

Part One: Tanzania Mainland - Legal and Human Rights Centre (LHRC)

Part Two: Zanzibar - Zanzibar Legal Services Centre (ZLSC)



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About LHRC and ZLSC

The Legal and Human Rights Centre (LHRC) is a private, autonomous, voluntary non-Governmental, non-partisan and non-profit sharing organization envisioning a just and equitable society. It has a mission of empowering the people of Tanzania, so as to promote, reinforce and safeguard human rights and good governance in the country. The broad objective is to create legal and human rights awareness among the public and in particular the underprivileged section of the society through legal and civic education, advocacy linked with legal aid provision, research and human rights monitoring. LHRC was established in 1995 and its operations mainly focus on Tanzania Mainland, with specific interventions in Zanzibar.

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

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

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

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

The Zanzibar Legal Services Centre (ZLSC) was established in 1992 as a non-governmental, voluntary, independent and non-profit making organisation. It is a body corporate and its major aim is to provide legal services to the poor, women, and children, the disabled, marginalised and other disadvantaged sections of the Zanzibari society. The Centre also aims to popularise knowledge on the law and produce publications in all areas of legal concern to the people of Zanzibar.

Vision: Rights and Access to Justice for all.

Mission: Raising people's awareness, promoting human rights and good governance.



Core Objectives: Providing free legal aid to the poor; providing free legal representation for clients in need of it; providing legal education to the public and raise awareness about human rights and duties; conducting research in different issues of or related to law and human rights.

Some of the results of research and other interventions have been both attractive and appealing to the government thus helping to shape policies and laws on various issues including the issue of the rights of the child in Zanzibar. The most notable research undertaken by ZLSC is Annual Human Rights Report since 2006.

Prof. Geoffrey Mmari
Chairperson - LHRC Board

Prof. Chris Peter
Maina
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Table of Contents

Contents

Acknowledgement.....	v
About LHRC and ZLSC	vi
Table of Contents.....	viii
Part One: Tanzania Mainland - Legal and Human Rights Centre (LHRC) ..	xvii
Introduction	xviii
Major Developments in 2018	xviii
Objectives of the Report.....	xix
Methodology.....	xix
Report Structure	xx
List of Abbreviations	xxii
Executive Summary	xxiv
Introduction.....	xxiv
Methodology.....	xxv
Key Findings.....	xxv
Key Recommendations	xli
Chapter 1: Contextual Overview	1
1.1. Historical Overview	1
1.2. Geography and Population.....	3
1.3. Economic Situation	6
1.4. Political and Governance Systems.....	7
Chapter 2: Civil Rights.....	11
Introduction.....	11
2.1. Right to Life.....	11
2.1.1. Mob Violence.....	12
2.1.2. Extrajudicial Killings and Violence against Law Enforcement Officers	14



2.1.3.	Witchcraft-related Killings and Violence against PWAs	18
2.1.4.	Death Penalty	20
2.1.5.	Road Accidents	21
2.2.	Freedom of Expression.....	22
2.2.1.	Media Freedom	23
2.2.2.	Freedom of Opinion	35
2.2.3.	Access to Information	36
2.3.	Rights to Equality before the Law and Effective Remedy.....	38
2.3.1.	Access to Justice	39
2.3.2.	Right to Presumption of Innocence and Legal Representation 49	
2.3.3.	Rights to Fair Trial and Effective Remedy	51
2.4.	Right to Liberty and Personal Security.....	51
2.4.1.	Freedom from Arbitrary Arrest and Detention.....	52
2.4.2.	Right to Personal Security	56
2.4.3.	Right to Bail.....	59
2.5.	Freedom from Torture and Inhuman or Degrading Treatment	59
	Conclusions and Recommendations	62
	Chapter 3: Political Rights.....	67
	Introduction.....	67
3.1.	Freedom of Assembly	67
3.2.	Freedom of Association.....	71
3.3.	Right to Take Part in Governance	76
3.3.1.	Right to Vote and be Voted for.....	77
3.3.2.	Right to Participate in Political Life.....	79
	Conclusion and Recommendations	82
	Chapter 4: Economic Rights.....	85
	Introduction.....	85



4.1. Right to Own Property	85
4.1. Right to Work	91
4.1.1. Right to Gain Living by Work.....	91
4.1.2. Right to Just and Favourable Working Conditions	101
Conclusion and Recommendations	103
Chapter 5: Social and Cultural Rights	108
Introduction	108
5.1. Right to Education	108
5.1.1. Right to Access Education	109
5.1.2. Right to Quality Education	113
5.2. Right to Health	119
5.2.1. Right to Access Health Services.....	120
5.2.2. Right to Quality Health Services	122
5.3. Right to Water	125
5.3.1. Right to Access Water	126
5.3.2. Right to Quality Water	129
5.4. Right to Adequate Standard of Living.....	133
5.4.1. Right to Food.....	134
5.4.2. Right to Shelter/Adequate Housing.....	135
5.5. Right to Culture	137
5.2.1. Right to Participate in Cultural Life	138
Conclusion and Recommendations	140
Chapter 6: Collective Rights	145
Introduction	145
6.1. Right to Development.....	145
6.2. Right to Enjoy and Benefit from Natural Resources.....	152
Conclusion and Recommendations	154
Chapter 7: Rights of Vulnerable Groups	158



Introduction	158
7.1. Women’s Rights	158
7.1.1. Violence against Women	159
7.1.2. Gender Inequality and Discrimination	170
7.2. Children’s Rights	172
7.2.1. Violence against children.....	172
7.2.2. Sexual Violence	175
7.2.3. Physical Violence and Psychological Violence	193
7.2.4. Child Marriage, Child Pregnancy and FGM.....	196
7.2.5. Discrimination and Stigma against Street Children and Children with Disabilities.....	202
7.3. Rights of Persons with Disability	204
7.3.1. Equality and Non-Discrimination	204
7.3.2. Freedom from Violence	206
7.4. Rights of the Elderly	207
7.4.1. Freedom from Violence	208
7.4.2. Non-Discrimination and access to health services	210
7.5. Rights of Persons Living with HIV/AIDS	210
7.5.1. Non-Discrimination.....	211
7.5.2. Access to Health Services.....	212
Conclusion and Recommendations	212
Chapter 8: Corruption, Good Governance and Human Rights.....	218
Introduction.....	218
8.1. Impact of Corruption on Human Rights.....	218
8.2. State of Corruption	220
Conclusion and Recommendations	225
Chapter 9: Human Rights Mechanisms	227
Introduction.....	227



9.1. National Human Rights Mechanisms	227
9.1.1. Key National Human Rights Mechanisms.....	227
9.1.2. Challenges faced by the National Human Rights Mechanisms	228
9.2. Regional and International Human Rights Mechanisms	230
Conclusion and Recommendations	231
Chapter 10: Other Issues of Human Rights Concern.....	233
Introduction.....	233
10.1. Political Tolerance	233
10.2. Responsibility of the State and Non-state Actors to Promote	
and Protect Human Rights	234
Annex 1: Status of International Human Rights Ratifications in 2018	236
Annex 2: Status of Tanzania’s Reportage to Treaty Bodies.....	238
Annex 3: List of Regional and International Human Rights Instruments.....	240
Part Two: Zanzibar - Zanzibar Legal Services Centre (ZLSC).....	241
LIST OF ABBREVIATIONS	242
CHAPTER ONE.....	245
CONTEXTUAL OVERVIEW.....	245
1.1. Introduction	245
1.2. Historical Overview	246
1.3. Geography and Population.....	252
1.4. Economic Situation	257
1.5. Political and Governance Systems.....	264
CHAPTER TWO	268
CIVIL RIGHTS	268
2.1. Right to Life.....	268
2.1.1. Mob Violence.....	270
2.1.2. Extra-judicial Killings	271



2.1.3.	Death Penalty	271
2.1.4.	Road Accidents	273
2.2.	Freedom of Opinion and Expression.....	275
2.2.1.	Media Freedom	277
2.2.2.	Access to Information	280
	Conclusion and Recommendations	283
2.3.	Rights to Equality before the Law and Effective Remedy.....	284
2.3.1.	Access to Justice	285
2.3.2.	Right to Legal Representation.....	288
2.3.3.	Rights to Fair Trial and Effective Remedy	289
2.4.	Right to Liberty and Personal Security.....	291
2.4.1.	Freedom from Arbitrary Arrest and Detention.....	293
2.4.2.	Right to Bail.....	294
2.5.	Freedom from Torture and inhuman or Degrading Treatment ..	296
2.5.1.	Torture by State	297
2.5.2.	Torture by individuals.....	298
	CHAPTER THREE.....	300
	POLITICAL RIGHTS.....	300
	Introduction.....	300
3.1.	Freedom of Assembly and Association	301
3.2.	Right to Take Part in Governance	303
3.2.1.	Right to Vote	303
3.2.2.	Right to Participate in Political Life.....	304
	CHAPTER FOUR.....	306
	ECONOMIC RIGHTS	306
4.1	Right to Own Property.....	306
4.2	Right to Work	308
4.3	Right to Gain Living by Work	309



4.3.1	Right to Just and Favourable Working Conditions	310
CHAPTER FIVE.....		313
SOCIAL AND CULTURAL RIGHTS.....		313
Introduction.....		313
5.1	Right to Education	313
5.1.1	Right to Access Education	314
5.1.2	Right to Quality Education	315
5.2	Right to Health	319
5.2.1.	Right to Access Health Services.....	319
5.2.2.	Right to Quality Health Services	321
5.3.	Right to Water	322
5.3.1.	Right to Access Water	323
5.3.2.	Right to Quality Water	324
5.4.	Right to Adequate Standard of living.....	326
5.4.1.	Right to Food.....	326
5.4.2.	Right to Shelter	328
5.5.	Right to Culture.....	329
5.5.1.	Right to Participate in Cultural Life	330
CHAPTER SIX.....		332
COLLECTIVE RIGHTS.....		332
Introduction.....		332
6.1.	Right to Development.....	332
6.2.	Right to Enjoy and Benefit from Natural Resources.....	336
CHAPTER SEVEN		339
RIGHT TO VULNERABLE GROUPS		339
Introduction.....		339
7.1	Women’s Rights.....	339
7.1.1.	Violence against Women.....	340



7.1.2. Gender Equality and Discrimination	342
7.2 Children Rights.....	344
7.2.1. Sexual Violence	345
7.2.2. Physical and Psychological Violence.....	347
7.2.3. Child Labour.....	348
7.3. Rights of Persons with Disabilities	349
7.3.1. Equality and Discrimination.....	350
7.3.2. Sexual Violence against Persons with Disabilities.....	351
7.4 Rights of the Elderly	352
7.4.1. Violence against the elderly.....	353
7.4.3. Discrimination	353
7.5. Rights of Persons Living with HIV/AIDS.....	354
7.5.1. Discrimination.....	356
7.5.2. Access to Health Services	356
CHAPTER EIGHT.....	358
CORRUPTION, GOOD GOVERNANCE AND HUMAN RIGHTS.....	358
Introduction.....	358
8.1. State of Corruption in Zanzibar	358
8.1. Good Governance and Anti-Corruption.....	359
Conclusion	360
CHAPTER NINE.....	361
HUMAN RIGHTS MECHANISMS.....	361
Introduction.....	361
9.1. National Human Rights Mechanisms	361
9.1.1. Judicial Mechanism.....	361
9.1.2. CHRAGG and Implementation of Human Rights	364
9.1.3. The of Law Review Commission of Zanzibar (LRCZ)	365
9.1.4. Role Played by the DPP Office	365



9.1.5.	The Role of Police Force	366
9.2.	International Human Rights Mechanisms.....	367
9.2.1.	The United Nations Office of the High Commissioner for Human Rights	368
9.2.2.	The United Nations Human Rights Committee	368
9.2.3.	United Nations Human Rights Council	369
9.3.	Regional Human Rights Implementation Mechanisms	370



**Part One: Tanzania Mainland - Legal and Human
Rights Centre (LHRC)**



Introduction

Major Developments in 2018

Alarming rate of incidents of sexual violence against children
Minister of Home Affairs ordering police to grant bail even during weekends and issues stern warning against police fabrication of cases
Controversial Online Content Regulations signed into law
Government to establish gender desks in primary and secondary schools in a bid to promote reporting of violence against children and address the problem
North Mara Gold Mine implicated in grand corruption scandal
Introduction of controversial Political Parties Bill
Reports of child-on-child sexual abuse in schools, especially in schools
Senior government officials speaking out against RC misuse of arrest and detention powers by regional and district heads
Tanzania further drops in the World Press Freedom Index
Judicial action to improve access to justice and address violence against children
Acute shortage of classrooms for pupils who passed Standard VII exams
Abduction of business mogul raising concerns over personal security
Killings of older people in Tabora, Songwe, Kagera and Rukwa
Killing of a university student, Akwelina Akwilini, during an opposition protest in Dar es Salaam
National and international stakeholders and partners express concern over decline of human rights in Tanzania
Concerns over by-election costs and political defections become a common practice in Tanzania
Amendment of the Appellate Jurisdiction Act to prohibit striking out cases because of procedural irregularities: a positive action to enhance access to justice
Abductions and killings of <i>bobaboda</i> drivers
Introduction of the Micro Finance Act 2018
Introduction of the Non-Governmental Organizations Act (Amendments) Regulations, 2018
Introduction and suspension of a new pension pay formula
Introduction of Legal Aid Regulations of 2018



Objectives of the Report

The main objective of this report is to shed light on the situation of human rights in Tanzania in 2018, highlighting violations of human rights in the year and efforts made to safeguard basic human rights. Another objective of the report is to make comparisons between the situation in 2018 and that of 2017 in order to determine whether improvements have been made in safeguarding human rights. The report can also be used as an advocacy tool to inform the public of relevant human rights standards, remind state actors of their human rights obligations, promote behaviour change in the society and provide key data on human rights issues.

Methodology

In preparation of this report, the LHRC research team employed a number of methods to collect data, both primary and secondary. Data was collected from various credible sources, including government institutions, bodies and ministries; CSOs; the Judiciary; parliamentary sources and community members. Primary data was collected in 10 regions of Tanzania Mainland, namely: Songea, Mbeya, Iringa, Dodoma, Singida, Tabora, Shinyanga Mwanza, Arusha and Kilimanjaro. The data used in preparation of this report was collected between January 2018 and March 2019. The report covers the period of January to December 2018, thus all collected information relate to incidents or events of the year 2018. Methods employed in obtaining information were face-to-face interviews with key informants, observation and checklists. Targeted respondents were district authorities, community development officers, social welfare officers, representatives of paralegal centres and local NGOs, LHRC paralegals and human rights monitors, and police gender desk officials at the Tanzania Police Force Headquarters.

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 reports by different government institutions and local and international NGOs, as well as news reported by newspapers, radio stations and television stations.

Analysis of quantitative data was done through Microsoft Excel and IBM's Statistical Package for Social Sciences (SPSS). The data is presented in the



report using tables and figures, showing frequency and percentages, summarizing information and trends of on human rights issues and incidents.

Report Structure

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. **Chapter One** of the Report provides background information on Tanzania (both Mainland and Zanzibar). **Chapter Two** covers the situation of key civil rights, namely: right to life; freedom of expression; rights to equality before the law and effective remedy; right to liberty and personal security; and freedom from torture. **Chapter Three** is about the situation of political rights, particularly freedom of assembly and freedom of association. **Chapter Four** covers economic rights such as right to property and right to adequate standard of living. **Chapter Five** examines the situation of social and cultural rights, especially the quality and accessibility around rights to education, water and health. **Chapter Six** looks at collective rights, particularly right to development and right to benefit from natural resources, while **Chapter Seven** is on the rights of vulnerable groups, which are women, children, Persons with Disabilities (PWDs), and the elderly. **Chapter Eight** is on Corruption, Good Governance and Human Rights. **Chapter Nine** looks at human rights mechanisms, at domestic, regional and international levels, while **Chapter 10** is on other issues of human rights concern in 2018.

Regions to Watch

Region	Right issue(s)
Mwanza	Sexual and physical violence against children Witchcraft-related killings
Tabora	Witchcraft-related killings Economic and psychological violence against women Child marriage Child/teenage pregnancy
Dar es Salaam	Sexual violence against children Mob violence
Kilimanjaro	Economic violence against women



	Sexual violence against children
Mbeya	Sexual violence against children Economic violence against women
Iringa	Sexual violence against children Economic violence against women
Shinyanga	Witchcraft-related killings Child marriage Sexual violence against children
Singida	Sexual violence against children Economic violence against women
Kigoma	Sexual violence against women



List of Abbreviations

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



PWAs	Persons with Albinism
PWDs	Persons with Disabilities
RC	Regional Commissioner
SDG	Sustainable Development Goal
TANROADS	Tanzania Roads Agency
TECMN	Tanzania Ending Child Marriage Network
TGNP	Tanzania Gender Networking Programme
THIS	Tanzania HIV Impact Survey
THRDC	Tanzania Human Rights Defenders Coalition
TLS	Tanganyika Law Society
TMAA	Tanzania Minerals Audit Agency
TPS	Tanzania Prisons Services
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPR	Universal Periodic Review
URT	United Republic of Tanzania
UTSS	Under the Same Sun
VAW	Violence against Women



Executive Summary

Introduction

LHRC and ZLSC have been jointly preparing the Tanzania Human Rights Report since 2006. Before this arrangement, LHRC was producing the report since 2002. Preparation of the report includes collaboration with different stakeholders such as the Government and its institutions, the media, academic institutions, CSOs, researchers and community members as well as LHRC and ZLSC partners.

The Tanzania Human Rights Report 2018 discusses the situation of human rights in Tanzania for the year 2018, analysing the situation of fundamental human rights in Tanzania. The report examines how these rights were enjoyed, protected, promoted or violated in 2018. This report has two parts. Part One depicts the situation of human rights in Mainland Tanzania whereas Part Two depicts the situation in Tanzania Zanzibar. Both parts have 10 chapters as follows: **Chapter One** of the Report provides a contextual overview of Tanzania. **Chapter Two** covers the situation of key civil rights, namely: Right to life, Freedom of Expression, Rights to Equality before the Law and Effective Remedy, Right to Liberty and Personal Security and Freedom from Torture and Inhuman or Degrading Treatment. **Chapter Three** is about the situation of key political rights, namely: Freedom of Assembly, Freedom of Association and Right to Take Part in Governance. **Chapter Four** examines the situation of economic rights, Right to Property and Right to Work, while **Chapter Five** covers social and cultural rights namely: Right to Education, Right to Health, Right to Water, Right to Adequate Standard of Living and Right to Culture. **Chapter Six** focuses on Right to Development and Right to Enjoy and Benefit from Natural Resources as key collective rights. **Chapter Seven** examines rights of special/vulnerable groups, namely: women, children, persons with disability, elderly and persons living with HIV/AIDS. **Chapter Eight** explores corruption and how it impacts human rights, while **Chapter Nine** reviews human rights mechanisms in Tanzania. Lastly, **Chapter Ten** covers other issues of human rights in 2018.



Methodology

In preparation of this report, the LHRC and ZLSC research teams employed a number of methods to collect data, both primary and secondary. Data was collected from various credible sources, including government institutions, bodies and ministries; CSOs; Judiciary; Parliament, the media and members of the public. The data used in preparation of this report was collected between January 2018 and March 2019. The report covers the period of January to December 2018, thus all collected information relate to incidents, developments or events of the year 2018.

Key Findings

I. Civil and Political Rights

Generally, the situation of civil and political rights slightly worsened in 2018 compared to 2017, owing to increased violations of/restrictions on freedom of expression, right to liberty and personal security, freedom from torture, freedom of association and right to take part in governance.

I.1. Right to Life

The situation of the right to life slightly improved in 2018, compared to 2017. This is due to reduced incidents of reported mob killings, extra-judicial killings, witchcraft-related killings and road accidents and resulting deaths. However, the rate of these incidents is still high and they continue to be a major threat to right to life. For the year 2018, other incidents/actions that threatened right to life included: violations of consumer rights through selling of counterfeit and substandard products; abductions and killings; acts of violence, including sexual and physical violence; killing of police officers in Kigoma; and non-realization of social and economic rights.

Mob violence: On average, 65 people were killed each month across Tanzania Mainland from January to June 2018 by angry mobs. These incidents are more prevalent in urban areas. A total of 385 mob killings were recorded by the Police Force in the first six months of 2018. LHRC documented four such incidents, reported from Mtwara, Geita, Tabora and Singida. Lack of faith in the justice system (police and judiciary) and due to corruption continued to be the major reason for resorting to mob violence. Poor knowledge about legal procedures also a contributing factor.



Extrajudicial Killings and Violence against Law Enforcement Officers: LHRC documented **5 incidents of alleged extrajudicial killings**, 4 less incidents than those documented in 2017. These incidents were reported in Dar es Salaam, Mara, Mbeya, Tanga and Tabora. These killings are caused by excessive use of force and torture by law enforcement officials. On the other hand, LHRC documented two incidents of violence against law enforcement officers, reported in Uvinza-Kigoma. In this incident, Inspector Ramadhani Mbini, and another police officer, were killed by civilians when conducting an operation to remove pastoralists in Mpetu Village, Uvinza District.

Witchcraft-related Killings and Violence against PWAs: 106 killings due to witchcraft suspicion were reported in the first half of 2018. LHRC documented incidents of witchcraft-related killings reported in regions such as Tabora, Geita, Morogoro, Songwe, Rukwa, Mwanza, Ruvuma and Shinyanga. LHRC was able to document one incident of attack against a PWA, which was in Singida. Action by the Government, the Commission for Human Rights (CHRAGG) and other stakeholders has contributed to improving the situation of PWAs. However, they continue to live in fear, especially at this period as we head to the general elections in 2020.

Death Penalty: In 2018, LHRC was able to document five death sentences, which are considerably less than those documented in 2017 (15). Currently, there are over 480 death row inmates, majority of them (over 90%) are male.

Road Accidents: Fewer road accidents and deaths (**2,220 accidents and 1,051 deaths**) reported in the first half of 2018, compared to the same period in 2017 (3,090 accidents and 1,308 deaths).

1.2. Freedom of Expression

In 2018, situation of freedom of expression continued to deteriorate, owing to continued restrictions, which have had a negative impact on civil society, human rights activists, opposition political parties, media and the community at large. These restrictions have been a major factor behind reduced civic space in Tanzania Mainland. Key issues affecting freedom of expression in 2018 were:



- Introduction of online content regulations, which are a threat to media freedom, freedom of opinion and right to information: Key concerns with the regulations include: vague and ambiguous definitions and prohibitions; requirement of internet café owners to install video cameras and record activities of internet users and keep recordings for at least a year; severe and uniform punishment for failure to comply with regulations; too much powers granted for the regulatory authority; requirements of registration, license and annual fees; obligation to moderate and filter content; some of the obligations of application services licensees; and some of the obligations of online content hosts.
- Harassment of and threats to journalists: LHRC documented at least four incidents of harassment of journalists, including foreign journalists from the Committee to Protect Journalists (CPJ) and beating of a journalist at a sports bonanza in Dar es Salaam.
- Amendments to the Statistics Act of 2015: Major concerns regarding the amendments include prohibiting dissemination of statistics that are considered to invalidate, distort or discredit official statistics by the National Bureau of Statistics (NBS), and publishing statistics without the approval of the bureau.
- Continued application of laws that contain provisions that arbitrarily restrict freedom of expression, such as Media Services Act of 2016 and Cyber Crimes Act of 2015.
- Employers restricting freedom of expression of employees: In 2018, LHRC received several complaints of employees in different sectors, both public and private, not being free to express their opinions deemed 'unconventional' by their employers, including what their post on their social media accounts that 'might reflect badly' on company, institution or organization.
- Working environment forcing journalists into self-censorship and sometimes kill stories: Existence and application of restrictive laws and harassment of journalists and media outlets, including through threats from unknown people, have created a difficult working environment for journalists, forcing them into self-censorship in the course of doing their job. A 2018 Twaweza study indicates that



majority of citizens (62%) feel that freedom of the media to criticize or report government mistakes has diminished.

- In January 2018, five media outlets were fined by the Tanzania Communications Regulatory Authority (TCRA) for airing content by LHRC about election of councilors in 43 wards that was deemed ‘offensive and unethical.’ The media outlets are Star TV, Azam Two, East Africa TV, Channel 10 and ITV.
- During the commemoration of the World Press Freedom Day in May 2018, several media stakeholders expressed concern over declining media freedom in Tanzania, contributed by restrictive laws and harassment from authorities, causing them to operate under fear of sanctions. Due to declining media freedom, Tanzania further dropped in the World Press Freedom Index of 2018.

In June 2018, the East African Court of Justice ruled that Tanzania must annul the publication ban placed on a local weekly newspaper, Mawio, banned in 2016. The Court stated that the Tanzanian Government failed to show sufficient justifiable grounds for the ban, and that the action was unlawful and constituted violation of the right of freedom of expression under the Constitution of Tanzania and regional and international human rights conventions ratified by Tanzania.

In 2018, the Kisumu Resident Magistrate Court acquitted the founder of Jamii Forums, Mxence Melo and shareholder, Micke William of charges relating to obstruction of police investigation under the Cyber Crimes Act of 2015.

1.3. Rights to Equality before the Law and Effective Remedy

In 2018, rights to equality before the law and effective remedy were boosted through action by government and non-government actors to improve access to justice and effective remedy. Action includes: amendment of the Appellate Jurisdiction Act; introduction of Legal Aid Regulations; employing technology to increase access to justice; hiring of judicial servants; implementation of Judiciary policy to reduce backlog of cases; introduction of mobile courts; and construction and renovation of court buildings. However, realization of these rights continues to be hampered by



several challenges, including: corruption in the justice system, violation of rights of accused persons, shortage of resources within the judiciary, and high costs of effective legal representation.

Access to justice continues to be faced with a number of challenges. These include limited access to legal aid, corruption within the justice system, inaccessibility of police stations and courts, high costs of effective legal representation, low awareness of relevant laws and procedures amongst community members, shortage of and uneven distribution of lawyers and advocates and prolonged detention of accused persons. Other factors include threats to lawyers seeking to represent clients, especially criminal suspects; interference with the independence of the Judiciary; Prolonged detention of accused persons and criminal suspects languishing in jail as remandees; existence of unethical lawyers, who take advantage of clients; English language problem for some lawyers and magistrates; shortage of judicial staff; corruption within the judiciary; and inadequate allowance for assessors in Primary Courts. According to the Chief Justice, Prof. Ibrahim Hamis Juma, there is a need of 24,643 judicial staff members, but currently there are only 6,096.

In 2018, rights to fair trial and effective remedy continued to be hampered by limited access to courts and delays in dispensation of justice. Recent estimates show that more than 20 million Tanzanians have no access to the High Court. According to the World Bank, delays and prolonged or unnecessary procedures cost Tanzania an estimated US\$464 million a year.

Corruption also continues to play a part in hindering full realization of the rights to fair trial and effective remedy, known to be more prevalent in lower courts, which are more accessible to majority of Tanzanians.

1.4. Right to Liberty and Personal Liberty

In 2018, the right to liberty and personal security was mainly affected by arbitrary arrests, including orders of arbitrary arrest and detention by regional and district commissioners; controversial/suspicious killings; and abductions.



Freedom from Arbitrary Arrest and Detention: Reported incidents of arbitrary arrest and detention documented by LHRC include arrest of a journalist in Dar es Salaam; and arbitrary arrest and detention of a university student-Abdul Nondo. In this year, there were also multiple complaints about police fabrication of cases against innocent civilians. Orders of arbitrary arrest and detention by regional and district commissioners were also an issue of key concern in 2018, with attracted media attention.

Right to Personal Security: Incidents of that threatened or violated right to personal security documented by LHRC include: the killing of a land rights activist, Godfrey Luena, in Morogoro; attack and killing of an opposition political party in Dar es Salaam; abduction of a business mogul in Dar es Salaam; and abduction of a university student. Another key issue is the growing trend of abductions and killings of *boboda* drivers in different parts of Tanzania Mainland. Incidences such as disappearances of politician Ben Saanane in 2016 and journalist Azory Gwanda in 2017 remained without answers in 2018, as did she shooting incident of Tundu Lissu (MP) in 2017.

Right to Bail: Although guaranteed under the Constitution of the United of Tanzania, right to bail, especially bail granted by police was found to be under threat in 2018. Some police officers were accused of extorting money from individuals under police custody or their relatives as a condition for release on bail. Because of this situation, in 2018 the Minister of Home Affairs issued a warning to police officers to refrain from corrupt behaviour and ordered that bail should be granted by police even during weekends.

1.5. Freedom from Torture

In 2018, incidents of torture documented by LHRC include: torture of a journalist at a sports bonanza in Dar es Salaam; torture of a local businessman in Bunju area in Dar es Salaam; beating of a journalist in Tarime-Mara; and torture of children by parents, teachers and guardians.

1.6. Freedom of Assembly

Freedom of assembly continued to be under severe pressure in 2018, particularly through ban of political assemblies for political parties, unless it



is by a Member of Parliament or other political leader within their respective constituency. Though it has no legal basis, several opposition political leaders were arrested in connection of with this; and requests for political rallies are usually denied.

1.7. Freedom of Association

Arbitrary restrictions on freedom of assembly had a severe impact on realization of freedom of association in 2018. As the African Commission on Human and Peoples' Rights held in the case of *the World Organization against Torture et al v. Zaire*, not permitting opposition parties to meet in public or private and harassing them, amounts to violation of their the right to freedom of association. Proposed amendments to the Political Parties in 2018 also further jeorpadized freedom of association for political parties.

A survey of by *Twaweza*, released in 2018 indicates low public awareness of smaller political parties. According to the survey, most citizens are aware of three major political parties in Tanzania, namely CCM (100%), Chadema (97%) and CUF (83%), while knowing little about other parties. The restrictions in the amendments on Political Parties Act will have more negative impact on these other/smaller parties.

Another key development relating to freedom of association in 2018 was introduction of the Non-Governmental Organizations (Amendments) Regulations, 2018, which contains some positive provisions such as ensuring financial transparency and accountability of NGOs and combating corruption and money laundering. However, the reporting requirements under the Regulations are burdensome and some provisions raise the question of practicability, while other are vague - leaving loopholes for misuse of power, hence harassment and arbitrary interference with the freedom of association.

1.8. Right to Take Part in Governance

Right to take part in governance or participate in the government includes the right to vote and be voted for and the right to participate in political life. Right to Vote and Be Voted for: In 2018, LHRC was able to observe and document a number of incidents which threatened the right to vote and be



voted for during by-elections in different parts of Tanzania. Violence erupted at some polling stations, leading to physical harm. There were also some complaints about irregularities, including denial of permits for agents.

Right to Participate in Political Life: **Arbitrary restrictions on participation rights**, namely: **freedom of expression, freedom of assembly and freedom of association**, greatly affected right to participate in political life in 2018, due they contributed to reduced civic space. Proposed amendments to the Political Parties Act further jeopardized the right to participate in political life in 2018. The Political Parties (Amendment) Act, 2018 contained several problematic provisions, including those essentially criminalizing political activities; granting too much powers to the Registrar; and regulation of political coalitions. A 2018 *Twaweza* study on citizens' views on politics in Tanzania shows that majority of Tanzanians are not confident in their representation by their Members of Parliament (MPs). According to study findings, fewer than half of all citizens approve of the performance of their MPs (44%) and councillors (45%) since coming to office.

2. Economic, Social and Cultural Rights

These rights are supposed to be realized progressively, depending on availability of resources. However, the pace of their realization continued to be slow, due to a number of challenges.

2.1. Right to Property

This right focuses on land, which is defined to include anything erected above it. While enjoyment of the right to property continued to be particularly a key issue of concern for women, the overall situation of this right was found to have improved in 2018. This is attested by several government action to address land-related problems, including land disputes; launch of the Land Management Programme; and strengthening of the security of tenure.

Affordability of land was also highlighted as key issue for majority of citizens, who are poor, owing to high land prices. Another key issue affecting right to acquire and use land in 2018 was corruption and land grabbing. In September 2018, during his visit in Bunda-Mara Region, Hon. President John P. Magufuli issued a warning against investors who grab land of citizens, instead of following relevant procedures for land acquisition for investment.



This followed complaints by Bunda residents about an investor who took their land without compensating them

2.2. Right to Work

Right to Work includes right to gain living by work and right to just and favourable working conditions. Right to gain living by work continued to be affected by the challenge of unemployment and lack of employability skills among university graduates. Other factors include inadequate wages; restrictions on freedom of association and collective bargaining; poor working environment; low awareness about labour laws, rights and duties. Teachers are among the groups mostly affected by these challenges. For women, sexual violence against them at workplaces re-emerged as a key issue in 2018. It was revealed that solicitation of sex bribe to secure employment or promotion continued to be a common practice in 2018.

Furthermore, right to work in 2018 was threatened by introduction of a new pension pay formula, providing for a 25% instead of the previous 75% lump sum pay for retirees; the burden of Pay as You Earn (PAYE) tax and loan board payments, which contributed to some workers within 58 Local Government Authorities receiving less than one third of their basic salaries; unpaid staff claims; inadequate staff appraisal; and delays in promotion; provision of salaries to ghost workers; shortage of staff, leaving burden to other staff to meet performance expectations; and violation of right to work of domestic workers.

2.3. Right to Education

Introduction of a fee-free education policy by the Government has helped to increase access to education (primary and secondary). However, this has created a problem of acute shortage of classrooms for pupils who have completed and passed primary education. Acute shortage of classrooms in this regard was reported in regions such as Shinyanga and Arusha. Other challenge affecting access and quality of education in 2018 were distance from home to school; lack of /shortage of dormitories; violence against children at school and on their way to and from school; insufficient budget; shortage of toilets and toilet holes; shortage of teachers and learning materials; child pregnancy; and child marriage.



2.4. Right to Health

A number of challenges continued to hinder **access to health services** in 2018, including distance to health facilities, especially in rural areas, and corruption. **Quality of health services** is compromised by a number of challenges, including insufficient budget, shortage of beds, harassment of and maltreatment of persons seeking health services, shortage of health workforce and shortage of medicines and medical supplies. Shortages of health facilities were reported in regions such as Kigoma, Mwanza (Ukerewe), Tanga (Muheza) and Shinyanga (Kahama). Access to health services is also hindered by lack of coverage of health insurance for the majority of citizens, as only 30% are covered. In 2018, the Minister responsible for health, Hon. Umyy Mwalimu, mentioned that the Government was planning to expand health insurance coverage to 50% of Tanzanians by 2020.

2.5. Right to Water

Right to water is a key socio-economic rights, that needs to be realized on a daily basis. In 2018, limited access to clean and safe water in some parts of Tanzania Mainland, especially in rural areas, greatly affected women and girls – who are usually forced to walk long distances to fetch water. When the women delay coming back from the water source they are usually accused of cheating by their spouses. For girls, lack of access to water affects them in various ways, including creating an uncomfortable learning environment at school. Challenges related to realization of right to water include budgetary constraints; shortage of experts in the water sector; inability of councils to effectively monitor water project funds; failure to complete water projects on time; non-payment of water bills by government institutions; decline in water resources; underinvestment in water projects by private sector; damage to water infrastructure and destruction of water sources; water leakages/loss; and poor management of water projects

2.6. Right to Adequate Standard of Living

Right to adequate standard of living includes the right to food and right to shelter/adequate housing. These rights are essential for realization of other human rights. Food security was generally not an issue of major concern in



2018. However, right to shelter/adequate housing continues to be a challenge for many Tanzanians, most of them living in houses which are dilapidated. For the people who faced the unfortunate fate of demolition of their houses in 2017, which caused public outcry, they continued to feel the impact in 2018, affecting their realization of the right to adequate standard of living.

2.7. Right to Culture

Right to culture is one of the fundamental human rights that is freely enjoyed in Tanzania; and 2018 was no different. Tanzanians, including ethnic minorities, were generally free to participate in cultural life and enjoy cultural products and identity. The Government continued to promote the Swahili language. People were also free to practice religion and embrace religious culture.

3. Collective Rights

3.1. Right to Development

This right includes participation in contribution to and enjoyment of economic, social, cultural and political development. Political development stalled in the year 2018, owing to arbitrary restrictions of participation rights, affecting peoples' participation in political development. Participation rights such as freedom of expression, freedom of assembly and freedom of association were negatively affected by government action and enactment of laws and adoption of regulations which infringe on these fundamental rights. participation rights such as freedom of expression, freedom of assembly and freedom of association were negatively affected by government action and enactment of laws and adoption of regulations which infringe on these fundamental rights.

Social development suggests realization of key social rights such as right to education, right to health, right to water and right to adequate standard of living. Social development suggests realization of key social rights such as right to education, right to health, right to water and right to adequate standard of living. Introduction of fee-free education policy by the government has definitely paid dividends as there has been increased enrolment in primary education and authorities in different parts of the



country are making efforts to vigorously implement the policy. However, increased enrolment has created a challenge of shortage of classrooms to accommodate pupils who pass the national examinations and ready to join secondary education. Revenue collection by the Government is key for the realization of social rights. The Government needs to enable it to provide basic social services such as food, water, clothing, shelter and healthcare for its people, especially the poorer section of the society. Tax avoidance and evasion in 2018 thus contributed to loss of revenue needed to ensure progressive realisation of social and economic rights.

Despite continued improvement in economic development, the main challenge for Tanzania remains translating such growth into poverty reduction in order to boost human development. Majority of the people still live under or slightly above USD 1 per day.

Counterfeit and substandard products also threatened right to development and other human rights in 2018, as well as consumer rights. A 2017 report on state of counterfeit goods in Tanzania by the Confederation of Tanzania Industries (CTI) indicates that counterfeit products contribute to tax revenue loss of about USD 4 million annually. Presence of these counterfeit and substandard products also causes loss of employment; ill-health; loss of consumer trust; loss of market share; and safety risks.

3.2. Right to Enjoy and Benefit from Natural Resources

Key factors which continued to affect realisation of the right to enjoy and benefit from natural resources in 2018 include: corruption within the mining sector; land grabbing; tax evasion; and lack of access to water resource in some areas.

4. Rights of Special/Vulnerable Groups

Special/vulnerable groups discussed in this report are women, children, persons with disability, elderly and persons living with HIV/AIDS.

4.1. Freedom from Violence

Children were the major victims of violence in 2018, followed by women.

Women



- In 2018, the Government continued to take several measures, in collaboration with non-government actor, to address the problem of violence against women (VAW), through implementation of the national Plan of Action to End Violence Against Women and Children 2017/18 – 2021/22. However, the situation of women's rights continued to be negatively affected by different forms of VAW, which are still prevalent in different parts of Tanzania Mainland.
- In the year 2018, LHRC documented various incidents of VAW, particularly in the forms of physical violence, economic violence and sexual violence, including beatings, rape, desertion/neglect, exploitation of labour and marital sodomy. More incidents of physical violence were reported in the media compared to the year 2017, including a husband stabbing to death his wife - was a lecturer at University of Dodoma; and a husband hitting his wife with hard object and killing her in Mkuranga-Pwani Region.
- Regarding sexual violence, police data indicate that 1,218 women reportedly raped from January to Jun 2018.
- Sexual violence was said to be among the major forms of VAW in half of the regions that were visited by LHRC, namely: Songea, Tabora, Mbeya, Singida and Kilimanjaro.
- In Kigoma, LHRC and Twaweza were able to document a series of incidents of rape and attempted rape of women in the region going as far back as 2017. These brutal acts are reportedly conducted by a group calling themselves TELEZA.
- One of the acts of sexual violence reportedly widely committed against women in 2018 was their spouses forcing them to engage in anal intercourse (marital sodomy).
- Sexual corruption was also identified as a major challenge for women in 2018, especially for young women seeking jobs. Reports of women being asked to sleep with prospective bosses in order to secure employment continue to be widespread, with some agreeing in order to be employed or promoted and others are discouraged and give up on employment altogether. In November 2018, a lecturer at the University of Dar es Salaam, Dr. Vincensia Shule, took to her Twitter account to expose sexual corruption at the



university, shortly after the visit of the President of Tanzania, Hon. Joseph Pombe Magufuli.

- In 2018, LHRC found economic VAW to a major problem in six out of the ten regions visited. These are Mbeya, Iringa, Shinyanga, Singida, Ruvuma and Kilimanjaro. In Ruvuma, economic violence was said to be more prevalent in Namtumbo.
- Reasons for violence against women include witchcraft beliefs, jealousy and revenge; payment of dowry; lack of legal awareness; drunkenness among men; poor educational background; and harmful traditional practices.

Another key development which affected women's rights, sexual and reproductive rights in particular, was the President's advice for women to abandon family planning and the Ministry of Health, Community Development, Gender, Elderly and Children in Tanzania announcing ban on airing of all family planning advertisements on radio and television pending further announcement.

Children

- For the year 2018, LHRC found children's freedom from violence to be the most violated human right, mainly caused by growing incidence of VAC.
- Incidents of violence against children increased from 4,728 incidents by mid-2017 to 6,376 incidents by mid-2018.
- Sexual violence against children, particularly in the forms of rape and sodomy, was a major human rights concern in 2018.
- Reported child rape incidents increased from 759 incidents in the first six months of 2017 to 2,365 from January to June 2018. Sexual violence was also mentioned as a one of the major violation of children's rights in all 20 districts of 10 regions that LHRC visited in 2018
- LHRC's media survey revealed that 91% of reported VAC incidents were of sexual violence, while 9% were physical and psychological violence.



- Child-on-child sexual abuse exists and is becoming a major problem, especially at schools. Reports of existence of such abuse were made in 7 out of 10 regions visited by LHRC.
- Main perpetrators of sexual violence were identified as neighbours and close relatives. *Bodaboda* drivers and teachers were mentioned among perpetrators and implicated in several acts of sexual violence against children in 2018.
- Reports of increased sex crimes against children were made in areas such as Mpwawa-Dodoma, Chunya-Mbeya, Misungwi-Mwanza, Hai-Kilimanjaro and Tarime-Mara.
- Factors contributing to VAC in Tanzania Mainland include: lack of proper care and parental guidance; lack of parenthood and child care knowledge amongst parents/guardians, leading to poor upbringing; household poverty, leaving children – especially girls – vulnerable to men who offer them money and food; witchcraft-beliefs; low awareness about child rights; family disintegration, whereby mother leaves father with children or father leaves and mother stays with children but children spend most of the time alone at home; drunkenness among men, and in some few cases women; tendency of parents preferring to settle VAC cases out of court ‘to conceal family shape.’ Other factors are: men abandoning their wives and children to marry other, usually younger, women; poor school environment and long distance to school, leaving children vulnerable, especially to *bodaboda* drivers; peer pressure, especially for the case of child-on-child sexual abuse; and parents/guardians not spending adequate time with their children.
- Sexual violence against girls and young women puts them at increased risk of HIV infection. This will hamper Tanzania’s efforts to achieve its 90-90-90 HIV infections reduction target and SDGs.
- Through media survey, LHRC was able to document 13 incidents of physical and psychological violence against children, but many more incidents were reported to the police and social or community welfare departments across Tanzania Mainland. One of the incidents which dominated the media was that of a 10-year-old child who was severely beaten by her teachers at school in Kilosa-Morogoro Region, such that she had to be admitted to Muhimbili Hospital in



Dar es Salaam. In another incident – which drew a lot of public attention in Tanzania - a standard five pupil at Kibeta Primary School Bukoba-Kagera, Sperious Eradius, was severely beaten to death by his teacher, Respicious Patrick (also known as Mtazangira), on 27th August 2018 at the school.

- Child marriage is still widespread and continues to be a major challenge for girls in Tanzania. LHRC was able to document reports of child marriage in Nkasi-Rukwa, Same-Kilimanjaro, and Serengeti-Mara. Drivers of child marriage include bride price, lack of secondary schools, parental force and female genital mutilation (FGM).
- In 2018, the Regional Commissioner of Tabora, Hon. Aggrey Mwanri, and his team made some commendable efforts to address violence against children and child marriage as well as promoting right to education for girls in the region.
- Child pregnancy was an issue of great concern in 2018. LHRC was able to document over 1000 cases of child pregnancy reported in less than 10 regions.
- High rate of child pregnancy incidents is an indicator of unprotected sex among girls. This puts them at increased risk of HIV infection and might hinder effective realization of achieving zero new infections among girls.

Elderly

- In 2018, violence continued to be a key issue affecting the elderly persons in Tanzania Mainland. Violence experienced by the elderly included physical violence in the form of witchcraft-related killings. As discussed in Chapter Two of this report, LHRC documented at least 3 incidents of killings of older persons on witchcraft suspicion. These are: the incident involving a 65-year-old man in **Kaliuwa - Tabora**; the incident involving a 77-year old man was brutally killed by six people, including his own children, in **Gairo-Morogoro**; and killing of a 70-year old woman in **Ileje-Songwe**.
- In his ministry's budget speech for the financial year 2018/2019, the former Minister of Home Affairs, Hon. Dr. Mwigulu Nchemba (MP) noted that from July 2017 to March 2018, a total of 117 older



people were killed in Tanzania Mainland (91 male, 26 female). Tabora leads with 25 killings, followed by Songwe with 12 and Kagera and Rukwa with 10 killings each.

4.2. Right to Equality and Non-Discrimination

- In 2018, LHRC probed into challenges faced by persons with disabilities which prevent them from fully realizing their right to equality and non-discrimination. Among the key challenges mentioned were: inadequate budget allocated to address issues affecting PWDs; income poverty; inaccessibility of buildings due to lack of ramps; lack of learning tools for PWD children at schools (education not inclusive enough); lack of employment opportunities; and social stigma.

Key Recommendations

Civil and Political Rights

State actors

- ⇒ Given President Magufuli's stance on death penalty execution, which is further proof of Tanzania's state of moratorium, the Government should move to declare the state of moratorium. The Law Reform Commission and the Parliamentary Committee on Constitutional and Legal Affairs should push for legal reforms to outlaw death penalty.
- ⇒ Commission for Human Rights and Good Governance (CHRAGG) and the Police Force to ensure police officers at all levels are regularly trained on the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials and human rights in general, in an effort to address extrajudicial killings.
- ⇒ The Judiciary and the Prevention and Combating of Corruption Bureau (PCCB) to closely work together to address corruption within the justice system in order to restore public faith in the system and reduce incidents of mob violence. Addressing judicial corruption will also contribute to safeguarding access to justice.
- ⇒ The Government, through the Ministry of Constitutional and Legal Affairs, should move table amendments of laws that impose arbitrary restrictions on participation rights, especially freedoms of



expression, association and assembly. These laws include Media Services Act of 2016, Cyber Crimes Act of 2015 and Statistics Act of 2015.

- ⇒ The Ministry of Information, Culture, Arts and Sports should review the Online Content Regulations to remove or amend provisions that do not conform to international standards of freedom of expression.
- ⇒ Regional and District authorities should refrain from misusing their powers of arrest and detention under the Regional Administration Act of 1997.
- ⇒ The Police Force should ensure its officers refrain from fabricating cases, conducting arbitrary arrests and arbitrarily detaining suspected criminals instead of sending them to court within a specified period of time (usually 24 hours) as required by the law, in order to uphold the right to liberty. Police officers implicated in this behaviour should be held accountable.
- ⇒ The Government should move to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in order to safeguard freedom from torture.
- ⇒ Government actors and police authorities to refrain from arbitrarily interfering with freedoms of assembly and association;
- ⇒ The Government should sign and ratify the African Charter on Democracy and Good Governance of 2007 in order to strengthen participation in democratic practices and processes;
- ⇒ The Officer of the Registrar of Political Parties should move to amend the proposed amendments to the Political Parties Act of 1992, by addressing problematic provisions identified by stakeholders and considering the recommendations given;
- ⇒ There is need to have in place an independent police oversight body to investigate police misconduct and ensure police officers who do not abide by the law are held accountable.

Non-state actors

- ⇒ CSOs to intensify and enhance collective effort to raise public awareness on legal procedures and civil and political human rights, as



well as encouraging community members to obey the law and respect human rights of others in order to preserve right to life.

- ⇒ CSOs to collaborate with CHRAGG to provide regular human rights trainings to judges, magistrates and other legal professionals in order to enhance their knowledge and understanding of human rights as a way of safeguarding right to equality before the law and ensuring access to justice.

Members of the public

- ⇒ To refrain from taking the law into their own hands and seek remedies at higher levels of the justice system where they are not happy with the outcome of a case.
- ⇒ Members of the public are also encouraged to report violations of their civil and political rights to the Commission for Human Rights and Good Governance, which is the national human rights institution mandated with protection and promotion of human rights;

Economic, Social and Cultural Rights

State actors

- ⇒ The Ministry of Lands, Housing and Human Settlements Development, should intensify efforts to address land-related conflicts and disputes and devise long-term solutions to this problem, in order to ensure realization of the right to own property. Land management programmes should be properly and cautiously implemented to guarantee long-term solutions.
- ⇒ The Prime Minister's Office Labour, Employment, Youth and People with Disability should ensure the Wage Order is regularly reviewed, in accordance with the law, to ensure realization of the right to work and promote adequate wages.
- ⇒ The Government, through the Ministry of Lands, Housing and Human Settlements Development and the Ministry of Water and Irrigation, should increase investment in irrigation in order to boost the right to work and economic boost.
- ⇒ The Prime Minister's Office Labour, Employment, Youth and People with Disability should strengthen mechanisms for protection of labour rights and enhance regular inspection of workplaces to



ensure rights are respected, protected and promoted, including favourable working environment.

- ⇒ The Ministry of Education, Science and Technology to work with the Prime Minister's Office Labour, Employment, Youth and People with Disability to address the problem of lack of employability skills among majority of university graduates.
- ⇒ Local Government Authorities (LGAs), President's Office - Regional Administration and Local Government (PO-RALG) and President Office Public Service Management (PO PSM) in collaboration with Treasury to ensure that funds for settling staff claims are released without further delays to avoid accumulation of debts; and ensure no new staff debts are created without having funds.
- ⇒ Government to implement CAG recommendation of Managements of local government authorities (LGAs) to liaise with President's Office - Regional Administration and Local Government (PO-RALG) to speed up promotions of eligible officers and their salaries adjusted soon after being promoted.
- ⇒ Government to implement CAG recommendation of management of LGAs to ensure that all the retired, absconded, transferred and dismissed employees are timely and effectively removed from payroll; and taking stringent measures should be taken to ensure total recovery of TZS 207,375,726 used to pay nonexistent employees.
- ⇒ The Government, through the Ministry of Education and Vocational Training, to address key challenges affecting the education sector, such as poor working environment for teachers and shortage of facilities and learning materials. The Ministry should strive to ensure teacher houses are built and teachers are fairly and timely remunerated.
- ⇒ The Government, through the Ministry of Constitution and Legal Affairs, should move to make corporate social responsibility (CSR) a legal requirement for all sectors, following the amendments to the Mining Act, which saw CSR mandatory for companies in the mining sector.
- ⇒ Regarding pregnant girls, LHRC continues to urge the Government to reconsider its stance in order to protect right to education for



girls in line with the Constitution of the United Republic of Tanzania of 1977 and regional and international conventions.

- ⇒ LHRC calls upon the Ministry of Education and Vocational Training to improve access to education for children with disabilities by ensuring availability of relevant infrastructure, teachers and learning tools.
- ⇒ The Government, through the Ministry of Finance and Planning, to increase budgetary allocations for health, education and water sectors in order to improve the access and quality of health, education and water services.
- ⇒ The Government, through the Ministry of Finance and Planning, to increase budgetary allocation for the sector of agriculture and increase investment in irrigation farming in order to boost food production and improve accessibility.
- ⇒ The Ministry of Lands, Housing and Human Settlements Development to ensure increased access to adequate but affordable housing in line with the Development Vision 2025 and the Sustainable Development Goals.
- ⇒ The Ministry of Water and Irrigation, should enhance efforts to address the problem of water leakages, which lead to water loss, and costs water authorities billions of money.

Non-state actors

- ⇒ The private sector should collaborate with the Government to invest in water projects in order to increase access to water services. This could also be done as part of corporate social responsibility.
- ⇒ The private sector and CSOs should support the Government to address key challenges in its health, education and water sector, such as shortage of health and educational facilities. This includes construction or maintenance of relevant buildings and infrastructure, such as toilets/toilet holes and classrooms.
- ⇒ CSOs should assist the Government in devising strategies on the best ways to address some key challenges in the education, health, water and housing sectors.



- ⇒ CSOs should collaborate with the Prime Minister's Office Labour, Employment, Youth and People with Disability to raise awareness about labour laws, rights and duties as well as economic rights.
- ⇒ Investors, both foreign and local, should follow relevant procedures to acquire land in Tanzania, comply with laws and respect human rights of the people where they operate.

Members of the public

- ⇒ Members of the public are encouraged to seek knowledge and access information about their economic rights, including right to work and right to own property, including popular versions on laws relating to these rights prepared by government and no-government actors.
- ⇒ Members of the public are also encouraged to report violations of their economic rights to relevant authorities, including trade unions and the Commission on Human Rights and Good Governance.
- ⇒ Members of the public have a duty to protect infrastructure and refrain from the habit of damaging them, especially water infrastructure. They also have a duty to report incidents of damage to the infrastructure.

Rights of Vulnerable Groups

State actors

- ⇒ The Government to spearhead enactment of a specific and comprehensive law on gender-based violence as the current legislations do not adequately address gender-based violence issues;
- ⇒ Regional and district authorities should work closely with the Police Force to address the problem of violence against women and children in their respective regions and districts.
- ⇒ The Government, through the Ministry of Constitution and Legal Affairs and the Law Reform Commission, to review, amend and repeal all discriminatory laws which continue to deprive women of their rights and which are contrary to fundamental principles of human rights as provided for in various regional and international conventions ratified by Tanzania.



- ⇒ The Government to improve gender parity and promote gender equality in leadership and decision-making positions in order to increase female representation.
- ⇒ The Government to fulfill its obligation under the regional and international children rights treaties to end child marriage and confirm the age of 18 as the minimum age for marriage, through a legislative action to amend the Law of Marriage Act 1971.
- ⇒ The Police Force and Judiciary to increase the pace of investigation and prosecution of cases of violence against children in order to achieve justice for children.
- ⇒ The Ministry responsible for Policy Coordination, Parliamentary Affairs, Employment and Persons with Physical Disabilities should ensure increased jobs and employment opportunities for PWDs;
- ⇒ The Government, through the Ministry of Home Affairs, should enhance protection of 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 Government, through the Ministry of Health, Community Development, Gender, Elderly and Children, should move to implement the Convention on the Rights of the Child in line with the General Comment No. 21 on Children in Street Situations, prepared by the UN Committee on the Rights of the Child, in order to safeguard rights of street children.

Non-state actors

- ⇒ CSOs should collaborate with the Government to ensure effective implementation of the Convention on the Rights of the Child in order to safeguard rights of all children, including street children and children with disabilities.
- ⇒ CSOs to continue raising awareness on the rights of the elderly and conduct campaigns on ending violence and discrimination against the elderly.



Members of the public

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



Chapter I: Contextual Overview

I.1. Historical Overview

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

The German colonial rule, which blatantly disregarded human rights of the natives, was met with stiff resistance, leading to uprisings, most notably from the chiefdoms under Chief Mirambo of the Nyamwezi Tribe, Chief Mkwawa of the Hehe, Mangi Meli of the Chagga and Abushiri of Pangani. In 1905, the German colonial administration faced another uprising, popularly known as the *Majimaji* Uprising, led by a traditional and spiritual leader called Kinjekitile Ngwale. The uprising involved different tribes in southern and eastern Tanganyika. It was believed that Kinjekitile Ngwale could turn bullets into water, hence the phrase “Majimaji Uprising” (*maji* is a Swahili word meaning water). The British did not fare much better in terms of protection and respect of human rights of the natives, hence the struggle for independence began, seeking to realize the right to self-determination.

Struggle for independence was led by the Tanganyika African National Union (TANU) party, born in 1954; and formerly known as Tanganyika African Association (TAA), established in 1929. The struggle intensified in



1950s and during this time there were other parties, such as the United Tanganyika Party (UTP) and the African National Congress (ANC). TANU's Julius Kambarage Nyerere, who became the father of the nation, peacefully led Tanganyika to independence in 1961, with Nyerere as its first Prime Minister and the Independence Constitution adopted as first constitution. The Governor General was still representing the Queen of England as Head of State until 1962 when Tanganyika became a republic and Nyerere its first president. The second constitution, the Republican Constitution, was adopted, making the President the head of state, head of government, commander in chief of the army and part of parliament, without whose assent a bill could not become law. In 1964, Tanganyika merged with the neighbouring Zanzibar to form Tanzania. Zanzibar had gained its independence from Britain in 1963 and overthrown the Sultan of Zanzibar (from Oman) in January 1964. The third constitution, the Union Constitution, was born, establishing a two-government union led by TANU in Tanzania Mainland (Tanganyika) and Afro-Shirazi Party (ASP) in Zanzibar. In 1965, the Interim Constitution was adopted, bringing an end to multipartism and declaring TANU as the sole political party in Tanzania Mainland and ASP for Zanzibar. The Constitution was enacted by an ordinary Act of Parliament, contrary to principles of constitutionalism and people participation. In 1977, TANU and ASP merged to form Chama cha Mapinduzi (CCM), which proposed and enacted the Permanent Constitution, which we still use to date, the Constitution of the United Republic of Tanzania 1977. Tanzania remained a one-party state until 1992 when multi-party political system was re-introduced through constitutional amendments.

Like many African States, post-colonial Tanzania did not prioritize human rights, seeing them as 'delaying' economic development. Process of economic development was considered to be one that did not necessarily promote or respect human rights. But the constitutional amendments of 1984, which saw incorporation of the Bill of Human Rights into the Constitution of Tanzania, gave a new hope of human right-based approach to development and increased protection of human rights in Tanzania. This was a remarkable achievement, a long struggle demanding for its inclusion.



1.2. Geography and Population

Tanzania is located in Eastern part of Africa between longitudes 29^o and 41^o East, and Latitude 1^o and 12^o South.¹ 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). It is also blessed with availability of beautiful national parks and game reserves that are the most tourists' attractions. Plenty of animals and different types of birds are said to be found in the parks.

Tanzania has more than 15 national parks, including Ruaha National Park, Serengeti National Park, Katavi National Park, Mikumi National Park, Saadani National Park and Lake Manyara National Park. It is also blessed with several natural water sources. On the Western part there is 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.² In 2016, Tanzania entered into agreement with Uganda to construct an oil pipeline which will run from Uganda to the Tanga Port.³ 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

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

² These countries include Uganda, Rwanda, Burundi, DRC, Zambia and Malawi.

³ See <http://af.reuters.com/article/investingNews/idAFKBNI360KP>, accessed on 11th November, 2016.



line which will connect the landlocked neighbouring countries of Uganda, Rwanda, Burundi and the Democratic Republic of Congo.⁴

Tanzania has a tropical climatic condition with the highland temperatures ranging between 10^oC to 20^oC during the cold and hot seasons respectively. The temperature around the rest of the country does not fall below 20^oC. 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^oC.

Rainfall distribution is divided into unimodal and bimodal areas.⁵ The unimodal areas experience rainfall once per year whereas the bimodal areas experience rainfall two times a year.⁶ 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 early June.⁷ Unimodal regions experience heavy rainfall around November to April. Therefore, due to availability of sufficient rainfall, food security and availability have been satisfactory in recent years. Food crops produced in Tanzania are sold to the neighbouring countries as the internal market cannot absorb all available food crops.

The country's climatic condition further attracts generation of alternative energy such as solar energy and wind energy. There is reliable sunshine and speed wind that can generate energy throughout the year. For instance, wind resource is encouraging energy generation throughout the Rift Valley,

⁴ See <http://www.tanzaniainvest.com/transport/central-corridor-railway-construction>, accessed on 20th January, 2017.

⁵ See www.meteo.go.tz, accessed on 10th December, 2017.

⁶ 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).

⁷ Ibid.



in the highland plains and along the coast of the Indian Ocean.⁸ 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.⁹

The Population of the country is rapidly growing, at the rate of 2.7 per annum. Estimation of the population according to the National Population and Housing Census of 2012 is 43,625,354 in Mainland Tanzania and 1,303,569 in Zanzibar, whereupon women making the majority at 51.3% and male at 48.7%.¹⁰ In 2016 the population projection was at a total of 50,144,175, with 24,412,889 males and 25,731,286 females.¹¹ Majority of the country's population resides in rural areas, where the number of households found is high compared to urban areas. The number of households in rural areas is 6,192,303, which is equivalent to 66.6 percent of the total number of households, and that in urban areas is 3,098,792 households, which is only 33.4 percent. The average household is occupied by 4.7 persons.

There are estimated 662,287 non-citizens living and working in Tanzania.¹² The number has grown as a result of an increased foreign direct

⁸ German Federal Ministry of Economics and Technology (2009), *Target Market Analysis: Tanzania's Wind Energy Market*, p. 1, available at <http://docslide.us/documents/gtz2010-en-target-market-analysis-wind-tanzania.html>, accessed on 1st December 2015.

⁹ United Republic of Tanzania, *The National Natural Gas Policy of Tanzania 2013*, p. 2.

¹⁰ URT 2012, the National Population and Housing Census.

¹¹ See National Bureau of Statistics (NBS), *Sub-Divisional Population Projection for Year 2016 and 2017 based on 2012 Population and Housing Census*, available at http://www.nbs.go.tz/nbs/takwimu/census2012/Tanzania_Total_Population_by_District-Regions-2016_2017r.pdf, accessed 18th December 2017.

¹² Ibid.



investments and corporations. On the other hand, the number of Tanzanians living and working abroad (Diaspora) is estimated at 421,456.¹³

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

1.3. Economic Situation

The Gross Domestic Product (GDP) in Tanzania has expanded to 6.80% in the third quarter of 2018 over the same quarter of the previous year. Annually, GDP annual growth rate in Tanzania is averaged at 6.76% from 2012 up to 2018, reaching an all-time high of 11.90% within the first quarter of 2007 and has recorded a low percentage of 2.60 in the third quarter of 2009.¹⁴ Services sector account for 40% of GDP, while primary sector accounts for 30% of GDP.

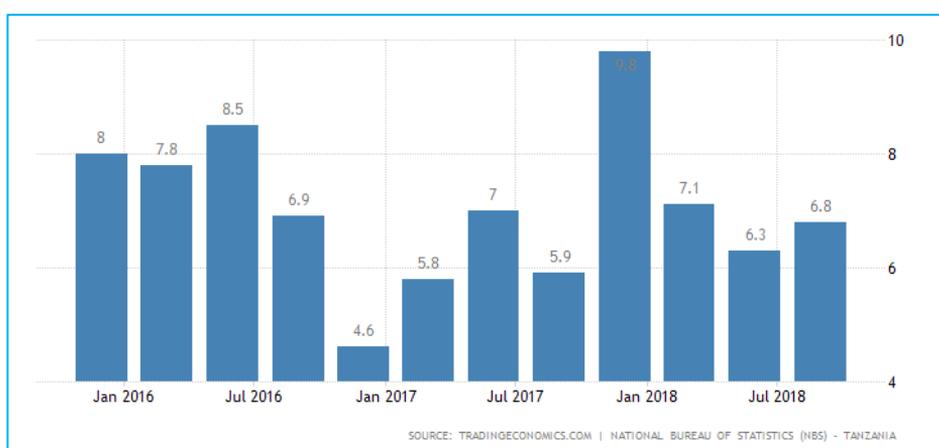


Figure 1: GDG annual growth rate

¹³ Ibid.

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



Economic growth in Tanzania is affected by both internal and external factors. Internal factors include inadequate funds; land ownership conflicts; inadequate participation of the private sector; high rate of population growth; environmental degradation and climate change. External factors that were mentioned to be the reason behind deterioration of the economy and the GDP included regional and global economic and political shocks; natural calamities and spatial politics that can breed wars and conflicts.¹⁵

1.4. Political and Governance Systems

Political Background

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

Governance System

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

The Executive

The Executive arm of the state is composed of the President, who is the Head of State, Head of Government and the Commander in Chief of the Armed Forces and the cabinet.¹⁶ The Government of the United Republic of Tanzania is in charge of all union matters and all matters of Tanzania Mainland.¹⁷ 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.

¹⁵ Refer Samuel Kamndaya, The Citizen: Eight Major Risks To Tanzania's Economic Growth In 2018/19 available at <https://www.thecitizen.co.tz/News/1840340-4612022-10008rz/index.html> accessed on 13th March 2019

¹⁶ Article 33 of the Constitution of the United Republic of Tanzania 1977.

¹⁷ Ibid, Article 34.



The Legislature

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

The Parliament is vested with legislative powers in relation to all Union Matters and 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.¹⁸

The majority of MPs are elected members from their constituencies.¹⁹ Other members are of the special seat category, appointed by political parties depending on basis of proportion of votes won on Parliamentary election.²⁰ The President also has power to appoint 10 members of his choice, while five members come from elected members of the House of Representative.²¹ The Attorney General of Tanzania is a Member of Parliament by virtue of his/her office.²² 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

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

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

²⁰ Ibid, Article 68 (1) (b).

²¹ Ibid, Article 68(1) (c).

²² Ibid. Article 68(1) (d).



the power of the entire Union.²³ 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.

The Judiciary

The Judiciary is a constitutional organ and an arm of the State. The Judiciary is the authority with final decision in dispensation of justice in the United Republic of Tanzania.²⁴ Tanzania's legal system is based on English common law, whereby judicial functions are administered by various courts established in accordance with the law.²⁵ 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.²⁶ Magistrates are appointed directly by the Commission.²⁷ The High Court of Tanzania has divisions dealing with land, labour and commercial matters. In 2016, the Economic and Organised Crime Control Act of 1984 was amended to establish the Economic, Corruption and Organised Crime Court (*Mahakama ya Mafisadi*).²⁸

²³ The House of Representatives is established under Section 63 and 64 of the Constitution of Zanzibar of 1984. It consists of: elected members from the Constituents; nominated members by the President of Zanzibar, female members (special seats 30% of all elected members) appointed by political parties and represented in the House of Representatives, Regional Commissioners; and the Attorney General of Zanzibar. The matters that are considered to be union matters are set out in the Constitution of the United Republic of Tanzania, 1977 at the 1st Schedule.

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

²⁵ See Articles 108, 114 and 117 of the Constitution of the United Republic of Tanzania of 1977; provisions of the *Magistrates Court Act*, Cap 11, [R.E. 2002].

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

²⁷ *Ibid*, Article 113(1).

²⁸ Section 3 of the Economic and Organized Crimes Act.



Tanzania also has a court martial process (military tribunal) meant to deal with cases related to armed forces personnel.²⁹ 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.³⁰ 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.³¹

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.³² The High Court of Zanzibar is the highest court for matters originating from *Kadhi* Courts and the interpretation of the Constitution of Zanzibar. However, the appeal process for a case originating from a magistrate court is slightly different, as some of the cases may be appealed to the High Court of Zanzibar and then appealed again to the Court of Appeal of Tanzania.

²⁹ Court Martial, including general court martial, disciplinary court martial and standing court martial, are governed by the provisions of the *National Defence Act, Cap. 192, [R.E. 2002]*.

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

³¹ Labour Institutions Act 2004 provides for establishment of institutions to adjudicate labour disputes in Tanzania. The Tax Revenue Appeals Act, Cap 408 of [R.E 2006] provides for establishment of Tax Revenue Appeals Board and the Tax Revenue Tribunal to adjudicate tax issues. Land matters are adjudicated by tribunals established under the Court (Land Disputes Settlements) Act, 2002.

³² There are 22 union matters. The Court of Appeal is one of the union matters listed in the First Schedule of the Constitution of Tanzania 1977. Other union matters include foreign affairs, security, police, citizenship, immigration, foreign trade, higher education, aviation and statistics.



Chapter 2: Civil Rights

Introduction

Civil rights belong to the first generation of human rights, which is civil and political rights, as documented in the International Covenant on Civil and Political Rights (ICCPR) of 1966. Other than the ICCPR, these rights originated from the Universal Declaration of Human Rights (UDHR) of 1948; and are guaranteed at continental and regional levels under the African Charter on Human and Peoples' Rights (ACHPR) of 1981, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (popularly known as the Maputo Protocol) of 2003, the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990 and SADC Protocol on Gender and Development of 2008. At domestic level, civil rights are provided for in the Constitution of the United Republic of Tanzania since 1984, following incorporation of the bill of rights into the constitution. These rights constitute the most fundamental human rights. This chapter focuses on six key civil rights, namely: Right to Life; Freedom of Expression; Rights to Equality before the Law and Effective Remedy; Right to Liberty and Personal Security; and Freedom from Torture.

2.1. Right to Life

Right to life is fundamental for enjoyment of other human rights, which is why it is the most important human right and guaranteed and protected in all major human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) of 1966, Convention on the Rights of Persons with Disabilities (CRPD) of 2006, Convention on the Rights of the Child (CRC) of 1989, the African Charter on Human and Peoples' Rights (ACHPR) of 1981, the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of

Every person has the right to live and to the protection of his life by the society in accordance with the law.

**Article 14 of Tanzania
Constitution of 1977**



2003, and SADC Protocol on Gender and Development of 2008.³³ This right is also contained in the Universal Declaration of Human Rights (UDHR) of 1948.³⁴ Domestically, right to life is also guaranteed and protected under the Constitution of the United Republic of Tanzania of 1977.

In 2018, the overall situation of right to life slightly improved compared to that of 2017. This report focuses on mob violence, extrajudicial killings, violence against law enforcement officers, witchcraft-related killings, violence against PWAs, death penalty and road accidents as key issues affecting right to life in 2018.

However, being the most fundamental human right, violations of other rights usually also threaten right to life, given the interrelation and indivisible nature of human rights. For the year 2018, other incidents/actions that threatened right to life included: violations of consumer rights through selling of counterfeit and substandard products; abductions and killings; acts of violence, including sexual and physical violence; killing of police officers in Kigoma; and non-realization of social and economic rights.

2.1.1. Mob Violence

Mob violence continued to be an issue of human rights concern, as the rate of mob violence is still high. For instance, an average of 65 people was killed each month across Tanzania Mainland due to mob violence in the period of January to June 2018. Incidents of mob violence are more prevalent in urban areas. The figure below shows the number of reported incidents of mob violence recorded by the police from 2014 to 2018.

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

³⁴ Article 3 of UDHR.



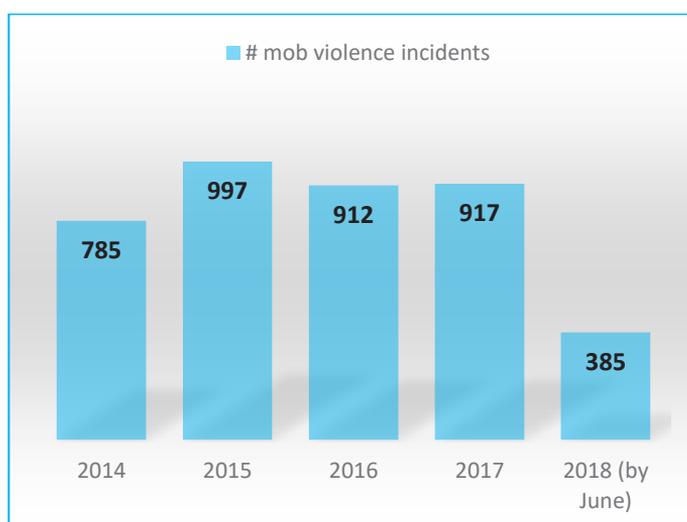


Figure 2: # Mob violence killings, 2014-2018

Source: Tanzania Police Force Data

The table below shows some of the incidents of killings resulting from mob violence recorded by LHRC for the period of January to December 2018.

Table 1: Incidents of mob violence recorded by LHRC from January to December 2018

Description	Source	Date
Mtwara: A man in Lipwindi Village was killed and torched by an angry mob after attacking and killing a child of a woman who had refused his sexual advances.	<i>Nipashe</i> Newspaper	8 Feb 2018
Geita: A man known by the name Eric, resident of Buhulahula Village, was attacked and killed by an angry mob, accusing him of breaking into a shop and stealing Tshs. 20,000.	LHRC Human Rights Monitoring Unit	12 Mar 2018
Tabora: Three people were held by police in December 2018 for their alleged involvement in killing of one person by angry mob, after he had broken into a teacher's house.	<i>Mwananchi</i> Newspaper	29 Dec 2018
Ikungi, Singida: A man, Joseph Wilbrod, was killed by an angry mob of neighbours in Kinku Village after stabbing his wife to death.	LHRC Human Rights Monitoring Unit	25 Aug 2018





Picture 1: A lifeless-body of Eric, who was attacked and killed by an angry mob in Buhulahula Village in Geita Region in June 2018

It is LHRC's view that mob violence is mainly caused by lack of faith in the justice system, which is still significantly tainted by corruption. In some cases, however, ignorance of the law fuels mob violence – especially when a populace is not aware of legal procedures such as bail. During an interview with LHRC, the Regional Administrative Secretary of Dodoma CC, Mr. Kessy Maduka, mentioned that delays in the justice system also make people lose faith and decide to take matters into their own hands. He added that police play their part in encouraging mob violence; and that in some cases fellow criminals participate in killing one of their own so that they do not expose them.

2.1.2. Extrajudicial Killings and Violence against Law Enforcement Officers

Tanzania is obligated under regional, continental and international human rights treaties to safeguard the lives of its citizens as well as foreigners, doing so through its law enforcement and security officials. The United Nations Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the

extent required for the performance of their duty.³⁵ In other words, use of force must be proportionate to the objective intended and use of firearms should be limited to when a suspect is armed and there is possibility of the lives of others being in jeopardy. When law enforcement officials do not observe this principle of proportionality and people die, they commit extrajudicial killings.

In 2018, LHRC was able to record five incidents of extrajudicial killings. These include the death of a university student, Akwilina Akwilini, in Dar es Salaam, purported to be extrajudicial killing. The former student of the National Institute of Transport (NIT) was shot while in public transport after police fired at members/protestors of the major opposition party, CHADEMA, in an effort to disperse them. The Police Force, however, insisted that the police officers acted in self-defense because the protestors were throwing stones, although it was later reported that six police officers were investigated over the incident.

Table 2: Reported incidents of extrajudicial killings

Description	Source	Date
Mara: Suguta Chacha (27), was reportedly killed while under police custody in Mara Region. The incident took place in April 2018; and it was reported that the victim was stabbed with a knife by a police officer identified as William Marwa.	LHRC Human Rights Monitoring Unit	28 April 2018
Mbeya: A fruit vendor, Allen Mapunda (20), reportedly died a few hours after he was released from police custody. The family members accused the police of torturing him, leading to his death, but the Regional Police Commander insisted he was not killed. The Regional Commissioner ordered the RPC to	LHRC Human Rights Monitoring Unit	19 April 2018

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



<p>investigate the matter and bring him the report. There were also calls for prompt investigation in Parliament, with the Nzega Constituency MP (CCM), Hon. Hussein Bashe, calling for the Prime Minister's Office to form an independent inquiry body to investigate such incidents.</p>		
<p>Korogwe, Tanga: In April 2018, Tanzania Prisons Services (TPS) announced that it had suspended 11 prison officers who were accused of killing a resident of Kirengo Village, Aloyce Makalla (41). The prison officers reportedly went to the late Aloyce's house and accused him of injuring their fellow officer before attacking and killing him in January 2018.</p>	<p>LHRC Human Rights Monitoring</p>	<p>28 April 2018</p>
<p>Igunga, Tabora: Jumapili Juma, a father of Selemani Jumapili (22), accused nine police officers of beating his son and causing his death after they had arrested him for allegedly opening business before the required time. He made the accusations during the burial ceremony, which was attended by the Tabora Regional Commissioner.</p>	<p>HABARILEO Newspaper</p>	<p>3 Sep 2018</p>





Picture 2: Suguta Chacha (left), who was reportedly killed while under police custody in Mara Region; and Allen Mapunda (right) who reportedly died a few hours after being released from police custody

In February 2018, the Deputy Minister of Home Affairs mentioned, when asked in Parliament, that 105 police officers had faced disciplinary action, including termination, for different reasons, including taking the law into their own hands by torturing/beating suspects while in custody. LHRC commends action taken to ensure law enforcement officials who commit extra-judicial killings are held accountable in accordance with the law.

Nevertheless, LHRC is very concerned with these incidents, which indicate excessive use of force by police officers while apprehending criminal suspects. Law enforcement officers are expected to be models for other members of the public in abiding by the law, not being the first to break them. Tanzania has an obligation to ensure that people who are under police custody are not subjected to torture or inhuman or degrading treatment.

On the other hand, law enforcement officers are known to have experienced violence in the past five years, sometimes resulting into death, over the past few years, including the 2017 killings in Kibiti-Pwani Region. For the year 2018, LHRC was able to document one incident of violence against law enforcement officers, reported in Uvinza District, Kigoma Region. In this incident, Inspector Ramadhani Mbini, and another police officer, were killed by civilians when conducting an operation to remove

pastoralists in Mpeta Village, Uvinza District.³⁶ This incident was met with wide condemnation, including by LHRC, calling for greater protection of law enforcement officials when conducting dangerous operations.

2.1.3. Witchcraft-related Killings and Violence against PWAs

Witchcraft-related killings are killings motivated by beliefs in witchcraft. Such killings continued to be among major threat to right to life in the year 2018, although statistics show a slight decrease in reported incidents. 106 incidents were reported in the first half of 2018.³⁷



Figure 3: # Witchcraft-related killings in Tanzania Mainland, 2014-2018

Source: Police data, 2014-2018

LHRC was able to document incidents of witchcraft-related killings reported in regions such as Tabora, Geita, Morogoro, Songwe, Rukwa, Mwanza, Ruvuma and Shinyanga. The table below shows the incidents of witchcraft-related killings recorded by LHRC in the period of January to December 2018.

Table 3: Reported incidents of witchcraft-related killings documented by LHRC

Description	Source	Date
Kaliuwa, Tabora: Ndilu Mbogashi (65),	HabariLeo	23 Mar 2018

³⁶ See *HABARILEO* Newspaper, 23rd October 2018.

³⁷ LHRC could not obtain the Police Force the number of incidents by December 2018.



resident of Taba Village in Kaliuwa District, was reportedly killed by an angry mob over witchcraft-suspicion in March 2018. It was reported that a woman, Amina Lufungulu (49), who was sick went to a witch-doctor – who pointed a finger at the late Ndilu Mbogashi.	Newspaper	
Nyangw'ale, Geita: A woman in Bukulu Village in Nyangw'ale District was reported to have strangled to death her 6-year-old son, claiming he disguised himself as an old woman during prayers.	Mwananchi Newspaper	18 Feb 2018
Gairo, Morogoro: A 77-year old man was brutally killed by six people, including his 3 children, who accused him of bewitching their mother and causing her to be sick and paralyze.	HABARILEO Newspaper	17 Oct 2018
Shinyanga: A man named Fikiri Charles (30), resident of Mwadui-Kahama, reportedly confessed to killing 6 women, stating that he inherited the 'business of killing women' from his late father, inspired by witchcraft beliefs; and that he is usually paid Tshs. 700,000 or 800,000 for each kill.	Nipashe Newspaper	13 Oct 2018
Kishapu-Shinyanga: Two older persons were reportedly killed in Itilima Village on witchcraft suspicion.	Nipashe Newspaper	3 Oct 2018
Ileje, Songwe: Namanga Mwambene (70), resident of Itumba Village, was beheaded by unknown assailants, who left with her head. The incident was connected to witchcraft beliefs.	Nipashe Newspaper	30 Sep 2018
Nkasi, Rukwa: Three people were arrested by police, accused of attacking and killing six people in Kate Village on witchcraft suspicion. The three suspects were killed by police after attempting to escape police custody enroute to show the police other people who participated in the murders.	Mtanzania Newspaper	24 Sep 2018
Misungwi-Mwanza: More than 20 incidents of attacks and killings of the elderly were reported in the district in 2018, motivated by witchcraft	LHRC Human Rights Monitoring Unit	10 Nov 2018



beliefs to maximize gains in mining activities.		
Namtumbo, Ruvuma: In September 2018, an older woman was attacked and raped while in shamba (farm), an act that was motivated by witchcraft beliefs	LHRC Human Rights Monitoring Unit	12 Nov 2018

On the other hand, efforts by government and non-government actors, led and coordinated by the Commission for Human Rights and Good Governance (CHRAGG) have significantly contributed to decrease in incidents of violence against persons with albinism (PWAs) in recent years. No killings of PWAs have been reported since 2015, but several attacks and attempted abductions were reported in 2017.³⁸ For the year 2018, LHRC recorded one incident of violence against PWAs, which was reported in Singida, whereby unknown people who had visited from Dar es Salaam plotted to kill the man at a traditional liquor bar.

While decrease in incidents of violence against PWAs is good and comforting news, LHRC is concerned with the upcoming elections in Tanzania of 2019 and 2020 as history shows that such incidents increase during election periods. Caution must thus be taken by government and non-government actors to ensure increased protection of PWAs during this period ahead of the upcoming elections. Reported incidents of attempted abductions and attacks for their body parts in 2017, has left PWAs in fear of fully participating in social, economic and political activities.

2.1.4. Death Penalty

Death penalty threatens right to life, the most fundamental human right protected under the Constitution of the United Republic of Tanzania of 1977³⁹, regional human rights instruments⁴⁰, and international human rights instruments.⁴¹ Although Tanzania contains death penalty in its criminal law, the last time such sentence was executed was more than 20 years ago,

³⁸ See LHRC & ZLSC (2018), Tanzania Human Rights Report 2017, at www.humanrights.or.tz.

³⁹ Constitution of Tanzania, Article 14.

⁴⁰ Such as the African Charter on Human and Peoples' Rights (ACHPR) and the African Charter on the Rights and Welfare of the Child (ACRWC).

⁴¹ Including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).



hence Tanzania being recognized as an abolitionist state and considered to be in a state of moratorium. In April 2017, the Parliamentary Constitutional and Legal Affairs Committee urged the Government to consider community death sentences to life in prison after a certain period of time. In October 2017, Hon. President John Pombe Magufuli declared that he would not sign any death warrant to order execution of death row inmates. These are positive developments in terms of Tanzania joining worldwide movement to abolish death penalty.

Currently, there are over 480 death row inmates, majority of them (over 90%) are male. Amnesty International, an international human rights organization, tracks death sentences imposed across the world. Its 2017 report on death sentences and executions around the world released in 2018 indicates a noticeable decrease in death sentences issues in Tanzania for the year 2017, with more than 5 such sentences imposed.⁴² However, through media survey, LHRC recorded 15 people who received death sentences in 2017. As for 2018, LHRC has recorded five (5) incidents of death sentence, as depicted in the table below.

Table 4: Reported death sentences recorded by LHRC from January to December 2018

Description	Source	Date
Moshi: High Court of Tanzania sentenced 5 people to death in connection with killing of a business mogul, the late Erasto Msuya.	<i>Mwananchi</i> Newspaper	23 Jul 2018

2.1.5. Road Accidents

Efforts by the Police Force of Tanzania saw road accidents and fatalities decrease in 2017, with much fewer accidents and resulting deaths recorded. In the year 2018, road accidents recorded by the police by June were 2,220, which are 870 less than those reported in the first half of 2017. Resulting deaths also decreased by 257. By June 2018, the police force had recorded 2,220 accidents and 1,051 deaths. In December 2018, it was reported in the

⁴² See Amnesty International (2018), DEATH SENTENCES AND EXECUTIONS 2017, Amnesty International Global Report, at <https://www.amnesty.org/download/Documents/ACT5079552018ENGLISH.PDF>, accessed 29th January 2019.



media that a total of 3,419 accidents occurred from January to October 2018, which is 1,654 less than those reported during the same period in 2017.⁴³ Deaths resulting from such accidents also reduced from 2,250 to 1,661.⁴⁴ The figure below shows the status of road accidents from 2016 to June 2018.

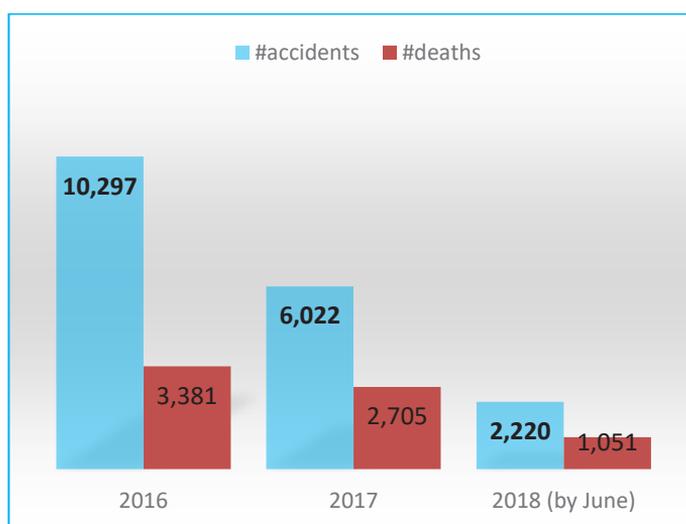


Figure 4: Road accidents and resulting deaths, 2016-2018

Negligence/reckless driving continues to be a key factor contributing to road accidents. In some areas, poor road infrastructure also contributes to road accidents. LHRC commends the Police Force for making efforts to reduce road accidents and ensure those responsible for reckless driving are held accountable. Nevertheless, the rate of accidents is still high, despite significant decrease, thus need for more coordinated efforts to address such accidents and preserve human lives.

2.2. Freedom of Expression

Freedom of expression is guaranteed and protected under all major human rights instruments, particularly the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966 and the African Charter on Human and Peoples' Rights

⁴³ See Kalunde Jamal "Kuelekea mwisho wa mwaka 2018, Ajali za barabarani zilivyotesa" 21 December 2018, at <https://www.mwananchi.co.tz/habari/Kitaifa/Ajali-za-barabarani-zilivyotesa/1597296-4904894-74ql6pz/index.html>, accessed 17th January 2019.

⁴⁴ Ibid.



(ACHPR) of 1981. Tanzania has ratified ICCPR and ACHPR), thus bound by them; and is bound to protect rights which constitute customary international law under the UDHR. This right is defined as **freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice.**⁴⁵ Domestically, it is guaranteed and protected under the Constitution of United Republic of Tanzania of 1977.

Freedom of expression is one of the participation rights - rights essential for enjoyment of the right to participate in governance - others being freedom of assembly and freedom of association. According to the Human Rights Committee, this right 'is a **necessary condition for the realization of the principles of transparency and accountability** that are, in turn, essential for the promotion and protection of human rights.'⁴⁶

Freedom of expression includes **press/media freedom, right to information and freedom of opinion.** This freedom may only be curtailed if restrictions are provided by law and necessary for "respect of the rights or reputation of others" and "for protection of national security or of public order (*ordre public*), or of public health or morals." If restrictions do not pass these tests then they are considered to be arbitrary.

In 2018, situation of freedom of expression continued to deteriorate, owing to continued restrictions, which have had a negative impact on civil society, human rights activists, opposition political parties, media and the community at large. These restrictions have been a major factor behind reduced civic space in Tanzania Mainland.

2.2.1. Media Freedom

In the year 2018, LHRC was able to document four incidents/developments which constitute restrictions to media or threaten such freedom. These

⁴⁵ Article 19 of UDHR and Article 19(2) of ICCPR.

⁴⁶ Human Rights Committee, General Comment No. 34, 102nd session Geneva, 11-29 July 2011, at <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>, accessed 28th December 2018.



include introduction of new online content regulations, harassment and threats to journalists, harassment of and threats to journalists, and introduction of amendments to the Statistics Act of 2015.

New online content regulations: A threat to media freedom, freedom of opinion and right to information

In March 2018, the Electronic and Postal Communications (Online Content) Regulations 2017 were signed into law, introducing new legal requirements for bloggers, internet users and online media that, to a large extent, threaten freedom of expression. The regulations were signed into law despite objections and criticism from various stakeholders, including the media community and civil society.

Overview of the regulations

The Electronic and Postal Communications (Online Content) Regulations, 2018⁴⁷ are divided into five (5) parts. Part I covers preliminary provisions; Part II is on powers of the authority (Tanzania Communications Regulatory Authority); Part III provides for general obligations for online content service providers; Part IV covers complaints handling; and Part V is offences and penalty. The regulations are 18 in total. The table below highlights the contents of the regulations.

Table 5: Contents of the Electronic and Postal Communications (Online Content) Regulations, 2018

Part & Name	Regulations
PART I PRELIMINARY PROVISIONS	1. Citation. 2. Application. 3. Interpretation.
PART II POWERS OF THE AUTHORITY	4. Powers of Authority.
PART III GENERAL OBLIGATIONS FOR ONLINE CONTENT SERVICES PROVIDERS	5. Obligations of online content providers and users. 6. Obligations of application services licensee. 7. Obligations of online radio, online television

⁴⁷ The Electronic and Postal Communications (Online Content) Regulations, 2018, GOVERNMENT NOTICE NO. 133 published on 16/03/2018, available at https://www.tcra.go.tz/images/documents/regulations/SUPP_GN_NO_133_16_03_2018_E_POCA_ONLINE_CONTENT_REGULATIONS_2018.pdf, accessed 12th January 2019.



	<p>and bloggers and online forums.</p> <p>8. Obligations of online content hosts.</p> <p>9. Obligations of internet cafe.</p> <p>10. Obligations of social media user.</p> <p>11. Disclosure of information.</p> <p>12. Prohibited content.</p> <p>13. Protection of children against indecent online content.</p> <p>14. Application for online content services licence.</p> <p>15. Cancellation of online content services licence.</p>
PART IV COMPLAINTS HANDLING	<p>16. Complaints handling by online content service provider.</p> <p>17. Referral of complaints to Authority.</p>
PART V MISCELLANEOUS PROVISIONS	<p>18. Offences and penalty.</p>

The online content regulations contain positive aspects, such as protection of internet and social media users from online criminal activity, fighting hate speech, promoting user responsibility and accountability and protection of children against indecent online content. On the other hand, the regulations contain provisions which may hinder full realization of fundamental human rights, including freedom of expression.

13. A person who provides online content, access to online content, hosts or uses online contents or operates an internet cafe shall take all possible measures to ensure that:

(a) children do not register, access or contribute to prohibited content; and

(b) users are provided with content filtering mechanism and parental control.

LHRC's key concerns with the Online Content Regulations

- ◆ **Vague and ambiguous definitions and prohibitions**



Some of the words and phrases contained in regulations on definitions (Regulation 3), obligations of online content providers and users (Regulation 5) and prohibitions (Regulation 12) are vague and ambiguous, subject to misinterpretation and abuse and with potential to arbitrarily restrict freedom of expression.

Everyone has the right to hold opinions without interference. Everyone has the right to freedom of expression on the Internet; this right includes the freedom to seek, receive and impart information and ideas, regardless of frontiers. The right to freedom of expression on the Internet should not be subject to any restrictions, except those which are provided by law, for a legitimate purpose and necessary and proportionate in a democratic society, as consistent with international human rights standards.

Principle 3 of the African Declaration on Internet Rights and Freedoms

Words/phrases such as **“hate speech”, “obscene content”, “cultural sensitivities”, “bad language”, “content that causes annoyance”, “morally improper”, “use of disparaging or abusive words”, “content likely to mislead or deceive the public”, and “current standards of accepted behaviour”** are not defined or clearly defined and highly subjective, leaving loopholes for arbitrary restrictions on freedom of expression. Another problematic provision in the regulations is that relating to hate speech, defining hate speech to include defamation, a loophole that could be used by powerful individuals and officials to act with impunity. Prohibiting ‘use of disparaging words’ and publishing content that is satirical or fictional in nature without being labeled as such serves to further restrict peoples’ freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, either orally, in writing or in print, **in the form of art**, or through any other media of their choice.⁴⁸

- ♦ **Requirement of internet café owners to install video cameras and record activities of internet users and keep recordings for at least a year**

Under the Online Content Regulations, owners of internet cafes have an obligation to install surveillance cameras to record and archive activities of

⁴⁸ Article 19 of UDHR and Article 19(2) of ICCPR.



internet users. The recordings must be kept for at least 12 months. Apart from violating right to privacy, this requirement is very costly for internet café users, which may in turn affect citizens' access to internet and information as the service providers may be forced to charge higher prices. Under the Joint Declaration on Freedom of Expression and the Internet,⁴⁹ States are obligated to promote universal access to internet, which is deemed **essential in promotion of respect for other rights, including rights to education, work, assembly and association.**⁵⁰ Consequently, this requirement is not in line with international standards on freedom of expression and contravenes the Joint Declaration on Freedom of Expression and the Internet.

9.-(1) Subject to Regulation 5, every internet café or business center shall have the following obligations:
 (d) to install surveillance camera to record and archive activities inside the cafe.
 (2) The images recorded by surveillance camera and the register of users recorded pursuant to sub regulation 1 shall be kept for a period of twelve months

- ♦ **Severe and uniform punishment for failure to comply with regulations**

Another key concern with the regulations is the fact that all offences under them carry a uniform punishment, as stipulated under Regulation 18. The punishment is a fine of not less than Tshs. 5 million or imprisonment of not less than 1 year, or both. Uniformity of punishment, regardless of whether an offence is major or minor, raises a human rights concern in that punishment may not be proportionate to offence. In LHRC's opinion, the punishment is severe and will mainly serve to instill fear in receiving and

⁴⁹ See the Joint Declaration on Freedom of Expression and the Internet (signed by The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information) at <https://www.osce.org/fom/78309?download=true>, accessed 29th December 2018

⁵⁰ Ibid, General Principle 6(a).



imparting information, thus curtailing freedom of expression on the internet.

18. Any person, who contravenes the provisions of these Regulations, commits an offence and shall, upon conviction be liable to a fine of not less than five million Tanzanian shillings or to imprisonment for a term of not less than twelve months or to both.

♦ **Too much powers for TCRA**

The regulations grant the regulator of online content, TCRA, too much powers, including power to remove prohibited content. This is more likely to cause fear for internet users to exercise their freedom of expression on the internet, given the sweeping censorship powers granted to the regulator. Ideally and in line with principles of natural justice, powers to remove content should be granted to a court of law – which is vested with powers of interpreting the law - and at minimum, the regulations should provide for right to appeal or judicial review, which is currently not the case.

♦ **Registration, license and annual fees**

The regulations provide for mandatory registration of and licensing, including registration of bloggers – which is not in line with international standards on freedom of expression.⁵¹ The regulations also require payment of registration fees, license fees and annual fees. Regarding online content services, the Second Schedule of the Regulations provides for application fee of Tshs. 100,000, initial license fee of Tshs. 1,000,000, annual license fee of 1,000,000 and renewal fee of Tshs. 1,000,000.

In LHRC's view, the fees are exorbitant for most Tanzanians and deprive potential or new bloggers from exercising their freedom of expression on the internet and limit flow of ideas and information. This requirement also contravenes Declaration of Principles on Freedom of Expression in Africa of 2002, which provides for authorities to take positive measures to promote

⁵¹ Mandatory registration of blogs does not meet the restrictions tests of freedom of expression.



diversity, including through availability and promotion of a range of information and ideas to the public.⁵²

14.-(1) Any person who wishes to provide online content services shall fill in an application form as prescribed in the First Schedule and pay fees as set out in the Second Schedule to these Regulations.

♦ **Obligation to moderate and filter content**

The regulations put an unfair burden on content providers to moderate and filter content, which serves to restrict flow of information and may lead to removal of legitimate content. They are also required to have in place mechanisms to identify source of content, which amounts to infringement of right to privacy and prevent people to share information anonymously (e.g. whistleblowers). Filtering content – including reviewing every comment before they are published - may take a lot of man-hours and in some cases require technical expertise, which a content provider might not possess. This is particularly more problematic for a content provider receiving a large amount of content, forcing them to either hire more people to review content received or reduce the amount of content that gets published. This obligation leaves loopholes for violations of rights to privacy and freedom of expression.

5.-(1) For the purpose of these Regulations, an online content provider shall have the obligations to-

- (d) use moderating tools to filter prohibited content;
- (e) have in place mechanisms to identify source of content;
- (g) ensure prohibited content is removed within twelve hours upon being notified.

♦ **Obligations of application services licensees**

The Regulations impose a number of obligations on application services licensees, including ordering a subscriber to remove prohibited content

⁵² African Commission on Human and Peoples' Rights, ACHPR /Res.62(XXXII)02: Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa (2002), 23 October 2002, available at: <https://www.refworld.org/docid/51949e234.html> [accessed 27 January 2019]



within twelve hours of receiving a notification from the regulator or a person affected. If the subscriber fails to remove the content in specified period, then the licensee is required to terminate subscriber's access account. In LHRC's view these obligations contravene freedom of expression and principles of natural justice. This procedure does not allow the subscriber the right to be heard (defend his content) and the regulator is playing the role of the court of determining legality of the content published. Moreover, the procedure does not provide avenues for appeal or judicial review. Additionally, 12 hours is not sufficient time for subscriber and content provider to take action or comply.

6.-(1) An application services licensee shall, when entering contract with subscribers, incorporate terms and conditions of service which include the right to:

(3) Where the licensee is notified by the Authority or by a person affected by the existence of prohibited content shall, within twelve hours from the time of notification, inform its subscriber to remove the prohibited content.

(4) Upon receipt of notification pursuant to subregulation (3), the subscriber shall, within twelve hours from the time of notification, remove the prohibited content.

(5) Where the subscriber fails to remove the prohibited content within twelve hours, the licensee shall suspend or terminate the subscribers' access account.

♦ **Obligations of online content hosts**

Like application services licensees, online content hosts are required under the regulations to remove hosted content upon notification by the regulator, or a person affected by content. In addition, notification may be given by a law enforcement agency. This obligation does not meet international standards on freedom of expression and contravenes principles of natural justice such as right to be heard and defend oneself. The regulator, affected person and law enforcement agency should not play the role of determining legality of a content, as it is the court of law which is best placed to do that. This provision will only encourage powerful individuals to order removal of content they deem prohibited, especially since the prohibitions carry ambiguous and vague terms.



8. Subject to Regulation 5 an online content host shall-
 - (a) adopt a code of conduct for hosting content;
 - (b) upon notification by the person affected by the content, the Authority, or law enforcement agency, remove the hosted content.

African Commission on Human and Peoples' Rights concerned over the Tanzania's Online Content Regulations

In July 2018, the African Commission on Human and Peoples' Rights, which is based in Banjul-Gambia, issued a press release on the growing trend on stringent regulation of the internet in East African States. For Tanzania, the Commission was particularly concerned with the adoption the Electronic and Postal Communications (Online Content) Regulations 2018.⁵³ Referring to licensing requirements for bloggers, the Commission stated that the regulations "...may negatively impact the ability of users to gain affordable access to the Internet, which goes against States' commitment to protect the right of every individual to receive information, as well as the right to express and disseminate one's opinion within the law which is provided under Article 9 of the African Charter on Human and Peoples' Rights."⁵⁴ The Commission urged Tanzania "to ensure that regulations do not undermine their commitment to ensure freedom of expression and access to information on the Internet and social media platforms."⁵⁵

Harassment of and threats to journalists

For the period of January to December 2018, LHRC was able to document at least four incidents of harassment of or threats to journalists. In August 2018, a video of police officers beating a journalist at the National Stadium in Dar es Salaam circulated in the social media. He was allegedly beaten because of trying to enter into a press conference following a football match involving Dar es Salaam-based Simba Sports Club.

⁵³ African Commission on Human and Peoples' Rights, Press Release on the growing trend of stringent regulation of the internet in East African States, 12 July 2018 at <http://www.achpr.org/press/2018/07/d409/>, accessed 19th December 2018.

⁵⁴ Ibid.

⁵⁵ Ibid.



In November 2018, two journalists from the Committee to Protect Journalists (CPJ), Angela Quintal and Muthoki Mumo, were reportedly arrested and detained by immigration officials at Southern Sun Hotel in Dar es Salaam-Tanzania hours after meeting with the Tanzania Editors Forum (TEF) to probe on the state of freedom of expression in Tanzania and disappearance of MCL journalist, Azory Gwanda.⁵⁶ Responding to these allegations, the immigration authorities mentioned that the two journalists had been detained because they violated their visit purpose.⁵⁷ The journalists were eventually released following calls for their release from local and international observers, including civil society and the CPJ.⁵⁸

Working environment forcing journalists into self-censorship and sometimes kill stories

Existence and application of restrictive laws and harassment of journalists and media outlets, including through threats from unknown people, have created a difficult working environment for journalists, forcing them into self-censorship in the course of doing their job. In some cases, since freedom of expressing opinions has declined, people tend to refuse to comment on stories or deny that they commented, forcing journalists to kill stories. According to a study on citizens' views on politics, demonstration and participation in Tanzania, conducted by Twaweza in 2018, majority of citizens (62%) feel that freedom of the media to criticize or report government mistakes has diminished.⁵⁹

⁵⁶ See DW "Tanzania under fire over detention of Committee to Protect Journalists staff" at <https://www.dw.com/en/tanzania-under-fire-over-detention-of-committee-to-protect-journalists-staff/a-46210445>; Ephrahim Bahemu "MCT, LHRC, THDRC walaani kukamatwa waandishi wa CPJ" at <https://mobile.mwananchi.co.tz/Habari/MCT--LHRC--THDRC-walaani-kukamatwa-waandishi-wa-CPJ/1597580-4844494-format-xhtml-o15pal/index.html>

⁵⁷ See "Freed journalists have safely left Tanzania, CPJ says" Daily Nation, 9th November 2018 at <https://www.nation.co.ke/news/africa/Why-Tanzania-detained-CPJ-staff/1066-4843448-n11o6q/index.html>

⁵⁸ Ibid; Gadosa Lamtey "Tanzania's Immigration Authorities Speak out on 'Arrested' CPJ Journalists" the Citizen Newspaper, 8th November 2018 at <https://allafrica.com/stories/201811080159.html>

⁵⁹ See Twaweza, *Citizens' views on politics, demonstration and participation in Tanzania*, Sauti za Wananchi, 5 July 2018, at <https://www.twaweza.org/go/szw-politics-and-participation-2018>, accessed 29th December 2018.



Media freedom on the decline – stakeholders

During the commemoration of the World Press Freedom Day in May 2018, several stakeholders raised their concerns over declining media freedom in Tanzania. These included officials from the Tanzania Chapter of the Media Institution of Southern Africa (MISA-TAN), Union of Tanzania Press Club (UTPC), Media Council of Tanzania (MCT) and the Tanzania Editors' Forum (TEF), citing disappearance and harassment of journalists and arbitrary restrictions on media freedom as contributing factors.⁶⁰ They noted that Azory Gwanda, a journalist from the *Mwananchi Communications Limited* who went missing in November 2017, is still missing and it is not known where he could be and whether he is still alive. They added that media houses and journalists are operating under fear of sanctions, including heavy fines, and undue harassment from authorities and recently enacted laws and regulations on freedom of expression. They also expressed concerns with the newly-enacted Online Content Regulations, calling for the regulations to be reviewed to conform to the Constitution and international standards of freedom of expression.⁶¹

In January 2018, **five media outlets were fined** by the Tanzania Communications Regulatory Authority (TCRA) for airing content by LHRC about by-elections in 43 wards that was deemed 'offensive and unethical.' The media outlets are Star TV, Azam Two, East Africa TV, Channel 10 and ITV.

Concerned with decline in media freedom and situation of other human rights in Tanzania, in May 2018, a total of 65 rights groups from across Africa and a few outside Africa wrote to President Hon. John Pombe Magufuli to seek his intervention.⁶² Among the recommendations made to the Government of Tanzania were to amend all restrictive provisions contained in freedom of expression laws such as the Cybercrimes Act, the Electronic and Postal Communications (Online Content) Regulations and

⁶⁰ See Mussa Juma "Uhuru wa habari, kujieleza vyazorota nchini – wadau" *Mwananchi Newspaper*, 4th May 2018.

⁶¹ Ibid.

⁶² See CIVICUS "Tanzania: Civil society groups express concern over rapid decline in human rights" at <https://www.civicus.org/index.php/media-resources/media-releases/open-letters/3163-civil-society-groups-express-concern-over-worrying-human-rights-decline-in-tanzania>, accessed 20th November 2018.



the Media Services Act, to be replaced with progressive provisions that guarantee freedom of expression and media in line with international human rights standards.⁶³

Tanzania further drops in the World Press Freedom Index 2018

Reporters Without Borders (RSF) is an international NGO that promotes and defends the freedom to be informed and to inform others throughout the world. It's 2018 World Press Freedom Index shows decline in press freedom in various parts of the world, including Tanzania. According to the report, Tanzania has further dropped in the index by 10 places, from 83rd in 2017 to 93rd in 2018, having dropped by 12 places in 2017.

Harassment of journalists and enactment of laws and regulations which do not conform to international standards of freedom of expression have contributed to this decline.

Mawio Newspaper ban illegal – East African Court of Justice

In June 2018, the East African Court of Justice ruled that Tanzania must annul the publication ban placed on a local weekly newspaper, Mawio, two years ago. The newspaper was banned in August 2016, by the former Minister responsible for media, Hon. Nape Nnauye, under the Newspapers Act of 1976, which has now been replaced by the Media Services Act of 2016. The Court stated that the Tanzanian Government failed to show sufficient justifiable grounds for the ban, and that the action of the Minister was unlawful and thus amounted to violation of the right of freedom of expression as per Article 18(1) of the Constitution of Tanzania; Article 19(3) of the International Covenant on

93

in the 2018 World Press Freedom Index

RANKING

↓ **-10**
83 in 2017

GLOBAL SCORE

= **0**
30.65 in 2017

ⓘ Ranking since 2013

⁶³ Ibid.



Civil Political Rights; and Article 27(2) of the African Charter on Human and Peoples' Rights.⁶⁴

2.2.2. Freedom of Opinion

Freedom of opinion, especially on social media, has been severely restricted by the Online Content Regulations, adding to Cybercrimes Act and Media Services Act. In LHRC's view, the current legal environment does not promote the right to hold opinions without interference. This freedom is one of the key participation rights, which enables members of the public to contribute to political, economic and social development. It is also essential for realization of the right to take part in governance in the fight against corruption – in summary, holding the Government and other bodies and officials to account.

Employers restricting freedom of expression of employees

In 2018, LHRC received several complaints of employees in different sectors, both public and private, not being free to express their opinions deemed 'unconventional' by their employers, including what they post on their social media accounts that 'might reflect badly' on company, institution or organization. In its 2017 Human Rights and Business report, LHRC highlighted denial of right to freedom of association and collective bargaining by employers, which denies employees a platform to exercise their freedom of expression. Outside the arena of human rights and business, the restrictions are more imposed on political views. Twaweza's study on citizens' views on politics, demonstration and participation in Tanzania of 2018, shows that 54% of citizens also feel they personally have less freedom to voice their own political views.⁶⁵

Cyber-crime: Maxence Melo and Micke William cleared by Kisutu Resident Magistrate Court

In 2018, the Kisutu Resident Magistrate Court acquitted the founder of Jamii Forums, Maxence Melo and shareholder, Micke William of charges

⁶⁴ See ARTICLE 19, Tanzania: EA Court ruling upholds media freedom in reversing newspaper ban, at <https://www.article19.org/resources/tanzania-ea-court-ruling-upholds-media-freedom-in-reversing-newspaper-ban/>, accessed 17th December 2018.

⁶⁵ See Twaweza, *Citizens' views on politics, demonstration and participation in Tanzania*, Sauti za Wananchi, 5 July 2018, at <https://www.twaweza.org/go/szw-politics-and-participation-2018>, accessed 29th December 2018.



under the Cyber Crimes Act of 2015. The two were charged with obstruction of police investigation contrary to Section 22(2) of the Cyber Crimes Act in December 2016.

2.2.3. Access to Information

Restrictions of media freedom and freedom of speech or opinion have automatically affected the right to information, which is a component of freedom of expression. Sanctions imposed in laws and regulations such as Cybercrimes Act, Media Services Act and newly-enacted Online Content Regulations have created fear among media and people performing journalistic functions from freely expressing themselves and sharing information. Limited access to information is detrimental to personal and state development and may deny citizens and the state an opportunity to make informed decisions. A study conducted by *Twaweza*⁶⁶ in 2016 indicated that 80% of respondents believed giving citizens more access to information would help to reduce corruption.⁶⁷

Arbitrary restrictions on freedom of expression imposed by laws and regulations mentioned above are contrary to international standards on such freedom as contained in international and regional instruments such as the International Covenant on Civil and Political Rights (ICCPR), the Declaration of Principles on Freedom of Expression in Africa and African Declaration on Internet Rights and Freedoms.

⁶⁶ An organization that works on enabling children to learn, citizens to exercise agency and governments to be more open and responsive in Tanzania, Kenya and Uganda.

⁶⁷ See Twaweza “What do citizens think about media freedoms in Tanzania?” Sauti za Wananchi 2016 at <https://www.twaweza.org/uploads/files/media%20freedoms%20data%20packet%20ENGLISH.pdf>



Concerns over curtailment of Freedom of Expression following amendments of the Statistics Act 2015

Amendments to the Statistics Act 2015 in the Written Laws (Miscellaneous Amendments) (No.3) Act of 2018, have raised concerns over impact of the amendments on enjoyment of freedom of expression in Tanzania. These concerns

A person shall not disseminate or otherwise communicate to the public any statistical information which is intended to invalidate, distort or discredit official statistics
Section 24B (1) of the Statistics Act 2015, as amended in 2018

were expressed by research, human rights and media stakeholders, including REPOA, Twaweza and LHRC,⁶⁸ following passing of the law in September 2018. The international community has also expressed concerns with some of the provisions in the Act. In October 2018, the World Bank issued a statement “regarding recent developments related to Tanzania’s 2015 Statistics Act,” expressing concern about the developments, “which are out of line with international standards such as the UN Fundamental Principles of Official Statistics and the African Charter on Statistics.”⁶⁹ The World Bank warned that “the amendments, if implemented, could have serious impacts on the generation and use of official and non-official statistics, which are a vital foundation for the country’s development.”⁷⁰

Major concerns regarding the amendments include prohibiting dissemination of statistics that are considered to invalidate, distort or discredit official statistics by the National Bureau of Statistics (NBS), and publishing statistics

⁶⁸ See Alex Malanga “Researchers urge govt to amend Statistics Act 2015” The Citizen Newspaper, 22 November 2018 at <https://www.thecitizen.co.tz/News/Researchers-urge-govt-to-amend-Statistics-Act/1840340-4863334-j2lmasz/index.html>, accessed 29th December 2018; Twaweza, Amendment of the Statistics Act:Analysis, at <https://twaweza.or.tz/go/amendment-of-the-statistics-act-analysis-twaweza>, accessed 30th December 2018; Sharon Sauwa “Wadau waliamarekebisha Sheria ya Takwimu” Mwananchi Newspaper, 21 August 2018, at <https://www.mwananchi.co.tz/habari/Wadau-walia-marekebisha-yasheria-ya-takwimu/1597578-4722132-pin309/index.html>, accessed 30th December 2018;

⁶⁹ See World Bank Statement on Amendments to Tanzania’s 2015 Statistics Act issued on October 2, 2018 at <https://www.worldbank.org/en/news/statement/2018/10/02/world-bank-statement-on-amendments-to-tanzania-2015-statistics-act>, accessed 30th December 2018.

⁷⁰ Ibid.



without the approval of the bureau.⁷¹ This means it is illegal to question or fact-check official statistics, which may serve to discourage independent statistics; and the bureau holds sole power to decide which statistical information can be published.

2.3. Rights to Equality before the Law and Effective Remedy

Rights to equality before the law and effective remedy are guaranteed and protected under various regional, continental and international human rights instruments. These include the Universal Declaration of Human Rights (UDHR), the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR).⁷² According to the Constitution of Tanzania, 'all persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.'⁷³ The right to effective remedy is provided for where other rights of an individual have been violated.⁷⁴ Rights derived from these two rights include right to access to justice, right to legal representation,⁷⁵ right to presumption of innocence and right to fair trial.⁷⁶ The situation of these three rights in Tanzania in 2018 is discussed below.

In 2018, these rights were boosted through action by government and non-government actors to improve access to justice and effective remedy. However, realization of these rights continues to be hampered by several challenges, including: corruption in the justice system, violation of rights of accused persons, shortage of resources within the judiciary, and high costs of effective legal representation.

⁷¹ See Twaweza, Amendment of the Statistics Act: Analysis, at <https://twaweza.or.tz/go/amendment-of-the-statistics-act-analysis-twaweza>, accessed 30th December 2018; "Civil society calls for review of Statistics Act" The Guardian Newspaper, 6 December 2018 at <https://www.ippmedia.com/en/news/%C2%A0civil-society-calls-%C2%A0review-statistics-act>, accessed 30th December 2018.

⁷² Article 3 of ACHPR; Article 14 of ICCPR; and Article 10 of UDHR.

⁷³ Article 13(1) of the Constitution of the United Republic of Tanzania of 1977.

⁷⁴ Article 2(3) (a) of ICCPR.

⁷⁵ See Article 14(3) (b) of the Constitution of Tanzania 1977; Article 7(1)(c) of ACHPR; and Article 14(3)(d) of ICCPR.

⁷⁶ Article 13(6) of the Constitution of the United Republic of Tanzania of 1977; Article 7 of ACHPR; Article 14 of ICCPR; and Article 10 of UDHR.



2.3.1. Access to Justice

Access to justice means access to **formal** or **informal** institutions that are tasked with delivery of justice such as courts and tribunals. This access enables people whose rights are violated or jeopardized to seek remedy from these institutions, where their grievances can be heard and determined. Access to justice is a key component of rule of law and the international community has recognized “**the right to equal access to justice for all**” and committed itself to “**taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid.**”⁷⁷

Conditions for Access to Justice

- Availability of independent and impartial courts and tribunals
- Good laws
- Courts/tribunals to be accessible and have sufficient resources to administer justice
- Availability of qualified lawyers for legal representation
- Fair trial and timely justice

Action to improve access to justice

In 2018, LHRC observed and documented some notable improvements in access to justice. These include: improved coordination of legal aid following enactment of the Legal Aid Act in 2017 and positive action taken by the Judiciary to modernize the justice sector and increase access to justice.

Construction and renovation of court buildings

According to the Chief Justice, construction of several court buildings completed in 2018, including Resident Magistrate Court in Pwani Region; District Courts of Kibaha, Bagamoyo, Mkuranga, Ilala and Kigamboni Districts; and Kawe Primary Court.⁷⁸ During the financial year 2017/2018,

⁷⁷ See Para 14 of the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, Resolution adopted by the General Assembly A/RES/67/1, Sixty-seventh session, 30 November 2012, available at <https://www.un.org/ruleoflaw/files/A-RES-67-1.pdf>, accessed 29th December 2017.

⁷⁸ See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA SIKU YA SHERIA, DAR ES SALAAM, TAREHE 06 FEBRUARI, 2019, at



the Judiciary managed to complete construction of 12 court buildings, including Resident Magistrates' Courts in Manyara Region; District Court and Primary Courts of Iguguno (Singida), Wasso (Loliondo), Old Korogwe and Magoma (Korogwe), Karatu, Robanda (Serengeti), Itinje (Meatu) and Totoe (Songwe). The Judiciary also renovated its buildings of High Court in Mbeya, Commercial Division of High Court in Mwanza and residence of Principal Judge of Dodoma. Construction of 16 District Courts were also reported to have commenced during the financial year 2017/2018, as well as construction of Resident Magistrates' Court buildings in Geita, Njombe, Simiyu, Katavi and Lindi Regions. District Court buildings were under construction in Geita, Njombe, Bariadi, Lindi, Mpanda, Rungwe, Ruangwa, Chato, Bukombe, Bunda, Kasulu, Sikonge, Kilwa Masoko, Kondo, Longido and Kilindi.

Employing technology to increase access to justice

With the support of the World Bank, the Judiciary of Tanzania has been implementing the Citizen-Centric Judicial Modernization and Justice Service Delivery Project, which seeks to transform and modernize justice delivery in Tanzania. This project, launched in 2016, is in line with the Judiciary's five-year strategic plan, which includes using ICTs to improve access to justice in Tanzania. This is a positive step as digitalization of judicial services will help in fast-tracking judicial proceedings.

The Judiciary is also introducing a computerized filing system (e-filing system) to boost court performance and fast-track judicial proceedings and improve court efficiency and effectiveness; and making efforts to combat judicial corruption in collaboration with Tanzania's anti-corruption body, PCCB. In order to regain public trust, the Judiciary has also introduced a campaign to re-introduce itself to the citizens.

<http://www.tanlap.or.tz/sites/default/files/HOTUBA%20YA%20MHESHIMIWA%20AJI%20MKUU%20SIKU%20YA%20SHERIA%20TRH%206%20FEBRUARI%2C%202019.pdf>, accessed 28th February 2019.



Efforts by the Judiciary and Government to address the problem of shortage of personnel

By December 2018, the Judiciary had acquired 420 judicial servants and secure permit to employ 168 new servants for the new courts that are being constructed in different parts of Tanzania.⁷⁹ In 2018, Hon. President John P. Magufuli appointed 2 Justices of Court of Appeal, Principal Judge and 12 Judges of the High Court.⁸⁰

Efforts to reduce backlog of cases

In 2018, the Judiciary continued to implement its policy of concluding cases within 6 months since they are instituted in an effort to address the problem of backlog of cases. According to the Chief Justice, 71% of all cases registered in 2018 were instituted at Primary Courts; and only 16 out of 15,675 cases that could not be concluded were more than 6 months old.⁸¹ At District Court and Resident Magistrate levels, a total of 51,161 cases were registered in 2018, whereby 47,089 were concluded and 28,912 were not concluded. Out of the cases which were not concluded, only 837 were more than one year-old. According to the Chief Justice, the number of cases in the case backlog category declined from 999 in 2016 to 729 in 2018.⁸²

At High Court level, however, out of a total of 37,471 cases available (18,284 registered, 19,187 from 2017), only 17,046 were concluded by the end of the year, while 20,425 continued into 2019. Each Judge is required to entertain 220 cases per year.⁸³

⁷⁹ See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA SIKU YA SHERIA, DAR ES SALAAM, TAREHE 06 FEBRUARI, 2019, at <http://www.tanlap.or.tz/sites/default/files/HOTUBA%20YA%20MHESHIMIWA%20JAJI%20MKUU%20SIKU%20YA%20SHERIA%20TRH%206%20FEBRUARI%2C%202019.pdf>, accessed 28th February 2019.

⁸⁰ Ibid.

⁸¹ See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA SIKU YA SHERIA, DAR ES SALAAM, TAREHE 06 FEBRUARI, 2019, at <http://www.tanlap.or.tz/sites/default/files/HOTUBA%20YA%20MHESHIMIWA%20JAJI%20MKUU%20SIKU%20YA%20SHERIA%20TRH%206%20FEBRUARI%2C%202019.pdf>, accessed 28th February 2019.

⁸² Ibid.

⁸³ Ibid.



The predicament of preliminary objections and amendment of the Appellate Jurisdiction Act

One of the factors that have been threatening access to justice in Tanzania for a long time now is constant preliminary objections due to procedural irregularities. This loophole has been used to frustrate and delay justice in civil and criminal proceedings. However, in 2018, a legal development in the form of amendment of the Appellate Jurisdiction Act sought to address the problem of striking out cases because of procedural irregularities.⁸⁴ The amendments add a provision called “overriding objective of Act,” which is to facilitate the just, expeditious, proportionate and affordable resolution of all matters governed by the Appellate Jurisdiction Act.⁸⁵ In exercising their powers or interpreting provisions of the this law, courts of law are required to seek to give effect to the **overriding objective**;⁸⁶ and hand all matters presented before them with a view of attaining a just determination of proceedings; efficient use of the available judicial and administrative resources, including the use of suitable technology; and timely disposal of the proceedings in the Court at a cost affordable by the respective parties.⁸⁷ Duty to uphold the overriding objective extends to parties to proceedings and advocates.⁸⁸

The amendments focus on attainment of substantive justice in line with Article 107A (2) (e) of the Constitution of Tanzania, which requires courts to take into account wider interests of substantive justice before striking out a matter on ground of procedural irregularity. This is because “so many appeals, revisions, reviews and other applications have been struck out on grounds of procedural irregularity in the past, making the jurisprudence of the Court of Appeal overly **reliant on procedural technicalities instead of substantive justice** expected by the Constitution.”⁸⁹

⁸⁴ See THE WRITTEN LAWS (MISCELLANEOUS AMENDMENTS) (NO.3) ACT, 2018 (PART II: AMENDMENT OF THE APPELLATE JURISDICTION ACT(CAP. 141)).

⁸⁵ Section 3A (1) of the Appellate Jurisdiction Act, CAP 141, as amended in 2018.

⁸⁶ Ibid, Section 3.A (2).

⁸⁷ Ibid, Section 3B (1).

⁸⁸ Ibid, Section 3B (2).

⁸⁹ Objects and purpose of the amendment in the amendments Bill.



Introduction of the Legal Aid Regulations

In 2017, the Parliament enacted the Legal Aid Act, which sought to improve access to justice for the financially-challenge groups and recognizes paralegals scattered in different parts of Tanzania. To further improve access to justice and operationalize this law, the Legal Aid Regulations were adopted in 2018.⁹⁰ The Regulations provide for administration and coordination of legal aid providers; registration of legal aid providers and paralegals; legal aid to indigent persons and persons in lawful custody; record management of legal aid provision; monitoring and evaluation of legal aid providers; management of appeals and other complaints; and some miscellaneous provisions, including on legal aid providers' forum and continuous legal education.

Introduction of mobile courts

In 2018, the Judiciary revealed its plan to introduce and pilot mobile courts, in order to take justice delivery closer to the people.⁹¹ Pilot study areas were identified in Dar es Salaam and Mwanza Regions. The mobile courts will mainly entertain smaller claims and family-related issues at primary court level.⁹²

Challenges hindering effective access to justice

However, despite some notable improvements, access to justice continues to be faced with a number of challenges. These include limited access to legal aid, corruption within the justice system, inaccessibility of police stations and courts, high costs of effective legal representation, low awareness of relevant laws and procedures amongst community members, uneven distribution of lawyers and advocates and prolonged detention of accused persons.

⁹⁰ See Legal Aid Regulations (G.N No. 44 Contd).THE LEGAL AID ACT, 2017REGULATIONS(Made under section 48)THE LEGAL AID REGULATIONS, 2018.

⁹¹ Gadosa Lamtey "Mobile courts set for roll-out under pilot scheme in Tanzania" The Citizen Newspaper, 28 June 2018, at <https://www.thecitizen.co.tz/News/1840340-4637000-1nd4w4z/index.html>, accessed 29th December 2018.

⁹² Ibid.



Limited access to legal aid

Legal aid is essential for members of the public who cannot afford an effective legal representation. Legal aid in Tanzania is provided by different government and non-government actors, including the national human rights institution – CHRAGG, civil society, paralegal centres and Tanganyika Law Society (TLS). NGOs providing legal aid include: Legal and Human Rights Centre (LHRC); the Tanzania Network of Legal Aid Providers (TANLAP); Women’s Legal Aid Centre (WLAC); Women in Law and Development in Africa (WiLDAF); and Tanzania Women Lawyers Association (TAWLA). Despite efforts by these organizations and those by paralegal centres in different parts of Tanzania Mainland, access to legal aid is still a challenge for majority of Tanzanians – especially those residing in rural areas. One of the reasons for this is the organizations and paralegal centres being concentrated in urban and/or semi-urban areas, as well as having limited resources to enable them reach remote areas.

Shortage of judicial staff

According to the Chief Justice of Tanzania, Prof. Ibrahim Hamis, in order for the Judiciary to operate effectively, there is a need of a total of 24,643.⁹³ However, there are only 6,096 judicial servants, which means there is shortage of 18,556 servants.⁹⁴ He mentioned that shortage of servants is caused by several factors, including death, retirement and certificates. 248 left judicial service because of death and retirement between January and December 2018, while 194 left because of fake or forged certificates.⁹⁵

Inaccessibility of police stations and courts

In some areas of Tanzania Mainland, especially rural areas, police service is not in close proximity. This makes it difficult for aggrieved persons in such areas to report crimes and begin a journey to justice. A 2015 study on effect of police integrity, government performance in fighting crime, and

⁹³ See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA SIKU YA SHERIA, DAR ES SALAAM, TAREHE 06 FEBRUARI, 2019, at <http://www.tanlap.or.tz/sites/default/files/HOTUBA%20YA%20MHESHIMIWA%20JAJI%20MKUU%20SIKU%20YA%20SHERIA%20TRH%206%20FEBRUARI%2C%202019.pdf>, accessed 28th February 2019.

⁹⁴ Ibid.

⁹⁵ Ibid.



accessibility of police stations on reporting crime in Tanzania, which was conducted by *AfroBarometer*, shows that people are more likely to report crime when police services are within easy reach.⁹⁶

Regarding courts, it is LHRC's view that people are more likely to access justice and continue to pursue it where the courts are in close proximity. Tanzania is faced with acute shortage of courts, especially primary courts, whereby recent statistics indicate shortage of 67%.⁹⁷

Prolonged detention of accused persons

One of the challenges that accused persons face in Tanzania is prolonged and arbitrary detention at police posts or stations. According to the Criminal Procedure Act, Chapter 20 of Laws of Tanzania, a person under police custody should be brought before the court within 24 hours, as a matter of general principle.⁹⁸ However, in practice this right of an accused person is not respected, as it is now a common practice for arrested persons to be held beyond 24 hours without being brought before a court of law. This is contrary to principles of access to justice, as everyone has a right to be tried without undue delays, as guaranteed under the International Covenant on Civil and Political Rights (ICCPR).⁹⁹ A good example is the case of Abdul Nondo, a student at University of Dar es Salaam, who was held for 2 days without being brought before the court. This case is discussed in detail under the right to liberty and personal security (sub-chapter 2.4).

Corruption within the justice system

Corruption is a big challenge to independence and impartiality of courts and tribunals. A study by the Prevention and Combating of Corruption Bureau (PCCB) in 2015 revealed that widespread corruption exists within all levels of the judicial system, especially in lower courts (resident magistrate,

⁹⁶ See Rose Aiko, *Effect of police integrity, government performance in fighting crime, and accessibility of police stations on reporting of crime in Tanzania*, Afrobarometer Policy Paper No. 20 | May 2015.

⁹⁷ See Judiciary of Tanzania, HAKI Bulletin, Issue No. 1, July – September 2017, available at <http://www.judiciary.go.tz/judiciary-of-tanzania-newsletter-haki-bulletin-july-september2017/>, accessed 30th December 2018.

⁹⁸ See Section 32 of Criminal Procedure Act, CAP 20, R.E 2002.

⁹⁹ Article 14(3) of ICCPR.



district and primary courts).¹⁰⁰ Judicial officers, including court clerks and magistrates, are known to solicit bribes to help ‘fast-track’ cases or slow down trial proceedings. Court assessors were also mentioned to be among corrupt individuals within the justice system. The PCCB report also mentioned poor working environment as a factor contributing to prevalence of corruption in lower courts, especially primary courts.¹⁰¹ Judiciary is still perceived to be among public institutions tainted with corruption. According to a 2017 corruption study by REPOA and AfroBarometer, majority of citizens (36%) perceive police as most corrupt, followed by magistrates and judges (21%).¹⁰² Because of perceived corruption within the justice system, some people decide ‘not to waste time’ pursuing justice.

In 2018, the Judiciary continued preparing an anti-corruption plan in line with the National Anti-Corruption Strategy and Action Plan Phase III.¹⁰³ Eight (8) magistrates were implicated and accused of corruption in 2018.¹⁰⁴

Shortage of and uneven distribution of lawyers and advocates

As of December 2018, Tanzania Mainland had over 8000 advocates.¹⁰⁵ Based on the current population of over 50 million, there is one advocate for every 6,250 people in Tanzania Mainland. This number is still not enough to cater for the needs of many people in Tanzania Mainland.

Apart from having shortage of lawyers and advocates, there is also a problem of uneven distribution of these legal professionals. Most of the

¹⁰⁰ *Prevention and Combating of Corruption Bureau*, Review of Corruption in High Risk and High Impact Sectors, December 2015, p. 49.

¹⁰¹ *Ibid.*

¹⁰² Lulu Olan’g and Jamal Msami, In Tanzania, anti-corruption efforts seen as paying dividends, need citizen engagement, Afrobarometer Dispatch No. 178, 6 December 2017 at http://www.repoa.or.tz/images/uploads/AD178-Corruption_in_Tanzania-Afrobarometer_dispatch-4dec17.pdf, accessed 10th December 2017.

¹⁰³ See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA SIKU YA SHERIA, DAR ES SALAAM, TAREHE 06 FEBRUARI, 2019, at <http://www.tanlap.or.tz/sites/default/files/HOTUBA%20YA%20MHESHIMIWA%20JAJI%20MKUU%20SIKU%20YA%20SHERIA%20TRH%206%20FEBRUARI%2C%202019.pdf>, accessed 28th February 2019.

¹⁰⁴ *Ibid.*

¹⁰⁵ Based on the number of advocates in 2017 and reported lawyers admitted to the Bar in 2018.



lawyers and advocates are concentrated in urban or semi-urban areas or townships. Ironically, majority of Tanzanians, over 60%, reside in rural areas, but they get a smaller share of lawyers, including advocates.

Low awareness of relevant laws and procedures

Low awareness of relevant laws and procedures is a key factor in people not being able to access justice in Tanzania. Low awareness is particularly higher in rural areas, where majority of the people are even intimidated by formal justice systems/mechanisms. Though its legal aid programme in Kinondoni-Dar es Salaam, Sakina in Arusha and mobile legal aid, LHRC has realized that many people who seek legal aid are not aware of relevant laws and legal procedures, something which contributes to their delays in accessing justice; sometimes even finding their claims barred by the law of limitation. Ignorance of the law and court procedure also leaves people seeking justice vulnerable to corruption, with corrupt officials taking advantage to solicit bribes.

Interference with the independence of the Judiciary

In 2018, the issue of political interference with judicial independence also came to the spotlight. Among those implicated in this sort of interference are regional and district commissioners. In January 2018, the Chief Justice, Prof. Ibrahim Juma, warned politicians and government officials against interfering with the work of the Judiciary and ignoring court orders and rulings.¹⁰⁶ A good example is disobedience of a court order (injunction) is two houses reportedly demolished despite specific order from the court against such action.¹⁰⁷

Unethical lawyers affecting access to justice

Some lawyers are unethical and take advantage of their clients, who usually possess no or little legal knowledge. In 2018, legal aid providers, including LHRC and the Tanzania Women Lawyers Association (TAWLA) provided legal aid to a number of clients who had been taken advantage of by their lawyers, destroying their cases in the process. Unscrupulous lawyers give

¹⁰⁶ See “Majaji, mahakimu tekelezeni kauli ya Jaji Mkuu” Mwananchi Newspaper, 35 January 2018, at <https://www.mwananchi.co.tz/Majaji--mahakimu-tekelezeni-kauli-ya-Jaji-Mkuu/1596774-4277914-format-xhtml-12u6u2hz/index.html>, accessed 29th December 2018.

¹⁰⁷ Ibid.



other lawyers a bad name, and among other things, charge their clients unusually high costs in contravention of the Advocates Remuneration Order. Most cases of complaints against advocates before the Ethics Committee of the Tanganyika Law Society (TLS) are of lawyers who take advantage of clients.

Language problem for lawyers and magistrates

English language has been identified as a problem by most lawyers and magistrates, which has shown during court proceedings and in several judgements seen or obtained by LHRC and other stakeholders. This issue may lead to delays in dispensation of justice and unnecessary objections and grounds of appeal. For instance, in Mbeya, a judge read a judgement by a magistrate of a District Court and could not understand it, hence ordering the case to be struck out. In December 2018, the Chief Justice, Prof. Ibrahim Juma remarked during advocate swearing-in ceremony, that most advocates struggle with the English language in the course of performing their duties, something which affects citizens' access to justice.¹⁰⁸

Available Judges burdened by shortage of judges

By December 2018, there were 66 Judges. Each of the judges had an average of 568 cases, which is too much and more than double the standard of 220 cases per year.

Inadequate allowance for assessors in Primary Courts

The amount of allowance granted to assessors in Primary Courts every time the matter is concluded by the court is Tshs. 5000. This amount is too little considering the role and importance of assessors in determination of

¹⁰⁸ See Cleo Michael "Jaji Mkuu Tanzania asema Kiingereza kinawapiga chenga mawakili" Mwananchi Newspaper, 14 December 2018, at <https://www.mwananchi.co.tz/habari/Kitaifa/Jaji-Mkuu-Tanzania-asema-Kiingereza-kinawapiga-chenga-mawakili/1597296-4895338-hlrkwdz/index.html>, accessed 20th December 2018; Eliya Mbonea "JAJI MKUU: KIINGEREZA KINAZUIA WANANCHI KUPATA HAKI MAHAKAMANI" Mtanzania Newspaper (Online) at <https://mtanzania.co.tz/jaji-mkuu-kiingereza-kinazuia-wananchi-kupata-haki-mahakamani/>, accessed 20th December 2018; Hellen Mwango "Mawakili wengi hawajui kuzungumza lugha ya Kiingereza" Nipashe Newspaper, 14 December 2018, at <https://www.ippmedia.com/sw/habari/mawakili-wengi-hawajui-kuzungumza-lugha-ya-kiingereza>, accessed 20th December 2018.



cases at Primary Court level, as well as the amount of time they stick around until a case is concluded. According to the Chief Justice, Prof. Ibrahim Juma, sometimes the Judiciary fails to pay the assessors due to budgetary constraints; and in the financial year 2017/18 the Judiciary owed a total of Tshs. 115 million in assessor allowance.¹⁰⁹

2.3.2. Right to Presumption of Innocence and Legal Representation

Presumption of innocence is a key principle in criminal justice. The right to be presumed innocent until proven guilty is an established principle under domestic, regional and international law. According to the Constitution of Tanzania, “no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence.”¹¹⁰ This right is also guaranteed under the ICCPR and UDHR.¹¹¹

A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Right to legal representation is clearly stipulated under Article 13 of the Constitution of the United Republic of Tanzania 1977, which is key for ensuring administration and access to justice. This means the right of an accused person to a lawyer, who will help to defend them in the court of law. In criminal justice, Tanzania is required under domestic, regional and international law to ensure an attorney is appointed for the defendant where the defendant cannot afford one. Article 14(3) of ICCPR – which Tanzania has ratified – clearly stipulates this obligation on the part of States.

¹⁰⁹ See HOTUBA YA JAJI MKUU MHE. PROF. IBRAHIM HAMIS JUMA SIKU YA SHERIA, DAR ES SALAAM, TAREHE 06 FEBRUARI, 2019, at <http://www.tanlap.or.tz/sites/default/files/HOTUBA%20YA%20MHESHIMIWA%20JAJI%20MKUU%20SIKU%20YA%20SHERIA%20TRH%206%20FEBRUARI%2C%202019.pdf>, accessed 28th February 2019.

¹¹⁰ Article 13(6) (b) of the Constitution of the United Republic of Tanzania, 1977.

¹¹¹ Article 14(2) of ICCPR; Article 11 of UDHR.



In 2018, LHRC was able to document several incidents of violations of the right to presumption of innocence and **right to legal representation**. One such case is that of Abdul Nondo, a university student who was reportedly abducted and later accused by the police of faking his own abduction. Statements issued by police and government authorities concluded that Mr. Nondo was guilty of faking his own abduction, which is contrary to the principle of presumption of innocence.

Nevertheless, the right to legal representation continues to be hampered by shortage of lawyers and advocates in within rural-based communities and high costs of legal representation.

Threatening lawyers seeking to represent their clients

There has been a tendency of threatening lawyers who seek to represent their clients, particularly in criminal cases. This affects right to legal representation and freedom of lawyers to provide legal services and their right to work. Right to legal representation is a fundamental right protected under the Constitution of the United Republic of Tanzania of 1977 as well as various regional and international human rights treaties that Tanzania is bound to, most notably the International Covenant on Civil and Political Rights (ICCPR). This right is at the heart of justice, and is very important in realizing the right to equality before the law.

Prolonged detention of accused persons and criminal suspects languishing in jail as remandees

Many people languish in jail and remand because ‘investigations are still underway.’ State attorneys and the Director of Public Prosecutions (DPP), contribute to this problem. This contravenes the right to liberty and personal security, presumption of innocence until proven guilty by court of law and the right to effective remedy. According to the former President of the Tanganyika Law Society (TLS), Adv. Fatma Karume, by December 2018, there were 1,723 males in Segerea Prison, out of whom only 158 had been convicted and found guilty by courts of law; while a whopping 1,565 were remandees.¹¹² She added that there were a total of 313 females in the

¹¹² See Speech by the President of Tanganyika Law Society (Swahili), Adv. Fatma Karume, delivered in Dar es Salaam on 6th February 2019.



prison, out of whom only 66 had been convicted and found guilty by courts of law.

2.3.3. Rights to Fair Trial and Effective Remedy

Rights to fair trial and effective remedy are also known as **rights to due process**. Right to fair trial includes the right to legal representation, right to be heard, right to be presumed innocent until proven guilty and right to be tried without undue delay by **an independent, impartial and competent tribunal**.¹¹³ Right to effective remedy is closely associated to the right to fair trial; and is also protected under the Constitution of Tanzania¹¹⁴ and international human rights instruments, including ICCPR.¹¹⁵

In 2018, rights to fair trial and effective remedy continued to be hampered by limited access to courts and delays in dispensation of justice. Recent estimates show that more than 20 million Tanzanians have no access to the High Court.¹¹⁶ According to the World Bank, delays and prolonged or unnecessary procedures cost Tanzania an estimated US\$464 million a year.¹¹⁷

Corruption also continues to play a part in hindering full realization of the rights to fair trial and effective remedy, known to be more prevalent in lower courts, which are more accessible to majority of Tanzanians.

2.4. Right to Liberty and Personal Security

Right to liberty and personal security is an essential human right, guaranteed under regional and international human rights instruments, including UDHR and ICCPR.¹¹⁸ It is also guaranteed and protected under the Constitution of the United Republic of Tanzania of 1977.¹¹⁹ This right includes freedom

¹¹³ See Article 14 of ICCPR; Article 13 of Tanzania Constitution; & Article 7 of ACHPR.

¹¹⁴ Article 13(6) (a) of the Constitution of the United Republic of Tanzania 1977.

¹¹⁵ Article 2(3)(b) of ICCPR.

¹¹⁶ A statement by former Chief Justice, Hon. Mohamed Othman Chande

¹¹⁷ See The World Bank “Citizen-Centric Justice in Tanzania: Expanding and Modernizing Court Services” 23rd May 2017 at

<http://www.worldbank.org/en/news/feature/2017/05/23/citizen-centric-justice-in-tanzania-expanding-and-modernizing-court-services>, accessed 20th January 2019.

¹¹⁸ Article 3 of UDHR; Article 9(1) of ICCPR.

¹¹⁹ See Articles 15 & 16 of the Constitution of Tanzania 1977; Article 6 of ACHPR.



from arbitrary arrest and detention, right to personal security and right to bail. When a person is arrested they are denied their liberty; and according to the Criminal Procedure Act, when this happens they are supposed to be brought before a court of law within 24 hours¹²⁰ and are entitled to bail,¹²¹ unless the offence for which they have been arrested is not bailable. The right to personal security creates an obligation on the Government of Tanzania to ensure that reasonable and appropriate measures are taken to protect detained and non-detained persons.

In 2018, the right to liberty and personal security was mainly affected by arbitrary arrests, including orders of arbitrary arrest and detention by regional and district commissioners; controversial/suspicious killings; and abductions.

2.4.1. Freedom from Arbitrary Arrest and Detention

Deprivation of liberty is only justified if it is **in accordance with the law** (principle of legality) and **not arbitrary**. If a person is arrested or detained on grounds which are not clearly stated in domestic law, the principle of legality is violated. Arbitrary arrest/detention does not only mean that against the law, but also not appropriate, unjust and done in disregard of due process of law. Arrest and detention of a person must thus not only be lawful, but also reasonable and necessary under the circumstances, for instance to prevent flight, interference with evidence or recurrence of crime. Accused person must not be discriminated against, must be allowed to communicate with family, and presumed innocent until proven guilty in court.¹²² Moreover, when an accused person under police custody is not produced before a court of law within 24 hours after arrest,¹²³ it amounts to arbitrary detention.

The Criminal Procedure Act requires police officers or other people carrying out an arrest to use a reasonable force during arrest (no more

¹²⁰ Section 32(1) of the Criminal Procedure Act, CAP 20 R.E 2002.

¹²¹ Ibid, section 48.

¹²² See ICCPR and BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT, adopted by the UN General Assembly in resolution 43/173 on 9 December 1988 at New York.

¹²³ Ibid.



than is necessary to prevent escape).¹²⁴ A person being arrested should not be subjected to more force than is necessary to make the arrest.¹²⁵

Arbitrary arrests and detention of journalists and civilians

Arbitrary arrest of a journalist in Dar es Salaam: In August 2018, a video of police officers beating a journalist from Wapo Radio, Silas Mbise, at the National Stadium in Dar es Salaam circulated in the social media. He was allegedly beaten because of trying to enter into a press conference following a football match involving Dar es Salaam-based Simba Sports Club.¹²⁶ The incident was widely condemned by media and human rights stakeholders.¹²⁷

Arbitrary arrest and detention of Abdul Nondo: 24-year old Abdul Nondo, a student at the University of Dar es Salaam, was reported missing by his fellow students on the night of 6th March 2018. On 8th March 2018, police in Iringa Region announced that the student had been found and was in police custody pending police investigation to determine whether he had really been kidnapped or not; and if not he would be treated like any other criminal. He was then reportedly transferred to Dar es Saalam where he continued to be held by police without being charged. Statements by the police and public leaders hinted at the student faking his own abduction and appeared to presume he committed the crime. LHRC's assessment of the matter revealed that whether he was abducted or faked his own abduction, the student had a right to be presumed innocent until proven guilty by a court of law in line Article 13(6) (b) of the Constitution of Tanzania and holding him without charging him for more than 2 days amounted to arbitrary arrest and detention, thus in violation of his right to liberty.

Multiple complaints about police fabrication of cases against innocent civilians

In 2018, concerns over police fabrication of cases against innocent civilians were raised in different parts of Tanzania Mainland. In August 2018, while in

¹²⁴ Section 12 of the Criminal Procedure Act, CAP 20.

¹²⁵ Ibid, Section 21.

¹²⁶ "Polisi washutumiwa kila kona kipigo mwanahabari" *Nipashe Newspaper*, 11th August 2018.

¹²⁷ "THRDC walaani polisi kupiga, kutesa waandishi wa habari" *Nipashe Newspaper*, 13th August 2018.



Bunda District, the Minister of Home Affairs, Hon. Kangi Lugola, stated that he would deal with corrupt police officers who fabricate cases against innocent motorcycle drivers, popularly known as *bodaboda* drivers.¹²⁸ In the same month, Hon. Minister also warned traffic police officers who fabricate cases/charges against motor vehicle drivers, providing an example of a traffic police officer in Vinguguti area in Dar es Salaam, who fined one driver for ‘putting boxes on passenger seats.’¹²⁹ During his visit at the police college in Kurasini-Dar es Salaam, again in August 2018, the Minister of Home Affairs further warned police officers against fabricating cases against civilians, including those relating to loitering and terrorism.¹³⁰ He mentioned that among the top complaints of fabrication of cases levelled against police officers are those on loitering and terrorism charges.¹³¹ He also made similar comments during a parliamentary session in September 2018.¹³²

In October 2018, the Prevention and Combating of Corruption Bureau (PCCB) called for the Police Force to put a stop to harassment, arbitrary arrests and beatings of citizens by some of the police officers, instead promoting closer ties between the force and community members.¹³³ This was raised by the PCCB Head of Community Education from the Kinondoni regional officer, Elly Makala, during a community sensitization session in Mbezi-Dar es Salaam.

Again, in October 2018, while opening a leadership training at the police academy in Moshi (CCP), Commissioner of Police Mussa Ali Mussa urged police officers to refrain from engaging in corrupt behavior and fabricating cases against innocent civilians.¹³⁴ He noted that some police officers have a tendency of fabricating cases and delaying investigations to create

¹²⁸ “Lugola awa mtetezi wa bodaboda” *Nipashe* Newspaper, 11th August 2018; See also “Lugola instensifies clean up” *Daily News* Newspaper, 22nd July 2018 at <https://www.dailynews.co.tz/news/2018-07-225b541092e0a55.aspx>, accessed 22nd December 2018.

¹²⁹ “Lugola awageukia trafiki waonevu” *Nipashe* Newspaper, 9th August 2018.

¹³⁰ “Lugola azidi kuwabana polisi” *Nipashe* Newspaper, 23rd August 2018; “Polisi watakiwa kuachana na kazi za ‘dili’” *HABARILEO* Newspaper, 22nd August 2018.

¹³¹ *Ibid.*

¹³² See “Onyo la Waziri Kangi Lugola kwa Askari wanaowaweka watu rumande” Millard Ayo, 13th September 2018, at <https://www.youtube.com/watch?v=la4ZrDwnKhw>, accessed 22nd August 2018.

¹³³ “TAKUKURU yakemea uonevu Jeshi la Polisi” *Majira* Newspaper, 2nd October 2018.

¹³⁴ “Polisi waonywa kubambikia wananchi kesi” *Mtanzania* Newspaper, 2nd October 2018.



opportunities for solicitation of bribe; and this constitutes majority of complaints against police officers.

In December 2018, residents of Salawe Ward in Shinyanga District reportedly complained to their District Commissioner, Hon. Jasinta Mboneko, about police officers in the ward who fabricate cases against them, including murder cases/chargers, something which has made most of them to live in fear.¹³⁵

Orders of arbitrary arrest and detention by RCs and DCs

In recent years, orders of arrest and detention of people for up to 48 hours by regional commissioners (RCs) and district commissioners (DCs) have been a common occurrence in Tanzania Mainland. This has prompted several national leaders, including the Minister of State in the President's Office, Regional Administration and Local Government, Hon. Selemani Said Jafo (MP). In August 2018, the minister warned against the habit of some DCs of ordering arbitrary arrests and detention of government officials and public servants.¹³⁶ In the same month, the deputy minister, Dr. Zainabu Chulla, made similar remarks while opening a training workshop for district commissioners and district executive directors in Dodoma.¹³⁷ In Simiyu Region, the Regional Commissioner, Hon. Anthony Mtaka, warned district commissioners in the region against ordering arbitrary arrest and detention of public servants."¹³⁸

In 2018, LHRC was able to document several reported incidents of arbitrary arrests and detention ordered by RCs and DCs. These include incidents in Nkasi District-Rukwa Region and Babati District-Manyara Region. In Nkasi District, it was reported that the Nkasi RC, Hon. Said Mtanda, ordered arrest and 12-hour detention of 3 public servants for delaying at an important function in Myula Ward.¹³⁹ In Babati District, it was reported that the Manyara RC, Hon. Alexander Mnyeti, had ordered arrest

¹³⁵ "Askari polisi watuhumiwa" Mwananchi Newspaper, 30th December 2018.

¹³⁶ "Baada ya ma-DC Jafo awageukia ma-DED" Mwananchi Newspaper, 16th August 2018.

¹³⁷ "Ma-DC waonywa utupaji watendaji ndani saa 48" HABARILEO Newspaper, 9th October 2018.

¹³⁸ "RC awashangaa wenzake kuweka watu mahabusu" Nipashe Newspaper, 19th August 2019.

¹³⁹ "DC awasweka ndani watendaji kwa kuchelewa 'songambele'" HABARILEO Newspaper, 20th October 2018.



and 48-hour detention of four workers of a company called Barton and their lawyer, Menrad De Souza, for allegedly spreading false claims of being detained on social media (posting seditious content).¹⁴⁰

2.4.2. Right to Personal Security

In 2018, LHRC recorded at least four reported incidents of violations of the right to personal security.

Killing of a land rights activist, Godfrey Luena

On 23rd February 2018, the public was shocked by the tragic death of human rights defender, Mr. Godfrey Luena, who also worked with LHRC in the past as a human rights monitor. The human and land rights defender, who was also Councillor of Nemawala Ward, was brutally killed by unknown



Picture 3: The late Godfrey Luena, who was brutally killed with machete by unknown assailants outside his home in Ifakara-Morogoro Region

assailants outside his house. The tragic death of Godfrey Luena sent shockwaves throughout the nation and was met with strong condemnation.

¹⁴⁰ “Mnyeti alivyowaweka ndani wakili, wateja wake” *Mwananchi* Newspaper, 1st August 2018; Joseph Lyimo “Mnyeti orders arrest of five for sharing seditious content on social media” *The Citizen* Newspaper, 31st July 2018, at <https://www.thecitizen.co.tz/News/Mnyeti-orders-arrest-of-five-for-sharing-seditious-content/1840340-4690746-370kky/index.html>, accessed 20th December 2018.

LHRC and other human rights stakeholders are very concerned with these trends of killings, which threaten peace and personal security.

Attack and killing of an opposition party official in Dar es Salaam

In February 2018, a secretary of CHADEMA political party was reported kidnapped and killed by unknown assailants in Dar es Salaam. The late Daniel John, disappeared on 12th February 2018, his body discovered along the Indian Ocean.

Abduction of business mogul, Mohammed Dewji

In October 2018, a Tanzanian business mogul, Mohammed Dewji, was abducted in Dar es Salaam, outside Colleseum Hotel in Oysterbay area-Dar es Salaam by unknown assailants.¹⁴¹ The incident raised security concerns both nationally and internationally, with calls for his safe return spreading fast in the social media.¹⁴² The businessman was found safe, ten days after his abduction.

Abduction of a university student

As discussed above, in March 2018, it was reported that a student at University of Dar es Salaam, Abdul Nondo, was reportedly abducted by unknown people in Dar es Salaam, although police later claimed that the student might have abducted himself and sent him to court. However, in May 2018 the High Court in Iringa released the student after the Prosecution failed to prove charges against him, including of publishing and disseminating false information about his abduction on social media and lying to a police that he had been kidnapped.¹⁴³

Abductions and Killings of bobaboda drivers

In recent years, killings of motorcycle drivers (popularly known as *bodaboda* drivers) by unknown assailants, who pretend to be passengers, have been an issue of concern in Tanzania Mainland. In 2018, several such incidents were

¹⁴¹ “Dewji abduction raises serious security doubts” *The Citizen Newspaper*, 13th October 2018, at <https://www.thecitizen.co.tz/News/Dewji-abduction-raises-serious-security-doubts/1840340-4804052-15s2t7g/index.html>, accessed 15th December 2018.

¹⁴² Ibid.

¹⁴³ See “Tanzania court sets university student Nondo free after eight months of legal battle” *The Citizen Newspaper*, 5th November 2018 at <https://www.thecitizen.co.tz/News/Tanzania-court-sets-university-student-Nondo-free-/1840340-4837998-fstogwz/index.html>, accessed 26th December 2018.



reported in different parts of the country. For instance, in May 2018, the Regional Commissioner of **Kagera** expressed concern over incidents of killings of the *bodaboda* drivers in the region, following brutal killings of three in the month.¹⁴⁴ In the same month, more than 100 *bodaboda* drivers in **Masasi-Mtwara** Region, took to the streets to protest against abductions and killings of three fellow drivers in the district within two weeks.¹⁴⁵ In September 2018, it was reported that police in Pwani Region apprehended two people suspected of abducting and killing a *bodaboda* driver in Kibindu area in Bagamoyo District, before leaving with his motorcycle.¹⁴⁶



Picture 4: Pwani Regional Police Commanders, ACP Wankyo Nyigesa, presenting suspected killers of a *bodaboda* driver in Bagamoyo-Pwani and the motorcycle that they stole to members of the press

In the same month, the District Commissioner of Pangani in Tanga ordered investigation into the abduction and killing of a *bodaboda* driver, Mohamed

¹⁴⁴ See Phinias Bashaya “Mauaji ya bodaboda yamtisha RC Kagera” Mwananchi Newspaper, 16 May 2018, at <https://www.mwananchi.co.tz/habari/Mauaji-ya-bodaboda-yamtisha-RC-Kagera/1597578-4565220-cbfbz/index.html>, accessed 29th December 2018.

¹⁴⁵ See Hamisi Nasiri “Waendesha bobaboda wachoshwa mauaji ya wenzao” Nipashe Jumapili Newspaper, 6 May 2018, at <https://www.ippmedia.com/sw/habari/waendesha-bodaboda-wachoshwa-mauaji-ya-wenzao>, accessed 29th December 2018.

¹⁴⁶ See Mariam Songoro “Wawili matatani kwa tuhuma za mauaji ya dereva bodaboda” Azam Tv, 21 September 2018, at <http://news.azamtv.com/sw/news/wawili-matatani-kwa-tuhuma-za-mauaji-ya-dereva-bodaboda-26627>, accessed 29th December 2018.

Ally, of 22nd September 2018.¹⁴⁷ Babaj drivers have also been known to face this predicament of abductions and killings in recent years.

Ben Saanane, Azory Gwanda and Tundu Lissu: What happened to them?

Ben Saanane, who was head of research department of an opposition party (CHADEMA) disappeared in November 2016, while Azory Gwanda – a journalist with *Mwanananchi* Newspaper, disappeared in November 2017. In September 2017, Tundu Lissu (MP), who was opposition chief whip in Parliament, was shot multiple times outside his residence in Dodoma. These incidents are among several, which have shocked the nation and threatened right to liberty and personal security in recent years. However, the question as to what happened to them remains unanswered.

2.4.3. Right to Bail

As indicated above, the right to bail is guaranteed under the Constitution of Tanzania 1977 and stipulated in the Criminal Procedures Act, CAP 20. Bail can be granted by police following an arrest, or by a court of law. But in practice, there have been multiple reported complaints about denial of police bail, especially during weekends. Some police officers have also been accused of extorting money from individuals under police custody or their relatives as a condition for release on bail. Because of this situation, in 2018 the Minister of Home Affairs issued a warning to police officers and ordered that bail should be granted by police even during weekends.

2.5. Freedom from Torture and Inhuman or Degrading Treatment

Freedom from torture is a basic human right protected under the regional and international human rights treaties.¹⁴⁸ 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

¹⁴⁷ See “DC Pangani aagiza uchunguzi ufanyike mauaji ya bodaboda wilayani Pangani” at <https://fullshangweblog.com/home/2018/09/25/dc-pangani-agiza-uchunguzi-ufanyike-mauaji-ya-bodaboda-wilayani-pangani/>, accessed 29th December 2018.

¹⁴⁸ Article 5 of ACHPR and Article 7 of ICCPR.



degrading punishment or treatment.¹⁴⁹ The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) defines torture for the purposes of the convention as any act inflicting severe pain to obtain information, confession or to intimidate or punish by a public official or any person in official capacity.¹⁵⁰ However, it also provides for a wider application. According to the the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, "Any unnecessary, excessive or otherwise arbitrary use of force by law enforcement officials is incompatible with the absolute prohibition of cruel, inhuman or degrading treatment."¹⁵¹ He notes that the act of a law enforcement official intentionally and purposefully inflicts pain or suffering on an individual who is powerless and unable to escape or resist arrest is unlawful and amounts to torture.¹⁵²

Torture of a journalist at the National Stadium in Dar es Salaam

In August 2018, a video of police officers beating a journalist from Wapo Radio at the National Stadium in Dar es Salaam circulated in the social media. He was allegedly beaten because of trying to enter into a press conference following a football match involving Dar es Salaam-based Simba Sports Club.

Torture of a local businessman in Bunju area – Dar es Salaam

In August 2018, a video showing a peoples' militia officer severely beating a local businessman in Bunju area -Dar es Saaam for not paying a cleanliness fine circulated in the social media. The police force later released a press statement stating that the perpetrator had been arrested and would be brought to justice.

¹⁴⁹ Article 13(6) (e) of Constitution of Tanzania 1977.

¹⁵⁰ Article I of CAT.

¹⁵¹ See "Arbitrary police violence can amount to torture, even in public spaces, UN expert warns" at

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22235&LangID=E>, accessed 23rd December 2018.

¹⁵² Ibid.



Torture of children by parents, teachers and guardians

Chapter Seven of this report, under sub-chapter 7.2 below, discusses issues of violence against children, which include acts of torture. LHRC has found that these acts are usually perpetrated by parents or guardians of the children, usually in the form of excessive punishment. Some of these acts have even resulted into death, as was the case of a pupil in Kagera Region, who was severely beaten by his teacher to death and an incident in Morogoro Region, where a child has severely beaten by her teachers such that she had to be admitted to a hospital. All these incidents are covered in greater detail under sub-Chapter 7.2 below.

Conclusions and Recommendations

I. Conclusions

Right	Conclusion
Right to Life	Right to life continues to face major threats in the form of mob violence, judicial killings, witchcraft-related killings, death penalty and road accidents. Incidents of mob violence have slightly increased compared to the first six months of 2017. Witchcraft-related killings also appear to have decreased, based on reported incidents, as have road accidents. However, these rights issues still pose a significant threat to right to life and numbers are still high. For the case of death penalty, LHRC documented fewer incidents of death sentences compared to the year 2017. More efforts are thus needed to safeguard right to life against these common threats.
Freedom of Expression	While the Online Content Regulations contain some important provisions and set minimum standard requirements with regards to the protection of children online, fighting hate speech and extremism online, and promoting user responsibility and digital security practices, they also contain provisions that do not meet international standards on freedom of expression and therefore serve to mainly arbitrarily restrict rather than promote freedom of expression which is essential in a democratic society. Amendments to the Statistics Act 2015, also poses a threat to freedom of



Right to
Equality
before the
Law and
Effective
Remedy

expression, especially for investigative journalists, CSOs and independent research institutions. Harassment of and threats to journalists was also a key issue affecting freedom of expression in 2018, which has contributed to Tanzania further dropping in the 2018 World Press Freedom Index.

Realization of the right to equality before the law continues to be boosted by government, judiciary and CSO action, especially through improving access to justice through provision of legal aid and construction of new courts. However, full realization of this right continues to be hindered by limited access to legal aid; inaccessibility of police stations and courts; prolonged detention of accused persons; corruption within the justice system; uneven distribution of lawyers and advocates; and low awareness of relevant laws and procedures. Violation of the right to presumption of innocence was also a key issue affecting the right to equality before the law in 2018.

Right to
Liberty
and
Personal
Security

LHRC welcomes the order issued by the Minister of Home Affairs, Hon. Kangi Lugola, regarding granting of police bail even during weekends. This will help to correct the practice of not allowing bail during weekends and consequently help to safeguard right to liberty. Apart from denial of police bail, right to liberty was mainly threatened by arbitrary arrests and detention of journalists and civilians; and arbitrary arrests and detentions ordered by regional and district commissioners. LHRC commends the Minister of State in the President's Office, Regional Administration and Local Government, Hon. Selemani Said Jafo (MP), for speaking against misuse of arrest and detention powers by regional and district commissioners and calling upon them to refrain from such behaviour. On the other hand, the right to personal security in 2018 was jeopardized by killings and abductions, including killing of Godfrey Luena, a land rights activist, outside his home in Ifakara-Morogoro.

Freedom
from
Torture
and

Incidents of torture recorded by LHRC in 2018 include torture of a journalist and a local businessman in Dar es Salaam; beating of a journalist in Tarime-Mara; and torture of



Inhuman or Degrading Treatment children by their parents and guardians in different parts of the country. Failure to ratify the anti-torture convention so far presents a challenge in the fight against torture in Tanzania.

2. Recommendations

State actors

- ⇒ Ministry of Home Affairs and the Police to ensure the police force responds timely to prevent mob violence and take action against mob-killings, ensuring the perpetrators are brought to justice.
- ⇒ Given President Magufuli's stance on death penalty execution, which is further proof of Tanzania's state of moratorium, the Government should move to declare the state of moratorium. The Law Reform Commission and the Parliamentary Committee on Constitutional and Legal Affairs should push for legal reforms to outlaw death penalty.
- ⇒ The Ministry of Home Affairs should ensure police officers implicated in extrajudicial killings are held accountable and brought to justice. Police officers and other law enforcement agents should also be properly trained and instructed to refrain from using excessive or unnecessary force in dealing with suspected criminals and other civilians. Use of force, especially firearms, should be a last resort in case of imminent threat to life and serious injury.
- ⇒ Commission for Human Rights and Good Governance (CHRAGG) and the Police Force to ensure police officers at all levels are regularly trained on the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials and human rights in general, in an effort to address extrajudicial killings.
- ⇒ The Judiciary and the Prevention and Combating of Corruption Bureau (PCCB) to closely work together to address corruption within the justice system in order to restore public faith in the system and reduce incidents of mob violence. Addressing judicial corruption will also contribute to safeguarding access to justice.



- ⇒ The Government and the Police Force to refrain from arbitrarily interfering with freedom of expression, including press freedom; freedom of assembly; and freedom of association.
- ⇒ The Government, through Ministry of Constitutional and Legal Affairs, should move table amendments of laws that impose arbitrary restrictions on participation rights, especially freedoms of expression, association and assembly. These laws include Media Services Act, Cyber Crimes Act and Statistics Act.
- ⇒ The Ministry of Information, Culture, Arts and Sports should review the Online Content Regulations remove or amend provisions that do not conform to international standards of freedom of expression.
- ⇒ Regional and District authorities should refrain from misusing their powers of arrest and detention under the Regional Administration Act.
- ⇒ The Police Force should refrain from conducting arbitrary arrests and arbitrarily detain suspected criminals instead of sending them court within a specified period of time (usually 24 hours) as required by the law, in order to the right to liberty. Police officers implicated in this behaviour should be held accountable.
- ⇒ The Police Force should ensure police officers refrain from fabricating cases against innocent civilians; and those responsible should be charged with malicious prosecution.
- ⇒ The Government should move to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in order to safeguard freedom from torture.
- ⇒ The Police Force and courts of law to grant bail for allailable offences and to do so timely.
- ⇒ There is need to have in place an independent police oversight body to investigate police misconduct and ensure police officers who do not abide by the law are held accountable.

Non-state actors

- ⇒ CSOs to intensify effort to raise public awareness on legal procedures and human rights, as well as encouraging community members to obey the law and respect human rights of others in



order to preserve right to life. In case of mob violence, for example, members of the public should be made aware of offences which are bailable.

- ⇒ CSOs and FBOs to use their platforms to speak against and raise awareness about mob violence, death penalty, witchcraft-related killings, attacks of PWAs and road accidents as well as their overall impact on human rights.
- ⇒ CSOs to collaborate with CHRAGG to provide regular human rights trainings to judges, magistrates and other legal professionals in order to enhance with knowledge and understanding of human rights as a way of safeguarding right to equality before the law and ensuring access to justice.
- ⇒ CSOs, in collaboration with CRAGG, to conduct research to determine extent of torture in Tanzania and ways of addressing this problem. Evidence collected could help to advocate for ratification of the United Convention against Torture.

Members of the public

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



Chapter 3: Political Rights

Introduction

Political rights are human rights that enhance direct participation of individuals in the political life, without discrimination or repression. Right to vote and to be voted for, the right to participate in democratic processes, freedom of association, freedom of assembly and the right to demand accountability from the State are key components of political rights. Civil societies and trade unions play a big role in enhancing political rights, especially through freedom of assembly and freedom of association.

Political rights are generally protected under the International Covenant on Civil and Political Rights of 1966. Domestically, political rights are constitutionally guaranteed under the Constitution of the United Republic of Tanzania of 1977. This Chapter examines the situation of freedom of assembly, freedom of association and right to take part in governance in the year 2018 as key political rights in Tanzania.

The International Covenant on Civil and Political Rights (ICCPR) of 1966 protects the political rights, as do regional human rights treaties that Tanzania is party to such as the African Charter on Human and Peoples' Rights (ACHPR) of 1981 and the African Charter on the Rights and Welfare of the Children (ACRWC) of 1990. These rights were also incorporated in the Constitution of the United Republic of Tanzania, 1977 as part of the bill of rights. The chapter discusses the situation of the political rights in Tanzania for the year 2018, focussing on freedom of assembly, freedom of association and right to take part in governance.

3.1. Freedom of Assembly

States are obligated to respect and refrain from interfering with freedom of assembly under international human rights law, including the International Covenant on Civil and Political Rights (ICCPR) and African

Every person has a freedom, to freely and peaceably assemble freedom of associate and cooperate with other persons, and for that purpose, express views association publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests

Article 20(1)



Charter on Human and Peoples' Rights (ACHPR).¹⁵⁵ In 1984, the Government incorporated the bill rights, including freedom of assembly, into the Constitution of United of Tanzania of 1977.

The only restrictions on freedom of assembly allowed are those prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, protection of public health or morals or protection of the rights and freedoms of others, according to ICCPR.¹⁵⁶ Restrictions must be necessary to achieve the desired purpose and must be proportionate to the need on which the limitation is based.

Continued limitation of political assemblies

According to the Guidelines on Freedom of Association and Assembly in Africa, published by the African Commission on Human and Peoples' Rights in 2017, organization of and participation in assemblies is a right and not a privilege, hence does not require authorization of the State.¹⁵⁷ States are required to offer the necessary measures to protect public safety and other rights if only the prior notification is put in place on the happening of the event.¹⁵⁸ The Guidelines also prohibit blanket bans and require simple and flexible notification procedures.¹⁵⁹

Freedom of assembly, particularly political assemblies, continued to face limitations in 2018, characterized by bans on political assemblies outside a politician's constituency. There were also complaints of discriminatory practices relating to freedom of assembly from political opposition camps, with notifications for assembly usually denied in the name of protecting peace and security. Arbitrary restrictions on freedom of assembly contributed to reduced civic space in Tanzania Mainland in 2018. In this year, law enforcement officials were also criticized for their tendency of using excessive force to deal with demonstrations, which lead death of a

¹⁵⁵ Article 20(1) of UDHR; Article 22 of ICCPR; and Article 11 of ACHPR.

¹⁵⁶ See Article 22(2) of ICCPR; see also Article 11 of ACHPR.

¹⁵⁷ See African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, at <http://www.achpr.org/instruments/freedom-association-assembly/>, accessed 20th January 2019.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.



university student, Akwelina Akwilini, during an opposition protest in Dar es Salaam in February 2018.

In 2018, political rallies resulted in arrest of many opposition members were arrested. This includes arrests of CHADEMA members of parliament,¹⁶⁰ who were accused of “inciting hatred and rebellion” during a public speech in which they uttered that the incumbent President would not last long.¹⁶¹ In late April 2018, citizens were threatened to be “beaten like stray dogs” and made to suffer if they participated in demonstrations called for 26th April 2018, which was the union day. Such threats have contributed to fear to participate in demonstrations among members of the public. A study on citizens’ views on participation and demonstrations, conducted by Twaweza in 2018 shows that 2 out of 3 citizens are unlikely to participate in any public demonstration.¹⁶² The study also shows that 5 out of 10 citizens agree with ban on political rallies, while 4 out of 10 disagree.¹⁶³

Key Provisions within the Guidelines on Freedom of Association and Assembly in Africa

What constitutes peaceful assembly?

The right to freedom of assembly extends to peaceful assembly. An assembly should be deemed peaceful if its organizers have expressed peaceful intentions, and if the conduct of the assembly participants is generally peaceful. a. ‘Peaceful’ shall be interpreted to include conduct that annoys or gives offence as well as conduct that temporarily hinders, impedes or obstructs the activities of third parties. b. Isolated acts of violence do not render an assembly as a whole non-peaceful.

Notification of assembly

Participating in and organizing assemblies is a right and not a privilege, and thus its exercise does not require the authorization of the state. A system of prior notification may be put in place to allow states to facilitate the exercise of this right and to take the necessary measures to protect public safety and rights of other citizens. a. A notification regime requires that the presumption is always in favor of holding assemblies, and that assemblies not be automatically penalized,

¹⁶⁰ Freeman Mbowe, Vincent Mashinji, John Mnyika, Peter Msigwa, Esther Matiko, Salum Mwalimu, and Halima Mdee

¹⁶¹ See Human Rights Watch : *Tanzania Events of 2018*, available at <https://www.hrw.org/world-report/2019/country-chapters/tanzania-and-zanzibar> (accessed on 3rd January 2019)

¹⁶² Twaweza, *Captains of their own ship?: Citizens’ thoughts on participation and demonstrations*, Sauti za Wananchi, Brief No. 49, July 2018, at <https://www.twaweza.org/go/szw-politics-and-participation-2018> accessed 29th December 2018.

¹⁶³ Ibid.



through dispersal or sanction, due to failure to notify, subject to the provisions further detailed below. b. Lack of notification shall not be understood to make an assembly illegal.

Notification procedures shall be nonburdensome.

a. A notification regime shall not stipulate that notifications be required too far in advance; rather, any notice period shall be as short as possible. Notification may be sought far enough in advance for an exchange of views as to any possible conditions, and for the relevant authorities to prepare

c. Procedures shall be flexible in instances of late notification or submission of incomplete information, with a view to facilitating the conduct of assemblies.

A failure to respond by the authorities shall be taken as acknowledgement that the assembly may go ahead along the lines proposed.

No notification need be submitted for small assemblies, assemblies unlikely to generate disturbance or spontaneous assemblies. Spontaneous assemblies include assemblies that occur as immediate reactions to events, and planned assemblies that necessarily occur within a tighter deadline than that required relative to notification.

A single authority shall be designated as the entity responsible for receiving notifications.⁵⁴ The designated authority shall be impartial. Upon receipt of notifications, the authority in question shall be responsible for communicating with other concerning agencies.

The operations of the authority in question should be subject to oversight and monitoring by an independent authority with a rights-advancement mandate, such as an ombudsman or a national human rights institution.

Freedom of expression through assembly

States shall fully respect in law and practice the right to freedom of expression through assembly.⁵⁶ States shall not discriminate among assemblies based on the expression involved.

Speech addressing matters of public concern, public interest or political or policy affairs, including criticism of the state or state officials, including as exercised in the context of an assembly, is given maximum protection under the right to freedom of expression

Blanket Bans

The blanket application of restrictions, including the banning of assemblies at certain times of day or in particular locations, shall be permitted only as a measure



of last resort, where the ban in question complies with the principle of proportionality.⁶³ The holding of assemblies in public areas in the proximity of residential areas, as well as the holding of nighttime assemblies, shall be handled on a case-by-case basis, rather than prohibited as such.

Proportionality

Any limitations imposed shall be in accordance with the principle of legality, have a legitimate public purpose, and be necessary and proportionate means of achieving that purpose within a democratic society, as these principles are understood in the light of regional and international human rights law. The law shall not allow assemblies to be limited based on overly broad or vague grounds.

Citizens' views on participation and demonstrations

A study on citizens' views on participation and demonstrations, conducted by Twaweza in 2018 shows that 2 out of 3 citizens are unlikely to participate in any public demonstration.¹⁶⁴ The study also shows that 5 out of 10 citizens agree with ban on political rallies, while 4 out of 10 disagree.¹⁶⁵

3.2. Freedom of Association

Freedom of Association ensures one the right to form and participate in association, either formally or informally. It covers any form of organized groups and professional organizations like political parties, trade unions, public associations and non-governmental organisations. It involves an ability to seek and receive resources for organization, peacefully promotion and respect of human rights.¹⁶⁶ This right is guaranteed under the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples Rights (ACHPR), and the African Charter on Democracy, Elections and Governance, among other human rights instruments.¹⁶⁷ In Africa, States have an obligation to have in place national

¹⁶⁴ Twaweza, *Captains of their own ship?: Citizens' thoughts on participation and demonstrations*, Sauti za Wananchi, Brief No. 49, July 2018, at <https://www.twaweza.org/go/szw-politics-and-participation-2018> accessed 29th December 2018.

¹⁶⁵ Ibid.

¹⁶⁶ Human Rights House Foundation: Freedom of Association at <https://humanrightshouse.org/we-stand-for/freedom-of-association/> (accessed on 24th February 2019)

¹⁶⁷ Article 22(1) of ICCPR; Article 10(1) of ACHPR; Articles 12(3), 27(2); and 28 of the African Charter on Democracy, Elections and Governance, 2007



legislation on freedom of association that facilitates and encourages establishment of associations and promotes their abilities to pursue their objectives. Members have a choice of joining and leaving associations.¹⁶⁸ Like for the right to freedom of assembly, restrictions applicable for the right of freedom of association are those prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, protection of public health or morals, or protection of rights and freedoms of others.¹⁶⁹ Together with freedom of expression and freedom of assembly, freedom of association is key for realization of the right to participate in governance (participation rights).

In 2018, freedom of association was threatened by violations of freedom of assembly. This is because the two rights are closely related, which is why they are both provided for under Article 20(1) of the Constitution of the United Republic of Tanzania of 1977. Arbitrary limitation of political rallies is a serious threat to the existence of political parties, as it hinders effective growth. Opposition members and leaders also complained of unfair treatment while in the conduct of political affairs in the forms of harassments, denial or delays in granting bail and prison sentences.

Unfair treatment of opposition political leaders, including harassments and bail delays

Opposition political parties, especially CHADEMA, complained of constant arrests and harassments by law enforcement officers while in the course of conducting political activities in the the year 2018. This includes arrest of its top leadership in connection with the protests of February 2018, that lead to the death of a university student, as discussed above. They faced 13 counts, including staging an unlawful demonstration in Dar es Salaam in the run-up to the February 16, 2018 parliamentary by-election in Kinondoni Constituency. They also raised concern over prison sentences for even minor offences and denial or delays in granting bail forailable offences. Jail sentences were issued for Mr. Joseph Mbilinyi (MP) and Mr. Emmanuel

¹⁶⁸ ACHPR: Guidelines on Freedom of Association and Assembly in Africa at http://www.achpr.org/files/instruments/freedom-association-assembly/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf accessed on 26th February 2019

¹⁶⁹ Article 22(2) of ICCPR.



Masonga in February 2018, for delivering “a hate speech” against the President.

Political Parties Bill: A serious threat to freedom of association for political parties

In November 2018, the Political Parties Bill was tabled before the National Assembly of Tanzania.¹⁷⁰ The controversial bill introduced several new provisions which significantly threaten freedom of association for political parties in Tanzania. The bill generally contravenes the Constitution of the United Republic of Tanzania of 1977, which guarantees freedom of association; and also threatens multiparty democracy. CSOs,¹⁷¹ opposition political parties¹⁷² and other stakeholders strongly voiced their concerns with the Bill,¹⁷³ but it was nevertheless passed by the Parliament. Key problematic provisions of contained in the Bill are briefly discussed below:

Criminalization of legitimate political activities

The Bill proposed unnecessary criminalization of political activities – which are the cornerstone of freedom of association of political parties. It imposes jail terms for contravention of the prohibition, focusing on punitive rather than administrative measures. For instance, it prohibited for a political party from functioning as a pressure or activist groups,¹⁷⁴ a measure that serves to cripple the functioning of political parties by rendering them inactive, thus contravening the Constitution of the Tanzania and contrary to regional and international standards on freedom of association under human rights and democracy instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the Guidelines on Freedom of Association and

¹⁷⁰ See Sharon Sauwa “Muswada wa vyama vya siasa watua rasmi bungeni” Mwananchi Newspaper, 16 November 2018, at <https://www.mwananchi.co.tz/habari/Kitaifa/Muswada-wa-vyama-vya-siasa-watua-rasmi-bungeni/1597296-4854784-format-xhtml-117016g/index.html>, accessed 12th January 2019.

¹⁷¹ Including LHRC, Twaweza, Tanzania Network of Legal Aid Providers (TANLAP), Tanzania Human Rights Defenders (THRD) and Tanganyika Law Society (TLS).

¹⁷² The parties include Chadema, ACT-Wazalendo, CUF, UPDP, DP, CCK, Chaumba, ADC and NCCR-Mageuzi.

¹⁷³ See Khalifa Said “Movement seeks to thwart amendment of Political Parties Act” The Citizen Newspaper, available at : <https://www.thecitizen.co.tz/News/Movement-seeks-to-thwart-amendment-of-Political-Parties-Act/1840340-4884988-30mptgz/index.html>, accessed on 25th January 2019

¹⁷⁴ Pressure or activist group is defined as ‘a group of people that influences public opinion or government action in the interest of a particular cause.’



Assembly in Africa. In LHRC's opinion, putting pressure on the Government take a certain action is a key function of a political party and health for democracy and development.

Vague provisions, susceptible to multiple interpretations and abuse

Some of the provisions, including definitions, are vague and susceptible to multiple interpretations and leave loopholes for abuse. They are also likely to create fear in the course of realization of freedom of association by party members. For instance, terms such as “ethics: and “peace and tranquility” are not clearly defined and thus leave room for wide interpretation.

Severe penalties and disregard of the principles of natural justice

Severe penalties are provided for in case of non-compliance with the provisions, including jail terms and fines. Some of the criminal sanctions, which are imposed on both individuals and parties, could be addressed administratively or at least be preceded by a warning or lesser sanction. For instance, a person who contravenes the requirement of conducting civic education or training to a political party and without approval of the Registrar is liable to a fine of not less than one million shillings but not exceeding five million shillings or to imprisonment for a term of not less than six months but not exceeding twelve months or to both. If it is an institution then it will be liable to a fine of not less than five million shillings but not exceeding thirty million shillings. If a political party, a leader or a member of a political party fails to provide any information demanded by the Registrar, they are liable to a fine of not less than one million shillings but not exceeding ten million shillings (political party) and a fine of not less than one million shillings but not exceeding three million shillings or to imprisonment for a term of not less than six months but exceeding twelve months or to both (an individual). Additionally, the Registrar may also suspend or deregister such political party.

Immediate suspension or deregistration without taking other administrative measures or imposing lesser sanctions is contrary to the spirit of promoting multiparty democracy and contravenes the principles of natural justice. One of the key principles of natural justice is the right to be heard and defend



oneself, which in this case is not afforded. In this case, the Registrar is also assuming the roles of both the accuser and judge.

Sweeping discretionary powers of the Registrar of Political Parties

The Bill granted the Registrar excessive powers, including policing and regulating of internal affairs of political parties. For instance, he is given powers to suspend any member of a political party from conducting political activities in case there's contravention of any provision of this law; and may demand any information from a political party, a leader or a member. Another good example of sweeping discretionary powers of the Registrar is in relation to provision of civic education and training to political parties, which cannot be done without his/her approval. Moreover, the Registrar was granted powers to suspend or deregister political parties for contravention of provisions of the Bill. These sweeping powers granted to the Registrar pose a big threat to freedom of association for political parties and hinders full realization and enjoyment of this right for both parties and individuals/members.

Low public awareness of smaller political parties

A survey on citizens' views on politics in Tanzania, conducted by Twaweza in 2018, shows that almost citizens are aware of three major political parties in Tanzania, namely CCM (100%), Chadema (97%) and CUF (83%).¹⁷⁵ However, awareness of other significant parties is much lower, whereby among other parties NCCR Mageuzi (54%) is the most well-known, followed by TLP (41%) and ACT Wazalendo (32%).¹⁷⁶ The blanket ban on political rallies will further hamper growth of these political parties, hence denying them their right to freedom of association.

The Non-Governmental Organizations (Amendments) Regulations, 2018 and its impact on CSOs

In October 2018, the Ministry of Health, Community Development, Gender, Elderly and Children introduced the the Non-Governmental

¹⁷⁵ Twaweza, *Speaking truth to power?: Citizens' views on politics in Tanzania*, Sauti za Wananchi, Brief No. 48, July 2018, at <https://www.twaweza.org/go/szw-politics-and-participation-2018>, accessed 29th December 2018.

¹⁷⁶ Ibid.



Organizations (Amendments) Regulations, 2018, complementing the Non-Governmental Organizations Regulations, 2004). The regulations provide for some positive provisions, seeking to ensure financial transparency and accountability of NGOs operating in Tanzania, as well as combating corruption and money laundering.¹⁷⁷ However, LHRC's assessment of the regulations shows that the reporting requirements under the Regulations are burdensome and the Regulations generally raise the question of practicability and leave loopholes for misuse of power by government actors, which might lead to harassment and arbitrary interference with the freedom of association of NGOs.¹⁷⁸ Under the Regulations, among other things, NGOs obtaining funds exceeding Tshs. 20,000,000 (twenty million) are required to: publish bi-annually fund reports together with its expenditure in a media that can be easily accessed by targeted beneficiaries; submit to the treasury and Registrar of NGOs contracts entered with the person who grant the said fund; and declare to the Registrar of NGOs any other resource received in cash or kind before its expenditure.¹⁷⁹ The Regulations also talk about and prohibit contracts which undermine sovereignty of the state and rights of the people,¹⁸⁰ but do not explain what this means.

3.3. Right to Take Part in Governance

Right to take part in governance is also known as right to take part in public affairs or right to participate in the government.¹⁸¹ It includes the right to for citizens to vote and be voted for public office and the right to participate in political life.

¹⁷⁷ See Regulations 12, 14 and 15 of the Non-Governmental Organizations (Amendments) Regulations, 2018.

¹⁷⁸ For further analysis, see LHRC's analysis at www.humanrights.or.tz.

¹⁷⁹ Regulation 13 of the Non-Governmental Organizations (Amendments) Regulations, 2018.

¹⁸⁰ Ibid, Regulation 15 (1) (b).

¹⁸¹ Is guaranteed under various regional and international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disability (CRPD).



Everyone, either directly or through a chosen representative, has a right and opportunity to take part in the public affairs of the state.¹⁸² Public participation enhances promotion of democracy and the rule of law. Individuals have to be allowed to draw attention in case there is any aspect of work that may likely to impede realization and promotion of human rights in the country.¹⁸³ Restrictions should not be imposed when a citizen is about to participate fully in the process leading to the matters affecting his wellbeing or that of the nation.¹⁸⁴

In practice, citizen participation in governance in Tanzania is limited by factors such as: low levels of financial and administrative discretion by local government authorities (LGAs); unavailability of more realistic participatory planning strategy and feedback mechanisms; and limited access to information, capacity of citizens or civil society organizations to carry out public expenditure tracking and budget analysis on a timely and regular manner.¹⁸⁵

This sub-chapter looks at the situation of right to vote and be voted for as well as right to participate in political life as key components of right to take part in governance in Tanzania Mainland in 2018.

3.3.1. Right to Vote and be Voted for

In 2018, some of the citizens of Tanzania exercised their right to vote and be voted for during the by-elections held in different parts of Tanzania Mainland. However, realisation of this right largely not peaceful as the violence erupted at some of the areas that held the by-elections, leading to injuries to both voters and some of the candidates. For instance, in Kaloleni-Arusha, one of the contestants from the opposition party,

¹⁸² Article 25 (a) of the International Covenant on Civil and Political Rights, 1966; Article 21(1) of the Constitution of Tanzania

¹⁸³ Article 8 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Adopted by General Assembly resolution 53/144 of 9 December 1998.

¹⁸⁴ Article 21 (2) of the Constitution of the United Republic of Tanzania, 1977

¹⁸⁵ Donald Mmari. Et al, *Limits To Citizen Engagement And Downward Accountability In The Context Of Decentralization By Devolution In Tanzania*, REPOA Brief No. 10 of April 2018 at http://www.repoa.or.tz/documents/Limits_to_citizen_engagement_and_downward_accountability_in_the_context_of_decentralization_by_devolution_in_Tanzania.pdf accessed on 27th February, 2019.



CHADEMA, Mr. Boniface Kimaro, was attacked by unknown assailants.¹⁸⁶ Such incidents of violence hinder people from freely coming out and voting, which in turn restricts their participation in governance. As the general elections of 2020 loom, such incidence of violence may discourage or prompt neutral Tanzanians and some members of political parties to decide not to vote and stay indoors.



Picture 6: A political post candidate, Boniface Kimaro, who was attacked in Kaloleni Ward - Arusha

Tensions between the ruling party, CCM, and opposition parties is an issue of key concern in Tanzania Mainland, as addressed in Chapter 10 of this report; and is, in LHRC's opinion, a key source of violence between members of these opposing parties. Deliberate measures to address this problem of political intolerance should be taken ahead of the upcoming elections in 2019 and 2020.

In another by-election held in Kinondoni Constituency in Dar es Salaam in February 2018, violence erupted at polling stations, as the opposition cried foul and bemoaned unfair treatment by the National Electoral Commission (NEC). Opposition parties, led by CHADEMA, claimed delays/denial of

¹⁸⁶ See "Vurugu zaripotiwa Uchaguzi wa Marudio" IPP MEDIA at <https://www.ippmedia.com/sw/habari/vurugu-zaripotiwa-uchaguzi-wa-marudio>, accessed on 24th February 2019

permits for their polling agents in Kinondoni-Dar es Salaam and Siha-Kilimanjaro, an action that prompted them to protest in Dar es Salaam.

LHRC's assessment of the by-election in 2018 concluded that they were marred with acts of violence, tension and complaints of foul play, which means NEC has a lot of work to do to ensure the upcoming elections are peaceful and democratic; and address perceived bias against it. LHRC condemns all acts of violence that occurred during the by-elections of 2018 and calls upon the authorities to address the irregularities and ensure future elections are free, fair and peaceful.

3.3.2. Right to Participate in Political Life

Right to participate in political life is key for advancement of human rights and promotion of democracy in Tanzania. This right enables citizens to take part in matters pertaining to the governance of the country and participate fully in the process leading to the decision on matters affecting them, their well-being or their nation, as provided for under the Constitution of the United Republic of Tanzania of 1977.¹⁸⁷ It also helps to open up debate and discussion about development and promote rule of law. This is a right of all people and can be enjoyed directly or indirectly through members of parliament (MPs). By nature, human rights are interrelated and interdependent; and as such, there are human rights which are crucial for realization of the right to participate in political life, also known as **participation rights**. These rights include freedom of expression, right to education, freedom of assembly and freedom of association. International human rights standards require that participation in political life and public affairs be equal (**discrimination-free**). Marginalized groups such as women, PWDs and indigenous peoples are usually not able to fully participate in political life in equal basis.

In 2018, the situation of the right to participate in governance slightly worsened compared to the year 2017. This was mainly due to:

¹⁸⁷ See Article 21 of the Constitution of Tanzania of 1977.



Arbitrary restrictions on freedoms of expression, assembly and association

As discussed above, freedoms of expression, assembly and association faced severe restrictions or threats in 2018. These participation rights are key for realisation of the right to participate in political life, hence their restrictions directly affected this fundamental right. Proposed amendments of the Political Parties Act further jeopardized realisation of this right in 2018 and in the future. The proposed amendments make it difficult for leaders and members of political parties to freely enjoy their right to participate in political life, owing to several restrictions, interferences and criminal sanctions proposed.¹⁸⁸

Removal and suspension of Members of Parliament for certain periods of time

The Standing orders of the National assembly empowers speaker of the assembly to reprimand and punish any MP in case there is contravention of the rules and regulations governing the parliamentary sessions. The speaker may ban/prohibit MPs from attending not more than five parliamentary sessions.¹⁸⁹

In 2018, several Members of Parliament (MPs) were kicked out of parliamentary sessions for different periods of time as disciplinary measures, with punishment for some taking longer than others. These MPs include:

- Hon. Hamidu Bobali, MP of Mchinga Constituency (CUF), who was ordered out by the Speaker during a parliamentary session on 28th June 2018;¹⁹⁰
- Hon. Peter Msigwa, MP of Iringa Urban Constituency, was suspended by the Deputy Speaker, Hon. Dr. Tulia Ackson, during the 13th Parliamentary session;
- Hon. Susan Kiwanga, MP of Mlimba Constituency, who suspended by the Speaker during the 13th Parliamentary session for misconduct; and¹⁹¹

¹⁸⁸ The Bill has been signed into law in early 2019.

¹⁸⁹ Order 72 of the Parliamentary Standing Order of 2016.

¹⁹⁰ See Mbunge wa CUF Afukuzwa Bungeni available at <https://www.malunde.com/2018/06/mbunge-afukuzwa.html> , accessed on 28th February 2019



- Hon. Ester Bulaya, MP of Bunda Constituency, was suspended by the Deputy Speaker, Hon. Dr. Tulia Ackson, during the session of 9th May 2018.¹⁹²

LHRC understands that the Parliament has its own rules and regulations (standing orders), which are used to justify different forms of punishment for members of parliament who contravene them. However, there is need to balance between the need to punish the MP and the right of citizens to participate in governance through MPs. In this case, the principle of proportionality should be considered for the sake of wider public interest. On the other hand, LHRC urges MPs from all political parties to conduct themselves properly while in Parliament, in line with the Standing Orders, in order to reduce the risk of suspension, so as to protect the right of the citizens to participate in governance through representation by MPs. MPs are also encouraged to actively participate in parliamentary sessions and in order to effectively perform their job of holding the government accountable.

Majority of citizens do not feel that they are adequately represented by their Members of Parliament and councillors

A 2018 Twaweza study on citizens' views on politics in Tanzania shows that majority of Tanzanians are not confident in their representation by their Members of Parliament (MPs).¹⁹³ According to study findings, fewer than half of all citizens approve of the performance of their MP (44%) and councillor (45%) since coming to office.¹⁹⁴

¹⁹¹ See Habel Chidawali: *Mbunge wa CUF amponza wa Chadema, atimuliwa bungeni* available at <https://www.mwananchi.co.tz/habari/Kitaifa/Mbunge-wa-CUF-amponza-wa-Chadema--atimuliwa-bungeni/1597296-4853672-7t2b6/index.html>, of November 15, 2018 (accessed on 1st March 2019)

¹⁹² See Ibrahim Yamola: *Bulaya yamkuta, atimuliwa bungeni*, of MAY 9 2018 available at <https://www.mwananchi.co.tz/habari/Bulaya-yamkuta--atimuliwa-bungeni/1597578-4553538-q7nriq/index.html> (accessed on 1st March 2019)

¹⁹³ Twaweza, *Speaking truth to power?: Citizens' views on politics in Tanzania*, Sauti za Wananchi, Brief No. 48, July 2018, at <https://www.twaweza.org/go/szw-politics-and-participation-2018>, accessed 29th December 2018.

¹⁹⁴ Ibid.



Arbitrary restrictions on participation rights contributing to shrinking civic space for civil society

Restrictions on freedoms of expression, association and assembly also continued to affect the work of civil society organisations (CSOs) and individual members and activists in Tanzania Mainland, as independent advocates and watchdogs. For instance, the adoption of amendments to the Statistics Act of 2015, pose a significant threat to the research function of CSOs. Online Content Regulations, discussed in detail in Chapter Two of this report, introduced in 2018, also affect the work of CSOs in terms of sharing information and using online platforms to advocate for change.

Conclusion and Recommendations

I. Conclusions

Right	Conclusion
Freedom of Assembly	Freedom of assembly continued to be affected by a blanket ban on political rallies in 2018. Opposition political parties also complained of discriminatory practices relating to political assembly; and arbitrary arrests and detention. These practices contravene the Guidelines of Freedom of Association and Assembly in Africa and severely curtailed freedom of assembly in Tanzania Mainland. Restrictions imposed on freedom of assembly are neither stipulated in the Constitution of the United Republic of Tanzania of 1977 nor the Political Parties Act of 1992, thus arbitrary.
Freedom of association	Arbitrary restrictions on freedom of assembly significantly contributed to violations of freedom of association, since the two rights are closely interrelated. Opposition political parties complained about unfair treatment while in the conduct of political affairs. However, the biggest threat to freedom of association, particularly for political parties, was introduction of the bill to amend the Political Parties Act of 1992. Analysis of the bill by various non-state actors revealed that the bill contained provisions which: criminalize legitimate political activities; are vague, susceptible to multiple interpretations and abuse; providing for severe penalties;



Right to Take Part in Governance

disregard the principles of natural justice; and confers upon the Registrar sweeping discretionary powers.

Right to take part in governance includes right to vote and be voted for and right to participate in political life. In 2018, these rights were marred by violence which erupted during by-elections in several parts of Tanzania Mainland. In 2018, the situation of the right to participate in governance slightly worsened compared to the year 2017. This was mainly due to arbitrary restrictions on freedoms of expression, assembly and association. Right to take part in governance is key for realization of the right to development and ensure government accountability. Tanzania is also yet to ratify the African Charter on Democracy on Good Governance of 2007, which is key for realization of the right to take part in governance.

2. Recommendations

State actors

- ⇒ Government and police authorities to refrain from arbitrarily interfering with freedoms of assembly and association;
- ⇒ The Police Force to objectively apply the Police Force and Auxiliary Services Act in relation to freedom of assembly in line with the Guidelines on Freedom of Association and Assembly in Africa and international human rights standards;
- ⇒ The Government should sign and ratify the African Charter on Democracy on Good Governance of 2007 in order to strengthen participation in democratic practices;
- ⇒ The Officer of the Registrar of Political Parties should move to make amends to the proposed amendments to the Political Parties Act 1992, by addressing problematic provisions identified by stakeholders and considering the recommendations given;
- ⇒ The National Electoral Commission (NEC) should move to address perceptions of bias in order to promote full realization of the right



to take part in governance, particularly right to vote and be voted for;

- ⇒ The Government and police should allow CSOs and political parties to operate freely in their work as watchdogs by guaranteeing their rights to freedoms of assembly and association;
- ⇒ As Tanzania heads to the 2019 and 2020 elections, the National Electoral Commission (NEC), Commission for Human Rights and Good Governance (CHRAGG) and CSOs should work together to provide civic and voter education in order to prepare Tanzanians to effectively participate in the elections as part of realizing their right to take part in governance;
- ⇒ The Ministry of Health, Community Development, Gender, Elderly and Children should hold consultative sessions with NGOs to review and amend the Non-Governmental Organizations (Amendments) Regulations, 2018 to ensure they do not arbitrarily interfere with the realization of freedom of association of NGOs.

Non-state actors

- ⇒ CSOs and political parties should exercise their freedoms of association and assembly;
- ⇒ CSOs should provide raise public awareness on freedom of assembly, freedom of association and right to take part in governance and collaborate with the Government, including its institutions such as the Police Force and the Commission for Human Rights and Good Governance, in promoting and protecting these fundamental human rights;

Members of the public

- ⇒ Members of the public are encouraged to effectively and fully realize their right to take part in governance;
- ⇒ Members of the public are also encouraged to report violations of their political rights to the Commission for Human Rights and Good Governance, which is the national human rights institution mandated with protection and promotion of human rights;



Chapter 4: Economic Rights

Introduction

International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, ratified by Tanzania in 1976, guarantees economic rights. States have a duty to ensure progressive realization of these rights.¹⁹⁵ Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.¹⁹⁶ Economic rights, such as right to work and right to own property are also enshrined in the Constitution of the United Republic of Tanzania.¹⁹⁷

Like social rights, economic rights are rights which are essential for a person to meet their basic needs, **enabling them to lead or live a life with dignity**. They are also enshrined in a several other human rights instruments, including the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the African Charter on Human and Peoples' Rights (ACHPR) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and the Convention on the Rights of Persons with Disabilities (CRPD). This chapter provides some highlights on the situation of the economic rights, particularly right to own property and right to work, in Tanzania Mainland for the year 2018.

4.1. Right to Own Property

Right to property is recognized under various regional and international human rights instruments, including ICCPR, ACHPR, UDHR, CEDAW and the Declaration on the Elimination of Discrimination against Women.¹⁹⁸ This right is also guaranteed under the Constitution of Tanzania of 1977.¹⁹⁹ The right to own property empowers the owner of the property with exclusivity of rights to choose the use of a resource, to the services of a

¹⁹⁵ Article 2(1) of ICESCR.

¹⁹⁶ Ibid, Article 2(3).

¹⁹⁷ Article 22, 23 and 24 of the Constitution of the United Republic of Tanzania, 1977

¹⁹⁸ Article 26 of ICCPR; Articles 13 & 14 of ACHPR; Article 17 of UDHR; Articles 15 & 16 of CEDAW; and Article 6 of the Declaration on the Elimination of Discrimination against Women.

¹⁹⁹ See Article 24(1) of Tanzania Constitution (Every person is entitled to own property, and has a right to the protection of his property held in accordance with the law)



resource, and rights to exchange the resource at mutually agreeable terms.²⁰⁰ It is somewhat complex human rights, subjected to more qualifications and limitations than any other human right and having features of both civil and socio-economic nature.²⁰¹ It is an essential right and has implications for other human rights, including right to work, right to education and right to adequate housing. Interference with or deprivation of the right to own property is only allowed where it is lawful, done for the public interest, proportional and accompanied by fair and adequate compensation.²⁰²

In 2018, realization of the right to own property was slightly improved, through several government actions. These include: intensified effort to resolve land disputes and launch of the Land Management Programme; effort to enhance security of tenure; and employing a more hands-on approach to addressing land issues by the Ministry of Lands, Housing and Human Settlements Development under Hon. William Lukuvi.

Intensified effort to resolve land disputes and launch of the Land Management Programme

Land conflicts and disputes have been a key issue affecting realization of the right to own property (land) for many years in Tanzania Mainland. Common conflicts/disputes are usually between villagers and investors, farmers and pastoralists and boundary disputes – including between villagers and wildlife authorities. In 2018, efforts to address these disputes were intensified by the Ministry of Lands, Housing and Human Settlements Development under Hon. William Lukuvi (MP). In August 2018, the Minister launched land management programme, implemented jointly by the Tanzania National Parks (TANAPA) and National Land Use Planning Commission (NLUPC), seeking to resolve land conflicts in regions with wildlife protected areas,

²⁰⁰ Alexandro ,P : Public property and Property Rights available at http://www.lse.ac.uk/europeanInstitute/research/hellenicObservatory/pdf/4th_%20Symposium/PAPERS_PPS/LAW_CITIZENSHIP/ALEXANDROPOULOU.pdf , accessed on 6th March 2019

²⁰¹ Magdalena Sep.lveda *et al* (2004), *Universal and Regional Human Rights Protection: Cases and Commentaries* (University for Peace, Costa Rica), p. 373.

²⁰² Article 24(2) of the Constitution of Tanzania of 1977; see *also* Article 14 of ACHPR.



namely Manyara, Dodoma, Mara, Arusha and Simiyu.²⁰³ He noted that land use planning was key in ending land/border disputes between villagers and wildlife authorities.²⁰⁴

In Ujiji-Kigoma, the authorities have been doing well to have in place and implement good land management system, which helps to ensure realization of the right to own and use property.

Effort to enhance security of tenure

In 2018, the ministry responsible for lands also worked to enhance security of tenure, including by ensuring increased pace of provision of title deeds and providing public education about land ownership and laws, since it was revealed that there were gaps in knowledge amongst a large section of the society, especially in rural areas. This has contributed to some of the citizens occupying land which is not registered, hence without formal ownership documents – leaving them susceptible to eviction without compensation. Ensuring citizens have formal ownership documents will reduce incidence of land conflicts/disputes and enhance security of tenure. It will also enhance access to credit for villagers and other people in order to effectively invest in their agricultural and other activities. Land Tenure Support Project (LTSP), which kicked off in 2016 in Ulanga, Malinyi and Kilombero Districts, was said to contribute to strengthening security of tenure in Morogoro Region.

Ministry of Land, Housing and Human Settlements Development employing a more hands-on approach to addressing land issues

In 2018, the ministry responsible for lands was observed to employ a more hands-on approach in addressing land issues, including land-related conflicts. This was a key step in ensuring progressive realisation of right to own land. In Morogoro, one of the regions where land-related conflicts are prevalent, Land Tenure Support Project (LTSP), which kicked off in 2016 in Ulanga, Malinyi and Kilombero Districts, was said to contribute to significant decline

²⁰³ See “Tanzania: Minister Issues Order On Land Disputes Resolution” The Citizen Newspaper, 17th August 2018, at <https://allafrica.com/stories/201808170355.html>, accessed 20th January 2019.

²⁰⁴ Ibid.



in land disputes in the region.²⁰⁵ Morogoro Regional Administrative Secretary (RAS) Clifford Tandale made a request to the ministry responsible for lands to extend the programme to Mvomero, Morogoro Rural and Kilosa districts where land disputes were still tense in 2018. It was reported that the project had enabled survey of 127 villages and issuance of title deeds. Land survey sought to help citizens access title deeds and proper management of their land. Addressing the issue of unsurveyed land was key to strengthening security of tenure and consequently reduce land-related disputes in the region.²⁰⁶

At different times of the year, the Minister also made time to attend to citizens who visited his office to hear about their land-related problems and devise ways of addressing them. He also made several visits in regions such as Morogoro and Manyara to address land issues.

Land-related conflicts still an issue of great concern

Despite efforts to address land issues in 2018, land-related conflicts still persist in different parts of Tanzania Mainland, especially between farmers and pastoralists. Reading the budget speech of his ministry for the financial year 2018/2019, the former Minister of Home Affairs, Hon. Mwigulu Lameck Nchemba (MP), mentioned that between July 2017 and March 2018, a total of 86 land-related conflicts between farmers and pastoralists were recorded in Tanzania Mainland, resulting into deaths of 44 people (34 male and 10 female) and causing injuries to 75 people (71 male and 4 female).²⁰⁷ He added that a total of 129 people were arrested in connection with the violence and killings. It was reported in 2018 that in areas such as Mvomero, Morogoro Rural and Kilosa Districts in Morogoro Region, land disputes were still tense.

²⁰⁵ See “Tanzania: Land Disputes in Morogoro Drop” DailyNews Newspaper, 19 February 2019, at <https://allafrica.com/stories/201902190542.html>, accessed 29th February 2019.

²⁰⁶ The project is briefly discussed below.

²⁰⁷ See Hotuba ya Waziri wa Mambo ya Ndani ya Nchi, Mhe. Dkt. Mwigulu Lameck Nchemba (MB.), akiwasilisha Bungeni Makadirio ya Mapato na Matumizi kwa Mwaka 2018/19, at <http://www.parliament.go.tz/uploads/budgetspeeches/1525875930-HOTUBA%20YA%20MAMBO%20YA%20NDANI%20YA%20NCHI.pdf>, accessed 20th January 2019.



Discriminatory laws and GBV limiting women's access, control and ownership of land

In 2018, LHRC observed that in the 10 regions it visited²⁰⁸ economic violence was the major form of violence against women for the year 2018. This was especially the case in rural areas, where women are the main producers of food. In regions such as Mbeya, Iringa and Kilimanjaro, it was revealed that men in rural areas tend to use women to engage in agricultural production but take full control during harvest period and abandon their spouses to seek and cohabit with other, usually younger, women. This form of economic violence significantly reduces chances of personal development for women, which in turn affects their ability to access, acquire and use land. In some cases, women tend to be victimized by their husbands when they access credit without their consent, leading to loss of property through confiscation. Other forms of violence, including physical, psychological and sexual violence also hinder effective realisation of women's right to acquire, use and dispose of land.

Limited access to land also affects women in terms of accessing financial services, as land is usually the main form of security that is accepted. Women, especially in rural areas, are usually less involved or not involved at all in decision making on land issues.

In pastoral societies such as Sukuma and Maasai, women generally face discrimination in accessing and owning land. Their situation is exacerbated by existence of discriminatory laws relating to inheritance, especially customary laws. Women in some communities, especially where practices such as bride price are common, are treated as objects or property themselves, hence no need to own property such as land. In such communities, women continued to have access only through their spouses/husbands in 2018.

Affordability of land

Land prices, especially in urban and semi-urban areas are generally high, hence not affordable for majority of Tanzanians. A good example is Dodoma, where many people have not been able to afford planned land, having easier access to unplanned land – which is cheaper. This calls for

208



availability of affordable land plots, so as to enhance the right to own property. Easier access to planned land could also help to reduce land-related disputes/conflicts. Access to land for investment should not be promoted at the expense of lack of land for common citizens. There is need for the Government to balance between the need for more investment and need for its citizens to have adequate access to land. Citizens should also have easier access to title deeds in order to enhance security of tenure.

Corruption and land grabbing in the land sector still issues of great concern

Corruption is still a major problem in different sectors in Tanzania, including in the land sector. This has resulted into violations of citizens' land-related rights. A 2015 study by the Prevention and Combating of Corruption Bureau (PCCB) the land sector as one of the high risk and high impact sectors for corruption.²⁰⁹ For instance, in 2018 Acacia Mining Company's North Mara Gold Mine was implicated in a grand corruption scandal, whereby some of its officials and government officials were accused to giving and receiving bribes to help the mine expand and deny rights of villagers, including compensation rights.

Land grabbing also continued to be a key issue in 2018. This is particularly a threat for villagers who need land for farming and indigenous people. According to the 2018 report by the International Work Group for Indigenous Affairs (IGWIA), land grabbing is one of the biggest threats against indigenous peoples, including in Tanzania.²¹⁰ In September 2018, during his visit in Bunda-Mara Region, Hon. President John P. Magufuli issued a warning against investors who grab land of citizens, instead of following relevant procedures for land acquisition for investment.²¹¹ This followed complaints by Bunda residents about an investor who took their land without compensating him.²¹²

²⁰⁹ See Prevention and Combating of Corruption Bureau, *Review of Corruption in High Risk and High Impact Sectors*, December 2015.

²¹⁰ IGWIA, *Half a million of indigenous peoples' livelihoods threatened in Tanzania* at <https://www.iwgia.org/en/news/3252-indigenous-peoples-livelihood-threatened-tanzania>.

²¹¹ Ikunda Erick "JPM awacharukia matajiri wapura ardhi" HABARILEO Newspaper, 6 September 2018.

²¹² Ibid.



4.1. Right to Work

Right to work is provided for under the various international instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and The African Charter on Human and Peoples' Rights (ACHPR).²¹³ It gives an individual an opportunity to gain a living by work they freely choose or accept.²¹⁴ An emphasis is made for governments to set up social, civil, political and economic mechanisms to enable full and progressive realization of the right to work.²¹⁵ Right to work includes right to gain living by work and right to just and favourable working conditions.

The International Labour Organization (ILO) emphasises on the commitment of member states to adhere to and respect four categories of rights in enhancing realization of the right to work, which are: freedom of association and recognition of the right to the collective bargaining, elimination of all forms of discrimination in employment, elimination of child labour and elimination of forced and compulsory labour.²¹⁶

This chapter highlights the situation on right to work in Tanzania Mainland in the year 2018.²¹⁷

4.1.1. Right to Gain Living by Work

Unemployment continues to be a key challenge affecting the right to gain living by work

Estimations and projections of the status of employment in Tanzania show that very few people are employed in Tanzania Mainland and even fewer will be in the employment sector by 2020.²¹⁸ Majority of the people are currently self-employed.

²¹³ Article 15 of ACHPR.

²¹⁴ Article 6(1) of the International Covenant on Economic, Social and Cultural Rights, 1966

²¹⁵ Ibid 6(2)

²¹⁶ *ILO Declaration on Fundamental Principles and Rights at Work*, Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Annex revised 15 June 2010)

²¹⁷ Ibid.

²¹⁸ See Danish Trade Union Council for International Development Cooperation, *Tanzania and Zanzibar Labour Market Profile 2018*, at





Figure 5: Estimations and projections of status of employment in Tanzania, 2000-2020

Source: ILO, Key Indicators of the Labour Market (KILM)

Factors contributing to unemployment, particularly among youth, include lack of employability skills among university graduates²¹⁹ and youth not being prepared for self-employment. Most youth face the challenge of lacking the necessary skills to secure employment or self-employ.

Majority of the people are employed in the agricultural sector. According to the World Bank, employment in agriculture in Tanzania stands at 66.71% as of 2017.²²⁰ However, this sector continues to be faced with several challenges, including budgetary deficits and non-use of modern farming equipment and technology, including during harvest – which has contributed to loss of crops during harvest.²²¹ Most farmers have poor access to improved seeds and fertilisers and limited access to financial institutions. They also lack storage facilities, which means they have to sell their produce at the earliest (at harvest), usually at a low price – hence hindering their full

http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/LMP2018/Imp_tanzania_2018_final2.pdf, accessed 20th January 2019.

²¹⁹ See “Over 50 per cent of EA graduates half-baked” The East African Newspaper, 12 June 2014, available at <http://www.theeastafrican.co.ke/news/Over-50-per-cent-of-EA-graduates-half-baked/2558-2345578-jw87c4/index.html>, accessed 21st January 2018;

²²⁰ See Trading Economics “Tanzania - Employment in agriculture (% of total employment),” at <https://tradingeconomics.com/tanzania/employment-in-agriculture-percent-of-total-employment-wb-data.html>

²²¹ See Elias Msuya “Kupotea kwa mazao shambani kunavyotishia uchumi wa viwanda” at <https://www.mwananchi.co.tz/habari/Makala/-Kupotea-kwa-mazao-shambani-kunavyotishia-uchumi-wa-viwanda/1597592-4599706-8xlrn6/index.html>, accessed 19th January 2019.



realization of the right to gain living by work. Moreover, in 2018, access to markets that pay for agricultural produce fairly continued to be a challenge for most farmers – the problem being compounded by existence of too many middlemen, who exploit farmers. Unreliable rainfall is also not helping their situation as does underinvestment in irrigation. According to the budget speech of the Ministry of Water and Irrigation for the financial year 2018/2019, Tshs. 20,103,412,150 million had been allocated for the National Irrigation Commission (NIC) for development expenditure for the financial year 2017/2018, but by March 2018, the NIC had only received Tshs. 2,468,524,645, equaling to 12.13%.²²² The speech also indicates that while there are 29.4 million hectares suitable for irrigation farming in Tanzania, only 475,052 hectares, equal to 47.44% of target and 1.6% of the land, were irrigated.²²³ Dissatisfied with disbursement of funds for development projects in the agriculture sector, in 2018, CSOs²²⁴ urged the Government to put more funding into the sector in order stimulate economic growth and eradicate poverty.²²⁵

For women working in the informal, their right to gain living by work is hindered by economic violence – which as discussed in Chapter Seven of this report, was a key issue affecting women’s rights in 2018. In this chapter, it is also highlighted that sexual violence threatened women’s rights in 2018, including at workplaces, which is a threat to their right to gain living by work. In December 2018, women’s rights activists met in Dar es Salaam to discuss marginalisation of and discrimination against women in the country’s labour market.²²⁶ It was revealed that women’s labour needs to be respected, valued and recognized in the national economy in order to ensure equal division of labour and benefits accruing from it.²²⁷ During the

²²² See Hotuba ya Waziri wa Maji na Umwagiliaji, Mhe. Eng. Isack Aloyce Kamwelwe (MB), akiwasilisha Bungeni Makadirio ya Mapato na Matumzi ya Fedha ya Wizara ya Maji na Umwagiliaji kwa Mwaka 2018/2019.

²²³ Ibid.

²²⁴ Including Action Aid, Ansaf, Forum CC, Oxfam, Policy Forum and Tanzania Gender Networking Programme (TGNP).

²²⁵ See “CSOs push for more investment in Tanzania’s agriculture” The Citizen Newspaper, 4 July 2018, at <https://www.thecitizen.co.tz/News/1840340-4646330-1mr7vxz/index.html>, accessed 19th January 2019.

²²⁶ See Khalifa Said “Activists want more jobs for women” The Citizen Newspaper, 13 December 2018, accessed 12th January 2019.

²²⁷ Ibid.



session there was also a presentation of findings on a study on the situation of women's labour, decent work and public services conducted by consultant from the Mkwawa University of Education, Prof Esther Dungumaro. According to study findings, though there has been an increase in women's labour participation, their rate of participation, in terms of decent work, is still low.²²⁸ The study further indicted that females are more vulnerable to employment than males and the share of males in senior and middle management occupations is higher (82.6 per cent) compared to females (17.4 per cent).²²⁹ The activists insisted on the Government giving the informal sector – which is dominated by women – assistance to ensure formalisation of the sector.²³⁰

In 2018, realization of this right continued to be an even bigger challenge for persons with disabilities (PWDs), who as discussed in Chapter Seven of this report, continued to face discrimination when accessing employment, despite the law offering them protection.

Introduction and suspension of new pension pay formula

In 2018, the Social Security Regulatory Authority (SSRA) introduced a new pension pay formula, which brought a public outcry from different parts of the country. The new formula provided for a pension pay of 25% in lump sum and the remaining 75% to be paid on a monthly basis in a period of 12 years.²³¹ The practice before was a 50% lump sum pay and 50% monthly packages.²³² Different stakeholders, including trade unions, criticized and protested against the new formula as a threat workers' right to social security, made in disregard of their views.²³³ In December 2018, President John Magufuli ordered revert to old pension formula during the transition

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ See Frank Kimboi "SSRA explains new pension pay formula" The Citizen Newspaper, 26 November 2018, at <https://www.thecitizen.co.tz/News/-SSRA-explains-new-pension-pay-formula/1840340-4868948-a3u1ys/index.html>, accessed 29th December 2018.

²³² Ibid.

²³³ See Beatrice Shayo "Wafanyakazi serikalini wapanga kikokotoo kipya" Nipashe Newspaper, 8 December 2018, at <https://www.ippmedia.com/sw/habari/wafanyakazi-serikalini-wapanga-kikokotoo-ki-pya>, accessed 29th December 2018.



period, to allow more negotiations between workers and the pension schemes.²³⁴

PAYE and loan board payments: a challenge for workers in public and private sectors

In 2018, workers in both public and private sectors continued to lament the burden of Pay as You Earn (PAYE) tax and loan board payments. PAYE constitutes 30% of monthly pay, while loan board in now 15% of monthly pay, rising from 8% since January 2017. Recently, the Controller and Auditor General (CAG) has indicated that some of the workers receive less than one third of their salary due to 15% deduction of educational loan. According to the 2016/2017 CAG report on local government authorities, a total of 4,830 employees in 58 local government authorities (LGAs) were noted to receive less than one third of their basic salaries, which is contrary to the Specified Officers (Debt Recovery) Act No.7 of 1970 as emphasized in circular with Ref. No.CE.26/46/01/1/66 of 28th November 2012.²³⁵ The CAG noted that excessive deductions significantly increased during the financial year 2016/2017 due application of the new rate of 15% to employees who are beneficiaries of Higher Education Students' Loans Board (HESLB), instead of 8% used to be charged previously.²³⁶ The CAG warned that these excessive deductions may adversely affect employees' performance and their well-being and leave them vulnerable to fraudulent practices and misappropriation of public funds or abuse of office, which will affect service delivery. He also recommended that "in future that any amendments to the law by the Government should apply prospectively in order to avert negative impact to parties that had already contracted using the Act before its amendments."²³⁷ CAG report for the financial year

²³⁴ Louis Kolumbia "Magufuli orders a revert to old pension formula amid pressure from workers" The Citizen Newspaper, 28 December 2018, at <https://www.thecitizen.co.tz/News/Magufuli-orders-a-revert-to-old-pension-formula-amid-pressure/1840340-4912986-t6ch2oz/index.html>, accessed 30th December 2018.

²³⁵ See THE ANNUAL GENERAL REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE AUDIT OF LOCAL GOVERNMENT AUTHORITIES FOR THE FINANCIAL YEAR 2016/2017 at http://www.nao.go.tz/?wpfb_dl=257, accessed 30th December 2018.

²³⁶ Ibid.

²³⁷ Ibid.



2017/2018 showed that basic salaries of 6,800 employees in 53 LGAs were subjected to deductions exceeding two thirds of their salaries.²³⁸

Other monthly deductions include health insurance, trade unions and social security, which total to up almost 50% of monthly pay – which means 50% is what most workers take back home, if they do not have bank or other loans.

Unpaid staff claims, inadequate staff appraisal and delays in promotion

In 2018, realization of the right to gain living by work was partly hindered by unpaid staff claims, inadequate staff appraisal and delays in promotion. According to the audit report on local government authorities by the Controller and Auditor General (CAG) for the financial year 2017/2018, outstanding staff claims and salary arrears in 22 LGAs amounted to Tshs. 11,141,505,574.²³⁹ These claims, including salaries, leave, acting allowances and subsistence, remained outstanding for more than 12 months without being paid.²⁴⁰ It was noted, and LHRC concurs, that these outstanding claims demoralize employees in delivery of effective and efficient services to the community.²⁴¹

The CAG report on LGAs has also highlighted absence of or inadequate staff appraisal, which affects delivery of service. The report revealed that performance appraisal for 661 staff out of 874 staff sampled in 27 LGAs, equivalent to 76%, was not performed or inadequately carried out, contrary to the Public Service Regulations, 2003 and the Public Service Standing Orders, 2009 and Circular No.2 of 2004.²⁴² Absence of or inadequate staff appraisal also affects the right to work in terms of need for training and suitability for promotion.

²³⁸ See ANNUAL GENERAL REPORT ON THE AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES (LGAs) FOR THE FINANCIAL YEAR 2017/2018 at http://www.nao.go.tz/?wpfb_dl=291, accessed 10th April 2019.

²³⁹ See ANNUAL GENERAL REPORT ON THE AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES (LGAs) FOR THE FINANCIAL YEAR 2017/2018 at http://www.nao.go.tz/?wpfb_dl=291, accessed 10th April 2019.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Ibid.



Furthermore, the CAG report shows that for the financial year 2017/18, there were delays in approving promotions and salary increments to 10,899 officers in 17 audited LGAs. Lists for approval were submitted to the President Office Public Service Management (PO PSM) for approval, but delayed despite the employees in question having the required qualifications. The delays were partly attributed to certificate verification exercise which commenced in 2016, and affect working morale and job satisfaction, which could lead to poor delivery of services to community members.

Payment of salaries or deductions to non-existing staff

The CAG report on local government authorities (LGAs) for the financial year 2017/2018 also reveals that despite Government effort to halt payment of salaries to ghost workers, the problem still exists in some LGAs. In 17 LGAs that were audited, a total of Tshs. 207,375,726 was paid to non-existing staff, out of which Tshs. 128,319,822 was paid as salaries; Tshs. 53,946,549 was paid as deductions; and Tshs. 25,109,355 was a double payment of salaries in one LGA.

Shortage of staff at LGAs

CAG audit reports on local government authorities (LGAs) for the financial years 2016/2017 and 2017/2018 reveal inadequate number of staff in LGAs. The 2016/2017 report revealed shortage of 155,013 staff (32%) in 166 selected LGAs,²⁴³ while the 2017/2018 report indicates shortage of 149,943 staff (33%) in 158 LGAs.²⁴⁴ Shortage was also observed in health and education departments, whereby there was shortage of 37,544 staff (47%) in the health sector (hospitals, health centres and dispensaries) in 155 LGAs; shortage of 58,057 staff (29%) in primary education in 146 LGAs; and shortage of 21,257 staff (24%) in secondary education in 146 LGAs.²⁴⁵ The shortage is partly attributed the government exercise of removal of

²⁴³ See THE ANNUAL GENERAL REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE AUDIT OF LOCAL GOVERNMENT AUTHORITIES FOR THE FINANCIAL YEAR 2016/2017 at http://www.nao.go.tz/?wpfb_dl=257, accessed 30th December 2018

²⁴⁴ See ANNUAL GENERAL REPORT ON THE AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES (LGAs) FOR THE FINANCIAL YEAR 2017/2018 at http://www.nao.go.tz/?wpfb_dl=291, accessed 10th April 2019.

²⁴⁵ Ibid.



workers without genuine certificates, which did not go hand in hand with their timely replacement.²⁴⁶

Shortage of workers has created a burden for existing employees, who are forced to do more than they are required in order to meet performance expectations. The CAG warns that this negatively affects efficiency and effectiveness of service delivery and could result into mental and physical health problems and lower morale and job satisfaction. The most affected sectors are health, agriculture and education.

Violations of right to work for domestic workers

A 2016 report by the International Labour Organization (ILO) on the situational analysis of domestic workers in Tanzania revealed that a number of work-related rights of domestic workers are abused in Tanzania.²⁴⁷ These rights include: right to employment contract; right to fair remuneration; right to normal working hours; right to overtime pay; right to favourable working conditions; and right to leave. The situational analysis revealed that 80% of domestic workers did not have employment contracts, while the average pay among domestic workers employed by diplomats ranged from TZS100,000 to 250,000 and for live-in domestic workers as low as TZS 25,000 and as high as TZS 100,000.

Table 6: minimum wage rates for domestic and hospitality services

Sector	Area	Minimum Wage Rates (Tshs.)				
		Per Hour	Per Day	Per Week	Per Fortnight	Per Month
Domestic and Hospitality Services	Domestic Workers employed by diplomats and potential businessmen	769.30	5769.65	34,618.05	69,236.10	150,000.00

²⁴⁶ Ibid.

²⁴⁷ International Labour Office, *A Situational Analysis of Domestic Workers in the United Republic of Tanzania*, International Labor Organization 2016 at https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-addis_ababa/---ilo-dar_es_salaam/documents/publication/wcms_517516.pdf, accessed 20th December 2018.



Sector	Area	Minimum Wage Rates (Tshs.)				
		Per Hour	Per Day	Per Week	Per Fortnight	Per Month
	Domestic workers employed by entitled officers	666.70	5000.40	30,002.30	60,004.60	130,000.00
	Domestic workers, other than those employed by diplomats	410.30	3077.15	18,463.00	36,925.90	80,000.00
	Other domestic workers not specified in (a), (b) and (c) above.					40,000.00
	Potential and tourist hotels	1282.15	9616.10	57,696.75	115,393.50	250,000.00
	Medium hotels	769.30	5769.85	34,618.05	69,236.10	150,000.00
	Restaurants, guest house and bars	666.70	5000.40	30,002.30	60,004.60	130,000.00

In terms of working hours, while the normal working hours are 9 hours a day, the situational analysis revealed that 70 percent of domestic workers were said to work between 14 and 16 hours, while 20 percent worked between 10 and 14 hours; and without overtime pay.²⁴⁸ Majority of domestic workers were also said not to be guaranteed rest during compulsory holidays or paid when they work during these days. Moreover, 70 percent of domestic workers indicated that they were never given annual leave; and maternity leave is rarely granted and if granted it is at the

²⁴⁸ Ibid.



discretion of the employer, while it is actually a legal requirement. In practice female live-in domestic workers voluntarily ask to leave their jobs or are asked by employers, when they get pregnant. The report further shows that most employers do not consider their households to be legitimate work places and do not value domestic work, hence mistreating domestic workers. Furthermore, Tanzania has not registered any collective bargaining agreement for any domestic worker; and most domestic workers do not have information on the existence dispute resolution mechanisms and trade unions.

According to ILO, 78% of female domestic workers are aged between 15 and 24 years, while 52% of their male counterparts fall in this age category in Tanzania Mainland.

Domestic workers, especially female workers, also face acts of violence, including physical and sexual violence – including rape, from their employers. However, most of these acts go unreported. Further research is needed to determine whether the overall situation of the right to work for domestic workers in Tanzania has improved.

Inadequate compensation in case of injury while at work

According to the Committee on Economic, Social and Cultural Rights, States parties should ensure that workers suffering from an accident or disease, and where relevant, their dependents, receive adequate compensation, including for costs of treatment, loss of earnings and other costs, as well as access to rehabilitation services.²⁴⁹ Compensation requirement is provided for under various international instruments on right to work, including ILO Workmen's Compensation (Accidents) Convention, 1925 (No. 17), which has been ratified by Tanzania,²⁵⁰ and Tanzania's Workers' Compensation Act.²⁵¹ This Act provides for the right to compensation for occupational injury (resulting in disablement or

²⁴⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 23 of 2016

²⁵⁰ Article 1 of the Convention states that "Each Member of the International Labour Organisation which ratifies this Convention undertakes to ensure that workmen who suffer personal injury due to an industrial accident, or their dependants, shall be compensated on terms at least equal to those provided by this Convention."

²⁵¹ CAP 263, R.E. 2015.



death)²⁵² and right to compensation for occupational diseases.²⁵³ It also establishes the Workers Compensation Fund²⁵⁴ and creates an obligation for an employer to contribute to it.

However, in practice, little or no compensation for workers in case of workplace injury is usually granted, as revealed in LHRC's Human Rights and Business Report of 2017 on situation of workers in private companies.²⁵⁵ Amount of compensation granted is usually not proportional to injury suffered.

4.1.2. Right to Just and Favourable Working Conditions

Under ICESCR, States are required to ensure just and favourable conditions of work, including: fair wages and equal remuneration for work of equal value without and not discriminatory, especially to women; remuneration that will provide a decent living for an individual and their families; safe and healthy working conditions; equal opportunity for promotion; and enjoyment of holidays.²⁵⁶ Tanzania has put in place a number of labour laws and regulations, which require just and favourable working conditions.

Factors affecting realization of the right to favourable working conditions

Despite existence of mechanisms to ensure enjoyment of the right to work, including labour laws and regulations, the right to favourable working conditions continues to be affected by several factors, some of which were highlighted in LHRC's Human Rights and Business Report 2017.²⁵⁷ These include: inadequate wages, restrictions on freedom of association and collective bargaining, poor working conditions and low awareness about labour laws, rights and duties.

Poor remuneration/inadequate wages

The issue of inadequate wages was identified as a key issue affecting right to work in Tanzania Mainland in LHRC's Human Rights and Business Report

²⁵² Section 19(1) of the Workers' Compensation Act.

²⁵³ Ibid, Section 22(1).

²⁵⁴ Ibid, Section 5(1).

²⁵⁵ See LHRC (2018), *Human and Rights and Busines Repor 2017* at www.humanrights.or.tz

²⁵⁶ Article 7 of ICESCR.

²⁵⁷ See LHR (2018), *Human Rights and Business Report 2017* at www.humanrights.or.tz



2017.²⁵⁸ Complaints about inadequate wages were leveled by workers of private companies/industries in all regions surveyed by LHRC, especially Mbeya, Morogoro and Tanga.²⁵⁹ This challenge continued to be an issue in 2018, as employers in the private sector continued to take advantage of demand for employment to offer minimum wages and exploit workers. LHRC also found that the Wage Order in use is that of 2013, while review is required every three years.

One of unjust conditions in the labour sector is unavailability of satisfactory wages to workers of the private sectors. Most of the private sector employees are unable to enjoy the fruits of their labour as they get paid wages that are inadequate to satisfy the basic needs.

Restrictions on freedom of association and collective bargaining

Restrictions on freedom of association and collective bargaining significantly affected full realisation of the right to favourable working conditions. Most workers, especially in the private sector, are discouraged to join trade unions and those who are actively engaged face threats from employers.²⁶⁰ Trade unions have also been questioned by workers and largely branded ineffective in protecting them and their rights, including right to favourable working conditions.²⁶¹ According to the Danish Trade Union Council for International Development Cooperation, systemic violations of trade union rights exists in Tanzania, meaning that “government and/or companies are engaged in serious efforts to crush the collective voice of workers.”²⁶²

Poor working environment

LHRC’s Human Rights and Business Report 2017 indicated some improvements in working environment in the private sector companies. However, the overall situation of working environment continued to be unsatisfactory in 2018, including in the education sector – where teachers, especially in rural areas, continued working in poor conditions,

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² See Danish Trade Union Council for International Development Cooperation, *Tanzania and Zanzibar Labour Market Profile 2018*, at

http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/LMP2018/Imp_tanzania_2018_final2.pdf, accessed 19th January 2019.



characterized by shortage of learning and teaching materials, burden of shortage of teachers, shortage of classrooms, shortage of teacher houses and delays in receiving their salary and other dues from the Government. In February 2018, the Government revealed that it would pay dues owed to 53,925 civil servants, including teachers, totaling Tshs. 43.39 billion, which is 34% of the initial claims made by the servants.²⁶³ 42.27% of the salary and other dues were of teachers. Some of the dues were said to go as far back as 2005.²⁶⁴

Low awareness about labour laws, rights and duties

A 2017 study on human rights and business in Tanzania Mainland indicates that awareness of labour laws, rights and duties, especially among workers, is very low. Only 23% of workers at private companies that were engaged were found to be aware of relevant labour laws, rights and duties and clearly mention them. Through in its Dar es Salaam and Arusha legal aid clinics, LHRC receives clients who complain about different issues, including labour-related issues. Through its engagement with clients, LHRC observed that awareness about labour laws, rights and duties continues to be low and a key issue affecting realization of the right to work, including right to favourable working conditions, in Tanzania Mainland.

Sexual violence against women at workplaces

In 2018, the issue of sexual violence against women at universities and workplaces re-emerged as an issue of great concern, as discussed in Chapter Seven of this report. This makes for uncomfortable working condition for women at workplaces, which includes being asked for a sex bribe to secure employment, promotion or work trips.

Conclusion and Recommendations

I. Conclusions

Right	Conclusion
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²⁶³ Sanula Athanas “Maelfu watumishi kulipwa mabilion madeni mwezi huu” Nipashe Newspaper, 10 February 2018.

²⁶⁴ Ibid.



Right to Own Property

Despite continuing challenges related to realization of the right to own property, especially for women, the situation of this right slightly improved in 2018. This was attributed to action by the Ministry of Lands, Housing and Human Settlements Development to address land disputes; fast-tracking of acquisition of land titles; and enhancing security of tenure. However, land-related conflicts/disputes remained an issue of great concern in 2018, resulting into deaths and injuries and affecting crop production. These conflicts were reported to be tense in areas such as Mvomero, Morogoro Rural and Kilosa Districts in Morogoro Region, land disputes were still tense. Discriminatory laws and GBV continued to affect women's access, control and ownership of land, especially rural areas.

Right to Work

The situation of the right to work remained the same in 2018, as it continued to be affected by challenges such as youth unemployment; unfavourable working conditions; inadequate wages; restrictions on freedom of association and collective; and low awareness about labour was, rights and duties. Lack of employability skills continued to be a key factor in youth unemployment. Teachers were among the group mostly affected by poor working environment, characterized by shortage of learning and teaching materials, burden of shortage of teachers, shortage of classrooms, shortage of teacher houses and delays in receiving their salary and other dues from the Government.

2. Recommendations

State actors

- ⇒ The Government, through the Ministry of Lands, Housing and Human Settlements Development, should continue applying a hands-on approach to resolving land-related conflicts and disputes and devise long-term solutions this problem, order to ensure realization of the right to own property. This includes strengthening the land-dispute settlement mechanisms, such as land tribunals. The Ministry should work with the Prevention and Combating of Corruption



Bureau (PCCB) to address corruption within these mechanisms and the land sector.

- ⇒ The Ministry of Lands, Housing and Human Settlements Development should also collaborate with the Law Reform Commission and other stakeholders to assess the impact of customary laws and practices that limit right to own property for women and devise a strategy to address this problem.
- ⇒ The Prime Minister's Office Labour, Employment, Youth and People with Disability should ensure the Wage Order is regularly reviewed, in accordance with the law, to ensure realization of the right to work and promote adequate wages.
- ⇒ Since agriculture employs the majority of Tanzanians and rainfall has not been very reliable due to climate changes in recent years, the Government, through the Lands, Housing and Human Settlements Development and the Ministry of Water and Irrigation, should increase investment in irrigation in order to boost the right to work and economic boost.
- ⇒ The Prime Minister's Office Labour, Employment, Youth and People with Disability should collaborate with the Ministry of Health, Community Development, Youth, Gender and Children to promote self-employment and entrepreneurship in order to address the problem of youth unemployment.
- ⇒ The Prime Minister's Office Labour, Employment, Youth and People with Disability should strengthen mechanisms for protection of labour rights and enhance regular inspection of workplaces to ensure rights are respected, protected and promoted, including favourable working environment.
- ⇒ The Ministry of Education and Vocational Training should address challenges faced by teachers to ensure they work in good conditions.
- ⇒ The Ministry of Education and Vocational Training to work with the Ministry of Labour and Employment to address the problem of lack of employability skills among majority of university graduates.
- ⇒ Authorities which have been granted mandate to manage land should intervene at early stages of establishment of informal settlements and stop illegal construction of houses.



- ⇒ The Government, through the Ministry of Lands, Housing and Human Settlements Development, should ensure that people who possess title deeds to land are timely and adequately paid compensation when their land is acquired for other use, as directed by law.
- ⇒ The Urban Planning Department within the Government should ensure implementation of laws related to urban planning as well as land laws in order to prevent informal settlements in urban areas.
- ⇒ Land management programmes should be properly and cautiously implemented to guarantee long-term solutions.
- ⇒ Local Government Authorities (LGAs), President's Office - Regional Administration and Local Government (PO-RALG) and President Office Public Service Management (PO PSM) in collaboration with Treasury to ensure that funds for settling staff claims are released without further delays to avoid accumulation of debts; and ensure no new staff debts are created without having funds.
- ⇒ As recommended by the CAG in his 2017/18 audit report on local government authorities (LGAs), management of the LGAs and the Government as a whole to ensure that there is sufficient budget allocation for staff appraisal activities and perform awareness program to LGAs' staff on the importance of staff appraisal to the government employees.
- ⇒ Government to implement CAG recommendation of Managements of local government authorities (LGAs) to liaise with President's Office - Regional Administration and Local Government (PO-RALG) to speed up promotions of eligible officers and their salaries adjusted soon after being promoted.
- ⇒ Government to implement CAG recommendation of management of LGAs to ensure that all the retired, absconded, transferred and dismissed employees are timely and effectively removed from payroll; and taking stringent measures should be taken to ensure total recovery of TZS 207,375,726 used to pay nonexistent employees.
- ⇒ Government to implement CAG recommendation of Local Government Authorities (LGAs), President's Office - Regional Administration and Local Government (PO-RALG) and President



Office Public Service Management (PO-PSM) to perform staff requirement assessment in LGAs and come up with mechanisms that will ensure that qualified staffs are recruited to fill the existing positions, retention of well skilled and experienced employees and provision of special incentives for employees especially those in education and health sector who are working in remote LGAs.

Non-state actors

- ⇒ CSOs should work with relevant government ministries, such as the ministry responsible for women and ministry responsible for land, to promote and protect economic rights, including conducting awareness-raising sessions and campaigns.
- ⇒ CSOs should collaborate with the Prime Minister's Office Labour, Employment, Youth and People with Disability to raise awareness about labour laws, rights and duties.
- ⇒ Investors, both foreign and local, should follow relevant procedures to acquire land in Tanzania, comply with laws and respect human rights of the people where they operate.

Members of the public

- ⇒ Members of the public are encouraged to seek knowledge and access information about their economic rights, including right to work and right to own property, including popular versions on laws relating to these rights prepared by government and no-government actors.
- ⇒ Members of the public are also encouraged to report violations of their economic rights to relevant authorities, including trade unions and the Commission on Human Rights and Good Governance.



Chapter 5: Social and Cultural Rights

Introduction

Social and economic rights enhance individual's protection by the state, for the dignity, freedom and well-being of individuals. The State is duty bound to support provision of entitlements to the basic needs such as education, food, public health care, housing, and other social goods to the maximum of the available resources.²⁶⁵

Right to education, right to health, right to social security, right to food, right to clean water and sanitation, and the right to adequate standard of living are commonly identified as the entitlements upon which states should accord their citizens with for the purpose of improving and maintaining their social lives. At international level, these social and cultural rights are guaranteed and protected under the Universal Declaration of Human Rights (UDHR)²⁶⁶ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).²⁶⁷ At regional/continental level, they are provided for and protected under the African Charter on Human and Peoples' Rights (ACHPR),²⁶⁸ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)²⁶⁹ and the African Charter on the Rights and Welfare of the Child (ACRWC).²⁷⁰ Tanzania is duty bound under the ICESCR, ACHPR, Maputo Protocol and ACRWC to progressively realize these rights for its citizens to the maximum of its available resources.

This chapter highlights the situation of the rights to education, health, water, adequate standard of living, and culture in Tanzania Mainland in 2018.

5.1. Right to Education

As stated above, States are duty bound under international human rights treaties to ensure progressive realization of social rights, including right to education. This right has to be implemented by member states without any

²⁶⁵ Dawood, A. et al (2017) *Social and Economic Rights*, International Institute for Democracy and Electoral Assistance (IDEA) 2nd Ed, Stockholm Sweden

²⁶⁶ See Article 25 (1) of UDHR.

²⁶⁷ See Articles 6, 9, 11, 12(1) and 13(1) of ICESCR

²⁶⁸ See for example Articles 15, 16(1) and 17(1) of ACHPR;

²⁶⁹ See for example Articles 12(1), 14 15 and 16 of Maputo Protocol.

²⁷⁰ Articles 11 and 14 of ACRWC.



discrimination as to race, colour, origin and sex, since it is one of the most basic human rights as guaranteed by the international covenants.²⁷¹ This right is also guaranteed under the Constitution of the United Republic of Tanzania of 1977, which clearly stipulates that “*the authority shall make appropriate provision for realizations of person’s right to self-education.*”²⁷² **Right to education is essential for effective realization of all other human rights.**

The Government of Tanzania strives to enhance provision of free education from the primary level to the secondary level. As education is regarded as fundamental to any state’s development, more efforts should be made to improve education as one of the measures to fight extreme poverty that that has permeated most sections of Tanzanian society.

In 2018, the Government continued to implement its fee-free education policy to increase access to basic education for children and progressively address some of the challenges affecting both access and quality of education.

5.1.1. Right to Access Education

Education is one of the most powerful tools that empowers an individual economically, politically and socially and has an ability to lift marginalized children and adults out of poverty.²⁷³ The Governments, including of Tanzania, are therefore required to ensure that proper mechanism for realization of right to education exists. They are required to enact rules and regulations that promote individual development through provision of education without any form of discrimination.

Girls continue to face limitations in accessing right to education in 2018

In the year 2017 the Government of Tanzania made it clear that the Magufuli administration would not allow a girl who has gotten pregnant to go back to school and enjoy government-sponsored education. This stance triggered a national and international debate, and the Government

²⁷¹ Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESR) of 1966

²⁷² Article 11 of the Constitution of the United Republic of Tanzania, 1977

²⁷³ See UNESCO: *Right to Education* at <https://en.unesco.org/themes/right-to-education>



continued with its stance in 2018. LHRC concluded in its Tanzania Human Rights Report 2017 that denying a girl her right to education because of pregnancy is in violation of various international conventions that Tanzania has signed and ratified such as the International Covenant on Civil and Political Rights, UN Convention on the Rights of the Child, Convention on the Elimination of all Forms of Discrimination Against Women- CEDAW, African Charter on the Rights and Welfare of the Child and Maputo Protocol. These human rights instruments impose an obligation upon States to provide education to all children and people at large without discrimination of any kind.

However, in November 2018, there was a hope for pregnant girls to be allowed to go back to school when the World Bank indicated that allowing pregnant girls to continue with education was key to its 300-million-dollar education loan for Tanzania.²⁷⁴ It was reported that the Government of Tanzania, in collaboration with the World Bank, has re designed the USD 300 million education project intended for the country so as to align with the girls' right to education. The proposed agreement is that the ministry of education has to provide a pathway for girls who drop out of schools for any reason so that they can be brought back to the system.²⁷⁵

Fee-free education policy continues to ensure increased access to education

The introduction of a fee-free basic education has significantly reduced the problem of inaccessibility of education for poor families which were not able to enrol their children to schools.²⁷⁶ This is a positive step that Government continued to take in 2018 as part of its progressive realization of the right to education. Since the introduction of the policy the enrolment rates in Tanzania Mainland have significantly increased.

²⁷⁴ See Syriacus Buguzi "World Bank : Tanzania's stance on pregnant schoolgirls key to loan release" The Citizen Newspaper, 18 November 2018 at <https://www.thecitizen.co.tz/News/World-Bank---Tanzania-s-stance-on-pregnant-schoolgirls/1840340-4856962-format-xhtml-ki8ug3z/index.html>, accessed 20th December 2018.

²⁷⁵ Ibid.

²⁷⁶ Circular N0.5 of the Education and Training Policy, 2014



In LHRC's view, increased access to education made possible by effective implementation of the policy will also help to curb the problem of child marriage. This is because girls who usually remain at home after completing their primary education for lack of fees for secondary education can now proceed with education, thus reduced chances of them being married off.

Long distance to school and violence against children among challenges affecting access to education, especially in rural areas

While fee-free education policy continued to boost access to education in 2018, LHRC observed that challenges such as long distances to school, caused by shortage of schools; and violence against children, continued to be a threat to right to access education in 2018. This was especially the case for rural areas.

Long distance to school

A school being located far from home is a big challenge for students and pupils in rural areas, something which poses a threat to their well-being and affects their concentration and performance in class. In some areas, students are forced to walk for long distances to reach their designated schools. For instance, in 2018 it was reported that in Mgome Village, which is located in Mpayu Ward in Muheza District-Tanga Region, students were forced to walk up to 22 Kilometres to get to a secondary school in nearby Lusanga Ward.²⁷⁷

Long distance to school also puts girls at risk of gender-based violence, especially by motorcycle drivers (popularly known as *boda boda*), who tend to take advantage of girls in order to sexually exploit them.

Overcrowding in hostels due to shortage of dormitories/hostels

In 2018, overcrowding of dormitories/hostels was a big problem, putting too much pressure on limited school facilities and making an uncomfortable environment for studying. For instance, this problem was revealed in Tanganyika District in Katavi Region, where it was reported that Kabungu Secondary School was not easily accessible and did not have enough dormitories to accommodate its students, thus causing overcrowding in available ones. The head master of the school reportedly stated that the

²⁷⁷ Nipashe Newspaper, 11th August 2018



school had a total of 627 students, whereby 128 of them stay at dormitories.²⁷⁸ The dormitory was also said to be in poor condition, characterized by shortage of beds and worn out mattresses. Shortage of dormitories also leaves girls vulnerable violence, as some of them tend to be tricked into cohabiting with men in areas nearby schools.



Picture 7: Worn out mattresses of a dormitory at Kabungu Secondary School in Tanganyika District – Katavi Region

Violence against children, child marriage and child pregnancy: a threat to the right to education

As discussed in sub-chapter 7.2 of this report, sexual violence against children significantly increased in 2018. Common forms of sexual violence were rape and sodomy; and girls were targeted by men, especially *bodaboda* drivers (motorcycle drivers), on their way to and back from school. *Bodaboda* drivers were said to take advantage of girls, especially those who have to walk long distances to reach school, by offering them lifts and gifts. Various reports of sexual violence perpetrated by male teachers were also reported in 2018, including in Misungwi District in Mwanza Region. Other perpetrators of sexual violence against children in 2018 were close relatives and fathers of children, especially where a female child is only living with a father – having separated with or divorced her mother.

278

Incidence of child-on-child sexual violence is also growing, as discussed in sub-chapter 7.2 of this report. The perpetrators are usually older children in primary and secondary schools, for example those in standard 6-7 and form 3-6 respectively, while the victims are usually those in standard 1- 5 and form 1- 2. This affects access to and compromises quality of education.

Child marriage and child pregnancy also threatened right to education in 2018. As discussed in sub-chapter 7.2 of this report, child marriage is still widespread in Tanzania Mainland and child pregnancy incidents significantly increased in 2018, forcing more than a 1500 girls from different parts of Tanzania Mainland to drop out of school. These problems were mostly reported in regions such as Ruvuma, Iringa, Shinyanga, Mwanza, Mbeya and Tabora.

In LHRC's opinion, it is very important that the Government, in collaboration with other key stakeholders, addresses and prioritises the issue of violence against children, especially sexual violence, as a key measure to ensure effective realization of right to education for all children. The victims of such violence cannot be expected to easily and effectively access education and perform well, as they are already suffering mentally, physically and psychologically due to harm inflicted on them. They also need quality and child-friendly sexual violence services in order to help repair their state of mind and enable them to fully realize and enjoy their right to education.

5.1.2. Right to Quality Education

While the Government has intensified efforts to ensure progressive realisation of the right to access education through implementation of fee-free education policy in line with the International Covenant on Economic, Social and Cultural Rights (ICESCR), it has not put the same amount of effort to ensure quality of education. In 2018, LHRC observed the right to quality education continued to be affected by several challenges, such as allocation of insufficient budget; shortage of teachers and learning materials; shortage of toilets and classrooms; and corporal punishment. Each of these challenges is discussed below.



Insufficient budget for the education sector

Insufficient budget for the education sector has been an issue of concern in Tanzania for many years. The international standard for education sector budget allocation is 20% of the national budget. However, according to *Haki Elimu*,²⁷⁹ the budget for the financial year 2016/2017 constituted 16% of the national budget, while for the financial year 2017/2018 it was 15%.²⁸⁰ The budget for development expenditure has also not been sufficient, taking into account that funds are usually not disbursed in full.²⁸¹ For the financial year 2017/2018, the education sector was allocated Tshs. 4.71 trillion, a decline of Tshs. 63.99 billion (1.3%) and fell short of the 20% of the national budget minimum mark under the Global Partnership for Education (GPE) target at 15%.²⁸² Implementation of the fee-free education policy has also contributed to stretching the available resources further.

Shortage of teachers and learning materials, especially in rural areas

The fee-free education policy has accelerated enrolment of students in primary schools. Due to other mechanisms of promoting the right to education like punishing parents who deny enrolling their children to school, however the policy has not created a smooth environment for application of the policy. There has been a problem of lack of teachers in primary schools, especially in rural and remote areas before the establishment of the policy but the problem has increased and escalated more to the extent that the quality of education provided is compromised as insufficient number of teachers can influence provision of quality education in public schools.

It was reported that in Momba District - Songwe Region, the district is faced with acute shortage of teachers, with only 618 teachers out of 925 required available. At one school five teachers had to teach 430 pupils.²⁸³

²⁷⁹ A right to education organization based in Tanzania.

²⁸⁰ See By Alice Tupa TZA "Haki Elimu kuhusu mpango wa Bajeti ya Sekta ya Elimu 2018/19" 24 April 2018, at <http://millardayo.com/ma24hak/>, accessed 29th December 2018.

²⁸¹ Ibid.

²⁸² See UNICEF, EDUCATION BUDGET BRIEF 2018:TANZANIA, at <https://www.unicef.org/esaro/UNICEF-Tanzania-2018-Education-Budget-Brief-Mainland.pdf>, accessed 29th December 2019.

²⁸³ Mwananchi Newspaper, 20th November 2018



Shortage of dormitories, toilets/toilet holes and classrooms

Shortage of school facilities such as dormitories, classrooms, toilet holes and learning materials such as books is still an issue of great concern in most parts of rural Tanzania Mainland, despite government effort to address it. Shortage of toilet holes, classrooms and dormitories make for an uncomfortable learning environment for pupils and students, affecting the quality of education that they receive. The table below provides an overview of reported incidents of shortage of classrooms, toilets/toilet holes and dormitories reported from different parts of Tanzania Mainland and documented by LHRC in 2018.

Table 7: Reported incidents of shortage of classrooms and toilets/toilet holes in 2018

Description	Source	Date
Muheza, Tanga: More than 150 pupils at Magoda Primary School were said to queue for a toilet at the school's neighbour's house after school toilets collapsed.	<i>Nipashe</i> Newspaper	11 Aug 2018
Mbeya: More than 1900 pupils at Iyela Primary School in Mbeya CC were reportedly accommodated in only 13 classrooms, leading to congestion. Required classrooms were reported to be 38.	<i>Nipashe</i> Newspaper	7 Aug 2018
Igunga, Tabora: More than 400 pupils at Milumbi Primary School were reportedly forced to relieve themselves in bushes due to lack of toilets, putting themselves in danger due to presence of snakes in the bushes.	<i>Mwananchi</i> Newspaper	9 Nov 2018
Chamwino, Dodoma: Pupils at Chinoje Primary School were reportedly forced to relieve themselves in bushes and hills due to lack of water at the school, while the toilet which was built requires a lot of water, according to the head teacher. Head teacher also mentioned that the school suffers from shortage of desks (80 available, 251 required).	<i>Majira</i> Newspaper	9 Oct 2018
Kalambo, Rukwa: About 965 pupils at Kalepula Primary School in Kalepula Village were said to	<i>Mtanzania</i> Newspaper	2 Oct 2018



relieve themselves in bushes due to lack of toilets at the school.		
Igunga, Tabora: Igunga MP, Hon. Dr. Peter Kafumu, reportedly stated that pupils at 8 primary schools in his constituency were relieving themselves in bushes. The schools mentioned were Mwajilunga, Kidalu, Mhamammoja, Ganyawa, Hindishi, Maweni na Milumbi.	<i>Mtanzania Newspaper</i>	9 Octo 2018
Arumeru, Arusha: A pupil at Selian Primary, Emmanuel Ephraim (7), reportedly escaped death after a toilet at the school collapsed while he was relieving himself. He was rescued by teachers and parents who were nearby.	<i>Mtanzania Newspaper</i>	27 Oct 2018
Muheza, Tanga: Nine teachers at Magila Primary School were forced to turn a store into an office due to shortage of offices at the school. Chairperson of school committee also mentioned that the school is faced with shortage of toilet holes, with 400 pupils using only 4 toilet holes, 2 for boys and 2 for girls.	<i>Nipashe Newspaper</i>	14 Oct 2018
Arusha: Education officer in Arusha CC mentioned that 8,456 (82%) who passed standard seven exams would not make it to secondary education due to shortage of classrooms.	<i>Nipashe Newspaper</i>	22 Dec 2018
Sengerema, Mwanza: It was reported that Busisi Primary School is faced with the problem of congestion in classrooms due to shortage of classrooms, with 1,098 pupils accommodated in only 7 classrooms.	<i>Mwananchi Newspaper</i>	31 Dec 2018
Shinyanga: It was reported that the region is faced with shortage of 461 classrooms for secondary level, causing 6,271 pupils from commencing secondary education in January 2019.	<i>Mwananchi Newspaper</i>	20 Dec 2018
Kahama, Shinyanga: Kahama township was reportedly faced with a shortage of 1,407 classrooms, preventing majority of pupils who	<i>Mtanzania Newspaper</i>	21 Dec 2018



passed standard seven exams from commencing secondary education.		
Tanzania Mainland: It was reported that 133,000 pupils who had passed standard seven exams could not join secondary schools due to shortage of classrooms in different regions of Tanzania Mainland.	Mtanzania Newspaper	14 Dec 2018
Babati, Manyara: 230 pupils at Endagwe and Hoshani Primary Schools in Dur Ward found themselves without classrooms after the classrooms they were using were demolished due to their dilapidated condition, having been deemed dangerous to the pupils. It was reported that the classrooms were built in 1975.	Nipashe Newspaper	1 Nov 2018

Source: LHRC Media Survey 2018

Corporal and inhumane punishments at schools

Corporal punishment is prevalent in primary schools, especially at public schools. Physical harm and psychological harm are among the results of corporal punishment imposed on students. Despite the fact that there is a law governing imposition of corporal punishment on pupils and students, which should not exceed 3 sticks, its applicability is contrary to what the rules are stating. Teachers, especially in primary schools, continued imposing such punishment in disregard of the law.

In August 2018, it was reported that a 13-year-old student at Kibeta Primary School in Bukoba Municipal, Kagera Region was severely beaten to death by his teacher, Mr. Respicius Mtazangira, upon being accused of stealing another teacher's handbag. Despite losing consciousness in more than one occasion, the teacher continued to mercilessly beat the pupil with heavy sticks; and reportedly did not stop even after other pupils and teachers begged him to stop the beating, leading to the child's death a couple of hours later.





Picture 8: A pupil, Sperius Eradius, who was beaten to death by his teacher in Bukoba-Kagera Region



Picture 9: Respicius Patrick, the teacher who was accused of beating the pupil to death (left) and Herieth Gerald, the teacher who alleged that the pupil in question stole her handbag, appearing before a court of law in Bukoba-Kagera Region

It is LHRC's view that corporal punishment constitutes a violation of children's rights and needs to be abolished, given the trend of children being severely beaten and some of them even dying, like it was the case in Bukoba. Alternative forms of punishments are encouraged, as corporal

punishment causes physical harm and psychological torture; and as stated above, the regulations are often not regarded by teachers.

Other factors

Other factors that compromise the quality of education in the country include poor working conditions for teachers, characterized by unpaid overdue debts, delays in obtaining salaries and allowance, shortage of teacher houses and inadequate wages. In some areas, poor educational background of parents and parents generally not regarding education as important, limit access to quality education for their children. For instance, in December 2018, it was reported that Some of the children aged 8 to 10 years in the Meatu District-Simiyu Region, had been hired by livestock keepers to herd cows, hence missing school.²⁸⁴

Table 8: Other reported incidents relating to or affecting access and quality of education documented by LHRC in 2018

Description	Source	Date
Bunda, Mara: Teachers union in the district bemoaned the various challenges teachers face, including not getting their emoluments on time.	<i>Mtanzania</i> Newspaper	15 Oct 2018
Sumbawanga, Rukwa: Teachers reminded the government to pay their dues, including salary and leave dues, worth Tshs. 1.2 billion. Teachers' union branch in the district noted that teachers were working in difficult environment.	<i>Mwananchi</i> Newspaper	9 Oct 2018
Dar es Salaam: The 2017/2018 Annual Education Sector Performance Report (AESPR) indicates a drop in numeracy levels among standard two pupils and slight increase in literacy levels.	<i>Mwananchi</i> Newspaper	3 Oct 2018

Source: LHRC Media Survey 2018

5.2. Right to Health

Right to health is a key for realization of other rights, including the fundamental right to life. This right means that hospitals, clinics, medicines and doctors' services must be accessible, available, acceptable, and of good

²⁸⁴ See *Mtanzania* Newspaper, 6th December 2018.



quality for everyone on an equitable basis, where and when needed. This right is guaranteed and protected under the International Covenant on Economic, Social and Cultural Rights (ICESCR), which recognises enjoyment of the highest attainable standard of physical and mental health.²⁸⁵ States parties to the ICESCR are required to take several steps towards full realization of right to health, including creating conditions which would assure to all medical service and attention in the event of sickness and prevention, treatment and control of epidemic, occupational and other diseases.²⁸⁶ States thus have a primary duty to ensure that necessary measures are taken to protect the health of their people and to ensure that they receive medical attention when they are sick.²⁸⁷ This right also guaranteed under regional treaties that Tanzania is bound to, such as the African Charter on Human and Peoples' Rights (ACHRPR), African Charter on the Rights and Welfare of the Child (ACRWC) and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).²⁸⁸

In 2018, the Government took several measures to ensure progressive realisation of right to health in Tanzania Mainland. However, realisation of this right continued to be affected by challenges such as shortage of health facilities, shortage of healthcare workers, insufficient budget and shortage of beds, essential medicines and medical supplies. This sub-chapter covers the situation of right to access health services and right to quality health services as key components of the right to health.

5.2.1. Right to Access Health Services

In 2018, the Government, through the Ministry of Health, Community Development, Elderly, Gender and Children (MoHCDEC), took steps to progressively ensure realisation of the right to access health services. This includes: enabling about 208 health facilities to provide emergency surgery services – including Comprehensive Emergency Obstetric and New-born Care (CEmONC), which is an ongoing exercise; providing HIV-related services; supplying essential medicines and medical supplies; providing health

²⁸⁵ Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1977

²⁸⁶ See Article 12(2) of ICESCR.

²⁸⁷ Article 16(2) of the African Charter on Human and People's rights, 1981.

²⁸⁸ See Article 16(1) of ACHRPR; Article 14 of ACRWC; and Article 14 of Maputo Protocol.



education to members of the public, including through media outlets; strengthening specialised medical services, which has helped to reduce number of patients needed referral to hospitals outside Tanzania; securing permit to employ more than 3000 new healthcare workers of different cadres, including doctors, nurse and medical consultants; construction of 30 houses for healthcare workers in Kiteto, Simanjiro and Hanang Districts in Manyara Region through the Global Fund project; finalizing and submitting a universal health coverage plan to the Cabinet; and implementing the Direct Health Facility Financing (DHFF), instead of disbursing funds through district/municipal/city councils, as was the case before.²⁸⁹

In August 2018, Minister of State in President's Office – Regional Administration and Local Government, Hon. Selemani Jafo, mentioned that the Government is set to construct 67 district hospitals across the country in the 2018/2019 fiscal year.²⁹⁰ It was also reported that in August 2018 that the President's Office – Regional Administration and Local Government was planning to construct 289 new health centres by 2020.²⁹¹ In August 2018, Deputy Minister of Health, Community Development, Gender, Elderly and Children, Hon. Dr. Faustine Ndugulile, mentioned that the Government was planning to introduce a new affordable health insurance scheme to expand social protection to more Tanzanians.²⁹² In November 2018, it was reported that Tshs. 1.5 billion was allocated for construction of Bukoba District Hospital in Kagera Region.²⁹³

However, effective realisation of the right to access health services continued to be hindered by a number of factors, including shortage of health facilities, in 2018. These factors also affected the right to quality health services; and are highlighted in 5.2.2 below.

²⁸⁹ See *Hotuba ya Waziri wa Afya, Maendeleo ya Jamii, Wazee, Jinsia na Watoto MHE. Ummu A. Mwalimu kuhusu Makadirio ya Mapato na Matumizi ya fedha kwa mwaka 2018/2019* available at <http://www.parliament.go.tz/budget-list> , accessed on 14th march 2019

²⁹⁰ Daily News Newspaper, 25th August 2018

²⁹¹ Nipashe Newspaper, 25th August 2018

²⁹² Nipashe Newspaper 21st August, 2018

²⁹³ Nipashe Newspaper, 2nd November 2018



Lack of coverage of health insurance for the majority

In Tanzania, only 30% of citizens are covered by health insurance,²⁹⁴ leaving the majority in great trouble when they fall sick – considering that the majority of Tanzanians are poor. In 2018, the Minister responsible for health, Hon. Ummu Mwalimu, mentioned that the Government was planning to expand health insurance coverage to 50% of Tanzanians by 2020.²⁹⁵

5.2.2. Right to Quality Health Services

Health services should not only be accessible, but also of required quality. This is the requirement under the ICESCR, as well as other human rights instruments such as ACRWC and Maputo Protocol.

The government has insisted on provision of health services by making it accessible and equal to all. However, accessibility of health services should not compromise provision of quality health services. The services provided should be of sufficient quality and intend to attain the highest standard of physical and mental states as the law requires.²⁹⁶ However, Tanzania is yet to achieve the highest attainable standard of physical and mental health through provision of services which its quality is compromised, several challenges facing the health sector and compromise its quality include the following:

Government action to improve quality of health services

In 2018, the Government continued to implement various programmes under the ministry responsible for health, including the Road Map Strategic Plan to Improve Reproductive, Maternal, Newborn, Child and Adolescent Health in Tanzania: 2016–2020 (One Plan II), and took other steps highlighted in 5.2.1 above to ensure progressive realization of right to health.

²⁹⁴ See Policy Forum, *Visioning access to Health Insurance in Tanzania: Opportunities and Challenges*, at <https://www.policyforum-tz.org/visioning-access-health-insurance-tanzania-opportunities-and-challenges>, accessed 22nd December 2018; Syriacus Buguzi “How Tanzania can achieve universal health coverage” *The Citizen Newspaper*, 29 August 2018, at <https://www.thecitizen.co.tz/News/How-Tanzania-can-achieve-universal-health-coverage/1840340-4074464-1wd3ddz/index.html>, accessed 22nd December 2018.

²⁹⁵ *Ibid.*

²⁹⁶ Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966



Challenges hindering effective realization of right to health in 2018

In 2018, full realisation of right to health continued to be hindered by various factors, including insufficient budget for the health sector; delayed disbursement of funds or disbursement of half of the funds; shortage of health workforce; shortage of health facilities; and shortage of beds.

Insufficient budget

One of the major factors that have been affecting delivery of quality health services is insufficient budget, which usually falls short of the minimum 15% of the annual budget required under the Abuja Declaration on HIV/AIDS, Tuberculosis and other related Infectious Diseases of 2001. For instance, the budget of the health sector for the financial year 2017/2018 accounted for only 7% of the national budget.²⁹⁷ Budget for the financial year 2018/2019 decreased by 19.6%, compared to that of 2017/2018;²⁹⁸ and still below the 15% threshold under the Abuja Declaration. The budget is also still significantly dependent on foreign donations, which raises concern over sustainability of health sector projects and programmes.

Delayed disbursement of funds or disbursement of only half of the funds

Delayed disbursement of funds allocated for the health sector is also a key challenge affecting progressive effective realisation of right to health in Tanzania Mainland. For the financial year 2017/2018, the total of Tshs 1,077, 701, 892,000 for the health sector. However, by March 2018, the ministry responsible for health had only received 57% of these funds.²⁹⁹

Shortage of health workforce

In February 2018, Chairperson of the Parliamentary Committee on Administration and Local Government Affairs reportedly told the National Assembly, while presenting the committee's report, that shortage of health workers in regional and referral hospitals stands at 54.4%, following the removal of 3,310 health workers during the workers' verification exercise.

²⁹⁷ See UNECEF (2018), Health Budget Brief 2018: Tanzania, at <https://www.unicef.org/esaro/UNICEF-Tanzania-2018-Health-Budget-Brief-Mainland.pdf>, accessed 20th December 2018.

²⁹⁸ Fredy Azzah "Bajeti ya Afya yafyekwa" Mtanzania Newspaper, 20th April 2018

²⁹⁹ See *Hotuba ya Waziri wa Afya, Maendeleo ya Jamii, Wazee, Jinsia na Watoto, MHE. Ummu A. Mwalimu, kuhusu Makadirio ya Mapato na Matumizi ya fedha kwa mwaka 2018/2019* available at <http://www.parliament.go.tz/budget-list>, accessed on 14th January 2019.



He added that the ministry needs to employ 57,788 health practitioners to cover the gap.³⁰⁰ In 2018, it was also revealed that Tanzania is faced with shortage of eye surgeons, who are currently only 55.³⁰¹ However, the Government announced in late 2018 that it would recruit 684 new healthcare workers.³⁰²

Shortage of health facilities

Report by the Parliamentary Committee on Administration and Local Government Affairs indicated that as of February 2018, at least 64 municipalities lacked hospitals, forcing local residents to walk long distances to access medical services.³⁰³ The policy is for each ward village to have a dispensary, each ward to have a health centre and each district to have a district hospital. However, some areas in Tanzania Mainland continue to face acute shortage of health facilities. For instance, it was reported that the District Commissioner of Ukerewe-Mwanza, Hon. Colonel Magembe, bemoaned shortage of health facilities in the district, noting that while there are 76 villages and 25 wards in the district, there maternal and child mortality was reported to be an issue of concern in Msalala District Council, largely contributed by shortage of dispensaries and health centres at village and ward levels. This means women are forced to walk long distances to access health facility services.³⁰⁴ This is particularly a challenge for villages which are in the outskirts (remote). In Muheza, Tanga, it was reported that Mgome Village in Mpayu Ward does not have a dispensary.³⁰⁵ Through its human rights survey, LHRC also documented reports of shortages of health facilities in areas such as Singida District Council in Singida; Mpwapwa District Council in Dodoma and Malinyi District Council in Morogoro.

Shortage of beds

Shortage of beds was an issue that affected full realization of right to health in 2018, especially for women. In August 2018, it was reported in Kigoma that Maweni Referral Hospital was facing shortage of 92 hospital beds.

³⁰⁰ The Guardian Newspaper, 9th February 2018

³⁰¹ Mwananchi Newspaper 8th October, 2018

³⁰² Habari Leo Newspaper, 7th October 2018

³⁰³ The Guardian Newspaper, 9 February 2018

³⁰⁴ Nipashe Newspaper, 5th November 2018

³⁰⁵ Nipashe Newspaper, 11 August 2018.



Harassment and/or maltreatment of patients by health workers

In 2018, harassment and/or maltreatment of patients by healthcare workers was revealed as another issue affecting full realisation of right to health. Reading her ministry's budget speech in 2018, the Minister responsible for health, Hon. Ummu Mwalimu, mentioned that some expectant mothers decided against delivering at health facilities due to harassment by nurses. She noted that while 98% of the women attended clinic, only 64% delivered at health facilities.³⁰⁶ In Nyamagana District – Mwanza, District Medical Officer, Dr. Philis Nyimbi, reportedly ordered suspension of two doctors and all nurses at Nyamagana District Hospital for negligence that contributed to a child mortality incident. He noted that there have been complaints levelled against some of the doctors and nurses at the hospital.³⁰⁷

5.3. Right to Water

The UN Committee on Economic, Social and Cultural Rights defines the right to water as the right of everyone to **sufficient, safe, acceptable and physically accessible and affordable** water for personal and domestic uses.³⁰⁸ It is also known as right to water and sanitation and is essential and indispensable in ensuring life with dignity.³⁰⁹ While not covered under the International Covenant on Economic, Social and Cultural Rights (ICESCR), this right is implied under the right to adequate standard of living – which is provided for in the ICESCR – and nevertheless covered under key human rights instruments such as the UN Convention on the Rights

The human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity" – **Human Rights Council**

³⁰⁶ Nipashe Newspaper, 3rd August 2018

³⁰⁷ Majira Newspaper, 13th November 2018

³⁰⁸ See UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, available at: <http://www.refworld.org/docid/4538838d11.html> [accessed 17 December 2017].

³⁰⁹ Article 1.1 of the *General Comment No. 15. The right to water*, UN Committee on Economic, Social and Cultural Rights, November 2002,



of the Child (CRC) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).³¹⁰ Moreover, in 2010 the UN General Assembly declared right to clean drinking water and sanitation a human right essential in full realization of other human rights, especially right to life. Domestically, the National Water Policy of 2002 and the Water Resources Management Act of 2009 recognize the right to clean and safe water.

This sub-chapter briefly highlights the situation of realisation of right to water in Tanzania Mainland in 2018, looking at both access and quality of water.

5.3.1. Right to Access Water

In 2018, the Government continued taking steps to ensure progressive realisation of right to water, as a key socio-economic right. In his ministry's budget speech for the financial year 2018/2019, the Minister of Water and Irrigation, Hon. Eng. Isack Aloyce Kamwelwe (MP), mentioned that in the financial year 2017/2018, the Government continued implementing various water projects in Dar es Salaam, regional capitals, district capitals, townships, towns and villages.³¹¹ He noted that access to water service at regional capitals stands at 78%, a decrease of 2% compared to 2016/2017. In district capitals, townships and areas where national projects are implemented, he noted that access to water is 60%, while access to water services in Dar es Salaam is 75%.

According to Water.org,³¹² that only 50% of the Tanzania's population have an access to improved sources of safe water and 34% have an access to safe sanitation.³¹³ Due to difficulties in accessing water, women and girls are more likely to suffer as they have to travel for long distances in search for water. This is not far from a 2016 survey by a 2016 survey conducted by

³¹⁰ Article 24(2) of CRC & Article 14(2) of CEDAW.

³¹¹ See Hotuba ya Waziri wa Maji na Umwagiliaji, Mhe. Eng. Isack Aloyce Kamwelwe (MP), akiwasilisha bungeni makadirio ya Mapato na Matumizi ya Fedha ya Wizara ya Maji na Umwagiliaji kwa mwaka 2018/2019.

³¹²A nonprofit developmental aid organization whose goal is to provide aid to regions of developing countries that do not have access to safe drinking water and sanitation.

³¹³ see *Tanzania's water and sanitation crisis* available at <https://water.org/our-impact/tanzania/> accessed on 18th January 2019)



Twaweza³¹⁴ which revealed that access to water in Tanzania, especially in rural areas, has remained largely stagnant over the past decade, with half the citizens (54%), having access to improved water source (46% in rural areas and 74% in urban areas).³¹⁵ In 2018, incidents of shortage of clean and safe water were reported in different parts of Tanzania Mainland, including Gairo-Morogoro, Namtumbo-Ruvuma, Bunda-Mara and Bahi-Dodoma. The table below provides a highlight of shortage of clean and safe water in these areas in 2018.

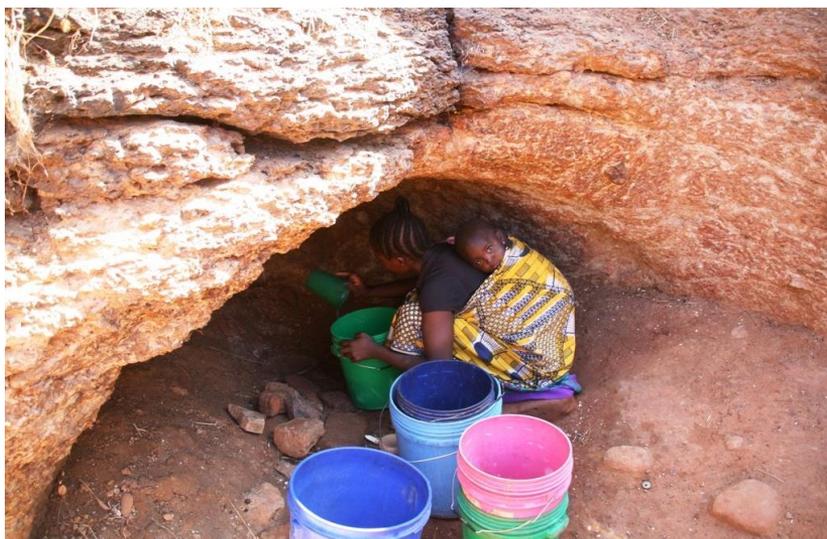
Table 9: Reported incidents of lack of or limited access to clean and safe water in 2018

Description	Source	Date
Gairo, Morogoro: It was reported that in Kwipipa Village, women are greatly affected by lack of clean water due to non-completion of a water project that commenced in 2010. Women in the village are thus forced to spend a lot of time fetching water. Water vendors in the village tend to charge up to Tshs. 1500 per 5-litre gallon.	<i>Majira</i> Newspaper	2 Aug 2018
Namtumbo, Ruvuma: Namtumbo District Commissioner, Hon. Sophia Kizingo, bemoaned shortage of water in his district and called for authorities to take relevant action to ensure adequate availability of water.	<i>Majira</i> Newspaper	21 Aug 2018
Bunda, Mara: It was reported that women in Kihumbu Village were forced to wake in the dead of the night to go and fetch water, walking long distances in the process. They usually take around 6 to 8 hours for them to come back with water, while their husbands become suspicious that they could be cheating on them.	<i>HABARILEO</i> Newspaper	29 Oct 2018
Bahi, Dodoma: Residents of Bahi Makulu were reportedly faced with a challenge of shortage of water, especially during dry season, having to buy a 5-litre gallon of water for Tshs. 1000.	LHRC Human Rights Monitoring Unit	20 Nov 2018

³¹⁴ An NGO that works in Tanzania, Kenya and Uganda.

³¹⁵ Twaweza press release at <http://www.twaweza.or.tz/index.php?r=szw-maji-2017-tz-kis&m=1&m=0>, accessed on 20th January 2019.





Picture 10: A resident of Ujiji Kigoma fetching water for personal and domestic use from an underground source which appears to be unsafe

Source: LHRC Media Survey 2018

In am usually afraid of going to school when in period because if my classmates find out they will laugh at and make fun of me since bad smell will be coming out of me. It happened once to one of my classmates. This is because there is not enough water at school. Also, there are no shops selling sanitary pads in our village – we find them when we go to Gairo town, but even then our parents usually cannot afford to the pads for us.

A Standard Seven pupil in Gairo

Limited access to water affects to the right to education, especially for girls

Shortage of water and limited access to water sources greatly affects women and girls as they are forced to walk long distances to fetch water. For girls, this also hampers their efforts to attend school regularly and timely. It also presents a problem for them during menstruation, especially where there is also shortage or no water at school. In July 2018, it was reported in Gairo-Morogoro, that shortage of water in the district affects girls in terms of their school attendance as they are forced to miss school for up to five days when they are period due to lack of water both at home

and school, as well as lack of favourable environment for girls at school and shortage of pads.³¹⁶

Due to shortage of water, most children reportedly go to school dirty and teachers cannot punish them because they understand the water problem. A teacher noted that after they are supposed to get tap water every 2 days, in most cases water comes after up to 5 days.

5.3.2. Right to Quality Water

The right to quality water means the water available is safe and acceptable. According to the United Nations Department of Economic and Social Affairs (UNDESA), safe water means water that is free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health. Acceptable water is water that is of an acceptable colour, odour and taste for each personal or domestic use, as well as culturally appropriate and sensitive to gender, lifecycle and privacy requirements³¹⁷

In 2018, several factors continued to compromise right to quality water in Tanzania Mainland. These factors include: insufficient budget allocated for water sector; shortage of experts in water sector; inability of councils to effectively monitor water project funds to ensure value-for-money; failure to complete water projects on time; non-payment of water bills by government institutions; decline in water resources; little investment in water projects by private sector; damage to water infrastructure and destruction of water sources; water leakages; little investment in water projects by the private sector; and lack of sustainability of water projects

Insufficient budget allocated for water sector

Reading his ministry's speech during the budget parliamentary session for the financial year 2018/2019, the former Minister of Water and Irrigation, Hon. Eng. Isack Aloyce Kamwelwe, mentioned underinvestment in the water sector due to insufficient budget as one of the challenges faced by the sector. He mentioned that for the financial year 2017/2018, budget

³¹⁶ *Majira* Newspaper, 2nd August 2018.

³¹⁷ See UNDESA, Human right to water and sanitation, at https://www.un.org/waterforlifedecade/human_right_to_water.shtml, accessed 22nd January 2019.



allocated for his ministry was Tshs. 648,064,207,757, but by March 2018, it only received 56% of funds allocated for development expenditure and 52.45% of funds allocated for recurrent expenditure.³¹⁸ He stated that Tshs. 643,710,160,202 had been allocated for development expenditure, but by March 2018, the ministry had received Tshs. 349,968,825,172 (56%).³¹⁹ This presents a challenge in ensuring progressive realisation of right to water and sanitation, which is essential for human life with dignity, and a key factor for realisation of the right to adequate standard of living.

Shortage of experts in water sector

In his budget speech for the financial year 2018/2019, the former minister responsible for water also mentioned shortage of experts in the water sector as a challenge.³²⁰ This is contributed by factors such as death, retirement, resignation and dismissal for misconduct.

Inability of councils to effectively monitor water project funds to ensure value-for-money

In May 2018, an alarm over probable mismanagement and misuse of funds allocated for water projects was raised in the National Assembly.³²¹ This was said to be contributed by inability of district/city/municipal councils to effectively monitor water project funds in order to ensure value-for-money.³²²

Failure to complete water projects on time

Contractors delaying completion of water projects has also been a challenge for the water sector, which also affects realisation of right to water and sanitation, especially in rural areas. In July 2018, the Government moved to blacklist four water project contractors for failure to complete

³¹⁸ See *Hotuba ya Waziri wa Maji na Umwagiliaji Mhe. Eng. Isack Aloyce Kamwelwe, akiwasilisha bungeni makadirio ya Mapato na Matumizi ya Fedha ya Wizara ya Maji na Umwagiliaji kwa Mwaka 2018/2019* available at

<http://www.parliament.go.tz/uploads/budgetspeeches/1525687312-Hotuba%20ya%20Bajeti-%20Maji--2018-2019.pdf>, accessed on 18th January 2019.

³¹⁹ Ibid.

³²⁰ Budget speech, *ibid.*

³²¹ Bernard Lugongo "Tanzania: Doubts Cast On Water Projects" DailyNews Newspaper, at <https://allafrica.com/stories/201805100111.html>, accessed 12th January 2019.

³²² Ibid.



big water projects in time.³²³ The Minister of Water and Irrigation, Prof. Makame Mbarawa, indicated that delays in completion of the projects without valid reasons hinder effective implementation of the Second Water Sector Development Programme (WSDP II).³²⁴

Non-payment of water bills by government institutions

Government institutions were implicated in non-payment of water bills in the budget speech of Ministry of Water and Irrigation for the financial year 2018/2019. These institutions were said to use the water service for long periods of time without paying the bills on time, hence massive debt accumulation – whereby by March 2018 the combined water debt for government institutions stood at Tshs. 39 billion.³²⁵ This was said to hinder water authorities from effectively implementing their activities and maintaining water infrastructure.³²⁶

Decline in water resources

In his ministry's budget speech for the financial year 2018/2019, the former Minister of Water and Irrigation, Hon. Eng. Isack Aloyce Kamwelwe, mentioned that water resources have declined.³²⁷ Reasons for this include climate change, destruction of water sources and misuse of water. This has negatively affected social and economic activities and contributed to disputes at areas around water sources.³²⁸

Little investment in water projects by private sector

Despite an increase in demand for improved water and irrigation services, the contribution of the private sector to investments in providing water services is said to be not satisfactory. The Government has continued to take various measures to promote the participation of the private sector in including the enactment of the National Public Private Partnership Policy of 2009 and the Public-Private Partnership Act of 2010, so as to encourage and promote investment.

³²³ See "Tanzania govt blacklists four water projects contractors" The Citizen Newspaper, at <https://www.thecitizen.co.tz/News/Minister-says-no-more-contracts-for-four-firms/1840340-4672532-dwc511z/index.html>, accessed 20th December 2018.

³²⁴ Ibid.

³²⁵ Budget speech for Ministry of Water and Irrigation (supra).

³²⁶ Ibid.

³²⁷ Ibid.

³²⁸ Ibid.



Damage to water infrastructure and destruction of water sources

Damage to water infrastructure is another challenge that affects effective delivery of water service.³²⁹ This happens in different parts of the country, both urban and rural; and includes removal of water equipment such as pipes for purposes of selling them. In August 2018, police in Mbeya Region conducted an operation to find and arrest villagers in Ilungu District who were implicated in damaging water infrastructure.³³⁰

Water leakages and Loss

In the budget speech for the Ministry of Water and Irrigation for the financial year 2018/2019, the former minister also mentioned that water leakages are among key challenges facing the water sector. He stated that reasons for this include infrastructure being in dilapidated condition (characterized, among others, by weakened iron pipes), bypass and illegal water connection, vandalism of water equipment and tampering with water meters.³³¹ He noted that by March 2018, water loss stood at 38% for Dar es Salaam Water and Sewerage Corporation (DAWASCO) and 33% for other water authorities in Tanzania Mainland. This is 18% and 13% of internationally accepted standard of water loss, which is 20%. In July 2018, it was revealed that the DAWASCO losses 1.7million dollars (equally Tshs. 4.2 billion) to water leakages each month.³³² It was also highlighted that due to poorly-conditioned water pipes, Dar es Salaam is losing 44% of water pumped daily.³³³ The Government seeks to reduce water leakages to 30% by 2020.³³⁴ In Dar es Salaam, areas notorious for water leakages include Ubungo, Kimara, Mbezi and Tabata.

³²⁹ See budget speech for the Ministry of Water and Irrigation (supra).

³³⁰ See “Mbeya RPC orders arrest of people over water infrastructure damage” The Citizen Newspaper, 17 August 2018, at <https://www.thecitizen.co.tz/News/Mbeya-RPC-orders-arrest-of-people-over-water-infrastructure-/1840340-4716750-hcigpcz/index.html>, accessed 12th January 2019.

³³¹ See budget speech for the Ministry of Water and Irrigation (supra).

³³² See John Green “Water leakages costing Tanzania \$1.7 million monthly” The Exchange, 9 July 2018, at <https://www.exchange.co.tz/water-leakages-costing-tanzania-1-7-million-monthly/>, accessed 12th January 2019; See also Betram Lengama “Tanzania: Fix Water Leakages, Mbarawa Orders Dawasco” DailyNews Newspaper, 9 July 2018, at <https://allafrica.com/stories/201807100474.html>, accessed 12th January 2019

³³³ Ibid.

³³⁴ Ibid.



Lack of sustainability of water projects

In the budget speech for the Ministry of Water and Irrigation for the financial year 2018/2019, the former minister mentioned that most water projects lack sustainability. This is due to lack of effective management of the projects and maintenance of water sources and equipment. Disputes and conflicts around areas with water sources also negatively affect sustainability of water projects.³³⁵

5.4. Right to Adequate Standard of Living

Everyone is entitled to an adequate standard of living.³³⁶ This includes availability of adequate food, clothing and housing, and to the continuous improvement of living conditions.³³⁷ States are duty bound under the International Covenant on Economic, Social and Cultural Rights (ICESCR) to take appropriate steps to ensure citizen's realization of the this fundamental human right.³³⁸ States have a duty to take appropriate steps to ensure realization of the right to adequate standard of living, including right to adequate food and right to shelter/housing. Apart from the duty stipulated in human rights conventions, these states, including Tanzania, have made commitments to realise this right under several international instruments, including the Declaration on the Right to Development³³⁹ and the Universal Declaration on the Eradication of Hunger and Malnutrition.³⁴⁰ This subchapter looks at the realization of the two rights derived from the right to adequate standard of living, namely right to adequate food and right to shelter/housing, in Tanzania in 2018.

³³⁵ See budget speech for the Ministry of Water and Irrigation (supra).

³³⁶ See Article 11(1) of ICESCR; Article 25(1) of UDHR.

³³⁷ Article 11 (1) of ICESCR.

³³⁸ Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights, 1966

³³⁹ Article 8.

³⁴⁰ Article 1.



5.4.1. Right to Food

According to the UN Committee on Economic, Social and Cultural Rights (CESCR), the right to adequate food is indivisibly linked to the inherent dignity of an individual person and is indispensable in fulfilment of other human

Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger

UN Committee on Economic, Social and Cultural Rights (CESCR)

rights.³⁴¹ State parties to ICESCR are duty bound to enhance and ensure access to food and that everyone in the community has ability to access food or means of its procurement physically and economically, at all times. They are required to take all the appropriate measures to improve methods of production, conservation and production of food, and if possible, reform the agrarian system for the purpose of achieving the most efficient development and utilization of natural resources.³⁴²

In 2018, the Government continued to take various measures to ensure progressive realisation of the right to adequate food in Tanzania Mainland. This was done through implementation of various programmes and plans, including the Tanzania Development Vision 2025, which, among other things, seeks to ensure high quality livelihood through food self-sufficiency and food security.

The overall situation of right to adequate food was satisfactory for most areas, as food supply remained to be satisfactory in most parts of the country, following good harvests in the financial year 2017/18 crop-season and adequate food supply in the region. Stocks of food held by the National Food Reserve Agency (NFRA) amounted to 95,534 tonnes at the end of December 2018, higher than the amount recorded at the end of December 2017 (Table 10). During the quarter, the agency purchased 18,541.7 tonnes

³⁴¹ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999, available at: <https://www.refworld.org/docid/4538838c11.html> [accessed 7 January 2019]

³⁴² Article 11 (2) of the International Covenant on Economic Social and Cultural Rights, 1966



of maize and sold 1,232.4 tonnes to private traders and Disaster Relief Unit of the Prime Ministers' Office.³⁴³

Table 10: National food stock held by the National Food Reserve Agency

	Tonnes					
	2013	2014	2015	2016	2017	2018
January	72,170.0	235,309.0	459,561.0	125,668.0	86,833.5	91,947.0
February	60,739.0	228,014.0	454,592.0	88,414.0	86,444.0	91,312.7
March	46,153.0	214,157.0	452,054.0	68,727.0	86,443.8	83,650.3
April	36,982.0	195,246.0	433,547.0	64,825.0	86,278.0	73,467.7
May	26,802.0	195,956.0	406,846.0	63,341.0	74,826.0	68,893.4
June	27,494.0	189,494.0	353,702.0	61,837.5	70,393.0	63,843.9
July	71,141.0	182,200.0	282,401.0	49,632.0	68,697.0	62,288.0
August	175,609.0	196,854.0	268,514.9	59,832.0	78,434.0	62,317.3
September	224,295.0	299,624.0	265,046.0	86,545.0	85,403.0	78,224.0
October	235,817.0	426,999.0	253,655.2	90,905.0	89,248.0	87,435.0
November	234,145.0	460,295.0	238,133.6	90,900.0	93,353.7	92,402.0
December	232,963.0	466,583.0	180,746.3	89,691.8	92,074.0	95,534.1

Source: National Food Reserve Agency

Source: BOT Quarter Economic Review, December 2018

However, challenges faced in the water sector highlighted in sub-chapter 5.3 above also affected realization of the right to food, since there is no food without water. Moreover, the methods of production widely employed, such as use of hand hoe, are still poor, resulting in less production of food. Access to nutritionally adequate food is also still a challenge for a large section of the society, especially in rural areas. This is more common among women and children, and tends to affect growth among children – including in regions such as Mbeya and Njombe, who are among the major producers of food in Tanzania.

5.4.2. Right to Shelter/Adequate Housing

The right to shelter and adequate housing does not only mean acquisition of a house. It requires men, women, youth and children to gain and sustain a

³⁴³ See Bank of Tanzania Economic Bulletin for the Quarter Ending December 2018 VOL. L No. 4 available at

https://www.bot.go.tz/publications/QuarterlyEconomicBulletins/DEC%202018%20QEB_FIN_AL.pdf, accessed on 15th March 2019



safe and secure home and community in which to live in peace and dignity.³⁴⁴ Elements of this right include **security of tenure, affordability, habitability, accessibility, location** and **cultural adequacy**.³⁴⁵ Security of tenure is key to protect against arbitrary eviction, especially for women in marriage and widows. Habitability means housing should be free from hazards; and it needs to be located at a place where basic social services can be easily accessed and free from pollution. This right is protected in major human rights instruments adopted by the United Nations, including ICESCR, UDHR, CEDAW, CERD and CRPD; and is closely connected to rights to health, water and sanitation.

In 2018, the situation of the right to adequate housing continued to be an issue of key concern for majority of Tanzanians, in both urban and rural settings. Limited realisation of the right to adequate shelter/housing in Tanzania is a result of poor or inadequate planning for housing development, which has resulting into poor housing. In areas such as Msimbazi Valley in Magomeni and Jangwani areas – Dar es Salaam, which have been designated areas prone to floods and unfit for human settlement, the people residing there continued to live in very poor and dangerous housing conditions, despite repeated calls from the Government to leave and relocate. Fortunately, unlike in 2017, there was no natural disaster to compound the housing problems in Tanzania Mainland in 2018.

Demolition of houses in Dar es Salaam, which was illegal for some houses, claimed more than 1000 houses in the city, and left a huge impact on the affected families – which continued to be felt in 2018. For those who suffered the fate of demolition of houses in Dar es Salaam in 2017, realization of the right to adequate housing remained a big challenge for them in 2018, with women and children suffering the most.

³⁴⁴ The Right to adequate Housing Toolkit available at <https://www.ohchr.org/EN/Issues/Housing/toolkit/Pages/RighttoAdequateHousingToolkit.aspx> , accessed on 15th March 2019

³⁴⁵ See UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, available at: <http://www.refworld.org/docid/47a7079a.html> [accessed 19 December 2018]; UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, 20 May 1997, E/1998/22, available at: <http://www.refworld.org/docid/47a70799d.html> [accessed 19 December 2018].



To ease the housing problem, especially in urban areas, the Government continued with various housing projects through the National Housing Corporation (NHC) in different parts of Tanzania Mainland, including in Dar es Salaam and Dodoma. The major challenge, however, is affordability of these houses for majority of Tanzanian, who remain swamped in poverty.



Picture 11: A house submerged by floods, reportedly resulting to deaths of 9 people in Jangwani area – Dar es Salaam in 2018

5.5. Right to Culture

Right to culture enables everyone to participate in cultural life and enjoy the benefits of culture. To achieve full realization of culture, state parties are required to ensure that necessary steps are taken so as to conserve, develop and assist diffusion of culture.³⁴⁶ This right can be enjoyed individually and in groups, then States parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) are obligated to take measures to facilitate enjoyment of this right. It is also provided for under other international human rights instruments such as Convention on the Elimination of Racial Discrimination (CERD), Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons

³⁴⁶ Article 15 of the International Covenant on Economic, Social and Cultural Rights, 1966.

with Disabilities (CRPD).³⁴⁷ Culture is dynamic and includes language, religion, land, arts, literature, sports and education. Right to culture is enjoyed individually and as part of a group.

This sub-chapter highlights the situation of the right to culture in Tanzania Mainland in the year 2018.

5.2.1. Right to Participate in Cultural Life

Like economic and social rights, right to culture is realised progressively, depending on the state's availability of resources. This right raises three State obligations, namely to **respect**, **protect** and **fulfil**; and may only be limited in accordance with the law and to the extent that it does not interfere with the rights of other people. States are required ensure this right is respected, protected and fulfilled, unless where cultural practices against the law and violate human rights.

With more than 120 tribes and people of different faiths and those with no faith, realisation of the right to culture is very important in Tanzania. In 2018, Tanzanians, including ethnic minorities, continued to generally freely participate in cultural life and enjoying cultural products and identity. A State, like Tanzania, that experiences multiculturalism should be able to employ mechanisms necessary for recognition, respect, acknowledgment, value, encouragement, empowerment and celebration of cultures so as to bring unity among them.³⁴⁸

Promotion of the Swahili Language

Swahili Language is the most important cultural symbol of for Tanzanians. It is this language that managed to unify more than 120 local tribes and enabled them to communicate and understand each other as well as understand and share their cultural practices and experiences. It has enabled promotion of unity, peace and solidarity among the people; influenced interaction among citizens socially, economically and politically; and enhanced patriotism.

³⁴⁷ Article 5(e) (vi) of CERD; Article 13(c) of CEDAW; Article 30 & 31 of CRC; and Article 30 of CRPD.

³⁴⁸ See Partnership International : Why is cultural diversity Important at <https://www.partnershipinternational.ie/why-is-cultural-diversity-important/> , accessed on 25th February 2019



In 2018, the Government and Tanzanians continued to enjoy and promote the Swahili language, which continues to gain more recognition in Africa and outside Africa, as requests for Swahili Language teaching continued to increase in 2018. Countries such as Rwanda and South Africa are promoting learning and use of the language in the countries. In September 2018, it was reported that the Minister of Education in South Africa, Ms. Angie Motshegka, had declared that Swahili Language would be incorporated in public and private school curriculums by 2020.³⁴⁹

Currently other African countries including Rwanda and the Republic of South Africa have recognized the language and several mechanisms are set to enhance and promote the Swahili language within the countries. A good example is the Republic of South Africa through the Minister of Education, Ms. Angie Motshegka, has declared the Swahili language to be part of the curriculum in public and private schools by 2020.

LHRC commends the Government in its promotion of Swahili Language, which has seen its demand increase over the last five years.

Enjoyment of cultural life

In 2018, the Government ensured realisation of the right to participate in cultural life. LHRC did not receive or document reports of any incidents of arbitrary interference with this right.



Picture 12: A group of Maasai men in the northern part of Tanzania enjoying their traditional dance

³⁴⁹ See BBC: Afrika kusini yaidhinisha lugha ya kiswahili kufunzwa shuleni at <https://www.bbc.com/swahili/habari-45561964> on 18th September 2018, accessed on 25th February 2019

Conclusion and Recommendations

I. Conclusions

Right	Conclusion
Right to Education	<p>Fee-free education has significantly contributed to improving access to education in Tanzania Mainland, hence boosting progressive realization of the right to education. This continued to be the major highlight in the education sector in 2018. However, realization of quality education was hampered by challenges such as: long distance to school and violence against children among challenges, especially in rural areas; insufficient budget for the education sector; shortage of teachers and learning materials, especially in rural areas; shortage of dormitories, toilets/toilet holes in classrooms; and poor working conditions for teachers.</p>
Right to Health	<p>The Government took several actions to ensure progressive realisation of the right to health in 2018. These include: enabling about 208 health facilities to provide emergency surgery services; providing HIV-related services; supplying essential medicines and medical supplies; providing health education to members of the public, including through media outlets; strengthening specialised medical services; allowing employment of more than 3000 new healthcare workers of different cadres, including doctors, nurse and medical consultants; construction of 30 houses for healthcare workers in Kiteto, Simanjiro and Hanang Districts in Manyara Region through the Global Fund project; finalizing and submitting a universal health coverage plan to the Cabinet; and implementing the Direct Health Facility Financing (DHFF). However, several challenges continued to hinder effective realization of the right to health in 2018, including: insufficient budget; delayed disbursement of funds; shortage of health workforce; shortage of health facilities; shortage of beds; and harassment of patients by health workers.</p>



Right to Water	<p>Right to water is essential in realisation of all other human rights, including right to life and right to adequate standard of living. In 2018, the Government continued implementing various water projects to increase access to quality water to citizens in Tanzania Mainland. However, shortage of improved water continued to be a challenge in several parts of the country, particularly rural areas. Women and children are the major victims of shortage of water services, as they are usually forced to walk long distances to fetch water and attend school under unfavourable environment. Insufficient budget for the water sector; shortage of experts; failure to complete water projects on time; damage to water infrastructure; destruction of water sources; and water leakages, are some of the factors that limited realisation of the right to quality water in 2018.</p>
Right to Adequate Standard of Living	<p>Right to adequate standard of living includes availability of adequate food, clothing and housing, and to the continuous improvement of living conditions. In 2018, realisation of this right was affected by shortage or lack of access to clean and safe (quality) water; limited access to nutritionally adequate food, which affects growth among children; poor or inadequate housing plans; habitability of housing; and affordability of adequate housing.</p>
Right to Culture	<p>Right to culture enables everyone to participate in cultural life and enjoy the benefits of culture. In 2018, this right continued to be the most enjoyed human right, with no reports of arbitrary interference with its realization.</p>

2. Recommendations

State actors

- ⇒ The Government to ensure increased budget for the education sector, whose resources have been even more stretched following the introduction of fee-free education, in order to guarantee quality education.



- ⇒ The Government, through the Ministry of Education and Vocational Training, to address key challenges affecting the education sector, such as poor working environment for teachers and shortage of facilities and learning materials. The Ministry should strive to ensure teacher houses are built and teachers are fairly and timely remunerated.
- ⇒ The Government, through the Ministry of Constitution and Legal Affairs, should move to make corporate social responsibility (CSR) a legal requirement for all sectors, following the amendments to the Mining Act, which saw CSR mandatory for companies in the mining sector. The amendments made in the Mining Act make it mandatory for mining companies to develop CSR plans on annual basis, containing priorities set out by local government authorities. LHRC strongly recommends such legal requirement to extend to companies to other sectors and priorities to include addressing challenges faced in the education sector.
- ⇒ Regarding pregnant girls, LHRC continues to urge the Government to reconsider its stance in order to protect right to education for girls in line with the Constitution of the United Republic of Tanzania of 1977 and regional and international conventions;
- ⇒ LHRC calls upon the Ministry of Education and Vocational Training to improve access to education for children with disabilities by ensuring availability of relevant infrastructure, teachers and learning tools.
- ⇒ In order to promote and ensure quality education, the Ministry of Education and Vocational Training should ensure school inspections are conducted regularly and meals are available at primary schools, particularly in rural areas.
- ⇒ The Government, through the Ministry of Health, Community Development, Elderly, Gender and Children (MoHCDEC) to increase budgetary allocation for the health sector. In order to improve the quality of health services the Government must strive to improve budget allocation for this key sector, to at least reach the minimum target of 15% as required under the Abuja Declaration.
- ⇒ The Government, through the Ministry of Health, Community Development, Elderly, Gender and Children (MoHCDEC) to



enhance efforts to address challenges faced in the health sector, including shortage of health facilities;

- ⇒ The Government, through the Ministry of Finance and Planning, to increase budgetary allocation for the sector of agriculture and increase investment in irrigation farming in order to boost food production and improve accessibility.
- ⇒ The Ministry of Lands, Housing and Human Settlements Development to ensure increased access to adequate but affordable housing in line with the Development Vision 2025 and the Sustainable Development Goals.
- ⇒ The Government, through the Ministry of Finance and Planning, to increase funding for the water projects, especially for rural areas, in a bid to improve accessibility and quality of water, which is essential to the Government's industrialisation drive.
- ⇒ The Government, through the Ministry of Finance and Planning, should strive to increase budgetary allocation for the water sector in order to improve access to quality water.
- ⇒ The Government should ensure its institutions pay water bills on time in order to water authorities to effectively implement their activities and maintain water infrastructure.
- ⇒ The Ministry of Water and Irrigation, should enhance efforts to address the problem of water leakages, which lead to water loss, and costs water authorities billions of money.

Non-state actors

- ⇒ The private sector should collaborate with the Government to invest in water projects in order to increase access to water services. This could also be done as part of corporate social responsibility.
- ⇒ The private sector and CSOs should support the Government to address key challenges in its health, education and water sector, such as shortage of health and educational facilities. This includes construction or maintenance of relevant buildings and infrastructure, such as toilets/toilet holes and classrooms.



- ⇒ CSOs, the media and other stakeholders should collaborate with the Government to promote and protect social and cultural rights, including through awareness-raising of the public.
- ⇒ CSOs should assist the Government in devising strategies on the best ways to address some key challenges in the education, health, water and housing sectors.

Members of the public

- ⇒ Members of the public have a duty to protect infrastructure and refrain from the habit of damaging them, especially water infrastructure. They also have a duty to report incidents of damage to the infrastructure.
- ⇒ Parents have a duty to fully support their children in order to ensure they fully realize their right to education.
- ⇒ Community members should also mobilize themselves and help the Government in addressing some key challenges in the education sector, such as shortage of desks and shortage of toilets/toilet holes.
- ⇒ Community members residing in housing areas which are not habitable, such as the Msimbazi Valley in Dar es Salaam, are encouraged to move to other areas as relocated by the Government in order to protect their rights to health, life and adequate standard of living.



Chapter 6: Collective Rights

Introduction

Collective rights are the rights that belong to the group of people as opposed to individual rights. An individual enjoys collective rights as part of a group. Collective rights include the right to self-determination, the right to clean and safe environment, the right to natural resources, the right to peace and the right to development. These rights are enshrined in various international human rights instruments including the International Covenant on Economic, Social and Cultural Rights (ICESCR); the African Charter on Human and People's Rights (ACHPR) and the United Nations Charter. In order for a right to be recognised as a collective right, **the holder of the right should be collective, the exercise of the right pertains to a legally protected collective good, the interest of a right is of a collective nature.**³⁵⁰

6.1. Right to Development

The United Nations (UN) has defined development as “...an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”³⁵¹

Rule of law, good governance, participation of people and respect for human rights are key for realization of the right to development. The Government has a duty to involve community members in creating development plans and policies, as well as ensuring fair distribution of the benefits. As indicated in the UN Declaration on the Right to Development, development is not just economic, but also social, cultural and political.³⁵²

³⁵⁰ Andrea, N. (2018) Collective Rights: *In The United Nations Declaration On The Rights of Peasants And Other People Working In Rural Areas*, Fian International available at https://www.fian.org/fileadmin/media/publications_2018/Reports_and_guidelines/droits_collectifs_UK_web.pdf, accessed on 18th March 2019

³⁵¹ Article 1 of the UN Declaration on the Right to Development, A/RES/41/12, 4 December 1986, available at <http://www.un.org/documents/ga/res/41/a41r128.htm>, accessed 27th December 2017.

³⁵² Ibid.



Governments are also obligated to formulate appropriate national development policies that seek to improve the well-being of the entire population as well as of individuals ensure meaningful participation in development and fair distribution of benefits resulting from such development.³⁵³ The Declaration further provides for states' duty to cooperate with each other in ensuring development and eliminating obstacles to development.³⁵⁴

6.1.1. Political development

Political development stalled in the year 2018, owing to arbitrary restrictions of participation rights, affecting peoples' participation in political development. As discussed in Chapters 2 and 3 of this report, participation rights such as freedom of expression, freedom of assembly and freedom of association were negatively affected by government action and enactment of laws and adoption of regulations which infringe on these fundamental rights. As a result, civic space continued to shrink in the 2018, hence inability of non-state actors to hold the state accountable as a way of contributing to political development. Deteriorating civic space is also poised to affect the Development Vision 2015, in terms of achieving good governance and rule of law.

Laws such as the Media Services Act, Cyber Crimes Act, amendments made in the Statistics Act and introduction of Online Content Regulations, contain key provisions which are not in line with international human rights standards and a threat to political development. Government action such as limiting freedoms of association and assembly also pose a great threat to political development, as do the proposed amendments to the Political Parties Act.

6.1.2. Social development

Social development suggests realization of key social rights such as right to education, right to health, right to water and right to adequate standard of living. Tanzania's Development Vision 2025 seeks to achieve high quality livelihood for Tanzanians; and the strategies for this include food self-

³⁵³ Article 2(3) of the UN Declaration on the Right to Development, A/RES/41/128 of 4th December 1986

³⁵⁴ Ibid Article 3(3)



sufficiency and security, universal primary education, access to quality primary health care, absence to abject poverty and universal access to safe water. Social development suggests realization of key social rights such as right to education, right to health, right to water and right to adequate standard of living, which threatens the welfare and wellbeing of the people, especially in urban areas – where conditions in the streets become worse during rainy seasons, as their houses and streets become flooded.

Chapter Five of this report provides a discussion of the situation of social rights in Tanzania Mainland for the year 2018. The introduction of fee-free education policy by the government has definitely paid dividends as there has been increased enrolment in primary education and authorities in different parts of the country are making efforts to vigorously implement the policy. However, increased enrolment has created a challenge of shortage of classrooms to accommodate pupils who pass the national examinations and ready to join secondary education. As discussed in Chapter Five, this has been reported as a challenge in different parts of the country. Other education-related challenges include shortage of toilets/toilet holes, shortage of teachers and shortage of desks. Main challenges in realization of right to health in 2018 were shortage of budget, shortage of healthcare workers and shortage of health facilities, as reported in different part of the country. Lack of decent shelter is also a key challenge affected residents of rural areas in many parts of Tanzania.

Taxation as a human rights issue and key for social development

All States are responsible for mobilising the resources necessary to implement their international obligation to promote, protect, and fulfil human rights. The collection of taxes and allocation of resources is essential to the realization of the right to development and requires efficient and equitable State action.

Office of the United Nations High Commissioner for Human Rights

Revenue collection by the Government is key for the realization of social rights. The Government needs to enable it to provide basic social services such as food, water, clothing, shelter and healthcare for its people, especially the poorer section of the society. It is therefore necessary for businesses and individuals to pay their taxes in order to contribute to their



own well-being by enabling the Government to progressively realise social and economic rights, which in turns brings about social development. This is a duty for every Tanzanian and businesses operating in the country, because this is essential for social development.

Governments need taxes, as most sustainable source of revenue, to ensure progressive realization of social and economic rights.³⁵⁵ Taxation is thus strongly linked to human rights and plays a fundamental role in realisation of such rights,³⁵⁶ especially right to development and social and economic rights. Moreover, fiscal policies play a key role in mitigating inequalities. According to Office of the United Nations High Commissioner for Human Rights, progressive taxation plays an important redistributive role ensuring the equitable sharing of wealth.³⁵⁷ All these suggest a human rights-approach to taxation.

Human rights obligations related to taxation exist under various regional and international instruments, including under the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966; the UN Declaration on the Right to Development; and the UN Guiding Principles on Extreme Poverty and Human Rights – which provides for an obligation for States to “..make certain that adequate resources are raised and used to ensure the realization of the human rights of persons living in poverty.”³⁵⁸

For the year 2018, Tanzania continued to be faced with challenges in the mining sector, including tax avoidance, tax evasion and corruption in the mining sector. These practices deny the Government the funds it needs to provide social services. However, it is crucial for the Government to also

³⁵⁵ See Sebastián López Nieto, Beretta Godoy, *Taxation as a human rights issue*, International Bar Association, September 2016 at <https://www.ibanet.org/Article/Detail.aspx?ArticleUid=4d8668cb-473a-44ea-b8be-1327d6d9d977>, accessed 20th January 2019.

³⁵⁶ Ibid.

³⁵⁷ Office of United Nations High Commissioner for Human Rights, *The Right to Development and Taxation*, Information Note, at https://www.ohchr.org/Documents/Issues/RtD/InfoNote_Taxation.pdf, accessed 20th January 2019.

³⁵⁸ See Office of United Nations High Commissioner for Human Rights, UN Guiding Principles on Extreme Poverty and Human Rights at https://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf, accessed 20th January 2019.



manage the funds properly and put them into intended use. People are more likely to freely pay their taxes if they see that they are properly managed and not misappropriated. The Government needs to focus on progressive tax system (direct taxes), which is more favourable to the poorer section of the society as they promote equality.

6.1.3. Cultural development

Right to culture is one of the few human rights which are fully and freely realized by most people in Tanzania, save for harmful cultural practices, such as FGM and child marriage. Swahili language continues to enjoy local and international recognition as one of the key languages in the world and more people are learning the language across the world. Swahili language continues to be promoted and accepted beyond Tanzania as the language of the East African community, which is a pride for all Tanzanians.

6.1.4. Economic development

Tanzania continues to enjoy economic growth, through implementation of its Development Vision 2025, seeking to achieve a strong and competitive economy. The goal is to achieve a semi-industrialized economy with a substantial industrial sector comparable to middle-income countries, a growth rate of 8% per annum or more and adequate level of physical infrastructure, among others.³⁵⁹ Through its industrialization drive, popularly known as “*Tanzania ya Viwanda*,” the fifth phase government, has taken several measures to push Tanzania ahead, including continued improvement of key infrastructure, such as roads, railway and flyovers. It has also made efforts to revive the industrial sector and boost revenue collection.

Efforts to boost economy have seen Tanzania maintaining a relatively high economic growth rate, which is close to the 8% set in the 2025 Development Vision. In 2018, the economic growth rate was estimated at 6.6%, slightly lower than 2017, which was 6.7%. However, the Minister of

³⁵⁹ See Tanzania Development Vision 2025 at <http://www.mof.go.tz/mofdocs/overarch/vision2025.htm>, accessed 30th December 2017.



Finance and Planning, Hon. Dr. Phillip Mpango, revealed that economic growth rate stood at 7% from January to June 2018.³⁶⁰

Despite the growth experienced in terms of economy, the main challenge for Tanzania remains translating such growth into poverty reduction in order to boost human development. Majority of the people still live under or slightly above USD 1 per day. Lack of modernization of the agricultural sector is also a challenge for economic development in Tanzania, taking into account that more than 65% of Tanzanians are employed in this sector. The AU Maputo Declaration on Agriculture and Food Security of 2003 requires that at least 10% of total budget should be allocated for agriculture, but this has not been realised. In most cases, less the approved budgeted funds are also not timely disbursed, including in the agricultural sector. These issues have a great effect on economic development.

Women's participation in development process

The Declaration on the Right to Development requires that women have an active role on the development process.³⁶¹ It also calls for elimination of discrimination based on sex in enjoyment of all human rights and fundamental freedoms.³⁶² Although significant progress has been made over the years to include women in the development process, they continue to face a number of challenges, including underrepresentation in positions of authority or decision-making. GBV also hinders majority of women, particularly in the informal sector, to effectively take part in the development process.

6.1.5. Counterfeit products and consumer rights

In 2018, human and consumer rights in Tanzania continued to be affected as counterfeit and substandard products continued to flood domestic

³⁶⁰ The Citizen : *Tanzania economy to 'grow at 6.6pc in 2019*, a report published by the African Development Bank on the Continental Economic Outlook available at <https://www.thecitizen.co.tz/News/Tanzania-economy-to--grow-at-6-6pc-in-2019--/1840340-4969384-xk25e7/index.html> , accessed on 18th March 2019

³⁶¹ Article 8(1) of the Declaration on the Right to Development.

³⁶² Ibid, Article 6(1).



market.³⁶³ These products usually originate from China, India, the United Arab Emirates (Dubai), Indonesia, Taiwan, Singapore, Pakistan, Hong Kong, South Korea, Bahrain, Malaysia, Burma and Thailand.³⁶⁴ Presence of these counterfeit and substandard products causes loss revenue due to tax evasion; loss of employment; ill-health; loss of consumer trust; loss of market share; and safety risks. They also threaten right to life, right to health, right to work and right to development. Counterfeit products contribute to tax revenue loss of about USD 4 million annually.³⁶⁵ In September 2018, the Tanzania Foods and Drugs Authority (TFDA), reported that it seized and destroyed Tshs. 32 million worth of counterfeit products in Tabora Region.³⁶⁶

A 2017 report on state of counterfeit goods in Tanzania by the Confederation of Tanzania Industries (CTI) indicates that in East Africa, Tanzania and Kenya suffer the most due to their geographical location; and that counterfeiting is a big problem in Tanzania.³⁶⁷ The products originate from both within Tanzania and from imports; and the hotspots for such products are Dar es Salaam, Arusha, Mwanza and Mbeya. Most of these goods (80%) enter Tanzania through the Port of Dar es Salaam and to a lesser extent through Tanga and Mbeya, while entry via Zanzibar is also widespread.³⁶⁸

The CTI report further indicates that majority of consumers purchase counterfeit goods because of ignorance and the products being cheap; and most of them do not report to relevant authority when they encountered fake products, while others do not know which authority is responsible for

³⁶³ See Sosthenes Mwita “Tanzania: Fake Goods Cause Huge Economic Losses” DailyNews Newspaper, 26 June 2018 at <https://allafrica.com/stories/201806260688.html>, accessed 14th November 2018.

³⁶⁴ Ibid.

³⁶⁵ Confederation of Tanzania Industries, *The State of Counterfeit Goods in Tanzania: Research Report*, October 2017

³⁶⁶ “TFDA yateketeza bidhaa feki Tabora” Mwananchi Newspaper, 22 September 2018, at <https://www.mwananchi.co.tz/habari/TFDA-yateketeza-bidhaa-feki-Tabora/1597578-4772464-format-xhtml-38blirz/index.html#>, accessed 18 November 2018.

³⁶⁷ See Confederation of Tanzania Industries, *The State of Counterfeit Goods in Tanzania: Research Report*, October 2017 at <http://www.best-dialogue.org/wp-content/uploads/2018/01/CTI-Counterfeit-report-Oct-2017.pdf?x82837>, accessed 18 November 2018.

³⁶⁸ Ibid.



fighting such products. Companies operating in Tanzania have also complained that counterfeit products have led to loss of market share (10-30%) and a loss of annual turnover; and tarnished their brand, leading to loss of consumer trust. Moreover, the CTI study findings show that 80% of the people interviewed reported that the fake products negatively affected the health and safety of Tanzanians as consumers. The situation has also contributing to companies not being able to expand and create more employment.

Reasons for existence of counterfeits in domestic market include: inadequate budget allocated for relevant authorities; poor governance and corruption; and lack of effective enforcement of laws; lack of coordination; and inability to monitor some of the borders with neighboring countries, which are highly porous.³⁶⁹ Report by the Controller and Auditor General (CAG) on audit of public authorities and other bodies for the financial year 2016/2017 indicates that there were no officers from the Tanzania Bureau of Standards (TBS) at several entry points to ensure compliance of imported goods with set standards.³⁷⁰ The entry points are: Borega, Kogaja, Kilongwe and Gorogonja in Mara Region; Bukoba and Kemondo ports in Kagera region; Kiseke, Kitobo and Chumvini in Kilimanjaro region and Kigombe, Kipumbwi, Mkwaja, Kwale – Jasini, Chongoleani, Sahare, Mwambani, Dumi and Mnyanjani in Tanga Region.³⁷¹ The CAG remarked that absence of TBS officers at these entry points poses a risk of importation of substandard goods in Tanzania.³⁷²

6.2. Right to Enjoy and Benefit from Natural Resources

The African Charter on Human and People's Rights of 1981 provides that "all people shall freely dispose of their wealth and natural resources" and importantly that "this right shall be exercised in the exclusive interest of the people."³⁷³ The right is also covered under the UN General Assembly

³⁶⁹ Ibid.

³⁷⁰ See THE ANNUAL GENERAL REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE AUDIT OF PUBLIC AUTHORITIES AND OTHER BODIES FOR THE FINANCIAL YEAR 2016/2017 at http://www.nao.go.tz/?wpfb_dl=253, accessed 18th November 2018.

³⁷¹ Ibid.

³⁷² Ibid.

³⁷³ Article 21(1).



Resolution 1803 of 1962 which calls for “permanent sovereignty over natural resources.”

Domestically the Constitution of the United Republic of Tanzania provides for the right to natural resources under article 9. This article provides that “the use of natural resources places emphasis on the development of people and in particular is geared towards the eradication of poverty, ignorance and disease.” Nevertheless, this provision is unenforceable as it is not in the Bill of Rights within the Constitution.

Natural resources are important for generation of revenue and provide employment for many Tanzanians, for example in the tourism industry. The mining industry is another area where natural resources generate revenue and provide employment. Local and foreign investors have invested in the mining sector.

Duty bearers are required to ensure permanent sovereignty over the natural resources for the purpose of enhancing national development and wellbeing of the people, ensure respect of the rights and interests of the indigenous people, equitable sharing of transboundary natural resources and protection and conservation of the natural resources.³⁷⁴ Under the Constitution of the United Republic of Tanzania, the State authority and agencies are required to direct policies and programmes in ensuring that the use of natural wealth places emphasis on the development of the people and geared towards eradication of poverty, ignorance and disease.³⁷⁵

Key factors affecting realization of the right to enjoy and benefit from natural resources

In 2018, LHRC was able to identify a number of factors that affect realization of the right to enjoy and benefit from natural resources. These factors include corruption in the mining sector, land grabbing, tax evasion and lack of access to water resource.

Corruption in the mining sector

³⁷⁴ Christina, V. International Environmental Law: Sovereignty over Natural Resources and Prohibition of Transboundary Harm available at <https://www.uio.no/studier/emner/jus/jus/JUS5520/h14/undervisningsmateriale/3.-sovereignty-over-natural-resources.pdf> , accessed on 19th March 2018

³⁷⁵ Article 9(i) of the Constitution of the United Republic of Tanzania, 1977



Corruption hinders people who are evicted from their land to pave way for mining activities from being compensated or justly compensated. Village authorities have been known to be corrupt, doing their investors' bidding for personal interest instead of looking out interest of the people they lead (reference is made to the 2018 North Mara Gold Mine corruption scandal in Mara Region). Recent PCCB report indicates corruption in the land sector to be an issue of great concern.

Land grabbing

Land grabbing by foreign investors has contributed to denying citizens their right to enjoy their resources, as their land is taken away without due process and they are either not compensated or timely and adequately compensated. Local leaders and village leaders are usually implicated in corrupt transactions with investors to make decisions in their favour.

Tax evasion

Regarding tax evasion, particularly in the mining sector, the Government gets to collect less revenue than anticipated. This translates into slow pace in the progressive realization of social and economic rights, such as right to water, right to education and right to health, which in turn affects human development as well as social and economic development. Therefore, tax evasion in the mining and other sectors poses a threat to realization of the right to benefit from natural resources for Tanzanians.

Lack of access to water resource

Lack of access to water resource also hinders most Tanzanians, especially in rural areas, from fully realizing their right to benefit from natural resources available in Tanzania. Water is key for human and economic activities, and is crucial in realization of the right to life and right to health.

Conclusion and Recommendations

I. Conclusion

Right	Conclusion
Right to Development	Right to development includes political development, social development, cultural development and economic development. All of these development are crucial in realizing the right to development. For the year 2018, major



challenges were in political development and social development.

There is no realization of the right to development without taxes, as there is a strong link between taxation and human rights, especially social and economic rights. The Government needs taxes in order to progressively realise social and economic rights; and human rights obligations related to taxation exist under various regional and international instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966.

For the year 2018, Tanzania continued to be faced with challenges in the mining sector, including tax avoidance, tax evasion and corruption in the mining sector. These practices deny the Government the funds it needs to provide social services. However, it is crucial for the Government to also managed the funds properly and put them into intended use. People are more likely to freely pay their taxes if they see that they are properly managed.

Right to
Benefit from
Natural
Resources

The fact that most areas/villages around investment areas, especially mining areas, such in Geita, living in poor conditions and face challenges in attaining quality social services such as water and education also points to failure on the part of investors and the government to ensure they benefit from their natural resources. Companies operating in these areas have a corporate social responsibility (CSR), which compels them to assist in provision of key social services. However, this has not been done much, given the persisting levels of poverty in villages and townships around their operation areas and reports of challenges in education and other social sectors, including shortage of classrooms, toilets and desks.

Key factors corruption in the mining sector, land grabbing, tax evasion and lack of access to water.



2. Recommendations

State actors

- ⇒ The Government should address corruption in the mining sector, which is threatening right to development and right to enjoy and benefit from natural resources.
- ⇒ The Ministry of Natural Resources should ensure effective implementation of natural resources laws.
- ⇒ The Government to ensure respect of human rights in the course of attracting investment and ensure investors comply with Tanzanian laws and respect human rights in their operations.
- ⇒ The Government to ensure effective implementation of corporate social responsibility (CSR) policy to ensure people in areas with heavy investment, such as mining areas, benefit from their natural resources through improved social services.
- ⇒ The Government to address tax evasion and avoidance in the mining sector and ensure companies which evade tax are held accountable;
- ⇒ The Government, through the Tanzania Bureau of Standards (TBS), Tanzania Foods and Drugs Authority (TFDA) and the Fair Competition Commission (FCC) should spearhead provision of consumer education, touching on difference between counterfeit and substandard products; effects of counterfeit products on consumers and Tanzania as a whole; and which government authority to approach in case of counterfeit or substandard product.³⁷⁶
- ⇒ The Government should enhance resources, budget and capacity of the Fair Competition Commission (FCC) in order to increase its presence in the country and ensure staff are well remunerated; and
- ⇒ The Government should enhance TFDA resources, budget and capacity, interagency cooperation in order to address corruption.

Non-state actors

- ⇒ CSOs and the Commission for Human Rights and Good Governance (CHRAGG) to raise public awareness on right to development and right to benefit from natural resources.

³⁷⁶ As recommended by the Confederation of Tanzania Industries.



- ⇒ CSOs should identify gaps in realization of natural resources and engage and advise the government accordingly.
- ⇒ CSOs should collaborate with the government to ensure companies comply with their corporate social responsibilities. CSOs can also advocate for CSR to be mandatory for other companies, following amendments to the Mining Act of 2010, which have made CSR a legal requirement for companies in the mining sector.

Members of the public

- ⇒ Community members are encouraged to preserve and protect natural resources, which is their constitutional duty.
- ⇒ Community members are also encouraged to pay their taxes, since these are key in realization of social and economic rights.



Chapter 7: Rights of Vulnerable Groups

Introduction

Vulnerable groups are groups within the society which are more likely to be victims of violations of fundamental human rights than others. In Tanzania, vulnerable groups include women, children, persons with disabilities (PWDs), the elderly and persons living with HIV/AIDS. These groups require special protection as they are more likely to face more human rights violations than others. This special protection, which is guaranteed under laws and conventions that specifically provide for rights of these groups, seeks to ensure they enjoy and realize fundamental human rights equally with others. This chapter looks at the situation of the rights of the members of these groups in 2018.

7.1. Women's Rights

As human beings, women enjoy human rights guaranteed and protected under key human rights conventions that form the international bill of rights, namely the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social and Cultural Rights (ICESCR). However, there are treaties that specifically provide for women's rights, namely the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) of 1979 and Protocol Additional to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003. Another key convention that provides for rights of women is the SADC Protocol on Gender and Development of 2008.

The principle of non-discrimination takes the centre stage when discussing women's rights; and domestically the Constitution of the United Republic of Tanzania of 1977 guarantees the right to equality before the law and prohibits any form of discrimination, including based on sex and gender.³⁷⁷ Under CEDAW, Maputo Protocol and SADC Protocol on Gender and Development, Tanzania is obligated to pursue all appropriate means to eliminate discrimination against women and promote and ensure gender equality. This sub-chapter looks at the situation of violence against women,

³⁷⁷ See Article 13 of the Constitution of the United Republic of Tanzania 1977.



discrimination and gender inequality in Tanzania Mainland as key issues affecting women's rights in 2018.

7.1.1. Violence against Women

Violence against women (VAW) refers to any act of violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women.³⁷⁸ It includes threats which such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Examples of VAW include: rape, sexual harassment at work, trafficking in women and girls, forced prostitution, trafficking in women, beatings, torture, sextortion, and harmful traditional practices such female genital mutilation (FGM). VAW is a form of discrimination and constitutes human rights violation,³⁷⁹ 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.³⁸⁰

Government efforts to address VAW

In 2018, the Government continued to take several measures, in collaboration with non-government actors, to address the problem of violence against women (VAW), through implementation of the national Plan of Action to End Violence Against Women and Children 2017/18 – 2021/22. The Judiciary also worked to ensure perpetrators of VAW are brought to justice. However, the situation of women's rights continued to be negatively affected by different forms of VAW, which are still prevalent in different parts of Tanzania Mainland.

³⁷⁸ See the United Nations Declaration on the Elimination of Violence against Women of 1993.

³⁷⁹ United Nations Human Rights, Office of the High Commissioner, *Violence Against Women*, Information Series on Sexual and Reproductive Health and Rights, available at http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_VAW_WEB.pdf, accessed 30th December 2018.

³⁸⁰ See Nieves Rico, *Gender-Based Violence: A Human Rights Issue*, available at <http://www.cepal.org/mujer/noticias/paginas/9/27409/genderbasedviolence.pdf>, accessed 30th December 2018; Amnesty International, *Violence Against Women Information*, available at <https://www.amnestyusa.org/our-work/issues/women-s-rights/violence-against-women/violence-against-women-information>, accessed 30th December 2018.



Physical and psychological violence

In the year 2018, LHRC documented various incidents of VAW, particularly in the forms of physical violence, economic violence and sexual violence, including beatings, rape, desertion/neglect, exploitation of labour and marital sodomy. More incidents of physical violence were reported in the media compared to the year 2017, including a husband stabbing to death his wife - a lecturer at University of Dodoma; and a husband hitting his wife with hard object and killing her in Mkuranga-Pwani Region.

In 2018, LHRC conducted an assessment of VAW in 20 districts of 10 regions of Tanzania Mainland, namely: Ruvuma (Songea & Namtumbo), Mbeya (Mbeya CC & Kyela), Iringa (Iringa MC & Iringa DC), Dodoma (Dodoma CC & Kongwa), Singida (Singida MC & Manyoni), Tabora (Tabora MC & Nzega), Shinyanga (Shinyanga & Kahama), Mwanza (Mwanza CC & Misungwi), Arusha (Arusha CC & Arumeru) and Kilimanjaro (Moshi MC & Moshi DC).

Physical and psychological violence were mentioned to be prevalent in Iringa DC, Dodoma CC, Singida MC, Manyoni, Tabora MC, Nzega, Kahama, Misungwi, Moshi MC and Meru.³⁸¹

In Iringa, it was revealed that physical abuse incidents increase during the *ulanzi* local liquor period, which lasts from January to April each year, with drunkenness amongst men fuelling physical abuse against women. **In Tabora MC**, it was stated that most reported cases of VAW are on physical violence, but victims

Most women do not provide cooperation when it comes to cases of physical violence. They are afraid of ending their marriages because the Chagga customs and traditions prohibit them from reporting their husbands to the police. If they do so (report to police) their marriages come to an end.

SWO, Moshi DC

and onlookers are either afraid of reporting or reluctant to do so. In some places, even local government leaders are reluctant to report such incidents or testify in court for fear of 'disrespecting/going against' their customs and traditions. Physical violence cases in the region include beatings and attacks motivated by jealousy, most of them reported to police gender desks. **In**

³⁸¹ LHRC Field Report, 2018.



Misungwi, physical/partner violence was said to be especially prevalent during harvest season.

Complaints of men abandoning their wives and children to either marry other women (usually younger than their wives) or start new life with them were said to be common in Iringa, Mbeya, Kilimanjaro, Singida, Arusha and Tabora Regions. The wives are usually left alone to raise and care for their children, leaving them psychologically affected and constantly seeking help or intervention from social welfare departments. **In Singida MC**, the social welfare department revealed that there is a problem of women being constantly married and divorced, leaving them in psychological trauma, especially when left with children. In **Nzega**, desertion of wives and children was said to be common, hence many child support cases at the social welfare department.

In Tabora and Kilimanjaro, customs and traditions were mentioned amongst factors contributing to physical VAW, as women are prohibited from revealing being beaten by their husbands. It was also revealed that most women in rural areas do not know where to report or seek assistance, while others have lost faith in the justice system, put off by perceived corruption within the system (especially police). In Moshi-Kilimanjaro, fear of breaking up marriage was cited as among reasons for women not reporting physical abuse.

Sexual Violence

Regarding sexual violence, police data indicate that 1,218 women reportedly raped from January to June 2018.³⁸² Sexual violence was said to be among the major forms of VAW in half of the regions that were visited by LHRC, namely: Songea, Tabora, Mbeya, Singida and Kilimanjaro. **In Songea**, sexual VAW was said to be high, with at least 43 cases recorded by social welfare department in 2017/2018. Sexual violence is mainly perpetrated in the form of rape and sodomy, including in marriage settings. Marital rape and sodomy are discussed below.

³⁸² LHRC could not obtain the statistics for the rest of the year from the Police Force.



The TELEZA Phenomenon: A nightmare for women in Kigoma

Since 2016, there have been reports of a group of rapists in Kigoma popularly known as TELEZA, who break into houses and brutally and repeatedly rape women.³⁸³ A fact-finding mission conducted by LHRC and Twaweza, has revealed some frightening information on brutal raping of women by the group in region, as little has been done to help the poor women and make them feel safe. LHRC and Twaweza

These incidents (rape) are very common. We usually hear screams, but most of them (victims) decide to keep quiet because of 'shame.'

An interview with a resident-Kigoma

were able to document a series of incidents of rape and attempted rape of women in the region going as far back as 2017. These include: raping of a woman who had returned home at midnight from fetching water in 2017; raping of a 60-year-old woman (four times) in 2017, after being hit with a rod; raping of a 36-year-old woman (who was reportedly raped 6 times from 2017 to 2019), such that she decided to buy a weapon to protect herself; raping of an eight-month-pregnant woman in 2018; and raping of two older persons, one of them 70-years old.

Marital sodomy: Women forced by their spouses to engage in anal intercourse

One of the acts of sexual violence reportedly widely committed against women in 2018 was their spouses forcing them to engage in anal intercourse. In December 2018, it was revealed by the Tanzania Women Lawyers Association (TAWLA) that women being forced by their spouses to engage in anal intercourse, especially those who are married, is becoming a common occurrence in Tanga Region.³⁸⁴ LHRC's interviews with social welfare officers (SWOs) and community development officers (CDOs) in

³⁸³ See Diana Rubanguka "Kundi la wabakaji laibuka Kigoma" 25 May 2016 at <https://mobile.mwananchi.co.tz/Habari/Kundi-la-wabakaji-laibuka-Kigoma/1597580-3221494-format-xhtml-72cybqz/index.html>; "Teleza azidi kuchafua hali ya hewa Kigoma" at <http://www.dar24.com/teleza-azidi-kuchafua-hali-ya-hewa-kigoma/>; Fadhili Abdallah "NYUMBA ZA WANAWAKE ZAVAMIWA, WABAKWA" HABARILEO Newspaper, 26 May 2018 at <https://habarileo.co.tz/habari/nyumba-za-wanawake-zavamiwa-na-kubakwa.aspx>

³⁸⁴ "Walio kwenye ndoa walazimishwa mapenzi kinyume na maumbile" *Mtanzania* Newspaper, 4th December 2018.



10 regions of Tanzania Mainland in 2018 further reveals the magnitude of this problem.

Marital sodomy exists, but men tend to think that they have a right to do to a woman as they please.

SWO, MERU

Incidents of marital sodomy were mainly reported in Singida, Tabora, Iringa, Arusha and Kilimanjaro.³⁸⁵ In Singida MC, the social welfare department revealed that women tend to complain about marital sodomy but they are afraid of reporting when they talk to SWOs. Some of them do not know that sodomy is a crime and those who know do not report to authorities for fear of 'family shame' and husband retaliation.

There are cases of marital sodomy, but most women are afraid of coming out and reporting. The problem of marital sodomy appears to be growing.

SWO, MOSHI MC

Sodomy incidents are common amongst spouses, but most women are afraid of reporting them, believing that 'a woman should not reveal family secrets.'

SWO, MOSHI DC

There is a man who started forcing his wife to engage in sodomy. He started to regularly sodomize her and later even started inserting a bottle in her. When she complained about this behavior, he threatened to leave her, but the wife decided to come and report the matter.

SWO, Iringa DC

Forced anal intercourse constitutes an act of sexual violence against a woman, violates her dignity, is a human rights violation and is a criminal

³⁸⁵ Field Report, 2018.



offence under the Penal Code of Tanzania.³⁸⁶ LHRC condemns this action and calls upon all men who commit marital sodomy to stop this behavior, which also has health consequences for women.

Sexual corruption: A challenge for women, including female students in higher learning institutions

Sexual corruption was also identified as a major challenge for women in 2018, especially for young women seeking jobs. Reports of these women being asked to sleep with prospective bosses in order to secure employment continue to be widespread, with some agreeing in order to be employed or promoted and others are discouraged and give up on employment altogether.

A study involving female journalists and university students, conducted by *Internews*³⁸⁷ in 2018 revealed rampant discrimination, lack of opportunities and demands for transactional sex against women who aim for media careers.³⁸⁸ According to the study, female journalists are usually asked for sexual corruption when they seek employment or by their story sources; and face sexual exploitation at their workplaces, especially when they seek promotion. The study further reveals that male lecturers make sexual advances and sexually exploit female students, sometimes giving them failing grades when they refuse such advances.³⁸⁹

In November 2018, a lecturer at the University of Dar es Salaam, Dr. Vincensia Shule, took to her Twitter account to expose sexual corruption at the university, shortly after the visit of the President of Tanzania, Hon. Joseph Pombe Magufuli.³⁹⁰ In her tweet she urged the President to intervene

³⁸⁶ Section 154 of Penal Code, CAP 16 (prohibits carnal knowledge of any person against order of nature).

³⁸⁷ An international non-profit organization, works to ensure access to trusted, quality information that empowers people to have a voice in their future and to live healthy, secure, and rewarding lives.

³⁸⁸ See Internews “Sexual Harassment Limits Women’s Advancement in Tanzanian Media” at <https://www.internews.org/story/sexual-harassment-limits-womens-advancement-tanzanian-media>, accessed 30th December 2018.

³⁸⁹ Ibid.

³⁹⁰ “TGNP yaibuka sakata la rushwa ya ngono” *Nipashe* Newspaper, 7th December 2018; Elias Msuya “Mhadhiri aliyedai rushwa ya ngono imekithiri UDSM apongezwa” *Mwananchi* Newspaper, 10th December 2018; Peter Mwai “Vicensia Shule: Mhadhiri aliyezua mjadala



on the matter, stating that sexual corruption at the university is rampant. The tweet stimulate public debate, particularly on social media; and human rights activists commended her for bravery in fighting against sexual violence, which is among key issues affecting women in Tanzania. The lecturer was later called before the ethics committee at the university to discuss and see how to address the matter.³⁹¹



Picture 13: Dr. Vicensia Shule's tweet regarding sexual corruption at the University of Dar es Salaam

Table 11: Incidents of VAW recorded by LHRC, 2018

Description	Source	Date
Mwanza: A 27-year-old man, resident of Mwanza, was arrested by police for raping and killing 28 women in Mwanza Region.	<i>Nipashe</i> Newspaper	25 Aug 2018
Misungwi, Mwanza: A resident of Sangamwalugesha Village in Simiyu Region was sent to court, accused of raping a woman who is mentally-handicapped.	<i>Mwananchi</i> Newspaper	4 Oct 2018
Shinyanga: Police in Shinyanga arrested 30-year-old Fikiri Charles, resident of Mwadui-Kahama, who reportedly confessed to killing 6 women for payment of up to Tshs. 800,000/-, 'a business' he said he inherited from his father, connected to witchcraft beliefs.	<i>Nipashe</i> Newspaper	13 Oct 2018
Siha, Kilimanjaro: In October 2018, Siha	<i>Nipashe</i>	13 Oct 2018

wa rushwa ya ngono chuoni UDSM, Tanzania ni nani" BBC Swahili, at <https://www.bbc.com/swahili/habari-46368623>, accessed 25th December 2018.

³⁹¹ "Kashfa ya ngono UDSM, mhadhiri kuhojiwa kamati ya maadili" Mwananchi Newspaper, 30th November 2018 at <https://www.mwananchi.co.tz/habari/Kitaifa/Kashfa-ya-ngono-UDSM--mhadhiri-kuhojiwa-kamati-ya-maadili/1597296-4875598-o68aj8/index.html>, accessed 25th December 2018.



District Court sentenced 48-year-old Peter Kimathi to a total of 60 years in prison after finding him guilty of raping and sodomizing a 35-year-old woman in January 2018.	Newspaper	
Arusha: A woman in Arusha testified before the Resident Magistrate Court about how her husband was beating her and inserting his hand in her private parts, causing her persistent pain.	<i>Mtanzania</i> Newspaper	17 Oct 2018
Tanga: Two women, aged 18 and 40, were raped and killed in Pangani District and Tanga District respectively.	<i>Mwananchi</i> Newspaper	4 Dec 2018
Butiama, Mara: A 24-year-old woman, resident of Nyaange Village, was attacked by her husband with a machete after going to a traditional dance ceremony without his permission. As a result, he cut her fingers as she held the machete to prevent an attack on her body.	<i>Mwananchi</i> Newspaper	12 Dec 2018
Morogoro: A 27-year-old woman, Zuhura Gabriel, was reportedly killed by her co-parent, known as Msambaa, because of jealousy. She was stabbed with a knife on different parts of her body.	<i>HABARILEO</i> Newspaper	28 Dec 2018
Bukoba, Kagera: A secondary school teacher, 36 years old, strangled his woman, 29 years old, because of jealousy; and then committed suicide.	<i>Nipashe</i> Newspaper	19 Dec 2018
Geita: 3 teachers at Kasamwa Secondary School were accused of beating a 19-year-old Form Five student until she lost consciousness for piercing her ears.	<i>Nipashe</i> Newspaper	18 Dec 2018
Nachingwea, Lindi: Dotusi Isaya, resident of Chanika-Dar es Salaam, reportedly attacked with a machete and killed his wife and two daughters (aged 3 and 5), following a marriage dispute. The man then committed suicide. Apparently he wanted to move with the children to Bukoba, but the wife refused.	<i>Mwananchi</i> Newspaper	16 Sep 2018
Bagamoyo, Pwani: A 38-year-old man, Mzee Kondo, was arrested by police for killing his 27-year-old wife in August 2018, following accusations that she was chatting with other men on the phone.	<i>Nipashe</i> Newspaper	5 Sep 2018
Ikungi, Singida: A man, Joseph Wilbrod, reportedly killed his wife, Editha Kanisi, by	LHRC Human Rights	20 Aug 2018



stabbing her after accusing her of being unfaithful in their marriage.	Monitoring Unit	
Temeke, Dar es Salaam: Police arrested a man, Frank Magulu (29), who was accused of killing his lover, Mariam Charles, because of jealousy.	HABARILEO Newspaper	9 Sep 2018
Mpanda, Katavi: Mpanda District Court sentenced Ramadhani Shaaban (24) to 30 years in prison after convicting him of raping a woman who is deaf and has a mental disability.	Mtanzania Newspaper	19 Sep 2018
Tanga: Petro Sabuni, resident of Pongwe, was arrested by police on accusation of killing wife and son using a knife in November 2018 for allegedly being told there is no food after he returned home. The son was stabbed when he intervened to protect the wife.	Mtanzania Newspaper	7 Nov 2018
Shinyanga: Police arrested a bodaboda driver, Shyrook Kimaro (48), for hitting his wife with a rock on the head and causing her death in November 2018.	Mtanzania Newspaper	7 Nov 2018

In August 2018, District Commissioner of Misungwi, Hon. Juma Sweda, indicate that incidents of raping, killing and removing body parts of women are among issues of key concern in his district.³⁹²

In October 2018, the Inspector General of Police Simon Sirro, mentioned that cases related to jealousy between spouses are among the major challenges for the police force.³⁹³ He stated that cases of women being killed by their spouses constitute the majority of cases at most police stations and posts.

“If you want child support, come get it!”: The case of Moshi

In Moshi, it was revealed that some men tend to use child support to take advantage of women they share a child or children with. Complaints of this kind were levelled against men at the social welfare department in Moshi MC.

³⁹² “Mauaji ya wanawake Misungwi yamuumiza DC” *Mtanzania Newspaper*, 9th August 2018.

³⁹³ “IGP Sirro: Mauaji ya wenza sasa tishio” *HABARILEO Newspaper*, 8th October 2018.



There are men who demand sex before they provide child support. They use child support as a weapon for perpetrating sexual violence against mothers of their children. They tell them “If you want child support, come get it!”

SWO department, Moshi MC

Sexual violence and killings of women in Monduli-Arusha

In August 2018, reports of fear in Monduli-Arusha due to increasing incidents of sexual violence and killings of women were reported.³⁹⁴ Eight women were reportedly killed in the district, while several others survived sexual violence.³⁹⁵ In the latest incidents, which occurred in July 2018, one woman was found killed and dumped in Mto wa Mbu area, after she was raped. Police in the area, however, dismissed claims that women are the only ones targeted, noting that the killings are random acts of crime.³⁹⁶

Economic violence

In 2018, LHRC found economic VAW to be a major problem in six out of the ten regions it was able to visit. These are Mbeya, Iringa, Shinyanga, Singida, Ruvuma and Kilimanjaro. In Ruvuma, economic violence was said to be more prevalent in Namtumbo.

Generally, SWOs and CDOs engaged by LHRC in these regions state that while women are the main food producers in their communities, men tend to take control during harvest period and sell the crops and keep the money for their own use – usually seeking another wife or spending it with younger women. In Iringa, it was reported that men tend to marry many women in order to use them to grow and harvest crops as cheap labour, seeking to exploit their labour.

³⁹⁴ See “Hofu yatanda Arusha nchini Tanzania kufuatia visa vingi vya mauaji ya wanawake” BBC Swahili, 13 August 2018 at <https://www.bbc.com/swahili/habari-45175110>, accessed 25th December 2018.

³⁹⁵ Ibid.

³⁹⁶ Ibid.



Women are the main producers of rice, but when they harvest their men tend to take charge of crops. During harvest season men tend to turn on their wives, even kicking them out their homes.

SWO-Kyela

Dowry is used to justify VAW, as once a man pays the required dowry it is taken to signify that he can do whatever he wants with the woman. Also, there are many cases of economic violence during the harvest season, with men deserting their wives and marrying other women, especially young women.

SWO, Kahama

Economic violence is becoming prevalent. During harvest, the male spouse tends to take all the crops (to go and sell them) and seek or marry other women.

SWO-Namtumbo

Table 12: Incidents of VAW documented by LHRC in 2018

Description	Source	Date
Dodoma: In May 2018, a university lecturer at the University of Dodoma was reportedly stabbed to death with a sharp object by her husband, John Mwaisango, a pastor. It was reported that the victim was stabbed multiple times.	LHRC Human Rights Monitoring Unit	2 Jun 2018
Mkuranga, Pwani: In May 2018, a senior nurse at Mkuranga District Hospital in Pwani Region, Rosemary Magombora, was reportedly killed by her husband by hitting her with a hard object. It was reported that the husband was accusing his late wife of infecting him with HIV.	LHRC Human Rights Monitoring Unit	2 Jun 2018
Meatu, Simiyu: A secondary school teacher in Meatu District, Richard Kihwili (29), was brought before a court of law, accused of raping a 19-year-old student.	Mtanzania Newspaper	6 Jun 2018
Njombe: A 32-year-old man was arrested by police for burning his wife in her private parts. It was reported that the man attacked his wife after refusing to have sexual intercourse with him.	Mtanzania Newspaper	12 Mar 2018
Kakonko, Kigoma: A woman in Itumbiko Village was reportedly killed by her husband with	Mtanzania Newspaper	23 Apr 2018



a bat for bearing him only female children.		

Reasons for VAW: LHRC's assessment

Based on its assessment of reported incidents of VAW and interviews with various key stakeholders, LHRC has identified various factors contributing to VAW. These factors include: witchcraft-beliefs, especially in the Lake Zone and Tabora; jealousy and revenge amongst spouses; harmful customs and traditions; dowry payment, especially in the Lake Zone; lack of economic empowerment for women, which forces them to tolerate VAW; low awareness about GBV and laws; drunkenness among men; and poor educational background among women and their spouses. Most women, especially in rural areas, do not report acts of violence perpetrated against them, including of partner violence, because of 'shame.'

7.1.2. Gender Inequality and Discrimination

Gender equality refers to equal enjoyment of rights and access to opportunities and outcomes, including resources, by women, girls and boys.³⁹⁷ Rights to gender equality and non-discrimination are recognized under CEDAW, the Maputo Protocol and SADC Protocol on Gender and Development. One of the key principles of promoting gender equality is ensuring at least 50% of decision-making positions in the public and private sectors are held by women.³⁹⁸

Goal 5 of the **Sustainable Development Goals (SDGs)** calls for **achieving gender equality and empowering all women and girls**. To achieve this goal, the Government of Tanzania needs to end all forms of discrimination against women and girls;³⁹⁹ eliminate all forms of violence against women and girls;⁴⁰⁰ ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.⁴⁰¹ To achieve gender equality and

³⁹⁷ Article 1(2) of the SADC Protocol on Gender and Development 2008.

³⁹⁸ Ibid, Article 12(1).

³⁹⁹ Goal 5.1 of the SDGs.

⁴⁰⁰ Goal 5.2 of the SDGs.

⁴⁰¹ Goal 5.5 of the SDGs.



empower women and girls, the Government also needs to undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources.⁴⁰²

In 2018, the Government continued with efforts to promote and ensure gender equality and non-discrimination in Tanzania. Continued violence against women, including economic violence, presents a hurdle in achieving gender equality and combating discrimination against women. Representation of women in decision-making also continues to be a problem, especially in rural areas – where most customs and traditions still discriminate women in decision-making. According to the Association of Tanzania Workers (ATE), as of June 2017, only 35% of women in Tanzania held senior leadership positions.⁴⁰³

Pulling the plug on family planning: a threat to women's sexual and reproductive rights

In September 2018, the President of Tanzania, Hon. John Pombe Magufuli, advised against family planning, noting that Tanzania does not need such planning and accused people who use contraceptives of being lazy and not wanting to bear responsibilities for their children, including feeding them.⁴⁰⁴ He advised women during a rally in Meatu-Simiyu Region to stop using birth control, as stakeholders feared this would lead to change in policy – which was adopted in 1976.⁴⁰⁵ On 19th September 2018, the Ministry of Health, Community Development, Gender, Elderly and Children in Tanzania

⁴⁰² Goal 5.a of the SDGs.

⁴⁰³ Rosemary Mirondo “Only 35pc of Tanzanian women hold senior leadership positions, says ATE” The Citizen Newspaper, 29 June 2017, at <https://www.thecitizen.co.tz/News/Only-35pc-of-Tanzanian-women-hold/1840340-3992906-s2ib7s/index.html>, accessed 20th November 2018.

⁴⁰⁴ “Magufuli advises against birth control” The Citizen Newspaper, 10 September 2018, <https://www.thecitizen.co.tz/News/Magufuli-advises-against-birth-control/1840340-4751990-4h8fqpz/index.html>, accessed 20th December 2018; Amnesty International “Tanzania: Decision to pull family planning ads an attack on sexual and reproductive rights” 21 September 2018 at <https://www.amnesty.org/en/latest/news/2018/09/tanzania-decision-to-pull-family-planning-ads-an-attack-on-sexual-and-reproductive-rights/>, accessed 20th December 2018.

⁴⁰⁵ Ibid.



announced ban on airing of all family planning advertisements on radio and television pending further notice.⁴⁰⁶

7.2. Children's Rights

Children's rights in Tanzania are protected at international, continental and domestic levels. They are guaranteed and protected under the UN Convention on the Rights of the Child (CRC) of 1989 and the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990, which require Tanzania to take all appropriate measures to protect children within its territory from all forms of abuse such as torture; violence; inhuman or degrading treatment; and especially sexual abuse and exploitation;⁴⁰⁷ and to protect female children from harmful practices that affect their welfare, dignity, normal growth and development, such as female genital mutilation and child marriage.⁴⁰⁸

This sub-chapter looks at the situation of harmful cultural practices, sexual violence and physical and psychological violence against children as key issues affecting children's rights in 2018.

7.2.1. Violence against children

Violence against children (VAC) is a key issue affecting human rights in Tanzania Mainland. For the year 2018, LHRC found children's freedom from violence to be the most violated human right, mainly caused by growing incidence of VAC. Police data for the first six months of the year 2018, indicate increased magnitude of the problem, showing an increase of VAC incidents from 4,728 incidents by mid-2017 to 6,376 incidents by mid-2018, as shown in the figure below.

⁴⁰⁶ Amnesty International, *ibid*; BBC Swahili "Je kufutwa kwa matangazo kuhusu uzazi wa mpango Tanzania kutakuwa na athari gani?" 21 September 2018, at <https://www.bbc.com/swahili/habari-45603630>, accessed 20th December 2018.

⁴⁰⁷ 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.

⁴⁰⁸ Article 5 of Maputo Protocol; Article 21 of the African Charter on the Rights and Welfare of the Child.





Figure 6: Reported incidents of VAC by mid-2017 and mid-2018

Source: Tanzania Police Force, 2017 & 2018

Information obtained by LHRC through media reports and interviews with different stakeholders in 20 districts of 10 regions of Tanzania Mainland also paint a picture of seriousness of the problem of VAC, especially sexual VAC. The regions and districts that were reached were: Ruvuma (Songea & Namtumbo), Mbeya (Mbeya

CC & Kyela), Iringa (Iringa MC & Iringa DC), Dodoma (Dodoma CC & Kongwa), Singida (Singida MC & Manyoni), Tabora (Tabora MC & Nzega), Shinyanga (Shinyanga & Kahama), Mwanza (Mwanza CC & Misungwi), Arusha (Arusha CC & Arumeru) and Kilimanjaro (Moshi MC & Moshi DC). Sexual violence was mentioned as the major VAC issue in all districts, followed by physical violence; and main acts of VAC were mentioned to be rape, beatings, sodomy/defilement and neglect/desertion.

There is one case of a woman who sells traditional liquor. When she comes back home, she usually comes back with a man, both drunk. They engage in sexual activity; and when they finish the man turns to her 13-year-old daughter (they sleep in the same room) and rapes her. Different men come by the house every now and then, sometimes during the day and rape the child. Fortunately, the child has been rescued by social welfare officers and was found to be HIV negative.

SWO, Singida MC

Various factors were mentioned as contributing to VAC in Tanzania Mainland. These include lack of proper care and parental guidance; lack of parenthood and child care knowledge amongst parents/guardians, leading to poor upbringing; household poverty, leaving children – especially girls – vulnerable to men who offer them money and food; witchcraft-beliefs; low awareness about child rights; family disintegration, whereby mother leaves father with children or father leaves and mother stays with children but

Victims of violence against children are more likely to become either perpetrators or victims of violence when they become adults

children spend most of the time alone at home; drunkenness among men, and in some few cases women; tendency of parents preferring to settle VAC cases out of court 'to conceal family shape.' Other factors that were mentioned were: men abandoning their wives and

children to marry other, usually younger, women; poor school environment and long distance to school, leaving children vulnerable, especially to *bodaboda* drivers; peer pressure, especially for the case of child-on-child sexual abuse; and parents/guardians not spending adequate time with their children.

In Nantumbo-Ruvuma, it was revealed that some parents tend to leave children by themselves for a long period of time, literally taking care of themselves.⁴⁰⁹ During the growing season, some parents even leave their homes and camp at the farms, leaving children to take care of themselves, thus putting them at increased risk of VAC. It was also revealed that men tend to marry more women (polygamy) every now and then, thus finding themselves incapable of adequately providing for all their wives and children, leaving children exposed to VAC.⁴¹⁰ **In Mbeya**, drunkenness, witchcraft beliefs and parental separation (especially where a father remains with a female child), were said to be major factors contributing to VAC. In Manyoni, the social welfare department indicated that children are usually left home alone, leaving them at increased risk of violence from passers-by and neighbours – who are known to be among the main perpetrators of

⁴⁰⁹ LHRC Field Report, 2018.

⁴¹⁰ Ibid.



VAC. In **Moshi**, strong belief in customs and traditions was said to contribute to VAC, as parents seek to ‘resolve issues’ at family level. In **Tabora**, shortage of fit persons and families was identified as among the challenges facing prosecution of sexual VAC cases.

Lack/shortage of fit persons/families contributes to victims of sexual violence turning hostile witnesses in court, since they are usually threatened to tell the truth in court when they return back home, especially where the perpetrator is a close relative or family member.

SWO, Tabora DC

LHRC’s media survey revealed that sexual violence incidents dominated print media reports for the year 2018. As shown in the table below, 91% of reported VAC incidents were of sexual violence, while 9% were physical and psychological violence.

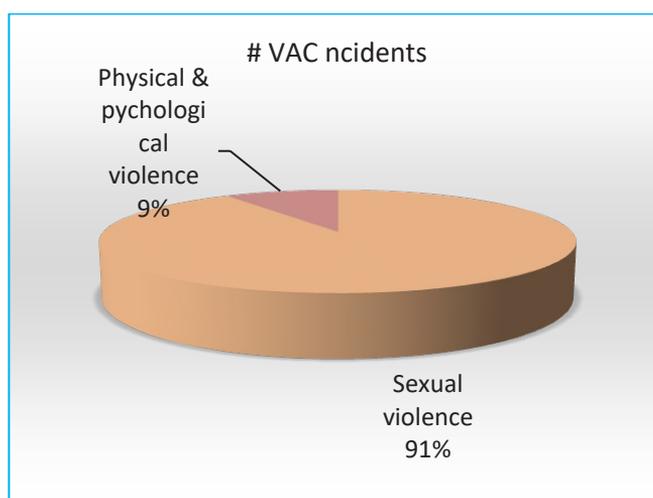


Figure 7: %Incidents of VAC reported by the media in 2018

Source: LHRC media survey 2018

7.2.2. Sexual Violence

Alarming rate of sexual violence against children

Sexual violence against children, particularly in the forms of rape and sodomy, was a major human rights concern in 2018. In the first half of 2018 police data indicated that reported child rape had increased by 3 times compared to the first six months of 2017. Sodomy incidents have increased



from 12 in the first half of 2017 to 533 in the first half of 2018. Such incidents are also common in schools, including primary schools and boarding schools.



Figure 8: Incidents of child rape reported to the police by mid-2017 and mid-2018

Source: Tanzania Police Force, 2011 & 2018

As indicated above, there were many media reports on VAC in the year 2018, more than 2017; and majority of reported incidents were of sexual violence, especially rape and sodomy. The table below provides some short narratives on reported incidents of sexual violence that were recorded by LHRC in 2018.

Table 13: Incidents of sexual violence against children recorded by LHRC, January to December 2018

Description	Source	Date
Mtwara: A man reportedly attacked and killed a child after the child's mother refused his sexual advances.	<i>Nipashe</i> Newspaper	8 Feb 2018
Loliondo, Arusha: A secondary school teacher, Erick Kaliache, reportedly raped and impregnated his student March 2018.	<i>HabariLeo</i> Newspaper	12 Jul 2018
Shiyanga: A father poisoned his 2-month-old baby born outside wedlock, allegedly to prevent his wife from finding out about the child.	<i>Nipashe</i> Newspaper	13 Apr 2018
Nyegezi, Mwanza: Soli Mkanzabe (24) was	<i>HabariLeo</i>	28 Feb 2018



reportedly apprehended by police, accused of raping a 4-year-old girl.	Newspaper	
Maswa, Shinyanga: Two people were taken to court in February 2018, accused of raping and impregnating students, including a Standard Three pupil.	<i>Mtanzania</i> Newspaper	8 Feb 2018
Ruangwa, Lindi: A police officer (28) was reportedly arrested and suspended after being accused of raping a 14-year-old girl.	<i>Majira</i> Newspaper	10 Apr 2018
Kinondoni, Dar es Salaam: A resident of Makumbusho area, Said Mussa, was brought before Kinondoni District Court, accused of raping a 16-year-old girl.	<i>Mtanzania</i> Newspaper	22 Aug 2018
Iringa: A resident of Mwangata area in Iringa (45) was arrested by police for using a 14-year-old girl for commercial sexual exploitation and beating her when she refused to engage in sexual intercourse with men.	<i>Nipashe</i> Newspaper	10 Aug 2019
Kinondoni, Dar es Salaam: Vitalis Joseph (24), a resident of Tegeta area was brought before Kinondoni District Court, accused of raping a 9-year-old girl, child of his former employer, where he was working as a garden attendant.	<i>Mtanzania</i> Newspaper	2 Aug 2018
Bukombe, Geita: A resident of Segere Village, Rushanga Kisumu (37), was sentenced to life in prison for sodomizing a 6-year-old girl in April 2018.	<i>Mwananchi</i> Newspaper	2 Aug 2018
Ilala, Dar es Salaam: A resident of Pugu Stesheni, Issa Athumani (47), was beaten by angry citizens for reportedly raping his own child.	<i>BAHARILEO</i> Newspaper	18 Aug 2018
Kiteto, Manyara: A teacher at Engusero Secondary School, Henry Michael (30), was brought before Kiteto Resident Magistrate Court, accused of raping a Form Two students aged 16 years.	<i>Mtanzania</i> Newspaper	31 Aug 2018
Hai, Kilimanjaro: 19 secondary school students were reportedly raped in September 2018 during the Uhuru torch celebrations. They mentioned <i>bodaboda</i> drivers, bajaj drivers and CD vendors as major perpetrators.	<i>Mwananchi</i> Newspaper	8 Oct 2018
Serengeti, Mara: A teacher at Nyibereka Primary School, Sokoine Francis (28), was brought before a court in Serengeti, accused of raping and impregnating a 15-year-old student in August 2018.	<i>Mwananchi</i> Newspaper	5 Oct 2018



Misungwi, Mwanza: A head master in Misungwi was arrested by police after being accused of engaging in sexual relationship with students.	<i>Mwananchi</i> Newspaper	7 Oct 2018
Mpwapwa, Dodoma: It was reported that in the first 9 months of 2018, a total of 54 incidents of child rape were reported to police gender desk, 24 of which resulted into child pregnancy.	<i>HABARILEO</i> Newspaper	29 Oct 2018
Moshi, Kilimanjaro: 10 secondary school students in Moshi DC, 5 boys and 5 girls, were reportedly sodomized and raped respectively.	<i>Nipashe</i> Newspaper	13 Oct 2018
Babati, Manyara: Police in Manyara arrested Charles Merikiory (32), a primary school teacher, for sodomizing a Standard Five pupil in a dormitory at the school.	<i>Nipashe</i> Newspaper	8 Oct 2018
Misungwi, Mwanza: Resident Magistrate Court of Misungwi sentenced a primary school teacher, Telesphory Revocatus (32), to 30 years in prison for raping and impregnating a primary school pupil.	<i>Mtanzania</i> Newspaper	27 Oct 2018
Misungwi, Mwanza: Charles Abel (24), resident of Usagara, was brought before Misungwi District Court, accused of raping and impregnating a 13-year-old pupil who is his cousin. He reportedly committed the offence in June 2018 at Usagara area.	<i>Mtanzania</i> Newspaper	11 Oct 2018
Misungwi, Mwanza: Magige John (20), resident of Old Misungwi Village, was sentenced by court to 30 years in prison after being convicted of raping and impregnating a Standard Six pupil.	<i>Mwananchi</i> Newspaper	25 Oct 2018
Chunya, Mbeya: An 8-year-old girl was raped to death in Mbuguni area by a 25-year-old man. Witchcraft-belief was said to be the motivation behind the incident.	<i>Majira</i> Newspaper	12 Oct 2018
Siha, Kilimanjaro: Siha District Court sentenced a man, Abrahamu Kaaya (30), to 60 years in prison after convicting him of raping and impregnating a 15-year-old secondary school student.	<i>Nipashe</i> Newspaper	24 Oct 2018
Misungwi, Mwanza: Misungwi District Court sentenced 30-year-old Peter Fred to 30 years in prison, following conviction of impregnating a Standard Seven pupil.	<i>Mwananchi</i> Newspaper	24 Oct 2018
Misungwi, Mwanza: Misungwi District Court sentenced 25-year-old Paul Masunga, resident of Mwemagembe Village, to 30 years in prison after he was convicted of raping and impregnating a 14-	<i>Mwananchi</i> Newspaper	18 Oct 2018



year-old girl.		
Tabora MC, Tabora: Patrick Kabula (24), who was accused of raping a 5-year-old girl in February 2018, was sentenced to 30 years in prison.	<i>Mtanzania Newspaper</i>	6 Dec 2018
Kinondoni, Dar es Salaam: Mohammed Hasan (66), resident of Mburahati area, was brought before Kinondoni District Court, accused of raping a 3-year-old girl in October 2018.	<i>Mtanzania Newspaper</i>	6 Dec 2018
Siha, Kilimanjaro: Issa Ismail (20), was sentenced to life in prison after he was convicted of sodomizing an 8-year old Standard Two pupil in October 2018.	<i>Nipashe Newspaper</i>	3 Dec 2018
Misungwi, Mwanza: Misungwi District Court sentenced a resident of Inonelwa Village, Nyanda Zephania (27), to 30 years in prison and payment of a fine of Tshs. 50,000 after he was convicted of trafficking, raping and impregnating a 16-year-old student.	<i>Mwananchi Newspaper</i>	10 Dec 2018
Siha, Kilimanjaro: A tourist escort, Geroge Lesilwa, was sentenced to life in prison after he was convicted of sodomizing three children.	LHRC Human Rights Monitoring	12 Dec 2018
Mbeya: Mbeya Resident Magistrate Court sentenced a 67-year-old man, resident of Iyunga area, after convicting him of raping a 6-year-old girl in Mbalizi area in March 2018.	<i>Majira Newspaper</i>	21 Dec 2018
Chamwino, Dodoma: A 14-year-old pupil at a primary school in Wilunze Village was accused of sodomizing other pupils of Standard One and Standard Two.	<i>HABARILEO Newspaper</i>	24 Dec 2018
Korongwe, Tanga: Police opened investigations into 3 secondary school teachers accused of engaging in sexual relationships with students.	<i>Nipashe Newspaper</i>	12 Dec 2018
Kahama, Shinyanga: Simon Patrick (29) and Erasto Jeremia (53) were arrested by police in connection with raping of 5-year-old and 15-year-old girls respectively.	<i>Nipashe Newspaper</i>	22 Nov 2018
Rombo, Kilimanjaro: Rombo RC ordered arrest of a man, resident of Mafufuu area, who was accused engaging in sexual relationship with his 16-year-old daughter.	<i>Nipashe Newspaper</i>	17 Dec 2018
Tunduru, Ruvuma: A step-father, Mmanga Mrope (47), was sent to court, accused of raping an 8-year-old girl in December 2018.	<i>Nipashe Newspaper</i>	15 Dec 2018



Pwani: A young man (20-25 years old), was arrested for raping two primary school girls along the border of Dar es Salaam and Pwani Regions.	LHRC Human Rights Monitoring Unit	November 2018
Nkasi, Rukwa: A head teacher, Eradi Kapyela, reportedly absconded from justice after impregnating a standard seven pupil at his school who was below the age of 14 years.	<i>HABARILEO</i> Newspaper	27 Jul 2018
Mbozi, Mbeya: Mbozi District Court sentenced Mathias Mbaya, resident of Maleza Mkwajuni, after he was convicted of raping two children in May 2018.	<i>Nipashe</i> Newspaper	12 Jul 2018
Kinondoni, Dar es Salaam: Riziki James (37), resident of Kimara, was arrested by police and sent to court, accused of defiling and sodomizing a 7-year-old child.	<i>Mtanzania</i> Newspaper	17 Aug 2018
Chamwino, Dodoma: Police arrested a man, Wilton Mdenende, accused of defiling his 5-year-old child in September 2018. The father was living alone with the child following separation with his wife. It was reported that the father and daughter were sharing the same bed and neighbours would hear the young girl crying at night but the father would tell he was punishing her for wetting the bed.	<i>HABARILEO</i> Newspaper	26 Sep 2018
Kinondoni, Dar es Salaam: Luhanga Godfrey (23), was brought before Kinondoni District Court, accused of raping a 14-year-old girl in May 2018 at Mabibo area.	<i>Mtanzania</i> Newspaper	21 Sep 2018
Lindi: Unknown man threatened with a machete and raped a 13-year-old in the bushes when she was enroute to meet with her parents at a farm.	<i>Nipashe</i> Newspaper	20 Nov 2018
Bukoba, Kagera: Police arrested a man, Nelson Petro, accused of raping a 5-year-old girl.	<i>Nipashe</i> Newspaper	10 Nov 2018

Sexual violence was also mentioned as a major violation of children's rights in all 20 districts of 10 regions that LHRC visited in 2018. Sexual VAC was said to be prevalent in 90% of districts that were visited, including those in Mbeya, Iringa, Kilimanjaro, Tabora, Mwanza and Arusha. Below are some of comments and cases on sexual VAC narrated by SWOs in various districts.



In January 2018, a man raped his relative's child while on visit. He was sent to court and sentenced to 30 years in prison. The incident was motivated by witchcraft beliefs.

SWO, Songea

There is a 17-year-old girl, a form five student, who was raped by a man she met on her way back home. The man threatened her with a knife and proceeded to rape her, although she recognized him. She stays far from school, thus forced to walk long distance to reach school. Her parents were not ready to cooperate with the court because they consider the incident to have shamed the family. Her mother said "we did not wish for this matter to reach the court because it has now become a family shame!"

SWO, Songea

There was a girl who boarded a bus going to school. She fell asleep and was taken by unknown man who raped her all nights such that she could hardly walk. She was helped by a neighbour to report the matter and was able to identify the perpetrator during a parade at police station. However, the accused person was acquitted by court of law, and we do not know why.

SWO, Songea

In July 2018, a child aged 11 years was reportedly regularly raped by father. Following her parents' separation, she went to live with her mother but was going to her father's to get some supplies. However, her father raped her whenever she went to his house and has infected her with HIV. The matter is now before the court of law.

SWO, Mbeya CC

Most parents keep acts of VAC committed against their children a secret, not ready to report the incidents. However, we have now engaged teachers, a move which has led to increased reporting of the incidents due to increased awareness about VAC. The MTAKUWWA programme has really helped.

SWO, Meru



Most cases sent to juvenile court are rape and sodomy cases. Some of the children tend to even engage in gang-rape. There is a 7-year-old child who was accused of sodomizing a 5 year-old child. There is also a 12-year-old child who has two sodomy cases against him.

SWO, Moshi MC

Other reports of sexual violence in Shinyanga, Mbeya and Iringa Regions

In 2018, LHRC received other reports of sexual violence against children from Regions of Shinyanga, Mbeya and Iringa, which are among regions notorious for sexual violence against children. Six incidents were reported from Shinyanga, including of: a father who regularly raped his child, who has disability, when his wife goes to work; another of a father who repeatedly raped his daughter when his wife went to work; a girl, who was a food vender, raped by a young man after inviting her into his room when she was selling food; and a girl who was raped while going back home from school.⁴¹¹ In Mbeya Urban, it was reported that children are usually raped in the evening in abandoned houses. In Moshi-Kilimanjaro, it was reported that two male children were sodomized by their uncle. In Iringa, there was a report of a father raping his daughter due to witchcraft-related belief, so that he could become rich.⁴¹²

Child rape incident - Chunya

A resident of Itewe Ward in Chunya District, Mbeya Region, was beaten by an angry mob after being accused of raping an 11-year-old girl.⁴¹³ The girl was a Standard Five pupil and the incident took place in May 2018. Chunya District is one of the areas where sexual violence against children is prevalent in Tanzania.

Sexual violence putting girls at increased risk of HIV infection

Sexual violence against girls and young women puts them at increased risk of HIV infection. This will hamper Tanzania's efforts to achieve its 90-90-90

⁴¹¹ LHRC's Human Rights Monitoring.

⁴¹² Ibid.

⁴¹³ Ibrahim Yassin "Aambulia kichapo kisa tuhuma kumbaka mtoto" Nipashe Newspaper, 15 May 2018, at <https://www.ippmedia.com/sw/habari/aambulia-kichapo-kisa-tuhuma-kubaka-mtoto>, accessed 18th November 2018.



HIV infection reduction target and SDGs. Addressing sexual violence against girls and young women is thus key for achieving zero new infections among them.

Child-on-child sexual abuse: Older children raping and sodomizing younger children at home and school

In 2017, LHRC received complaints of child-on-child sexual abuse in some primary schools in Dar es Salaam, whereby some pupils were found by their teachers engaging in sexual abuse, particularly sodomy. In 2018, LHRC decided to probe into the matter when it visited 10 regions of Tanzania Mainland in October and November 2018. Generally, child-on-child sexual abuse was found to exist and becoming a major problem, especially at schools. This type of abuse was especially mentioned to be a problem in Kilimanjaro, Singida, Tabora and Mbeya.

In Moshi MC, it was revealed that over 90% of sexual violence cases sent to juvenile courts are of rape and sodomy; and that there are many cases of adolescent children sodomizing younger children and impregnating younger girls. Some adolescent children even engage in gang-rape. In Tabora MC, social welfare officers indicated that children as young as 3 to 5 years old were defiled/raped by older children, most of them secondary school students. **In Dodoma CC**, it was reported that there is a growing number of adolescent boys aged 14 to 17 years who are committing acts of rape and sodomy against children below the age of 14. **In Singida MC**, a SWO said, *“We receive many cases of children perpetrating violence against fellow children in Singida MC, especially rape and sodomy. But child perpetrators of such violence enjoy protection under the Law of other Child Act. There is need to amend the law to impose stricter punishment for child perpetrators of sexual violence.”* Similar remarks regarding stricter punishment were made by a SWO **in Moshi MC**.

There is a child who was HIV positive and was sodomized by an adult, who was also doing the same to another child. The child got used to the act and started doing it on other children.

SWO, Tabora MC

In Tabora MC and **Nzega**, a SWO remarked that there is a need to conduct an advocacy campaign on GBV at boarding schools, as there are



many sodomy incidents. Children who are victimized at school also tend to do it to other children at home. Similar remarks were made by the social welfare department in Moshi.

Another SWO in Tabora mentioned that unrestricted access to phones and internet has contributed to moral decay and acts of sodomy due to children watching pornography copying what they see. Sodomy in boarding schools was said to be a major concern, such that in 2017 a secondary school suspended many students for engaging in the act while at school. **In Mbeya CC**, it was revealed that school owners are not ready to disclose information about sodomy incidents happening at their schools because they do not want to taint school image.

In Singida MC, it was reported that some children perpetrate acts of sexual violence on one another while at school, especially during breaks in toilets. **In Meru DC**, child-on-child sexual abuse was said to be a growing problem, with some parents, close relatives and guardians said to be contributing to it by sexually abusing their children at home. Some older children were said to continue sexually abusing younger children because they know they are protected under the Law of the Child Act 2009. **In Moshi**, adolescent boys were identified as among main perpetrators of child rape.

A 6-year-old child who was in boarding school was repeatedly sodomized at school. Once his health started to deteriorate, his parents took him to the hospital for checkup and he was found to be HIV positive. Supposedly, he acquired the virus due to sexual abuse suffered at school. His father was shocked, suffered from stroke and then died.

SWO, Tabora MC

A child aged 9 years was regularly sodomized by fellow pupils, aged 12 and 13. They would pull the child to the bushes while coming from school and do it. After some time teachers noticed that the child was not looking okay, looking very thoughtful. When they asked him what was wrong, he told them the whole story.

SWO, Misungwi



We have been receiving reports of children sodomizing one another at schools. When we make follow up teachers tend to be less cooperative, fearing that the image of the school could be tainted and they could get in trouble. This is especially the case with private schools.

SWO department, Mbeya

There is one child who after completing his ordinary level secondary education and returned home, started sodomizing his younger brother, threatening him with a machete.

SWO department, Moshi MC

Incidents of sodomy exist at some schools. Most of the cases we receive involve from one up to form three students.

SWO, Singida MC

Witchcraft beliefs among reasons for sexual violence against children

Witchcraft beliefs continue to be a factor contributing to sexual violence against children, especially those below the age of 10 years. This factor has been mainly mentioned in **Iringa, Mbeya and Tabora.**

In **Chunya-Mbeya**, the social welfare department revealed that some of the people and perpetrators who had been interviewed by the department mentioned that they had been instructed by witch-doctors to rape young children to increase their chances of economic success in their mining activities.⁴¹⁴ In **Iringa DC**, some of the acts of sexual violence/rape were said to be motivated by belief

Witchcraft beliefs play a big role in prevalence of violence against children. People expected to get quick money through violence against children, especially raping of girls.

SWO department, Mbeya

⁴¹⁴ “Matukio ya ukatili wa kijinsia yakithiri Chunya” *Mtanzania Newspaper*, 12th October 2018.



in witchcraft, in order for men to become rich, especially in areas around mining areas.

In 2017, a girl was sodomized by her father, whom she was living with after her mother separated from him. This incident was connected to witchcraft beliefs.

SWO, Tabora MC

Long distance to school contributes to VAC, especially sexual violence

In Iringa and Moshi, long distance to school was mentioned to contribute to VAC, especially sexual VAC, as some girls are raped while on their way to or back from school. In some areas children have been advised to walk in groups. *Bodaboda* drivers try to take advantage of girls who schools are far from home. Bushes provide a perfect spot for perpetrators to commit such heinous act.

Long distance to and from school is a factor contributing to acts of violence (against children) as some of the girls have been raped while on their way to or from school. For instance, a 9-year-old girl was raped and sodomized by a man whom she met while on the way from school. The man grabbed her and took her to a nearby bush and raped and sodomized her. Her colleague ran and went to report the incident. The incident occurred in April 2018 in Uvanga Village, Iksimani Ward.

SWO, Iringa DC

Government move to establish gender desks at schools: A positive action

In October 2018, Deputy Minister of Health, Community Development, Gender and Children, Hon. Dr. Faustine Ndugulile, announced that the Government was planning to establish gender desks at primary and secondary schools to enable children to learn about and report violence against them.⁴¹⁵ He noted that the move seeks to curb incidents of violence against children, which continue to be prevalent in the country. He mentioned parents, guardians, close relatives and neighbours as among main perpetrators of violence against children. He added that the Government

⁴¹⁵ "Madawati ya jinsia kuanzishwa shuleni" *Nipashe* Newspaper, 9th October 2018.



was planning to improve the functioning of police gender desks across Tanzania Mainland.

LHRC commends this move by the Government, given the alarming rate of VAC incidents perpetrated against children at home, at school and on their way to and from school. This will give children a platform to learn about VAC, including its impact, and encourage them to report such incidents.

Neighbours, close relatives, bodaboda drivers and teachers among main perpetrators of sexual violence against children in 2018

Main perpetrators of sexual violence continue to be neighbours and close relatives. This was revealed to LHRC through various interviews with social welfare officers, community development officers and a section of community members across 10 regions of Tanzania Mainland, especially in **Mbeya, Tabora, Singida and Shinyanga**. Bodaboda drivers, step fathers and teachers have also been implicated in a good number of cases of sexual violence in various regions. For example, at least 7 teachers in 2018 were arrested and charged with raping and/or impregnating pupils/students. In Hai-Kilimanjaro, *bodaboda* drivers were among the main perpetrators of rape of 19 secondary students on the eve of the Uhuru torch celebrations.

In its letter to the African Committee of Experts on the Rights and Welfare of the Child dated 8th May 2017, *Human Rights Watch* mentioned teachers as among people implicated in widespread sexual abuse and harassment in schools in Tanzania.⁴¹⁶

⁴¹⁶ See Human Rights Watch, Letter to the African Committee of Experts on the Rights and Welfare of the Child on Tanzania, May 8 2017, at <https://www.hrw.org/news/2017/05/08/letter-african-committee-experts-rights-and-welfare-child-tanzania>, accessed 26th December 2018.



Main perpetrators of rape are close relatives and neighbours. There are a number of rape cases involving neighbours as perpetrators. For example, there is one case where a teacher found her 8-year-old pupil with Tshs. 25,000. When she forced the pupil to tell her where she got the money the pupil said she was given the money by her uncle (51years-old), who is also their neighbor. She said that the uncle was regularly having sexual intercourse with her (raping). The uncle also had HIV, but luckily the young girl was not infected. However, the child has been severely harmed psychologically and physically. The main reason for men to sleep with young is witchcraft beliefs.

SWO, Kyela

There is a 5-year-old girl who was raped by her neighbour this year. The accused person denied the charges in court, but the evidence was clear that the child had been raped and testified in court.

SWO, Tabora MC

There are many incidents of rape, with close relatives and people around children being the main perpetrators, such as a father or an uncle. Very few cases involve strangers. There is a child, who was raped by her father and infected with HIV in May, 2018. The case is still proceeding in court.

SWO department, Mbeya

In Tabora, step-fathers were said to be among the major perpetrators of sexual violence against children. Single fathers who live with their female children also perpetrate acts of sexual violence, demanding they assume 'wife' duties, as reported in **Mbeya** – where it was further revealed that very few cases involved strangers as perpetrators in 2018.

A 6-year-old girl was raped by her step-father, whom she was living with together with her mother. The step-father was HIV positive, but luckily when she was tested, the girl was negative. When her mother went to work, she usually remained at home with her step-father. When asked about the health status of her husband, the mother claimed "my husband is of good health, he is taking his medicine (ARV), he has gained weight now."

SWO, Tabora MC



There is a man who turned his daughter into his wife after he separated from this wife. There is a day teachers noticed that when the child was walking some semen was dripping down her legs. When they made follow up and questioned her they found that she was regularly raped by her father.

SWO department, Mbeya

Uncles have also been implicated in a number of VAC cases. For instance, in Mbeya, an 8-year-old boy was found to have been sodomized by his uncle. When they did, they informed the police and ensured the boy received survivor services, including health and counselling services.

In Mbeya, SWOs mentioned that they have started a campaign to inform parents not to allow visitors to sleep with their children, because most of the perpetrators of sexual violence against children are close relatives. Different forums are used to remind parents to increase protection of their children. They further noted that they have in place child protection teams at all levels (council, ward and *mtaa* (street)), which have a responsibility of providing education about GBV/VAC and protection to children. People are informed to report VAC incidents to the police or social welfare department. There is a 116 child helpline, which is used to report VAC incidents, especially by community members who want to remain anonymous.

There is a neighbour who reported a child rape incident through the child protection helpline. A child was regularly raped by her uncle, whom she was staying with.

SWO department, Mbeya

Complaints about rise of sex crimes committed against children in several districts of Tanzania Mainland

LHRC's media survey for the year 2018 revealed that sexual violence against children were reported to be on the rise in several districts of Tanzania Mainland. For instance, in August 2018 during a councilors' meeting in Tarime-Mara it was reported that sexual harassment and abuse of children was becoming a big problem in schools, with complaints from



parents that their children, especially Standard One and Standard Two pupils, were sodomized by teachers.⁴¹⁷

In October 2018, police gender desk in Mpwawa-Dodoma reported that many incidents of violence against children and child pregnancy were reported in the first 9 months of 2018.⁴¹⁸ Police gender desk officer, Magreth Lyaro, pointed out that during that period, 226 GBV incidents were reported, out of which 54 were rape incidents.

In October 2018, the social welfare department lamented the prevalence of sexual violence against children in Hai-Kilimanjaro, following rape incident of 19 secondary students during the event of the Uhuru torch celebrations.⁴¹⁹ Parents were said to be partly to blame for the situation for largely not living up to their parental responsibilities, including spending quality time with and being close to their children, being too busy earning their daily bread.

In October 2018, social welfare department in Chunya-Mbeya lamented the situation of sexual violence in the district.⁴²⁰ SWO Theresia Mwendapole mentioned that for the year 2017/2018 there were many reported incidents of sexual violence against children, including against children below the age of 10 years.⁴²¹

In October 2018, District Commissioner of Kibiti-Pwani, Hon. Gula Hussein, mentioned that the district is faced with many cases of child rape and child pregnancy.⁴²² He lamented the role of village chairpersons in promoting sexual violence against children through resolving such disputes out of court, calling for family meetings instead.

⁴¹⁷ *HABARILEO* Newspaper, 2nd August 2018.

⁴¹⁸ “Wanaume watakiwa kutokomeza ukatili wa kijinsia” *HABARILEO* Newspaper, 29th October 2018; See also Ludovick Kazoka “District registers GBV 226 cases in nine months” *DAILY NEWS* Newspaper, 26th October 2018 at <https://dailynews.co.tz/news/2018-10-25bd1c73570a97>, accessed 21st December 2018.

⁴¹⁹ “Wazazi lawamani ukatili wa kingono kwa watoto” *Nipashe* Newspaper, 15th October 2018.

⁴²⁰ “Matukio ya ukatili wa kijinsia yakithiri Chunya” *Mtanzania* Newspaper, 12th October 2018.

⁴²¹ *Ibid.*

⁴²² “Kibiti kinara ubakaji wa watoto” *Nipashe* Newspaper, 25th October 2018.



Judicial action against perpetrators of sexual violence

Despite the various challenges in the justice system, including corruption and delays, courts of law in different parts of Tanzania continued to take action against perpetrators of sexual violence in different parts of Tanzania Mainland. Below are some of the prison sentences for perpetrators of sexual violence against children reported by the media in 2018.

Table 14: Judicial action against perpetrators of sexual violence reported by the media in 2018

Description	Source	Date
Siha, Kilimanjaro: Siha District Court sentenced Abrahamu Kaaya (23), to a total of 60 years in prison after convicting him of raping and impregnating a Form One student in October 2017.	<i>Mtanzania Newspaper</i>	23 Oct 2018
Lindi: Lindi District Court sentenced Mussa Milanzi (29) to life in prison after finding him guilty of sodomizing a 5-year-old child in October 2017.	<i>Nipashe Newspaper</i>	20 Aug 2018
Tabora: Tabora Resident Magistrate Court sentenced Masunga Ngele (30), after finding him guilty of defiling a 10-year-old pupil in December 2017.	<i>HABARILEO Newspaper</i>	17 Dec 2018
Moshi, Kilimanjaro: Rashid Mohamed Sadick (61), popularly known as Babu Pipi, was sentenced to life in prison after he was found guilty of raping an 11-year-old girl in March 2017.	<i>Mwananchi Newspaper</i>	21 Dec 2018
Moshi, Kilimanjaro: A tourist escort in Moshi was sentenced to life in prison for sodomizing three male children in 2017.	<i>Mwananchi Newspaper</i>	12 Dec 2018
Siha, Kilimanjaro: In December 2018, Siha District Court sentenced Issa Ismail (20) to life in prison after finding him guilty of sodomizing a standard two pupil.	<i>Mwananchi Newspaper</i>	2 Dec 2018
Bukombe, Geita: A resident of Segere Village, Rushanga Kisumu (37), was sentenced to life in prison for sodomizing a 6-year-old girl in April 2018.	<i>Mwananchi Newspaper</i>	2 Aug 2018
Misungwi, Mwanza: Resident Magistrate Court of Misungwi sentenced a primary school teacher, Telesphory Revocatus (32), to 30 years in prison for raping and impregnating a primary school	<i>Mtanzania Newspaper</i>	27 Oct 2018



pupil.		
Misungwi, Mwanza: Magige John (20), resident of Old Misungwi Village, was sentenced by court to 30 years in prison after being convicted of raping and empregnating a Standard Six pupil.	<i>Mwananchi Newspaper</i>	25 Oct 2018
Siha, Kilimanjaro: Siha District Court sentenced a man, Abrahamu Kaaya (30), to 60 years in prison after convicting him of raping and impregnating a 15-year-old secondary school student.	<i>Nipashe Newspaper</i>	24 Oct 2018
Misungwi, Mwanza: Misungwi District Court sentenced 30-year-old Peter Fred to 30 years in prison, following conviction of impregnating a Standard Seven pupil.	<i>Mwananchi Newspaper</i>	24 Oct 2018
Misungwi, Mwanza: Misungwi District Court sentenced 25-year-old Paul Masunga, resident of Mwemagembe Village, to 30 years in prison after he was convicted of raping and impregnating a 14-year-old girl.	<i>Mwananchi Newspaper</i>	18 Oct 2018
Tabora MC, Tabora: Patrick Kabula (24), who was accused of raping a 5-year-old girl in February 2018, was sentenced to 30 years in prison.	<i>Mtanzania Newspaper</i>	6 Dec 2018
Misungwi, Mwanza: Misungwi District Court sentenced a resident of Inonelwa Village, Nyanda Zephania (27), to 30 years in prison and payment of a fine of Tshs. 50,000 after he was convicted of trafficking, raping and impregnating a 16-year-old student.	<i>Mwananchi Newspaper</i>	10 Dec 2018
Mbeya: Mbeya Resident Magistrate Court sentenced a 67-year-old man, resident of Iyunga area, after convicting him of raping a 6-year-old girl in Mbalizi area in March 2018.	<i>Majira Newspaper</i>	21 Dec 2018
Hai, Kilimanjaro: Hai District Court sentenced two men to 30 years in prison after finding them guilty of gang-raping a standard five pupil in October 2016.	LHRC Human Rights Monitoring Unit	6 Nov 2018
Chunya, Mbeya: Chunya Resident Court sentenced Julius Joseph Isambi (35), resident of Mawelu Iwa Village, to life in prison after finding him guilty of defiling a 1-year-old baby.	<i>Majira Newspaper</i>	3 Sep 2018



7.2.3. Physical Violence and Psychological Violence

Through media survey and its Human Rights Monitoring Unit, LHRC was able to document 13 incidents of physical and psychological violence against children. One such incident was that of a 10-year-old child who was severely beaten by her teachers at school in Kilosa-Morogoro Region, such that she had to be admitted to Muhimbili Hospital in Dar es Salaam. However, many more incidents were reported to the police stations and social welfare departments across Tanzania Mainland, while many others are usually unreported.

In another incident – which drew a lot of public attention in Tanzania - a standard five pupil at Kibeta Primary School Bukoba-Kagera, Sperious Eradius, was severely beaten to death by his teacher, Respicious Patrick (also known as Mtazangira), on 27th August 2018 at the school. The incident was reported to the police the same day and the accused persons, the teacher who beat the deceased pupil and the teacher who claimed her wallet was stole, Harieth Gerald, were arrested. In court, it was revealed that Ms. Gerald had suspected Sperius had taken the wallet, but he denied doing so and when he was inspected in his bag the wallet was note there.⁴²³ The teacher beat him with a stick three times and then handed him to Mr. Respicious Patrick, who was the discipline master. It was further revealed that the discipline master beat the student with a stick and when he kept on denying taking the wallet he ordered other pupils to bring him some big sticks. He continued beating him and demanding that he shows where the wallet is, until he fainted.⁴²⁴ When he regained consciousness the discipline master continued beating him on different parts of his body, including the head, until he could no longer move; and even used a sharp object to inflict pain on his fingers, pulling out a nail in the process. Further testimony revealed that the beating lasted for about 3 hours. The court found the first accused person, Mr. Respicious Patrick, guilty of killing the boy, noting that he intended to cause grievous harm and/or kill him.⁴²⁵

⁴²³ *Republic v. Respicious s/o Patrick @ Mtazangira & Herieth d/o Gerald*, Criminal Sessions Case No. 56 of 2018, High Court of the United Republic of Tanzania at Bukoba, Judgement [22/2 & 6/3/2019].

⁴²⁴ *Ibid.*

⁴²⁵ *Ibid.*



In August 2018, the Secretary of the Teachers' Service Commission, Ms. Winfrida Rutaindurwa, issued a strong warning to teachers who punish pupils and students beyond the law.⁴²⁶ She reminded teachers to punish pupils and students in line with the law and regulations, in particular the Education (Corporal Punishment) Regulations, G.N No. 294 of 2002. She noted that under the regulations, corporal punishment is only issued in case of serious misconduct, should not exceed four strikes and should take into consideration age, gender and health of a pupil/student. Teachers mandated to impose corporal punishment by head teacher or head master are also required to keep record of all such punishments, including number of strikes and reasons for punishment.

Table 15: Reported incidents of physical and psychological violence against children

Description	Source	Date
Misungwi, Mwanza: A 14-year-old form two student at Sumbugu Secondary School was reportedly beaten by her father with a heavy object, leading to her death, because of skipping school.	<i>Mtanzania</i> Newspaper	10 Aug 2018
Iringa: A form four student of Old Tanga Secondary School was found killed and face skin removed.	<i>Nipashe</i> Newspaper	21 Aug 2018
Mbeya: A woman and her son were arrested by police for subjecting a child to physical and psychological violence by beating him with a wire and burning him on different parts of his body in July 2018.	<i>HABARILEO</i> Newspaper	3 Aug 2018
Bukoba, Kagera: In August 2018, a standard five pupil at Kibeta Primary School, Sperius Eradius (13), died after he was severely beaten by a teacher following accusations by another teacher that he had stolen her wallet.	LHRC Human Rights Monitoring Unit	30 Aug 2018
Bukoba, Kagera: 2 children from the same family aged 7 and 5 were found killed and dumped in the bush in Mashule Village. Another child aged 9 was reportedly found killed in the similar manner in nearby ward, Rubale.	<i>HABARILEO</i> Newspaper	24 Oct 2018

⁴²⁶ "Walimu wanaotoa adhabu kwa wanafunzi waonywa" *Majira* Newspaper, 31st August 2018.



Busega, Simiyu: A standard one pupil aged 9, Susana Shija, was found killed and dumped in an abandoned house. Some of her body parts, including private parts and legs, were removed.	<i>Mtanzania Newspaper</i>	12 Oct 2018
Tabora: Police in Tabora arrested a police officer, accused of burning with an iron a 17-year-old boy he found talking to his daughter on different parts of his body in December 2018.	<i>Mtanzania Newspaper</i>	29 Dec 2018
Babati, Manyara: Police in Manyara arrested Mariamu Daudi (40) for her role in beating her son Emmanuel Justine (11) to death, together with a man called Amani, for allegedly stealing the latter's dove.	<i>Nipashe Newspaper</i>	22 Nov 2018
Morogoro: In March 2018, three teachers at Kimamba B Primary School in Kilosa District severely beat a standard four pupil, causing her great bodily harm such that she had to be admitted to Muhimbili Orthopaedic Institute (MOI) at Muhimbili Hospital in Dar es Salaam.	LHRC Human Rights Monitoring Unit	30 Mar 2018
Mbarali, Mbeya: Police arrested Geoffrey Mwanganga (21), resident of Isitu Village, who was accused of killing his five-month-old baby using a poison.	<i>Nipashe Newspaper</i>	1 Sep 2018
Kinondoni, Dar es Salaam: A standard one student was severely injured after his mother poured kerosene on him and set him on fire for allegedly stealing some money.	<i>Majira Newspaper</i>	5 Sep 2018
Igunga, Tabora: Police arrested a healthcare worker at Igunga District Hospital, Joyce Ngalama (27), who was accused of severely beating and burning her 13-year-old house girl on her private parts with an iron.	<i>HABARILEO Newspaper</i>	8 Sep 2018
Misungwi, Mwanza: Rachel Matalaka, resident of Lugenge Village, was arrested by police for beating her 10-year-old son for allegedly stealing mangos from a neighbour's mango tree.	<i>Nipashe Newspaper</i>	7 Nov 2018

In 10 regions that were visited by LHRC in 2018, physical abuse against children was mentioned to continue being a challenge facing children, though not as prevalent as sexual abuse. For instance, in **Tabora**, it was revealed that a 14-year-old child was living with her aunt, who was working as a bar attendant. The aunt was constantly beating her and locking her inside the house. She was eventually rescued by neighbours, who alerted



the authorities and worked together with a SWO to locate her mother. She located the mother in Mwanza and sent back her child. Among the main perpetrators of physical abuse against children mentioned in **Kahama**, **Moshi** and **Misungwi** were step-parents, who were accused of usually inflicting severe pain on their step-children through beatings.

Recently, a 3-year-old child was severely beaten by a step-father just because the child pooped in clothes. The child sustained some serious injuries and had to be admitted to the Misungwi District Hospital for more than a week.

SWO, Misungwi

There is a child who told to wash the dishes, but decided to go and play. As punishment, her hands were tied by her sister, who then burned them. The damage was so severe that the hands had to be cut. She is 11 years old; and the incident occurred in Kilolo.

SWO, Iringa DC

7.2.4. Child Marriage, Child Pregnancy and FGM

Child marriage widespread and still a major challenge for girls in Tanzania

Child marriage is still prevalent in regions such as Shinyanga, Tabora, Mara and Dodoma Regions. Under the Maputo Protocol, Tanzania is required to undertake appropriate national legislative measures to guarantee that the minimum age of marriage for women is 18 years,⁴²⁷ while the African Children's Charter prohibits child marriage and calls for states to take legislative action to ensure 18 is the minimum age of marriage.⁴²⁸ Nevertheless, Tanzania is yet to make the legal reforms to protect children from child marriage, as the Law of Marriage Act 1971 continues to allow girls aged 14 and 15 to be married.

In 2018, several incidents of child marriage were reported across several regions of Tanzania Mainland. In **Nkasi-Rukwa**, police managed to rescue a 15-year-old girl from child marriage, after a dowry of 45 cows had been

⁴²⁷ Article 6 of the Maputo Protocol.

⁴²⁸ Article 21(2) of the African Charter on the Rights and Welfare of the Child.



accepted by her father. The girl had passed her standard seven examinations and was due to commence her secondary education when her parents decided to marry her to a man aged around 45-50 years.⁴²⁹ In **Same-Kilimanjaro**, a standard two pupil aged 12 years was reportedly forced by her foster father to marry a 48-year-old man.⁴³⁰ In September 2018, district authorities in **Nkasi-Rukwa** ordered arrest of parents of a standard three pupil whom they wanted to marry off to a man in Mkinga Village.⁴³¹ In **Serengeti-Mara**, a 30-year-old man, resident of Iseresere Village for marrying a standard two student in May 2018.⁴³²

Drivers of child marriage

Poverty: is the key driver of child marriage. Child marriage is more likely to be practiced in groups or families with lowest income rather than well-off families. Bride is a major source of income for poor families.⁴³³ Other drivers include: traditions and socio-cultural norms such as FGM, initiation rites and traditional dances; gender discrimination; lack of educational opportunities; and fear of teenage pregnancy.⁴³⁴

Commendable efforts by the Tabora Regional Commissioner's Office in addressing VAC, child marriage and promoting right to education for girls in the region

The Regional Commissioner of Tabora, Hon. Aggrey Mwanri, has been a key figure in promotion of children rights in Tabora Region. The RC and his team have been working to ensure rights of children, including right to education, are respected and realized. In August, 2018, the RC called upon religious leaders to refrain from conducting/performing child marriages, unless the parties are above 18 years of age.⁴³⁵ He also called upon them to help the government combat child marriage and child/teenage pregnancy.⁴³⁶ In October 2018, the RC issued a stern warning to citizens in Tabora that

⁴²⁹ *HabariLeo* Newspaper, 16th February 2018.

⁴³⁰ *Nipashe* Newspaper, 15th February, 2018.

⁴³¹ *Mtanzania* Newspaper, 19 Sep 2018.

⁴³² *Mtanzania* Newspaper, 12 Sep 2018.

⁴³³ See Ministry of Health, Community Development, Gender, Elderly and Children, *Child Marriage in Tanzania at a Glance*, March 2, 2017.

⁴³⁴ *Ibid.*

⁴³⁵ "Maharusi, viongozi wa dini kuswekwa rumande" *Majira* Newspaper, 14th August 2018.

⁴³⁶ *Ibid.*



whoever will be found participating in a child marriage ceremony would be arrested and taken to court.⁴³⁷



Picture 14: Tabora RC, Hon. Aggrey Mwanri, who has been instrumental in addressing harmful cultural practices and promoting girls' right to education in Tabora

(Picture by Mwananchi Communications Limited)

During an interview with LHRC, Regional Administrative Secretary (RAS) of Tabora mentioned that the regional administration is working hard to address the problem of child marriage and ensure realization of girls' rights, including right to education.⁴³⁸ He added that the administration has been working closely with education officers, whom he believes have a vital role to play in promoting right to education and combating child marriage and pregnancy in the region. He also hinted at strong belief in customs and traditions among community members and ignorance on the part of parents as factors contributing to child marriage, noting that there are still parents who value their cattle more than they do education for their children, especially girls. Rather than spending on girls' education, the parents would rather they get married; and when the girls say no they are more likely to

⁴³⁷ "RC kuwakomesha wanaooza wanafunzi" *Nipashe Newspaper*, 1st October 2018.

⁴³⁸ LHRC Field Report, 2018.



be kicked out of their homes.⁴³⁹ The children rights campaign in the region has helped to ensure more than 60% of children who had dropped out return back to school.⁴⁴⁰

Child pregnancy among pupils and students an issue of great concern in 2018

In 2018, many incidents of child pregnancy among pupils and students were reported across Tanzania Mainland. Through media survey, LHRC was able to document over 1000 cases of child pregnancy in less than 10 regions, as indicated below. Areas where many cases of child pregnancy were reported include Mwanza, Kilimanjaro, Simiyu and Rukwa.

Table 16: Reported incidents of children pregnancy

Description	Source	Date
<u>Chamwino-Dodoma</u> : 11 primary school pupils were said to have dropped out of school due to pregnancy from January to October 2018	<i>Nipashe</i> Newspaper	20 Oct 2018
<u>Maswa-Simiyu</u> : More than 80 pupils and students acquired pregnancy from 2017 to September 2018, forcing them to drop out of school. Child pregnancy cases increased from 23 in 2017 to 62 in 2018	<i>Nipashe</i> Newspaper	23 Oct 2018
<u>Masasi-Mtwara</u> : 11 pupils and students in Masasi District dropped out of school due to pregnancy, including a standard five pupil	<i>Nipashe</i> Newspaper	22 Nov 2018
<u>Mtwara & Kilosa-Morogoro</u> : 212 girls were impregnated in Mtwara and Kilosa-Morogoro from January to November 2018, of which 150 are secondary school students and 38 are primary school pupils.	<i>Mwananchi</i> Newspaper	30 Dec 2018
<u>Mwanza</u> : A total of 412 girls reportedly dropped out of school due to child pregnancy in 2018	<i>Majira</i> Newspaper	25 Dec 2018
<u>Muheza-Tanga</u> : 35 girls at Muheza Secondary School became pregnant by August 2018, with	<i>Nipashe</i> Newspaper	19 Aug 2018

⁴³⁹ Ibid.

⁴⁴⁰ Ibid.



adult men, young men and <i>bodaboda</i> drivers mentioned as main perpetrators		
<u>Rukwa</u> : 121 girls from primary and secondary schools became pregnant in a period of July 2017 to May 2018, forcing them to drop out of school. 46 of them were from primary schools and 75 from secondary schools	<i>Mwananchi</i> Newspaper	23 Oct 2018
<u>Kilimanjaro</u> : 214 girls from primary and secondary schools reportedly dropped out of school due to pregnancy from January to September 2018. ⁴⁴¹	<i>Mtanzania</i> Newspaper	7 Dec 2018
<u>Arumeru-Arusha</u> : 77 girls dropped out of school due to child pregnancy in 2017 and 2018 (by September). ⁴⁴²	<i>HABARILEO</i> Newspaper	10 Oct 2018
<u>Misungwi-Mwanza</u> : From January to June 2018, there were 80 reported cases of child pregnancy. ⁴⁴³	LHRC Human Rights Monitoring Unit	October 2018
<u>Kishapu-Shinyanga</u> : 56 secondary school students reportedly dropped out of school due to child pregnancy from January to September 2018.	<i>Mwananchi</i> Newspaper	21 Nov 2018

Source: LHRC Media Survey and Human Rights Monitoring Unit

Lack of parental care contributes to child pregnancy, as parents fail to be as close to their children as they should be. In some areas, income poverty and long distance long distance to school have been mentioned as factors contributing to child pregnancy, as girls become vulnerable to advances by men.⁴⁴⁴ *Bodaboda* drivers have been mentioned among main parties responsible for child pregnancy in Dodoma.⁴⁴⁵

Among the 10 regions that were visited by LHRC to probe on issues of women's and children's rights, child pregnancy was said to continue to be a main challenge in Dodoma, Tabora, Shinyanga and Kilimanjaro. **In Ruvuma,**

⁴⁴¹ "Wanafunzi 200 wakatisha masomo" *Mtanzania* Newspaper, 7th December 2018.

⁴⁴² "Wanafunzi 77 wapata mimba, wakatisha masomo" *HABARILEO* Newspaper, 10th October 2018.

⁴⁴³ LHRC, Field Report 2018.

⁴⁴⁴ "Wanafunzi waaswa mimba za utotoni" *Nipashe* Newspaper, 9th October 2018.

⁴⁴⁵ "Bobaboda, makondakta watajwa kukatisha masomo" *HABARILEO* Newspaper, 24th October 2018.



bodaboda drivers were mentioned as major contributors to child pregnancy, while the drivers were also mentioned in **Moshi-Kilimanjaro** – targeting girls and offering them lifts to school.

Some girls become pregnant when they are subjected to sexual violence in the form of rape. For instance, it was reported October 2018 that in the first 9 months of 2018, total of 54 incidents of child rape were reported to police gender desk in Mpwapwa-Dodoma, 24 of which resulted into child pregnancy.⁴⁴⁶



Picture 15: A cartoon depicting how child pregnancy can end a girl's dreams

Source: Nipashe Newspaper

Prevalence of child pregnancy means unprotected sex is common and girls are at increased risk of HIV infection

High rate of child pregnancy incidents is an indicator of unprotected sex among girls. This puts them at increased risk of HIV infection and might hinder effective realization of achieving zero new infections among girls.

Efforts by stakeholders contributing to FGM reduction

Female genital mutilation (FGM) is a harmful traditional practice that has been found to have negative impact on rights and health of women and girls. In Tanzania, FGM has been prevalent in regions such as Manyara, Dodoma, Arusha, Mara, and Singida. Recent statistics indicate a decline of 5% from

⁴⁴⁶ HABARILEO Newspaper, 29th October 2018

15% prevalence rate in 2010 to 10% in 2015/16.⁴⁴⁷ This decline has been made possible by government action in collaboration with various stakeholders implanting anti-FGM projects in different parts of Tanzania. On its part, LHRC has been implementing such project together with Amref Health Africa from 2016 to 2018 in Serengeti District, Mara Region.

Amref Health Africa and LHRC's implementation of anti-FGM project in Serengeti District-Mara Region has contributed to decline of FGM in the district as well as changing attitudes and perceptions towards the practice in communities of tribes such as the Kurya, the Ngureme and the Tatogase. Number of girls undergoing FGM declined from 14,000 in 2014 to 2,313 in 2016, while in 2018 the number stood at 175. Similar contributions have also been made in areas such as Handeni and Kilindi Districts in Tanga Region, where Amref interventions have reportedly saved 3070 girls from female genital mutilation (FGM) in Handeni and Kilindi districts, respectively, between 2014 and 2016.⁴⁴⁸

Despite efforts to combat FGM, the practice is still practiced in different areas, albeit in secret. For instance, in June 2018, resident of Oloipili Village in Arusha Region was accused of forcing his female children to undergo FGM, threatening to kill himself if they refused.⁴⁴⁹

7.2.5. Discrimination and Stigma against Street Children and Children with Disabilities

Street children and children with disabilities are the major victims of discriminations and social stigma. They usually do not enjoy their fundamental human rights as stipulated in various national, regional and international instruments providing for their rights equally with other children. The instruments in question include the Law of the Child Act of 2009, which is the domestic legislation; the African Charter on the Rights and Welfare of the Child (ACRWC), which is a regional treaty; and the United Nations Convention on the Rights of the Child (CRC), which is an international treaty. Street children in towns and cities in Tanzania constantly face harassment from authorities and other members of the

⁴⁴⁷ See LHRC(2018), Tanzania Human Rights Report 2017 at www.humanrights.or.tz

⁴⁴⁸ Cheji Bakari "Tanzania: Anti-FGM Initiatives Yield Good Outcomes" Daily News Newspaper, 5 March 2018.

⁴⁴⁹ *Mwananchi* Newspaper, 13th June 2018.



public, denying their fundamental rights such as freedom of association, freedom of assembly. They also face discrimination in terms of access to public spaces such as parks, usually forcibly removed from such spaces; and get round up every now and then. Street children are also more vulnerable to different forms of abuse and violence against children. Recognizing these vulnerabilities, in 2017, the UN Committee on the Rights of the Child issued a general comment, General Comment No. 21 (2017) on Children in Street Situations, which reminds States of their obligations under the Convention on the Rights of the Child in relation to street children.

In May 2018, a report on street children titled “Street-Connected Children in Tanzania: Headcount Findings 2017” was released. The report provides quantitative headcount of street-connected children or children living and working on the street (CLWS), which was conducted in six cities, namely: Arusha, Dar es Salaam, Dodoma, Iringa, Mbeya and Mwanza.⁴⁵⁰ The aim of the headcount was to establish an up to date, realistic baseline of the children in order to inform various interventions.⁴⁵¹ The findings show that there are 6,393 street-connected children in these cities during the day, 76% of which are male and 24% are female. At night, there are 1,385 street-connected children, of which 70% are male and 30% are female.

The findings show that, on average, female CLWS increase from 24% during the day to 30% during the night. However, Iringa, Dodoma and Mbeya have a higher proportion of girls on the street at night than the national average.⁴⁵²

Another key finding is that all cities had sharp increase of female CLWS at night, with the exception of Dar es Salaam. This sharp increase is more likely driven by sex work. Among female CLWS counted at night, the majority (86%) were found to engage in sex work.⁴⁵³ Moreover, 39 female CLWS aged 11-14 (44%) were also found to engage in sex work, which is

⁴⁵⁰ Government of the United Republic of Tanzania and USAID Kizazi Kipya Project (2018). *Street-Connected Children in Tanzania: Headcount Findings 2017*. Dar es Salaam, Tanzania: Government of the United Republic of Tanzania, Railway Children Africa, Ipsos, and Pact Tanzania.

⁴⁵¹ Ibid.

⁴⁵² Ibid.

⁴⁵³ Ibid.



an alarming finding on child sex trade.⁴⁵⁴ This attests increased risk of violence against female CLWS, including sexual violence, on the streets. Number of female CLWS engaging in sex work at night is highest in Iringa and Arusha (33%) and lowest in Dar es Salaam (9%).⁴⁵⁵

Children with disabilities also face discrimination from different members of the community, including their own parents. In 10 regions of Tanzania Mainland that LHRC visited in 2018, there reports of some parents 'hiding' their children with disabilities inside their homes, sometimes not even allowing them to come out. Some of these children are reportedly even denied their right to education because of their disability status. They also face difficulties at schools due to shortage or lack of relevant equipment and specialised learning materials.

7.3. Rights of Persons with Disability

Rights of persons with disabilities (PWDs) are provided for under the Convention of the Rights of Persons with Disabilities (CRPD). These rights include right to equality and non-discrimination, right to life, right to equality before the law, right to liberty and security of person, freedom from torture, freedom from violence, right to education, right to health and right to work and employment.⁴⁵⁶ Tanzania is party to this treaty and has an obligation to take measures to safeguard rights of PWDs. The treaty was domesticated in 2010 through the Persons with Disabilities Act. PWDs, especially children with disability, need special care to ensure they enjoy human rights equally with others.

This sub-chapter looks at discrimination and violence as major challenges faced by PWDs in 2018.

7.3.1. Equality and Non-Discrimination

CRPD requires States 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.⁴⁵⁷ This

⁴⁵⁴ Ibid.

⁴⁵⁵ Ibid.

⁴⁵⁶ See CRPD.

⁴⁵⁷ Article 27(1) of CRPD.



right is safeguarded through various measures, including prohibiting discrimination on the basis of disability.⁴⁵⁸

During its visits in 10 regions of Tanzania Mainland,⁴⁵⁹ LHRC also probed into challenges faced by persons with disabilities which prevent them from fully realizing their right to equality and non-discrimination. Among the key challenges mentioned were: inadequate budget allocated to address issues affecting PWDs; income poverty; inaccessibility of buildings due to lack of ramps; lack of learning tools for PWD children at schools (education not inclusive enough); lack of employment opportunities; and social stigma. **In Tabora**, it was mentioned that lack of/shortage of fit persons and families to take in persons with albinism (PWAs) who are at risk of attacks is a major challenge. **In Dodoma CC**, income poverty was said to contribute to parents failing to provide adequate care to or neglecting children with disabilities, while **in Singida MC** it was stated that social stigma is a major challenge for children with disabilities. It was further reported that children who are persons with albinism (PWAs) face stigma and exclusion, especially in schools; and some parents tend to hide their children who have disabilities, denying them their right to education. This issue was also raised **in Iringa DC**, where there is a tendency of parents, especially in rural areas, perceiving children with disabilities to be incapable of doing anything, including studying, hence deciding not to invest much in their education. Remarks on hiding children with disabilities and denying them their basic rights, especially education, were also made by social welfare officers (SWOs) and community development officers (CDOs) in **Shinyanga MC, Kahama DC, Tabora, Misungwi and Moshi DC**. Discrimination against PWDs was largely said to be non-existent **in Moshi MC and Manyoni**. Across all regions that were reached, it was stated that despite the existence of inclusive schools, there are barriers to quality education for children with disabilities, such as shortage of qualified special needs teachers, shortage of adequate teaching and learning materials and lack of accessible school infrastructure.

⁴⁵⁸ Ibid, Article 27(1)(a).

⁴⁵⁹ Ruvuma, Mbeya, Iringa, Dodoma, Singida, Tabora, Shinyanga, Mwanza, Arusha and Kilimanjaro.



In August 2018, the Deputy Minister of Prime Minister's Office responsible for Policy, Parliamentary Affairs, Labour, Employment, Youth and the Disabled, Hon. Stella Ikupa, issued a stern warning to industries which

There is a trend of unequal treatment of children with disabilities at family level. They are not provided with care equally with other children. Some of them are not sent to school, instead hidden at home.

CDO, Misungwi

do not hire PWDs in line with the Persons with Disabilities Act of 2010.⁴⁶⁰ The law required companies with 20 or more staff members to have PWDs constituting 3% of the staff. She issued a warning while visiting some industries in Shinyanga Region, where she found that two cotton processing industries in the region, Afrisian and Fresho had not complied with the law, with the former not having a single PWD among its staff.⁴⁶¹

In August 2018, the Tanzania Federation of Disabled People's Organizations (SHIVYAWATA) bemoaned lack of PWD-friendly infrastructure at buildings of primary and secondary schools in Dodoma.⁴⁶²

7.3.2. Freedom from Violence

Under the CRPD States are required to take all appropriate legislative, administrative, social, educational and other measures to protect PWDs from all forms of exploitation, violence and abuse, including GBV.⁴⁶³ Like other groups, PWDs also face different forms of violence, including physical, psychological and sexual. For instance, in 2018 LHRC was able to document two incidents of sexual violence against women with disabilities (mental disability). Discrimination and stigma against PWDs amounts to psychological violence, as they are left with psychological trauma.

The group of PWDs that has over the years been facing most violence in Tanzania is that of Persons with Albinism (PWAs), who have been targeted for their body parts and are forced to live in fear. Although killings of PWAs

⁴⁶⁰ "Waziri aonya viwanda kutoajiri walemavu" *Nipashe* Newspaper, 12th August 2018.

⁴⁶¹ *Ibid.*

⁴⁶² "Miundombinu mibovu yatesa wanfunzi walemavu" *Nipashe* Newspaper, 18th August 2018.

⁴⁶³ Article 16(1) of CRPD.



have significantly declined over the past 3 years, as indicated in Chapter Two of this report, PWAs continue to be attacked for their body parts and forced to live in fear. **In Mbeya CC**, it was reported that in January 2018, unknown assailants attacked a PWA from Tunduma and cut and left with his fingers, an act believed to be motivated by witchcraft beliefs. **In Singida MC**, it was reported that a PWA man escaped death after he was informed by an innocent civilian while at a traditional liquor restaurant that some men from Dar es Salaam were plotting to kill him. He managed to run away and seek refuge.

7.4. Rights of the Elderly

Rights of the elderly are guaranteed and protected under various, regional, continental and international human rights instruments. These include the African Charter on Human and Peoples' Rights, the Maputo Protocol (for women elderly), ICCPR, ICESCR, and CRPD (for elderly PWDs. We are yet to have in place a convention on the rights of the elderly.

According to *HelpAge International*, elderly-specific human rights convention is needed because existing human rights mechanisms do not guarantee and provide for adequate protection and promotion of rights of older people.⁴⁶⁴ It states that the convention should: provide a comprehensive and systematic framework for the protection and promotion of all our human rights in older age; prohibit all forms of discrimination in older age in every aspect of our lives; articulate how each human right specifically applies to us in older age; and provide for a strong implementation, monitoring and accountability system.

According to the 2011 report of the Secretary General to the UN General Assembly, older persons around the world face four major challenges in terms of human rights.⁴⁶⁵ These challenges are discrimination, poverty, violence and abuse and lac of specific measures and services.⁴⁶⁶ These

⁴⁶⁴ See HelpAge International "Towards a UN convention on the rights of older people" at <https://www.helpage.org/what-we-do/rights/towards-a-convention-on-the-rights-of-older-people/>, accessed 5th January 2019.

⁴⁶⁵ See Follow-up to the Second World Assembly on Ageing: Report of the Secretary-General, Sixty-sixth session, A/66/173, 22 July 2011 at <https://undocs.org/A/66/173>, accessed 5th January 2019.

⁴⁶⁶ Ibid.



challenges are also major challenges faced by the elderly in Tanzania,⁴⁶⁷ who are believed to be over four million people.

7.4.1. Freedom from Violence

In 2018, violence continued to be a key issue affecting the elderly persons in Tanzania Mainland. Violence experienced by the elderly included physical violence in the form of witchcraft-related killings. As discussed in Chapter Two of this report, LHRC documented at least 3 incidents of killings of older persons on witchcraft suspicion. These are: the incident involving a 65-year-old man in **Kaliuwa -Tabora**; the incident involving a 77-year old man who was brutally killed by six people, including his own children, in **Gairo-Morogoro**; and the killing of a 70-year old woman in **Ileje-Songwe**.

In October 2018, it was reported that older people in Mwanamali and Kishili Villages in **Nzega-Tabora**, complained about their children and youth demanding inheritance from them while they are still alive.⁴⁶⁸ In the same month, older people in Itilima Village in **Kishapu-Shinyanga**, bemoaned senseless killings of older persons in the village by people claimed to be their close relatives, including their own children.⁴⁶⁹ Two older persons were reportedly killed in the village in 2018, Nyabhamba Dohoi (70) and Nkamba Mhoja (70), both killed by their children because of demand for land inheritance.⁴⁷⁰ It was also claimed by another older person in the village, Salumu Kilymawe (76), that his nephew was plotting to kill him over a land dispute.⁴⁷¹ Tabora, Mwanza and Shinyanga are still the most notorious regions for elderly killings.⁴⁷²

LHRC also received information about older persons killed and attacked for witchcraft-related purposes in **Misungwi-Mwanza**, with some of them found missing body parts such as breasts and private parts.⁴⁷³ It was reported that more than 20 incidents of attacks and killings of the elderly were reported in the district in 2018, with killings believed to 'help'

⁴⁶⁷ According to the Tanzania National Age Policy 2003, these are people who are 60 years and above.

⁴⁶⁸ "Wazaaee wang'aka kudaiwa urihi wangali hai" *Mwananchi* Newspaper, 4th October 2018.

⁴⁶⁹ "Waelezea kuchoka mauaji ya vikongwe" *Nipashe* Newspaper, 3rd October 2018.

⁴⁷⁰ Ibid.

⁴⁷¹ Ibid.

⁴⁷² "Mauaji ya wazee bado janga nchini" *Nipashe* Newspaper, 31st December 2018.

⁴⁷³ LHRC Field Report, 2018.



maximise profits generated through mining activities in the area.⁴⁷⁴ In **Namtumbo-Ruvuma**, it was reported that in September 2018, an older woman was attacked and raped while in *shamba* (farm), an act that was motivated by witchcraft beliefs.⁴⁷⁵

In his ministry's budget speech for the financial year 2018/2019, the former Minister of Home Affairs, Hon. Dr. Mwigulu Nchemba (MP) noted that from July 2017 to March 2018, a total of 117 older people were killed in Tanzania Mainland (91 male, 26 female).⁴⁷⁶ Tabora leads with 25 killings, followed by Songwe with 12 and Kagera and Rukwa with 10 killings each, as indicated in the figure below. Fewest killings were reported in Kigoma (1), Iringa (1), Dodoma (1), Mara (2) and Morogoro (2).⁴⁷⁷ The Home Affairs Minister noted that 100 people had been arrested in connection with the killings.⁴⁷⁸



Figure 9: # Elderly killings in 13 regions of Tanzania Mainland, July 2017-March 2018

Source: Budget speech of the Ministry of Home Affairs, 2018/19

⁴⁷⁴ Ibid.

⁴⁷⁵ Ibid.

⁴⁷⁶ HOTUBA YA WAZIRI WA MAMBO YA NDANI YA NCHI MHE. DKT. MWIGULU LAMECK NCHEMBA (MB.), AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI KWA MWAKA 2018/19, at

<http://www.parliament.go.tz/uploads/budgetspeeches/1525875930-HOTUBA%20YA%20MAMBO%20YA%20NDANI%20YA%20NCHI.pdf>, accessed 20th December 2018.

⁴⁷⁷ Ibid.

⁴⁷⁸ Ibid.



7.4.2. Non-Discrimination and access to health services

Regarding discrimination, a key challenge for the elderly is discrimination in accessing health services. They usually complain that they are harassed and discriminated against by healthcare workers when they seek health services. This complaint resurfaced in 2018, whereby older people bemoaned lack of effective implementation of the National Health Policy, which provides for free healthcare for older people.⁴⁷⁹ For the elderly residing in rural areas, which are the majority, they also face a challenge of accessibility of health services, given shortage of health facilities in different parts of Tanzania Mainland, especially at village and ward level, as discussed in Chapter 5 of this report.

In June 2018, the committee member of the Tanzania Pensioners Union, Mr. Willy Mbuga, raised alarm about non-implementation of the free-medical services for the elderly.⁴⁸⁰ He noted that most of the elders and pensioners are facing a hard time to get health services, whereby they are usually told there are no funds to cover free medical services for them.⁴⁸¹

7.5. Rights of Persons Living with HIV/AIDS

Like other human being, rights of persons living with HIV/AIDS are provided for and protected under various regional, continental and international conventions, including the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the African Charter on Human and Peoples' Rights (ACHPR). In Tanzania, their rights are covered under the HIV and Aids (Prevention and Control) Act of 2008, which provides for the right to non-discrimination and right to access social services, among others.

⁴⁷⁹ See Deutsche Welle "Wazee Tanzania walalamika kudharauliwa huduma za afya" at <https://www.dw.com/sw/wazee-tanzania-walalamika-kudharauliwa-huduma-za-afya/a-45674580>, accessed 5th January 2019.

⁴⁸⁰ See Ludger Kasumuni "Tanzanian elders complain over backfired free-medical services" The Citizen Newspaper, 22 June 2018 at <https://www.thecitizen.co.tz/News/Tanzanian-elders-complain-over-backfired-free-/1840340-4625926-bapx24/index.html>, accessed 5th January 2019.

⁴⁸¹ Ibid.



About 1.4 million people in Tanzania were PLHIVs in 2016.⁴⁸² Efforts to combat HIV/AIDS in the past decade have helped to reduce infection rate. Groups such as women, young/adolescent girls, sex workers and men who are mobile are more vulnerable to HIV infection. HIV prevalence is highest in Njombe (11.6%), followed by Iringa (11.2%) and Mbeya (9.2%).

Combating HIV/AIDS is key for realization of Sustainable Development Goal (SDG) 3. UNAIDS adopted a 2016-2021 Strategy to combat HIV/AIDS, aligned to the Sustainable Development Goals. The Strategy consists of a total of eight result areas, which include: Children, adolescents and adults living with HIV access testing, know their status and are immediately offered and sustained on affordable quality treatment; New HIV infections among children eliminated and their mother's health and well-being is sustained; Young people, especially young women and adolescent girls, access combination prevention services and are empowered to protect themselves from HIV; Women and men practice and promote healthy gender norms and work together to end gender-based, sexual and intimate partner violence to mitigate risk and impact of HIV; and Punitive laws, policies, practices, stigma and discrimination that block effective responses to HIV are removed.⁴⁸³ Groups that continue to be at risk of HIV infection include: women; adolescent girls and young women; prisoners and remandees; and persons with disabilities.

7.5.1. Non-Discrimination

The HIV and Aids (Prevention and Control) Act of 2008 provides for the right to non-discrimination for PLHIVs; and prohibits formation of a policy, enactment of a law or acting in a manner that discriminates PLHIV, orphans or their families.⁴⁸⁴ It also provides for a health practitioner to provide health services to PLHIVs without any kind of stigma or discrimination.⁴⁸⁵ Furthermore, the Act prohibits denying a PLHIV right to employment, travelling (freedom of movement), and admission into any institution and

⁴⁸² Avert "HIV AND AIDS IN TANZANIA", available at <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/tanzania>, accessed 10th January 2018.

⁴⁸³ See UNAIDS Strategy 2016–2021 at <http://www.unaids.org/en/goals/unaidstrategy>, accessed 21st December 2018.

⁴⁸⁴ Section 28 of the HIV and Aids (Prevention and Control) Act 2008.

⁴⁸⁵ Ibid, section 29.



living at residence of choice.⁴⁸⁶ Discrimination of PLHIV attracts a penalty of fine of not less than Tshs. 2 million or imprisonment for a term not exceeding 1 year or both.⁴⁸⁷

For the year 2018, LHRC did not record any incidents of discrimination against PLHIVs. However, social stigma continues to be a key issue affecting PLHIVs and preventing them from fully realizing their human rights.

7.5.2. Access to Health Services

Stigma, discrimination, ignorance about HIV/AIDS (problem of right to information), lack of or poor knowledge about laws and human rights, and shortage of health centres continue to contribute to poor access to health services by PLHIVs. Stigma that PLHIVs face includes self-stigma and stigma and discrimination by health workers. Budgetary constraints in the health sector, discussed in Chapter Five above, also affect access to health services.

Conclusion and Recommendations

I. Conclusion

Rights Group	Conclusion
Women	Women's rights continue to be affected by different forms of violence, including physical and psychological violence; sexual violence; marital sodomy;; sexual corruption, especially at workplaces and in higher learning institutions; and economic violence. Reasons for VAW include witchcraft beliefs, jealousy and revenge, harmful traditional practices, lack of legal awareness, drunkenness among men, poor educational background and peer pressure to engage in marital sodomy among men. VAW-related challenges amount to discrimination against women and contribute to gender inequality in Tanzania.
Children	In 2018, LHRC observed that violence against children has significantly increased compared to the year 2017. Child rape is the most common form of violence against children. Sexual

⁴⁸⁶ Ibid, section 30.

⁴⁸⁷ Ibid, section 32.



violence was mentioned as a major issue affecting girls in 90% of all the districts reached by LHRC in 2018. Child-on-child sexual abuse was found to be a major problem in most areas that were visited, including Kilimanjaro, Singida and Tabora. Sexual violence puts girls at increased risk of HIV infection. Major perpetrators are close relatives and neighbours.

Child/teenage pregnancy was also an issue of big concern in 2018. This was especially the case in regions such as Mtwara Simiyu, Mwanza, Kilimanjaro and Shinyanga. This also puts girls at increased risk of HIV infection.

Factors contributing to violence against children include long distance to school, witchcraft beliefs, household poverty and child neglect. Other factors include lack of children supervision, poor educational background of parents and domestic violence.

Street children and children with disabilities often face more discrimination and stigma than other children.

Persons with Disabilities

Discrimination and violence against PWDs are major challenges for PWDs in Tanzania. PWD children cannot easily access education to realize their right to education, while PWAs continue to live in fear due to attacks and violence against them, even when such attacks have declined in the past two years. Access to employment and economic opportunities also remains low for PWDs. Despite existence of various laws and policies on PWDs, effective implementation remains a challenge.

The Elderly

The elderly face discrimination in accessing social services and violence from other members of the community. For the year 2018 violence was a major issue for older people in Tanzania, who continue to be killed for various reasons, including witchcraft suspicion.



Persons Living with HIV Major challenges faced by PLHIVs are discrimination, including when accessing HIV-related services, and social stigma. This makes them uncomfortable to reveal their status and freely enjoy their human rights.

2. Recommendations

State actors

- ⇒ 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 the Ministry of Constitution and Legal Affairs and the Law Reform Commission, to review, amend and repeal all discriminatory laws which continue to deprive women of their rights and which are contrary to fundamental principles of human rights as provided for in various regional and international conventions ratified by Tanzania.
- ⇒ The Government through the Ministry of Education to Integrate gender education in learning curriculums from elementary to higher learning.
- ⇒ The Government should increase backing for the police gender desk to enable it to effectively address gender-based violence and violence against children;
- ⇒ 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 Judiciary to ensure that courts prosecute and punish acts of gender-based violence.
- ⇒ The Government to consider gender parity and equality in leadership and decision-making positions in order to increase female representation.



- ⇒ The Government to 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 and women;
- ⇒ 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 Judiciary 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.
- ⇒ The Government, through the Ministry of Home Affairs, should ensure that the elderly are protected from all forms of violence, particularly witchcraft-related killings, through investigation and prosecution of cases of violence against them.
- ⇒ The Government, through the Ministry of Constitution and Legal Affairs, to table a bill in Parliament to propose enactment of a specific law to cater for the promotion and protection of the elderly.
- ⇒ The Government, through the Ministry of Health, Community Development, Gender, Elderly and Children, to spearhead the enactment of the law on elderly rights and protection to complement the National Age Policy.
- ⇒ The Government, through the Ministry of Health, Community Development, Gender, Elderly and Children, should move to implement the Convention on the Rights of the Child in line with the General Comment No. 21 on Children in Street Situations,



prepared by the UN Committee on the Rights of the Child, in order to safeguard rights of street children.

- ⇒ 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.

Non-state actors

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

Members of the public

- ⇒ Community members to perform their duties of protecting and safeguarding children's rights refraining from conducting acts of abuse to children.
- ⇒ Community members should refrain from discriminating all children, including street children and children with disabilities.
- ⇒ Community members to refrain from protecting perpetrators of violence against children simply because they need 'to conceal family shame.'
- ⇒ Women and children are encouraged to come forward and report acts of violence against them in order to receive relevant assistance,



including legal and health services. They are also encouraged to cooperate with the Prosecution and social welfare, including testifying in court, in order to ensure perpetrators of violence are held accountable and justice is achieved.



Chapter 8: Corruption, Good Governance and Human Rights

Introduction

Transparency International defines corruption as abuse of public power or officer for private gain or benefit.⁴⁸⁸ According to the Prevention and Combating of Corruption Act (PCCA) of 2007, corruption includes: **soliciting**, accepting or obtaining, or attempting to obtain any **advantage** as **inducement** or **reward** for any agent, whether or not such agent has authority; and **giving**, promising or offering any **advantage** to any person for the benefit of that or another person as **inducement** or **reward** to agent with or without authority.⁴⁸⁹ There is petty corruption and big or grand corruption;⁴⁹⁰ forms of corruption include bribery, embezzlement, extortion, sexual corruption, favouritism and fraud.

If not addressed, corruption may have a negative impact on human rights and good governance. This is why the negative impact of corruption on the protection of human rights is highlighted in various international, continental and regional instruments.

8.1. Impact of Corruption on Human Rights

According to the United Nations Human Rights Council, corruption has serious negative impact on all categories of human rights – civil, political, economic, social and cultural.⁴⁹¹ It also hinders realization of the right to development. In terms of economic, social and cultural rights, corruption affects the ability of the Government to achieve progressive realization of these rights to the maximum of its available resources in line with the International Covenant on Economic, Social and Cultural Rights

⁴⁸⁸ See Transparency International's definition at http://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/, accessed 28th December 2017.

⁴⁸⁹ Prevention and Combating of Corruption Act 2007, s. 15(a).

⁴⁹⁰ Stephanie von Wogau (2010), *Corruption in Tanzania*, p. 8, available at http://www.againstcorruption.eu/uploads/norad/Wogau_Corruption-in-Tanzania.pdf, accessed 28th July, 2017.

⁴⁹¹ Human Rights Council, Resolution 23/9. The negative impact of corruption on the enjoyment of human rights, available at <http://www.achrnepal.org/about/resolution-239-the-negative-impact-of-corruption-on-the-enjoyment-of-human-rights/>, accessed 10th October, 2017.



(ICESCR).⁴⁹² Embezzlement and mismanage of public resources may hinder the Government from effectively safeguarding key social rights such as the right to education, right to health and right to water by delivering quality education, health and water services. Due to corruption, people may also suffer discrimination in accessing public services in favour of those who can bribe officials, given the fact that majority of people in Tanzania are poor.

Civil and political rights such as right to life, access to justice, right to equality before the law and right to fair trial may also be affected by corruption. This could be in terms of the Government being unable to fully and progressively realize social and economic rights such as right to health, right to food and right to water, hence jeopardizing right to life. Corruption within the justice system creates corrupt police officers, investigators, magistrates and judges, who tend to deny rights to equality before the law and right to fair trial. It thus weakens judicial institutions. Rights of access to justice and effective remedy are also compromised by corruption in the justice system. Corruption during elections may also discourage people from exercising their political rights, such as right to vote.

Lack of faith in the justice system, usually due to corruption, is the major factor for people resorting to mob violence. Right to development, which is both an individual and collective human rights, is also affected by corrupt practices and transactions by government officials. Corruption in revenue collection means less revenue for the Government, which affects its delivery of social services and implementation of development projects, hence affecting realization of socio-economic rights and collective rights.

Moreover, good governance can be affected by corruption through weakening rule of law and undermining democracy. Corruption therefore poses a big threat to enjoyment of human rights in any country, particularly third world countries like Tanzania.

⁴⁹² See Article 2 of the International Covenant on Economic, Social and Cultural Rights of 1966.



8.2. State of Corruption

Perceived decrease in corruption

Recent studies on corruption in Tanzania by Twaweza, REPOA and Transparency International paint a picture of perceived decrease in corruption in Tanzania.⁴⁹³ This could be attributed to intensified anti-corrupt effort on the part of the Prevention and Combating of Corruption Bureau (PCCB). But more importantly, the political will to curb the vice, under the administration of President John Magufuli may have played a greater role in the current state of affairs. Having run on anti-corruption platform during the 2015 general elections in Tanzania, President Magufuli has been keen on fighting corruption, including in key sectors such as the mining sector and revenue collection. Since then he has made changes within PCCB and demanded more action, replacing former Director General, Dr. Edward Hosea, in 2016 with Valentino Mlowola, who was also replaced by Diwani Athumani in 2018.

Nevertheless, corruption continues to be a major challenge in Tanzania, including in key sectors such as the justice sector, the mining sector, the health sector and the land sector.

Reported incidents of corruption in 2018

Through media survey, LHRC was able to document the following incidents of corruption in Tanzania Mainland for the year 2018.

Table 17: Reported incidents of corruption recorded by LHRC in 2018

Description	Source	Date
Morogoro: PCCB in the region reported that it had filed 34 corruption cases before district courts from July 2017 to June 2018.	<i>HABARILEO</i> Newspaper	22 Aug 2018
Manyara: PCCB in the region announced that local government authorities lead in corruption, followed by the police force. Previously, it was	<i>Mtanzania</i> Newspaper	10 Aug 2018

⁴⁹³ See Lulu Olan'g and Jamal Msami, *In Tanzania, anti-corruption efforts seen as paying dividends, need citizen engagement, REPOA & Afrobarometer*, Afrobarometer Dispatch No. 178 at http://www.repoa.or.tz/images/uploads/AD178-Corruption_in_Tanzania-Afrobarometer_dispatch-4dec17.pdf, accessed 28th December 2018; Twaweza, *The untouchables? Tanzanians' experiences and views of corruption*, Sauti za Wananchi, Brief No. 45 October, 2017 at <https://www.twaweza.org/uploads/files/SzW-TZ-2017-Corruption-EN-FINAL-web.pdf>, accessed 28th December 2018.



the judiciary which was perceived to be the most corrupt in the region.		
Dar es Salaam: In July 2018, Ilala PCCB head, Zainabu Bakari, mentioned that sectors which are claimed to be most corrupt are private sector, police and judiciary. Other institutions/sectors are TAMISEMI, health sector, land sector, education sector and insurance companies. She also mentioned that PCCB had received 352 corruption complaints in the period of 2017/2018.	<i>Majira</i> Newspaper	1 Aug 2018
Kiteto: A ranger from Mkungunero Game Reserve was arrested and brought before Kiteto Resident Magistrate's Court, accused of demanding a bribe of Tshs. 5 million from pastoralists in May 2018.	<i>Mtanzania</i> Newspaper	20 Aug 2018
Tabora: Police and PCCB in Igunga District arrested nine local government and village leaders for embezzlement of Tshs. 141 million belonging to Bulangamilwa Village.	<i>Mtanzania</i> Newspaper	20 Aug 2018
Dar es Salaam: PCCB brought before a court of law a director of a company in Dar es Salaam, who was accused of attempting to bribe the minister responsible for land with Tshs. 90 million.	<i>Mwananchi</i> Newspaper	3 Aug 2018
Kagera: PCCB in Biharamulo District sent to court Kishapu Member of Parliament, Suleiman Nchambi, plus two other people on accusations of corruption involving a Tshs. 5 million bribe.	<i>Nipashe</i> Newspaper	7 Aug 2018
	Azam TV	6 Aug 2018
Ruvuma: PCCB regional office revealed that from July 2017 to June 2018 it had received 298 corruption complaints, with local government topping the list with 70 complaints, followed by land sector, police and judiciary.	<i>Majira</i> Newspaper	7 Aug 2018
Dodoma: PCCB in Dodoma arrested a lecturer from University of Dodoma, Jacob Nyagusi, who was accused of demanding a sex bribe from a first year student at the university in exchange for help in examinations.	<i>HABARILEO</i> Newspaper	5 October 2018
Mara: PCCB in Mara Region arrested seven individuals who were implicated in the North Mara Gold Mine corruption scandal.	<i>Mtanzania</i> Newspaper	12 Dec 2018



North Mara Gold Mine implicated in grand corruption scandal

In 2018, Acacia Mining Company's North Mara Gold Mine was implicated in some serious corruption charges involving the mine and government officials to influence the valuation process. Among those reportedly arraigned before the Resident Magistrate's Court in Tarime District on corruption charges in October 2018 were two North Mara Mining in Tanzania (NMML) officials, Marteen Van Der and Johannes Jansen. It was revealed during court proceedings that in May 2013, the two officials bribed Adam Yusuph, who was the Principal Government Valuer, Tshs. 93,869,000 in order to ensure the mining company is favoured during the valuation process to expand the mining areas.⁴⁹⁴ They also allegedly gave Tshs. 30,000,000 to Peter Elias Mrema, who was also a principal government valuer to favour the company in valuation process to guarantee expansion. Consequently, Peter Elias Mrema was also charged with receiving the bribe, in contravention of the Prevention and Combating of Corruption Act (PCCA) of 2007.⁴⁹⁵

Other government officials who were charged with corruption are Joseph Thomas Kleruu, who allegedly corruptly obtained land valuation consultancy in order to help the North Mara Gold Mine acquire an area for expansion (USD 681,572) and received USD 243,650 to favour the mine in valuation process; and Abel Mnyakibari, former Chairperson of Nyakunguru Village, who in January 2013 and December 2017 reportedly received Tshs. 966,687,343 from the company to 'deal' with villagers, whom he also refused to pay their compensation dues.⁴⁹⁶ Bogomba Chichake, who was Ward Councilor of Kamambo Ward, and Tanzania O'Mtima, who was Managing Director and Shareholder of Mara Kaskazini Enterprises, were charged with corruptly obtaining tenders worth Tshs 7,709,575,914.19/= and Tshs.1,102, 880, 903 respectively from North Mara Gold Mine between January 2006 and My 2018 in order to prevent Nyabigena Primary School from being transferred from Mrwambe area to Mgema area. Tanzania O'Mtima, while being Chairperson of Kewanja Village, also reportedly

⁴⁹⁴ "TAKUKURU yakunjua makucha North Mara" *Majira* Newspaper, 12th October 2018; Seven in court over 11 billion/- gold mine bribery allegations" *The Guardian* Newspaper, 12th October 2018.

⁴⁹⁵ Ibid.

⁴⁹⁶ Ibid.



corruptly obtained Tshs. 90,251,475 so that he would no longer make follow up on compensation dues of more than 800 villagers in the village and influence village government decisions in the mine's favour.⁴⁹⁷

Sexual corruption rampant at universities

In November 2018, a lecturer at the University of Dar es Salaam, Dr. Vincensia Shule, took to her Twitter account to expose sexual corruption at the university, shortly after the visit of the President of Tanzania, Hon. Joseph Pombe Magufuli.⁴⁹⁸ In her tweet she urged the President to intervene on the matter, stating that sexual corruption at the university is rampant. The tweet stimulated public debate, particularly on social media; and human rights activists commended her for her bravery in fighting against sexual violence, which is among key issues affecting women in Tanzania. The lecturer was later called before the ethics committee at the university to discuss and see how to address the matter.⁴⁹⁹ A study conducted by *Internews*⁵⁰⁰ in 2018 also points to the sexual corruption at universities and workplaces in Tanzania.⁵⁰¹ In December 2018, Iringa District Commissioner, Hon. Richard Kasesela, also bemoaned growing incidence of sexual corruption in the district, calling for concrete action to address the problem.⁵⁰²

Sexual corruption presents a big challenge for women and girls in Tanzania to fully enjoy their fundamental human rights. It is also a form of violence

⁴⁹⁷ Ibid.

⁴⁹⁸ "TGNP yaibuka sakata la rushwa ya ngono" *Nipashe* Newspaper, 7th December 2018; Elias Msuya "Mhadhiri aliyedai rushwa ya ngono imekithiri UDSM apongezwa" *Mwananchi* Newspaper, 10th December 2018; Peter Mwai "Vicensia Shule: Mhadhiri aliyezua mjadala wa rushwa ya ngono chuoni UDSM, Tanzania ni nani" BBC Swahili, at <https://www.bbc.com/swahili/habari-46368623>, accessed 25th December 2018.

⁴⁹⁹ "Kashfa ya ngono UDSM, mhadhiri kuhojiwa kamati ya maadili" *Mwananchi* Newspaper, 30th November 2018 at <https://www.mwananchi.co.tz/habari/Kitaifa/Kashfa-ya-ngono-UDSM--mhadhiri-kuhojiwa-kamati-ya-maadili/1597296-4875598-o68aj8/index.html>, accessed 25th December 2018.

⁵⁰⁰ An international nonprofit organization, works to ensure access to trusted, quality information that empowers people to have a voice in their future and to live healthy, secure, and rewarding lives.

⁵⁰¹ See Internews "Sexual Harassment Limits Women's Advancement in Tanzanian Media" at <https://www.internews.org/story/sexual-harassment-limits-womens-advancement-tanzanian-media>, accessed 30th December 2018.

⁵⁰² "Takukuru yatakiwa kukomesha rushwa ya ngono" *Mtanzania* Newspaper, 12th December 2018.



against women and constitutes violation of human rights. LHRC calls upon the PCCB to look closely into sexual corruption allegations at workplaces and universities and ensure those responsible are brought to justice. Members of the public are also encouraged to report these incidents so that action can be taken against the perpetrators.

Tanzania maintains score in the Corruption Perceptions Index 2018, but restrictions on freedom of expression imposed by new laws and regulations may affect the fight against corruption

Since 1996, Transparency International⁵⁰³ has been publishing Corruption Perceptions Index, ranking 180 countries worldwide depending on the level of corruption, using a scale of 0 to 100, where 0 is highly corrupt and 100 is very clean.⁵⁰⁴ Tanzania scored 36 out of 100 and is ranked 103 in 2017, jumping 13 places compared to the ranking of 2016. The score is the highest in the past 5 years as indicated in the figure below.

In 2017, Tanzania scored 36 out of 100 in the index, jumping 13 places compared to 2016. In 2018, Tanzania has maintained the score of 36 out of 100 and jumped 4 places, ranked 99.th The figure below shows score trend from 2014 to 2018.



Figure 10: Tanzania's scores in the Corruption Perceptions Indexes 2014-2018

⁵⁰³ A global civil society organization that seeks to combat global corruption.

⁵⁰⁴ See Transparency International website at

https://www.transparency.org/news/feature/corruption_perceptions_index_2017, accessed 22nd February 2018.



While improved performance in the fight against corruption in 2018 is a welcome news, restrictions on freedom of expression imposed by new laws and regulations, such as the Media Services Act and the Online Content Regulations, are more likely to hamper anti-corruption efforts in the long run. Media is a key weapon in the fight against corruption, as are anonymous users of the internet. Unfortunately the recently enacted laws and regulations severely curtail their freedom of expression.⁵⁰⁵

Likelihood of corruption in the projects within Local Government Authorities (LGAs): CAG Report

The Annual General Report on the Audit of the Local Government Authorities (LGAs) for the Financial Year 2017/2018 reveals likelihood of corruption in several projects within the LGAs. For instance, out of 26 projects /contracts that were assessed in this financial year, 4 contracts had high corruption likelihood in its overall, 5 contracts had high corruption likelihood in pre-bid phase, 5 contracts had high corruption likelihood in evaluation and award phase and 12 contracts had high corruption likelihood in contract management and audit phase.⁵⁰⁶

Conclusion and Recommendations

Conclusion

LHRC commends the Government's efforts to combat corruption in Tanzania Mainland. However, corruption is still pervasive in most sectors and more action is needed to address this vice, especially grand corruption. A collaborative effort with other stakeholders, including the media and civil society is key in this regard. Therefore, it is in the Government's best interest to remove the hurdles that are currently hindering these key stakeholders from effectively contributing to Tanzania's development, such laws and regulations that restrict civic space. The Government and PCCB can achieve more in terms of fighting corruption if the space for civil society is not restricted, democracy is left to prevail and basic human rights such as freedom of expression are fully safeguarded.

⁵⁰⁵ For discussion on the laws and regulations see Chapter 2 of this report.

⁵⁰⁶ See ANNUAL GENERAL REPORT ON THE AUDIT OF THE LOCAL GOVERNMENT AUTHORITIES (LGAs) FOR THE FINANCIAL YEAR 2017/2018 at http://www.nao.go.tz/?wpfb_dl=291, accessed 10th April 2019.



Recommendations

State actors

- ⇒ The Government, through the Prevention and Combating of Corruption Bureau (PCCB), to intensify the pace of fighting corruption, especially grand corruption, as key measure to ensure progressive realization of social and economic right.
- ⇒ PCCB to work with stakeholders such as CSOs, workers' unions, and the Judiciary to address sexual corruption at workplaces and universities.
- ⇒ The Government should ensure provision of improved social services as a way of reducing corruption in provision of such services.

Non-state actors

- ⇒ CSOs to sensitize the public about the impact of corruption on human rights and promote behaviour change.

Members of the public

- ⇒ Community members must refrain from corrupt practices and report corruption to PCCB or other relevant authorities.



Chapter 9: Human Rights Mechanisms

Introduction

This chapter looks at local, regional and international human rights mechanisms in Tanzania. These human rights mechanisms comprise of laws and institutions that protect and promote human rights. The national mechanisms highlighted in this chapter the national human rights institution (CHRAGG), the judiciary and law enforcement organs. Regional and international human rights mechanisms covered in this chapter are the Universal Periodic Review (UPR) mechanism and mechanisms established by treaties, namely the Human Rights Committee, Committee on the Elimination of Discrimination Against Women, Committee on the Rights of the Child, and the African Committee on the Rights and Welfare of the Child.

9.1. National Human Rights Mechanisms

9.1.1. Key National Human Rights Mechanisms

In Tanzania, key national human rights institutions include the Commission for Human Rights and Good Governance (CHRAGG), the Judiciary, the Tanzania Police Force and the Tanzania Prisons Services (TPS).

The Commission for Human Rights and Good Governance (CHRAGG)

The Commission for Human Rights and Good Governance (CHRAGG) is an independent national human rights institution established under the Constitution of the United Republic of Tanzania of 1977.⁵⁰⁷ It has an overall mandate to promote, protect, and safeguard human rights and good governance in Tanzania. Among the functions of CHRAGG are sensitizing about preservation of human rights and duties and receiving complaints on human rights violations.⁵⁰⁸ CHRAGG is also tasked with advising the Government and its institutions on issues of human rights and good governance.⁵⁰⁹

⁵⁰⁷ See Article 129(1) of the Constitution of Tanzania 1977.

⁵⁰⁸ Article 130(1) of the Constitution of Tanzania 1977.

⁵⁰⁹ Ibid.



Judiciary

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.

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 to reform such individuals so that they can fit in back into the society, should they be released.

9.1.2. Challenges faced by the National Human Rights Mechanisms

National human rights mechanisms in Tanzania are faced with a number of challenges, which affect their ability to ensure respect and protection of human rights in Tanzania. For the year 2018, the following challenges were identified by LHRC:

- *Corruption:* As discussed in Chapter Eight of this report, corruption is one of the major challenges facing the Judiciary and law enforcement organs (especially the Police Force). This hinders the ability of these institutions to always protect human rights. Corrupt elements tend to bribe their way out of trouble or deliberately delay proceedings.



- *Delays in investigation and prosecution of cases:* Delays during investigation of cases by police and delays in proceedings in court undermine the efficiency of national human rights mechanisms to ensure protection of human right in Tanzania. Delays may be caused by factors such as corruption or poor working environment.
- *Poor working environment due to shortage of equipment:* Police officers are faced with a challenge of poor working environment, which is largely contributed by not just having enough equipment, but modern equipment as well.
- *Overcrowding of prisoners:* This is a major challenge for the Tanzania Prison Service (TPS). In 2018, the former Minister of Home Affairs, Hon. Dr. Mwigulu Lameck Nchemba (MP), mentioned in his budget speech that by March 2018, TPS had a total of 39,763 prisoners (20,312 male and 19,451 female), while its capacity is to hold 29,902 prisoners – causing overcrowding by 33%.⁵¹⁰ He mentioned that to address this problem, the government has established alternative sentencing programme as well as constructing more prison buildings.⁵¹¹
- *Budgetary constraints:* Budget constraints is another challenge for some of the national human rights mechanisms, such as the Commission for Human Rights and Good Governance (CHRAGG) – which makes it difficult for this national human rights institution to reach more segments of the society.
- *Shortage of facilities:* Some areas do not have police posts/stations, thus forced to travel far to access such services. The same problem applies to the Judiciary, whereby – as discussed in Chapter Two of this report – there is a shortage of court buildings in different parts of Tanzania Mainland. This significantly affects protection of human rights by the Judiciary.
- *Poor knowledge about human rights:* This is particularly a problem for police and prison officers. Through its engagement with these

⁵¹⁰ See HOTUBA YA WAZIRI WA MAMBO YA NDANI YA NCHI MHE. DKT MWIGULU LAMECK NCHEMBA (MB.), AKIWASILISHA BUNGENI MAKADIRIO YA MAPATO NA MATUMIZI KWA MWAKA 2018/19 at <http://www.parliament.go.tz/uploads/budgetspeeches/1525875930-HOTUBA%20YA%20MAMBO%20YA%20NDANI%20YA%20NCHI.pdf>

⁵¹¹ Ibid.



officers and complaints received by LHRC from its clients, it has been observed by the organisation that knowledge about human rights is still lacking in minds of most law enforcement officers, especially those of lower ranks.

9.2. Regional and International Human Rights Mechanisms

Tanzania has access to several regional and international human rights mechanisms. These include the Universal Periodic Review Mechanism (UPR) - whereby it submits its report on protection and promotion of human rights; and bodies established under various human rights treaties.

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.⁵¹² 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.⁵¹³ The last UPR process was 2016, whereby Tanzania submitted its report and CSOs submitted shadow report. Several recommendations were made for Tanzania to improve human rights, whereby some accepted and some were rejected.⁵¹⁴

Treaty bodies are established by the human rights treaties that have been ratified, with the aim of monitoring the implementation of such treaties by States parties. The provisions of the treaties require States parties to submit to the treaty bodies periodic reports on their efforts to implement the treaties. The major international and regional treaty bodies are the Human Rights Committee (HRC), the UN Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of Persons with Disabilities, the African Court on Human and

⁵¹² 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.

⁵¹³ Ibid.

⁵¹⁴ See LHRC & ZLSC (2017), Tanzania Human Rights Report 2016.



Peoples' Rights, the African Commission on Human and Peoples' Rights, African Committee of Experts on the Rights and Welfare of the Child and the East African Court of Justice. Status of reporting to the treaty bodies is indicated in the Annex 2 below.

Conclusion and Recommendations

I. Conclusion

Rights Issue	Conclusion
National human rights mechanisms	Key national human rights mechanisms are the law enforcement organs, mainly the Tanzania Police Force and the Tanzania Prison Services; the Judiciary; and the Commission for Human Rights and Good Governance (CHRAGG). Their role is to protect human right under different capacities. However, they are faced with several challenges, including: corruption; delays in investigation and prosecution of cases; poor working environment; prison overcrowding; budgetary constraints; shortage of facilities; and poor knowledge about human rights.
Regional and international human rights mechanisms	International, continental and regional human rights mechanisms include: Universal Periodic Review Mechanism, Human Rights Committee (HRC), the UN Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of Persons with Disabilities, the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights, African Committee of Experts on the Rights and Welfare of the Child and the East African Court of Justice. Tanzania has access to all these mechanisms, some of which are based in Arusha – one of its regions. However, these mechanisms have not been adequately engaged by individuals, lawyers and CSOs in Tanzania.



2. Recommendations

State actors

- ⇒ The Government should strengthen national human rights mechanisms to ensure better protection of human rights. Adequate budget should be allocated for CHRAGG as the national human rights institution, to enable it to effectively carry out their mandate.
- ⇒ The Government, through the Prevention and Combating of Corruption Bureau (PCCB), should move to address corruption in the justice system to boost protection of human rights and their ability to ensure justice.

Non-state actors

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

Members of the public

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



Chapter 10: Other Issues of Human Rights Concern

Introduction

This short chapter looks at issues of human rights concern other than those discussed under Chapters 2 to 9. The first issue looked at is political tolerance in Tanzania Mainland. The second issue is the responsibility of state and non-state actors in promotion and protection of human rights in Tanzania.

10.1. Political Tolerance

Political tolerance can be defined as accepting and respecting the basic rights and civil liberties of persons and groups whose viewpoints differ from one's own.⁵¹⁵ Duty to practice political tolerance is there for all people, including political leaders.⁵¹⁶ Political intolerance, which is the opposite of political tolerance, is a threat to democracy.

In 2018, LHRC continued to observe trends of political tension between ruling party members and those of the opposition, especially during by-elections in Dar es Salaam and other parts of Tanzania Mainland such as Kilimanjaro, Arusha and Kigoma. Violent acts were reportedly perpetrated against members of opposing political parties during the by-elections held in these areas. There was also tension among members of the Civic United Front (CUF), between those who support Prof. Ibrahim Lipumba and those who support Seif Sharif Hamad. The tension is also felt on the social media, especially between members of the ruling party and those of the major opposition parties.

The tensions can be attributed to a number of factors, majority of which have been discussed above, including arbitrary restrictions on basic human rights such as freedom of expression and freedom of assembly. As a result, there has been a tendency of citizens who are members of these political parties to exchange bad words and even hate each other because of political affiliations. This has also been observed in the Parliament, whereby members of parliament may not support each other on issues of national importance simply because of political ideology or affiliation. While such

⁵¹⁵ See Inter-Parliamentary Union website at <http://archive.ipu.org/dem-e/idd/tolerance.htm>, accessed 10th January 2018.

⁵¹⁶ Ibid.



tensions have also existed even in the past, LHRC has observed that the situation is worsening little by little, which is not a good indication for human rights protection. It is important for the Government, political parties and community members to come together and promote political tolerance, especially at this time as Tanzania heads to the 2019 and 2020 elections, so that we have peaceful elections.

10.2. Responsibility of the State and Non-state Actors to Promote and Protect Human Rights

Under international, regional and domestic law, States are charged with primary responsibility of promoting and protecting human rights and are required to refrain from interfering with them arbitrarily.⁵¹⁷ This responsibility extends to individuals, groups and organs in the society as indicated by the UN General Assembly through its declaration called “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.”⁵¹⁸ This Declaration provides for **the right to promote human rights** and highlights the responsibility of state and non-state actors in promoting and protecting human rights.

States must take necessary steps to create all conditions necessary for social, economic, political and other fields and adopt such legislative, administrative and other steps to ensure that human rights and freedoms are effectively guaranteed.⁵¹⁹ “Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.”⁵²⁰ They

⁵¹⁷ See various human rights treaties discussed above, such as ICCPR, CRC, ACHPR and Maputo Protocol.

⁵¹⁸ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144 Adopted at 85th plenary meeting 9 December 1998.

⁵¹⁹ Ibid, Article 2(1).

⁵²⁰ Ibid, Article 16.



must also play a role in safeguarding democracy, promoting human rights and advancing democratic societies, institutions and processes.⁵²¹

LHRC recognizes the role of the media in promoting and advancing protection of human rights in Tanzania, as well as exposing corrupt practices. As an important advocacy tool for promotion and protection of human rights, LHRC urges media outlets to increase investigation and reporting of human rights issues and provide more airtime for human rights-related programmes.

Individual citizens have a duty to obey laws and follow legal procedures, as well as to report crimes and incidents of human rights violations, and intervene to protect human rights when possible. They also have a duty to respect other peoples' rights, which includes paying taxes in order to enable progressive realization of economic, social and cultural rights in the community.

Law enforcement officers also have a big role in promotion and protection of human rights. LHRC has noted with concern tendency of police officers, especially of lower ranks, to either disregard or not take seriously issues of human rights, not knowing that they too may be victims of human rights violations someday and in need of protection. LHRC recognizes the challenges our brothers and sisters in uniform face in performing their duties, but they have a responsibility to serve and protect, which includes protecting and respecting human rights. Other actors like religious and traditional leaders must also play a role in ensuring respect for human rights within communities, including by continually speaking out against human rights violations and urging community members to refrain from practices that violate such rights.

⁵²¹ Ibid, Article 18(2).



Annex I: Status of International Human Rights Ratifications in 2018

As of December 2018, Tanzania has ratified 10 out of 18 international human rights treaties/conventions. The table below indicates the number of regional and international treaties ratified by Tanzania so far.

	Convention/Treaty	Ratification
International	Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) 1979	1985
	Convention on the Elimination of All forms of Racial Discrimination 1965	1972
	Convention on the Rights of the Child (CRC) 1989	1991
	International Covenant on Civil and Political Rights (ICCPR) 1966	1976
	International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966	1976
	Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005	2005
	Optional Protocol to the Convention on the Elimination of All forms of Discrimination Against Women 2000	2006
	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2002	2004
	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2002	2003
	Convention on the Rights of Persons with Disabilities 2008	2009
	Convention Relating to the Status of Refugees 1951	1983
	Optional Protocol on the Convention on	2009



	Convention/Treaty	Ratification
Regional	the Rights of Persons with Disabilities 2008	
	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.

Annex 2: Status of Tanzania's Reportage to Treaty Bodies

The table below shows the status of Tanzania's reporting to the treaty bodies.

Treaty Body	Mandate	Tanzania Reports
Human Rights Committee	Monitoring implementation of the ICCPR (Article 40 ICCPR)	First report submitted on 20 th August 1979. Second report submitted on 4 th June 1991. Third report submitted on 6 th February 1997. Fourth and last report submitted on 8 th October 2007. Fifth report was due on 1 st August 2013.
Committee on Economic, Social and Cultural Rights	Monitoring implementation of ICESCR (Article 17 ICESCR)	First report submitted on 10 th September 1979. Second report submitted on 25 th August 2009. Third report was due on 30 th November 2017.
Committee on Elimination of Discrimination Against Women	Monitoring implementation of CEDAW (Article 18 CEDAW)	First report submitted on 9 th March 1988. Second report submitted on 25 th September 1996. Third report submitted on 16 th April 2007. Fourth and last report submitted on 10 th



Treaty Body	Mandate	Tanzania Reports
		November 2014.
Committee on the Elimination of Racial Discrimination	Monitoring implementation of CERD (Article 9 of CERD)	First report submitted on 22 nd March 1976. Second report submitted on 29 th January 1980. Third report submitted on 1 st October 1982. Fifth report submitted on 17 th July 1986. Sixth and last report submitted on 27 th October 2004. Seventh report was due on 26 th November 2007.
Committee on the Rights of Persons with Disabilities	Monitoring implementation of CRPD (Article 35 of CRPD)	Report was due on 10 th December 2011, yet to be submitted.
Committee of the Rights of the Child	Monitoring implementation of CRC (Article 44 of CRC)	First report submitted on 20 th October 1999. Second report submitted on 20 th October 2004. Third report submitted on 13 th January 2012. Next report due on 9 th January 2020.
Committee on the Rights and Welfare of the Child	Monitoring implementation of the ACRWC (Article 43 of ACRWC)	Initial report submitted in December 2006. Consolidated 2 nd , 3 rd and 4 th reports submitted in October 2015.

The table above indicates the extent to which Tanzania has complied with its reporting obligations under the treaties it has ratified. While Tanzania has done well in its reporting obligations under the ICESCR, CEDAW, CRC, and ACRWC, it has not done so with regard to its reporting obligations under the CRPD and recently under the ICCPR and CERD. LHRC calls upon the Government, under the Ministry of Constitutional and Legal Affairs to comply with its treaty reporting obligations by preparing and



submitting timely reports on actions taken to improve, promote and protect human rights in Tanzania.

Annex 3: List of Regional and International Human Rights Instruments

- ⇒ African Charter on Human and Peoples Rights (ACHPR)
- ⇒ African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)
- ⇒ African Charter on the Rights and Welfare of the Child (ACRWC)
- ⇒ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- ⇒ Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)
- ⇒ Convention on the Elimination of all forms of Racial Discrimination (CERD)
- ⇒ Convention on the Rights of Persons with Disabilities (CRPD)
- ⇒ Convention on the Rights of the Child (CRC)
- ⇒ Declaration on the Elimination of Discrimination against Women
- ⇒ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144 Adopted at 85th plenary meeting 9 December 1998.
- ⇒ Economic and Organized Crimes Act
- ⇒ International Covenant on Civil and Political Rights (ICCPR)
- ⇒ International Covenant on Economic, Social and Cultural Rights (ICESCR)
- ⇒ Universal Declaration of Human Rights (UDHR)



Part Two: Zanzibar - Zanzibar Legal Services Centre (ZLSC)



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 Demokrasia na Maendeleo
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	Jumuiya ya Uamsho na Mihadhara ya Kiislamu
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	Mkakati wa Kukuza Uchumi na Kupunguza Umaskini Zanzibar
MoEVT	Ministry of Education and Vocational Trainings
MV	Marine Vessel
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 Broadcasting Corporation
ZLR	Zanzibar Law Report
ZLS	Zanzibar Law Society
ZLSC	Zanzibar Legal Services Centre
ZNP	Zanzibar Nationalist Party
ZPPP	Zanzibar and Pemba People's Party



CHAPTER ONE

CONTEXTUAL OVERVIEW

1.1. Introduction

Every human being has got ‘rights’ that are equal to the rights of each other. These rights include the rights to life, liberty, equality and dignity of his person. The rights are inherent in him merely because he is born human. These rights are so called *Human Rights* in the sense that they are naturally part and parcel of his ‘*being human*’. Human Rights are universal and every human being has right to enjoy them regardless their recognition and protection under their national Constitutions and laws of their lands.⁵²²

Despite the inherent nature of these rights, people have long ago been struggling for their recognition, respect and protection. The struggle has characterised numerous efforts taking place at different social stratifications both international (global and regional) and national wise. As a result, it is widely accepted that every human being is entitled to enjoy his or her human rights without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁵²³

Tanzania on its side, apart from recognising the human rights norms in the International and regional treaties, it had emphatically recognised and protected them under the laws of the land. The Constitution of the United Republic of Tanzania for instance has recognised Human Rights and incorporated the Bill of Rights as the *Basic Rights and Duties* in the Part III.⁵²⁴

Under the Constitution of Zanzibar 1984, the human rights have been protected under Part III of the Chapter One⁵²⁵. Under these provisions of the Constitution, any one has got a right to defend his right before the Courts of law against any infringement done by any one.

⁵²²Kassa G.A (2015), *The African Regional Human Rights System*, p.1

⁵²³ United Nations, *Handbook for UN Staff*, p.2

⁵²⁴Article 12 to Article 30 of the Constitution of the United Republic of Tanzania, 1977.

⁵²⁵Section 11 to 25 of the Zanzibar Constitution of 1984.



1.2. Historical Overview

As far Zanzibar is concerned, it has been a home to human beings since the beginning of the late Stone Age. One can understand it on reading different scriptures, including Greco-Roman text and the Periplus of the Erythraean Sea which were written between the 1st and 3rd centuries BC, had mentioned the island of Menuthias which is believed to be Unguja,⁵²⁶ the main island that, together with Pemba, it forms Zanzibar.

The first settlements of Zanzibar are believed to have been established by immigrants from numerous sections of the African Mainland.⁵²⁷ At that time, there was contact between the people of Zanzibar and outsiders. The word Zanzibar is believed to be derived from Arabic word 'Zanjibar' which means coast of the blacks.

Autonomous African societies existed in Zanzibar since ancient times, before the isles became increasingly a good geographical and strategic location that attracted visitors from many foreign nations, some of whom established their political bases in the isles. Henceforth, the historical print of Zanzibar drew mainly from African settlers, Persians traders and invasion by foreign nationals. Persians and Arabs are said to be the first foreigners who settled in Zanzibar prior to the coming of Sultan of Oman.⁵²⁸

The interactions of the local people and foreigners had derived from the responses of development marked by indigenous African parallel with imported notions from other parts of Africa, the Middle East, especially from Oman and Yemen in Arabia and from Shiraz in Persia.⁵²⁹

During the 16th Century, the Portuguese who were the first foreign visitors arriving from the South to Zanzibar were also the first European power to gain control of Zanzibar from 1503 to 1698. The Portuguese established friendly relations with the ruler and introduced Christianity in the Isles. However, the Muslim of Oman did start a forceful campaign along the coast

⁵²⁶ Pearce F.B. Zanzibar(1920), the Island Metropolls of East Africa, p.120

⁵²⁷ Michael F (1965), Zanzibar Background to Revolution, p.29

⁵²⁸Bhacher M.R(1994), Trade and Empire in Muscat and Zanzibar:p.5-6

⁵²⁹ ibid



against the Portuguese in the late of 17th Century. Consequently, the Portuguese were defeated and fell and thus, their colonial powers and Christian presence came to an end.⁵³⁰

The people of Zanzibar have also been socially influenced by the coming of Persians (Shirazi) who began landing in Zanzibar from about the 10th Century. It is common even nowadays to find a good number of Zanzibaris as “Shirazi” with the Persians origin.⁵³¹

Politically, the people of Zanzibar have a long political relationship with Arabs from Oman.⁵³² The Omani Arabs, who expelled the Portuguese from Muscat in 1650 and were the leading force against them in the entire region, gradually established at least nominal control over many settlements, including Zanzibar. After a lengthy turmoil of dynastic wars and losses and gains on the African coast, the ruling sultan of Oman, Said bin Sultan, decided to relocate his capital from Muscat to Zanzibar.⁵³³

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. Universal Declaration of Human Rights condemns slavery as one of the violation of human rights, as this said “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”⁵³⁴ It is the strength of international pressure as founded under the provisions of the international Bill of Rights that slavery was abolished in most countries that were practicing slavery, including Zanzibar.

The involvement of British rule in Zanzibar had led a human right agenda to take another shape in the islands. The British rule remained the colonial power with its well-established political presence signified by the abrupt

⁵³⁰ J. Middleton and another (1965), Zanzibar, its society and politics, p.3-4

⁵³¹ . Ibid.

⁵³² . S.C. Nicholls (1971), The Swahili Coast, Politics, Diplomacy and Trade on the East African Littoral, p.217

⁵³³ . <https://www.britannica.com/place/Zanzibar-island-Tanzania>

⁵³⁴ Article 4 of UDHR



redistribution of the Sultan's inland territories. This was brought about by the Heligoland–Zanzibar Treaty (German: Helgoland-Sansibar-Vertrag; also known as the Anglo-German Agreement of 1890) which was an agreement signed on 1st July 1890, between Germany and Great Britain. Germany gained the small but strategic island of Heligoland, which its new navy needed for the control of the new Kiel Canal and approaches to Germany's North Sea ports.

Upon the approval of Sultan, the exchange agreement between the two allowed Zanzibar and its narrow coastal regions to be declared a British protectorate in 1890. The joint colonial leadership between British and Sultan took place for virtually 70 years from 1890. Their rule came to an end after the islands got their independence in 1963.⁵³⁵ Despite bringing into the end the Sultanate regime in Zanzibar, the social relationship between the people of Zanzibar and the Oman people continued to be significantly in existence. The main cause behind this social link appears to be inter-marriage and, therefore, blood relationships between Zanzibaris of African origin and Zanzibaris of Arabs. However, the official link or tie between the Revolutionary Government of Zanzibar and Omani Government has been the 'ups and downs' topic.

For example, in 1932, the relationship between Oman and Zanzibar was strongly laid down by the Sayyid Said bin Sultan who made the two territories under his rule. Consequently, the link between Zanzibar and Oman was broken after death of Sayyid Said bin Sultan 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.⁵³⁶

There are also a number of instances in which these kinds of links are demonstrated within the history of Oman and Zanzibar. Recently, in March 2015, the House of Representatives of Zanzibar conducted a quite bitter discussion on the disappearance of some vital historical documents from Zanzibar archives. At the end of the discussion, the House perceived the Oman Embassy and Zanzibar and some senior officials of the Zanzibar

⁵³⁵Majamba H.I, (2007), Perspectives on the Kadhis' Courts in Zanzibar, p.2

⁵³⁶ Zanzibar Human Rights Report, 2016



archives to be responsible for the loss of the documents. Hence, the House passed the resolution directing the Revolutionary Government of Zanzibar to necessarily take appropriate measures against the Omani Ambassador in Zanzibar and the responsible archives officials for the loss of the documents.⁵³⁷

On the other hand, in strengthening the socio-economic relationship between these two countries, Oman had been helping Zanzibar in a number of projects. It is Oman that assists the government of Zanzibar in health, education, culture and other economic support. It is in strengthening this relationship that, on Thursday 12, 2017, a delegation of 300 dignitaries from Omani Government representing King Sheikh Sultan Qabous bin Said had arrived in Zanzibar aboard a ship named 'Fulk Al Salamah' officially used by the royal family, with the view to strengthening the existing ties between the two sides.

Directly from Muscat Oman to Malindi Port of Zanzibar, the delegation had been received by Second Vice President Hon. SeifAli Iddi who was accompanied by cabinet Ministers including Minister of State in the Second Vice president's Office, Mr Mohamed Aboud Mohamed; Minister for Water, Energy, Land and Environment, Ms Salama Aboud Talib; and Minister for Finance and Planning, Dr Khalid Salum Mohamed. Other ministers who participated in the delegation were Minister for Information, Tourism, Culture and Sports, Mr Rashid Ali Juma, and Ms Amina Salum Ali, Minister of Trade and Markets. Involved in the delegation was Regional Commissioner of the Urban Western Region of Unguja, Hon. Ayoub Mohamed Mahmoud.

Oman delegation which was led by Minister of oil and gas, Mr. Mohamed Al-ramh, had strengthened the diplomatic and economic relations of the two countries which shared a long history.⁵³⁸

On the history of human rights in Zanzibar, the independence of 10th December, 1963, had rewarded Zanzibar with the first and remarkable Constitution which had enclosed the Bill of Rights. The independence

⁵³⁷ . Hansard of the House of Representatives of Zanzibar, dated on 15th March, 2015.

⁵³⁸ The Citizen, Thursday, 12th October, 2017



further made Zanzibar to become a member of the British Commonwealth and a member state of the United Nations on 16th December 1963. The Independence was possible on the coalition between the Zanzibar Nationalist party (ZNP) and its offshoot the Zanzibar and Pemba People's party (ZPPP), both of which principally represented the Arabs against the Afro-Shirazi party (ASP), whose followers were Africans.⁵³⁹

It was the Constitution that followed the Westminster model of government, since the ZPPP formed government, while the Sultan as Head of the State. However, one month later after that December independence, on 12th January 1964 the Revolution had overthrown the existent regime and abrogated the Independence Constitution of 1963.⁵⁴⁰

The Bill of Rights which was respected under the Independence Constitution of 1963 became the day dream under the Presidential Decrees which always become a signal of 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.⁵⁴¹

The Legislative Power Law said to be the first law and acted as the Constitution of Zanzibar after 1964 revolution.⁵⁴² 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.'⁵⁴³ All legislations were passed by the Revolutionary Council which had both, the

⁵³⁹ <http://zanzibar.go.tz/index.php?rgo=history>

⁵⁴⁰ Martin E.B (1978), Zanzibar Traditional and Revolution, p.57

⁵⁴¹ Zanzibar Human Rights Report, 2016

⁵⁴² Uki A, The State of Constitutionalism in Zanzibar in 2010 in Odhiambo M, Annual state of Constitutionalism in East Africa, 2010 (Kampala: p.187

⁵⁴³ Zanzibar People Decree, No.6 of 1964



legislative and judicial powers and headed by Hon. Abeid Aman Karume as the Chairman and the First President post revolution of 1964.

Zanzibar united with Tanganyika to form one sovereign state, the United Republic of Tanzania with Mwalimu Julius Nyerere as president,⁵⁴⁴ 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, 1964.⁵⁴⁵

Since the formation of the union, Zanzibar has her own Executive headed by the President of Zanzibar who is also the Chairman of the Revolutionary Council, 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.⁵⁴⁶

In 1969, Revolutionary Council of Zanzibar had brought the fundamental changes on the Court system and human rights history by establishing the Peoples' Courts which came into effect on 1st January 1970.⁵⁴⁷ The Courts were presided over by lay people and some of them completely illiterate and were not bound by rules of evidence and procedure, but had to formulate their own regulations of the proceedings.⁵⁴⁸

The Human rights had started taking its merits in 1979 when the second president Hon. Aboud Jumbe had established the Constitution of Zanzibar in that year. 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

⁵⁴⁴Kituo cha Katiba, (2003) p.21

⁵⁴⁵ United Republic Declaration of Name Act, No.61 of 1964

⁵⁴⁶ ibid

⁵⁴⁷ Section I of the Presidential Decree, No. 11 of 1969

⁵⁴⁸Nassali Maria, (2008) Reforming Justice in East Africa. A Comparative Review of Legal Sector Processes, Fountain Publishers, Kampala, 1st Ed, p.177



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 Constitution had recognised the Bill of Rights under its Chapter III that had remained to date.

In 2010, Zanzibar had further developed its constitutional development though it had nether change any provision of Bill of Rights. The government had 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);⁵⁴⁹ ministers and other members of the Revolutionary Council (i.e. the Cabinet as the President deems fit to appoint.

1.3. Geography and Population

Geographically, Zanzibar is located between 15 and 20 miles from Tanzania Mainland. Apart from two bigger islands, Zanzibar has many small islands surrounding. Between the two bigger islands, the Unguja which also known as Zanzibar is the Capital which shelter the most historical monument of the island an old quarter, called Stone Town- which is one of the World Heritage Sites. And it was the Stone Town where the Slave Market was once upon a time located. After the Slave trade was abolished, the market was destroyed and an Anglican Cathedral was built at its place.⁵⁵⁰ Zanzibar 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.⁵⁵¹

⁵⁴⁹ Section 39 of Zanzibar Constitution 1984

⁵⁵⁰ David Lawrence, D. (2009), *The Land Its People and Contemporary Life*, p.76-77.

⁵⁵¹ Lugoe F.N (2012) *Land Diputes in Zanzibar for SMOLE* p.13





Beach view of Stone Town, Zanzibar

Zanzibar had been blessed with the brilliant white beaches round by the warm turquoise waters of the Indian Ocean, provide the perfect place to relax, soak up the sun and take a break from some busy sightseeing. One who finds and get relax in Zanzibar beaches, finds himself in paradise, intermingled with picturesque fishing villages, where the people live a simple way of life, unchanged over the years. There are more than 25 fantastic beaches in Zanzibar, and some are so peaceful and remote that the only noise breaking the silence is likely to be the ocean.⁵⁵²

Notwithstanding the God's bless of beautiful beaches in Zanzibar, the sea-level rise imperils them to be not in the same place in the future. If the Zanzibar beaches still exist throughout the sea-level rise, many of the buildings may not. Efforts therefore should be taken to save beaches, such as seashore armouring structures.⁵⁵³ Sea-level rise in Zanzibar is caused by number of reasons, including the increase in global ocean volume due to thermal expansion from oceanic temperature and salinity changes; and the

⁵⁵² <http://zanzibar.net/paradise-beaches/>

⁵⁵³ <http://coastalcare.org/sections/inform/sea-level-rise/page/3/>



additional melting of land-based ice caps and glaciers, and the ice sheets of Greenland and Antarctica.⁵⁵⁴

It is further stressed that sea-level rise is a gradual process, with a much longer response time than for temperature. Newly detected rising sea-levels in parts of the Indian Ocean, including Zanzibar coastlines, appears to be at least partly a result of human-induced increases of atmospheric greenhouse gases. The sea level rise could have far-reaching impacts on both future regional and global climate.⁵⁵⁵

United Nations predicts that world population will be 9 billion by 2050, while massive areas of land are available throughout the interiors of many countries, the same rule that applied in the ancient times that people are attracted to settle near seas, oceans and rivers. And on that ground, about half of the world's population lives within 100 km of water, and this trend continues to grow.

The demand for additional land for housing, industry and recreation along the coasts is becoming steadily more acute. If cities can't grow outward, they grow upwards resulting in more congestion in terms of industry, roads and demand for services. While this trend might have at one time seemed impossible, from the 1970s onwards the dredging industry has developed new technologies for creating new land in the water. As a result, "buying" new land by "making" it through reclamation is turning out to be less expensive than developing old land.⁵⁵⁶

On the same situation to Zanzibar, her geographical location in particular beaches, has been expanded through land reclamation. One of the common and great reclamation is that construction of a tourist resort at Mtoni, north of the Stone Town of Zanzibar, operated under Coastal Dredging & Construction Company Tanzania Limited (CDCC), of Bakhresa

⁵⁵⁴RoZ (2012), Technical Report on the Economics of Climate Change in Zanzibar: Projections of Climate Change and Sea Level Rise for Zanzibar, P.13

⁵⁵⁵ <http://kibunango.blogspot.com/2010/07/indian-ocean-sea-levels-on-rise.html>

⁵⁵⁶By René Kolman, New Land by the Sea: Economically and Socially, Land Reclamation Pays, p.1



Group, incorporated in Zanzibar, with a motive to venture into the Dredging Business.⁵⁵⁷

By 2017, 70 percent of the project has so far been implemented and was expected to be completed in August 2018. For the purpose of human rights, the land reclamation at Mtoni has created jobs for thousands of Zanzibaris and several more are expected to be created once it is completed. The said land reclamation project is expected to consist 106 rooms, six of which will be presidential rooms that can accommodate the same number of Presidents at one go.

The land reclamation with a height of 150 meters and width of 50 meters, after completion of the water park project, expected to accommodate at least 3,500 families in one go and the marine is expected to accommodate at least 30 boats of height 30 metres in one go.⁵⁵⁸

Zanzibar government had intended to change geographical view of Zanzibar with modern houses, by construction fourteen new cities in different areas in Zanzibar. The government in collaboration with different construction companies, including Engineering Consultants Group of Egypt, aimed at changing the geography of the islands to be *Smart City*.⁵⁵⁹ The construction of 14 Smart City will increase employment to the people of Zanzibar and as humans, they will be able to serve their lives. The construction will also enhance technology and making Zanzibar a destination for visitors.⁵⁶⁰

The Climate of Zanzibar is usually warm and humid (equatorial). However, there are four common and long climate changes experienced in Zanzibar. *Masika* is the longer and heavy rains and some time comes with consequences, normally occurs between March and May;⁵⁶¹ *Kipupwe* which is cold season usually comes on June and August; the hot season is known as

⁵⁵⁷ Tanzania Daily News, 21st June 2016

⁵⁵⁸ <https://www.journalducameroun.com/en/tanzania-firm-embarks-on-us20m-land-reclamation-hotel-project/>

⁵⁵⁹ <http://zanzibar24.co.tz/2017/04/24/misri-kuisaidia-zanzibar-kujenga-miji-mipya/>

⁵⁶⁰ <https://nocompedcommunitymedia.blogspot.com/2017/04/misri-kuisaidia-zanzibar-kujenga-miji.html>

⁵⁶¹ Zanzibar Institute for Tourist Development (2014) p.33



Kaskazi or *Kiangazi* always comes between December and February and the fourth is *Vuli* where short rains are experienced, usually happens on October and November.⁵⁶²

Administratively, Zanzibar is divided under five regions and eleven districts. Among the five, Unguja is divided to three which 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.

Pemba as the second part of Zanzibar, is administered under two regions. The North Pemba and South Pemba regions. North Pemba has the two districts of Wete and Micheweni, while 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.⁵⁶³

The majority of Zanzibaris are Muslim of Sunni sect, however there are also Christians and Hindu followers. Zanzibaris are an eclectic mixture of ethnic backgrounds, indicative of the islands' colourful history. Widespread intermarriages between Shirazis and Africans gave rise to a coastal community with distinctive features, using a highly Arabicized form of language, known as Kiswahili, which is the country's national language. However, while the official languages are both Kiswahili and English, English generally is used as a medium of instruction in academic institutions. The language of the court and all official documents and public recordings is either Kiswahili or English.⁵⁶⁴

Around the late 11th or 12th Century, number of traders who had settled in Zanzibar had intermarried with the indigenous Africans. Ultimately, a hereditary ruler (known as the *Mwinyi Mkuu* or *Jumbe*), emerged from among the *Hadimu*, and a similar ruler, called the Sheha, was set up among

⁵⁶²Zanzibar Human Rights Report, 2016

⁵⁶³ Ibid.

⁵⁶⁴Zanzibar Human Rights Reports, 2016



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*. 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.⁵⁶⁵

The government had carried out the population census carried in August 2012, which indicates that Zanzibar has a population of about 1,303,569 people compared to that of 2002, which was 984,624. This is to say 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.

Despite Zanzibar having five regions, the most populated is the Urban West Region 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 of Unguja with a population of 115,588. It is further indicated that the proportion of females has marginally increased compared to males.⁵⁶⁶

1.4. Economic Situation

It is a historical phenomenon for Zanzibar's economy to base on agriculture and tourism. In agriculture, Zanzibar grows and exports cloves as the first products and monopolised by the government seconded by coconuts, chilies, copra and seaweed. Fishing on the seas surrounding Zanzibar, becomes the wealth for the local economy. Therefore, Zanzibar economy can be classified into four major sectors; 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

⁵⁶⁵ ibid

⁵⁶⁶ ibid



high tide levels can lead to droughts and floods which are likely to affect the Isles' economy and the GDP.⁵⁶⁷

Cloves which is the economic backbone of the island' economy, was historically 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 originally grown by Arabs on their large plantation with the manual labour being provided for by slaves. Despite hard labour was not at that time considered being a violation of the human rights, it had contributed to the change of legal system with the beginning of colonialism. During the British colonialism, private ownership as opposed to communal system, 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.⁵⁶⁸

Cloves continued to be the main source of the national income until the time when the slavery was totally abolished and even after the revolution of 1964. The economy of Zanzibar, however, collapsed in 1970 because of a decline in clove exports.⁵⁶⁹ 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 driving reason for the legal sector reform.⁵⁷⁰ 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

⁵⁶⁷ SMOLE Report 2012 p.18

⁵⁶⁸ Zanzibar Human Rights Report, 2016

⁵⁶⁹ Martin (supra), p.60-67

⁵⁷⁰ Moshi et al (2004) Zanzibar, Challenges of Globalization and Poverty Reduction, p.31



based economy⁵⁷¹. These programmes encouraged privatization in the economy.

Ultimately, the main role of government was to ensure law and orders are formulated to enable public policies for the private sectors are flourished in economic development and service delivery. The government had another role of ensuring promoting democratic governance, mobilizing resources for provision of public services and delivering effective and efficient public services. As a result, positive measures were 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).

Despite reforms made, cloves still continued to contribute largely to Zanzibar economy, and therefore, the government had taken several measures to improve its production. From 2012 the government has been distributing, free of charge, clove seedlings in a bid to boost the clove cultivation.⁵⁷²

In spite of wide spread demands coming mostly from farmers and businessmen who want the Zanzibar government to liberalize the cloves trade, the government still monopolises clove industry in the Isles and maintains the law prohibiting anyone from transporting cloves without its permission.⁵⁷³

Furthermore, the government still puts its efforts to revive the cloves by developing good business relations with the farmers. For example, up to 5th January 2018, the total tones of 8,182.04 of cloves which valued 114.14 billion shillings have been purchased from the farmers for the financial year 2017/2018. On the side of selling, the government had sold the total tones of 5,881 which valued 103.49 billion Tanzania shillings for the financial year, 2017/2018. The government in process to agree with the cloves farmers to

⁵⁷¹ Hartmann J (1994), the state of Tanzania, p.218-233

⁵⁷² Issa Yussuf (2015), Isles maintain a Higher Clove Price Despite Global Slam, p.12

⁵⁷³ ibid



pay them 80% of the world market price. For six years now, the government of Zanzibar has been buying the cloves on price of Tsh.14,000 per kilogram from the cloves farmers.⁵⁷⁴

Notwithstanding the government efforts on cloves and of being a major foreign exchange in Zanzibar for the last 150 years ago, there has been a noteworthy steady decline in production of cloves 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.⁵⁷⁵

To save national economy due to decline of cloves production, Zanzibar has moved from cloves dependency to tourism industry during the mid-80s. 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 enactment of Tourism Promotion Act of 1991 had promoted and strengthened tourism in the country. Tourism industry had been strengthened further eight years later, on the enactment of new Promotion of Tourism Act, of 1996 and repealed the former of 1991⁵⁷⁶ which, among other things, established the Commission for Tourism as independent body.⁵⁷⁷ Subsequently, this Act was repealed by the Zanzibar Tourism Act, 2009,⁵⁷⁸ as amended by the Zanzibar Tourism (Amendment) Act 2012.

Currently, Tourism is a 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

⁵⁷⁴ The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018

⁵⁷⁵ Zanzibar Human Rights Report, 2016

⁵⁷⁶ Section 35(1) of Act No.9, 1996

⁵⁷⁷ Section 3(1) of Act No.9 of 1996

⁵⁷⁸ Section 32(1) of Act No. 6 of 2009



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.

For further promotion of tourism industry, the government had established Zanzibar Investment Promotion Authority (ZIPA) in 2004,⁵⁷⁹ for promotion and facilitation of investments in Zanzibar.⁵⁸⁰ The Authority had flourished tourism industry in Zanzibar and fastened it as a fast growing sector in the Zanzibar economy contributing around 80% of foreign exchange earnings and about 27% of the Growth Domestic Product (GDP). Tourism had further generated employment which 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.

Tourism is estimated to drive economic development in Zanzibar by generating all employments over 50% by 2020. This is viewed under the National Growth Strategy (MKUZA II), which is based on both Zanzibar Vision 2020 and Millennium Developments Goals (MDG). In order to make this vision achievable, 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.⁵⁸¹

Zanzibar currently has a substantial number of tourism offerings. The tourism sector had been flourishing every year. The number of tourists who find Zanzibar as a cute place for their visits has been increasing. For this year, 2017 the total number of 433,116 had increased from 379,242 for

⁵⁷⁹Section 3(1) of Act No. 11, 2004

⁵⁸⁰Ibid, section 4(1)

⁵⁸¹ Zanzibar Human Rights Report, 2016



2016. This makes the escalating of 14.2% for one year. The Government of Zanzibar has a goal to increase the number of tourists to 500,000 for 2020, which is probably will be reached before that year (2020).⁵⁸²

Tourism in Zanzibar also based on cultural activities. Museums, monuments, artisans and their handmade products are a large part of Zanzibar's culture and heritage. There are number of artisans in Zanzibar who craft goods and exhibit them at various places, but Zanzibar government has yet make centralised market for its own local arts and crafts, as well as its artisans.

Zanzibar had further been bestowed with natural and attractive beauty for tourism industry. Ngezi forest, Kiwengwa forest, natural caves, dolphin spotting and Jozani wilderness are some of the more popular lovely attractions in Zanzibar. There are other attractions such as Zanzibar Butterfly Centre that offers a unique view of nature and its various inhabitants.⁵⁸³

In Pemba, a unique kind of hotel with underwater rooms marked another attraction for tourists. The Manta Resort is located 250 metres off the coast on Pemba Island, part of the Zanzibar archipelago off the coast of East Africa, 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. Seaweeds were introduced in Zanzibar from Philippines in 1988 and now had developed to form a local industry that provides employment opportunities to hundreds of Zanzibaris, particularly women. Seaweeds farms are generally located in shallow, calm and constantly warm waters, but only where the bottom is sandy. This farming has become well known and perfectly developed at different coastal areas including Pwani Mchangani, Bwejuu, Jambiani, Michamvi, but mostly at Uroa.⁵⁸⁴

⁵⁸² The Speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018

⁵⁸³ Zanzibar Human Rights Reports, 2016

⁵⁸⁴ http://www.tourzanzibar.info/activities/seaweed_farming.html



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 2017, for example, the total internal revenue was 548.571 billion as compared to 487.474 billion of 2016, and therefore the total of 61.097 billion (equal to 12.5%) had increased in comparison to the 2016.⁵⁸⁵

The budget of revolutionary government of Zanzibar had increased to the estimation of Tsh.2,827 billion for the financial year 2017 as contrary to Tsh.2,628 billion for financial year 2016/2017. The national income increased by 7.0% in comparison to 6.8 for 2016, while the individual income for the people of Zanzibar increased to Tsh.1,806,000 from 1,632,000 Tanzania Shillings for 2016. The inflation rate is 5.6% for 2017 from 6.7% of 2016⁵⁸⁶.

On business activities, goods valued 145.76 billion shillings were exported in 2017, when compared to 94.94 billion shillings of 2016. Imported goods were of value 211.42 billion shillings in 2016 when compared to 167.09 billion shillings of 2016. For the business activities between Zanzibar and Tanzania Mainland had also been increasing and well flourished. For this year, goods valued 32.32 billion shillings exported to Tanzania Mainland while the goods valued 184.84 billion shillings were imported in Zanzibar from Tanzania Mainland from January to December, 2017.⁵⁸⁷

Zanzibar government had been constructing its Abeid Amani Karume International Airports for years now with the purpose of keeping it in up-to-date working conditions so that more international flights will be attracted to choose Zanzibar as one of their destination. This went together with the construction of the new terminal which unfortunately is completed yet. The delay of construction for months had obviously affected the economic growth and deprived the public right to benefit with their national developments.

⁵⁸⁵ The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018

⁵⁸⁶ ibid

⁵⁸⁷ ibid



The construction was to recommence by the end of 2017 and upon completion, the new terminal II is meant to meet the future growth on international arrivals by extending capacity to six million passengers per annum in a total terminal area of 60,000 square metres. This on the other hands will increase the number of tourists and other passengers since the terminal is expected to serve 1.6 million passengers.⁵⁸⁸

1.5. Political and Governance Systems

Political and governance system of Zanzibar had embarked very early in organised governance including political decentralization. Zanzibar governance system and its politics have been influenced by its history which is formally started on the coming of the British who declared it a British protectorate in 1890. Under the British, the Sultan was reserved for ceremonial purpose but most major decisions were made by the British Resident.

For the purpose of divide and rule governance system, the British led the formation of different associations 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.⁵⁸⁹ For the first time of its history, 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.⁵⁹⁰

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, the union and before Government of National Unity in 2010. 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

⁵⁸⁸ The Guardian News letter, 20th November 2017

⁵⁸⁹ ZLSC, Zanzibar Human Rights Report(2015) p.25

⁵⁹⁰ *ibid*



Tanganyika soon after the revolution to form the United Republic of Tanzania on 26th April, 1964.⁵⁹¹

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.⁵⁹²

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 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.⁵⁹³ The President comes from the party that wins the election, the First Vice President may be appointed by the President from the party that holds second in presidency position during the general election,⁵⁹⁴ while the second Vice President is nominated from the President's party⁵⁹⁵ to be head of government's affairs in the House of Representatives.⁵⁹⁶

⁵⁹¹ Martin E.B. (1978) Zanzibar Traditions and Revolution, p.57

⁵⁹² Zanzibar Human Rights Report, 2016

⁵⁹³ Section 39(1) of the Zanzibar Constitution, 1984

⁵⁹⁴ Section 39(3) of the Zanzibar Constitution, 1984

⁵⁹⁵ Section 39(6) of the Zanzibar Constitution, 1984

⁵⁹⁶ Section 39(7) of the Zanzibar Constitution, 1984



The cabinet which in Zanzibar referred as the Revolutionary Council is composed of by the President, the First and Second Vice Presidents and other 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.⁵⁹⁷The Attorney General of Zanzibar who is appointed by the President becomes an ex-officio member of the Revolutionary Council of Zanzibar.⁵⁹⁸

As said above, Zanzibar adopted multiparty system in 1992, and had gone through general elections five times from 1995 to date. For the first time of the elections history since 1992, Zanzibar had undergone two general elections within six months. It is because the entire general election of 2015 was nullified by the Chairman of Zanzibar Electoral Commission (ZEC) on the ground of irregularities and therefore, the election was re-run on 20th March, 2016. The issue whether the Chairman had power to nullify the entire election or the entire electoral process remained disputed, since there was no explicit provision for the same in any law of Zanzibar.⁵⁹⁹The Civic United Front(C.U.F) who found itself as was the winner on the nullified election of 2015, despite no official results were declared by ZEC, did boycott the re-run election of 2016, and therefore, the ruling party, Chama cha Mapinduzi (CCM) is still ruling the country.

To solve the confusion happened in 2015, the government had established the new Elections Act (Act. No.4 of 2018) to repeal the previous Elections Act, No.11 of 1984. The New Elections Act among others had vested power to the Election Commission to nullify an entire election results or any part of it on the ground of irregularities, abuse or violation of election process. Section 14(1) and (2) of the said Act stipulates:

“Where the Commission is satisfied prior to declare the election results that there has been irregularities, abuse or violation of elections process; or

⁵⁹⁷Section 43(1) and (2) of the Zanzibar Constitution, 1984.

⁵⁹⁸ Section 43(3) of the Zanzibar Constitution, 1984

⁵⁹⁹ European Union Election Observation Mission, United Republic of Tanzania Final Report of General Elections 2015, p.42



Where there is a tying of results between the candidates who obtained the highest votes; the Commission shall either suspend or nullify the elections or any part thereof, and shall declare another date for Re-run elections.”⁶⁰⁰

⁶⁰⁰Section 14 of Act, No.4 of 2018



CHAPTER TWO

CIVIL RIGHTS

Introduction

"Civil rights" refer to personal liberties that belong to an individual, owing to his or her status as a citizen or resident of a particular country or community. They are a class of rights that protect individuals' freedom from infringement by governments, social organisations and private individuals. They ensure one's ability to participate in the civil and political life of the society and state without discrimination or repression.⁶⁰¹ Civil and political rights constitute the first part of the Universal Declaration of Human Rights (UDHR) of 1948, whereas economic, social and cultural rights form the second part of the Declaration. These are known as the first generation of human rights, pointing to their significance to people.

Civil rights include the ensuring of peoples' physical and mental integrity, life and safety; protection from discrimination on grounds such as race, gender, national origin, colour, age, political affiliation, ethnicity, religion, sexual orientation, gender identity, and disability and individual rights such as privacy and the freedoms of thought, speech, religion, press, assembly, and movement.

This chapter discusses the situation of fundamental civil rights in Zanzibar in the year 2018. These rights are: right to life; freedom of opinion and expression; rights to equality before the law and effective remedy; right to liberty and personal security; and freedom from torture.

2.1. Right to Life

Introduction

Right to life is the most important of all human rights. This is the cornerstone of human rights. Right to life lays the foundations for enjoyment of other human rights. It is therefore understandable that all

⁶⁰¹. Paul Sieghart, *The Lawful Rights of Mankind: An Introduction to the International Legal Code of Human Rights*, Oxford University Press, 1985, p. 5. See, generally: https://en.wikipedia.org/wiki/civil_and_political_rights



important human rights provide for the protection of the right to life.⁶⁰² 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. Article 3 of the Universal Declaration of Human Rights of 1948, provides that:

“Everyone has the rights to life, liberty and security of person.”

This provision is echoed in even more elaborate terms in 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 the African Charter on Human and Peoples' Rights 1981, the provision on the right to life is very brief, but to the point. It states:

Human rights are inviolable. Every human being shall be entitled to respect for his life and integrity of his person. No one may be arbitrarily deprived of this right.⁶⁰³

Though not so clearly put, right to life under the African Charter is not absolute. What seems to be prohibited under the Charter is an arbitrary killing. This position implies that right to life may still be deprived under certain circumstances which do not amount to arbitrariness.

As far the Zanzibar legal system is concerned, protection of right to life is covered under Section 13 of the Constitution of Zanzibar, 1984. The Section makes provisions that:-

13 (1) Every person has the right to the preservation of his life.

(2) Every person has the right to live and to the protection of his life by the society in accordance with the law.

In the year 2018, the right to life continued to be affected by incidents or threats of mob violence, extra-judicial killings, death penalty and road accidents. However, based on the reported incidents, the overall situation of right to life slightly improved in 2018, as fewer incidents of mob violence

⁶⁰² Chris Maina Peter, Human Rights in Tanzania: ..., op. Cit., p. 25.

⁶⁰³ Article 4, African Charter on Human and Peoples' Rights 1981.



and road accidents were report, while ZLSC did not receive reports of extra-judicial killings or death penalty.

2.1.1. 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.⁶⁰⁴ The major cause of mob violence is lack of faith in the justice system of Zanzibar. Corruption (including favouritism), incompetence and irresponsible tendencies, among other factors, have contributed to somewhat crippling the criminal justice system.⁶⁰⁵ Many law enforcers in Tanzania, including Zanzibar, 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. 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.

One reason behind the apparent rampant increase in crimes such as sexual violence against women and children, robbery and stealing, road traffic offences, among others, is perceived to be the failure of the country’s justice system; with its natural result to having social groups developed to dispense their own systems of mob justice.

In 2018, Zanzibar Legal Services Centre (ZLSC) was able to record a few incidents of mob violence in Zanzibar. One such incident occurred in February 2018 at Maziwani area, where a resident of the area - Nassor Abdalla Nassor (22) – was severely beaten by an angry mob after being accused of stealing from a civilian in Mzambarauni Patini – Wete District. Fortunately, the police were able to intervene in time to prevent his death, who then rushed him to the district hospital.

⁶⁰⁴ Zanzibar Human Rights Report 2016.

⁶⁰⁵ See: “How Corrupt, Failed Criminal Justice System Fuels Mob Killing”, an Article in The Citizen (Tanzania News Paper), Friday, February 21, 2014.



2.1.2. Extra-judicial Killings

It is acceptable all over the world that extra judicial killings constitute violation of human rights, as this is identified under international law, regional and municipal laws of many countries. In curbing the extra judicial killings, the International laws oblige the respective state to bring to justice people who have been identified as having participated in extra-judicial killings and other unlawful killings committed in their states.⁶⁰⁶ And the superior officers or other public officials who did not obey the said laws, shall be held responsible, since they knew or 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.⁶⁰⁷

In 2018, ZLSC did receive or record any reported incidents of extrajudicial killings.

2.1.3. Death Penalty

The death penalty is a government sanctioned practice whereby a person is put sentenced 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 are provided for under the law. It is inflicted when a person is convicted of offences either of murder, treason or any other such offences punishable by death sentence.⁶⁰⁸

Death penalty is considered to be one of the most controversial issues in almost all judicial and political systems. There are movements almost all over the world both for abolition, retention or introduction of this form of punishment.⁶⁰⁹ The debate on the death penalty is complicated one on the fact that most States consider this form of punishment to be a purely municipal or domestic issue which is best dealt with under the respective criminal regime. Those arguing for the retention of the death penalty say

⁶⁰⁶ See: Principle 19 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

⁶⁰⁷ *ibid*

⁶⁰⁸ LHRC and ZLSC, Tanzania Human Rights Report, 2016.

⁶⁰⁹ Chris Maina Peter, Human Rights in Tanzania: ..., *op. cit.*, p.27.



that this form of punishment is the only means of dealing with incorrigible individuals and a general deterrent from crime.⁶¹⁰ This penalty has also received ideological justification from the main religions, in our case Christianity and Islam. Many believers would not wish to question anything which they consider to have been sanctioned by their religion as taught by their religious leaders.⁶¹¹ In penological terms, capital punishment is a reflection of retributive justice, embodying the ancient maxim of ‘an eye for an eye, a tooth for a tooth.’ It is based on vengeance channelling public outrage into a legalized form of punishment. It is argued by its proponents that, in its absence, outraged people may be forced to seek vengeance through mob justice or individualized forms of revenge. These are, however, mere impressions not supported by any data.⁶¹²

For those arguing against the death penalty and its abolition argue that this form of punishment is unacceptable as it is irrevocable once it has been carried out, even by judicial mistake. Death penalty also found unacceptable as being a cruel, inhuman and degrading punishment; and that it offends the right to human dignity in the course of executing the sentence; the death penalty infringes the right to life; and it is not in public interest.⁶¹³

In 2018, the situation of death penalty in Zanzibar continued to be threatened by law imposing death sentences. In August 2018, the High Court of Zanzibar imposed a death sentence on Abdallah Mohamed Kangoba (43) after convicting him of attacking his wife and killing her in 2013 in Donge Mtabile Village, Unguja North Region. This was the only death sentence that ZLSC was able to record for the year 2018, which makes it a total of two prisoners who are in death row in Zanzibar’s Institute of Offenders’ Education.

⁶¹⁰ Jayewardene, C.H.S., *The Penalty of Death: The Canadian Experiment*, Lexington: Lexington Books, 1977, p. 9.

⁶¹¹ Simon Coldham ‘Criminal Justice Policies in Commonwealth Africa: Trends and Prospects’ Vol. 44 No. 2 (2000) *Journal of African law*, OUP 218-238

⁶¹² Ibid.

⁶¹³ Chris Maina Peter, *Human Rights in Tanzania: ...*, op. cit., p.29 and p. 43.



2.1.4. Road Accidents

The problem of road accidents in Zanzibar continued to be a serious issue in 2018. 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 peoples' lives more than diseases which are normally treated in Zanzibar hospitals. These accidents are usually caused by reckless behaviour and negligence on the part of motor vehicle drives, hence jeopardizing right to life.

For the year 2018, ZLSC was able to document several incidents of road accidents. One such accident occurred in Mkanyageni-Pemba, leading to death of one person and causing serious injuries to eight other people, who had to be rushed to a nearby hospital for treatment. Onlookers reportedly commented that the passenger vehicle was in high speed; and the driver lost control and hit a tree on the side of a road. The vehicle was speeding with another passenger vehicle. The police force in Zanzibar commented that most accidents in Zanzibar are caused by reckless driving and over speeding; and noted that the drivers of the passenger vehicles who caused and contributed to the accident were arrested and will brought to justice.



Picture 16: A passenger vehicle which was involved in road accidents, killing one person and injuring eight others, in Mkanyageni-Pemba

In another incident, a 30-year-old resident of Chanjaani in Chakechake, Mohamed Ali Mohamed, reportedly drove a car while drunk and caused an accident in April 2018. His reckless driving in a stated of intoxication resulted into a death of one person and injuries to 3 others. The accused person was arrested and arraigned in Chakechake Court, where he received a 7-year jail term.



Picture 17: A car involved in a road accident caused by a driver who was drunk in Chanjaani -Chakechake

In another incident, a motorcycle driver - Mohamed Ahmed Tafuta (aged 50 years), resident of Uwandani in Chakechake District was killed in a road accident. It was reported that the motorcycle driver was hit by a passenger bus which was over speeding in one of the feeder roads in Uwandani area. One of the people who witnessed the incident said, “I thought the car was being chased by police, because it was in such a high speed, while the road is not even a main road. It is not normal for a car to be driven in such high speed in a feeder road.”



Picture 18: The motorcycle which was hit by a car in Uwandani - Chakechake District, resulting to the death of the driver

Conclusion and Recommendations

Right to life is the most fundamental human rights. As such, the Government needs to intensify efforts to ensure this right is protected by addressing threats posed by issues such as mob violence, extra-judicial killings, death penalty and road accidents. Corruption within the justice system must be addressed in order to restore peoples' faith in the in police and courts of law.

The laws are there, but what is lacking is effective implementation and respect for rule of law by both citizens and state officials or public servants. As such, the Government must ensure effective realization of laws and respect for rule of law. Police and judicial officers must refrain from corrupt tendencies in order to ensure justice. Citizens are also encouraged to refrain from taking matters into their own hands, instead trust the justice system and seek assistance, including from NGOs, to ensure justice is done. Citizens should also obey the law and exercise their duty to report crime in order to preserve and protect human rights.

2.2. Freedom of Opinion and Expression

Introduction

Freedom of expression is defined as a right to communicate one's opinions and ideas to anyone who is willing or entitled to receive them. It includes any act of seeking, receiving and imparting information or ideas regardless



of the medium of the information used.⁶¹⁴ This right is provided for and protected under various international and regional human rights instruments, such as the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966 and the African Charter on Human and People's Rights (ACHPR) of 1981.

Under its Article 19, the UDHR provides that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

This right under the UDHR is given legal force under Article 19 of ICCPR, which states:

Everyone shall have right to hold opinions without interference and everyone shall have right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds regardless of frontiers either orally, in writing or in print.

ACHPR, which is specific for African countries, provides for the right to freedom of expression as follows:

1. *Every individual shall have the right to receive information.*
2. *Every individual shall have the right to express and disseminate his opinion within the law.*
- 3.

Freedom of expression is also protected domestically under the Constitution of Zanzibar of 1984. Section 18 of the Constitution provides that:

(1) Without prejudice to the relevant laws of the land, every person has the right to freedom of opinion and expression, and to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers and also has the right of freedom from interference with his communications.

⁶¹⁴ ZHRR 2015, P.73



(2) Every citizen has the right to be informed at all times of various events in the country and in the world at large which are of importance to the lives and activities of the people and also of issues of importance to society.

Several principles under international law allow some restrictions on such rights and freedoms but only where they meet certain thresholds or restrictive conditions. Interference with the right to freedom of opinion or freedom of expression has to qualify as being “necessary in a democratic society” and to the extent strictly required to achieve the legitimate aim sought to be achieved.” In other words, a state must not only demonstrate that its interference with a person’s right meets a “pressing social need” criteria but also it is proportionate to the legitimate aim pursued, which appears to be necessary in a democratic State.⁶¹⁵ Zanzibar Government action to restrict freedom of opinion and express must thus mee these conditions, but in practice these conditions are usually not met, hence arbitrary interference with this fundamental human right.

In 2018, the situation of freedom of opinion and expression in Zanzibar continued to be threatened by several restrictive laws. These laws include the Registration of News Agents, Newspaper and Books Act 1988, which provides discretionary power to the Minister concerned to ban or close down any newspaper under given circumstances.⁶¹⁶ Generally, the freedom of expression continued to be restricted, especially expression of opinions on political issues. Also, as was the case in 2017, political rallies - a key platform to exercise freedom of expression - continued to be banned, allegedly to ensure maintenance of peace and security.

2.2.1. Media Freedom

Under Article 19 of the United Nations Declaration of Human Rights 1948, freedom of expression is recognized to be one of the fundamental human rights.⁶¹⁷ Under the provision, everyone has the right to freedom of opinion and expression. This right includes the right to hold opinions without

⁶¹⁵ ZHRR 2015, p.74

⁶¹⁶ Section 30(1) of the News Agents, Newspaper and Books Act, 1988.

⁶¹⁷ UN General Assembly Resolution 217A (III), adopted 10 December 1948.



interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Furthermore, Article 19 of the International Covenant on Civil and Political Rights (ICCPR)⁶¹⁸ guarantees the right to freedom of opinion and expression in very similar terms to the UDHR. These guarantees are not absolute. They allow some restrictions on the right to freedom of opinion and expression, but only to the extent that is prescribed by law, in pursuance a legitimate aim, and is necessary in a democratic society.

As narrated in the preceding part, in Zanzibar, the right to freedoms of opinion and expression is provided for under Section 18 (1) of the Constitution of Zanzibar 1984. The question is, then, whether the right to freedom of press may be inferred from the existing provision on the right to the freedom of expression? Othman Masoud,⁶¹⁹ in his paper titled “*Legal and Regulatory Framework of the Media in Zanzibar*”, having cited several decided cases from India, concluded that freedom of speech and right of information enshrined in the Zanzibar Constitution 1984 cover also the right to free press.

It is well noted that Subsection (2) of section 18 of the Zanzibar Constitution 1984 guarantees every citizen with a right to be informed of various events in the country and in the world at large which are important to the society. Thus, right to excess of information is impliedly part and parcel of the fundamental right to freedoms of opinion and expression, under section 18 of the Zanzibar Constitution 1984. But, how restricted is the right to freedom of information under the Zanzibar legal system?

In 2018, realisation of the right to media freedom in Zanzibar continued to be affected by a number of factors, most notably: self-censorship; limited access to information; journalists operating in fear due to restrictive laws, including the Online Content Regulations – which were introduced in 2017; and concerns over the independence of the broadcasting regulatory body.

⁶¹⁸ UN General Assembly Resolution 2200A (XXI), 16 December 1966, in force 23 March 1976.

⁶¹⁹ Othman Masoud Othman, “*Legal and regulatory framework of the Media in Zanzibar*”, pg. 1 and 2, a paper presented in the Media Council office of Tanzania Zanzibar Office on the Occasion of World Press Freedom Day 3rd. May 2008.



Regarding self-censorship, restrictive laws introduced starting 2015, such as the Cybercrimes Act of 2015, the Media Services Act of 2016 and the Statistics Act of 2015 (as amended in 2018), continued to put pressure on journalists to practice self-censorship for fear of facing jail terms and hefty fines for violations of the provisions of these laws. This has made journalists to take too much time and care in deciding what to air or publish. They are also forced to not contradict the wishes of their bosses (media outlet owners) for fear of losing their jobs. Authorities continued to possess power to largely control media content. Existence of this environment means journalists operating in fear of repercussions and not knowing or being sure if they would get in legal trouble for broadcasting or publishing certain information, given the wide interpretation of vague provisions in the laws and prohibitions and conditions which are not in line with the international standards on freedom of expression. Arbitrary restrictions on this fundamental freedom contravene the International Covenant on Civil and Political Rights (ICCPR) of 1966, the African Charter on Human and Peoples' Rights (ACHPR) of 1981, and other regional and international human rights conventions that Tanzania (including Zanzibar) has ratified. It is also contrary to the Declaration of Principles of Freedom of Expression in Africa.⁶²⁰

Limited access to information also affected media freedom in Zanzibar in 2018, including information from government authorities. Restrictive laws such as Cyber Crimes Act and Online Content Regulations also affected flow of information between the people and the journalists, including whistle-blowers.

⁶²⁰ Adopted in 2002 by the African Commission on Human and Peoples' Rights.



In its 2017 Zanzibar Human Rights Report, ZLSC highlighted that the Zanzibar Broadcasting Policy does not guarantee the independence of broadcast regulatory body, which is not in line with the African Charter on Broadcasting of 2001. According to the Charter, any public authority that exercises powers in the areas of broadcast or telecommunications regulation be independent and adequately protected against interference, particularly of a political or economic nature.⁶²¹

Restrictions on media freedom in Tanzania Mainland and Zanzibar, through government action and restrictive laws, contributed to Tanzania further dropping in the World Press Freedom Index of 2018. Reporters Without Borders (RSF) is an international NGO that promotes and defends the freedom to be informed and to inform others throughout the world. It's 2018 World Press Freedom Index shows decline in press freedom in various parts of the world, including Tanzania. According to the report, Tanzania has further dropped in the index by 10 places, from 83rd in 2017 to 93rd in 2018, having dropped by 12 places in 2017.

93in the 2018 World Press
Freedom Index**RANKING**

↓ **-10**
83 in 2017

GLOBAL SCORE

= **0**
30.65 in 2017

ⓘ Ranking since 2013

2.2.2. Access to Information

Access to information is a key component of freedom of expression. According to the Report of the UN Special Rapporteur on Freedom of Opinion and Expression of 2000, public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information.⁶²² It also provides that all public bodies should

⁶²¹ See the African Charter on Broadcasting at <http://archive.niza.nl/docs/200207191410309398.pdf>

⁶²² See UN Commission on Human Rights, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, submitted



be required to establish open, accessible internal systems for ensuring the public's right to receive information; the law should provide for strict time limits for the processing of requests for information and require that any refusals be accompanied by substantive written reasons for the refusal; and the cost of gaining access to information held by public bodies should not be so high as to deter potential applicants and negate the intent of the law itself.⁶²³

Arbitrary restrictions on freedom of expression imposed by laws and regulations mentioned above are contrary to international standards on such freedom as contained in international and regional instruments such as the International Covenant on Civil and Political Rights (ICCPR), the Declaration of Principles on Freedom of Expression in Africa and African Declaration on Internet Rights and Freedoms. Introduction of the Electronic and Postal Communications (Online Content) Regulations 2017 (popularly known as the Online Content Regulations) further compounded the problem of access to information in both Tanzania Mainland and Zanzibar in 2018.

The Online Content Regulations contains some important provisions and minimum standards geared towards protecting online users from extremism and hate speech, as well as protecting children online. They also promote online user responsibilities and digital security practices.⁶²⁴

However, the Online Content Regulations also contain provisions that have been found to arbitrarily restrict freedom of expression, including right to information. In July 2018, the African Commission on Human and Peoples' Rights, which is based in Banjul-Gambia, issued a press release on the growing trend on stringent regulation of the internet in East African States. For Tanzania, the Commission was particularly concerned with the adoption the Electronic and Postal Communications (Online Content)

in accordance with Commission resolution 1999/36 , 18 January 2000, E/CN.4/2000/63, available at: <https://www.refworld.org/docid/3b00f3e10.html> [accessed 16 January 2019]

⁶²³ Ibid.

⁶²⁴ See CIPESA, Analysis of Tanzania's Electronic and Postal Communications (Online Content) Regulations 2017, at <https://cipesa.org/2017/11/analysis-of-tanzanias-electronic-and-postal-communications-online-content-regulations-2017/>, accessed 20th January 2019.



Regulations 2018.⁶²⁵ Analysis of the Online Content Regulations by various stakeholders, both domestic and international, shows that regulations contain the following problematic provisions:

- Unclear, ambiguous definitions and words or phrases: Some of the provisions on definitions, prohibitions and obligations are ambiguous or unclear, hence subject to misinterpretation and abuse and with potential to arbitrarily restrict freedom of expression. Examples include words/phrases like hate “speech”, content that causes annoyance”, content likely to mislead or deceive the public”, and “current standards of accepted behaviour.”
- Too much power vested in the regulatory authority (Tanzania Communications Regulatory Authority): The regulations grant the regulatory authority too much power, including power to remove prohibited content. These powers may promote fear to exercise freedom of expression on the internet. The powers amount to infringement of right to privacy and prevent people to share information anonymously.
- Imposing too much and intrusive obligations on content service providers: The regulations burden content service providers with obligations to moderate and filter content. This obligation is hectic and contrary to the Declaration of Principles of Freedom of Expression in Africa of 2002. According to the Online Content Regulations, an online content provider has obligations to: use moderating tools to filter prohibited content; have in place mechanisms to identify source of content; and ensure prohibited content is removed within twelve hours upon being notified.⁶²⁶
- Registration, licensing and fee requirements: Under the Regulations, registration and licensing of bloggers is mandatory. Bloggers are also required to pay annual fees and other fees. Application fee is Tshs. 100,000, initial license fee is Tshs. 1,000,000, annual license fee is

⁶²⁵ African Commission on Human and Peoples’ Rights, Press Release on the growing trend of stringent regulation of the internet in East African States, 12 July 2018 at <http://www.achpr.org/press/2018/07/d409/>, accessed 19th December 2018.

⁶²⁶ See Regulation 5(1) of Electronic and Postal Communications (Online Content) Regulations 2017.



1,000,000 and renewal is Tshs. 1,000,000. These fees are too much for earning of many bloggers.

- Severe punishment for failure to comply with regulations: All offences prescribed in the regulations carry a uniform punishment; which is a fine of not less than Tshs. 5 million or imprisonment of not less than 1 year, or both.⁶²⁷
- Internet café owners to install video cameras and record activities of internet users and keep recordings for at least a year: The Regulations require owners of internet cafes to install surveillance cameras to record and archive activities of internet users and keep the recordings for at least 12 months. This requirement is asking too much of the owners and serves to arbitrarily limit access to internet and information and contrary to the Joint Declaration on Freedom of Expression and the Internet.⁶²⁸

Conclusion and Recommendations

The overall situation of freedom of expression in Zanzibar in 2018 has contributed to majority of people in Zanzibar questioning the quality of media reports. Freedom of expression is key for development and the fight against corruption in Zanzibar. It is therefore in the Government's best interest not to interfere with realisation of this fundamental human right, including through enactment of restrictive laws. Freedom of expression in Zanzibar was affected by application of restrictive laws such as Cyber Crimes Act, Media Services Act and Statistics Act, as well as introduction of the Online Content Regulations.

⁶²⁷ See Regulation 18 [Any person, who contravenes the provisions of these Regulations, commits an offence and shall, upon conviction be liable to a fine of not less than five million Tanzanian shillings or to imprisonment for a term of not less than twelve months or to both]

⁶²⁸ See the Joint Declaration on Freedom of Expression and the Internet (signed by The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information) at <https://www.osce.org/fom/78309?download=true>, accessed 29th December 2018



To improve the situation of freedom of expression in Zanzibar, ZLSC recommends the following:

- ⇒ The Government of the United Republic of Tanzania to amend and review laws that restrict freedom of expression and make relevant amendments in order to guarantee such freedom;
- ⇒ Government and regulatory body officials should refrain from arbitrarily interfering with freedom of expression and ensure journalists operate in a friendly environment and not operate in fear;
- ⇒ The Government to ensure that public and private media are regulated by a body that is independent of political interference;
- ⇒ The Government, through Ministry of Information, Tourism and Archives, to move to amend unclear and unambiguous definitions and working in the Online Content Regulations; and
- ⇒ Media practitioners and owners to abide media ethics and seek judicial remedy when they feel their rights have been violated.

2.3. Rights to Equality before the Law and Effective Remedy

Introduction

Equality before is one of the basic characteristics of the rule of law doctrine. Equality before the law entails that no one is above the law. That is every man, whatever his rank or position or place in society is subject to the law of the land and amenable to the jurisdiction of the courts and tribunals established by law.⁶²⁹

In other words, the rule of law demands further that all subjects should be treated equally before the law. Equality before the law then means that all classes of people in a civil society should be treated alike by the law itself and before all law enforcement bodies and agencies which are created by the law.⁶³⁰

Rights to equality before the law and effective remedy are guaranteed and protected under various regional, continental and international human rights instruments. These include the Universal Declaration of Human Rights (UDHR), the African Charter on Human and Peoples' Rights

⁶²⁹ Chris Maina Peter, *Human Rights in Tanzania ...*, op. cit., p. 304.

⁶³⁰ *Ibid*, p. 377.



(ACHPR) and the International Covenant on Civil and Political Rights (ICCPR).⁶³¹ This right is also guaranteed under the Constitution of Zanzibar, 1984, which provides under Section 12 that: “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.”

2.3.1. Access to Justice

The right to equal access to justice is a key component of equality before the law. 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. This principle is 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.”⁶³²

Access to justice is a key component of rule of law and the international community has recognized **“the right to equal access to justice for all”** and committed itself to **“taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid.”⁶³³** Key conditions for access to justice include: availability of independent and impartial courts and tribunals; good laws; courts/tribunals to be accessible and have sufficient resources to administer justice; availability of qualified lawyers for legal representation; and fair trial and timely justice.

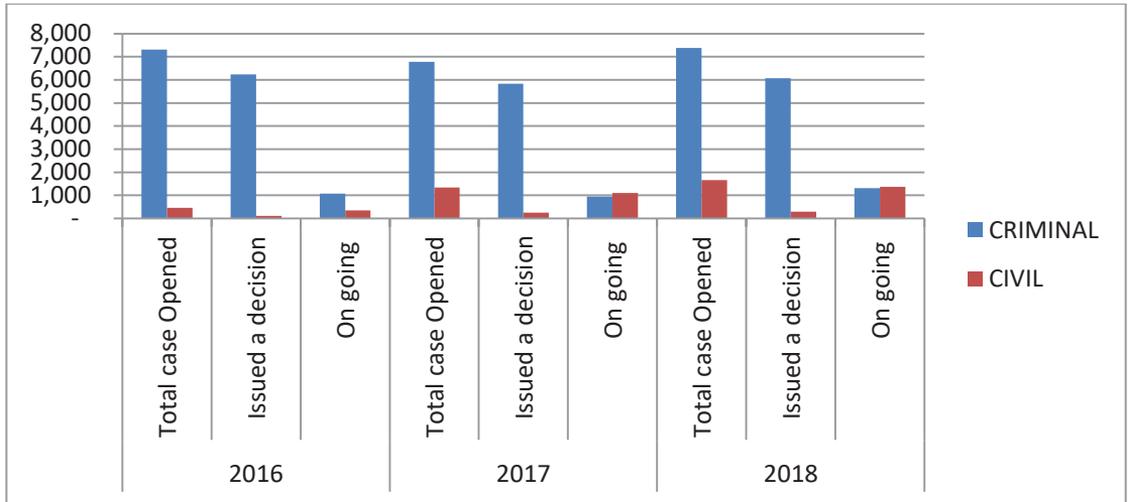
⁶³¹ Article 3 of ACHPR; Article 14 of ICCPR; and Article 10 of UDHR.

⁶³² See Article 7 of the Universal Declaration of Human Rights 1948.

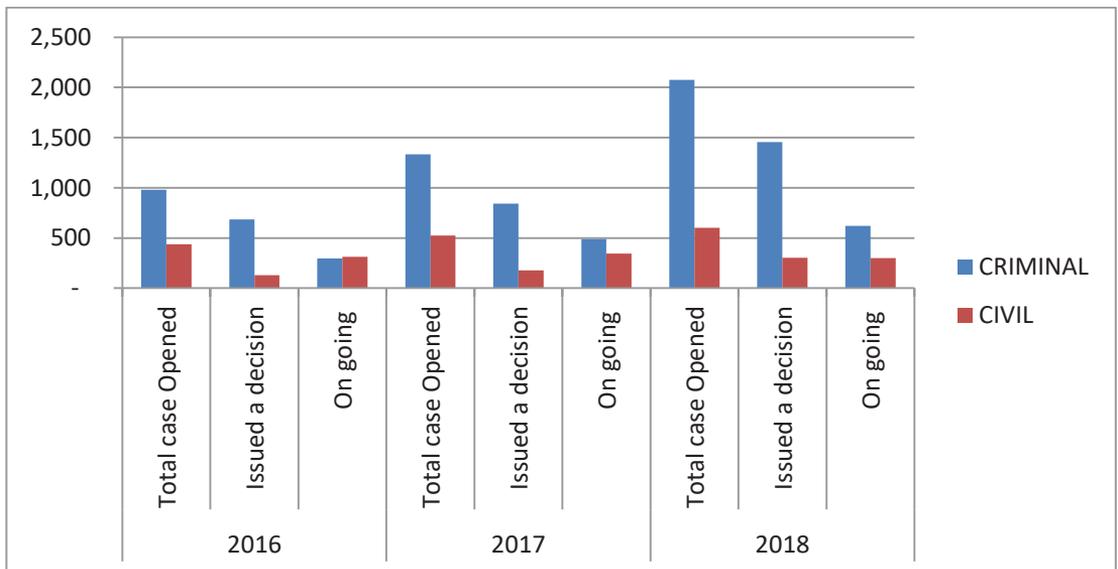
⁶³³ See Para 14 of the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, Resolution adopted by the General Assembly A/RES/67/1, Sixty-seventh session, 30 November 2012, available at <https://www.un.org/ruleoflaw/files/A-RES-67-1.pdf>, accessed 29th December 2017.



In 2018, the Government and Judiciary of Zanzibar continued to take steps to improve access to justice in Zanzibar. These include renovation of the Mkaoni District Court; provision of trainings for new judicial staff; and using ICT to entertain proceedings in courts of law, including video conferences and electronic filing system. The chart below shows the case flow from Unguja Courts.⁶³⁴



The chart below shows the case flow from Pemba Courts.⁶³⁵



⁶³⁴ Source from the Office of Court Registrar.

⁶³⁵ Ibid.



In 2018, access to justice in Zanzibar was mainly boosted by proposed Legal Aid Act, which seeks to extend legal aid to different parts of the isles. According to the Principal State Attorney, Saleh Mubarak, and Director of Public Prosecutions (DPP), Ibrahim Mzee, free legal aid will be provided to all poor people in Zanzibar, except those charged with economic crimes or cases of sexual offences, drugs and corruption.⁶³⁶ The Legal Aid Act will enable legal recognition of all providers of legal aid, who will be registered and provided with certificates.

While the proposed Legal Aid Act served to boost access to justice in Zanzibar, this right continued to face several challenges in 2018, akin to those faced in Tanzania Mainland. These challenges include violation of rights of accused persons, including denial of bail; high costs of effective legal representation; corruption within the justice system (police and courts of law); low awareness about human rights, laws and legal procedures; delays in administration of justice (investigations and prosecutions); and shortage of resources and facilities within the Judiciary.

For the Financial Year 2017/2018, lack of Office of Attorney General in Pemba was found to affect access to justice for residents in the island, forcing them to access such services in Unguja.⁶³⁷ In Pemba, the Judiciary is faced with the several challenges, including: court buildings being in poor/dilapidated condition; shortage of judicial staff; budgetary constraints; shortage of vehicles; and witnesses refusing to come forward and give their testimonies.⁶³⁸ Mkokotoni District Court was also found to be faced with challenges such as poor conditions of buildings; shortage of offices; shortage of facilities such as chairs and tables; and delays in investigation of cases. Similar challenges are faced by Konde District Court, hence negatively affecting access to justice for residents of the district. Moreover, in 2018 the Office of the DPP continued to be faced with challenges such as:

⁶³⁶ See "Tanzania: Zanzibar Govt Plans to Provide Free Legal Aid" Daily News Newspaper, 23 November 2018 at d: <https://allafrica.com/stories/201811230853.html>, accessed

⁶³⁷ See RIPOTI YA KAMATI YA KUDUMU YA SHERIA, UTAWALA BORA NA IDARA MAALUM YA BARAZA LA WAWAKILISHI KWA MWAKA WA FEDHA 2017/2018, at <http://www.zanzibarassembly.go.tz/files/documents/committee/All/1518687898.pdf>, accessed 23 November 2018.

⁶³⁸ Ibid.



shortage of motor vehicles; delays in disbursement of funds; and witnesses refusing to cooperate and testify in court.⁶³⁹

2.3.2. 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. However, the good working relationship to different CSOs which providing free legal aid in the Isles accommodate the needs. For instance, ZLSC, ZAFELA and ZLS provide legal representation and pro bono cases. ZLSC provides legal assistance and representation to 56 children have been attended to and assisted in the Institute of Education for Offenders by the Centre's Officers in Unguja.

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

⁶³⁹ Ibid.



can therefore be submitted that the lack of legal representation and legal aid contribute to the denial of the right to justice.

Nevertheless, in 2018, realisation of the right to legal representation continued to be mainly affected by high costs of effective legal representation. Another key challenge affecting right to legal representation in Zanzibar is shortage of state attorneys and advocates. In April 2018, the Director of Public Prosecutions (DPP), Ibrahim Mzee Ibrahim, revealed that shortage of state attorneys is a big challenge for his office, causing cases/proceedings in court to take long to conclude.⁶⁴⁰ He noted that crime is on the rise in Zanzibar and there are too many cases for available attorneys to effectively and efficiently handle.⁶⁴¹ The DPP further stated that there are only 57 attorneys operating in Unguja and Pemba.⁶⁴²

2.3.3. Rights to Fair Trial and Effective Remedy

The right to a fair trial is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms, the most prominent of which are the right to life and liberty of the person.⁶⁴³ It is guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR) which provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”⁶⁴⁴

Right to fair trial includes the right to legal representation, right to be heard, right to be presumed innocent until proven guilty and right to be tried without undue delay by **an independent, impartial and**

⁶⁴⁰ See Mwanajuma Mmanga “Watendaji watakiwa kusimamia utawala bora” 2 April 2018, at <http://zanzibarleo.co.tz/2018/04/02/watendaji-watakiwa-kusimamia-utawala-bora/>, accessed 23rd December 2018.

⁶⁴¹ Ibid.

⁶⁴² Ibid.

⁶⁴³ Lawyers Committee for Human Rights, “What is a fair Trial?”, A Basic Guide to Legal Standards and Practice, Issued in the United State of America, New York, 2000, p. 7. See, also, [<http://www.lchr.org>] and [<http://witness.org>].

⁶⁴⁴International Covenant on Civil and Political Rights [ICCPR], UN General Assembly resolution 2200A (XXI), December 16, 1966, entered into force March 23, 1976.



competent tribunal.⁶⁴⁵ Right to effective remedy is closely associated to the right to fair trial; and is also protected under the Constitution of Tanzania⁶⁴⁶ and international human rights instruments, including ICCPR.⁶⁴⁷

In 2018, realisation of the right to fair trial in Zanzibar continued to be hampered by high costs of legal representation. Since many people are poor and thus cannot afford good lawyers, they find it difficult to be well represented in court, which in turn affects the fairness of the trial. This also automatically affected the right to effective remedy as well. Another key issue which affected the right to fair trial in 2018 was delays in dispensation of justice. In February 2018, the Regional Commissioner of Kusini Pemba, Hemed Suleiman Abdalla, urged the Zanzibar Judiciary to ensure that the problem of backlog of cases in Zanzibar courts is addressed, so that cases do not take too long to conclude.⁶⁴⁸ Judge of the High Court of Zanzibar, Abdul-hakim Ameir Issa, urged fellow judges, magistrates and kadhis to ensure timely justice, by providing judgement within 60 days as required by law.⁶⁴⁹

Conclusion and Recommendations

Right to equality before the law is very important in realization of civil and political rights. People need to feel they are all equal before the law in order to freely enjoy their human rights. Access to justice is a key component of this right; and while government action boosted action to justice in 2018, several challenges remain to be a thorn in accessing justice for Zanzibaris. These challenges include violation of rights of accused persons, including denial of bail; high costs of effective legal representation; corruption within the justice system (police and courts of law); low awareness about human rights, laws and legal procedures; delays in administration of justice (investigations and prosecutions); and shortage of resources and facilities within the Judiciary. Similar challenges hinder effective realisation of the right to legal representation and right to effective remedy.

⁶⁴⁵ See Article 14 of ICCPR; Article 13 of Tanzania Constitution; & Article 7 of ACHPR.

⁶⁴⁶ Article 13(6) (a) of the Constitution of the United Republic of Tanzania 1977.

⁶⁴⁷ Article 2(3)(b) of ICCPR.

⁶⁴⁸ Zuhura Juma “Majaji, Mahakimu waambiwa, sikilizeni na toweni hukumu kwa wakati.....” 13 February 2018.

⁶⁴⁹ Ibid.



Government and Judiciary needs to intensify efforts to address challenges affecting access to justice, in order to make justice easily accessible by all people and boost the right to equality before the law. The anti-corruption body in Zanzibar, ZAECA, should work with the Judiciary and Police Force to address corruption in the justice system, which hinders effective realization of the right to equality before the law. CSOs should also play their part by raising legal awareness to the public and providing legal assistance.

2.4. Right to Liberty and Personal Security

Introduction

Right to liberty is provided for in Section 14 of the Constitution of Zanzibar, 1984. The provision guarantees the right of every person to be free and to live like a free person.⁶⁵⁰ It is also an essential human right, guaranteed under regional and international human rights instruments, including UDHR and ICCPR.⁶⁵¹ In order to preserve the personal liberty of an individual, in essence, the provision prohibits for any person to be arrested, jailed, kept in custody, detained, forcibly deported, or to be deprived of his freedom. The overall purpose of this section in Zanzibar Constitution is to ensure that no one should be dispossessed of his liberty in an 'arbitrary fashion'. The right also safeguards the individual against the illegal deprivation of liberty conducted in contrary to Section 14 of the Constitution of Zanzibar 1984. This constitutional provision also takes care of a situation where an individual does not exist alone, but as part of the community and hence the need to be sensitive of the rights and freedoms of the rest members of the society.⁶⁵² This means that the right to liberty is not absolute.⁶⁵³ Though the right is not an absolute one, its curtailment can only be done in limited circumstances. These include where it is expressly

⁶⁵⁰ See: Section 14 (1) of the Zanzibar Constitution 1984.

⁶⁵¹ Article 3 of UDHR; Article 9(1) of ICCPR.

⁶⁵² C.M. Peter, *Human Rights in Tanzania: Selected Cases and Materials*, Koln: Rudiger Koppe Verlag, 1997, p. 524.

⁶⁵³ D.J.Harris, M. O'Boyle, and C. Warbrick, *Law of the European Convention on Human Rights*, London: Butterworths, 1995, p. 97.



provided by law, or in the process of implementing a judgment or order or a punishment imposed by a court of law following a conviction.⁶⁵⁴

In 2018, right to liberty and personal security was threatened by a several incidents, reported in various parts of Zanzibar. These incidents, documented by ZLSC, include unknown people torching a house of a youth economic group called Kujikomboa Group, based in Wete District in Pemba in January 2018.



Picture 19: Some of the people who were abducted, reportedly tortured and later released in Mtambwe - Kaskazini Pemba

In another incident, reported in Mtambwe in Kaskazini Pemba Region, six people reported missing in April 2018. The missing persons, feared to have been abducted, are Thuwein Nassor (30), Khamis Abdalla Matar (22), Juma Kombo (17), Said Shanani (16), Khalid Khamis (29) and Abdalla Khamis (19). It was reported that they had been taken by about 15 people at night, some of whom were armed. Three of the abducted persons were released a few days later, on 8th April 2018, while the other three were released some few days after that. When questioned about their abductors, they noted that they could not identify them, but they might have been dumped at Kengeja area in the region. Others were found at areas such as Mzambarauni and Likoni areas. Most of them appeared to have been tortured and could not

⁶⁵⁴ Section 14 (2)(a) and (b).

stand or walk properly, while others could not even talk properly and had scars on their backs.

2.4.1. Freedom from Arbitrary Arrest and Detention

The meaning of the term detention differs from one jurisdiction to another and from different points in time.⁶⁵⁵ Essentially, it involves deprivation of personal liberty before conviction and, in most jurisdictions, it relates to pre-trial incarceration of the suspect or the accused person. For example, the accused is detained in police custody without being sent to court. That is, detention without trial.⁶⁵⁶

Article 9(1) of the ICCPR provides that “everyone has the right to liberty and security of person.” The liberty of a person has been interpreted narrowly, to mean freedom of bodily movement, which is interfered with when an individual is confined to a specific space such as a prison or a detention facility.⁶⁵⁷

Security has been taken to mean the right to be free from interference with personal integrity by private persons. Under Article 9(2) “No one shall be subjected to arbitrary arrest or detention” and “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” The principle of legality embodied in the latter sentence both substantively (“on such grounds”) and procedurally (“in accordance with such procedure”) mandates that the term “law” should be understood as referring to an abstract norm, applicable and accessible to all, whether laid down in a statute or forming part of the unwritten, common law. The prohibition of arbitrariness mentioned in the previous sentence serves to ensure that the law itself is not arbitrary, i. e. that the deprivation of liberty permitted by law is not “manifestly unproportional, unjust or unpredictable, and [that] the specific manner in which an arrest is made must not be discriminatory and must be able to be

⁶⁵⁵ Saito, Toyoji, “Preventive Detention in Japan” in Frankowski, S. and Dinah, Shelton (eds.), *Preventive Detention: A Comparative and International Law Perspectives*, London: Martinus Nijhoff Publishers, 1992, p. 169.

⁶⁵⁶ C.M. Peter, *op. cit.*, p. 579-580.

⁶⁵⁷ Nowak, Manfred, *Covenant on Civil and Political Rights: CCPR Commentary*, Ailing: N.P. Engel, 1993, p. 244.



deemed appropriate and proportional in view of the circumstances of the case.”⁶⁵⁸

In Zanzibar, there are several laws that ‘legalise’ detention without trial. These laws authorise certain category of functionaries in the executive arm of the State to detain individuals for specific period(s) or indefinitely for imagined commission of offences.⁶⁵⁹ For example, under Section 13 of the Regional Administration Act (No. 8), 2014, there is provided powers of the Regional Commission and District Commissioner to effect arrest and detention of individuals without trial under certain circumstances.

In Zanzibar legal system, the requirement to this effect is founded under Section 12 (6)(f) of the Constitution of Zanzibar 1984 which makes provisions that any person suspected of a crime shall be given opportunity to be defended by an advocate of his choice. Although literatures on Zanzibar practice in these aspects are not apparently available, there also seems to be no record of allegations of open violations of the individual’s rights as discussed in this part.

In 2018, ZLSC received 12 complaints on denial of bail and arbitrary arrest and detention, whereby 6 people were reported unlawfully detained for more than 12 days without being sent to court. This forced ZLSC to file a Chamber Summons under Certificate of Urgency in High Court to order, among other things, the release of the detainees from police custody and to prohibit the Deputy Director of Criminal Investigation Zanzibar from unlawfully detaining the applicant or any other persons for longer period than permitted by law. However, such incidents are usually not reported; and this could be attributed to fear among citizens to report such incidents; as such incidents have been relatively common in the past.

2.4.2. Right to Bail

Bail may generally be defined to mean a temporary release of an accused person upon certain conditions pending the finalisation of court

⁶⁵⁸ Ibid, p. 258.

⁶⁵⁹ C.M. Peter, op. cit., p. 594.



proceedings.⁶⁶⁰ It is like a conditional discharge in the sense that person's liberty at that particular time is tied up with bail conditions.

There are three types of bail. These are the police bail, bail pending trial and bail pending appeal. Under all situations, bail is considered to be a right of the person whose liberty is at stake pending the due process of the law. Though righteous in essence, the right to bail is not an absolute one as it granted in the exercise of court's discretion.

Bail as an aspect of criminal justice has a long history. While its origin could be traced in medieval justice, in the modern times, it is traced to the Magna Carter which provided, inter alia, that no free man shall be arrested or detained in prison unless by the law of the land.⁶⁶¹ In England, bail has also been related to Petition of Right of 1628; the Habeas Corpus Act of 1679 and the Bill of Rights of 1689.⁶⁶²

Presumption of innocence is one of the pillars of the rule of law doctrine. In substance, rule of law is one of the cardinal principles of the Zanzibar constitution which enshrined under Section 12(6)(b) of the Constitution of Zanzibar, 1984. The Section makes provisions that:

“no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence.”

IAs indicated above, in 2018, ZLSC received 12 complaints of relating to denial of bail; and managed to assist 10 clients to obtain bail. Furthermore, the Centre managed to assist all 98 children in conflict with law to be granted bail before the courts.

In 2018, right to bail was boosted by a warning by the Ministry of Home Affairs of the United Republic of Tanzania, Hon. Kangi Lugola, against police officers denying police bail and ordered that bail should be granted by police even during weekends.

⁶⁶⁰ Chris Maina Peter, Human Rights in Tanzania: ..., op. cit., p.527.

⁶⁶¹ Magna Carter, Chapter 39.

⁶⁶² Shaughnessy, E.J., Bail and Preventive Detention in New York, Washington D.C.: University Press of America, 1982, p.13.



Conclusion and Recommendations

The right to liberty is everyone fundamental right that prohibits the state and other individual to detain others without due process of law. Detention as contrary to liberty, on the reasons provided and subject to the provisions of law, may be applied to deter the liberty of others, should not be misused to deter the rights of others.

Right to bail, which is line with the principle and right to presumption of innocence, is essential for realisation of the right to liberty. Any criminal suspect should be granted bail as long as the crime for which he or she is charged with is bailable. This is a constitutional guarantee and should thus be respected and granted.

2.5. Freedom from Torture and inhuman or Degrading Treatment

Introduction

There are several definitions of torture. The internationally accepted definition of torture is that set out under Article I 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 investigation 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.’

The Tokyo Declaration made by the World Medical Association (WMA) in 1975 defines torture as:

The deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the order of



any authority, to force another person to yield information, to make a confession or for any other reason.⁶⁶³

With reference to the above definitions, 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 or by an individual or group of persons 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.⁶⁶⁴ 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.⁶⁶⁵

National and international legal prohibitions on torture derive from a consensus that torture and its similar ill-treatments are immoral, as well as impractical, and information obtained by torture is far less reliable than that obtained by other techniques. Despite these findings and international conventions, organizations that monitor abuses of human rights (e.g., Amnesty International, the International Rehabilitation Council for Torture Victims, Freedom from Torture, etc.) report widespread use condoned by states in many regions of the world.⁶⁶⁶

2.5.1. Torture by State

People face torture in many countries. Some are targeted for criticizing the authorities or because they take part in peaceful political activities, such as protesting or leafleting, or even because a friend or relative had done so. Other individuals are targeted because of aspects of their identity, like their originality, affiliation, sexuality, e.t.c. It has been established that wherever

⁶⁶³ Sorensen, Bent, "Medical Aspect of torture", in Cassese, Antonio (ed.), *The International Fight against Torture*, Baden-Baden: Nomos Verlag, 1991, p. 11.

⁶⁶⁴ www.ictj.org/definitor of torture (accessed on 20/11/2017)

⁶⁶⁵ Ibid.

⁶⁶⁶ https://www.freedomfromtorture.org/page/where_does_torture (accessed on 18th October, 2017).



and whenever torture happens, it intends to intimidate, silence and break people.⁶⁶⁷

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, as well as Article 5 of the ACHPR, condemn the acts of torture, inhuman or degrading treatment of human beings.

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.”

Incidence of torture has been a key issue in Zanzibar since the violence that erupted during the 2015 elections and re-run election, with many incidents of abductions and torture reported. In 2018, ZLSC documented five reports of torture by state officials. Two complaints were directed to police officers from Bububu Police Stations and 3 were for SMZ special departments (“vikosi”). However, no action has been taken in response to the acts of torture.

2.5.2. Torture by individuals

It is hard to find one precise definition of the term torture by individuals as it is simple to relate it by the state. In practice, torture can be carried out by individuals, as it is done by the group of people and by the state. The individuals can inflict torture against individual human being or against the group, as the same group of non-state officials can torture the individual, on several reasons including that of punishment, revenge, deterrence and coercion. Since every individual has the equal right to the respect of his dignity inherent in a human being and to the recognition of his legal status,

⁶⁶⁷ Ibid.



any form of torture, whether is done to the individual by the state or by his fellow individual is prohibited.⁶⁶⁸

It is common to get information of torture by state if you peruse the information relating to Zanzibar, but it is almost not common to get knowledge on what happens in the Zanzibar community on how the individuals are tortured by other individual persons or group. This might be caused by several reasons, not forgetting the culture of the people reside in Zanzibar are very kind and shy. It is hard for instance to get information on what and how wives are tortured by their husbands, but it is shame to find a husband narrating how he is tortured by his wife or wives.⁶⁶⁹

In 2018, ZLSC received report of abduction and torture of six people, resident of Mtabwe in Pemba North, who were reported missing in April 2018. It was reported that they had been taken by about unknown 15 people at night, some of whom were armed. When they were eventually released, most of them appeared to have been tortured and could not stand or walk properly, while others could not even talk properly and had scars on their backs. Moreover, in July 2018 it was reported by the relatives of Hamad Haji Juma, Juma Suleiman and Haji Khamis, islamic leaders (maimamu) were missing for more than 7 days and the police denied to have any information.

Conclusion and Recommendations

Zanzibar society had experienced the civil and political life since the coming of British who despite their merits, had divided people on political base and having granting their civil rights on the division of their wish. The political life that the people of Zanzibar do have today has been to its high percentage influenced by the past. Incidents of torture, whether by state or non-state actors are not acceptable; and legal action should be taken against perpetrators of torture. A key step towards addressing the problem of torture in Zanzibar would be for Tanzania to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), in order to safeguard freedom from torture.

⁶⁶⁸ Article 5 of the African Charter of Human and Peoples Rights

⁶⁶⁹ JUMAZA



CHAPTER THREE

POLITICAL RIGHTS

Introduction

Political rights are those rights that involve participation in the establishment or administration of a government; right to exercise franchise; right of holding a public office; and the right to engagement in political activities, generally. These rights are very important as they explain a sense of individual's right to belong to a given society.

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 (relevant to Zanzibar being part of Tanzania) 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.

Article 20 of the UDHR sets international standards for the exercise of righteous freedom of peaceful assembly and association. While Article 20(1) of the UDHR makes provision 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 individual⁶⁷⁰. But such assembly and association must be lawful, peaceful and should be exercised as of right or freedom and not under compulsion.

Furthermore, UDHR guarantees everyone the right to take part in the government of his country.⁶⁷¹ 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

⁶⁷⁰ Article 20(2) of UDHR, 1948

⁶⁷¹ Article 21 of UDHR, 1948



genuine elections which shall be by universal and equal suffrage; and shall be held by secret vote or by equivalent free voting procedure.

3.1. Freedom of Assembly and Association

The terms *freedom of assembly* and *freedom of association* may be used to distinguish between the freedom to assemble in public places and the freedom to join an association. Freedom of assembly is often used in the context of the right to protest, while freedom of association is used in the context of labor rights. Section 20(1) of the Constitution of Zanzibar, 1984 makes provisions that, save in his own free will, no person shall be prevented to exercise his freedom to assemble and associate with other persons in whatever manner he likes, and especially for establishing and become a member of workers' unions, human rights organizations, or other useful associations and that are legally accepted. That is, the right to associate and to assemble is voluntary, in the sense that one is allowed to form and join trade union, human right associations and any other association for his or her benefit. However, Section 20(2) provides for limitations in the exercise of these two rights, including in case of matters related to the interest of defense and security of the citizens, health aspects and those of society; and matters related to the preservation of right and freedoms of other persons.

In 2018, freedoms of assembly and association in Zanzibar were affected by a number of factors, including continued ban on political assembly, unless it is within a constituency of a politician; and introduction of the Political Parties Bill. These were the two factors that mainly affected freedoms of assembly and association in Zanzibar in 2018. Freedom of assembly continued to be limited due a ban issued by the President of the United Republic of Tanzania, Hon. John Pombe Magufuli in June 2016. The ban included also limiting internal meetings, unless specific authorization is granted.

In November 2018, the Parliament of the United Republic of Tanzania had the bill on Political Parties Act of 1992 tabled before it.⁶⁷² The bill proposed

⁶⁷² See Sharon Sauwa "Muswada wa vyama vya siasa watua rasmi bungeni" Mwananchi Newspaper, 16 November 2018, at <https://www.mwananchi.co.tz/habari/Kitaifa/Muswada->



several amendments to the Political Parties Act, which will serve to further limit freedoms of assembly and association for political parties. The bill was widely criticized by various stakeholders, including CSOs and opposition political parties such as CUF, ACT Wazalendo and CHADEMA, who called for changes to the proposed amendments so that they conform to the Constitution of the United Republic of Tanzania of 1977 and regional and international human rights standards. However, the Bill was passed by the Parliament without accommodating any changes. Provisions within the amendments which were found by stakeholders to be arbitrarily limiting freedoms of assembly and association include: vague provision, which leave loopholes for multiple interpretations and abuse; severe penalties for contravention of offences;⁶⁷³ disregard of the principles of natural justice; and discretionary powers of the Registrar of Political Parties, including policing and regulating of internal affairs of political parties.

On 9th December 2018, fifteen (15) opposition political parties issued a statement against the proposed bill to amend the Political Parties Act of 1992.⁶⁷⁴ The political parties include: ACT-Wazalendo, NLD, ADC, Chauma, Chadema, CTK, CUF, UDP and NCCR Mageuzi. Chadema Secretary General and Dr. Vicent Mashinji, noted that the Bill arbitrarily limits freedom of opposition political parties to collaborate in political activities and gives the Registrar of Political Parties immunity against legal proceedings and denies political parties an opportunity to challenge his decision within the justice system.⁶⁷⁵ Zitto Kabwe (Member of Parliament) from ACT Wazalendo mentioned that the Bill will lead to death of multiparty system in Tanzania.⁶⁷⁶ On his part, the Chairperson of Chaumma, Hashim Rungwe, expressed that opposition political parties had joined

[wa-vyama-vya-siasa-watua-rasmi-bungeni/1597296-4854784-format-xhtml-117016g/index.html](http://www.vyama-vya-siasa-watua-rasmi-bungeni/1597296-4854784-format-xhtml-117016g/index.html), accessed 12th January 2019.

⁶⁷³ For instance, a person who contravenes the requirement of conducting civic education or training to a political party and without approval of the Registrar is liable to a fine of not less than one million shillings but not exceeding five million shillings or to imprisonment for a term of not less than six months but not exceeding twelve months or to both.

⁶⁷⁴ See “VYAMA VYA UPINZANI VYATUMIA SIKU YA UHURU KUDAI UHURU” at <https://www.mzalendo.net/habari/vyama-vya-upinzani-vyatumia-siku-ya-uhuru-kudai-uhuru.htm>.

⁶⁷⁵ Ibid.

⁶⁷⁶ Ibid.



hands to strongly oppose the Bill because it infringes on constitutionally-guaranteed freedoms of assembly and association for political parties.

The limitation and interference of freedom of association and assembly in Zanzibar was also imposed on Kituo cha Katiba (KCK), which in collaboration with CSOs in Zanzibar, sought to conduct a validation meeting on the findings of a fact-finding on Zanzibar's Government of National Unity (GNU). The meeting was stopped on 8 August 2018 by police officers, citing the security reasons.

Conclusion and Recommendations

The situation of freedoms of assembly and association in 2018 was mainly affected by the proposed amendments of the Political Parties Act, which pose a threat for political parties. ZLSC recommends review of the amendments and all key actors to come together and reach a consensus on how best to protect freedoms of assembly and association for political parties, in both Tanzania Mainland and Zanzibar. The Police Force is also encouraged to objectively apply the Police Force and Auxiliary Services Act in relation to freedom of assembly in line with the Guidelines on Freedom of Association and Assembly in Africa and international human rights standards.

3.2. Right to Take Part in Governance

Introduction

This part examines two important governance issues relating to Zanzibar political society. These two issues are (i) right to vote and (ii) right to participate in political life.

3.2.1. Right to Vote

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.⁶⁷⁷ This right is subject to a number of limitations as provided under the Constitution. For example, one must prove, among other things, his residence, age and be in possession of a voter's identity card. The House of Representatives has been empowered to enact law(s)

⁶⁷⁷ Section 7 of the Constitution of Zanzibar 1984.



to regulate all matters necessary for the election to be conducted and the exercise of the right to vote.⁶⁷⁸

In October 2018, residents of Jang'ombe Constituency in Zanzibar participated in a by-election of a representative in the House of Representatives. CCM's Ramadhan Hamza Chande emerged the winner with 90.5% of the votes (6,581 votes). The Civic United Front (CUF), the main opposition party in Zanzibar, however, announced boycotting the by-elections, stating that participating in the by-election means accepting the results of general elections re-run of March 2016, which put President Dr. Ali Mohammed Shein in the Office.⁶⁷⁹

3.2.2. Right to Participate in Political Life

Section 9 of the Constitution of Zanzibar 1984, though providing a directive principle that cannot be upheld by courts,⁶⁸⁰ it deals with government and the people. It declares Zanzibar to be a democratic society. It acknowledges that the basis of 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.

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/herself 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.⁶⁸¹ 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.⁶⁸²

In 2018, the right to participate in political life in Zanzibar continued to be affected by the political tension which started after the 2015 general

⁶⁷⁸ Zanzibar Human Rights Report, 2016

⁶⁷⁹ See "CUF yaendeleza mgomo Zanzibar, yasusia chaguzi Jimbo la Jang'ombe" at <http://zanzibar24.co.tz/cuf-yaendeleza-mgomo-zanzibar-yasusia-chaguzi-jimbo-la-jangombe/>, accessed 20th November 2018.

⁶⁸⁰ Section 10A of the Constitution of Zanzibar 1984.

⁶⁸¹ Section 21 of Zanzibar Constitution, 1984

⁶⁸² Zanzibar Human Rights Report, 2016



elections – which faced several controversies following nullification of election results. Since then, there has been tension and political disagreements between leaders and members of the ruling party – CCM – and the main opposition party in Zanzibar, CUF.

ZLSC calls upon the leaders of CCM and CUF to sit and reconcile their differences in order to preserve peace and promote democracy ahead of the upcoming elections in 2019 and 2020. All issues which are controversial as well as complaints by opposition political parties must be addressed in order to guarantee and promote the right to participate in political life.

Conclusion and Recommendations

Right to take part in governance or participate in political life, as well as right to vote are essential and should be protected and promoted by the Government. As Tanzania heads into the elections in 2019 and 2020, it is important that these rights are safeguarded, in order to lay foundation for free and peaceful elections and avoid post-election violence like during the last elections. To this end, political tensions, especially between the ruling party (CCM) and the main opposition party (CUF) should be addressed.



CHAPTER FOUR

ECONOMIC RIGHTS

4.0 Introduction

Economic rights include right to own property and right to work. The International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees promotion of economic rights in an equal manner. Each State is duty bound to ensure progressive realization of economic rights to the maximum of its available resources. Economic rights include the right to own property, land being one of them; and the right to work. This highlights the situation of these key economic rights in Zanzibar for the year 2018.

4.1 Right to Own Property

Article 17 of the Universal Declaration of Human Rights of 1948 recognizes the right of everyone to own property alone as well as in association with others; and that they shall not be deprived of that right arbitrarily by anyone.⁶⁸³

Right to acquire land in Zanzibar is governed by various laws. The main laws are: the Constitution of Zanzibar of 1984; the Land Tenure Act 1992; the Land Acquisition Decree of 1909; the Acquisition of Land (Assessment of Compensation) Decree 1949; and the Town and Country Planning Decree 1955. Section 17 of the Constitution of Zanzibar declares that the government shall not acquire any private property, which in this sense includes immovable properties, unless that the acquisition is of 'utmost importance' and 'absolutely important' to legalise acquisition of a person's property.

Although the Constitution of Zanzibar 1984 directs the government, when it acquires the private lands for public interest, has to compensate a holder fairly and adequately,⁶⁸⁴ there exists no interpretation on what constitutes fair and adequate compensation. The Land Tenure Act 1992 declares that a

⁶⁸³ Article 17 of the Universal Declaration of Human Rights,

⁶⁸⁴ Section 17 of the Constitution of Zanzibar, 1984



holder would be compensated according to the market value and unexhausted improvements.⁶⁸⁵

In 2018, the situation of realization of the right to own property in Zanzibar was more or less the same as that of 2017. No significant events occurred to change the situation. Effective realization of this right continued to be threatened by climate changes, which have a negative impact on land use systems, resulting into both direct and indirect repercussions for land access and land tenure. An assessment conducted in 2016 indicates that shifts in climatic regions, rising sea levels and increases in extreme climatic events are likely to reduce the availability of land suitable for human settlement and agricultural production.⁶⁸⁶ This is due to 'temperature increase, sea level rise and associated flooding, and restrictions in water supply, leading to population migration and displacement and the need to adjust livelihood patterns to new circumstances.'⁶⁸⁷ Consequently, there will be increase competition for land, hence threatening land access and tenure for the majority of people.

In response to threats posed by climatic changes, the Zanzibar Government established the Department of Disaster Management, which is tasked with monitoring climate changes and improving information based on disasters. However, the department is faced with a number of challenges, including shortage of professional staff, shortage of relevant equipment, as well as shortage of centres for conducting monitoring.⁶⁸⁸

Moreover, a large amount of urban land in Zanzibar remains unplanned and many people live in areas of high risk, which are prone to floods. A large section of the society has limited access to planned land. This is due to affordability of planned land and most land suitable for human settlement and agriculture being acquired by a few well-off individuals and politicians. This presents a threat to effective realization of the right to acquire and own land property in Zanzibar.

⁶⁸⁵ Section 56 of the Land Tenure Act, 1992

⁶⁸⁶ Rashid Mohammed Azzan *The effects of climate change on land tenure in Zanzibar Islands*, November 2016, at <https://mycoordinates.org/the-effects-of-climate-change-on-land-tenure-in-zanzibar-islands/>, accessed 22nd December 2018.

⁶⁸⁷ Ibid.

⁶⁸⁸ Ibid.



4.1.2 Conclusion and Recommendations

It takes time to build a just society in terms of property rights. This is due to human behaviour who always fights to acquire property more and more and deprive others even if his brothers from owning and enjoying the same. The right to acquire and own property particularly land in Zanzibar faces number of challenges including the nature of the island itself. Zanzibar is small while the number of its inhabitants is increasing daily.

In order to guarantee access to land property for majority of Zanzibaris, the Government needs to ensure land planned land is accessible and affordable. This will also ensure fair distribution of land resource, instead of the current practice of a few rich individuals, including politicians, owning large tracts of land, while common Zanzibaris struggle. Land is also essential for realisation of the right to adequate standard of living, which includes right to adequate shelter or decent housing.

4.2 Right to Work

Introduction

The right to work implies the opportunity and freedom of working and engaging in productive employment without being deprived of such doing by any one. Under International Covenant on Economic, Social and Cultural Rights (ICESCR) the State Parties are duty bound to recognize the right to work in their domestic legislations, which shall contain among others, the provisions that grants everyone with the opportunity to gain a living by work.⁶⁸⁹ Right to work is provided for under the Constitution of Zanzibar; and several legislations have been enacted over the years to ensure protection of this right. These include the Employment Act, No.11 of 2005; The Labour Relations Act, No.1 of 2005; The Public Service Act, No.2 of 2011; The Zanzibar Social Security Fund, Act no.2 of 2005; The Occupational Safety and Health Act, No.8 of 2005; and The Worker's Compensation Act, No.15 of 1986.

This subchapter looks at the situation of the right to gain living by work and right to just and favourable working conditions, as key components of the right to work, in Zanzibar in the year 2018.

⁶⁸⁹ ICESCR, Article 6(1)



4.3 Right to Gain Living by Work

Government efforts to improve situation of right to gain living by work

In an effort to improve the situation of the right to gain living by work and ease the problem of unemployment in the isles, the Zanzibar Government continued to take several measures, as follows:

Intention to increase salaries to workers

During the commemoration of May Day in 2018 in Wete, Pemba North Region, the President of the Revolutionary Government of Zanzibar, Hon. Dr. Ali Mohamed Shein, expressed that his Government intends to increase salaries of workers as efforts to improve the economic situation continue. One of the targets is to increase the minimum wage from Tshs. 150,000 to Tshs. 300,000.

Loans to facilitate self-employment

Through implementation of the *Feed the Future Tanzania Mboga na Matunda* Project, funded by USAID, the Government has enabled smallholder horticulture farmers to secure loans for self-employment. The project has given 46 loans worth Tshs.83, 000,000 to small scale farmers. 12 loans worth TShs Tshs.30, 000,000 to 84 farmers in Pemba and 22 Loans worth Tshs.53, 000,000 were provided to 112 farmers in Unguja.

Training for youth to instil in them employability skills

The Government has trained 1000 youth in Unguja and Pemba (470 male and 530 female) in order to boost their employability skills and make them more competitive in the job market. Also, through the Alternative Learning and Skills Development Project (ALSDD II), 660 youth (300 men and 360 women) have been trained on self-employment.

Connecting citizens with employers abroad

It has connected 1,026 citizens with employers (341 men and 685 women go to work in Qatar, Oman and Community of the United Arab Emirates (U.A.E) as Drivers, Hotel attendants, Stores keeper, in oil industries, Accounting, IT, Catering, industrial works and domestic works. (2,280)



(1,001 men and 1,279 women) are employed locally in various private institutions.

Enforcing new Wages Order

In a move to safeguard the right to gain living by work, in July 2017, the Ministry of Labour, Empowerment, Elders, Youths, Women adopted and introduced new rates of minimum wages for employees of private sector in Zanzibar, rising from Tshs. 145,000 to Tshs. 300,000.⁶⁹⁰

Challenges in realization of right to gain living by work

Unemployment

Despite the Government's efforts to address the problem, unemployment—especially among the youth, remains a major challenge in Zanzibar, as it is the case in Tanzania Mainland. The problem is partly compounded by lack of employability skills among most college and university graduates, thus difficulty in securing employment. In other cases, ZLSC has learned that some of the university graduates become choosy when it comes to type of work offered.

Shortage of staff in key sectors

In 2018, ZLSC observed that there is still significant shortage of staff in key sectors, such as health, justice and education. Shortage of workers in these sectors creates a burden for existing employees, who are forced to do more than they are required in order to meet performance expectations, without receiving any additional payment.

4.3.1 Right to Just and Favourable Working Conditions

Right to just and favourable working conditions is guaranteed under the International Covenant on Economic, Social and Cultural Rights (ICESCR). This human rights convention requires States to ensure just and favourable conditions of work, including: fair wages and equal remuneration for work of equal value without and not discriminatory, especially to women; remuneration that will provide a decent living for an individual and their families; safe and healthy working conditions; equal opportunity for

⁶⁹⁰ Issued under Government Gazette as the Legal Notice No.68 that enforces the order to be effective on the 1st July, 2017.



promotion; and enjoyment of holidays.⁶⁹¹ This right is especial for all types of workers, regardless of their gender, colour, age; nature of formal and informal sectors, foreign and native workers, workers from ethnic and other minorities, self-employed workers, agricultural workers, refugee workers and unpaid workers.⁶⁹² Occupational health and safety is a key component of this right, and is provided for under the Occupational Safety and Health Act No. 5 of 2003.

Steps taken by the Government and Judiciary to enhance favourable and just working conditions

Inspection of different institutions on payment of the indicated minimum wage

It was reported that the Government has spearheaded of audit of 297 institutions (261 in Unguja and 36 in Pemba) to check on implementation of labour laws. Special audits were conducted at 470 Institutions (369 in Unguja and 101 in Pemba) to check on implementation of the Wage Order since July 2017, whereby it was found that 289 Institutions (265 in Unguja and 24 in Pemba) have already begun to implement the Order.

Resolution of labour disputes

The judiciary sought to safeguard the right to just and favourable working conditions through resolution of disputes, whereby a total of 76 were reportedly entertained. Out of these labour disputes, 52 were at the state go arbitration 15 were at judgement stage, 5 were sent to the Labour Court and 4 were dismissed. Some of the disputes involved non-payment of salary, which contributes to unjust and unfavourable working conditions.

Training of employees and employers on labour laws

In 2018, the Government of Zanzibar ensured provision of training for employees and employers in Unguja and Pemba. 24 institutions (14 in Unguja and 10 in Pemba) received training on labour laws. 4 radio programmes and 6 television programmes were also prepared and aired, with the aim of enhance knowledge of labour laws amongst the general public.

⁶⁹¹ Article 7 of ICESCR.

⁶⁹² <https://www.escr-net.org/resources/general-comment-no-23-2016-right-just-and-favorable-conditions-work>



Challenges in realization of the right to just and favourable working conditions

Despite the efforts made in enhancing realization of the right to just and favourable working conditions, several challenges continued to exist and affect this right in 2018. These include: shortage of working equipment and facilities; poor condition of buildings and other facilities; shortage of budget; poor remuneration/Inadequate wages; and low awareness about labour laws, rights and duties. For instance, in Pemba, the Judiciary was reportedly faced with several challenges, including court buildings being in poor/dilapidated condition and shortage of vehicles. At Mkokotoni District Court buildings are also in poor conditions and there is shortage of facilities such chairs and tables. Several complaints were also made by teachers regarding their working environment, which has worsened following introduction and implementation of fee-free education policy – characterized by congestion of pupils in class, shortage of classrooms, shortage of learning and teaching materials and shortage of desks.

Conclusion and Recommendations

The Government took a number of initiatives in 2018 to safeguard right to work for Zanzibaris. These include enforcing the new Wage Order, inspection of institutions and workplaces and training of employees on labour laws and rights. However, several challenges continue to hinder effective realisation of the right to work, including: shortage of working equipment and facilities; poor condition of buildings and other facilities; shortage of budget; poor remuneration/Inadequate wages; and low awareness about labour laws, rights and duties.

To improve the situation of right to work, the Government must continue to address the challenges indicated above. The Government should ensure favourable working conditions and guarantee the rights to collective bargaining and freedom of association for workers. The ministry responsible for education should ensure improved working conditions for teachers in order to improve quality of education.



CHAPTER FIVE

SOCIAL AND CULTURAL RIGHTS

Introduction

The Universal Declaration of Human Rights (UDHR) recognizes a number of social and cultural rights⁶⁹³ and the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the primary international legal source of social and cultural rights.⁶⁹⁴ The Convention on the Rights of the Child⁶⁹⁵ and the Convention on the Elimination of All Forms of Discrimination against Women recognizes and protects the social and cultural rights recognized in the ICESCR in relation to the children and women.⁶⁹⁶

The Convention on the Elimination of All Forms of Racial Discrimination prohibits discrimination on the basis of racial or ethnic origin in relation to a number of social and cultural rights.⁶⁹⁷ The Convention of the Rights of Persons with Disabilities also prohibits all discrimination on the basis of the disability including refusal of the reasonable accommodation relating to full enjoyment of social and cultural rights.⁶⁹⁸

Social and cultural rights include the right to education, right to adequate standard of living, right to health, the right to education, right to water and the right to culture. The situation of these rights in Zanzibar in 2018 is highlighted under this chapter.

5.1 Right to Education

Introduction

ICESCR recognizes the right to education for everyone and calls education to be directed to the full development of the human personality and the

⁶⁹³ Article 22 of UDHR

⁶⁹⁴ Article 3 and 6 of ICESCR

⁶⁹⁵ Article 4 of the Convention on the Rights of the Child

⁶⁹⁶ See Convention on the Elimination of All Forms of Discrimination Against Women

⁶⁹⁷ Article 1 of the [Convention on the Elimination of All Forms of Racial Discrimination](#), 1965

⁶⁹⁸ Article 4(2) of the Convention of the Rights of Persons with Disabilities



sense of dignity. It recognises that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and groups.⁶⁹⁹ In achieving the full realisation of this right, states are required to ensure: primary education is compulsory and available free to all; secondary education in its different forms, including technical and vocational secondary education, is made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; and higher education is made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.⁷⁰⁰

Despite being internationally recognized under the international instruments, the Constitution of Zanzibar of 1984 has not indicated the right to education as part of bill of rights, Instead, it is mentioned under section 10(f) of the Zanzibar Constitution as a political objective of the Revolutionary Government of Zanzibar. The right to education is provided for under the Education Act of 1982⁷⁰¹ which provides for free and compulsory education.⁷⁰² 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.⁷⁰³

This chapter focuses on highlighting the situation of the right to education in Zanzibar in 2018, in terms of access to education and quality of education provided.

5.1.1 Right to Access Education

In enhancing the right to access education for all, the Government of Zanzibar took several measures in 2018, including:

- Commencement of construction of nine secondary schools in Unguja and Pemba;

⁶⁹⁹ Article 13(1) of ICESCR

⁷⁰⁰ Ibid, Article 14(2) (a) – (c)

⁷⁰¹ Act No. 6 of 1982.

⁷⁰² Section 19 of Act No. 6 of 1982.

⁷⁰³ Ibid, Section 20 (1-2).



- Purchase of desks for schools in Unguja and Pemba, including through donations; and
- Continuing implementing the fee-free education policy.⁷⁰⁴

The key measure is implementation of the fee-free education, which has seen access to basic education in Zanzibar significantly increasing, as is the case in Tanzania Mainland. For instance, at primary education level, enrolment rate rose from 106.9% in 2017 to 116.5% in 2018.

5.1.2 Right to Quality Education

The international bill of rights requires member states to provide not only accessible education but the education provided has to be of sufficient quality, according to UNICEF quality education includes:⁷⁰⁵

- Learners who are healthy, well-nourished and ready to participate and learn, and supported in learning by their families and communities;
- Environments that are healthy, safe, protective and gender-sensitive, and provides adequate resources and facilities;
- Content that is reflected in relevant curricula and materials for the acquisition of basic skills, especially in the areas of literacy, numeracy and skills for life, and knowledge in such areas as gender, health, nutrition, HIV/AIDS prevention and peace;
- Processes through which trained teachers use child-centred teaching approaches in well-managed classrooms and schools and skillful assessment to facilitate learning and reduce disparities; and
- Outcomes that encompass knowledge, skills and attitudes, and are linked to national goals for education and positive participation in society.

It is stipulated that everyone has the right to receive education which is of good quality. Zanzibar has to ensure that the standards of education are of sufficient quality and that the conditions relating to the quality of the

⁷⁰⁴ The speech of President of Zanzibar on the 54th anniversaries of Zanzibar Revolution on 12th January, 2018

⁷⁰⁵ UNICEF, (2000) Defining Quality in Education, A paper presented for the International Working Group on Education Florence, Italy, p.4



education provided are also equivalent.⁷⁰⁶ Also, member states to UNESCO Convention against Discrimination in Education are obligated to adopt minimum educational standards to ensure that all schools, public and private, offer the same quality education.⁷⁰⁷ Quality education has to be the same for boys and girls.⁷⁰⁸

As indicated above, efforts by the Government of Zanzibar have seen increased enrolment in basic education, due to implementation of the fee-free policy. However, the quality of education continued to suffer due several factors, highlighted below:

Dilapidated buildings and shortage of classrooms and desks

One of the major challenges affecting quality of education in Zanzibar is school is poor learning environment, mainly characterized by classrooms which are in poor conditions. Among schools which were found to have classrooms which are not in good conditions are Madungu Secondary School and Mgelema Primary School, both of Chake Chake in Pemba. Shortage of classrooms and desks also continued to be among major challenges negatively affecting the right to quality education. In some schools there are up to four shifts in order to accommodate all pupils; and some classrooms classroom have 70 to 100 pupils.⁷⁰⁹

⁷⁰⁶ Article 4(b), [UNESCO Convention against Discrimination in Education](#), 1960)

⁷⁰⁷ Article 13, ICESCR, 1966;

⁷⁰⁸ Article 2, UNESCO Convention against Discrimination in Education, 1960

⁷⁰⁹ See Rahama Suleiman “Walimu 800 wahitajika” Nipashe Newspaper, 14 February 2018 at <https://www.ippmedia.com/sw/habari/walimu-800-wahitajika>, accessed 20th December 2018.





Picture 20: Condition of school buildings in some of public schools in Zanzibar

Shortage of teachers

Fee-free education policy has contributed to increased enrolment in basic education in Zanzibar. However, shortage of teachers continues to be a major problem and teachers are increasingly forced to carry the burden of increased number of pupils and students. According to the Education Officer of Pemba, Mr. Kitwana Sururu, increased enrolment has contributed to the problem of shortage of teachers.⁷¹⁰ He added that another factor contributing to shortage of teachers is the slow pace of replacing teachers who retire.⁷¹¹ In February 2018, the General Secretary of the Zanzibar Teachers Union (ZATU), Mussa Omar Tafurwa, mentioned that the study conducted by ZATU indicated shortage of about 800 teachers in Pemba alone.⁷¹²

⁷¹⁰ ZLSC Media Survey 2018.

⁷¹¹ Ibid.

⁷¹² See Rahama Suleiman “Walimu 800 wahitajika” Nipashe Newspaper, 14 February 2018 at <https://www.ippmedia.com/sw/habari/walimu-800-wahitajika>, accessed 20th December 2018.

In January 2019, it was revealed that shortages of teachers and classrooms in secondary schools in Zanzibar were among the reasons for poor performance in form six national examinations of 2018 by most schools in the islands.⁷¹³ 48% of schools which performed poorly in the national examinations were from Zanzibar. Shortage of teachers was said to be more of a problem in regions such as Mjini Magharibi, Pemba North and Pemba South, where some of the teachers teach a class of up to 150 students, which is three times the standard.⁷¹⁴ According to the ministry responsible for education, there is shortage of 952 teachers in Zanzibar.⁷¹⁵

Insufficient Budget

International standard requires 20% of national budget to be allocated for education sector. However, Tanzania, including Zanzibar, is yet to meet this standard. Insufficient budget affects and hinders the ability of the ministry responsible for education to ensure full realization of the right to education. For instance, for the financial year 2017/2018, budget set for pre-primary and primary education in Zanzibar was Tshs. 70,724,571,000, but the funds received were Tshs. 50,518,855,184 - which is 71.4% of the budget allocated. For secondary education, the budget allocated was Tshs. 63,496,813,000, while the funds received were Tshs. 27,414,994,282 - which is on 43.2% of the budget. Therefore, apart from being insufficient, the funds are usually delayed and not disbursed in full. ZLSC recommends that sufficient budget should be allocated for the education sector, given its importance in realization of all other human rights.

Conclusion and Recommendations

Education is key for realisation of human rights. As such the Government of Zanzibar needs to focus on quality of education, now that implementation of fee-free education policy has resulted into increased enrolment at primary and secondary education levels. Key measures that need to be

⁷¹³ See Alex Malanga "Hizi ndizo sababu za matokeo mabovu mitihani ya kitaifa Zanzibar" *Mwananchi* Newspaper, 15 January 2019, at <https://www.mwananchi.co.tz/habari/Makala/Hizi-ndizo-sababu-za-matokeo-mabovu/1597592-4935686-qrdmrb/index.html>, accessed 20th February 2019.

⁷¹⁴ Ibid.

⁷¹⁵ Ibid.



taken include increasing budget for the education, which help to address challenges such as shortages of learning materials, desks and classrooms. Teachers are also essential for quality education, hence the Government, through the Ministry of Education, should move to ensure more teachers are employed to ease the burden of teaching for existing teachers and improve their overall working environment. Improving quality of education provided will help to address the problem of poor performance in secondary school national examinations, as was the case in 2018.

5.2 Right to Health

Introduction

Right to health is guaranteed under key human rights instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12(1) of ICESCR recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. States have a primary duty to ensure that necessary measures are taken to protect the health of their people and to ensure that they receive medical attention when they are sick.⁷¹⁶ This right also guaranteed under regional treaties that Tanzania is bound to, such as the African Charter on Human and Peoples' Rights (ACHRPR), African Charter on the Rights and Welfare of the Child (ACRWC) and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).⁷¹⁷ Domestically, the Constitution makes reference to right to health and directs the Government to ensure that every person has access to adequate health care.⁷¹⁸

This subchapter looks at the situation of the right to access health services and right to quality health services as key components of the right to health, focusing on the year 2018.

5.2.1. Right to Access Health Services

Over the past decade, access to health services in Zanzibar has improved, especially in urban areas where private-sector involvement in provision of

⁷¹⁶ Article 16(2) of the African Charter on Human and People's rights, 1981.

⁷¹⁷ See Article 16(1) of ACHRPR; Article 14 of ACRWC; and Article 14 of Maputo Protocol.

⁷¹⁸ Section 10(f) of the Zanzibar Constitution, 1984



health services has developed. In rural areas, however, inadequate medicine supplies and too few skilled health providers continue to affect the health sector. Improvement in health requires the greater support of the Government and since it a cross-cutting issue, there is a need of cooperation and coordination, especially between the Ministries of Education and Culture; Agriculture and Food Security; Water; and Community Development, Women, and Children, as well as nongovernmental organizations.⁷¹⁹

In 2018, the Government of Zanzibar continued to take various steps to ensure progressive realisation of the right to health in Zanzibar, including disbursing relevant funds for procurement of medicines and medical supplies, as well as addressing shortages of resources in the sector. However, several challenges continue to exist and affect realization of the right to health in Zanzibar. These challenges are highlighted below.

Inadequate numbers and poor distribution of health workers

Shortage of health workers of different cadres continued to be among key challenges affecting the health sector in Zanzibar in 2018. For the financial year 2017/2018 it was revealed that the sector is facing shortages of health workers such as medical doctors, nurses, laboratory technicians, radiologists and anaesthetists.

Lack of health insurance coverage

The issue of lack of health insurance coverage re-emerged as a key issue affecting right to health in Zanzibar in 2018. During his budget speech for the financial year 2017/2018 before the House of Representatives, the Minister of Health insisted that his ministry was in the final process of establishing health insurance in Zanzibar.⁷²⁰ Lack of coverage of health insurance is a major problem for Tanzania as a whole, as more than 60% of the population is not covered. These poses a great risk to health and effective realization of the right to health.

Shortage of equipment and medical supplies

⁷¹⁹ Melissa Thaxton, Integrating Population, Health, And Environment In Tanzania, p.4

⁷²⁰ Budget Speech for the Ministry of Health, 2017/2018, p.70



Like health facilities in Tanzania Mainland, health facilities in Zanzibar are faced with shortages of relevant medical equipment and supplies. These equipment and supplies include gas plants, CT-scan, laboratory equipment, anesthetic machines, biochemistry and hematological analyser. This problem is mainly attributed to insufficient budget allocated for the health sector. Hence, the only way to cure this problem is to increase budget for procurement of essential medicines, equipment and medical supplies. Lack of occupational safety and health laboratory was also identified as a challenge affecting right to health in Zanzibar in 2018.⁷²¹ In August 2018, the Deputy Minister of Health, Harusi Said, acknowledged that the Mnazi Mmoja Hospital was faced with shortage of beds, especially in maternity wards, due to increased number of patients each day.⁷²²

5.2.2. Right to Quality Health Services

The Zanzibar Vision 2020 puts emphasis on provision of basic health services for all the people without discrimination. Priority is given to preventive services, combating epidemics, special maternal and child care services and the dissemination of health education for all.⁷²³ Through Vision 2020, the Government of Zanzibar seeks to attain quality health services to its people through, among others, providing standard basic health services, promoting safe delivery, planned motherhood and child survival, and prioritizing child immunization.⁷²⁴

However, while implementation of various health-related measures continued in Zanzibar in 2018, several challenges continued to face the health sector and affecting the quality of health services provided at health facilities, chief among them being inadequate funds allocated for the sector and lack of an ICU department within children's ward.

Insufficient budget is the main factor negatively affecting progressive realisation of right to health. Budget allocated for the financial year 2017/2018 was not sufficient and below the 20% of the national budget

⁷²¹ Ibid, p.29

⁷²² See "Hospitali kuu Mnazi mmoja Z'bar yakabiliwa na uhaba wa vitanda" 15 August 2018 at <http://news.azamtv.com/sw/news/hospitali-kuu-mnazi-mmoja-zbar-yakabiliwa-na-uhaba-wa-vitanda-25440>

⁷²³ Zanzibar Vision 2020

⁷²⁴ ibid



standard. Moreover, not all funds budget for the sector were disbursed, as is usually the case.⁷²⁵

In 2018, it was also reported that there is no Intensive Care Unit (ICU) in children's ward. In Wete District in Pemba, some children had ate food containing poison, but when they were rushed to the district hospital, their lives were at stake due to lack of ICU at the hospital.⁷²⁶

Conclusion and Recommendations

Despite the efforts taken by the government of Zanzibar, the health sector faces many challenges, including the shortage of human resources for health which sternly hampers the implementation of health activities at all levels, which vehemently affect the providing of the quality of health services in Zanzibar. Budgetary allocation for the health sector still falls below the international standard. In order to improve realisation of right to health, the Government must increase budget for this important sector. Ministry of health also needs to enhance efforts to address challenges faced in the health sector, including shortage of relevant medical supplies.

5.3. Right to Water

Introduction

Right to water is defined as the right of everyone to **sufficient, safe, acceptable and physically accessible and affordable** water for personal and domestic uses.⁷²⁷ It is also known as right to water and sanitation and is essential and indispensable in ensuring life with dignity.⁷²⁸ This right is not provided for under the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, it is guaranteed in human rights conventions such as the UN Convention on the Rights of the Child (CRC)

⁷²⁵ Budget allocated was TZS 72,936,229,000, but funds disbursed were TZS 56,085,137,747

⁷²⁶ Refer **Mmoja afariki wengine wapaokea matibabu kwa kula chakula kinachodaiwa kua na sumu** available at www.pembatoday.com accessed on 31st March 2019

⁷²⁷ See UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003, E/C.12/2002/11, available at: <http://www.refworld.org/docid/4538838d11.html> [accessed 17 December 2017].

⁷²⁸ Article 1.1 of the *General Comment No. 15. The right to water, UN Committee on Economic, Social and Cultural Rights, November 2002*,



and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).⁷²⁹

Right to water includes right to access water and right to quality water. This subchapter looks at the situation of these two sub-rights in Zanzibar in 2018.

5.3.1. Right to Access Water

Efforts to improve access to water

Everyone is entitled to sufficient and reliable sources of water for personal and domestic uses. In 2018, the Revolutionary Government of Zanzibar continued taking various measures to ensure citizens have access to water for different uses. This was done through implementation of different water programmes and projects.

In January 2018, the Government revealed that a big water project worth USD 23.673 million loaned from the African Development Bank (ADB) was being implemented in the Urban West Region, with installation of 68 kilometres water pipelines and water tanks.⁷³⁰ The project is implemented by STECOL Company from China is estimated to be completed by April 2019, and upon its completion it is estimated to increase the availability of water in the Urban West Region from 67 million litres to 81 litres per day, an increase of 20.9%.⁷³¹ It was also reported that there is another big project worth USD 92 million, a loan issued by the Exim Bank of India, will be undertaken to improve water supply in West A and West B Districts in Unguja with the CRUCS Company from India overseeing the implementation of the project.⁷³² DROP4DROP, an international organization that is dedicated to developing clean water solutions in different parts of the world, is also planning to implement a number of clean water projects in Zanzibar

⁷²⁹ Article 24(2) of CRC & Article 14(2) of CEDAW.

⁷³⁰ See Augustine Kayuni “Tanzania: Measures in Place to End Isles' Water Problems” DailyNews Newspaper, 24 January 2018 at <https://allafrica.com/stories/201801240728.html>, accessed 22nd January 2019.

⁷³¹ Ibid.

⁷³² Ibid.



In 2018, it was also revealed that water desalination⁷³³ should be considered as among solutions to water problems in Zanzibar in order to ease the water problem.⁷³⁴ According to the organization, the projects, which include providing sustainable community wells, will benefit a total of 4,900 people and 806 households; and will reduce the 2-7 hours spent a day in fetching water, as well as enhance educational opportunities and time to engage in work for children and adults respectively.⁷³⁵

Challenges in accessing water

However, despite efforts to increase access to water services in Zanzibar, some areas – especially rural areas – continued to experience water problem in 2018. One such area is Mjini Magharibi Region, which has been experience limited access to clean and safe water. However, in 2018 the Zanzibar Water Authority (ZAWA) revealed that it constructing tanks that would carry about eight million litres of water, in order to address water problem in the region.⁷³⁶ Another problem affecting access to water for Zanzibaris is water loss caused by water leakages.

5.3.2. Right to Quality Water

Quality water means water that is clean and safe, water that is free from pollution and other harmful substances. Quality is important because safe drinking water should be within acceptable standards with regards to taste, odour and appearance.⁷³⁷ Acceptable water is water that is of an acceptable colour, odour and taste for each personal or domestic use, as well as culturally appropriate and sensitive to gender, lifecycle and privacy requirements⁷³⁸

As indicated above, several efforts were made in 2018 to address the problem of limited access to quality water in Zanzibar, including

⁷³³ A process to remove salt from seawater making it suitable for human consumption.

⁷³⁴ See DROP4DROP, *THE WATER CRISIS IN ZANZIBAR*, at <https://drop4drop.org/water-crisis-zanzibar/>, accessed 22nd January 2019.

⁷³⁵ Ibid.

⁷³⁶ Laylat Khalfan “Tatizo la maji Mjini Magharib kutoweka” Zanzibar Leo, 31 August 2018, at <http://zanzibarleo.co.tz/2018/08/31/tatizo-la-maji-mjini-magharib-kutoweka/>

⁷³⁷ World Health Organisation, Rights to Water, Fact Sheet No.5, p.12.

⁷³⁸ See UNDESA, Human right to water and sanitation, at https://www.un.org/waterforlifedecade/human_right_to_water.shtml, accessed 22nd January 2019.



implementation of various water programmes and projects and introduction of new water projects in different areas. However, as these measures continue to be taken access to quality water remains a challenge in different parts of Zanzibar. According to DROP4DROP, an international organization dedicated to developing clean water solutions in different parts of the world, clean water is less accessible in Zanzibar due to factors such as leaking pipes and annual droughts in springtime.⁷³⁹ This limited access to clean water, especially in rural areas, sometimes forces people (especially women) to travel up to 7 hours a day to fetch water, which is still often contaminated and unsafe.⁷⁴⁰ According to the Zanzibar Water Authority (ZAWA), only 50% of required fresh water is shared among Zanzibaris.⁷⁴¹ Other factors affecting access to quality water in Zanzibar include: damage to water infrastructure and destruction of water sources; insufficient budget allocated for water sector; water loss caused by leakages; delays in completing water projects; and inability to effectively monitor water projects.

Conclusion and Recommendations

While the Government continued to take steps to improve access to clean and safe water in 2018, several challenges continued to hinder full realisation of the right to quality water. These challenges include: budgetary constraints, water leakages and poor monitoring of water projects. In order to address these problems, the Government should first increase budgetary allocation for the water sector; and ensure water projects are properly and effectively monitored. Members of the public should refrain from tampering with water sources and causing damage to water infrastructure, which leads to water loss. Members of the public, as well as government institutions and agencies, should also pay their water bills to enable the Zanzibar Water Authority to operate effectively.

⁷³⁹ See DROP4DROP, *THE WATER CRISIS IN ZANZIBAR*, at <https://drop4drop.org/water-crisis-zanzibar/>, accessed 22nd January 2019.

⁷⁴⁰ Ibid.

⁷⁴¹ Ibid.



5.4. Right to Adequate Standard of living

Introduction

An adequate standard of living is a human right recognized under various international human rights instruments and is understood to establish a minimum entitlement to food, clothing and housing at an adequate level. According to the Universal Declaration of Human Rights (UDHR), “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”⁷⁴² This right is also provided for under the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁷⁴³ It includes right to food and right to shelter, which are the focus of this subchapter.

5.4.1. Right to Food

According to the UN Committee on Economic, Social and Cultural Rights (CESCR), Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger. States which have ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), including Tanzania, have a duty to ensure that their citizens have ability to access food or means of its procurement physically and economically, at all times. They are required to take all the appropriate measures to improve methods of production, conservation and production of food, and if possible, reform the agrarian system for the purpose of achieving the most efficient development and utilization of natural resources.⁷⁴⁴

In 2018, the Government of Zanzibar continued to take several measures to ensure progressive realization of the right to food in Zanzibar. This includes continued investment in agriculture, which employs 40% of the

⁷⁴² Article 25(1) of UDHR.

⁷⁴³ Article 11(1) of ICESCR

⁷⁴⁴ Article 11 (2) of the International Covenant on Economic Social and Cultural Rights, 1966



population, in order to boost food production. There was thus no serious food insecurity problem in the year 2018. However, according to the Director of Food Security Department in the Ministry of Agriculture, Natural Resources, Livestock and Fisheries of Zanzibar, Mansura Mosi Kassim, one of the major causes of food insecurity in Zanzibar is high food prices, making it difficult for some members of the society to afford. This problem affects access to nutritionally adequate food and contributes to the problem of malnutrition.⁷⁴⁵

A 2017 report on food security and nutrition in Zanzibar⁷⁴⁶ shows that common causes of food insecurity Zanzibar include poor crop harvests and low food stock at household level caused by poor Vuli rainfall; high food prices coupled with low household incomes, which reduces household purchasing power and thus affects access to adequate and nutritious food; and floods, which results in internal displacement, destruction of infrastructure, housing which impacted on acute food security (availability, access and utilization), especially for poor households.⁷⁴⁷ According to this report, food accessibility is a major limiting factor to household food security in Zanzibar, due to low household income that leads to low purchasing power.⁷⁴⁸ Access to adequate food is undermined by higher dependency on food purchases, especially rice and wheat.⁷⁴⁹ The report also highlights that food utilisation is a minor limiting factor to achieving food security in Zanzibar. Intake of cereals (carbohydrates), and fat is high, while there is limited use of protein source food, which partly driven by limited knowledge on nutrition.⁷⁵⁰

⁷⁴⁵ See FAO in Tanzania, *Stakeholders meet in Zanzibar for Integrated Food Security Phase Classification roll-out*, at <http://www.fao.org/tanzania/news/detail-events/en/c/1095433/>, accessed 22nd January 2019.

⁷⁴⁶ See ZANZIBAR FOOD SECURITY AND NUTRITION MONITORING – IPC TECHNICAL WORKING GROUP (TWG), *Zanzibar Food Security and Nutrition Analysis Report*, August 2017 at https://reliefweb.int/sites/reliefweb.int/files/resources/I_IPC_Tanzania_Zanzibar_AcuteFI_Report_2017JulySept.pdf, accessed 20th January 2019.

⁷⁴⁷ Ibid.

⁷⁴⁸ Ibid.

⁷⁴⁹ Ibid.

⁷⁵⁰ Ibid.



5.4.2. Right to Shelter

The right to shelter is recognized under the Universal Declaration of Human Rights (UDHR) “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” Under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), States parties are required to take appropriate steps to ensure realization of right to housing and continuous improvement of living conditions. Elements of right to shelter include security of tenure, affordability, habitability, accessibility, location and cultural adequacy.⁷⁵¹

The Zanzibar Development Vision 2020 recognises better shelter/housing as key in achieving poverty eradication.⁷⁵² One of the goals is development of a social environment conducive for peace, harmony, protection and development for all, including through provision of adequate and sustainable habitat. According to the Vision document, adequate shelter means adequate privacy, adequate space, physical accessibility, adequate security and security of tenure, adequate lighting, heating and ventilation, adequate basic infrastructure, including water supply, sanitation and waste management facilities, suitable environmental quality and health related factors.⁷⁵³ The Vision’s policy objective on provision of adequate and sustainable habitat include to: enable people to obtain shelter, and to protect and improve dwellings and neighbourhoods so that every Zanzibari will have adequate shelter that is healthy, safe, secure, accessible and

⁷⁵¹ See UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, available at: <http://www.refworld.org/docid/47a7079a.html> [accessed 19 December 2018]; UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, 20 May 1997, E/1998/22, available at: <http://www.refworld.org/docid/47a70799d.html> [accessed 19 December 2018].

⁷⁵² See Zanzibar Vision 2020 at http://www.tzdp.org.tz/fileadmin/_migrated/content_uploads/Zanzibar_Vision_2020.pdf, accessed 20th January 2019.

⁷⁵³ Ibid.



affordable; increase access to adequate and affordable habitat, with particular focus on rural areas through supporting rural and urban housing development schemes; and enhance the provision of housing services in the rural and urban areas.⁷⁵⁴

In 2018, access to decent housing continued to be a key concern in Zanzibar, caused in part by increasing population. Low household income also contributes to the problem of shelter in Zanzibar, as people who cannot afford planned land tend to construct houses in areas which are not decent, leaving themselves vulnerable to diseases. High housing prices means people cannot afford to build or rent decent houses.⁷⁵⁵ Limited access to land, couple with bureaucracy in obtaining building permit, is a major problem for Zanzibaris who have a low income.

Conclusion and Recommendations

For years, the Revolutionary Government of Zanzibar for years has been ensuring its people to have food for eating and adequate housing. However, challenges such as unreliable rainfall and budgetary deficits for the agricultural sector threaten realisation of right to adequate standard of living. High food and housing prices pose a challenge for most Zanzibaris to realise their right to adequate standard of living. Low awareness about importance of nutritionally-rich food also contributes to the food insecurity for a section of Zanzibar society. The Government should make efforts to ensure that there is sufficient budget allocated for the agriculture sector. There is also need to raise public awareness about the importance of nutritionally-rich food, decent shelter and right to adequate standard of living overall. NGOs could help the Government to raise public awareness in this regard.

5.5. Right to Culture

Introduction

Cultural rights are those rights relating to art and culture,⁷⁵⁶ which are intended to guarantee people and their communities an access to their

⁷⁵⁴ Ibid.

⁷⁵⁵ See Mwinyi Sadallah “Bila ardhi ya makazi mafuriko yataendeleo kutuamiza” 14 May 2017 at <https://www.ippmedia.com/sw/makala/bila-ardhi-ya-makazi-mafuriko-yataendelea-kutuamiza>, accessed 10th December 2018.

⁷⁵⁶ F Jaffeson (2000), Human Rights in Africa, p.34



culture and participation in the culture of their choice. They are rights related to different cultural themes, including the language; rights of the people to participate in cultural life, cultural and artistic production; cultural heritage; intellectual property rights (IPR); author's rights and rights of minorities and access to culture.

Cultural rights at international level have been recognized under 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. This right is also recognized under the Universal Declaration of Human Rights (UDHR);⁷⁵⁷ the International Covenant on Economic, Social and Cultural Rights (ICESCR);⁷⁵⁸ and the UNESCO Principles on International Cultural Co-operation.⁷⁵⁹

Domestically, the cultural rights are recognized under the Zanzibar Constitution of 1984 that requires the Revolutionary Government of Zanzibar to promote unity and development of the people and social welfare in the country by directing its policy in ensuring the Zanzibar culture is protected, enhanced and promoted.⁷⁶⁰ The Government under the Ministry of Information, Culture, Tourism and Sports, has been vested with powers of ensuring that the culture of Zanzibar is duly protected, enhanced and promoted in and outside Zanzibar.

5.5.1. Right to Participate in Cultural Life

Right to participate in cultural life raises three State obligations, namely to **respect, protect** and **fulfil**; and may only be limited in accordance with the law and to the extent that it does not interfere with the rights of other people. States are required ensure this right is respected, protected and

⁷⁵⁷ Article 27 of UDHR.

⁷⁵⁸ Article 15 (1) of ICESCR.

⁷⁵⁹ Article 1 of the Declaration of Principles of International Cultural Co-operation

⁷⁶⁰ Section 10(f) of the Constitution of Zanzibar, 1984



fulfilled, unless where cultural practices against the law and violate human rights.

In 2018, right to participate in cultural life continued to be among the human rights that are freely and fully enjoyed in Zanzibar. There were no reports of interference with enjoyment of this right.



Picture 21: one of the traditional dance in cultural festival in Zanzibar 2018

Conclusion and Recommendations

Culture is dynamic not static. It changes as the change of time and people happen. It takes differences as par time goes. The culture of 1960s is not the same as we have today in 2017. Zanzibar Culture is influenced to change and it is more affected by the integration and interaction with different people in the country. Right to culture enables everyone to participate in cultural life and enjoy the benefits of culture. The Government has a big role to play in ensuring preservation and promotion of Zanzibari culture.

CHAPTER SIX

COLLECTIVE RIGHTS

Introduction

Collective rights which are also called group rights or solidarity rights are the third generation of human rights which are entitled to individuals as part of the group or certain community. These rights include environmental rights, right to development, the right to peace and security, right to separate identity and the right to self-determination.

Despite being important, collective rights were not at first included in the list of human rights of the world, but subject to the long fight in particular by the third world countries, because of socio economic and political marginalization in such countries, Collective rights have at last being recognised as other fundamental rights. 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 them⁷⁶¹. The rights which have been given priority in Africa falling in this category include children's rights, women's rights,⁷⁶² refugee rights, minority rights and the rights of indigenous peoples among others.

6.1. Right to Development

The United Nations (UN) has defined development as “...an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”⁷⁶³

⁷⁶¹ 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.

⁷⁶² Article 18(3) of African Charter on Human and Peoples Rights

⁷⁶³ Article 1 of the UN Declaration on the Right to Development, A/RES/41/12, 4 December 1986, available at <http://www.un.org/documents/ga/res/41/a41r128.htm>, accessed 27th December 2017.



Governments are obligated to formulate appropriate national development policies that seek to improve the well-being of the entire population as well as of individuals ensure meaningful participation in development and fair distribution of benefits resulting from such development.⁷⁶⁴ The Declaration further provides for states' duty to co-operate with each other in ensuring development and eliminating obstacles to development.⁷⁶⁵

Right to development cannot be achieved without considering other related rights including the right to self-determination and the right to natural wealth or resources. By considering its importance, the two conventions have considered the right to self-determination as vital point to the right of development as follows:

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”⁷⁶⁶

Realization of all other human rights, as enshrined in Zanzibar Constitution and regional and international human rights instruments, is essential for realisation of the right to development. In 2018, right to development in Zanzibar was affected both positively and negatively by different factors. This sub-chapter looks at the situation of four aspects of the right to development in Zanzibar in 2018, namely: political development, social development, cultural development and economic development.

A 2011 report by the United Nations Conference on Trade and Development (UNCTAD) indicates that **poor infrastructure is key obstacle to development in Africa.**⁷⁶⁷ One of the factors that continued to hinder effective realization of the right to development in Zanzibar in 2018, is poor and inadequate road infrastructure.

⁷⁶⁴ Article 2(3) of the UN Declaration on the Right to Development, A/RES/41/128 of 4th December 1986

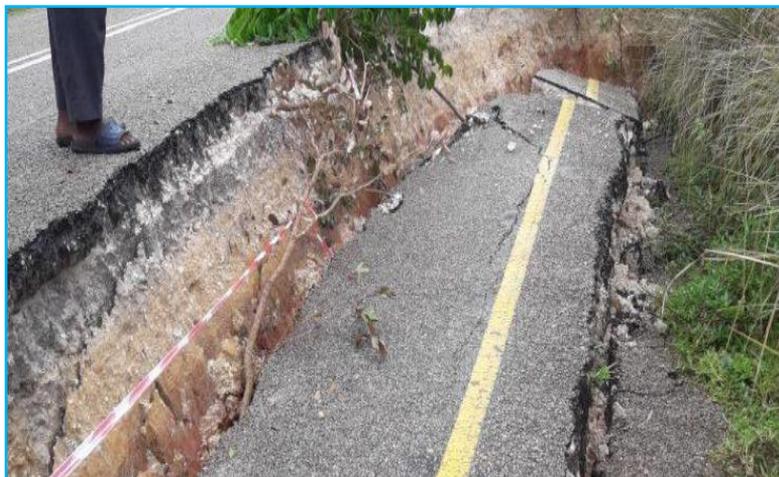
⁷⁶⁵ Ibid Article 3(3)

⁷⁶⁶ Article I of ICCPR and ICESCR

⁷⁶⁷ See “Poor infrastructure is key obstacle to development in Africa” DW, 26 July 2011, at <https://www.dw.com/en/poor-infrastructure-is-key-obstacle-to-development-in-africa/a-15264436>, accessed 20th January 2019.



Several incidents attesting to this factor were reported in different parts of Zanzibar in 2018. Once such incident occurred in Wete District in Pemba North, whereby in May 2018 citizens of the districts were stranded due to potholes and cracks on the Wete Gando Road, damage caused by rainfall.⁷⁶⁸ People travelling out of the district had to cut their journeys and trips short, including to hospital. Smaller cars managed to pass through the emergency road in the area.



Picture 22: Cracks and potholes due to rainfall damage at Wete Gando Road, Pemba North

In May 2018, there was another incident involving Mkoani-Chake Chake road, which was also damaged due to heavy rainfall at Changaweni area. A similar incident occurred in May 2017, whereby the road was repaired. Recurrence of this problem, not only at Changaweni area, but other areas of Zanzibar points to inadequate road maintenance.

On a positive note, it was reported in February 2018, that a 35-kilometre-long Ole-Kengeja road is expected to be fully tarmacked by the year 2020.⁷⁶⁹ This was revealed during a one-day visit by the presidential advisor in Pemba, Dr. Mauwa Abedi Daftri, to check on progress made in road construction. In February 2018, it was also reported that a road was being built for 177 residents of Ngomeni Village in Chakechake District, following order by the President of the Revolutionary Government of Zanzibar, Hon.

⁷⁶⁸ ZLSC Media Survey 2018.

⁷⁶⁹ Ibid.

Dr. Ali Mohamed Shein. In April 2018, Tanzania Social Action Fund (TASAF) facilitated construction of a road and a bridge for 2000 citizens of Mlindo Ward – Micheweni District in Pemba.⁷⁷⁰



Picture 23: A road under construction in Ngomeni Village in Chakechake District

Apart from infrastructural problems, economic development in Zanzibar is affected by tax evasion and avoidance, like in Tanzania Mainland. This is partly contributed by importation of counterfeit and substandard products. According to a 2017 report on the situation of counterfeit products in Tanzania by the Confederation of Tanzania Industries (CTI), Zanzibar is one of the major entry points for such products in Tanzania.⁷⁷¹ Tax evasion by companies and other businesses continued to be a key challenge affecting the right to development in Zanzibar in 2018. Revenue collection is essential for realization of socio-economic rights such as right to education, right to water and right health. According to the Office of the United Nations High Commissioner for Human Rights collection of taxes and allocation of resources is essential to the realization of the right to development and requires efficient and equitable State action. Therefore, the Government of Zanzibar needs to ensure that it addresses loopholes

⁷⁷⁰ ZLSC Media Survey 2018.

⁷⁷¹ See Confederation of Tanzania Industries, *The State of Counterfeit Goods in Tanzania: Research Report*, October 2017 at <http://www.best-dialogue.org/wp-content/uploads/2018/01/CTI-Counterfeit-report-Oct-2017.pdf?x82837>



that lead to loss of revenue, such as tax evasion and importation of counterfeit and substandard goods.

In terms of social development, as discussed in Chapter Five above, several challenges continued to hinder effective realisation of rights to education, health, water and adequate standard of living. In education, while implementation of fee-free education policy has significantly increased enrolment in primary education, it has led to increased problem of shortage of classrooms, which in turn affects the quality of education provided. Shortage of teachers is also a problem for both secondary and primary education in Zanzibar, which seriously affects quality of education.

The situation of political development in 2018 was affected by arbitrary restrictions on rights such as freedom of expression, freedom of assembly and freedom of association, imposed by restrictive laws enacted since 2015, such as the Media Services Act of 2016, Cyber Crimes Act of 2015 and the Statistics Act of 2015, as amended in 2018. This has also affected civic space in Zanzibar. Introduction of the Electronic and Postal Communications (Online Content) Regulations further affected political development.

6.2. Right to Enjoy and Benefit from Natural Resources

The right to benefit from natural resources is another kind of human right that every human being has to enjoy. In Zanzibar the right to natural resources includes land, sea and forests. These resources form the backbone of the economy by contributing through economic activities like tourism and farming. Natural resources are materials extracted or purified from their natural state as opposed to materials produced through human effort; and they are used by manufacturing industries, mining industries, and the tourism industry.⁷⁷²

The right to natural resources is recognized under various international and regional human rights instruments, as the same is recognised under the municipal laws in Zanzibar. This right is covered under the United Nations General Assembly Resolution 1803 of 1962 called “Permanent Sovereignty

⁷⁷² Tanzania Human Rights Report (2014), p.215



over Natural Resources”, which provides four guiding principles for the exploitation of natural resources, which are: individual and state sovereignty over natural resources; exploitation of natural resources for the benefit of the people; necessity to reach consensual agreements to exploit natural resources; and utilization of natural resources for the purposes of human development.⁷⁷³ This right is connected to the right to development and right to self-determination; and is also recognized and protected under Article 21 of the African Charter on Human and Peoples’ Rights.

In 2018, the Government continued implementing various measures and projects, which contribute to realization of the right to enjoy and benefit from natural resources of the Zanzibaris, particularly through generation of revenue which is used to bring about development. However, the right to enjoy and benefit from natural resources in Zanzibar continued to be affected by several factors. These factors include corruption, tax evasion and limited access to water. Like in Tanzania Mainland, corruption is a key issue affecting development and enjoyment of human rights in general in Zanzibar. Corrupt transactions contribute to loss of revenue, as does tax evasion – which is also a key concern in Zanzibar. Limited access to adequate land for Zanzibaris, attributed by factors such as high prices and low purchasing power, also affects realization of their right to enjoy and benefit from natural resources.

The rights to be benefit from natural resources is considered to be a serious challenge for 88 people from Dundua Village in Bumbwini, Unguja, who complain on the decision of the Revolutionary Government of Zanzibar to force all villagers to move from their village to another area where the government has built a new village. Furthermore, 55 villagers from the same area (Dundua) were only compensated for trees rather than the area (land) taken by the government on the ground that area is public land. The Dundua Village is planned to be a buffer zone for oil and Gas in Zanzibar.

⁷⁷³ Ibid



Conclusion and Recommendations

The Government continued to promote and protect the collective rights in 2018, in particular the right to development and right to enjoy and benefit from natural resources. These rights are important and should be equally enjoyed everyone. In order to ensure effective realisation of this right, the Government, through its anti-corruption and tax authorities, should address corruption and loopholes for tax evasion, in order to improve revenue collection and hence safeguard the right to development and right to enjoy and benefit from natural resources. The Government should also ensure effective implementation of natural resources laws. Business owners and companies should also pay their taxes in order to ensure right to development, as there is not development without taxes. Members of the public are also reminded and encouraged to demand receipts when they purchase different items, as a way of ensuring compliance with tax laws among businesses. Furthermore, the government should pay the proper compensation when it comes to take any land for public used as it is required by law. This means that the consideration of market value of the land must be considered.



CHAPTER SEVEN

RIGHT TO VULNERABLE GROUPS

Introduction

Vulnerable groups refer to those groups which are more likely to suffer violations of human rights. For purposes of this report, these groups are: women; children; persons with disabilities; the elderly; and persons living with HIV/AIDS. These groups require special protection in order to safeguard their human rights. This is why there are several regional and international human rights conventions that specifically provide for their rights. These include: the UN Convention on the Rights of the Child (CRC) of 1989; Convention on the Elimination of all Form of Discrimination Against Women (CEDAW) of 1979; Convention on the Rights of Persons with Disabilities (CRPD) of 2006; African Charter on the Rights and Welfare of the Child (ACRWC) of 1990; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003.

At the national level, the Constitution of Zanzibar protects the rights of vulnerable groups despite the nonexistence of the specific provision on the matter. Under section 12 of the Constitution of Zanzibar, the rights of these groups can be expressed in relation to the equality before the law, thus requires equal treatment of all people without any discrimination.⁷⁷⁴ The chapter reveals on the situation of vulnerable groups for the year 2018.

7.1 Women's Rights

Introduction

Women's rights are protected under several international and regional human rights instruments, most notably the Convention on the Elimination of all Form of Discrimination Against Women (CEDAW) of 1979; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) of 2003; and SADC Protocol on Gender and Development of 2008.

⁷⁷⁴ See Section 12(1) to (5), respectively, of the Constitution of Zanzibar 1984.



Women's rights are also protected under the Constitution of Zanzibar, which prohibits discrimination of any for and provides for equal enjoyment of rights for all regardless their nationality, tribe, gender, place of origin, political opinion, colour, religion or station in life.⁷⁷⁵ Women's right are also protected under several legislations, including: the Penal Act No 6 of 2004; Criminal Procedure Act No 7 of 2004; Spinster and Single Parents Children Protection No 4 of 2005; and Employment Act No 11 of 2005.⁷⁷⁶

This chapter looks at violence against women and gender inequality and discrimination as key issues affecting women's rights in Zanzibar in 2018.

7.1.1. Violence against Women

Violence against Women (VAW) 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.⁷⁷⁷ Violence against Women 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 and others.

The Revolutionary Government of Zanzibar recognizes the empowerment of women is one way of curbing violence against them. However to transform the concept from VAW to empowerment is a critical to economic and social achievement of national development goals.⁷⁷⁸

In 2018, ZLSC managed to document incidents of various forms of violence against women. These were sexual, psychological and physical violence, including: denial of child support, rape, sodomy, and beatings.

Psychological violence: the case of denial of child support

⁷⁷⁵ Section 12(5) of the Zanzibar Constitution 1984,

⁷⁷⁶ Zanzibar Human Rights Report, 2016

⁷⁷⁷ Ministry of Labour, Empowerment, Elders, Youth, Women and Children. National Plan of Action to end Violence Against Women and Children 2017-2022, p.6

⁷⁷⁸ See Cluster III of MKUZA II, Goal No. 2, the core cluster strategies associated to goal two of cluster three, No.vii, p.100



Denial of child support continues to be a key challenge for women who are left alone with children by their spouses or former husbands in Zanzibar. This causes women - most of whom struggle to gain a living - to be left with a burden of taking care of children alone, which affects them psychologically. For instance in Tumbe – Pemba, it was reported in 2018 that a husband deserted his wife, leaving her with four female children, simply because she ‘failed’ to conceive a male child.⁷⁷⁹ ZLSC receives many clients who complain about being deserted by spouses and not provided with child support. The Zanzibar Female Lawyers Association (ZAFELA) also receives many cases of this nature.

Sexual violence in the form of rape and sodomy

In 2018, several incidents of sexual violence against women, particularly in the form of rape and sodomy, were reported in Zanzibar. This includes incident of rape of a woman with disability (mentally disabled), Salma Said Ali (22), who was reportedly raped and killed by unknown people in Fundo Island. Her body found covered bruises and indicated that she raped, killed and then thrown into the ocean to remove evidence.⁷⁸⁰ In another incident which occurred in Wete District, Ali Shangiti Juma, a resident of Micheweni was accused of raping a mentally-ill woman contrary to Zanzibar criminal legislation.⁷⁸¹

Incidents of sexual violence against women partly thrive due to the tendency of resolving cases ‘at family level’ in order to ‘conceal family shame.’ In one incident for example, which occurred in Kiungoni in Wete District – Pemba, a 30-year-old woman was reportedly raped and sodomized. However, when the victim reported the matter to the police (Mchangamdogo Police Post), she was blamed by her family for reporting and forced to apologize for taking exposing the matter.⁷⁸²

⁷⁷⁹ ZLSC Human Rights Survey2018

⁷⁸⁰ Ibid.

⁷⁸¹ Ibid.

⁷⁸² ZLSC Human Rights Survey2018



Physical violence in the form of beatings

In Semewani – Chake Chake, it was reported that a man was wanted by the police for physically abusing a woman, resident of Pemba South Region. He reportedly tried to strangle the girl, bruising and sexually assaulted her in the process. In another incident, a woman – resident of Jondeni – Pemba South, was assaulted by unknown man, causing her bodily harm. The man is wanted by police and is still at large.⁷⁸³

Prevalence of physical in some parts of Zanzibar is partly attributed by belief that physical violence against women is normal. A recent study shows that a third of men and women in Zanzibar believe a husband beating a wife is justified in certain circumstances.⁷⁸⁴ This attests to attitude problem and lack of or poor knowledge about gender-based violence and its impact on a society.

7.1.2. Gender Equality and Discrimination

The Convention on Elimination of all Forms of Discrimination against Women (CEDAW) that among others requires governments to ensure that women are not discriminated against in any sphere of life.⁷⁸⁵ Attaining equality between women and men and eliminating all forms of discrimination against women are fundamental for protection and promotion of human rights and United Nations values. Women around the world nevertheless regularly suffer violations of their human rights throughout their lives, and realizing women's human rights has not always been a priority. Achieving equality between women and men requires a comprehensive understanding of the ways in which women experience discrimination and are denied equality so as to develop appropriate strategies to eliminate such discrimination.⁷⁸⁶

Women's right to gender equality and non-discrimination in Zanzibar continued to be affected by several factors in 2018. These include limited

⁷⁸³ ZLSC 2018 Human Rights Survey

⁷⁸⁴ See Apolitical, *Tanzania's radical \$119m plan to end violence against women and children*, at https://apolitical.co/solution_article/tanzanias-radical-119m-plan-to-end-violence-against-women-and-children/, accessed 4th January 2019.

⁷⁸⁵ Article 1, 2,4,7,8,10,11,12,13,14,16 and 17 of CEDAW

⁷⁸⁶ Ibid, p.1



access to land; income poverty; limited access to decision making opportunities; and different forms of violence.

The Government of Zanzibar needs to intensify effort to protect and promote women's rights, which is key for achieving gender equality and empowering all women and girls - Goal 5 of the Sustainable Development Goals (SDGs). To achieve this goal, the Government needs to end all forms of discrimination against women and girls;⁷⁸⁷ eliminate all forms of violence against women and girls;⁷⁸⁸ ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.⁷⁸⁹ The Government also needs to undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources.⁷⁹⁰

Conclusion and Recommendations

Women's rights continue to be affected by different forms of violence, including physical violence; and psychological violence; and sexual violence. Among the major factor for these forms of violence to continue is belief that they are normal, especially in the case of physical violence. Violence against women constitutes violation of women's rights and hinders their development as well as affecting development of families, communities and the nation at large. In order to safeguard women's rights, the Government should continue to take various measures to combat violence and discrimination against them. Economic empowerment programmes are also important in combating violence against women, thus such programmes should be established in different parts of Zanzibar, including rural areas, and expanded where they are already established. Enactment of a specific and comprehensive law on gender-based violence could also help in combating violence against women as well as implementing the National Plan of Action to End Violence against Women and Children. The

⁷⁸⁷ Goal 5.1 of the SDGs.

⁷⁸⁸ Goal 5.2 of the SDGs.

⁷⁸⁹ Goal 5.5 of the SDGs.

⁷⁹⁰ Goal 5.a of the SDGs.



Government should also ensure that all discriminatory laws and practices deprive women of their rights are reviewed and prohibited.

7.2 Children Rights

Introduction

Internationally, right of children are guaranteed and protected under the UN Convention on the Rights of the Child (CRC) of 1989. In 1990, a year after the CRC was adopted by the United Nations, the African Charter on the Rights and Welfare of the Child (ACRWC) by OUA (currently AU – African Union). Under this Charter, African States – including Tanzania (Mainland and Zanzibar) – are required 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;⁷⁹¹ and to protect female children from harmful practices that affect their welfare, dignity, normal growth and development, such as female genital mutilation and child marriage.⁷⁹²

In Zanzibar children are protected under various domestic instruments, including the Constitution of Zanzibar 1984 and the Children’s Act (No 6) of 2011.⁷⁹³ This subchapter looks at violence against children as a key issue hindering effective realisation of children’s rights in Zanzibar in 2018.

In 2018, the Government of Zanzibar, under the ministry responsible children, continued to take various measures to ensure protection of children and realisation of their rights. Measures taken include provision of care to children who at children care centres; strengthening the system of documentation of information about children living under difficult circumstances (children in especially difficult circumstance); and supervision of orphanages in Unguja (6) and Pemba (1).

⁷⁹¹ 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.

⁷⁹² Article 5 of Maputo Protocol; Article 21 of the African Charter on the Rights and Welfare of the Child.

⁷⁹³ Ljungman, C.M et al, Evaluation of Save the Children’s Child Rights Governance and Protection Projects in Tanzania – Zanzibar project (2014), p.12



Despite government efforts to protect children, violence against children continued to be a major challenge in 2018. Many incidents of violence against children, especially sexual violence, were reported in this reporting year, as highlighted below:

7.2.1. Sexual Violence

Sexual violence was the most common form of violence against children in Zanzibar in 2018. ZLSC was able to document several incidents of rape and sodomy of children reported from different parts of Zanzibar, both Unguja and Pemba. Most of the incidents, however, were reported from Pemba. While ZSLC could not obtain the exact numbers of reported cases from the police, it was able to document several incidents of sexual violence against children in 2018, as summarized in the table below:

Table 18: Reported incidents of sexual violence against children in 2018 as recorded by ZLSC

Description	Date
Pemba: A 50-year old man reported sexually abused a 5-year-old child.	29 Jul 2018
Pemba South: A man was sentenced to 5 years in prison for raping and impregnating a 14-year-old child.	15 Aug 2018
Kigongoni, Pemba North: More than 8 children were reportedly sexually-abused by a 75-year-old man.	26 Sept 2018
Pemba North: Bakari Omari Bakari (28) was sentenced to four years in prison for raping a 17-year-old girl in 2016	13 Mar 2018
Chakechake, Pemba: Abeid Salum Hamis (20) was sentenced to 9 years in prison for raping a child aged 14 years.	26 Jul 2018
Chakechake, Pemba: Yassir Mohamed (19) was sentenced to 11 years in prison for raping and impregnating a 13-year-old child.	18 Apr 2018
Wete, Pemba: A resident of Wete area in Pemba North was accused of defiling a 3-year-old child. His whereabouts were unknown as he reportedly left the district after committing the heinous crime.	5 Jul 2018
Wete, Pemba: A resident of Kangangani in Wete District, Pemba Region was accused of raping a 9-year-old girl in his house.	2 Aug 2018
Chakechake, Pemba: A resident of Mgelema Village, Kassim Massoud Abedi (29) was sentenced to 4 years in prison for raping a 7-year-old girl	June 2018



Wete, Pemba: A resident of Kangagani, Muhamed Bakari Mshindo (56) was reported to have raped a 9-year-old girl at his house in Kangagani. Despite the case being reported at Mchangamdogo Police Station, no action had been taken against the accused.	13 Oct 2018
Machomane, Chakechake: 3 men were convicted of sodomizing a 6-year-old boy and sentenced to 6 years in prison each.	29 Jul 2018
Chakechake, Pemba: 30-year-old man, resident of Kipangani Chake Chake, was sentenced for 5 years in prison for undressing a young boy aged 17 and leaving him naked in the public.	17 March 2018
Northern Pemba: The Resident Magistrate Court of Pemba sentenced to 25 years in prison a man aged 45 years, resident of Kifundi, for sodomizing two children of the same family aged 5 and 8.	
Southern Pemba: A 16-year-old boy, resident of Gombani ya Ale, was accused of sodomizing a boy aged 10 years.	3 May 2018
Wete, Chakechake: Bakari Hamisi (25), a resident of Mitondooni, Chakechake, reportedly sodomized a 4-year-old boy.	9 Feb 2018
Pemba: A 25-year-old resident of Tondooni was sentenced to 7 years in prison by the Resident Court of Chakechake after being convicted of raping a 12 year old girl.	7 Apr 2018

Source: ZLSC Survey 2018

High prevalence of sexual abuse against children

It was reported in 2018 that from the year 2015 to June 2018 a total of 999 incidents of child abuse were reported in Zanzibar. These include child pregnancy (86) and sodomy (63). Most of these incidents were reported in Chakechake (256), Micheweni (234) and Pemba (163). Factors contributing to his form of violence include moral decay and marriage breakdown.

Sexual violence against children with disability

Several incidents of sexual violence against children were reported in 2018, whereby perpetrators took advantage of their vulnerability, especially mentally-ill children. For instance, in July 2018, sentenced a 19-year-old man, resident of Semewani, Chakechake – Pemba, to 6 years in prison after finding him guilty of raping a 17-year-old girl who is mentally-ill.



Compromising children's rights to protect family ties

In 2018 it was revealed that there is a tendency of not reporting or discouraging reporting incidents of violence against children to authorities by family members, especially where perpetrators of such violence are close relatives or neighbours. This settlement out of court is illegal and denies a victim justice and access legal services; and is against the principle of best interests of the child. In Pemba, it was reported that Bakari Hamisi (25), resident of Mtondooni in Wete District – Pemba South, was accused of sodomizing a 4-year-old boy. However, when the victim's family were about to report the matter, they were confronted by parents of the accused person, who wanted the two families to sit together and resolve the matter without involving the police.

Sexual violence against children perpetrated by fellow children

Reports of child-on-child sexual abuse have not been common or widely reported in Zanzibar. However, in 2018, there was one incident of such abuse that was reported in Pemba. ZLSC document the incident, which occurred in Gombani ya Kale, whereby a 16-year-old boy was accused of sodomizing a 10-year-old boy, causing him severe pain.

Sexual violence against children affecting realisation of their right to education

Child victims of sexual violence are more likely to suffer psychologically and constantly living in fear of something bad happening to them again. This has a profound effect in their lives, including accessing education. The psychological trauma affects them in class and contributes to underperformance. It may also lead to poor school attendance to avoid school mates who call these children names and stigmatize them.

7.2.2. Physical and Psychological Violence

Physical and psychological violence against children are also common in Zanzibar. These include beatings, burning of body parts and verbal abuse. Corporal punishments are also common in Zanzibar and taken to be necessary in child upbringing, usually causing severe pain and injuries when inflicted on children. In Kiungoni, Wete District, there was a report of a child who was severely beaten with a stick by his madrasat teacher and then got his fingers burned.





Picture 24: A madrasat student from Kiungoni in Wete District – Pemba, who was severely punished and his fingers burnt by his madrasat teacher

Sometimes, physical violence is perpetrated by a fellow child and could lead to death. A good example is the incident which occurred in Chakechake in Pemba, whereby a 16-year-old boy was found dead after he had been attacked with a brick by another child aged 17 years following a misunderstanding.

Incidents of abandonment of infants

Incidents of abandonment of infants continued to be reported in Zanzibar in 2018. In Chambani, Pemba South, it was reported that a baby aged about 3-month old was abandoned by her parent, whose whereabouts could not be established. In another incident, police in Pemba arrested one woman for abandoning her baby at Chambani Hospital.

7.2.3. Child Labour

Child labour in Zanzibar continued to be a challenge threatening children's welfare in 2018. In June 2018, it was reported that despite various government efforts to combat child labour, the practice is still common in several areas of Zanzibar. These areas include Micheweni in Pemba North and Mwambe in Pemba South.⁷⁹⁴ In May 2018, there was a media report on

⁷⁹⁴ See Abdi Shamnah "Castico akiri ajira za watoto bado tatizo" Zanzibar Leo, 12 June 2018 at <https://zanzibarleo.co.tz/2018/06/12/castico-akiri-ajira-za-watoto-bado-tatizo/>, accessed 20th November 2018.

child labour in the form of stone quarrying, reported by *Zanzibar Leo Newspaper*, in Mwambe Village in Pemba South.⁷⁹⁵ In Micheweni, Pemba North there was a report of a child (16) who died after stone fell on his head while at working place.⁷⁹⁶



Picture 25: Children engaged in stone quarrying in Zanzibar
Source: ZanzibarLeo Newspaper

Conclusion and Recommendations

Incidents of violence against children, especially sexual violence, are on the rise in Zanzibar. These have a profound effect on the rights and welfare of the children. The Government should intensify efforts to protect children from all forms of violence. Parents should also play their part by being close to their children and ensure they tell them their problems. The Police Force and Judiciary should ensure perpetrators of violence against children are and brought to justice.

7.3. Rights of Persons with Disabilities

Introduction

Rights of persons with disabilities (PWDs) are provided for under the Convention of the Rights of Persons with Disabilities (CRPD). These rights include right to equality and non-discrimination, right to life, right to equality before the law, right to liberty and security of person, freedom

⁷⁹⁵ Ibid.

⁷⁹⁶ ZLSC Human Rights Survey 2018.



from torture, freedom from violence, right to education, right to health and right to work and employment.⁷⁹⁷ Tanzania, including Zanzibar, is party to this treaty and has an obligation to take measures to safeguard rights of PWDs.

Zanzibar has enacted the Persons with Disabilities (Rights and Privileges) Act, No.9 of 2006 which provides for the rights and privileges of people with disabilities, and obliges anyone to take efforts to the maximum realisation of the rights of disabilities in Zanzibar.⁷⁹⁸ Under the Act, any disabled person in Zanzibar has the right to education,⁷⁹⁹ right to employment,⁸⁰⁰ right to medical care,⁸⁰¹ accessibility and mobility.⁸⁰² There are several organizations established for the purpose of promoting and protecting interests and welfare of PWDs. These include the Zanzibar Association of the Blind (ZANAB), Zanzibar Association for People with Developmental Disabilities (ZAPDD), the Organization of People with Disabilities in Zanzibar (UWZ), Zanzibar Centre for Disability and Inclusive Development (ZACEDID) and others.

7.3.1. Equality and Discrimination

CRPD requires States 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.⁸⁰³ Discrimination against PWDs is when they are treated differently and unequally; and this includes using words, gestures or caricatures that demean, scandalize or embarrass persons with disabilities and include limiting, segregating or classifying in a way that adversely affects the opportunities or status of a person with disability.⁸⁰⁴ Owners of the public buildings and facilities for public use, roads and other social amenities,⁸⁰⁵

⁷⁹⁷ See CRPD.

⁷⁹⁸ Section 5 of Act No.9, 2006

⁷⁹⁹ Ibid, section 9

⁸⁰⁰ Ibid, section 7

⁸⁰¹ Ibid, section 11

⁸⁰² Ibid, section 12

⁸⁰³ Article 27(1) of CRPD.

⁸⁰⁴ Section 2 of Act No. 9, 2006 of the Laws of Zanzibar.

⁸⁰⁵ Section 12(1) and (2) of Act No.6 of 2006



are required to create environment for PWDs to access social services without any challenges.

Despite existence of various laws relating rights and welfare of PWDs, this group continues to suffer incidences of discrimination. This includes in terms of accessing public buildings, school buildings and even realizing their right to education, especially for children PWDs. In the education sector, challenges experienced by PWDs include shortage of qualified teachers, shortage of learning materials; inaccessibility of school buildings due to lack of ramps; toilets which are not PWD friendly; and negative attitude and perception from other members of community and school mates.

7.3.2. Sexual Violence against Persons with Disabilities

Sexual violence is also a key issue affecting PWDs, as indicated in subchapters above, especially women and children. They are usually targeted due to their increased vulnerability, victimized sexually and physically. In Shengejuu area, Wete District in Pemba, it was reported that a mentally-ill woman was raped and impregnated by unknown man. In another incident, in January 2018, police in Pemba reported to have arrested a 24-year-old man, resident of Semewani, accused of raping a 17-year-old girl who is mentally-ill. Incidents of sexual violence against PWDs are becoming a problem and somewhat common in Zanzibar, with perpetrators thinking that since they are mentally-challenged, the victims would not be able to testify against them.

Conclusion and Recommendations

PWDs require special protection which is equal and effective for enjoyment of human rights. The protection of vulnerable group in Zanzibar is not satisfactory, despite all the efforts that are taken to ensure their welfare is being guaranteed. In order to protect and promote rights of PWDs, the Government should set aside adequate budget for them. Laws and policies on PWDs should also be effectively implemented. Moreover, the Government should ensure PWDs can easily access social services, including education, by making sure that there is relevant infrastructure to facilitate this. Buildings under construction should be friendly to PWDs,



including by ensuring they have lifts (for storey buildings) and ramps. Perpetrators of violence against PWDs should also be apprehended and brought to justice. Access to employment for PWDs should also be increased, as well as empowering them economically to prepare them for self-employment.

7.4 Rights of the Elderly

Introduction

Human rights are universal. They apply to all human beings everywhere, regardless of sex, age, religious affiliation, disability, sexual orientation and other distinctions. Thus, the human rights of all people, including older persons, are tacitly protected in the Bill of Rights.⁸⁰⁶ There is no specific regional or international convention providing for rights of the elderly. However, as other people, older persons enjoy human rights enshrined in conventions such as the African Charter on Human and Peoples' Rights, the Maputo Protocol (for women elderly), ICCPR, ICESCR, and CRPD (for elderly PWDs). At the national level, the rights of elderly are implied under the Zanzibar Constitution, which requires the Government to ensure it assists and enables to be assisted any disadvantaged groups such as the elderly, the sick, children and disabled persons.⁸⁰⁷

In 2018, the Government of Zanzibar continued to take several measures to care for the elderly. These include:

- Establishing homes for the elderly in Unguja and Pemba;
- Supporting older persons above the age of 70 years in Sebleni and Welezo in Unguja; Limbani and Makundeni in Pemba. These older persons, who are 73 in total, are provided with a monthly allowance of Tshs. 30,000. They are also provided with three meals a day; and
- Purchasing a 2-storey building for the elderly and renovating old houses in Limbani, Pemba.

⁸⁰⁶ Fredvang Marthe and Simon Biggs (2012), The Rights of Elder persons, Social Policy Working Paper no. 16,

p.10

⁸⁰⁷ Section 10(g) of the Constitution of Zanzibar, 1984



7.4.1. Violence against the elderly

Despite the efforts made by the Revolutionary Government of Zanzibar to protect the rights of elderly it is still reported that elderly are also vulnerable to attacks and being violated with their human rights. The elders have become victims of torture, attacks and killings due to their vulnerability. Challenges faced by older persons in Zanzibar include lack of proper social protection, including health care and food security. The situation forces them to totally rely on assistance from their children, family members, relatives, or strangers on the streets. Some of them are abandoned or neglected by their children or families.

In Wete, Pemba, it was reported that an older man aged 72 years was found dead. Medical report indicated that the deceased older man was hit with a heavy object, which is more likely to be a cause of death.

7.4.3. Discrimination

The elderly have the right to non-discrimination. They ought to be treated equally, regardless of health status or disability, as other age groups. This is in terms of all aspects of life, including, but not limited to, employment, and access to education, accommodation, and other facilities.

In 2018, older persons in Zanzibar continued to generally experience several forms of discrimination. These include when they access health services and violent acts from relatives and families.

Conclusion and Recommendations

Access to social services is a key concern for elders. The Government should ensure that older persons are not subjected to any form of discrimination when accessing these services. They should also be enabled to access such services, including health services; and health insurance is key in this regard. Adequate budget should be allocated to cater to the needs of the elderly. Community members have a duty and should respect and care for the elderly, instead of discriminating them, subjecting them to violence and letting them beg for food.



7.5. Rights of Persons Living with HIV/AIDS

Introduction

Like other human being, rights of persons living with HIV/AIDS are provided for and protected under various regional, continental and international human rights instruments, including the Universal Declaration on Human Rights (UDHR),⁸⁰⁸ the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁸⁰⁹ the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)⁸¹⁰ and the Convention on the Rights of the Child (CRC).⁸¹¹ They are also enshrined in the African regional and sub-regional human rights instruments including the African Charter on Human and Peoples' Rights.⁸¹²

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 worldwide⁸¹³. 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 region⁸¹⁴.

In realisation of the problem and on considering the right to health to its people, the Zanzibar Government passed the Zanzibar HIV and AIDS Prevention and Management Act No.18 of 2013, to provide for, among others, the prevention and management of HIV and AIDS in Zanzibar and for the protection and promotion of the human rights of persons living with or affected by HIV and AIDS.⁸¹⁵ The Act prohibits any kind of discrimination directly or indirectly against people living with HIV.⁸¹⁶ The Act has reinforced the established Zanzibar AIDS Commission which was established under the Zanzibar Aids Commission Act, No.3 of 2002 as a

⁸⁰⁸ Article 25 of UDHR

⁸⁰⁹ Article 12 of ICESCR

⁸¹⁰ Article 14 of CEDAW

⁸¹¹ Article 14 of CRC

⁸¹² Article 12 of African Charter on Human and Peoples' Rights

⁸¹³ The Third Zanzibar National HIV and AIDS Strategic Plan 2016.2017- 2020/21

⁸¹⁴ *ibid*

⁸¹⁵ See the long Title of the HIV and AIDS Prevention and Management Act No.18 of 2013

⁸¹⁶ *Ibid*, section 23



separate administrative organ to deal with this pandemic.⁸¹⁷ The Zanzibar AIDS Commission is one of the major players for HIV/AIDS in Zanzibar. This Commission which was working under the First Vice President of Zanzibar since the establishment of the Government of National Unity in 2010 is currently working under the Office of the Second Vice President of Zanzibar whose main responsibility is to coordinate the national multi-sectoral response to this pandemic.⁸¹⁸

Among the functions of the Commission is to organize the national awareness of HIV/AIDS and enhance public awareness by ensuring the accessing of all necessary facilities to all people without humiliation to achieve 90-90-90 HIV infection reduction target. The aim of this 90% goal is to ensure those infected with HIV/AIDS are aware of their conditions, and are using ARVs to minimize the infection of HIV/AIDS.⁸¹⁹

Apart from the Government efforts on fighting against HIV/AIDS in Zanzibar, there are other non-governmental organizations dealing with HIV/AIDS in an attempt to contain the disease from further spreading in the society. Zanzibar Association of People with HIV/Aids (ZAPHA+) and the Zanzibar NGO Cluster for HIV and AIDS Prevention and Control (ZANGOC) are umbrella organizations comprising of forty five HIV and AIDS related NGOs, Community Based Organizations (CBOs) and Faith Based Organizations (FBOs) in Zanzibar (41 in Unguja and 4 in Pemba).⁸²⁰

In 2018, HIV infection continued to be a threat in Zanzibar, partly due to increase sexual violence against women and children. Adolescent girls and young women, as well as boys who are subjected to sodomy, are at greater risk of being infected with HIV through acts of violence. According to

⁸¹⁷ Ibid, section 3

⁸¹⁸ Budget Speech of the Second Vice President, 2017/2018

⁸¹⁹ See Part III of Act No. 18, 2013

⁸²⁰ Zanzibar Human Rights Report, 2016



UNICEF, at current trends in the world, around 80 adolescents will die of AIDS every day by 2030.⁸²¹

7.5.1. Discrimination

Although international, regional and domestic laws prohibit discrimination against PLHIVs, they continued to be subjected to various forms of discrimination and stigmatization by fellow society members. Discrimination against them is said to be mainly attributed to poor knowledge of members of the public about HIV/AIDS and rights of PLHIVs.

In practice, HIV-related stigma and discrimination in Zanzibar is high and acts as a barrier to voluntary counselling and testing as well as to the effectiveness of HIV prevention and care services. Stigma can have a major impact on people living with HIV and those at risk of infection and has been shown to be associated with stress, depression, and lower perceived quality of life among those people living with HIV/AIDS in Zanzibar.

- Stigma can manifest itself in a number of ways from loss of employment and denial of health care to social isolation and lack of family support. People living with HIV can also be blamed by their families for becoming infected because of the burden that the disease places on the family.⁸²²
- Lack of awareness and stereotype about HIV & AIDS and people live with it.⁸²³

7.5.2. Access to Health Services

PLHIVs are supposed to be prioritized in accessing health services. However, the matter is different in Zanzibar. They tend to face social stigma as well as stigma from the health workers. Some of them are sometimes even denied health services and mistreated by the health providers. As result, some of the PLHIVs decide to avoid the health facilities and those who can afford travel to Tanzania Mainland to find those services,

⁸²¹ UNICEF, Around 80 adolescents will die of AIDS every day by 2030, at current trends, 29 November 2018, at <https://www.unicef.org/press-releases/around-80-adolescents-will-die-aids-every-day-2030-current-trends-unicef>

⁸²² ZAPHA+ (2010), People Living with HIV Stigma Index Assessment, Zanzibar, p.8

⁸²³ Ibid, p.9



for fear of being stigmatised or discriminated due to their status in Zanzibar.⁸²⁴

Conclusion and Recommendations

People living with HIV/AIDS continue to be subjected to various forms of discrimination. To address this problem there is need for the Government to collaborate with NGOs to raise public awareness on the rights of PLHIVs and HIV and AIDS in general. Access to health services for PLHIVs should also be enhanced.

⁸²⁴ Ibid, p.57



CHAPTER EIGHT

CORRUPTION, GOOD GOVERNANCE AND HUMAN RIGHTS

Introduction

Under the Zanzibar legal system, the term corruption is defined broadly and includes all the crimes covered in Part V of the Zanzibar Anti-Corruption and Economic Crimes Act, 2012. These offences include bribing agent of the ZAECA; secret inducement for advice; deceiving principal; fail to disclose conflict of interests; improper benefits to trustees for appointment; bid rigging; misappropriation of property and revenue; misappropriation of assets; tax evasion; smuggling; hoarding; ant-trust and syndication; wrongful use of official information; money laundering; drug trafficking; counterfeit goods and currency; scheme intended to unlawfully manipulate exchange rate; abuse of office; transfer of proceeds of corruption; corruption in election; bribery of foreign official; sexual favours and abetment.⁸²⁵

As part of the United Republic of Tanzania, Zanzibar has come up with this broad definition of ‘corruption’ which encompasses a broad range of practices and behaviour in its efforts to implement the United Nations Convention Against Corruption of 2003; the African Union Convention on Preventing and Combating Corruption of 2003; SADC Protocol Against Corruption of 2001, and so many other similar treaties which Tanzania is a signatory. It is from this background that issues of corruption in Zanzibar have been examined in this report.

8.1. State of Corruption in Zanzibar

According to Zanzibar Integrated Strategy for Integrity and Anti-Corruption (2017 – 2022)⁸²⁶ acts of corruption in Zanzibar include: nepotism, favouritism, abuse of power, peddling influence, and bribery in service delivery all take place in political and bureaucratic processes. Corruption in the justice system continues to be a problem affecting access to justice in

⁸²⁵ Sections 36 to 59 of the Zanzibar Anti-Corruption and Economic Crimes Act (No. 1), 2012.

⁸²⁶ The RGoZ (President’s Office, Constitutional, Legal Affairs, Public Service and Good Governance), Zanzibar Integrated Strategy for Integrity and Anti-Corruption (2017-2022), p. 13.



Zanzibar. Other sectors prone to corruption include: administration of state public finance and property; human resources; and public and social services.

8.1. Good Governance and Anti-Corruption

The Constitution of Zanzibar, 1984 (as amended) provides the framework of governance within which political governance and associated principles of transparency and accountability are given prominence. To give weight to these principles, Section 10 of the Constitution spells out the political objectives of the country, including total eradication of corruption and abuse of power.

Zanzibar Anti-Corruption and Economic Crimes Authority (ZAECA) is the anti-corruption body operating in Zanzibar, established under Act No. 1 of 2012. ZAECA's functions in relation to addressing corruption in Zanzibar are providing anti-corruption education (prevention), investigating acts of corruption and capacity building.

Despite efforts to provide anti-corruption education, citizen awareness is still limited, particularly for people in rural areas, and levels of tolerance of petty corruption, especially in provision of social services, is still a major challenge.

Overall, despite a combination of efforts to prevent, educate, and combat corruption, challenges remain in implementation of anti-corruption activities in Zanzibar, including: (i) limited public education work; (ii) inadequate framework for prevention; (iii) institutional constraints of ZAECA in its combating work; (iv) weak management of anti-corruption work; and (v) lack of clear linkages with other reforms.

In 2018, several reports of corruption were reported in Zanzibar. In January 2018, police in Pemba South arrested Shawal Zahor (32) and charged him with corruption for attempting to bribe the Chake Chake Regional Crimes Officer (RCO) with Tshs. 50,000 to effect release of Sabri Omar Seif, who was charged possession of marijuana.⁸²⁷ In July 2018, Regional Court of Chake Chake in Pemba ordered remand of an official from the Environment

⁸²⁷ ZLSC Media Survey 2018.



Department in Pemba South for soliciting and receiving a bribe of Tshs. 3,000,000.⁸²⁸ No grand corruption cases were reported in Zanzibar in 2018.

According to the United Nations Human Rights Council, corruption has serious negative impact on all categories of human rights – civil, political, economic, social and cultural.⁸²⁹ It also hinders realization of the right to development. It affects the ability of the Government to achieve progressive realization of these rights to the maximum of its available resources in line with the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁸³⁰ Embezzlement and mismanagement of public resources may hinder the Government from effectively safeguarding key social rights such as the right to education, right to health and right to water by delivering quality education, health and water services. Due to corruption, people may also suffer discrimination in accessing public services in favour of those who can bribe officials, given the fact that majority of people in Tanzania are poor.

Conclusion

ZLSC is pleased with efforts made by the Government to combat corruption in 2018. However, corruption is still prevalent in most sectors and collaborative efforts with other stakeholders, including the media and CSOs, are needed in order to effectively combat this vice. Education about the negative impact of corruption for community members is also important and should thus continue to be provided. Members of the public are also encouraged to refrain from corrupt practices and report corruption to relevant authorities when they witness or hear about it. More importantly, political will is very important in the fight against corruption.

⁸²⁸ Ibid.

⁸²⁹ Human Rights Council, Resolution 23/9. The negative impact of corruption on the enjoyment of human rights, available at <http://www.achrnepal.org/about/resolution-239-the-negative-impact-of-corruption-on-the-enjoyment-of-human-rights/>, accessed 10th October, 2017.

⁸³⁰ See Article 2 of the International Covenant on Economic, Social and Cultural Rights of 1966.



CHAPTER NINE

HUMAN RIGHTS MECHANISMS

Introduction

Human rights mechanisms comprise of laws and institutions that protect and promote human rights. There are special mechanisms provided for under the Constitution of the United Republic of Tanzania 1977, the Constitution of Zanzibar 1984, and some other laws that are earmarked for the protection of these rights. This chapter highlights the human rights mechanisms that exist in and for Zanzibar as of the year 2018.

National human rights mechanisms include the Judiciary; the Commission for Human Rights and Good Governance (CHRAGG); Law Review Commission of Zanzibar (LRCZ); Office of the Director of Public Prosecutions (DPP); and the Police Force. Regional and international human rights mechanisms accessible to Zanzibar include: Universal Periodic Review Mechanism (UPR); Human Rights Committee (HRC), the UN Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Discrimination Against Women; the Committee on the Elimination of Racial Discrimination; the Committee on the Rights of Persons with Disabilities; the African Court on Human and Peoples' Rights; the African Commission on Human and Peoples' Rights; African Committee of Experts on the Rights and Welfare of the Child; and the East African Court of Justice.

9.1. National Human Rights Mechanisms

9.1.1. Judicial Mechanism

The basic principle regarding implementation of the constitutional human rights norms in Zanzibar legal system is provided for under Section 24(3) of the Zanzibar Constitution, 1984. The provision reads as follows:

Any person claiming that any provision in this Part of this Chapter or in any law concerning his right or duty owed to him has been, in being or is likely to be violated by any person anywhere in Zanzibar, may institute proceedings for redress in the High Court.



The Constitution, however, stipulates a caution in terms of the limitations in the enjoyment of human rights in Zanzibar. It says that enjoyment of such rights shall not be exercised in such a way that it results in the violation of rights of any other persons. This provision could be said to posit a priori in the enjoyment of collective rights as against the individualistic ones.⁸³¹ The Provision provides further that limitation may also be provided by laws enacted by the House of Representatives for various purposes.⁸³²

The enforcement mechanism per se is provided for under Section 25A of the Constitution of Zanzibar 1984. The provision states that such enforcement shall be through institution of a case 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 preferred before the same High Court but now sitting with three judges. The decision of the High Court in the appeal is final. That is, there shall be no appeal that will lie in this regard 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 1984.⁸³³ This means that the Court of Appeal of Tanzania has got no jurisdiction to entertain cases relating to the enforcement of the Bill of Rights under the Constitution of Zanzibar, 1984.

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 2017, there was not a single case instituted before the High Court of Zanzibar seeking enforcement of the constitutional Bill of Rights in Zanzibar.

⁸³¹ Section 24(1) of the Constitution of Zanzibar 1984.

⁸³² Ibid.

⁸³³ Section 24 (3), Constitution of Zanzibar, 1984.



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.

Enforcement of human rights may also be effected under the right provisions of the Constitution of the 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 basically the 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.

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 Tanzania, appeal may lie with the Court of Appeal of the United Republic of Tanzania. In the year 2017, there was no any human rights case originating from Zanzibar that is known to have been instituted before the High Court of the United Republic of Tanzania for enforcement of the Bill of Rights under the provisions of the Constitution of the United Republic of Tanzania 1977.



9.1.2. CHRAGG and Implementation of Human Rights

The Commission for Human Rights and Good Governance (CHRAGG) has been established under Article 129 (1) of the said Constitution as amended by Act No. 3 of 2000. The Commission is charged with the role of overseeing implementation in the protection of human rights and good governance in the country. This commission which has been established as an independent government institution is the national focal point institution for the promotion and protection of human rights and duties, as well as good governance issues, in Tanzania.

The Commission started its operations on the 1st July 2001 following the coming into force of the Commission for Human Rights and Good Governance Act No7 of 2001 as amended by Act No 16 of 2001.⁸³⁴ The Commission was officially inaugurated in March 2002 following the appointment of first Commissioners by the President of the United Republic of Tanzania.

CHRAGG plays the dual role of an ombudsman and a human rights commission. Although, being a union matter, this institution had to operate in both the Mainland and Zanzibar Tanzania from its inception. However, Zanzibar authorities initially prevented it from functioning in Zanzibar. The main argument was that human rights is not within the list of the union matters and that, under the prevailing circumstances at the time, its application in Zanzibar would offend the provisions of Section 132(1) of the Constitution of Zanzibar, 1984. However, after some consultations and undertakings, 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 the United Republic of Tanzania. As a result, CHRAGG extended its function and opened its office in Zanzibar since 2007, and recently it has opened its office in Pemba as well.

In its operation, the Commission has been highly criticized on grounds that its independence is not apparently realistic. For example, the

⁸³⁴ See: Government Notice No. 311 of 8th June 2001.



commissioners of the Commission are presidential appointees⁸³⁵. They may be removed from office because of a number of reasons listed in its Act of establishment. 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 always operate at the risk, if not the danger, of being removed from their offices at any time and for any reason.

The major challenge faced by CHRAGG and affecting its operations in Zanzibar is its budgetary constraints, which makes it difficult to protect and promote human rights in Zanzibar. Because of these constraints, it is sometimes difficult for CHRAGG to conduct investigations into alleged human rights violations and making follow ups. In recent years, the Commission has been accused of being very passive in response to human rights violations in Zanzibar, particularly in the aftermath of the 2015 general elections.

9.1.3. The of Law Review Commission of Zanzibar (LRCZ)

Another National Human Right Mechanism in the country is Law Review Commission Zanzibar (LRCZ). This commission was established in 1986. It was a result of recommendations of Law Review Commission commonly known as the “Msekwa Commission”, as led by Hon. Pius Msekwa. It was the idea of the Mskewa Commission that there are various laws which are outdated in Zanzibar and do not reflect the existing situation in the society. Hence, there is a need to establish a permanent organ to deal with law review. LRCZ was established under Zanzibar Law Review Commission Act No. 16 of 1986. The main function of the Commission is to review the laws of Zanzibar and to propose necessary amendments so as to make sure that they respond to timely changes as taking place in Zanzibar.

9.1.4. Role Played by the DPP Office

The Office of the Director of Public Prosecution as the National Human Rights Mechanisms in Zanzibar was established in 2002, following the 8th amendment of the Constitution of Zanzibar 1984.⁸³⁶ The fundamental role of

⁸³⁵Article 130 of the Constitution of the United Republic of Tanzania of 1977.

⁸³⁶ 1984 Section 56A



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.

9.1.5. The Role of Police Force

Police force, as well, has very important role to play in the exercise of rule of law generally. By dealing with evidential issues that are important for prosecution, the Police Force helps to prevent prosecution from being changed to persecution. There is no room thus to arrest and charge a person without evidence as doing so is to violate constitutional rights by having a person unreasonably charged with a criminal offence.



Tanzania Police Force which falls in the list of Union matter is involved in the National Human Rights Mechanisms in Tanzania. 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 basic function of the Police Force is the protection of peace and security of citizens and their property. They officials are part of the 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.

9.2. International Human Rights Mechanisms

The International Bill of Human Rights refers to a collection of three international documents: the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights (with its Optional Protocol⁸³⁷); and the International Covenant on Civil and Political Rights (with its two Optional Protocols⁸³⁸).

In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR), establishing the vision and principles which recognize the interdependence and indivisibility of all human rights: a vision that guarantees people civil and political freedom as well as economic and social well-being. Together with establishment of international law standards covering civil, political, economic, social and cultural rights, these international treaties have set up specific mechanisms for implementing the standards so set. The following is a brief discussion of the said human rights implantation mechanisms.

⁸³⁷ Optional Protocol to the Covenant on Economic, Social and Cultural Rights

⁸³⁸ (a): [Optional Protocol to the International Covenant on Civil and Political Rights](#)

(b): [Second Optional Proccotol to the International Covenant on Civil and Political](#) Rights, aiming at the [abolition of the death](#) penalty.



9.2.1. The United Nations Office of the High Commissioner for Human Rights

The role of the OHCHR is to protect and promote human rights. It is the main office in the United Nations that deals with human rights and it works to ensure that human rights standards are applied in all of the UN's activities. It collaborates with governments to strengthen their human rights capabilities, encourages states to develop policies and institutions that are conducive to human rights, and provides advice and technical assistance to achieve these goals.⁸³⁹

9.2.2. The United Nations Human Rights Committee

Article 28 of the International Covenant on Civil and Political Rights 1966 provides for the setting up of the Human Rights Committee, which thus becomes the principal organ of implementation of the Covenant on Civil and Political Rights. This contrasts with the Covenant on Economic, Social and Cultural Rights, where no new body was created and implementation was assigned to the existing Economic and Social Council.⁸⁴⁰

Reporting procedure is the principal measure of implementing the ICCPR, while the inter-State procedure is optional. Potentially, therefore, the submission of reports by States and their examination by the Human Rights Committee is of cardinal importance in the implementation of the Covenant, and so the practical and theoretical merits of such a system deserve careful study.⁸⁴¹

The obligation of States to report relates to – (i) the measures they have adopted to give effect to the rights set out in the Covenant; (ii) the progress made in the enjoyment of those rights; and (iii) the factors and difficulties, if any, affecting the implementation of the Covenant.⁸⁴² The report is to be presented within one year of the entry into force of the

⁸³⁹ <http://www.ohchr.org/English/bodies/hrcommission/> (accessed on 22nd November, 2017)

⁸⁴⁰ A.H. Robertson and J.G. Merrills, *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights*, 4th edn., Manchester: Manchester University Press, 1996, p.39.

⁸⁴¹ *Ibid*, pp. 41-2.

⁸⁴² Article 40(2) of the ICCPR.



Covenant for the States parties concerned, and thereafter when the Committee so requests.⁸⁴³

However, some governments are extraordinarily sensitive about anything in the nature of international examination of their human rights records, invoking arguments about national sovereignty and Article 2(7) of the UN Charter, and it was therefore a distinct achievement to get them to accept to get them to accept even modest measures just described. In practice, therefore, when a State submits either an initial report or a subsequent periodic report, examination of it usually extends over several meetings and may produce dozens, if not hundreds, of questions from the members of the Committee to the States' representatives.⁸⁴⁴

9.2.3. United Nations Human Rights Council

The Human Rights Council replaces the Commission on Human Rights as the main UN body charged with monitoring and evaluating conditions of human rights in countries around the world and identifying major areas of concern. This includes a system of special procedures, expert advice, and a complaint procedure.

Composed of 47 Member States elected by the UN General Assembly, the Council serves as a round-table for governments and civil society groups to raise concerns about human rights abuses in particular countries, as well as thematic areas of concern. The Council meets at least three times a year and also functions through a series of working groups and special procedures. These include the Open-ended working group to consider options regarding the elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which would include an individual complaint mechanism.⁸⁴⁵

Special procedures with thematic mandates include Special Rapporteurs on Adequate Housing, the Right to Education, the Question of Human Rights and Extreme Poverty, the Right to Food and the Right to Health, who are able to receive information on specific allegations of human rights violation

⁸⁴³ Article 40(1) of the ICCPR.

⁸⁴⁴ A.H. Robertson and J.G. Merrills, *Op Cit*, p. 44.

⁸⁴⁵ <http://www.ohchr.org/English/bodies/hrcouncil/> (accessed on 22nd November, 2017)



and send urgent appeals or letters of allegation to governments asking for clarification, as well as reporting on visits and investigations which uphold the basic principles and core values of economic, social and cultural rights.

The following are the seven Human Rights Treaty Bodies that monitor the implementation of the core international human rights treaties.⁸⁴⁶

- (a) Human Rights Committee (HRC);
- (b) Committee on Economic, Social and Cultural Rights (CESCR);
- (c) Committee on the Elimination of Racial Discrimination (CERD);
- (d) Committee on the Elimination of Discrimination Against Women (CEDAW);
- (e) Committee Against Torture (CAT);
- (f) Committee on the Rights of the Child (CRC); and
- (g) Committee on Migrant Workers (CMW).

9.3. Regional Human Rights Implementation Mechanisms

Regional human rights systems, consisting of regional instruments and mechanisms, play an increasingly important role in the promotion and protection of human rights. Regional human rights instruments (e.g. treaties, conventions, declarations) help to localise international human rights norms and standards, reflecting the particular human rights concerns of the region. Regional human rights mechanisms (e.g. commissions, special rapporteurs, courts) then help to implement these instruments on the ground. Currently, the three most well-established regional human rights systems exist in Europe, America and Africa.

The African regional human rights system has been established within the intergovernmental organisation known as the African Union.⁸⁴⁷ The main regional human rights instrument in Africa is the African Charter on Human and Peoples' Rights, 1981 and the main mechanisms are the African Commission on Human and Peoples' Rights and the recently-established

⁸⁴⁶ <http://www.escr-net.org/.../human-rights-enforcement-mechanism...> (accessed on 22nd December, 2017)

⁸⁴⁷ <http://www.au.int/en/> (accessed on the 30th August 2017).



African Court on Human and Peoples' Rights.⁸⁴⁸ The African Charter (which entered into force in 1986) incorporates universal human rights standards and principles, but also reflects the virtues and values of African traditions. Thus, the African Charter is characterised by the concept of a reciprocal relationship between the individual and the community, linking individual and collective rights.

The African Charter established an African Commission for Human Rights, located in Banjul, Gambia. It is a quasi-judicial body made up of eleven independent experts and tasked with promoting and protecting human rights and collective (peoples') rights throughout the African continent (by receiving periodic reports from States Parties on the implementation of the Charter's provisions) as well as interpreting the African Charter and considering individual complaints of violations of the Charter.

The African Commission has also established several Special Mechanisms including six Special Rapporteurs who monitor, investigate and report on allegations of violations in member states of the African Union, and eleven working groups, committees or study groups that monitor and investigate human rights issues under the purview of the Commission.⁸⁴⁹ The Special Rapporteur mandates cover: Extra-judicial, Summary or Arbitrary Execution; Freedom of Expression and Access to Information; Human Rights Defenders; Prisons and Conditions of Detention; Refugees, Asylum Seekers, Migrants and Internally Displaced Persons; and Rights of Women.

The Working Groups cover specific issues related to the work of the African Commission; Indigenous Populations/Communities in Africa; Economic, Social and Cultural Rights; Rights of Older Persons and People with Disabilities; the Death Penalty; Extractive Industries, Environment and Human Rights Violations; Fair Trial; and Communications. And finally, there is a Committee for the Prevention of Torture in Africa; a Committee on the Protection of the Rights of People Living with HIV; and a Study Group on Freedom of Association.

⁸⁴⁸ <http://www.achpr.org/mechanisms> (accessed on the 30th August 2017).

⁸⁴⁹ Ibid.



The African Court on Human and Peoples' Rights was established in 2004 following the entry into force of a Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights. The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter, the Protocol, and any other relevant human rights instrument ratified by the States concerned.⁸⁵⁰

⁸⁵⁰ Ibid.





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