

# NGO REPORT

## ON THE IMPLEMENTATION OF THE ICCPR

(PRIOR TO THE ADOPTION OF THE LIST OF ISSUES)

Prepared and Submitted in **January 2009** by the Legal and Human Rights Centre (LHRC); the Southern Africa Human Rights NGO Network – Tanzania Chapter (SAHRiNGON – T); and the Tanganyika Law Society (TLS) With Technical Support from the Centre for Civil and Political Rights (CCPR Centre) and the International Federation for Human Rights (FIDH) of France.



With the support of:



International Federation of Human Rights

## **PROFILE**

### **THE LEGAL AND HUMAN RIGHTS CENTRE (LHRC)**

LHRC is an autonomous and independent non-governmental, non-partisan and non-profit making human rights organization registered as a company limited by guarantees without share capital under the Companies Ordinance/ Act, Chapter 212 of the laws of Tanzania. The main objective of LHRC is to create legal and human rights awareness among the public and, in particular, among the underprivileged sections of the society through legal and civic education, advocacy, research, follow-up of human rights abuses and the provision of legal aid.

#### **Vision**

Legal and Human Rights Centre envisages a just and equitable society.

#### **Mission**

LHRC strives to empower the public, promote, reinforce and safeguard human rights and good governance in Tanzania.

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### **THE SOUTHERN AFRICA HUMAN RIGHTS NGO NETWORK TANZANIA CHAPTER (SAHRiNGON-TZ)**

SAHRiNGON (T) Chapter is a collaborative Human Rights NGO Network with members from different regions in Tanzania mainland and Zanzibar. The activities and actions of SAHRiNGON (T) Chapter are carried out by members through the coordination of the secretariat and supervision of the board members and Annual General Meetings.

SAHRiNGON (T) Chapter seeks to strengthen advocacy and human rights monitoring by working with its members and other human rights activists worldwide to provide a

platform for discussion and advocacy challenges facing human rights and development in Africa.

### **Vision**

SAHRiNGON-Tanzania Chapter envisions a world in which all human rights are enjoyed fully by every one.

### **Mission**

SAHRiNGON-Tanzania Chapter exists to improve the performance of its members in the promotion and protection of human rights through capacity building, lobbying and advocacy, mobilization for collective action, coordination and monitoring implementation of human rights.

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### **THE TANGANYIKA LAW SOCIETY (TLS)**

The Tanganyika Law Society (TLS) which is an association of practicing advocates in Tanzania Mainland , was established by the Tanganyika Law Society Ordinance, then referred to officially as Ordinance No. 30 of 1954 (Cap 307) which came into force on 1<sup>st</sup> January 1955 .Currently that law is referred to and cited as the Tanganyika Law Society Act (Cap. 307) R.E 2002 (the Act).The Act has been amended from time to time and it is expected that in the near future it will be repealed and replaced by a new Advocates Act which addresses contemporary circumstances that impact on private legal The Act came into force on 1<sup>st</sup> January 1955 (to be referred to as the TLS Act). Membership to the TLS is compulsory for all professionally qualified lawyers from the time they are enrolled and given Certificates to practice law as advocates in Tanzania by the Chief Justice pursuant to the Advocates Act. One of its programmes is human rights and standing/ lobbying programme, which is coordinated mainly by the Human Rights Committee of the TLS.

## **Vision**

Tanganyika Law Society (TLS) envisions a society where justice and the rule of law are upheld.

## **Mission**

Tanganyika Law Society the Bar Association of Tanzania mainland aiming at promoting the rule of law by furthering the professional development of its members, Protecting the integrity and ethical standards of the legal profession, defending the independence of the judiciary, upholding justice and human rights, and influencing legal reforms.

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## **THE CENTRE FOR CIVIL AND POLITICAL RIGHTS (CCPR CENTRE)**

The vision of the CCPR Centre is the full respect worldwide of all the human rights proclaimed by the International Covenant on Civil and Political Rights (ICCPR), ratified by 163 States.

The CCPR Centre works to promote the participation of NGOs in the work of the Human Rights Committee, raising awareness, strengthening NGOs' capacities, and providing technical and legal support at all stages of the reporting process, including the follow-up of the recommendations of the Committee.

### **Centre for Civil and Political Rights (CCPR Centre)**

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## Articles 1 and 2

### Question

- **Why is Tanzania's budget donor dependent for the past 45 years of independence despite of all such numerous resources that it has?**
- **What has the government done to ensure that the Tanzanians freely determine their economic development?**
- **What has Tanzania done in order to protect the Hadzabe and other indigenous peoples from being deprived of their means of subsistence by investors?**

Rights Embodied: The rights to Self-Determination [economically, socially and culturally]; against discrimination; freedom to dispose ones own natural resources or wealth; equality between men and women; effective remedy (judicial, administrative or legislative authorities) and enforcement of remedies.

### *Self-determination (Politically, Economically and Socially)*

The United Republic of Tanzania is sovereign (especially politically) as it is provided for under the Art. 1 ICCPR and the UN Charter of 1945. However, its economy (as part of governance patterns) largely depends on foreign aids and loans. The recent trend of Tanzania's dependence on donors' money is as follows:

Year	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08
<b>GBS</b>	30%	38%	34%	48%	42%	38%
<b>Basket Funds</b>	16%	18%	21%	26%	16%	12%
<b>Project Funds</b>	54%	44%	45%	26%	41%	51%
<b>Total</b>	100%	100%	100%	100%	100%	100%

**Source:** Government Budget Books, various years, Ministry of Finance (extracted from the GBS Annual Review 2007 – Information Pack, page 2).

The *General Budget Support Annual Review 2007 – Information Pack* of the United Republic of Tanzania indicates that the government of Tanzania depends on around 42% of the donors' funds<sup>1</sup> for its national budget and around 80% of the development budget from the donors. With this donor dependency syndrome, the government could not realize (self-determines) its needs according to the priorities. The dependence of the budget on the donor external financing, sometimes negatively affects government's plans because donors' support is unpredictable.<sup>2</sup>

<sup>1</sup> Note that, Tanzania receives aid from its donors in three ways; GBS, basket funds and project funds. Unlike other ways, the GBS funds go directly to the national budget.

<sup>2</sup> The Speech by the (Tanzania's) Minister for Finance and Economic Affairs Honorable Mustafa Haidi Mkulo (MP), Introducing to the National Assembly, the Estimates of Government Revenue and Expenditure for the Financial Year 2008/ 09 on 12<sup>th</sup> June, 2008. See page 22, paragraph 33 (ii).

## ***Discrimination***

### Disability

As to Persons with Disabilities, in the year 2007 the United Nations General Assembly adopted the *Convention on the Rights of People with Disabilities*, which was open for signatures since March 2007. Article 3 of the *Convention, inter alia*, restricts discrimination against People with Disabilities and provides for equality of opportunities and accessibility for this group of people. Despite the fact that the government of Tanzania has enacted specific laws to address the needs of disabled persons such as the *Disabled Persons (Employment) Act*<sup>3</sup> and the *Disabled Persons (Care and Maintenance) Act*<sup>4</sup>: -

- These laws are not adequately enforced (no record available of their enforceability in courts of law) and they contain incongruities that weaken the effects of these laws.
- There are no specific affirmative measures to ensure non-discrimination of people with disability especially in the private sector.
- The complaints procedure (provided by those laws) is complex, very bureaucratic and inadequate as very few people know the organ responsible to hear them, namely the Director of Public Prosecutions.<sup>5</sup>
- Experience on the ground shows that most of the buildings including government facilities (such as public transports, toilets, offices, road, school materials, and so on) are not universal accessible for the people with disabilities.
- In major cities like the City of Dar es Salaam these people are normally neglected by the Commuter buses because of their bicycles which are said to have occupied a large space for more passengers.
- Most of the schools even higher learning institutions do not have learning facilities for disabled. All these factors (physical, legal and social barriers) make these people as one of most marginalized of all populations.
- The government has failed to control the killings of albinos. In recent years, there have been **serious killings and mutilation of albinos**. For instance, between

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<sup>3</sup> Cap. 184 of the Revised Edition 2002 of the Laws of Tanzania.

<sup>4</sup> Cap. 183 of the Revised Edition 2002 of the Laws of Tanzania.

<sup>5</sup> LHRC (2006) Tanzania Human Rights Report 2006 with Zanzibar Chapter, pg 80.

January and December 2008, more than 35 albinos were killed.<sup>6</sup> There is no official records of the number of albinos in Tanzania (the government does not keep this record at the moment); but is estimated that, there is about 172,000 and 200,000 albinos in Tanzania. The killings of albinos are perpetuated by the traditional doctors who are allowed by the laws to operate in the country. They order their “clients” to look for and bring to them albinos’ parts in order for them to make some *black-magic* to make the “clients” rich – especially those engaging in mining activities. Tanzania is the only country in Africa, which its albino are massively killed because of the witchcraft believes. So far, no one has been found guilty by the courts of law.

### Women

- The government of Tanzania has not yet ratified the *Optional Protocol to the International Convention on Elimination of all Forms of Discrimination against Women*, which allows aggrieved individual women, that is, whose right to work has been violated to submit complaints directly to the UN Committee on the Elimination of Discrimination against women.
- Despite the incorporation of the definition of *discrimination* into the Constitution of the United Republic of Tanzania, there are national laws still in effect which directly violate Article 2 of the ICCPR, CEDAW and other international human rights instruments. Example, the *Customary Law (Declaration Order (of 1963) Cap 358 R.E 2002)*. This law confines customs and usages of tribes of Tanzania, which are discriminatory and oppressive to women. For instance, it denies widows to inherit from their deceased husbands’ estates. In addition, daughters are given unequal share of the estate as compared to sons and hence are denied their rights to property. Paragraph 62 – 70 of *Government Notice No. 279 (Sheria ya Hali ya Watu)* of 1963 for inheritance provides that a widow is inherited by a relative of the deceased husband and degrades the status of a widow and is discriminatory in that it treats a woman as a property.
- Section 285 of the *Criminal Procedure Act, Cap. 20* and section 71 of the *Magistrates Courts Act, Cap. 11* provide for use of assessors in some courts proceedings. The procedure for the selection of assessors is not gender sensitive and is biased in favour of men, who most of the time favour men in the detriment of women because of the custom and tradition.
- Further, the government not undertaken to ensure the practical realisation of the principles of equality and non-discrimination; there are few assessments and limited protective measures in place to determine the effectiveness of laws and policies that are meant to promote women's equality. The said (see government

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<sup>6</sup> According to the Lawyer of the Tanzania Association Society (TAS), Advocate Possi – January 8<sup>th</sup> 2009, Dar es Salaam ALSO the LHRC (2008) *Tanzania Human Rights Report* [forthcoming].

report) increase of special seats for women representatives in the Parliament up to the minimum of 30% is a positive trend; however, in other non-political positions, women still hold very junior positions including messenger, personal secretaries of men bosses and receptionists in most of the offices in Tanzania.

- In addition, little government action has been taken to address indirect discrimination, which is a result of facially gender neutral laws interpreted within the customary gender perspectives.

### Indigenous and Minority People

As for the rights and affairs of the Minority and Indigenous peoples in Tanzania<sup>7</sup>, the reality on the ground shows that these groups of people are subject to a myriad of rights denials, as regularly face land alienation, discrimination, denial of justice, violation of cultural rights, lack of constitutional and legislative recognition, marginalization from social services as well as denial of the rights to political recognition, representation and participation, to health and medical attention, to existence and to their own development.<sup>8</sup> As a result for instance, in October 2006, the *Hadzabe* people, one of the minority groups demonstrated in protest against their land being ceded to an investor at Yaeda Chini in Mbulu District, Manyara Region, northern part of Tanzania. According to the information, the whole part of where these people are living was to be allocated to an Arabic investor who was to be permitted to hunt using firearm along side with the *Hadzabe*. With this permit, about 3,000 Hadzabe people were to be affected because the experience has already shown that, investment in wildlife sector tends to exclude indigenous people from entering in the licensed hunting blocks. If they do so, they are labeled as poachers.<sup>9</sup>

Other minorities such as **albinos** are killed and have their hands mutilated by the people without serious government intervention to end the violations of their rights as stated above. This is a new trend in Tanzania, which costs an average of two to three albinos per a month. For 2007, about 35 albinos were killed because of witchcraft believes.

### ***Effective Remedy***

#### Enforcement of Basic Rights

The enforcement of fundamental rights enshrined in the Constitution of Tanzania is done through the *Basic Rights and Duties Enforcement Act, Cap. 3* as the government

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<sup>7</sup> In Tanzania there are two indigenous people/ minority groups namely the Hadzabe and Ndorobo tribes. These tribes have less than 3,000 people according to the 2002 National Census. They are found in the Eastern side of Tanzania. They live through hunting and gathering of wild animals and fruits.

<sup>8</sup> Report on the African Commission's Working Group of Experts on Indigenous Populations/ Communities, ACHPR & IWGIA, Banjul, 2005, 15.

<sup>9</sup> LHRC (2006) Tanzania Human Rights Report of 2006, pages 93, 94 and 95 [access it online through [www.humanrights.or.tz](http://www.humanrights.or.tz)]

report have indicated (paragraph 27). However, this law has not been effectively used because of the challenges it poses. For instance;

- The law requires all petitions for remedy to be lodged for determination directly to the *High Court* (the second to the top). As to January 2009, there are 13 High Court Registries countrywide located in the main townships; while Tanzania (mainland) has 21 Regions (these are administrative divisions like cities or provinces in other countries). Most of the people living in rural areas where lots of violations occur. It is not easy for them to access the High Court once their rights are violated.
- The law also provides that, every case concerning violation of human rights shall be determined by three Judges of the High Court. At the moment, there are 58 Judges of the High Court of Tanzania for all divisions of the High Court (Land, Commercial and Main Divisions). To get a column of three Judges is not easy. For instance, it took about 6 months for the petition of 2005 (to challenge the constitutionality of the electoral corruption – “*takrima*”) filed by the Legal and Human Rights Centre (LHRC) to commence hearing because of the same reason.

#### The efficacy of the Commission for Human Rights and Good Governance of Tanzania

Rightly as the government report indicates (paragraph 29), this National Human Rights Institution (the Commission for Human Rights and Good Governance – CHRGG) is a statutory body established in the year 2001 by an act of the Parliament called the *Commission for Human Rights and Good Governance Act, Cap. 391*.

Its work has been impeded by the government itself through number of ways as follows:

- **Disregard or ignoring its decisions/ recommendations.** A good illustration can be found from the case of *Nyamuma* village, whereby in 2004, some of the villagers of the said village of Serengeti district, Mara region, Tanzania made complaints to the CHRGG<sup>10</sup> against the District Commissioner and the District Commanding Officer of Police for unlawfully evicting them from their residences (in order to give room for the expansion of Ikongoro Game Reserve, which boards the Serengeti National Park), burning their houses, torturing and harassing them. The CHRGG after two years of investigation and determination found that this eviction was unlawful. Then CHRGG made recommendations based on these occurrences which were refused by the government, despite the human rights violations that had occurred. This blatant disregard for the recommendations of the CHRGG in effect limit its ability to carry out its mandate, rendering the CHRGG of limited use in the battle to achieve equality

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<sup>10</sup> The case number HBUB/S/1032/2001/2002/MARA involved *Ibrahimu Koroso & 34 Others and LHRC Vs. District Commissioner and Officer Commanding District for Serengeti District*. See more information at *Tanzania Human Rights Report* (2004) page 66 - also available online through [www.humanrights.or.tz](http://www.humanrights.or.tz).

- and stamp out discrimination. The provisions of section 25 (f) of the *Commission for Human Right and Good Governance Act, Cap. 391* states that any person contemptuous of its (CHRGG's) proceedings or orders can be prosecuted before a competent court. Those government officials who ignored its 2004 *Nyamuma's* recommendation are still in public service to date because of the impunity and lack of political willingness to uphold human rights culture in Tanzania.
- It is **not fully independent** as the *UNs Paris Principles*<sup>11</sup> requires because of number of factors. Firstly, the Chairperson is appointed by the President who is the head of executive and the state. Note that, the executive has never been free from blames as the main perpetuator of human rights violations. Logically, it can not be fully independent as it would have been a case if the Chairperson would have been appointed by the Parliament of Tanzania. Secondly, there is legal obstruction of its independence. Article 130 (3) of the *Constitution of the United Republic of Tanzania of 1977* provides that the President can order the Commission (CHRGG) to do anything s/he wishes.<sup>12</sup> Sub-article 6 limits the CHRGG to investigate the President or Leader of the Revolutionary Government of Zanzibar except only with accordance with the provisions of the Constitution of Tanzania or Zanzibar. Despite the fact that section 14 of the law establishing the CHRGG<sup>13</sup> ensures its independence, it relinquish it by subjecting itself to the said provision of the Constitution.
  - It is not accessible through out the country. It has an office in Dar es Salaam city, Unguja and Pemba. Its services are highly needed owing to the increase of incidences of human rights violations. It is necessary and appropriate that branches are established at least at regional or zonal levels of three to five regions. The government has the obligation to provide CHRGG with sufficient funding to effectively and widely carry out functions as section 13(2)<sup>14</sup> of the *Commission for Human Right and Good Governance Act* provides for.

### Legal Aid

- There is no government funded Legal Aid except in capital offences (murder and treason) in Tanzania.
- As a result provision of legal aid to the poor people is overwhelmingly on the shoulders of the Civil Society Organisations in Tanzania. Despite this volunteering

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<sup>11</sup> United Nations General Assembly, *National Institutions for the promotion and protection of human rights*, A/RES/48/134, 85<sup>th</sup> plenary meeting, (20<sup>th</sup> December 1993) (hereinafter *Paris Principles*).

<sup>12</sup> Also section 16 (2) (d) of the law establishing the Commission (The *Commission for Human Right and Good Governance Act, Cap. 391*) provides that, the CHRGG shall not investigate a matter on which the President directs otherwise in accordance with the provisions of the Constitution. Section 16 (1) of this law, reiterates the immunity given to the President of the United Republic and Zanzibar.

<sup>13</sup> The *Commission for Human Right and Good Governance Act, 2001* [Cap. 391 of the Revised Edition 2002 of the Laws of Tanzania].

<sup>14</sup> Section 13 (2) of the said law provides that "For the purposes of the better performance of its functions, the Commission may, where it considers it necessary or appropriate, establish branch offices away from its headquarters in such geographical areas as it may deem necessary and may establish divisions or departments and assign to them particular responsibilities in respect of the functions of the Commission."

- role which Civil Societies are carrying out in Tanzania, they do not receive any subsidy from the government. One Civil Society Organisation in Tanzania can receive even more than 6,000 Clients per annum who seek legal aid because they are economically poor.
- The said (paragraph 28 of the government report) Legal Sector Reform Programme – LSRP has so far yielded no any tangible output(s) despite the fact that it has been in existence for 5 years. As such, juvenile justice is still uncertain because of lack of sufficient juvenile courts; civil and criminal cases still delay up to ten years in court; almost all laws (about 98% of them) are in English language while majority of Tanzanians speak Kiswahili language.
  - Therefore, with this and other reasons, the LSRP has done almost nothing so far.

### Ratification of Key International Human Rights Treaties

The government of Tanzania (as to January 2009) has failed to ratify the following international human rights treaties:

- *Optional Protocol to the International Covenant on Civil and Political Rights (1966);*
- *Second Optional Protocol to the International Covenant on Civil and Political Rights (1989);*
- *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and its Optional Protocol;*
- *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990);*
- *Convention on the Rights of People with Disabilities(2007)*

**Therefore, a Tanzanian can not use the remedies available under the first optional protocol to ICCPR to submit directly individual complaints to the UN Human Rights Committee. As for the CAT, Tanzania is one of less than five African countries which have so far failed to ratify the same.**

### Domestication and Applicability of ICCPR

- There is also no any specific law which gives formal recognition and applicability of ICCPR in domestic law. The courts use provisions of the ICCPR as persuasive and not mandatory provisions. No one can be held liable for the breach of any provision of the ICCPR because it has not been domesticated in to national laws.
- As for Female Genital Mutilation (FGM) – (see paragraph 11 of the Concluding Observation), it is true that, the amendment of the *Penal Code, Cap. 16* though the *Sexual Offences Special Provisions Act of 1998*, FGM is criminalized. However,

- the law protects women of less than 18 years only. It can not be a criminal offence if FGM is practiced to a woman who is above 18 years.
- There is also no any law in Tanzania which prohibits marital rape as the Members of the Human Rights Committee recommended (paragraph 11 of the Concluding Observation).

### **Article 3 [Equality between men and women]**

Question:

- **Why do the customary laws which are repugnant to human rights still exist in Tanzania – C.f. Customary Law Declaration Order of 1963?**
- **Why hasn't Tanzania amended the Law of Marriage Act for comprehensive protection of women human rights?**

Rightly as the government has stated (paragraphs 30 to 41 of the government report), it has enacted number of laws plus amending the existing in order to ensure the enjoyment of this right including the amendment of the Penal Code, enactment of the *Employment and Labour Relations Act* and other laws mentioned in its report. However, the reality on the ground is different. Women are still discriminated against because of presence of other bad laws which have not been amended and because of the bad customs and traditions which still prevail in Tanzania.

Therefore, despite the fact that women, like men, have the right to own land and sell property in Tanzania, there are still some provisions of Tanzanian (personal) laws make it difficult for women to exercise their rights in this regard.

For example, the *Law of Marriage Act* states in section 59 that one spouse cannot alienate the matrimonial home without the consent of the other spouse. However, section 60 allows one spouse to bring forth evidence demonstrating that he or she is the sole owner of a particular piece of property.

Compounding the problems of discriminatory laws is that many women (especially those in rural areas or those who are impoverished) do not know their rights under the law. Customary laws often deny women the right to property or right to maintenance upon dissolution of a marriage.<sup>15</sup> This creates a financial dependency and a disincentive for a woman to dissolve a marriage that could be abusive. It is critical that efforts are made around the country to ensure that women know their rights under family law.

In Tanzania, there is no uniform law for inheritance. The inheritance of property is instead governed by three systems of law:

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<sup>15</sup> Tanzania Women Lawyers Association (TAWLA), *Review of Gender Discriminative Laws in Tanzania* at pg. 18.

1. statutory law (the *Indian Succession Act*), which is applicable to Christians and those of European origin;
2. Islamic law, applicable to Muslims;
3. Customary Laws, applicable to indigenous patrilineal society that account for 80% of Tanzania's communities.<sup>16</sup> Customary laws are found in The Local Customary Law (Declaration) Order

Under customary law for patrilineal tribes, wives are not considered members of the family for the purposes of owning land, therefore they are precluded from inheriting property upon the death of their husbands. In both patrilineal and matrilineal tribes, men control the family property.<sup>17</sup>

While the *Land Act* and *Village Land Act*, 1999 have improved women's access to ownership to land, the laws are fairly recent. Therefore, the long term impact they may have in giving women ownership rights to property in reality is still unknown.

Customary inheritance laws for some ethnic groups in Tanzania also stipulate that a widow must marry a male relative of her deceased husband. This practice is incredibly discriminatory and contrary to the concepts of equality that Tanzania has adopted through its Constitution and through international treaties.

Under Islamic law, there are specific shares of property given to particular individuals after death. A widow's share is  $\frac{1}{8}$ <sup>th</sup> if the deceased left children and  $\frac{1}{4}$  if the deceased had no children. The remaining shares of the estate go to heirs where female heirs receive  $\frac{1}{2}$  the shares of male heirs.<sup>18</sup>

The said *Law of Marriage Act* and the *Customary Law Declaration Order* plus other related laws were recommended by the Law Reform Commission of Tanzania (LRCT) for amendment since 1994. But they have not yet been amended to date. The government has always been saying that it still needs to consult people. But this has already been done by the LRCT and submitted its recommendations to the government more than ten years ago. Paragraph 41 of the government report is therefore not true.

Furthermore, the *Law of Marriage Act* and other laws have not been amended to prohibit the **marriage of girls under the age of majority** (see Concluding Observations of the Members of the Committee paragraph 13). Section 13 of the *Law of Marriage Act* and Section 138 (6) of the *Penal Code* still allow marriage of girls of the age up to 15 years or below that.

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<sup>16</sup> *Review of Gender Discriminative Laws in Tanzania*, *supra* at pg. 20.

<sup>17</sup> *Review of Gender Discriminative Laws in Tanzania*, *supra* at pg. 20.

<sup>18</sup> *Review of Gender Discriminative Laws in Tanzania*, *supra* at pg. 26.

## Articles 4 and 5 (State of emergence)

### Question:

- **Why cosmetic amendments?**
- **Why does Tanzania retain bad laws despite of the Nyalali Commission Recommendations?**

It is true that the Emergency Powers Act, 1986 was amended in 1998 as the government report (Paragraph 43) has indicated. However, the amendment covered only one provision (Section 5) to delete the “any other specified authority” as it was. However, the phrase “any other specified authority” still features else where in the law. Moreover, despite the said amendment, there are still lots of bad provisions contained in this law, which contravene the spirit of ICCPR. Some of the said provisions, which the Nyalali’s Commission also recommended for amendment, are: -

- Section 14 gives the President discretionary powers to prohibit meetings or processions. It Provides that “[T]he President or any specified authority may, by order in writing, prohibit, either generally or in a specified area for a specified time, the holding of any processions or demonstration in any public meetings, or the carrying in public of anything capable of being used as a weapon of offence.”
- Section 18 gives the President discretionary powers to *amend, suspend or disapply* laws [which would have been the work of the Court or Parliament]. The said provision stipulates to the effect that “[T]he President may, if in his opinion it is necessary for the purposes of implementing the provisions of this Act, suspend, or disapply any written law for the time being in force and such suspension or disapplication shall lapse with the revocation of the Proclamation issued in terms of the provisions of section 4(4) of this Act.”
- Section 26 ousts the power of the courts and therefore contradicts even with Article 107A of the Constitution of Tanzania, which gives Courts final powers to adjudicate any rights in Tanzania. The said provision states that “[E]xcept as provided in this Act, no proceeding or order, taken or made under this Act shall be called in question by any court, and no civil or criminal proceeding shall be instituted against any person for anything done or intended to be enactments done under this Act or against any person for any loss or damage caused to or in respect of any property whose possession can be proved to have been taken under this Act.”.
- Section 27 is like Section 18 of the same law. It allows the President to order or act in any way he prefers regardless any law in force in Tanzania. It gives effect of emergency orders inconsistent with other enactments. The said section provides that “[A]ny order made, and any other action taken, under this Act shall have

effect notwithstanding anything inconsistent with any enactment other than this Act or with any instrument having effect by virtue of any enactment other than this Act.”

Therefore, the concerns of the Members of the Human Rights Committee as appear on paragraph 9 of the Concluding Observations are still valid and have not yet been taken into account. Other laws mentioned by the Members of this Committee (paragraph 9 of the Concluding Observations) have not been amended. Those laws include the *Witchcraft Act*; the *Societies Act* and the *Preventive Detention Act*. They are still enforceable and un-amended.

### **Articles 6, 7, 8, 9, 10 and 11 (Right to life; against torture, inhuman and degrading treatment and against slavery)**

#### **Questions:**

- **Why is death penalty still mandatory in Tanzania?**
- **Why does Tanzania keep applying corporal punishment?**
- **What has the government done in order to ensure protection of Albinos, innocent persons against mob justice? Or citizens against extra judicial killings by police force?**
- **Why should Tanzania be listed among countries related to human trafficking?**

The violation of the right to life takes many forms in Tanzania, including the failure to abolish the death penalty, murder, killings related to witchcraft, extra-judicial killings, mob violence, and torture resulting in death.

#### **Death Penalty**

- Tanzania's *Penal Code* still provides for the use of the death penalty as the mandatory punishment for both treason and murder convicts.<sup>19</sup> Under the *National Defence Act*,<sup>20</sup> misconduct of a commander or any service man in the presence of an enemy is also punishable by death. In Tanzania, the death penalty is to be carried out by way of hanging.<sup>21</sup> As to October 15, 2008, there were **232** inmates in the death row waiting for execution according to the Minister for Justice and Constitutional Affairs of Tanzania Mr. M. Chikawe when talked with delegates from Legal and Human Rights Centre, Tanganyika Law Society and Zanzibar Legal Services Centre. While the death penalty is still listed

<sup>19</sup> *Penal Code*, Cap. 16 of the Revised Edition 2002 of the Laws of Tanzania.

<sup>20</sup> *National Defence Act*, Cap. 192 of the Revised Edition 2002 of the Laws of Tanzania

<sup>21</sup> See section 26(1) of the *Penal Code*. However, section 26(1) also states that women who are pregnant at the time of sentencing shall be given a life sentence instead. Section 26(2) states that a death sentence shall not be given to a person who at the time of the commission of the offence is under 18 years. The person shall instead be detained in a place and under conditions as the Minister responsible for legal affairs may direct.

in Tanzania as punishment for the above-referenced offences, no execution has been carried out for quite some time.<sup>22</sup>

- Tanzania has also **not yet ratified the 2<sup>nd</sup> Optional Protocol one to the ICCPR** which calls for the abolition of the death penalty.

### Corporal Punishment

The Members of the Human Rights Committee proposed (see paragraph 16) for the abolishment of the corporal punishment as it is one of the forms of cruel and degrading treatments. In stead, the government still retains it as one of the punishments for criminal cases according to sections 25 and 26 of the *Penal Code, Cap. 16*. It is also provided for under the *Corporal Punishment Act, Cap. 17* of laws of Tanzania. Astonishingly, in stead of abolishing the said provisions or laws, in 2002 the government went further to formulate the *Education (Corporal Punishment) Regulations* (Government Notice # 294 of 2002), made under section 60 (o) of the *Education Act, Cap. 353* of the laws of Tanzania. The regulation stipulates on rule 3 that corporal punishment may be administered for serious breaches of school discipline or for grave offences committed whether inside or outside the school which are deemed by the school authority to have brought or are capable of bringing the school into disrepute. This regulation/ law, has been used to punish pupil and in most cases caused physical and psychological harms to the children.<sup>23</sup>

### Killings of Albinos and Old Women on Witchcraft Believes

Albino and elderly people are often the target of witchcraft-related killings or violence in Tanzania. It is estimated that between 200 and 1,000 old women are killed in Tanzania every year. For instance, in January, 2007, Mwanza (on of the regions/ cities) Regional Police Commander Zeloth Stephen stated that **238** elderly people had been murdered in the past two years due to witchcraft beliefs – an average of **100** killings per annum for only one region among 26 of the United Republic of Tanzania. He further stated that twenty so called witch doctors had been arrested in connection with some of these deaths in Geita, Magu, Misungwi and Sengerema Districts.<sup>24</sup>

As for **albino**, this is a new trend as stated above. For past two years that is 2007 and 2008, about 60 albinos have been brutally killed on witchcraft believe in Tanzania. For instance, from October and mid-December 2007, more than **20** Albinos were killed. Most of these killings took place in Arusha, Mara, Shinyanga, Mwanza and Kagera. The killings are believed to have been motivated by a superstitious belief that one can gain

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<sup>22</sup> There is no official public record in Tanzania on the number of convicts who have been executed since independence.

<sup>23</sup> SAHRiNGON Tanzania Chapter's NGOs' Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights in Tanzania, January 2008, page 56.

<sup>24</sup> George Ramadhan "Police arrest twenty over Mwanza killings" *The Guardian* (Tanzania) (19<sup>th</sup> January 2007).

wealth through the body parts of Albinos;<sup>25</sup> as for between January and December 2008 about **35** and **40** albinos were also killed in Tanzania according to the Tanzania Albino Society (TAS). The number is increasing while no one has been found guilty of murder or any offence relating to killings and mutilations of albinos. This indicates how this society is neglected in Tanzania.

### Mob Violence

It is on increase in Tanzania. According to the survey done by a Tanzanian based human rights organization the Legal and Human Rights Centre (LHRC), majority of the people are of the view that mob violence is perpetuated by a lack of confidence and dissatisfaction in traditional law enforcement mechanisms in place in society.<sup>26</sup>

For instance, the responses of the 379 interviewees who responded to the LHRC's questions in 2007 on mob violence, can be summarized as follows;

<b>Mob Violence: What Causes Mob Violence?</b>					
<b>Response/ Reason</b>	<b>Overall Total = 379</b>			<b>Percentage = 100%</b>	
	<b>Sub- Total # of Respondents</b>	<b>Male</b>	<b>Female</b>	<b>Male</b>	<b>Female</b>
<i>a) Lack of Confidence in the Police</i>	83	56	27	67.46%	35.54%
<i>b) Remoteness of Police Stations</i>	45	24	21	53.30%	46.70%
<i>c) Citizen's Ignorance of Law</i>	78	42	36	53.84%	46.16%
<i>d) Anger</i>	47	26	21	55.31%	44.69%
<i>e) Others</i>	43	23	20	53.48%	46.62%

**Source:** LHRC – HRMU Survey January to December 2007

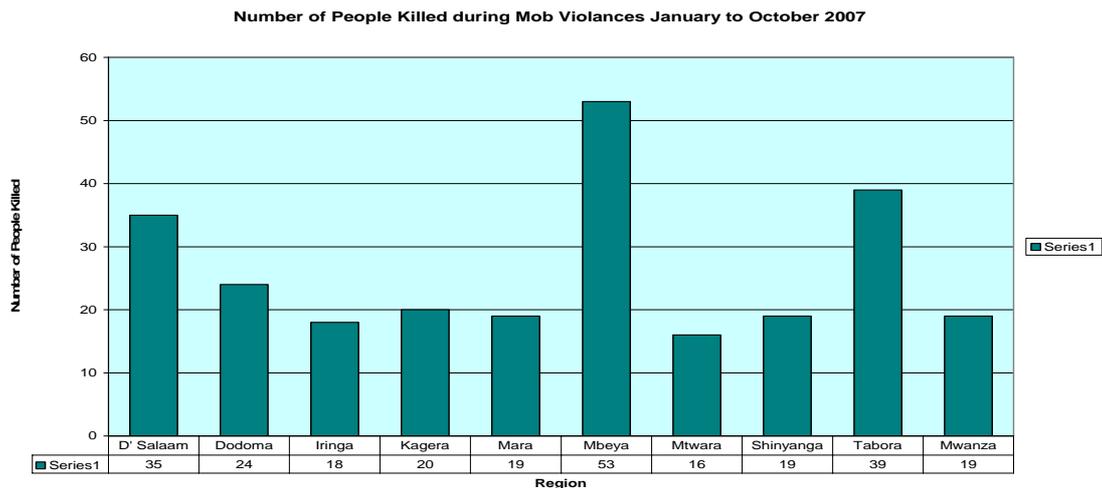
The survey reveals that the opinion of most people who participated in the survey is that lack of confidence in the police is the cause of the mob violence. The figures reveal that 21.89% of the 379 respondents said that mob violence is perpetuated by lack of confidence with the police. Many of them said that some police officers tend to release suspects once they receive bribes. While this may not always be true as some offences are bailable, the fact that most of the people are complaining about same thing

<sup>25</sup> LHRC Newsletter, January 2008. Information about these murders was obtained by LHRC's information officer in an interview with Mr. Samwel Mluge, General Secretary of the Tanzania Albinos Association.

<sup>26</sup> See LHRC, *Tanzania Human Rights Reports of 2004, 2006 and 2007* available online through [www.humanright.or.tz](http://www.humanright.or.tz).

indicates that there is a problem that the police force should rectify in order to reduce mob violence.

Mob violence costs more that 300 people every year in Tanzania. The following recently published statistic information of the Police Force evidences this assertion. The top ten regions in Tanzania with the most reported incidents of mob violence in 2007 up to October 2007 are as follows:<sup>27</sup>



The above information indicates that mob violence remains one of the main violations of the right to life in Tanzania.

### Torture and Extra-Judicial Killings

- The incidences of torture and extra-judicial killings done by state authorities are many. For instance, in September 2007, 14 individuals from Kenya were alleged to have been in the process of planning the robbery of Exim Bank along Boma Road in Moshi district, Kilimanjaro region were shot and killed by the police at Mailimoja area, Hai district in Kilimanjaro region.<sup>28</sup> The Tanzanian police report indicated that there was a shootout between the police and the alleged bandits, resulting in their death; however, a Kenya human rights group called the Oscar Foundation has stated that the post-mortem results indicate that the individuals were shot at close range, execution style<sup>29</sup> and according to the media, some

<sup>27</sup> Note that, the information for this bar chart was extracted from the Statistical Information obtained from the Police Force, Head Quarters in Dar es Salaam. Arusha region had 5 killed people; Kigoma region had 6; Kilimanjaro region had 1; Manyara region had 8; Morogoro region had 4; Pwani region had 6; Rukwa region had 2; Ruvuma had 4; Singida region had 6 and Tanga region had 4. Note that, this information is not exhaustive for the year 2007 because it does not contain the incidences of November and December 2007.

<sup>28</sup> LHRC, "Fact-finding mission on the Extermination of 14 alleged bandits from Kenya killed at Mailisita area, at Hai District in Kilimanjaro Region", conducted October 6-11, 2007. During that time, the research team traveled to Hai district, where the incident occurred, and interviewed number of residents and other officials.

<sup>29</sup> Sebastian Mrindoko "They were bandits indeed, says DCI." *Thisday* (Tanzania) (19<sup>th</sup> September 2007). See also Helen Nyambura Mwaura, "Rights groups condemns Kenyans' killing." *Thisday* (12<sup>th</sup> September 2007).

NGOs from Kenya such as the Oscar Foundation have stated that some of the bodies bore marks of torture before they were shot.

- **Overcrowding of inmates in prisons** is also one of the factors for torture and ill-treatment (as the government report paragraph 71 accepts). The government stated in December 2007 that, the carrying capacity of prisons increased from previous 22,699 of inmates to 27,653 of inmates in 2007. The then Minister for Home Affairs, Mr. Joseph Mungai, said that the inmates in prisons has been reduced from 46, 416 to 43,262 in the same time frame.<sup>30</sup> The year 2008 does not witness any tremendous improvement. The Minister for Home Affairs, Mr. Laurence Masha, said in June 2008<sup>31</sup> that, the official capacity of the prisons has increased from 22,669 to 27,653 in 2008. However, the overcrowding still stands at 44% above the official carrying capacity of all prisons in the country.

The alternative to a sentence of imprisonment (as proposed by the Committee's report paragraph 20) is carried out through the newly enacted law called the *Community Service Act, Cap. 291* as rightly pointed out by the government report (paragraph 71). However, it is unfortunate that this law is not implemented countrywide. As to December 2008, it was operated in 12 regions only out of 21 in mainland Tanzania. These regions are Dar es Salaam, Arusha, Tanga, Kilimanjaro, Mwanza, Dodoma and Shinyanga. Others are Iringa, Mbeya, Kagera, Mara and Mtwara.<sup>32</sup>

Another important legal avenue of depopulating the prisons would have been through the normal parole under the *Parole Board Act*.<sup>33</sup> This law has not been effectively use. For instance, during the 2007/2008 financial year of Tanzania, only 233 were released on normal parole under the said law. As it is seen, this is a very small fraction of prisoners who has benefited under this scheme because the law itself is very restrictive in terms of qualifications for those who are eligible for this scheme.<sup>34</sup>

Moreover, the prison situation is not transparent as *UN Minimum Rules for Treatment of Prisoners* require. The Tanzanian *Prisons Act, Cap. 58* prohibits entry to the prisons and the dissemination of information concerning the

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<sup>30</sup> LHRC *Tanzania Human Rights Report of 2007*, page 107.

<sup>31</sup> In *Hotuba ya Waziri wa Mambo ya Ndani ya Nchi, Mheshimiwa Lawrence Kego Masha (MB); Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Fedha kwa Mwaka 2008/2009* [The Speech in National Assembly on the Estimate of the Government Revenue and Expenditure for the Year 2008/2009 of the Hon. Lawrence Kego Masha (MP), Minister for Home Affairs of Tanzania], page 14 of the Swahili Speech.

<sup>32</sup> Extracted from the Speech in National Assembly on the Estimate of the Government Revenue and Expenditure for the Year 2008/2009 of the Hon. Lawrence Kego Masha (MP), Minister for Home Affairs of Tanzania], pages 10 to 20 of the Swahili Speech.

<sup>33</sup> Cap. 400 of the Laws of Tanzania.

<sup>34</sup> Information from the same Speech in National Assembly on the Estimate of the Government Revenue and Expenditure for the Year 2008/2009 of the Hon. Lawrence Kego Masha (MP), Minister for Home Affairs of Tanzania], pages 10 to 20 of the Swahili Speech.

conditions of prisons.<sup>35</sup> Publication of investigative stories concerning prisons is also prohibited, as is taking and publishing photographs.

- Tanzania has **not yet ratified CAT** as said above. It is one of the very few African countries, which have so far failed to do so. The government can not claim implementation of Article 7 of ICCPR if it fears to ratify the CAT because of its silent bad records on torture as appears in number of NGOs reports of Tanzania such as the Tanzania Human Rights Reports of 2002 to 2007.<sup>36</sup>

### Infant Mortality Rates

The government report (paragraph 54) quotes wrong figures on the status of the mortality rate. It does not disclose the proper source of its information. The improvement of 105 infant deaths per 1,000 births as to 2004 is not true. The recently published figures of 2008 indicates that mortality rate stands at between 112 and 162 deaths per 1,000 lives for the under five and 68 deaths per 1,000 live for the infants.<sup>37</sup>

The same report also says that children in Tanzania face a high risk of death at an early age, with more than 1 in 10 Tanzanian children dying before they reach their fifth birthday.<sup>38</sup> This implies that the rate of under-five mortality is 160,000 children who die every year. Majority of the under-five deaths occur in rural areas. At least 162 per 1,000 live births as compared to 123 for urban children.<sup>39</sup> The same figures are supported by the government's National Bureau of Statistics as indicated below: -

<b>Rural and Urban Rates of Under-Five Mortality and Malnutrition</b>		
The Under-Five Mortality Rate (Per 1,000)		Percentage of Children Under-Five who are Stunted
<b>Rural</b>	162	40.9
<b>Urban</b>	123	26
<b>D' Salaam</b>		16.9
<b>Other Urban</b>		29.1

**Source:** National Bureau of Statistics, Populations Census 2002 Tanzania Demographic and Health Survey 2004/05 [Extracted from REPOA, March 2008].

<sup>35</sup> For instance, section 93 of the *Prisons Act* provides that "Any prison officer who, without the permission of the Commissioner, gives to the press or any other person any information concerning a prison or a prisoner or any information deriving from an official source connected with or related to the Service commits an offence and is liable upon conviction to a fine not exceeding three thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment."

<sup>36</sup> Available online through [www.humanrights.or.tz](http://www.humanrights.or.tz)

<sup>37</sup> REPOA (March 2008) **Children and Vulnerability in Tanzania: A Brief Synthesis**. REPOA Special Paper 07.25. Page 1. Also same information published by the AFROBAROMETER Briefing Paper "Delivery of Social Services on Mainland Tanzania: Are People Satisfied?", Issue No. 34, April 2006. The Ministry of Planning and Economic affairs, the Poverty Eradication Division "Progress Towards a Better Quality of Life and Improved Social Well-Being in Tanzania", Brief 2 of 2007 maintains the same position as well. The REPOA website is accessible.

<sup>38</sup> REPOA in the same report of March 2008 says that, newborns face the greatest risk, with almost 30% dying within one month of birth.

<sup>39</sup> REPOA (March 2008) **Children and Vulnerability in Tanzania: A Brief Synthesis**. REPOA Special Paper 07.25. Page 2.

The regions in Tanzania which lead for the children mortality rates are Lindi and Mtwara, which are in southern part of the country. They are commonly referred to as marginalized regions because of the low socio-economic development. One in four or five children born in districts in those regions die before their fifth birthday. The under-five deaths there are 220-250 death per 1,000 live births. In contrast, other regions such as Arusha and Kilimanjaro record 40-50 death per 1,000 live births.

### **Articles 12 and 13 (Freedom of Movement)**

#### **Questions:**

- **Why does the Tanzania Citizenship Law discriminate against women married to non-citizens?**
- **Why does Tanzania retain such colonial laws – i.e. Expulsion of Undesired Persons Act?**
- **Under the human rights principle of respect of human dignity, why should Tanzania discriminate against its poor citizens – calling them undesirable and destitutes?**

As rightly pointed out by the government's report (paragraph 85), the right to freedom of movement is provided for under Article 17 of the *Constitution of United Republic of Tanzania*. However, the right to freedom of movement in Tanzania is not fully enjoyed because of some policies, laws and practices which violate the right. Those policies, laws and practices include:

- Section 11(1) of the *Tanzania Citizenship Act, Cap. 357* does not recognize equal rights between men and women. The section is silent on the status of a non-citizen man who marries a Tanzanian woman while the same law specifically provides for the requirement of naturalization when a non-citizen woman marries a Tanzanian man. Section 11(1) provides that a woman married to a Tanzanian man will be entitled citizenship by way of naturalization during the lifetime of the husband upon making an application for naturalization but is silent on a status of the non-citizen husband who marries a Tanzanian woman.
- Also this law does not recognize dual citizenship. At this stage of globalization where non-national men comes in Tanzania and marries get difficulties of getting citizenship of Tanzania and most cases subjecting their wives to change the nationality thought it is not at their will.
- As for **refugees**, (see also paragraph 3 of the Human Rights Committee's recommendations) the *Refugee Policy* and *Refugee Act, Cap. 37*, accord the right to movement but this right is very restricted. Practice shows refugees who are living in camps are allowed to move not beyond four (4) kilometers.

Other laws which are in force in Tanzania and infringe this important right to freedom of movement as enshrined in the Constitution of the United Republic of Tanzania and the *ICCPR* are as explained bellow;

- *The Destitute Persons Act, Cap. 389* is the 1923 legislation inherited by the government of Tanzania after its independence in 1961 from the colonial rule (the British). It was enacted to make provision for the control of destitute persons. This law, the way it is, is used to harass people through time to time round-ups and crack-downs to arrest and apprehend the so called destitute persons especially in the major cities of Tanzania<sup>40</sup>.

A "destitute person" is defined under Section 2 to mean "any person without employment and unable to show that he has visible and sufficient means of subsistence". This law gives power the Magistrate to detain the destitute person for a period of up to one month or order his or her be returned to his or her usual place of residence in Tanzania. Section 4 provides that;

"[W]hen a destitute person fails to find work before the named date as ordered, or work cannot be found for a destitute person ordered to be detained in custody, then a magistrate may order that person, if he is a native who is not dwelling in his usual place of residence to return before a named date to his usual place of residence in Tanzania, or, if he is not a person born in Tanzania to be detained in custody for a period of one month from the date of the order with a view to his deportation".

Furthermore, Section 6 of this law, the *Destitute Persons Act, Cap. 389* provides for enforcement mechanisms of the order given against the destitute person. The provision reads as follow;

When an order is made for a person to return to his usual place of residence in Tanzania, then—

(a) the magistrate may, if he thinks fit, order that that person be kept in custody until a suitable opportunity occurs for his journey, and also that the person be kept in custody during his journey;

(b) if the native fails to comply with the order, or having complied with the order leaves such place without the licence of an administrative officer or of his Chairman of the Village or Mtaa<sup>41</sup> acting in accordance with the general or special directions of an administrative officer, he shall be liable to a fine not or exceeding ten thousand shillings or to imprisonment for a term not exceeding six months, and may again be ordered to return to his usual place of residence.

This law does not provide for a right to appeal against the order of the magistrate which is, of course, issued without adhering to a due legal process. The provisions of Sections 4

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<sup>40</sup> Section 8 of the *Destitute of Persons Act, Cap. 389* gives powers the Police Officers to arrest any person they consider a destitute even without an arresting warrant.

<sup>41</sup> "Mtaa" is a Swahili language name which means "Street".

and 6 imply imprisonment of a destitute person without proving the “offence”. This law infringes number of human rights including the **right to movement, the presumption of innocence, the right to appeal** and the like. It does not appreciate the fact that an employment opportunity in poor countries like Tanzania, which does not have viable affirmative measures to provide employment opportunities, is a big challenge. In Tanzania therefore, to be unemployed, is an offence. This law is against various principles of the ICCPR and other international human rights instruments.

The *Expulsion of Undesirables Act, Cap. 39* is the 1930 colonial legislation, which was also inherited by the government of Tanzania after its independence in 1961. This law makes provision for the expulsion of undesirable persons.

Section 6 of the Act provides that it shall be lawful for the President, if he thinks fit, in an expulsion order, instead of requiring the person against whom it is made to leave the United Republic within a fixed time, to order that the person be arrested and deported from the United Republic in such manner as the President may direct. Section 7 of the Act stipulates to the effect that;

(1) Any person arrested under an expulsion order, shall, pending his deportation from the United Republic, be detained in custody in such manner and place as the President shall direct.

(2) No person in custody under an expulsion order shall be admitted to bail, except with the consent of the President.

Therefore, a person so detained under the order of the President has no right to bail through judicial process. The right to bail is discretionally and administratively vested on the will of the President. Sections 6 to 12 of this law provide that the President may appoint the Board of Inquiry to review the order issued against the alleged undesirable person. Section 20 restricts the Jurisdiction of any Court to challenge the decision of the President. It reads as follow;

“[N]o court of law in the United Republic shall have any jurisdiction to review, quash, reverse, or otherwise interfere with any proceedings held, act done or order made under this Act”.

The general comments are as follow; this law does not force those who give an expulsion order to give reasons of their decisions, it does not provides for an avenue to challenge the decision/order of the President, it does not give a right to bail and it allows a person to be detained even without being his or her case adjudicated by the court of law.

- *The Resettlement of Offenders Act*<sup>42</sup> was passed by the legislature in 1969 to provide for <sup>43</sup>punishment to habitual offenders. According to the Act habitual

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<sup>42</sup> Chapter 71 of 2002, R.E

<sup>43</sup> Section 4 of Cap. 71 R.E., 2002

offender is defined as a person of not less than twenty-five years who, after attaining the age of eighteen, has on three or more occasions been convicted of any crime of moral turpitude for which he was, on each occasions, sentenced to imprisonment for a term of three years or more and who has now been sentenced to imprisonment for a term of not less than three years upon conviction of another offence of moral turpitude.<sup>44</sup>

The law further gives a mandate to Minister of Home Affairs to give a removal order to a person found guilty by a court of competent jurisdiction and subject that person to go serve his/her punishment at resettlement centre.<sup>45</sup>

### **Articles 14, 15, 16 and 17 (Equality before the law, Courts and Tribunals)**

Question:

- **Why is it difficult to interdict high profile politicians in the same manner [speed and/or delay] like other poor offenders even for offences that are self evident?**
- **Why does Tanzania seem to condone impunity?**
- **What did the government of Tanzania do with its officials that burnt down houses of 135 villagers in Nyamuma- Serengeti in 2001?**

These articles are violated in number of ways. For instance;

- There are some laws which presume the accused person guilty until proved otherwise. One of those laws is the *Prevention of Terrorism Act, 2002*. This law was passed by the Parliament on November 2002 to prevent both domestic and international terrorism. There are some provisions in it which totally disregard the right to presumption innocence. For instance, Section 12 empowers the Minister of Home Affairs to declare any person he considers appropriate to be a suspect of international terrorism. The Minister may also make regulations to allow seizing of some properties of any person he believes to be a terrorist. This no doubts amounts to a punishment to a suspect because the law does not even say whether or not after being so declared a suspect will be taken into court for trial or otherwise. There are also draconian provisions under this law which exempts a security officer from any liability arising from investigation on terrorism even if it causes death of a person. This again contravenes the right to presumption of innocence and the constitutional right to life.
- The right to **legal representation**, which also forms part to these articles of the ICCPR is also a big challenge in Tanzania. Majority of Tanzanians are very poor,

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<sup>44</sup> Section 2 of Cap. 71 R.E., 2002

<sup>45</sup> Section 3 defines resettlement place to mean an area where a Minister responsible may, by notice in the Gazette, designate any place or area to be a resettlement centre for the purposes of that Act.

- they cannot easily hire services of Advocates to represent them in courts. Moreover, the number of Advocates (lawyers who are authorized to appear in Court and represent parties) is too minimal. Recent statistics (of December 2008) produced by the Tanginyaka Law Society (the Tanzania Bar Association), indicates that there were about 1,000 Advocates appearing on the Roll of Advocates in Tanzania Mainland. About 80% of practicing Advocates are found in major cities of Dar es Salaam, Arusha and Mwanza only. According to the practice, preparation of very small and simple legal documents by an Advocate say a Complaint costs about USD 500. Consultation Fee ranges from a Minimum of USD 10 and above. The majority of Tanzanians, who actually live below USD 1 per a day, can logically not afford and enjoy this right to legal representation.
- Furthermore, **Paralegals/ Paraprofessionals** (people who have been trained on elementary knowledge of law and procedures) are not recognized in the laws of Tanzania. These people, that is, Paralegals would have reduced the demand of legal representation at least in the lower levels of judicial hierarchy.
  - **Courts and Tribunals:** As of 2006 (no recent official statistics as of January 2009), there were 1105 Primary Courts, 88 District Courts, 22 Courts of Resident Magistrates, 13 High Court District Registries and One Court of Appeal Station in Dar es Salaam.<sup>46</sup> Tanzania has more than 10,000 villages, more than 125 districts and 21 regions for mainland Tanzania alone. Though the law does not indicate that in each village or ward or district there must be a court, it would be more convenient to at least have Magistrate or District courts in each district of Tanzania.

There has also been a challenge to setting up land tribunals, especially at the district levels. Very few districts in Tanzania had District Land Tribunals in 2007. As of February 2007 (again recent statistics not yet obtained as of January 2009), there were only 23 District Tribunals countrywide and more than 5,000 pending land cases in those Tribunals.<sup>47</sup>

Other tribunals such as Tax Appeal Board, Tax Appeal Tribunal,<sup>48</sup> the Fair Competition Tribunal<sup>49</sup> and the Commission for Mediation and Arbitration (of employment causes)<sup>50</sup> are based in Dar es Salaam and in very few large cities.

- **Delay of (criminal) cases:** The shortage of resources at several levels of the legal system causes delay in civil and criminal cases in Tanzania. As it is well known, delay of cases denies justice. For example, in March 2007, more than 500 remandees from Keko and Segerea, Dar es Salaam and from Arusha boycotted

<sup>46</sup> *Tanzania Human Rights Report* (2006), *supra* at pg 23.

<sup>47</sup> According to the Minister for Lands, Housing and Human Settlement Development, Mr. John Magufuli. See Isaac Chanzi, "More Land Tribunals Underway", *The African* (Tanzania) (22<sup>nd</sup> February 2007).

<sup>48</sup> The tax board and tribunals are established by the *Tax Revenue Appeals Act*, Cap. 408 of the Revised Edition 2002 of the Laws of Tanzania.

<sup>49</sup> Established by the *Fair Competition Act, 2003*.

<sup>50</sup> Established by *Labour Institutions Act, 2004 Act No. 7 of 2004*.

court sessions in Iringa, protesting delays in the investigations of their cases. Some of them complained that they had spent up to ten (10) years in remand prison, awaiting completion of the investigations in their case.

Furthermore, remand prisoners also say that, more than 170 remand prisoners are normally being hauled into a single `karandinga` (prison's vehicle/bus) with a carrying capacity of only 30 people. Furthermore, they usually complain that they usually left the prison premises at around 6.00 am for the court grounds and returned around 5.00 pm without being given food or water. The inmates called on the government to treat all remandees equally.<sup>51</sup>

### **Article 18 (Freedom of Conscience and Religion)**

- **How secular is the semi-autonomous part of Tanzania i.e. Zanzibar?**
- **What mechanism/strategy has the government of Tanzania in place to ensure that there will not be violent conflicts between Muslims and Christians in respect of:**
  - **i) Establishment of Kadhi's Courts**
  - **ii) membership of Tanzania to OIC [organization of Islamic Countries]**

The enjoyment of this right is generally guaranteed in law and practice. However, on part of Tanzania Zanzibar, the government of Tanzania Zanzibar enacted a law which governs religious (Islamic) matters. That law is called the *Office of Mufti Act*.<sup>52</sup> The law itself is contrary to the *Constitution of United Republic of Tanzania* which expressly provides that Tanzania is a secular state. This law has been negatively applicable in Tanzania (Zanzibar). For instance, in 2004 the right to conscience and religion were infringed by the Zanzibar government where *Answar Sunna* believers (one of the Islamic sect) were harassed, intimidated and their properties were destructed because they celebrated one of the Islamic festivals without the permission of the Mufti (chief religious Islamic leader). The Mufti, the Chief religious Islamic leader, is appointed by the President of Zanzibar. His office is funded by the Revolutionary Government of Zanzibar. His office is one department under the Ministry of State, President's Office and Constitution and Good Governance. Therefore, in Tanzania Zanzibar, the religious matters are controlled by the state contrary to Article 18 of the ICCPR and other related international instruments.

Similarly there has been a serious antagonism between the two major religious groups in Tanzania – Christians versus Muslims in respect of the demand by Moslems for establishment of Kadhis Courts. Moreover, the antagonism gained momentum in the debate whether Tanzania should be a member of OIC or not. The government of Tanzania is blameworthy if there will occur any breach of peace because these issues

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<sup>51</sup> Rosemary Mirindo, "Remandees Protest Against Ditopile's Case" *The Guardian* (13<sup>th</sup> March 2007).

<sup>52</sup> No.9 of 2001

came out as a means of political campaign – in the parties manifestos which disregarded the constitutional principle that Tanzania is a secular state.

### **Article 19 (Right to hold Opinion, expression, etc)**

#### **Question:**

- **Is freedom of expression/press respected in Tanzania? Do other laws support this freedom of information?**
- **What is delaying the enactment of Information law?**
- **Why does the public leader's code of ethics law prohibit publicity of the public records of leader's property?**

There were several violations of the right to freedom of expression and opinion in Tanzania. Below are some of the recent incidences of 2005, 2006, 2007 and 2008 done by the government officials.

- In 2005, the government banned all media entities from publishing advertisements or announcements coming from one of the civil society organizations called HakiElimu.<sup>53</sup> The government claimed that the advertisements, which focused on primary and secondary education development programs, were “disparaging public effort and mocking the image of national education performance.”<sup>54</sup> In 2007, the Office of the Prime Minister made the following statement, “[W]e are writing to remind you once again that your advertisements and publications that are being published via radio, television and other media have been prohibited by Government being contrary to the public interest.”<sup>55</sup> In 2007 again, the then Prime Minister of Tanzania, Mr. Edward Lowassa met with the NGO's leaders. The meeting resulted in the lifting of the ban against HakiElimu. The government has now agreed to let the organization conduct and publish research, publish and distribute publications as long as materials are first submitted (for screening) to the Chief Education Officer for the government. They can also now develop and broadcast media spots and programs and represent civil society in government-led processes and forums.<sup>56</sup>
- As for freedom of press/media, Article 18 of the Constitution of Tanzania guarantees for this right. However, several laws in Tanzania have historically limited freedom of expression and freedom of information. For example, the

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<sup>53</sup> Tanzania Government Gazette G.N 373/ 2005.

<sup>54</sup> Unnamed reporter “HakiElimu government set on collision course” *ThisDay* (Tanzania) (31<sup>st</sup> January 2007).

<sup>55</sup> Rodgers Luhwago. “HakiElimu in trouble again” *The Citizen* (Tanzania) January 2007.

<sup>56</sup> Unnamed reporter, “HakiElimu, Govt agree to bury the hatchet” *The African* (Tanzania) (8<sup>th</sup> February 2007). See also Austin Beyadi, “Govt lifts HakiElimu ban” *The Guardian* (8<sup>th</sup> February 2007).

*Newspapers Act*<sup>57</sup> allows the government to order a newspaper to cease publication if it is against public interest or in the interests of peace and good order to do so.<sup>58</sup> The *National Security Act*<sup>59</sup> allows the government to control the dissemination of information that goes to the public. Furthermore, the *Broadcasting Services Act*<sup>60</sup> allows the government to regulate electronic media. Towards the end of last year 2008, one investigative newspaper called *MwanaHalisi* was suspended from operating for three months by the government on the allegation of seditious stories against the government. Early on, in January 2008, the owner of that newspaper was attacked and acidic substances poured on to his eyes by unidentified people. The owner, Mr. Saed Kubenea was in his office at the time of the attack. This event was associated by majority of people as an act to stop him from writing investigative articles.

- The *Public Leadership Code of Ethics Act, Cap. 398* and its regulations prohibit publication of information regarding assets, interests and/or liabilities of public leaders. Regulations 6 (2) and 7 (2) (c) of the *Public Leadership Code of Ethics (Declaration of Interest, Assets and Liabilities) Regulations of 1996*, which is made under section 31 (1) of the parent Act, prohibit publication of information regarding assets, interests and liabilities of the public leaders.
- Of recent, there has been a delay in ensuring that the freedom of information Act is in place. The government has been keen to ensure that substantial part of the old laws is re-enacted. This has caused a lot of outcry from the media. The Information Act is required to promote and ensure guarantee of the Freedom of information not otherwise.

### **Articles 21 and 22 (Freedom of Association and Assembly)**

- **Does the Non- Government Act of 2002 (NGO Act) guarantee freedom of association?**

The freedom of association is not absolute. This can be clearly seen when Tanzania passed the *Non- Governmental Organization Act*<sup>61</sup> in 2002 hereinafter referred as the *NGO Act*. The Act remained overly restrictive on the right to freedom of association and freedom of expression. Section 35(1) of the *NGO Act* provides for penal sanctions against NGOs which will operate without abiding to the procedure registering the NGO. The law puts a mandatory requirement that to every NGO to be registered<sup>62</sup> prior to its

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<sup>57</sup> Cap. 229 of the Revised Edition 2002 of the Laws of Tanzania.

<sup>58</sup> Section 5 of the *Newspapers Act, supra*.

<sup>59</sup> Cap 47 of the Revised Edition 2002 of the Laws of Tanzania.

<sup>60</sup> Cap. 306 of the Revised Edition 2002 of the Laws of Tanzania.

<sup>61</sup> Act No.24 of 2004

<sup>62</sup> Section 11 (1) of the NGO Act, Act no. 24 of 2002

operation. If already registered under other laws of the country it makes it a compulsory requirement to obtain a certificate of compliance.<sup>63</sup> The certificate of compliance is obtained through application by completing Form No. 3 made under section 11 of the *NGO Act*. Furthermore, Article 35(2) of the *NGO Act* violates the freedom of association by barring all individuals convicted under the Act from holding office in an NGO for up to five years.

Therefore any person who operates an NGO without obtaining registration or certificate of compliance for NGOs already registered is “*liable to a fine not exceeding five hundred thousands shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment*”. This provision is contrary Article 22(2) of the ICCPR. Considering the criminal sanctions attached to the non registration, the situation is likely to become extremely dangerous for NGOs, all the more as the cases in which registration can be refused are not strictly defined. Indeed, the *NGO Act* provides that a “NGOs Coordination Board” (NGO Board) may refuse to approve application for registration of an NGO, particularly if its activities do not strive for public interest. However, the definition of “public interest” is extremely vague. Indeed, according to Article 2 of the Act, “public interest includes all forms of activities aimed at providing for and improving the standard of living or eradication of poverty of a given group of people or the public at large”.

Moreover, the *NGO Act* provides that the director of the NGO Board is appointed directly by the President of the Republic and contains no other provision relating to the qualification of the members neither of this Board nor on their election process thus interferes with NGOs activities

According to the *NGO Act*, the NGO Board provides “policy guidelines to NGOs for harmonizing their activities in the light of the national development plan”. However, some of these national development plans are very controversial for NGOs, with some organizations in fact advocating against some of them, in particular regarding privatization or land acquisition. Therefore, this obligation to harmonize NGOs activities with national development plans is contrary to the non-governmental nature of NGOs.

Moreover, section 7 of the *NGO Act* also provides the NGO Board with the right to “investigate and to inquire into any matter” in order to ensure that NGOs adhere with their own statutes.

Those provisions clearly violate the freedom from interference of NGO and are therefore contrary to Section 18(1) of the Tanzanian Constitution, which states: “subject to the 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

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<sup>63</sup> Section 11 (2) of the *NGO Act*, Act no. 24 of 2002

through any media regardless of national frontiers, and also has the rights of freedom from interference with his communications”.

Section 25 of the *NGO Act* establishes National Council for NGOs or which is a collective forum of NGOs, whose purpose is the co-ordination and networking of NGOs operating in Tanzania. However, section 25(4) prohibits any NGO to “perform or claim to perform anything which the Council is empowered or required to do under the act”. This provision denies the possibility for NGOs to get together voluntarily under an NGOs coalition, and prohibits already existing coalitions of NGOs. Therefore Section 25(4) clearly denies the full enjoyment of freedom of association among NGOs, in contradiction with Article 1 of UN Human Rights Defenders Declaration which emphasize that “every one... has right in association with others to promote and to strive for the protection and realization of human rights and fundamental freedoms at national and international levels” and article 5 which provides that everyone has the right, individually and in association with others, “to form, join and participate in NGOs, associations or groups”.

Violation of this right of association was observed in August, 2005 where the then Minister of Education and Culture, Mr. Joseph Mungai threatened to deregister *Hakielimu* (already explained above) after it produced a report critical of the Government’s efforts to reform primary education.<sup>64</sup> Clearly, by banning *Hakielimu*’s interaction with educational professionals and threatening deregistration via the NGO Act, the government violated the right to freedom of association as well as the rights to expression and assembly.

### **Article 23 (Family – age, consent – marriage)**

- **Are the provisions of the Law of Marriage Act, 1971 within the spirit of the provisions of ICCPR?**
- **How does Tanzania uphold the principle of equality in matrimonial arrangement where polygamy is allowed?**

As for this right under Article 23, there are lots of issues of concern in Tanzanian legal jurisprudence, which have been violating the rights relating to family. Some of the said factors are: -

- **Parental Consent:** Provisions of Section 17 (1) of the *Law of Marriage Act* allow that a girl below the age of majority can be married simply by the consent of her father. Most parents have given free consent for the marriage of their young

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<sup>64</sup> See the Tanzania Human Rights Report of 2005 at page 30 accessible online through [www.humanrights.or.tz](http://www.humanrights.or.tz)

- daughters regardless of their age and their own consent. This tendency creates a form of compulsory marriage, to the detriment of a young girl.
- **Minimum Age of Marriage:** The law is discriminatory in sex with respect to the age of marriage (*See Section 13(1) of the same law*). It is discriminatory to a girl child as she can be married before attaining the age of majority. The minimum age for marriage for males is apparent age of 18 years while the minimum age for females is the apparent age of 15 years.
  - *The Law of Marriage Act* contravenes the provisions of the *Penal Code, Cap. 16*. Under the *Penal Code*, sexual intercourse with a child under 18 years is criminalized and is rape regardless of consent; however, the *Law of Marriage Act* provides for girls less than 15 years to get married as adults for the purposes of marriage and sexual intercourse. The courts also have the discretion to allow the marriages of parties who are 14 years old if satisfied that there are special circumstances which make the proposed marriage desirable. Additionally, the law allows African-Asian girls to marry as young as 12 so long as the marriage is not consummated until the girl reaches the age of 15.
  - **Division of Matrimonial Properties:** The *Law of Marriage Act* provides for division of matrimonial properties. Section 114 (2) (a) of the *Law of Marriage Act* requires the court to take full consideration of the custom of a community to which the party belongs when granting an order for division of matrimonial properties. Most of these customs and usages, which the court is required to make reference to, are patriarchal, discriminatory and oppressive to women and therefore violate the rights of women in the division of matrimonial properties.
  - **Custody of Children:** On the custody of children, the *Law of Marriage Act* also has weaknesses. Section 125 (2) (c) of the law provides for the power of the court to make orders for the custody of children. In deciding in whose custody the children should be placed, the court is required to consider the customs of the community to which the parents belong. Generally, the spirit of the *Local Customary Law (Declaration) (No.4) Cap. 358 R.E 2002* is that all issues of marriage belong to the male parent. The said customs deny a woman the right to have custodianship of her own children.
  - **Divorce (Grounds for Divorce):** The rules are discriminatory and based in part on the woman as she is regarded only as the adulterer, (*See paragraph 106 of 1<sup>st</sup> schedule GN No. 279 of 1963*).
  - **Desertion:** The Law allows only the husband to sue his wife for desertion. The wife does not have that right to sue her husband.
  - **Cruelty:** Sections 163 – 164 implicitly of the Law, allows a husband to beat his wife. The conciliation board is given a very high standard of proof to determine whether the husband can be presumed to have beaten his wife, whom he has inflicted with bodily injuries or grievous harm.
  - **Bride Price:** The *Law of Persons Act (Sheria ya Hali ya Watu) Cap. 358 R.E 2002*, gives legal recognition to and permits payment of bride price. Payment of bride price is abused and regarded as selling a girl child upon marriage. Payment of bride price is taken to be an excuse by the husband or his relatives for

mistreating and abusing married women. When such abuses occur the woman is told to tolerate the mistreatments and abuses simply because her parents, guardians or relatives cannot pay back the bride price upon divorce. Bride price is also used by parents as a source of wealth without regard to the welfare of the girl child. As a result, especially in rural areas, on payment of bride-wealth by the husband upon marriage, the wife is thereby purchased and becomes the "property" of the husband and the husband's family. Consequently such a wife is unable to leave abusive relationships because one cannot afford to refund the 'bride price.'<sup>65</sup>

- **Inheritance Rights:** Customary practices such as wife inheritance and widow cleansing are still practiced and noted among some women. Moreover, Tanzania still maintains discriminatory inheritance laws, for example the *Local Customary Law (Declaration) (No.4) Cap. 358 R.E 2002*, which denies widows to inherit from their deceased husbands' estates. In addition, daughters are given unequal share of the estate as compared to sons and hence are denied their rights to property.
- Paragraph 62 – 70 of *GN No. 279 (Sheria ya Hali ya Watu) of 1963* for Inheritance provides that a widow is inherited by a relative of the deceased husband and degrades the status of a widow and is discriminatory in that it treats a woman as a property. In addition, under paragraph 62 – 70 the declaration provides for the ousting of the rights of a widow over custody of her children. The second schedule paragraph 1 – 53 provides for the rules of inheritance which are discriminatory, oppressive and biased in favour of men. The enactment of new *Land Laws of 1999* had no connection with the widow's inheritance rights. The Customary Inheritance laws which have denied thousands of women and girls from inheriting still exist as good laws and are fully operational.
- Even in the absence of a bride price "purchase," in the current practice of Tanzanian law in probate and administration matters it is only when the husband dies, and not when the wife dies, that letters of administration of the deceased's estate are applied for. This presupposes that it is only the husband who had a personal property interest in the property jointly acquired by the couple during their marriage. Legally, the wife is not recognized as having a property interest in the wealth which she might have greatly laboured in its acquisition.
- Widows are forced out of their homes, excluded from their communities, isolated from their children and denied their legal rights to property and effective access to justice.
- There have been initiatives by the government to address the problems of inheritance since 1990, including a review of discriminatory laws. However, the process has taken too long to finalize while women and children continue to suffer especially this era of HIV and AIDS.

### **Article 24 (Children's Rights)**

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<sup>65</sup> Law Reform Commission of Tanzania, "Report on the Law of Succession," 2002, 7.

- **Why does the law allow child marriage in Tanzania?**
- **What is the Government of Tanzania doing in order to remove the contradiction between the Law of Marriage Act and the Penal code – in respect of rape particularly where the law of marriage allows a girl below 18 years to get married?**

Tanzania is a signatory to the UN *Convention on the Rights of the Child (CRC)*. The CRC includes the following four categories of rights:

1. non-discrimination;
2. the best interests of the child;
3. the right to life, survival and development;
4. the views of the child.

Tanzania has signed onto the *Optional Protocol to the Convention of the Rights of the Child on the sale of Children, Child Prostitution and Child Pornography*. The ICCPR in Article 24 also provides for the protection of children.

The *African Charter on the Rights and Welfare of the Child* provides for the extensive protection of the rights of children, including protection of life and welfare, the provision of education, the right to be free from child labour and abuse, and so forth.<sup>66</sup>

### ***Violence against Children***

The media survey conducted by Legal and Human Rights Centre (LHRC) from January to November 2007 indicated that there has been an increase of violations of the rights of children in Tanzania. The survey of the media alone has recorded 164 incidences during that period; however, it is highly probable that most incidents of child violence go unreported and therefore aren't accounted for in this statistic. Tanzanian children are seriously vulnerable to cruelties of all forms, including sexual offences, physical and emotional neglect, physical abuse, child labour, and even murder. Rape incidences account for about 75% of the reported 164 incidents. Last year, a similar media survey recorded only such 107 cases.<sup>67</sup>

Most of these offences against children are prohibited in Tanzania under the *Penal Code*. For example, punishment for perpetrators of child prostitution is imprisonment for not less than 10 or more than 20 years. However, child prostitution remains a problem in Tanzania, especially for children from poor families and from Tanzania's least

<sup>66</sup> *African Charter on the Rights and Welfare of the Child*, 1990, OAU Doc. CAB/LEG/24.9/49, entered into force 1999.

<sup>67</sup> *Tanzania Human Rights Report (2006)*, *supra* at pg. 57.

developed areas. In assessments done by the ILO in 2001 and 2003, over half of children engaged in prostitution were orphans, and 22.2% lived in female-headed households.<sup>68</sup>

As mentioned above, multiple incidents of violence against children were reported in the media in 2007. Many of these incidents reported by the media were sexual in nature; however, this may only reflect the fact that sexual violence may be deemed to be more “newsworthy” than violence that is not sexualized. Violence against children is often committed by someone who occupies a position of trust or power over a child such as a parent, relative, family friend or teacher; however, these cases are less likely to be reported.

Some of the more gruesome cases include the following:

- In January 2007, a woman was arraigned in Ilala District. It was alleged that she was taking a 12 year old girl to a man’s residence where the girl was sexually abused. The woman was allegedly being paid for sexually exploiting the girl.<sup>69</sup>
- A Dar es Salaam court sentenced a *Daladala* (Commuter bus) conductor to five years’ imprisonment for cutting a seven year old girl with razorblades in Ilala District. The offence occurred on the *Daladala*.<sup>70</sup>
- In July, a man was found guilty of raping a seven year old girl in Mbeya Region. He was sentenced to life imprisonment.<sup>71</sup>
- In September, a man allegedly beat his six year old daughter to death. The girl was born with a physical disability, and the father allegedly killed her to cleanse the family from a curse.<sup>72</sup>
- In September, a twenty year old man was convicted and sentenced to 20 years in jail for the indecent assault of a two year old girl in Morogoro Municipality.<sup>73</sup>
- Many young girls working as home maids are being physically and sexually abused by their employers<sup>74</sup>

### ***Girls and forced marriage***

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<sup>68</sup> UN Committee on the Rights of the Child, Consideration of Reports Submitted by States parties under Article 12, Paragraph 1 of the Optional Protocol to the Convention of the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (7<sup>th</sup> July 2007) at pg. 12 (hereinafter UNCRC July 2007 report).

<sup>69</sup> Imani Mwanahapa “Dar woman arraigned over sexual exploitation” *The Citizen* (Tanzania) (25 January 2007).

<sup>70</sup> Rosemary Mirondo “Daladala conductor jailed five years for harassing pupil” *The Guardian* (Tanzania) (4<sup>th</sup> September 2007).

<sup>71</sup> Janeth Mwenda “Rape sends Mbeya man to life imprisonment” *The African* (Tanzania) (11 July 2007).

<sup>72</sup> Peti Siyame “Father kills daughter to cleanse curse” *The Daily News* (Tanzania) (5 September 2007).

<sup>73</sup> Fitina Haule “Man jailed 20 years for indecent assault on an infant” *The Guardian* (Tanzania) (22 September 2007).

<sup>74</sup> See Women’s Dignity Project, Popular Tribunal Report (November 2007).

Under the *Law of Marriage Act*, girls may be married at the age of just 14 with the consent of court and 15 with the consent of a parent or guardian. Many civil society organizations such as Tanzania Media Women Association (TAMWA) are seeking changes to this portion of the *Law of Marriage Act* (among other provisions) as it undermines the rights of girls and women. There were several incidents of forced early marriage reported in the media. In Shinyanga District, 17 parents and guardians whose daughters did not report to secondary school despite securing positions were arrested. It was alleged that all were trying to marry off their daughters. A village ward executive was also arrested for allegedly participating in marriage arrangements for one girl.<sup>75</sup>

TAMWA has noted that some parents or guardians force their children to get married at such a young age in order to collect a bride price.<sup>76</sup> The LHRC believes that allowing early marriages and allowing families to profit from them violates the rights of the child.

### ***Child Labour***

Tanzania has ratified the ILO Convention No. 182 on the worst forms of child labour and has taken steps to implement the Convention by integrating it in its MKUKUTA awareness-raising program.<sup>77</sup> This is a positive step towards eradicating child labour. Furthermore, the *Employment and Labour Relations Act* holds that no person shall employ a child under the age of 14 years. A child of 14 years may only be employed to do light work that will not be harmful to the child's health and development or prejudice his or her attendance in school. It is also prohibited under the *Act* to employ children under 18 years to work at night or to do hazardous forms of work such as work in mines, factories and ships. Despite these positive measures and legislative attempts to end child labour, hundreds of Tanzanian children are reportedly working in mines located in the Lake Victoria gold belt.<sup>78</sup> While the amount of child labour occurring is difficult to quantify, many employers around the country continue to employ children to work in mines, as housekeepers, child minders and the like as they are a form of cheap labour.

### **Article 25 (Right to take part in governance)**

- ***Why some of the provisions National Election Act, 1985 were subjected to judicial review for being unconstitutional?***
- ***Are the state owned media free enough to cover campaigns for both ruling and opposition parties?***
- ***Why is Tanzania government resistant to private candidature?***

<sup>75</sup> Sam Bahari "DC arrests parents marrying off girls" *The African* (Tanzania) (21 June 2007).

<sup>76</sup> Devotha John "Tamwa seeks changes to Law of Marriage Act 1971" *The Citizen* (Tanzania) (5 March 2007).

<sup>77</sup> UNCRC July 2007 report at pg. 18.

<sup>78</sup> The Reporter "Child labourers continue to work in dangerous mines" *The Citizen* (7 January 2007).

This right is inhibited by number of factors including loss of franchise; denial of private candidacy; and the imbalance in party subsidy and financing.

- *Loss of Franchise:* As the *National Elections Act*<sup>79</sup> does not provide for any method of voting apart from appearing at a polling station, prisoners and those who cannot travel due to disease or disability also cannot exercise their democratic right to vote.
- *Private Candidates:* The Constitution and the elections laws of Tanzania do not allow private candidacy.<sup>80</sup> A person who wants to contest for any political post must be sponsored by a registered political party. In 6<sup>th</sup> May 2006, the High Court declared that this requirement unnecessary and unreasonable restrictions to the fundamental rights of the citizens of Tanzania to run for the relevant elective posts either as party members or as private candidates. Therefore, the provisions of the laws which provide for sponsorship by political parties were declared unconstitutional. The government was directed by the court to amend the law in order to accommodate the requirement of private candidate. The law has not been amended to date. In July 2007 the government officially lodged an appeal against last year's High Court ruling that allowed participation of private candidates in future elections in Tanzania. Therefore, the case is still pending at the Court of Appeal of Tanzania.
- *Party Subsidy:* The subsidy for political parties is given only to political parties which have seats in the Parliament. Tanzania has 18 registered political parties. But those which receive subsidies from the government are less than five. Therefore, during campaigns, the newly formulated parties fail totally to compete with those with subsidies from the government.

### **Article 27 (Rights of Minorities – Focus on the Hadzabe as Indigenous People)**

- **What is the government of Tanzania doing to protect rights of indigenous peoples and the minorities?**

The UN Committee on the Elimination of Racial Discrimination has expressed concerns expressed concern about the lack of information in Tanzania on actions taken to guarantee human rights to particular vulnerable ethnic groups such as nomadic and semi-nomadic populations. This includes the Barbaig, the Maasai and the Hadzabe.<sup>81</sup>

In Tanzania, minority groups face a host of challenges such as: land alienation, racial discrimination, lack of autonomy in decision-making, under-representation in the

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<sup>79</sup> Cap. 343 of the Revised Edition 2002 of the Laws of Tanzania.

<sup>80</sup> See Articles 21, 39 and 67 of the *Constitution of Tanzania*.

<sup>81</sup> *Racial Discrimination Report, supra* at pages 3-4.

political sphere, inability to participate in decision-making, marginalization, and erosion of culture.

No specific law in Tanzania addresses racial discrimination. The UN Committee on the Elimination of Racial Discrimination has recommended the adoption of specific legislation which implements provisions of the *International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)*, including a legal definition of discrimination that is in line with Article 1 of the Convention. Article 1 of the *ICERD* defines racial discrimination as follows:

[A]ny distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The Committee has also recommended that national legislation contain effective protection and remedies for racial discrimination and that the public is informed of their rights and legal remedies available.<sup>82</sup>

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<sup>82</sup> *Racial Discrimination Report, supra* at page 2.