

NGO Report on the Implementation of the International Covenant on Civil and Political Rights in Tanzania

This report is a response to the compilation of the fourth periodic report of the state party due in 2008 and submitted by the government of Tanzania to the Human Rights Committee



With Technical and Financial Support from CCPR Centre



PROFILE

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

SAHRiNGON (T) Chapter is a collaborative Human Rights NGO Network with 84 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.

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THE TANGANYIKA LAW SOCIETY (TLS)

The Tanganyika Law Society (TLS) is Bar Association of Tanzania Mainland. It is established by the Tanganyika Law Society Act, Cap. 307. Membership to the TLS is compulsory for all professionally qualified lawyers. One of its programmes is the human rights programme, which is coordinated mainly by the Human Rights Committee of the TLS. The Society aims 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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INTRODUCTION

This report is a response to the state periodical report submitted by the government of the United Republic of Tanzania to the United Nations Human Rights Committee, which will review Tanzania's Country Report on the 13th and 14th of July 2009. The report was jointly prepared by SAHRiNGON Tanzania Chapter, Tanganyika Law Society (TLS), Legal and Human Rights Centre (LHRC) and the National Organization for Legal Aid Assistance (*nola*) in response to the second to tenth consolidated periodic reports submitted by the Government of Tanzania as at 2009. The Centre for Civil and Political Rights of Geneva (CCPR) has provided technical and financial support.

Information contained in this report is from various sources including government reports, academic works, reports from local and international organizations. Primarily the information comes from local based NGOs with first hand information in the human rights in the country. Therefore, the information represents the real picture of Tanzania.

The report is not exhaustive in terms of all pertinent issues; but at least, it depicts a picture of the situation. More information about these organizations and Tanzanian human rights situation can be obtained from the websites of such organizations.

This report covers status of the Government's efforts to implement the provisions of the International Covenant on Civil and Political Rights, 1966.

LIST OF ABBREVIATIONS

CDOs	Community Development Officers
IGAs	Income Generating Activities
LMA	Law of Marriage Act, Cap. 29.
LRCT	The Law Reform Commission of Tanzania.
NGOs	Non-Governmental Organisations.
OVC	Orphans and Vulnerable Children.
TLR	Tanzania Law Reports
CJF	Community Justice Facilitators.
<i>nola</i>	National Organization for Legal Assistance
P.P.F	Parastatal Pensions Fund.
LAPF	Local Authorities Provident Fund.
LHRC	Legal and Human Rights Centre
LSRP	Legal Sector Reform Programme.
CRC	Convention on the Rights of the Child
ILO	International Labour Organization
ACRWC	African Charter on the Rights and Welfare of the Child.
UN	United Nations
NSGRP	National Strategy for Growth and Reduction of Poverty
MKUKUTA	Mpango wa Kukuza Uchumi na Kukuza Uchumi Tanzania (in English the National Economic Growth and Reduction of Poverty).
MTS	Medium Term Strategy under LSRP
SAHRINGON	Southern African Human Rights NGOs Network
TLS	Tanganyika Law Society
UNICEF	United Nations International Children Education Funds
URT	United Republic of Tanzania.

Article 1

The Covenant provides that all peoples have the right to self-determination, by determining their political status and freely pursuing their economic, social and cultural development.

The Government Report [Paras 3 to 5]

The Government report which refers to Article 1 of the Constitution of the United Republic of Tanzania, 1977, states that; Tanzania is one State and is a sovereign United Republic. The report further indicates that the government has set up a legal framework following the modes and procedures permissible in a state governed by the rule of law. It also shows that Tanzania recognizes the right to self-determination. It is on record that the report shows that Tanzania is a party to the Charter of the United Nations and other international treaties and conventions and fully subscribes to the principles of independence of nations, primacy of human rights and equality between states.

Article 2

The Covenant provides that each state party to the covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Further, the covenant obliges states to take necessary steps, in accordance with the constitution and the covenant, to adopt legislative or other measures necessary to give effect to the rights recognized in the covenant, such measures must ensure effective remedy for violation of rights recognized under the covenant, and that such remedy shall be provided by competent judicial, administrative or legislative authorities.

Responses to Paragraph 1 of the List of Issues:

1. Please clarify how all the Covenant provisions have been integrated in the domestic legal system, including whether it is proposed to incorporate the Covenant itself into the legal system and the precedence, which it may be given over conflicting domestic legislation. Please also indicate whether the Covenant provisions can and have been invoked before the courts. If so, please provide information including examples and statistical data if available, of such cases (State report, CCPR/C/TZA/4, paras. 24-27, previous concluding observations of the Human Rights Committee, CCPR/C/79Add.97, para. 10)?

The Government Report [Paras 6 to 29]

The government has provided a detailed account of its efforts to implement the provisions of Article 2 of the Covenant. It states that it guarantees all persons within its territory, the right to non-discrimination on any ground, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. It also says that Article 9(f), (g), (h) and article 13(2) and (6) (e) of the constitution provide for the right to non-discrimination, and that the principle of non-discrimination is reflected in various legislation. The government states that the constitution guarantees equality of all people to the enjoyment of the civil and political rights, and that it prohibits gender-based discrimination.

The State Party report further states; the State has taken steps to ensure affirmative action for women in all sectors, and has adopted the National HIV/AIDS Policy, and further established institutions with

mandate to deal with issues related to HIV/AIDS in the country. Furthermore, the government states that courts in Tanzania have given recognition to the Covenant, as illustrated in the case of *Bernado Ephrahim v Holaria Pastory [1990] LRC (Const.757*. The government also states expressly that ICCPR has become customary international law. The State Party report also indicated that the provisions of the covenant are reflected in the Bill of Rights in the Constitution, and that people have access to courts in the country. Finally, the government asserts that it has established a Commission for Human Rights and Good Governance as an independent institution.

NGOs Observations

The covenant has not been domesticated in domestic law. There are no notable efforts to domesticate the Covenant. Even where some of the provisions of the Covenant are embodied in some pieces of legislation, enforcement mechanism is not satisfactory due to the fact that even the law that allows enforcement of the Basic Rights and Duties under the constitution does not seek to guarantee maximum enjoyment of the fundamental rights and freedoms of everyone.

The Basic Rights and Duties Enforcement Act, [CAP. 3, R.E 2002] only complicates matters for the enforcement of the basic rights and duties in that it requires three judges to preside over, hear and determine a petition on the violation of any of the provisions on the basic rights and duties in the constitution. This is even more difficult, complicated and cumbersome for High Court registries in the regions other than Dar es Salaam, where there are less than three judges per High Court centre.

This inevitably leads to unnecessary delays in hearing constitutional petitions, thereby adversely affecting the remedy to the victims of human rights violations. Moreover, the trend shows that there were many human rights cases before the enactment of the Basic Rights and Duties Enforcement Act in 1994. But, after the coming into force of the Act, only a few cases have been instituted and decided.

One example of delay is the case of ***Baraza La Wanawake Tanzania (Bawata) Vs The Registrar of Societies, Minister For Home Affairs and the Attorney General Miscellaneous Civil Cause No 27 of 2007***, High Court of Tanzania at Dar es Salaam(Unreported). This constitutional case was brought under Articles 13(6), 15, 18, 20(1), 24, 24, 26(2) and 30(4) of the Constitution of the United Republic of Tanzania, 1977, sections 4 and 5 of the Basic Rights and Duties Enforcement Act, 1994. The case was filed in 1997 and the judgment given in 2009, more than ten years after.

Courts feel hand and tongue – tied to invoke or interpret provisions of the Covenant or other international human rights instrument without express and clear recognition of the covenant and a law transforming such instruments into domestic laws of Tanzania. This is particularly so because Tanzania follows a dualist approach in international treaties, including those on human rights. Nevertheless, courts, and especially a few judges have only been extra-ingenious in interpreting the provisions of the Covenant. Apart from the only three cases cited by the government, this is shown in various cases decided by the High Court and Court of Appeal of Tanzania.¹

¹ See generally, *Mbushuu alias Dominic Mnyaroje and Kalai Sangula v Republic*, Court of Appeal of Tanzania at Dar es Salaam, Criminal Appeal No. 142 of 1994, reported in [1995] LRC 216; *Republic v Mbushuu alias Dominic Mnyaroje and Another*, [1994] TLR 146; *Legal and Human Rights, Lawyers' Environment Action Team (LEAT) and National Organisation for Legal Assistance v The Attorney General*, High Court of Tanzania, at Dar es Salaam (Main Registry), Misc. Civil Cause No. 77 of 2005 (Kimaro, J; Massati, J and Mihayo, J), (unreported) at p. 39 of the Judgment; *Baraza la Wanawake, Tanzania (BAWATA) and 5 Others (Petitioners) v Registrar of Societies and 2 Others (Respondents)*, In the High Court of Tanzania, at Dar es Salaam, Misc. Civil Cause No 27 of 1997, Ruling of Kalegeya, J; *John Byombalirwa v Regional Commissioner, Kagera and Regional Police Commander, Bukoba*, [1986] TLR 73; *Paschal Makombanya Rufutu v The Director of Public Prosecutions*, High Court of Tanzania, at Mwanza, Miscellaneous Civil Cause No. 3 of 1990 (Unreported); *Khasim Hamisi Manywele v The Republic*, High Court of Tanzania, at Dodoma, Criminal Appeal

But, even when courts have referred to, or interpreted the provisions of the covenant, they have only done so with extra care and great hesitation, contending that the covenant is not yet part of the laws of Tanzania. Quite often, courts do not give weight to international human rights instruments at all as submitted by advocates for petitioners, on the ground that it is simply unnecessary. This is clear from the *BAWATA Case* decided cited above.² Surprisingly, Court of Appeal has at times not been positive or fair or with some of the human rights decisions pronounced by the Judges of the High Court that touch on the fundamental human rights of individuals, particularly the right to life. There is one incident that is very important here, that of Justice James Mwalusanya (retired) in the case of *Republic v Mbushuu alias Dominic Mnyaroje and Another*, [1994] TLR 146. Justice Mwalusanya (retired) who, after a very thorough discussion of various international human rights instruments on the right to life and against torture, and jurisprudence from different regional human rights bodies, declared the death penalty unconstitutional and void, and substituted it with life imprisonment. At the appellate stage, the Court of Appeal attacked him and made the following discouraging and sarcastic statement:

*Before we finish, we commend the learned trial Judge for his unexcelled industry in his exploration of the human rights literature. However, we would also like to point out that the style he has used in writing the judgment, dividing it into parts and sections, with headings and sub-headings, is unusual. That style is more suited for a thesis than that for a judgment.*³

That apart, it is also notable that the government has not adhered to its reporting obligation arising from the Covenant. It has failed substantially to report in time, and all its reports, including the fourth periodic report to the Human Rights Committee have always been long overdue.

With regards to the Commission for Human Rights and Good Governance, in theory it is independent as it should, but practically it is not strictly so especially where the government deliberately refuses to respect the recommendations of the Commission for Human Rights and Good Governance. Attempts have been made by the government not to observe the recommendations of the Commission, and here regard must be given to the *Nyamuma Case*.

Recommendations

No.39 of 1990, (Unreported), p.15; *Thomas Mjengi v Republic*, [1992] TLR 157; *Christopher Mtikila and Others v The Republic*, High Court of Tanzania at Dodoma, Criminal Appeal No. 90 of 1990 (Unreported); *Christopher Mtikila v The Attorney-General*, In the High Court of Tanzania, at Dar es Salaam Main Registry, Miscellaneous Civil Cause No.10 of 2005 (Manento, J.K; Massati, J and Mihayo, J), Judgment of 5 May 2006 (unreported); *Peter Ng'omango v Gerson M.K Mwangwa and the Attorney-General*, [1993] TLR 77. For a comprehensive understanding on the application of international human rights instruments in domestic courts of Tanzania, see generally, Chacha Bhoke Murungu, 'The place of International Law in Domestic Courts of Tanzania' A paper prepared for presentation at a conference on *International Law and Human Rights Litigation in Africa*, to be held in conjunction with the *18th African Moot Court competition in Lagos, in August 2009*, organized by the Centre for Human Rights and Amsterdam Centre of International Law, p.1-34; Chacha Bhoke 'Application and Compliance with International Human Rights Standards in East Africa', in the Kenyan Section of the International Commission of Jurists, *Reinforcing Judicial and Legal Institutions: Kenyan and Regional Perspectives*, Judiciary Watch Series, Vol.5 (2007) Ch.5, p.95-118.

² *BAWATA case*, as n 1 above.

³ In *Mbushuu alias Dominic Mnyaroje and Kalai Sangula v Republic*, Court of Appeal of Tanzania at Dar es Salaam, Criminal Appeal No. 142 of 1994, reported in [1995] LRC 216. One wonders whether their Lordships in the Court of Appeal have had an opportunity to read cases from other jurisdictions, particularly those from South Africa, before attacking Justice Mwalusanya. In South Africa, judgments contain paragraphs, headings, and sub-headings just like what Justice Mwalusanya had presented in his judgment.

- The Government should amend the Basic Rights and Duties Enforcement Act to remove the requirement of three Judges to preside over human rights cases in order to expedite hearing of human rights cases.
- It is recommended that the government should domesticate the Covenant into the domestic law of the country, so as to enforce its provisions. It should also timely submit its periodic reports on all measures it has taken to implement the provisions of the Covenant, to the Human Rights Committee.
- The government is urged to respect and observe the recommendations of the Commission for Human Rights and Good Governance, and continue to provide sufficient funds for its activities, and also ensure its unfettered independence.
- Courts in Tanzania should invoke the provisions of the Covenant even before its domestication, by relying on the settled principles of international law of treaties as enshrined in the *Vienna Convention on the Law of Treaties, 1969*, particularly those of *pacta sunt servanda*, and obligation not to defeat the objects and purpose of the treaties based on a state's internal law.

Follow-up to the recommendations of the Nyalai Commission

Paragraph 3 of the List of Issues

3. Please provide information regarding the non-implementation of some of the outstanding recommendations of the Nyalai Commission, which has been noted in paragraph 9 of the Committee's previous concluding observations and the reasons thereof. (State report, paras. 42-44, 59-62, 74-75).

Government Report [Paras 73 to 75]

The Government Report states among other things that; during the consideration of the third periodic report of the United Republic of Tanzania, the Committee called for the implementation of the recommendations in the Nyalali Commission; among the recommendations was to repeal or amend certain provisions of the Human Resources Deployment Act of 1983 (now repealed) which led to forced labour or communal projects. It has been replaced with the National Employment Promotion Services Act, Cap 243 R.E 2002. Moreover, section 5 and 6 of the Employment and Labour Relations Act No 6 of 2004 Cap 243(366) R.E 2002 prohibit and criminalize forced labour, child labour and all forms of discrimination as well as within trade unions.

NGOs Observations

NGOs agree with what has been explained in the government report that Human Resource Deployment was repealed. However, there are some laws which have not been repealed but have more or less effects on the life of Citizens. These laws include the Destitute Persons Act , which permits District Commissioners to arrest destitute persons and take them away from the townships through court orders.

Recommendation

- The government should fully implement Nyalali Commission recommendations.

Article 3

The Covenant provides that the States Parties to the Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant.

Responses to Paragraphs 4 and 5 of the List of Issues

4. Please indicate whether the laws on marriage, citizenship, succession and inheritance, that discriminate against women have been reviewed, in particular those regarding the minimum age of girls for marriage (State report, paras. 41, 149, previous concluding observations, paras. 12-13). Please also indicate whether the legislation applying in Zanaibar continues to permit the imprisonment of both mother and father in the event of unmarried women falling pregnant (State report, paras. 157-158, previous concluding observations, para. 15).
5. Please explain in greater detail the positive action taken with regard to women's access to education, including the steps taken to overcome customary attitudes preventing women from pursuing their right to education fully (State report, para. 17, 35 previous concluding observations, para. 12). Please also provide detailed information on the measures in place to promote an equitable representation of women in decision-making positions, both in public affairs and in their private sector (State report, para. 34).

Government Report [Paras 30 to 41]

The government has submitted that the constitution ensures that men and women have equal rights in the enjoyment of civil and political rights, citing articles 12 and 13(1) thereof, and also various laws as its report shows in paragraphs 33, 36 and 37. The report also states that it has adopted affirmative action in relation to women in the country.

NGOs Observations

The laws on marriage, citizenship, succession and inheritance that discriminate against women have not been amended despite the recommendations of the Law Reform Commission of Tanzania (LRCT). It must be known that the constitution itself provides for the working number of women members of the National Assembly to not less than 30%. Although the government has shown positive efforts to reach this number, it has nevertheless been slow in reaching an equal number of men and women in other public sectors where women are still positioned in junior posts.

They are laws which discriminate against women. These include, the Law of Marriage Act of 1971 (Cap 29.R.E) which allows girls to get married at the age of 14 and 15 while boys can get married at the age of 18. Customary laws discriminate against women. These laws also allow treatment of girls and women as commodities in the community. For instance, the *Law of Persons Act* and the *Law of Marriage* give legal recognition to and permit 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 husbands or husbands' relatives for mistreating and abusing married women. Bride price also is used as an excuse for domestic violence including wife battery [See also paragraph 16.2 expands this assertion].

The Ministry responsible for Community Development, Gender and Children receives the least budget allocations which in turn affects community development, gender and children rights.

Also, the Customary Law provides for the concept of wife inheritance under which a widow is required to marry a male relative from her deceased husband's family or clan. Rule 62 of the *Local Customary Laws Declaration Order No.4 (1963)* provides that the deceased's relatives may ask the widow if she wishes to be inherited and if she agrees she may remain in the house as a wife but without control over land and

property. This practice is harmful and degrading to women and treats them as property passing between one man and another through inheritance.

Recommendations

- The government is urged to endeavor to ensure equality between men and women at the equal proportions in public sectors.
- The government should amend discriminatory laws including the Law of Marriage Act, Cap. 29 and customary laws.
- The government should also repeal the entire Local Customary Laws Declaration Order No.4 (1963) as it does not ensure equality of men and women.
- The government should allocate more resources to the Ministry of Community Development, Gender and Children.

Article 4

The Covenant requires that in times of emergency which threaten the life of the nation, the state parties may take measures derogating from their obligations under the Covenant, subject to international law, and such measures must not be discriminatory. The Covenant goes further to impose obligations on states not to derogate from article 6 (right to life), 7 (torture or cruel, inhuman or degrading treatment or punishment), 8 (slavery and servitude), and 18 (freedom of religion), etc.

Responses to Paragraph 9 of the List of Issues

9. Please comment on reports according to which the amended Emergency Powers Act of 1986, inter alia granting the President exceptional powers to suspend laws and overrule court decisions, is still not fully consistent, in particular, with Article 4 of the Covenant in respect of rights from which no derogations are permissible. Please also indicate, whether any emergency powers have been exercised since the last periodic report and under what conditions (State report, paras. 42-44, previous concluding observations, para. 9).

The Government Report [Paras 42 to 44]

The government states that article 32 of the constitution empowers the President to declare a state of emergency in Tanzania. It further submits that the relevant law, which is, The Emergency Powers Act, 1986 as amended in 1998 by Act No. 12 of 1998 confers the vice president to exercise the power of the president.

NGOs Observations

It is acceptable that the person with power to declare a state of emergency is the president or vice president and 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 elsewhere 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 of 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.”

It is generally observed that the rights are prone to be derogated by the state as even the constitution does not prohibit the president from derogating these rights.

Recommendation

- The government is urged to ensure that these rights at issue are not derogable even at the time of public emergency. This can be guaranteed if the government amends the *Emergency Powers Act* and the *Constitution* so as it is clear on the non-derogable rights even at the time of public emergency.

Article 5

The Covenant imposes an obligation that nothing should be interpreted in the covenant as implying for any state, any right to engage in any activity aimed at the destruction or limitation of rights and freedoms recognized in the covenant. It further requires that there should be no derogation from any fundamental rights.

The Government Report [Para 45]

The government contends that as it has submitted in respect of article 4 above, the rights amenable to suspension in Tanzania do not derogate from those provided for in the covenant, and that the legal regime in Tanzania does not permit the abuse of any civil and political rights of individuals.

NGOs Observations

The government amended the constitution to remove some of the notable claw-backs to the rights provided under the Bills of rights. However, there are some provisions in the constitution which derogate and subject human rights to ordinary laws or acts of Parliament. Article 30(2) of the constitution contains some of such limitations.

Article 30(2) of the Constitution of the United Republic of Tanzania provides among other things:

It is hereby declared that the provisions contained in this Part of this Constitution which set out the basic human rights, freedoms and duties, do not invalidate any existing legislation or prohibit the enactment of any legislation or the doing of any lawful act in accordance with such legislation for the purpose of;

- (a) Ensuring that the rights and freedoms of other people or of the interests of the public are not prejudiced by the wrongful exercise of the freedoms and rights of individuals;
- (b) Ensuring the defence, public safety, public order, public morality, public health, rural and urban development of property of any other interests for the purposes of enhancing the public health;
- (c) Ensuring the execution of a judgment or order of a court given or made in any civil or criminal matter;
- (d) Protecting the reputation, rights and freedoms of others or the privacy of persons involved in any court proceedings, prohibiting the disclosure of confidential information, or safeguarding the dignity, authority and independence of the courts;
- (e) Imposing restrictions, supervising and controlling the formation, management and activities of private societies and organizations in the country; or
- (f) Enabling any other thing to be done which promotes, or preserves the national interest in general.

It is also apt to assert that the legal regime of Tanzania as demonstrated by its dualist approach tends to subdue the covenant in that the constitution itself allows derogation from, and limitations to the non-derogable rights under the covenant. It is also a reality that civil and political rights have no total guarantees and protection in Tanzania. They are subject to derogation and limitations, particularly among others, in times of public emergency. This is observed in article 31 of the constitution.

Recommendations

- The Constitution of the United Republic of Tanzania should be amended particularly in Article 30(2) to remove the provisions which subject/subdue human rights contained in the Bills of Rights to ordinary laws and acts of Parliament.
- The government should amend its laws to ensure that the rights are not derogable as such, and give recognition and protection to the fundamental rights and freedoms contained in the covenant in its entirety. Limitation clauses in the constitution must not subject these rights to derogation.

Article 6

The Covenant provides that every human being has the inherent right to life, and that this right shall be protected by law, and that no one shall be arbitrarily deprived of his life. It is provided in article 6(2) that the death penalty may be imposed only for the most serious crimes. However, above all, the covenant requires that *nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any state party to the covenant.*

Responses to Paragraph 10 of the List of Issues

10. Please provide updated statistics regarding the number and type of offences for which the death penalty has been imposed, including the number of executions carried out and the number of prisoners still on death row. (State report, paras. 49, 63 previous concluding observations, para. 14). What is the status of the moratorium on the execution regarding appeals or reviews governing death sentences and their application in practice.

The Government Report [Paras 46 to 55]

The government states that the provisions of article 6 of the covenant are stated in article 14 of the constitution, which provides that every person has the right to life and to the protection of his life by the society in accordance with the law. According to the government report, the right to life is subject to derogation under article 31 of the constitution. The government states that it still maintains the death penalty for the offences of murder and treason.

NGOs Observations

It is not true that the death penalty is still constitutional and of significance today. The data presented by the government in its report indicate that Tanzania is a *de facto* abolitionist. The government has simply not respected its obligation under article 6(6) of the Covenant. Besides, the government has not performed its obligation to observe the concluding recommendations of the Human Rights Committee in respect of its previous report on article 6 of the covenant. It should be recalled that the Committee had recommended for the abolition of the death penalty by law. Since then, efforts by the government to abolish death penalty have not been promising. The Law Reform Commission of Tanzania has recommended for the abolition of the death penalty but there is no notable effort from the government side to adhere to the recommendations of the Law Reform Commission of Tanzania as no preliminary efforts have taken course in the Attorney General's Office or at Cabinet level. Moreover, there is no publicity of the Commission's recommendations for public scrutiny.

Attempts have been made several times to challenge the death penalty. The first challenge was in the case of *Republic v Mbushuu alias Dominic Mnyaroje and Kalai Sangula, [1994] TLR 146* wherein the High Court (Mwalusanya, J as he then was) declared the death penalty unconstitutional and void. The Government appealed to the Court of Appeal which actually condemned the High Court decision for striking out the death penalty and substituting it with life imprisonment. Although the Court of Appeal found it to amount to torture it nevertheless, declared it constitutional and that it is in public interest.

Currently, there is an ongoing case in the High Court of Tanzania. This is the case of *Tanganyika Law Society and Others v Attorney General, In the High Court of Tanzania, Main Registry, at Dar es Salaam, In the matter of a Petition to Challenge the Constitutionality of Sections 25(a), 26, 39, 40 and 197 of the Penal Code, Between Tanganyika Law Society, Legal and Human Rights Centre and SAHRINGON-Tanzania Chapter (Petitioners) and Attorney-General (Respondent), Misc. Civil Application No. 67 of 2008, (Before Lugaziya, Makaramba and Sheik, JJ).*

The petitioners in this case have asked the court to declare the death penalty for murder and treason under sections 25(a), 26, 39, 40 and 197 of the Penal Code, unconstitutional. Further, petitioners have sought to declare the mandatory imposition of the death penalty by section 197 of the Penal Code, also unconstitutional. Petitioners have challenged the death penalty on the grounds that it amount to arbitrarily taking away the right to life; it amounts to torture, cruel, inhuman and degrading treatment or punishment; and that it offends human dignity protected by the constitution.

The petitioners have also challenged the mandatory imposition of the death penalty in that it breaches fair trial by failure to allow mitigating circumstances, i.e. allowing a prayer for life imprisonment; it is disproportional; contrary to separation of powers, and that it fetters with the judicial discretion of courts at the sentencing time.

Recommendations

- The government should be reminded to implement the last recommendations of the Human Rights Committee [Paragraph 14 of the Concluding Observations of the Human Rights Committee: United Republic of Tanzania. 18/08/98. CCPR/C/79/Add.97]
- Further, the government should be urged to abolish the death penalty for all offences, by drawing or pointing out examples from neighboring countries such as Rwanda, Mozambique, South Africa, Angola, etc.
- The government should be urged to observe article 6(6) of the Covenant.
- Courts in Tanzania should be urged to employ a broad and comparative human rights interpretation especially on the fundamental right to life and dignity.

Article 7

The Covenant provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Responses to Paragraphs 10, 11, and 12 of the List of Issues

10. Please provide updated statistics regarding the number and type of offences for which the death penalty has been imposed, including the number of executions carried out and the number of prisoners still on death row. (State report, paras. 49, 63, previous concluding observations, para. 14). What is the status of the moratorium on the execution of death sentences? Please also provide detailed information on the legal provisions regarding appeals or reviews governing death sentences and their application in practice.

11. Please indicate when the State party intends to review its legislation which permits corporal punishment as part of judicial sentences and in the education system (State report, para. 63, previous concluding observations, para. 16) and what measures are envisaged to ensure its compatibility with the Covenant.

12. Please provide more detailed information on the mechanisms in place to investigate and prosecute complaints of torture and ill-treatment in police custody, detention facilities and prisons during all stages of deprivation of liberty (State report, paras. 67-68), including information on their independence (previous concluding observations, para. 18)?

The Government Report [Paras 56 to 72]

The Government report states among other things that: Article 13 (6) of the Constitution prohibits torture and inhuman or degrading treatment or punishment. The Government of Tanzania is under way to ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the process is still in the very initial stages. Despite the fact ratification has not taken place, the Government has been making efforts to ensure that the international standards laid down by the Convention are met.

Although this right is protected under the Constitution, there is no specific national legislation to prevent the same. However, the right is justiciable and forms part of the laws of the land (Article 30(3) of the Constitution). Any person aggrieved under this article may petition to the court through the Basic Rights and Duties Enforcement Act, Cap 3 R.E. 2002. Recourse may also be sought under the prerogative orders of *certiorari and mandamus* or with the Commission for Human Rights and Good Governance. The Government further states that; there have been amendments to the Prevention Detention Act of 1962 and the Witchcraft Act, Cap 18 R.E, 2002.

NGOs' Observations

Tanzania has **not yet ratified the UN Convention Against Torture (CAT)**. It is one of the very few African countries, which have so far failed to do so. The government cannot 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 a number of NGOs reports of Tanzania such as the Tanzania Human Rights Reports of 2002 to 2007.⁴

The government has not yet enacted a specific law prohibiting and punishing torture, despite its prohibition under article 13(6) (e) of the Constitution. Even then, when a person invokes this provision of the Constitution, torture is always regarded by the Court of Appeal as constitutional as was expressly stated in the *Mbushuu case* at an appellate stage. Yet torture is a form of punishment in Tanzania, as observed through execution by hanging. This is tantamount to non-recognition of the prohibition of torture. to date, the position regarding torture in Tanzania is that it is lawful, as stated by the Court of Appeal.

Further, the government has enacted several legislations which allow torture, particularly the Anti-Terrorism Act, 2002. Besides, both the Police Force Act and all the laws relevant and applicable to prisoners authorize corporal punishment which is one form of torture as a form of punishment. Acts of torture are rampant in remands and cells. The Police Force applies arbitrary force in arresting individuals, and in most cases, once a suspect is arrested; he is subjected to severe beatings and mental torture. It is also notable that caning is used as a form of punishment in schools as well as the domestic arena.

Furthermore, the Government report just states that, the Government is in the process of ratifying the Convention against Torture, but the report does not specifically state which stage of the process has so far been reached. The Government report does not provide for time frame to sign and ratify CAT either.

The recent research conducted in Tanzania in 2006 revealed that, the people of Tanzania are suffering under police forces that are too often corrupt, violent and brutal tools of the government. The finding mentioned that the police torture the suspects in order to get confessions⁵. For instance one of many examples available is the incidence which occurred on March 2006 whereby one person, a taxi driver identified as Christopher Samson was tortured to death while in the police custody by the Police Officers after he was arrested due to the allegation that he participated in the armed robbery at Nyakato Bus Terminal in Mwanza City of Tanzania⁶.

⁴ Available online through www.humanrights.or.tz

⁵ The Commonwealth Human Rights Initiative (June, 2006) *The Police, the People, the Politics* – further information see www.humanrightsinitiative.org

⁶ LHRC (2006) *Op cit*, pg 22 (Footnote number 23).

Other challenges for persistence of this problem in Tanzania are insufficient knowledge of law, inadequate police resources, fear of reprisal from FGM practitioners, corruption, and poor police investigation.⁷

Some incidences of Torture and Extra-Judicial Killings

As it had been stated in the list of issues already submitted;

- 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.⁸ 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 style⁹ and according to the media, some NGOs from Kenya such as the Oscar Foundation have stated that some of the bodies bore marks of torture before they were shot.
- In Kemonge village, Kiteto District in Manyara region, police shot and killed two people in 2007 including the Standard 6 child in what was reported to be a botched security operation against individuals engaging in brewing traditional brews. Same police were allegedly attempting to collect bribes from Togota villagers.¹⁰

Recommendations

- The government should ratify the Convention Against Torture as soon as possible and make it a criminal offence under the laws of Tanzania.

Violence against women

Responses to Paragraphs 6 and 7 of the List of Issues

6. Please provide more detailed information on the measures taken to ensure effective investigation, prosecution, and sanctioning of acts of violence against women, including domestic violence. Do victims have access to effective legal remedies? Please clarify whether domestic violence and marital rape are recognized as specific criminal offenses in the domestic criminal law. What steps are being taken to overcome patriarchal attitudes and stereotypes which continue to inhibit women from complaining about such violence? (previous concluding observations, paras. 11, 24)
7. Please comment on reports according to which female genital mutilation continues to be practiced illegally and is rarely prosecuted. Please indicate whether the criminalization of this

⁷ See AFNET 'Minutes of Meeting of Anti-FGM Coalition' (Meeting Minutes Dodoma, Tanzania, 6 February 2008), also Immigration and Refugee Board of Canada 'Tanzania: Practice of Female Genital Mutilation (FGM); state protection available to victims' [ReportOttawa 14th August 2008]. More information on this issues can be obtained from LHRC (2008) Tanzania Human Rights Report of 2008 page 79 at page 79 and on www.unhcr.org.

⁸ 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.

⁹ LHRC (2007) Tanzania Human Rights Report of 2007 at pages 14 to 17.

¹⁰ Ibid, page 17.

practice protects all women irrespective of their age (previous concluding observations para. 11). In addition to criminalization, what practical steps have been taken to prevent female genital mutilation?

Gender Based Violence is widespread in Tanzania. In November 2007, it was reported that 50% of women in Tanzania were beaten on a daily basis by their partners. Moreover, 25% of Tanzanian women interviewed in a 2006 study reported being subject to non-spousal battery.¹¹

As for respect of dignity especially for women, it is true that there have been quite progressive measures to address the violations of this right to dignity. The enactment of *Sexual Offences Special Provisions Act (SOSPA) in 1998*¹², which was a miscellaneous amendment of various provisions of the laws relating to children and women's rights, has been a big step ahead to safeguard the dignity of women and children in Tanzania because the law provides severe stern measures for the perpetrators of the sexual harassments, cruelty to children and the like.

The Penal Code, Cap. 16 which criminalizes **Female Genital Mutilation (FGM)**¹³, has not been effective to curb FGM practices in Tanzania as the tendency still persists. Tanzania is ranked 9th in the world in terms of prevalence of FGM.¹⁴ Many cases of FGM are not reported and others which are reported are often dismissed due to lack of evidence or failure of those who report the case to appear before the court to testify against the accused. FGM is most frequently practiced in Manyara region (northern part of Tanzania), where 81% of women and girls have undergone the process.¹⁵ The Penal Code also does not cover women or girls who are above 18 years who may undergo FGM unwillingly or due to family pressure. The law states that FGM is an offence if it is practiced against the girl who is under 18 years.¹⁶

Recommendations:

- The government should also repeal the entire Local Customary Laws Declaration Order No.4 (1963) as it does not ensure equality of men and women.
- The government should enact specific legislation, which will provide for civil and criminal remedies for such actions of Gender Based Violation as it was proposed by this Committee at its last Concluding Observation to Government of Tanzania of 18/08/1998 (Paragraph 24) – CCPRR/C/79/Add.97.

Article 9

¹¹See the Immigration and Refugee Board of Canada 'Tanzania: Situation of Women Victims of Domestic Violence, including legislation and the availability of protection and support services' (Report of 15 July 2008; also see, 'Tanzania: Domestic Violence a serious concern' IRIN 20th April, 2006. More information on Gender Based Violence are available at pages 81 to 85 of the Tanzania Human Rights Report of 2008. Information can also be accessed on www.unhcr.org; www.irinnews.org; www.humanrights.or.tz.

¹²Note that, the provisions of this law have been absorbed in Parts XV and XVI of the Penal Code, Cap. 16 of the Revised Edition 2002 of the Laws of Tanzania.

¹³Section 169A of the Penal Code, Cap. 16.

¹⁴Boniface Ngussa "Rate of Female Genital Mutilation declines", the *Sunday Observer* (Tanzania) 18th February 2007. Also see LHRC (2007) Tanzania Human Rights Report of 2007 at page 63.

¹⁵See LHRC (2007) Tanzania Human Rights Report of 2007 at page 63 also Jane Mkonya "Manyara leads FGM shame – activists" the *Guardian* (Tanzania) 7th February, 2007.

¹⁶See Section 169A of the Penal Code, Cap. 16. Also LHRC (2008) Tanzania Human Rights Report of 2008, page 79.

Everyone has the right to liberty and security of person. It prohibits arbitrary arrest or detention. It further requires for reasons and grounds be given for arrest and detention.

Government Report [Paras 76 to 78]

The Government report combines Articles 9 and 10 and states among other things; the right to liberty and security of a person is enshrined in part II, article 15(1) and (2) of the Constitution of the United Republic of Tanzania. This Article provides that every person has the right to freedom and to live as a free person and that no person shall be arrested, imprisoned, confined, detained, deported or otherwise be deprived of his freedom save only for the operation of the law.

Where a person feels that his or her right has been violated he or she has recourse to seek redress with the courts as provided for by Article 30(3), which states that any person alleging that any provision in this part of this chapter or in any law concerning his right or duty owed to him has been, is being or is likely to be violated by any person anywhere in Tanzania, may institute proceedings for redress in the High Court.

NGOs Observations

Despite the fact that the provisions of the Constitution of the United Republic of Tanzania provides for the right to freedom of persons, the experience on the ground is different. Moreover, there are still some laws which were recommended by the Presidential Commission of Inquiry of 1992 (The Nyalali's Commission) to be amended or repealed but have remained un-amended and un-repealed up to date. These laws were found to contain some provisions which, *inter alia*, curtailed enjoyment of human rights in Tanzania.

Even those which have been amended/ repealed so far, their abnormalities have been retained and transferred to the newly enacted laws. The *Regional Commissioners' Act of 1962* and the *District Commissioners Act of 1962* are some of these kinds of laws. For instance, the above two laws were repealed by the *Regional Administration Act, Cap. 97* but have retained the provisions of the two Acts, though with some modifications. Sections 7 and 15 of the *Regional Administration Act* give arresting powers to both Regional and District Commissioner by stating that;

(1) For the purposes of the effective and better exercise of his functions and duties under this Act, a Regional Commissioner and District Commissioner shall have power to cause to be arrested any person who in his presence commits or to his knowledge has committed, any offence for which a person may be arrested and tried.

(2) Notwithstanding subsection (1), where a Regional Commissioner or District Commissioner has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquility, or to do any act that may probably occasion a breach of the peace or disturb the public tranquility, and that, that breach cannot be prevented in any way other than detaining that person in custody, he may order a police officer verbally or in writing to arrest that person.

These two are actually the same provisions which the Nyalali's Commission recommended for repeal as they give these Administrative Officials an arbitrary power of trading with individual liberties¹⁷. District and Regional Commissioners being politicians coming from ruling political parties, may arbitrarily order an arrest of anybody for any reason be it a political one or personal.

Recommendations

¹⁷ Page 2 of the Report of the Nyalali's Commission of 1992.

- Sections 7 and 15 of the Regional Administration Act be repealed as they cover the same powers to Regional and District Commissioner provided under the repealed *Regional Commissioners' Act of 1962* and *the District Commissioners Act of 1962*,
- The government should fully implement the Nyalali Commission recommendations.

Article 10

Responses to Paragraph 16 of the List of Issues

16. Please provide information on the progress made with regard to the national prison policy document (State report, para. 69). What measures have been taken by the State party to improve conditions of detention and to prevent overcrowding (State report, paras. 70-72)? Do non-governmental organizations have access to detention facilities and under what conditions?

Overcrowding of inmates in prisons is also one of the factors for torture and degrading treatment (as the government report paragraph 71 accepts). The government stated in December 2007 that, the carrying capacity of prisons increased from previously 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 have been reduced from 46,416 to 43,262 in the same time frame.¹⁸ In 2008, the current Minister for Home Affairs, Mr. Laurence Masha, said in June 2008¹⁹ 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. Most of the prisons do not have health facilities because of budget constraints. Prisoners get only one meal per a day. Women prisons, in particular, the Kingolwira –Women Prison do not have sanitize apparatus for women such as pads for the menstrual cycle.

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.²⁰

Another important legal avenue of depopulating the prisons would have been through the normal parole under the *Parole Board Act*.²¹ This law has not been effectively used. 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

¹⁸ LHRC *Tanzania Human Rights Report of 2007*, page 107.

¹⁹ 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.

²⁰ 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.

²¹ Cap. 400 of the Laws of Tanzania.

is a very small fraction of prisoners who have benefited under this scheme because the law itself is very restrictive in terms of qualifications for those who are eligible for this scheme.²²

- Moreover, the prison situation is not transparent as *UN Minimum Rules for Treatment of Prisoners* require. The said **National Prisons Policy** (Para 69 of government report) has not been formulated/ made in public. The Tanzanian *Prisons Act, Cap. 58 prohibits entry to the prisons, NGOs are not allowed to enter in prisons and the dissemination of information concerning the conditions of prisons.²³ Publication of investigative stories concerning prisons is also prohibited, as is taking and publishing photographs.*
- Despite the fact that the Prisons Act, Cap. 58 allows **Justice of Peace/ Visiting Justices** to visit and monitor prisons situation, these people/ officials have not recently visited any prison because the government has failed to allocate budget for them. The only independent institution, which visits prisons, is the Commission for Human Rights and Good Governance. This Commission does not have sufficient resources for monitor all prisons in Tanzania.

Moreover, despite the fact that there are some provisions in the laws of Tanzania which address the issue of torture, experience on the ground shows that torture, degrading punishments and treatments are rampant in Tanzania.

As for respect of dignity and right against torture in prisons/police lock-ups, the situation is even worse compared to the police's situation. The most serious problem facing prisons is overcrowding. The statistical analysis done by *International Centre for Prison Studies – Prison Brief for Tanzania September 2006* (as was updated by LHRC in December 2006) indicates that, the occupancy level in prisons based on official capacity of prisons in Tanzania has exceeded above normal level by 193.4%. That is, there are more than 43,911 inmates in the prisons which have the capacity of accommodating only 22,699 inmates in Tanzania. In November 2002, 17 inmates suffocated to death at the Mbarali police station in Mbeya region in Tanzania. The dead were among the 112 inmates who were detained together in a small room capable of accommodating only 30 people²⁴. These are some of the examples in this respect.

The parole and community sentencing schemes as mechanisms to decongest the prisons under the *Parole Board Act, Cap. 400* and the *Community Services Act, Cap. 291* are not effectively done. Prisoners themselves have complained of corruption and disregard of prescribed conditions for the parole and/or community services. For instance, four ex-prisoners wrote a letter to the President explaining that; "...we request for your penitence in the name of God, who gave you the Presidency, to pardon these inmates who have saved their terms in prisons for long time but continue to suffer because of **ill-will of the People (i.e of some of the Prison Officers)**, who for their own interests want these inmates to make for them, houses, furniture and nice outfits....The truth is, (you) President Kikwete have forgotten those citizens of yours whom you promised, when they sang for you, that you will assist them, and God was present to hear what you promised...".²⁵ Therefore, the parole system is not efficient as it is explained by the

²² 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.

²³ 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."

²⁴ LHRC (2003) Tanzania Human Rights Report 2003, pg 13.

²⁵ Extracted from page 20 of the *Mtanzania* newspaper of 10th January 2007. This letter was written by Juma Samata; Said Salum (Prisoner Number 414/2006); Charles Chach (Prisoner Number 833/2006) and Douglas Florence (171/2006).

government report because the overcrowding problem is escalating every year and therefore the inmates continue to face degrading, inhuman, cruel and very harsh conditions in prisons contrary to the standards set by the *United Nations Minimum Standards for the Treatment of Prisoners of 1956*.

Recommendations:

- The government should amend the Prisons Act to allow access of the NGOs in the prisons.
- The government should adopt more effective measures to depopulate prisons of Tanzania.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

Paragraph 17 of the List of Issues

17. Please provide information on measures undertaken by the State party to ensure the implementation of article 11 and prohibit imprisonment for inability to pay debt. (State report, paras. 79-84, previous concluding observations, para. 21)?

Government Report [Paras 79 to 84]

The Government report states that; the law and practice in Tanzania differs from the provisions of article 11 of the Covenant; under section 44(1) of the Civil Procedure Code Act Cap 33 R.E 2002, a judgment debtor may be arrested in the execution of a decree at any hour and any day and shall as soon as practicable be brought before the court which may order his detention.

The Government report further states; it is obviously follows that a person cannot be jailed solely for genuine inability to fulfill a contractual obligation. A decree for the payment of money may be executed by the detention in prison of the judgment debtor, after the court has failed to either attach or sell his property or both.

NGOs Observations

As is stated in the Government report, section 44(1) of the Civil Procedure Code Cap 33 R.E 2002, contravenes Article 11 of the ICCPR by permitting civil debtors to be imprisoned. Civil debtors include debtor who fail to fulfill contractual obligations.

Recommendations

- The Government should review the provisions of the Civil Procedure Code and amend the same to be in line with Article 11 of the ICCPR. In actual fact, it is the Decree holder who pays for the costs of the judgment debtor to stay in prison which at the end does not benefit the decree holder either.

Article 12

Article 12 provides among other things that; everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence and that no one shall be arbitrarily deprived of the right to enter his own country.

Government Report [Paras 85 to 94]

The Government report states among other things that; Article 17(1) of the Constitution of the United Republic of Tanzania provides and guarantees the right to freedom of movement throughout the Republic, which entails the right to leave and enter the country and the right not to be forced to leave or expelled from the Republic. The freedom may be restricted by law in the interest of security, public safety, public order, public morality, and public health or in enforcing a court order.

The Immigration Act Cap 54 R.E 2002 further provides entry into the country of immigrants from all countries of the world on an equal basis. The Government report further states that; under section 16 of the Tanzania Citizenship Act Cap 357 R.E, 2002, a naturalized citizen may be deprived of his or her citizenship, if the Minister is satisfied that, it is not conducive to the public good that person should continue to be a citizen of the United Republic of Tanzania. However, before the Minister responsible for citizenship affairs makes such an order, the person will be served with a notice in writing stating the grounds on which it is proposed to be made.

NGOs Observations

The Government report provides for two categories of Citizens; citizens by birth and citizens by naturalization, however, citizenship through naturalization can be revoked for certain reasons stated in the Government report as provided under the Citizenship Act. It is NGOs observation that, this provision of the law is discriminatory against citizens whose citizenship is acquired through naturalization which is contrary to article 13 of the Constitution which prohibits discrimination Article 13 of the Constitution provides:

13(2) No law enacted by any authority in the United Republic shall make any provision that is discriminatory either of itself or its effect. Citizens who acquire their citizenship through naturalization should be accorded equal protection and if they commit other offences specific laws should be applied.

Recommendations

- Provisions of the Citizenship Act which discriminate citizens based on the acquisition of their citizenship and the ultimate revocation of their citizenship should be amended to accord equal treatment to all citizens

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Government report [Paras 95 to 98]

The Government Report states; section 12 of the Immigration Act, Cap 54 R.E 2002 provides for the arrest and expulsion of prohibited immigrants wherever there is a reasonable cause to suspect them having entered Tanzania while being a prohibited immigrant otherwise than in accordance with the provisions of the Act.

The Government report further states, apart from the Immigration Act Cap 54 R.E 2002 there are other laws providing for the expulsion of aliens under certain circumstances which are covered by this. The Government, in an effort to protect the rights of aliens, has enacted a number of laws including the Prevention of Terrorism Act No 21 of 2002, Transfer of Prisoners Act of 2004, Refugees Act Cap 37 R.E 2002, Extradition Act Cap 368 R.E. 2002, Drugs and Prevention of Illicit in Traffic Act Cap.95 R.E 2002.

NGOs Observations

The Government report does not state to what extent do the Prevention of Terrorism Act No 21 of 2002, Transfer of Prisoners Act of 2004, Refugees Act Cap 37 R.E 2002, Extradition Act Cap 368 R.E. 2002, Drugs and Prevention of Illicit in Traffic Act Cap.95 R.E 2002 promote and protect the right of aliens.

Recommendation:

- NGOs recommend that the Government should specify how and to what extent do laws in Tanzania protect the rights of aliens.

Article 14

This Article provides among other things that; all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Response to Paragraphs 10 and 18 of the List of Issues

10. Please provide updated statistics regarding the number and type offences for which the death penalty has been imposed, including the number of executions carried out and the number of prisoners still on death row. (State report, paras. 49-63, previous concluding observations, para. 14). What is the status of the moratorium on the execution of death sentences? Please also provide detailed information on the legal provisions regarding appeals or reviews governing death sentences and their application in practice.

18. Please comment on reports according to which the police often fail to bring a person arrested for a criminal offence before a magistrate within the legally prescribed 24 hours. Please also provide information on legal assistance in criminal as well as civil proceedings (State report, para. 176)?

Government Report [Paras 99 to 108]

The government reports states that the Constitution, law and case laws support this Article. It mentions that legal aid is freely provided NGOs like the Legal and Human Rights Centre (LHRC), Tanzania Women Lawyers Association (TAWLA), and others. The report states that, provision of legal aid is also guaranteed by the government if the person accused is charged in the High Court with murder and treason.

NGOs Observations

Apart from citing the Constitutional provision of the right to be heard, the government report does not reveal challenges which the civil and criminal justices in Tanzania are facing in terms of both procedural and substantive laws and practice. The right to be heard (*audi alterrem partem* rule) requires that before

a person is condemned or judged, he should be granted the opportunity to present his side of the story²⁶ – through prescribed legal processes.

This right in Tanzania is eroded by a number of factors namely the presence of mob violence or “mob-justice” especially in the major cities of the country, judicial corruptions and the like. Mob violence erodes the constitutional principle of the presumption of innocence. It has as a result claimed the lives of many people in Tanzania without their cases or allegation being determined by the Courts of law. The mob violence incidences are rampant. For instance, in a report issued by the office of the Director for Criminal Investigations in October 2005, there were 206 recorded cases of mob violence between January and August 2005 alone.²⁷

Lack of confidence in the rule of law is ironically causing lawlessness via mob violence, which as said above erodes notions of presumption of innocence and the right to be heard. For instance, one of the incidences on record (according to 2004’s LHRC Report) shows that on 7th June 2004, one Ismail Tambwe, a 16 years old Form Two Student of a Secondary School called Nronga in Hai District, Kilimanjaro Region in Tanzania, was beaten to death by the so called annoyed citizens of Tanga town on the mere suspicion of stealing a bicycle. Immediately after the death of the poor boy, it was learnt that he was actually a student and not the one who stolen a bicycle. Most of the mob violence incidences are reported but there are no records which indicate how many perpetrators have been taken into task for killing innocent people without causing their cases to be heard in the courts of law.

Response to Paragraph 8 of the List of Issues

8. Please provide information on existing or proposed counter-terrorism related laws, such as the 2002 Prevention of Terrorism Act, and their compatibility with the Covenant, including the definition of terrorism contained therein (State report, para. 98).

There are some laws which presume the accused person guilty until proven otherwise. One of those laws is the *Prevention of Terrorism Act, 2002*. This law was passed by the Parliament in November 2002 to prevent both domestic and international terrorism. There are some provisions in this Act which totally disregard the right to presumption of 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.

1. The Legal Aid Schemes for the Indigent in Tanzania

Response to Paragraph 19 of the List of Issues

19. Please provide detailed information on the 2002 law on NGOs, in particular whether it includes criminal sanctions for non-registration of NGOs, on the investigative powers of the NGO Board, as well as the possibility to form national coalitions.

²⁶ Peter, Chris Maina (1997) *Human Rights in Tanzania: Selected Cases and Materials*, Rudiger Kopper Verlag, Koln, pg 428

²⁷ LHRC (2005) *Tanzania Human Rights Report 2005*, page 12.

The right to legal representation, which also forms part of Article 14 of the ICCPR, is affected by a number of challenges in Tanzania. The Majority of Tanzanians are very poor, they cannot afford to 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 small to meet the demand. Recent statistics (of December 2007) produced by the Tanginyaka Law Society (the Association of Advocate), indicates that there were 926 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 Plaintiff costs about \$500. Consultation Fee ranges from a Minimum of \$10 and above. The majority of Tanzanians, who actually live below \$1 per a day, can logically not afford and enjoy this right to legal representation.

In spite of the initiatives by the legal sector institutions and development partners in recent years, the quality of the legal services available to the people and other entities in Tanzania remains well below standards in most respects.²⁸ This state of affairs is reflected in the following among other things;

- Inordinate delays in resolving disputes and dispensing justice. In spite of recent efforts to address this problem, there remain large backlogs of both criminal and civil cases in the legal system. Major crimes take more than four years to resolve and civil cases including commercial cases usually take even longer. This is clearly a totally unacceptable situation.²⁹
- Limited access to legal services for the majority of the citizens who either lack awareness of their basic rights and the opportunities for judicial redress, or cannot afford the legal services costs or do not have confidence in the integrity and fairness of the legal system.³⁰
- Corrupt and unethical officials in the legal system and perceived corruption of judicial officers and other law enforcement officers;³¹
- Outdated and non-responsive system to either social, political, economic and technological changes, or increasing resource constraints over the years; and³²
- Limited public trust in the legal system attributed to unexplained delays in the disposal of civil and criminal suits.³³

The institutional and resources constraints underlying the problems in the Legal Sector remain much the same as elaborated in the report of the Legal Sector Task Force.³⁴ These include:

- (i) A fragmented, excessively bureaucratic and outdated legal and regulatory framework;³⁵
- (ii) Weak management and coordination of Legal Sector Institutions;³⁶
- (iii) Low competence and morale of public sector legal personnel;³⁷
- (iv) Inadequate numbers of professionally trained legal personnel in the country;³⁸
- (v) Constrained independence and low integrity of the legal system;
- (vi) Ignorance and poverty of the majority of the citizens;³⁹ and
- (vii) Excessively limited and poorly maintained work environment for all public institutions in the Legal Sector.⁴⁰

²⁸ Legal Sector Reform Programme, Medium Term Strategy, 2005/06-2007/08, Vol 1 page 4

²⁹ Legal Sector Reform Programme, Medium Term Strategy, 2005/06-2007/08, Vol 1 page 4

³⁰ *ibid*

³¹ *ibid*

³² *ibid*

³³ *ibid*

³⁴ *ibid*

³⁵ *ibid*

³⁶ *ibid*

³⁷ *ibid*

³⁸ *ibid*

³⁹ *ibid*

The above named challenges remain unresolved or partly resolved because the Legal Sector Reform Programme (Medium Term Strategy) (2005/2006-2007/2008) is yet to achieve its objectives due to a number of problems according to the First Annual Review of the Legal Sector Reform Programme (LSRP).⁴¹

LSRP has recorded minimal achievements as per the Annual Review Report. The report states at page 10;

Given the initial difficulties, the little progress made by the LSRP has been impressive. This finding highlights the Programme's singular success. Under KRA 1's goal of 'improving the legal environment and streamlining the prosecution service' a new law has been enacted and a number of reports and studies on other laws impeding access to justice prepared. The new law is the National Prosecution Service Act (NPS Act) that received presidential assent in January this year.

The Annual Report enumerates other successes as:⁴²

Other reform activities under this result area have moved apace. Laws that impede justice to disadvantaged groups have been identified and pre-legislative studies and discussion papers have been completed on (i) local customary laws; (ii) the death penalty, corporal punishment and long term sentences; and (iii) persons with disabilities in Tanzania'

In addition, there has been a review of the Business Names (Registration) Act and study tours and a range of training events have been organized for the police and link officers and programme managers. Under KRA 2 the LSRP has provided support for the Tanganyika Law Society (TLS), and TLS Legal Aid Day. The promotional and informational activities for the day resulted in actual aid being given to over 300 people. Under KRA 4 on 'Knowledge and Skills for Legal Professionals' the founding legislation for the Law School of Tanzania has been enacted; the Law School has been established and it has already admitted the first cohort of 274 students;...'

According to the Annual Review the challenges facing LSRP include:⁴³

- (i) lack of common agreement and understanding among stakeholders of core concepts used in the LSRP;⁴⁴
- (ii) there is only partial national ownership of the LSRP⁴⁵;
- (iii) the LSRP programme aims to be- but it is not-mainstreamed;⁴⁶
- (iv) there seems to be no uniform understanding of what the term 'reform' actually entails;⁴⁷
- (v) there is lack of common understanding of 'Capacity' and so of 'Capacity Building' or Capacity- Development;⁴⁸

⁴⁰ ibid

⁴¹ Ministry of Justice and Constitutional Affairs, the Legal Sector Reform Programme (LSRP), **Unblocking the Road to Timely Justice for All**, First Annual Review of the Legal Sector Reform Programme (LSRP) of the United Republic of Tanzania [Final Report] 18th June, 2008 Conducted by Prof. Chris Maina Peter, Mr. Wachira Maina, Mr. Michael Ward, Ms. Jeniffer Khor, Dr. Lemayon Melyonki and Ms Mette Jacobsgaard.

⁴² Ibid page 10

⁴³ Ibid page 11

⁴⁴ Ibid

⁴⁵ Ibid page 11-12

⁴⁶ Ibid page 12

⁴⁷ Ibid page 13

⁴⁸ Ibid page 13

- (vi) LSRP lacks overall Strategic Leadership;⁴⁹
- (vii) The inconsistency across the five core reform programmes could have a deleterious impact on LSRP;⁵⁰
- (viii) The Lead Agencies have no financial support to coordinate the implementing agencies under their Result Area;⁵¹
- (ix) Programme Coordination Office(PCO) does not have sufficient capacity to fulfill its dual function of supporting the implementing agencies and acting as secretariat to the programme's executive committees;⁵²
- (x) Many implementing agencies feel that the Medium Term Strategy(MTS) is not flexible;⁵³
- (xi) The lack of some link with Parliament, even if only at the conceptual level to an important missing link in the MTS.⁵⁴

The abovementioned challenges have weakened the implementation of the LSRP.

In Tanzania, generally, the State does not provide legal assistance to the indigents, except in specified criminal cases which include Murder and Treason cases.⁵⁵

According to section 3 of the Legal Aid (Criminal Proceedings) Act, the Chief Justice or a Judge of the High Court may certify that a certain accused person should be extended free legal aid throughout the proceedings facing him or her where it appears to the certifying authority that "it is desirable, in the interest of justice that an accused should have legal aid in preparing and conduct of his defence or appeal and that his means are insufficient to enable him to obtain such aid."

Nonetheless, in appreciation of this State omission and its economic incapability to do so, a few NGOs and institutions have been providing legal aid to the needy and vulnerable. The most prominent and notable ones include: the Legal Aid Committee (LAC) of the Faculty of Law, University of Dar Es Salaam; Women Legal Aid Centre(WLAC); the Tanzania Women Lawyers Association (TAWLA); Legal and Human Rights Centre (LHRC); the Tanganyika Law Society (TLS); National Organization for Legal Assistance (*nola*), CCBRT, and the like.

The above list is not exhaustive and covers only those Organizations and Institutions providing legal assistance through lawyers but excludes Community Based Organizations (CBOs) and Faith Based Organizations (FBOs) providing legal assistance through Paralegals.

Furthermore, **Paralegals** (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.

2. Administration of Juvenile Justice

- **Need for a Separate Criminal Justice System**

NGOs firmly believe that the present practical problems inherent in the principal juvenile penal law are direct results of its time of enactment; as it was enacted some more than 50 years before the evolution of

⁴⁹ Ibid page 14

⁵⁰ Ibid page 15

⁵¹ Ibid page 16

⁵² Ibid page 17

⁵³ Ibid

⁵⁴ Ibid page 18

⁵⁵ The Legal Aid (Criminal Proceedings) Act, Cap 21 R.E 2002.

modern global juvenile justice principles.⁵⁶ For that matter, the good intentions it strived to serve in the past 60-years-plus are, substantially, moribund to date. Times have changed, so have socio-economic realities.

According to various studies on the state of juvenile justice in the State Party, this juvenile penal law has a lot of practical hitches that many analysts have called for its repeal.⁵⁷ Some of these problems include:

- **The Repugnancy of the Age of Criminal Responsibility**

The *Children and Young Persons Act*⁵⁸ sets up the age of criminal responsibility by defining a *child* as ‘any person under the age of twelve, and a *young person* as ‘any person who is twelve years of age or upwards and under the age of sixteen years.’⁵⁹

Thus, persons of below the age of 18 and above 16 are not taken or treated as children. Section 17 states categorically that: Where it appears that any person brought before it (the court) is of the age of sixteen or upwards that person shall for the purposes of this Ordinance be deemed not to be a child or young person.

Section 15(1) of the *Penal Code*⁶⁰ provides that: ‘A person under the age of ten years is not criminally responsible for any act or omission.’

Section 15(2) of the *Penal Code* states categorically that: *A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.*

In practice, the age of criminal responsibility has been a cause of a lot of misapprehension by the juvenile justice personnel. Although the *Penal Code*, pegs the age of criminal responsibility at 10 or 12 years,⁶¹ subordinate courts have been misconceiving this fact hence holding criminally liable young offenders of the apparent age below that, as was the situation in the case of life imprisonment to a 9-year old in Magu in early 2000s.⁶²

NGOs observe that the *Penal Code* and Cap. 13 set the age of criminal responsibility lower than the international standards. For instance, the CRC requires that a minimum age for criminal responsibility to

⁵⁶ See Article 14 of the International Covenant on Civil and Political Rights; *United Nations Standard Minimum Rules of the Administration of Juvenile Justice (the Beijing Rules)*, General Assembly resolution 40/33, annex; *United Nations Convention on the Rights of the Child* (1990); *United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)*, General Assembly resolution 45/112, annex; *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UNRPJ)*; *United Nations Standard Minimum Rules for Non Custodial Measures (Tokyo Rules)*; *United Nations Guidelines for Action on Children in the Criminal Justice System*, Economic and Social Council resolution 1997/30, annex; and *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, General Assembly resolution 40/34, annex.

⁵⁷ LEGAL AND HUMAN RIGHTS CENTRE, *The State of Juvenile Justice in Tanzania*, op. cit.

⁵⁸ Cap. 13 R.E. 2002.

⁵⁹ Section 2 of Cap. 13 R.E. 2002.

⁶⁰ Cap. 16 R.E. 2002.

⁶¹ According to section 15 of the *Penal Code*, as repealed and replaced by section 4 of the *Sexual Offences Special Provisions Act* [No. 4 of 1998], ‘a person under the age of ten years is not criminally responsible for any act or omission.’ [Subsection (1)]. Whereas, subsection (2) provides that a ‘person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.’

⁶² See LEGAL AND HUMAN RIGHTS CENTRE, *The State of Juvenile Justice in Tanzania*, op. cit.

juveniles should be set out clearly.⁶³ Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.

- **Arrest of Juveniles and Notification of Parents/Guardians/Social Welfare Officers**

Under the *Children and Young Persons Act* there are no clear provisions relating to procedures for arrest of juvenile delinquents. There is also lack of basic prerequisites in arrest – such as notification of parents or guardians upon arrest of juveniles, for the law itself is passé, as modern juvenile principles require notification of apprehension of young offenders to be communicated immediately upon such apprehension to parents or guardians of the respective juvenile.

However, section 56 of the *Criminal Procedure Act*, 1985, obliges a police officer in charge of investigating an offence in respect of which a child is under restraint to cause a parent or guardian of the child to be informed that he is under restraint and of offence for which he is under restraint. In contrast, Rule 10.1 of the Beijing Rules provides that “Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and where such immediate notification is not possible, the parents or guardian, shall be notified within the shortest possible time thereafter”.

According to the LRCT Report⁶⁴ notification serves an important aspect in administration system of the juvenile justice because; first, it helps the police to get the background information that can enable them to take immediate and appropriate reaction; secondly, it helps parents or guardian to know exactly the whereabouts of their child, hence may take appropriate action, including but not only limited to bailing out the respective young offender and/or preparing defence; and thirdly, it may help any other interested person or institution to take necessary measures aimed at protecting the juvenile apprehended from being ill-treated or abused.⁶⁵

NGOs observe that in very rare cases, the police notify the probation officers, let alone parents or guardians, to attend interrogation sessions or bail out juveniles or appear in courts for taking action in criminal cases involving young offenders. One probation officer in Tabora,⁶⁶ for instance, admitted to researchers that this system of her involvement in the administration of juvenile justice in her area lacks effectiveness. She said that she could not wholly dedicate her daily commitment to the administration of justice because she was also the officer in charge of street children’s affairs as well as children’s homes in the region. Thus depending wholly on being notified by the police officers or court officials. In such a watertight schedule, coupled with lack of requisite facilities in her disposal – like motor vehicle – she found herself dealing with only limited areas involving children in conflict with the law.

Rule 10.3 of the *Beijing Rules*, any contact between the police officer (or any other law enforcement agent) and the juvenile offender should ‘be managed in such a way as to respect the legal status of the juvenile, promote the well being of the juvenile and avoid harm to her or him, with due regard to the circumstances of (each) case.’

⁶³ Article 40(3) (a) of the CRC. On its part, the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (henceforth *the Beijing Rules*), rule 4, stipulates that the age of criminal responsibility should not be fixed at too low an age level. It provides that: “In those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”. The commentary to rule 4 states: In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority, etc.).

⁶⁴ LAW REFORM COMMISSION OF TANZANIA, “Report on the Law Relating to Children in Tanzania,” op. cit, p. 77.

⁶⁵ See also section 114 (1) of the New Zealand Bill for further details on apprehension and notification. Section 90(3) of the Ugandan *Children Statute* also provides for notification upon apprehension of young offenders.

⁶⁶ LEGAL AND HUMAN RIGHTS CENTRE, *The State of Juvenile Justice in Tanzania*, op. cit.

- **Pre-Trial Detention**

The *Children and Young Persons Act* does not contain specific provisions relating to detention of juvenile delinquents while pending trial in courts of law. It scantily provides only for arrangements to be made by the Inspector General of Police (henceforth called “the IGP”), *so far as practicable*, for preventing a child, while in custody, ‘from associating with an adult, other than a relative, charged with an offence.’⁶⁷

Recommendations

- The Government should expedite the implementation of the Legal Sector Reform Programme
- The government should amend the *Children and Young Persons Act*, being the leading procedural law on juvenile justice in the country, to include the basic principles on the administration of juvenile justice as well as the provisions of the International Covenant on the Rights of the Child and the African Charter on the Rights and Welfare of the Child
- The government should allocate more resources to legal sector institutions in order to improve legal sector services. These institutions include but not limited to faculties of laws at Universities, Judiciary, Police, Attorney General Office, Office of the Director of Public Prosecutions, Law School of Tanzania.
- The Government should improve the right to equality before the law by among other things allocating funds to legal aid providers for provision of legal assistance.
- The government should enact a law which will facilitate provision and recognition of free legal aid on civil matters.
- Legal aid should be extended to all accused persons who face serious sentences from and above 15, juveniles, people with disabilities, vulnerable etc.
- The Government should provide financial support to NGOs providing Legal Assistance.

Article 15

Article 15 of the ICCPR provides, *inter alia*, that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.

Government Report [Paras 109 and 110]

The government report indicates that the Constitution of the United Republic of Tanzania, under Article 13 (6), prohibits retroactive penal legislation. The report further states that, there is no retroactivity in the criminal law system of laws in Tanzania and therefore, a person cannot be charged with an offence for an act committed before any law is legislated against such act.

Response to Paragraph 8 of the List of Issues

8. Please provide information on existing or proposed counter-terrorism related laws, such as the 2002 Prevention of Terrorism Act, and their compatibility with the Covenant, including the definition of terrorism contained therein (State report, para. 98).

NGOs Observations

⁶⁷ The term “*associating with an adult*” is so ambiguous as to attract a multitude of inferences. It may mean in certain interpretation, confederating or allying or affiliating the child to adult offenders, or it may imply pairing or combining, the child with adult.

There are some draconian provisions of the *Prevention of Terrorism Act, 2002*. This law was passed by Parliament in November 2002 to prevent both domestic and international terrorism. 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 gives the Minister wider discretion, which would include ordering punishment of the suspect for an offence which is not provided in the law. Note that **terrorism has not been defined in this law**. Therefore, any act or omission could be regarded as a terrorist offence depending on the discretion of the Minister.

Recommendations

- The term terrorism should be defined in order to give certainty to offences prohibited under this law. In actual fact; the possibility of punishing a suspect for “any” offence relating to terrorism, is in violation of Article 15 of the ICCPR.
- The *Prevention of Terrorism Act, 2002* should be amended to remove any possibility of creating retroactivity offences and punishment.

Article 16

Article 16 of the ICCPR provides that “[E]veryone shall have the right to recognition everywhere as a person before the law.”

16.1 Government Report [Paras 111 and 112]

The government report says that the recognition and protection of the individuals is guaranteed in Tanzania under Articles 12, 13 and 14 of the Constitution. The report states that, the Constitution provides to the effect that, all human beings are born free and equal and that every person is entitled to recognition and respect of dignity and life. It is further argued by the government that the right to life is guaranteed under the provisions of the *Penal Code*, Cap. 16 R.E 2002.

16.2 NGO Observations

As it has been discussed under Article 3 of this NGO report [See paragraph 3.3 of this report], payment of bride-wealth by the husband upon marriage (which is allowed by the laws of Tanzania), 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 she herself and her family cannot afford to refund the 'bride price'.⁶⁸

Also, Paragraph 62 – 70 of *GN No. 279 of the Law of Persons Act ((Sheria ya Hali ya Watu) of 1963*; on Inheritance provides that a widow may be inherited by a relative of the deceased husband (see section on article 3).

Recommendation

- The government of Tanzania is urged to take immediate actions to amend or repeal the customary laws and other laws which are oppressive and discriminatory against women.

Article 17

⁶⁸ Law Reform Commission of Tanzania, “Report on the Law of Succession,” 2002, 7.

Sub-article 1 of Article 17 of the ICCPR stipulates that “[N]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.” Sub-article 2 of the same Article provides that “[E]very one has the right to the protection of the law against such interference or attacks.”

17.1 Government Report [Paras 113 and 114]

The government report states that the Constitution of the United Republic of Tanzania under its Article 16 (1) guarantees the right to privacy. Further, the report by the government indicates that there is enacted Sexual Offences and Special Provision Act, Cap. 101, which *inter alia*, requires the hearing of sexually related cases involving women and children be conducted in camera.

17.2 NGO Observations

The law, as it has been rightly stated by the government report, is good. However, in practice, the situation is different. In almost all police stations of Tanzania, there is no special desk for hearing sexual offences for women and children. There are no special rooms to record information on sexual offences privately. Once a victim of sexual abuse reports her case to the police, the information is recorded at the reception/ counter of the police which is not public. Police also do not accord much weight to sexual offences as compared for instance to theft offences.

Recommendation

- The government of Tanzania is urged to take immediate and affirmative actions to make sure that all police posts and stations in Tanzania have specific desks for gender issues, specifically on sexual offences, where the victim and/or the suspect can actually be guaranteed of their privacy.

Article 18

Article 18 of the ICCPR stipulates, *inter alia*, that everyone shall have the right to freedom of thought, conscience and religion; and that no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

18.1 Government Report [Paras 115 to 121]

The government report states that Article 19 of the Constitution of the United Republic of Tanzania provides for the freedom of thought or conscience, belief or faith and choice in matters of religion including the freedom to change religion or faith. The report goes further to say that the government recognizes religious studies and associations such as Islamic Council, Christian Council of Tanzania and Tanzania Episcopal Community. The government recognizes the challenge on the part of Zanzibar in which the religious leader (*Mufti*) is vested with discretionary powers to permit or refuse to permit religious gatherings.

18.2 NGO Observations

The enjoyment of this right is generally guaranteed in law and practice. However, on part of Tanzania Zanzibar, rightly as the government report has pointed out, the government of Tanzania Zanzibar enacted a law which governs religious (Islamic) matters. That law is called the Office of Mufti Act.⁶⁹ 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 caused some problems and confusion in Tanzania (Zanzibar). For instance, in

⁶⁹ No.9 of 2001

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 some misunderstandings and mistrust between the two major religious groups in Tanzania – Christians versus Muslims in respect to the demand by Muslims to establish Kadhis (Islamic) Courts. Moreover, the misunderstanding gained momentum in the debate whether Tanzania should be a member of Organization of Islamic Conference (OIC) or not. The government of Tanzania was confusing especially statements by the Minister for Foreign Affairs that the government had to do research and found out that OIC was good and beneficial to the country, as such there was no problem of joining OIC.

Recommendations

- The *Office of Mufti Act, 2001* should be repealed as it infringes the provisions of Art. 18 of ICCPR, as should be Art. 19 of the Constitution of the United Republic of Tanzania;
- The government of Tanzania should respect and protect the right to freedom of conscience, the profession and free practice of religion and avoid joining religious organizations or facilitating establishment of religious organizations which lead to religious bias on the part of the government.
- The government of Tanzania is urged to discuss with the Revolutionary Government of Zanzibar to see how religious matters are harmonized for the interests of all Tanzanians.

Article 19

Sub-article 1 of Article 19 of the ICCPR stipulates that “[E]very one shall have the right to hold opinions without interference.” Sub-article 2 of the same provides that “[E]very one shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

Response to Paragraph 20 of the List of Issues

20. Please provide information on the legislative framework for media services and comment on reports according to which the government has restricted the work of journalists and publishers, particularly in Zanzibar.

19.1 Government Report [Paras 122 to 129]

The government's report indicates that, in Tanzania, the provisions of Article 19 of ICCPR are embodied in Article 18 of the Constitution of the United Republic of Tanzania. The report further states that, since 1998, this right has been protected by the media policy of November 2003. The restriction of electronic broadcasting to only five regions in Tanzania was removed. It is also said that, the freedom of media which guarantees existence of the television and radio stations, has enabled some print and electronic

media outlets to investigate and report profile corruption issues, which, enabled the government to take measures.

19.2 NGOs Observations

There is no any law enacted to safeguard this right despite occurrence of number of incidences, which infringe it. 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.⁷⁰ 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.”⁷¹ 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.”⁷² 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.⁷³

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 *Newspapers Act*⁷⁴ 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.⁷⁵ The *National Security Act*⁷⁶ allows the government to control the dissemination of information that goes to the public. Furthermore, the *Broadcasting Services Act*⁷⁷ allows the government to regulate electronic media.

Towards the end of last year 2008, one investigative newspaper called *MwanaHalisi*⁷⁸ 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 the majority of people as an act to stop him from writing investigative articles.

Moreover, 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

⁷⁰ Tanzania Government Gazette G.N 373/ 2005.

⁷¹ Unnamed reporter “HakiElimu government set on collision course” *ThisDay* (Tanzania) (31st January 2007).

⁷² Rodgers Luhwago. “HakiElimu in trouble again” *The Citizen* (Tanzania) January 2007.

⁷³ Unnamed reporter, “HakiElimu, Govt agree to bury the hatchet” *The African* (Tanzania) (8th February 2007). See also Austin Beyadi, “Govt lifts HakiElimu ban” *The Guardian* (8th February 2007).

⁷⁴ Cap. 229 of the Revised Edition 2002 of the Laws of Tanzania.

⁷⁵ Section 5 of the *Newspapers Act, supra*.

⁷⁶ Cap 47 of the Revised Edition 2002 of the Laws of Tanzania.

⁷⁷ Cap. 306 of the Revised Edition 2002 of the Laws of Tanzania.

⁷⁸ MISA, ‘Newspaper suspended for seditious article; security forces summon editor for questioning’ (personal email correspondence 14 October 2008); L. Philemon ‘MwanaHALISI banned’ *The Guardian* (Tanzania) 14 October 2008; P Rugonzibwa ‘Govt bans “Mwanahalisi” tabloid’ *DailyNews* (Tanzania) 14 October 2008.

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.

Recently, the government has been slow in amending media laws and enacts laws which protect the freedom of information. Media institutions and stakeholders in Tanzania prepared draft Private Bills namely; the Right to Information Bill of 2008 and the Media Services Bill of 2008 and which were submitted to the government. The government has yet to respond to the Bills.

Recommendations

- The government should repeal laws which violate the right to freedom of information including the Newspaper Act of 1976 and Public Leaders Act particularly the regulation which prohibit publication of public leader's declaration of Assets etc.
- The government should respond to media institutions and stakeholders call for enacting the Right to Information Act and the Media Services Act.
- Government officials should be tolerant and supportive of public debates aimed at combating abuse of power and corruption in the country.

Article 21

Article 21 of the ICCPR provides that “[T]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.”

21.1 Government Report [Paras 134 to 143]

In its report, the government combines Articles 21 and 22 of the ICCPR and states that, the said articles have been guaranteed under the provisions of Article 20 of the Constitution of the United Republic of Tanzania. The report by the government states that, the right to freedom of assembly is a constitutional right for both Tanzania mainland and Zanzibar. The report further states that; the provisions of the Police Force and Auxiliary Services Act, Cap. 322 give procedures to be followed in order to carry out assembly in public places.

21.2 NGO Observations

The right to freedom of assembly is an essential Constitutional right however, it is violated by a number of unnecessary restrictions which are indeed used arbitrarily. Even though an individual has the right to assemble freely, that right is subject to article 30 of the Constitution which subjects the rights provided under the Bills of Rights to ordinary laws or acts of parliament. Section 74(1) of the Penal Code⁷⁹ provides that when three or more persons assemble with the intent to commit an offence or, being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighborhood reasonably to fear they are unlawfully assembled.

Freedom of assembly is circumscribed by the *Police Force and Auxiliary Services Act*. This Act provides that any person who wants to have an assembly in a public place has to notify the police of the impending

⁷⁹ Cap. 16 R.E 2002 of the Laws of Tanzania.

assembly.⁸⁰ It is within the discretion of the police to prohibit an assembly, if the assembly “is likely to cause a breach of the peace or to prejudice public safety or the maintenance of public order or to be used for any unlawful purpose”.⁸¹ There have been allegations that the police have improperly exercised their discretion to prohibit public assemblies. More specifically, it is alleged that the police favour certain political parties when deciding whether to permit a public assembly.⁸² If the police exercise their discretion to prohibit assemblies improperly, then they infringe the right to assembly and, in the case of political assemblies, they effectively hinder the democratic process in Tanzania.

Moreover, the right to demonstrate, as a group, is subject to many of the same legislative limitations that apply to the right to freedom of assembly as explained above. An example of this is the demonstration staged by the former workers of the East African Community in Dar es Salaam in October 2008. These ex-workers congregated on the *Selandar* Bridge, which is one of the main routes into the Dar es Salaam city centre, and stopped traffic for several hours while they protested the government’s failure to pay them terminal benefits since the 1970s and 1980s. It is alleged that the demonstration was illegal, as the demonstrators had not notified the police of their intention to demonstrate. The police tried to get the demonstrators to disperse voluntarily. When the demonstrators refused to disperse, it is reported by the media that the police used water cannons on the demonstrators and arrested 25 suspected ring leaders of the demonstration. Eight of the arrested demonstrators were arraigned before the Kisutu Resident Magistrate’s Court in Dar es Salaam in early November 2008 on charges of unlawful assembly.⁸³ As is evident from this example, the limitations on the freedom of assembly can negatively affect a person’s freedom of expression.

Recommendations

- The government should amend the *Police Force and Auxiliary Services Act* to restrict police discretion on permitting peaceful assemblies and explicitly prohibit the police from discriminating between persons on grounds such as political affiliation when deciding whether to permit a public assembly.
- The police force’s role in relation to assemblies should be limited to the maintenance of security at an assembly, rather than having the power to decide whether people should assemble or not.

Article 22

Article 22 provides among other things that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

Response to Paragraph 19 of the List of Issues

19. Please provide detailed information on the 2002 law on NGOs, in particular whether it includes criminal sanctions for non-registration of NGOs, on the investigative powers of the NGO Board, as well as the possibility to form national coalitions.

⁸⁰ S. 43 of the *Police Force and Auxiliary Services Act*, Cap. 322.

⁸¹ S. 43(3) of the *Police Force and Auxiliary Services Act*, Cap. 322. .

⁸² N. Kigwangallah ‘Opposition leaders bemoan election laws’ *The Guardian* (Tanzania) 21 June 2008.

⁸³ R. Lamtey and R Mirondo ‘Riot police descend on ex-EAC workers’ *The Guardian* (Tanzania) 30 October 2008; ‘Furious ex-EAC workers paralyse transport in Dar’ *ThisDay* (Tanzania) 3 November 2008; R John ‘Ex-EAC Workers Arraigned’ *The Citizen* (Tanzania) 29 October 2008.

22.1 The Government Report [Paras 134 to 143]

The government report provides that Article 20 of the Constitution of the United Republic of Tanzania is in conformity with Articles 21 and 22 of the ICCPR. However, the right is with some restrictions. The laws include Police Force and Auxiliary Service Act, Cap 322, R. E of 2002, Penal Code, Cap. 16 R.E 2002, Trade Unions Act, Cap. 244 of the R.E 2002, Political Parties Act, Cap. Cap 258 R.E 2002, the NGO Act, Act No. 24 of 2002, the Trustees Incorporation Act, Cap. 318, R.E 2002 and Societies Act Cap. 337 of 2002.

22.2 The NGOs Observations

As stated in the government report, freedom of association in Tanzania is not absolute. Despite the fact that there are laws which facilitate enforcement of this right, still, there are some restrictions which are not necessary and go to the extent of negating the right itself and which are contrary to the ICCPR.

For instance, Tanzania passed the Non-Governmental Organization Act⁸⁴ in 2002 hereinafter referred as the NGO Act. The NGO Act has provisions⁸⁵ which provide for **suspension** or **cancellation** of NGOs. The provisions under the law create loop-holes under which the operation of human rights defenders may easily be undermined. Under the law for example, an NGO certificate of registration may be suspended or cancelled if the terms in the Certificate have been violated, the NGO has ceased to exist, or operates in variance with its Constitution.

The law further **criminalizes** operating an NGO without registration and a person who operates an NGO without obtaining registration or certificate of compliance for NGOs which had already been registered before enactment of this law. Once the NGO obtains the certificate of compliance, it is restricted to operate in Zanzibar because the NGO Act is operational on Tanzania mainland only. The requirement of applying for the certificate of compliance under this NGO Act tends to burden registered NGOs to undergo another kind of re-registration.

In 2008 the Parliament passed the HIV and AIDS (Prevention and Control) Act No. 28 of 2008, section 35(2) of the Act threatens the lives of NGOs by stating that *"[a]ny person who misuses any aid or assistance aimed at providing services to persons living with HIV and AIDS, widows, widowers or orphans, commits an offence and shall be liable, in case of a body corporate, to ... deregistration from the Register of NGOs, CBOs, or FBOs as the case may be."*

This provision contradicts with ICCPR as it provides deregistration of NGOs, CBOs, or FBOs on the basis of misuse of HIV and AIDS funds by some of its individual leader(s).

In once incident, in August, 2005 the then Minister for Education and Culture, Mr. Joseph Mungai threatened to deregister an NGO called Hakielimu after publishing a report which seemed to be critical to the Government's programme to reform primary education⁸⁶. Minister's intimation to deregister Hakielimu a clear violation of the right to freedom of association.

⁸⁴ Act No.24 of 2004

⁸⁵ Section 35(1) of the NGO Act provides for penal sanctions against NGOs which will operate without abiding to the procedure registering the NGO. Section 11 puts a mandatory requirement that for every NGO to be registered prior to its operation, and if already registered under other laws of the country, the NGO is required to apply for and obtain a certificate of compliance. 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 five years.

⁸⁶ See the Tanzania Human Rights Report of 2005 at pg.30

As it has been reported in this report in the case of *Baraza la Wanawake Tanzania (BAWATA) Vs The Registrar of Societies, Minister for Home Affairs and the Attorney General Miscellaneous Civil Cause No 27 of 2007*, High Court of Tanzania at Dar es Salaam(Unreported). The case was filed to challenge the Powers of the Minister of Home Affairs to deregister a society under the Societies Registration Act. BAWATA had been deregistered by the Minister hence filing this constitutional case was brought under Articles 13(6), 15, 18, 20(1), 24, 24, 26(2) and 30(4) of the Constitution of the United Republic of Tanzania, 1977, sections 4 and 5 of the Basic Rights and Duties Enforcement Act, 1994. The case was filed in 1997 and the judgment given in 2009, more than ten years after.

Recommendation

- The government is urged to amend laws which unnecessarily restrict the freedom of association. These laws include the NGOs Act and the HIV and AIDs (prevention and control) Act so that they comply with the provisions of the ICCPR.

Article 23

Article 23 provides among other things that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State and that the right of men and women of marriageable age to marry and to found a family shall be recognized.

Response to Paragraph 4 of the List of Issues

4. Please indicate whether the laws on marriage, citizenship, succession and inheritance, that discriminate against women have been reviewed, in particular those regarding the minimum age of girls for marriage (State report, paras. 41, 149, previous concluding observations, paras. 12-13). Please also indicate whether the legislation applying in Zanaibar continues to permit the imprisonment of both mother and father in the event of unmarried women falling pregnant (State report, paras. 157-158, previous concluding observations, para. 15).

23.1 The Government Report [Paras 244 to 150]

The government report provides as to the kind of families, life style and protection. With regard to the protection of family, the government report provides; Tanzania had established institutions to deal with family affairs issues such as Reconciliation Boards under the *Law of Marriage Act, Cap. 29*, Social Welfare Department under the Ministry of Health and other auspices of the religious institutions.

The Report further states that about the laws in place which take care of the welfare of the families such as the *Law of Marriage*, the *Law of Affiliation Act* and the *Penal Code*. The government further states that under the ministry of Community Development, Gender and Children it has prepared and submitted the cabinet paper to the gathered stakeholders' views about the laws relating to the rights and welfare of the children. Other related measures are the formulation of Women and Gender Development Policy of 2000 and enactment of the Land laws which ensure equal opportunities for men and women.

23.3 NGOs Observations (see also section on article 3)

The *Law of Marriage Act*⁸⁷ is the main act which regulates issues relating to issues of family matters, including rights before, during and after divorce or separation. The law also provides for issues such as the custody of children in case of divorce or separation.

Under the *Law of Marriage Act* there are some provisions which tend to violate the rights of a woman as visualized in ICCPR as follows:

(1) Parental Consent:

Section 17 (1) of the Act (*supra*) allows a girl child below the age of majority that is of 15 years to get married by the consent of her parents/guardian or a court at 14 years. This provision is contrary to ICCPR as it creates no room for a girl child to get higher education, to choose a spouse and is dangerous to her health.

(2) Minimum Age of Marriage:

Section 13(1) allows a girl child to get married before attaining the age of majority (18 years old), 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 is discriminatory in sex with respect to the age of marriage.

(3) Division of Matrimonial Properties:

Section 114 (2) (a) of the Act provides for division of matrimonial properties, in deciding the same the provision obliges 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 the communities in Tanzania have customs and usages that are discriminatory and oppressive to women and therefore violate the rights of women to equally share in the division of matrimonial properties.

(4) Custody of Children:

Children born out of wedlock is addressed by the *Affiliation Act, 1949*⁸⁸. The Act compels a father of a child to pay Tanzania Shillings one hundred⁸⁹ (100) per month for the maintenance and other needs of the child.⁹⁰ This amount is insignificant to support a child in any way. Besides, the law allows a man to apply to court to have a child support made under the *Affiliation Act* vacated if a woman remarries.⁹¹ This Act narrows parental care from the father and completely leaves it to the mother to the detriment of the child.

(5) 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)*, which denies widows inheritance from their deceased husbands' estates. In addition, daughters are given unequal and smaller share of the estate as compared to sons and hence are denied their rights to property.

Paragraph 62 – 70 of *GN No. 279, The Law of Persons (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.

Recommendations

⁸⁷ Cap 29, R.E 2002

⁸⁸ S. 5 of the *Affiliation Act, 1949*.

⁸⁹ One USD is equivalent to Tshs. 1300/=

⁹⁰ S. 5 of the *Affiliation Act, 1949*.

⁹¹ S. 6 of the *Affiliation Act, 1949*.

- The government of Tanzania is urged to take immediate action to amend or repeal the customary laws and other laws which are oppressive and discriminatory to women.
- The government is argued to review and amend the Affiliation Act and accord weight to maintenance of children born out of wedlock.
- The government should amend the law of marriage Act to raise the minimum marriage for girls to get married from 14 by order of the court to 18 years which is the age of majority.

Article 24

Article 24 provides that; every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State; Every child shall be registered immediately after birth and shall have a name and that every child has the right to acquire a nationality.

Response to Paragraph 21 of the List of Issues

21. Please provide information on the effectiveness of the steps taken to enforce the legal provisions aimed at eradicating child labor (State report, para. 154, previous concluding observations, para. 25), in particular with regard to mining activities? In addition, please provide more detailed information on the unified law on child matters (State report, para. 154).

24.1 The Government Report [Paras 151 to 158]

The Government Report addresses well on the right to protection for a child. That there laws which protect the affairs of the child, including the constitution, Birth and Death Registration Act, Cap 108 R.E. of 2002, Employment and Labour Relation Act, Act No 6. 2004 and Spinster Act of Zanzibar. Also Tanzania is a state party to the CRC and its Two Optional Protocols.

24.2 NGOs Observations

Tanzania is a party to the international and regional instruments that protect the interests of the child. For example, Tanzania is a signatory to the *Convention on the Rights of the Child, 1989*, the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000*, the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000* and the *African Charter on the Rights and Welfare of the Child, 1990*.⁹²

Despite of all these efforts by the government still children's rights are not well elaborated under national legislation⁹³ their provisions dealing with children's rights are scattered throughout various pieces of legislations. **There is still no unified law on the rights and welfare of the children in Tanzania.** These laws

⁹² *Convention on the Rights of the Child, 1989* (adopted 20 November 1989, entered into force 2 September 1990, ratified by Tanzania 10 June 1991) UNGA Res 44/25, UN Doc A/44/49; *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000* (adopted 25 May 2000, entered into force 18 January 2002, acceded to by Tanzania 24 April 2003) UNGA Res 54, UN Doc A/54/49; *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2002* (adopted 12 February 2002, entered into force 12 February 2002, acceded to by Tanzania 11 November 2004) UNGA 54, UN Doc A/54/49; *African Charter on the Rights and Welfare of the Child, 1990*.

⁹³ The *Penal Code*, the *Law of Marriage Act* and the *Children and Young Persons Ordinance*, the *Affiliation Act*, *The Employment and Labour Relation Act* and the *Adoption Act*.

lack a unified mechanism of protecting the child welfare. However, the government is in the process of enacting an omnibus piece of legislation, the *Children Act*, to address children's rights.

In Tanzania, there are 1.2 million working children (**child labour**).⁹⁴ Children under 12 years old are being employed in **hazardous work like mines** and as porters in markets.⁹⁵ Children are also engaged in scavenging, fishing, quarrying, and acting as barmaids, prostitutes, street vendors, cart pushers and auto mechanics.⁹⁶

A **street child** is another serious problem which is visibly present in larger cities.⁹⁷ However, there is no current data on the number of children who live on the streets in Tanzania. The government does not keep records of this group of children.

Worst still, child protection is frustrated by law enforcement institutions as they are beaten by the police, put into jail and, sometimes, repatriated to their rural homes.⁹⁸ The police have defended the round up of street children on the basis that their acts are in accordance with the provisions of the *Destitute Persons Act, 1923*, the *Criminal Procedure Act* and the *Penal Code*.⁹⁹

Child Abuse; Tanzania children are grossly subject to sexual abuse. Statistics shows that at least 122 cases of child abuse in every four months are reported.¹⁰⁰ Sexual abuse of girls and women seems to be widespread in Tanzania. Research indicates the proportion of women ages 15 to 49 who reported that their first act of sexual intercourse was forced.¹⁰¹

Location	Under age 15	15-17 years	18 years and over
Tanzania (Urban)	40%	17%	10%
Tanzania (Rural)	43%	18%	12%

Child registration

Child registration is a challenge too, many children are not registered in the rural areas due to lack of awareness by parents of the importance of birth registration. The government is yet to reach the majority of Tanzanians especially in the rural areas despite revived efforts by the Registration, Insolvency, and Trusteeship Agency (RITA).

Although children born in urban areas are registered more easily and birth notifications allow the parents to get birth certificates at the district headquarter, accessibility is a challenge to most rural areas.

⁹⁴ Interview with Jurgen Schwettmann, *supra*; "Let's cooperate to fight child labour" *The Citizen* (Tanzania) 16 June 16, 2008.

⁹⁵ LHRC (2008) Human Rights Report of 2008, page 86, Children under 12 years old are employed in the Mererani Tanzanite mines in the Manyara region and children between the ages of five and 16 years being used as porters in the Tengeru Women Market in Arusha.

⁹⁶ Department of Labour, United States of America '2007 Findings on the Worst Forms of Child Labour – Tanzania' (Report United States of America 27 August 2008) <<http://www.unhcr.org>> accessed 25 September 2008.

⁹⁷ Such as Arusha, Dar es Salaam, Morogoro, Moshi, Mbeya, Mwanza and Tanga

⁹⁸ Carabain, *supra*.

⁹⁹ 'High Court hears petition to remove oppressive laws' *Arusha Times* (Tanzania) (31 May 2008). See: *Destitute Persons Act*, Cap. 389, R.E. 2002; *Criminal Procedure Act*, Ca. 20, Cap. 20, R.E. 2002; *Penal Code*, Cap. 16, R.E. 2002.

¹⁰⁰ LHRC (2008) Tanzania Human Rights Report of 2008.

¹⁰¹ International Women's Health Coalition 'Triple Jeopardy: Female Adolescence, Sexual Violence, and HIV/AIDS' (Report June 2008) <<http://www.iwhc.org>> accessed 3 December 2008.

Poverty is another challenge to children from poor families who fail to get birth certificate because their parents cannot afford to pay the required fee of Tshs 3,500.

RITA currently does not have its own staff at every district headquarter where registration is mostly done; instead it designates some staff at the district commissioner office to conduct registration. Some of the district commissioner's office are not qualified enough and sometimes not motivated which negatively affect the registration exercise.

A recent study by UNICEF showed that 50m newborn babies were not registered at birth in the year 2000 - the equivalent of 41% of all births worldwide. Although there are no accurate statistics on birth registration rate in Tanzania, data obtained from the Registrar General's office shows that only 19% of the children born in a year gets birth certificate¹⁰²

Recommendation

- The government is urged to take a holistic approach to child labour by considering and addressing the various reasons for child labour that are identified in this report, these reasons include poverty.
- The government should expedite the process of enacting the child law.
- The government should allocate more resources to birth and death registration in country to be used among other thing raising awareness on the importance of birth registration.

Article 25

Article 25 provides; every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections this shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Response to Paragraph 22 of the List of Issues

22. Please describe the measures taken to prevent electoral irregularities and political violence during elections in Zanzibar, in particular in light of the events of the 2000 and 2005 elections in the archipelago (State report, paras. 159-171)? Please also provide information on the report of the Independent Commission of Inquiry into the events of 27 January 2001 (State report, paras. 164), as well as on the decision in the case *Rev. Christopher Mtikila v. Attorney General HCT Misc. Civil Case No 10/2005* (State report, paras. 162).

25.1 The Government Report [Paras 159 to 171]

The government report states that, Tanzania guarantees the right of its citizens to participate freely in public affairs. Article 21(1) and (2) of the Constitution of the United Republic of Tanzania provides for freedom of the individual to take part in matters pertaining to the governance of the country and in the process leading to the decision on matters which affect him, his well being or that of the nation at large.

25.2. The NGOs Observations

¹⁰² http://www.unicef.org/infobycountry/tanzania_statistics.html viewed on 27th May 2009

Despite that every individual has the right to participate in governance of the country, there are still some legal and practical limitations on the same right.

The post election violence in Zanzibar occurred in 27 January 2001 and again in 2005/6 between the opposition political party (C.U.F) and the government following electoral irregularities has not been resolved as yet. The political accord known as **MUAFKA** broken in 2008 on the allegation that the ruling political party contravenes some of the terms of the **MUAFKA**.

Electoral violations still persist in Tanzania. For instance, in the Kiteto district, Manyara Region, a by-election was held on 24 February 2008 to fill a parliamentary seat that was left vacant following the death of the incumbent Member of Parliament, Mr. Benedict Losurutia. In the lead up to the by-election, six officials of CHADEMA who were campaigning in Kiteto were attacked and beaten by members of the CCM and, possibly, by members of the police force. Two people were arrested in connection to the violence.¹⁰³ It is uncertain as to whether these two people were prosecuted. The CCM candidate, Mr. Benedict Nangoro, won the by-election with 21,506 of 35,262 votes.¹⁰⁴

Pre-election violence also occurred in Tarime District, Mara Region where a by-election was held in October 2008 for a parliamentary seat that had become vacant due to the death of the incumbent MP, Mr. Chacha Wangwe. Five political parties participated in the by-election and, ultimately, an MP was elected from CHADEMA. A number of violent incidents occurred in the pre-election period in Tarime, such as:

- four CHADEMA supporters were wounded during a political rally. It is suspected that they were wounded by CCM supporters;¹⁰⁵
- Rev. Christopher Mtikila of the Democratic Party (DP) was stoned by a mob while addressing a political rally;¹⁰⁶
- on 7 October 2008, the police used rubber bullets and tear gas to disperse supporters of CHADEMA after they stoned the police. The CHADEMA party leaders were among the 29 people arrested on the grounds of holding an illegal assembly;¹⁰⁷ and,
- the National Convention for Construction and Reform (NCCR-Mageuzi) Director for Justice and Human Rights, Dr. Sengondo Mvungi, was stoned by youths after addressing a political rally. It was reported that the youths were supporters of CHADEMA.¹⁰⁸

Some of the actions taken by the political parties during the Tarime by-elections were questionable. For instance, the political leaders of the CCM and the DP advised people not to vote for CHADEMA, as CHADEMA was allegedly responsible for the death of the incumbent MP.¹⁰⁹ In addition, on the day before the election, the CCM disrupted a campaign rally of the NCCR-Mageuzi.¹¹⁰ Actions of this nature disrupt the process that ensures a free and fair election, as voters may change their voting behaviour due to

¹⁰³ R. Athumani and M Juma 'Six injured in Kiteto campaign violence' *The Citizen* (Tanzania) 19 February 2008; A Mavuri 'Makamba blames CHADEMA for chaos in Kiteto campaign rally' *The Guardian* (Tanzania) 20 February 2008; B Missoke 'CUF slams campaign violence ahead of by-election in Kiteto' *The Citizen* (Tanzania) 28 February 2008.

¹⁰⁴ LHRC 'By-election in Kiteto' (Report Tanzania 2008).

¹⁰⁵ LHRC 'Tarime By-election Report' (Report Tanzania 2008) LHRC/ELM/Vol.III/ii.

¹⁰⁶ M. Juma 'Top envoys visit violence-ridden Tarime' *The Citizen* (Tanzania) 6 October 2008.

¹⁰⁷ M. Juma 'Police – CHADEMA has declared war on us' *The Citizen* (Tanzania) 8 October 2008.

¹⁰⁸ F. Mwera 'NCCR's Mvungi injured as youths disrupt public rally' *The Citizen* (Tanzania) 1 September 2008.

¹⁰⁹ LHRC 'Tarime By-election Report' (Report Tanzania 2008) LHRC/ELM/Vol.III/ii.

¹¹⁰ *Ibid.* There was a disagreement between the CCM and NCCR-Mageuzi over the use of a parade ground. Both parties claimed they had the right to use the same parade ground at the same time. Ultimately, the NCCR-Mageuzi leader, Mr. James Mbatia, was allowed to salute his supporters and then they proceeded to a different venue. After the salute, the CCM held their rally at the parade ground.

unsubstantiated allegations about one political party and political parties may not have an equal opportunity to present their platform to voters.

Moreover, both the Tanzania Constitution and the Zanzibar Constitution do not allow private candidates to contest for electoral political positions including Presidency, Member of Parliament, Councilors and Local Government Leaders, despite a big debate on widening participatory democracy.

The Tanzania Constitution under Article 39(1) (c), states that, “any person shall not be entitled to be elected to hold the office of the president of the United Republic save only he is a member of, and a candidate nominated by, a political party”. Similarly the Constitution of Zanzibar provides that, to any person to qualify in election into the House of Representatives, he shall be a member of a political party, nominated by the political party in accordance with the Political Part Act of 1992. These provisions from the two Constitutions limit the right of many people to take part in public affairs. It is evident that people who do not like to be involved in party politics are denied the right to be voted and participate in public affairs, despite possessing strong leadership capabilities.

In respect of **private candidate** the Court of Appeal¹¹¹ made it clear when delivered judgment for a petition of election filed by *Rev. Christopher Mtikila* where it held that the amendments introduced by Act No.34 of 1994 are 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; then the very provisions were also declared unconstitutional and contrary to the International Human Rights Conventions. The Registrar of Political Parties of Tanzania has also come out in support of private candidates as “everyone has the right of electing and being elected”.¹¹²

In Zanzibar, the government retains laws which require a person to reside at a place in Zanzibar for a period of thirty consecutive months in order for him/her to qualify to vote in the Zanzibar General Election. It is indeed unfortunate that this draconian law applies to prevent people from participating in the election.

The Tanzania government amended the electoral laws to allow a traditional hospitality popularly known as *takrima* during elections, the High Court at Dar es Salaam¹¹³ declared it unconstitutional, offensive and encouraging corruption in the electoral process because they violate the right to freedom from discrimination, the right to equality before the law and the right of Tanzanian citizens to participate in fair and free elections¹¹⁴.

Moreover, the Election Act¹¹⁵ hinders the right to take part in elections where it provides that the method of voting, stating that a registered person must physically walk into the polling station in order to vote properly. Thus, Tanzanians who resides outside Tanzania with good reasons are denied the right to vote and/or to be voted on the polling day, since they are not covered by the Election Act¹¹⁶

Recommendations

¹¹¹ In the judgment delivered in the case of *Rev. Christopher Mtikila v Attorney General*, Misc. Civil Cause No.10 of 2005 at the High Court of Tanzania, Dar es Salaam Main Registry at Dar es Salaam.

¹¹² Written response to LHRC questionnaire by unnamed employee of the Office of the Registrar of Political Parties (Dar es Salaam, Tanzania October 2008).

¹¹³ In the case of *LEAT, LHRC, and NOLA v The Attorney General*, Misc. Civil Cause No.77 of 2005, High Court of Tanzania at Dar es Salaam (Main Registry).

¹¹⁴ *Ibid*

¹¹⁵ Cap. 343R.E 2002

¹¹⁶ *Op.cit* at pg.25

- The government of Tanzania is urged to amend the Constitution and laws related to presidential and parliamentary elections in order to allow private candidacy.
- The government of Tanzania is urged to amend the electoral laws in order to facilitate Tanzanians who are eligible voters to vote and/or be voted for while outside Tanzania.
- The government is urged to comply with its international human rights obligations, in particular with the provisions of the Article 25 of the ICCPR.
- Political parties are urged to educate their supporters and party officials about appropriate behaviour in pre-election periods and on the principles of democracy.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

26.1 The Government Report [Paras 172 to 177]

The government report states that; the government recognizes the principle of equality before the law by incorporating provisions which establishes this principle particularly under Article 12 and 13 (1) and 13 (4). Further, report stated that the government ratified the Rome Statute on the International Criminal Court in order to hold responsible the heads of state and people of the same caliber as the Statute calls for. Lastly, the report states that, the government is addressing the issue of access to justice and legal representation. So far, there is a Legal Aid (Criminal Proceedings) Act,¹¹⁷ and the Legal Sector Reform Programme (LSRP) of 2005 – 2008.

26.2 The NGOs' Observations

It is true that the principle of equality before the law is incorporated in the provisions of the Constitution of the United Republic of Tanzania as rightly pointed out in the government report. But there are some Articles of the Constitution and provisions of some laws, which erode this right in favour of certain group(s) of people in Tanzania.

For instance, Articles 39 and 67 of the Constitution of the United Republic of Tanzania bar private candidates from running as Presidential Candidates, Members of Parliament, Councilors or Local Government Leaders. Article 39(1) (c) of the Constitution bars private candidates from contesting for presidency.¹¹⁸ Article 67(1) (b) of the Constitution bars private candidates from contesting as Members of Parliament.¹¹⁹ The provisions of Articles 39 and 67 of the Constitution of the United Republic of Tanzania

¹¹⁷ Cap. 21 R.E 2002 which provides that person accused of capital offences such as murder and treason are given pro bono services at the expense of the government. The fee paid to the Advocate who takes a dock-brief is less than USD 100 per the whole period of the adjudication of the case in the court.

¹¹⁸ Article 39(1) (c) of the Constitution of the United Republic of Tanzania provides: A person shall not be entitled to be elected to hold the office of the President of the United Republic save only, he is a member of, and a candidate nominated by, a political party.

¹¹⁹ Article 67(1) (b) of the Constitution of the United Republic of Tanzania provides: Subject to the provisions contained in this Article, any person shall be qualified for election or appointment as a Member of Parliament if he is a member of, and a candidate proposed by a political party.

violate and contravene Articles 12, 13 and 21 of the Constitution and the same have been a subject of litigation and interference of the Judiciary by the Executive.

In 1993 the High Court of Tanzania at Dodoma¹²⁰ held that provisions of the Constitution and Electoral Laws which bar private candidates from contesting for Presidency, Members of Parliament and Councilors are unconstitutional.¹²¹ Aggrieved by this declaration, the Government filed an appeal to the Court of Appeal while the Petitioner also cross appealed against certain decisions made adverse to him. This was Civil Appeal No. 3 of 1995. **While the appeal was pending the Government processed a Bill and proceeded to enact a law which had the effect of rendering the ruling of the High Court ineffective and/or a nullity.**

On that ground the Government applied to withdraw the appeal. The Court of Appeal of course had to grant the application for withdrawal but speaking through KISANGA Ag. C.J. the Court of Appeal lamented at p. 3 of the typed judgment:

...We are constrained to have to point out some aspects in the handling of this matter by the appellant who cause great concern. While the ruling was being awaited, the Government on 16/10/94 presented a Bill in Parliament seeking to amend the Constitution so as to deny the existence of that right, thus pre-empting the Court's Ruling should it go against the Government. This is where things started going wrong. The Government was now adopting parallel causes of action towards the same end by asking Parliament to deal with the matter simultaneously with the High Court. That was totally wrong for reasons which will be apparent presently¹²².

Thus the government consciously and deliberately drew the Judiciary into a direct clash with Parliament by asking the two organs to deal with the same matter simultaneously. Such a state of affairs was both regrettable and most undesirable. It was wholly incompatible with the smooth administration of justice in the country and every effort ought to be made to discourage it.¹²³

The Court then went on to observe in conclusion:

In the instant case had the amendment been initiated and passed after the Court process had come to a finality that in law would have been alright procedurally, the soundness of the amendment itself, of course, being entirely a different matter. Then the clash would have been avoided. Indeed that would be in keeping with good governance which today constitutes one of the attributes of a democratic society.

The amendments referred to in the judgment of the Court of Appeal are those made by Act No. 34 of 1994 which as observed, was passed by the Parliament on 16/10/1994 while the Ruling of Lugakingira J (as he then was) was handed down on 24/10/94, as it was still pending when the Parliament enacted the law. As a matter of procedure, we must, at once condemn this act of the Government as being contrary to the dictates of good governance, and for which we can do no more than quote the above cited passage from the judgment of the Court of Appeal.¹²⁴

¹²⁰ In the case of *Rev. Mtikila Vs. Attorney General* (1995) TLR, 31.

¹²¹ *Rev. Mtikila Vs. Attorney General* [1995] TLR, 31.

¹²² *Rev. Mtikila Vs. the Attorney General*, Miscellaneous Civil Cause Number 10 of 2005, High Court of Tanzania at Dar es Salaam (Unreported).

¹²³ *Rev. Mtikila Vs. the Attorney General*, Miscellaneous Civil Cause Number 10 of 2005, High Court of Tanzania at Dar es Salaam (Unreported).

¹²⁴ *ibid*

In 2005 again the same Petitioner filed a Petition in the High Court of Tanzania at Dar es Salaam challenging barring private candidates from contesting in electoral positions as stated. The High Court delivered its decision on 5th May, 2006, declaring Articles 39(1) (c) and 67(1) (b) unconstitutional and inconsistent with other Articles of the Constitution.¹²⁵ In its ruling the court said;

“So in conclusion on the above two issues, we wish to make it very plain that in our view Act 34 of 1994 which amended Article 21 (1) so as to cross refer it to Article 5, 39, and 67 which introduced into the Constitution, **restrictions on participation of public affairs and the running of the government to party members only** was an infringement on the fundamental right and that the restriction was unnecessary and unreasonable, and so did not meet the test of proportionality. We thus, proceed to declare that the said amendments to Articles 21 (1), 39 (1) (c) and 67 (10) are unconstitutional” [Emphasis Added].

The Government has once again appealed against the decision of the High Court.

Other laws which contain some provisions against the spirit of Article 26 of the ICCPR in Tanzania are illustrated by the following law;

The Local Customary Law (Declaration) (No.4)¹²⁶ 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* 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.

There are a series of legal incidences whereby instead of safeguarding the rights to equality, freedom and others as enshrined in the ICCPR, the government has actually been violating the same. Below are some of the said legal incidences which can certainly show the trend of the government towards protection of interests of the few in power instead of upholding the principles contained in the ICCPR.

The Government in 2001, amended the Electoral Laws in particular the National Elections Act of 1985 through the Electoral Laws (Miscellaneous Amendments) Act, 2001 which provided among other things that: The Registrar shall not fix a date for the hearing of any election petition unless the petitioner has paid into court, as security for costs, a sum of five million Tanzanian Shillings¹²⁷ in respect of the proposed election petition. The above amendment had the effect of denying poor contestants the equal right to access to justice to challenge election results because they could not afford to pay five millions shillings as security for cost. The Court of Appeal declared the said provisions unconstitutional and discriminatory against poor people.¹²⁸

The Government in 2000, through Electoral Law (Miscellaneous Amendments) Act, No. 4 of 2000, amended the Electoral Laws to give room for provisions which legalized the offering, by a candidate in election campaigns of anything done in good faith as an act of hospitality to the candidate's electorate or voters. The introduced amendments were popularly known as “*takrima*”, that is “traditional hospitality” whereby it was legal for a candidate in political campaigns to offer some gifts such as money, shirts, food, etc to his or her prospective voters as a gesture of hospitality.

¹²⁵ *ibid*

¹²⁶ Cap. 358 R.E 2002

¹²⁷ Approximately \$ 5,000.

¹²⁸ *Julius Ishengoma Francis Ndyababo Vs. Attorney General*, Miscellaneous Cause Number 2 of 2001, Court of Appeal of Tanzania (Unreported).

In 2005 three NGOs Legal and Human Rights Centre(LHRC), Lawyers Environmental Action Team (LEAT) and National Organization for Legal Assistance (nola) petitioned to the High Court to challenge the constitutionality of the provisions of section 98 (2) and (3) of the National Elections Act, 1985 as amended by the Electoral Law (Miscellaneous Amendments) Act, No. 4 of 2000. The petitioners averred that the provisions were violative of Articles 13, 21, and 29 of the Constitution of the United Republic of Tanzania, 1977.¹²⁹

The petition in general challenged the “takrima” provisions to the extent that they infringe the right of every citizen to vote and be voted for in a fair and free election as well as the right to equality before the law. They were also being challenged in as much as they contravene the provisions of the constitution that prohibit any law enacted by the Parliament to contain provisions that discriminate citizens of the country as guaranteed for under Article 29(1) of the Constitution of the United Republic of Tanzania.

The petitioners prayed for declaratory orders to the effect that the “takrima” provisions are unconstitutional, null and void. They also prayed for costs of this petition. The High Court ruled in favour of the petitioners by declaring that:

“Since the “takrima” provisions are violative of Articles 13(1), 13(2), 21(1) and 21(2) of the Constitution, we declare the said provisions null and void and we order the same to be struck out of National Elections Act, (Cap. 343 R.E. 2002), forthwith. However, we have further seen that section 130 (b) and (c) of the National Elections Act give powers to the High Court to allow such acts one in good faith or traditional hospitality to be exception which would otherwise make the acts or omission corrupt or illegal practice. We think this provision may lead to absurdities in the face of what we have declared on sections 119(2) and (3). So in our view although the petitioners have not specifically prayed for the nullification of this provision we think that it cannot be saved either. We exercise our powers under “any other relief” and proceed to declare that section 130(b) and (c) are also unconstitutional and should be struck out of the statute. This being public interest litigation, there is no order for costs”.

Recommendations

- The government should protect the right to equality before the law by refraining from enacting laws which violate the right or erode it.
- The Basic Rights and Duties Enforcement Act, must be amended to confer jurisdiction to other courts particularly District and Resident Magistrates Courts presided by Magistrates with Bachelor of Laws to hear and determine Human Rights cases.

Article 27

Article 27 provides in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

Response to Paragraphs 13 and 23 of the List of Issues

¹²⁹ LHRC, LEAT and nola Vs Attorney General, Miscellaneous Civil Cause Number 77 of 2005, High Court of Tanzania at Dar es Salaam (Unreported).

13. According to reports before the Committee, persons with albinism are increasingly becoming victims of violent attacks and killings, often because of witchcraft or superstitious beliefs. What urgent and effective measures have been taken to eradicate this practice? Please provide information on the number of these cases which have been prosecuted and indicate their outcomes. Please also provide information on the planned awareness raising campaign organized in this regard by the Ministry of Community Development, Gender and Children.

23. Please indicate whether the State party has carried out any studies regarding minorities (State report, para. 178)? In addition, please provide information on the situation of the Hadzabe indigenous community, particularly the extent to which their right to their traditional way of life and their culture has been adversely affected by the granting of hunting licenses.

27.1 The Government Report [Para 178]

The government report states that it does not recognize the existence of ethnic groups in Tanzania. Further, it states that so far there no government study carried out to recognize their presence.

27.2 NGO Report Observations

It is true that there is no group of people or tribe or region which fights for its self determination within the United Republic of Tanzania.

However, there are several indigenous people who need special protection from the state including the Maasai, Barbaig, Hadzabe, Ndorobo, Sandawe, Iraqw, Gorowa and Bugurni. Some of these indigenous peoples are nomads, gatherers, hunters, collectors and fishers. Some of Indigenous peoples in Tanzania¹³⁰ are recognized by the government.

Other minorities are a group of albinos are killed and have their hands mutilated by people while the government is below people's expectations. This is a new trend in Tanzania, which takes the lives of an average of two to three albinos per month. For 2007, about 35 albinos were killed because of witchcraft beliefs.¹³¹

In 2008, two land conflicts between the Tanzanian government and indigenous people were reported in the media. The first was the conflict between the Tanzanian government, a foreign investor and the Hadzabe people over the use of land that has been customarily occupied by the Hadzabe people in the Yaedi Chini Valley.

The second conflict occurred between the Barbaig, a nomadic, pastoral people, and a French firm, UN En-Lodge Afrique. The French firm planned to set up a tourist lodge in a wild animal corridor linking the Lake Manyara eco-system to the Tarangire National Park. This area has been inhabited by the Barbaig since the 1970s.¹³² It was reported that the French firm had made an initial payment of Tsh8 million to the officials of the Vilima-Vitatu village to lease 4084 hectares in the area.¹³³ When the Barbaig initially protested against this investment in April 2008, 14 members of the Barbaig community were arrested.¹³⁴

¹³⁰ 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.

¹³¹ LHRC 2008 Human Rights Report

¹³² 'Barbaig told to value education more than cattle' *The Arusha Times* (Tanzania) 3 May 2008.

¹³³ V. Nkwame 'Animals Corridor allocated to French Entrepreneurs' *The Arusha Times* (Tanzania) 19 April 2008.

¹³⁴ *ibid.*

Both of the issues identified above threaten the ability of an indigenous people to survive as a distinct cultural group that has unique cultural practices, unique social organisation and unique modes of production.

Albino's Killings in Tanzania

Belief in witchcraft is pervasive throughout Tanzania.¹³⁵ In the past three years, there has been a steady increase in the number of albinos killed. In 2006, 25 albinos died in suspicious circumstances.¹³⁶ Whereas it was reported that in the period October to December of 2007, 20 albinos were murdered, and more than 35 albinos were murdered in the period January to December of 2008.¹³⁷ While albinos were murdered in all regions of Tanzania, there was a greater concentration of these incidents in rural areas and, in particular, in the regions of Arusha, Mwanza, Shinyanga, Mara and Karega.¹³⁸

The killing of albinos in Tanzania has been linked to witchcraft. It is believed that an organ or body part of an albino can be used by a witchdoctor to manufacture a charm that will make a person wealthy.¹³⁹ These charms are believed to increase a person's success in activities, such as fishing and mining.¹⁴⁰ Hon. Mr. Justice (rtd) Amir Manento, the Chairperson of the Commission for Human Rights and Good Governance, attributed the killings of albinos for witchcraft purposes to poverty and illiteracy.¹⁴¹

In 2008, a number of murders of albinos occurred. For instance;

- In January 2008, a five-year old albino was murdered in Mwanza and her organs removed. Her murder was associated with witchcraft;¹⁴²
- In February 2008, a two-year old albino boy was killed in the lake zone. His blood was drained and some of his body parts were removed for use in witchcraft;¹⁴³
- In May 2008, Vumilia Doto Makoye, a 17 year-old albino girl, died after a group of people hacked off her right leg so that it could be used for witchcraft;¹⁴⁴
- In July 2008, Jovin Majaliwa was killed in his home in a remote Lake Victoria village. His attackers reportedly severed his right foot and genitalia. His wife, also an albino, was also injured;¹⁴⁵ and,
- In October 2008, an albino residing in Dar es Salaam was attacked when she was on her way home from a demonstration raising awareness about the plight of albinos in Tanzania. Her assailants hacked off one of her arms and, unsuccessfully, tried to hack off her other arm. This arm was later amputated.¹⁴⁶

¹³⁵ Maia Green, 'Discourses on inequality' (2005) 5 *Anthropological Theory* 247, at p. 249.

¹³⁶ E. Agola 'British NGO decries rampant albino killings' *The Guardian* (Tanzania) 10 March 2008.

¹³⁷ Interview with Advocate Abdallah Possi, Advocate for the Tanzania Albino Society (Tanzania) 8 January 2009; F Seleman 'Human rights watchdog castigates albino killings' *The Guardian* (Tanzania) 12 February 2008; '16 albinos killed in the country, says Kagasheki' *ThisDay* (Tanzania) 21 June 2008.

¹³⁸ F. Seleman 'Human rights watchdog castigates albino killings' *The Guardian* (Tanzania) 12 February 2008; B Kinyori 'Tanzania: Child Abuse 'Is Most Rampant'' *The Citizen* (Tanzania) 10 September 2008.

¹³⁹ 'Attackers kill albino girl 5, in night raid' *The Citizen* (Tanzania) 25 January 2008.

¹⁴⁰ *Ibid.*

¹⁴¹ L. Shekighenda 'Pinda challenges Human Rights Commission staff to be exemplary' *The Guardian* (Tanzania) 4 June 2008.

¹⁴² 'Attackers kill albino girl 5, in night raid' *The Citizen* (Tanzania) 25 January 2008.

¹⁴³ 'Govt blasted over albinos' killings' *The African* (Tanzania) 4 March 2008.

¹⁴⁴ 'Albino girl killed in Magu' *ThisDay* (Tanzania) 6 May 2008.

¹⁴⁵ 'Tanzania albinos targeted again' *BBC News* (United Kingdom) 27 July 2008.

¹⁴⁶ A Smith 'Albino Africans live in fear after witch-doctor butchery' *The Observer* (United Kingdom) 16 November 2008.

The government, has been delaying to respond to the murder of albinos.¹⁴⁷ In response to the murders, the government launched a campaign in mid-2008 to train traditional healers in other occupations, as a way of encouraging them to abandon their present occupations, and, presumably, reduce the practice of witchcraft and attendant violence.¹⁴⁸ President Kikwete also ordered the police to locate albinos and to offer them protection.¹⁴⁹ **However, in general, the government's response to the murder of albinos has been slow and inadequate. It is doubtful as to whether the steps taken by the government to address the murders of albinos have had any effect.**

Currently from June 2009 the High Court of Tanzania commenced the hearing of murder cases relating to the albinos killings. While these cases are heard by the court, two (2) more albinos were killed between June and July 2009 in Tanzania.

The police have also been criticized for the tardy manner in which they have addressed the murder of albinos.¹⁵⁰ In the media, it was suggested that police had been bribed to not investigate these murders. The police made no arrests in this regard in the period January to March 2008, although their performance improved in the period April to October 2008 when 47 people were arrested in connection to the violence against albinos.¹⁵¹

In Tanzania particularly the *Constitution of United Republic of Tanzania, 1977* prohibits discrimination on the basis of tribe, place of origin, and religion.¹⁵² But there is no policy to protect this people.

Recommendations

- The government is urged to specifically address the customary rights of indigenous groups as their existence is culturally and intrinsically attached to the land they occupy.
- The government should develop a policy or a law that addresses the rights of indigenous people and, more specifically, sets out a mechanism for the resolution of land conflicts between the government and indigenous people that takes into account the cultural importance of certain areas of land to indigenous people.

END

¹⁴⁷ E. Agola 'British NGO decries rampant albino killings' *The Guardian* (Tanzania) 10 March 2008.

¹⁴⁸ '16 albinos killed in the country, says Kagasheki' *ThisDay* (Tanzania) 21 June 2008.

¹⁴⁹ 'Living in fear: Tanzanian's albinos targeted in wave of witchcraft killings' *ThisDay* (Tanzania) 23 July 2008.

¹⁵⁰ Kagero 'Rights groups blamed over silence on the killing of albinos' *ThisDay* (Tanzania) 22 March 2008.

¹⁵¹ L. Shekighenda 'JK: Plight of albinos critical challenge' *The Guardian* (Tanzania) 20 October 2008.

¹⁵² Art. 13(5) of the *Constitution of Tanzania, 1977*.