to information until the happening of a particular event, where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices.¹³⁷ Again, this provision is broad and open to abuse by information holder. There should thus be a time limit for a deferral.

8. Distortion of Information

Under section 18 of the Act a person who receives information from information holder is prohibited from distorting such information; and failure to abide by this provision is an offence, attracting imprisonment of two to five years. However, the provision is too broad as it does not state distortion of information for what purposes or objectives.¹³⁸

9. Review of Decisions of Information Holder

The Act provides a remedy of review where upon requesting for information, a person is aggrieved by decision of the information holder.¹³⁹ It allows such person to apply to the head of the institution in question for review of the decision in respect of access to information. The problem is that the head of institution is allowed to act as information officer where they have failed to appoint one; and in such a situation they will be required to review their own decision. However, it is an established principle under the principles of natural justice that no one can be a judge in their own case.

Apart from problematic provisions within the Access to Information Act restricting right to information, the government's action to end live parliamentary coverage also threatened this right in 2016. In early 2016 the Government announced banning live broadcasting of the *Bunge* sessions, first citing costs and then to enable people to work

136 See section 21 of the Access to Information Act.

137 Ibid, section 16(1).

138 Media Council of Tanzania (December 2016), *Analysis of the Access to Information Act, 2016*.

139 Section 19(1) of the Access to Information Act.

instead of watching the sessions during the day.¹⁴⁰ As a result, the parliamentary sessions were edited and aired at night through the Tanzania Broadcasting Corporation (TBC). Banning of live broadcasting of the Bunge sessions contravenes constitutionally-guaranteed right to information,¹⁴¹ under the freedom of expression,¹⁴² which is also protected under the African human rights Charter¹⁴³ and the civil and political rights treaty.¹⁴⁴ *Twaweza* study on the matter, conducted in March 2016, revealed that majority of citizens (88%) do not support the Government's decision and believe cost is not a valid reason as private media were ready to provide live coverage.¹⁴⁵ Another study by the Media Council of Tanzania (MCT) also revealed that the majority of Tanzanians are against the ban on the live coverage of the *Bunge* sessions.¹⁴⁶ Members of the public have a right to be informed about the issues raised and discussed in the Parliament by their representatives.

2.2.4 Conclusion and Recommendations

Freedom of expression is necessary in a democratic state for social, political, and economic development. It is also essential for achieving other human rights, as promotion and protection of human rights depends on the ability of the people to speak their minds or give their opinions as well as freely share information and experiences. Media plays an important role in increasing scrutiny of government spending and corruption, and therefore can support the government's current priorities and campaign for increased accountability. However, despite positive developments with the enactment of the Access to Information Act, key issues continue to threaten Freedom of Expression in 2016.

To improve the situation of freedom of expression in Tanzania, LHRC recommends the following:

- The Ministry of Legal and Constitutional Affairs should initiate a process of revising/reviewing the Media Services Act to remove or amend provisions requiring licensing of journalists and print media; licensing or registration requirements for broadcast media; establishing Independent Media Council

140 See LHRC (2016), *Biannual Human Rights Report 2016*.

141 LHRC's Biannual Human Rights Report 2016; LHRC & ZLSC Perceptions Index Report.

142 Article 18 of the Tanzania Constitution 1977.

143 Article 9 of ACHPR.

144 Article 19 of ICCPR.

145 *Twaweza*, Citizens' Opinions on the Bunge Live Ban, *Sauti ya Wananchi* Series, Brief No. 32, June 2016.

146 *The Citizen* Newspaper "SPECIAL REPORT: Pressure mounts for govt to lift live Bunge coverage ban" 20th November 2016 at <http://www.thecitizen.co.tz/News/Pressure-mounts-for-govt-to-lift-live-Bunge-coverage-ban/1840340-3458470-5qmse9/index.html> accessed 20th January 2017.

since we have Media Council of Tanzania; establishing the Journalists Accreditation Board; criminalizing defamation; and providing for Government control over content to be published by media houses;

- The Ministry of Legal and Constitutional Affairs should initiate the process of amending and elaborating provisions within the Media Services Act containing vague phrases such as “national security” and “hate speech” as well as provisions on sedition;
- The Ministry of Legal and Constitutional Affairs and the Law Reform Commission to initiate the process of amending the Media Services Act to require the Government to seek court approval before issuing bans to media outlets;
- The Ministry of Legal and Constitutional Affairs and the Law Reform Commission should initiate a process of amending the Access to Information Act, in order to:
 - Allow all people or legal persons, not just citizens, to access information and such information to be obtainable from all public authorities and private bodies;
 - Increase the scope of information required to be published by information holder;
 - Elaborate vague exceptions stipulated in the Act, such as “public interest”;
 - Reducing the time period for information holders to respond to information request; and
 - Elaborate fees to be charge for information access.
- The Government should ensure the amendment of provisions on deferral of access, distortion of information, and review of decisions of information holder within the Access of Information Act; and
- The Ministry of Legal and Constitutional Affairs should initiate a process of revising/reviewing the Cybercrimes Act so that it does not infringe on freedom of expression.

2.3 Rights to Equality before the Law and Effective Remedy

Domestic, regional and international human rights laws provide for the rights to equality before the law and effective remedy.¹⁴⁷ These rights are essential for ensuring access to justice. The right to equality before the law includes the right to a fair hearing in determination of criminal charges, rights, and obligations;¹⁴⁸ right to be presumed innocent until proven guilty according to law;¹⁴⁹ right to be informed about charges against them;¹⁵⁰ right to be heard;¹⁵¹ right to legal representation or assistance;¹⁵² and right to be tried without undue delay.¹⁵³

Under the ICCPR all states have an obligation to ensure that any person whose rights or freedoms have been violated have an effective remedy.¹⁵⁴ The remedy must be claimed and provided by competent judicial, administrative or legislative authorities.¹⁵⁵ This right is also stipulated in the UDHR.¹⁵⁶

In 2016 enjoyment of the rights to equality before the law and effective remedy was boosted by improved access to justice through action by the Government and the Judiciary. On the other hand, these rights were curtailed through disregard of due process and threat to the right to legal representation for suspected criminals.

2.3.1 Access to Justice

Access to justice in Tanzania has been for a long time affected by delays and backlog of cases as well as shortage of judicial facilities and workers. The situation in 2016 indicates a slight improvement of access to justice through action by the Government and the judiciary. To address the problem of backlog of cases, the Ministry of Legal and Constitutional Affairs and the Judiciary had introduced the “zero case backlog” policy, whereby each Primary Court Magistrate is required to entertain and decide 260 cases per year; each District Court Magistrate and Resident Magistrate are required to

147 Article 13 of Tanzania Constitution 1977; Article 3 of ACHPR; Article 14 of ICCPR; and Article 10 of UDHR.

148 Article 13(6) (a) of the Constitution of the United Republic of Tanzania of 1977; Article 14(1) of ICCPR; and Article 7(1) of ACHPR.

149 Article 13(6) (b) of the Constitution of the United Republic of Tanzania of 1977; Article 7(1) of ACHPR; Article 14(2) of ICCPR; and Article 11(1) of UDHR.

150 Article 14(3) (a) of ICCPR.

151 Article 13(6) (a) of the Constitution of the United Republic of Tanzania of 1977; Article 7(1) of ACHPR; Article 14(1) of ICCPR; and Article 10 of UDHR.

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

153 Article 14(3) (c) of ICCPR and Article 7(1)(d) of ACHPR.

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

155 Ibid, Article 2(3) (b).

156 Article 8 of UDHR.

entertain and decide 250 cases; and each High Court Judge is required to entertain and decide 220 cases.¹⁵⁷

During his budget speech before the National Assembly for the financial year 2016/2017, the Minister of

Constitutional and Legal Affairs, Hon. Harrison Mwakyembe, revealed that courts have set up a system of concluding all case/proceedings within the financial year aged more than 24 months for High Court and Court of Appeal; 12 months for the District and Resident Magistrate Courts; and 6 months for Primary Court.¹⁵⁸ He added that the Judiciary has managed to reduce the number of backlog cases, which now stands at 15%, compared to 60% in 2012/13.¹⁵⁹

To address the problem of shortage of courts, in 2016 the Government pledged to repair court buildings and build new ones in areas, including ensuring each ward has a primary court.¹⁶⁰ It seeks to build a total of 70 within two years (by December 2018), including 9 High Courts. Number of High Courts needed is 26, one for each region, but currently there are only 14 of them. Regions without a High Court are Songwe, Katavi, Njombe, Lindi, Kigoma, Mara, Singida, Morogoro, Pwani, Simiyu, Geita and Manyara.¹⁶¹

A total of 276,147 cases were filed and by December 279,331 cases had been heard and concluded. Cases which were still in court by December were 56,531 and among them backlog cases were 3,618, which equal to 6% of all proceedings.

- **Judiciary**

Table 9: Number of Courts to be built by 2018

Courts	Number	Timeframe
High Court	9	Within two years
Resident Magistrate Court	6	Within two years
District Court	19	By December 2017
Primary Court	36	By December 2017
TOTAL	70	

Source: Judiciary of Tanzania website¹⁶²

157 See the Speech by the Minister of Constitutional and Legal Affairs, Hon. Dr. Harrison George Mwakyembe (MP), delivered at the National Assembly during the Budget estimates session for the financial year 2016/2017.

158 Ibid.

159 bid.

160 Ibid.

161 The Judiciary of the United Republic of Tanzania website at <http://www.judiciary.go.tz/majengo-70-ya-mahakama-kujengwa-na-kukarabatiwa/>, accessed 30th January 2017.

162 <http://www.judiciary.go.tz/majengo-70-ya-mahakama-kujengwa-na-kukarabatiwa/>

To improve access to justice, the Judicial Service Commission employed a total of **989 servants**, 248 of whom were Resident Magistrates.¹⁶³ This has increased the number of servants to 7,132 from 6,143 in 2015.¹⁶⁴ The number is 1,556 less than the required number of 8,688 servants in 2016; and the deficit now stands at 18% from 29% in 2015.¹⁶⁵

In 2016, the Ministry of Constitutional and Legal Affairs tabled before the Parliament the Legal Aid Bill.¹⁶⁶ The Bill was first read in November, 2016 before the legal aid stakeholders (CSOs) were invited to provide recommendations.¹⁶⁷ This is good news for legal aid providers and stakeholders, who for a long time have been calling for the law on legal aid in order to improve access to justice for the majority of Tanzanians, who cannot afford attorney fees, and legal recognition of paralegals. The legal aid law will enable paralegals scattered across the country to have legal recognition and represent clients in courts. They will be able to provide legal assistance to communities in remote areas as most of the trained lawyers are based in urban areas and require costs which cannot be afforded by many.

LHRC and other legal aid providers continued to provide legal aid to Tanzanians in 2016 to ease the burden in of the people in accessing justice. On its part, LHRC provided legal aid to its clients in at its Kinondoni Legal Aid Clinic and the Arusha sub-office. Below is the number of clients attended by LHRC in 2016.

163 Speech by the Minister of Constitutional and Legal Affairs, Hon. Dr. Harrison George Mwakyembe (MP), delivered at the National Assembly during the Budget estimates session for the financial year 2016/2017.

164 See Mahakama ya Jamhuri ya Muungano wa Tanzania, Taarifa ya Mwaka ya Utekelezaji wa Majukumu ya Mahakama Mwaka wa Fedha 2014/15, 30 Oktoba 2015 at <http://www.judiciary.go.tz/wp-content/uploads/2016/08/TAARIFA-YA-MWAKA-YA-UTEKELEZAJI-2014.15-KATTANGAH-VERSION.pdf>, accessed 30th January

165 Ibid.

166 Ministry of Constitutional and Legal Affairs Website “Serikali Yawasilisha Bungeni Muswada wa Sheria ya Msaada wa Kisheria” at http://www.sheria.go.tz/index.php?option=com_content&view=article&id=129, accessed 30th January 2017

167 Ibid.

Table 10: LHRC Beneficiaries of Legal Aid in 2016

TYPES OF CASES	OLD CLIENTS			NEW CLIENTS			GRAND TOTAL
	Male	Female	Total	Male	Female	Total	
Employment	2919	865	3784	1242	481	1723	5507
Matrimonial	239	1152	1391	110	287	397	1788
Land	3341	2123	5464	619	399	1018	6482
Contract	451	300	751	192	208	400	1151
Children rights (adoption, rape, maintenance -etc)	99	208	307	57	134	191	498
Tort	468	177	645	103	42	145	790
Probate	372	596	968	147	162	309	1277
Insurance	323	179	502	70	53	123	625
Gender based violence and violence against children	0	0	0		0	0	0
Others- (Civil & Criminal) All what is not covered above	513	215	728	333	157	490	1218
Total	8725	5815	14540	2873	1923	4796	12854

In 2016, however, legal aid provision in Tanzania continued to face a number of challenges, including shortage of funds in order to reach people in the outskirts and remote areas through mobile legal aid. The number of legal aid providers, which includes paralegal groups, is still not sufficient as demand is high.

2.3.2 Due Process of Law and Presumption of Innocence

In 2016, the fifth phase Government introduced an operation aimed at removing ‘unscrupulous’ public/state officials accused of stealing from the public and/or failing to perform their duties. This operation has been popularly known as “*utumbuaji majipu*.” Several government officials and civil servants were suspended by the President, Hon. John Pombe Magufuli, and other government leaders.

While the operation might have been done with good intentions, to bring about accountability and remove unscrupulous civil servants and government officials, there

were concerns about the manner the whole exercise was being conducted, disregarding human rights of the accused. The accused persons are denied the right to be heard,¹⁶⁸ and there is a danger of wrongly condemning officials and servants to public shame.¹⁶⁹ They are also denied the right to be presumed innocent until proven guilty. In May 2016, the Vice-President of Tanzania, Hon. Salima Suluhu Hassan, also reminded government leaders that the operation should be conducted in accordance with the law, with the accused persons provided avenue to be heard.¹⁷⁰

2.3.3 Right to Legal Representation

In 2016, the Deputy Director of Criminal Investigation (DCCI) in Zanzibar, ACP Salum Msangi was quoted by the media suggesting that lawyers seeking to represent suspected criminals will be joined in the charges against them and join them in police cells or prison.¹⁷¹ The Zanzibar Law Society (ZLS) and Tanganyika Law Society (TLS), which issued press statements condemning this statement, reminding the police of the rights of suspected criminals under the Constitution of the United Republic of Tanzania of legal representation and to be presumed innocent until proven guilty in courts of law.¹⁷²

LHRC also condemns this statement as it can potentially lead to violation of rights of legal representation and presumption of innocence in both Zanzibar and Tanzania Mainland. Indeed, in July 2016 one of LHRC lawyers in Arusha Region, Adv. Ngalula Shilinde, was arbitrarily arrested and detained by the police in Loliondo District where he had gone to represent 8 people who were under police custody for more than 5 days, accused of espionage. When he arrived at the police station he was not shown much cooperation by the police and was denied an opportunity to represent the suspects, including being present when they were interrogated by police. He was told to leave and return the following; and when he did he was informed that he was also accused and arrested as he was preparing to go to court. LHRC thus had to send a team of other lawyers to conduct a fact-finding mission and seek bail for Adv. Shilinde; and eventually, he was released on bail.

168 This is a right under the principles of natural justice (procedural fairness), which were developed to ensure that decision-making is fair and reasonable.

169 LHRC (2016), Biannual Human Rights Report 2016.

170 *Mwananchi* Newspaper “Samia awataka waiga utumbuaji majipu kutenda haki” 13th May 2016 at <http://www.mwananchi.co.tz/habari/Samia-awataka-waiga-utumbuaji-kutenda-haki/-/1597578/3201526/-/dk29b8/-/index.html>, accessed 30th January 2017.

171 See statement by the Tanganyika Law Society dated 6th July 2016 at <http://www.rainbowprinters.co.tz/tamko-la-chama-cha-wanasheria-wa-tanganyika-tls-kuhusu-kauli-ya-naibu-kamishna-wa-jeshi-la-polisi-zanzibar/>, accessed 30th January 2017.

172 See Article 13 of the Constitution of Tanzania 1977.

LHRC is concerned with and condemns this new trend of denying legal representation to suspected criminals, which is a constitutional guarantee, and threatening lawyers who represent or seek to represent them. The police conduct in Loliondo District was also condemned by the lawyers across the country and prompted the lawyers in Arusha to demonstrate all the way to the Regional Police Commander, in protest of the conduct.¹⁷³



Picture 5: Lawyers in Arusha demonstrating in protest of the unlawful arrest and detention of fellow lawyer

2.3.4 Conclusion and Recommendations

LHRC commends the Government for efforts made so far to improve access to justice through improved and increased judicial infrastructure and the Judiciary for introducing and implementing the *zero backlog* policy. However, more efforts are needed to increase access to justice, particularly for the people in rural areas, in order to achieve SDG 16 on promoting just, peaceful and inclusive societies. While there were positive steps with regard to access to justice, government actions violated or threatened rights to due process of law, presumption of innocence, and legal representation. LHRC makes the following recommendations to safeguard rights to equality before the law and effective remedy:

- The Government, through the Ministry of Constitutional and Legal Affairs, to complete construction and renovation of court buildings within the stipulated time;

¹⁷³ *Mtanzania* Newspaper “Mwakili waandamana kudai haki” 27th July 2016 at <http://mtanzania.co.tz/mwakili-waandamana-kudai-haki/>, accessed 31st January 2017.

- The Judiciary to fully and effectively implement the *zero backlog* policy in order to address the problem of backlog of cases in courts of law;
- Government leaders and officials to regard due process of law in taking their actions and uphold principles of natural justice; and
- The Police Force to stop interfering with the work of advocates and respect the right to legal representation and right to presumed innocent until proven guilty for all suspected criminals and accused persons.

2.4 Rights to Liberty and Bail

Right to liberty is a fundamental human right protected under the Constitution of the United Republic of Tanzania and international human rights law.¹⁷⁴ This right prohibits arbitrary arrest or detention, and requiring one to be informed of reasons for arrest and charges against them at time of arrest.¹⁷⁵ When one is arrested or detained on a criminal charge, they should also be brought promptly before a judge or magistrate and is entitled to a trial within a reasonable time or to release.¹⁷⁶ Under the Criminal Procedures Act, when the police arrest a person they are supposed to charge the person and send them to court within 24 hours,¹⁷⁷ in line with the right to be tried without undue delay. The Act also provides for the right to bail under section 148.

A person deprived of liberty because of arrest or detention may take proceedings before a court and matter determined without delay. A victim of unlawful arrest or detention has an enforceable right to compensation.

In 2016, LHRC was able to document a number of reports on unlawful arrest or detention and right to bail, in violation of the right to liberty guaranteed by the Constitution. The table below indicates some of the incidents of unlawful arrest or detention.

174 See Article 15 of the Constitution of Tanzania 1977; Article 6 of ACHPR; Article 9 of ICCPR; and Article 12 of UDHR.

175 Article 9(1) and (2) of ICCPR.

176 Ibid, Article 9(3).

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

Table 11: Reported Incidents of Unlawful Arrest and Detention

Description	Source	Date
Abdallah Echa and HamisiRungwe were reportedly arrested in Dar es Salaam and sent to Kigoma, where they were detained at the police station for three weeks without being sent to court.	LHRC Human Rights Monitoring Unit	Apr 2016
On 20 th April 2016 LHRC received reports of unlawful arrests and detention of villagers in Kalambo District in Rukwa Region following a land dispute which led to an injury to one villager. LHRC managed to intervene through the RPC, who ordered release of the arrested person as there was no case against them.	LHRC Human Rights Monitoring Unit	Apr 2016
In November 2016, LHRC received a report from Arusha of an arrest of the Arusha Urban MP, Hon. GodblessLema, who was arrested in Dodoma and sent to Arusha on charges of sedition. He was accused of issuing seditious statement on social media. He has ever since denied bail on legal technicalities	LHRC Human Rights Monitoring Unit	Nov 2016
On 13 th December 2016 the founder of a social network called <i>Jamii Forums</i> , MaxenceMelo, was arrested and detained by the police for 8 days without being presented before the court of law. He was arrested on charges of not releasing the identity of a <i>Jamii Forums</i> member. He was eventually released on bail on 1 st December 2016.	<i>Jamii Forums</i> Website	Dec 2016
In July 2016 Adv. ShilindeNgalula from LHRC was arrested and detained in Loliondo District – Arusha Region when he had gone to represent some villagers who had been accused of espionage and detained for about 8 days without being brought before court of law.	LHRC Human Rights Monitoring Unit	Jul 2016

Incident Report: Arrest of *Jamii Forums* Owner, Maxence Melo

On 14th December 2016 police arrived at the house of Maxence Melo, the founder of the popular social network in Tanzania called *Jamii Forums* and searched the house, leaving with various documents, including the company certificate registration and licence. This was one day after he was arrested, detained by police for more than four days without being told the charges against him and sent to court. It was later revealed that he was arrested because he refused to release the identity of *Jamii Forums* members upon request by the police, to protect their right to privacy.

This action by the police was condemned by CSOs, Tanzania Editors Forum (TEF) and other human rights stakeholders. TEF issues a press statement condemning the move by the police and violation of the rights of Mr. Maxence Melo. They noted that the police have been seeking to restrict and violate the right to freedom of expression and opinion, which is guaranteed under Article 18 of the Constitution of the United Republic of Tanzania 1977. They concluded, and rightly so, that by holding Mr. Maxence Melo without taking him to court within 24 hours of arrest, the police infringed his human rights. They called upon the police to respect human rights and rule of law in their treatment of Mr. Maxence Melo, sending him to court immediately if they believe he has a case to answer.

The calls made by TEF and CSOs, including LHRC, paid off and Mr. Maxence Melo was eventually released and sent to court on 16th December 2016.



Picture 6: Maxence Melo being escorted into Kisutu Resident Magistrate Court

2.4.1 Conclusion and Recommendations

Right to liberty, which guarantees right to bail, is a constitutionally-guaranteed right and should not be denied. Denial of bail, even for bailable offences, may contribute to prison overcrowding and prevent accused persons from enjoying their right to liberty.

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

- The Police Force to refrain from conducting arbitrary arrests and detentions;
- The Police Force and courts of law to grant bail for all bailable offences and to do so timely;
- The Ministry of Home Affairs and CHRAGF to ensure there is regular human rights training for police, particularly on the rights of accused persons and due process of law;
- The Ministry of Home Affairs, the Police Force, and courts of law to ensure law enforcement officials who arbitrarily deprive liberty of persons are held accountable; and
- CHRAGG and CSOs to continue raising awareness on civil and political rights, particularly important rights of accused persons such as right to bail and right to liberty.

2.5 Freedom from Torture

Freedom from torture is a basic human right protected under the regional and international human rights treaties.¹⁷⁸ The Constitution of the United Republic of Tanzania also prohibits torture, providing that to ensure equality before the law, among the principles that must be taken into account, is to ensure that no person is subjected to torture or inhuman or degrading punishment or treatment.¹⁷⁹

Elements of Torture

1) Severe pain or suffering has to have been inflicted, 2) for a specific purpose, such as to obtain information, as punishment or to intimidate, or for any reason based on discrimination, 3) by or at the instigation of or with the consent or acquiescence of state authorities.

In 2016, the Commission for Human Rights and Good Governance (CHRAGG) revealed that 65% of complaints against the police in Tanzania relate to beatings, torture and trumped-up cases. LHRC also received a number of clients who complained about police brutality experienced by them or their relatives while in police custody.

Given their limited resources, LHRC is of the view that police seem to rely heavily on confessions by suspected criminals to obtain evidence in cases. As a result,

¹⁷⁸ Article 5 of ACHPR and Article 7 of ICCPR.

¹⁷⁹ Article 13(6)(e) of Constitution of Tanzania 1977.

interrogations are usually associated with acts of torture in order to obtain information that can help the police to make a case for the prosecution. Incidents of torture have also been reported in prisons, but more research needs to be conducted on this particular human right.

2.5.1 Conclusion and Recommendations

Freedom from torture is a fundamental human right that essential for human dignity, but Tanzania is yet to ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. To improve the situation of the right to freedom from torture, LHRC makes the following recommendations:

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

CHAPTER THREE

POLITICAL RIGHTS

3.1 Introduction

Political rights were threatened in 2016 due to negative developments limiting important freedoms, notably freedom to assemble. Political rights experienced significant pressure as the newly sworn-in government was taking shape. Government officials made statements suggesting the banning of all political activities – including assemblies - until the year 2020 urging citizens to concentrate on development activities instead. As a result political meetings were banned, including indoor political meetings, undermining the very existence of the political parties and their conduct, limiting their right to assemble, as guaranteed by the Constitution of the United Republic of Tanzania.

Political rights entail the right of citizens to participate directly in politics of the country by participating in democratic processes, by associating in common causes, and by demanding accountability from the state machinery. Political rights guarantee citizens the right to participate in politics by conducting peaceful demonstrations, and by forming and joining associations such as civil societies and unions.

Political rights are provided for under the International Covenant on Civil and Political Rights, 1966. The protection of political rights is further cemented by the constitutional guarantee where freedom of association, assembly and rights to take part in governance are stipulated.

3.2 Freedom of Assembly

Freedom of assembly was under pressure in 2016 as authorities limited both public assemblies and indoor meetings with the justification of fear of breach of peace. Authorities cited that this limitation was to maintain peace. However, authorities presented little reasoning, rather relying on general and unclear reasons to justify the limitation.

Freedom of assembly is a fundamental human right enshrined in the international law, African law and Tanzanian domestic law. Freedom of assembly is provided in key

international human rights instruments which Tanzania has ratified. These include the Universal Declaration of Human Rights;¹⁸⁰ the International Covenant on civil and Political Rights of 1966;¹⁸¹ the International Convention on the Elimination of All forms of Racial Discrimination;¹⁸² and the Convention on the Rights of the Child.¹⁸³

The Constitution of the United Republic of Tanzania defines freedom of assembly as the freedom of every person “ ...to freely and peacefully assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving his/her beliefs or interests or any other interests.”¹⁸⁴

Authorities have the power to use their discretion to limit this right under specific conditions provided by the law. As far as freedom of association and assembly is concerned for political parties, the right of such person to associate and assemble should not be for purposes of advocating discrimination, use of force to attain their activities and non-adherence to democratic process. The Constitution further gives mandate to the Legislature to enact laws to ensure that political parties adhere to the conditions set forth by the Constitution in exercising their freedom of assembly and association.

According to Transformation Index BTI 2016, an international Index assessing democracy status across developing and transitional countries, Tanzania has scored 6 out of 10 over the past eight years.¹⁸⁵

180 Article 20.

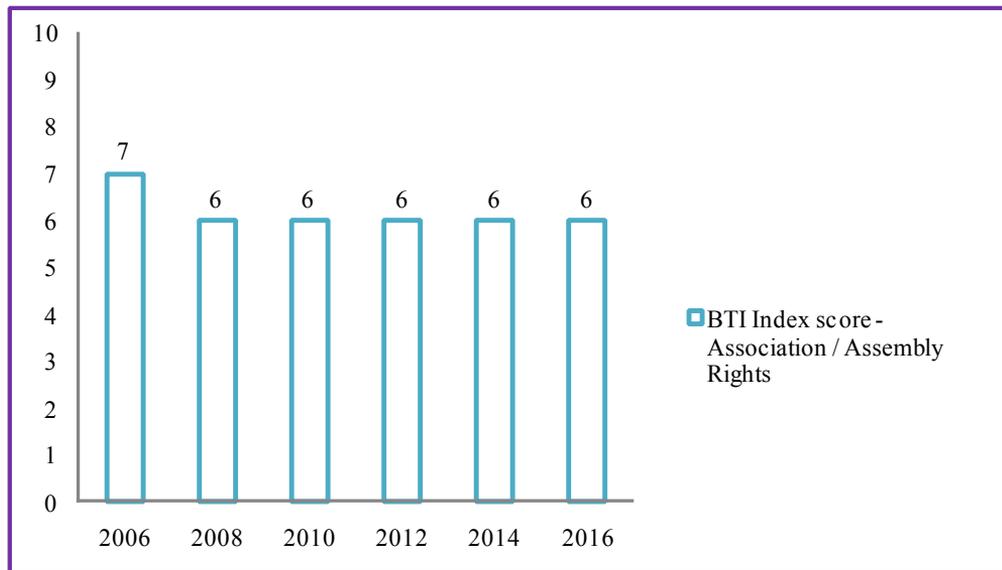
181 Article 21.

182 Article 5(d) (ix).

183 Article 15.

184 Article 20(1).

185 Transformation Index BTI 2016. Available online: <https://www.bti-project.org/en/index/status-index/>

Figure 12: BTI Index score Association/Assemble Rights

Source: BTI 2016 Tanzania Country Report

Although considered ‘fair’ in comparison to other developing and transitional countries, LHRC’s country perspective on the situation in 2016 highlights flawed systems and actions in regards to the state’s ability to safeguard this right. For instance, human rights monitors across mainland Tanzania regarded the situation in 2016 to be poor, graded a D+.¹⁸⁶ Further analysis on this grade and the issues in regions are discussed further below.

3.2.1 Limitations to Assemble

In 2016, Freedom of Assembly has been significantly threatened due to arbitrary limitations to assemble. Citizens’ right to assemble is provided in all key human rights instruments, which Tanzania has ratified including the International Convention on Civil and Political Rights of 1966. The Constitution of the United Republic of Tanzania also provides for the right of individuals to assemble freely and peacefully.¹⁸⁷ Civil society organisations have reported concerns on limitations to assembly by authorities, arbitrarily and without clear reasoning. The police force has power to limit freedom of assembly under certain conditions, as provided by the ICCPR. These conditions require that these restrictions are;

- Prescribed by law;

186 LHRC & ZLSC (2016): Tanzania Civil and Political Rights Perceptions Index.

187 Article 20 (1) of the Constitution of the United Republic of Tanzania, 1977.

- In pursuit of one or more legitimate aim;
- Are necessary;
- Proportionate.

However, in 2016 assemblies have been restricted despite not meeting these conditions. The police force banned political rallies and demonstrations without giving adequate reasoning and justification. This is in violation of principles of natural justice as were propounded by the High Court of Tanzania which restrained the Police Force from making orders without observing principles of natural justice.¹⁸⁸ The ruling gives interpretation on enjoyment of freedom of assembly as a matter of right as provided by the Constitution of the United Republic of Tanzania.

In 2016, Freedom of Assembly has been significantly threatened due to arbitrary limitations to assemble. Civil society organisations have reported concerns on limitations to assembly by authorities, arbitrarily and without clear reasoning. As noted above, freedom to assemble has restrictions, and police have the authority to restrict assemblies under specific conditions. However, the 2016 restriction does not meet these conditions. The police force banned political rallies and demonstrations without giving adequate reasoning and justification.

As noted above, the 2016 Tanzania Civil and Political Rights Index graded Freedom to assemble in mainland Tanzania a D+. Across the higher-graded regions, the police were perceived to be actively providing security at assemblies, and local authorities are not interfering in meetings. Across lower-graded regions, there is a perception that assembly organisers are harassed and discrimination by local authorities in providing venues was cited.¹⁸⁹

Since 2015, there has been an increased trend for arbitration limitation to assemble. As depicted in the timeline below, the statements made by the Prime Minister in late 2015 seemed to set the tone for government action on assemblies and political activities in general. Immediately after the statement made by the Prime Minister (which was later confirmed by the President himself by restricting political activities) the Police Force moved in and banned political assemblies in the whole country. Political parties and other stakeholders showed their dissatisfaction resulting to the opposition CHADEMA

188 Miscellaneous Civil Cause No. 11 of 2015, in the High Court of Tanzania at Mwanza (unreported). This is a ruling by the High Court following the case filed by CHADEMA in 2015 following the police denying the party from organizing a funeral of one of its cadres who was brutally murdered by unknown people on allegations related to political influences.

189 LHRC and ZLSC (2016) Tanzania Civil and Political Rights Index, p. 13.

organising the national wide protests against the banning. The move by CHADEMA prompted the authorities to extend the restrictions by even banning indoor political meetings.

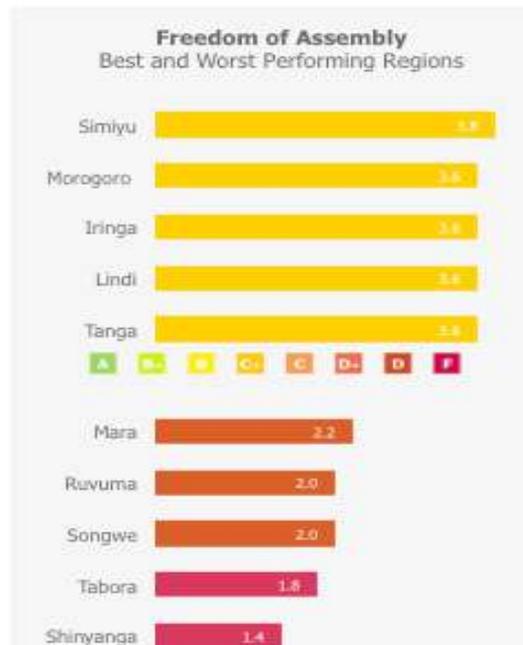


Figure 13: Tanzania Civil and Political Rights Index 2016 results for Mainland

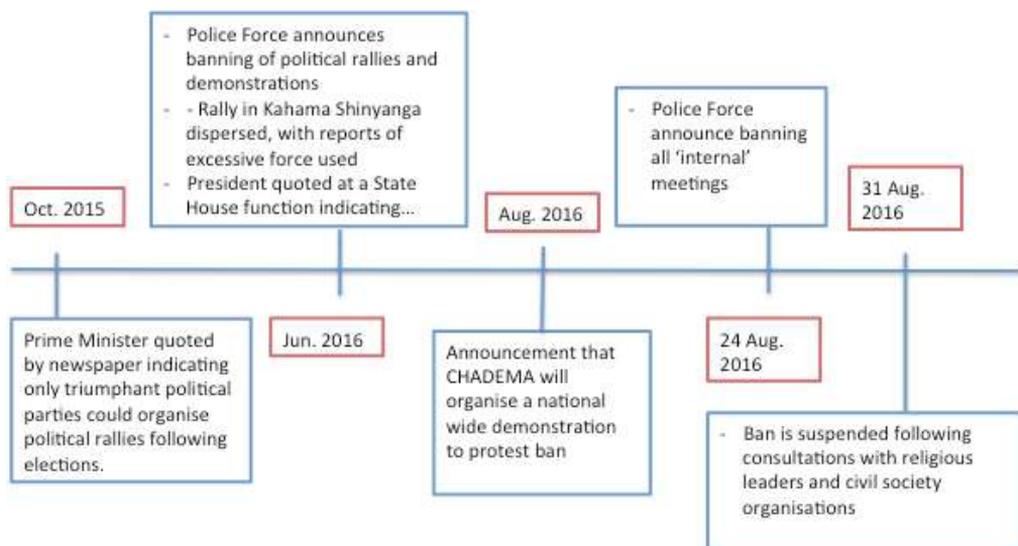


Figure 14: Timeline of events affecting right to assemble in 2016

The trend of these events meant that political parties could not conduct their mandate as provided by the laws of the country. Banning of political rallies and demonstrations meant that citizens could no longer practice their democratic rights of participating in political activities.



Picture 7: Riot Police arresting an individual at the political rally in Kahama Shinyanga, June 2016

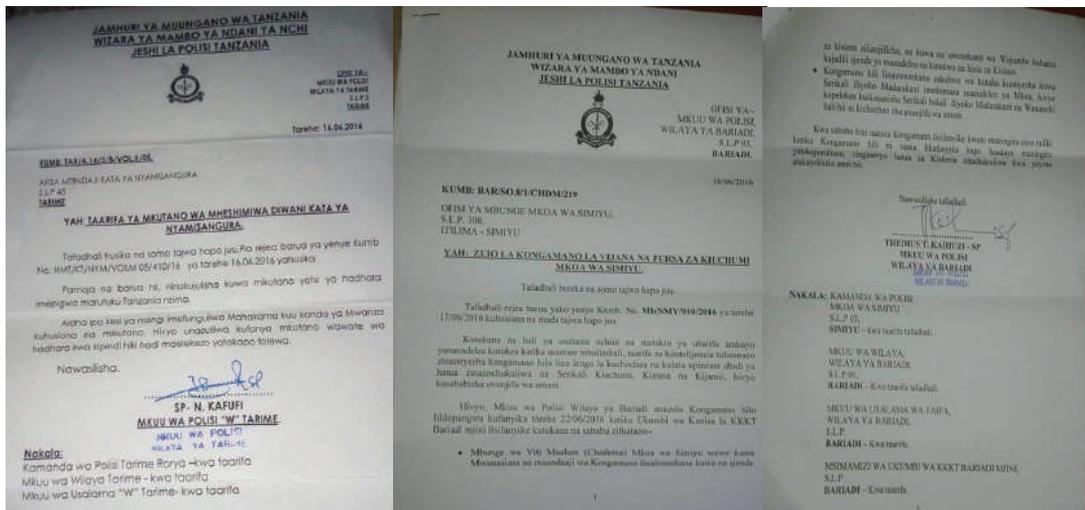
In enforcing the central police ban a number of rallies were banned by local police chiefs in different districts across the country. These include a political rally in Kahama, Shinyanga (see incident report above). Another incident was a rally organised by the councillor for Nyamisangira Ward in Tarime district, Among the indoor meeting affected by the banning included the graduation ceremony organised by CHADEMA youth wing in universities (CHASO) in regions of Dodoma and Kilimanjaro; the banning of a workshop organised by ACT-Wazalendo to discuss the 2016/2017 Budget; and other meetings which were organised at district levels, all of which the Police Force doomed to have a political agenda of “inciting” violence.

Table 12: Example of political meetings that were banned by the police in 2016

Date	Description	Source
19-20 Jun 2016	CHADEMA Student Organisation (CHASO) organised a graduation ceremony for its members in Dodoma and Kilimanjaro regions. The police banned the ceremony urging that the organisers did not obtain necessary permission from the police.	Sharon Sauma, <i>“Polisi wazuia mahafali ya shirikisho lwa wanafunzi Chadema.”</i> Mwananchi 19 th June, 2016.
13 Aug 2016	The Member of parliament for Tanga urban (CUF) was conducting public rallies in his constituency. On 13th August, 2016 the MP conducted a meeting at Madina street which was interrupted and cancelled by the police citing that there was a possibility of breach of peace.	Mwananchi newspaper 15 th August, 2016; <i>‘Polisi yazuia mikutano ya Mbunge wa CUF Tanga.’</i>
12 June 2016	The opposition ACT Wazalendo organised a workshop to discuss the proposed government budget for the year 2016/17. The party officials believe that the government intervened and banned the meeting because the government feared the criticism that might have come out of the workshop.	ACT Wazalendo correspondence with LHRC
Novem 2016	The Secretary General of the opposition CUF organised an indoor session in Mtwara. Police barred CUF from holding the said session citing the likelihood of breach of peace.	Mwananchi newspaper 9th November, 2016: special Correspondent <i>‘Polisi wazuia mkutano wa Maalim Seif Mtwara.’</i>

<p>5 Aug 2016</p>	<p>The Force in Chalinze banned at the last minutes the meeting that was organised by the opposition CHADEMA. The police cited the reasons for banning the meeting was because the police had intelligence information that national CHADEMA cadres were planning to speak at the meeting and that the police had not put protocol forward to provide security. CHADEMA district leaders claimed that they had followed all the required procedure by giving an early notice to the police and that the police had blessed the meeting to take place.</p>	<p>Mwananchi 6th August, 2016 <i>'polisi wazuia mkutano wa Sumaye Chalinze.'</i></p>
<p>June 2016</p>	<p>The CHADEMA youth wing in Universities (CHASO) in Dodoma had organised a graduation ceremony for graduating members in Dodoma region. The ceremony was to take party indoors in a famous municipal hotel. Members and invited guests had gathered at the hotel for the ceremony when police in riot gear and vehicles stormed the hotel and orders everyone gathered to disperse. The police did not provide any reasonable justification for their action.</p>	<p><i>'Polisi watawanya mahafali ya Chadema Moshi.'</i> Mwananchi June 20, 2016 Daniel Mjema.</p>

Picture 8: The Police letters informing the banning of meetings in Tarime and Bariadi



3.2.2 Arbitrary use of Force

The state has an obligation to support freedom of assembly as stipulated by the law, through the facilitation of peaceful assemblies. The state has an obligation to take reasonable and appropriate measures to enable lawful demonstrations.

The banning of political rallies provoked a lot of criticism from political stakeholders. The opposition CHADEMA announced that they would

“Every political partyshall be entitled – (a) to the protection and assistance of the security agencies for the purposes of facilitating peaceful and orderly meetings. Section 11 (1) (b) of the Political Parties Act 1992.

organise a national wide demonstrations on 1st September, 2016 to protest the ban in what was in its Kiswahili acronym UKUTA (*Umoja wa Kupinga Udikteta Tanzania*).

Throughout the months following the banning of public political rallies the streets of almost all major cities and towns in the country were flocked with full-gearied riot police forces conducting what was called ‘regular readiness exercises.’

These were nothing but regular exercises as they brought about fear and tension among citizens, disrupting their everyday routines. During this time several people were arrested in connections with the banned UKUTA demonstrations. CHADEMA eventually announced that it was suspending the UKUTA demonstration for a period of one month. CHADEMA cited that their decision followed the consultations it had with several stakeholders including religious leaders and civil society organisations.¹⁹⁰ CHADEMA also cited that it was suspending the same because there were a lot of criminal activities going on which were wrongly associated with UKUTA by the authorities.



190 <http://allafrica.com/stories/201610030247.html>



3.2.2.1 Conclusion and Recommendations

LHRC is thus of the opinion that the right to freedom of association was violated in 2016 by the authorities. LHRC recommends the following to ensure that the right to freedom of assembly is observed by the authorities and enjoyed by citizens:

7. **Police discretion to limit assemblies should be objectively:** prevention and cancellation of assemblies should be done with clear justifications, timely and in writing. Prohibition of an assembly should be of last resort.
8. **Police should focus more on providing security to assemblies:** More than often the police have cited ‘intelligence’ tip have led to them cancelling and preventing assemblies. The police should remember that their legal obligation is to provide law and order to citizens and their property. Police should thus focus more on providing security to assemblies to ensure that they are conducted in a peaceful manner.
9. **Mechanisms should be established and strengthened to hold police accountable:** An independent constitutionally endorsed body should be established to provide objective oversight of the police, independent of the Government and party influences. the mandate of such body would cover police action more broadly with significant consideration provided on how the police promote and protect human rights, including freedom of assembly.
10. **Enhance the quality and availability of data:** Data should be collected and recorded on the number of assemblies authorised, denied and cancelled. The data should as well collect the reasons for denial and cancellations. The data should be made available to the public to support open governance.

3.3 Freedom of Association

As a constitutional enshrined right, freedom of association entails the right of individuals to come together on a group for a collective purpose. This right is enjoyed individually or collectively. Thus, collectively, the right is enjoyed by political parties, civil society organisations, clubs, religious groups or trade unions, to name a few.

A democratic society depends on the existence of democratic institutions, including associations. The role played by associations in a democratic society is acknowledged by international instruments that establish and seek to ensure the right to freedom of association. Thus in order to have a functioning democracy freedom of association is inevitable, which in turn freedom of association prerequisite other freedoms and in achieving goals which are in public interest. States have the obligation to respect, protect and facilitate the exercise of the right to freedom of association.

3.3.1 Freedom of Association as Political Parties

Political parties operate in Tanzania pursuant to a constitutionally recognised right. This right is further elaborated in the Political Parties Act and the regulations thereto.¹⁹¹ Political parties are essential for furtherance of democracy in a country. Tanzania is a multi-party democracy, recognising the existence of several political parties. In order to operate as a political party the law requires that the political party obtain registration, provisional or permanent.¹⁹²

There are 23 registered political parties in Tanzania, 22 with permanent registration and 1 having provisional registration. On August, 2016 the Registrar of Political Parties announced the de-registration of a political party known as *Chama cha Maadili na Uwajibikaji* (CM-Tanzania) for failure of the party to file for permanent registration pursuant to the law.¹⁹³ The law requires a provisionally registered political party to file for permanent registration within a period of not more than 180 days since the said political part had been provisionally registered.¹⁹⁴

191 Chapter 258 (R.E 2002) of the Laws of Tanzania.

192 The Political Parties Act, Chapter 258 (R.E 2002), Sections 7(3),8

193 The Political Parties Act, Chapter 258 (R.E 2002), Section 8 (3), (4).

194 Ibid,.

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**TAARIFA KWA VYOMBO VYA HABARI KUHUSU
KUFUTWA KWA CHAMA CHA CM-TANZANIA**

Msjajili wa Vyama vya Siasa nchini amekifuta katika orodha ya vyama vya siasa vyenye usajili wa muda Chama cha Maadili na Uwajibikaji (CM-Tanzania), kutokana na kushindwa kutimiza masharti ya usajili. CM-Tanzania kilipata usajili wa muda tarehe 4 Februari, 2016.

Kwa mujibu wa kifungu cha 8(3) na (4) cha Sheria ya Vyama vya Siasa namba 5 ya mwaka 1992, chama cha siasa chenye usajili wa muda ni lazima kiwasilisha maombi ya usajili wa kudumu ndani ya siku mia moja na themanini tangu tarehe ya kupata usajili wa muda. Aidha, uhai wa chama cha siasa chenye usajili wa muda unaisha baada ya siku mia moja na themanini (180) tangu kipate usajili wa muda.

Hivyo, uhai wa cheti cha usajili wa muda wa Chama cha Maadili na Uwajibikaji (CM-Tanzania) ulikwisha tarehe 02 Agosti, 2016, kwani waanzilishi wake walipaswa kuwasilisha maombi ya usajili wa kudumu siyo zaidi ya tarehe 02 Agosti, 2016.

Kwa mujibu wa Sheria ya Vyama vya Siasa, waanzilishi na wanachama wote wa CM-Tanzania hawapaswi kufanya siasa au shughuli yoyote kwa jina la Chama cha Maadili na Uwajibikaji, kwa sababu uhai wa cheti chake cha usajili wa muda umekwisha. Kufanya hivyo ni kukiuka Sheria za nchi.

Kufutwa kwa Chama cha Maadili na Uwajibikaji kunaifanya idadi ya vyama vya siasa vyenye usajili wa muda kuwa kimoja ambacho ni Chama cha Restoration of the Nation Party (RNP). Aidha, idadi ya vyama vya siasa vyenye usajili wa kudumu ni ishirini na mbili (22).

Sisty L. Nyahoza

Kny: MSAJILI WA VYAMA VYA SIASA
10 Agosti, 2016

Picture 9: Press release from the Office of the Registrar of Political Parties announcing the de-registration of Chama cha Maadili na Uwajibikaji

Suspending Political Activities by Political Parties Jeopardises the very existence of Political Parties:

With re-introduction of multiparty system in Tanzania in 1992 necessary legal reforms were made to accommodate the same. Such include the reforms of the Constitution and the political Parties Act of 1992. However, there were many other laws among which the Nyalali Commission urged for their amendment and/or repeal in order to conform to the re-introduced multi-party system and its smooth running.

The President is vested with powers to appoint different officials, including the Clerk of the National Assembly and the Registrar of Political Parties.¹⁹⁵ As such, there is a

¹⁹⁵ Article 87 (1) of the United Republic of Tanzania and section 4(1) of the Political Parties Act [R.E 2002].

risk that appointees could be selected based on affiliations. There have been allegations that the Office of the Registrar of Political Parties favours the ruling party. In 2016 the allegations were based on the fact that the Registrar of Political Parties supported the actions taken by the Government to ban political rallies and demonstrations.

“Every political party.....shall be entitled – (a) to address public meetings in any area of the United Republic of Tanzania after giving notification to the police officer in charge of the area concerned for purposes of publicizing itself and soliciting membership.” Section 11 (1) (a) of the Political Parties Act, 1992.

The office of the Registrar of Political parties is the custodian of all political parties, and has the duty to make sure that the conduct of political parties is safeguarded. The Registrar is further required to make sure that he is at the forefront in furtherance of democracy by advising the government on issues related to democracy and politics as well as monitoring the implementation of the laws governing political parties.¹⁹⁶ In a press statement issued on 28th July, 2016, the Registrar of Political Parties did not use his mandate to condemn the arbitrary banning of political rallies and instead the press statement dwelt in condemning the language issued by CHADEMA in declaring that the party was going to hold nationwide political rallies and demonstrations.¹⁹⁷

3.3.2 Right to Take Part in Governance

The right to take part in governance is guaranteed under major international instruments. These include the International Covenant on Civil and Political Rights of 1966 (ICCPR), which enhances the Universal Declaration of Human Rights (UDHR) by promoting political rights. The right to take part in governance is further enhanced through a number of other international human rights instruments such as the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) of 1979;¹⁹⁸ the Convention on

The Constitution of the United Republic of Tanzania establishes the local government authorities (LGAs) in each region, district, urban area and village. The designation of LGAs is established by the Local Government (District) Authorities Act and the Local Government (Urban Authorities) Act, both of 1982. These legislations establish Town Councils, District Councils, Municipal Councils and City Councils across the country. These councils are made up of elected councillors.

196 These are among the functions of the Office of the Registrar of Political Parties. http://www.orpp.go.tz/en/about/?p_id=42

197 Fidelis Butahe, “UKUTA wa CHADEMA wamuibua Msajili.” Mwananchi 29th July, 2016.

198 CEDAW prohibit any kind of discrimination for women in participating in democratic processes.

the Rights of Persons with Disabilities (CPDR) of 2006;¹⁹⁹ the African Charter on Human and People's Rights (ACHPR) of 1984;²⁰⁰ and the African Charter on Democracy, Elections and Governance of 2007.²⁰¹

The right to take part in governance is a constitutional guaranteed right.²⁰² This right is exercised through democratic elections. Tanzania has two major elections, through which citizens can participate directly in governance of their countries. These are the general elections (where the citizens can elect the President, members of parliament and councillors); and the local government elections.

Post 2015 General Elections: Election of Mayors and Chairmen of Municipalities, Cities, District and Town Councils

The 2015 general elections involved the election of the President, members of parliament and councillors. Councillors are elected at ward level across the country. The Councillors in their respective Cities, municipalities, districts and town councils had to conduct elections among in order to obtain individuals who would hold offices of mayors for city and municipal councils and chairmen of district and town councils. These councils form the Local Government Authorities

Some of these elections were marred with irregularities and in some instance violence following the disagreements between councillors of opposing political parties. The irregularities were caused by allegations of undemocratic processes observed in these elections. Among the councils which experienced these irregularities were the Councils in Dar es Salaam (Kinondoni, Temeke and Ilala), the Kilombero District Council and the Tanga Municipal Council.

In 2016 the Legal and Human Rights Centre (LHRC) conducted a fact finding mission to ascertain these irregularities. LHRC conducted the fact finding mission in Kilombero District Council and Tanga Municipal Council. It is LHRC observation that, such malpractices are contrary to principles of good governance and democracy.

A: The Election of Chairman of the Kilombero District Council

The Kilombero district council convened to elect the chairman of the district council on 1st March, 2016. The major political parties in the Kilombero District Council are CHADEMA with 19 councillors and CCM with 18 councilors with the Civic United Front (CUF) holding 1 councillor chair. The results of the election showed that CCM

199 Provides for the rights of people with disabilities to participate in political life.

200 Accords right to participate in democratic governance.

201 Promotes conduct of free and fair election in Africa.

202 Article 21(1) of the Constitution of the United Republic of Tanzania.

under David Ligazo won the Chairmanship of the Council by 19 votes followed by Godfrey Luena for CHADEMA who received 18 votes.

The election was preceded with a lot of conflicts and chaos. This was caused by the allegations that the ruling CCM was plotting to scoop the chairmanship despite having less councillor seats. The conflict was also caused by the fact that there was contest as to whether the Member of Parliament for Kilombero had the right to cast vote in the Chairmanship election. The misunderstanding had caused the postponement of the election which was to be held on 15th November, 2015. The elections were postponed without any justifiable cause. The conflict had also resulted in the arrest of Member of Parliament for Kilombero Hon. Peter Lijuakali, who was contesting for being barred to cast his vote in the election of the chairman of the Kilombero District Council. The MP was arrested on the day of the election on 1st March 2016 (on the day of the election) and removed from the conference where the elections were to take place. As a result the MP could not cast his vote during the election.

LHRC fact finding in Kilombero District revealed that the nature of the conflict was caused by the following factors:

- (a) Improper boundary demarcation of constituencies of Kilombero and Mlimba. The role to demarcate and set new electoral constituency is vested with the National Electoral Commission (NEC). In 2015 general election the Mlimba constituency was named as a new electoral constituency of which formerly was part of the Kilombero Constituency. The request to demarcate the Kilombero constituency was submitted to NEC and available evidence showed that it was to be divided into three constituencies; (Kilombero, Ifakara and Mlimba). However, at the end it was only divided into two constituencies without considering prior proposed boundaries. For that case MP for Kilombero had 9 wards that are falling under Ifakara Township Council and 10 wards that administratively fall under Kilombero District Council.
- (b) Legal interpretation on the role of MP in representing citizens at designated councils. The shortfall explained in (a) above gave rise to statutory interpretation of the Local Government (District Councils) Act, 1982 and its regulations as to the right of the MP to represent the citizens. The MP for Kilombero claimed to have right to represent the citizens in both councils that is, the Ifakara Township Council of which has 9 wards and Kilombero District Council of which has 10 wards. The Minister responsible for Regional Administration and Local Government denied him the right to vote in election of chairmen in both the Ifakara Township Council and the Kilombero District Council district chair. However, the Minister stipulated that the MP had a right to represent the citizens in meetings of both councils.

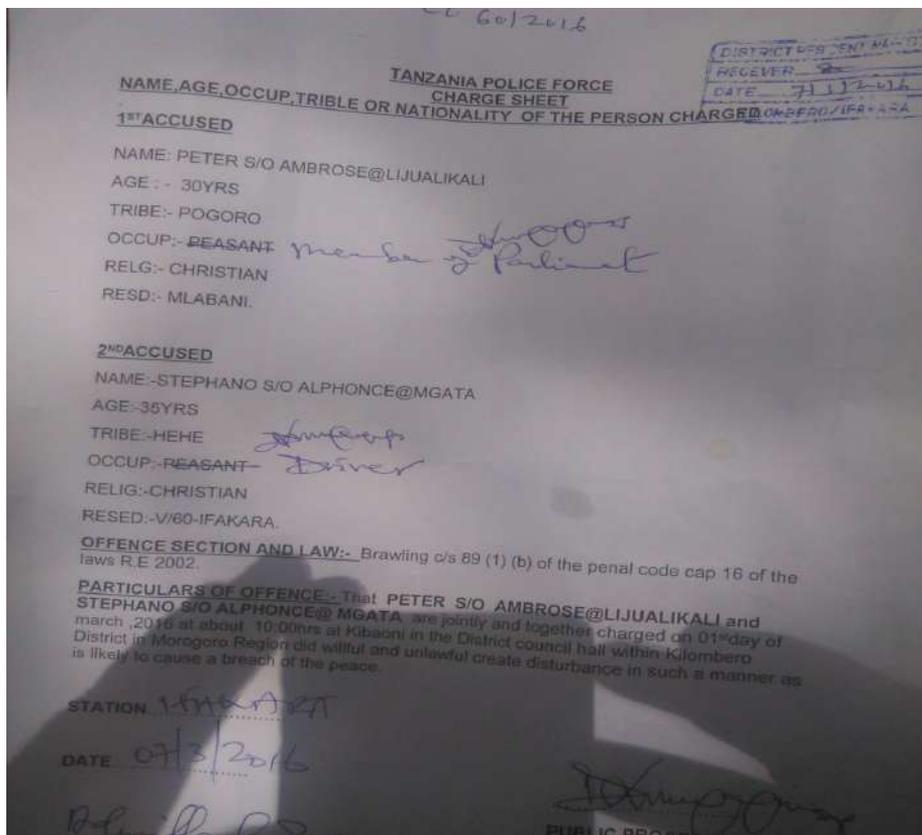
(c) Political atmosphere, in Kilombero constituency is very competitive between CCM and CHADEMA as the opposition party under the umbrella of “UKAWA”.

(d) Institution of criminal cases to politician without justifiable cause is one of the issues experienced. For instance the MP for Kilombero complained that;

“Jeshi la polisi limekuwa likitumika kisiasa kufungua kesi zisizo na mantiki kwa viongozi wa vyama vya siasa, mfano kesi ya jinai namba 66/2016 iliyofunguliwa dhidi yangu na mwenzangu. Katika hati ya mashtaka pia niliandikwa kama mkulima”

That,

“the police force in Kilombero is politically motivated by instituting unjustifiable criminal charges to opposition parties leaders, for instance the criminal case No. 66/2016”²⁰³



Picture 10: Copy of the charge sheet against the Kilombero MP Hon. Lijualikali

203 In this case Hon. Peter Lijualikali was charged on Brawling Contrary to Section 89(1) (b) of the Penal Code, Cap 16 [R.E 2002].

On 1st March, 2016 Hon. Peter Lijualikali (MP) for Kilombero was arrested again and put into custody as a result he did not cast his vote in the election for Kilombero District Council Chair.



Picture 11: Hon. Lijuakali (above and below) is being apprehended and arrested by police and taken outside the election hall



- (e) It was also alleged that Police from neighboring districts and others from Iringa region were brought to Kilombero on 15th November, 2015. However on that material date election were suspended without any justifiable cause and CCM eligible members did not show up at the election venue as was prior planned and announced.
- (f) Existence of hostility between police force and opposition parties under the umbrella of UKAWA has caused short term police reshuffle as from 25th October, 2015 up to March, 2016 there have been 3 replacements of chiefs of the Police force (OCD) for Kilombero district.

B: Political Turmoil Following the Election of the Mayor of Tanga City Council

Tanga City Council convened to elect the City Mayor on 19th December, 2015. The election was attended by 37 eligible voters from all the Urban Wards in Tanga. The major political parties in the area are Civic United Front (CUF) with majority of seats with 20 councillors whereas Chama Cha Mapinduzi (CCM) has 17 seats. Mr Mustapha Mohamed candidate for CCM won by 19 votes against Mr. Rashid Jumbe, candidate for CUF who had 18 votes. The position of Deputy Mayor was won by Mr. Mohame Aniu (CUF) by 21 votes against Mr. Mohamed Mambeya (CCM) who had 16 votes.

The results of the election were highly contested, as the opposition CUF alleged that the election was faced with a lot irregularities which were intentionally caused by the returning officer officiating the election in favour of the ruling CCM.²⁰⁴ The announcement of the results was followed by eruption of chaos from mainly councillors of opposition CUF. The opposition alleged that the returning officer had switched the votes and handled the win to the ruling CCM.

204 During the fact finding mission in Tanga the agent for CUF candidate one Khalid R. Hamza informed the LHRC that, while counting the votes for Mayor in Tanga, CUF Candidate Rashid J. Hamza had 20 votes whereas CCM candidate one Seleman Mustafa had 17. But to the contrary and his surprise declared winner was the CCM candidate Seleman.



Picture 12: LHRC Officer interviewing the CUF General Secretary - Tanga

The aftermath of the Tanga Municipal Mayoral election was the political turmoil within the municipality. The two major parties opposing in Tanga municipality could not work together in any sphere. Since, then it has been impossible for the disputed Mayor to convene meetings and assume office. The CUF Tanga region has been in constant struggle to ensure that the results are nullified without success.

Further, the Police Force in Tanga has banned CUF from conduct any public meetings in the region due to fear of breach of peace however the ruling party was allowed to hold their meetings as usual. For instance in a letter dated 18th January, 2016 the regional secretary of CUF complained to Regional Police Commanding (RPC) of Tanga that, “On 13th January, 2016 they were dispersed by police force to conduct internal meeting at Mwanzage ward, but CCM had conducted a public meeting at Maweni without any disruption”. In his opinion this was an unfair treatment and double standards on the part of the police obeying unlawful and unjustifiable orders against CUF and not doing the same for CCM.

Recommendations

- 1) That, National Electoral Commission (NEC) should consider re-demarcation and division of the constituents in Kilombero, considering adding the constituency of urban Ifakara due to geographical location and the population of the given area;

- 2) That, the President's Office Regional Administration and Local Government should consider re-election of the Chairman of the Kilombero district council so as to enhance democratic processes;
- 3) That, the Police Force should operate their mandate to protect people and their property regardless of their political affiliation. The police force should abstain from entertaining politically motivated charges against members of the opposition political parties as the same defeat justice in a democratic society;
- 4) That, the Commission for Human Rights and Good Governance (CHRAGG) should put emphasis to promote good governance the same way it is promoting human rights. Good Governance in a multiparty democratic country is fundamental for the realization of human rights;
- 5) Civil society organizations and other stakeholders should continue pressurizing the government through the responsible ministry to promote human rights, good governance and democracy as a post-election analysis (Serious Adverse Effect (SAE) that needs to be addressed;
- 6) The Tanzania Centre for Democracy (TCD) should engage more in initiating serious dialogues among political parties themselves on similar incidences and emerging trends;
- 7) Political parties should be aware of the prevailing situation of multiparty democracy and accept the wind of change that might happen to accept democracy to take its course. For instance the situation prevailed in Dar es Salaam City Council was likely to happened in similar way as it happened in Tanga City Council.

Conclusion

LHRC observation of the council elections has raised the importance of monitoring and observing these elections same way as the general elections. Councils at all levels are the foundation for the Local Government Authorities (LGAs), vital in decentralization and development at lower level of the government structure. There is thus a need to strengthen democratic processes at the level of LGAs.

CHAPTER FOUR

SOCIAL RIGHTS

These are the so called socio-economic human rights which are described as the third generation of human rights. States have the obligation to respect, protect and fulfilled these rights, the obligation established under the International Covenant on Economic, Social and Cultural Rights (ICESCR) as well as the Second Optional Protocol of the ICESCR. The obligation to respect requires the state to refrain itself from any violation of these rights, the obligation to protect requires the State to reasonably prevent other actors from interfering with enjoyment of these rights while the obligation to fulfil mandates that the State actively take steps to create the conditions necessary for individuals' full enjoyment of the right.

The economic, social and cultural rights are the rights concerning the basic social and economic conditions needed to live a dignified life and freedom, relating to work, social security, health, education, food, water, housing, health environment and culture.

However, these rights have traditionally been considered non-justifiable rights, meaning that they cannot be enforced in a court of law. This is mainly because under the ICESCR the state obligation to protect, respect and fulfil these rights largely depends on availability of resources of such states.

4.1 Right to Education

Right to education is a fundamental human right, essential for the realisation of other human rights. Right to education promotes individual freedom and empowerment and yields important development benefits.²⁰⁵

Education is a human right because it is legally guaranteed, a guarantee which provides the provision of the right to education without discrimination. States have obligations to protect, respect and fulfil the right to education. There must be present a way to hold states accountable for violation or depriving of the right to education.

The Dakar 2000 World Education Forum reaffirmed Basic education as fundamental human right. The Forum also put as an objective universalizing primary education by the year 2015.

205 <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/right-to-education/>

Right to education is enshrined in the national,²⁰⁶ regional²⁰⁷ and international human rights instruments.²⁰⁸ In 2002 UNESCO showed how crucial it was to introduce constitutional provisions on the right to education.²⁰⁹ UNESCO further showed how crucial it was to enact appropriate enabling legislation so that the state obligation under the relevant international conventions is incorporated in the domestic legal order.²¹⁰

For the right to education to be a meaningful right it must exhibit interrelated essential features of **availability, accessibility, acceptability and adaptability**.²¹¹

Despite efforts made by the government of the United Republic of Tanzania to increase the number of students enrolled in schools through provision of free primary education, quality of education provided is still a big challenge.

The Constitution of the United Republic of Tanzania does not recognize education as a right.²¹² It only recognizes it as a fundamental objective and directive of state policy.²¹³ That means that the right to education cannot be enforced in a court of law. There are a number of laws and policies adopted by the Tanzania to ensure that there is provision of education in the country.

Circular No. 5 specified that “provision of free education means pupils or students will not pay any fee or other contributions that were being provided by parents or guardians before the release of new circular.”

4.1.1 The 2014 Education and Training Policy: Free Basic Education

In 2015 Tanzania adopted the Education and Training Policy of 2014. The Policy specified that from its adoption basic education in Tanzania will cover 10 years, meaning from standard one to form four, meaning basic education will cover six years and secondary school four years. The policy further stipulated that **basic education**

206 Article 11 of the Constitution of the United Republic of Tanzania; Section 9(1) of the Law of the Child Act of 2009

207 The African Charter on Human and People’s Rights of 1981, Article 17(1); the African Charter on the Rights and Welfare of the Child of 1990, Article 11

208 The Universal Declaration of Human Rights of 1966, Article 13(1); the Convention on the Rights of the Child of 1989, Article 28(1); the Convention on the Elimination of All Forms of Discrimination against Women of 1979, Article 10

209 Ibid.

210 Ibid.

211 UNESCO: Right to Education, Scope of Implementation: General Comment 13 on the Right to Education (Article 13 of the International Convention on Economic, Social and Cultural Rights).

212 The Constitution of the United Republic of Tanzania of 1977, Article 11.

213 Action Aid 2015: United Republic of Tanzania; Right to Education Fact Sheet.

will be free of all forms of fees and contributions. The Policy directs the provision of secondary education free of charge for all students.²¹⁴ This means that all direct costs including all forms of fees and contributions were removed which covered school fees, contributions for building maintenance, desks, examinations, watchmen and other school running costs. However, parents still have to meet indirect fees such as school uniforms, learning materials (exercise books and text books) and school meals for pupils and students. The circular further abandoned any contribution for public primary school pupils.²¹⁵

Provision of free basic education means that the Tanzanian government has gone beyond its constitutional obligations which requires the government to provide free and quality primary education in lines with the target of sustainable Development Goal, which requires states to ensure that everyone completes free, equitable and quality primary and secondary education.²¹⁶

While the Education and Training Policy 2014 guarantees access to free basic education, there are a number of challenges which the right to education still faces. Among these challenges are as follows:

4.1.2 Financial Barriers

Despite abolishment of school fees and contributions, many students from poorest families still cannot attend school because of other school related costs.²¹⁷ These include transport fees, uniforms and other additional school materials such as books. Many secondary schools are far away from student homes forcing students to stay in hostels and boarding facilities near school. These hostels are expensive and not every parent can afford. These hostels are usually very informal and thus are associated with other dangers for students, especially girl students. Because of the poor financial conditions students are forced to care for their own meal expenses, leaving girl students in danger of manipulation and exploitation.

4.1.3 Gaps in School Budgets

Abolishment of school contributions has left schools with inability to cover additional fees to cover for running costs, such as school constructions and renovation. These costs

214 Education Circular No. 5 of 2015.

215 Primary school education has been provided free in Tanzania since 2011. However, there were a number of contributions which the parents had to meet for the provision of education to their children.

216 Action Aid 2016: Tanzania Implement Free Education Policy for Secondary Education.

217 Human Rights Watch 2017: 'I had a dream to finish school': Barriers to secondary education in Tanzania.

used to be covered by parents’ contributions. To address this challenge the government introduced the initiative for local government and stakeholders to contribute for desks and building of laboratories. By June 2016 many town and municipal councils reported to have met the targeted number of desks required for the schools in their councils.²¹⁸

4.1.4 Primary and Secondary School Enrolment in 2016

Implementation of free basic education resulted in the increase of enrolment of pupils and students in both primary and secondary education. It is reported that in 2016 there was an increase of about 5.1% of the number of children enrolled in these schools.²¹⁹ The increase is significant although it has not matched with the improvement of school facilities and resources. As a result this is likely to pose a threat to the provision of quality education and thus jeopardize the right to education for the children.

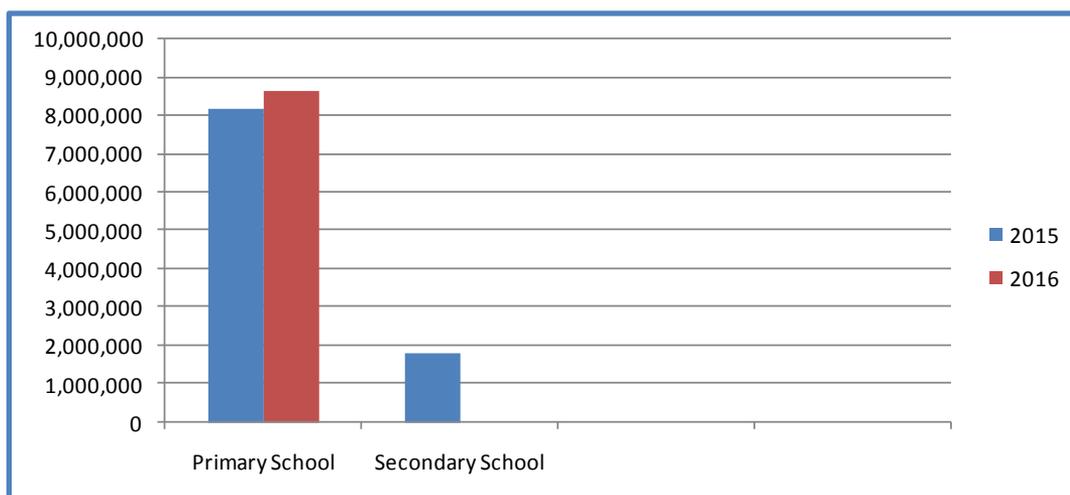


Figure 15: Number of students and pupils enrolled in 2015 and 2016

Despite the positive trend shown by the introduction of free basic education there are still a number of shortcomings which need to be addressed as they are likely to impact the provision of the right to education in Tanzania. Among them is the problem of school dropout, especially for girls due to child marriage and pregnancies. Significant development was experienced in 2016. The Education Act, CAP 352 was amended to tackle the problem of child marriage and pregnancies. The amendment saw the increase of penalty to 30 years jail term for anyone found guilty of marrying a primary or secondary school girl/boy and for anyone found guilty of impregnating a primary

218 Naomi Mwakilembe, “Nini kifuata baada ya madawati.” Mwananchi 6 September, 2016.

219 Orestes Kapinga 2016: Assessment of School Facilities and Resources in the Context of Fee Free Basic Education in Tanzania.

or secondary school girl.²²⁰ This is a commendable step towards achieving the right of education to girls especially. However, the government needs to amend the Law of Marriage Act of 1971 to go in line with the amendments of the Education Act. The provisions of the Law of Marriage Act which provides for the marriage of a girl child at the age below 18 (at a tender age of 14) need to be repealed and in its place the minimum age for marriage set at 18 for both girls and boys.

4.1.5 Recommendations

1. Economic empowerment to poor families to enable them meet the indirect education related costs;
2. Amendment of the Law of Marriage Act of 1971 and place the minimum age for marriage at 18;
3. Re-think on mandatory pregnancy tests performed by some schools which scare away girls from attending schools;
4. Institute government circular to allow girls who have been impregnated to attend school again after giving birth;
5. Abolishment of corporal punishment in schools and use alternative punishment instead;
6. Constitutional amendments to safeguard the right to education;
7. Legislative amendment to require not only to free education but free and quality education for all without any discrimination;
8. Status of teachers need to be improved by addressing teachers' motivation;
9. Children in rural areas are discriminated from accessing education due to inequality in resource allocations.

4.2 Right to Health

Health is fundamental in realising other rights, including right to life. Right to health is dependent on other socio-economic rights such as right to food, housing, water and environment as stipulated in regional and international human rights instruments.

The human rights to health means that everyone has the right to the highest attainable standard of physical and mental health, which includes access to all medical services,

220 Written Laws (Miscellaneous Amendment) (No.2) Act of 2016, sections 20-22.

sanitation, adequate food, decent housing, health working conditions and clean environment.²²¹

The human right to health means that there is a guaranteed system of health protection for all and that health care must be provided as a public good for all; must be financed publicly and equitably.²²²

The human right to health care means that hospitals, clinics, medicines, and doctors' services must be **accessible, available, acceptable**, and of **good quality** for everyone, on an **equitable** basis, where and when needed.

The right to health has its foundation in regional and international human rights instruments. These include the International Covenant on Economic, Social and Cultural Rights (ICESCR);²²³ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);²²⁴ UN Convention on the Rights of the Child (CRC);²²⁵ international Convention on Elimination of All Forms of Racial Discrimination (CERD);²²⁶ African charter on the Rights and Welfare of the Child (ACRWC);²²⁷ African Charter on the People and Human Rights (ACPHR);²²⁸ and the Universal Declaration of Human Rights (UDHR).²²⁹

The Constitution of the United Republic of Tanzania of 1977 does not explicitly stipulate the right to health. However the right to health is implied in Article 11(1) which requires the Government with the duty to ensure realisation of the social welfare to health at times of sickness.

Tanzania is however party to key international human rights instruments which provides for the right to health and health care. As a result Tanzania has **obligation** under these instruments to **respect** equal access to health services and refrain from activities which may negatively intervene with the rights of the citizen to health services.²³⁰ Tanzania has also the obligation to **protect** under international law, which

221 NESRI 2016: What is the Human Rights to Health and Health Care.

222 Ibid.

223 Article 12 which recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

224 Articles 12 and 14.

225 Article 24.

226 Article 5.

227 Article 14.

228 Article 16.

229 Article 25(1).

230 Sepulveda, Magdalena et al (2004): *Human Rights Reference Handbook*, University for Peace.

means that Tanzania must take initiatives to ensure equal access to health services provided by third parties and protecting people from health infringements by third parties.²³¹ Tanzania also has the obligation to **fulfil**; which curtails adoption of national health policy and allocate sufficient resource for the health sector.²³²

4.2.1 Equal Access to Health Facilities

Tanzania still struggles to ensure that there is availability and equal access to health facilities. Tanzanians do not enjoy equal access to health facilities. The ration of health facilities per population differs diversely from one region/district to the other. This is especially true comparing the rural and urban communities.

4.2.2 Availability of Health Workers

Availability of human resources in the health sector determines quality and reliability of health services. The health sector in Tanzania is faced with shortage of health workers with the shortage in 2016 standing at 51%.²³³ The problem is more severe in the rural areas where majority of the population resides.

It was reported that more than 2,000 health facilities around the country are run by unskilled personnel.²³⁴ Despite this shortage it was also reported that there are about 20,000 qualified medical professionals waiting to be recruited for the past years.²³⁵ The shortage of specialists at regional referral hospitals was as well alarming. The Mbeya Municipal council reported a shortage of about 35% of skilled health workers and Mpanda municipality having a shortage of about 200 health workers in 2016.²³⁶

4.2.3 Availability of Essential Medicines and Medical Supplies

Availability and accessibility of essential medicines and medical supplies in health facilities are key indicators of quality of the health service. There is frequent stock out of essential medicines and medical supplies which contribute to poor provision of health services.

There are several initiatives and guidelines developed by the government to improve availability of essential medicines and medical supplies.²³⁷ Such initiatives are the

231 Ibid.

232 Ibid.

233 SIKIKA & Policy Forum 2016: Civil Society Organisations' Statement, the Joint Annual Health Sector Review.

234 Ibid.

235 Ibid.

236 LHRC (2016): Human Rights Situation survey.

237 SIKIKA 2015: Advocacy Paper on Budget Allocation Increase for Essential Medicines and

Health Sector Strategic Plan III, which aims at improving quality of health through improving availability of essential medicines and medical supplies. Another initiative is the Big Results Now (BRN), which put as a target reaching the 100% stock in availability of medicines and medical supplies by 2019. Despite all these initiatives availability of essential medicines and medical supplies has remained low in the country. In 2012 availability of essential medicines was at 41%, with availability of antibiotic medicines which is very essential for therapy of bacterial infection standing at 57%.²³⁸

Insufficiency in essential medicines and medical supplies has been largely caused by insufficient budget allocation, causing frequent shortage or stock out of medicines. The amount of allocated fund has been increasing at a very small margin in the last six years, as shown in the table below. However, in 2016 the allocated fund rose significantly to Tshs 251 billion out of which Tshs 108 billion was allocated to repay debt owed by the government. Despite the increase in allocated fund, this figure runs short of the requirement which for 2016/17 was standing at Tshs. 577 billion.²³⁹

Table 13: Budget Trend of the Essential Medicines and Medical Supplies 2010-2016

Source	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Local (bn)	30.3	49.8	34	34	60	36.2
Foreign (bn)	33.6	73.6	46.5	30	10.5	0
Total (bn.)	63.9	123.4	80.5	64	70.5	36.2
Demand/Need	-	188	198	549*	577*	577+
Gap(bn.)		64.6	117.5	485	506.5	540.8+

* Estimated demand as stated by the Minister of Health during 2014/15 budget presentation at the Parliament

Source: SIKIKA

Timely and partial disbursement of budget allocation is another challenge facing the health sector. Delayed and/or partial disbursement worsens the availability of the essential medicine and supplies.

Medical Supplies, Press Release.

238 Ibid.

239 SIKIKA 2016: Urgent and Deliberate Intervention Required to Resolve Chronic shortage of Essential Health Commodities.

Table 14: Budget Allocation vs Disbursement of Essential Medicines and Medical Supplies

Year	2010/11	2011/12	2012/13	2013/14	2014/15
Allocated	63,000,000	123,400,000	80,500,000	64,000,000	70,500,000
Disbursed	48,300,000	98,000,000	80,500,000	50,000,000	23,500,000*
% Disbursed	75.6	79.4	100	78.9	33.3

*Amount disbursed by the end of April 2015

Source: SIKIKA

Budget allocation and disbursement for essential medicines and medical supplies has been decreasing over the last five years. The allocation has been lower than actual demand. Demand for essential medicines has been from about Tshs. 188 billion in 2011/2012 to Tshs. 577 billion in 2014/15 whereas the allocation of budget has varied between Tshs. 123.6 billion and Tshs. 80.5 billion respectively.²⁴⁰ Medicines stock out between these years has been at 60%.

4.2.4 Shortage of Medicine at the Medical Store Department (MSD)

In 2016 the Medical Store Department²⁴¹ experienced a critical shortage of medical supplies. The current system of purchasing medical equipment requires that health facilities should purchase medical commodities from MSD. That, these facilities should seek availability of commodities at MSD first and seek for other sources only when there is shortage at MSD.

The shortage experienced in 2016 was so critical that some vaccines were in shortage for a period longer than 3 months.²⁴² One of the reasons cited for the shortage was the shortage of fund at MSD because of the long overdue debt owed to the Government. It was reported that by 16th September 2016 MSD showed that it had **zero** stock of the 47% of all medical items as per MSD medicine catalogue.²⁴³ The shortage includes important health outcomes such as delivery kits, ORS+Zinc, anti-hypertensive and vaccines essential for ailments such as yellow fever, measles and rabies. It was further reported that the Government had overtime failed to commit sufficient financial

240 Ibid.

241 Medical Stores Department (MSD) is an autonomous department in the Ministry of Health, Social Development, Gender, Elderly and Children responsible to develop, maintain, manage an efficient and cost effective system of procurement, storage and distribution of approved medicines and medical supplies required for use by the public health services as the Ministry may from time to time approve.

242 SIKIKA 2016: Urgent and Deliberate Intervention Required to Resolve Chronic shortage of Essential Health Commodities.

243 Ibid.

resources to MSD. For instance, the financial requirement for essential medical commodities in in 2016/2017 was standing at Tshs 577 billion, with the Government allocating Tshs 251 billion, out of which Tshs. 108 billion was committed for repayment of previous debt owed by the Government.²⁴⁴

4.2.5 Funding of Health Care

The Abuja Declaration of 2001 urged the African governments to increase funding for health. The declaration urged governments to allocate at least 15% of their annual budget to improve health sector.

4.3 Right to Water

The right to water is defined by the UN Committee on Economic, Social and Cultural Rights as “*the right to everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses.*”²⁴⁵ The general comment further states that the human right to water to be indispensable for leading a life in human dignity.

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

The International Convention on Economic, Social and Cultural Rights considers the right to water as an integral part of the international human rights law.²⁴⁶ The right to water is not provided for in the Constitution of the United Republic of Tanzania of 1977. However, the National Water Policy of 2002 recognises *access to clean and safe water as a basic need and right for all human beings*. Further, the policy emphasises that *the water for basic human needs in adequate quantity and acceptable quality will receive highest priority*. The Water Resources Management Act of 2009 recognizes safe drinking water a basic human right.²⁴⁷

On 28 July 2010 the United Nations General Assembly explicitly recognized the human rights to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights.²⁴⁸ The resolution calls

244 Ibid.

245 General Comment 15. The Right to Water. UN Committee on Social and Economic Rights, November, 2002.

246 Articles 11 and 12. The Right to water is also recognised as a universal human rights in the Convention of the Right of the Child (Article 24(2)(c); the Convention on the Elimination of all Forms of Discrimination, Article 14(2)(h); and the Right to Food Security of the Protocol to the ACHPR on the Rights of Women in Africa (Article 15).

247 Section 4(1)(b)

248 Resolution A/RES/64/292 United Nations General Assembly, July 2010

upon States and international organisations to provide financial resources, help capacity building and technology transfer to help countries, in particular developing countries, to provide safe, clean, accessible and affordable drinking water and sanitation for all.

States' Obligation of Realising Human Right to Water²⁴⁹

I. Progressive realisation and maximum available resources: that States have obligation to move as quickly as possible towards full realisation of human right to water using maximum available resources. Progressive realisation requires increase in the number of people with access to water with a view to achieving universal access, but also an improvement in the general levels of service for present and future generations. That, the State shall use the maximum available resources including revenues through taxation and other mechanisms.

II. Obligation to respect, protect and fulfil the human right to water:

Obligation to respect: entails that the State may not prevent people from enjoying their human right to water, for instance allocation of land with water sources which is used by the local population without providing an adequate alternative.

Obligation to protect: this requires the state to prevent third parties from interfering in any way with people's enjoyment of their right to water.

Obligation to fulfil: this obligation requires the state to ensure that the conditions are in place for everyone to enjoy their human right to water. This does not mean that the state has to provide services directly, unless there are individuals or groups of people who cannot access this right through other mechanisms.

Tanzania is blessed with abundancy of water sources. This fact does not however provide that all people have access to enjoy their right to water. There are many challenges facing the realisation of this right among them being lack of constitutional guarantee of the right to water.

249 UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation: Realizing the human right to water and sanitation; a Handbook by the UN Special Rapporteur Catalina De Albuquerque

4.3.1 Accessibility to Water

Everyone has the right to a water service which is physically accessible within, or in the immediate vicinity of the household, educational institution, workplace or health institution.²⁵⁰ According to WHO, the water source has to be within 1,000 metres of the home and collection time should not exceed 30 minutes. The water should be accessible to all people, including the poor, vulnerable and marginalised.

In 2015 it was estimated that 23.2% of Tanzanians did not have access to ‘improved’ water.²⁵¹ That, a total of 55.5% of Tanzanian population had access to ‘improved’ water. By the year 2017 the estimation for Tanzanians with access to water stand at 56.2% of the population.²⁵² Water distribution is very uneven leaving those in rural areas in dire position to access. In 2015 it was estimated that 77.2% of urban population had access to ‘improved’ water with only 45.5% of the rural population having the same access.²⁵³ It is further estimated that Tanzania can meet a universal access to water by the year 2013.²⁵⁴ However, in order to achieve the same an average of 3.3% of population of 2030 need to be reached annually.

4.3.2 Quality of Water

The water for each personal or domestic use must be safe, thus free from any contamination and acceptable in quality. The water must be free from micro-organisms, chemical substances and radiological hazards that constitute a threat to person’s health.²⁵⁵

4.3.3 Sufficiency of Water

The water supply for each individual must be sufficient and continuous for personal and domestic uses. According to WHO between 50 and 100 litres of water per person per day are needed to ensure that most basic needs are met and few health concerns arise.

4.3.4 Affordability of Water

Water, water facilities and services must be affordable for all. The UNDP suggests that water costs should not exceed 3% of the household income.

250 UNDESA: International Decade for Action ‘WATER FOR LIFE’ 2005-2015.

251 WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation.

252 Ibid.

253 Ibid.

254 Ibid.

255 Ibid.

4.4 Right to Adequate Standard of Living

The right to adequate standard of living is recognised as human rights in international instruments. This right establishes a minimum entitlement to food, clothing and housing at an adequate level.

The right to adequate standard of living is stipulated in Article 25 of the Universal Declaration of Human Rights of 1967 and in Article 25 of the International Covenant on Economic, Social and Cultural Rights. Realisation of the right to adequate standard of living depends on other rights such as right to education and social security. States are thus called to take appropriate steps to ensure the realisation of this right by improving methods of production, conservation and distribution of food.²⁵⁶

Tanzania like many other African countries has ratified the ICESCR. However, the right to an adequate standard of living has remained to be neglected due to lack of resources and poverty. This is manifested with remaining high rates of poverty, high rates of child and maternal mortality as well as continued unreliability of the status of food.

In spite of the economic challenges mentioned above, Tanzania has taken several economic and political initiatives which will also address issues of development and thus poverty. These include the Vision 2025, MKUKUTA, MKURABITA and Big Results Now.

4.4.1 Food Security and Freedom from Hunger

Food as a Human Rights Issue

The rights to food guarantees freedom from hunger and access to safe and nutritious food.²⁵⁷ There are several human rights principles fundamental too guaranteeing the right to food: **Availability** – requires that food should be available in quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a certain culture; **Accessibility** – Food should be physically and economically accessible in ways that do not interfere with enjoyment of human rights; **Sustainability** – requires that food should be secure, or accessible, for both present and future generations; and **Non-discrimination** –

The right to adequate food is realised when every man, woman and child, alone or in a community with others, has physical and economic access at all times to adequate food or means for its procurement. Committee on the Economic, Social and Cultural Rights

256 Article of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

257 <https://www.nesri.org/programs/what-is-the-human-right-to-food> visited on January 2017.

any discrimination in access to right to food, as well as to means and entitlements for its procurement, on the grounds of race, colour, sex, language, age, religion, political or other opinion, national or social origin, birth or other status, constitutes a violation of the right to food.

The right to food is protected under Article 25 of the Universal Declaration of Human Rights; Article 11 of the International Covenant on Economic, Social and Cultural Rights; and Articles 24 and 27 of the Convention on the Rights of the Child.

Article 2 of the ICESCR places obligation to states parties to the convention on ensuring progressive realisation of the right to adequate food. This impose obligation for state parties to move as expeditiously under its jurisdiction access to the minimum essential food which is sufficient nutritional, adequate and safe to ensure their freedom from hunger.

Violation of the right to food can occur through direct action of States or other entities insufficiently regulated by States.²⁵⁸ These may include the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to food; denial of access to food to particular individuals or groups; the prevention of access to humanitarian food aid in internal conflict or other emergency situations; adoption of legislation or policies which manifestly incompatible with pre-existing legal obligations relating to the right to food; and failure to regulate activities of individuals or groups so as to prevent them from violating the right to food of others, or failure of a state to take into account when entering into agreement with other states or with international organizations.

Food Security and Availability in Tanzania

It was reported that for the 2015/2016 financial year Tanzania had availability of food amounting to 120%.²⁵⁹ This was a result of production of 15,528,820 tonnes of food produced compared to the country's food need which stood at 12,946,103 tonnes for 2015/2016, thus creating a surplus of 2,582,717 tonnes.²⁶⁰

In spite of the report by the minister above there were great concerns in 2016 as far the situation of food security and availability is concerned in the country. The concern was caused by the delays of rainfalls experienced in the last months of 2015 and the early months of 2016. During his budgetary speech the minister pointed out that in spite of good food situation, 18 regions had vulnerable areas within 69 councils which are

258 Committee of Economic, Social and Cultural Rights: General Comment 12.

259 Ministry of Agriculture, Livestock and Fisheries: 2016/17 Budgetary Speech.

260 Ibid.

likely to have food shortage. On another occasion during the *Nanenane* exhibitions, the Minister for Agriculture, Livestock and Fisheries warned on the danger of food shortage because of falling food production, specifically maize production. The Minister warned that 43 districts were in danger of facing food shortage for the year 2016.

In late months of 2016 the food situation in the country was reported to be in a dire situation. It was reported that the National Food Reserve Agency (NFRA) had deficit in food stock across the country. On its January 2017 Monthly Economic Review the Bank of Tanzania (BOT) reported that NFRA had a stock amounting to 89,692 tonnes of food stock.²⁶¹ In January 2016 the food stock held by NFRA was at 125,668 tonnes.²⁶² Commenting on food situation in the country Hon. Zitto Kabwe was quoted saying the food stock held by NFRA in October, 2016 was enough to cover the country's food need for only one week (BOT November Monthly Economic Review showed the food stock in NFRA then at 90,905 tonnes). Hon. Zitto Kabwe further noted that in order to run smoothly and respond to any food emergency NFRA need to have food stock enough to last for at least three months period.

As one can observe from the below table in 2016 NFRA had a record low amount of food stock in its storages compared to previous two years. The Minister for Agriculture, Livestock and Fisheries Dr. Charles Tizeba was at one time quoted saying that NFRA did not purchase any food in 2016 because the previous year the country had surplus production of food.²⁶³ The Minister further said that because of surplus in food production individuals had plenty of food stock in their storages.

261 Bank of Tanzania (2017): January Monthly Economic Review.

262 Ibid.

263 Mnaku Mbani, "*Nani anasema ukweli kuhusu hali ya chakula.*" Raia Mwema 19 January 2017.

Figure 16: Food Stocks Held by the National Food Reserve Agency

Table 1.2: Food Stocks Held by National Food Reserve Agency

	Tonnes				
	2012	2013	2014	2015	2016
January	166,796	72,170	235,309	459,561	125,668
February	142,906	60,739	228,014	454,592	88,414
March	123,312	46,153	214,157	452,054	68,727
April	105,245	36,982	195,246	433,547	64,825
May	78,125	26,802	195,956	406,846	63,341
June	65,985	27,494	189,494	353,702	61,838
July	61,469	71,141	182,200	282,401	49,632
August	75,489	175,609	196,854	268,515	59,832
September	91,021	224,295	299,624	265,046	86,545
October	98,544	235,817	426,999	253,655	90,905
November	105,734	234,145	460,295	238,134	90,900
December	89,951	232,963	466,583	180,746	89,692

Source: National Food Reserve Agency

Source: National Food Reserve Agency

Among the reasons cited for NFRA facing deficit in food stock was that there was no enough budget allocated and spent for food purchase for the year 2016/17. According to the Minister for Agriculture, Livestock and Fishing, the allocated budgetary fund for NFRA to purchase cereals for the year 2015/16 was Tshs. 31,106,667,395; until 30th April 2016 NFRA had spent Tshs. 13,854,500,840.²⁶⁴ The Minister did not indicate whether NFRA received the whole amount of fund allocated to it. However, the ministry received only 41.9% of the total fund allocated for the ministry. The Minister further said that by 14 April 2016 NFRA had purchased cereals amounting to 22,335.157 tonnes to reach the total food stock of 65,275.155 tonnes held by NFRA.²⁶⁵

The situation of food reserve in the NFRA has caused concern around the country. Further concern was raised by the rising food prices in the market.²⁶⁶ There were testimonials from different parts of the country that families, especially those belonging to poor ranks were going with one meal per day or even without a single

264 Ibid.

265 Ministry of Agriculture, Livestock and Fisheries: 2016/17 Budgetary Speech.

266 Mnaku Mbani, "Nani anasema ukweli kuhusu hali ya chakula." Raia Mwema 19 January 2017.

meal, because they cannot afford to buy food due to poor economies.²⁶⁷ Extended droughts posed danger to the situation of food security and availability.

There were several incidents in 2016 which showed that the situation of food security and availability was not very good at the end of the year. Several regions reported either draughts or food shortage threatening famine situation and hunger. In Tanga in the districts of Korogwe , Kilindi and Handeni because of food shortage people resorted to consuming mangoes to survive, where as in Chamwino Dodoma people resorted eating insects.²⁶⁸

To address these challenges the Office of the Prime Minister ordered ministries, regions and councils around the country to ensure that they take necessary measures to address issues of food shortage by ensuring that people in their areas cultivate short term food crops.²⁶⁹ The Prime Minister also ordered that NFRA make sure that they reserve the remaining food stock for the coming days to face possible food shortage. While addressing the Nanenane exhibition the Minister for Agriculture, livestock and fishery was quoted saying that 43 districts were in danger of facing food shortage due to poor food production in 2016.²⁷⁰

Muleba and Bukoba districts were hit by devastating earthquakes, leaving behind deaths, injuries and a lot of destruction in social services. People in those districts were left with nothing, having their crops destroyed. The people thus found themselves in desperate need of humanitarian aid, including food aid. Sadly, the government responded very negatively by telling the people to engage more in food production.

267 Ibid.

268 Ephraim Bahemu, “*MATUKIO YA MWAKA 2016: Tetemeko Kagera, mvua, njaa majanga yaliyotetemeshwa nchi.*” Mwananchi 29th December, 2016.

269 Ibid.

270 <http://www.ippmedia.com/sw/wilaya-43-zinatarajiwa-kukumbwa-na-baa-la-njaa> accessed on January, 2017.



Picture 13: Victims of the Earthquake in Kagera Region

The situation clearly shows that the food security situation and availability in 2016 was not in a good condition. LHRC commends the following:

1. The government to take necessary measures to ensure that the situation of food security and availability is accessed and addressed in a transparent manner to enable citizens and stakeholders to take necessary precautions and act;
2. The Parliament should make sure that the government disperses the total fund allocated for improving food production and food purchase by the NFRA;
3. The NFRA to provide regular updates of the situation of food stock in their storages;
4. Government officials, especially those in higher positions to refrain from uttering statements denying the danger of situation of food security and availability in disregard of the situation on the ground.

CHAPTER FIVE

ECONOMIC RIGHTS

Economic and cultural rights are human rights concerning the economic conditions needed to live a life of dignity and freedom, relating to work and workers' rights, social security and culture.

The Universal Declaration of Human Rights (UDHR) of 1948 outlines the basic civil, cultural, economic, political and social rights which are entitled to all human beings. Economic and cultural rights were expressed as legal rights in the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. These two instruments, the UDHR and ICESCR form what is termed as the International Bill of Rights.²⁷¹

Tanzania, as member state to the above instruments, has articulated its commitment to economic and cultural rights through the Constitution of the United Republic of Tanzania (CURT) of 1977. The CURT promote economic rights in a range of entitlements, such as the right to own property;²⁷² the right to work and fair remuneration;²⁷³ and the right to protect natural resources sustainably.²⁷⁴ Cultural rights are given less promotion in the Constitutional of the United Republic of Tanzania. Tanzania is a multi-cultural society with diversity cultural practices. This is due to the fact that there are more than 120 tribes identified in the country, with diversity cultural practices, for instance in languages where almost each tribe has its own unique vernacular. However, Tanzania is very well united through the use of Kiswahili language which is spoken across the country by all tribes. Kiswahili is both a national and official language of the country.

Just as other rights enshrined in the ICESCR, the realization of economic and cultural rights depend on the principles put forward by the ICESCR. Thus, a state must take steps "to the maximum of its available resources"²⁷⁵ to progressively realise these rights. That, a State has the following obligations;

- ✓ To respect (the State itself to refrain from any violation of the economic and cultural rights);
- ✓ To protect (the State should prevent third parties from violating economic and cultural rights);

271 The International Network for Economic, Social and Cultural Rights (ESCR-NET).

272 Article 24.

273 Articles 22 & 23.

274 Article 27.

- ✓ To fulfil (the State should take necessary measures to realise the economic and cultural rights. These measures include legislative, administrative, budgetary and other processes); and
- ✓ To seek and provide international assistance and cooperation in the realization of the economic and cultural rights.

5.1 Economic Rights

Realization of social rights depends very much in the economic development of the country. For a country to reach economic development it is essential that economic rights are protected, promoted and implemented.

Situation of the Economy and a Glance of the 2016/17 Budget

The World Bank estimates that the economy of Tanzania has been experiencing a stable and high growth performance over the last decade (6.5% per annum).²⁷⁵ The World Bank further estimates that the Tanzanian economy has been performing well credit given to the political stability of the country. This has resulted to strengthening of the gross domestic production (GDP) which has remained strong at 7% due to increased public consumption together with growing construction, communication, financial services and mining sector.²⁷⁶

Tourism has continued to be the top foreign exchange earner for Tanzania. Agriculture employs the majority of Tanzanian households (estimated at almost 70%). However, agriculture has experienced decelerating growth, at the rate of 1.7% compared to 2.3% in 2015.²⁷⁷ Manufacturing experienced accelerating growth at 7.8% compared to 6.5% in 2015.²⁷⁸ The growth in manufacturing economy is attributed to increase in manufacturing products such as food, textiles, cement, wood, paper, printing, chemicals, pharmaceuticals, basic metals, electrical and machinery products. Cement production experienced an increase amounting to 45.6% mainly due to the increase of production by the Dangote Cement Company.²⁷⁹

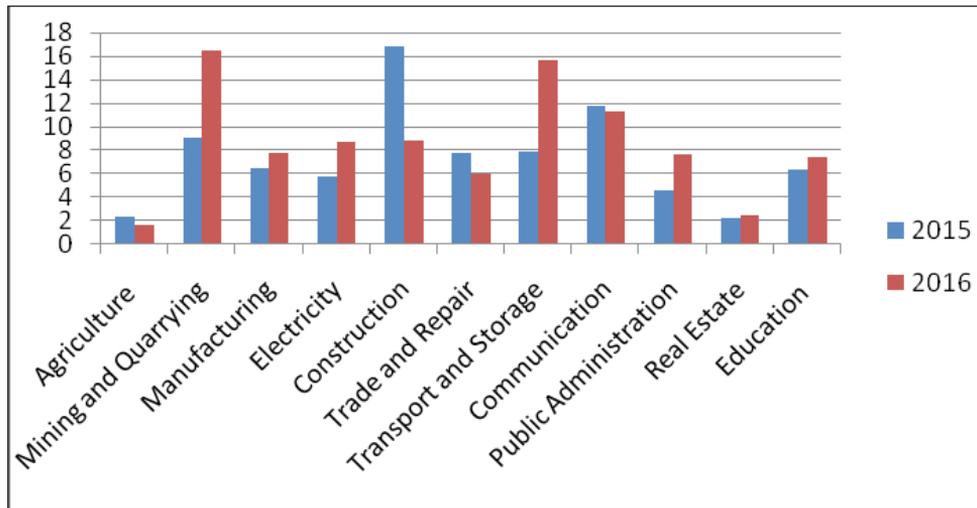
275 The World Bank: Tanzania Overview, found at <http://www.worldbank.org/en/country/tanzania/overview>.

276 Ibid.

277 URT Ministry of Finance and Planning: Budget Execution Report for the First Half of the Fiscal Year 2016/17.

278 Ibid.

279 Ibid.

Figure 17: GDP Growth Rates by Selected Economic Activities (%)

Source: Ministry of Finance and Planning

In January 2016 the inflation rate was at 6.5% and declined in August 2016 due to higher food prices and depreciation of the nation currency. The annual average inflation for 2016 was at 5.2%.²⁸⁰

The fifth phase government under President John Magufuli put emphasis in developing infrastructure and reducing unnecessary government expenditure. Thus, the government announced reducing expenditure in national celebrations, sitting allowances, printing (T-shirts, caps, bags, diaries, calendars etc.), foreign travels and short term trainings. Other commendable measures taken by the government to reduce expenditure include:

- The use of public facilities to conduct meetings, workshops, trainings and seminars;
- The use of Government entities in procuring services such as insurance, transport, mail delivery, freight and packaging and advertising;
- To control the use of vehicles to reduce operating costs, maintenance and purchase of new vehicles;

To reduce the use of telephone, electricity and water, ensuring that the government use *LUKU* (the method of paying electricity according the amount one use) in electricity use and installing metres for water usage in government buildings to manage water usage and control expenditure;

280 Ibid.

LHRC commends the government for taking these measures to account for and reduce government expenditure.

The 2016/17 budget was the first budget of the fifth phase government under President John Pombe Magufuli following the 2015 General Elections. The fifth government came into power with emphasis on improving the industrial sector of the country. The 2016/17 budget thus was prepared to address the same and themed “**Industrial growth for job creation.**”²⁸¹ To that effect the government announced increase of the development budget reaching 40% of the total budget compared to a total of 25% of the 2015/16 budget.²⁸² The Government announced that the main focus of the 2016/17 budget will be in the following areas of priority:²⁸³

- Intervention for fostering economic growth and industrialization;
- Integrate economic growth and human resources;
- Enabling business environment ;
- Effectiveness in implementation oversight and implementation of the plan.

LHRC commends the efforts by the Government to increase the development budget to reach 40%. However, based on past experiences, LHRC is concerned on whether the allocated budget will be released to realize the targeted goals by the end of the 2016/17 fiscal year.

5.2 Right to Own Property

The right to property is classified as a human right for natural persons regarding their possessions.²⁸⁴ Right to property is enshrined in article 17 of the Universal Declaration of Human Rights (UDHR) of 1948; but is neither included in the International Covenant on civil and Political Rights (ICCPR) nor the International Covenant on Economic, Social and Cultural Rights (ICESCR) because of controversy in terms of its existence and interpretation.²⁸⁵

The Constitutional of the United Republic of Tanzania of 1977 guarantees the right to own property.²⁸⁶ The right to property is also protected under the Penal Code in

281 URT Ministry of Finance and Planning: government Budget for Financial Tear 2016/17 – Citizens’ Budget Edition.

282 URT Ministry of Finance and Planning: Budget Execution Report for the First Half of the Fiscal Year 2016/17.

283 2016: Ministry of Finance and Planning.

284 AA Berle. ‘Property, production and Revolution.’ (1965) 65 Columbia Law Review.

285 Doebbler, Curtis (2006): Introduction to International Human Rights Law.

286 Article 24.

offences related to property ownership.²⁸⁷

5.2.1 Human Rights Violations in Land-related Conflicts

Land is a primary asset for survival and major source of income and livelihood especially for the rural population. It is estimated that about 80% of Tanzanian population lives in rural areas where the main economic activity is subsistence agriculture.²⁸⁸ Land is thus a vital asset, not only as valuable for economic activity but also because it carries spiritual value.

Given the importance of land in livelihood of the majority of the population in the country, land use is at high pressure resulting to conflicts in its use. Thus, there are frequent clashes between pastoralists and farmers over the use of land. These conflicts usually lead to violent clashes, causing serious injuries and loss of life. As a result the two communities, the pastorals and farmers are in constant situation of fear affecting their co-existence. Of recent years due to increasing investment in agriculture pressure on land use has as well increased resulting to conflicts extending between investors and village authorities and sometimes farmers in the respective villages.

Land related conflicts have become prevalent in Tanzania in both rural and urban areas. In urban areas land conflicts are mainly between individual over ownership of the same, as most land in urban areas is not planned land thus creating conflicts especially on demarcation of the same. In rural areas land conflicts take a different form where they go beyond individual ownership. Land conflicts in rural areas are caused by tribalism, pressure in economic activities (commercial agriculture), investment and conservation.²⁸⁹ Land related conflicts account for majority dispute reported. For instance in 2016 among the disputes reported at LHRC Legal Aid Clinics land related disputes made the majority of all disputes.²⁹⁰

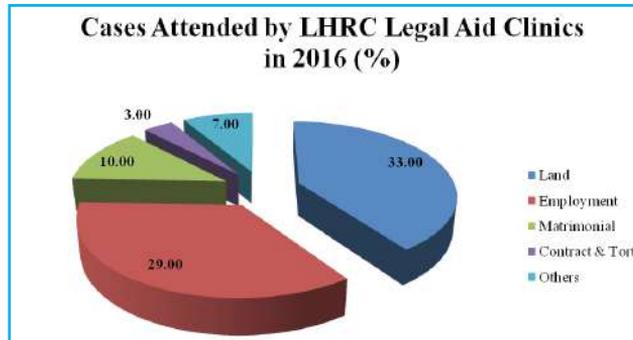
287 The Penal Code criminalizes theft as an offence against property ownership.

288 URT: 2012 Population and Housing Census.

289 LHRC (2015): Mini Study on Land Related Conflicts in Tanzania.

290 LHRC (2016): Legal Aid Clinic.

Table 18: Disputes Reported at LHRC Legal Aid Clinics in 2016



Land Conflicts in Morogoro Region

Morogoro region is endowed with vast fertile land. This has attracted settlement of people from different parts of the country seeking to engage in agriculture. As a result demand for land for commercial agriculture has increased as well as the demand for area for settlement and areas for pastures for pastoralists. The demand has resulted in great pressure on land use, resulting to conflicts between these different land users. Thus, Morogoro region has experienced conflicts between farmers and pastoralists; between neighbouring villages; between investors and villagers and/or farmers etc.

The districts which have experienced constant land conflicts are Ifakara, Kilosa, Mvomero and Morogoro Rural. Among the reasons resulting to land conflicts are as follows:

- i. Local leaders in some of the affected villages instigate the conflicts for their own gains, be political or economic;
- ii. Poor response by the government when conflicts arise;
- iii. Disregard of the rule of law by local government authorities;
- iv. Un-willingness of the Government authorities in these areas to cooperate with non-state actors, such as NGOs in addressing the situation;
- v. Lack of village land use plan due to various reasons.

LHRC has conducted fact finding missions in Morogoro region and among the findings established are the following:²⁹¹

- i. There are many unresolved land conflicts in the region with available records of the same. However, no serious steps have been taken to resolve the same

291 LHRC (2016): Human Rights Monitoring Unit.

by the Government. In some instances the Government officials have been accused of instigating these conflicts. A good example is the situation in the case of Ngaite village and Parakuyo in Kilosa District;

- ii. The villagers in the village of Ngaite, Parakuyo and Mofu are in danger of being evicted from their village land without following the due process. The government at the District level has shown intention to conduct an eviction without following proper procedure of the law. In some cases resolution has been issued in municipal council such as the case for Parakuyo village;

Table 17: Timeline of Pastoral Evictions carried out in Morogoro Region between 2009 - 2015

Year	District	Eviction
2009	Kilosa District	Operation Remove Livestock from Kilosa: 2,00 people & 20,000 livestock were evicted; 800 million shillings paid in 'fines' to the district authorities;
2009	Kilombero and Ulanga districts	Operation Remove Livestocks from Ulanga & Kilombero: 2000 and 20,000 livestock were evicted and 105 million shillings paid in 'fines' district authorities;
2012	Kilombero and Ulanga districts	Operation Save Kilombero valley: 5,000 people and 250,000 livestock and 700 million shillings paid in 'fines';
2011-2013	Morogoro region	Violent, sometimes lethal, encountered between TANAPA and pastoralists in the vicinity of wildlife protection areas;
2013	Kilosa district	13 Maasai business properties burned and destroyed in Dumila town;
2013	Mvomero district	Deadly clashes in Kambala village between Maasai and gangs leaving 7 people dead and other 50 injured;
2013	Morogoro region	Regional and District Commissioners declared that pastoralist (Maasai and Datoga) were to be removed.
2013-2015	Morogoro Municipality and Morogoro Rural	Declared that all pastoralists were to be removed from the district.

Source: IWGIA (2015) Briefing Note: Ethnic Violence in Morogoro Region in Tanzania

- iii. The increasing population in the light of diminishing land resources and environmental stress in a situation of land governance deficits has led to numerous land conflicts; between societies, communities and the State; and between communities and investors. In these situations pastoralist communities are the most affected as they are the minority in the society. Pastoral communities are usually accused of invading areas which have previously been resided by farmer communities. Their pastoral economic activities are perceived negatively for environmental degradation and as a source of conflict;

- iv. In many villages the land use plan has not been conducted, as a result the land is not allocated in accordance with economic activity to be conducted thus leaving room for conflicting activities by different communities;
- v. Increasing livestock and degraded pastures and water sources, coupled with recurring droughts and encroachment on pastoral lands, has resulted in constant conflicts between various groups, fighting over access to pastures, water, and land for agriculture. The land which was reserved for pastoralism has been immersed by Commercial farming to the extent of blocking livestock's corridors and access to important resources such as water and pastures;
- vi. Extensive use of force in resolving the existing land conflicts which has resulted into human rights violations. In many cases the government has considered eviction as the only way of resolving land disputes and has not considered other mechanism which will lead to amicable means of resolving these disputes;
- vii. There is no program in place of making sure that education is provided to land users especially in rural areas to understand the existing laws and dispute mechanism process. Education has also not been provided on village land use management to enable villages manage how they will accommodate different communities with their different economic activities. The role of providing education has mainly been taken by non-state;

5.3 Recommendations/Way Forward

1. To the Government

- i. The Government should ensure that the rule of law and governance is adhered at all levels and especially at the local levels to end such conflicts. The government through the Vice President's Office (VPO) should make sure that it affects an immediate halt to all pastoralist evictions and that any future eviction follows the due process of the law and procedure. The Government should also make sure that the authorities adhere to court orders, rulings and judgments. A good example where such orders have not been respected is in the conflict at Mabwegere village where the orders given in a judgment by the Court were ignored by authorities at the district level in of contempt of court;
- ii. Proper, systematic and comprehensive resolution of land disputes regarding village boundaries in the district should be. The communities should understand that administrative boundaries are not linked to

property rights over natural resources, but are aimed at demarcating administrative boundaries at between neighbouring villages, wards, districts and regions;

- iii. The Government should set up an enquiry committee to investigate eviction of pastoral communities over the past decade. The composition of the commission should be approved affected communities to create trust. The findings of the Committee should be presented before the Parliament and made public for wider utilisation, following the good example of the report on *Operation Tokomeza* (December 2013);
- iv. The communities in affected areas should be empowered to utilize modern agricultural practices and land management methods;
- v. Immediately humanitarian response is required to rescue communities affected by long draughts which have resulted into food shortage.

2. To Civil Societies and Non-State Stakeholders

- i. To continue with legal empowerment and awareness raising to the general public through community radio and television programs;
- ii. To make a close follow to ensure prompt intervention to prevent any potential conflict;
- iii. To develop a permanent solution to ensure that future disputes are avoided. This shall include conducting discussions between farmers, pastoralists and the authorities in coming up with acceptable resolutions by both parties;
- iv. To provide legal aid where need there is need of legal representation; for instance legal aid should be provided to endure there is execution of the decision made by the Court of Appeal in Mabwegere case and also to challenge unconstitutional decision by the the Kilosa District Council of declaring that Ngaite village is a farmer's district;

CHAPTER SIX

RIGHTS OF VULNERABLE GROUPS

Vulnerable groups are groups within the society which are more likely to be victims of violations of fundamental human rights than others. These groups are women, children, persons with disabilities (PWDs), and the elderly. These groups consequently require special protection so that they can equally and effectively enjoy fundamental human rights; and as such there are laws and treaties which specifically provide for the human rights of these groups and ensure effective and equal enjoyment of their rights. These treaties and laws therefore provide additional protection of the rights of the members of these groups other than that provided generally by the international bill of human rights, which is composed of the ICCPR, ICESCR, and UDHR. This chapter looks at the situation of the rights of the members of these groups in 2016.

6.1 Women's Rights

Under international human rights law, other than the international bill of rights,²⁹² women's human rights are provided for and protected under the Convention on the Elimination of All forms of Discrimination against Women 1979 (CEDAW) and the Protocol Additional to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). Domestically, women's rights are contained and guaranteed under the Constitution of the United Republic of Tanzania of 1977, which provides for a bill of rights for everyone in Tanzania. The Constitution provides for equality before the law and prohibits discrimination based on sex and other forms of discrimination.²⁹³

Discrimination and gender-based violence are the major issues hindering women from effectively exercising and enjoying their fundamental human rights across the globe, Tanzania and other developing countries being notorious on this issue. It was against this background that CEDAW and Maputo Protocol were adopted. CEDAW prohibits discrimination against women and calls for States Parties to condemn such discrimination in all its forms and pursue all appropriate means to eliminate it.²⁹⁴ Maputo Protocol also prohibits discrimination against women and calls for states to take measures to curb all forms of discrimination, particularly those harmful practices

292 International bill of rights comprises of the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social and Cultural Rights (ICESCR).

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

294 Article 2 of the CEDAW.

which endanger the health and general wellbeing of women.²⁹⁵ It also provides for key human rights for women in Africa, including the right to dignity,²⁹⁶ right to life,²⁹⁷ right to integrity,²⁹⁸ right to security of person,²⁹⁹ and right to freedom from violence, particularly for the elderly women.³⁰⁰

This sub-chapter discusses violence against women, discrimination, and gender equality as major issues affecting women's rights in 2016.

6.1.1 Violence against Women (VAW)

Violence against women (VAW) is a major problem in realization of women's rights in Tanzania, taking different forms, such as sexual violence, physical (domestic) violence, and psychological violence. It includes rape, sexual harassment at work, trafficking in women and girls, forced prostitution, trafficking in women, beatings, torture, and harmful traditional practices such as female genital mutilation (FGM). VAW is a form of discrimination and constitutes human rights violation,³⁰¹ violating rights such as right to life; right to physical integrity; right to liberty and personal safety; right against torture or cruel, inhuman or degrading treatment or punishment; and right to health.³⁰²

Violence against women means any act of violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women. It also includes threats which such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

UN Declaration on the Elimination of Violence against Women 1993

As a human rights violation, VAW generates state responsibility as states have an obligation under international human rights law to address and

States have obligations to respect, protect and fulfil women's right to a life free of violence

295 Article 2 of the Maputo Protocol.

296 Ibid, Article 3.

297 Ibid, Article 4.

298 Ibid.

299 Ibid.

300 Ibid, Article 22.

301 United Nations Human Rights, Office of the High Commissioner, *Violence Against Women*, Information Series on Sexual and Reproductive Health and Rights, available at http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_VAW_WEB.pdf, accessed 30th December 2016.

302 See Nieves Rico, *Gender-Based Violence: A Human Rights Issue*, available at <http://www.cepal.org/mujer/noticias/paginas/9/27409/genderbasedviolence.pdf>, accessed 30th December 2016; Amnesty International, *Violence Against Women Information*, available at <https://www.amnestyusa.org/our-work/issues/women-s-rights/violence-against-women/violence-against-women-information>, accessed 30th December 2016.

respond to all acts of violence against women,³⁰³ ensuring that private actors do not engage in discrimination against women and girls, including gender-based violence.³⁰⁴ They have a duty to prevent, investigate, and punish acts of gender-based violence, whether such acts are perpetrated by the state officials or by private persons.³⁰⁵ Under the **Maputo Protocol**, Tanzania has a duty to take several effective measures to address violence against women, including enacting and enforcing laws prohibiting all forms of violence against women; and identifying the causes and consequences and taking appropriate measures to prevent and eliminate such violence.³⁰⁶

In 2016, many incidents of sexual violence, particularly rape, were reported. Other incidents were reported on violence against women were domestic violence and physical violence, including witchcraft-related attacks and killings of the elderly women. Statistics of 2016 indicate that the rate of violence against women is still very high, violating women’s rights to life, integrity, security of the person, and freedom from violence.

According to the Dar es Salaam Special Zone police report, **incidents of rape** in the city increased from **972** in 2015 to **1030** in the period of January to December 2016.

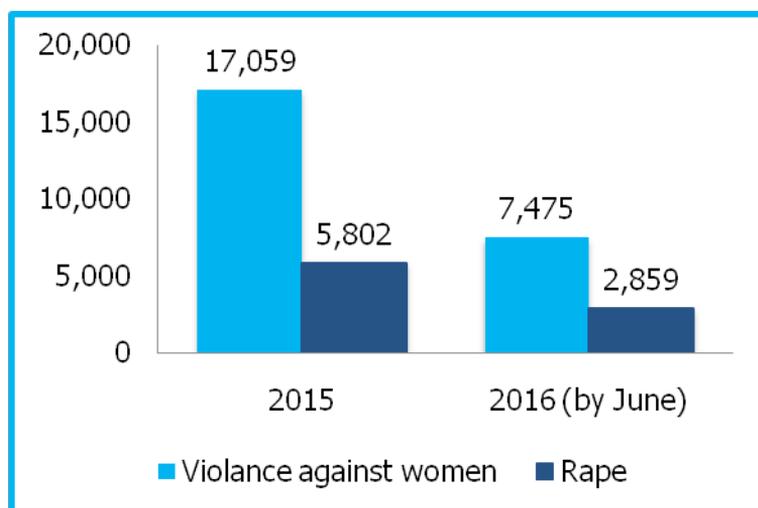


Figure 19: Incidents of violence against women and rape in 2015 & 2016

303 United Nations Human Rights, Office of the High Commissioner, *Violence Against Women*, Information Series on Sexual and Reproductive Health and Rights, available at http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_VAW_WEB.pdf, accessed 30th

304 Ibid.

305 Article 4 of the UN Declaration on the Elimination of Violence Against Women 1993; Article 4(2) (e) of the Maputo Protocol.

306 Article 4(2)(a) & (c) of the Maputo Protocol.

As the figure above indicates, a total of 17,059 cases of violence against women were reported to the police in 2015, including 5,082 cases of rape,³⁰⁷ whereas from January to June 2016, a total of 7,475 cases of violence against women were reported.³⁰⁸ Out of these cases, 2,859 were rape cases, an increase of 1,585 rape cases were reported during the same period.³⁰⁹ In Kilimanjaro Region, the police revealed that from March to August 2016, there were 151 rape incidents reported, compared to 92 reported during the same period in 2015.³¹⁰

The table below highlights some of the incidents of violence against women that were reported in 2016, including rape, spousal/domestic violence and witchcraft-related killings.

Table 18: Incidents of Violence against Women Reported in 2016

Description	Source	Date
A young woman, Oliver Erasto (22), and her child aged 3 were brutally killed by two assailants, Rajabu Juma and Flowin Mbwale in Bagamoyo District – Pwani Region	TAMWA Press Release	18 May 2016
A nurse, Elizabeth Misango (54), was brutally killed by unknown assailants with machetes in Kagu area, Geita Region	TAMWA Press Release	18 May 2016
Yunis Peter, a resident of Dar es Salaam, was brutally murdered in a guest house with a sharp object in Ifakara, Morogoro Region.	TAMWA Press Release	18 May 2016
In September 2016, Ashura Kadoshi (50) was killed by unknown people sent by her estranged husband, who had wanted them to get back together, in Geita Region	<i>Mwananchi</i> Newspaper	25Sep 2016
A woman called Rehema Lubinza (47) was brutally attacked to death by her husband with a machete in Tumaini area, Mlele District, Katavi Region	TAMWA Press Release	18 May 2016
A 21-year old woman was raped and sodomized by a group of about 11 men in Dakawa area. The perpetrators recorded the sexual violence incident and circulated it in the social media in Mvomero, Morogoro Region.	TAMWA Press Release	18May 2016

307 See LHRC (2016), Tanzania Human Rights Report 2015, p. 140.

308 See LHRC (2016), Biannual Human Rights Report.

309 Ibid.

310 *Majira* Newspaper, 19th September 2016; HABARILEO Newspaper, 18th September 2016.

According to the Shinyanga Regional Police Commander, Muliro Jummane, 26 elderly women were killed on suspicion of practicing witchcraft from January 2015 to June 2016 in Shinyanga Region.	<i>Mwananchi</i> Newspaper	19Sep 2016
In September 2016, police in Shinyanga held five people from the same family who were allegedly involved in the killing of a 68-year old Veronica Mtaki, who had been accused by children of her brother in law of being a witch in Shinyanga Region	<i>The Guardian</i> Newspaper	13 Sep 2016
A 65-year old woman was raped in Tegeta area. Perpetrator was caught in the act. Victim's relatives claiming foul play by police in reluctance to apprehend the perpetrator in Tegeta, Dar es Salaam	LHRC Gender Unit	Jan 2016
A 23-year old woman was allegedly sodomized by her employer in Mwika area - Moshi, Kilimanjaro Region.	LHRC Human Rights Monitoring Unit	Jan 2016
A woman popularly known as "Mama Koku" hanged to death by her husband in Kisangani, Kigoma Region.	Jamvi la Habari blog	8Sep 2016

Source: LHRC Survey 2016

In 2016, the report on the demographic and health survey of 2015-2016 was released. On the issue of **domestic violence**, the report indicates that the percentage of women who have experienced physical violence since age 15 remains the same since 2010.³¹¹ Survey findings show that violence is more common in the Lake and Western zones, particularly in Mara and Shinyanga regions, than in other zones.³¹² Such violence is mainly perpetrated by persons who have a close relationship with a woman, either husbands or partners. The table below provides a summary of findings of the demographic and health survey conducted in 2015-16 on physical, sexual, and spousal violence.

311 Ministry of Health, Community Development, Gender, Elderly and Children (MoHCDGEC) [Tanzania Mainland]; Ministry of Health (MoH) [Zanzibar], National Bureau of Statistics (NBS); Office of the Chief Government Statistician (OCGS); and ICF, 2016. *Tanzania Demographic and Health Survey and Malaria Indicator Survey (TDHS-MIS) 2015-16*. Dar es Salaam, Tanzania, and Rockville, Maryland, USA: MoHCDGEC, MoH, NBS, OCGS, and ICF, p. 369.

312 Ibid.

Table 19: Violence experienced by women aged 15 - 49

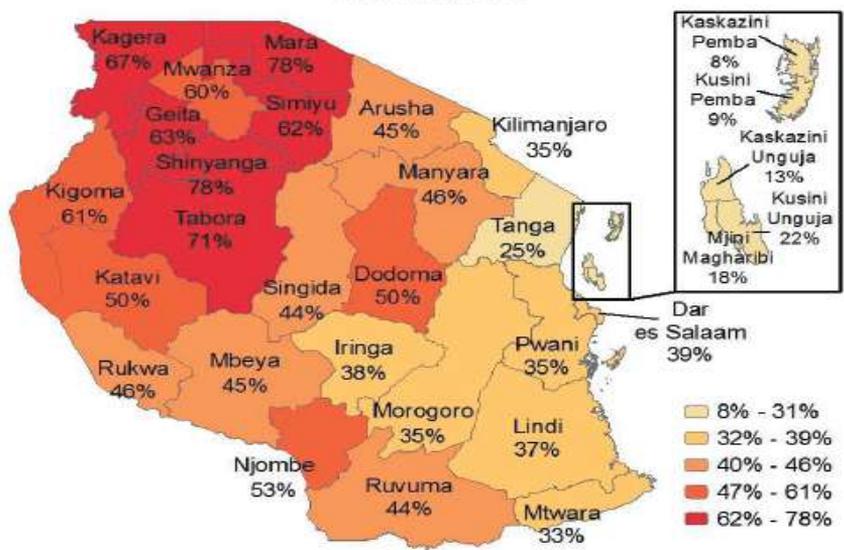
Violence Type	Percentage
Physical Violence	<p>Experienced by 40% of women since age 15</p> <p>Experienced by 22% of women within past 12 months of 2015-16</p> <p>Experienced by 8% of women during pregnancy</p>
Sexual Violence	<p>Experienced by 17% of women</p> <p>Experienced by 9% within past 12 months of 2015-16</p> <p>Prevalent in Western and Lake zones</p>
Spousal Violence	<p>Experienced by 50% of all ever-married women (physical, sexual, or emotional violence)</p> <p>Experienced by 38% of women in the past 12 months of 2015-16</p> <p>Forms of violence include slapping (most common), choking, burning, forced sexual intercourse, and attacking with a weapon</p> <p>Has declined by 6% and 4% for physical and emotional violence respectively since 2010. Physical violence from 33% to 27% and emotional violence from 32% to 28%.</p> <p>Rate of violence highest in Mara and Shinyanga Region (Lake Region), both with 78%</p>

Source: TDHS-MIS 2015-16

Figure 20: Spousal Violence by Region

Figure 17.4 Spousal violence by region

Percentage of ever-married women age 15-49 who have ever experienced physical, sexual, or emotional violence committed by their husband/partner



Source: TDHS-MIS 2015-16

Reasons for prevalence of violence against women include witchcraft beliefs (especially for the older women), drunkenness among men, and suspects colluding with families of victims to hide evidence.³¹³ The findings of the demographic and health survey of 2015-16 show that 80% of women whose husbands or partners get drunk very often have ever experienced spousal violence.³¹⁴ For the case of witchcraft-related killings please refer to Chapter Two of this report, which show that elderly women are the major victims, especially those with red eyes. These killings constitute violence against these women, violating their right to life.

LHRC survey in 10 regions in 2016 revealed that most women who encounter violence from their spouses decide against reporting to authorities due to their dependence on them. For instance, a social welfare officer interviewed in Tabora Region by the LHRC research officers had this to say about the women of the Nyamwezi tribe in relation to domestic violence:

313 LHRC (2016), Biannual Human Rights Report.

314 See the Tanzania Demographic and Health Survey and Malaria Indicator Survey (TDHS-MIS) 2015-16 Report (supra).

“Domestic violence cases ni nyingi. Ila wanawake wengi wa kinyamwezi wanaogopa kuwashtaki wenzi wao sababu bado wanawategemea kiuchumi.”

“There are many domestic violence cases. However, most Nyamwezi women are afraid of reporting their spouses to the authorities (police) because they mainly depend on them economically.”

However, the statistics show that more women are reporting incidents of physical or sexual violence perpetrated against them than in previous years. The demographic and health survey 2-15-16 report indicates that the percentage of women who are seeking help has increased by almost 20% since 2010, especially in Iringa (72%) and Morogoro (70%) regions.³¹⁵

On 13th December 2016, Tanzania launched a five-year National Plan of Action to End Violence Against Women and Children 2017/18 – 2021/22). The plan consolidated eight different action plans addressing violence against women and children to create a single comprehensive, National Plan of Action to eradicate violence against women and children in the country. It seeks to contribute to the Agenda 2030 Sustainable Development Goals (SDGs) and Union Commission’s Agenda 2063.

Addressing challenges of gender equality will be key for Tanzania to reach Goal 5 of the Sustainable Development Goals (SDGs) “Achieve gender equality and empower all women and girls.”

6.1.2 Discrimination in Inheritance and Administration of Property

Right to inheritance is among the most violated women’s rights in Tanzania, particularly in rural areas where customary laws are mostly practiced. This right is recognized under various regional and international human rights treaties that have been ratified by Tanzania, mainly the Maputo Protocol and the Convention on the Elimination of all Forms of Discrimination (CEDAW).

In 2012, a case against the United Republic of Tanzania was filed before the United Nations Committee on the Elimination of Discrimination against Women.³¹⁶ The case, which was filed following extensive legal proceedings in Tanzania, was about two Tanzanian widows who had been denied inheritance under customary inheritance

315 Ibid.

316 *E.S and S.C. v the United Republic of Tanzania*, CEDAW/C/60/D/48/2013/ Communication No. 48/2013

law.³¹⁷ The two women had been denied the right to inherit or administer the estates of their late husbands, evicted from their homes by their in-laws. The Committee declared that the Local Customary Law (Declaration No. 4) discriminates against women, denying them their right to inherit property, hence should be reformed.³¹⁸ The decision of the CEDAW Committee has a huge significance for millions of women in Tanzania and beyond.

The Committee also ordered the women to be remedied with appropriate reparation and adequate compensation. The Committee urged the Government to take the necessary steps to amend or repeal customary laws that discriminate against women, including inheritance laws, and eliminate discrimination of women and girls in inheritance and administration of property. However, the Government is yet to implement the CEDAW Committee recommendations as the oppressive customary laws continued to exist and applied in 2016, denying millions of women in Tanzania their rights to inheritance and owning property, especially owning or accessing land.

6.1.3 Gender Equality and Women's Participation in Decision-Making

According to the SADC³¹⁹ Protocol on Gender and Development, Gender equality means the equal enjoyment of rights and the access to opportunities and outcomes, including resources, by women, men, girls, and boys.³²⁰ The Protocol seeks to promote gender equality to ensure that men and women enjoy equal rights and opportunities. Among the key provisions in this Protocol is the obligation of States Parties to undertake measures to ensure that at least 50% of decision-making positions in the public and private sectors are held by women, including the use of affirmative action measures.³²¹

The Government has taken commendable efforts to increase female representation and increasing women's participation in decision-making bodies over the past decade. However, the situation in 2016 indicates that Tanzania is moving backwards in terms of achieving the 50% of women in leadership and decision-making positions. Statistics show that the number of women in decision making positions has fallen in the fifth phase government, under President John Magufuli, compared to the fourth

317 Amnesty International Annual Report 2016/17 at <https://www.amnesty.org/en/latest/research/2017/02/amnesty-international-annual-report-201617/>, accessed 20th February 2017.

318 Ibid.

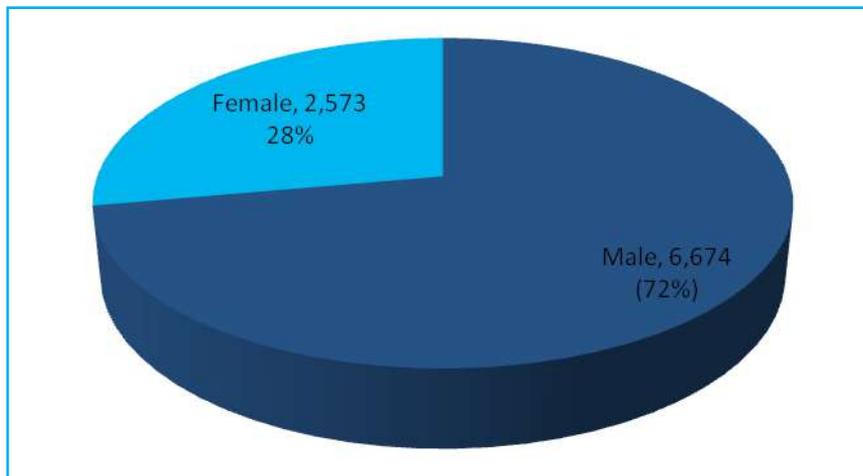
319 Southern African Development Community (SADC) is a regional economic community comprising 15 Member States in Africa, namely Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

320 See Article 1(2) of the SADC Protocol on Gender and Development 2008.

321 Ibid, Article 12(1).

phase government, under President Jakaya Kikwete.³²² The ratio of women to men in the Government currently stands at 28:72, whereby women holding positions are 2,573 and men are 6,674.³²³

Figure 21: Leadership Positions in Civil Service by Gender in 2016



Source: Ministry of State, President’s Office – Public Service Management

In LHRC’s view, the 50-50 representation is best guaranteed under the Second Draft Constitution, but was disappointingly removed in the Proposed Constitution by the Constituent Assembly. While the fifth phase Government has done well to increase the number of women judges, other areas of leadership and decision-making positions have less female representation compared to the previous Government.

Table 20: Women in Various Leadership Positions in 2015 & 2016

Leadership Position	Number/Percentage	
	4 th Phase Govt	5 th Phase Govt
Judges	39%	41%
Minister & Deputy ministers	16 out of 57 (28%)	9 out of 35 (25.7%)
MPs	127 out of 357 MPs 21 elected MPs	141 out of 396 MPs (37%) 26 elected MPs
District Administrative Secretaries	40%	16%

322 *Mwananchi* Newspaper “Why JPM lags behind on 50-50 gender issue” 8th March 2017.

323 Ibid.

Leadership Position	Number/Percentage	
	4 th Phase Govt	5 th Phase Govt
Permanent & Deputy Permanent Secretaries	20 (37.7%)	10(20%)
Ambassadors	36%	9 out 33 (21%)
Regional Commissioners		5 out of 26 (19%)
District Commissioners	53	25 out of 134

LHRC calls upon the Government to fully implement the SADC Protocol on Gender and Development of 2008 in order to safeguard women’s right to gender equality and guarantee their representation in key government positions and participation in decision-making.

6.1.4 Conclusion and Recommendations

Violence against women is a major problem hindering women from fully realizing their fundamental rights guaranteed under the regional and international human rights treaties ratified by Tanzania. While the statistics may generally indicate a slight improvement of gender-based violence human rights violations, the rate of violence against women is still high. Denial of inheritance and right to own property continue to be among key issues affecting women in Tanzania, particularly in rural areas.

To improve women’s rights, LHRC recommends the following:

- The Government, through the Ministry of Legal and Constitutional Affairs, to spearhead law reforms to include marital rape as a crime;
- The Government to ensure enactment of a specific and comprehensive law on gender-based violence as the current legislations do not adequately address gender-based violence issues;
- The Government, through Ministry of Constitutional and Legal Affairs, to implement CEDAW Committee’s recommendations made in 2015 in the case of two widows (E.S and S.C) including repealing customary laws that discriminate against women in inheritance and administration of property;
- The Government, through Ministry of Constitutional and Legal Affairs, to harmonize laws on administration of deceased’s estates to address the problem of conflict of laws applicable during administrate of estate;

- The Government, through the Ministry of Health, Community Development, Gender, Elderly, and Children, and the Ministry of Home Affairs, to ensure that acts of gender-based violence (violence against women) are prevented and investigated;
- The Ministry of Legal and Constitutional Affairs to ensure that courts prosecute and punish acts of gender-based violence; and
- The Government to consider gender parity and equality in leadership and decision-making positions in order to increase female representation.

6.2 Children's Rights

Children rights are protected under the Constitution of the United Republic of Tanzania of 1977, which provides for rights of all people in Tanzania. In 2009, a specific law for protection and promotion of children rights was enacted. This law is called the Law of the Child Act 2009. Internationally, there is the United Nations 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, human rights treaties specific for children.

Under regional and international child rights treaties, Tanzania has an obligation to take all appropriate measures to protect children within its territory from all forms of abuse such as torture; violence; inhuman or degrading treatment; and especially sexual abuse and exploitation.³²⁴ It also has an obligation to protect female children from harmful practices that affect their welfare, dignity, normal growth and development, such as female genital mutilation and child marriage.³²⁵

This sub-chapter discusses violence against children in the form of sexual violence, child abuse and torture, child marriage, and female genital mutilation, as major issues affecting children's rights in Tanzania in 2016.

6.2.1 Child Marriage and Pregnancy

Tanzania is duty bound under the Maputo Protocol to undertake appropriate national legislative measures to guarantee that the minimum age of marriage for women is 18 years.³²⁶ The African Charter on the Rights and Welfare of the Child specifically calls

324 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.

325 Article 5 of Maputo Protocol; Article 21 of the African Charter on the Rights and Welfare of the Child.

326 Article 6 of the Maputo Protocol.

for states to prohibit child marriage and take legislative action to ensure minimum age of marriage is 18 years.³²⁷ However, the Law of Marriage Act 1971 still allows child marriage.

Court Rules against Child Marriage, declares Age of Marriage to be 18

In July 2016, the High Court of Tanzania issued a judgement in the case filed by the director of a girls' right to education organization called *Msichana Initiative*.³²⁸ In its petition before the Court, the organization argued that by allowing girls to be married, the Law of Marriage Act 1971 denies girls their fundamental rights such as right to equality, right to dignity, right to health, and right to education, guaranteed by the Constitution of Tanzania 1977 and Law of the Child Act 2009.³²⁹ In its landmark decision the High Court **declared sections 13 and 17 of the Law of Marriage Act unconstitutional** and declared marriage age to be 18 (age of majority) for both sexes.³³⁰ The Court directed the Government to amend the marriage law within one year starting from the date of the Judgement, which was 8th July 2016, making 18 the age where citizens (male and female) can enter into marriage.³³¹

Sections 13 and 17 of Law of Marriage Act of 1971 permit child marriage at the tender age of 14 years with the consent of the Court, and 15 years with the consent of the parents

While child rights stakeholders hailed the High Court's decision as a positive step towards ending child marriage in Tanzania, they were shocked by the Government's decision to appeal against the decision.³³² In response to this decision, the Tanzania Ending Child Marriage Network (TECMN), of which LHRC is a member, issued a statement in August 2016, expressing its sadness and dissatisfaction at the decision by the Government to appeal, noting the serious implication it has on the status of child marriage in Tanzania.³³³

327 Article 21(2) of the African Charter on the Rights and Welfare of the Child.

328 See *Rebeca Z. Gyumi vs. the Attorney General*, Miscellaneous Civil Cause No. 5 of 2016, available at http://las.or.tz/wp-content/uploads/2016/07/REBECA-Z.-GYUMI-vs-A.G_Misc-Civil-Cause-No.5-of-2016.compressed.pdf, accessed 24th December 2016.

329 Ibid, p. 3.

330 Ibid, p. 27.

331 Ibid.

332 *Mwananchi* Newspaper "Government to appeal against ruling on minimum age of marriage" 3rd August 2016.

333 See Press Release Statement on Attorney General's Notice to Appeal Against the Child Marriage Case, 4th July 2016, available at <http://tanzaniaendingchildmarriagenetwork>.

“Unakuta umempokea mteja ana watoto 3, ukimuuliza umri ana miaka 19.”

“You may receive a female client with 3 children, when you ask how old she is she says 19 years.”

Social Welfare Officer - Tabora

In 2016, child pregnancy and marriage were cited as the major factors for girls to drop out of school, ending their education journey and leaving them vulnerable to spousal violence. LHRC’s Biannual Human Rights Report 2016 indicates that **2 out of 5** girls are forced into marriage before attaining age of majority as the Law of Marriage Act 1971 continues to leave loopholes and promote child marriage.³³⁴

Recent report by the United Nations Population Fund (UNFPA) on prevalence of child pregnancy in Africa indicates that Tanzania **ranks first on child pregnancy** in East Africa and third in Africa.³³⁵ Katavi ranks first in this regard, according to the National Bureau of Statistics, followed by Tabora and Simiyu Regions.³³⁶ In Dodoma Region, it was reported by the District Commissioner that 53 school girls were impregnated in Dodoma District from January to October 2016, six of which were primary school girls.³³⁷ In September 2016, the Regional Commissioner of Kilimanjaro Region noted that a total of 238 students of primary and secondary schools were impregnated between January and August 2016, with Rombo District leading, with 60 cases of child pregnancies.³³⁸ In Moshi District, 31 school girls were found to be pregnant.³³⁹ In Serengeti District – Mara Region, it was reported that 26 primary school students were impregnated in the period between January and March 2016.³⁴⁰

On the issue of child marriage recent statistics by the Ministry of Health, Community Development, Gender, Elderly, and Children indicate that Shinyanga Region leads in child marriages with 59%, followed by Tabora with 58% and Mara with 55%.³⁴¹ The figure below shows the percentages of child marriage in different regions of Tanzania Mainland.

blogspot.com/2016/08/press-release-statement-on-attorney_11.html, accessed 24th December 2016.

334 LHRC (2016), *Biannual Human Rights Report 2016*.

335 *Mwananchi* Newspaper “Mimba za utotoni tishio Shinyanga” 7th June 2016; *Mwananchi* Newspaper “Katavi kinarua mimba za utotoni” 11th July 2016.

336 Ibid.

337 *The Citizen* Newspaper, 17th October 2016.

338 *Majira* Newspaper, 19th September 2016; also *DailyNews* and *Mtanzania* Newspapers of the same date.

339 *Nipashe* Newspaper, 8th November 2016.

340 LHRC (2016), *Biannual Human Rights Report*.

341 *JAMBO Leo* Newspaper, 14th October 2016.

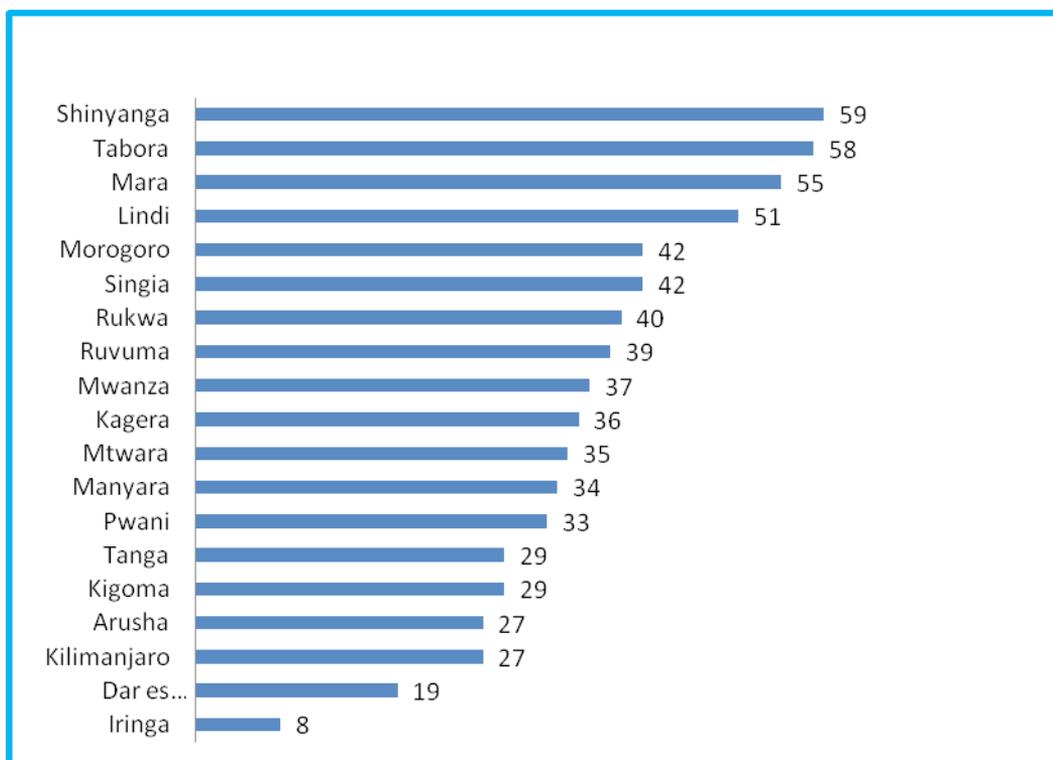


Figure 22: Regional Percentages of Child Marriage in Tanzania Mainland

6.2.2 Sexual Violence

Increased Trend of Sexual Violence in Dar es Salaam, Mbeya, Morogoro, Pwani, and Kilimanjaro

In 2016, the police reports indicate an increase in incidents of child rape and sodomy, whereby 1,765 incidents were reported in the period of January to March, which is an increase of 180 incidents compared to the same period of 2015.³⁴²

In September 2016, the Police Force released another report which indicated that **2,571 children were raped from January to July 2016**,³⁴³ with Dar es Salaam recording the most child rape incidents, with a staggering 435 incidents, followed by Mbeya with 177 incidents as indicated in the figure below. The report states that **49% of sexual violence against children is perpetrated at home**, while 23% and 15% are

342 Tumaini Msowoya, *Mwananchi* Newspaper “Kunajisi, kulawiti watoto: Janga linakothiri Iringa” 16th June 2016, available at <http://www.mwananchi.co.tz/habari/habari-ya-ndani/Kunajisi--kulawiti-watoto--Janga-linalokithiri-Iringa/1724700-3252174-vcr698z/index.html>, accessed 20th December 2016.

343 See *Mwananchi* Newspaper, 8th September 2016.

perpetrated in streets and at school respectively.³⁴⁴

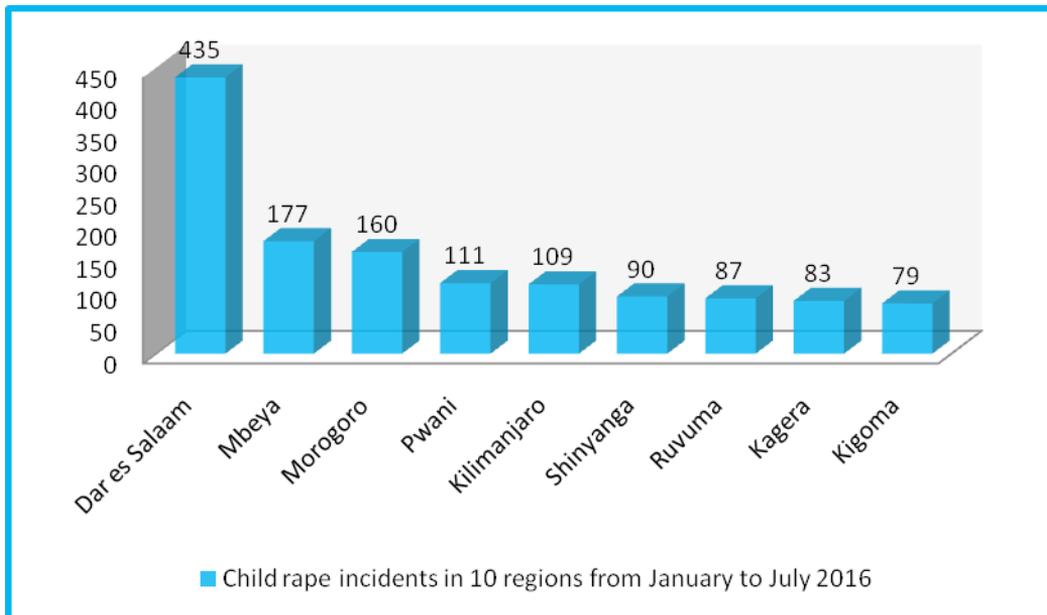


Figure 23: Reported Child Rape Incidents in 10 Regions from January to July 2016

Other regions which recorded a relatively high number of child rape and abuse incidents include Dodoma (79), Mara (78), Iringa (76), Mwanza (74), Tabora (73), and Singida (71). In Iringa Region, an investigation conducted by Mr. Tumaini Msowoya, a journalist with *Mwananchi* Newspaper, revealed an increase of incidents of sexual violence against children, whereby 373 children were subjected to rape and sodomy in 2015 and **37 children were victimized from January to May 2016 in Iringa Municipality alone.**³⁴⁵ Most of the victims are children aged 3 to 10 years old. One of the victims, a 6 year old girl from **Semtema area** in Iringa, stated:³⁴⁶

“Alinituma nimnunulie mafuta ya taa, akasema nimpelekee, nami nikafanya hivyo. Lakini nilipofika alinikamata kwa nguvu akanifunga mdomo ili nisipige kelele, kisha akaniumiza sana”

“He called and asked me to go and buy for him kerosene oil, so I went. When I returned he grabbed me and covered my mouth with his hand so that I do not shout, he then hurt me so bad”

344 Ibid.

345 Ibid.

346 Ibid.

Some of the children who experienced such horrific acts of sexual violence died, as was the case for one girl child who was raped outside her home in Kihesa area, Iringa Municipality. According to the victim’s mother, her child woke up in the middle of the night when she heard someone calling her name to open the door for him, identifying himself as her uncle; and when she opened it she was raped and sodomized. The child died *en route* to the hospital.³⁴⁷ Prevalence of such violence against children in the region has created fear among parents and community members resorting to mob violence against the perpetrators as police investigations take too long. Close relatives, guardians, neighbours, and family guests were identified as major perpetrators of sexual violence against children.³⁴⁸ This was confirmed by social welfare officers in Iringa Municipality during an interview with LHRC research officers.

In Kilimanjaro Region, the police reported that from January to October 2016 child rape incidents that were reported in Moshi District were 102, while child sodomy incidents were 33.³⁴⁹ Most of the victims were aged between 0 and 14 years old.³⁵⁰ Kilimanjaro Region was also among the regions where children were reportedly sodomizing each other at primary schools, together with Arusha and Dar es Salaam.³⁵¹

Table 21: Reported Incidents of Sexual Violence against Children

Description	Source	Date
In Hai District – Kilimanjaro, a teacher at Lemira Secondary was accused of impregnating a form four student	<i>Mwananchi</i> Newspaper	14 Oct 2016
A 13-year old school girl of Mlangalini Primary School in Arusha was raped and impregnated by a 65-year old man in October 2016.	<i>Majira</i> Newspaper	17 Nov 2016
A resident of Mjimwema in Songea Region was accused of sodomizing his own child in January 2016.	LHRC Human Rights Monitoring Unit	22 Jan 2016

347 Ibid.

348 Ibid.

349 See *Nipashe* Newspaper, 8th November 2016.

350 Ibid.

351 *Mwananchi* Newspaper “Wapendekeza wabakaji wahasiwe, wanyongwe” 7th December, 2016.

Description	Source	Date
In October, 2016, a 45-year old man, Hussein Iddi, was convicted and sentenced to 30 years in prison by Handeni Resident Magistrate Court in Tanga Region for raping a 6-year old child. Incident happened in April 2016.	<i>Mwananchi</i> Newspaper	10 Oct 2016
In September 2016, Philbert Julius of Kayenze Village in Geita District – Geita Region was caught in a guest house engaged in sexual intercourse with a 16-year old school girl.	<i>The Guardian</i> Newspaper	19 Sep 2016
Two residents of Ilala District – Dar es Salaam, Samwel Frank and Fatuma Salum, were accused of intoxicating, raping, and sodomizing a 15-year old girl.	<i>JamboLeo</i> Newspaper	20 Sep 2016
Assistant Head teacher at Nyenze Primary School in Kishapu District - Shinyanga, Gizbati Gervas, was accused of impregnating a standard seven student at the school in September 2016.	<i>Majira</i> Newspaper	21 Sep 2016
Godfrey Philemon (31), a resident of Chunya District - Mbeya was sentenced to life in prison for raping and sodomizing his 6-year old stepson in May 2016.	<i>The Citizen</i> Newspaper	12 Sep 2016
A teacher at Mwenge Primary School in Geita District was arrested for allegedly defiling a standard five student in October 2016.	<i>The Citizen Newspaper</i>	14 Oct 2016
A two-year old girl was allegedly raped in Kibirashi Village in Tanga Region.	LHRC Gender Unit	March 2016
17-year old Fabian Paul accused of raping a 4-year old girl and causing her bodily injuries in Mkabogo, Kigoma Region.	LHRC Human Rights Monitoring Unit	
35 primary school students raped and sodomized at Kaloleni Primary School in Moshi, Kilimanjaro Region.	Mwananchi Newspaper, LHRC Human Rights Monitoring Unit	16 Oct 2016

Challenges in Combating Sexual Violence against Children: LHRC's Survey Findings

During interviews with LHRC research officers, social welfare officers in 10 surveyed regions in Tanzania Mainland highlighted the following as challenges in combating sexual violence against children:

1. Slow Pace of Investigation and Prosecution of Perpetrators

“Kuna changamoto ya upepelezi wa polisi kuchukua muda mrefu. Kumekuwa na malalamiko mengi.”

“There is a challenge of police investigation, which takes a long time. There have been many complaints.”

Social Welfare Officer - Iringa

2. There is a Gap in Parenting

“Kuna changamoto pia ya wazazi kutokuwa karibu na watoto wao, hivyo watoto kushindwa kuwaeleza matatizo yao. Tumeanzisha utaratibu wa kuwatumia walimu mashuleni kuwa karibu na wanafunzi ili waweze kuwaeleza matatizo yao, japo nao (walimu) wanaelemewa.”

“There is also a challenge of parents not being close to their children, hence the children not telling them their problems. We have established a system of using teachers at schools to get close to students so that they can open up to their teachers about their problems, although the teacher) are overburdened.”

Social Welfare Officer - Iringa

“Kuna gap katika parenting. Watoto wanaharibika tu, simu na mitandao vikichangia. Hii inachangia watoto kufanyiana ukatili, hasa wa kingono.”

“There is a gap in parenting. Children are spoiled, with mobile phones and internet playing a part. This has contributed to children engaging in violence against each other, especially sexual violence.”

Social Welfare Officer – Bukoba, Kagera

“Vitendo vingi vya ubakaji na ulawiti vinatokea majumbani. Watoto kuangalia picha chafu, wazazi kulala chumba kimoja na watoto, ni tatizo. Pia, wazazi wote wawili wanakuwa busy na shughuli za kiuchumi na hivyo kukosa muda wa kuwa karibu na watoto. Wengi wanakuwa muda mwingi na wafanyakazi wa ndani. Kwa Moshi pia ulevi wa wazazi ni tatizo. Hii inasababisha kukosa muda wa kuwa karibu na watoto, sababu ya kuchelewa kurudi.”

“Rape and sodomy are mainly perpetrated at home. Children watching adult (sexual) content, sleeping in the same room with parents, is a problem. Parents, being busy with economic activities, have little or no time to be close to their children. Children are usually left with house maids. For Moshi, alcoholism amongst parents is also a problem. This causes alcoholic parents to fail to spend time and be close to their children because of returning home late.”

Social Welfare Officer – Moshi, Kilimanjaro

3. Parents, Guardians, or Relatives of Victims Colluding with Perpetrators

“Unaweza kumkuta mtoto anatakiwa kutoa ushahidi ila ndugu au wazazi wanamshurutisha asiseme ukweli. Mara nyingine unakuta familia ya mhanga na wazazi wanaamua kuyamaliza nyumbani na mshitakiwa na hivyo kuharibu kesi makusudi.”

“A child may be required to give testimony in court, but is persuaded by relatives or parents to give false testimony. In other cases the victim’s family and parents decide to settle the matter with the perpetrator at home, hence deliberately weaken the case in court.”

Social Welfare Officer – Mbeya

“Muda mwingi, hasa ambapo mtoto ndiye mhanga wa ubakaji, unakuta wazazi na perpetrator wanayamaliza, labda kwa kupeana pesa, mhanga akibaki bila msaada wowote. Kuna kesi moja baba alikuwa anambaka binti yake mara kwa mara. Yule baba akakamatwa na kufunguliwa kesi. Familia ilipoona kuna uwezekano wa baba kufungwa wakafanya juhudi za kuiua kesi sababu ndiye bread winner wanayemtegemea. Hii ni changamoto kubwa

“In most cases, especially where the rape victim is a child, parents tend to settle the issue with perpetrators, usually by being paid off, leaving the victim without any assistance. There is one case in which a father used rape his daughter regularly. He was arrested and charged. When the family members saw the possibility of him being convicted and sent to prison they made efforts to weaken the case because he was the breadwinner. This is a major challenge.

Social Welfare Officer – Bukoba, Kagera

“Wazazi wanamalizana baada ya mtoto kufanyiwa ukatili na kuyamaliza nyumbani.”

“Parents tend to settle the matter with the perpetrator at home when their children have been victimized.”

Social Welfare Officer – Moshi

4. Concealing ‘Family Shame’ at the Expense of the Victim

“Kwenye ubakaji na ulawiti jamii imekuwa nzito kutoa ushirikiano na ushahidi ili kuficha aibu au kupewa pesa.”

“Community members have been reluctant in providing cooperation and testify in rape and sodomy cases for purposes of ‘concealing shame’ or receiving money from perpetrators.”

Social Welfare Officer - Moshi

“Kwa ukatili wa kingono, wazazi wanaamua kuficha kwa kuwa aliyefanya ukatili ni ndugu, hivyo wanaamua kuficha aibu”

“In cases of sexual violence, parents tend to not report incidents because the perpetrator is a relative; hence they decide to conceal shame.”

Social Welfare Officer - Mbeya

5. Belief in Witchcraft

Belief in witchcraft was identified as a major factor contributing to the increase in sexual violence against children in Iringa. According to Nikodemus Kindole, a resident in Kihesa area, some people, particularly young men, believe that if they rape young children (below 14 years of age) then they could become rich. He noted that there were some flyers circulating within the area suggesting that raping children will guarantee riches, which may have contributed to increase of sexual violence against children in the region.³⁵² Belief in witchcraft was also cited by a social welfare officer in Bukoba – Kagera and the Executive Director of Paralegal Aid Centre Shinyanga (PACESHI) in Shinyanga during interviews with LHRC research officers.

352 See *Mwananchi* Newspaper, 8th September 2016.

“Kuna kesi za wazazi kubaka watoto, hili likihusishwa na imani za kishirikina.”

“There are cases of parents raping their children; and this is mainly attributed to belief in witchcraft.”

Social Welfare Officer – Bukoba, Kagera

Social welfare officers face a number of challenges in attending to cases of violence against children, especially sexual violence, as it was revealed by social welfare officers in regions that LHRC visited. These challenges include insufficient budget; shortage of officers; lack of transport to remote areas to make follow up on incidents and provide assistance; and lack of cooperation from guardians, family members or relatives of the victims.³⁵³

6.2.3 Child Abuse and Torture

Incidents of child abuse and torture were also reported in 2016. LHRC was not successful in obtain official police data, but was able to document the incidents of child abuse and torture through media survey as indicated in the table below.

Table 22: Incidents of child abuse and torture reported in 2016

Description	Source	Date
A mother, Rose Mwanazumi, was arrested in Sumbawanga District – Rukwa for burning her six-year child’s hand after the child returned home late.	<i>DailyNews</i> Newspaper	11 Sep 2016
One Melea Mazengo was arrested for attempting to marry off her 13-year old daughter in Msalato – Dodoma.	<i>Mtanzania</i> Newspaper	22 Jan 2016
A father burned his three-year old child for eating rice without permission in Ukerewe District – Mwanza.	LHRC Human Rights Monitoring Unit	
A student at Mbogoma Secondary School was brutally beaten and injured by 6 teachers in Njombe Region.	Jamii Forums Organization	6 th October 2016
Sebastian Chikungu, a student at Mbeya Day Secondary School was brutally beaten and flogged by 4 teachers in Mbeya Region.	LHRC Human Rights Monitoring Unit, social media	5 Oct 2016

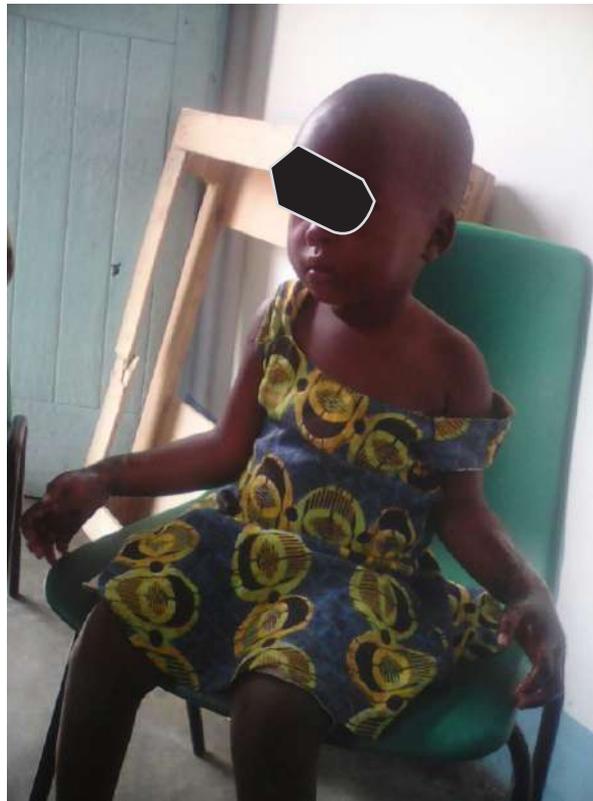
353

LHRC Survey, October 2016.

Description	Source	Date
A 2-year old child was brutally beaten and had his private parts pulled by his step father in Kibaha District – Pwani Region.	LHRC Human Rights Monitoring Unit	5 Jul 2016
A child was attacked with a machete by his uncle following a family dispute.	Channel Ten Television	2 Nov 2016
A father in Mpanda District – Katavi Region burned the fingers of his child’s left hand after accusing him of eating all the vegetables, which cost Tshs. 500.	LHRC Human Rights Monitoring Unit	5 Jul 2016



Picture 14: A child at the Muhimbili National Hospital after he was attacked by his uncle



Picture 15: A three-year old child whose hands were burned by her father for eating rice without permission

6.2.4 Female Genital Mutilation

Efforts by Stakeholders paying off as Statistics indicate Significant Decrease of FGM

Female Genital Mutilation (FGM) is a practice or ritual of removing external female genitalia, involving removing and damaging health and normal female genital tissue, hence interfering with the natural function of girls' and women's bodies.³⁵⁴ FGM is a big problem in Africa, with the World Health Organization (WHO) estimating 3 million females undergoing the procedure each year.³⁵⁵ Tanzania is one of the countries in Africa where FGM is prevalent, with

FGM is mostly carried out on young girls between infancy and age 15

World Health Organization

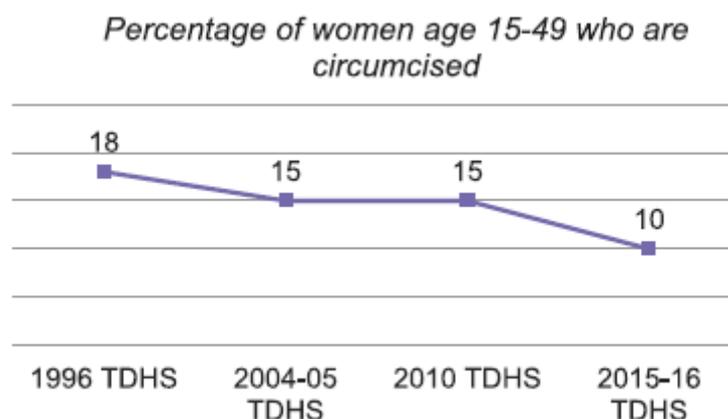
354 See LHRC & ZLSC (Tanzania Human Rights Report 2014).

355 Rainbow organization, *Female Genital Mutilation in Africa*, at <http://www.rainbo.org/female-genital-mutilation-in-africa/>, accessed 29th December 2016.

prevalence of 15% from 2004 to mid-2015.³⁵⁶

However, in 2016, the Government released the report on demographic and health survey for covering the period of 2015-2016, which indicates that **FGM has dropped by 5% in Tanzania** as the figure below shows. This is good news for the Government, CSOs and other stakeholders who have been fighting to end FGM in Tanzania.

Figure 24: Percentage of women aged 15-49 who are circumcised



Source: Tanzania Demographic and Health Survey 2015/16

FGM constitutes violation of girls' and women's rights and is a criminal offence under the Tanzania Penal Code. While the decline in FGM prevalence may indicate actual decline in practice, it may also suggest, at least in part, underreporting of incidents as there is now more secrecy in undertaking FGM.³⁵⁷ The Tanzania Demographic and Health Survey and Malaria Indicator Survey 2015-16 Report indicates that **FGM is more prevalent in Manyara, Dodoma, Arusha, Mara, and Singida Regions**, as the map below indicates.

356 See Ministry of Health, Community Development, Gender, Elderly and Children (MoHCDGEC) [Tanzania Mainland], Ministry of Health (MoH) [Zanzibar], National Bureau of Statistics (NBS), Office of the Chief Government Statistician (OCGS), and ICF, 2016. *Tanzania Demographic and Health Survey and Malaria Indicator Survey (TDHS-MIS) 2015-16*, Dar es Salaam, Tanzania, and Rockville, Maryland, USA: MoHCDGEC, MoH, NBS, OCGS, and ICF. Available at http://www.nbs.go.tz/nbs/takwimu/dhs/Tanzania_Demographic_and_Health_and_Malaria_Indicators_Survey_2015-16_Report.pdf, accessed 29th December 2016.

357 See the Tanzania Demographic and Health Survey and Malaria Indicator Survey 2015-16 Report, p. 359.

Percentage of women age 15-49 who are circumcised

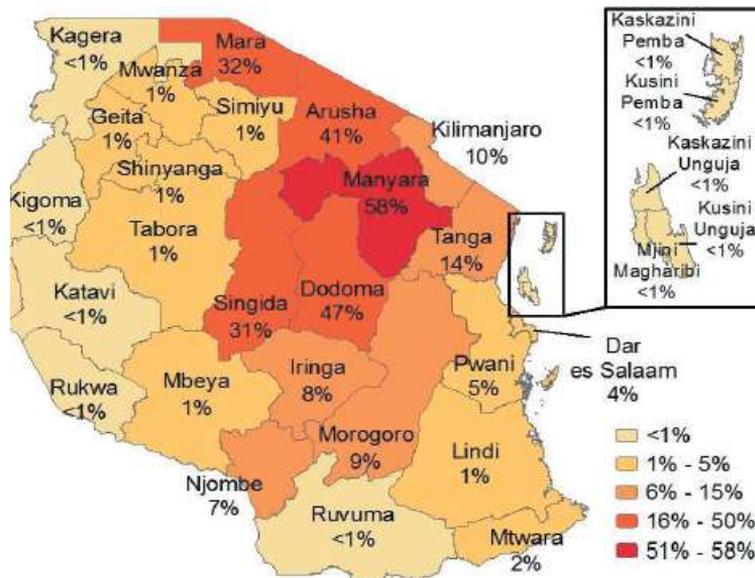


Figure 25: Regional Percentage of women aged 15-49 who have undergone FGM

In Mara Region, female children continued to be at great risk of being mutilated. Reports indicate that FGM is still a major problem in the region, particularly in Serengeti, Tarime and Rorya Districts. Efforts made by the police, Government, and other stakeholders, including the anti-FGM network, have helped to rescue 74% of girls who were scheduled to be cut in Serengeti District in 2016.³⁵⁸ Out of 5621 girls who were to be cut, only 1473 were circumcised.³⁵⁹ 32 people were arrested and charged for practicing FGM in the District.³⁶⁰ The Tanzania Demographic and Health Survey and Malaria Indicator Survey 2015-16 indicates that 82% of women believe that FGM is not required by their religion.³⁶¹ It indicates that 84% of women believe the practice should not be continued.³⁶²

6.2.5 Conclusion and Recommendations

In 2016, children’s rights in Tanzania were hugely affected by increased trend of violence against them, particularly sexual violence, and child abuse and torture. Decrease in incidents of FGM indicates that we are on the right track in protecting

358 LHRC Report on anti-FGM initiative in Serengeti District.

359 Ibid.

360 Ibid.

361 Tanzania Demographic and Health Survey and Malaria Indicator Survey 2015-16 Report, p. 361.

362 Ibid.

Tanzanian girls from this harmful traditional practice. On the issue of child marriage, however, the state's failure to implement its obligations under the treaties protecting girls' rights to end child marriage and subsequently amend the Law of Marriage Act is holding back the fight against child marriage.

To improve the situation of children's rights in Tanzania and reduce violence against them, LHRC recommends the following:

- The Government to fulfill its obligation under the regional and international children rights treaties to end child marriage and confirm the age of 18 as the minimum age for marriage, through a legislative action to amend the Law of Marriage Act 1971;
- The Members of Parliament to increase pressure on the Government to amend provisions on child marriage under the Law of Marriage Act which have been declared unconstitutional by the High Court;
- The police and courts of law to increase the pace of investigation and prosecution of cases of violence against children;
- CSOs and social welfare departments within local governments to increase awareness on violence against children and encourage community members to report incidents to relevant authorities so that the perpetrators can be brought to justice.

6.3 Rights of Persons with Disabilities

Persons with Disabilities (PWDs) across the world are faced with several challenges in enjoying their rights contained in various international human rights instruments, including discrimination and denial of their rights. To address these challenges, the United Nations adopted a specific treaty for protection of rights of PWDs in 2006, the Convention on the Rights of Persons with Disabilities (CRPD). The Convention, which entered into force in 2008, provides for several rights of PWDs, including equality and non-discrimination; right to life; equal recognition before the law; access to justice; liberty and security of person; freedom from torture; freedom from violence, exploitation and abuse; living independently and being included in the community; right to education; right to health; right to work and employment; and right to participation in political and public life.³⁶³ Women and girls with disabilities, who are subject to multiple discrimination, are accorded special protection, with states required to take specific measures to facilitate their access to employment, professional and

363 Articles 5, 10, 12, 13,14,15,16, 19, 24, 25, 27, and 29 of CRDP.

vocational training as well as their participation in decision-making.³⁶⁴ States are also obligated to take all necessary measures to ensure children with disabilities enjoy the fundamental human rights equally with other children.³⁶⁵ The Convention provides for obligations of states to ensure realization of these rights.

Tanzania ratified CRDP in 2009 and domesticated it a year later through enactment of the Persons with Disabilities Act 2010. This Act provides for rights of PWDs stipulated in the CRDP and stipulates duties of government authorities to ensure enjoyment of these rights, including by safeguarding them and eliminating discrimination on the basis of disability.³⁶⁶

Recent statistics indicate that Tanzania has **an estimated 3.5 million PWDs**.³⁶⁷ Challenges that they have been facing include discrimination, including in employment; stigma in the society; and environmental barriers such hindering them from accessing public and social services.³⁶⁸

In 2016, PWDs continued to face a number of challenges which hindered them from fully realizing their fundamental human rights. The main challenges are discrimination in work and employment; accessibility to physical environment, facilities, and services; violence; and discrimination and stigma.

When compared with men with disabilities, women with disabilities are more likely to experience poverty and isolation, and tend to have lower salaries and be less represented in the work force.

UN Committee on the Elimination of Discrimination against Women

6.3.1 Discrimination

Under the CRPD, Tanzania is required to guarantee the right of PWDs to work on equal basis with others and ensure their acceptance in the labour market and work environment that is open, inclusive and accessible to them.³⁶⁹ This right is safeguarded through various measures, including prohibiting discrimination on the basis of disability.³⁷⁰

In 2016, a study conducted by the Tanzania Federation of Disabled People's Organizations (SHIVYAWATA) in Dar es Salaam Region revealed that very few

364 Article 23 of Maputo Protocol; Article 6(1) of CRPD.

365 Article 7 of CRPD.

366 Ibid.

367 See LHRC(2016), Tanzania Human Rights Report 2015, p 155.

368 Ibid, p. 57.

369 Article 27(1) of CRPD.

370 Ibid, Article 27(1)(a).

PWDs are employed in public and private companies and organizations.³⁷¹ **According to the study only 0.7% of PWDs in Dar es Salaam are employed in different companies and organizations.**³⁷² Thus, less than one percent of PWDs in Dar es Salaam are employed. This suggests that PWDs are still facing a lot of discrimination in employment. This denies them the right to work, which is protected under the Constitution, the Persons with Disabilities Act, and CRDP. Right to work is essential for every human being in realizing other rights and living in dignity.³⁷³

In June 2016, the Deputy Minister in the Prime Minister's Office responsible for Policy Coordination, Parliamentary Affairs, Employment and Persons with Physical Disabilities, while attending the 9th session for the Conference of States Parties to the CRPD, revealed that lack of economic opportunities is a big challenge of PWDs.³⁷⁴ Negative perception and discrimination are the main reasons behind the low employment rate of PWDs in Tanzania.

Women with disabilities may be subject to double discrimination on account of gender and disability, and are considered a vulnerable group.

UN Committee on the Elimination of Discrimination against Women

As a result of limited economic opportunities for PWDs, most of them have resorted to begging. There are many beggars who are PWDs in the streets of Dar es Salaam and other cities in Tanzania, particularly around the city centres and along the main roads. This is not a life with dignity.

Another challenge that PWDs continued to face in 2016 is discrimination and stigma within communities, although awareness-raising initiatives by the Government and CSO stakeholders have helped to reduce stigma and discrimination, compared to previous years. This challenge was highlighted at the UPR process meeting in Geneva, Switzerland in 2016.³⁷⁵ PWDs are taken to be recipients of charity because

371 East African Television "Wenye ulemavu walalamikia kutengwa na mfumo" 25th November 2016, available at <http://www.eatv.tv/news/current-affairs/wenye-ulemavu-walalamikia-kutengwa-na-mfumo>, accessed 28th December 2016.

372 Ibid.

373 See Report of the Officer of the United Nations High Commissioner for Human Rights, *Thematic Study on Work and Employment of Persons with Disabilities*, at <http://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx>, accessed on 30th December, 2016.

374 *Mwananchi* Newspaper "Naibu Waziri awasemea walemavu UN" 16th June 2016, available at <http://www.mwananchi.co.tz/habari/Naibu-Waziri-awasemea-walemavu-UN-/1597578-3251744-piy519z/index.html>, accessed on 29th December, 2016.

375 *Mwananchi* Newspaper "Naibu Waziri awasemea walemavu UN" 16th June 2016, available at <http://www.mwananchi.co.tz/habari/Naibu-Waziri-awasemea-walemavu-UN-/1597578->

of perception that they are helpless and cannot do much for themselves or people who decisions must be made for them. This denies them their right to live independently and being included in the community.³⁷⁶

6.3.2 Accessibility to Physical Environment, Facilities, and Services

The Convention on the Rights of Persons with Disabilities provides for the PWDs' right to accessibility, requiring states to take appropriate measures to ensure they can access, on equal basis with others, the physical environment, transportation, information and communication, and other facilities and services open or provided to the public.³⁷⁷ All barriers and obstacles to accessibility must be identified and eliminated.³⁷⁸

In 2016, the Deputy Minister in the Prime Minister's Office responsible for Policy Coordination, Parliamentary Affairs, Employment and Persons with Physical Disabilities, mentioned lack of facilities and services that will enable them to realize their rights as one of the major challenges affecting PWDs.³⁷⁹

6.3.3 Violence against PWDs

States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

Article 16(1) of CRPD

As a marginalized group, PWDs are among the major victims of violence. Chapter Two of this report under the section of right to life discusses how Persons with Albinism (PWAs) are targeted for their body parts, although trend shows decline in attacks. LHRC documented two attacks of PWAs in Kagera and Tabora Regions. Among women and girls who encounter violence are PWDs, who seem easier targets as they are less capable of escaping the cycle of violence.

PWAs are the most affected vulnerable group among the PWDs. The brutal nature of the attacks and killings of PWAs over the years, has led them to live in constant fear despite measures taken to improve their security across Tanzania, although the

³⁷⁶ 3251744-piy519z/index.html, accessed on 29th December, 2016.

³⁷⁶ See Article 19 of CRPD.

³⁷⁷ Article 9 of CRPD.

³⁷⁸ Ibid.

³⁷⁹ *Mwananchi* Newspaper "Naibu Waziri awasemea walemavu UN" 16th June 2016, available at <http://www.mwananchi.co.tz/habari/Naiibu-Waziri-awasemea-walemavu-UN-/1597578-3251744-piy519z/index.html>, accessed on 29th December, 2016.

situation improving.³⁸⁰ In rural areas, children with disability are afraid to go to school where such schools are located far from the villages.

6.3.4 Conclusion and Recommendations

Violence and discrimination against PWDs must be addressed in order to protect the members of this vulnerable group and ensure that they are able to enjoy their fundamental rights in equal basis with others. Discrimination at work and in employment as well as limited economic opportunities expose PWDs to higher risks of extreme poverty. LHRC recommends that:

- The Ministry responsible for Policy Coordination, Parliamentary Affairs, Employment and Persons with Physical Disabilities should ensure increased jobs and employment opportunities for PWDs;
- The Ministry of Home Affairs to ensure that police investigate and prosecute cases of violence against PWDs, especially PWAs;
- The Ministry of Constitutional and Legal Affairs to ensure that courts of law fast-track proceedings of violence against PWDs;
- The Ministries responsible for housing and infrastructure to ensure that buildings and infrastructure built can be accessed by PWDs.

6.4 Rights of the Elderly

Elderly people rights are covered in various domestic, regional, and international legal laws. These include the Constitution of the United Republic of Tanzania 1977, the African Charter on Human and Peoples' Rights, the Maputo Protocol (for women elderly), ICCPR, ICESCR, and CRPD (for elderly PWDs). Unlike other vulnerable groups, there is no specific law for the elderly.

Recent statistics indicate that Tanzanian Mainland has more than four million people who are considered to be the elderly.³⁸¹ These are those who have attained the age of 60 years and above, with majority of them living in rural areas.³⁸² They face a number of challenges, including violence, discrimination, and lack of social protection.

380 *The Citizen* Newspaper "Albinos live in fear despite tight security" 25th July 2016, available at <http://www.thecitizen.co.tz/News/1840340-3310672-k8dx27z/index.html>, accessed 28th December 2016.

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

382 See the Tanzania National Age Policy 2003.

Tabora leads in witchcraft-related killings, with 69 deaths reported between July 2015 and March 2016. Other notorious regions in this regard are Mbeya, Shinyanga and Geita as indicated in Chapter Two of this Report.

6.4.1 Violence and Discrimination

Violence and discrimination are the major challenges that elderly faced, hindering them from enjoying their constitutionally guaranteed human rights. Chapter two of this report highlights the situation of witchcraft-related attacks and killings, whereby the elderly, particularly the elderly women, are the major victims. They are usually targeted when their eyes become red, which is taken to be a sign of a witch, leading to discrimination and attacks by community members. They are also targeted for their properties, whereby close relatives tend to attack and kill them so that they can take or inherit their properties such as cattle, farms, and houses.³⁸³

It has been reported that between July 2015 and March 2016 a total of 124 older persons were killed, indicating a declining trend compared to 321 deaths from July 2014 to July 2015.³⁸⁴

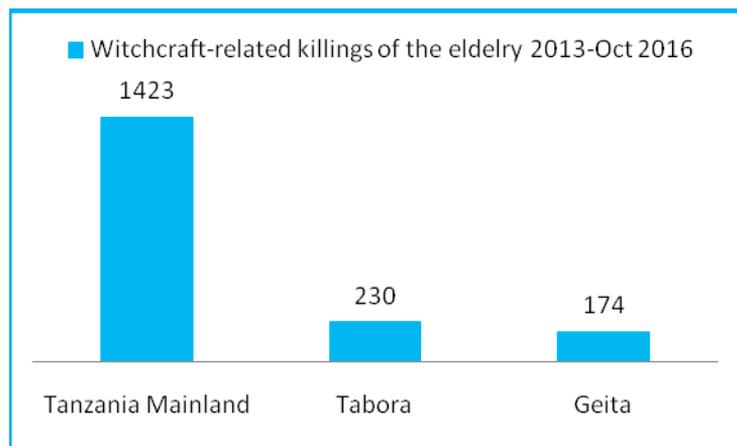


Figure 26: Witchcraft-related killings of the elderly 2013-October 2016

According to the recent study by *HelpAge International*, Tanzania is among the lowest ranking countries on the safety of lives of the elderly. The study shows that Tanzania ranks 91st out of 96 countries in this regard, with Afghanistan identified as the worst place for the elderly to live at 96th position.³⁸⁵ This suggests that Tanzania is among

383 *Mtanzania* Newspaper “Tume ya Haki za Binadamu na Utalawa Bora: Haki za wazee zipewe ulinzi kisheria” 18th February 2016.

384 *Habari Leo* Newspaper “Haki za wazee na moshi mweupe uliotanda” 23th January 2017.

385 *Habari Leo* Newspaper “Changamoto ukatili kwa wazee upatiwe ufumbuzi” 26th December

the countries least safe for the elderly to live in, with their attacks and killings being a major factor. In terms of provision of health services to the elderly, however, Tanzania is doing better, ranking 69th out of 96. However, older people, particularly in rural areas, still face discrimination at health facilities when they go to seek free medical care as directed by the Government. They are also usually attended by health workers who are not properly trained on attending older people.

6.2.2 Social Protection

Elderly people face many health problems due to their age. They are not accorded adequate social protection, as majority of them are in rural areas and not covered by social security. As a result they become too dependent on family members and community members at large, leaving them vulnerable to discrimination and abuse. **According to HelpAge International, 96% of the elderly in Tanzania do not have a secure income and only 4% of the 2.5 million older people have access to pension.**³⁸⁶

In 2016, the Minister of Health, Community Development, Gender, Elderly and Children, Hon. Ummu Mwalimu, revealed that the Government is in the final process of introducing pension for the elderly in Tanzania Mainland.³⁸⁷ The elderly in Tanzania Mainland will thus join their counterparts in Zanzibar, who have been receiving a monthly pension of Tshs. 20,000 since April 2015.³⁸⁸ The Minister responsible for elderly also mentioned that the Government is also working on enacting the law on the elderly to complement the National Age Policy of 2003.³⁸⁹

LHRC commends government efforts to introduce a pension scheme for the elderly, who desperately need social protection in order to ease their economic and social burdens and access basic social services. However, the pension provided should be adequate, given the current economic hardships, to enable them to cater for their basic necessities. Effective pension scheme for the elderly will also help to reduce the number of older people roaming the streets and roads as beggars.

6.4.3 Conclusion and Recommendations

The elderly are not adequately protected in Tanzania, particularly in the absence of universal pension scheme. In addition to that they face discrimination in accessing

2016, available at <http://habarileo.co.tz/index.php/makala/19155-changamoto-ukatili-kwa-wazee-itafutiwe-ufumbuzi>, accessed 20th January 2017.

386 See HelpAge International website at <http://www.helpage.org/where-we-work/africa/tanzania/>
387 *Habari Leo* Newspaper “Changamoto ukatili kwa wazee upatiwe ufumbuzi” 26th December 2016.

388 Ibid.

389 Ibid.

social services and violence from other members of the community. To address these challenges, LHRC recommends the following:

- The Government, through the Ministry of Home Affairs, should ensure that the elderly are protected from all forms of violence, particularly witchcraft-related killings, through investigation and prosecution of cases of violence against them;
- The Government, through the Ministry of Health, Community Development, Gender, Elderly and Children, to spearhead the enactment of the law on elderly rights and protection to complement the National Age Policy;
- The Ministry of Health, Community Development, Gender, Elderly and Children to fast-track the process of introducing pension for the elderly;
- Local government authorities to ensure that older people enjoy free medical care and are not discriminated as directed by the Government; and
- CSOs to continue raising awareness on the rights of the elderly and conduct campaigns on ending violence and discrimination against the elderly.

CHAPTER SEVEN

COLLECTIVE RIGHTS

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 belong to the third generation of human rights as opposed to individual rights which belong to the first generation of human rights.

Example of collective rights include the right to self-determination, the right to clean and safe environment, the right to natural resources, the right to peace and the right to development. These rights are enshrined in various international human rights instruments including the International Covenant on Economic, Social and Cultural Rights (ICESCR); the African Charter on Human and People's Rights (ACHPR) and the United Nations Charter.

7.1 Right to Enjoy Natural Resources

Tanzania is blessed with abundant natural resources. These include land, sea, rivers, lakes, forests, wildlife and minerals. Together the natural resources form the backbone of Tanzania's economy.

Enjoyment of natural resources is a concern to human rights because natural resources support life. This implies that protection of natural resources is important for the protection of life itself, as accorded by the constitution of the United Republic of Tanzania.³⁹⁰

The State has the obligation to improve accessibility, equality and empowerment of people with respect to enjoyment of and protection of natural resources.

The right to enjoy natural resources is recognized under international and regional human rights law. The African Charter on Human and People's Rights of 1981 provides that "all people shall freely dispose of their wealth and natural resources" and importantly that "this right shall be exercised in the exclusive interest of the people."³⁹¹ The right is also covered under the UN General Assembly Resolution 1803 of 1962 which calls for "permanent sovereignty over natural resources."

390 Article 14.

391 Article 21(1).

Domestically the Constitution of the United Republic of Tanzania provides for the right to natural resources under article 9. This article provides that “the use of natural resources places emphasis on the development of people and in particular is geared towards the eradication of poverty, ignorance and disease.” Nevertheless, this provision is unenforceable as it is not in the Bill of Rights within the Constitution.

7.1.1 Right to Benefit from Natural Resources

Tanzania has diverse and rich natural resources, ranging from wildlife, minerals and forestry. Tanzania has put emphasis in conserving its natural resources, thus has placed 28% of its land under conservation protection. Majority of Tanzanians depends on these natural resources for their livelihood, but because of conservation protection policy the ordinary people do not benefit much from them. Tanzanian natural resources are under pressure as a result of overwhelming population growth, environmental mismanagement, and expansion of commercial economic activities (such as agriculture and mining), climate change and poverty. As a result there is a decline in wildlife population and environmental degradation.

The Tanzania natural resources provide an important source of generating revenue for the country as well as providing security, income and employment. In recent years tourism industry has been growing as number of visitors in national parks has been increasing contributing significantly to economic development of the country. The mining industry has as well been growing, with larger investments witnessed in the sector.

In spite of the benefits obtained from natural resources of the country, the local population living around these areas of natural resources has not benefited much from the revenue so generated. There is limited awareness of sustainable ecosystem management and biodiversity conservation among these communities. Tanzania is experiencing an increase into illegal poaching and logging activities, threatening the survival of the wildlife in conserved sanctuaries.

LHRC urges that there is a need to develop a sustainable management of natural resources, one which will involve the local communities living around and adjacent to areas of conservation. Thus **at the local level**, the district administrations’ capacities around the conservation areas should be improved in planning, coordinating and managing natural resources. Among the measures that can be employed include:

- Strengthening community based natural resource management and benefit-sharing schemes;

- Improving social and economic village infrastructure and feeder roads;
- Improving protected areas infrastructure, equipment and management;

At national level the work done by the Tanzania Wildlife Authority in addressing challenges facing wildlife resources conservation, management and administration. However, the authority need to work in close relation with local authorities in reservation areas in order to make the local communities feel that they are part and parcel of their resource conservation, management and administration.

7.2 Right to Development

Everyone is “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 realised,” the ground-breaking Un Declaration on the Right to Development proclaimed in 1986 that **development is a right that belongs to everyone.**³⁹²

“ We, heads of State and Government, ...are committed to making the right to development a reality for everyone and to freeing the entire human race from want,” United Nations Millennium Declaration (General Assembly resolution 55/2)

Like all human rights, the right to development belongs to everyone, individually and collectively, with no discrimination and with their participation. The declaration recognises the right to self-determination and to full sovereignty over natural wealth and resources.³⁹³

The principles underlying the right to development are active, free and meaningful participation in development; equality, non-discrimination and fair distribution of its benefits; self-determination and full sovereignty over natural wealth and resources; the rule of law and good governance; human rights-based approaches to development; global governance and reforms; and social justice and equity, especially with regard to poverty, women and indigenous peoples.³⁹⁴ Further these principles are applied to the issues of aid, trade, technology transfer, intellectual property, access to medicines and climate change in the context of international cooperation, solidarity and global partnership for development.

392 UN Human Rights: Office of the High Commissioner: 30th Anniversary of the Declaration on the Right to Development, can be found at <http://www.ohchr.org/EN/Issues/Development/Pages/Introduction.aspx>

393 Ibid.

394 Ibid.

The right to development guarantees the highest economic, social and environmental standards attainable for the entire population.³⁹⁵ States must thus respect existing communities and ensure the active participation of community members in redevelopment planning. Development plans must avoid displacing communities at all costs. The right to development is not dictated by market forces but instead focuses on development's role in creating sustainable communities for the well-being of society that equally value social, cultural, political and economic progress.

7.2.1 Implementing the Sustainable Development Goals in Tanzania³⁹⁶

Lesson from the Millennium Development Goals (MDGs)

Tanzania domesticated the MDGs through revision of its development plans and poverty reduction strategies. Some goals were particularly influential, in terms of actors' interest and involvement. In general, the goals targeting improvement of education and health were very influential partly because they had deteriorated indicators as a result of the implementation of Structural Adjustment Programs (SAPs) but they are also considered necessary for economic transformation. Progress has been made although respective targets have not been met on MDGs 2, 3, 4, and 6. Several challenges hindered successful implementation of MDGs and these should be addressed if SGDs have to be successfully implemented. These include:

- Inadequate resources in terms of human capacity and financial resources and equipment to support MDGs interventions;
- Poor coordination at both national level and at the local level;
- Poor mobilization of resources from domestic sources as a result of inadequate engagement of the private sector and low awareness of communities on MDGs and its implementation;
- Poor governance especially on management of financial resources and failure to take actions when public resources are mismanaged;
- Monitoring progress – lack of up to date data for some indicators and production of many reports which do not speak to each other. Further the reports are not properly utilized for future planning.

395 NESRI 2015.

396 ESRF (2016): Implementation of SDG in Tanzania; Prospects and Challenges.

Prioritizing SGDs in Tanzania

SGDs agenda is ambitious, with the aim of eliminating rather than reducing poverty – the “leave no one behind” notion. It has a much wider scope, beyond predominantly “social” goals of MDGs, incorporating more fully aspects of economic and environmental sustainability and aspirations for peaceful and inclusive societies. The following example is used to show the difficulties in attaining the “leave no one behind” ambition. Goal 1 target 1.1 aims at reducing extreme poverty to all people everywhere by 2030. Poverty especially in rural Tanzania is declining at a very low pace; from 40.8% in 1991/92 to 33.3% in 2011/12 (7.5 percentage points decrease for 20 years). Inequalities are also huge with more households moving from poverty in Dar es Salaam (the capital city) than other urban centres, a decline from 28.1% and 28.7% in 1991/92 to 4.2% and 21.7% in 2011/12 respectively. Further, SGDs are too many and overloaded (17 goals, 169 targets and over 300 indicators) and they have to be implemented within the same time span and with more/less the same amount of human and financial resources as those employed during the implementation of MDGs. Thus, Tanzania has to make sequential prioritization and serious resource mobilization from domestic and international sources for its implementation.

- I. Improving productive capacity of the poor:** Tanzania should prioritize SGDs that aim at improving the productive capacities of the poor with special focus on agriculture and industrialization. These sectors can help alleviate poverty as they can employ larger population (with agriculture already employing about 80% of the Tanzanian population, mostly in rural areas) and have strong linkages. Interventions which are of economic and social nature and with ability to provide productive opportunities should be identified. Linkage between science, technology, innovation, research and development should be established to transform competitive economy.
- II. Ensuring quality service delivery:** Target should be to health, education, water and sanitation services with focus on quality rather than quantity, especially with regard to health and education. The frequent outbreak of cholera in almost all regions of the country echoes the need to prioritize water, sanitation and hygiene, not only at the household level but also at the institutional level (schools and health facilities).
- III. Eliminating inequality:** Various equity fault lines exist in Tanzania whereby one group is affected than the others in accessing services. Inequalities exist in terms of geographical location, social and health status, age, gender, ethnicity, etc. Thus, implementation of SGDs should take into account these faulty lines and address them through equitable interventions. In addressing

gender inequalities, there is a need to move beyond eliminating gender gaps in education and employment and consider a wide transformative agenda of gender based violence (GBV), patriarchal culture over ownership of resources and decision making; all of which tend to hinder women's progress in human development.³⁹⁷

- IV. Promoting sustainable development:** Climate change and sustainable development are emerging as serious concerns in development; The MDGs did not take serious consideration on environmental issues. Future production capacities will be seriously impacted if the environmental and natural resources are not managed sustainably to address climate change effects.
- V. Improving governance:** Good governance, an area missed in the MDGs, is a key concern for sustainable development. The current government is keen in promoting good governance in terms of law enforcement, addressing corruption (including tax evasion), and promoting participation and inclusiveness.

Immediate national actions to deliver the targets

- I. Development of institutional mechanisms for SGDs implementation:** Attainment of SGDs will require a strong and effective institutional mechanism involving various stakeholders at various levels including public representatives (central and local), the Government (Executive and Legislative), the private sector, civil society organizations, local communities and development partners.
- II. Integration in the national planning process:** Integration of SGDs in the national planning process through National Plans, Poverty Reduction Strategies and the Medium Term Expenditure Framework (MTEF) is of essence. The SGDs have come at the right time when the government is reviewing its two major medium term development plans/strategies (the National Strategy for Growth and Reduction of Poverty; and 5 Year Development Plan).
- III. Mobilization of financial and non-financial resources:** Resource mobilization from both international and activating latent domestic sources of funds is crucial. One of these sources is the growing oil and gas sector. Enforcement of policies and tax regulations can also result to more collection from businesses. International Private Public Partnership (PPP) is expected to result to knowledge and technology transfer and market access.

397 Please refer to Chapter Six of this report on detailed discussion on Women's Rights.

- IV. Investing in good governance:** Promoting the rule of law, accountability (e.g. discipline in spending), inclusive participation, leadership ethics and strengthening the legal and regulatory framework are important ingredients in the implementation of SGDs. E.g. in mining sector, transfer of technology through international PPP can occur and result to win-win situation if important contracting regulations are effected.

- V. Investing on developing a monitoring master plan:** Development of an elaborate monitoring master plan to be coordinated by the National Bureau of Statistics and that can be fed with data from various should be one of the core components of the implementation plan. The current rapid technological progress should be put into effective use.

- VI. Investing on developing a monitoring master plan:** Development of an elaborate monitoring master plan to be coordinated by the National Bureau of Statistics and that can be fed with data from various sources should be one of the core components of the implementation plan. The current rapid technological progress should be put into effective use.

Conclusion:

LHRC urges the government to make sure that the implementation of the SDGs move hand in hand with existing national development programs in order to achieve the intended sustainable development to be enjoyed by all Tanzanians. Tanzania should also learn from the experienced of implementing the MDGs to make sure the smooth implementation of SGDs.

7.3 Consumer Rights

A consumer is defined by the Fair Competition Act of 2003 as any person who purchases or offers to purchase goods or services otherwise than for the purpose of resale.³⁹⁸ The Fair Competition Act of 2003 is the major consumer protection law in Tanzania. The law establishes the Fair Competition Commission, the air Competition Tribunal and the National Consumer Advocacy Council.³⁹⁹

The Fair Competition Act recognises then right to choice⁴⁰⁰; right to be heard⁴⁰¹; the right

398 Section 2 of the Fair Competition Act of 2003.

399 Sections 62(1), 83(1), 92(1).

400 Section 9(2).

401 Section 93.

to redress⁴⁰²; the right to be informed⁴⁰³; and the right to safety⁴⁰⁴. The Fair competition Act of 2003 calls for enhanced welfare of Tanzanians as a whole, by promoting and protecting effective competition in markets, aiming at increasing economic efficiency and lowering prices of goods and services for consumers.

7.3.1 The problem with counterfeit and substandard products

Tanzanian market is threatened by counterfeit and substandard products. These products threaten the economy of the country and put people's lives at risk. Most of the counterfeit products in the market are electronic, electrical and medicinal products.⁴⁰⁵ According to Tanzania Bureau of Standards (TBS) the government loses between 15-25% of domestic revenue and about US\$ 343-566 million in tax evasion to counterfeit and substandard products annually.⁴⁰⁶

Table 23: Unsuitable/counterfeit products (by tonnes) seized by TFDA in 2013-2016

YEAR	FOODS	DRUGS	COSMETICS	TOTAL
2013/14	132.00	137.00	4.83	273.83
2014/15	60.00	73.00	8.82	141.82
2015/16	145.37	14.63	66.80	226.80
TOTAL	337.37	224.63	80.45	642.45

Source: MoHSW

In the financial year 2015/2016 the Tanzania Food and Drugs Authority (TFDA) reported that they seized and destroyed a total of **226.8 tonnes** of counterfeit and substandard products worth **Tshs. 1,983,230,330**, most of which were not fit for human consumption.⁴⁰⁷ Among them cosmetic products amounted to 66.8 tonnes (29.5%); food products (liquor inclusive) 145.37 tonnes (64.1%); medicines 14.48 tonnes (6.4%) and medical equipment 0.15 tonnes (0.1%).⁴⁰⁸

402 Part V, VI and VII.

403 Section 93.

404 Part VIII and IX.

405 East African Business Week, "Editorial: Tanzania right on substandard goods." 24th January, 2016.

406 Ibid.

407 Ministry of Health, Community Development, Gender, Elderly and Children: 2016 Budget Speech.

408 Ibid.

Picture 16: Counterfeit products seized by TFDA



Source: MichuziBlog

In fulfilling its mission of “promoting and protect effective competition in markets and **protect consumer** from unfair and misleading market conduct, the Fair Competition Commission (FCC) received a total of 24 complaints in the year 2015/2016, of which 19 were solved (involving compensating consumers in some form).⁴⁰⁹ The FCC also announced that it was underway in completing regulations on standard form consumer contracts and enacting the National Policy on Consumer Protection.⁴¹⁰ All these efforts go hand in hand with preparations for the Guidelines on Consumer Dispute Handling. All these are major steps in ensuring that consumer rights are safeguarded.

For the efforts to fight counterfeit and substandard products off the market to be successful it is equally important that local products are made in standards which can compete with international brand products. This is especially true when considering that Tanzania is in the verge of creating an industrial economy. For that reason the efforts made by TBS in ensuring local products made by small industries are of required standards is very commendable. In 2015/2016 TBS issued a total of 21,749 Certificates of Conformity (CoCs).

409 Supra: Budget Speech.

410 Ibid.

CHAPTER EIGHT

REVIEW OF TANZANIA'S ACTIONS TO IMPROVE HUMAN RIGHTS

8.1 Introduction

This chapter highlights the manner in which Tanzania is fairing in its national, regional and international human rights mechanisms. The national human rights mechanism comprises laws, the Commission of Human Rights and Good Governance (CHRAGG), and organs such as the judiciary, police, and prisons, mandated with protection of human rights in Tanzania.

The international and regional human rights mechanisms discussed in this Chapter are the Universal Periodic Review (UPR) Mechanism and the mechanisms established by treaties such as 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.

8.2 National Human Rights Mechanisms

8.2.1 The Commission for Human Rights and Good Governance (CHRAGG)

8.2.1.1 CHRAGG Mandate as the National Human Rights Institution

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 1977.⁴¹¹ It has an overall mandate to promote, protect, and safeguard human rights and good governance in Tanzania. Among the functions of CHRAGG are:⁴¹²

- ♦ Sensitizing about preservation of human rights and duties;
- ♦ Receiving complaints in relation to violation of human rights;
- ♦ Conducting inquiry on matters relating to infringement of human rights and violation of principles of good governance;

411 *See* Article 129(1) of the Constitution of Tanzania 1977.

412 Article 130(1) of the Constitution of Tanzania 1977.

- ♦ Conducting research and disseminating education on human rights and good governance;
- ♦ Inquire 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.

8.2.1.2 CHRAGG Performance and Challenges in 2016

In 2016, CHRAGG continued to raise human rights awareness through different platforms, including the media. For instance, it continued conducting human rights seminars to secondary school teachers and district executive directors in 9 regions of Tanzania Mainland, an exercise which began in July 2015.⁴¹³ They also aired at least 10 television and radio programmes on human rights and good governance within the financial year 2015/2016 and coordinated efforts of creating a national strategy on combating violence and killings of PWAs, prepared by CHRAGG in collaboration with the “Under the Same Sun” organization and other human rights stakeholders.⁴¹⁴ In 2016, CHRAGG was also vocal against incidents of violations of human rights and principles of good governance, including by government leaders. For instance, it condemned the statement made by the Dar es Salaam Regional Commissioner, Mr. Paul Makonda, made during the funeral ceremony of three police officers who had been murdered by bandits in August 2016. The regional commissioner was quoted encouraging the police to beat suspected criminals and if the human rights activists question police conduct the police should refer them to him.⁴¹⁵ Following this statement, which was also condemned by other human rights stakeholders, CHRAGG summoned the regional commissioner,⁴¹⁶ but no information has been released by CHRAGG as to the response of the regional commissioner and what measures were taken by CHRAGG afterwards.

Despite the good work done in 2016, CHRAGG is still faced with a number of challenges highlighted in the National Human Rights Action Plan 2013-2017. These challenges include:

413 See budget speech by the Minister of Constitutional and Legal Affairs, Hon. Dr. Harrison Mwakembe (MP) for the financial year 2016/2017 at <http://www.parliament.go.tz/uploads/budgetspeeches/1462512167-hotuba%20ya%20waziri%20wa%20katiba%20na%20sheria%20-%20final%20from%20website%20ya%20wizara.pdf>, accessed on 20th January 2017.

414 Ibid.

415 *Mwananchi* Newspaper “Makonda ataka wahahifu wagongwe, wapiawe” 26th August 2016.

416 *Mwananchi* Newspaper “Makondaawashua Haki za Binadamu” 27th August 2016.

- ♦ Inadequate financial resource and expertise;
- ♦ Delays in complying with some of CHRAGG recommendations by Government and other authorities;
- ♦ Failure to reach the majority of Tanzanians whose rights have been violated;
- ♦ Low public awareness on human rights and the role of CHRAGG, particularly in rural areas;
- ♦ Failure to adequately meet the expectations of the public and other stakeholders; and
- ♦ Insufficient investigative/monitoring capacity.

Most of these challenges are still valid as CHRAGG continues to fail to reach a larger segment of the Tanzanian population, particularly in rural areas, due to budgetary constraints. In March, 2016, the Chairperson of CHRAGG, Bahame Tom Nyandunga, highlighted challenges faced by his institution during a press conference, including lack of houses for officials, non-payment of allowances, shortage of working tools, and failure to reach majority of Tanzanians due to lack of zonal offices.⁴¹⁷ According to the CHRAGG Chairperson, the institution has offices in Dar es Salaam, Zanzibar, Mwanza, Lindi, and Pemba only, to make a total of five offices.⁴¹⁸ There were four offices when the National Human Rights Action Plan 2013-2017 in December 2013,⁴¹⁹ thus only one more office since, one year away from 2017. These challenges have made it difficult for CHRAGG to reach a wider segment of Tanzanians to receive and address their complaints as well as providing human rights education.

Among the objectives of strengthening CHRAGG stipulated in the National Human Rights Action Plan 2013-2017 are strengthening the operational and financial capacity and independence of CHRAGG, including providing CHRAGG an independent budget line item. Another key objective is to review the CHRAGG Act and reporting system to ensure that CHRAGG reports are discussed in Parliament. LHRC believes that these two objectives are key for the strengthening CHRAGG and ensuring its recommendations are carried out. One year before the end of the Action Plan, CHRAGG still has no independent budget line item and its reporting system has not been reviewed to enable discussion of its reports in Parliament. At present, the budget for CHRAGG is included in the budget for the Ministry of Constitutional and Legal Affairs, which has not been received in full, in turn affecting the budget for CHRAGG.

417 Mtanzania *Newspaper* "Ukata waikabili Tume ya Haki za Binadamu" 28th March 2016

418 Ibid.

419 See the National Human Rights Action Plan 2013-2017, p. 76.

Table 24: Budgets for the Ministry of Constitutional and Legal Affairs 2012 - 2016

Financial Year	Budget	Received	% Budget
2012/13	186,323,718,000	86,005,210,966.19	46%
2013/14	260,656,733,000	120,363,046,912	46%
2014/15	234,246,819,000	108,903,009,746	46.5%
2015/16	196,087,197,000	119,784,602,272	60%

8.2.1.3 Implementation of the National Human Rights Action Plan 2013-2017

The National Human Rights Action Plan 2013 – 2017 was developed following the call made by the Vienna Declaration and Programme of Action of 1993, urging States to consider and develop a national action plan aimed at promoting and protecting human rights. Following years of debating and preparation, the plan was eventually adopted under the Ministry of Constitutional and Legal Affairs in December 2013. Implementation of this plan is coordinated by CHRAGG as the national human rights institution. The tables below indicate key objectives for human rights that need to be achieved as we enter the final year of the plan in 2017.

Table 25: NHRAP 2013-2017 Key Civil and Political Rights Objectives

Right	NHRAP Objectives
Right to Life	Conduct nationwide public consultations, including awareness raising initiatives of global trends, with a view of considering the abolition of death penalty.
	Strengthen investigation and prosecution of alleged incidents of extra-judicial killings.
	Train law enforcement officials on human rights issues.
	Raise public awareness about individual rights and legal processes through public education initiatives.
	Review and amend the Tanzania Witchcraft Act to reflect human rights standards.
	Strengthen oversight of road safety regulation through ensuring proper road infrastructures, effective enforcement of the laws and greater accountability of traffic police, public transport drivers, and the general public.

Right	NHRAP Objectives
Access to justice, fair trial, and equality before the law	Increase the budgetary allocation of the judiciary to provide for adequate human and material resources.
	Introducing computerized system of filing, documenting, and hearing of cases.
	Provide regular human rights training to magistrates, judges, state attorneys, and private advocates.
	Provide public awareness programmes on the legal procedures in accessing timely justice and human rights, ensuring outreach to the most vulnerable communities.
Freedom of Opinion, Expression, and Information	Establish and ensure adherence to codes of conduct and ethics by journalists and political leaders on the exercise of freedom of speech, expression, and media.
	Require relevant authorities to disseminate and make accessible in a timely manner all material information in which the public has a reasonable interest.
Freedom of Assembly	Develop Standard Operating Procedures that clearly explain how police should exercise their duties while upholding individual rights to peaceful assembly in line with human rights standards.
	Provide human rights training to law enforcement on the freedom of assembly and the use of reasonable force.
	Create public awareness on the procedure to be followed in exercising the right to freedom of assembly and demonstrations.
	Develop guidelines on freedom of assembly and demonstration.

Right	NHRAP Objectives
Right to Liberty and Security of Persons	Ensure that arbitrary or excessive use of force and discharge of firearms by police officers is punished as criminal offence under any circumstance.
	Ensure human rights and police ethics, along with the specific needs of women and girls, are given special attention in police training, especially in the investigative process.
	Increase budgetary allocation to the police force to enable them to purchase equipment and other necessary materials.
	Ensure that superior officers are held responsible if they know, or should have known, that those under their command are resorting or have resorted to unlawful use of force or abuse of power, and they did not do anything to prevent, remedy or report such a case.

Table 26: NHRAP 2013-2017 Key Economic, Social and Cultural Rights Objectives

Right	NHRAP Objectives
Right to Own Property and To Access Land	Enhance public education concerning equal ownership of land, with special focus on the rural population and disadvantaged groups such as pastoralists, hunters, gathers, women and youth
	Enhance transparency in land allocation
	Implement a Human Rights Based Approach to proceedings for land acquisition for public interest and involve local communities in the deliberation process.
	Cost of acquiring surveyed land should be reduced and proceedings for land registration should also be simplified.
Right to Education	Improve access to education for youth and adults, including access to informal and vocational education.
	Enforce equal treatment and opportunity of education for girls and women at all levels.
	Increase budget allocation for education to improve working conditions for teachers, availability of teaching tools and materials, and school infrastructure.
	Enhance inspection, monitoring, and evaluation of schools' performance.

Right	NHRAP Objectives
	Promote inclusive and learner-friendly school environment that caters to the learning needs of disadvantaged groups, including children with disabilities.
Right to Adequate Standard of Living and Right to Food	Ensure responsibility for and commitment by the government to the provision of essential services, especially to the most disadvantaged groups.
	To provide opportunities for citizens to receive financial support to start or support business ventures, thereby promoting entrepreneurship
	Improvements to the education and training to young people with a greater focus on vocational skills to reduce unemployment.
Right to Clean and Safe Water and Sanitation	Increase allocation of funding for supply of clean water and sanitation.
	Prioritize the need for concerted efforts to improve hygiene practices.
	Prioritize the need to strengthen the water and sanitation sectors' governance.
Right to Work	Strengthen mechanisms to protect workers and employees in formal and informal contractual arrangements, in urban as well as rural areas, and ensure adequate working environment, including increasing the frequency of labour inspections.
	Promote self-employment and entrepreneurship, in both urban and rural areas, including the establishment and strengthening of small-scale entrepreneurship groups for youth and women. Incorporate self-employment, entrepreneurial and management skills into educational curricula and vocational training.
	Raise awareness of labour rights among employees and employers.

Right	NHRAP Objectives
Right to Highest Attainable Standard of Physical and Mental Health	Develop a strategy to increase the number of health professionals.
	Provide incentives to medical professionals to work at government hospitals and health centres.
	Increase number and accessibility of health facilities, with particular focus on increasing access for women, children and other special groups.
	Increase budget allocation to ensure availability of drugs, including those used to treat mental illness.
	Promote maternal health, including maternal mortality reduction and providing emergency obstetric and new born care.

Table 27: NHRAP 2-13-2017 Key Rights of Vulnerable Groups Objectives

Category	NHRAP Objectives
Women	Raise awareness of gender issues and women’s rights in communities.
	Promote affirmative action policies for women to ensure their active participation in social, political, and economic spheres.
	Domesticating CEDAW by enacting Domestic Violence Law and reviewing other anti-discrimination legislation.
	Enact a modern, gender-responsive inheritance and succession law.
	Promote public awareness on the harmful impact of sexual and domestic violence.
	Raise awareness of the prohibition of FGM in the most affected areas and strengthen the enforcement of penal legislation.
	Promote re-admission of girls to school after giving birth.
	Support economic self-sufficiency for women through micro-credit schemes and entrepreneurship training.

Category	NHRAP Objectives
Children	Promote efforts to raise awareness of and address violations of children's rights among parents, guardians, government officials, teachers, the public, and law enforcers
	Strengthen mechanisms to enhance awareness of the Law of the Child Act.
	Implement effective sanctions to address issues of child labour.
	Raise awareness on the importance of education, especially education of girls, particularly among families.
PWDs	Enact regulations to enforce the implementation of the Persons with Disability Act.
	Enforce the law to ensure that PWDs are not discriminated against in seeking and securing employment.
	Improve accessibility in infrastructure and public facilities, such as buildings and public transport and communications.
	Integrate the rights of PWDs into the Teachers' Training Curriculum.
	Raise public awareness of human rights of PWDs.
	Amend existing laws and policies to mainstream issues of PWDs.
Elderly	Raise public awareness against harmful traditional beliefs and to enhance respect for the elderly.
	Institute universal pension scheme for all elderly.

Most of the objectives highlighted in the tables above have not been achieved so far, while some of them have been partly achieved. For instance, investigation and prosecution of extrajudicial killings has not been strengthened; the Witchcraft Act is yet to be reviewed and amended; in access to justice we do not yet have in place a computerized system of filing, documenting, and hearing of cases; access to information by the public is still a problem; CEDAW is not yet domesticated to safeguard women's rights; and universal pension scheme for the elderly has not yet materialized. For the objectives that have been partly achieved, particularly those on sensitization, the main challenge has limited resources to enable reaching a wider segment of the population, especially in rural/remote areas. In the Tanzania Human

Rights Report 2017 LHRC will provide an analysis of the implementation of these objectives, showing to what extent they have been achieved or not achieved.

8.2.2 Judicial Organs

Judicial organs are key in protection of human rights, interpretation of human rights laws, development of human rights jurisprudence, and providing remedies when human rights have been violated. The main judicial organs in this regard are courts of law, which deal with criminal and civil cases. With regard to criminal cases, courts have a duty to ensure key human rights of the accused person such as rights to equality before the law, legal representation and bail are not breached. In civil cases, the courts and tribunals have a duty to ensure the rights of the parties involved are protected and provide the right to effective remedy. They conduct judicial review of laws and administrative actions, and in this way they have a role of ensuring that the Parliament and the Executive abide by the Constitution in order to protect people from laws and practices that infringe in their human rights. Courts, particularly the High Court, provide a forum for people whose rights have been violated to seek remedy.

A good example of courts playing a role of protecting human rights in 2016 is the decision by the High Court in Dar es Salaam in the case of Rebeca Gyumi, declaring the age of marriage for girls and boys to be 18 years and provisions allowing child marriage within the Law of Marriage Act unconstitutional. This case is discussed in detail in Chapter on rights of vulnerable groups under the section of child rights. However, the role of the judicial organs of protecting human rights continued to be hindered by challenges such as shortage of judges and magistrates, delays of cases, and corruption.

LHRC calls for increased efforts to strengthen the judicial system in order to improve access to justice and protection of human rights. Strong judicial organs are needed in order to ensure effective justice mechanism. Their strength relies on independence of the judiciary and sufficient human and financial resources to deliver timely justice and protect human rights.

8.2.3 Law enforcement organs

Law enforcement organs, particularly the Tanzania Police Force (TPF) and the Tanzania Prisons Services (TPS) play an important role of protecting citizens and their properties. Police ensure justice is done through conducting investigations and taking suspected criminals to face justice. Prisons protect the society from convicted criminals and act serve to reform such individuals so that they can fit in back into the society, should they be released.

In 2016, the police force continued to carry out its mandate of protecting the people and their property as well as playing their role in the administration of justice. However, as discussed in Chapters Two and Three of this report, police were also implicated in human rights violations in 2016, through actions such as torture, arbitrary arrests and arbitrary detentions. These actions are not effectively dealt with due to poor police accountability mechanism.

There are also challenges that affect the ability of the police force to effectively carry out its duties, including conducting investigations. These challenges include shortage of human and material resources, corruption, poor remunerations, shortage of housing, and corruption.

LHRC is of the view that in order to improve police conduct as a mechanism of human rights, the above challenges must be addressed. There should also be an effective mechanism of addressing allegations of human rights violations by the police while performing their duties.

On the part of Tanzania Prisons Services (TPS) the main challenge is prison overcrowding, affecting basic rights of prisoners. The prisons that are available are not sufficient to accommodate the prisoners. Currently, the capacity of prisons in Tanzania is to hold a total of 29,552 prisoners and remandees, while the number of prisoners is more than 33,000.⁴²⁰ The Government has made a number of efforts to address the problem, including the use of alternative sentences such as parole, probation, and conditional sentences. However, increase of arbitrary arrests, delays of investigations, and denial of bail for bailable offences, particularly by the police, is nullifying those efforts; and as a result at least half of the people in prisons are remandees.

In July 2016, LHRC paid a visit to the Segerea Prison in Dar es Salaam, with the major aim of providing legal aid to prisoners and remandees.⁴²¹ LHRC was able to attend 61 prisoners and remandees, and during the interviews with them the following issues emerged:

- Prisoners who are victims of prolonged detention and delays in investigation;
- Denial of police and court bail, even for bailable offences;
- Prison conditions not conducive for women prisoners due to lack of necessary infrastructure for women. Moreover, children born in prison are detained or

420 See budget speech by the Minister of Home Affairs, Hon. Mathias Chikawe (MP) for the financial year 2015/2016.

421 LHRC (2016), Report on the Commemoration of the African Women's Day at the Segerea Prison in Dar es Salaam.

imprisoned with their mothers and not getting special attention;

- Fabrication of charges and cases (trumped up cases). Innocent people jailed because of personal issues;
- Sexual abuse of women prisoners and remandees during search by prison officers, sometimes asked to remove underwear; and
- Mixing minors and adults in the same prison cells, contrary to the Law of the Child Act 2009, which provides that children who are in conflict with the law should not be jailed or detained with adults.

8.3 International and Regional Human Rights Mechanisms

8.3.1 Universal Periodic Review Mechanism

8.3.1.1 Tanzania's Universal Periodic Review in 2016

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.⁴²² Under this mechanism human rights situation of all UN Member States, Tanzania inclusive, is reviewed every 5 years to ascertain the extent states have taken action to improve human rights and fulfil their international human rights obligations.⁴²³

In May 2016, Tanzania presented its report before the Human Rights Council for universal periodic review, having submitted the report on the situation of human rights in the country.⁴²⁴ This was its second review, following the review of October 2011. In response to Tanzania's UPR report, a total of 227 recommendations were made by member states.⁴²⁵ In September 2016, Tanzania announced that it had accepted 130 recommendations, rejected 72, and deferred for further consideration 24.⁴²⁶ Below are some of the key recommendations which were accepted, rejected, and deferred.

422 See United Nations Human Rights Office of the High Commissioner, *Universal Periodic Review*, at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>, accessed 29th December 2016.

423 Ibid.

424 UPR Info, *Review of United Republic of Tanzania*, at <https://www.upr-info.org/en/review/Tanzania-%28United-Republic-of%29/Session-25---May-2016/UPR-Info%27s-2RP-%28responses-to-recommendations%29#top>, accessed 29th December 2016.

425 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: United Republic of Tanzania, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, Thirty-third session, Agenda item 6.

426 Ibid.

Table 28: Key recommendations that were accepted, rejected or deferred during Tanzania's UPR Review in 2016

Recommendation	Response	Reasons
Civil and Political Rights		
Ensure the full compliance of the Media Service Bill of 2015 with the right to freedom of expression as guaranteed under the ICCPR and that its provisions facilitate the work of independent and pluralistic media, including citizen journalists. (Czech Republic).	Rejected	The existing policy and legal framework do not accommodate the concepts of pluralistic media and citizen journalists. Freedom of expression is guaranteed under the Constitution and bill in line with it.
Adopt and implement, through an inclusive process, a revised Access to Information Act and Media Services Bill in line with international human rights law and standards. (Denmark).	Rejected	When recommendation issued Access to Information Act was still in bill form and has just been passed so cannot be revised. Both Act and Bill were created through consultative and participatory process with stakeholders.
Ensure compliance of legislation with its international human rights obligations, by inter alia reviewing the Cybercrime Act and the Statistics Act. (Germany)	Rejected	Two constitutional petitions on provisions of Cybercrimes Act are in court, awaiting decision to determine way forward. No need to review Statistics Act as it was enacted in a participatory and consultative manner.
Amend all laws infringing on press freedom, in particular the Statistics Act and the Cyber Crimes Act. (Belgium)	Rejected	The Recommendation is broad and calls for the amendment of all laws infringing press freedom. The State reiterates its position above on the Cyber Crimes Act, 2015 and the Statistics Act, 2015.

Recommendation	Response	Reasons
Ensure that the legal framework and enforcement of laws, including the Cybercrimes Act and other laws affecting members of the media, are fully consistent with the human rights and fundamental freedoms in Tanzania's Constitution and the Universal Declaration of Human Rights. (United States of America)	Rejected	The Recommendation is rejected on the basis that the Cybercrimes Act of 2015 is being challenged in Court and the State is awaiting the decision of the Court.
Women's Rights		
Prohibit and criminalize acts of domestic violence (Turkey)	Accepted	
Continue to promote the rights of women and girls, elderly and children (Pakistan)	Accepted	
Adopt legislative and policy measures to combat all forms of discrimination and violence against women (Italy)	Accepted	
Expedite action taken to modify legislation to promote equality between men, women and children in matters of inheritance and succession (Madagascar)	Accepted	
Enforce fully existing laws prohibiting violence against women and girls, including rape, female genital mutilation, domestic violence and violence against persons believed to be practicing witchcraft (Canada)	Accepted	
Strengthen efforts in addressing the harmful practice of female genital mutilation and ensure that all such cases are promptly investigated and prosecuted and that victims have access to social and medical services (Cyprus)	Accepted	
Enact a non-discriminatory law on succession, inheritance and land-rights issues (Norway)	Rejected	

Recommendation	Response	Reasons
Expedite the adoption and implementation of laws to counter all forms of violence against women and girls, including marital rape and Female Genital Mutilation (Denmark)	Rejected	
Child Rights		
Set the minimum age to marriage and voting to 18 years for both genders without preference. (Haiti)	Rejected	There is a case at the Court of Appeal challenging the age of marriage in the Law of Marriage Act, 1971. The State is awaiting the Court of Appeal decision before addressing all matters and initiatives relating to the age of marriage. The State does not sanction forced marriages. Minimum age for voting is 18 years for both genders.
Amend the Law of Marriage Act of 1971 and increase the minimum marital age for girls, as well as prevent child, early and forced marriage. (Poland).	Rejected	Rejected as above.
Improve the effectiveness of measures to protect vulnerable children against sexual abuse and protect children with albinism (Capo Verde)	Accepted	
Intensify efforts to prevent and investigate cases of sexual abuse of children, particularly those living on the street, so as to punish the perpetrators, and provide assistance and protection to victims (Mexico)	Accepted	
Strengthen the Child Labour Monitoring System to ensure that children are withdrawn from the labour market in line with the ILO campaign (South Africa)	Accepted	

Recommendation	Response	Reasons
Improve the access to education for children with disabilities (Congo)	Accepted	
Social and Economic Rights		
Apply, in conformity with the policy of education and training adopted in 2014, legal and administrative measures in favour of the “education for all system” (Equatorial Guinea)	Accepted	
Allocates sufficient resources to improve the geographic accessibility of schools (Bangladesh)	Accepted	
Combat tax evasion and strengthen the tax collection system in order to fund development projects and improve the delivery of services (Cuba)	Accepted	
Improve access to safe drinking water and adequate sanitation facilities (Maldives)	Accepted	
Facilitate access to education and land rights, in particular for women and people in rural areas (Haiti)	Accepted	

Source: UPR Tanzania Reports

LHRC commends the Government for accepting most of the UPR recommendations, particularly those highlighted in the table above. However, the Government’s decision to reject key recommendations aimed at safeguarding freedom of expression, ending child marriage and protecting women from discrimination and violence raises concerns. LHRC thus calls upon the Government to reconsider, accept and implement the rejected recommendations highlighted in the table above.

8.3.2 Human Rights Treaty Bodies

Treaty bodies are established by the human rights treaties that have been ratified, with the aim of monitoring the implementation of such treaties by States parties. The provisions of the treaties require States parties to submit to the treaty bodies periodic reports on their efforts to implement the treaties. The major international and regional treaty bodies are the Human Rights Committee (HRC), the Committee on the Rights of the Child , the Committee on Economic, Social and Cultural Rights,

the Committee on the Elimination of Discrimination Against Women, the Committee on the Elimination of Racial Discrimination, and the Committee on the Rights of Persons with Disabilities. The table below shows the status of Tanzania's reporting to the treaty bodies.

Table 29: Status of Tanzania's reporting to treaty bodies

Treaty Body	Mandate	Tanzania Reports
Human Rights Committee	Monitoring implementation of the ICCPR (Article 40 of ICCPR)	<p>First report submitted on 20th August 1979.</p> <p>Second report submitted on 4th June 1991.</p> <p>Third report submitted on 6th February 1997.</p> <p>Fourth and last report submitted on 8th October 2007.</p> <p>Fifth report was due on 1st August 2013.</p>
Committee on Economic, Social and Cultural Rights	Monitoring implementation of ICESCR (Article 17 of ICESCR)	<p>First report submitted on 10th September 1979.</p> <p>Second report submitted on 25th August 2009.</p> <p>Third report was due on 30th November 2017.</p>
Committee on Elimination of Discrimination Against Women	Monitoring implementation of CEDAW (Article 18 of CEDAW)	<p>First report submitted on 9th March 1988.</p> <p>Second report submitted on 25th September 1996.</p> <p>Third report submitted on 16th April 2007.</p> <p>Fourth and last report submitted on 10th November 2014.</p>

Treaty Body	Mandate	Tanzania Reports
Committee on the Elimination of Racial Discrimination	Monitoring implementation of CERD (Article 9 of CERD)	<p>First report submitted on 22nd March 1976.</p> <p>Second report submitted on 29th January 1980.</p> <p>Third report submitted on 1st October 1982.</p> <p>Fifth report submitted on 17th July 1986.</p> <p>Sixth and last report submitted on 27th October 2004.</p> <p>Seventh report was due on 26th November 2007.</p>
Committee on the Rights of Persons with Disabilities	Monitoring implementation of CRPD (Article 35 of CRPD)	Report was due on 10 th December 2011, yet to be submitted.
Committee of the Rights of the Child	Monitoring implementation of CRC (Article 44 of CRC)	<p>First report submitted on 20th October 1999.</p> <p>Second report submitted on 20th October 2004.</p> <p>Third report submitted on 13th January 2012.</p> <p>Next report due on 9th January 2020.</p>
Committee on the Rights and Welfare of the Child	Monitoring implementation of the ACRWC (Article 43 of ACRWC)	<p>Initial report submitted in December 2006.</p> <p>Consolidated 2nd, 3rd and 4th reports submitted in October 2015.</p>

The table above indicates the extent to which Tanzania has complied with its reporting obligations under the treaties it has ratified. While Tanzania has done well in its

reporting obligations under the ICESCR, CEDAW, CRC, and ACRWC, it has not done so with regard to its reporting obligations under the CRPD and recently under the ICCPR and CERD. LHRC calls upon the Government, under the Ministry of Constitutional and Legal Affairs to comply with its treaty reporting obligations by preparing and submitting timely reports on actions taken to improve, promote and protect human rights in Tanzania.

8.3.3 CHRAGG and CSO engagement

8.3.3.1 CHRAGG's Participation in the Tanzania UPR Process in 2016

In September 2015, the Commission for Human Rights and Good Governance (CHRAGG) submitted its report to on the review of the United Republic of Tanzania to the Human Rights Council (HRC),⁴²⁷ a requirement for all national human rights institutions (NHRIs). The report mainly provided an assessment of the implementation of the recommendations of Tanzania's previous UPR process of 2011 and provided recommendations to further improve the human rights situation in the country.⁴²⁸

On the implementation of recommendations of the previous UPR process, CHRAGG noted that the Government was able to implement over 50% of the recommendations, including adopting the National Human Rights Action Plan 2013-2017.⁴²⁹ However, it noted the Government had failed to implement some of the key recommendations made, including ratification of the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT). CHRAGG urged the Government to reconsider ratifying CAT and other conventions and continue implementing other recommendations.

In its submission, CHRAGG provided an assessment of some key human rights issues and provided recommendations. These issues include death penalty, killings of PWAs and older women, extrajudicial killings, condition of detention facilities, juvenile justice, rights of PWDs, right to education, and land disputes. The following key recommendations were made in the submission:

427 See Individual Report of the Tanzania National Human Rights Institution submitted to the Human Rights Council under the Universal Periodic Review Mechanism, Review of the United Republic of Tanzania, UPR Second Cycle, 25th Session, April/May 2016, at [http://www.chragg.go.tz/docs/REP/UPR%20submission%20-%20CHRAGG%20\(Chair's%20version\)%2021%20accepted.pdf](http://www.chragg.go.tz/docs/REP/UPR%20submission%20-%20CHRAGG%20(Chair's%20version)%2021%20accepted.pdf), accessed 20th January 2017

428 Ibid, p. 1.

429 Ibid, p. 2.

- ♦ Abolish death penalty;
- ♦ Ensure all perpetrators of attacks and killings of PWAs are brought to justice;
- ♦ Ensure provision of social security to the elderly;
- ♦ Address the issue of complaints against law enforcement officials;
- ♦ Review and amend the Police Force and Auxiliary Services Act;
- ♦ Provide adequate budget for construction and rehabilitation of prison infrastructure and remuneration of prison officers and police;
- ♦ Effectively use alternative penal sanctions such as community services;
- ♦ In juvenile justice, ensure children in conflict with the law are separated from adults;
- ♦ Fully implement the Persons with Disabilities Act;
- ♦ Increase education budget and pay teacher arrears;
- ♦ Pay adequate and timely compensation when land is acquired in the public interest; and
- ♦ Construct water infrastructure in pastoralist areas to ensure availability of water for livestock.

These recommendations are similar to and among those provided during the UPR process in 2016 by CSOs in other states involved in the process and Tanzanian CSOs.

8.3.3.2 Civil Society Engagement with Human Rights Mechanisms

Civil Society Organizations (CSOs) are key in helping the Government in safeguarding and promoting human rights in Tanzania. These organizations, particularly human rights-based CSOs, also play a key role as government watchdog, ensuring the Government fulfils its national, regional, and international human rights obligations. CSOs thus complement government efforts in promoting human rights, providing legal aid, and advocating for legal and policy reforms to ensure fundamental rights are guaranteed. In the course of their activities these CSOs engage with various human rights mechanisms, particularly the judiciary, police and the national human rights institution (CHRAGG).

In 2016, CSOs engaged in the UPR process, whereby more than 80 human rights organizations – including LHRC - submitted a joint report, prepared in September 2015, before the UPR Working Group.⁴³⁰ The report prepared under the coordination

⁴³⁰ *Universal Periodic Review (UPR) General Report*, Joint Tanzania civil society submission to the UPR Working Group, UPR 25th Session, April 2016, available at <https://tnrf.org/files/>

of the Tanzania Human Rights Defenders Coalition (THRDC), highlighted human rights challenges and incidents of human rights violations and provided a total of 118 recommendations, suggesting ways the Government and other stakeholders can improve human rights in Tanzania. Below is a summary of key recommendations made by CSOs during the Tanzania UPR process in 2016.

Table 30: Summary of Key Recommendations made by CSOs during Tanzania UPR Process in 2016

Rights Category	Recommendations
Civil and Political Rights	<p>Amend all draconian laws such as the Newspaper Act 1976 and recently passed Cybercrimes Act and Statistics Act to safeguard freedom of expression.</p> <p>Include and involve key stakeholders when developing laws on freedom of expression.</p> <p>Resume the constitution-making process and ensure that the views of the people collected by the former Constitutional Review Commission are respected.</p>
Social Rights	<p>Increase budget for the health sector up to 15% of the total budget as a minimum requirement.</p> <p>Ensure timely disbursement of funds for the health and education sectors.</p> <p>Increase women's access to healthcare services.</p> <p>Increase quality of education through developing qualified teachers for primary and secondary schools and improving working environment.</p>

Rights Category	Recommendations
Women's Rights	<p>Enact legislation to ensure equal participation of women in all political and administrative positions.</p> <p>Endorse the Second Draft Constitution of the United Republic Constitution, which provides for a 50-50 female representation in decision-making bodies.</p> <p>Enact uniform, non-discriminatory inheritance laws to protect women's rights.</p> <p>Review and amend all laws discriminating women's right to inheritance, including customary laws.</p> <p>Fully implement the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), including implementing a legislation prohibiting FGM.</p> <p>Enact a specific law on domestic violence as part of implementation of CEDAW.</p>
Child Rights	<p>Harmonize laws to ensure they are in line with international child rights standards and principles.</p> <p>Improve learning environment at schools.</p>
Rights of PWDs	<p>Increase efforts of raising awareness on the rights of PWDs and addressing stigmatization against them.</p> <p>Fully implement the Persons with Disability Act 2010.</p> <p>Increase speed of investigating and prosecuting cases involving PWAs.</p> <p>Ensure equal access to education and employment for PWDs.</p>
Rights of the Elderly	<p>Enact a legislation that will guarantee social protection for the elderly.</p> <p>Introduce universal pension scheme for the elderly.</p>

Source: Civil society joint UPR report 2016

8.3.4 Status of Ratification of Key International Human Rights Treaties

As of December 2016, Tanzania has ratified 10 out of 18 international human rights treaties/conventions. The table below indicates the number of regional and international treaties ratified by Tanzania so far.

Table 31: Human Rights Treaties Ratified by Tanzania as of December 2016

	<i>Convention/Treaty</i>	<i>Ratification</i>
International	Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) 1979	1985
	Convention on the Elimination of All forms of Racial Discrimination 1965	1972
	Convention on the Rights of the Child (CRC) 1989	1991
	International Covenant on Civil and Political Rights (ICCPR) 1966	1976
	International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966	1976
	Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005	2005
	Optional Protocol to the Convention on the Elimination of All forms of Discrimination Against Women 2000	2006
	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2002	2004
	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2002	2003
	Convention on the Rights of Persons with Disabilities 2008	2009
	Convention Relating to the Status of Refugees 1951	1983
	Optional Protocol on the Convention on the Rights of Persons with Disabilities 2008	2009
Regional	African Charter on Human and Peoples' Rights 1981	1984
	African Charter on the Rights and Welfare of the Child 1990	2003
	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2000 (Maputo Protocol)	2007
	Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights 1998	2006

Tanzania is yet to ratify the following treaties:

- ⊖ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1987;
- ⊖ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 2003;
- ⊖ International Convention for the Protection of all Persons from Enforced Disappearance 2010;
- ⊖ Optional Protocol to the International Covenant on Civil and Political Rights 1976;
- ⊖ Second Optional Protocol to the International Covenant and Political Rights, aiming at the abolition of the death penalty 1991;
- ⊖ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2013;
- ⊖ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2006; and
- ⊖ Optional Protocol to the Convention on the Rights of the Child on a communications procedure 2011.

LHRC calls upon the Government to ratify the conventions which are yet to be ratified in order to safeguard human rights and strengthen human rights mechanisms in Tanzania. Members of the Parliament can play a key role in putting pressure on the Government to act fast and ratify these important human rights treaties.

8.4 Conclusion and Recommendations

LHRC commends the Government for agreeing to implement some of the recommendations made during the UPR process, particularly on ending violence against women and social rights. However, rejection of other recommendations such as those aimed at protecting rights of women and girls as well as those on freedom of expression is a worrying sign. For instance, amendment of the Law of Marriage Act to stipulate 18 years as minimum age of marriage is very important in combating child and forced marriages. Ratification of the anti-torture convention is also key in protecting Tanzanians from acts of torture by state officials. However, Tanzania has still not yet ratified the convention and rejected the recommendation to do so in 2016.

LHRC thus provides the following recommendations:

- The Government to increase budgets for human rights mechanisms CHRAGG, Police Force, and Tanzania Prisons Service in order to effectively promote and safeguard human rights;
- The Ministry of Constitutional and Legal Affairs to ensure key objectives in the National Human Rights Plan of Action are fully implemented by the end of the plan in 2017;
- The Ministry of Constitutional and Legal Affairs to ensure that the Government adheres to its reporting obligations under regional and international human rights treaties;
- The Government, through the Ministry of Constitutional and Legal Affairs, to increase the pace of implementation of accepted recommendations made during the UPR process in 2016 as well as those made during the previous process in 2011;
- The Government to reconsider, accept and implement recommendations on safeguarding right to life, including abolishing death penalty; women's rights; and child rights, especially ending child marriage; and
- The Government to ratify and domesticate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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PART TWO

**ZANZIBAR HUMAN RIGHTS
REPORT**

ZANZIBAR HUMAN RIGHTS REPORT OF 2016



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LIST OF ABBREVIATIONS

AAKIA	Abeid Amani Karume International Airport
AAPAM	African Association of Public Administration and Management
AC	Appeal Cases
ACHPR	African Charter on Human and Peoples' Rights (ACHPR)
ADB	Africa Development Bank
ADR	Alternative Dispute Resolution
AG	Attorney General
AIR	All India Law Report
ASP	Afro Shirazi Party
ASP	Afro-Shirazi Party
BADEA	Arab Bank for Economic Development in Africa
CAG	Controller and Auditor General
CCM	Chama Cha Mapinduzi
CHADEMA	Chama Cha DemokrasianaMaendeleo
CHRAGG	Commission for Human Rights and Good Governance
CJ	Chief Justice
CUF	Civic United Front
DNA	Deoxyribo Nucleic Acid
DPP	Director of Public Prosecutions
ERP	Economic Recovery Programs
FAWE	Forum for African Women Educationalists

GBS	General Budget Support
GBV	Gender Based Violence
GDP	Gross Domestic Product
GDP	Gross Domestic Product
GNU	Government of National Unity
GSO	Government Security Office
HC	High Court
HCD	High Court Digest
HCZ	High Court of Zanzibar
ICCPR	International Covenant on Civil and Political Rights
ICE	Institute of Continuing Education
ICSEC	International Covenant on Social Economic and Cultural Rights
IFMS	Integrated Financial Management System
IPU	World Future Council, the Inter-Parliamentary Union
ITUC	International Trade Union Confederation
JSC	Judicial Service Commission
JSC	Judicial Services Commission
JUMIKI	JumuiyayaUamshonaMihadharayaKiislamu
LEGCO	Legislative Council
LRC	Law Review Commission
LRCZ	Law Review Commission of Zanzibar
LRT	Law Report of Tanzania

MACEMP	Marine and Coastal Environment Management Project
MCT	Media Council of Tanzania
MDG	Millennium Developments Goals
MKUZA	MkakatiwaKukuzaUchuminaKupunguzaUmaskini Zanzibar
MoEVT	Ministry of Education and Vocational Trainings
NGO	Non-Governmental Organization
NIDA	National Identity Card Authority
OAU	Organization of African Union
OUT	Open University of Tanzania
PVR	Permanent Voters Register
SACCOS	Saving and Credits Cooperatives Societies
SAP	Structural Adjustment Program
SC	Supreme Court
SEP	Structural Economic Programme
SMOLE	Sustainable Management of Land and Environment
SMZ	Serikali ya Mapinduzi Zanzibar
TAMWA	Tanzania Media Women Association
TANU	Tanganyika African National Union
TEMCO	Tanzania Election Monitoring Committee
TLR	Tanzania Law Report
TMA	Tanzania Meteorology Agency
TPDF	Tanzania People Defence Force

TWA	Trans World Aviation
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	The United Nations Educational, Scientific and Cultural Organization is a specialized agency of the United Nations
UP	Umma Party
ZAA	Zanzibar Airports Authority
ZABEIPO	Zanzibar Strategy for Growth and Reduction of Poverty Zanzibar Education Implementation Project
ZACPO	Zanzibar Clove Producers Organization
ZAECA	Zanzibar Anti-Corruption and Economic Crimes Authority
ZAFELA	Zanzibar Female Lawyers Association
ZANGOC	The Zanzibar NGO Cluster for HIV and AIDS Prevention and Control
ZAN-ID	Zanzibar Identity Card
ZAPDD	Zanzibar Association of People with Development Disabilities
ZAT	Zanzibar Aviation Services & Travel Limited
ZATU	Zanzibar Association of Teachers Union
ZATUC	Zanzibar Association of Trade Union Confederation
ZAWA	Zanzibar Water Authority
ZBC	Zanzibar Business Council
ZBC	Zanzibar Broadcasting Corporation
ZCT	Zanzibar Commission for Tourism
ZEC	Zanzibar Electoral Commission

ZIFF	Zanzibar International Film Festival
ZIPA	Zanzibar Investment Promotion Authority
ZLR	Zanzibar Law Report
ZLS	Zanzibar Law Society
ZLSC	Zanzibar Legal Services Centre
ZNP	Zanzibar Nationalist Party
ZPPP	Zanzibar and Pemba People's Party
ZSSF	Zanzibar Social Security Fund

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PREFACE

The Zanzibar Legal Services Centre (ZLSC) was established in 1992 as a non-governmental, voluntary, independent and non-profit making organisation. During the 24 years of its existence, the Centre has grown from strength to strength, working tirelessly to achieve all its major aims and objectives in keeping with the vision and mission of the Centre. Its major aim is to provide legal services to the poor, women, and children, the disabled, marginalised and other disadvantaged sections of the Zanzibari society. The Centre also aims to popularise knowledge on the law and to produce publications in all areas of legal concern to the people of Zanzibar.

In order to achieve these aims, the Centre strives to ensure that all the people of Zanzibar have a basic understanding of legal and human rights principles and can act on them in order to build a society based on rule of law, good governance and the observance of human rights norms.

The Centre is a Body Corporate and thus has right and capacity to sue and be sued in its own name and own both moveable and immovable property. It also has its own Official Seal and Emblem.

Vision

Rights and Access to Justice for all.

Mission

Zanzibar Legal Services Centre is a Non-partisan, Non-profit Organization dedicated to raising people's awareness, promoting human rights and good governance.

Core Objectives

The Centre primarily provides legal aid in the form of counselling and advice to the poor and those who cannot afford to hire lawyers to handle their legal matters. Those in need of legal aid visit the offices of the Centre in both Unguja and Pemba. In addition, some of the staffs of the Centre who are admitted into the Roll as Advocates provide legal representation in the courts of law for deserving cases which have satisfied the Centre's criteria for taking legal matters to court. All the legal aid provided by the Centre – be it purely advisory or litigation, is provided free of charge. The Centre is also actively engaged in the provision of legal education to the public in order to raise people's awareness on their basic rights and civic responsibilities. As will

be elaborated in this report, this is done through various means including seminars, workshops, round-table meetings, and the media mainly through television and radio programmes.

The Centre prides itself on the legal research it undertakes through conducting, co-ordinating and commissioning research on legal issues. The results of the research undertaken is disseminated through meetings of all forms in which scholars, politicians and people from all walks of life meet to converse and exchange views. Some of the completed results have been both attractive and appealing to the government thus helping to shape policies and laws on various issues including the issue of the rights of the child in Zanzibar.

The most notable research undertaken by ZLSC is Annual Human Rights Report since 2006.



Prof. Chris Peter Maina
Chairperson ZLSC

CHAPTER ONE**GENERAL OVERVIEW OF ZANZIBAR****1.1 Introduction**

Zanzibar has been home to humans since the beginning of the late Stone Age. This notion has been supported by numerous bodies of evidence including ancient scriptures. It is believed that the Greco-Roman text, the Periplus of the Erythraean Sea, written between the 1st and 3rd centuries BC, mentioned the island of Menuthias which is probably Unguja.⁴³¹ The first settlements of Zanzibar are believed to have been established by immigrants from numerous sections of the African Mainland.⁴³² At that time, there was contact between the people of Zanzibar and outsiders. The word Zanzibar is believed to be derived from Arabic word ‘Zanjibar’ which means coast of the blacks.

Autonomous African communities have existed in Zanzibar since ancient times. Nevertheless the geographical and strategic location of Zanzibar attracted visitors from many foreign nations, some of whom established their political bases in Zanzibar. Henceforth, the historical print of Zanzibar draws mainly from African settlers, Persians traders and invasion by foreign nations. Persians and Arabs are said to be the first foreigners who settled in Zanzibar prior to the coming of Sultan of Oman.⁴³³

There are of course significant interactions from other countries. These interactions are thought to have derived from the responses of indigenous African development parallel with imported notions from other parts of Africa, the Middle East, especially from Oman and Yemen in Arabia and from Shiraz in Persia.⁴³⁴

During the 16th Century, the first foreign visitors arriving from the south to Zanzibar were the Portuguese. The Portuguese were the first European power to gain control of Zanzibar from 1503 to 1698. They established friendly relations with the ruler and introduced Christianity in the Isles. However in the late 17th Century the Christian

431 Pearce F.B. Zanzibar (1920), the Island Metropolis of East Africa, p.120.

432 Michael F (1965), Zanzibar Background to Revolution, p.29.

433 Bhacher M.R (1994), Trade and Empire in Muscat and Zanzibar:p.5-6.

434 Ibid.

presence came to an end, after a forceful campaign along the coast by the Muslims of Oman. The Portuguese colonial powers were defeated by the Omani Arabs.⁴³⁷

Whilst Persians, principally Shirazi began to land in Zanzibar from about the 10th Century, their impact was restricted only to social aspects. This social impact was so great that it can be evidenced even today. For instance, the vast majority of Zanzibar's indigenous African population call themselves "Shirazi" as a social identity with the Persians. In contrast, a long political relation was established by Arabs from Oman. In 1690 Saif bin Sultan, the Imam of Oman, pressed down on the East African coast.⁴³⁸ Though Saif faced a major obstacle at Fort Jesus which housed the garrison of a Portuguese settlement at Mombasa, after a two-year siege, it fell to him in 1698.

Zanzibar then became an increasingly important part of the Omani empire due to its value as the main slave market of the East African coast. It was the slave trade which was originally responsible for generating the increased economic interest of the Omanis in the Swahili Coast.

After his succession from al-Mazrui, Seyyid Said bin Sultan (al-Busaid) began to reassert his authority in East Africa. In 1822 he took Pemba and captured Mombasa in 1827. Despite strong opposition from the local Arab clans of Zanzibar, Seyyid Said, in 1830 exercised nominal sovereignty over a number of towns. By 1832, Seyyid Said decided to shift his capital from Oman to Zanzibar.⁴³⁹

From this point in time, Zanzibar and Oman were both under the rule of Seyyid Said, but the link with Oman was broken after his death in 1856. Zanzibar remained an independent Arab state for sixty years until Great Britain, extending its own empire in East Africa, made Zanzibar its Protectorate. Britain showed her interest in having links with Zanzibar especially in trade and officially signed extraterritorial jurisdiction treaties, namely, the Treaties of 1822, 1839 and 1886 under which, the Sultan agreed to the appointment of a British Agent in Zanzibar and to exercise by him, certain rights of jurisdiction over English subjects engaged in trade, and in ships flying the Sultan's flag outside Sultan's dominion.⁴⁴⁰

The British were increasingly involved in this prosperous offshore Island. After the abrupt redistribution of the Sultan's inland territories, Britain remained the

437 J. Middleton and another (1965), Zanzibar, its society and politics, p.3-4.

438 S.C.Nicholls (1971), The Swahili Coast, Politics, Diplomacy and Trade on the East African Littoral, p.217.

439 Middleton and another (1965),(supra) p.3-4.

440 Olson J.S (1991), Historical Dictionary of European Imperialism, p.279-280.

only colonial power with a well-established political presence in Zanzibar itself. This was brought about by the Heligoland–Zanzibar Treaty (German: Helgoland-Sansibar-Vertrag; also known as the Anglo-German Agreement of 1890) which was an agreement signed on 1st July 1890, between Germany and Great Britain. Germany gained the small but strategic island of Heligoland, which its new navy needed for the control of the new Kiel Canal and approaches to Germany’s North Sea ports.

In exchange, Germany gave up its rights in the Zanzibar region in Africa, allowing Zanzibar to provide a key link in the British control of East Africa. With the approval of the Sultan, the island and its narrow coastal regions were declared a British protectorate in 1890. However, their rule came to an end after the Island got its independence in 1963.

On 10th December, 1963 Zanzibar gained full independence and became a member of the British Commonwealth and a member state of the United Nations on 16th December 1963. A coalition of Arab parties formed the first government, with the Sultan as Head of the State. Its Independence Constitution followed the Westminster model of government. However, in January 1964, a month after independence from Britain, a revolution toppled the regime. The Sultan was deposed and a People Republic of Zanzibar proclaimed.⁴⁴¹

Abeid Amani Karume became the president of Zanzibar after the Revolution. Political parties were abolished and the State made several changes, some of which are said to be positive and others negative. Within the first year of the Revolution, the President introduced several radical changes in the political, economic and social spheres. The liberty of the people was declared, land and other properties were confiscated, mortgages were cancelled, rickshaws publicly burned, all clubs and schools based on religion, race or wealth were nationalised or banned by the Government.⁴⁴²

The first law was the Legislative Power Law which was passed by the Revolutionary Council in 1964 to act as the Constitution.⁴⁴³ Other more prominent legislations that had effects similar to that of the Constitution were ‘Constitutional Government and the Rule of Law Decree, 1964’ and, ‘Equality, Reconciliation and Unity of Zanzibar People Decree, 1964.’⁴⁴⁴ In this arrangement, the legislative and judicial powers were entrusted to the Revolutionary Council where the President was the Chairman.

441 Martin E.B (1978), Zanzibar Traditional and Revolution, p.57.

442 Ibid.

443 Uki A, The State of Constitutionalism in Zanzibar in 2010 in Odhiambo M, Annual state of Constitutionalism in East Africa, 2010 (Kampala: p.187.

444 Zanzibar People Decree, No.6 of 1964.

In 1969, the Revolutionary Council restructured the court system which was based on British judicial principles. Interestingly, on 1st January 1970, the Revolutionary Council abolished the legal system which had been based on British judicial principles to form its own kind of legal system. The legal system of Zanzibar was then governed by Decrees until sometime in 1979 when the first post-revolution constitution was introduced.⁴⁴⁵

One important development of this constitution was the separation of powers of the legislative from those of the executive. The House of Representative was for the first time established to pass all laws to be applied in Zanzibar. This Constitution brought remarkable development towards the strengthening of democracy and the rule of law. The Zanzibar government introduced a new constitution, entitled *Katiba ya Zanzibar* 1984 which was enacted by House of Representatives in 1984. The introduction of this Constitution saw a number of reforms in the legal sector.

Zanzibar united with Tanganyika to form one sovereign state, the United Republic of Tanzania with Mwalimu Julius Nyerere as president,⁴⁴⁶ and Abeid Amani Karume as Vice President. A special session of the Tanganyika National Assembly approved the Articles of the Union on 25th April 1964 with no substantive discussion. The United Republic of Tanganyika and Zanzibar which was officially proclaimed on 26th April 1964 was renamed the United Republic of Tanzania on 28th October, 1964.⁴⁴⁷

Since the formation of this union Zanzibar has had her own Executive headed by the President of Zanzibar who is also the Chairman of the Revolutionary Council, and under the Constitution of Zanzibar 1984, it has its own legislative body, namely, the House of Representatives which consist of two parts, the President of Zanzibar on one part and the House of Representatives on the other. It also has an independent High Court of Zanzibar headed by the Chief Justice and other judges of which not less than two are referred to as High Court Judges.⁴⁴⁸ The 2010 constitutional development introduced for the first time, a Government of National Unity, where there are to be two Vice Presidents (the First Vice and the Second Vice Presidents),⁴⁴⁹ ministers and other members of the Revolutionary Council (i.e. the Cabinet as the President deems fit to appoint.

445 Martin (1978), p.64.

446 Kituo cha Katiba, (2003) p.21.

447 United Republic Declaration of Name Act, No.61 of 1964.

448 Ibid.

449 Section 39 of Zanzibar Constitution 1984.

1.2 Geography

Zanzibar covering an area of approximately 565 sq miles (1464 sq km) is mainly a low lying island, with its highest point at about 350 feet. It is located in the Indian Ocean, about 25 miles from the Tanzanian mainland coast, and 6° south of the equator. Zanzibar as a country is made up of two main islands, namely ‘Unguja’ and ‘Pemba’. Unguja Island (known broadly as Zanzibar) is 60 miles long and 20 miles wide, occupying a total area of approximately 650 square miles. It is characterised by beautiful sandy beaches with fringing coral reefs, and the magic of the historic Stone Town - said to be the only functioning ancient town in East Africa.⁴⁵⁰

The coral reefs that surround the East Coast are rich in marine diversity, and make Zanzibar an ideal location for snorkelling and scuba diving. Zanzibar experiences ideal holiday weather for most of the year. The heat of summer is often seasonally cooled by windy conditions, resulting in pleasant sea breezes, particularly on the North and East coasts. Being near to the equator, the islands are warm all year round, but officially, summer and winter peak in December and June respectively.⁴⁵¹



Picture 17: The most popular dolphin spotting location in Zanzibar in Kizimkazi village on the Southern coast of Unguja Island.

450 Lugoe F.N (2012) Land Disputes in Zanzibar for SMOLE p.13.

451 Ibid.

In Zanzibar there are the short rains known as Vuli which generally occur during October and November and are characterised by showers which do not last long. The longer rains popularly known as Masika normally occur between March and May and, although this is often referred to as the ‘Green Season,’ it typically does not rain every day during that time⁴⁵² but when it does; the rains are very heavy with adverse and detrimental consequences. The climate in Zanzibar is warm and humid (equatorial). The cold season known as Kipupwe is during the months of June to August, while the hot season, locally known as Kaskazi, is experienced from December to February.

Zanzibar has a number of economic industries. The main industries are those in spices (which include cloves, nutmeg, cinnamon and pepper), raffia, and tourism. It is for this reason that Zanzibar is referred to as the “Spice Islands”, a term that is also associated with the Maluku Islands in Indonesia. Zanzibar is also the home of the endemic Zanzibar Red Colobus and the elusive Zanzibar Leopard.

Pemba Island is the only island apart from Unguja that still produces cloves on a large scale which is a primary source of income for the islands. Sometimes called “a jewel in the lap of Africa,” the archipelago has become a popular tourist destination. Pemba has a large population of bats making this a famous tourist attraction.⁴⁵³ It is believed that bats of a large size are commonly found in Pemba. The Zanzibar Commission for Tourism’s website does a good job in listing and explaining these various attractions so that individuals can easily identify those that best suit their needs.

Zanzibar has five administrative regions and eleven districts. There are three regions in Unguja and two regions in Pemba. The three regions of Unguja are Urban West, South Unguja and North Unguja. The urban west region has three districts which are Urban district, West A and West B districts. South Unguja region has Central and South districts. The North region of Unguja has North A and North B districts. In Pemba, there are two regions. They are North Pemba and South Pemba regions. North Pemba has the two districts of Wete and Micheweni. The South Pemba region has the two Districts of Mkoani and Chake Chake. Each district is divided into a number of smaller localities called ‘Shehias’. There are 384 Shehias in Zanzibar.⁴⁵⁴

1.3 The People

Zanzibar is predominantly a conservative, Sunni Muslim society, although there are also pockets of Christian and Hindu followers. Zanzibaris are an eclectic mixture of ethnic backgrounds, indicative of the islands’ colourful history. Widespread

452 Zanzibar Institute for Tourist Development (2014) p.33.

453 Zanzibar Human Rights Report (2015) p.9.

454 Ibid.

intermarriages between Shirazis and Africans gave rise to a coastal community with distinctive features, using a highly Arabicized form of language, known as Kiswahili, which is the country's national language. However, while the official languages are both Kiswahili and English, English generally is used as a medium of instruction in academic institutions. The language of the court and all official documents and public recordings is either Kiswahili or English.⁴⁵⁵

Around the late 11th or 12th Century, a significant number of traders began to settle in Zanzibar and intermarried with the indigenous Africans. Eventually, a hereditary ruler (known as the MwinyiMkuu or Jumbe), emerged from among the Hadimu, and a similar ruler, called the Sheha, was set up among the Tumbatu. With the coming of British in Zanzibar, the inhabitants were grouped mainly into Europeans, Arabs and African whereas the natives (Africans) were sub-grouped into Wahadimu, Watumbatu and Wapemba. As Chul (1995) wrote "the inhabitants of Zanzibar are mainly three sub-Swahili groups: Wahadimu, Watumbatu, and other Swahili immigrants from Mainland (including the Shirazi).

The Swahili groups formed about eighty per cent of the total population, about ten per cent were Arabs, nine per cent Indo-Pakistanis, and the rest were Somalis, Comorians and Goans.⁴⁵⁶ The population census carried out on August 2012 indicates that Zanzibar has a population of about 1,303,569 people compared to that of 2002, which was 984,624. This indicates that the growth rate increased from 3.0 per cent in 1988 to 3.1 per cent during 2002 and then declined to 2.8 per cent in 2012. The population density of Zanzibar has increased from 400 person/sq. km in 2002 to 530 person/sq. km in 2012.

The Urban Region dominates the overall population with the highest growth rates of 4.2 percent and a population of 593,678; while the region with the least population is South Region (Kusini Unguja) with a population of 115,588. The report further indicates that the proportion of females has marginally increased compared to males.⁴⁵⁷ The majority of Zanzibaris are Muslims who are estimated to be 95% of the population. The predominant Muslim sect is Sunni. There are also small minority groups of Hindu believers and a number of Christian denominations.

The average household size in Zanzibar declined from 5.3 in 2002 to 5.1 in 2012 censuses. As shown in table below, the average household size varies among districts. Five districts in Zanzibar recorded above the Tanzania national average of 4.8 persons

455 Ibid.

456 Ibid.

457 Ibid.

per household. Sex ratios also varied among districts in Zanzibar from 91 males per 100 females in West to 102 in Central, with the average sex ratio of 94.

1.4 The Economy

Zanzibar's economy is based mostly on agriculture and tourism. In agriculture, the main crops grown for export include cloves, coconuts, chillies, copra and seaweed. Zanzibar also uses its wealth of the sea for fishing which is also important to the local economy. The types of economic activities can be classified into four major sectors which are: the agriculture sector, production and construction sector, distribution sector, and services sector. These sectors are climate dependent and a large proportion of Gross Domestic Product (GDP), employment and livelihoods are associated with climate sensitive activities. Higher temperatures, unpredictable rainfall patterns and high tide levels can lead to droughts and floods which are likely to affect the Isles' economy and the GDP.⁴⁵⁸

Historically, cloves had, for a long time, been the economic backbone of the island's economy. It was introduced in Zanzibar by the Omani Arabs in the first half of the 19th Century and has been a major foreign exchange earner in Zanzibar for over a hundred years. Cloves were grown on large plantation owned by Arabs with the manual labour being provided for by slaves. At that time, hard labour was not considered to be a violation of the human rights. However, the legal system began to change with the advent of colonialism. British law was predicated on private ownership as opposed to communal system. The process of privatization was believed to be not only progressive but also absolutely necessary in order to ensure that slaves continue to work and contribute to clove economy.⁴⁵⁹

This continued until the time when the slavery was totally abolished. Even after the revolution of 1964, cloves were the main source of the national income in Zanzibar. To protect its economy Zanzibar adopted a foreign policy which supported the underdeveloped third world as opposed to capitalism, colonialism, exploitation and neo-colonialism. The economy of Zanzibar, however, collapsed in 1970 because of a decline in clove exports.⁴⁶⁰ Efforts to boost the economy of Zanzibar were made in the late 1970s, enforced materially by the Revolutionary Government of Zanzibar in the mid-1980s and deepened during the decade of 1995 – 2005. This generated some positive results at the Macro-level.

Several reasons led to legal and economic reforms in Zanzibar, but the failure of the mission of the Government to adequately provide for basic social services was the

458 SMOLE Report 2012 p.18.

459 ZHRR (2015) P.13.

460 Martin (supra), p.60-67.

driving reason for the legal sector reform.⁴⁶¹ It was inevitable to have these reforms as it was the belief of thinkers that economic development is the result of all forces and energies in a country which collectively raises its per capita output.

The legal economic reforms aimed at boosting the economy of Zanzibar. The government had to do all it could to meet the conditions of securing aid from IMF and WB. These included the Structural Adjustment Program (SAP) and Economic Recovery Programs (ERP) which underlined a market based economy⁴⁶². These programmes encouraged privatization in the economy.

Eventually, the core roles of government was to focus on ensuring law and order, formulation of enabling public policies for the private sector to flourish in economic development and service delivery, promote democratic governance, mobilization of resources for provision of public services and delivery of effective and efficient public services. Positive measures taken by the government to promote private sector development include formulation of the investment policy, programmes to promote business entrepreneurship, creation of investment promotion institutions, as well as the establishment and operation of the Zanzibar Business Council (ZBC).

Cloves still contribute largely to the economy of Zanzibar. The government has taken several measures to improve the production of the cloves. From 2012 the government has been distributing, free of charge, clove seedlings in a bid to boost the clove cultivation. Efforts were also taken to raise the price of cloves from TZS 5,000 in 2010 to the current price of TZS 14,000/=.⁴⁶³

The Zanzibar government is still not ready to privatize the clove industry in the Isles. Despite wide spread demands coming mostly from farmers and businessmen who want the Zanzibar government to liberalize the cloves trade, the government still maintains the law prohibiting anyone from transporting cloves without government permission. According to the Agricultural Transformation for Sustainable Development 2010 – 2020 policy, cloves have been a major foreign exchange earner in Zanzibar for the last 150 years. However, there has been a significant steady decline over the last decade from an annual average of about 16,000 tons in 1970s to a current average of between 1,500 to 3,500 tons. The decline in production is attributed to climate changes, insecurity of the three acre land tenure system, diseases, poor management and limited replacement and ageing of cloves trees.

461 Moshi et al (2004) Zanzibar, Challenges of Globalization and Poverty Reduction, p.31.

462 Hartmann J (1994), the state of Tanzania, p.218-233.

463 Issa Yussuf (2015), Isles maintain a Higher Clove Price Despite Global Slam, p.12.

Zanzibar has moved from cloves dependency to tourism during the mid-80s following the introduction of tourism industry in the islands. The tourism sector in Zanzibar had been in existence for a long time but was not regarded as a key factor to the economy of Zanzibar. It was not until the mid-eighties when tourism gained impetus. The main changes in the tourism sector in Zanzibar were facilitated by the enactment of the Zanzibar Tourism Promotion Act 1991. This Act was made to promote and strengthen tourism and to provide for the procedures for better carrying out business in tourism and matters connected with tourism. Eight years later, the Act was repealed by the Promotion of Tourism Act, 1996 which, among other things, established the Commission for Tourism as independent body. Subsequently, this Act was repealed by the Zanzibar Tourism Act, 2009, as amended by the Zanzibar Tourism (Amendment) Act 2012.

Tourism is currently promoted as the major sector of Zanzibar's economy which generates foreign exchange earnings, employment opportunities, stimulates local economy, and supports other sectors such as agriculture, and small scale handcraft industry. Above all, it is a way of economic diversification. This move towards diversification was initiated in 1980's where the Structural Economic Programme (SEP), among other things, proposed a move towards a Free Economic Policy and Trade Liberalization. Thus, from mid-1980's, Zanzibar adopted liberalized economic policies in relation to the role of Private Sector Investments, Free Trade and liberal exchange rate.

The Zanzibar Investment Promotion Authority (ZIPA) established in 1996 is mandated to promote and conduct all procedures for investments. The response to the investment is beyond imagination and tourism related investments dominated the list of ZIPA approved investments in terms of number and capital outlays. Tourism is a fast growing sector in the Zanzibar economy contributing around 80% of foreign exchange earnings and about 27% of the Growth Domestic Product (GDP). Employment generated through the tourism sector is estimated to reach 12,500, out of whom 8,600 people are employed in hotels and guest houses subsector alone. The rest are employed in other tourist investments such as tourist shops and tour operators.

The National Growth Strategy (MKUZA II), which is based on both Zanzibar Vision 2020 and Millennium Developments Goals (MDG), had the view that tourism is the driver of economic development for Zanzibar and over 50% of all employment will be generated from tourism by 2020. To achieve this vision, a series of goals and objectives have been devised to optimize the likelihood of achievement. Such goals and objectives embrace Zanzibar's rich natural assets; developing integrated

coastal experiences; promotion of special interest (niche) markets; targeting the most profitable prospects; applying a collaborative approach to marketing. It is envisaged that the expedited growth of tourism will lead to (a) higher GDP growth rates, (b) increased employment, (c) high Government revenue, and (d) better quality of life for all the people.⁴⁶⁴

Zanzibar has also focused on cultural based tourism activities. Museums, monuments, artisans and their handmade products are a large part of Zanzibar's culture and heritage. Several artisans in the Zanzibar regularly craft goods and exhibit them at various places, but Zanzibar has yet to make a concerted effort to market its own local arts and crafts, as well as its artisans.

Natural and scenic beauty is probably another of Zanzibar's very rich resources. Zanzibar has a wealth of scenery. Ngezi forest, Kiwengwa forest, natural caves, dolphin spotting and Jozani wilderness are some of the more popular scenic attractions in the area. There are other attractions such as Zanzibar Butterfly Centre that offers a unique view of nature and its various inhabitants.

Zanzibar currently has a substantial number of tourism offerings. In the retail chain built primarily around tourists, many souvenir shops exist but only a few souvenirs that display a true picture of Zanzibar exist. Restaurants to cater for tourists are limited to a very few international restaurants in the island. The other restaurants are primarily for local dining that would not be considered to accommodate first class tourists. Low cost hotels are plentiful when compared to the number of international hotels in the island. There are 378 establishments with accommodation in 10 districts accounting for 8027 rooms. Nearly 60% of the rooms are located in North Region while just over 15% is located in South Region, 17% are located in Stone Town and its vicinity, and the remaining are located in Pemba. In Pemba, a unique kind of hotel with underwater rooms marked another attraction for tourists. The Manta Resort located 250 metres off the coast of Pemba Island, has underwater rooms that forms part of a holiday retreat of the main island, and comprises of a three-storey floating structure with its lowest level positioned four meters beneath the water.

Another economic activity which helps to raise livelihood of people is seaweed farming. Seaweed farming is the practice of cultivating and harvesting seaweed. In its simplest form, it consists of the management of naturally found batches. In its most advanced form, it consists of fully controlling the life cycle of the algae. People who live in coastal areas in Zanzibar have in recent years engaged in seaweed production. It is also a substantial source of foreign currency after tourism and cloves and helps to

464

ZHRR (2015) p.15.

reduce the degradation of the marine environment. Seaweed farming in Zanzibar has been reported to empower women from their long time dependency on their husbands in controlling the family's socio-economic needs. However, the impact of climatic changes has had adverse effects in seaweed production⁴⁶⁵.

Zanzibar has a number of economic activities which are used to boost the economy and provide Zanzibar's income. The economy of Zanzibar keeps growing year by year thereby improving the living standards of the people. In the year 2016, for example, the internal revenue increased by 31.1% from 336 billion in 2015 to 441.3 billion in 2016⁴⁶⁶. The budget of revolutionary government of Zanzibar has increased from 4.3% in 2015/2016 to 4.9% in the financial year 2016/2017⁴⁶⁷. The national income increased by 6.6% and individual income for the people of Zanzibar increased to 1,632,000 Tanzania Shilling equivalents to 817USD. The inflation rate is 6.7% from 5.7% of 2015⁴⁶⁸. Also in the same year, the government enabled 51 investment projects valued 497.92 USD where 53% of such projects are owned by local investors.

On business activities, goods valued 94.93 billion shillings were exported in 2016, when compared to 45.71 billion shillings of 2015. Imported goods were of value 167.09 billion shillings in 2016 when compared to 156.94 billion shillings of 2015.⁴⁶⁹

1.4.1 Development of the Airways Services in Zanzibar

Major constructions continue to be made to upgrade and maintain Zanzibar Airport and keep it in up-to-date working conditions so that more international flights will be attracted to choose Zanzibar as one of their destination. When the construction of the new terminal is completed, Zanzibar will increase its capacity to handle various international airlines.

In December 2016, there was another improvement in the air transport in Zanzibar after Turkish Airways launched direct route from Istanbul to Zanzibar in order to improve tourist sector and air transport in Zanzibar. Prior to that several other international flights land in Zanzibar including Ethiopian Airlines, Oman Air, and Qatar Airlines.

465 ZHRR (2015) p.18.

466 The speech of President of Zanzibar on the 53rd anniversaries of Zanzibar Revolution on 12th January, 2016.

467 Ibid.

468 Ibid.

469 Ibid.

1.5 Political System

Zanzibar was one amongst a few African countries that had embarked very early in organised governance including political decentralization. On this note, Zanzibar politics goes a long way back, starting from what is called a period of confusion. Zanzibar was officially declared a British protectorate in 1890. The sultan was retained for ceremonial purpose but most major decisions were made by the British Resident. During this time, the formation of different associations was established based on ethnic groups which later were changed into political parties. The ethnic based associations categorised people as Shirazis, Arabs, Indians and other African tribes and created ethnic tensions that have plagued Zanzibar since.⁴⁷⁰ Zanzibar has witnessed the formation of political parties fighting for independence from British which included the Zanzibar Nationalist Party (ZNP), Afro Shirazi Party (ASP) and the Zanzibar and Pemba Peoples Party (ZPPP) – these were all the products of ethnic associations.⁴⁷¹

The ethnic based political parties were the core of dirty politics in the islands and led to many conflicts which continued even after independence, the revolution and the union. Zanzibar attained its independence on 10th December, 1963 with the first government formed by a coalition of ZNP and ZPPP. However, the said government only survived for one month and was followed by bloody revolution led by John Okello on 12th January, 1964. Zanzibar united with Tanganyika soon after the revolution to form the United Republic of Tanzania on 26th April, 1964⁴⁷².

The ruling party CCM remained the only political party until the multiparty system was reintroduced in Zanzibar in 1992. CCM was formed when the then existing parties, namely Tanganyika African National Union (TANU) merged with the Afro-Shirazi Party (ASP) on 5th February 1977. The first multi-party general election which was held in 1995 was marked with irregularities where the ruling party (CCM) was accused of having rigged the election for its own benefit. Since then, problems of political unfairness were reported election after election, normally followed by hatred among Zanzibaris and destruction of properties and even loss of life.

In 2010, an agreement intended to solve the problem was reached after the discussions between the then Zanzibar President Amani Abeid Karume of the ruling party (CCM) and Maalim Seif Sharif Hamad, the Secretary General of the opposition party (CUF) to have power sharing. The Constitution of Zanzibar was amended after a referendum held in July

470 ZLSC, Zanzibar Human Rights Report (2015) p.25.

471 Ibid.

472 Martin E.B. (1978) Zanzibar Traditions and Revolution, p.57.

2010 to support certain features of the agreement. The 10th constitutional amendment had, thus, introduced a power sharing in the government between the parties that has emerged the winner in the general election and the opposition party or parties, as the case may be.

The tenth amendment has introduced two positions which are the first Vice President and the Second Vice President. The President comes from the party that wins the election while the First Vice President may be appointed by the President from the party that holds second in presidency position during the general election. The second vice President who is nominated from the President's party to be head of government's affairs in the House of Representatives. The cabinet is composed of members from parties which have representation in the House of Representatives depending on the number of seats each party wins in the constituency elections for members of the House.

CHAPTER TWO

CIVIL RIGHTS AND LIBERTIES

2.1 Introduction

It is important to note the existing difference between “civil rights” and “civil liberties.” The legal area known as “civil rights” has traditionally revolved around the basic right to be free from unequal treatment based on certain protected characteristics (race, gender, disability, etc.) in settings such as employment and housing. “Civil liberties” concern basic rights and freedoms that are guaranteed -- either, explicitly identified in the Bill of Rights and the Constitution or, interpreted through the years by courts and lawmakers. Civil liberties represent such themes as freedom of speech, the right to privacy, the right to be free from unreasonable searches of one’s home and the right to a fair court trial⁴⁷³.

Interpretations of the constitutional rights guaranteed by the Bill of Rights and federal civil rights statutes have been varied widely through time and as the law evolve. While many groups view themselves as civil rights and civil liberties advocates, they use their advocacy resources in different ways. These include freedom of speech, the right to privacy, the right to be free from unreasonable searches of one’s home, the right to a fair court trial and the like.

These rights are the actual determinant of human personality, humanity and respect without which anyone in this universe shall have the guts to query and claim that he is a human being. The importance of these rights had been recognized even before the formal protection of the human rights for all. Looking at the sensitivity of this category of rights, the states party to the present Covenant on Civil and Political Rights, considered that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

States parties also recognise that these rights derive from the inherent dignity of the human person and, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy

473

Schmidt C.W (2016), Civil Rights and Civil Liberties, p.11.

his civil and political rights, as well as his economic, social and cultural rights. This is the reason behind the obligation of states under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms.

The guarantee and protection of these rights become inevitable to the State and its agents because people are beneficiaries of civil rights and liberties and deserve protection. The State can only limit the civil rights when there is justifiable cause to do so.

The instruments which protect civil rights and liberties in the world and in Africa specifically include the Universal Declaration of Human Rights (UDHR) 1948, the International Convention on Civil and Political Rights (ICCPR) 1966, the African Charter on Human and Peoples Rights (ACHPR) 1981 and the International Convention of the Rights and Dignity of Persons with Disability (ICRDPD) 2006.

Many other such instruments had been created and States have also been taking individual and collective measures to ensure that the rights are not violated. Civil rights and liberties are the attributes of the enjoyment of life. Human life becomes meaningless if civil rights and liberties are not protected. Their protection is perhaps the most fundamental political value in a humanly society, including Zanzibar. Civil liberties are protection against government actions and they have significant support for every human being as indicated below.

2.2 Right to Life

This is the cornerstone of all rights with the other rights trailing after it and without the right to life all the other rights are meaningless. The right to life is a fundamental human right, central to the enjoyment of all other human rights. International human rights law recognises this basic right as accruing from birth and international and regional human rights bodies as well as courts worldwide have clearly established that any prenatal protection must be consistent with women's rights.

There are different international human rights instruments which deal with the protection of the right to life. In the European Convention on Human Rights 1950, physical survival is considered a prerequisite for benefiting from various rights and liberties. The American Convention on Human Rights (ACHR) 1969 and the African Charter on Human and Peoples Rights (ACHPR) 1981 also provided special attention to this right.

The Universal Declaration of Human Rights gave primary emphasis to the protection of human life and made direct reference to everyone's right to life. The United Nations adopted the Universal Declaration of Human Rights in 1948 and the International Convention on Personal and Political Rights reaffirmed the same idea in 1966. Article 3 of the Universal Declaration of Human Rights of 1948, provides that:

“Everyone has the rights to life, liberty and security of person.”

The importance of the right to life is also identified by the proclamation of the International Covenant on Civil and Political Rights (ICCPR) 1966, which in its Article 6 (1) provides:

“Every human being has the right to life, the rights shall be protected by law and no one shall be arbitrarily deprived of his life”.

In technical terms, the right to life is an inherent right. It pertains to the very existence of the human personality. The ICCPR recognised the nature of this right and used the word ‘inherent’ denoting that this right is not conferred by the Covenant but the Covenant recognizes its existence and potentiality⁴⁷⁴. In principle, people are entitled to enjoy this right not because it is the establishment of international human rights instruments but because it is their inherent right. Therefore, it is fundamental to all human beings.

In Zanzibar, apart from protection under the Constitution of the United Republic of Tanzania, 1977, the right to life is safeguarded by the Constitution of Zanzibar, 1984, which makes provisions that “Every person has the right to the preservation of his life”.⁴⁷⁵ The Constitution provides further that “Every person has the right to live and to the protection of his life by the society in accordance with the law”⁴⁷⁶. This is also considered as a fundamental right.

The right to life in Zanzibar is compromised by a number of factors. They include the imposition of the death penalty as a result of a judicial process and also the contravention of certain minimum safeguards imposed by human rights law.

There are also deaths or loss of life caused by the people themselves. On several occasions people are involved in activities that literally result in death, either involving themselves or that of other persons. The following are common factors that have contributed to the violations of the rights to life in Zanzibar in 2016.

474 Tanzania Human Rights Report (2010), p.301.

475 Section 13(1) of the Zanzibar Constitution 1984.

476 Section 13(2) of the Zanzibar Constitution 1984.

2.2.1 Road Accidents

The problem of road accidents in Zanzibar is very serious. These accidents claim the lives of people virtually every day. Road accidents in Zanzibar have been increasing from year to year and so also has the rate of resultant deaths. It has been reported that road accidents take more lives of people than diseases which are normally treated in hospitals.

Table 32: Number of road accidents in Zanzibar from 2012 to 2016

YEAR	Number of Accidents	Deaths	Injuries
2012	486	39	344
2013	534	29	503
2014	845	88	547
2015	26832	150	791
2016	562	155	849

Source: Official records from Zanzibar Traffic Office, Malindi and Ziwani Zanzibar.

The Zanzibar Road Transport Act⁴⁷⁷ that was enacted to provide for the regulation of traffic of motor vehicles on roads for other matters related thereto, has either not been fully implemented or otherwise it does not suit the needs. A number of road users have expressed their concern on the implementation of the Zanzibar Road Transport Act, where some of them shift the blame to the traffic police for their laxity and not being committed or loyal in performing their duties.

Road accidents are said to be caused by a number of factors including distracted driving, driving under the influence of liquor, reckless driving during rains, running or driving through red traffic lights, ignoring or driving past Stop Signs and other road signs, use of mobile phones whilst driving and teenage or inexperienced and unqualified drivers. These accidents produce a number of detrimental effects including destruction of property, deaths and disabilities. Road carnage seems to be the order of the day.

⁴⁷⁷ Act No.7 of 2003.



Picture 18: Scene at a road accident at MtonikwaKisasi, West District in Unguja Island

2.2.2 Murder

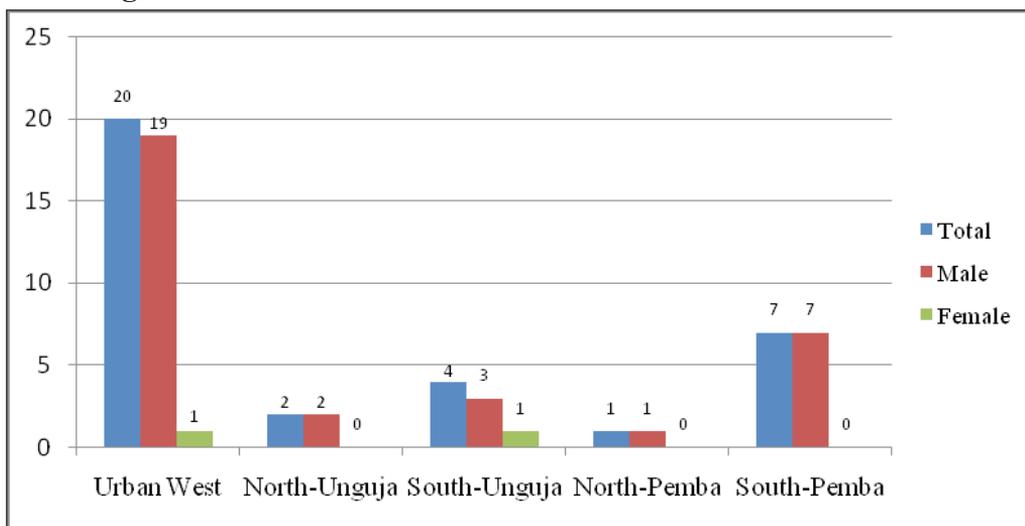
The precise definition of murder varies from jurisdiction to jurisdiction. Under Common Law or law made by courts, murder is the unlawful killing of a human being with malice aforethought. The term malice aforethought did not necessarily mean that the killer planned or premeditated on the killing, or that he or she felt malice toward the victim. Generally, malice aforethought referred to a level of intent or recklessness that separated murder from other killings and warranted stiffer punishment for murder.

The definition of murder has evolved over several centuries. Under most modern statutes in the United States, murder comes in four varieties: (1) intentional murder; (2) a killing that resulted from the intent to do serious bodily injury; (3) a killing that resulted from a depraved heart or extreme recklessness; and (4) murder committed by an accomplice during the commission of, attempt of, or flight from certain felonies.

Intentional homicide is a human rights violation. It is one of the worst human rights violations, and a component of or companion to all the worst violations (genocide, apartheid, torture). The offence of murder has been committed for various reasons. They include revenge, superstitious beliefs and other factors.

In the year 2016, a number of murders have been committed in different administrative regions of Zanzibar. A total of 34 murder cases had been reported to the Police authority in Zanzibar. According to reports received from the Zanzibar police headquarters at Madema, 20 cases were reported to have been committed in West-Urban Region Unguja, 2 cases in North Region Unguja, and 4 cases in South Region Unguja. Reported were also 7 cases in South Pemba Region and 1 case in North-Pemba Region.

Figure 27: Number of murders committed in Zanzibar in 2016



Source: Records from Police Headquarters, Madema, Zanzibar.

2.2.3 Suicide

The word suicide means to kill oneself. It is the act of intentionally causing one's own death. In most cases suicide is often reported to have been carried out as a result of despair, the cause of which is frequently attributed to a mental disorder such as depression, bipolar disorder, schizophrenia, borderline personality disorder, alcoholism, or drug abuse.⁴⁷⁸ Stress factors such as poverty or troubles with interpersonal relationships often play a role. Suicide is very rampant in some jurisdictions, though there are few cases of suicide in Zanzibar. In United States, for example, suicide ranks as the 10th leading cause of death. Globally, an estimated 700,000 people take their own lives annually.

Studies have revealed that there are different factors that trigger the risk of suicide including psychiatric disorders, drug misuse, psychological states, cultural, family

⁴⁷⁸ Paris J (2002), Chronic Suicidality among Patients with Boarder Line Personalities Disorder, p.738-742.

and social situations, and genetics. Mental illness and substance abuse contribute to suicide and frequently co-exists. Other risk factors include having previously attempted suicide⁴⁷⁹, the ready availability of a means to take one's own life, a family history of suicide, or the presence of traumatic brain injury. Socio-economic problems such as unemployment, poverty, homelessness, and discrimination may trigger suicidal thoughts.

In some countries like Canada, there is a move to decriminalize attempting suicide on the grounds that the right to life is one's individual right. When a person attempts to take his own life, then there is no need to take legal actions against him or her.

2.2.4 Mob Violence

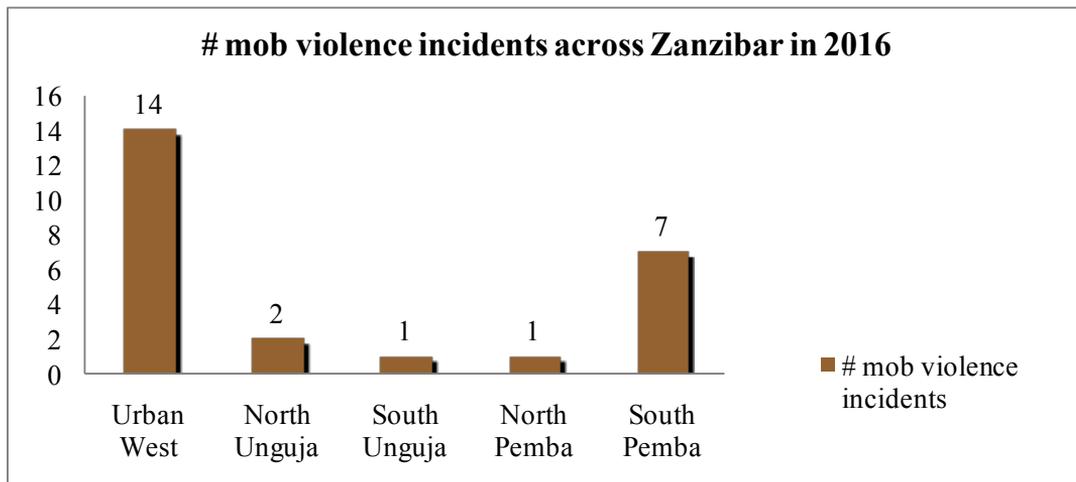
Mob violence (sometimes called "Jungle Justice") refers to the act of a group of people taking the law into their own hands in exercising violent justice over an alleged criminal. In most of the cases it is contended that when the legal system cannot be trusted due either to a feeling of social inequalities or corruption, angry and disenfranchised people resort to mob violence when frustrated. Many law enforcers in Tanzania have failed to deliver and people have to live with the fear that they are not well protected. Corruption has affected the police department, the courts and other government agencies dealing with administration of justice in one way or another. Therefore, when a suspected criminal is apprehended and handed over to the police, many are able to either negotiate their way out using the intricacies of the law or through corruption. This further alienates the public who think that the police and courts favour criminals.

In mob violence, the public thinks that it is counter-productive to handover such criminals to the system of justice and instead take the law into their own hands. One reason for the apparent increase in crimes such as robbery and stealing is the increasing level of unemployment due to retrenchments or lack of job opportunities. The gap between the rich and poor is also widening. It can be said therefore, that mob violence is a manifestation of a failing judicial system and an unequal economic system that favours those who are already rich. This leads to certain social groups deciding to develop and dispense out their own system of social justice.

According to official records from Zanzibar Police Force Headquarters, 25 incidences of mob violence were reported to Police authority in the year 2016. Among these, 14 cases were reported to be committed in the Urban West Region in Unguja, 7 cases in South Region in Pemba, 2 cases in North Region Unguja and 1 case each from South Region Unguja and North Region in Pemba.

479 Gitlin C.B and another (2011), *the Depressed Patient and Suicidal Patient in the Emergency Department*, p.1-23.

Figure 28: Incidences of Mob Violence in various regions of Zanzibar in 2016



Source: Records from Police Headquarters, Madema - Zanzibar.

Among Paralegals across Zanzibar, the situation of mob violence was graded a C, which also represents the national grade across Tanzania in the 2016 Tanzania Civil and Political Rights Index. Kusini Unguja and Mjini Magharibi scored the lowest, with paralegals highlighting key issues in regards to mob violence. Key issues affecting these low grades include the issue of limited reporting to police when crimes take place, and a perception of police inaction.

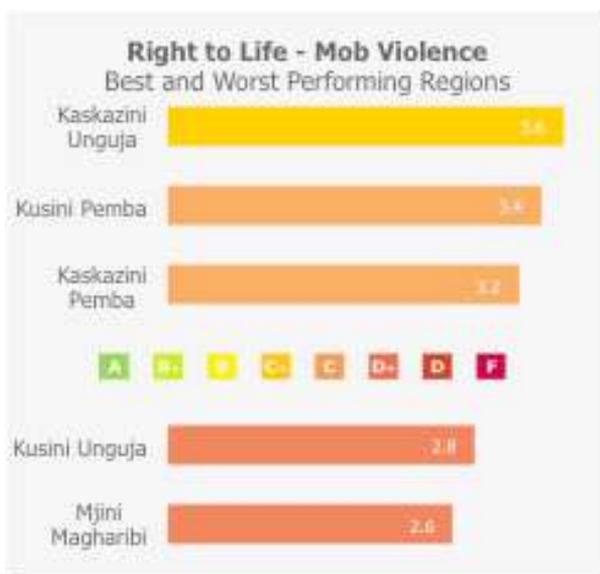


Figure 29: Tanzania Civil and Political Rights Index 2016 - Zanzibar Data on Mob Violence

Mob violence is a great evil and an outright violation of human rights, seriously degrading humanity inherent in responsible human beings. Mob violence or the so called ‘jungle justice’ reduces human life and dignity to zero and this is why some people can afford to call barbarians, those who engage in this kind of behaviour. There is therefore a need for Zanzibar society to refrain immediately from this attitude.

2.2.5 Death Penalty

The death penalty is a government sanctioned practice whereby a person is put to death by the state as a result of conviction and punishment passed by the court in a criminal case. It is also called capital punishment. In Zanzibar, the death penalty is recognized as one of the punishments which provided for under the law. It is inflicted when a person is convicted of offences either of murder, treason or any other such offences that warrant the death sentence.

The Constitution of Zanzibar, 1984 recognises the right to life as one of the fundamental rights and freedoms. It should, however, be noted from the outset that the safeguard accorded to this right, which has been regarded as ‘the mother of all human rights’ and a foundation for other rights, is not absolute. Its enjoyment and protection is subject to the laws. Interestingly, two consequences arise from this observation. First, no human life can be taken unless the law so provides and it is so ordered by a competent authority administering justice, here being the Judiciary. Secondly, human life can be lawfully taken where it is so sanctioned by law as it is commonly known as capital punishment.

The death penalty has been criticised by many human rights activists on the grounds that it is inhuman and against the right to life. There have been therefore worldwide campaigns calling for the abolition of the death penalty. International instruments have introduced various prohibitions as a way of combating capital punishment. For example, Article 3 of the Universal Declaration of Human Rights 1948 provides that “everyone has the right to life, liberty and security of person.” Another international instrument that prohibits the death penalty is the International Covenant on Civil and Political Rights 1966, which also condemns the penalty as provided under Article 6 (2)⁴⁸⁰ that; “...for the countries which have not abolished death penalty, the sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime...”

The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) 1989 requires all signatory States to abolish death penalty in their

480 Article 6(2) of ICCPR, 1966.

jurisdictions⁴⁸¹. Many countries, including Tanzania, ratified the ICCPR, but they are yet to ratify the Second Optional Protocol to the ICCPR which provides for the total abolition of the death penalty; but allows States parties to retain death penalty in time of war if they make a reservation to that effect at the time of ratifying or acceding to the Protocol.

The execution of the death penalty is also condemned by UN Resolution No. 50/1984. The resolution urges states not to execute the death penalty to groups of people below the age of 18, pregnant women or insane people and the punishment should only be carried out after legal process with all possible safeguard of fair trial including legal assistance.⁴⁸²

Article 4, of the African Charter on Human and Peoples Rights, 1981 recognizes that no person may be arbitrarily deprived of his life.

In Zanzibar, the death penalty is executed through hanging the convict to death.⁴⁸³ Limitations however are imposed, without prejudice to any law, with pregnant women and children below the age of 18 being exempted from suffering the death penalty.⁴⁸⁴ In addition, the execution of the death penalty cannot be implemented without the approval of the President.⁴⁸⁵ Generally the execution of death penalty has been problematic in Zanzibar and has for a long time been condemned by the general public for not being executed according to the religious beliefs of the majority of the population.

In 2016, ZLSC in collaboration with Human Rights Commission of Tanzania conducted a study to understand views of the people in Zanzibar on the death penalty. The result of the study indicated that more than 50% of the respondents were against death penalty. They wanted such penalty to be abolished and replaced by life imprisonment.

In the year 2016, two persons who were charged before the High Court of Zanzibar with the offences of murder were convicted and sentenced to death⁴⁸⁶. This indicates that judicial decrees in Zanzibar still apply this punishment and they are therefore in support of the same or, rather, the existing socio-legal circumstances dictates them so to appear. However, the death penalty in Zanzibar is just pronounced by the court but

481 Article 1 of Optional Protocol of ICCPR, 1989.

482 www.unodc.org

483 Section 305(1) of Zanzibar Criminal Procedure Act, No.7/2004.

484 Ibid, Section 305(2).

485 Ibid, Section, 310.

486 High Court of Zanzibar, 2016.

it is not executed as the President does not approve murder convicts to be executed as such.

In 2016, the ZLSC marked the day at Haile Selassie School and in Pemba it took place at Madungu Nursery School Chake Chake Pemba. The occasions involved inviting people to discuss and give their views concerning death penalty. The stand taken by the Centre is to abolish death penalty because it is against the right to life and it contributes to infringing human rights. Many persons who attended the 2016 Death Penalty Day expressed their concern that the death penalty ultimately seems to be a cruel, inhuman and degrading form of punishment that invariably tends to violate the convict's right to life. ZLSC has constantly maintained the stand that death penalty should be abolished as it is against human rights.



Picture 19: Executive Director Ms. Harusi M. Mpatani welcoming the guest of honour during Death Penalty Day at Haile Selassie Secondary School, Unguja.

2.2.6 Extra-judicial Killings

Extra-judicial killing is the killing of a person by government authorities without the sanction of any judicial proceeding or legal process. This is normally characterised by excessive use of force by security forces at roadblocks, during patrols, at police

stations, in the course of violence, disturbances and pro-democracy rallies, when combating crimes or dealing with detained persons. The killings are by their nature unlawful since they bypass the due process of the legal jurisdiction in which they occur. They often target leading political figures, trade unionists, dissidents, religious and social figures and activists who sometimes include journalists, and may be carried out by the state authorities such as the armed forces or police.

It can be correctly observed that extra judicial killings are a clear violation of human rights. Under international law, governments are obliged to bring to justice people who have been identified as having participated in extrajudicial executions and other unlawful killings.

Moreover, this applies not just to those who commit killings, but also to those superior officers who knew or should have known that their subordinates “are resorting or have resorted to the unlawful use of force and firearms, and they did not take measures in their power to prevent, suppress or report such use.” Similarly, Principle 19 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions states: “Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts”.

In some of these types of incidents, the police often claim that suspects were shot while trying to escape arrest or custody. Such claims are often highly implausible as it is unlikely that suspects indeed attempt to escape from armed authorities. Either way, such claims are irrelevant. The lethal use of force to prevent escape is prohibited under international standards unless there is an imminent threat to life.

In LHRC and ZLSC’s Tanzania Civil and Political Rights Index 2016, the situation of extrajudicial killings scored the lowest across all the civil and political rights issues.⁴⁸⁷ According to the Index results, the average grade across the regions in Zanzibar was a C in 2016, compared to the national average of D. The situation in Kaskazini Pemba was considered the worst in Zanzibar with a grade of D. Kaskazini Unguja scored relatively high with a B. Poor police investigation of incidents of extrajudicial killings and violence were cited across the lower-scoring regions in Zanzibar as key issues related to extrajudicial killings in 2016.

487 LHRC and ZLSC (2016) *Tanzania Civil and Political Rights Index 2016*, p. 16-17.

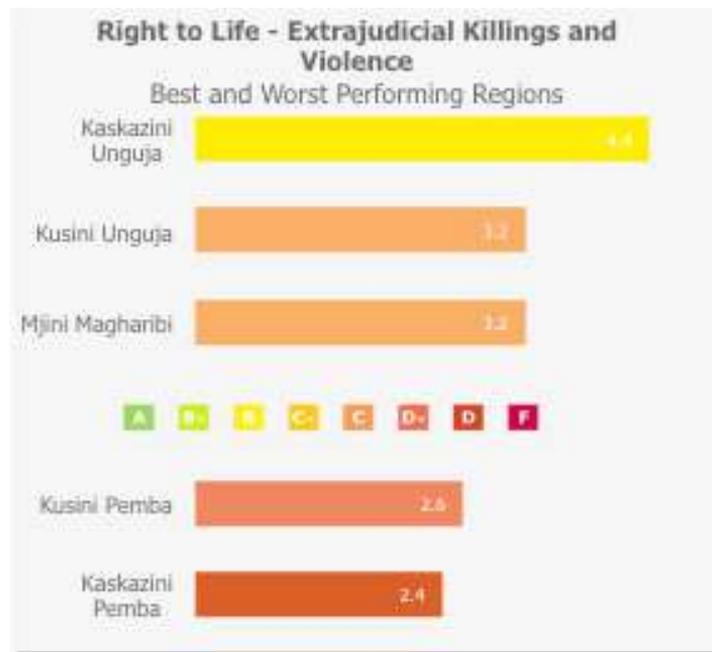


Figure 30: Tanzania Civil and Political Rights Index 2016 – Zanzibar Data on Extrajudicial Killings

2.3 Freedom from Torture

The internationally accepted definition of torture is that set out under Article 1 of the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) 1984:

...’torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.’

With reference to the above definition, it can be said that torture is the intentional infliction of severe mental or physical pain or suffering by or with the consent of the state authorities for a specific purpose. It is often used to punish, to obtain information or a confession, to take revenge on a person or persons or create terror and fear within a population. Some of the most common methods of physical torture include beating,

electric shocks, stretching, submersion, suffocation, burning, rape and sexual assault. It can also include psychological forms of torture and ill-treatment, which very often have the most long-lasting consequences for victims and commonly include isolation, threats, humiliation, mock executions, mock amputations, and witnessing the torture of others.⁴⁸⁸

While the global fight against torture requires the active support of all people, the government of a given territory is ultimately held responsible for any torture that occurs within its boundaries. Individual governments, therefore, must take it upon themselves to take part in the struggle against torture. Ratification of the Convention is often a necessary first step in this process. At the international level, Article 5 of the UDHR and Article 7 of the ICCPR condemn the act of torture, inhuman or degrading treatment of human beings.

Tanzania has ratified the Convention and state agents are required to respect the UN ambition to respect people's rights. Based on this requirement, there are several domestic laws enacted to protect the suspects' rights in Zanzibar. The first and the most important is the Constitution of Zanzibar 1984 and the Criminal Procedure Act No 7 of 2004. The procedure set under the Act provides a mechanism for the handling the suspect before arrest, during arrest and after arrest. Also the Police Force and Auxiliary Service Act 1958⁴⁸⁹ explains the police powers and its limitations over the suspects and arrestees. However, despite all of these provisions, acts of torture in Zanzibar have been reported several times.

It is believed that freedom from torture is amongst the most important aspect of the rights to life. Amplifying the constitutional provisions on the right to dignity of human persons, Section 13(3) of the Constitution of Zanzibar 1984 provides that:

“It is prohibited for a person to be tortured, inhumanly punished or to be given punishments which are degrading and humiliating”.

In essence, this provision appears also to guarantee the protection against all forms of torture in Zanzibar.

In obvious contravention of this constitutional provision, there have been some allegations of torture that took place in Zanzibar in 2016. It has been established that specifically immediately before and immediately after the rerun election of March 20, 2016, the police force and special departments organised themselves to exercise

488 [www.irct.org/definiton of torture](http://www.irct.org/definiton%20of%20torture) (accessed on 20/11/2016).

489 Chapter 322, R: E 2002.

torture on the people in Zanzibar. As can be viewed from the photograph below, the organised torture was exercised virtually in all main streets within Zanzibar Township.



Picture 20: Police officers in patrol in the streets of Zanzibar during the rerun exercise in 2016

2.4 Equality before the Law

The right to equal access to justice is one aspect in the explanations of the equality before the law which is a basic constitutional principle. The equality before the law principle is founded upon the fundamental truth that all human beings are equal in dignity and have to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. Founded under these considerations is the principle that all human beings are equal before the law and have the right to equal protection and benefit of the law. It is this principle that has been enshrined in the Universal Declaration of Human Rights 1948 in the following words:

“All people are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”.⁴⁹⁰

The Constitution of Zanzibar, 1984 guarantees the equality before the law principle under section 12. The section provides that:

490 See: Article 7 of the Universal Declaration of Human Rights 1948.

“All people are equal before the law and they are entitled, without any discrimination to be protected and provided with equal right before the law”.

Access to justice enables individuals to make use of the laws in the protection of their rights. However, this can only be enjoyed if there is an established sound institution and legal framework that would guarantee all people access to the law and a judicial which is free. Zanzibar, like other developing countries, faces problems in the realisation of access to justice which in one way or another hinders people’s enjoyment of their constitutional rights of equality before the law.

2.5 Equality before the Law and the Right to Legal Representation

It is well established that in Zanzibar, the right to legal representation before the court of law is provided via two arms, namely, constitutional rights and statutory rights. A trial becomes a nullified one in the circumstance where the constitutional and statutory rights of the appellant were denied legal representation.

There is still a problem of the legal representation as a move to get people closer to access to justice. The government offers legal representation support to those persons accused of serious crimes only, but it does not do the same to the person accused with lesser serious offences or even for people found to be in serious need legal support.

People with mental illness and psychiatric disabilities face similar issues of lack of legal representation within the criminal justice system as people with intellectual disabilities, whether suspects or victims. Most people would appreciate if people with disabilities are, to a much higher degree, given the right to access of justice and legal representation like other groups such as victims of crime. This is often because they are vulnerable and find themselves in situations that are dangerous and violent. In addition, the law still imposes fees for indigent civil litigants even if they are poor unless a special procedure to file a case on the basis on the incapacities is applied. There is also the challenge of sign language at the court and other offices when dealing with the administration of justice. It can therefore be submitted that the lack of legal representation and legal aid contribute to the denial of the right to justice.

ZLSC took various measures in 2016 to encourage the promotion of equality before the law. One of the measures was to organize talks or forums with institutions dealing with enforcement of law. During such talks, among other things, the Centre requested such institutions to take all necessary steps available for maintaining equality before

the law and access to justice to all. These institutions included the police force, office of Director of Public Prosecutions (DPP), Judiciary and Zanzibar Anti-Corruption and Economic Crimes Authority (ZAECA).



Picture 21: ZLSC Pemba coordinator, Ms. Fatma Kh. Hemed with other staff of the Centre with members from police force, DPP office, judiciary, ZAECA and others after a talk held at Mkoani Police Station on 26th June, 2016

2.5.1 Structure of the Zanzibar Courts System

The court system in Zanzibar is greatly influenced by the history of the Zanzibar people. Indications point to a transformation of the court system from time to time based on the interest of the people and the political powers which were interacted by outside influences on one part and inside reorganisations on the other side. As a result, the Zanzibar court system comprises two different legal systems operating within the same legal system. This is referred as a dual court system namely the Common Law Court System which is governed by secular laws on one side and the Kadhis Court System which is governed by Islamic laws on the other side.

As correctly reflected in Zanzibar Human Rights Report 2015, Courts falling under the common law system include the Court of Appeal of Tanzania,⁴⁹¹ for all matters which are not restricted by the Constitution of Zanzibar, as this is a Union matter. The Constitution of Zanzibar 1984 has however limited the powers and functions of the Court of Appeal of Tanzania.

491 Article 117(1) of the Constitution of United Republic of Tanzania, 1977.

In particular, it cannot entertain cases on the interpretation of the Constitution of Zanzibar, cases relating to Islamic matters as originated from Kadhi's Court and other matters as mentioned in the Constitution of Zanzibar or other laws enacted by the House of Representatives⁴⁹². Generally, the powers and functions of the Court of Appeal of Tanzania in Zanzibar are to hear and determine appeals brought before it from the High Court of Zanzibar. Below the Court of Appeal of Tanzania, in the court hierarchical system, is High Court of Zanzibar established under Section 93 of the Constitution of Zanzibar 1984, the Regional Magistrate Courts, the District Magistrate Courts and Primary Courts which are established under relevant provisions of the Magistrate Courts Act 1985.

There is also the Children's Court as established by Act No. 6 of 2011. The Children's Court which is to be presided over by a Regional Magistrate as chairperson has the mandate to entertain matters relating to child affairs⁴⁹³. Although the Act creates the Children's court in every region, at the moment there is only one Children's court located in the Urban West Region which receives child disputes from all regions. However, based on the information given by the High Court Registrar, Hon. George Kazi, the judiciary is in the process of constructing a modern building at Mahonda, about 20 miles from Zanzibar Stone Town, for a children's court.

The next arm of the Zanzibar court system is the Kadhi's Court which deals with the administration of justice in compliance with Islamic Law. The Kadhis Court Act 1985 establishes Courts of Chief Kadhis (one in Unguja and another one in Pemba). It also establishes a District Kadhi's Court in every Administrative District of Zanzibar. Zanzibar has eleven Districts seven in Unguja and four in Pemba, where the number of Kadhis Courts is the same as the number of districts.

2.5.2 Infrastructure of Courts

While the High Court of Zanzibar is located at Vuga Zanzibar and Chake Chake Pemba only, Regional Magistrates Courts are located in each of the five administrative regions of Zanzibar. Currently there are three regions in Unguja Island and two regions in Pemba Island, with their respective Regional Courts centres. District Courts and Primary Courts have been established in every administrative district of Unguja and Pemba. Hence there are ten District Courts and ten Primary Courts, one in each administrative District of Zanzibar. This had been made with the view of keeping the courts closer to the people wherever they are.

Most of these courts make use of very old court buildings that were built several

492 Section 99 of the Zanzibar Constitution 1984.

493 Section 18 of Children Act, No.6/2011.

years ago, some built even before the 1964 Zanzibar revolution. To improve the situation, the judiciary has in the past five years been in a process of renovating and even constructing new court buildings.

In 2016, the judiciary finalised the renovation of High Court building at Chake-Chake Pemba. The building was inaugurated by the President of Zanzibar on 5th November, 2016. This building also houses a specific room for use as a Children’s Court. The room has facilities which it makes it child friendly.



Picture 22: The President of Zanzibar Dr. Ali Mohamed Shein inaugurates the High Court building at Chake Chake Pemba on 5th November, 2016

2.5.3 Manpower of the Zanzibar Judiciary

Until the end of the year 2016, Zanzibar judiciary had 6 practising High Court Judges, 18 Regional Court magistrates who were in practice, 22 District Court magistrates and 11 Primary Court magistrates⁴⁹⁴.

494 High Court of Zanzibar, 2016.

2.5.4 Independence and Impartiality of Judiciary

As reported in the 2015 Zanzibar Human Rights Report, the independence and impartiality of the judiciary has its origins from the doctrine of separation of powers, which basically states that the three arms of the government, that is the Executive, Legislature and the Judiciary must be independent of each other and separate from one another. The doctrine was most famously expounded by a French Jurist, Montesquieu whose idea was aimed at dividing the functions of the state and giving powers to the judiciary to exercise their duties without any interference. It has therefore been well established that a modern concept of the independence of judiciary cannot be confined to the individual judge and to his substantive and personal independence, but must include collective independence of judiciary as a whole.

International law protects independence of the judiciary. Article 1 of the Basic Principles on the Independence of Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crimes and the Treatment of Offenders 1985, provides that the independence of judiciary shall be guaranteed by the state and enshrined in the constitution or law of the countries. It is also within the scope of the rule of law doctrine that cases of individuals must be decided by ordinary courts that are wholly independent from the executive. It is therefore basically the duty of the government and all its institutions to respect and observe the independence of the judiciary.

Independence of the judiciary forms part of the Constitution of Zanzibar 1984. The Constitution declares explicitly that Zanzibar shall follow the system of separation of powers between three authorities and no authority shall interfere with the other's authority except in the manner provided by the Constitution.⁴⁹⁵ The Constitution also guarantees security of tenure for the judges of High Court.⁴⁹⁶

The independence of judiciary in Zanzibar is faced by a number of challenges. The main ones are currently corruption and political pressure. The judiciary has been interfered with by some government officers and leaders, though no evidence has been obtained in this study to indicate that it is done so under the direction of central government. The President of Zanzibar has maintained on several occasions that he is not the one who interferes with the independence of judiciary.

2.5.5 Delay of Cases

Section 12(6) of the Zanzibar Constitution 1984 maintains that whenever a person is charged with a criminal offence, unless the charge is withdrawn, he shall be entitled

495 Section 5A of the Constitution of Zanzibar 1984.

496 Section 95 of the Constitution of Zanzibar 1984.

to a fair hearing in public within reasonable time. The accused is entitled to a quick hearing of the criminal case and quick delivery of a judgment.⁴⁹⁷

Bearing in mind Zanzibar's unedifying record of long pre-trial detentions and inordinate delays in trials, this provision has generated a great deal of controversy in criminal trials. The relevant subsection which provides for the right to be tried in court with speed does not define the time "speed" within the context of the provision. It is then left to the Zanzibar courts to interpret the phrase.

In 2016, a total of 7,341 cases were instituted from primary court to High Court. Among these cases 722 are still pending⁴⁹⁸.

2.5.6 Legal Representation

One of the inherent hurdles involved in adjudication under the adversarial system of dispute settlement is that a party is obliged to present his or her own case to the satisfaction of the inquirer. The challenge is even increased in relation to technicalities involved in the enforcement of more sophisticated subject matter of law like human rights. For proper adjudication upon the human rights norms under the Constitution of Zanzibar, therefore, it is imperative for one to engage a competent lawyer for proper legal services. The inability of a victim of human rights violations to have legal representation will negatively impact on the right to enforce human rights. Where, therefore, a victim of human rights violations does not have the capacity to engage a lawyer to prosecute his cause in court, he or she is likely to be without a remedy. The right to legal representation is therefore a crucial factor in the enforcement of human rights.

On the other hand, legal representation is very important in the administration of justice, both criminal and civil. However in practice, more emphasis in representation is given to criminal cases and even then, the representation of the accused before the court has been problematic in many countries. There are some decisions of cases where the judge had acquitted or ruled otherwise because of the failure of the accused to be represented. It is necessary therefore that, for the purpose of the fair trial, the indigent defendant (defendant who cannot afford legal representation) should be provided with legal aid by the state.⁴⁹⁹

497 Section 12(6)(e) of the Constitution of Zanzibar 1984.

498 Zanzibar Judiciary 2016.

499 ZLSC, *Zanzibar Human Rights Report, 2015* p.65.

In Zanzibar the right to legal representation is by necessary implication provided in the Constitution,⁵⁰⁰ where the right to protection of the law or right to fair hearing includes the right to every person who is charged with a criminal offence to defend himself in person or by legal practitioners of his choice.

While every litigant has the right to file proceedings to enforce his or her legal rights in a court of law; there are various challenges which face legal representation in Zanzibar. These include inadequate formal procedures established for legal representation, the low economic capacity of clients to meet the costs, the shortage of advocates especially in rural areas since those who are available are concentrated in urban areas, and also resistance from police authority to allow legal representation. For example, in 2016 the Deputy Director of Criminal Investigation Zanzibar during political crisis in Zanzibar and Pemba in particular, declared that lawyers who would go to police stations seeking the possibility of representing those arrested and detained by police on political charges would be detained as well.

This statement from the police force shocked members of the legal profession and the public at large. The Zanzibar Law Society (ZLS) voiced its disappointment at the police authority following such a statement and requested the respective police officer to apologise and withdraw the statement made on lawyers and legal representation in Zanzibar.

2.5.7 Legal Aid

Legal aid is the provision of assistance to people who are unable to afford legal representation and access to the court system. Legal aid is regarded as central in the need of providing access to justice by ensuring equality before the law, right to counsel and right to a fair trial. There are a number of delivery modes for legal aid, including daily lawyers, community legal clinics and payment of lawyers to deal with cases for individuals who are entitled to legal aid.⁵⁰¹

Legal aid has a close relationship with the welfare State, and the provision of legal aid by a State is influenced by attitudes towards welfare. Since legal aid guarantees equal access to justice for all, some nations have developed special schemes for the provision of legal aid. For example, the European Union Convention on Human Rights regarding criminal law cases guarantees the assistance of legal aid including the use of an interpreter if a suspect cannot understand the language used in court.⁵⁰²

500 Section 12(1) of the Constitution of Zanzibar 1984.

501 Zanzibar Human Rights Report 2015 p.62.

502 Article 6 (3) of European Convention on Human Rights.

Legal aid has become necessary in Zanzibar to help people get access to justice but the government has not given due attention to the provision of legal aid to the needy. Instead, there are a few non-governmental organizations (NGOs) who have taken the lead in the provision of legal aid to save the situation.

ZLSC provides legal aid to the poor, marginalized and vulnerable people in Zanzibar. This is in line with its vision of access to justice for all. Currently, ZLSC has 14 full time lawyers working in the Centre, of which 6 are advocates. Lawyers of the Centre provide free legal aid and counselling to the Centre's clients who visit the centre directly to seek legal assistance. At the Centre, advocates prepare legal documents and, sometimes, when clients cannot stand on their own or they cannot afford to hire an advocate, they represent these clients in court.

ZLSC also commemorates International Legal Aid each year and on 13th December 2016 ZLSC hosted two special events (mainly based on legal aid clinics), one in Unguja and one in Pemba. The purpose of these events is to publicise and thus to draw public awareness on the services that ZLSC provides in legal aid and legal counselling. All Zanzibaris with legal problems or questions are invited to come and seek the help of ZLSC's lawyers and advocates in representing him or her. To best ensure a large turnout and participation on Legal Aid Day, every year, the Centre advertises the event in newspapers, over the air and TV stations.

2.5.8 Paralegal Services

Paralegals, despite the challenges they face, play a major role in providing legal assistance or legal first aid to a large section of the population. Challenges facing paralegals include, among others, the size of the constituency, isolation, animosity, a large number of cases, cultural factors, political ideology, financial resources and communication facilities.

Acceptance of paralegals by the community they serve has also been mentioned to be another challenge paralegals are facing. Some of the community members are reluctant to accord them with any form of cooperation or recognition, a situation also found with some government institutions.

In 2016, a total of more than 53 paralegals (32 from Unguja and 21 from Pemba), from each of the 54 electoral constituencies of Zanzibar and from some other institutions interested in the programme, completed their paralegal training conducted by ZLSC.

The paralegals were provided with extensive training, especially in legal matters for two years. This is to impart to them legal knowledge which in turn would enable them to train and assist others in their respective constituencies to understanding the law and its application and applicability to the whole of Zanzibar. All this is to suit the Centre's vision to try its level best to make justice a passion for every Zanzibari. Hence, the paralegal programme is earmarked as advocacy for change. To this effect, the Centre conducts a monthly two-day training followed by exams at the end of the year. This intensive training held in Kiswahili involves lectures and group discussions on all key aspects covered in L.L.B curricula of East African Universities generally.

2.6 The Right to Freedom of Thought, Conscience and Religion

This right is constitutionally protected as one of the basic human rights. Under this protection, every person is entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance. Freedom from worship and religion is a principle that supports the freedom of an individual or community in public or private to manifest religion or belief in teachings, practice and worship. It also recognizes and includes the freedom to change religion or to abstain from following any religion.⁵⁰³

The Constitution of Zanzibar 1984 under Section 19(1) recognizes and protects the individual right to freedom of worship. It provides that - "Every person has the right to freedom of thought or conscience, belief or faith and choice in matters of religion, including the freedom to change his religion or faith."

The Constitution goes further to declare that, without prejudice to the relevant laws, the profession of religion, worship and propagation of religion shall be free and a private affair of an individual; and the affairs and management of religious bodies shall not be part of the activities of the state authority. In this provision reference to the word "religion" is meant to include religious denominations and cognate expressions.

The provision therefore implies that the Government of Zanzibar shall not adopt any religion as the State religion. This provision is plain and simple enough to admit no controversy. It guarantees religious neutrality on the part of the government. Literal interpretation of section 19 would therefore mean that neither the legislative nor the executive power may in any way be used to aid, advance, foster, promote or sponsor a religion. However, the government is responsible for the registration of entities or organization some of which pertain to different religious beliefs.

503 Article 18 UDHR, 1948.

Although the majority of Zanzibaris are Muslims, the question of religion is not the main issue in Zanzibar. There is interaction among the people of different religions, as well as different sects of a religion. It has been observed that, sometimes, this kind of interaction in different matters becomes a point of friction. For example, in 2016, there was conflict among Muslims of the village of Kangagani Pemba where the mentioning of the President of Zanzibar during a Friday religious sermon by the Sheikh sparked controversy. This event took place on 18th December 2016. The police force had to intervene to restore the peace. However this appeared to be a more politically oriented problem than a religious one.

2.7 Freedom of Expression

Freedom of expression is defined as a right to communicate one's opinions and ideas to anyone who is willing or entitled to receive them. It includes any act of seeking, receiving and imparting information or ideas regardless of the medium of the information used.⁵⁰⁴ The Universal Declaration of Human Rights 1948 has recognized freedom of expression as a category of human rights worth protecting under international human rights law. The right enjoys protection under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) 1966, which provision states:

“Everyone shall have right to hold opinions without interference and everyone shall have right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds regardless of frontiers either orally, in writing or in print...”

In Zanzibar, freedom of expression is provided for under Section 18 (1) of the Constitution of Zanzibar 198, providing that:

18.(1) Without prejudice to the relevant laws of the land, every person has the right to freedom of opinion and expression, and to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers and also has the right of freedom from interference with his communications.

(2) Every citizen has the right to be informed at all times of various events in the country and in the world at large which are of importance to the lives and activities of the people and also of issues of importance to society.

504 ZHRR 2015, P.73.

As stated in the above provision, the protection under this section is undermined by the draw-back clause *'without prejudice to the relevant laws of the land'*. This clause appears to subject or restrict enjoyment of freedoms of opinion and expression to the provisions of ordinary laws of the land without any other constitutional or legal safeguard. In Zanzibar in particular, where recourse to court of law for testing constitutionally and legally such provision is something yet to be cultivated. This style of curtailing basic rights and freedoms of an individual is still a matter of grave concern.

Several principles of international and constitutional laws allow for some restrictions on such rights and freedoms but only where they meet certain thresholds restrictive conditions. Those restrictions must be prescribed under the authority of law and must also serve either one of the limited list of legitimate objectives of sufficient importance to warrant overriding constitutionally protected rights.

As such, one of the cornerstones of human rights law provides the principle that any interference with a qualified right such as the right to privacy or freedom of expression must be “necessary in a democratic society.” In general, it means that a state must not only demonstrate that its interference with a person’s right meets a “pressing social need” but also that it is proportionate - or to some jurisprudence adequate - to the legitimate aim pursued, which appears to be necessary in a democratic State.⁵⁰⁵

However, the Constitution of Zanzibar 1984 fails to satisfy the three restrictive measures provided under international law, mentioned above, with regard to the right to freedom of expression so accordingly ZLSC recommends that it should be amended or those claw back clauses⁵⁰⁶ are removed. It is from this deficiency in respect of which appeal is hereby made clear, we see that although the Constitution of Zanzibar provides for freedom of expression, several laws are enacted now and then to unjustifiably limit or even derogate some fundamental individual rights and freedoms that are constitutionally provided.

These laws include the registration of News Agents, Newspaper and Books Act of 1988. Section 30(1) of the Act provides that when the Minister is of the opinion that it is the publication of the newspaper named in the order, then such a newspaper shall cease publication from that date and in the interest of peace and good order he may order or direct the suspension of the newspaper. In this Act there are some sections which limit the ability of the media to function effectively. The registration of the

505 ZHRR 2015, p.74.

506 Zanzibar: Democracy on Shaky Foundation, April, 2000, p.23.

Newsagent, Newspaper and Books Act, 1988 provides discretionary power to the minister concerned, to ban or close down any newspaper.

ZLSC has raised concerns about arbitrary measures to prevent freedom of expression especially on political matters. In 2016, a reporter from Radio DeutcheWelle (DW) in Zanzibar, one Salma Said, was reported to be kidnapped allegedly by members of state armed forces because of her reports allegedly in support of the opposition.

Also in the year 2016, the freedom of expression in Zanzibar has been highly controlled as the police force banned political rallies. Until the end of the year, political rallies had not yet been allowed in Zanzibar. It is argued that was done as a means to maintain peace and security in the Isles.

2.7.1 Abuse of Freedom of Expression

In 2016, there were some incidents that showed that freedom of expression was abused by some people in Zanzibar. There have been expressions which have incited and encouraged hatred among the people of Zanzibar thus endangering the existing unity and peace. The research shows that it is political parties which instigate the abuse of this freedom.

In the name of the so called “*Maskani*” of political parties, members used to display messages which manifest abuse of this freedom. Some messages noted in notice boards of “*maskan*” of some political parties in Zanzibar fuel hatred and are disturbing in their nature.

Based on these findings, ZLSC repeats its 2015 recommendations that do not appear to have been given due attention and suggests that; the Government of Zanzibar should amend the Constitution of Zanzibar, 1984 as it continues to fail to satisfy the three restrictive measures provided under international law regimes with regard to the right to freedom of expression so accordingly it should remove the existing uncontrolled claw back clauses.⁵⁰⁷

The Government of Zanzibar has an extensive Bill of Rights. It should therefore be encouraged to achieve their implementation and enforcement so as to serve the purpose of having the Bill of Rights and Freedom in the country’s Constitution, including the provisions guaranteeing the freedom of expression.

507 ZHRR, 2015, P.80.

ZLSC still perceives that freedom of expression should be an explicit part of the training in human rights which is provided to people in power (e.g. police force) and vulnerable groups of people (e.g. people with disabilities).

The Centre also urges the Government and the people of Zanzibar, in general, to adopt a culture of reading human rights reports prepared by ZLSC annually, among other human rights documentations, to learn more and become advised by recommendations and advice given in such reports and documentation.

2.8 Conclusion

In conclusion, civil rights and liberties are of utmost importance in Zanzibar society, the same as it is in the other areas in the world society. Human being by his natural inclination demands these rights for a life worthy of humankind. The Zanzibar society, amongst other responsible human societies, must take measures to protect them. The government of Zanzibar is reminded to protect these rights as much as possible; knowing that protecting human rights is not only the duty, but also the target and sign of civilization for the government concerned.

CHAPTER THREE

POLITICAL RIGHTS

3.1 Introduction

In the history of the generation of human rights, political rights are found in the first generation of human rights. Political rights are those rights that involve participation in the establishment or administration of a government and are usually held to entitle the adult citizen to exercise franchise, the holding of the public office and engagement in political activities. These rights are very important as they make a person part and parcel of the society to which he belongs.

Political rights which are recognized and protected under International Instruments are the right to take part in governance, freedom of peaceful assembly and freedom of association. The International Instruments which recognize and protect these rights include Universal Declaration of Human Rights (UDHR) 1948, International Covenant on Civil and Political Rights (ICCPR) 1966 and African Charter on Human and Peoples Rights (ACHPR) 1981.

While Article 20(1) of the UDHR provides for the right of freedom of peaceful assembly and association, Sub-article (2) of this Article prohibits compelling any one to belong to an association. Therefore, this Article guarantees the right to assembly and association to every individual⁵⁰⁸. But such assembly and association must be lawful, peaceful and should be exercised as of right or freedom and not compulsion.

Article 21 guarantees everyone the right to take part in the government of his country⁵⁰⁹. It may be directly or through any one freely chosen representative. It also guarantees that everyone has the right to equal access to public service of this country. It finally provides that the will of the people shall be the basis of the authority of the government. It requires that the will of the people shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage; and shall be held by secret vote or by equivalent free voting procedure.

The rights stated above are also reflected in the ICCPR where they are given force of law under Article 21 of the said Covenant where is provided as the right of

508 Article 20(10) of UDHR, 1948.

509 Article 21 of UDHR, 1948.

peaceful assembly; and it requires each State party to the covenant to make sure that no restriction may be placed in the exercise of this right. The restrictions may only be imposed with the view of making sure that this right is exercised in conformity with the law and they are necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or moral or the protection of the right of others.

Article 22 of the Covenant provides for freedom of association. It includes protection of the right to form and join trade unions for the protection of joint interest, and it also allows limited restrictions on the exercise of these rights which are in conformity with the law and they are necessary in a democratic society in the interest of national security, public safety, public order, the protection of public health or moral or the protection of the right of others. The article further permits imposition of law for full restriction on members of the armed forces and of the police in the exercise of this right.

The Covenant guarantees the right and opportunity to take part in the conduct of public affairs directly or through freely chosen representative⁵¹⁰. It also provides for the right to vote and to be voted or elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot guaranteeing the free expression of the will of the electors. It finally reflects the right to have access to public service in the country on general term of equality. This right is required to be exercised without unreasonable restrictions and without distinction or discrimination of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or other status.

The above rights are provided in the same manner under ACHPR. Article 10 of the charter is about freedom of association whereby it prohibits compelling a person to join an association although it requires every individual to maintain solidarity as a mandatory obligation under Article 29. Article 11 is about the right to assembly and Article 13 guarantees the right of every citizen to participate and to have equal access to public service and access to public property and services in strict equality of all persons before the law.

3.2 Right to Participate in Governance

Section 9 of the Constitution of Zanzibar, 1984 deals with government and the people. It declares Zanzibar to be a democratic society⁵¹¹. It acknowledges that the basis of

510 Article 15 of ICCPR, 1966.

511 Section 9 of Zanzibar Constitution, 1984.

government powers is the people of Zanzibar themselves; and that the Constitution of Zanzibar shall guarantee that people participate in the governance of their society. It further guarantees that the structure of the Revolutionary Government of Zanzibar shall be Government of National Unity (GNU) and it will perform its functions to ensure national unity and democracy.

Section 21 of the Constitution provides among other things that the right to freedom of participating in public affairs including public services, in that, every Zanzibari is guaranteed the right to participate in the decision making for matters that affect him/her or the interest of the nation. Also every Zanzibari is guaranteed the right to participate in the governance of Zanzibar either directly or through representatives who are voluntarily elected.⁵¹² Thus, the Constitution of Zanzibar makes meaningful provisions that their implementation has brought some kind of peoples' participation in different capacities of the country leadership.



Picture 23: Members of public in the House of Representatives listening to their representatives.

In making this right practicable, the right to vote is provided for under Section 7 of the Constitution. There is universal suffrage in the exercise of this right to those who have attained the age of 18 years.⁵¹³

The right to vote is subject to a number of limitations as provided under the Constitution. For example, one must prove, among other things, his residence, age

512 Section 21 of Zanzibar Constitution, 1984.

513 Section 7 of Zanzibar Constitution, 1984.

and be in possession of a voter's identity card. The House of Representatives has been empowered to enact law(s) to regulate all matters necessary for the election to be conducted and the exercise of the right to vote.

In the 2016 Tanzania Civil and Political Rights Index, the Right to Vote has been graded a D+ based on perceptions of human rights monitors in mainland and paralegals across Zanzibar.⁵¹⁴ In Zanzibar, both Kusini Unguja, Mjini Magharibi, and Kusini Pemba scored D+, while Kaskazini Pemba and Kaskazini Unguja only scored slightly higher with a C. Key issues raised in Zanzibar in 2016 among paralegals included; limited civic and voter education, perceptions of media bias in reporting news about the elections, censorship of media houses and journalists during the elections, and interference by the government of the Zanzibar Electoral Commission (ZEC).

3.3 Election Rerun

Information relating to Zanzibar general election was reported in Zanzibar Human Rights Report 2015.⁵¹⁵

Despite the fact that meetings continued between the Zanzibar CCM and CUF leadership until January 2016, no agreement was reached regarding the electoral impasse as both political parties maintained their initial positions. On 22nd January 2016, before any decision to officially halt bilateral meetings, the ZEC chairman, on behalf of ZEC that had met on 30th and 31st December 2015, announced 20th March 2016 as the date for a re-run of the Zanzibar general elections. On 28th January, after internal meetings, CUF officially declared that the party would not participate in the re-run of the Zanzibar elections. Following these events, on 29th January, the heads of diplomatic missions of Belgium, Canada, Denmark, the European Union, Finland, France, Germany, Ireland, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and the United States issued a joint local statement. In this statement, the heads of missions reaffirmed their belief that the political impasse in Zanzibar would be best addressed through a mutually acceptable and negotiated solution.⁵¹⁶

The advice by the European Union that the Zanzibar impasse be addressed through a mutual negotiation came following the nullification of the October 2015 general elections when on 28th October 2015, the Chairman of the Zanzibar Electoral Commission declared the nullification of the Zanzibar General Elections. This was published in the Official Gazette of the Revolutionary Government of Zanzibar on

514 LHRC and ZLSC (2016) *Tanzania Civil and Political Rights Index 2016*, P. 14-15.

515 ZLSC, *Zanzibar Human Rights Report 2015*, pp. 86-7.

516 European Union, United Republic of Tanzania: *Final Report of General Election 2015*, p. 41.

11th November 2015.⁵¹⁷

Following annulment of Zanzibar general election of 25th October 2015, Zanzibar Electoral Commission (ZEC) organized the rerun election that took place on 20th March, 2016. This election was boycotted by the main opposition party of Zanzibar, CUF. Arguing for the boycott CUF stated that Zanzibaris had already expressed their will in the legal, free and fair election of October 25th 2015 where, according to CUF, it won the presidential post in this election as well as a number of seats in the House of Representatives.⁵¹⁸

These CUF arguments despite, the rerun election was stated to had been ruled out from a number of deficiencies that affected its validity from both legal and political grounds, among others.⁵¹⁹

Various institutions intervened and gave their opinion concerning these elections. For example; the Tanganyika Law Society (TLS)⁵²⁰ said that it conducted a post-mortem of the 2015 general elections for the United Republic of Tanzania and the Revolutionary Government of Zanzibar to explore serious legal challenges encountered during the elections and propose remedial measures. On the part of Zanzibar, it was agreed that the 2015 elections were dominated by unprecedented peaceful campaigns and voting process compared to previous elections since the adoption of the multiparty system in 1992. The annulment of the election resulted into constitutional and legal crisis in Zanzibar.

TLS and other legal experts in the country, including ZLS, the East African Law Society (EALS), Tanzania Human Rights Defenders' Coalition (THRDC), Legal and Human Rights Centre (LHRC) and other private legal experts had called on the Zanzibar Revolutionary Government and Union Government to ensure that such constitutional and legal crisis are dealt with amicably through mutually acceptable and negotiated solution.⁵²¹

While the citizens were still in the dark about what transpired, the President of Zanzibar Dr Ali Mohamed Shein, when addressing the public during the commemoration of the 52nd anniversary of the Revolutionary Government of Zanzibar on 12th January

517 See: Revolutionary Government of Zanzibar, Government Official Gazette (GN no. ... of 11 November 2015.

518 European Union, United Republic of Tanzania: Final Report of General Election 2015, p. 51.

519 Ibid.

520 Tanganyika Law Society paper on assessment of 2015 general election in Tanzania

521 European Union, United Republic of Tanzania: Final Report of General Election 2015, p. 45.

2016 emphatically stated that there would be an election re-run in Zanzibar. On his part, ZEC chairman not only confirmed the President's statement, but went further to announce the date for the election rerun to be March 20, 2016.

TLS took a radical position that in annulling the 2015 elections contrary to Section 119 (10) of the Constitution of Zanzibar⁵²² which requires that all decisions of the Commission to be seconded by majority members of the Commission, the ZEC chairman has asserted the exercise of powers not vested on him.

Unfortunately, both the Constitution of Zanzibar, 1984 and the Zanzibar Electoral Commission Act 1984 can oust the Courts jurisdictions to interfere with any decision or action taken by the Commission⁵²³.

Article 119 (13) of the Zanzibar Constitution 1984 and Section 5 (6) of the Zanzibar Electoral Commission Act 1984 provide to the effect that no court of law shall have jurisdiction to inquire into the question of whether the Commission has validly performed any function constitutionally and legally vested in it.

On other hand, Revolutionary Government of Zanzibar, ZEC and the ruling CCM party maintained that what was done by ZEC chairman was valid and in conformity with the Zanzibar Constitution and the law; that ZEC chairman had the mandate to do what he did; and the rerun election was therefore lawful. Eventually, the rerun election was conducted on 20th March 2016, and the incumbent President Dr. Ali Mohamed Shein of CCM won the Zanzibar Presidency by 91.4%. Also, the ruling party CCM won all seats in the House of Representatives of Zanzibar.



Picture 24: Dr Ali Mohammed Shein casts his ballot at the polling station during the rerun election on 20th March, 2016

522 Section 109 (10) of Zanzibar Constitution, 1984.

523 Section 119 (13) of Zanzibar Constitution, 1984.

Since no case was instituted before any court to challenge the legality of rerun election, whether such election was legal or not remains a riddle to which the audience have failed to predict an answer.

3.4 The Aftermath of the Rerun Election

One of the most notable consequences was the inability to form a Government of National Unity (GNU). The president appointed three members from opposition parties which participated in the rerun election to become members of the House of Representatives. Then he appointed them ministers. The objective was to make his government looks like GNU. However the fundamental purpose of GNU was not met as Zanzibaris found themselves in a situation of disunity and hatred and until the end of 2016 the situation continued to exist.



Picture 25: The CUF General Secretary and retired first Vice President of Zanzibar rejects a handshake from President of Zanzibar, Dr. Ali Mohamed Shein at the burial ceremony of the late Second President of Zanzibar the late AboudJumbeMwinyi on the 17th August, 2016

The disunity and hatred led the local leaders in Zanzibar to call for political tolerance after at least seven houses/huts and clove trees were torched by unidentified arsonists in separate incidents in Unguja and Pemba Islands.

According to the Regional Commissioner (RC) for North Pemba, Mr Omar Khamis Othman, unidentified people set fire to a clove farm, destroying several clove trees in Kinyasini village, Wete, before doing likewise to a clove nursery in the region.

The RC for North Unguja, Mr JumaKassimTindwa, said the arsonists who are still at large burned houses/huts and properties including a shop in Chwaka village on the small island of Tumbatu, North Unguja. Estimates of the loss are still unknown, as the police including Assistant Commissioner of Police (ACP), Mr Mohamed Hassan Msangi, said the hunt for the suspects was still going on. : “We ask people with any information which can lead us to arrest the suspects to come forward,” said Mr Msangi. Both RCs condemned the incidents with a plea for political tolerance, as they warned of serious disciplinary measures according to the law, against arsonists and people instigating hate in the society. “Elections are over, peace prevails, why unnecessary conflicts. We will act tough on anybody using divisive language and instigating hate.”⁵²⁴

Also strict isolation of CCM members in social matters took place in Pemba. They were expelled or denied the right to boardany public transport, isolated in funerals, marriage ceremonies and worship areas. Members of society were totally disunited.



Picture 26: Clove trees that were cut down by unknown people in a farm in Pemba, 2016

There was destruction of health centres at KiuyuMinungwini, setting fire to 5 houses belonging to different citizens and also setting fire to a house used as a CCM branch at TibirinziChakeChake.⁵²⁵ These incidences took place in Pemba especially in the week before the rerun election.

524 IssaYussuf, ‘Tanzania: Political Tolerance Urged as Properties Torched in Zanzibar’, Daily News (a Tanzania News Paper), 3rd April 2016.

525 [www.eatv.tv/news/current-affairs/Matukio ya Moto Yaitikisa Pemba](http://www.eatv.tv/news/current-affairs/Matukio%20ya%20Moto%20Yaitikisa%20Pemba).



Picture 27: The Health Centre burnt down by unknown people at Kiuyu Minungwini Wete Pemba on 13th March, 2016

A significant number of people were arrested and detained for a long time without being sent to courts. They were released sometime later. These people were alleged to have planned to cause violence in Zanzibar as a way of opposing the rerun of the elections in Zanzibar. However, the situation has changed over time and by the end of the year, peoples' unity and tolerance had started to be restored.

Therefore, the situation after rerun election was terrible as far as human rights were concerned. People faced a difficult period of time for several months. It is recommended that the only way to rescue Zanzibar society from those problems is the maintenance of a rule of law, accountability and peace by those who are given duties to supervise the electoral process in Zanzibar and Tanzania at large.

3.5 The Right to Peaceful Assembly and Association

Section 20 (1) of Constitution of Zanzibar, 1984 guarantees the right to freedom of association and assembly⁵²⁶. The right to association is voluntary. One is allowed to form and join trade union, human right associations and any other association for his or her benefit and in accordance with the law. Section 20(2) provides for limitations in the exercise of these two rights in Zanzibar according to relevant provisions of international Instruments.

⁵²⁶ Section 20 of Constitution of Zanzibar of 1984.

Sections 55 to 57 of the Penal Act No. 6 /2004 deal with the prohibition of unlawful assembly and riot. In essence, section 55(1) and 56 of the Act prohibit and punish (up to one year imprisonment) the conduct of three or more person to assemble with intent to commit an offence or to commit a breach of the peace or to provoke other person(s) to commit a breach of the peace. Section 55(3) provides for the offence of riot in a situation where an unlawful assembly results into a breach of peace or terror on the part of the public, and section 57 provides punishment of up to two years for the offence of riot.

Section 58 of the Act authorizes a magistrate or, in his or her absence, a superior police officer or any commissioned officer in the military force of Zanzibar to make or cause to be made a proclamation to command twelve or more persons assembled within his views to disperse peaceably; disobedience of which is an offence under section 60 of the Act.

The right to freedom of assembly in Zanzibar is thus faced by a number of restrictions. The main one is that the right cannot be exercised without a permit from police authority as per section 11(4) of Political Parties Act⁵²⁷, and section 43 (1) of the Police Force and Auxiliary Services Act⁵²⁸. Also the police force has been given power to refuse issuing permits for exercising the freedom of assembly and procession in Tanzania. The reason for the exercise of such power by the police force includes the likelihood of the breach of peace by the intended assembly.

In Zanzibar the freedom to exercise the right to assemble publicly has been suspended since Thursday 7th June 2016. Until 31st December 2016 the suspension was still in effect. The suspension has in particular, the effect of barring assemblies by political parties, while at the same time freedom of assembly by political parties in the private places and in house meetings were barred but they were later permitted on 22nd September 2016.

Banning of the right to freedom of assembly has been the cause of various chaotic incidences in Zanzibar Islands. Several people had been arrested on the allegation that they had assembled unlawfully in various places. On 9th May, 2016 at Kimango Kiungoni Wete Pemba, three people were arrested on grounds that that they assembled unlawfully. It was alleged that they and others assembled at their talking/meeting places (baraza) without police permission. In Zanzibar sitting and talking at the "baraza" is something quite ordinary. It is surprising to see that people are

527 Chapter 258, RE 2015.

528 Chapter 322, RE 322.

now arrested and formally charged under such situations⁵²⁹. There can hardly be any sound explanation other than political reasons on why such kind of gatherings is to be considered unlawful assembly.

Also, the citizens themselves interfere with each other in the exercise of this right to this freedom of assembly on political grounds even in religious places. Religious activities especially in Pemba Island have been organized on political basis.

Therefore the right to freedom of assembly in Zanzibar in 2016 has been problematic. Notably, these incidents took place in the aftermath of the annulment of the general election of October 2015 and the conducting of the rerun election on the 20th March 2016.

In the post-election context in Tanzania, Freedom of Assembly is perceived to be poor with an average grade of D+.⁵³⁰ In Zanzibar, paralegals graded freedom of assembly lower compared to the other civil and political rights issues in the Index. As highlighted in the Index Report, ‘there have been worrying trends in 2016, amounting to a dominant perception that government authorities are restricting assemblies without adequate reasoning or justification.’⁵³¹ The Index findings highlight the role of the police and authorities ensuring adequate security are provided at assemblies, and ensuring venues and secure space is provided so that citizens can exercise their right to assemble.

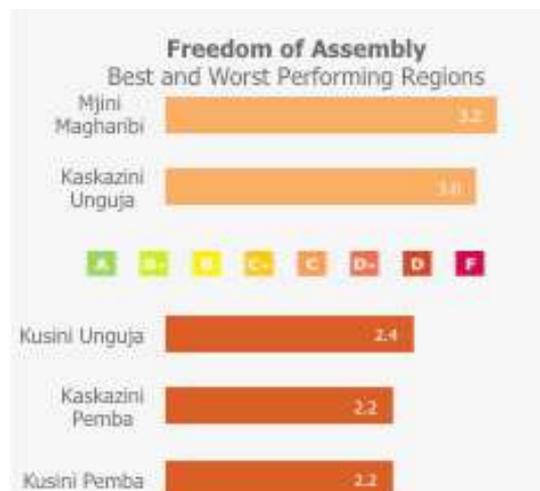


Figure 31: Freedom of Assembly - Best and Worst Performing Regions

529 Information collected at Police Wete Pemba, on the 20th May, 2016.

530 LHRC & ZLSC (2016), *Tanzania Civil and Political Rights Perceptions Index 2016*, p. 12-13

531 Ibid., p. 12.

3.6 Freedom of Association

As indicated in Section 20 (1) of the Constitution of Zanzibar guarantees the right of freedom of association as well. However there is no absolute guarantee as that right may be restricted on the basis of national security and public safety, protection of environmental and social safety, protection of the freedom of others and on some other restrictions relating to government officers, members of the army or peoples who are doing the work that they have voluntarily been elected to do.

3.7 Freedom of Association in Trade Unions

Trade unionism is allowed under the laws of Zanzibar, both in public and private sectors. Employees are encouraged to form the trade unions to safeguard their rights against employers. Exercise of the right to form and join trade unions is highly encouraged by International Labour Organization (ILO) which has the task to supervise labour matters in the world.

The current structure of trade unions in Zanzibar is highly attributable to the Tanzania Parliament decision of 1998 (Trade Union Act of 1998) that prohibited the historical marriage between the workers of Tanzania Mainland and those of Zanzibar under the pretext that labour issues were not accommodated in Union matters. Before that trade unions operations cut across the whole United Republic of Tanzania, with their headquarters in Dar es Salaam. Consequently, the Zanzibar House of Representatives was compelled to enact the Zanzibar Trade Union Act No. 4 of 2001, which allowed registration of trade unions in the Isles. Subsequently, the unitary trade union centre and its affiliated national unions were forced to separate.

Due to these institutional changes, workers in Zanzibar were technically compelled to start new initiatives in developing trade union activities on their own. This situation called for an urgent need to revive independent trade union activities in Zanzibar. A lot of work had to be done in the area of organizing Zanzibar workers in the new system of workers union. The organizing activities involved identification and locating where workers were, sensitizing and re-orientating them on the exercise of organizing trade unions under the new system.

In every society where there are employees, there are trade unions. It is believed that the formation of federation of trade unions is important. It encourages more unity and solidarity among employees. When the federation is formed the workers expect among other things that their interests will be protected through various ways such as representations, collective bargaining and agreement. The disputes which face employees will also be settled efficiently and timely hence the workers' working conditions and then life conditions to be improved.

In 2016, ZATUC has made major development in ensuring that it gives rights support to trade unions (its potential members) in Zanzibar by properly organising themselves under the ZATUC umbrella. Up to 2016, ZATUC succeeded in registering 11 workers unions. In 2016, however, ZATUC took a decision to convince its members that a strong association of workers union does not necessarily depend on a big number of trade unions that constitute the association, but by big numbers of workers forming both the workers unions and the association of their unions. Based on this idea, ZATUC took the initiative to reduce the number of its members, workers unions. In 2016 ZATUC succeeded in amalgamating some workers or trade unions, with the result that the number of Trade Unions was reduced from 11 (in 2015) to 8 trade unions.

Within this set up, ZATUC has managed to enter into agreement with the Revolutionary Government of Zanzibar to establish a national forum for discussion at the public service level with the aim of facilitating the process of resolving various problems facing workers in Zanzibar public service.

Also, in the current set up, ZATUC has managed to lobby the Government to agree to improve the country's minimum wage for public servants from Tshs. 150,000/- to Tshs. 300,000/- with effect from April 2017.

Apart from these elements of success attained by ZATUC, there are numerous challenges it faces in its undertakings. The challenges include the lack of political will among government leaders (the same as with the majority of private sectors employers) to work with stakeholders, including the trade unions and as well ZATUC itself. Some of leaders both in public and private employments may even be labelled to be 'anti-trade union' ones.

It is also challenging to leadership in Zanzibar trade unions, and also ZATUC itself, that they experience frequent change of labour profile within the ministerial set-up of the Revolutionary Government of Zanzibar. This tendency quite often gives hardship to authorities in the trade unions and also ZATUC in the abrupt or sudden cut-off of continued paradigms of consultation and bargaining between the workers unions and the responsible government ministry.

In Zanzibar, the workers themselves according to the findings of study are not happy at the existing situation of trade unions. It is especially in public sectors where trade unions are not considered significant by the workers of public sectors. This comes with the effect that working and living conditions of public sector workers is poor.

Teachers, for example, who are members of ZATU by virtue of their employment, blame the trade union situation in their sector. They say that only two things are notable in their union. First, deduction of teachers' salaries as contribution for ZATU and; secondly, enrichment of ZATU leaders within a short period of time of their tenure in the office.

The position of laws on trade union concerning other sectors is that members of armed forces, police, state security and members of the Zanzibar special departments are not allowed to form and join trade unions. This restriction is made under Section 2(2) of Employment Act No.11/2005. Also, workers from some public institutions are not allowed to enjoy certain rights such as right to strike. These workers include Judges, Judicial Officers, workers in Special Departments and employees of the House of Representatives.

Generally, it is observed that in Zanzibar trade unionism is weak and it does not achieve its objectives. There are a number of reasons obtained in the course of preparing this report which led to this position. They include:

- (a) Politics has been highly attacking trade unions. In Zanzibar everything is easier to be related to politics. When trade unions are formed, they are defined as belonging to their leaders. The leaders may be judged on the basis of their place of birth and origin so that the government and even members of unions themselves may not support the leaders. They are negatively conceptualized. As the result, they fail to help their union to achieve their goals. When the leaders of unions are strong enough, they are considered government opposers and not merely opposers of employers; when the matter concerns government employees.
- (b) There is lack of unity and solidarity among members of trade unions. Some members of trade unions stand for their unions while others stand as informers of employers on what is taking place in the union. Thus, some members betray their fellows on what they have planned in struggling against employers for their rights. As the result trade unions in Zanzibar are considered as nothing more than a platform in the exercise of enmity amongst its members.
- (c) Power struggle among members of some trade unions. This is especially for those who contest for leadership in the unions. The members divide themselves in groups during the time of elections for union leaderships. The candidates form camps in the union. When the leaders are elected, he is supported only by workers from his camp; and the defeated one with his or her camp do not sincerely give support the winner. The incumbent leader is weakened

deliberately in order to be defeated in the next election. The situation is simply a demonstration of selfishness tendencies.

- (d) Poor employment system. Generally, people are employed in both public and private sectors based on relationships with those who are already in employment, especially in leadership positions. As correctly observed by Chinua Achebe that in Africa employment does not matter on what you know but who you know. When a person is employed under patronage or any other selfishness grounds, then he/she can never be a strong member of trade union.

Thus, laws in Zanzibar on trade union do not reflect sufficiently the international standards especially on the memberships of armed forces, police force, state security and special departments in trade unions. Under International instruments, membership of a worker's union is a matter of entitlement to every employee but in Zanzibar the law allows total prohibition of some categories of employees.

Nevertheless, for those workers who are engaging in workers unions, a lot may be said that are advantageous to their membership as it is demonstrated herein below.

CHAPTER FOUR

SOCIAL RIGHTS

4.1 Introduction

Social rights are those human rights which relate to social affairs. The rights are guaranteed in order to make human beings enjoy basic needs in the society. International instruments that recognize social rights have been established in the International Covenant on Economic, Social and Cultural Rights, (ICESCR), 1966. The rights that are propagated to be guaranteed by states by this covenant include, right to education⁵³², right to health⁵³³ and right to food, clothing and housing⁵³⁴. Tanzania being a party to ICESCR has not ratified the Optional Protocol of the Convention but however has full responsibilities to observe these rights.⁵³⁵

In the African continent social rights are incorporated and recognized under ACHPR. The Charter recognizes the right to health (Article 16), and the right to education (Article 17). Through a decision by the African Commission on Human and Peoples' Rights, *SERAC v Nigeria* (2001), the Charter is also understood to include a right to housing and a right to food as "implicit" in the Charter, particularly in light of its provisions on the right to life (Art. 4), right to health (Art. 16) and to development (Art. 22).

In the Constitution of Zanzibar 1984 these rights are provided as the Fundamental Objectives and Directive Principles and Policies of the Revolutionary Government of Zanzibar which have not been afforded the status of The Bill of Rights principles, nor that they have been given a force of law. They are merely policy objectives of the Government.⁵³⁶

4.2 Right to Education

The right to education is recognised by various human rights instruments as one of the basic rights for everyone⁵³⁷ It is the key in the fight and protection of one's right

532 Article 13-14 of International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966

533 Ibid, Article 12.

534 Ibid, Article 11.

535 ZLSC, Human Rights Report 2015

536 Section 10A of the Constitution of Zanzibar 1984.

537 Article 13(1) of the ICESCR 1966.

because it gives people the ability to be aware of their rights. However, as noted above, it is unfortunate that the Constitution of Zanzibar does not include the right to education as one of the enforceable rights. Rather, it is enshrined under Article 10 (6) as one of the political objectives of the government. The right to education is provided for under the Education Act, 1982⁵³⁸ which provides for free and compulsory education.⁵³⁹ The Education Act provides for obligation on the part of parents or guardians to ensure that the child regularly attends school until he or she completes the basic education. Basic education is defined to mean basic primary and junior secondary which every child in Zanzibar is entitled to be provided with.⁵⁴⁰

4.1.1 Zanzibar Education Policy

The policy of education is guided by the declaration of compulsory and free basic education for all that was promulgated on 23rd September 1964. The policy ensures that all eligible children are enrolled in and attending school, and that they are entitled under Government commitment to be provided with quality and relevant education and with equal educational opportunities. The Zanzibar education system presently offers 12 years of compulsory education. This means encompasses two years of nursery education, six years of primary education and four years of secondary schooling.⁵⁴¹

4.2.1. Achievements in Education Sector in 2016

The year 2016 marked the first year of the second term of the seventh phase of the Revolutionary Government of Zanzibar. It is very difficult to assess the achievements in the education sector within a year especially since this report is compiled in one calendar year while the government of Zanzibar runs its activities based on financial year which begins in the month of the year in question. In the financial year 2015/16 the number of students who were provided with higher education loans reached 3046 including 575 fresh students. Thus, the number of continuing students who were provided with the loans was 2471.⁵⁴² The number of students who paid up their loan instalments had increased during this period of time to 1016 students as compared to 744 graduates in the year 2014/15.⁵⁴³

In the year 2016, there was a 7% increase in the number of schools to 843 from 792 schools that existed in 2015. There was also a 8.36% increase in the number of students from 388,616 in 2015 to 424,074 in 2016. In order to increase school

538 Act No. 6 of 1982.

539 Section 19 of Act No. 6 of 1982.

540 Ibid, Section 20 (1-2).

541 Revolutionary Government of Zanzibar, Zanzibar Education Policy 2006.

542 MoEVT Budget speech for Financial Year 2016/17.

543 Ibid.

building facilities, the government had also constructed 9 storeyed buildings for secondary schools in the Urban district and West A and B districts, both in Unguja, and one in each of its four districts of ChakeChake, Wete, Mkoani and Micheni in Pemba.⁵⁴⁴

To widen avenues for better provision of higher education in the country's universities, the government has succeeded in increasing the number of students enrolled for studies by 5.9% from 6,370 in 2015 to 7383 in 2016. Moreover, in its efforts to strengthen deliverables in the higher education, independent professional institutions namely 'Mbwani College of Health Science', 'Zanzibar College of Tourism Development' at Maruhubi Zanzibar, and 'Zanzibar Institute of Finance Administration' at Chwaka', were all brought together under one umbrella and made an integral part of the State University of Zanzibar (SUZA).⁵⁴⁵

At the same time, in 2016, the Zanzibar Institute Education Act⁵⁴⁶ was enacted by the House of Representative aimed at facilitating a better system of Education in Zanzibar. One of its achievements was to remove the distance between education stakeholders in Zanzibar, in particular, private schools and teachers training colleges with the aim of enhancing competency in students, improving and strengthening curriculum, teaching materials and textbooks, as well as controlling and monitoring curriculum systems.⁵⁴⁷

4.2.2 Existing Challenges in Education Sector in Zanzibar

As repeatedly reported in various previous editions of the Zanzibar Human Rights Reports, the Zanzibar education sector is still faced with several challenges. Some of the challenges are reported herein below:

4.2.2.1 Budget Deficiency

The impact of the education sector budget allocation has been a focal point in issues relating to development in education. The budget which is set for the ministry is generally dependent on foreign aid, in which case the Ministry may suffer financial incapacity in the event that the aid providing countries do not provide the aid fund as budgeted. This position is indicated in the Ministry's budget in the financial year 2015/16 where, out of a total of Tshs. 23,898,500,000.00 planned in development budget, only Tshs. 2,900,000,000.00 was to be realised from internal sources, and the rest, Tshs. 20,998,500,000.00 to be derived from foreign aid and loans. This

544 The Speech of Zanzibar President on 53 anniversary of Revolution of Zanzibar.

545 Ibid.

546 Act No. 4 of 2016.

547 The Speech of Zanzibar President on 53 anniversary of Revolution of Zanzibar.

situation signifies that the Ministry may well fail to implement its development plans because of lack of funds if foreign aid and loans have not been disbursed or untimely disbursed.⁵⁴⁸

4.2.2.2 Nursery School Registration

Nursery schooling has a long history in Zanzibar. The aim of nursery schooling is to prepare children for enrolment in primary schools. Nursery school education is provided by both government and private initiatives but all are registered by the government through the Registrar of Education.

Up to May 2016, the number of nursery schools in Zanzibar was 323. Among those schools 293 are under private ownership and 30 are owned by the government.⁵⁴⁹

With nursery education being part of compulsory education under the Education Policy of 2006, inadequate or insufficient nursery schools deprive many children of their right to nursery education. Therefore there is a need of improving registration of nursery schools in Zanzibar especially on the government side. This is because the number of nursery schools is still minimal as compared to the real requirements, based on growing population in Zanzibar. Also, the number of government nursery schools is quite disproportionate to the ones owned in the private basis.

4.2.2.3 Registration of Primary and Secondary Schools

Up to May 2016, there were 239 primary school in Zanzibar which has been registered to provide primary education.⁵⁵⁰ Among those, 211 are government school and 28 are privately owned.

In 2016, government primary schools had successfully enrolled 44,033 in standard one. This is a great achievement compared to 2015 indicating an increase of 7,425 students.⁵⁵¹

In improving ICT studies among its students, in the financial year 2015/16, the government had provided solar driven computer sets to 16 schools both in Unguja and Pemba from an American non-governmental organization, Pioneer. Also, ICT teachers from the relevant schools have provided with training on the proper use of the computer sets so provided. Likewise, to encourage students to learn ICT, ZANTEL (a telecommunication company in Zanzibar) donated 21 computer sets to the MoEVT.

548 MoEVT Budget Speech for 2015/16.

549 MoEVT Budget Speech 2016/17.

550 Ibid page 19.

551 MoEVT Budget Speech 2016/2017.

These in turn were distributed to its secondary schools specialising in commerce and ICT Mombasa in Unguja and Chasasa Secondary School in Pemba, and also to four teacher centres.

The government has purchased laboratory equipment for more than 168 schools in both Unguja and Pemba in the financial year 2015/16.⁵⁵² It can be said that, empowering students with ICT and practical studies is a step in the right direction towards the promotion of education in the country and, therefore, the government should do its best to encourage students to study ICT and introduce it in all secondary schools.

4.2.2.4 Alternative Education

In Zanzibar, basic education is a right which the state is duty-bound to make accessible to all children. Nevertheless, some pupils for some reason or other have missed out on basic education or are unable to complete basic education through normal schooling. The main reasons for this are the shortage of places, distance from home to school, poor quality of education, irrelevant curriculum, lack of parents' awareness on the importance of education, early marriages and pregnancy and opportunity costs.⁵⁵³ To solve this problem, the government has provided an alternative learning programme for them to complete their basic education.

A total of 443 students have been enrolled in the alternative learning government schools in Unguja and Pemba, among them 294 are males and 149 are females. Also 105 students have accomplished their studies in Grade III in 2016; among them 33 are females.⁵⁵⁴ However, the programme has not yet reached the remote and underserved rural communities where a great number of children are not in school or are early dropouts of school.

552 Ibid page 19.

553 Alternative Education <http://www.moez.go.tz/?cq=syst&sys=9> (accessed on 24th November, 2015).

554 MoEVT Budget Speech 2016/2017 page 22.



Picture 28: Alternative education students at Rahaleo Zanzibar

4.2.2.5 Overcrowding in Classes

Despite efforts of the Revolutionary Government of Zanzibar to construct many schools and classes in Zanzibar, the problem of large numbers of students in Zanzibar primary school classes still persists. The problem was once again acknowledged by the Ministry of Education in its budget speeches over the years including 2016/17.⁵⁵⁵ The ministry in its budget speech promised to solve the problem by constructing more schools and classrooms in different parts of the country.

4.2.2.6 Shortage of Secondary School Science Teachers

The shortage of qualified science teachers in secondary school in Zanzibar remains a big problem despite different efforts taken by the government.⁵⁵⁶ It is our observation that, many students dislike science subjects. If this problem is not amicably addressed it will undermine many sectors in Zanzibar which require specialists who have a background of science subjects including the health sector.

555 MoEVT budget Speech page 44.

556 Ibid, p. 32 262Ibid, p. 9.

However, the Centre acknowledges the efforts taken by the government in 2016 to overcome the problem of science teachers. This included hiring science teachers from other countries,²⁶ preparing a research on relocation of art teachers to science teachers after conducting in-service training.⁵⁵⁷ Furthermore, the government has bought laboratory apparatus for different schools.⁵⁵⁸ There is also collaboration between MoEVT and Strengthening of Mathematics and Science Education in Africa (SMASE Africa) to provide for training of trainer (ToT) for science teachers in Zanzibar. 671 employees of the MoEVT in Unguja and 82 in Pemba have enrolled in studies at diploma, bachelor and master levels in professions of science and fine art in different universities and other institutions in Zanzibar and beyond.⁵⁵⁹

4.2.2.7 No Cost Sharing in Education

Although Education is not constitutionally guaranteed, Zanzibar has pursued the policy of free education for all since 1964. Free education begins at nursery school but compulsory education includes twelve years of quality basic education from primary level to the end of secondary (ordinary level).

The policy of free education was also cemented on 12th January 2016 by the President of Zanzibar when commemorating 52 years of the Zanzibar revolution.⁵⁶⁰ The Hon. President was reported to have said that there should be no contribution whatsoever public schools, from standard one up to form IV. However, in practice parents still contribute to education. This can be verified by the government issuing a contribution guideline which is to be followed by heads of schools. This means that, financial contribution in public schools still persists in some form or the other.

The government should be praised for its efforts in making education free, but again it is our recommendation that the government should improve the quality of education in public schools since the current situation does not convince people to take their children to public schools; they do that as a last resort.

4.2.2.8 Unwanted Pregnancies and Early Marriages

Zanzibar like any other country of the African continent is faced with the problem of early pregnancies and early marriages. There are many young female students in primary and secondary schools who drop out of school each year because of early

557 Ibid, p. 11.

558 Ibid, p. 20.

559 Ibid, p. 31.

560 Speech of the Zanzibar President in commemoration of 52 years Anniversary of Zanzibar Revolution.

marriage and pregnancy.⁵⁶¹ In the year 2016, among 20 early marriage cases reported, 8 cases were dealt with. Among the 20 cases so reported, 5 cases (3 in Unguja and 2 in Pemba) were between students themselves. Under section 20(3) of Education Act (no.6) 1982 these student are allowed to continue with their studies.⁵⁶²

The provision with regard to expulsion from school after marriage has however not been reviewed. Thus while the education policy says one thing the law has not been brought into conformity with the policy intent. We therefore ask the government to review this provision so as to avail married students the opportunity to attend school and continue with their education, just like female students who have become pregnant outside of wedlock.

4.2.2.9 Teacher's Problems

It is almost given that teaching is the noblest among all the professions since all professionals underwent education with a teacher. Teaching produces all skilled professionals and workers like politicians, lawyers, engineers, doctors, policemen, priests, educators, legislators and good citizens. Despite doing the most important work in the country, teachers have been taken for granted.⁵⁶³ This situation is true also in Zanzibar to the extent that no one appears to be willing to join the profession and those who have joined did it as a 'last resort' and are always looking for 'greener pastures elsewhere.'

Teachers of both public and private schools in Zanzibar face many challenges. According to the Secretary of Zanzibar Teachers Union, these problems include low salaries, lack of transport for teachers, lack of housing for teachers who teach in remote areas, lack of teaching materials, promotions and the lack of health insurance.⁵⁶⁴ Government school teachers at all levels in Zanzibar face the radical problem of accumulated teaching allowances. We urge that the Government needs necessarily to create conducive environment for betterment of the teaching profession in the country. We also support the call of the Teachers' Union for establishment of the Teachers Service Commission, in order to supervise teachers' interests in the country as was also stated in the Education Policy of 2006, in paragraph 6.2.2.⁵⁶⁵ We therefore recommend that this is the right time for the government to establish the Teachers

561 Hotuba ya Waziri wa Uwezeshaji Ustawi wa Jamii, Vijana na Maendeleo ya Wanawake na Watoto kuhusu Taarifa ya Utekelezaji wa Haki na Ustawi wa Watoto kwa mwaka 2013 / 2014.

562 MoEVT, 2016/17 Budget Speech, page 27.

563 Ngoni Makuvaza and Ruth B. Gora, What is happening to the 'noble' profession? Concerns about and threats to the teaching profession in high school in Zimbabwe – The Way forward International J. Soc. Sci. & Education 2014 Vol.4 Issue 2.

564 Zanzibar Human Right Report 2015,p.116

565 Ibid.

Service Commission to meet teachers' demands. Some neighbouring countries do have a Teachers Service Commission and we think Zanzibar should follow suit.

4.2.2.10 Lack of Facilities in Schools

Though the government keeps on increasing the number of classes and schools, these schools face the problem of insufficient facilities. These facilities, among other things, are desks, classrooms, toilets, waters services and other amenities. In the financial year 2015/16, a total of 25 government schools have been supplied with complete water facilities, modern toilets and some other washing places.⁵⁶⁶ These developments have been made under SWASH⁵⁶⁷ Project.

Other initiatives taken by the Government to improve the facilities is the repairing of roofs of school buildings at Rahaleo, Jendele, Chwaka, Mkanyageni, Wingwi, Gando schools among others. In addition, 315 student desks, 27 chairs and 27 tables have been donated under SIDA development support at DongeMtambile, ZingweZingwe and Kinuni in Unguja; and Tumbe, Kilindi and Pujini in Pemba. 66 class rooms have built through people's initiatives.⁵⁶⁸

These efforts by the government to solve the problem of insufficient educational facilities need to be commended. However, it is our recommendation that the government should do more to solve the problem in its totality for the betterment of its people.

4.2.2.11 Shortage of Qualified Lecturers in Higher Learning Institutions

It was correctly reported in 2015 Zanzibar Human Rights Report that for an academic institution to prosper and get international recognition it requires the full commitment of its management to have qualified lecturers, who can perform the three important functions of academic institutions namely; teaching, research and consultancy. It has been observed that, most of the higher learning Institutions in Zanzibar lack qualified lecturers in their institutions. This problem can be associated with low level of salaries and allowances for university lecturers. Currently, most Ph.D holders receive less than USD 2000 per month as salary. This and other factors have compounded the poor quality of education. Most students from higher learning institutions are unable to articulate even simple issues in their fields. As result none of the Zanzibar higher learning institutions are ranked in the 100 best universities in Africa.

566 MoEVT budget Speech 2016/2017, p. 6/7.

567 SWASH is an abbreviation for 'School Water Sanitation and Hygiene'.

568 MoEVT budget Speech 2016/2017, p. 7

To solve this problem, many higher learning institutions provide their staff with further education. For example in 2015/2016 the State University of Zanzibar has continued to train 54 of its staff members at different levels from diploma to PhD. These include 33 for PhD, 13 for masters, 4 for undergraduate and 4 for diploma.⁵⁶⁹ There was no change found for the year 2016 specifically.

It is recommend that the Tanzania Commission for Universities (TCU) should help the quality assurance assessment and accreditation for all public and private universities to avoid the obvious risk of universities producing incompetent graduates due to lack of qualified lecturers.

4.2.2.12 Insufficient Budget for Higher Education Fund

Apart from problems surrounding primary and secondary schools, high learning institutions were at one time also unsettled because of students' demonstrations and complaints attributed to various reasons. The major issue has been the granting of loans to the government sponsored students. The higher education students' loans scheme is administered by the Zanzibar Higher Education Loan Board (ZHELB). The Board is charged with coordinating, giving and receiving loans to and from the students pursuing degrees in Zanzibar, Tanzania and abroad. This body is faced with many problems including delays in disbursing processed loans and uncertainties of the criteria set for eligibility to get a loan.

The priority for issuing the loans is for those students studying science subjects and economics. This situation has left those who wish to study other fields without any loan. Again, it has been observed that the Board does not provide the same amount of loans for students who study in Zanzibar and those who study in mainland Tanzania, though they may be studying the same course. The latter are given higher stipends compared to the former.

It was observed that some students were not paid their stipends or tuition fees. This was reported in many higher learning institutions. For instance, we interviewed some loan recipients of ZHELB who studied at University of Dar es Salam. They said that their academic certificates were withheld because the Board did not pay tuition fees to the University.⁵⁷⁰ This is not an acceptable situation by any means, because these graduates cannot apply for the jobs anywhere since they do not have academic certificates which are a requisite for job applications.

569 MoEVT budget speech 2015/2016, p. 39.

570 Interview with recipients of loan from ZHELB.

The Centre stands its ground in saying that their right to work has been curtailed by the government.⁵⁷¹ We therefore, recommend the government to increase its budget to the Board so as to pay the students and academic institution on time and also that the Board sponsors students regardless of their choice of study.

The budget estimate for ZHELB for the financial year 2015/16 was Tshs. 8,259,000,000.00 which was earmarked for the provision of loans to the students in higher learning institutions. It had been reported until 31st May 2016 that a total of Tshs. 3,658,169,400.00 only has been realised from the Government, which is 44.3% of the total budget.⁵⁷²

This situation is also reflected in the decrease of the number of students who received the loans. In the financial year 2014/15 recipients of the ZHELB loans were 3,499. This number has decreased by 13% to make total number of students who received the loans in the year 2015/16 to be 3,046.⁵⁷³ Worse still, in the financial year 2016/17, out of 2,624⁵⁷⁴ students who applied for the higher education loans, only 372 students received the loans. The reduction of the number of students who received the loans has caused dissatisfaction and claims from students who failed to meet their expectations to receive the loans. As a result, the President of Zanzibar and Chairman of the Revolutionary Council temporarily stopped the issuing of higher education loans and called upon the MoEVT and the ZHELB to re-examine the criteria they use in disbursing the loans with a view to rectifying the situation.⁵⁷⁵

4.3 Right to Health

The right to the highest attainable standard of health, commonly referred to as the right to health, is guaranteed in a number of international human rights instruments. However, the first mention of this right was contained in the preamble to the Constitution of the World Health Organisation where it is provided as follows; “health is a state of complete physical, mental and social well-being, not merely the absence of disease or infirmity. The enjoyment of the highest attainable standard of health is one of the fundamental rights of all human beings without distinction to race, colour, and religion”.

571 Article 21 and 22 of the Constitution of Zanzibar relate to the right to participate in gainful work.

572 MoEVT, budget Speech 2016/2017, p. 15.

573 Ibid.

574 Zanzibar24.co.tz/2016/11/13 - “Seriakli ya Mapinduzi ya Zanzibar yatangaza kufuta Mikopo ya Elimu ya Juu kwa wafanyakazi wa Serikali”.

575 Ibid.

In substance, the right to health has been provided under the Universal Declaration of Human Rights where it was provided that; “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”.⁵⁷⁶

Furthermore, article 12(1) of ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Article 12(2) also lays down broad guidelines regarding the necessary steps to be taken by the member states in order to achieve the full realisation of this right. Other UN treaties that directly address the right to health include the Convention on the Rights of the Child (CRC),⁵⁷⁷ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁵⁷⁸ and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).⁵⁷⁹ In addition to these, there are other instruments whose provisions indirectly or implicitly impact on the right to health. A good example is the International Covenant on Civil and Political Rights (ICCPR), article 6(1) which guarantees the right to life and Article 7 which prohibits medical or scientific experimentation on anyone without his free consent.

The African Charter on Human and People’s Rights imposes an obligation on states parties to provide health care to their nationals. It provides that:

“Every individual has the right to enjoy the highest attainable state of physical and mental health”.⁵⁸⁰

Article 16 (2) obliges state parties to the African Charter to take “the necessary measures to protect the health of their people and to ensure that they receive medical treatment when they are sick.”

Article 16 (1) and (2) of the African Charter suggest that state parties to the African Charter are obliged to provide health care services to their people at all times. Under the African Charter, state parties are obliged to provide health care to their nationals at all times without any limitations.

The right to health does not mean the right to be healthy as such, but embodies an obligation on the part of the government to create the conditions necessary for individuals to achieve their optimal health status. In 2000 the United Nations

576 Article 25 of the Universal Declaration of Human Rights 1948.

577 Ibid, Article 24,

578 Ibid, Article 12.

579 Ibid, Article 5(e)(iv).

580 Article 16(1) of the African Charter on Human and People’s Rights 1981.

Committee on Economic, Social and Cultural Rights adopted a General Comment explicating the substance of government obligations relating to the right to health (UNCESCR General Comment No 14).⁵⁸¹

In addition to clarifying governmental responsibility for policies, programmes and practices influencing the conditions necessary for health, it sets out requirements for the delivery of health services, including their availability, acceptability, accessibility and quality. It lays out directions for the practical application of Article 12 and proposes a monitoring framework indicating the ways in which the State's responsibility can be implemented through national law. Currently, over 100 national Constitutions have recognised the right to health and this number continues to increase as Constitutions are rewritten or updated.⁵⁸² However, the Constitution of Zanzibar does not provide for the right to health, though in Zanzibar there are free health services.⁵⁸³

4.3.1 Improvement of Health Services in Zanzibar

Enjoyment of the right to health requires that the government makes an effort to ensure that health services are functional and are available in sufficient quantity. That is, there should be, for instance, adequate well motivated human resources and that health care facilities, goods and services are accessible to everyone.⁵⁸⁴

The Government has been striving to improve health services through budgetary approach and improvement of health facilities together with working conditions of medical practitioners. Currently a doctor in Zanzibar attends up to 9,000 patients compared to the ratio of 30,000 patients per doctor in the past five years.⁵⁸⁵ As for the budget for instance, there was an increased total medicine sector budget proposed for from TZS 50,954,097,000 in year 2014/2015 to 84,980,100,000 in year 2015/2016. It is noted that there has been an increase of 60% of the budget allocation to health sector.⁵⁸⁶ These improvements have increased the availability of medicines in different hospital and health centres.

Furthermore, the government has controlled the HIV/AIDS and Malaria transmission to below 1%. Although the MoH has succeeded in reducing malaria to below 0.5%, in

581 Tarantola, D. and others (2008) Human Rights, Health and Development Australian Journal of Human Rights 13(2):1 – 32.

582 Kinney E (2001) 'The international human right to health: What does this mean for our nation and world?' 34 Indiana Law Review pp 1457-1475.

583 See: Section 10(f) of the Zanzibar Constitution 1984 which provides for one of the non-justiciable fundamental objectives of the State policies.

584 Kinney, E (2001) 'The international human right to health: .." op. cit.

585 President Dr. Shein made in one of his presidential campaign at Chokocho – Pemba.

586 MHSW Budget speech 2015/2016, p. 56.

some districts malaria cases are reported to exist throughout the year. The districts in question are Central District, South District, West District, North A and B Districts, for Unguja; and Micheweni and Wete districts, for Pemba.⁵⁸⁷

The number of pregnant mothers who gave birth in hospitals between July 2015 and March 2016 was 8,892. In the government campaign to have more women give birth at the hospitals, it has succeeded in using special experts who went door to door looking for pregnant mothers and advising them to make sure that they give birth at reliable hospitals.⁵⁸⁸

Four new health centres have been fully constructed thus making the total number of effective health centres in Zanzibar to be 152. This improvement registers an increase of 13.4% compared to 134 health centres in the year 2014/2015.⁵⁸⁹

The Government has successfully completed the rehabilitation of AbdalahMzee Hospital at Mkoani Pemba and its use has already been launched on 26th November 2016. This hospital which has the capacity to admit 160 patients suffering from different diseases, it has been up-graded to regional hospital status.⁵⁹⁰

Also, intensifying referral hospital services at MnaziMmoja Hospital, the diagnosis services have been improved by installing the MRI and Dialysis machines which have been in use from the year 2016. The MoH has also completed construction of a new hospital building for women (with 100 beds) and children (with 100 beds) which was launched for use on 21st November 2016 and it is now fullyoperational.⁵⁹¹

4.3.2 Challenges Facing Health Sector

The health sector is faced with many challenges. These include shortage of human resources for health which severely constrains implementation of health activities at all levels. Lack of accommodation at rural health facilities hinders equitable distribution of staff especially in remote areas. Lack of proper incentive packages for medical staff assigned on special responsibilities or sent to difficult stations is another problem which in turn affects staff retention. Government funding continues to be inadequate, inconsistently disbursed, and actual releases fall short of budget expectations as has already been noted above. Shortage of communication equipment

587 MoH, Budget Speech 2016/17.

588 Ibid.

589 Speech of the Zanzibar President in commemoration of 53 years Anniversary of Zanzibar Revolution.

590 Ibid, p. 5.

591 Ibid.

including transport, compound the problems facing the health sector.⁵⁹²

There is an increase in the importation of products which do not meet health standards made by unscrupulous business persons. Such products are harmful for human consumption, and challenge the MoH to take appropriate measures to deal with them,⁵⁹³

There is an increase in non-communicable diseases. These include blood pressure, diabetes, heart diseases, cancer and injuries from road accidents.⁵⁹⁴ The Government in trying to deal with the issue, urges people to change their lifestyle and seek professional and medical help rather than going to unrecognised traditional doctors.

4.3.2.1 Private Health Sector

Since the passing of the Private Hospital (Regulation) Act of 1994, Zanzibar has seen a mushrooming in the number of private clinics. The number of private pharmacies and drugs shops has also grown rapidly since the Pharmaceuticals and Dangerous Drugs Act of 1986 came into force. Recent estimates suggest that there are 59 Part I and 203 Part II drug sales points in Zanzibar, the majority of which are located in the towns.⁵⁹⁵ The private sector also provides health services in Zanzibar through hospitals, dispensaries, health centres and pharmacies. These facilities have created a back-up and play a complementary role especially when there are service shortages in public facilities.⁵⁹⁶

4.3.2.2 Availability of Drugs

In 1980s, Zanzibar used to produce basic drugs but currently all drugs and reagents are imported.⁵⁹⁷ The availability of drugs in Zanzibar is still a major challenge thereby forcing people to buy drugs for themselves.

Though the government has made a lot of improvements in the health sector, much more still needs to be done on availability of medicine in Zanzibar so as to help the poor and needy people suffering because of lack of drugs. The government should facilitate the establishment of internal drug production by encouraging the private sector to view this as part of developmental investment.

592 Ministry of Health and Social Welfare, Zanzibar Health Sector Strategic Plan Iii 2013/14-2018/19.

593 MoH, Budget Speech for 2016/17, p. 8.

594 Ibid.

595 Ministry of Health and Social Welfare, Zanzibar Health Sector Strategic Plan 2013/14-2018/19, p.55.

596 Ibid, p26.

597 Ibid, p. 106.

In the year 2016, the government of Zanzibar spent 6.4 billion shillings which is a 48.8% increase when compared to 4.3 billion in the year 2015/2016 budget. Owing to this budget increase, the availability of drugs has been improved in all government hospitals.⁵⁹⁸

Also in the previous year the government had successfully contained the cholera epidemic in Zanzibar, which began from September 2015 to July 2016. In total 4,330 people were infected with cholera where 48 patients, equal to 1.5 % died. The rest were treated successfully in the 21 special centres in both Unguja and Pemba. Malaria has also decreased to 0.4% in 2016 compared to 0.6% in 2015.⁵⁹⁹

4.3.2.3 Availability of Doctors

Recently, the health workforce in Zanzibar (Training Plan for health facilities 2011/2021) indicated that 74 Zanzibaris Medical Doctors (minimum qualification degree in medicine) are currently working in Zanzibar (Unguja and Pemba). Of these 11 Medical Doctors are in Administrative positions that provide support to patients on an ad-hoc basis. With the observed growing population (1.3 mil. people in 2011), the doctor population ratio for Zanzibar ranges from 1:15,165 (all doctors) to 1:48,994 (active doctors). The result is that the traditional role of the Medical Doctor in diagnosing and treating patients is shifted to Assistant Medical Officers, Clinical Officers and nurses in the primary care facilities.⁶⁰⁰

Zanzibar needs more than 200 doctors to solve the problem of doctor shortages. In the financial year 2015/2016 MoH has employed 25 doctors to add to 74 doctors that constituted the health workforce of Zanzibar in the year 2015. Furthermore, the government is still taking serious measures to solve the problem. The measures include training 134 medical students in Zanzibar and abroad including 7 specialists. It has also established a medical school under the umbrella of the State University of Zanzibar [SUZA] to train and so increase the number of medical doctors.

4.3.2.4 Infrastructural Challenges

The health sector in Zanzibar is also faced with the challenge of infrastructure. This includes shortage of rooms and beds and the problem of insecure or uncertain electricity supply in hospitals. In the attempt to solve this problem, the Revolutionary Government of Zanzibar in 2016 completely rehabilitated the Abdalla Mzee Hospital in Pemba and continued with construction of new facilities including a new complex

598 President of Zanzibar Speech on 12th January 2017.

599 Ibid.

600 ZLSC, Zanzibar Human Rights Report 2015, p.128.

for MnaziMmoja Hospital in Unguja.⁶⁰¹

4.4 HIV/AIDS and Human Rights

Acquired Immune Deficiency Syndrome (AIDS) is a disease caused by infection with the Human Immune Deficiency Virus (HIV). HIV is spread only when infected body fluids enter the bloodstream of a non-infected person. The dominant modes of transmission of the HIV are unprotected penetrative or oral sexual intercourse where the exchange of bodily fluids takes place through the accidental or deliberate shared use of HIV-contaminated needles or skin cutting/piercing instruments (in and out of health care settings) or from infected mothers to infants.⁶⁰²

Sexual health rights are integral element of the right to health, which is recognized and enshrined by United Nations (UN) human rights instruments such as the Universal Declaration on Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). It is also enshrined in the African regional and sub-regional human rights instruments including the African Charter on Human and Peoples' Rights.⁶⁰³

HIV has become one of the largest public health problems, especially in developing countries, and women are particularly vulnerable to infection. A joint United Nations Programme on HIV/AIDS (UNAIDS) Report of 2015 indicates that since 2000, about 38.1 million people were infected with HIV AND 25.3 million people have died of AIDS- related illness. In 2015, there were about 36.9 million PLHIV in the world and in 2014 it was estimated that about 1.2 million people have died of AIDS worldwide⁶⁰⁴. It was estimated that the HIV prevalence for the Sub Saharan African (SSA) region in 2015 was 4.7% but varies greatly between countries within SSA. Southern Africa is claimed to be the worst affected region⁶⁰⁵.

In Zanzibar, the first case of HIV was reported in 1986. From that time onwards, the country has continued to witness a growth in the cumulative number of HIV and the HIV epidemic has spread to all districts in Zanzibar but at unequal pace, levels and magnitude.⁶⁰⁶

601 President of Zanzibar Speech on 12th January 2017.

602 University of Cape Town (2006) Policy on HIV Infection and AIDS.

603 Karen Stefiszyn and others (2009), Realising the right to health in the Universal Declaration of Human Rights after 60 years: addressing the reproductive health rights of women living with HIV in Southern Africa, University of Pretoria.

604 The Third Zanzibar National HIV and AIDS Strategic Plan 2016.2017- 2020/21

605 Ibid.

606 HIV Status in Zanzibar <http://192.185.148.241/~zacor/index.php/about-zac/current-status/>

4.4.1 HIV/AIDS Legal Framework

The Zanzibar government has realized the problem of HIV/AIDS and hence passed the Zanzibar HIV and AIDS Prevention and Management Act, 2014. The Act provides for the prevention and management of HIV and AIDS in Zanzibar and for the protection and promotion of the human rights of persons living with or affected by HIV and AIDS. The Act prohibits any kind of discrimination directly or indirectly against people living with HIV.⁶⁰⁷

4.4.2 Institutional Framework

The government of Zanzibar has established a separate administrative organ to deal with this pandemic. The Zanzibar AIDS Commission is one of the major players for HIV/AIDS in Zanzibar. This commission which was initially established under the First Vice President of Zanzibar is currently working under the Office of the **Second Vice President of Zanzibar** whose main responsibility is to coordinate the national multi-sectoral response to this pandemic. However, the Ministry of Health has the greater responsibility of dealing with the disease. For this reason, within the ministry there is a unit, the **Zanzibar Integrated HIV/TB and Leprosy Program (ZIHTLP)** Control which is responsible for dealing with HIV/AIDS. Besides the Commission, there are some non-governmental organizations dealing with HIV/AIDS in an attempt to contain the disease from further spreading in the society. Zanzibar Association of People with HIV/Aids (ZAPHA+) and the Zanzibar NGO Cluster for HIV and AIDS Prevention and Control (ZANGOC) are umbrella organizations comprising of forty five HIV and AIDS related NGOs, Community Based Organizations (CBOs) and Faith Based Organizations (FBOs) in Zanzibar (41 in Unguja and 4 in Pemba).⁶⁰⁸

As noted above, the issue of HIV/AIDS is treated as a cross cutting issue so it is not the issue of one entity of the government. Through the Ministry of Education and Vocational Training, the government has also introduced Guidance and Counselling from primary school standard six to lower secondary classes with the aim of nurturing the youth. The programme has introduced training materials for students and promoted Moral Ethics and Environmental Studies (MEES) clubs in schools which deal with issues related to HIV/AIDS, environment and population. The programme has also been introduced in teacher training colleges. Life skills education is also pursued via the provision of guidance and counselling services and the initiation of peer education

hiv-in-zanzibar. htmlvisited 10th November 2016.

607 The Zanzibar HIV and AIDS Prevention and Management Act No. 2013.

608 The Revolutionary Government Of Zanzibar, The 7th And 8th Periodic Reports On The Implementation Of The Convention On The Elimination Of Discrimination Against Women (CEDAW) 2008 – 2014.

programmes.⁶⁰⁹

4.4.3 HIV/AIDS Situation in Zanzibar

Despite a number of programmes to control the spread of HIV/AIDS in Zanzibar, the number of people who are continuing affected by AIDS is still alarming. For instance, between July 2015 and March 2016 the total number 69,155 persons were tested in the HIV/AIDS centres, out of whom 810 persons, equal to 1.2% were found to live with the HIV/AIDS virus.⁶¹⁰ However, with only 173 new HIV infections it can be said to be on the decline indicating that the HIV prevention and treatment interventions are bearing fruit.⁶¹¹

Sexual intercourse, especially heterosexual sex, accounts for more than 91% of HIV transmission in Zanzibar. HIV transmission through body fluids and blood products in hospital settings is controlled through standard screening and sterilization procedures of invasive equipment. HIV transmission through piercing and other surgical invasive equipment accounts for approximately 7% of all HIV transmission. Guidelines and directives to ensure aseptic techniques are now in use in all health facilities. Data from **Zanzibar Integrated HIV/TB and Leprosy Program (ZIHTLP)** estimates that about 5% of HIV transmission is of vertical nature [mother to child transmission] inclusive of breast-feeding period. It is further reported that the HIV transmission among the injecting drug users counts 15.1%.⁶¹²

4.4.4 Violation of the Rights of People living with HIV/AIDS in Zanzibar

People living with HIV and AIDS are victims of human rights violation and they are easily discriminated against particularly by society with insufficient knowledge on the rights of those people.⁶¹³ The Universal Declaration proclaims that ‘all human beings are born free and equal in dignity and rights.’ Therefore, human rights belong to all without discrimination, a principle that has been enshrined in all major human rights treaties.⁶¹⁴

609 The Revolutionary Government Of Zanzibar, The 7th And 8th Periodic Reports On The Implementation Of The Convention On The Elimination Of Discrimination Against Women (CEDAW) 2008-2014.

610 MoHSW, Budget speech 2016/17, p. 14.

611 Office of the Second Vice President, The Third Zanzibar National HIV and AIDS Strategic Plan 2016/17 - 2020/21.

612 Ibid.

613 ZLSC, Zanzibar Human Right Report 2015, p.125.

614 Karen Stefiszyn, Mmatsie Mooki and Yohannes Tesfagabir (2009) Universal Declaration of Human Rights After 60 Years: Addressing The Reproductive Health Rights of Women Living With HIV in Southern Africa.

4.4.4.1 The Stigmatization and Discrimination against People Living with HIV/AIDS

As already mentioned, ‘all human beings are born free and equal in dignity and rights.’ Therefore, human rights belong to all without discrimination, a principle that has been enshrined in all major human rights treaties. After over two decades of the AIDS epidemic and 17 international AIDS conferences, stigma and discrimination based on misperceptions of HIV and AIDS is still pervasive, and even, at times, perpetuated by the very health care workers to whom those vulnerable to infection and those infected turn to for help. Individuals, including health professionals, tend to stigmatize HIV-positive women, in particular, those seeking services related to reproductive decision-making.⁶¹⁵

Despite the international, regional and domestic instruments to eliminate all forms of discrimination, in Zanzibar the violation of the rights of people living with HIV/AIDS is still a problem. Stigma and discrimination has been reduced steadily over the years, but still remaining a problem as shown by recent stigma index study. Over the last 5 years investments have been done in the country to address the stigma.⁶¹⁶ We therefore, recommend for more national advocacy campaigns to promote broadmindedness on stigmatisation.

4.4.4.2 Right to Privacy

The Constitution of Zanzibar guarantees the right to privacy.⁶¹⁷ However, there was a time; this right was not enjoyed in Zanzibar as far as people living with HIV are concerned. People who were tested and found to be living with the HIV virus were not assured about confidentiality of their status. Failure to observe confidentiality in hospitals and HT centres has resulted in many people fearing to take HT in Zanzibar. People thus opt to go Mainland Tanzania or abroad for testing. This situation has prompted many CSOs to conduct HT services counselling in the country and that has made HT services to be easily accessible. For example, in the 2015 ZANA, ZANGO, ZAYADESA, ZAMEISO, etc., provided voluntary counselling and testing (VCT) services where more than 25,000 people were tested. As a result, a good number of persons turned up at hospitals and HT service centres to get tested⁶¹⁸.

615 Karen Stefiszyn and others (2009), Realising the right to health in the Universal Declaration of Human Rights after 60 years: addressing the reproductive health rights of women living with HIV in Southern Africa, University of Pretoria.

616 Office of the Second Vice President, The Third Zanzibar National HIV and AIDS Strategic Plan 2016/17 - 2020/21.

617 Article 15 of the Constitution of Zanzibar.

618 Office of the Second Vice President, The Third Zanzibar National HIV and AIDS Strategic Plan 2016/17 - 2020/21.

The Centre strongly recommends that medical personnel in public and private hospitals adhere to the professional code of conduct especially on confidentiality of medical information.

4.4.4.3 Narcotic Drugs/ HIV/AIDs and Related Challenges

Narcotic drugs have a direct effect on the spread of HIV in Zanzibar. It was reported that HIV prevalence was 16% among the injection drug users (IDUs).⁶¹⁹ Despite several efforts by the government to combat narcotic drugs in Zanzibar, the problem still remains unchanged.⁶²⁰ The Government has passed the Drugs and Prevention of Illicit Trafficking in Drugs Act, 1995 to deal with imposition and transfer of narcotic drugs. Manufacturing of narcotics which is prohibited under that law includes all kinds of cocaine derivatives, medicinal cannabis, opium derivatives, and poppy straw concentrate.⁶²¹ This law was among the efforts of the government to align with international organisations in the fight against illicit drugs. Internationally, narcotic drugs have been condemned by different conventions including the Single Convention Narcotic Drugs, 1961, adopted by United Nations Conference at New York, the Convention on Psychotropic Substances, 1971, adopted by United Nations Conference in Vienna, and the United Nations Convention against Illicit Traffic in Narcotic Drugs, 1988.

Moreover, the government has made other efforts to combat narcotic drugs in Zanzibar. The government is in the process of constructing its own treatment and rehabilitation centre for helping those who have been affected by drugs.⁶²² However, the government has allowed the establishment of sober houses for intravenous drug users, peer support, overdose management, and behavioural interventions.⁶²³ Sober Houses have been supported by government financially and strategically. Ten houses were given funds of TZS 1,500,000 each to support their activities. The Centre recommends that the government provide more funds which will be sufficient to set up a special budget to support the houses. Among the recipients of these funds from the government are; Limbani Sober House (Pemba), Kifoi Sober House (Pemba), Mtofaani Sober House (Unguja) Free At Last Recovery Home (Unguja), Tawabiina Sober House (Unguja) Detroit Sober House (Unguja), Trent Sober House (Unguja), Zanzibar Youth Forum (Unguja), Nyarugusu Sober House (Unguja) and Mkoroshoni

619 Integrated Biological and Behaviour Surveillance Survey 2012.

620 Budget speech the Office of the First President 2015/2016 page 12.

621 Section 2 (a) and (b), Drugs and Prevention of Illicit Drugs Act, 1995.

622 Ibid page 17.

623 The Revolutionary Government Of Zanzibar, The 7th And 8th Periodic Reports On The Implementation Of The Convention On The Elimination Of Discrimination Against Women (CEDAW) 2008 – 2014.

Sober House (Pemba).⁶²⁴ This effort of the government to financially support sober houses is a commendable intervention which other stakeholders in the fight against illicit drugs should support.

4.5 Right to Clean Water

Access to clean water has become a problem in many nations with a number of people lacking access to safe drinking water. In March 1977 there was the UN Water Conference at Mar del Plata. The Action Plan from this Conference recognised water as a right for the first time declaring that “All peoples, whatever their stage of development and social and economic conditions, have the right to have access to drinking water in quantities and of a quality equal to their basic needs”.⁶²⁵ There are numerous international instruments which ensure that a human being has a right to clean water. These include; the 1979 Convention on the Elimination of Discrimination against Women (CEDAW) and the 1989 Convention on the Rights of the Child (CRC). On 16th December 1966, the United Nations Committee on Economic, Social and Cultural Rights (the “CESCR”) adopted the International Covenant on Economic, Social and Cultural Rights (the “ICESCR”). In force from 3rd January 1976, the ICESCR forms a multilateral treaty which commits its parties to work towards the granting of economic, social and cultural rights to individuals, in particular Article 11; the right to an adequate standard of living that also requires the right to adequate food and water.⁶²⁶

Following the publication of GC 15, a number of states formally recognised the right to water as part of their treaty obligations under the ICESCR. UN Human Rights Council: Resolution A/HRC/15/L.14 on 28th July 2010, formally acknowledged the right to drinking water and sanitation as a human right by the General Assembly (the “GA”) Resolution (Ref. A/64/L.63/Rev.1) (the “GA Resolution”). The GA called upon UN member states and international organisations to provide funding and further resources to aid poorer countries in their efforts to supply clean drinking water. It also suggested that a UN Independent expert report to the GA on an annual basis setting out the progress towards the target of halving the number of people without safe drinking water by 2015, as set out within the Millennium Development Goals.⁶²⁷

624 Budget speech the Office of the First President 2015/2016 page 35.

625 The Human Right to Water and Sanitation Milestones http://www.un.org/waterforlifedecade/pdf/human_right_to_water_and_sanitation_milestones.pdf (accessed on 16th November, 2016)

626 Ibid.

627 Alex Gordon and Others (2011) RIGHT TO WATER [http://www.a4id.org/sites/default/files/user/\[A4ID\]_Right%20to%20Water.pdf](http://www.a4id.org/sites/default/files/user/[A4ID]_Right%20to%20Water.pdf), (accessed on 20th May 2015).

Significantly, on 30th September 2010, the UN Human Rights Council confirmed in its first UN Human Rights resolution, Resolution A/HRC/15/L.14 (the “UN Resolution”), that the right to water and sanitation is legally binding: “The human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.” The UN Resolution affirms the UN Human Rights Council’s recognition that the right to water derives from Article 11(1) of the ICESCR, the right to an adequate standard of living, and by so doing ensures that the right to water is legally binding and therefore enforceable.⁶²⁸ There is a total absence of any mention of the right to water under the African Charter. However, the African Charter on the Rights and Welfare of the Child (African Children’s Charter), provides that state parties are required to take measures to ‘ensure the provision of adequate nutrition and safe drinking water’.⁶²⁹ The ambit of the provision in the African Children’s Charter is so limited that it merely regulates the quality (safety) of available water and applies only to children.

Unlike other countries like South Africa whereby the right to water is enshrined in their constitution,⁶³⁰ the right to water is not provided in the Constitution of Zanzibar. However the Revolutionary Government of Zanzibar has taken various measures to ensure that all people in Zanzibar enjoy this right. Different policies, strategies, plans, programmes and projects were formulated to address issue of water in Zanzibar. These included the Water policy (RGoZ, 2004), Forest policy (1996), Education policy (RGoZ, 2006), Tourism policy (RGoZ, 2005), and Environmental policy (RGoZ, 1992, 2013).

4.5.1 Current Situation of Provision of Right to Water in Zanzibar

In Zanzibar, the duty to produce clean and safe water falls under the government executive agent, the Zanzibar Water Authority (ZAWA).⁶³¹ The authority is responsible for formulating water policies, supply of clean water and collection of nominal charges from water recipients. ZAWA has a duty to contact international

628 International Bank for Reconstruction and Development (IBRD), World Bank. The Human Right to Water. Legal and Policy Dimensions. 2004. www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/10/18/000090341_20041018135134/Rendered/PDF/302290PAPER0Human0right0to0H20.pdf (accessed on 20th May 2015). 331SC McCaffrey ‘The basic right to water’ in EB Weiss et al (eds) Fresh Water and International Economic Law (2005) 93-94.

629 M Craven ‘Some thoughts on the emergent right to water’ in E Riedel & P Rothen (eds) The human right to water (2006) 37-39.

630 Section 27(1) of the Constitution of South Africa 1996.

631 Zanzibar Water Authority Act No. 4 of 2006.

organizations on improvement of water.⁶³² The authority provides water services in both urban and rural areas. Currently those who enjoy the right to water are more than 76 per cent of Zanzibaris, the vast majority of whom live in rural areas and who now have access to safe water.⁶³³ The target of the authority is to give water services to not less than 250 meters from where people are living in rural area.⁶³⁴ However, the water supply in urban area is a problem. Most of the inhabitants of the town area use privately owned wells as their source of water and in most cases, the water not really pure, clean and is usually salty.

Reports from the water authority suggest that water production has dropped dramatically. For example, statistics indicated that the required amount of water is 177.4 Million litres of water in Zanzibar per day, but the available amount is 140.7 equal to 79.3% of the required amount. The production was only 163 million litres (about 76 per cent).⁶³⁵ This data signifies the shortage of water for daily requirement is 36.7 million litres, which is equal to 20.7%. Climate changes, decrease of underground water, the rise in sea water and ignorance of Zanzibaris on conservation of the environment have been attributed to be the main cause of the problem.⁶³⁶

Addressing the House of Representatives during his budget speech in 2016, the Minister responsible for water had claimed that in the financial year 2016-2017 the Ministry had implemented different projects which included projects for the supplying of water to both Zanzibar Town and the rural areas.⁶³⁷

The government has been working closely with several development partners including China, Japan, ADB, BADEA, UN-Habitat, and some private local institutions to make sure that safe water is available to the people by constructing bore halls and water wells.⁶³⁸ For instance, the ruler of Ras al Khaiman has sponsored a project of drilling 150 deep wells in the urban areas.⁶³⁹

632 Ibid.

633 Zanzibar Celebrates Safe Rural Water with the African Development Bank <http://allafrica.com/stories/201509070779.html> accessed on 11th December 2016.

634 Budget speech of Ministry of Lands, Housing, Water and Energy 2015/2016.

635 The speech of Zanzibar President to commemorate 53rd Anniversary of Zanzibar Revolution of 1964 <http://www.ikuluzanzibar.go.tz/publications/view/hutuba-ya-rais-wa-zanzibar-na-mblm-dk.ali-shein-katika-sherehe-zamaadhimis>, (accessed on 14th December, 2015).

636 Human Rights Report 2014.

637 Speech of the Minister of Land 2015/2016, page 15.

638 How Zanzibar is overcoming water scarcity <http://www.dailynews.co.tz/index.php/features/40890-how-zanzibar-isovercoming-water-scarcity>, (accessed on 20th December, 2016).

639 Ibid, p. 18.

In 2016, 150 wells were drilled under the aid of the government of Ras al Khaimar where up to December, 2016, 17 are already operational. Also, the Zanzibar Urban Water Supply Project (ZUWSP) is working hard to ensure constant water supply in 27 Shehia of Stone Town and NgambuyaZamani. Likewise, three big water tanks are expected to be built at Saateni and MnarawaMbao.⁶⁴⁰

4.5.2 Challenges Facing Water Supply

Water supply in Zanzibar faces many challenges. Among those are the watersheds in Zanzibar which now face frequent drought especially during the dry season.⁶⁴¹ This has caused some groundwater wells to be abandoned due to drought.⁶⁴² Climate change in the form of rising temperature and decreasing rainfall trends over the years have led to dwindling ground water supply in Zanzibar.⁶⁴³

In addition, people invading areas near water reservoirs, old water infrastructures that lead to shortage of water in some areas, failure of people to pay their bills, climate change and variability together with declining water situation in Zanzibar all contribute to the water problems facing the Isles.⁶⁴⁴ In addition, water control is still a big problem in Zanzibar where the Authority has claimed to have lost thousands of litres of water through old leaking pipes, unattended water or broken taps, unattended water tanks, and storage of much more water than what is actually needed.⁶⁴⁵

The Centre recommends that the government should improve provision of water supply with the view to alleviate the 20% deficit of water supply. It is our hope that, this undertaking will be fulfilled for the benefit of Zanzibaris, hence saving a lot of money for people who have had to buy water thereby adding another burden over and above the persistent poverty facing people. In addition a proper supply of water will reduce time spent by all, men women and children looking for clean water especially in the urban areas.

640 Speech of the Zanzibar President in commemoration of 53 years Anniversary of Zanzibar Revolution.

641 Revolutionary Government of Zanzibar (RGoZ).(2004). National Water Policy 2004.Ministry of Water, Construction, Energy and Lands, Zanzibar.

642 Bates, B. C. Kundzewicz, Z. W., Wu, S., and Palutikof, J. P. (eds) (2008). Climate Change and Water: Technical Paper of the Intergovernmental Panel on Climate Change. IPCC; Secretariat, Geneva.

643 Kombo A. Kombo and Ahmad Kanyama, Effect of Climate Change and Variability on Water Supply in Zanzibar Int. J. Mar. Atmos. & Earth Sci. 2015, 3(1): 1 – 16.

644 Ibid.

645 Ibid.

4.6 Right to Housing

The government of Zanzibar in the year 2016 took the initiative to promote better housing in Zanzibar. At Nyamanzi the government has embarked on a project of building 1300 houses where 20 houses have already been completed.

In the same spirit, the government through Zanzibar Social Security Fund has started implementation of 18 buildings projects, each seven storeys high, with a total of 252 flats. Until November 2016, five buildings with 70 flats had been completed. In the promotion of better housing, the government has supplied electricity to 34 villages in Unguja and Pemba, 17 villages on each of the two islands.⁶⁴⁶

4.7 The Youth and Society

The youth does not occupy a special perch outside its social environment. It is very much part of society. In Zanzibar, the definition of the youth is more expansive and includes individuals aged between 15 to 35 years.⁶⁴⁷ Zanzibar has more than 471,634 youths which is equal to 36.2% of all people in Zanzibar.⁶⁴⁸

Youth Councils exist in Zanzibar where various issues concerning youth are discussed. Youth parliament is used to help the youth to get experience on how to run national issues. On 26th September 2016, the youth parliament held its conference in Zanzibar where youth from different walks of life participated in this parliament.

Despite being more than 36.2% which is more than 1/3 of the population, the youth in Zanzibar face many challenges. Unemployment in Zanzibar is a widespread and persistent challenge especially amongst the youth due to rapid increase of the youth population. According to the Zanzibar Integrated Labour Force Survey of 2006, youth unemployment rate for those aged 15-35 is 19.6 per cent. The findings show that unemployment rate for young women are higher representing 23.5 per cent compared with young men which accounted for 15.2 per cent. The same situation is revealed in Tanzania Demographic Health Survey (2010) where 65 per cent of young women in Zanzibar are currently unemployed.

In addition, the Household Budget Survey (2010) revealed that the general unemployment rate for youth aged 15 – 24 in Zanzibar is 17.1 per cent, an increase in comparison to 14.6 per cent recorded in HBS of 2004/05. The reported data reveal

646 The Speech of the President of Zanzibar on 12th January, 2017.

647 Zanzibar Youth Policy, 2007.

648 The speech of the Minister of President Office, State House a Good Governance on commemorate Population Day 2014.

that in rural area the rate is 11 per cent and in urban area is 31.2 per cent. Therefore youth unemployment ends up as a critical challenge which needs special attention in the Zanzibar.

In addition, the youth in Zanzibar face other challenges like high school dropout rates, poor reproductive health choices, high prevalence of HIV/AIDs, poor maternal and child health services and high maternal mortality rates over time.



Picture 29: A youth parliamentary sessions in 2016

4.8 Conclusion

In Africa and Zanzibar particularly, socio-economic rights are making slow progress compared to civil and political rights. The slow progress of this right may include the economic standard of the country like Zanzibar which has not really grown economically. Despite this, Zanzibar has made successful strides in areas like education, water and health. However, in relation to the right to work, despite it being introduced in the constitution it is not an enforceable right so that individuals cannot claim against the government for losing out on jobs. Many people are jobless and those who have jobs complain of low salaries. Though our economy is not a large one, we need to ensure legal mechanisms are put in place to enable the people to have an equitable enjoyment of these rights.

CHAPTER FIVE**ECONOMIC AND CULTURAL RIGHTS****5.1 Introduction**

These rights fall under the second generation of human rights. The economic rights include the right to education, the right to health and the right to work. These rights are social, cultural and economic in content and orientation. The first and second generations of rights are focused on individuals. Globally, two separate covenants that followed the Declaration gave impetus to the Declaration of Human Rights. They are the International Covenant on Civil and Political Rights (ICCPR), 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966. The former UN High Commissioner for Human Rights, Mary Robinson, stated that these Treaties and the UN Declaration, known collectively as the International Bill of Rights, are the cornerstone of the remarkable body of international and regional instruments, well over seventy in number, which form the basis of international human rights law, and regulate the fundamental rights and freedoms of an individual.⁶⁴⁹

The World Conference on Human Rights once declared that all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.⁶⁵⁰

The New Delhi Statement on the justifiability of economic, social and cultural rights in South Asia recognized that human rights are indivisible and interdependent and that the rights entrenched in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and, where relevant, the Directive/Fundamental Principles of State Policy contained in some national constitutions represent statements of clear legal obligation for the States concerned. It further proclaims that the principles anticipated in those documents give direction to the States concerned in addition to giving content and meaning to fundamental rights enshrined in those constitutions.⁶⁵¹

649 Robinson, M, "Protecting Human Rights: the Role and Responsibilities of Independent Bar", a Keynote Addresses Delivered at the Inaugural World Conference of Barristers and Advocates, Edinbrugh on the 28th June 2002.

650 The Vienna Declaration and Program of Action, World Conference on Human Rights, June 1993, p.14-25.

651 Zanzibar Human Rights Report, 2015 p.134.

The Harare Declaration on Human Rights notes that “there is a close inter-linkage between civil and political rights and economic and social rights; neither category of human rights can be fully realized without the enjoyment of the other.” The Supreme Court of India said that both are complementary, “neither part being superior to the other.”

With regard to Africa, the African Charter on Human and Peoples’ Rights 1981, in its preamble, states: “... that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights”. Notwithstanding that, various international instruments, declarations and statements have not only recognized but also proclaimed that civil and political rights and economic, social and cultural rights are interconnected, interdependent, interrelated and indivisible, they still accord primacy to political rights over economic rights.

5.2 Right to Property

The right to property is very important in human society. It relates to ownership of property by an individual to the exclusion of others. According to Shivji (2006), this ownership of property is not a relation between a person and a thing. It is a relation between a person and persons. Ownership of (property) means that the owner can exclude others from access to it. One’s right to own a piece of land means his/her right to exclude others from it. And when the State guarantees one the right to own (property), it undertakes to exclude others from it by law, meaning disguised force.

Over time, the meaning of the term property has changed. . Traditionally, property was only that what was tangible, but now property rights include even intangible acquisitions. Also, the value of property in relation to other matters differs from society to society. In some societies property is valued even more than life itself.

Since right to property is a positive right, the Constitution of Zanzibar provides it in a manner that does not impose positive duty on the State to ensure that there is a positive environment put in place to ensure that every citizen is capable of acquiring property. Section 17 of the Constitution of Zanzibar gives protection from deprivation of property.

The Section provides that no person shall be deprived of his property interest or right in that property except and upon compliance with the following conditions: that the acquisition and occupancy of the property is of utmost importance for the defence and

security of the people, health requirement, town planning and any other development in public interest; that the need to acquire the property in question is absolutely necessary to the extent that it legalizes its acquisition even if it is detrimental to its owner; that there exists a law in respect of which acquisition or occupation of the property provides for fair and adequate compensation.

Despite the fact that the right to property has been protected by the constitution, the resulting situation is not all the simple. The right to own private property has been subject of constant interference by both state and non-state actors who have been infringing the right to own private property without any justifiable or legitimate cause.

In 2016, the right to property raised specific attention when government of Zanzibar evicted traders from Darajani container shops and also those who had small businesses without specific business places. These were directed to conduct their businesses at Saateni about one kilometer from the town centre. This exercise was aimed at improving the environment of the town and makes it cleaner and more attractive.

Other traders who were removed from their business areas included those from the so called “*Jumba la Treni*” at Darajani. The government explained this building to be unfit and posed serious safety risks for humans. All traders conducting businesses therein were made to evacuate the building to allow the government to undertake necessary renovations.

This exercise was not received favourably by the business community in the area. They complained bitterly about the loss of their businesses at the hands of their government. They argued that they were forced to vacate their business places without being given neither proper notices nor directives on what they were to do or go.

Others complained that their business buildings were demolished without compensation. Others said that they were renting the premises from the government but were now forced to leave the premises before the rent term is over. With regard to “*Jumba la Treni*” more than five people instituted cases claiming ownership of the building but they lost their cases and the government ordered all residents and traders to vacate the buildings.



Picture 30: Traders collect their properties after the demolition exercise at Darajani Zanzibar



Picture 31: View of “jumba la treni” (train building) at Darajani Zanzibar just before the time of its demolition.



Picture 32: A view of the proposed renovated “Jumba la Treni” as displayed by Zanzibar Social Security Fund (ZSSF), the financier of the renovation project

Generally, while there is nothing wrong for the government to plan its towns properly, it is important for the government to use proper legal procedures and correct ways of doing so. The property rights of the people should not be unnecessarily violated. The government should ensure that it is always taking measures to protect the rights of its citizens.

5.2.1 Right to Acquire and Own Immovable Property

The Constitution of Zanzibar under Section 17 guarantees the right of every citizen of Zanzibar to acquire and own property. It provides that no person shall be deprived of his property interest or right in that property except and upon compliance with certain conditions. Section 15 the same Constitution protects the private ownership of property. Section 15 reads:

15(1) “Every person is entitled to respect and protection of his person, the privacy of his own person, his family and of his matrimonial life, and respect and protection of his residence and private communication.

(2) For the purpose of preserving the person's right in accordance with this Section, the state authority shall lay down legal procedures regarding the circumstances, manner and extent to which the right to privacy, security of his person, his property and residence may be encroached upon without prejudice to the provisions of this Article".

In the above provisions, it is noted that the Constitution guarantees private property rights that includes the right to delegate, rent, or sell any portion of the rights by exchange or gift at whatever price the owner determines (provided someone is willing to pay that price) but at the same time, this right has not been made absolute.

There are circumstances where the enjoyment of this right is limited. The state shall still have power to interfere with the property of an individual under the following conditions namely; that the acquisition and occupancy of the property is of utmost importance for defence and security of the people, health requirement, town planning and any other development in public interest; that the need to acquire the property in question is absolutely important to the extent that it legalizes its acquisition even if it be to the detriment of its owner; and that there exists a law in respect of which acquisition or occupation of the property provides for fair and adequate compensation.

There are the three basic elements of private property. They are; exclusivity of rights to choose the use of a resource, exclusivity of rights to the services of a resource, and rights to exchange the resource at mutually agreeable terms are not absolutely provided. At the same time there are also properties which are specifically owned by the government though the government may give the right to occupancy and use to individual persons or institutions.

In the promotion of the right to own immovable property, the government has increased efforts to minimize land disputes in Zanzibar. From January 2016 to October 2016, a total of 215 land disputes were settled in Zanzibar when compared to 178 of 2015⁶⁵².

5.2.2 Limitation to the Right of Property

There are some factors which limit the right to property in Zanzibar. This includes inefficient machinery to settle land disputes in Zanzibar, causation of land disputes by government officials and allocation of land to non-Zanzibaris. This cause the people of Zanzibar to face the problem of shortage of land hence allocation and prices for purchase of land has become very expensive.

652

President of Zanzibar Speech on 12th January 2017, p. 8.

5.3 Challenges facing property ownership in Zanzibar

Until the end of the year 2016, property ownership has been faced by a number of challenges in Zanzibar as also reported in the 2015 human rights report. The challenges include:

5.3.1 Destruction of Property

The year 2016 witnessed various events where property of various people was destroyed. This was especially in Pemba Island. The destruction was connected with political ideologies and misunderstanding between the two main political parties in Zanzibar (CCM and CUF).

The reports revealed that both private and public properties were destroyed in Pemba at different times. The following pictures depict the situation.



Picture 33: The house belonging to the Sheha of Maziwang'ombe in Northern Pemba, Ms.AshaYussuf destroyed by unknown people allegedly for political reason in May, 2016



Picture 34: One of the many houses destroyed by unknown persons in Tumbatu allegedly on political misunderstandings

5.3.2 Change of Ownership after Transfer

Another common challenge in terms of property ownership in Zanzibar is associated with the documentation especially in the change of the property ownerships between individuals. There has been a tendency (though illegal) in Zanzibar for people not to bother with changing the ownership deeds after the transfer. Failure of proper transfer documentation and registration thereof has caused a lot of disputes associated with transfer of land and other items, the resolutions of which have necessitated recourse to the courts of law. Hence, the multiplicity of such cases before courts of law in the country.

5.4 Right to Work

In Zanzibar, the right to work is provided under Article 21 (3) and (4) of Constitution of Zanzibar, 1984 which states that all people have the right to work and are entitled to equal rights and privileges, and can hold any position in employment under jurisdiction of Zanzibar. The constitution further asserts that the right should be enjoyed without discrimination of any kind, and remuneration should be given according to one's work, that is, the extent of the work he does and his competency.

To serve this purpose, the government of Zanzibar has passed different laws and policies. One of the most prominent legislation in this area is the Employment Act 2005 which provides for the rights and duties of both employer and employees. For proper implementation of this law (among several others), the government of Zanzibar has earmarked a special Ministry to facilitate the provisions of the right to work by coordinating all necessary steps in promoting jobs and employment domestic and international. The ministry which is responsible for labour matters is Ministry of labour, empowerment, elders, youths, women and children. Among the main functions of the office are, to coordinate performance of public servants, continue playing its core role of coordinating the implementation of labour laws, employment policy, youth employment action plan and job creation programmes.

5.4.1 State of Employment in Zanzibar

In Zanzibar employment opportunities are highly government-driven. That is, most people look to government for employment. Most of the youth, particularly those who graduated from universities or colleges have big ambitions that they will be employed by one of the government offices, though there are a number of informal sectors that are potential employers and provide various job opportunities. Zanzibar has a standard legal framework for labour relations.

From a legal point of view, Zanzibar regulates employment relations by setting hours of work, wages, leave, vacation, penalties, termination of employment and has established the Labour Advisory Board and Conciliation Board. It also allows the Zanzibar Trade Union Congress, ZATUC, to exercise its function for the protection of the employees' rights and creating good relationship with the government and other employers. ZATUC has been increasingly recognised by the government and has regular formal and informal meetings with the President as well as all relevant ministries.

Labour issues in Zanzibar have historically not been accommodated in union matters. Consequently, the Zanzibar House of Representatives had enacted the Zanzibar Trade Union Act No. 4 of 2001, under which trade unions in Zanzibar are registered and managed. Under the same Act, the national trade union centre – Zanzibar Trade Union Congress (ZATUC) - was established in 2003 and also deals with private sectors – process and procedure, opportunities, contracts, harassments, minimum wage and corruption.

Up to the end of the year 2016, there are about 70,000 employees in Zanzibar. Among them around 40,000 are public employees and 30,000 are private sectors

employees⁶⁵³. This means that the number of employed people in Zanzibar is very low when compared to the total population of about 1.3 million,

The government took various initiatives to increase employment opportunities in Zanzibar. The government through its youth's fund created self-employment for 2326 youth, The private sector employed 1824 youth and in the government or public sector 711 youths were employed. Also 319 entrepreneurs were trained on matters relating to entrepreneurship so as to encourage self-employment⁶⁵⁴.

5.4.2 Salaries and Incentives Packages

The term salary may be defined as a form of periodic payment from an employer to an employee, which may be specified in an employment contract. It is contrasted with piece wages, where each job, hour or other unit is paid separately, rather than on a periodic basis. From the point of view of running a business, salary can also be viewed as the cost of acquiring and retaining human resources for running operations, and is then termed personnel expense or salary expense. In accounting, salaries are recorded in payroll accounts. It is a fixed amount of money or compensation paid to an employee by an employer in return for work performed. Salary is commonly paid at fixed intervals, for example, monthly payments of one-twelfth of the annual salary.

According to 2015 Human Rights Report, salaries, particularly of the government employees are still extremely low. In its general outlook, salaries paid to public and private employees are still poor and could not be guarantee a minimum expenditure of half a month. The frequent increase in the prices of basic commodities that are caused, sometimes, by the fluctuation of the currency has led the life of the ordinary people to become extremely difficult. It is almost impracticable for a civil servant who receives minimum salary to survive with only that salary, without any additional income.

There has however been an increase of salary for judicial officers and State Attorneys though there are still claims that the Judicial Officers are given preference in the increases compared to State Attorneys. In combating the problem of low salaries, the government of Zanzibar announced that from April 2017, the minimum wage for public sectors will be 300,000 TZS⁶⁵⁵ (approximately 150 USD). With this promise given by the President of Zanzibar, the public employees in Zanzibar have anxiously been waiting for that day.

653 Zanzibar Social Security Fund, 2016.

654 President of Zanzibar Speech on 12th January, 2017.

655 The speech of the president of to the House of Representatives members on 2nd April, 2016.

5.4.3 Shortage of Employment Opportunities

The problem of unemployment has yet to be resolved. It is understood that a large number of university graduates and those from other institutions of higher learning fail to get employment. Some university graduates move outside Zanzibar Islands in search for employment. It appears that the public and private sectors in Zanzibar cannot absorb the increased number of job seekers. Favouritism and nepotism seems to be the order of the day in getting employment especially in the public sector. It is believed that interviews are a mere formality but not a determining factor in getting a job. Furthermore, the introduction of the General Security Office (GSO) which was intended to scrutinize the suitability of people who seek for employment in public services is allegedly used merely for serving political purposes.

Unemployment among youths in Zanzibar is reported to be at 37% in 2016 with a much higher real rate of jobless and unemployed youth. Young women are most vulnerable. The reason for their vulnerability being the lack of education and skills, cultural attitude and practices, discriminations and limited job opportunities. The tourism industry is said to contribute about 27 per cent of the revenue, but yet local Zanzibaris are said to be sidelined from employment. Responding to the unemployment problem, members of the House of Representatives urged the Minister responsible for Livestock, Tourisms, Economic Empowerment and Information to investigate and find out the ratio of Zanzibaris employed in the tourism sector compared to non-Zanzibaris and foreigners. It is alleged that the number of Zanzibaris is lower than non Zanzibaris contrary to the requirements of laws of Zanzibar⁶⁵⁶.

As observed in the last year's Human Rights Report a survey conducted by ZLSC indicates large numbers of young people who are without job, spend most of their time at "vijiwe". The situation is frightening and it sometimes encourages youth to engage in criminal acts and use narcotic drugs. It is time for government to take responsibility by introducing centres where young people can employ themselves and hence to rescue this young generation from total collapse. Zanzibar is full of potential facilities for this purpose. For example, Zanzibar is surrounded by sea, but the fishing industry has not been considered by government as a sector that can create jobs.

While urging the government to take a major role in carrying out its responsibilities by creating job opportunities, it is also important that the youth from Zanzibar be urged to change their job attitudes by paying greater heed to the informal sector. Many people especially youth, who are capable of working, make no attempt to engage in private and entrepreneurial projects where they can create their own jobs or become self-employed. Zanzibar has a lot of opportunities for jobs that have not been well

656 Economic performance report 2016, p.34.

exploited. The majority of youth would like to be employed by the government or at least have white collar jobs. It is very rare for a Zanzibari youth, save only those who live in rural areas, to engage themselves in farming or fishing. Those who have attempted to engage in some business or the other do not have many complaints apart from the challenges they face in the course of their businesses.

5.4.4 Poor System of Social Protection

United Nations Research Institute for Social Development defines social protection as preventing, managing, and overcoming situations that adversely affect people's wellbeing. Social protection consists of policies and programmes designed to reduce poverty and vulnerability by promoting efficient labour markets, diminishing people's exposure to risks, and enhancing their capacity to manage economic and social risks, such as unemployment, exclusion, sickness, disability and old aged persons.

It is important to have a better system of social protection as it is an integral component of any strategic effort to reduce the incidence and severity of poverty. As such, it relates to a large body of literature on the definition, explanation and identification of the poor; and, conversely, to decades of theoretical and empirical work on what contributes to sustainable poverty-reduction. The modern social protection has grown to envelop a much broader range of issues and purposes; it is now being used as a policy approach in developing nations, to address issues of persistent poverty and target structural causes.

Moreover, it is designed to lift recipients out of poverty, rather than exclusively providing passive protection against contingencies. Social protection has rapidly been used in trying to reduce and ultimately eliminate poverty and suffering in developing countries (mostly in Africa), so as to enhance and promote economic and social growth of societies.

The Zanzibar Social Security Fund (ZSSF) is the only social security scheme in Zanzibar. The fund provides old age pension, life insurance, and gratuity, invalid and maternity benefits. The contributory system is 10 per cent of salary paid by employer and 5 per cent deduction from the employee. The government also provides pensions to retired civil servants but the Zanzibar pension is said to be considerably lower than that of Mainland Tanzania. Old age pension and gratuity are paid as a monthly and a lump sum.

There are two types of pension, one provided by Ministry of Finance and the other from ZSSF. It was observed that most of the retired officers face extreme hardship during retirement. ZSSF is so far faring well and there are not so many complaints from the beneficiaries. However, the ZSSF does not cover members of the Zanzibar Special Departments (Isles Security Forces) where their retirement is handled by different laws. Contribution from informal employed is also covered by ZSSF

5.4.5 The Handling of Labour Disputes

The Employment Act, 2005 provides for the existence of dialogue between employer and employees. As far as the Employment Act 2005 and Labour Relations Act 2005 are concerned, the structure of the handling of labour disputes is established through the Industrial Court, the Labour Commission with office establishments in almost every District of Zanzibar.

All labour disputes whether existing or apprehended shall at the first instance be filed before the dispute handling unit. The Unit shall deal with the receiving and filing of disputes, notification of parties, summons, fixture of proceedings and other matters necessary for handling of such disputes in a manner provided by Regulation made under these two Acts.

Under the Regulations, the mediator is required to resolve the dispute through a mediation process which shall take place within 30 days of the date of a relevant dispute, unless the parties agree to a longer period. If mediation fails, either party may further refer to the arbitrator or labour complaint to the High Court, Labour Division commonly known as the Industrial Court. Both the arbitrator and the Industrial Court are empowered to take evidence, and hear legal submissions from both parties, before rendering a decision on the merits of the case.

5.5 Cultural Rights

The simple definition of Cultural Rights is that these are rights relating to art and culture⁶⁵⁷. The objective of these rights is to guarantee that people and communities have an access to culture and can participate in the culture of their choice. Cultural rights therefore become human rights that aim at assuring the enjoyment of culture and its components in conditions of equality, human dignity and non-discrimination. They are rights related to themes such as language; cultural and artistic production; participation in cultural life; cultural heritage; intellectual property rights (IPR); author's rights; minorities and access to culture, among others.

657 F. Jaffeson (2000), Human Rights in Africa, p.34.

The cultural rights of groups focus on such things as religious and ethnic minorities and indigenous societies that are in danger of disappearing. Cultural rights include a group's ability to preserve its way of life, such as child rearing, continuation of language, and security of its economic base in the nation in which it is located. The related notion of indigenous IPR has arisen in attempt to conserve each society's culture base and essentially prevent ethnocide.

Anthropologists are of the opinion that culture is transmitted through a highly complex process comprising a mixture of material and nonmaterial components. Culture can be reflected and expressed through the type of housing we choose to live in and the people with whom we share the housing; the type of food we grow or eat, and how we grow or eat it; the type of music we play or listen to, and how we play or listen to it; the religion we identify with; and the landholding patterns in our society. Culture is reflected in and expressed through our relationships with parents, children, relatives, friends and strangers as well as with other cultures and with the physical world around us.

At international level, cultural rights as human rights are advocated by the Declaration on the Principles of International Culture Cooperation; the Declaration on the Rights Belonging to National or Ethnic, Religious and Linguistic Minorities; the Declaration on the Rights to Development; the International Convention on the Protection of the Rights of Migrant Workers; and the ILO Convention No. 169 on the Rights of Indigenous and Tribal People. The following legal provisions address culture in general terms; provisions relevant to specific groups are detailed herein below.

Although later provisions in international law reflect a broader understanding, the direct references to cultural rights in the 1948 Universal Declaration of Human Rights are rather narrow. Article 27 says:

“Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”.

Article 15 of the ICESCR, adopted in 1966, is not much more expansive. It says in part:

“The States Parties to the present Covenant recognize the right of everyone:
To take part in cultural life;
To enjoy the benefits of scientific progress and its applications;

To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”.

The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

Other relevant international principles or declarations include the Convention on the Prevention and Punishment of the Crime of Genocide (Article 2), which is interpreted to forbid the deliberate destruction of a people’s culture.⁶⁵⁸

UNESCO Principles on International Cultural Co-operation (Article 1):

“Each culture has a dignity and value which must be respected and preserved. Every people have the right and the duty to develop its culture”.

In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind⁶⁵⁹. There are also regional legal provisions providing for similar protection of the cultural rights in various aspects. Article 17 of the African Charter on Human and Peoples’ Rights 1981 guarantees the right of individuals to take part in the cultural life of their community. It also provides that the promotion and protection of morals and traditional values recognized by the community shall be the duty of the State. Article 22 provides for the right to cultural development of peoples and the equal enjoyment of the common heritage of mankind.

At domestic level, the Constitution of Zanzibar 1984 requires cultural rights to be guaranteed. Section 10(f) of the said constitution includes the protection, preservation and the promotion of the Zanzibar culture as the responsibility of the government of Zanzibar. Some aspects of culture have been included. Administratively cultural issues are administered by the Ministry of Information Culture, Tourism and Sports, where, for a long time the Ministry has been responsible for cultural development.

The cultural rights are protected for the reason that they guarantee the people and communities concerned an access to culture and can participate in the culture of their own. Cultural rights are human rights that aim at assuring the enjoyment of unique culture and its components in conditions of equality, human dignity and non-discrimination. For a country like Zanzibar with a diversity of communities, protection of cultural rights is necessary to ensure enjoyment of cultures and stability of its people.

658 Convention on the Prevention and Punishment of the Crime of Genocide, 1948.

659 Declaration of the Principles of International Cultural Cooperation, 1966.



Picture 35: Children of Zanzibar dressed in traditional clothes performing a traditional dance called “Msewe”

5.5.1 Cultural festivals in Zanzibar

In Zanzibar, there are two famous festivals which take place every year. The first is the Zanzibar International Film Festival (ZIFF) which takes place annually in the month of June and July at the old fort in the Stone Town of Zanzibar. The festival gives room for cultural activities from different dhow countries in Africa and Asia in particular to be displayed.



Picture 36: Zanzibar Acrobat Group performing during ZIFF festival in June, 2016

5.5.2 Stone Town as World Cultural Heritage

Stone Town, also known as MjiMkongwe (Swahili for “old town”), is the old part of Zanzibar City, the main city of Zanzibar, in Tanzania. (The newer portion of the city is known as Ng’ambo, Swahili for ‘the other side’). Stone Town is located on the western coast of Unguja, the main island of the Zanzibar Archipelago. A former capital of the Zanzibar Sultanate, and a flourishing centre of the spice as well as the slave trade in the 19th Century, it retained its importance as the main city of Zanzibar during the period of the British protectorate.

When Tanganyika and Zanzibar united to form the United Republic of Tanzania, Zanzibar kept a semi-autonomous status, with Stone Town as its local government seat.

Stone Town is a city of prominent historical and artistic importance in East Africa. Its architecture, mostly dating back to the 19th Century, reflects the diverse influences underlying the Swahili culture, with the East African culture being preeminent. There is a unique mixture of Arab, Persian, Indian and European elements. For this reason, the town was designated as a UNESCO World Heritage Site in 2000.



Picture 37: An upward outlook of Stone Town Zanzibar

5.5.3 Zanzibar Handcrafts Activities

People of Zanzibar are identified by many cultural features which give a unique attraction to many people including those living within. There are various cultural hand craft activities such as Zanzibar doors, mats and other items. The “Zanzibar Door” is one among those features that has been a significant symbol of Zanzibar history and cultural heritage.

Around every corner turn in the Stone Town, one may come across the giant wooden masterpieces, the doors of Zanzibar. Traditionally, the door was the first structure to be erected when a house was being built and in the past, they served as a valuable glimpse into the homeowner's place of origin, profession and economic status. Some have elaborate carvings and are a reminder of Zanzibar's affluent past.

Many of the doors have decorative metal studs or spikes on them. The large brass studs have their origins in India, where they were said to be a defence against elephants. However, in Stone Town they have been no elephants and these are mainly decorative pieces and in the past have been symbolic markers of wealth.

Zanzibar Doors were deemed cultural heritage in 1980 and are protected by the Stone Town Conservation and Development Authority.⁶⁶⁰ Protection and preservation of these doors is very significant.

5.5.4 Traditional Healing and Medicine

Traditional and Alternative Medicine (TAM) had been practised in Zanzibar without official guidelines to assist Traditional medicine practitioners in performing their activities in accordance with legislation and regulation. Nevertheless, there has been some public awareness on the potential opportunities that could be tapped from the use of TAM and its benefits to the health sector. Currently, traditional medicine is to a certain extent, a kind of institutionalized practice with full legal recognition in Zanzibar.

In Zanzibar administrative system, traditional medicine is formally regulated by the Zanzibar Traditional and Alternative Medicine Council (ZTAMC), an authority legally created by the government. The Traditional and Alternative Medicine Council was established under the Ministry of Health by the Act No. 8 of 2008 in recognition of the traditional healers. This Council has a mandate to authorize or restrict any person or institution involved in traditional medicine. The integration of traditional and alternative medicines into national health care system has the potential to supplement, strengthen and promote better health care for all, in line with the national vision 2020.

The government recognizes and advocates for the use of traditional medicine and supports the idea of incorporating it into the national health system with the objective of ensuring that traditional medicine treatment is done scientifically, rationally and with reliable safety to the Zanzibari community. As reported by the Registrar of the Traditional Medicine and Alternative Care Unit, approximately 205 healers, 158

660 ZLSC, Zanzibar Human Rights Report 2016, p.158.

Kilinges and 40 medicinal plants have been registered up to now. Kilinges are the offices smaller than clinics, where healers meet patients.⁶⁶¹

As far as human rights are concerned, in Zanzibar the traditional healing can be categorized into two major parts; the one that specifically uses physical traditionally made medicines that includes fruits, roots of trees and others and the other part that uses spiritual healings.

5.5.4.1 Traditional Medicine from Zanzibar Herbalist

According to the WHO, traditional medicine is “the total combination of knowledge and practices, whether explicable or not, used in diagnosing, preventing or eliminating physical, mental or social diseases and which may rely exclusively on past experience and observations handed down from generation to generation, verbally or in writing.” The terms “complementary medicine” or “alternative medicine” are used interchangeably with traditional medicine in some countries. They refer to a broad set of health care practices that are not part of that country’s own tradition and are not integrated into the dominant health care system.

“*Dawazaasili*” (traditional medicine) is very common in Zanzibar. Many people have been using traditional medicines from birth. These are medicines frequently used for curing a number of diseases including spiritual ones. The professional or traditional healers who produce medicine from traditional herbs, plants and spices, are commonly known as “mgangawajadi” (traditional healer(s)), “mtaalam” or “fundi” (specialist). These people are locally regarded as equivalent in practice to western doctors as in public hospitals. In fact, doctors in normal hospitals sometimes send patients, who show no signs of improvement with western treatment methods to the wagangawajadi (in plural). For those patients, the wagangawajadi often means “the last chance.”

661

Bayllor J (2015), Analysis of Traditional Medicine in Zanzibar, p.5.



Picture 38: Zanzibar Second Vice President examines traditional medicine used to cure various diseases

Article 15(1) (b) of the ICESCR recognizes the right of everyone “to enjoy the benefits of scientific progress and its applications.” While this guarantee sounds relatively straightforward, it is in reality, fraught with complexities. Once again, the relationship of power to culture comes into play. Access to technology and the products of scientific progress may be constrained for large numbers of people, because they cannot afford to buy them. In addition, economic power can monopolize the products of scientific progress in a way that is detrimental to cultural and other rights of people around the world.

While almost no one doubts the benefits that can accrue to the quality of life from scientific progress, problems that should be of concern to cultural rights activists arise from the fact that the concept of “scientific progress” is grounded in the Western liberal tradition. The belief in “scientific progress” has been termed an ideology, and as with all ideologies, it can serve as a blinder to experiences and perspectives that might be in conflict with it.

Since different cultures embody different perspectives, such a blinder potentially threatens to shut out other cultural experiences and beliefs. The safeguarding of the

cultural rights of people without depriving them of the fruits of technological advance and scientific progress implies that new paradigms of social transformation have to be evolved where without any sacrifice of their cultural moorings and creative potential, populations and communities can achieve sustainable development.

Zanzibar Legal Service Centre is of the view that traditional healing and medicines is a cultural heritage that is worthy of protection and preservation as an approach to protecting human rights. It has to be promoted, encouraged, and learnt for transferring knowledge. Professional research and local expertise and exploration of the resources need to be carried out.

However, there is a need for research to be conducted to ascertain the efficacy and safety of several other practices and medicinal plants. Unregulated or inappropriate use of traditional medicines and practices can have negative or dangerous effects. Research findings will provide the proof of safety and efficacy of herbal medicines. Information may appear in authoritative national documents (such as pharmacopoeias or official guidelines of national authority) or scientific publications. In conducting research and evaluating ZTAM, knowledge and experience obtained through the long history of established practices should be respected sufficiently.

5.6 Preservation of Cultural Heritage

Cultural Heritage is a wide concept. We prefer to concentrate on the similarities between the various heritages sectors, instead of their differences. Having at one time referred exclusively to the monumental remains of cultures, cultural heritage as a concept has gradually come to include new categories. Today heritage is not only manifested through tangible forms such as artefacts, buildings or landscapes but also through intangible forms. Intangible heritage includes voices, values, traditions, oral history. Popularly this is perceived through cuisine, clothing, forms of shelter, traditional skills and technologies, religious ceremonies, performing arts, storytelling, etc. Today, we consider the tangible heritage inextricably bound up with the intangible heritage. In conservation projects we aim to preserve both the tangible as well as the intangible heritage.

It is an expression of the ways of living developed by a community and passed on from generation to generation, including customs, practices, places, objects, artistic expressions and values. Cultural Heritage is often expressed as either intangible or tangible Cultural Heritage (ICOMO). As part of human activity, cultural heritage produces tangible representations of the value systems, beliefs, traditions and lifestyles as an essential part of culture as a whole. Cultural heritage contains these visible and tangible traces from antiquity to the recent past.

Protection and preservation of the cultural heritage has become one of the state functions. To ensure that the records of today are preserved for future generations various steps are taken by the governments, including the establishment of the National Archives, which are given power to provide for the preservation of public records and for other matters connected therewith and incidental thereto.

In the case of Zanzibar, this function is statutorily given by the National Archives Act, No. 7, 1988. Through the National Archives, people can make use of the records to study and understand the life, ideas and thoughts of their ancestors, linking the past, present and future. Archives ensure that historically significant records are systematically described and, wherever possible, available for a variety of research uses, including teaching purposes, building plans, publications, television and radio programs, plays, and legal proceedings. It serves as society's collective memory. They provide evidence of the past and promote accountability and transparency of past actions. In that regard, the archives is a public cultural property as it is there to serve the whole nation.

One thing notable in Zanzibar now is that the cultural heritage is on the decline. The Stone Town has been breaking down. The problem which arises here is that reconstruction is not permitted as doing so is to destroy the cultural heritage. There is need however to do something to sustain this heritage in its natural and harmonious state.



Picture 39: Zanzibar Mkunazini slave market is one among the cultural heritages in Zanzibar

5.7 Conclusion

Economic, social and cultural rights are among the fundamental rights which man cannot do away with. In order for man to survive, he must have the means to support his life. The economic rights come to give a human being a means of life to use so that he can get his basic needs. Human life is not static. Humans as members of a particular society need an identity to distinguish them from members of other societies. This makes cultural rights very crucial in the society. The history of human society impacts these rights. For example, political history may lead to cultural heritage which later becomes very important to be protected. Therefore the Zanzibar government is strongly encouraged to continue protecting economic and cultural rights.

CHAPTER SIX

THE RIGHT OF VULNERABLE GROUPS

6.1 Introduction

The Universal Declaration of Human Rights 1948 guarantees that all human beings are equal irrespective of their race, economic status, ethnicity and the like. This position is guaranteed by national, regional and international human rights instruments. Vulnerable groups are the groups of people who find themselves prone to physical or emotional injury, or subject to systemic marginalization or less valuable members of the society and include women, children, and people living with disabilities. Also included in this group are refugees, stateless persons and victims of war. Their vulnerability places them in a position where they cannot have reliable access to the majority of socio-economic opportunities. It is worth noting that vulnerable people are normally at a higher risk of suffering from the effects of poverty and social exclusion than the general population.

Despite the commitment by international human rights law to promote and protect rights covered in these groups, there is no standard definition, concept or classification of the list of people who belong to the vulnerable and disadvantaged groups⁶⁶².

In Zanzibar, vulnerable and/or disadvantaged people are categorized into several groups such as women, children, people living with disabilities and the elderly for they are incapable of fully asserting their rights in society, hence their need for protection.

Matters relating to the protection of rights and interests of these groups have been the subject matter of international, regional and national legal instruments. On the part of international instruments protecting rights of vulnerable and disadvantaged people, we have, among others, the Convention on the Elimination of all Form of Discrimination Against Women 1979; Convention on the Rights of the Child 1989; United Nations Convention of the Refugees 1951; International Convention on the Protection of the Rights of all Migrant Workers 1990 – 2003; and United Nations Declaration on the Rights of Disabled Persons 1978.

662 Sastry T.S.N (2006), Human Rights of Vulnerable and Disadvantaged Groups Course Book, p.11-15.

Regional instruments covering rights of vulnerable and disadvantaged people include the African Charter on Human and Peoples Rights (ACHPR) 1981; and Protocol to ACHPR 1981 on the Rights of Women in Africa, 2000 and Maputo Protocol, 2003.

In general, based on the international and regional instruments as quoted above, the basic principles governing the protection of the rights of vulnerable and disadvantaged people require that:

1. States Parties shall combat all forms of discrimination against vulnerable and disadvantaged people through appropriate legislative, institutional and other measures. In this regard they shall:

- a) “Include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;
- b) Enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of these people;
- c) Integrate a vulnerable and disadvantaged people perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life;
- d) Take corrective and positive action in those areas where discrimination against vulnerable and disadvantaged people exists in law and in fact continues to exist;
- e) Support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against vulnerable and disadvantaged people”.

2. States Parties shall commit themselves to modifying the social and cultural patterns of conduct of all people through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority of vulnerable and disadvantaged people.

In Zanzibar, the protection of the rights of vulnerable or disadvantaged people has not been made a subject of any particular or specific provision in the Constitution of

Zanzibar, 1984. There are however, the provisions of Section 12 of the Constitution of Zanzibar, 1984 which provides for equality before the law, in the following words:

“that all persons are equal before the law and are entitled without any discrimination, to protection and equality before the law; that no person shall make any provision that is discriminatory either of itself or in its effect; that the civic rights, duties and interests of every person shall be protected and determined by the courts of law, state organs and other organs established by the law; that no person shall be discriminated against by any person or any authority acting under any law or in the discharge of the functions of any state office or by any management of any party and its organs; that Except that the word “discrimination” shall not be construed in such a way as to restrain the Government from taking necessary measures with the aim of rectifying peculiar problem in the society.”⁶⁶³

Based on these constitutional provisions, and in the light of some international and regional perspectives in the protection of the rights of vulnerable and disadvantaged people, Zanzibar has taken a number of positive measures with the view to protect the rights of vulnerable and disadvantaged people. Current efforts undertaken by the Revolutionary Government of Zanzibar is the execution of the Zanzibar Poverty Reduction Strategy MKUZA II in which one of its goals deals specifically with the poor and vulnerable and is to - “improve safety net and social protection for poor and vulnerable groups.”

6.2 Patterns of Protection

In the Zanzibar perspectives, vulnerable and disadvantaged groups have apparently been conceptualized to include women, children, elderly persons and persons with disability.

6.2.1 Legal Framework for Protection of Women in Zanzibar

The Government of Zanzibar has taken various measures to ensure that women’s rights are protected. The Constitution of Zanzibar, 1984 guarantees equal rights for all the people regardless their nationality, tribe, gender, place of origin, political opinion, colour, religion or station in life.⁶⁶⁴

In addition to the Constitution, a number of legislations have been enacted to protect specific aspects of women’s rights. These laws include the Penal Act No 6 of 2004, Criminal Procedure Act No 7 of 2004, Spinster and Single Parents Children Protection

663 See: Provisions of Section 12(1) to (5), respectively, of the Constitution of Zanzibar 1984.

664 Section 12(5) of the Zanzibar Constitution 1984.

No 4 of 2005, and Employment Act No 11 of 2005. These laws have been earmarked to provide different aspects related to women's rights. For example, section 10(2) (a) of the Employment Act obliges public employers to promote equal opportunity in workplaces and eliminate discrimination in employment policy or practice⁶⁶⁵. As far the Zanzibar Employment Policy is concerned, it requires that specific measures be taken to increase level of education and skills of women to enable them to compete equally with their male counterparts in the labour market. There are many other aspects of women's rights protected by the above stated laws.

6.2.2 Institutional Framework for Protecting Women

The Ministry responsible for women in Zanzibar as a focal point on women affairs and protection has facilitated the development of women's rights and children in Zanzibar. In the Ministry's budget statement for the financial year state 2016/2017, the Ministry's top priority was stated to be strengthening the government's format of coordination, monitoring and evaluation of the broad programme the Government has established in the protection of the women's rights, among other vulnerable groups. In the statement, the Government has also detailed different measures planned to be executed in that financial year to concentrate further in the gender balance initiatives already introduced; and also to strengthen the fight against the serious problem of children and women sexual abuse.⁶⁶⁶

In addition to the Ministry responsible for Women's Affairs, there are a number of non-governmental organizations that work on this thematic issue. These include Zanzibar Legal Services Centre (ZLSC), Zanzibar Female Lawyers (ZAFELA) and Tanzania Media Women Association (TAMWA) – Zanzibar Office. These are reputable non-governmental organisations in Zanzibar working to provide education and awareness in various ways on rights of women and children, gender sensitivity. They also represent vulnerable people, mainly women and children, in struggling for their rights before the courts of law and outside the courts. In one way or another, these NGOs work hand in hand with the Ministry of Labour in support of the Ministry's undertakings to provide proper services to Zanzibaris in general, and women and children in particular.

Sharing the same sentiments on women rights, both the Zanzibar Government and relevant NGOs join the rest of the world every year to mark International Women's Day on 8th March. The main purpose of this commemoration is to draw the public's awareness to issues relating to women's rights and enabling communities to assess

⁶⁶⁵ Section 10 (2) (a) and (b), Zanzibar Employment Act No. 11/2005.

⁶⁶⁶ Ministry of Empowerment, Development of Youth, Women and Children, Budget Statement for Financial Year 2016/2018.

the performance of resolutions, declarations, conventions and various protocols, international and regional and to examine development issues relating to gender and women in ensuring that the rights of women economically, socially and politically are availed and protected.



Picture 40: Women in Zanzibar marking International Women’s Day on 8th March 16

In Zanzibar, this event is organized by the government and in collaboration with non-government organization including ZLSC, ZAFELA, TAMWA, Action Aid, SOS and ZGC

6.2.3 Gender Based Violence (GBV)

The term GBV refers to any action that results in or is likely to result in physical, sexual or psychological harm or suffering occasioned to women including acts of threats of such harm or suffering, coercion, or arbitrary deprivation of liberty whether occurring in public or private life. GBV constitutes one of the most serious human rights abuses and public health problems in the contemporary world. It may occur in various locations such as in families, school, religious institutions, work places, etc. It always has negative consequences on children in the household, the unity of family, and the society as a whole.

GBV is not defined under Zanzibar laws. However, several laws address various forms of sexual violence which is a kind of GBV⁶⁶⁷. The Constitution of Zanzibar, 1984 has not expressly provided for the rights of women and children. However, women and GBV issues have been addressed by different policies, directives and several laws including the Penal Act, 2004, Children Act No. 6 of 2011, Spinsters and Single Parent's Children Protection Act of 2005, Employment Act, 2005, and Kadhi's Court Act 1985⁶⁶⁸. The current existing policies are, Women Protection and Development Policy 2001, and the Child Survival, Protection and Development policy 2001.

The Zanzibar Vision 2020 has, in one of its directives, clearly stated the need to integrate the disadvantaged groups of the society through the eradication of abject poverty with the women empowerment being the main goal.⁶⁶⁹ Although there is no national gender policy,⁶⁷⁰ the policy of the Protection and Development of Women in Zanzibar (2002) is used to protect women's rights. The Ministry of Empowerment Youth Development Women and Children has been entrusted with the responsibility of promoting gender and women development issues.

6.2.3.1 Current Situation on GBV in Zanzibar

According to the Ministry of Empowerment, Youth Development, Women and Children, GBV remains a serious problem in Zanzibar since there are a number of GBV incidences. In Zanzibar there were a total of 189 GBV cases in 2016. Out of these 99 were in Unguja and 90 in Pemba. These cases include 110 rape cases, 29 unnatural offences cases, 19 molestation cases and 31 abduction cases. All these cases were taken to the court.⁶⁷¹ Despite many efforts taken by the Government organs and also NGOs to fight GBV seriously faced by women and children in Zanzibar, the situation is becoming increasingly worse. This situation has led the passing of a resolution by Zanzibar House of Representatives that whoever is involved in committing gender based offences, will have his right to be bail curtailed.

6.2.3.2 Prosecution of Sexual Violence Cases

Despite the existence of many laws against GBV, its execution has been a major challenge. It has been claimed that a number of cases are reported to the Police but the majority of them are dropped for lack of evidence to win a conviction in a court of law. Studies conducted since 2010 show that many cases reported to police and then brought to court are subsequently withdrawn or dismissed due to incomplete evidence

667 Zanzibar Human Rights Report 2015, p.169.

668 ZLSC, Zanzibar Human Rights Report, 2013.

669 Ibid.

670 Zanzibar Human Rights Report, 2015 p.170.

671 Budget of Speech of MEYDWC 2015/2016 p.24.

or procedure.⁶⁷² There are problems which hinder the efforts of fighting gender based violence in Zanzibar and these can be evidenced in different areas. Firstly, there are loopholes in the laws which protect violence. For instance, all laws protect violence but have failed to provide the standard to prove what constitutes violence and the number of offences essentially making it difficult to charge anyone with the crime. Secondly, the investigation process in sexual violence cases is far from the satisfactory. Criminal law requires attorneys to prove beyond reasonable doubt for conviction. For that there must be solid evidence to prove a case. State attorneys in the Office of the Director of Public Prosecutions blame the police for failure to collect strong evidence and as a result they stand in an awkward position to win a conviction especially when the accused persons are represented by competent advocates.

Thirdly, Zanzibar has for long time lacked DNA equipment, a problem that exists to date. The result of this is that where there is a need for DNA testing, those who need the service should travel to Dar es Salaam where majority fail to do so because of the high costs involved. As DNA service is only available in Dar es Salaam, it is expensive and it takes time to have the results obtained, thus frustrating those who want proof for their cases. Lastly, there is a shortage of medical doctors to investigate sexual harassment issues and this is still a big challenge for Zanzibar.

It is now the time for the government to take serious measures to deal with gender violence cases.

6.2.4 Domestic Violence

The term domestic violence refers to violence which occurs when a family member, family partner or ex-partner attempts to physically or psychologically dominate another.⁶⁷³ It normally occurs between spouses but may also include cohabitants and unmarried intimate partners.

Domestic violence has many negative consequences to both the victims and the community in general. It has been a world problem that transcends cultural boundaries and more. It is a tool used to violate and diminish women rights in the society. In Zanzibar, domestic violence has been increasing day after day, even though there are no proper records kept by the relevant institutions.⁶⁷⁴

672 Human Rights Report, 2013.

673 Ibid.

674 Ibid.

6.2.4.1 Legal Framework in Combating Domestic Violence in Zanzibar

Domestic violence cases in Zanzibar are regulated by various laws including Penal Act (No 6) 2004; Employment Act 2005, and Kadhi's Court Act 1985. However there is no specific legislation regarding domestic violence besides those laws. Other acts condemned by the Penal Law, include all acts tantamount to murder, manslaughter and infanticide and actions like causing grievous harm, assault, kidnap and wrongful confinement.⁶⁷⁵

6.2.4.2 Prosecution of Domestic Violence Cases

The enforcement of Domestic Violence Cases falls under the normal criminal cases procedures. The laws applicable are the Penal Act No 6 of 2004, the Criminal Procedure Act No 7 of 2004 and the Evidence Law Act. The prosecution has to provide sufficient evidence before the court to win a conviction, otherwise the case is dismissed. There is no special court dealing with the Domestic Violence Cases and these are generally not given priority. Cases of such nature are subject to the normal court procedure.⁴³⁹

6.2.5 Women Participation in Decision Making

The right to take part in decision making is a constitutional right. The Constitution of Zanzibar 1984 has provided the right regardless of gender. Section 21 (1) provides:

“Every Zanzibari shall have the right to take part in the conduct of the government of the country, either directly or indirectly through freely chosen representatives”.

Despite this constitutional guarantee, it has been reported that women participation in the decision making process still remains low. The main reason being attributed to the low participation of women is lack of education, cultural and historical factors including the religious beliefs and lack of exposure.⁶⁷⁶

Participation of women in political posts is through contesting in the general elections, or being appointed by the president⁶⁷⁷ or after being elected or nominated to special seats for women to join the United Republic Parliament or House of Representatives. Despite these different avenues for women to participate in public leadership, their number is still unsatisfactory.

Currently there is only 3 District Commissioner in Zanzibar out of 11 existing Districts, and there is no Regional Commissioner out of 5 Regions. Both District and Regional

⁶⁷⁵ Ibid.

⁶⁷⁶ ZLSC, Zanzibar Human Rights Report 2015.

⁶⁷⁷ Section 61 (2) of the Constitution of Zanzibar, 1984.

Commissioners are presidential appointees, constitutionally.⁶⁷⁸

At the Ministerial level, until 31st December 2016, there were only 4 female Ministers out of 13 Ministers and 4 Deputy Ministers out of 10 deputy ministers. This imbalance also exists for the other top notch posts like, Principal Secretary, and Directors in the Ministries. Although the number of female ministers remains the same as it was during 2010-2015, it has technically increased because in 2010-2015 there were 16 ministries while currently there are 13 ministries. On the other hand, there are 54 elected members of the House of Representatives of whom 47 are males and 7 are females. That is, while the total number in the House is 84, out of whom only 31 are females.

The above statistics show that although women do get opportunities to be members of the House through contest in the constituencies, they rely heavily on presidential appointments and women seats. This means that women in Zanzibar do not passionately contest alongside with men, instead rely on the mercy of the President. There is a need for women to look into this matter seriously and thus to fight for seats from public elections so that the gender sensitivity and equality to give sense in election process and governance.



Picture 41: Some members of the House of Representatives from special women seats participating in House activities in 2016

678 ZLSC, Human Rights Report 2015.

6.3 Children Rights

In Zanzibar children are protected by different international and domestic legal instruments. The Convention of the Rights of the Child (CRC) 1989, the African Charter on the Rights and Welfare of the Child 1990, the Optional Protocol on the Involvement of Children in Armed Conflicts of 2000, Optional Protocol on the Safety of Children 2000, the Child Prostitution and Child Pornography 2000, the Constitution of the United Republic of Tanzania 1977, the Constitution of Zanzibar 1984 and the Children's Act (No 6) 2011.

6.3.1 Legal Framework

The Constitution of Zanzibar, 1984 provides the frame work for the right to life. It should be borne in mind that the human rights enshrined in the Constitution are also children's rights. It is not possible to draw a line of distinction between human rights and children rights. Both International and regional instruments as well as the Children's Act (No 6) 2011 aim to give more meaningful protection of children rights.

However, the protection of the interest of children and their welfare has not been well addressed. Many children suffer economically and therefore are socially disadvantaged. It is an undeniable fact that, at the moment, Zanzibar has a very promising and conducive legal framework for the protection of children's welfare. The Zanzibar child's rights law has actually been the winner of the 2015 Future Policy Award on securing children's rights, beating 29 other nominated policies to the prize. The Award was presented to Zanzibar authority at a ceremony in Geneva by the World Future Council, the Inter-Parliamentary Union (IPU) and UNICEF during the 133rd IPU Assembly in 2015.

The "Children's Act" is an outstanding piece of legislation. It earned the 2015 Award for its balanced coverage of child abuse and violence against children and for its promotion of child rights – two important topics for children worldwide. Since the enactment of this law, Zanzibar has seen a favourable and significant shift of social attitudes towards children.

The Act lays the foundation for the establishment of a comprehensive national child protection system to deal with cases of children in need of care and protection and already notable achievements have been recorded in its execution. These include the establishment of district child protection committees, the establishment of Children's Courts, the designation of Police Gender and Children's Desks in every Police Station in Zanzibar and the roll out of training social welfare and frontline justice professionals. An exciting feature of this legislation was the child consultation

process which provides young people with an understanding of the law and their rights. It gives children a voice in the development of the legislation and resulted in the establishment of over 200 Children's Councils in the Isles.

This achievement, however, does not mean that the welfare of children in Zanzibar is already up to satisfactory standards. We cannot ignore the efforts taken by the government and the people in the proper maintenance of the welfare of the children, but a lot still needs to be done. Different reasons have attributed to the breakdown of children's welfare, but the most significant one is divorce. In most cases, marriages in Zanzibar do not break down peacefully. They are faced by conflicts in such a way that, after break down of the marriages, the parents fail to arrange for the welfare of their children.

6.3.2 Institutional Framework

The Revolutionary Government of Zanzibar has formed a Child Protection Unit at the Ministry of Empowerment, Development of Youth, Women and Children. The Ministry is the focal point for all matters relating to children at the national and international levels.⁶⁷⁹

Apart from the Government, there are different NGOs and various projects aimed at promoting the rights of the child. These include the child's Criminal Justice Project under the Zanzibar Legal Reform sector.⁶⁸⁰

There is a special Juvenile Court room at Vuga High Court, the construction of the new Children Court building at Mahonda Northern Region Ungujawich has already been launched, and a special child friendly court room that has been set in ChakeChake High Court building in Pemba Island. This High Court building in Pemba was launched by the President of Zanzibar on 5th November, 2016. This obviously is a big step forward for establishing juvenile justice in the country. However, there is a need to have more juvenile court rooms for all five regions of Zanzibar.

Besides the establishment of these various institutions, Zanzibar also promotes children rights in a number of ways. In the year 2016, the ZLSC as one of the NGOs in Zanzibar in collaboration with Save the Children International (SCI) marked the Day of the African Child on 14th June 2016 at SOS village. Also on November 2016, SOS conducted one week programme at Vitongoji Village in Pemba to educate members of public on the right of the child to get a birth certificate. 50 villagers and various government officers participated in this programme.

679 Human Rights Report 2014.

680 Ibid.

6.3.3 Right to Life

In Zanzibar a child's life is protected while is still in womb of his/her mother. The Penal Act, 2004 protects that right by criminalizing infanticide, murder, child destruction, and cruelty to children.⁶⁸¹ To protect the life of the child the government has taken a number of steps. One of those efforts is improving nutrition and immunization. Statistics show that there is an improvement in the number of mothers taking their children to health centres to check their children's nutrition, diet and general well-being.⁶⁸²

6.3.3.1 Children Homes

After the 1964 Revolution, the Government of Zanzibar established the first orphanage for abandoned children in the Stone Town at Forodhani. The large number of orphans could not be accommodated at the Forodhani orphanage and so in later years, a two-storey building was constructed by ZAYEDESА at Mazizini with the help of various stakeholders. There are a number of other orphanages including Integral Assistance to Vulnerable Children (IAVC), Zanzibar Orphan Support Project (ZASO), Zanzibar Children's Fund at ChakeChake Pemba and SOS Village.

The objective of most of these orphanages is to see the Zanzibar community free from poverty and disease, provide educational development, child care and social welfare to orphans and disadvantaged persons. The number of children who are under the government support at the Mazizini orphanage has increased from 30 last year to 37 this year.⁶⁸³

6.3.3.2 Children and Religious Institution (Madrassa)

An Islamic school or *Madrassa* is an institution which usually offers different courses of Islamic study. These include citation and memorization of the Qur'an, Arabic, Qur'anic interpretation, Islamic law, recorded sayings and deeds of Prophet Muhammad (PBUH), logic and Muslim history.⁶⁸⁴

Madrassa have existed in Zanzibar long before the advent of the colonialists. Throughout history, Islamic religion was taught at local village by elderly persons and sheikhs who were the main organizers of the studies. Children attended these schools as initial stage to understand the teaching of the Qur'an. Students normally

681 Sections 196, 205, 217 and 168 of the Penal Act, 2004.

682 Budget Speech Ministry of Health and Social welfare 2015/2016 page 40.

683 Budget Speech ministry of Women Children 2016/2017, page 25.

684 ADEA (2012) Triennale on Education and Training in Africa Qur'anic Schooling and Education for Sustainable Development in Africa: the case of Kenya.

commence studies from as young as 4 to 5 years in age, where they learn Arabic words and phrases of the Qur'an.

According to the Ministry of Education and Vocational Training, there are more than 2,296 Madrasa in Zanzibar. Despite being an important institution for development of children, some of the teachers in the Madrasa are not given due recognition and are not provided with opportunities in the training and teaching profession. It is recommended that they should be treated fairly and given attractive and realistic remunerations.

What is disturbing to note however, is the indecent actions and molestations by some of the teachers in Madrasa entrusted with the religious upbringing of the children. These sexual acts or assaults can be deemed as a violation against children and human rights. We recommend to the government to work together with this very important institution to avoid such malpractices. In the year 2016, 12 incidences of this category were reported in Pemba and 14 incidences in Unguja.



Picture 42: Pupils of Madrasat Hidayat Islamia of Kidoti, Northern A district in Northern Region of Unguja Island listening to the President of Zanzibar, Dr. Ali Mohamed Shein during the inauguration of their Madrassa

6.3.4 Right to Grow and Develop

In addition to having a right to life, a child has a right to grow well. A child can grow well if he/she is properly cared for and educated. The Penal Act, 2004 provides

for special treatment to the child by criminalizing cruelty to children, desertion of children, neglecting to provide food, clothes, bedding and other essentials and child kidnapping. The basic purpose of the right to grow and develop is given seriousness in the growth of intellectual capacity of the child.

However, existing reports show that in the year 2016, there were open indications that this right is violated. For example; there are 7 cases reported to police authority showing violation of this right. It was reported that 7 women killed their own children immediately after giving birth to them. Three cases were from Unguja and 4 cases were reported in Pemba. The 4 cases of Pemba are from northern region.

6.3.4.1 Right to Education for the Child

The right to Education for the child is highly considered a basic human right and the foundation for society. It is a fundamental human right for all,⁶⁸⁵ men, women and children including children with disabilities. The right to education is universal,⁶⁸⁶ and importantly, education is also treated as a basic need.⁶⁸⁷

Article 28 of the CRC provides for education as a basic right, and for free and compulsory primary education as a matter of urgent priority. It encourages the development of different forms of secondary education, including general and vocational education, stating that they should be available and accessible to all children (Article 28(1) (b)).

The Zanzibar Education Act No 6, 1982 provides for the right to education for the child. Universal primary and middle secondary school is compulsory. All parents are required by law to send their children to schools. However, to advance to the next education stage is not compulsory. It depends upon the intellectual capacity of the child. Some parents send their children to private schools in the hope that they get quality education giving the impression that child in public schools are of low income earners.

In the year 2016, a total of 55,731 school age children were enrolled at nursery level. At primary level a total of 43,409 in both government and private school were enrolled. Among them 27,939 are from Unguja (13,924 female and 14,014 male) and 15,470

685 Article 26 of the UDHR (1948) recognizes education along with other necessities such as food, shelter and water as a fundamental human right. The CRC affirms the right of all children to free, relevant and quality education. In addition to that, at the World Education Forum in Dakar (2000) participants from 164 countries pledged to provide education for all by 2016.

686 Asquith S, & Hill M, 'Justice for Children', Boston/London, 1994, page 87.

687 Freeman M, 'Children Rights. A Comparative Perspective', University College, London 1996, page 33.

(7,492 females and 7,839 males) are from Pemba⁶⁸⁸. Up to 23rd September, 2016, there were a total 249,143 primary level students and 119,200 secondary level students.⁶⁸⁹



Picture 43: A very young child leads others in the class to read what has been written on the back board in one of primary schools in Zanzibar

6.3.4.2 Right to Play

There are a few designated places for children to play in Unguja and Pemba. For a long time, Zanzibar used to have recognised Children Amusement Parks at Kariakoo in Unguja and Tibirinzi in Pemba. The parks had undergone major renovations and were reopened shortly before the elections. These government owned grounds are now operating every week end and during the holidays in Zanzibar especially religious holidays.

The private sector has also provided places for children to play. These include Jamhuri Garden, Forodhani and Zanzibar Park. All these privately-owned places have their weaknesses, putting children's lives at stake. To start with, Jamhuri Garden was not initially constructed as recreation centre. Our observation here is that, in case of emergency the area does not provide a safe escape for the children and this may result casualties. Zanzibar Park is also used as a depot for ORYX gas, which can be very dangerous in case of an explosion.

688 The speech of the minister of education and vocation training on 23rd September, 2016.

689 Ibid.

More regulations and better safety measures need to be put in place especially in these play areas and parks for smooth and safe operation.⁶⁹⁰ One should also bear in mind that some of these parks charge an admission fee together with other charges for use of equipment etc. This renders the parks inaccessible to many children who cannot afford the fees so charged. Lack of playgrounds forces many children to convert streets and alleys frequented by bicycles and motor cycles users into playgrounds thereby endangering their lives and that of the road users. Beside these official centres, there are also unofficial centres which were used to accommodate children but is no longer in use due to poor land planning.⁶⁹¹



Picture 44: Children Taking Part in Children Drama on Free Education Day, on 23rd September, 2016

690 “Mtoto Afariki akiogolea Zanzibar Park,” ZanziNews, 13th October, 2014.

691 Kibanda Maiti, Uwanja wa Farasi and Jangombe.



Picture 45: Children Participating in Traditional Sacks Races on Free Education Day, on 23rd September 2016



Picture 46: Children Participating in Race Competition at Amaan Stadium, on the 23rd September, 2016

6.3.4.3 Violence against Children

Violence against children has been a long time problem. There are different forms of violence to children including sexual violence and physical violence from family members and the society at large. There has been an attempt to check the violence against children through the Ministry responsible for Children.

A number of non-governmental organizations at national and international levels have offered assistance to check this vice. An aggressive awareness campaign is being conducted to change the mind-set of the people to value the rights of children and to do away with violence to children.

6.3.4.4 Current Situation on Child Abuse

Notwithstanding the efforts taken by Zanzibar Revolutionary Government to improve the conditions of children, it is reported that children are being sexually abused. According to information given in the budget statement of the ministry responsible for children, 1014 complaints relating to children sexual abuse both Unguja and Pemba have been reported, of which 875 complaints have were received in Unguja, and 139 complaints were received in Pemba. The Ministry has directed that all complaints be referred to courts of laws for immediate action.⁶⁹²

6.3.5 Child Labour

In Zanzibar there is no direct prohibition for child work. What is prohibited is the type of work to be done by children. The reason behind this position is that children should not be exposed to any harmful situation that would otherwise affect or endanger their health, education, mental, physical or moral development, according to the Children Act No. 6, 2011.⁶⁹³

Despite this prohibition, children are still made to work in different tasks which are dangerous to their health and development. In Pemba for instance, children are seen working in stone quarries, breaking stones into pebbles and blocks fabrication. Areas affected with this kind of child labour are Micheweni, Mwambe, and Wambaa, for Pemba. In Unguja, the affected areas include Charawe, Kijini, and Matemwe, but with a different type of child labour. Unlike in Pemba where children are mainly engaged in stone cutting activities, in these areas of Unguja children ordinarily engage in fishing, seaweed cultivation, fetching firewood and livestock keeping.

692 Budget Speech MLEYDWC 2016/2017, p. 24.

693 Section 98 (1) of the Children's Act No 6 of 2011.



Picture 47: Very young children carrying broken stones at Micheweni Northern Pemba on July 2016

In the year 2016, the Ministry of Labour established a special programme with the view to removing children from child labour and getting them back in schools to continue with their studies. The programme is earmarked to relieve children who were forced to leave school due to difficult life conditions they face at home. In the execution of this programme, the Ministry managed to provide financial assistance to 1500 families living in poor live conditions in 11 districts of Unguja and Pemba and, thus, managed to relieve 5,067 children from child labour and enable to continue with their school life.⁶⁹⁴

6.3.6 Maintenance of Children

In Zanzibar, matters relating to maintenance are governed by Islamic law. Kadhi's courts are vested with the jurisdiction to entertain matters relating to the maintenance of children where all parties are Muslims. However, experience shows that claims first have to be lodged at the Ministry responsible for children before being taken to the court.

Addressing the House of Representatives, the Minister responsible for children has said that her office has received 170 complaints of neglected children in need of maintenance. There were 114 complaints from Unguja and 56 from Pemba.⁶⁹⁵

694 MLEYDWC, Budget Speech for Financial Year 2016/2017, p. 30.

695 Ibid, 30.

6.4 Children in Conflict with the Law

The term “children in conflict with the law” refers to the situation whereby a person defined by the relevant law as a child has come in contact with the justice system as a result of committing a crime or being suspected of committing a crime. Often prejudice, stereotyping and discrimination brings children into conflict with the law without a crime being committed.

It is estimated that there are over one and half million children worldwide in detention. The detention of children who have been accused of a crime but are awaiting trial (remand) continues to be the norm in a majority of countries and in some cases this accounts for over 90 per cent of children being held in detention. Notably, everyday thousands of children around the world get caught up in formal justice systems. Most of these children arrested have committed petty crimes or minor offences such as vagrancy, truancy, begging or alcohol use. However some of them have committed more serious offenses. They are then usually arrested and detained by police, tried by magistrates, and sent to institutions including prisons; where there are various reasons why children end up committing crimes.⁶⁹⁶

According to Articles 37 and 40 of the Convention on the Rights of the Child (1989), children in conflict with the law have the right to treatment that promotes their sense of dignity and worth, taking into account their age and aims at their reintegration into society.

Article 17 of The African Charter on the Rights and Welfare of the Child provides that every child accused or found guilty of having infringed penal laws shall have the right to special treatment in a manner consistent with the child’s sense of dignity and worth and which reinforces the child’s respect for human rights and fundamental freedoms of others.

The Child Act 2011 is the main law in relation to children in Zanzibar. The Act defines a person below the age of 18 as a child. In relation to Children in Conflict with law, the Act works in the best interest of each child. For example, the Act explains about arrests of the child, the diversion by police, cautioning and bail of children apprehended by the police, the custody of children not discharged on bail after apprehension, the assessment of Child Offenders and procedure in the Children’s Court, both in trial and sentencing where a child is found guilty.

In Zanzibar there is a special court for children, which is a very much commendable step. However the problem is that there is no special reformatory scheme for children

696 ZLSC, *Zanzibar Human Rights Report 2015*, p. 181.

in Zanzibar offenders educational centres (prisons). Children and adults share the same buildings, facilities and even the same prison cells. This situation is not at all pleasing because it accentuates or increases their vulnerability to abuse, violence, exploitation and health related risks such as injury and HIV/ AIDS infection. Moreover, children accompany their adult counterparts in Zanzibar prisons and share the same cells. This situation makes it very susceptible for young offenders to pick up some of the criminal ways from their adult cell mates. The Centre is greatly concerned about this a suggests that it is always advisable that if children are to be detained, they strongly need to be separated from adults. Failure to do so is something more than a gross violation of their rights; it is invariably endangering their reformatory rights.

In the administration of the programme of namely ‘Children in Conflict with Law’, ZLSC in support of UNICEF engage in taking care of children who face criminal charges, only to make sure that no violation of their legal rights takes place during their trials before the court. This program, that started its operations in 2015, has continued to work very well in 2016.

6.5 Rights of the Elderly

The principal Universal International Human Rights instruments do not contain any specific provisions for the elderly, except perhaps for the International Covenant on Economic and Social Rights’ with reference to the right to “social insurance” which is sometimes understood to cover pension rights.⁶⁹⁷ It is at the regional level that one finds a few scattered references. For example, article 25 of the Charter of Fundamental Rights of the European Union “recognizes and respects the rights of the elderly to live a life of dignity and independence and to participate in social and cultural life”.

Article 18(4) of the African Charter stipulates that the aged shall “have the right to special measures of protection in keeping with their physical and moral needs”. The rights of older persons internationally were first considered in the Vienna International Plan of Action on Ageing, 1982⁶⁹⁸ and later on in the Madrid International Plan of Action on Ageing, 2002 (Madrid Plan).⁶⁹⁹ The latter plan contained detailed recommendations to UN member states on how to realize the rights of older people through three main areas which are development, improving health and wellbeing as well as creating an enabling and supportive environment for older persons.⁷⁰⁰

697 Frédéric Mégret (2006), *The Human Rights of the Elderly: An Emerging Challenges*, p.45.

698 Adopted by the world Assembly on Ageing held in Vienna, Austria from 26th July - 6th August, 1982, endorsed by UN General Assembly 37/51.

699 Adopted at the 10th Plenary meeting of the Second Assembly on Ageing 12th April, 2002.

700 Human Rights Report 2009.

The population census that was conducted 2012 recorded that there were 48,511 people aged 60 and over in Zanzibar making this 4.5 % of the total population. Older people face many challenges including health problems, disability and poor mobility, which continue to push them into poverty. The recent old people registration exercise in Zanzibar shows that most of them are obliged to work sometimes in very difficult conditions, in some cases right into their seventies.⁷⁰¹ The study has also found that out of 48,511 elderly people in Zanzibar only 7,800 people receive a pension from Zanzibar Social Security Fund (ZSSF).⁷⁰²

Apart from this pension fund administered by ZSSF, the Revolutionary Government of Zanzibar has established a small but commendable programme especially to coordinate social security matters for elderly peoples of 70 years and above. Administering this scheme, the Government has provided a total number of 18,371 elders with elderly social pension of Tshs.20,000/- each per month starting April 2016 onwards.⁷⁰³

Despite the many challenges, the Revolutionary Government of Zanzibar has made several efforts to protect the welfare of elderly people. These include establishing special homes for the elderly in Unguja and Pemba. There are 172 elders who live under government support at Sebleni (50) and Welezo (47) for Unguja, Limbani (12) and Makundeni (63) for Pemba.⁷⁰⁴ The Centre argues that it is time now for the government to implement its plan of providing a universal pension scheme and other amenities and facilities for elderly people aged 70 and above as it has promised.

6.6 Rights of Persons with Disabilities

The definition of disability is a very contentious issue within disability discourse. As a result of this, proffering an acceptable definition of ‘disability’ could be problematic. Indeed, the CRPD acknowledges that ‘disability is an evolving concept’ and so does not explicitly define disability but merely elucidates who a disable is. According to the Convention, ‘persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others’.⁷⁰⁵ There is a number of International and regional instruments taking care of the rights of people with disabilities.

701 Smart Daniel, Introduction of a universal pension scheme by the Government of Zanzibar, United Republic of Tanzania SOCIEUX in Action Newsletter Number 3, June 2015.

702 ZLSC, Human Rights Report 2016, p. 181-2.

703 MLEYDWC, Budget Speech for Financial Year 2016/2017, p. 33.

704 The budget speech of 2015/2016 of Minister of Social Welfare, Children and Women Development, page 25.

705 Anwuli Irene Ofuani The right to economic empowerment of persons with disabilities in Nigeria: How enabled? AHRLJ-2011-2.

The most prominent international instrument providing for the rights of the people with disability is the International Convention on the Protection of the Rights and Dignity of Persons with Disability, 2006 in which Tanzania is a signatory. Zanzibar being a part of Tanzania is also bound by that instrument.⁷⁰⁶ In 2003, the African Union initiated a process of developing a protocol on the protection of the rights of persons with disabilities and the elderly. However, in the process of the development of the Protocol a number of challenges were encountered.⁷⁰⁷ The Commission's Working Group on the Rights of Older Persons and Persons with Disabilities presented a draft Protocol for public comment in April 2014.⁷⁰⁸ The draft Protocol calls for effective implementation of the right to health including 'ensuring that health-care services are provided using accessible formats and that communication between service providers and persons with disabilities is effective'.⁷⁰⁹

In the year 2016, the government provided services to 125 people with disabilities in Zanzibar. To make these services possible and accessible, a total of 16, 611 disabled persons have been registered. However, this number shows that many of disabled persons do not receive services from the government. This is among the registered ones and does not include those who are not registered and remain in the dark. There is a need for the government to have better statistics and other provisions for the people with disabilities in Zanzibar.

6.6.1 Legal Framework

Zanzibar has enacted the Persons with Disabilities (Rights and Privileges) Act, 2006⁷¹⁰ which provides for the rights and privileges of people with disabilities. This includes the right to employment, access to education, and entitlement to medical care, accessibility and mobility.⁷¹¹ The Act, apart from providing such rights and privileges, also imposes obligations on the government and every person to provide for the rights and privileges to those people. Other documentations that define the rights of people with disabilities in Zanzibar are Labour Relations Act 2005,⁷¹² and Zanzibar Education Policy 2006, focusing in on improving access to education for children with disabilities. Another important document is the Zanzibar Strategy for Growth and Reduction of Poverty, 2006-2020.

706 Human Rights Report 2009.

707 Anwuli Irene Ofuani The right to economic empowerment of persons with disabilities in Nigeria: How enabled? AHRLJ, 2011 – 2.

708 Ibid.

709 Ibid.

710 Act No. 2 of 2006.

711 Sections 3 – 12 of the Act.

712 The Act Bars Discrimination based on Disability in the context of trade Union.

The existing statistics show that there are more than 16,544 people with different types of disabilities throughout Zanzibar. 10,112 of the people with disabilities live in Unguja (5,101 females and 5,011 males) and 6,432 live in Pemba (3,012 females and 3,420 males).⁷¹³

In ensuring the dissemination of the human rights knowledge to the peoples with disabilities, ZLSC conducted two separate trainings in Unguja and in Pemba. The trainings were aimed at raising the awareness on their human rights, generally, and their rights in accordance with the current Zanzibari laws and policy matters.

6.6.2 Institutional Framework

The Revolution Government of Zanzibar has set a special department which is under the Office of Second Vice President of Zanzibar to be responsible for dealing with matters relating to people with disabilities. Apart from government institutions there are a number of non-governmental organizations dealing with the promotion and interests of people with disabilities of different types.

There are more than ten non-governmental organizations dealing with people of different disabilities. These include the Zanzibar Association of the Blind (ZANAB), Zanzibar Association for People with Developmental Disabilities (ZAPDD), the Organization of People with Disabilities in Zanzibar (UWZ), Zanzibar Centre for Disability and Inclusive Development (ZACEDID) and others.

6.6.3 Challenging Facing People with Disabilities

It is estimated that the number of people with disabilities in Zanzibar is more than 16,000 people out of the total Zanzibar's population of about 1.3 million. People with disabilities in Zanzibar are faced with many challenges, as follows: Though the Act stresses that public buildings and services should be accessible to all people including persons with disabilities, the situation is actually different. A large number of public buildings are not accessible to people with disabilities. Most of the families of people with disabilities live below the poverty line and hardly meet the basic needs of life. There is also the problem of some families of people with disabilities to try and hide them and keep information about them a secret. Discrimination in employment is another serious problem that cannot be overlooked.

People with mental disabilities are subjected to sexual violence and some of them are raped and impregnated. In Zanzibar, out of the estimated number of children and youth with disabilities only 2% of them have access to education of any kind.

⁷¹³ ZLSC, Human Rights Report 2016, p. 183-4.

Some of the main challenges for providing education to children with disabilities are: shortage of trained teachers; shortage of appropriate teaching and learning materials; inadequate supply of teaching tools and equipment for learners with disabilities, inaccessible school buildings (no ramps, narrow corridors and doors, poorly designed toilets); distances from home to the nearest school; negative community attitude towards people with disabilities and low awareness and sensitivity to disability issues by government policy makers and other stakeholders.⁷¹⁴

To overcome these challenges, the government has undertaken several measures including the preparation of a policy for people with disabilities which is in its final stage, conducting a census to know the number of people with disabilities in all five regions of Zanzibar. The government has established a special fund for people with disability and 288 people with disabilities (Unguja 153 and Pemba 135) were given special equipment and other accessories to help them in their life.⁷¹⁵

6.7 Conclusion

Economic and Cultural Rights are very important rights in the society. The protection of these rights in Zanzibar is of a medium standard. The government has been taking measures to protect these rights in different ways. It is notable from the above analysis that cultural rights are protected in order to maintain social identity of a particular society. The economic rights are protected so as to boost economic development of a given society. These rights are protected on the bases of economic capacity of the government and its people. The government of Zanzibar is urged to increase efforts in the protection of these rights as much as it can do so.

714 The 7th and 8th Periodic Report on the Implementation of CEDAW of 2008-2014.

715 Budget Speech of the office of first vice president 2015/2016 p.10.

CHAPTER SEVEN

COLLECTIVE RIGHTS

7.1 Introduction

Collective rights are the third generation of human rights. They are entitled to individuals as part of the group or certain community. They are also called group rights or solidarity rights. At first, these rights were not included in the list of human rights in the world. They include environmental rights, the right to peace and security, right to development, right to separate identity and the right to self-determination.

The collective rights are highly fought for in the third world countries because of socio economic and political marginalization in such countries. On the African continent, these rights are well reflected in the African Charter on Human and Peoples Rights 1981. The Charter made significant contributions to the development of these rights by making provisions for them⁷¹⁶. The rights which have been given priority in Africa falling in this category include children's rights, refugee rights, women's rights, minority rights and the rights of indigenous peoples among others.

Group rights are taken in various conceptions. The first one is the collective conception. R. Joseph sets it out most clearly. He subscribes to a theory of rights, and he defines what it is to possess a right. Thus, to have a right to something is to have an interest in that something. Merely having an interest, though, is not by itself enough to create a right. An interest translates into a right only if it is an interest of sufficient moment, all things considered, to justify imposing a duty upon another. Therefore a right, for Joseph, is conceptually tied to a duty. That relation, however, is more than one of mere correlation: a right grounds a duty in that the right provides the reason for the duty.

Another conception of group rights is the "corporate" conception. The main difference between these conceptions is that, while the collective conception ascribes moral standing only to the individuals who jointly hold the group right, the corporate conception ascribes moral standing to the group as such. Thus, under the corporate conception, the holder of the right is the group conceived as a single, integral entity. Morally, the group might be said to constitute a right-bearing "individual." The right

716 Robinson, M, "Protecting Human Rights: the Role and Responsibilities of the Independent Bar," being a keynote address delivered at the inaugural World Conference of Barristers and Advocates, Edinburgh 28th June, 2012.

is held not jointly by the several individuals who make up the group, but by the group as a unitary entity; the right is its right rather than their right.

Although it is still a debate on whether group rights are really human rights, governments have been taking different measures to protect them. The Revolutionary Government of Zanzibar has been taking various initiatives to enforce these rights in its jurisdiction.

7.2 Right to Development

The right to development does, in fact, not exist in isolation. It has connection with other rights like the right to self-determination, the right to development or right to natural wealth or resources. Articles 1(1) of ICCPR and ICESCR provide that the right to self-determination encompasses the right of the people not only to freely determine their political status but to freely pursue their economic, social and cultural development. A similar provision is contained in article 20(1) of the African Charter. Further to the foregoing provisions, the General Assembly of the United Nations on 4 December 1986 adopted the Declaration on the right to development.⁷¹⁷

The Declaration, in its preamble, states *inter alia* that:

Recalling the right of peoples to self-determination by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development.

On other hand, Article (1) (1) of the Declaration provides as follows:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

Article 2(1) of the Declaration provides that:

The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

From the above provisions, it is clear that right to development is embedded in the right of the people and their entitlement to participate, contribute and enjoy economic, social, cultural and political development. Again, the full realization of the right to

717 UNGA Resolution 41/128 of December 1986.

self-determination is dependent on the human right to development wherein the human person remains the fulcrum, the subject and the beneficiary of the development.

The right to development was first recognized in 1981 in Article 22 of the African Charter on Human and People's Rights as a definitive individual and collective right.

Article 22 (1) provides that:

All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

The right to development was subsequently proclaimed by the United Nations in 1986 in the Declaration on the Right to Development which was adopted by the United Nations General Assembly resolution 41/128.⁷¹⁸ The right to development is a group right of peoples as opposed to an individual right and was reaffirmed by the 1993 Vienna Declaration Program of Action.

Regarding the right to development, Zanzibar started with its self-determination in 12th January 1964 when Zanzibar Revolution took place. Following this revolution, the people of Zanzibar became independent and the government of Zanzibar came under the control of Africans. This revolution made the people of Zanzibar to practically assert their freedom from colonial control.

Zanzibar Revolution is celebrated on 12th January of every year. The celebration is preceded by a number of activities which have a connection to development. In the year 2016, the celebration was not carried out as expected because Zanzibar was under the cloud of the political turmoil following the cancellation of 25th October 2015 election. Right until Revolution Day, the fate of Zanzibar was not yet determined as ZEC had not yet announced the date for the election rerun.

However, various development activities were inaugurated to mark this day. One such activity was a project of developing Matemwe village in Northern Unguja by building modern hotels, a small airport and an international cricket field. It is hoped that this will also provide employment opportunities.

718 Ibid.



Picture 48: A prospective view of Matemwe village after completion of the project

Regarding the enjoyment of economic resources, the year 2016 witnessed a remarkable event in Zanzibar. This was the enactment of specific legislation which deals with oil and gas (upstream) in Zanzibar. The President of Zanzibar had already assented a bill on 15th November 2016, and this has now become a law. Under this legislation, Zanzibar can now conduct research on whether there is oil in Zanzibar or not. If the answer will be in affirmative, various companies will be invited to extract oil in Zanzibar.

Therefore, with the possibility of discovery and extraction of oil in Zanzibar, it is expected that Zanzibar development will grow rapidly. The reason behind is that oil is one among lucrative income generating resources in the world. Zanzibar economy will now depend on three sectors which are agriculture (coconut and cloves), tourism and oil. Since Zanzibar is small in terms of geography and population, the coming of this new economic sector will increase income and employment for the people of Zanzibar and hence boost Zanzibar's developmental dreams.

7.3 Rights to the Environment and Sustainable Development

The term environment can be defined as the sum total of what is around something or someone. This includes living things and natural forces. The environment of living things provides conditions for development and growth, as well as for danger and damage. Living things do not simply exist in their environment. They constantly

interact with it. Organisms change in response to conditions in their environment. The environment consists of the interactions among plants, animals, soil, water, temperature, light, minerals and other living and non-living things.⁷¹⁹

Environmental human rights was initiated in 1972 UN Stockholm Conference and strengthened in the Rio Summit which sought to resolve them through Agenda 21 and the UNCED Conventions. Implementation of these international instruments has been facing a number of challenges, the main one being failure of the governments to include this right in their constitutions and statutes.

Environmental human rights covers the right to a clean and safe environment, the right to act to protect the environment and the right to information, access to justice, and to participate in environmental decision-making. These rights enable citizens to play an active part in creating a healthy environment, and are linked to several UN Conventions and Declarations.

Until the end of the year 2016, environmental human rights had not been incorporated in Constitution of Zanzibar. It is however covered under legislation. This legislation is the Environmental Management and Sustainable Development Act of 1995. The Act provides the right to a clean and healthy environment and a duty to maintain it. As given under Section 6:

- (1) “Every person has a right to a clean and healthy environment; and
- (2) Every person has a duty to maintain and .enhance that environment.”

It also provides the right to legal proceedings to any person. Section 109 states that: (1) every person, whether or not assisted by an advocate or wakil, shall have the right to petition the appropriate enforcing institution or any court of law subject to that court’s rules, to enforce any provision of this Act; (2) Any person who institutes a proceeding under this section and who prevails in court shall have the right to recover the costs of the legal proceeding from the other party; (3) At the request of the prevailing party, the court acting upon a proceeding instituted under this section shall include in the judgment any costs of the prevailing party; and (4) For the avoidance of doubt, “person” specifically includes any individual or group of individuals, whether formally registered for environmental purposes or not and any community which has prepared a community environmental management plan.

Under the Act, the established institution responsible for the environment through the Director shall prepare a local environmental action plan when environmental

719 Zanzibar Human Rights Report of 2015, p.190.

problems which require special localized planning are identified, especially those which threaten and are likely harm to Zanzibar's biological diversity or an ecosystem such as a coastal area or water catchment.

The Act also gives the right to any person to petition the Director to identify a problem which requires the preparation of a local environmental action plan. A local environmental action plan shall be approved by the Minister.

The right to a clean environment is among the concerns of the Revolutionary Government of Zanzibar. It has taken various initiatives to create and improve a clean environment in Zanzibar. This includes the establishment of the Department of Environment (DoE) in 1989. This Department is responsible for overseeing the integrity of Zanzibar's environment for sustainable development.

In spite all of the above efforts, the situation of environmental protection in Zanzibar until the end of the year 2016; it was not at all satisfactory. There are various incidences of environmental pollution. People sometimes live in filthy and unhealthy surroundings which pose a major health risk. The government and other environmental stakeholders do not take serious measures to protect the environment. For example, until the completion of this report no case was found to have been instituted in Zanzibar to enforce environmental rights in spite several avenues for legal actions. Also there are many types of environmental pollution occurring in Zanzibar including among others noise pollution. Nothing much has changed in the situation from the previous 2015 Human Rights Report. In the Proposed Constitution of the United Republic of Tanzania 2014, the right to a clean and safe environment has been made a constitutional right,⁷²⁰ a situation which would signify that poor environment is a serious problem not only in Zanzibar, but in Tanzania at large.

The Zanzibar Government in the year 2016 took a number of initiatives to protect the environment. There were three environmental protection projects where a follow up was made in 23 areas in Unguja and 12 in Pemba to ensure that environmental pollution in such areas does not continue to take place⁷²¹.

7.3.1 Improving Transportation

Efficient transport is the one among the critical component of development. The interface between transportation investment and economic development has broad ramifications that go beyond transportation's basic purpose of moving goods and people from one place to another.

720 Article 50 of the Proposed Constitution, 2014.

721 The speech of the President of Zanzibar on 12th January, 2017.

In 2016, the Zanzibar Government has completed construction of a 4km road from Mwanakwerekwe to Fuoni. The roads from Zanzibar Central Library to Gofu, Kwarara to Fuoni, Kinazini to Kariakoo have been also undergone quite extensive maintenance measures.⁷²²

In Pemba Island also, the Government continues with its road construction from Ole to Kengeja (35km). In the meantime, 11km of road have been completed.⁷²³

7.3.2 Noise Pollution

Noise pollution is a bad experience and a nuisance and many Zanzibari do not even bother about it even though they are affected by it. The government itself has not done much in protecting citizens from this nuisance. The most commonly used practice is the use of public address systems, also known as speakers or “garibomba” used by political parties, cell phone companies, religious leaders, entertainment groups, shopkeepers and even street vendors.

The whole town is actually permeated with noise pollution. There is noise basically everywhere, going around the markets, bars, public and private cars, motor cycles, taxis, streets and even near schools, hospitals and residential areas where traders and companies pollute the areas with noise as they compete with each other. Even fish mongers, people who sell commodities like dates, juice, mouse traps and poison use public address systems to advertise their products.

While the situation is of major concern all over the Zanzibar municipalities and towns, it has also spread to villages and beaches especially those with tourist resorts. In villages, particularly in the north region and east coast, there is regular loud noise of music from discotheques with no sound proofing, disturbing people who in the surrounding localities.

The pride of Zanzibar, which was until few years back a place characterised by quiet and peaceful environments, is currently clouded with noise pollution. The trend is growing worse and worse as most young people, who have failed in their long cherished dreams of getting employed, move to town looking for at least trade or business opportunities. As a result, they find themselves joining undefined groups, including night clubs and dances with increased noise tendencies.

722 Speech of the Zanzibar President in commemoration of 53 years Anniversary of Zanzibar Revolution.

723 Ibid.

The prevailing silence on this issue implies that authorities do not care or have decided to turn a deaf ear to it. We, as human rights activists, cannot ignore the fact that noise is not only a nuisance, but a health hazard. It is believed that too much noise may result in deafness and heart problems or even mental breakdown in some cases. We strongly urge that since noise as pollution affects people it must be properly controlled. At the national level, we may rightly think of a Noise Pollution Control Policy with rules calculated to control noise at public places among other suitable measures. There should also be in place a time limit for noise beyond which any noise becomes an offence.

7.4 Right to Peace and Security

As already introduced above, the right to peace and security is part of collective rights. The Charter of the United Nations of 1945 laid the foundation for a new international legal order. The purposes of the United Nations as set out in the Charter include as follows:

To maintain international peace and security, and to that end; to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

In 2016, the situation of peace and security in Zanzibar was seriously comprised. The level of criminality for all kinds of offences has increased in 2016 as compared to the year 2015.⁷²⁴ The available data indicates, for example, whereas in 2015 the total number of serious offences committed in the whole of Zanzibar was 570, in 2016 the total number of serious offences committed was 838. For less serious offences, in the year 2015 a total of 1072 offences were reported, in comparison with 1196 in 2016. The reality is that there has been an increase in commissions of every category offences reported in 2016 compared to reported crimes 2015. The research so conducted has revealed that offences against morality have taken the lead in the increase. This indicates decline of good morality in Zanzibar.

724 For analysis of rates of criminal offences in the year 2015, see: ZLSC, Human Rights Report 2015, pp. 196-7.

Table 33: Records of the Serious Criminal Cases from January 2016 – December 2016

REGION	OFFENCES AGAINST PERSON	OFFENCES AGAINST PROPERTY	OFFENCES AGAINST MORAAILITY	TOTAL
URBAN DISTRICT	27	21	33	81
WEST (A)	17	49	19	85
WEST (B)	24	31	11	66
Total Urban West Region	68	101	63	232
NORTH (A)	33	29	21	83
NORTH (B)	31	20	40	81
Total North Region (U)	64	49	61	164
CENTRAL (U)	40	47	17	104
SOUTH (U)	18	39	27	84
Total South Region (U)	58	86	44	188
WETE PEMBA	11	17	22	50
MICHEWENI	19	20	5	44
Total North Region (P)	30	37	27	94
CHAKE CHAKE (P)	31	29	30	90
MKOANI PEMBA	30	29	11	70
Total South Region (P)	61	58	41	160
Grand Total	281	331	236	838

Source: Official Records from Zanzibar Police Headquarters - 2016

Table 34: Records of the Less Serious Criminal Cases from January 2016 – December 2016

REGION	OFFENCES AGAINST PERSON	OFFENCES AGAINST PROPERTY	OFFENCES AGAINST MORALITY	TOTAL
URBAN DISTRICT	44	36	25	105
WEST (A)	35	81	10	126
WEST (B)	52	49	7	108
Total Urban West Region	131	166	42	339
NORTH (A)	20	95	80	195
NORTH (B)	10	80	40	130
Total North Region (U)	30	175	120	325
CENTRAL (U)	25	77	11	113
SOUTH (U)	70	30	30	130
Total South Region (U)	95	107	41	243
WETE PEMBA	11	12	55	78
MICHEWENI	20	20	10	50
Total North Region (P)	31	32	65	128
CHAKE CHAKE (P)	32	20	10	61
MKOANI PEMBA	40	40	4	100
Total South Region (P)	72	60	14	161
Grand Total	359	540	282	1196

Source: Official Records from Police Headquarters Zanzibar, 2016

The above statistics show that the crime rate in Zanzibar is still high. It increases from year to year. The question of peace and security is fundamentally important in the society. Without peace nothing meaningful can take place in the society. Therefore the government in Zanzibar is required to take effective measures to control crimes. When the crimes are well controlled in the society, then peace and security will prevail and the country can move forward.

7.4.1 Stone Town Security

In the year 2016, peace and security in Zanzibar's Stone town was strengthened. It was a result of completing the project of installing CCTV cameras around the town. The project was funded by ZTE Corporation, a Chinese government owned company that came to Zanzibar in response to a visit by Zanzibar Second Vice-President, Ambassador Seif Ali Iddi to the People's Republic of China in 2014.

Therefore it can now be said without doubt that now security situation in Stone Town has greatly improved. In 2016, the crime report does not indicate criminality in Stone Town as far as foreigners are concerned. This makes Stone Town an ideal place for tourists to visit at any time. The police force through its tourist unit also escorts the tourists who visit Stone Town in Zanzibar.

7.5 Conclusion

The situation of collective rights in Zanzibar in 2016 is not bad. There are improvements which have seriously been made by the government and some stakeholders in Zanzibar to improve the situation. The situation of environment, peace and security and resources utilization has improved in comparison to the year 2015. One can notice what is being done in Zanzibar for the protection of such rights.

Despite these achievements, there are still numerous challenges which are supposed to be addressed. These include further promotion of transparency and a sense of accountability that needs to be inculcated in all official and unofficial platforms. There is also a serious need for Zanzibaris to sacrifice their apparent selfish tendencies and, thus, prioritising strong and sustainable developments in the country's enforcement of economic, social and cultural rights, among others.

CHAPTER EIGHT

SMZ SPECIAL DEPARTMENT AND HUMAN RIGHTS

8.1 Introduction

The Constitution of Zanzibar allows for the formation of its own forces, which are regarded as special departments of the government.⁷²⁵ These departments have been established under the Acts enacted by the House of Representative. The special departments established by the Revolutionary Government of Zanzibar include, *Jeshi la Kujenga Uchumi* - JKU (Economic Building Brigade)⁷²⁶, *Kikosi Maalum cha Kuzuia Magendo* – KMKM (Special Force for Prevention of Smuggling)⁷²⁷ and *Chuo cha Mafunzo* (Offenders Educational Centre).⁷²⁸ The President of Zanzibar has been empowered under Section 121 (3) of the Constitution of Zanzibar to establish other special departments to be known as special departments apart from those established under the Constitution. The special departments that have been established by the President under the provisions of Section 121(3) are *Kikosi cha Zima Moto na Uokozi* (Fire and Rescue Brigade)⁷²⁹ and *Kikosi cha Valantia* (Volunteers Brigade).⁷³⁰

8.2 The *Jeshi la Kujenga Uchumi* (JKU) (Economic Building Brigade)

“*Jeshi la Kujenga Uchumi* (JKU)” was established under the JKU Act No 6 of 2003. The functions of this brigade are to train and orientate young men and women in matters relating to economic development activities and, more particularly, in agriculture, small scale industries, fisheries and vocational training. In the early years of its introduction JKU was fully engaged in economic activities.

In 2016, the brigade has provided productive and life skills to 2,884 youths⁷³¹. The category is 1,550 were trained in economic and agriculture and vocational trainings, 104 in different sports programmes, 710 in vocational training, and 520 in secondary schools⁷³². It has also employed some new teachers at the end of 2016 in

725 Section 121 of the Constitution of Zanzibar.

726 *Jeshi la Kujenga Uchumi* Act, No.6 of 2003.

727 *Kikosi Maalum cha Kuzui Magendo* Act, No.1 of 2003.

728 *Offenders Education* Act, No.1 of 1980.

729 *Fire Brigade and Rescue* Act, No. 7 of 1999.

730 *Kikosi cha Valantia* Act, No. 5 of 2004.

731 *Ibid* pg14.

732 Ministry of State, President Office Local Government and Special Department, Budget Speech for Financial Year 2015/2016, page 14.

order to teach various youth at its school located at Mtoni within West District of Unguja Island.

8.3 KMKM (Special Force for Prevention of Smuggling)

The KMKM has been established by the Act no. 1 of 2003 with the following duties: to ensure the security of territorial waters of Zanzibar, to protect and defend marine natural resources, to protect and defend the security of the country from spies and saboteurs coming by sea, to prevent by all means smuggling activities in the country, to protect convoys of Government vessels transporting members of public, national leaders or valuable goods in the event of war or public emergency, to transport troops when called upon to do so, to cooperate with the Tanzania People's Defence Forces, when mobilized in the defence of the United Republic of Tanzania, to counter crimes committed at sea including illicit drugs trafficking and piracy, to undertake search and rescue operations at sea and protection of Marine Environment, to come to the aid of the Government during public emergencies and to undertake any assignment given by the President, taking into consideration the duties, expertise and resources of KMKM

In 2016, the marine force has managed to intercept smuggling of 1,725 Kg of dry cloves, 1875 Kg of clove-buds and 500 kg of Sugar; with the total estimated cost of Tshs. 627,523,200/-⁷³³.

KMKM had trained 28 commanders in diving and rescue courses with the help from L&W Company from United Kingdom⁷³⁴. Also, KMKM has started to train the commanders working in the new Rescue Centres in Unguja and Pemba. KMKM has also continued to improve the health services rendered to the general public at its Kibweni KMKM hospital.

8.4 Offenders Educational Centres (Prison Centres)

This department was established under Act no. 1 of 1980⁷³⁵ with the main purpose of reforming criminal offenders who are found guilty and sentenced to serve given terms of imprisonments at the centre. In 2016, the Centre has managed to provide elderly, vocational training and language education to 290 inmates.⁷³⁶ The department has also managed to introduce literacy programme in the 3 learning subjects (i.e. reading, writing and arithmetic). The programme has started at Kiinuamiguu as a pilot

733 Ministry of State, President Office Local Government and Special Department, Budget Speech for Financial Year 2016/2017, page 16.

734 Ibid, page 17.

735 Offenders Education Act No 1 of 1980 as Amended by Act 3 of 2007.

736 Budget Speech 2016/17 pg.15.

project.⁷³⁷ The Prisons Centre is in the process of amending its Offenders Education Centre Act to cover intensively the Nelson Mandela Rules⁷³⁸ and other International Conventions like CRC. They have also managed to work closely with UNODC (UN agency for drugs and crime). The programme was to provide technical and material support so as to improve the health sector in prisons, especially with drugs addicts.⁷³⁹ The Centre has installed TV sets where the inmates can enjoy their right to information and entertainment.

The Centre has continued to provide basic needs to inmates, including food, clean water, and uniform and health services. Despite the achievements this department has registered in 2016, the situation is not very satisfactory. It has been established that number of detainees (who are remand prisons) is increasingly very high thereby overburdening the Centre's budget. ZLSC urges that the problem of a large number of remand prisoners may well be reduced by considering and giving bail as part of their constitutional rights to every accused person with aailable offence.

8.5 Kikosi cha Zimamoto na Uokozi - KZU - (Fire and Rescue Brigade)

KZU was established under the KVZ Act No. 7, 1999.⁷⁴⁰ Its functions are fire fighting and rescue services. In the year 2016 this brigade has engaged in various fire and rescue operations in Zanzibar. The brigade has managed to tackle 482 cases in Unguja and Pemba. Among these cases, only 165 cases were handled properly and within the right time. The rest of the cases were not properly dealt with for a number of varying reasons and circumstances outside the brigade's control. In 2016, there were 17 deaths caused by fire, and they were well attended and reported⁷⁴¹.

8.6 Conclusion

Special departments are constitutional and statutory establishments. They have been given exclusive functions under the respective legislature. They are not supposed to interfere with the rights of the people because doing so is against International instruments, the Constitution of United Republic of Tanzania, and the Constitution of Zanzibar and various statutes which are applicable in Zanzibar. The Revolution of Government of Zanzibar is advised to manage these departments by ensuring that they perform their core function and any other necessary functions in accordance with the law and the principles of good governance. It is important for the departments to know the purpose of their establishment and not work for politicians.

737 Interview with the lawyer of Offenders Education Centres, Mr. Seif Maabadi.

738 These are the UN Standard Minimum Rules for the Treatment of Prisoners.

739 Ibid.

740 Act No 7 of 1999.

741 Ministry of State, President Office Local Government and Special Department, Budget Speech for Financial Year 2015/2016, page 67.

CHAPTER NINE

CORRUPTION, ABUSE OF POWER AND HUMAN RIGHTS

9.1 Meaning of Corruption

The word corruption refers to dishonest or illegal behaviour especially on the part of people in authority. Corruption also refers to acting with an intent to give someone an advantage inconsistent with any official duty and the right of the others; a fiduciary or official use of station or office to procure some benefit either personal or for someone else, contrary to the right of the other.

Corruption still is a common phenomenon found in emerging economies (i.e. the developing countries and societies), as well as in the developed societies, though in varying degrees or extents. Corruption is practiced in different institutions and in different forms in Zanzibar, but corrupt practices may hardly be reported. People do not regularly report corruption issues in Zanzibar for several reasons, but mainly because those who engage in this are satisfied with services rendered to them in return for the corruption practices. It may also be because of friendship, proximity or the close relationship that exists between those who often share corrupt practices, and they always consider sharing corrupt gains the next time round. As a result, corrupt practices normally pass unnoticed by authorities combating corruption or it may be that these practices are hardly reported to appropriate authorities.

9.2 International Instruments in Combating Corruption

The United Nations has not been silent in the war against corruption. In its resolution 55/61 of 4th December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized (resolution 55/25 Annex 1) was desirable and decided to establish an ad hoc committee for the negotiation of such an instrument in Vienna at the headquarters of the United Nations Office on Drugs and Crime.⁷⁴²

The Convention approved by the ad hoc Committee was adopted by the General Assembly Resolution 58/4 of 31st October 2003.⁷⁴³ The General Assembly, in its resolution 57/169 of 18th December 2002, accepted the offer of the Government of Mexico to host a high level signing conference in Merida for the purpose of signing

742 International Instruments on Corruption – Google Search.

743 Ibid.

the United Nations Convention against Corruption.⁷⁴⁴ In accordance with Article 68(1) of Resolution 58/4, the United Nations Convention against Corruption came into force on 14th December 2005.⁷⁴⁵

Several anti-corruption initiatives have seen the light on the African continent, but their effectiveness is yet to be proven. The African Union Convention on Preventing and Combating Corruption (AU Convention) was adopted in Maputo, Mozambique on 11th July 2003 and came into force about three years later.⁷⁴⁶ As of 1st July 2012, 45 States have signed the Convention and 31 have ratified it.

The Southern African Development Community Protocol against Corruption (SADC Protocol) was enacted on 14th August 2001 and was enforced four years later. The Protocol aims to align member States' definitions of corruption in order to facilitate cross-border cooperation. It covers a wide range of corrupt practices, both in the private and public sectors, and provides a broad list of preventive measures which State Parties "undertake" to adopt.⁷⁴⁷

9.3 Corruption and Human Rights

A human rights approach may help to minimize opportunities for corrupt behaviour and make it more likely that those who are corrupt are caught and appropriately sanctioned.⁷⁴⁸ A human rights approach also focuses attention on people who are particularly at risk, provides a gender perspective, and offers elements of guidance for the design and implementation of anti-corruption policies.⁷⁴⁹ If corruption is shown to violate human rights, this will influence public attitudes. Corruption is a critical factor that contributes to the violation of rights by facilitating, serving or creating an environment in which the violation takes place.⁷⁵⁰

The fundamental rights which member states of the International Convention on Economic, Social and Cultural Rights are obligated are likely to be violated when people are constrained to pay bribes for basic everyday services such as getting their children admitted to schools, accessing medical services or to gain employment. Grand corruption on the other hand diverts resources which would otherwise have been used towards the realization of these, subject to their capacity to incrementally

744 Ibid.

745 Ibid.

746 The AU Convention entered into force on August 5, 2006.

747 Human Rights Report 2014.

748 Ibid.

749 KannokkanAnukansai, "Corruption: The Catalyst for Violation of Human Rights".

750 Ibid.

achieve the full realization of among others, the rights to education, health and work. Corruption impairs the realization of these rights in several ways.⁷⁵¹

Corruption no doubt denies people the fundamental rights guaranteed under the international human rights instruments, among them the United Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples' Rights (ACHPR).⁷⁵²

In addition, the ICPR in Article 26 guarantees equality and equal protection by the law. At the national level domestic law, in most cases the constitution, provides for equality. Corruption however negates these rights. When a person gives a bribe to a public servant and the bribe is accepted, such a person acquires a privileged status vis a vis other persons who are similarly or better placed, but have not offered bribes.⁷⁵³ Such a person will receive preferential treatment which has no reasonable or objective justification. Such treatment is plainly discriminative and does not serve any legitimate purpose.⁷⁵⁴

94. Institutional Framework for Combating Corruption in Zanzibar

Fighting corruption is an integral part of development for the Revolutionary Government of Zanzibar as articulated in the Zanzibar National Development Plans (Vision 2020), and in the second generation of Zanzibar strategies for growth and reduction of poverty (MKUZA II). MKUZA II recognizes that corruption generates economic, political, individual and social (structural) impact that can cause oracerbate poverty situations. If the goals in the National Development Strategies for Zanzibar are to be archived, anti-corruption measures have to be adopted that would enable tackles corruption at its root.

In an effort to promote Good Governance in Zanzibar, the Revolutionary Government of Zanzibar (RGOZ) has taken financial institutional and operational steps. In 2000, the RGOZ established the Ministry of Constitutional Affairs and Good Governance to coordinate among, other things, and good governance issues. In 2010 the RGOZ restructured the ministries and currently governance issues are coordinated by the President Office, Public Service and Good Governance (PO-PSGG). Another institution aimed at promoting good governance is the office of Controller and Auditor

751 Ibid.

752 Human Rights Report 2014.

753 Transparency International Report (2007).

754 Ibid.

General (CAG) which operates under the PO-PSGG. CAG is empowered to audit public institutions and submit the audit report to the House of Representatives for the House scrutiny and deliberations. Specific financial measures to combat corruption include the introduction of the Integrated Financial Management System (IFMS) with a view to controlling propriety of government. In 2016, the Revolutionary Government of Zanzibar again restructured the Ministries. The results of the government's restructuring were the establishment of the Ministry of State, President Office, Constitution, Legal Affairs, Public Services and Good Governance. This government restructuring campaign was definitely carried out as a strategy to achieve more in its developmental missions within the existing policy and legal frame-work.

9.5 Legal Frame Work against Corruption in Zanzibar

Based on the institutional set up in the war against corruption in Zanzibar, there are a number of statutes enacted in the execution of this purpose. These laws include the Public Procurement Act of 2005⁷⁵⁵ which, among other initiatives, provides that procurement of goods and services by government agency shall be based on open and competitive tendering process. Also, in 2011, RGOZ developed and adopted a good governance policy and, persuaded by it, the Anti-Corruption and Economic Crimes Act, 2012⁷⁵⁶ was passed by the Zanzibar House of Representative.⁷⁵⁷ Prior to this, the Constitution of Zanzibar, 1984, and Penal Act no. 6 of 2004 had introduced offences related to corruption and abuse of office against any person holding public office.⁷⁵⁸

The Anti-Corruption and Economic Crimes Act seeks to establish an independent and autonomous agency "The Zanzibar Anti-Corruption and Economic Crime Authority", (ZAECA) an authority which is mandated to, *inter alia*, receive and investigate complains concerning corruption practices in public and private board. Also complaints about breach of ethics or economic crimes against any public or private body fall under the mandate of this authority. The President of Zanzibar has already appointed the Director General of Zanzibar Anti-Corruption Authority.

In addition, ZAECA advises any public or private entity on corruption occurrence issues and assists any law enforcement agency of the government in the investigation of the corruption or economic crime offences, examines the practices and procedures of public or private bodies in order to facilitate discovery of corruption practices and secure mechanisms for reversing the situation and educate the public on the dangers

755 The Public Procurement and Disposal of Public Assets Act, No.9/2005.

756 Act No. 1, 2012.

757 Act No. 1, 2012.

758 Section 10 (b) of the 1984 Zanzibar Constitution.

of corruption and economic crimes.⁷⁵⁹

Unlike Mainland Tanzania, ZAECA has no prosecutorial powers and the right to authorize prosecution is vested in the Office of the DPP. At the same time, the Commission is government funded so the budget for implementation of activities has been problematic.⁷⁶⁰

9.6 Current Situation on Corruption in Zanzibar

The current situation on corruption in Zanzibar has compelled the government to step up its efforts to overcome this situation and declared corruption a disaster in the country. The government is doing all it can to try and control this situation. Corruption is taken as a major problem hindering economic development in Zanzibar. The President of Zanzibar and the President of the United Republic of Tanzania keep urging their people to avoid corruption and explain its detrimental effects.

The government has employed staff in the anti-corruption office in Pemba and has increased the number of investigative officers in this office. A project of the Zanzibar legal sector reform provides various forms of training designed to help the society understand the effects of corruption in Zanzibar and has established special training for personnel of ZAECA.

The fight against corruption is not a simple and easy matter because corruption involves high profile and educated people. The situation shows that corruption is practised in public sectors such as in hospital, judiciary, police, and others. In 2016, Zanzibar the Anti-Corruption and Economic Crimes Authority received 150 complaints, 100 of which were under investigation. If the complaints after investigation are not confirmed, the investigation is closed.

9.6.1 Corruption in the Administration of Justice

There has been allegation on complaints of corruption reported at ZAECA, involving magistrates and court clerks receiving corruption within the Judiciary in Zanzibar. Corruption in courts is said to be one of the reasons behind a delayed ruling or the hearing of a case and appeal to the aggrieved party in a criminal or civil proceeding before the court.

⁷⁵⁹ Human Rights report 2015.

⁷⁶⁰ Legal and Human Rights Centre and Zanzibar Legal Services Centre, Tanzania Human Rights Report, 2014.

9.7 Conclusion

For almost five years now since the establishment of Zanzibar Anti-Corruption and Economic Crimes Authority (ZAECA), there is no obvious or significant achievement that the people of Zanzibar have noticed as a result of ongoing fight against corruption and feel disillusioned. There are allegations, indicators and risks of corruption that are quite obvious in various sectors. The people still feel the pinch of corruption in Zanzibar. The Authority is advised to take more serious measures and become more assertive in its fight against corrupt and economic crimes activities in Zanzibar.

CHAPTER TEN**HUMAN RIGHTS PROTECTION IN ZANZIBAR****10.1 Introduction**

The protection of human rights in Zanzibar has had a long history and can be traced back to 1963 when Zanzibar got independence from the British. The first Constitution of Zanzibar, “The Constitution of the State of Zanzibar, 1963”, that came in force on December 10, 1963, incorporated the Bill of Rights⁷⁶¹.

10.2 Incorporation of Bill of Rights in the Constitution of Zanzibar, 1984

This Constitution of the State of Zanzibar, 1963 was short-lived. It had been abrogated by the January 12th 1964 Revolution of Zanzibar.⁷⁶²

Following the abolition of 1963 Constitution, Zanzibar existed without a constitution for 15 years and there was no mention of the Bill of Rights. Zanzibar was ruled by the Presidential Decrees promulgated in the name of the Revolutionary Council. In addition, the first-post Revolution Constitution of Zanzibar 1979 contained no Bill of Rights provisions. The Constitution of Zanzibar, 1984 has incorporated the provisions to be found in Chapter three where several aspects of basic human rights and freedoms as well as basic duties an individual owes the society are outlined,

10.3 Protection of Human Rights under the Constitution of Zanzibar 1984

Chapter three of the Constitution of Zanzibar 1984 provides for the Bill of Rights. Various human rights are provided for under the chapter. These rights include human equality, equality before the law, right to life, right to privacy, right to liberty, right of movement, right of expression, religion rights, rights of association and assembly, property right, and the right to work.

The Constitution stipulates the limitations in the enjoyment of human rights in Zanzibar. It says that enjoyment of such rights shall not result in the violation of rights of any other person. It may also be limited by laws enacted by the House of Representatives for various purposes.

761 Chapter 2, The Constitution of the State of Zanzibar, 1963.

762 www.zanzibarassembly.go.tz/history.php

Section 25 A of the Constitution provides for the enforcement of the Bill of Rights⁷⁶³. It provides that such enforcement shall be through institution of cases before the High Court of Zanzibar. When a case is instituted, it will be heard by one judge of the High Court. The appeal from decision of such kind of cases shall be filed before the same court but now sitting with three judges. The decision in the appeal is final in the sense that there shall be no appeal that will lie from the decision of the Zanzibar High Court to the Court of Appeal of Tanzania in any matter relating to interpretation of the Constitution of Zanzibar 1984.⁷⁶⁴ This means that the Court of Appeal of Tanzania has no jurisdiction to entertain cases relating to the enforcement of the bill under the Constitution of Zanzibar.

Enforcement of the Bill of Rights in Zanzibar is subject to a number of criticisms. The most obvious one is that there is no specific legislation enacted to regulate enforcement of the Bill of Rights under the Constitution of Zanzibar 1984. It is uncertain what procedure or format human rights cases should take in Zanzibar. This lacuna has resulted into some procedural constraints on the enforcement of the Bill. One direct effect of this procedural vacuum is that until the end of the year 2016, there was not a single case instituted before the High Court of Zanzibar seeking enforcement of the constitutional Bill of Rights in Zanzibar.

Despite the existence of an ineffective court for protection of individual rights and freedoms in Zanzibar, there is also no specific institution established in Zanzibar to deal with human rights protection. The Revolutionary Government of Zanzibar after the March 2016 election formed a Ministry called Ministry of State, President Office, Constitution, Legal Affairs, Public Service and Good Governance. Although this Ministry has various departments, unfortunately it has no department which deals with specifically with human rights protection.

10.4 Protection of Human Rights under Constitution of United Republic of Tanzania 1977

This Constitution falls under the union matters and as such is applicable in Zanzibar. It provides for the Bill of Rights in its Chapter three, as well. The rights which are provided in this chapter are similar to those found under the Constitution of Zanzibar 1984. The United Republic of Tanzania Constitution 1977 provides two ways which are relevant to protecting individual's human rights and freedoms in Tanzania. First is by enforcement of the Bill through court of law, and secondly, by using a commission for human rights.

763 Constitution of Zanzibar, 1984.

764 Section 24 (3), Constitution of Zanzibar, 1984.

10.4.1 Protection through the Court

The High Courts of both Tanzania and Zanzibar have jurisdiction to deal with enforcement of the Bill of Rights under of the United Republic of Tanzania 1977. The enforcement process is required to be instituted in the form of petition. Three High Court judges are required to sit to hear the petition. But, in all two jurisdictions, petitions shall have to take place after the court has granted leave for instituting a particular petition.

When enforcement takes place through the High Court of Zanzibar or the High Court of Tanzania, appeal may lie with the Court of Appeal of the United Republic of Tanzania. In the year 2016, no case had been instituted before the Zanzibar High Court for enforcement of the Bill of Rights under the provisions of the Constitution of the United Republic of Tanzania 1977.

10.4.2 Protection under the Human Rights Commission

The Constitution of United Republic of Tanzania 1977 established the Commission for Human Rights and Good Governance (CHRAGG). This commission is an independent government department. It has been established as the national focal point institution for the promotion and protection of human rights and duties as well as good governance in Tanzania. It was established under Article 129 (1) of the said Constitution as amended by Act No. 3 of 2000.

The Commission started to operate from the 1st July 2001 following the coming into force of the Commission the Human Rights and Good Governance Act No7 of 2001 as amended by Act No 16 of 2001.⁷⁶⁵ The Commission was officially inaugurated in March 2002 following the appointment of Commissioners by the President of the United Republic of Tanzania.

CHRAGG plays the dual role of an ombudsman and a human rights commission. Although, from its inception, this legislation is to operate in both the Mainland and Zanzibar Tanzania, Zanzibar authorities initially prevented it from functioning for a while. The main argument was that human rights are not within the list of the union matters. However, in May 2006, the authorities in the Union and Zanzibar Governments agreed that the quasi-governmental CHRAGG be permitted to operate in the same way on both the sides of Tanzania. As a result, CHRAGG extended its function to Zanzibar since 2007 and recently it has opened its office in Pemba as well.

⁷⁶⁵ See: Government Notice No. 311 of 8th June 2001.

10.4.2.1 Operation of the Commission

In its operation, the Commission has been highly criticized on grounds that its independence is not realistic. For example, the commissioners of the Commission are presidential appointees⁷⁶⁶. They may be removed from office because of a number of listed reasons. They may also be removed from office for any reason. No person could figure out what constitutes “any other reason” that would lead to the removal of a commissioner at a point of time. This means that commissioners of the Commission are in danger of being removed from their offices at any time.

The performance of the commission has also been highly criticised especially in Zanzibar where its impact is insignificant and not even noticeable. In 2016, there have been various allegations on matters of mal-administration in general, and that of violations of human rights in particular, but nothing has been heard being done in the execution of the roles of the Commission. In fact, the Commission has been very passive in responding to human rights violations in Zanzibar.

10.5 Zanzibar Law Review Commission (ZLRC)

This commission was established in 1986. It was a result of recommendations of Law Review Commission commonly known as the “Msekwa Commission” since it was led by Hon. Pius Msekwa. It was the idea of the Msekwa Commission that there are various laws which are outdated and do not reflect the existing situation in the society hence there is a need to establish a permanent organ to deal with law review.

ZLRC was established under Zanzibar Law Review Commission Act No. 16 of 1986. The main function of the commission is to review the laws of Zanzibar and to propose amendments so as to make sure that they respond to time changes in Zanzibar.

In 2016, ZLRC completed its review of Evidence Decree, Cap.5 which is now waiting for assent of the President of Zanzibar. Other laws which had previously been reviewed by this Commission are Criminal Procedure Act (CPA) No.7/2004 and Penal Act No.6/2004 and Civil Procedure Act Cap 8/ 1917.

Review of such laws is a very important step as far as human rights are concerned for keeping laws up to date is important in safeguarding individual’s rights under the laws of the land.

766 Article 130 of the Constitution of the United Republic of Tanzania of 1977.

10.6 The Office of the Director of Public Prosecution

The Office of Director of Public Prosecutions (DPP) in Zanzibar was established in 2002, following the 8th amendment of the Constitution of Zanzibar 1984.⁷⁶⁷ The fundamental role of the DPP office is the administering of criminal cases by charging and prosecuting persons charged with criminal cases. The DPP has constitutional powers to institute, prosecute, discontinue and take over any criminal case in all courts in Zanzibar other than martial courts.

This office performs its functions in accordance with the Constitution of Zanzibar 1984, the office of Director of Public Prosecutions Act (No. 2) 2010, the Prosecution Manual of 2005 as revised in 2015. The four constitutionally founded core values of the DPP Office are independence, impartiality, integrity and truthfulness.

The DPP office administers criminal cases by prosecuting all criminal cases in all courts of Zanzibar from District Courts, Regional Magistrates courts, High Court and the Court of Appeal of Tanzania cases that are filed in Zanzibar. It also coordinates all prosecution services in primary courts. The office is also responsible in educating members of society on matters relating to criminal justice. The office was established under the idea of civilianization of prosecution where prosecution services are to be delivered by civilians and not police force.

As far as human rights and good governance are concerned, the DPP office performs its responsibilities under two main slogans. The first is that investigation should precede prosecution and the second is that no conviction without evidence. From these two slogans, the DPP office always requires police to admit suspects to bail until such time where an investigation of a given case is completed and where prosecution can then be formally initiated.

By making evidence important for prosecution, it helps to prevent prosecution from being changed to persecution. There is no room thus to arrest and charge people without evidence as doing so is to violate constitutional rights so guaranteed for every person in Zanzibar.

In the year 2016, the office of the DPP faced a number of challenges in attempting to exercise its prosecutorial roles according to law. There was serious misunderstanding between police force and the DPP office. It was especially with regard to the bomb explosion cases and destruction of properties in Pemba Island. In March, 2016 there was a bomb explosion at the house of the Zanzibar Commissioner of Police at Kijichi,

⁷⁶⁷ 1984 Section 56A.

Urban West district of Unguja⁷⁶⁸. Three people were arrested and detained by police without being admitted to bail. When the matter was presented to the office of DPP, it was found that the evidence was not sufficient to connect the suspects to that allegation. When the DPP office refused to institute a case the police force became dissatisfied. It refused to release the suspects until made to do so under the order of the High Court of Zanzibar when *habeas corpus* writ was sought by the advocates of the suspects.

Also, between April and June 2016, there were incidences of destruction of properties in Pemba Island allegedly on political grounds. The police force arrested a number of people and detained them beyond the statutory time allowed and without due process of law including denial of bail. When cases were sent to the DPP it was required that the investigation be completed prior to the institution of cases. Police officers pressurised the institution of cases and as a result about ten cases were instituted around June 2016.⁷⁶⁹ Until the end of the year 2016, neither of these cases had started their hearing, despite of the fact that they were supposed to start hearing before expiring of four months from the date they were instituted before the courts. This situation makes clearly indicates that institution of such cases was largely a misuse of court processes and legal machineries.

Therefore for effective administration of criminal justice in Zanzibar, there is a need for the law enforcing institutions to have mutual respect, to obey rule of law and to consider the limits of constitutional and legal powers vested in each of them. This is fundamental to avoiding unnecessary conflicts within public institutions especially where their functions are interdependent.

10.7 Police Force and Human Rights in Zanzibar

The functioning of Tanzania Police Force falls in the list of Union matter. Police officers are employed by the Government of United Republic of Tanzania. They work either in Mainland Tanzania or Zanzibar according to the internal arrangements of the Force. The current Police system in Tanzania has its origin from colonial heritage from England. The police force is based on the protection of peace and security of citizens and their property. They are armed force machinery and one of the state apparatus. The police in Tanzania, in the performance of its responsibilities are governed by laws and also special police guidelines covered in ‘the Police General Orders (PGO)’. The very nature of the functions of the police force necessitates that in the performance of their roles, police officers should work in a friendly matter with the people - knowing that they are key protectors of the individual’s human rights.

⁷⁶⁸ <http://mtanzania.co.tz/nyumba-ya-mkuu-wa-polisi-zbar-yalipuliwa-kwa-bomu/>

⁷⁶⁹ Issa Yussuf, Tanzania: 20 Held in North Pemba Over Recent Arson Acts, Tanzania Daily News 14th March, 2016, <http://allafrica.com/stories/201603140886.html>

However, in 2016, as far as human rights are concerned, records of the performance of the police force in Zanzibar were not satisfactory. There are various incidences which took place and lowered the reputation of this force. This was especially following the rerun of the elections in March 2016 and its aftermath. The force used to conduct unnecessary patrols using a large number of cars and also while heavily armed patrolling the streets and torturing innocent people in their localities, as evidenced in the following picture.



Picture 49: Police officers in patrol in the streets of Zanzibar during the rerun exercise in 2016

10.8 Zanzibar Human Rights Guidelines (*Muongozo wa Haki za Binadamu Zanzibar*)

It is five years now since the Revolutionary Government of Zanzibar issued the above guidelines. The objective of distributing such guidelines was to raise the public awareness on human rights issues. Making the people aware on human rights is very important in enabling the people to enforce them. There are reports which show that a good follow up of such guidelines is needed in order to understand their fate.

However the reports do not show what has been the outcome of the guidelines since their distribution. This raises doubt on whether there is really follow up these guidelines. The guidelines have been not only ornamental but rather like an unwanted bird that has been released to fly in the air to wherever it wants.

Failure to educate the people on their basic rights comes with the consequence that many people will not understand their rights. They will not know what rights are guaranteed under the Constitution and how to enforce them. It is estimated that more than 60% of the people of Zanzibar are not yet aware of their rights.

The Ministry responsible for this is advised to carry out a follow up of these guidelines and to measure their impact. It can safely be said now that the people do not understand their rights. The government should try as far as possible to ensure that the people in Zanzibar islands are aware of their basic rights and freedoms.

10.9 Human Rights Day

Zanzibar joins the rest of the world every year in human rights anniversaries. Human Rights Day is observed every year on the 10th December. It commemorates the day on which, in 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. In 1950, the Assembly passed resolution 423 (V), inviting all States and interested organizations to observe 10 December of each year as Human Rights Day.⁷⁷⁰ The significance of this day is to make the people aware of the human rights agenda and to prepare specific annual messages as far as human rights are concerned.

In Zanzibar, this commemoration is organized by government and non-government organization such as Zanzibar Legal Service Centre (ZLSC). The celebration of human rights day for the year 2016 had the message “Stand up for someone’s right today”.



Picture 50: Registrar of the High Court Pemba, Mr. Hussein Makame at the Human Rights Day in Pemba on 10th December 2016

770 <http://www.un.or/en/events/humanrightsdays/> (Last visited 14 November 2016).

10.10 Conclusion

The road to domestic initiative in Human Rights Protection in Zanzibar is still a very bumpy one. There are administrative and technical hitches frustrating the initiative in human rights protection. In fact, the human rights protection initiatives need the government's commitment and political will. In this area, the Zanzibar Government remains always accused that what the government promises does not correspond to the reality. A lot of good promises are made while implementation leaves much to be desired. The Centre urges to the Revolutionary Government of Zanzibar to make deliberate intentions on working for a better human rights regime in the country for the wider mutual interest of both the rulers and the rule

LIST OF LEGISLATION

Children's Act No 6 of 2011.

Constitution of the United Republic of Tanzania, 1977.

Constitution of Zanzibar, 1984.

Criminal Procedure Act No. 7 of 2004.

Elections Act, No. 1, 1985.

Employment Act No. 11 of 2005.

High Court Act No. 2 of 1985.

Kadhis Court Act No. 3, 1985.

Labour Relations Act No.1 of 2005.

Land Tenure Act No. 12 of 1992.

Local Administration Act No. 8 of 2014.

Magistrate Court Act No. 6, 1985.

Mufti Act No. 9 of 2001.

Penal Act No. 6 of 2006.

Persons with Disabilities Right and Privileges Act No.9 of 2006.

Promotion of Tourism Act No 9 of 1996.

Regional Administration Authority Act No.1 of 1998.

Road Transport Act, Act No. 7 of 2003.

United Republic Declaration of Name, Act No. 61 of 1964.

Zanzibar Commercial Court (High Court Division Act) No. 9 of 2013.

Zanzibar HIV and AIDS Prevention and Management Act No. of 2013.

Zanzibar Tourism Act No. 6 of 2009.

Zanzibar Water Authority Act No. 4 of 2006.

LIST OF INTERNATIONAL LEGAL INSTRUMENTS

African Charter on Human and Peoples Rights, 1981.

International Covenant on Civil and Political Rights, 1966.

International Covenant on Economic, Social and Cultural Rights, 1966

Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty in all Circumstances, 2002.

Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty, 1983.

Protocol to the American Convention on Human Rights to Abolish the Death Penalty, 1990.

Second Optional Protocol to the International Covenant on Civil and Political Rights, 1987.

Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 1989.

UN Declaration on the Elimination of Violence against Women (CEDAW), proclaimed by the UN General Assembly in its resolution 48/104 of 20th December, 1993.

Universal Declaration of Human Rights, 1948.

