

**Final 1**

**THE SECOND TO TENTH CONSOLIDATED PERIODIC REPORT  
SUBMITTED BY THE UNITED REPUBLIC OF TANZANIA UNDER THE  
AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 62 OF THE AFRICAN CHARTER**

A compilation of the second to tenth consolidated periodic report of the State  
Party due in 2006 with permission of the African Commission on Human Rights.

**ADDENDUM**

**UNITED REPUBLIC OF TANZANIA**

## 1. INTRODUCTION

This is the consolidated second to tenth periodic report submitted by the United Republic of Tanzania, to the African Commission for Human and People's Rights in conformity with Article 62 of the African Charter on Human and People's Rights. The report comprises of the 2<sup>nd</sup> to 10<sup>th</sup> periodic reports. The report has been prepared in conformity with guidelines issued by the Commission in its note ACHPR/PR of 2<sup>nd</sup> April 1999. This report updates and complements the initial report submitted in July 1991. Since the submission of the initial report there have been major changes in the country with regard to the protection and promotion of Human Rights which will be highlighted in this compilation of reports.

The 2<sup>nd</sup> to the 9<sup>th</sup> reports could not be submitted due to lack of specific institution and mechanism for coordinating and preparation of the reports. There is currently in place a specific department within the Attorney General's Chambers in the Ministry of Justice and Constitutional affairs, responsible for coordinating human rights reporting.

The United Republic of Tanzania legal system is structured on the Common law system. The category of laws that operate in Tanzania includes statutory laws, customary laws and case laws (precedent). The United Republic of Tanzania has also adopted far reaching administrative interventions in its endeavour to strengthen the legal, public, health and financial services sectors with a view to making them serve the public better. The measures include the Formulation and Implementation of Legal Sector Reform Program under which Knowledge and Skills of the Legal Profession, National Legal Framework, Access to Justice for the Poor and Disadvantaged, Human Rights and Administrative Justice and Service Delivery capacity and key Legal Institutions have been taken on board. The vision of the government is to ensure Timely Justice for All by the year 2008 when the medium term strategy to implement the reform will be reviewed.

This report covers both Tanzania Mainland and Tanzania Zanzibar.

## **2. ARTICLE 1: RECOGNITION OF RIGHTS, DUTIES AND, FREEDOMS**

Tanzania recognises the rights and duties enshrined in the Charter. It is a party to various regional and international treaties on human rights. During the period of reporting, Tanzania became a party to the Rome Statute on the International Criminal Court, 1998 which it ratified on the 20<sup>th</sup> August, 2002 and Protocol on the Establishment of the African Court on Human and Peoples Rights, 2004 which was ratified in February 2006.

Tanzania also in 2003, ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the Declaration made in accordance with Article 8 and Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. It ratified the Charter on the Rights and Welfare of the Child, on 16<sup>th</sup> March, 2003.

Tanzania follows the dual system in which terms of an International treaty becomes applicable in Tanzania upon both ratifying and domesticating the treaty terms. This means that a treaty becomes incorporated into law by either amending or repealing an existing legislation, or enacting new legislation altogether.

Tanzania, on acceding and ratifying the African Charter on Human and People's Rights was undertaking a solemn declaration to respect and, ensure that all individuals within its territory and jurisdiction enjoy Human Rights, enumerated in the Charter. Human Rights in Tanzania are respected, protected and entrenched in the Constitution of the United Republic of 1977. This followed the entrenchment of the Bill of Rights in the Constitution of United Republic of Tanzania in 1985 whose Article 12 – 29 incorporate various rights and duties along the spirit of the Universal Declaration of Human Rights of 1948. The Bill of Rights provides for the basic rights, which the individual is entitled to. To make the Bill of Rights a living document, in 1994 the Parliament of the United Republic of Tanzania enacted the Basic Rights and Duties Enforcement Act Cap 3 RE 2002, in order to enable her citizens to access the basic rights as guaranteed in the Constitution.

Similarly, Tanzania has taken measures to update some of the laws. For example, on matters relating to birth registration, the Birth and Death Registration Act CAP.108 R.E. of 2002 was amended in 2005 (Act No. 13 of 2005) to reduce cumbersome procedures on birth registration. The law also provides for late registration of birth for those who happen not to have been registered at birth. The office of the Registrar General has been on campaign on the importance of birth registration to ensure that every birth is registered at a place where it occurs.

Furthermore, the government intends to issue a White Paper to collect stakeholders' views before formulating legislation on the law of marriage, law of the child, inheritance and succession.

As for the case of Tanzania, Zanzibar there is in place the Birth and Death Registration Decree which requires parents to notify the Registrar of birth within forty – two days of the birth of the child. For birth taking place in prisons, hospitals, orphanage/quarantine stations, the heads of these institutions are supposed to report.

Some of the principles of the Charter have been incorporated and therefore domesticated in the following legislations; Penal Code CAP. 16 R.E. 2002 (on protection of children against exploitation and abuse), Criminal Procedure Act CAP. 20 of R.E. 2002 (on protection of children in conflict with the law), Evidence Act CAP. of 6 R.E. 2002 (on child witness) through the Sexual Offences (Special Provisions) Act (SOSPA) cap 101 RE 2002.

The United Republic in its effort to implement Human Rights, has established the Commission for Human Rights and Good Governance under Part One of Chapter Six of the Constitution of the United Republic of Tanzania, of 1977. The core functions of the Commission as provided by Article 130(1) of the Constitution are:

- (i) To promote within the country the protection and the preservation of Human rights and duties to the society in accordance with the Constitution and the laws of the land.
- (ii) To investigate acts of violation on human rights and matters related to good governance.
- (iii) To advise the Government, public institutions, private sector and the public on human rights and governance issues.

The Commission was established pursuant to the Paris Principles on national human rights Commissions or institutions.

The Commission for Human Rights and Good Governance, Act CAP. 391 R.E. 2002, was enacted in pursuance of Article 129(1). This Act applies to both Tanzania Mainland as well as Zanzibar. The Commission has started working and submissions have been made to it such as those relating to poor condition in prisons, the *Nyamhuma* land dispute, pension complaints and abuse of office. The Commission as of June 2006 had received 4,000 complaints and attended 8,525 complaints relating to human rights and good governance issues.

Generally, Tanzania recognizes freedom of its people, to associate, during the period of one party system; all trade unions were affiliated to the government. However, after the introduction of multi partism the situation has changed. Today, workers can form independent trade unions, under the Trade Unions Act and can also go on strike provided they follow the procedure stated in the Industrial Court Act. Currently there are a number of registered trade unions ,for example The Tanzania Union of Government and Health Employees (TUGHE), Chama Cha Walimu Tanzania (CWT), CHODAWU, TUICO, TRAAWU, and TLWAGU. The above information is provided in a nutshell, but details relating to specific measures in this regard will be provided in the course of this report in the relevant parts.



### 3. ARTICLE 2: NON DISCRIMINATION

Enjoyment of all rights and freedom to all without discrimination is provided for under Article 9(f) - (h) and Article 13(2) and (4-(e) of the Constitution of United Republic of Tanzania. Article 13 prohibits discrimination on the basis of nationality, tribe, place of origin, political opinion, colour, sex, religion or station in life. This principle is also reflected in various legislation. The Government has enacted laws prohibiting discrimination such as the Penal Code, Cap 16 RE 2002, the Evidence Act, Cap 6 RE 2002 and Criminal Procedure Act, cap 20 RE 202 prohibits discrimination in the criminal justice system. The Employment and Labour Relations Act, Cap 16 RE 2002 of 2004 prohibits discrimination at workplace.

Women, children and people with disability are particularly vulnerable to discrimination. The government is making effort to assist the poor and the other disadvantaged groups. In this regard, the Government has formulated a policy on National Development called the National Development Policy – Vision 2025 (Vision 2025) that aims at eradicating poverty by 2025. In the course of implementing the Vision 2025, the Government has formulated a strategy on economic empowerment and poverty reduction known as National Strategy for Growth and Reduction of Poverty (NSGRP). In the financial year 2006/2007 the Government has allocated 18% of its annual budget to implement the strategy at the village level. The Government has also formulated property formalisation programme MKURABITA, in order to formalise informal sector properties to enable people to secure loans. In addition to the above mentioned efforts, Local Government Authorities, Municipal and District Councils throughout the country allocate fund to the poor, women and youths in order to empower them economically through Tanzania Social Action Fund (TASAF), a programme under the Prime Minister's Office. In this financial year the government has allocated 500,000,000/= shillings to each region which will be used to empower people economically.

In order to supplement the Government efforts in eradicating poverty, it has allowed civil society organisations (CSOs) to work in collaboration with the Government in improving the economic capacity of the poor. It has, therefore, established a department, which

deals with non-governmental organisations under the Ministry of Gender, Children and Community Development. The Government has also established a full fledged Ministry of Empowerment and Planning that is responsible for issues related to economic empowerment and poverty reduction. There are also various financial institutions, which give loans to the above mentioned groups, such as Savings and Co-operative Societies, Pride Tanzania Limited, Small, Medium Enterprises and Equal Opportunity for All Trust Fund. The activities of these financial institutions are regulated by the Bank of Tanzania Act, the Banking and Financial Institutions Act of 2006 and the Cooperative Societies Act CAP. 211 R.E. of 2002.

The government has also adopted affirmative action measures so as to increase women participation in decision-making. The 14th Constitutional amendment increased the threshold of special seats for women. Article 66 (1) (b) of the Constitution provides for the number of women to be not less than thirty percent of the total number of parliamentary seats. According to the data compiled by the President's Office Diversity Unity, Public service Management, there is a considerable increase in the number of women in the current Tanzanian Parliament. Out of 324 members of Parliament, 94 are women (19 from constituency +75 from women special seats). This is equivalent to 30 percent. The previous Parliament had 290, women members of parliament were 63, (16 from constituency and 47 women special seats) currently, there is a woman Deputy Speaker of the National Assembly.

Furthermore, according to the Data compiled by the Inter Parliamentary Union in July 2006, Tanzania is among 3 top countries to have attained the SADC target of 30 percent women members of parliament. In addition, the Public Service Act, CAP. 298 R.E. 2002 provides for affirmative action in the public sector employment in order to increase the number of women employees in the public sector.

The Government has also taken positive measures to provide necessary social amenities, such as education and health, to minority groups like the Hadzabe. These measures aim at

ensuring that they are accorded equal treatment in the socioeconomic development of the country.

The laws and policies in Zanzibar make similar provisions in respect of the matters discussed above.

### **ARTICLE 3 EQUALITY BEFORE THE LAW**

The government of the United Republic of Tanzania ascribes to the Constitutional principle of equality before the law. This is provided for under Article 13 (6) (b) of the constitution. Equality is safeguarded to all and no person is above the law. This is in conformity with the doctrine of rule of law. In ensuring equality before the law, laws have been enacted to set procedures which are appropriate and take into account the principle that, when the right and duties of any person are being determined by the court or any other agency that person shall be entitled to a fair hearing and the right to appeal or other legal remedy against the court's decision. These laws include the Basic Rights and Duties Enforcement Act; CAP. 3 R.E. 2002 the Evidence Act; CAP 6 R.E. Criminal Procedure Act; CAP 20 R.E. 2002 the Public Service Regulations and the Civil Procedure Code CAP 33 R.E. 2002. Similar laws exist in Zanzibar.

Under the foregoing laws, an accused who, for example, has been taken to court is presumed innocent until proved otherwise in the criminal justice system. At the same time, when a person is of the opinion that his/her civil rights are infringed by another person, he/she can resort to court redress where both parties are given an opportunity to a fair trial.

In order to ensure that equality before the law is guaranteed, separation of powers is recognised under the Constitution and State power is exercised by the Executive, the Legislature and the Judiciary. The Independence of Judiciary is guaranteed under Article 107A of the Constitution and supremacy of legislature by Article 64 of the Constitution.



The state ensures that the right and necessity for judges to conduct their professional duties independently and without interference is respected. This is clearly stated in the Constitution and the Judicial Service Act, No. 4 of 2005.

The right of an individual to have access to an independent and impartial court and to effective legal representation is also safeguarded. Under the Legal Aid (Criminal Proceedings) Act CAP 21 R.E. of 2002, persons accused of capital offences like murder are given free legal aid at the expense of the Government. Under the Medium Term Strategy (MTS) within the Legal Sector Reform Programme (LSRP) of 2005/06-2007/08 the Government has formulated strategies to ensure that the indigent, disadvantaged and vulnerable persons are given free legal representation as and when in need. The Government has also allowed various institutions including civil society organisations to provide legal representation to the indigent, disadvantaged and vulnerable.

#### **ARTICLE 4 AND 5: RESPECT FOR LIFE, INTEGRITY AND DIGNITY**

With regard to respect for life, Tanzania has taken measures to ensure the enjoyment of this right by incorporating the right into the Constitution of the United Republic of Tanzania in Article 12 in 1984. In 1985 the Union Government enacted the Criminal Procedure Act CAP. 20 R.E. of 2002 which specifically requires the Police Force and other institutions entrusted with the use of force in their operation to ensure that the use of force is reasonable. Similar provisions are to be found in the Zanzibar Criminal Procedure Act of 2004. With regard to individuals who are likely to breach this right, both the Penal Code CAP. 16 R.E. of 2002 of Tanzania Mainland and that of Zanzibar penalise malicious killings (murder) and killing without malice (manslaughter). All these are measures intended to protect the right to life within the laws of Tanzania. It is important to state that Tanzania retains capital punishment for murder cases since public opinion on the matter is still divided and the majority still calling for retention of capital punishment. The punishment however has not been carried out for the past few years.

With regard to integrity of person, Tanzania has a number of procedural laws that ensures that no one's integrity is invaded without a just cause. These procedures are mainly included in the Criminal Procedure Acts of Tanzania Mainland and that of Zanzibar. For example, Sections 13, 14, 16 and 23 of Criminal Procedure Act of Tanzania and Criminal Procedure Act of Zanzibar respectively prohibits arrest without reasonable cause while sections 24 and 41 of CPA (T) and CPA (Z) respectively prohibit search without reasonable grounds.

With regard to respect for dignity and recognition of legal status of a person, Tanzania prohibits all forms of exploitation and degradation of a person particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment. This is in principle done through the Constitution vide Article 12(6) and 13(6)e respectively. The CPA (T) and CPA (Z) also prohibit torture, cruel, inhuman or degrading punishment and treatment in sections 55(1) and (2) respectively.

Although, due to constraints emanating from the ability of the government, the Union Government has taken measures to address problems of congestions in prisons such as overcrowding and poor sanitary conditions. This is being done through decongestion measures such as enactment and use of non custodial sentences including parole (under the Parole Boards Act) and Community service (under the Community Service Act). Prisoners are also being supplied with essential clothing and beddings in accordance with the provisions of the Prisons Act which are in line with the Minimum Standards for the Treatment of Prisoners 1956.

Prisons and other custody facilities are also being inspected regularly by among other institutions, the Commission for Human Rights and Good Governance. Most of the recommendations by the Commission have been implemented to the extent of the government's financial ability. The last visit by the Commission was carried out in March 2007.

With regard to the dignity of women and children, the Penal Code, the Law of Evidence Act, and the Criminal Procedure Act and their counterparts in Zanzibar were amended in 1998 in order to ensure the protection of women's and children rights and dignity in respect of sexual related issues. The amendment included prohibition of sexual harassment which was not initially in the law. Trials of sexual related cases are conducted in camera hence ensuring this right. The Penal Code, by virtue of the amendment now prohibits trafficking in person, an element that results in the degradation of one's dignity.

The government has also criminalized harmful traditional practices through section 169A of the Sexual Offences Special Provisions Act Cap 4 of the Revised Edition of the laws of Tanzania 2002.

In relation to dignity and criminal justice administration, the CPA (T), CPA (Z) and the Police Force and Auxiliary Services Act regulate the manner under which arrest and investigation are to be conducted. These laws provides for consequences of violating the procedures but an individual can also move the High Court under the Basic Rights and Duties Act which regulates litigation on constitutional violations. The Evidence Act of CAP. 6 R.E. 2002 also has provisions regarding the admissibility of evidence obtained through torture. In addition to these laws article 2 of the Code of Conduct for Law Enforcement Officials requires that '*in the performance of their duty Law Enforcement Official shall respect and protect human dignity and maintain and uphold human rights of all persons*'. The Provisions of the CPA (T) and CPA (Z) embody these provisions and that members of the police force and other investigative organs are required to ensure that investigations are always guided by the need to respect the dignity, honour and privacy of all persons under investigation and those helping in investigation. The Tanzania Police Force Client Charter, for example, crystallises the principles and the Charter has been widely circulated to people so that they know their rights and duties with regard to police work (including how to obtain remedy in case of police officer's misbehaviours). Those who have been found violating these principles have either

administratively (disciplinary charges) or through courts of law been called to account for their actions.

## **ARTICLE 6: RIGHTS TO FREEDOM**

Article 15(1) and (2) of the Constitution of United Republic provides that, every person has the right to freedom and to live as a free person, and that for the purpose of preserving this freedom, every individual has a right to live as a free person. The Article also provides that no person shall be arrested, imprisoned, confined, or detained except where it is expressly provided by law or where such prohibition is in accordance with a court order. These constitutional provisions are provided for in various pieces of legislation in order to give them legal and practical effects.

Arrest and detention both in the pre-trial, post trial and administrative detention are governed by various laws in Tanzania. Arrest, both by individuals and law enforcement officials, is governed by the Criminal Procedure Act, 1985. Detention can be done by Police at pre-trial stages where an accused person or suspect cannot provide reliable sureties for his bail. In the past years certain officials have been authorized by law to order people to be detained. The officials, like the Regional Commissioner and the District Commissioner could order incarceration of individuals upon being satisfied that an individual has breached peace or is a security risk. The nature and length of incarceration depended on the nature of the offence which the individual was alleged to have committed. These officials could detain individuals for a specific period of time.

However, some of those who were vested with the power to detain abused it. The time allowed was either exceeded or an individual could be detained without reasons, which is required by law. People who committed ordinary crimes were treated as security risks, thus detained under the Preventive Detention law. The Regional Commissioners Act, and District Commissioners Acts of 1962, allowed the Commissioners to detain an individual



for 48 hours without due process where he suspected that, such a person was likely to commit a breach of peace or disturb the public tranquillity.

The courts of law and the public voice intervened to condemn violations of the fundamental rights. In 1996, the Regional Commissioners' Act of 1962 and the District Commissioners Act of 1962 were repealed and replaced by the Regional and Area Commissioners Act, Under the new Act, the Regional and District Commissioner do not have power to detain.

The President as well under the Preventive Detention Act 1962 had powers to detain. From 1962 to 1985 any detention order by the President could not be challenged in courts of law, and this was the existing ouster clause in the Law. In 1985 the Preventive Detention Act, 1962 was amended by the Preventive Detention (Amendment) Act, 1985. The amendments left powers of the President to detain an individual but accorded rights to detainees to challenge the detention in the court of law, right to be given reasons for detention within 15 days after detention, and right of the detainee's name to be published in the official government gazette so that the public have knowledge about the detention. The amendment extended its application to Zanzibar.

This new position of the Preventive Detention law was put to test in the case of **Dadi Karim Nuru Mohamed Vs Republic (1999) Dar es Salaam Registry (Unreported)**. The detainee in this case had been detained prison on the strength of a detention order signed by the Vice President while exercising powers of the President of the United Republic of Tanzania who was outside the country. The order was challenged among other things, for failing to meet the conditions set in the Preventive Detention Act, 1962 as amended by the Preventive Detention (Amendment) Act Cap 361 of the RE of 2002. The law provides that, the detainee should be given detailed reasons for his or her detention within 15 days of the order and his name be gazetted in the official government gazette. In this case **Lady Justice Kileo** indicated that it was improper for the executive

among the State to use its powers to curtail the liberty of the citizens without following procedures set out in the law. The detainee was discharged.

## **ARTICLE 7: EQUALITY BEFORE THE LAW**

The Constitution of the United Republic of Tanzania, of 1977 under Article 13(6)(a), guarantees the right to be heard in order to ensure equality before the law. In order to achieve this goal, the State has a duty to make policies and enact laws to the effect that when the rights and duties of any person are being determined by the court of law or any other body, such a person has the right to be fairly heard and to appeal against the decision of the court or such other body. This provision gives the rules of natural justice special status in the Tanzanian legal system.

Courts of law has emphasised this position in the process of determining the rights of individuals. For example in the case of **Mahona Vs University of Dar es Salaam** (1981) TLR at page 55, the applicant was terminated from employment by the defendant on disciplinary grounds. He complained that he was not given an opportunity to be heard. Agreeing with the applicant Kisanga J, as he then was, confirmed that there was breach of the rules of natural justice as the grounds of appeal by the defendant were not made known to the plaintiff by the Minister and the same Minister proceeded to determine the appeal without hearing the applicant. The judge underlined the importance of the rules of natural justice and indicated that non-adherence to these rules renders the decision made null and void.

Similarly, in **Jimmy David Ngonya vs. National Insurance Corporation LTD** [1994] T.L.R. 28, the applicant was dismissed from employment as a branch manager of the respondent corporation. The Board of Directors dismissed him on the basis of an audit report whose contents were never shown to the applicant to enable him to contradict them. When the Board of Directors met to deliberate on the applicant's case, the General Manager, who had initiated the proceedings against the applicant and had commissioned

the audit, was present but the applicant was absent. The applicant applied for certiorari and mandamus arguing that his dismissal was in contravention of the rules of natural justice. The court held that since the audit report was prejudicial to the interests of the applicant and it formed the basis of the decision of the Board, it ought to have been shown to the applicant for his comments and for an opportunity to contradict its contents; failure to do that contravened the right of the applicant to be heard. It also held that since the General Manager, who was in the nature of a prosecutor, was present during the deliberations of the Board which dismissed the applicant, the proceedings of the Board were vitiated by bias.

Tanzania respects its people and every citizen is presumed innocent until proved guilty. This right is guaranteed by Article 13(6)(b) of the Constitution of the United Republic of Tanzania of 1977. This provision provides that no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty.

Article 13(6)(c) of the same Constitution provides that no person shall be punished for any act which at the time of its commission was not an offence under the law and also no penalty shall be imposed which is heavier than the penalty in force at the time the offence was committed.

Legal representation for an accused person is a right that is universally recognised. The Legal system of Tanzania recognises this right and where it is curtailed courts of law intervene. In the case of **Khasim Hamisi Manywele Vs Republic (High Court of Tanzania at Dodoma, Criminal Appeal No. 39 of 1990 (unreported))** it was held that the right to legal representation has been guaranteed and thus ought to be protected in Tanzania. The United Republic of Tanzania ensures that administration of Justice, and the principles of natural Justice are well protected.

The right to be tried within reasonable time by an impartial court or tribunal is guaranteed. Section 32(1) of the Criminal Procedure Act, Cap 20 RE 2002, provides that

a person arrested should be brought to the court within 24 hours or as soon as practicable. In addition to this, section 33 requires every officer in charge of a police station to report to the nearest magistrate within 24 hours or as soon as practicable, cases of all persons arrested without warrant within his respective stations, whether or not such persons have been admitted to bail.

Legal representation to every one is guaranteed under Article 13(6) of the Constitution. Under the Legal Aid (Criminal Proceedings) Act Cap 21 of RE 2002, persons accused of capital offences like murder are given free legal aid. Under the Medium Term Strategy (MTS) within the Legal Sector Reform Programme (LSRP) of 2005/06-2007/08 the Government has formulated strategies to ensure that the indigent, disadvantaged and vulnerable are given free legal represent. The Government has also allowed various civil society organisations to provide legal representation to the indigent, disadvantaged and vulnerable. The courts also recognise the right to fair access to justice. This was reiterated in the case of **Julius Ndyanabo vs AG, CA** where the Court of Appeal of Tanzania which is the Highest in the ladder ruled out the requirement in elections cases of depositing five hundred million Tanzanian Shillings as security prior to the hearing of cases. The court stated that, such an amount of money was so much on the higher side for a commoner or poor Tanzanian, hence an obstacle to access to justice.

## **ARTICLE 8: CONSCIENCE AND RELIGION**

Everyone in Tanzania is entitled to his conscience or freedom of thoughts and is able to decide what is right and wrong in the affairs that concerns him. This is guaranteed by Article 19 of the Constitution.

With regard to religion, Tanzania is a secular state. The profession, practice, worship and propagation of religion are free and private affairs of the individuals and the conduct and management of religious bodies is not part of the functions of the State. This is explicitly provided for, under Article 19 of the Constitution following the 14<sup>th</sup> amendment to the union Constitution. Tanzania is a vast and diversified country in which there are



different religious sects including traditional faiths. Freedom to manifest ones religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, morals or the fundamental rights and freedom of others.

Religions which exist in Tanzania are Islam, Christianity, Buddha, Hindu, Bahai, traditional religions and the Sikhs. Some of these religions are being managed by religious institutions such as the Muslim Council of Tanzania (BAKWATA), the Christian Council of Tanzania (CCT) for Evangelical Lutheran Churches of Tanzania, Anglican Church of Tanzania, African Inland Church of Tanzania; Episcopal Council (TEC) Roman Catholics; Free Pentecostal Church of Tanzania; and Seventh Day Adventists. On top of these, there exists groups within the religious sector, for instance the Catholic Women Association, Muslim Women Association; Tanzania Young Catholic Society, Young Men Christian Association (YMCA), Young Women Christian Association (YWCA), just to mention a few, formed for the purpose of identifying individual roles within the concerned religious groups.

#### **ARTICLE 9: INFORMATION AND OPINION**

As an effort to ensure that right to receive, express and disseminate information is enjoyed by her citizens, the United Republic of Tanzania among other things amended its Constitution in 2005 to remove the claw back clauses.

Under Article 18 of the Constitution of the United Republic of Tanzania, it is well stipulated and expressed that; every person has the right to freedom of opinion and expression, to seek, receive, disseminate information and ideas through any media regardless of national frontiers and has a resent of freedom from interference with his communication.

In October 2003, an Information and Broadcasting Policy was issued by the Government and additionally, a number of laws were amended and new pieces of legislation were enacted to create an enabling environment for the enjoyment of these rights. Some of these legislations are Newspapers Act CAP. 229 R.E. 2002 and the Broadcasting Services Act CAP. 306 R.E. 2002.

The Broadcasting Services Act of 1993 establishes the Tanzania Broadcasting Commission which is responsible for the issuing of broadcasting licences and the control of radio and TV programs in the country to meet the required standards that do not corrupt public morals.

As a result of these developments, there have been a number of privately owned newspapers, television and radio stations, media institutions profession training. There are no longer monopolised by the Government and the ruling party. Over 42 privately owned newspapers covering a range of subjects are circulated for the consumption of the public. Some of the common newspapers include the Guardian, Business Times, the East African, Family Mirror, Majira, Nipashe, Mtanzania, Mwananchi, An Nuur, Msema Kweli, Rai, Kiongozi, Nyakati, Tanzania Daima, The African, Citizen, Financial Times, Procurement News, Alasiri, Dar Leo and many others, a good number of privately owned television stations are in operation. These are Independent Television (ITV), Dar es Salaam Television (DTV), Coastal Television Network (CTN), Star Television, Agape Television (ATN), East African Television (EA), TV Burudani, Abood Television, SUA Television and Channel Ten. There are also privately owned radio stations such as stations Clouds FM, Radio One, Radio Free Africa, Radio Tumaini, Radio Kuizera, WAPO Radio, Radio Uhuru, Radio Quoran and Sauti ya Injili Radio Upendo FM, Radio Praise Power.

The Information relayed by most of these media institutions is done in Swahili language which is the national language hence understood by all that is, the majority of Tanzanians have access to information.

Furthermore, the media practitioners have established a council for the protection of their rights in the course of their duty. The Media Council of Tanzania is a voluntary, independent and non-statutory body established by media with a belief that the main role of the media practitioners is to serve the truth guided by the principle of public right to information. The council's objective is to maintain freedom of the media in the United Republic of Tanzania. It is also there to ensure the highest professional standards and strict observance of and compliance with the code of ethics by proprietors' media communication.

Another function of the Council is to monitor acts of infringement of the code of ethics by members of journalists associations or owners of the mass media. Media Council maintains a register of development likely to restrict the supply of information of public interest and importance and keep a review of the same and co-operates with governmental bodies at all levels. It also produces and disseminates such reports to the public. The government on the other hand has issued a directive of setting information desks to all Ministries, Departments and Agencies of the Government.

Of recent the Media has helped a lot in sensitising the public about various issues such as sexual abuse, exploitation of Minors and abuses against women e.g. female genital mutilation and its effect on women's Health.

Include the freedom to access information with regard to the wealth of the political leaders and decision makers (Ethics Secretariat) Public Leaders are required to submit a declaration on their wealth under the Public Leaders Ethics Act CAP. 398 R.E. 2002 to the Ethics Secretariat established pursuant to the provisions of the constitution.

## ARTICLE 10 and 11: ASSOCIATION AND ASSEMBLY

Article 20 of the Constitution of the United Republic of Tanzania is in conformity with Article 10 and 11 of the African Charter which explicitly provides that every person is entitled to freedom of association and peaceful assembly and more specifically to join an Association or organisation formed for the purpose of preserving his beliefs or interests. However, the freedom is not absolute, as it must be in conformity with the laws of the country. Since the initial report there have been some major political changes in the country, which in turn have led to some amendments to the Constitution of the country regarding these rights. Article 3 of the Constitution was amended in 1992 in order to reintroduce a multiparty system. The major political changes culminated into the holding of multiparty elections in October 1995. Ever since, multiparty elections have been held once in every five years.

The right of an individual to enjoy his or her freedom to associate with others is also portrayed in legislation for instance the Societies Act, CAP. 337 of R.E 2002, Non – Governmental Organisation Act, of 2002, Trustees Incorporation Act, CAP. 318, Companies Act, CAP. 212 of R.E. of 2002 the Political Parties Act, No.5 of 1992. These developments have widened the right to freedom of Association and Peaceful Assembly. However, essential limitations have been provided to ensure that political activities do not cause problems in specified areas. Section 12 (1) of the Political Parties Act, for instance, provides that, no political party is permitted to establish or form any branch, unit, youth or women's organisation or other organisation or other organ of any political party in any place of work, school or other place of learning. This is intended to ensure that these institutions are free from party politics which could at times be regressive and affect smooth development and productivity of such institutions.

In order to cement nationhood the Constitution of United Republic of Tanzania has restrictions on the formation of political parties. Article 20 (2) (a- e) stipulate that:

“Notwithstanding the provisions of sub article (1) it shall not be lawful for any political entity to be registered which according to its constitution or policy -

- (a) aims at promoting or furthering the interests of
  - (i) any religious faith or group
  - (ii) any tribal group, place of origin, race or gender;



- (iii) only a particular area within any part of the United Republic
- (b) advocates for the break up of the United Republic
- (c) accepts or advocates for the use of force or violent confrontation as means of attaining its political goals.
- (d) advocates or intends to carry on its political activities in only one part of the United Republic;
- (e) Does not permit periodic and democratic election of its leaders.”

Furthermore Article 20 (4) provides that “it shall be unlawful for any person to be compelled to join any association or organisation, or for any association or any political party to be refused registration on grounds only of its ideology or philosophy.”

General, Political pluralism has increased more opportunities for people to participate in politics in parties of their choice. Today there are 18 Political Parties which are Chama Cha Mapinduzi (CCM), NCCR Mageuzi, Civic United Front (CUF); Tanzania Labour Party (TLP), Chama cha Demokrasia na Maendeleo (CHADEMA); Democratic Party (DP), National League for Democracy (NCD) United Movement for Democracy (UMD), United Democratic Party (UDP), Tanzania Democratic Alliance, (TADEA), Chama Cha Haki na Ustawi (CHAUSTA), Jahazi Asilia and Progressive Party of Tanzania (PPT).

## **ARTICLE 12: FREEDOM OF MOVEMENT**

The United Republic of Tanzania respects the freedom of movement, of its residents. Under Article 17 (1) of the Constitution of the United Republic of Tanzania, it is expressly provided that every citizen has the right to freedom of movement and the right to live in any part of the United Republic, the right to leave and enter the country and the right not to be forced to leave or be expelled from the United Republic.

The Immigration Act, CAP. 54, of R.E. 2002 sets out the procedure and the conditions of entry and residence within the country. The Tanzania Citizenship Act, CAP. 357, R.E. 2002 provides for the procedure to attain Tanzania citizenship. The Refugee Act no. 9 of 1998, CAP. 37 of R.E. 2002 sets out the procedure and the rights of the Refugees within the United Republic of Tanzania. The country's laws allow individuals to seek asylum when they are persecuted in their countries of origin and indeed Tanzania has been for many years a home for many refugees from neighbouring countries and afar.

The law respects the right of the non-nationals who are legally admitted according to the procedure set out in the laws. Expulsion may only happen if and only one goes contrary to the Law and that decision is usually taken in accordance with the law. Mass expulsion of non-nationals is prohibited in Tanzania.

### **ARTICLE 13: PARTICIPATION**

The Government of the United Republic of Tanzania guarantees the right of its citizens to participate freely in public affairs. Article 21(1) and (2) of the Constitution of the United Republic provides for freedom of the individual to take part in matters pertaining to the governance of the country, and in the process leading to the decision on matters which affect him, his well being or that of the nation at large. Furthermore, article 146 (1) and (2) of the Constitution decentralize the power of the Central Government to the Local Government, which enables the citizens to participate in the decision making processes and to have access to public services.

The Constitution guarantees women's right to participate in political matters on and in decision making on equal basis with men. The 14<sup>th</sup> Constitutional amendment of February 2005 has increased the number of women participation to a minimum of thirty percent. In decision-making, there are 6 women Ministers leading important ministerial portfolio e.g. Finance, Ministry of community development, Gender and children, Ministry of Education and Vocational Training and Ministry of Justice and Constitutional Affairs. Furthermore there are women Permanent Secretaries leading various Ministries, Regional and District Commissioners and the Deputy Speaker, (the Speaker of The African Parliament is a Woman from Tanzania (one of the minister originates from a minority tribe called Hadzabe). A good number of women participate in the judicial system. The court system is a three tier one. It consists of its apex The Court of Appeal of Tanzania which has 3 woman justices, out of 11. Justices of Appeal; the High Court of Tanzania has 13 women Judges out of 57 judges.

Political reforms, which have been undertaken in Tanzania, have promoted democracy, and good governance. One of the fruits of good Governance is the establishment of the

Permanent Voters Register under the National Election Act 1985, CAP. 343, R.E. 2002, as amended in 2004.

The Constitution recognises the equal Status of men and women and the right to participate in political, social and economic life of the country. Furthermore individuals participate freely in the activities of Non Governmental Organizations. They articulate out their needs and at times they use the Non Governmental Organisations as a forum to engage the government to discuss issues in order to improve their status. The Government has also involved individuals, NGOs all over the country to participate towards the amendment of the Constitution through a White Paper. The individuals responded by expressing their views and reasons to justify their proposals to the proposed amendments. Public services such as school, hospitals, and roads are equally accessible. Primary Education is free and compulsory for every child.

#### **ARTICLE 14: PROPERTY RIGHTS**

The right to property is provided for under article 24 (1) of the Constitution of the United Republic of Tanzania. The provision guarantees the right to own property and the right to get protection for that property. That property is accorded protection when it is held in accordance with the law. This means that protection is not given to illegally acquired property. Article 24 (2) prohibits the deprivation of property by reason of nationalisation or any purposes without legal mandate which shall set out conditions for fair and adequate compensation.

The right to the peaceful enjoyment of the property that is guaranteed in the Constitution, it does not advocate for any form of discrimination by virtue of the Land Act, CAP. 113 R.E. 2002 and Village Land Act, CAP. 114 of the R.E. of 2002. The previous social set up in the country was such that it prevented women from occupying and controlling the economy, though it had been declared by the government that all citizens are equal, and equal opportunities are given to all irrespective of gender.

Although the Government has adopted measures to ensure that there is no discrimination in the society in some areas women are still discriminated in matters related to property.

There have been problems regarding ownership of land under customary laws, because women are sometimes discriminated. However, the courts have declared these practices unconstitutional in such cases like **Bernado s/o Emphraimu Vs Holaria d/o of Pastory**<sup>1</sup> and many others. Gradually, such customs are coming to an end.

Generally access to land is now being accorded to all. In 1999, the Land Act CAP.113 of R.E 2002 and Village Land Act CAP. 114 of R.E. 2002 were enacted to address the mischief mentioned above. Contemporary women have access to ownership of land. The above mentioned land legislations has established committees, which deal with various land matters within their respective areas. Such committees are required to ensure gender representation as stipulated in The Courts (Land Disputes Settlement) Act CAP.no.2 of 2002. In addition to this, criminal and inheritance law are now being reviewed so that widows and orphans are not deprived of their right to inheritance.

Gradually the society is opening up for change in matters of equality between men and women as such customary practices are expected to fade out gradually.

#### **ARTICLE 15: WORK AND PAY**

The Constitution of the United Republic of Tanzania under Articles 22 and 23 provide for equal rights in employment to both men and women. Equal opportunities in employment are accorded to men and women, where women are highly encouraged to apply. Equal pay for every equal work done is a right to men and women. Maternity paid leave is granted after every three years to every female Public Servant under the Standing Orders for the Public Service, 1994 and Section 98(1) of the Public Service Regulations, 2003. In addition to this, the newly enacted Empowerment and Labour Relations Act, no. 6 of 2004 provides for paternity leave, according to section 34 of the said Act.

The Constitution also spells out clearly the right of all persons to work without discrimination. This includes the right to free choice of profession, promotion, job security and employment, as well as to fringe benefits. However, the Constitution only provides and protects the right of those already employed. It is not guaranteed that every person will be provided with work. This is so because work as part of economic right is

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<sup>1</sup> PC Civil Appeal No. 701 of 1989



not considered an inherent or inalienable right. It is among the rights accorded by the state within the limits of its economic capacity and development.

The Employment and labour relations Act has replaced the old Employment Ordinance and the Security of Employment Act CAP. 387 R.E. 2002 in dealing with employment issues. This law provides for equal opportunities and condition of employment regardless of gender. However, competence, qualification and other merits are important factors for one to qualify for employment.

Matters relating to the improvement of working conditions and mainstreaming gender issues have been considered and incorporated in the new laws.

In promoting women's opportunities in the informal sector, the government is providing grants and low interest loans to women, disadvantaged groups and youth so as to enhance their right to work.

#### **ARTICLE 16: HEALTH**

In Tanzania, the right to health falls outside the provision of the Bill of Rights. The right is provided for under Article 11 (1) in part II of the Constitution of the United Republic of Tanzania.

The National Health Policy was introduced in 1990, among the major areas outlined in the policy was primary health care and public education in health care services .as an effort to make sure that health care is affordable and available to all the government introduced community health insurance scheme's in all district's under the scheme there is a provision for exemption of services for vulnerable groups of our society namely the disabled, senior citizen's and children (under 5 years old), the vaccination for the six major child sickness are provided for free, and the aged above 70 years get free medical treatment. For people within the public service they are cover by the National Health Insurance Fund (NHIF).

All citizens get free medical treatment for diseases like tuberculoses (T.B.), leprosy and cancer, there are specialised institutions for instance Ocean Road Cancer Institute to deal with cancer. In Arusha region the Kibongoto hospital is responsible for the treatment of

T.B. and leprosy. There is a National T.B and Leprosy Programme which is responsible for counselling, treatment, distribution of drug's related to those diseases. The Programme has focal people in all regions within the country.

The National Health Policy recognises the role of traditional medicines and alternative healing systems. The *Traditional and Alternative Medicine Act, no. 23 of 2002*, governs the practises, and issues of research in regard to traditional medicines and alternative healing systems.

The Government in doing away with harmful practices that affect women and society at large, it has either enacted new laws or amended the existing ones to deal with the same, for example The Penal Code as amended by Sexual Offences Special Provisions Act Cap. 10 of R.E. 2002 have added Female Genital Mutilation (FGM) as one of the criminal offences. Through Non Governmental Organizations (NGO's) and mass media, the government is educating on its citizens how bad FGM is to women's health. Tanzania has ratify on 3<sup>rd</sup> March 2007, the Maputo Protocol which among other things, prohibits and condemns all form of harmful practices, including FGM. The Maputo Protocol, 2003. also known as the Protocol to the African Charter on Human and People's Rights of Women in Africa is a product of African Union head of States held in Maputo, Mozambique on July, 2003.

The HIV/AIDS epidemic has posed a serious threat to our Country. By December 2001 the United Republic of Tanzania had over two million people living with AIDS. More than 700,000 are suffering from HIV/AIDS. Between 1<sup>st</sup> January and 31<sup>st</sup> December 2002, a total of 12, 675 cases were reported to the National AIDS control Programme (NACP) from the 21 regions of Tanzania mainland. Many Tanzanian families have been affected by the scourge, yet stigma and discrimination remains high within the communities, at workplace and health services. In 2001 The National Aids Policy was launched by President Benjamin Mkapa, who declared HIV/AIDS a National Disaster and the Tanzania Commission for AIDS (TACAIDS) Prime Minister's Office was formed. TACAIDS has been addressing the HIV/AIDS campaign, transmission from motherhood to child, anti retro- viral and stigma and discrimination. HIV/Aids has been made a cross sector issue where by each sector mainstreams it into its mandate. Anti

Retro Virals are provided for free to Peoples Living with HIV/AIDS (PLHA's). Currently the government has reviewed laws affecting HIV/AIDS and came up with a report which recommended for changes in legislations in order to control and mitigate the impact of HIV/AIDS. A Concept Paper on HIV/AIDS legislation awaits Stakeholders' meeting. Awareness and intervention programmes are organized at the community level in order to negate the spread of HIV/AIDS.

With regards to Malaria and Cholera, the Government is working with other partners to fight malaria. The campaign is aimed at encouraging people to use mosquito nets and clean the environment and areas where people live. The Government has recognised Cholera as one of the dangerous diseases. It conducts campaigns to educate all people without any discrimination to use clean and safe water. There are special programmes in mass media on how people should fight the diseases and there are plenty of drugs to be supplied, in areas affected with this disease. The biggest problem of Cholera is that the Dar es Salaam City is not provided with sufficient and safe water. With a population of 4 million people the city is served with 18 million gallons of water, which is one fifth of the needs. More over the large population in the city has poor sanitary services. This makes the fight against the disease even more difficult. However poverty is the main cause of cholera and in the fight against malaria, because most people cannot afford buying the simplest vector control accessories like mosquito nets and insecticides. The government is making efforts to enlarge its water supply, by encouraging investors, to invest in water sector. It also educates people to live in clean environment which surround them in order to eliminate these diseases. The government has also subsidised prices for the vector control accessories so as to enable common people to buy these, accessories. The Government has done a great deal to curb the shortage of Dr's (Medical Practitioners, nurses, medical assistant's and clinical officers) by paying for their training at the Public and Private Universities. The government has permitted private universities and higher learning institutions to train them. Upon completion of their studies they will be given direct employment to areas where there is a shortage.

## **ARTICLE 17: EDUCATION AND CULTURE**

The Right to Education falls under Part II of the Constitution of the United Republic of Tanzania and it is not enforceable. Article 11(2) provides that every person has a right to education, and every citizen shall be free to pursue the field of education of his choice up to the utmost standard subject only to his merit and ability.

Article 11(3) of the Constitution provides that, the Government shall endeavour to ensure that there are equal and adequate opportunities to all persons to enable them acquire education and vocational training at all levels of schools and other institutions of learning.

The government's effort to improve education focuses on the distribution and equalization of the education opportunities for both sexes and expansion of the system at all levels, including the attainment of the primary education. In order to achieve this the government has embarked upon a programme which among other things aims at increasing the enrolment of primary school pupils. Religious organisations and some Non-governmental organisations have come up with models and approaches for alternative education towards women and children as protection measures. The gender imbalance at all levels of education is being addressed by the Government.

The Government of the United Republic of Tanzania considers education as one of the major factors of development. In that regard, the government has formulated an Education and Training Policy of 1995 in order to raise the education standard of her citizens. The Education and Training Policy of 1995, apart from other objectives, aims at promoting access to basic education available to all citizens as a basic right, encouraging equitable distribution of educational institutions and resources, and expanding and improving girls' education to enhance gender balance. The Policy aims at promoting and facilitating access to education to the disadvantaged social and cultural groups. Such groups include those who have not had access to this right due to their style of living, who among them are the hunters, gatherers, fishermen and pastoralists like the Masai; others on account of marginalisation such as orphans and most vulnerable children e.g. street children, others on account of their physical and mental disabilities such as the



blind, the deaf, the crippled and the mentally retarded. The Policy document also aspires for universal and compulsory education to every child at the age of seven. The Education Policy Tanzania Mainland is supported by the Constitution of the United Republic of Tanzania in its article 11 (2). For Tanzania there is in place the Education Policy which addresses educational issues pertaining to Zanzibar. The two laws are in place to ensure the implementation of the Education Policy. The Education Act CAP. 353 R.E. 2002 (for Tanzania Mainland) and the Education Act No. 6 of 1982 (for Zanzibar).

The country is implementing a number of initiatives to improve the education sector. These initiatives include encouraging more private schools. Currently there are 273 registered non government primary schools, whereby 58 are registered religious English medium and 6 are registered English medium government primary schools. In total there are 337 registered primary schools in Tanzania. Furthermore Tanzania has 2289 Secondary Schools ('A' and 'O' level). Whereby 471 are private 'O' level Secondary Schools and 128 are 'A' level private Secondary Schools.<sup>2</sup>

Vocational institutions. Though a programme, Primary Education Development plan (PEDP) Secondary Education Development plans, Girls Secondary support programme. The Government is implementing far reaching initiatives to improve the quality of education and access to education for girls. These initiatives are proving worthy and will continue to be pursued for a number of years to come.

In the United Republic every individual may freely take part in cultural life of his community. There are about 126 speaking different ethnic languages. However, majority of the population speaks Kiswahili, which is the national language. This language is the symbol of unity as it is the major means of communication and business transactions.

The Government in its effort to promote and protect morals and traditional values recognized by the communities has formulated the Cultural Policy of 1995 in order to accomplish promotion and protection of culture. The objective of the Policy was to promote: *Kiswahili as a national language, vernacular languages, arts and crafts, protect cultural heritage, to ensure that recreational activities take cognize of national values, sensitize the public to participate fully in cultural activities, to ensure that the*

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<sup>2</sup> United Republic of Tanzania, Ministry of Education and vocational Training, Basic Education Static in Tanzania (BEST), 2002, National Data, June 2006. p.p. 35 and 69.

*family is respected as a basic and important institution and to promote education and training in different cultural professions.* The Government through the National Museum of Tanzania has established a system whereby each ethnic tribe has the opportunity to display its culture in the village museum. These ethnic tribes are required to register their cultural values with the National Museum with the objective of preserving them for future generations.

#### **ARTICLE 18: FAMILY**

The United Republic of Tanzania has taken special measures to protect the family and to eradicate discrimination against women. Children's rights are upheld to conform to international declarations and Conventions. Similarly the government has taken special measures to protect the aged and people with disabilities with regard to their physical or moral needs.

The United Republic of Tanzania has in the process of protecting the family and encouraging its cohesion, among other things has established reconciliation boards under the provision of the Law of Marriage Act CAP. 29 R.E. 2002 some are under the Department of Social Welfare and others have been established under the auspices of religious institutions. The Department of Social Welfare falls under The Ministry of Health and Social Welfare. These boards have the function of reconciling married couple who are in dispute. The boards encourage reconciliation and mediation, which enhances cohesion and unity of the family at large. The Department of Social Welfare further educates the public on child trafficking and a trafficking in human persons bill is currently being considered. The department does counselling for the family and educate parents on the effects of divorce and maintenance of children.

The Department further educates the public and promotes family values. The family day is being celebrated on the 15<sup>th</sup> May each year in the country.

The government through the Ministry of Community development, Gender and Children is finalising '*the family Policy*' which has the objective of intensifying family unit at all levels. Family education will be included in the syllabus in schools to promote and teach family values. The department plays a big role in the adoption process by investigating the environment of the intended adoptive family as per the Adoption Act CAP.....RE 2002 rules and regulations. Poor families receive petty business loans from the Social welfare Department and free education from local governments.

The provisions of the Penal Code CAP 16 Cap R.E. 2002 of Tanzania impose a specific duty with regard to heads of families or households to provide necessities of life to children under 14 years.

The amending legislation, Sexual Offences Special Provisions Act CAP. 101 RE 2002, was enacted to give protection to women's personal integrity, dignity and liberty, also protect children against sexual abuse. The government ensures that the elimination of every discrimination against women and the protection of the rights of women and children as stipulated in international declarations and Conventions.

In ensuring the protection of the child the Government of the United Republic of Tanzania, established a Department called 'Children Development Department' in 2003 to deal with children issues in the country within the Ministry of Community Development Gender and Children.

The government has already formulated a white paper with a view to reviewing all laws relating to women and children. It is currently collecting stakeholder's views on the issue. Similarly, the Child Policy is currently under review to accommodate the principle of the best interests of the child.

The Ministry of Community Development Gender and children has established Junior Council for the United Republic of Tanzania for the effective participation of Children. Furthermore Children's rights issues are incorporated in the National Growth and Eradication of Poverty Strategy which is an important step in ensuring Children's rights in the country. The government is committed to the rights of the child and among other things celebrates the Day of the African Child each year on the 16<sup>th</sup> June. Through the Ministry of Community development Gender and Children has submitted timely its

periodic reports on the Convention on the Right of the Child and the Convention on Elimination of all Forms of Discrimination against Women.

The government in its effort to comply with this article empowers women by establishing loan schemes such as the Women Development Fund (WDF) which also operate through the Districts level to the grassroots. This loan scheme has been established to eradicate poverty among women in the country. Furthermore, the United Republic of Tanzania has developed a women and Gender Development Policy (2000) with the objectives of giving direction to stakeholders in advancing women socially, culturally, economically and politically. The Policy also provides guidelines for gender focus on mainstreaming gender in various programmes, women ownership of property, participation in decision making, in accessing business, credit facilities and technology. Gender Focal Points (GFP) have been established in all the Government set up at National level, Departments, Regional secretariats and the local government, authorities, with the view of bringing equality at all levels.

The enactment of the Land Act CAP 113 R.E. 2002 and the Village Land Act CAP 114 R.E. 2002 of the same year provides for Gender equality in ownership, access and control over land.

The adopted Micro Finance Policy (2000) clearly shows efforts done by the Government to mobilize women in communities to form savings and credit co operative associations (SACCO's) and establishment of Community Banks that assists women to access Capital without depending on the support of men.

The United Republic of Tanzania formulated and adopted the National Trade Policy in 2003 that examines, among other things, women and gender factors in view of the unique role as a productive force which is constrained by limitations in their accessibility to necessary production of capital, eradication and entrepreneurial skills.

The establishment of the *Tanzanian Chapter of the Eastern African Network on the elimination of Female Genital Mutilation*, which was formed in year 2001, to mark the commitment of the government regarding this issue. A National Plan of Action to



combat FGM (2001- 2015) has been developed to provide guidance on elimination of FGM.

In improving the condition of people with disabilities the United Republic of Tanzania has established the Disabled Policy? (National Policy on Disability 2004), with the objective of improving the life standard of the disabled people. The Government through its department of social welfare provides for vocational training and technical aids for people with disabilities. It works closely with organisations dealing with people with disabilities. To further its commitment, the Government joined the African Rehabilitation Institute which emerged within the African Union. Currently the Government is working on a projected ten years plan for people with disabilities called 'African Decade for people with disabilities'.

Apart from giving small loans for the disabled to start of petty business, the Social welfare Department also assists with job placement. The state is also in the process of ratifying the UN standard Rules on equalization of opportunity for person with disability.

A number of pension schemes are in place to ensure comfortable retirement these include Parastatal Pension Fund (PPF), National Social Security Fund (NSSF), Public Service Pension Fund (PSPF), Local Authorities Provident Fund (LAPF) and National Health Insurance Fund (NHIF).

The Government in its effort to improve the condition of the elderly people on the other hand has done quite a number of efforts. It has established 17 elderly homes that are run by the government within the country and another 24 elderly homes are run by Faith Based Organisations for example Mburahati faith based) Nunge (Government owned) and Msimbazi (FBO) elderly home. Another 24 elderly homes 'are run by faith based organisations.

The National Ageing Policy 2002 that exclusively deals with elderly issues was formulated in 2002. The National Growth and Poverty Eradication Strategy has accommodated issues of elderly people to mark its commitment. The Social welfare Department provides counselling for the elderly. It also advises and counsels elderly groups who are conducting business. Further more elderly people over 60 year are treated free of charge in hospitals. The government collaborates well with Faith Based

Organisations and Non Governmental Organisations that deal with the elderly. It further gives directed assistance of equipment to elderly people who are disabled for example hearing aid and artificial legs.

## **ARTICLE 19: EQUALITY OF RIGHTS**

Article 12 of the Constitution of the United Republic of Tanzania enshrines the provisions of article 19 of the Charter. The government has undertaken measures to ensure that these rights are realised by reviewing laws, which are discriminatory. Such legislator review includes land laws, Law of Marriage, Cap 29 RE 2002 Laws of succession, and inheritance and laws that touch the best interest of the child.

NGOs complement government efforts in dealing with women issues and have been at the forefront in advocating for women's rights and equality. One of these organisations. The Tanzania Media Women Association (TAMWA) has launched various radio, television programmes and publications to educate the public on human rights, women rights, equality and freedom from fear. Other NGO's, such as Kuleana, National Organisation for legal assistance (NOLA), The Tanzanian Chapter of The Southern African Human Rights NGO Network, The University of Dar es salaam Legal Aid Committee, advocate for children's rights making sure that they are given equal status to maintain their dignity.

Equal opportunity is also accorded before the courts of law. Cases in court are considered on merit without segregating an individual in terms of sex, race, ethnicity or age. Tanzania Lawyers Women Association, Legal and Human Rights Centre and other NGOs play the role of providing legal assistance to women in courts of law.

In another endeavour to advocate for equality between men and women, the Government under UNICEF has undertaken a project directed at changing negative parental and community attitudes toward the rights of girls to education and other economic opportunities. The programme among other things advocates on reduction of existing gender disparities, support social mobilisation for the girl child and promote positive images of girls and positive gender relation in the society.

Equal status of men and women is provided for in the Constitution of the United Republic of Tanzania. The right to vote and stand for election is provided equally for both irrespective of gender.

Article 5 of the Constitution provides for the franchise right to vote. Every citizen who has attained the age of majority has the right to vote in the government's elections provided that he or she has attained the age of majority.

Inequality of access to education still exists at all levels. This divide between children from rural and urban locations, those from rich and poor families and children of educated and illiterate parents. These inequalities are a result of the respective historical background of each group, the culture they were brought up and the economic constraints encountered by the government. Cultural values and practice, and lack of value of education affect girls and this is a big cause of inequality in access and learning achievement for women. The government on her part has formulated an education and cultural policy supported by reviewed laws to ensure a conducive environment for education of the girl child. The University of Dar-es-salaam and Sokoine University of Agriculture (SUA) have special affirmative action programmes to assist women students gain access to institutes of higher learning and tertiary institutes.

The employment status reveals that employment opportunities for women are limited despite existing laws which provide for equality between men and women. Women are encouraged to aspire to various posts provided that they have the required qualification. Various government institutions and NGOs encourage women to be aggressive in search of employment and refrain from inferiority complex.

The Law Reform Commission has reviewed all laws pertaining to labour employment with a view to improve the status of women and children in employment and incorporate gender balance. The bill for the new law has already been passed by the National Assembly and awaits for commencement date from the Minister of Labour.

Gender based NGOs are building partnerships with allies to mainstream gender transformation in the society. Committed partners often serve as role models. Initiatives to eliminate customary malpractice, which discriminate against women such as eating

habits and inheritance matters, custody of children and division of property in divorce are being carried by the government and NGOs in order to strike a balance of equality.

Article 14 of the Constitution of the United Republic of Tanzania provides for the right to life and protection of the community.

#### **ARTICLE 20: RIGHTS TO EXISTANCE AND SELF DETERMINATION**

Tanganyika attained its independence in 1961 and Zanzibar attained its independence in 1964 and the union was formed in 1964., The United Republic of Tanzania Constitution of 1972 ensures the right to existence of its citizens, in its article 14, whereby it stipulates that every person has the right to live and to the protection of his life by the society in accordance with the law. Furthermore the country ensures that its citizens shall freely determine their political Status (article 20 (1) and shall pursue their economic and social development according to article 22 (right to work), and to choose the Policy they have freely chosen.

The right to self determination can be covered for by article 21 (1) of the Constitution which stipulates that all human beings are born free, and are all equal according to article 12 (2), which says that every person is entitled to its recognition and respect for his dignity.

#### **ARTICLE 21: RIGHTS TO POSSESS WEALTH AND NATURAL RESOURCES**

Land is property of the state and the President of the United Republic of Tanzania is the custodian on behalf of all citizens. Any exploitation of the land is in compliance to laid down procedures set under the Land Legislations.

The government can acquire land for public interest such as land for building schools, hospitals or government institutions, and for commercial utilisation. When doing so the government pays compensation to the affected people. Where disputes arise about quantum the aggrieved person has access to the court to seek for redress.



## ARTICLE 22: ECONOMIC SOCIAL AND CULTURAL RIGHTS

Economic, social and cultural rights are rights that have been characterised as the second generation rights.

The Economic, Social and cultural rights have been incorporated in the Bill of Rights. As the Government has adopted various measures in order to ensure that, these rights are being respected. With regard to economic rights, Article 22 of the Constitution of the Republic of Tanzania do provide for the right to work. Similarly Article 23 provides for the right to work without being discriminated and the right to get just remuneration according to the work done. The courts have in several occasions reminded the Government on her obligation to implement these provisions. In civil Appeal no 45 of 1998, between the Attorney General and N.I.N Munuo Nguni (unreported) the Court of Appeal of Tanzania held that the Section 4 (2) of the Legal Aid (Criminal Proceedings) Act, Cap 21 RE 2002 was unconstitutional because it provided for remuneration which was not just to the plaintiff. The respondent/s in this matter instituted a suit against the Government challenging the decision of the Judge in charge of Arusha High court registry to suspend him from practice because he had refused dock briefs. Payment for each dock brief was five hundred shillings. However section

4 (2) provided that:

*remuneration payable shall not be less than one hundred and twenty shillings and nor more than five hundred shillings.*

The court held that the amount stipulated by this provision was in contravention of the Constitution.

Similarly the government has formulated various policies dealing with economic and social issues. Among the policies, formulated a are the National Vision 2025, the NATIONAL STRATEGY FOR GROWTH AND REDUCTION OF POVERTY referred to as the NSGRP, which is geared towards promoting economic growth and reduction of income poverty and also closely linked to improved quality of life and social well being. These are based on the bedrock which is good governance and accountability. The

strategy make sure that development initiatives are efficient effective and harmonised and that everyone benefits from the new wealth that is created.

Another notable effort by the government is the amendment of the land act, 1999 with regard to the use of land for economic gain, the amendment has simplified the procedures for mortgaging land for acquiring loans.

The government is also in the process of enabling financial institutions to ease their conditions for loans. The government is taking care of the development of her people by creating conducive environment for sustainable development. A development Policy was formulated and adopted in 1999. This Policy has the objective of building a strong economy by empowering people with development facilities. The Land law has been amended to allow people access credit facilities through mortgages. Such facilities include banks like CRDB Bank, National Micro Finance Bank, National Bank of Commerce, Akiba Commercial Bank and the Postal Bank. Others are Small Industries Development Organisation (SIDO) which loan small industry machinery, Equal Opportunities for All Trust Fund, TASAF, Agricultural Input credits. The National Poverty Eradication Strategy and other national development Programmes address thoroughly the development issue.

The Government has also formulated a cultural Policy whose objectives are:

- a) To promote Kiswahili as a National language
- b) To promote vernacular languages
- c) To promote arts and crafts
- d) To protect and promote cultural heritage
- e) To ensure that recreational activities take cognizance of national values
- f) To sensitize the public to participate fully in cultural activities
- g) To ensure that the family is respect as a basic and important institution
- h) To promote education and training in different cultural professions.

## **ARTICLE 23: RIGHTS TO NATIONAL AND INTERNATIONAL PEACE AND SECURITY**

The United Republic of Tanzania is a member of the United Nations and its subsequent bodies i.e. United Development Program (UNDP), United Nation Environmental Program UNEP, United Nation Fund of Population (UNFPA), World food Program (WFP), World Health Organisation (WHO), United Nations Education Scientific Cultural Organisation (UNESCO), WIPO and World Trade Organisation (WTO). It secures its citizens through the Security Council, which is the organ of the United Nations. It is currently the member of the Security Council. The country respects the principle of solidarity and friendly relations. Tanzania is also a member of the African Union. It is also the member of regional organisations such as Southern African Development Corporation (SADC), Non Aligned Movement and the East African Community. It also participates in peace processes within the Great Lakes region, and currently there is a Great Lakes Initiative on Peace which is also a guiding instrument in peace issues.

All refugees seeking refuge within the United Republic of Tanzania are required to follow the laws of our country specifically the Refugee Act no 9 of 1998. Any asylum seeker who engages himself in subversive activities is usually prosecuted and punished according to the laws in our statutes. This is usually done bonafide in order to strengthen peace, solidarity and friendly relations between other States in the

Over 520000 thousand refugees have settled in the Western Party of Tanzania, this has made Tanzania the largest refugee host Country in Africa.

The hosting of refugees has posed a number of challenges such as environment degradation and proliferation of arms and related offences.

## **ARTICLE 24: RIGHTS TO SATISFACTORY ENVIRONMENT**

This article provides for the right of the peoples to a general satisfactory environment favourable to their development. Article 27 of the Constitution of the United Republic entrust individuals within the country to protect natural resources. In further

implementing this article, the government has formulated an environmental policy that has resulted into the enactment of the Environmental Management Act, 2004. There is also new Ministry of Environment which is within the vice President's Office.

## **ARTICLE 25: STATES DUTY TO EDUCATE THE MASSES**

In complying with this article of the Charter the United Republic of Tanzania, has formulated a number of activities aimed at educating the public at large in order to ensure that rights and freedoms contained in the present Charter are understood. These activities are carried out by NGOs and Government Institutions and have helped individuals in realising and understand basic human rights issues and where to seek redress where the rights have been abused or violated.

The Judiciary has a radio program to educate the public on the law and their legal rights. The radio program is termed as '*Ijue Mahakama*' (Understand the judicial system) through Radio Tanzania Dar es salaam (RTD). The Law Reform Commission of Tanzania has also a radio programme which is transmitted through *Radio one* Radio Station in its '*Kume mbambazuka*' session which is termed as '*siku ya sheria*' (law day) once a week. In addition to this, there is a weekly programme in one of the private owned TV stations which educates the public on various legal issues. Their programme is called Understand the Law (*Ijue Sheria* in Kiswahili). A Committee which was established by the Government in the Ministry of Education Vocational Training has reviewed the Primary Schools and Secondary School curricula to include Human Rights education. It is now taught in the mentioned institutions.

Furthermore the Ministry of Justice and Constitutional Affairs in collaboration with different International Organisations for example the United National Development Program (UNDP) are currently undertaking a project titled Strengthening capacity to archive Human Rights in Tanzania. The programme entails Human rights training for State Attorney, Magistrates, Judges, Prison officers and the Police. A number of people



have attended these training which have been proved to be very useful in the daily dispersion of their duties. On the other hand Government in collaboration with UNICEF are implementing grass root justice by training the local people within their respective communities basic legal knowledge. These people will act as legal advisers to their fellow villagers.

NGOs such as legal and Human Rights Centre, Tanzania Media Association, Tanzania Women Lawyers Association, to mention a few, have been conducting legal literacy campaigns in various issues regarding human rights, through publication of pamphlets, booklets, posters and through radio, television programs, as well as in seminars, workshops and legal aid camps.

The media including newspapers have made legal issues part of the content in their features as well as Television programmes and radio plays have been used to educate the public on legal rights. For instance the independent television has a program '*zijue haki zako za msingi za kisheria*' meaning know your basic human rights every Tuesday evening for half an hour, where by they would normally have one or two people conversant with legal rights in the studio to talk on different issues regarding basic legal rights. The TV program '*MULIKA*' that is transmitted through Channel Ten, also makes people aware of the rights they are entitled to.

Having seen the above measures taken by the Government of the United Republic of Tanzania in collaboration with International Organisations and NGO's one can see how Tanzania is striving to educate its people on Human Rights issues. As a result of awareness on legal rights more people are resorting to legal aid clinics, centres for counselling and legal advice.

## **ARTICLE 26: COURTS AND NATIONAL HUMAN RIGHTS INSTITUTION**

The Judiciary is another pillar of the state which is accorded a special position in a democratic society. The Judiciary means the court and those who compose it. The Judiciary is vested with the power to decide between subjects of the state or between the

State itself and its subjects on legal rights. Separation of powers is recognised under the constitution of the United Republic of Tanzania and State power is exercised by the Executive, the Legislature and the Judiciary.

The independence of the Judiciary is guaranteed under Article 107 A of the Union Constitution. The court hierarchy begins with the primary court as court of the lowest grade presided by the Primary court Magistrate and two lay Assessors. Apart from the Primary court at the bottom there are Ward Tribunals established under the Ward Tribunals Act, No 7 of 1985. These are institutions adjudicating minor disputes and appeals lies to the Primary courts. Assessors sit the High Court Judges when hearing homicide, treason and cases in order to have the community participation in the process of dispensation of Justice. Assessors are also allowed in Primary Courts whereby any decision is required to be District courts are presided by District Magistrates. Resident Magistrates courts are presided by Resident Magistrates and the High court of Tanzania is presided by the Judges. Lay assessors in the High court do sit with the Judges in certain cases such as murder, economic crimes, defamation and commercial cases. The High court has two divisions, that is the commercial and the Land matters respectively. The court of Appeal of Tanzania is the highest on the legal system of the country. The Judiciary in Tanzania work independent in dispensation of Justice throughout the country.

In 1994 the law which regulates the Procedure for complaints against constitutional violation was enacted. This is the Basic Rights and Duties Enforcement Act No.33 of 1994. This law provides for jurisdiction and procedure for commencing petitions on claim of human rights violations

The Government has established an Institution to deal with Human Rights complaints. The Commission for Human Rights and Good Governance Institution established under chapter six of the Constitution of the United Republic of Tanzania, 1977 as amended by Act No. 3 of 2000. By virtue of article 131 of the Constitution, the parliament enacted act no 7 to operationalise the functions of the Commission. The core functions of the Commission as provided by Article 130 (1) of the Constitution are:

- (i) To promote within the country the protection and the preservation of Human rights and of duties to the society in accordance with the constitution and the laws of the Land.
- (ii) To investigate acts of violation on human rights and good governance.
- (iii) To advice the Government, public institutions and private sector on human rights and good governance. The Commission has started working and submissions have been made to it. Several complaints have been lodged to the Commission including the famous Nyamuma complaint.

## CONCLUSION

The decision to establish the Independent Commission on Human Rights and Good Governance is a move by the Government to address issues pertaining to violations of Human Rights. The Commission has been educating the public and public institutions through media, publications, seminars and workshops on the Human Rights and Good governance issues. The commission has the competence to investigate complaints of abuse of power and unfair treatment of any person or by a public office and public officer in discharging official duties. It provides advice to public institutions on specific issues on Human Rights and Good Governance, and advise the aggrieved person appropriately. As to the Government it recommends and advise the government in the event of the violation of such rights. The Commission reports annually its report to the National Assembly on the performance of its functions.

Remarkable achievements have been made on the Human Rights situation in Tanzania since the submission of the first report though there is a lot to be done in order to create an environment that will ensure effective promotion and protection of Human Rights. Claw-back clauses which existed in the Bills of Rights have been removed and replaced by the internationally accepted limitation clauses. However, attitudes about some negative customary practices still exist and will take some time to phase out through

education and empowerment. We are optimistic that adherence to human rights will ultimately be attained though in a gradual process.

### **Challenges**

Dissemination of the Reports remains a great challenge to Tanzania especially to people in rural areas. Illiteracy, ignorance, cultural barriers and constraints, lack of coordination between and amongst stakeholders, human and financial resources, delays/ inefficiency in responding to issues within government departments, (MDA's), lack prioritization, reporting period between 2 reports of two years is short. There is a need to have a proper monitoring and evaluation system to follow up on how the reports have been disseminated to the citizens.