Political Handbook & NGO Calendar 2012

Years of Independence Tanzania Mainland

Legal Reform Processes for the Promotion of Civil Rights

FRIEDRICH EBERT STIFTUNG

TANZANIA

This Handbook belongs to ...

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NB: Articles which carry an author's name do not necessarily reflect the view of FES. All facts and figures in this Calendar are correct to the best of our knowledge. However, FES bears no responsibility for oversights, mistakes or omissions.

The Friedrich-Ebert-Foundation congratulates Tanzania Mainland on 50 Years of Independence!

Dear Friends and Partners of the FES Tanzania

Welcome to the FES Political Handbook and NGO Calendar 2012!

To commemorate the monumental occasion of Tanzania Mainland celebrating 50 Years of Independence, this year's edition of our Political Handbook focuses on the Legal Reform Processes that have taken place within Tanzania over the last 50 years in regards to Civil Rights. The Friedrich-Ebert-Foundation has had the privilege of working with Tanzania on many levels since 1968. As a political foundation dedicated to the ideas and basic values of social democracy, strengthening the Civil Rights of all citizens is integral to these values and central to our work, both in Tanzania and worldwide.

The contributing authors highlight and critically analyse the legal reform processes that have taken place to improve the civil rights of the citizens of Tanzania, as well as drawing attention to access to these rights. I would personally like to thank all the authors for their stimulating articles and for sharing their expertise, experience and insights with us! I would also like to thank the editorial team for their creative ideas and dedication.

I wish you a thought-provoking read and look forward to many more years of fruitful and constructive cooperation between Tanzania and the Friedrich-Ebert-Foundation!

Dr. Stefan Chrobot
Resident Director
Tanzania Office

Geography

Total Area (incl. Zanzibar, Pemba, Mafia)	947,300 km^2
Bordering Countries	Mozambique, Malawi, Zambia, DR Congo, Rwanda, Uganda, Kenya
Coastline	1,424 km
Lowest Point	0 metres (Indian Ocean)
Highest Point	5,895 m (Mount Kilimanjaro)

Source: *CIA World Factbook; https://www.cia.gov/library/publications/the-world-factbook/geos/tz.html*

Demography

Population	42,746,620	
Pop. Growth Rate	2.002%	
Median Age	18.5 years	
Life Expectancy	52.85 years	
Birth Rate	32.64 birth / 1,000 population	
Death Rate	12.09 deaths / 1,000 population	
Age Structure	0-14 years	42%
	15-64 years	55.1%
	65 +	2.9%
Religion	Mainland: Christian 30%, Muslim 35%, Indigenous Beliefs 35%	
	Zanzibar: over 99% Muslim	
Urbanisation Rate	4.7%	
Urban Population	26% of total population (2010 est.)	

Source: *CIA World Factbook, all 2011 estimates*
https://www.cia.gov/library/publications/the-world-factbook/geos/tz.html

Education

Literacy Rate (15 +0)	73.2% (2010 est., UNESCO Institute f. Statistics)	
School Enrolment Rate	Prim. School	95.9% (2009); 97.3% (2007)
	Sec. School	27.8% (2009); 20.6% (2007)
Expenditure on Education, % of GDP	1.3% (2010)	1.4% (2009)
Expenditure on Education, % of Budget	6.8% (2008 est., World Bank)	
Student / Teacher Ratio	54:1 (2009 est., Bank), 43:1 Secondary (EAC, 2009)	

Sources: *World Bank: http://data.worldbank.org/indicator/SE.SEC.ENRR, UNESCO Institute for Statistic: http://data.un.org/CountryProfile.aspx?crName=United%20Republic%20of%20Tanzania, EAC Facts and Figures 2011: http://www.eac.int/statistics/index.php?option=com_docman&task=doc _view&gid=131&tmpl=component&format=raw&Itemid=153*

Health

Infant Mortality	66.93 deaths / 1,000 live births (2011 est.)
Total Fertility Rate	4.16 children born / woman (2011 est.)
HIV / AIDS Prevalence	5.6% of adults (2009 est.)
People living with HIV	1.4 mil. (2009 est.)
HIV /AIDS deaths	86,000 (2009 est.)

Source: *CIA World Factbook; https://www.cia.gov/library/publications/the-world-factbook/geos/tz.html*

Government

Form of Government	Multi-party Republic
Head of State	President Jakaya Mrisho Kikwete (since 2005)
Head of Government	Prime Minister Mizengo Peter Pinda (since 2008)
Capital	Dodoma
Administrative Provinces	26 regions (5 in Zanzibar / Pemba) subdivided into 117 districts

Sources: *CIA World Factbook: https://www.cia.gov/library/publications/the-world-factbook/geos/tz.html*
UNDP: http://www.tz.undp.org/docs/countryinfo1.pdf

Economy

GDP Growth Rate	7.1% (IMF projection 2010/11); 6.5% (2010 est.)	
GDP	$58.44 bil. (2010 est.); $54.89 bil. (2009 est.)	
GDP per capita	$1,400 (2010 est.); $1,300 (2009 est.)	
GDP per sector	Agriculture	42%
	Industry	18%
	Services	40% (2010 est.)
Government Budget	Revenues	$4.263 bil.
	Expenditures	$5.662 bil. (2010 est.)
Inflation Rate	7.2% (2010 est.); 12.1% (2009 est.)	
Unemployment Rate	6.4% of total labour force (2008 country stat)	
Population below national poverty line	33.4% (2007 est.) Bank	
Exports	$3.809 bil. (2010 est.)	
Export Partners	India (12.1%), China (9.4%), Japan (6.7%), Netherlands (5.9%), UAE (5.4%), Germany (4.9%) (all 2009 est.)	
Imports	$6.334 bil. (2010 est.)	
Import Partners	China (15.5%), India (15%), South Africa (7.4%), Kenya (6.6%), UAE (4.5%), (all 2009 est.)	
External Dept	$7.576 bil. (2010 est.), $7.07 bil. (2009 est.)	

Sources: *CIA World Factbook: https://www.cia.gov/library/publications/the-world-factbook/geos/tz.html*
IMF Country Report: http://www.imf.org/external/pubs/ft/scr/2011/cr11105.pdf
Country Statistics: http://www.countrystat.org/tza/cont/pages/page/indicators/en

Millenium Development Goals Report: Mid-way Evaluation 2000 - 2008

Tanzania Mainland						
MDG	**1990**	**2000**	**2008 Actual**	**2008 Expected****	**2015**	**GLANCE**
Proportion Of Population Below Basic Needs Poverty Line	39	36	33.64	25.0	19.5	✗
Under-Five Underweight (%)	28.8	29.5	22	18.4	14.4	✗
Under-Five Stunted (%)	46.6	44.4 (1999)	38	29.8	23.3	✗
Primary School Net Enrolment Rate	54.2	58.7	97.2	87.2	100	✓
Under-Five Mortality Rate (Per 1,000 Live Births)	191	153	112	99.6	64	( )
Infant Mortality Rate (Per 100,000 Live Births)	115	99	68	59.6	38	( )
Maternal Mortality Rate (Per 100,000 Live Births)	529	-	578	244	133	✗
Birth Attended By Skilled Health Personnel (%)	43.9	35.8	63	77.1	90	✗
Hiv Prevalence, 15 – 24 Years	6	-	2.5	‹ 6	‹ 6	✓
Access To Portable Water: % Of Rural Population	51	42 (2002)	57.1	67.6	74	✗
Access To Potable Water: % Of Urban Population	68	85 (2202)	83	79.5	84	✓
*** = Computed as % passage time thus 2008 is equivalent to 18 years or 72% time that has elapsed*						

Zanzibar						
MDG	**1990**	**2000**	**2008 Actual**	**2008 Expected****	**2015**	**GLANCE**
Proportion Of Population Below Basic Needs Poverty Line	60	-	51	38.4	30	✘
Under-Five Underweight (%)	39.9	25.8	7.3	14.3	20.0	✓
Under-Five Stunted (%)	47.9	35.8 (1999)	23.1	30.6	23.9	✓
Primary School Net Enrolment Rate	50.9	67.0	83.4	86.3	100	✓
Under-Five Mortality Rate (Per 1,000 Live Births)	202	14.1	101	105	67	✓
Infant Mortality Rate (Per 100,000 Live Births)	120	89	61	62.4	40	✓
Maternal Mortality Rate (Per 100,000 Live Births)	377	323	473	173	94	✘
Birth Attended By Skilled Health Personnel (%)	37	-	47	75.2	90	✘
Hiv Prevalence, 15 – 24 Years	0.7	-	0.6	‹ 0.7	‹ 0.7	✓
Access To Portable Water: % Of Rural Population	46	46	59	65.4	73	✓
Access To Potable Water: % Of Urban Population	68	90	83	79.5	84	✓
*** = Computed as % passage time thus 2008 is equivalent to 18 years or 72% time that has elapsed*						

Source: *UNDP MDG Development Rep*
http://www.tz.undp.org/docs/MDGprogressreport.pdf

✘ = Unlikely to Achieve ✓ = Likely to Achive ↻ = Achievable

East African Community (EAC)

Area in km² (incl. water)	
Burundi	27.8
Tanzania	939.3
Uganda	241.6
Kenya	582.7
Rwanda	26.3
EAC	1,817.7
Population in millions	
Burundi	8.2
Tanzania	41.9
Uganda	30.7
Kenya	38.6
Rwanda	10.0
EAC	129.5

EAC Ecomony and Finance	
GDP growth rate	3.4% Burundi; 2.6% Kenya; 6.0% Tanzania; 6.1% Rwanda; 5.2% Uganda (2009 est.)

Tanzania Intra EAC Trade (2009)	
Tanzania to/from Kenya	192.9 / 304.5 million US Dollars
Tanzania to/from Uganda	89.1 / 12.1 million US Dollars
Tanzania to/from Rwanda	16.4 / 0.0 million US Dollars
Tanzania to/from Burundi	15.0 / 25.1 million US DOllars
Tanzania to rest of EAC	259.9 US Dollars
Tanzania from rest of EAC	323.5 million US Dollars

Education

NET Enrolment	Primary	Secondary
Burundi	94	13
Tanzania	96	28
Uganda	108	24
Kenya	93	36
Rwanda	93	13

Expenditure on Education as % of GDP	2009 est.	2008 est.
Burundi	22.1	6.7
Tanzania	1.4	1.3
Uganda	3.1	1.3
Kenya	7.0	7.2
Rwanda	3.6	5.0

Source: *EAC Facts and Figures, 2011: http://www.eac.int/statistics/index.php?option=com_ docman&task=doc_view&gid=131&tmpl=component&format =raw&Itemid=153*

Germany

Total Area	357,022 km^2	
Bordering Countries	Switzerland, France, Luxembourg, Belgium, Netherlands, Denmark, Poland, Czech Republic, Austria	
Population	81,471,834 (July 2011 est.)	
Age Structure	0-14	13.3%
	15-64	66.1%
	65 +	20.6% (2011 est.)
Religion	Protestant 34%, Roman-Catholic 34%, Muslim 3.7%, Non-denominational or other 28.3% (2011 est.)	
Human Development Index (HDI)	Rank 10 of 169 countries (2010)	
Shares in parliament, female-male ratio	0.460	

Sources: *CIA World Factbook: https://www.cia.gov/library/publications/the-world-factbook/geos/gm.html*
UNDP Human Development Index: http://hdrstats.undp.org/en/countries/profiles/DEU.html

January 2012	Febuary 2012	March 2012
S 1	W 1	T 1
M 2	T 2	F 2
T 3	F 3	S 3
W 4	S 4	S 4
T 5	S 5	M 5
F 6	M 6	T 6
S 7	T 7	W 7
S 8	W 8	T 8
M 9	T 9	F 9
T 10	F 10	S 10
W 11	S 11	S 11
T 12	S 12	M 12
F 13	M 13	T 13
S 14	T 14	W 14
S 15	W 15	T 15
M 16	T 16	F 16
T 17	F 17	S 17
W 18	S 18	S 18
T 19	S 19	M 19
F 20	M 20	T 20
S 21	T 21	W 21
S 22	W 22	T 22
M 23	T 23	F 23
T 24	F 24	S 24
W 25	S 25	S 25
T 26	S 26	M 26
F 27	M 27	T 27
S 28	T 28	W 28
S 29	W 29	T 29
M 30		F 30
T 31		S 31

April 2012	May 2012	June 2012
S 1	T 1	F 1
M 2	W 2	S 2
T 3	T 3	S 3
W 4	F 4	M 4
T 5	S 5	T 5
F 6	S 6	W 6
S 7	M 7	T 7
S 8	T 8	F 8
M 9	W 9	S 9
T 10	T 10	S 10
W 11	F 1	M 11
T 12	S 12	T 12
F 13	S 13	W 13
S 14	M 14	T 14
S 15	T 15	F 15
M 16	W 16	S 16
T 17	T 17	S 17
W 18	F 18	M 18
T 19	S 19	T 19
F 20	S 20	W 20
S 21	M 21	T 21
S 22	T 22	F 22
M 23	W 23	S 23
T 24	T 24	S 24
W 25	F 25	M 25
T 26	S 26	T 26
F 27	S 27	W 27
S 28	M 28	T 28
S 29	T 29	F 29
M 30	W 30	S 30
	T 31	

July 2012	August 2012	September 2012
S 1	W 1	S 1
M 2	T 2	S 2
T 3	F 3	M 3
W 4	S 4	T 4
T 5	S 5	W 5
F 6	M 6	T 6
S 7	T 7	F 7
S 8	W 8	S 8
M 9	T 9	S 9
T 10	F 10	M 10
W 11	S 11	T 11
T 12	S 12	W 12
F 13	M 13	T 13
S 14	T 14	F 14
S 15	W 15	S 15
M 16	T 16	S 16
T 17	F 17	M 17
W 18	S 18	T 18
T 19	S 19	W 19
F 20	M 20	T 20
S 21	T 21	F 21
S 22	W 22	S 22
M 23	T 23	S 23
T 24	F 24	M 24
W 25	S 25	T 25
T 26	S 26	W 26
F 27	M 27	T 27
S 28	T 28	F 28
S 29	W 29	S 29
M 30	T 30	S 30
T 31	F 31	

October 2012	November 2012	December 2012
M 1	T 1	S 1
T 2	F 2	S 2
W 3	S 3	M 3
T 4	S 4	T 4
F 5	M 5	W 5
S 6	T 6	T 6
S 7	W 7	F 7
M 8	T 8	S 8
T 9	F 9	S 9
W 10	S 10	M 10
T 11	S 11	T 11
F 12	M 12	W 12
S 13	T 13	T 13
S 14	W 14	F 14
M 15	T 15	S 15
T 16	F 16	S 16
W 17	S 17	M 17
T 18	S 18	T 18
F 19	M 19	W 19
S 20	T 20	T 20
S 21	W 21	F 21
M 22	T 22	S 22
T 23	F 23	S 23
W 24	S 24	M 24
T 25	S 25	T 25
F 26	M 26	W 26
S 27	T 27	T 27
S 28	W 28	F 28
M 29	T 29	S 29
T 30	F 30	S 30
W 31		M 31

Dec / Jan

26 - 01

Monday 26	Tuesday 27	Wednesday 28
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Thursday 29	Friday 30	Saturday 31
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02 - 08 January

	Monday 2	Tuesday 3	Wednesday 4
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	Thursday 5	Friday 6	7 Saturday
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January

09 - 15

Monday 9	Tuesday 10	Wednesday 11
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Thursday 12	Friday 13	Saturday 14
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		Sunday 15
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16 - 22 January

	Monday 16	Tuesday 17	Wednesday 18
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	Thursday 19	Friday 20	Saturday 21
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January

23 - 29

Monday 23	Tuesday 24	Wednesday 25
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Thursday 26	Friday 27	Saturday 28
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30 - 05

Jan / Feb

	Monday 30	Tuesday 31	Wednesday 1
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	Thursday 2	Friday 3	Saturday 4
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February

06 - 12

Monday 6	Tuesday 7	Wednesday 8
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Thursday 9	Friday 10	Saturday 11
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Monday 13	Tuesday 14	Wednesday 15
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Thursday 16	Friday 17	Saturday 18
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		Sunday 19
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February

20 - 26

Monday 20	Tuesday 21	Wednesday 22
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Thursday 23	Friday 24	Saturday 25
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March

05 - 11

Monday 5	Tuesday 6	Wednesday 7
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Monday 12	Tuesday 13	Wednesday 14
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Thursday 15	Friday 16	Saturday 17
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March

19 - 25

Monday 19	Tuesday 20	Wednesday 21
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Thursday 22	Friday 23	Saturday 24
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	Thursday 29	Friday 30	Saturday 31
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April

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April

16 - 22

Monday 16	Tuesday 17	Wednesday 18
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Thursday 19	Friday 20	Saturday 21
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		Sunday 22
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	Monday 23	Tuesday 24	Wednesday 25
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	Thursday 26	Friday 27	Saturday 28
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Apr / May

30 - 06

Monday 30	Tuesday 1	Wednesday 2
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	Thursday 10	Friday 11	Saturday 12
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May

14 - 20

Monday 14	Tuesday 15	Wednesday 16
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Thursday 17	Friday 18	Saturday 19
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		Sunday 20
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	Monday 21	Tuesday 22	Wednesday 23
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	Thursday 24	Friday 25	Saturday 26
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May / June

28 - 03

Monday 28	Tuesday 29	Wednesday 30
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Thursday 31	Friday 1	Saturday 2
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04 - 10 June

	Monday 4	Tuesday 5	Wednesday 6
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	Thursday 7	Friday 8	Saturday 9
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June

11 - 17

Monday 11	Tuesday 12	Wednesday 13
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Thursday 14	Friday 15	Saturday 16
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18 - 24
June

	Monday 18	Tuesday 19	Wednesday 20
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June / July

25 - 01

Monday 25	Tuesday 26	Wednesday 27
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02 - 08

July

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July

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Thursday 19	Friday 20	Saturday 21
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July

23 - 29

Monday 23	Tuesday 24	Wednesday 25
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30 - 05
July / Aug

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August

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13 - 19 August

	Monday 13	Tuesday 14	Wednesday 15
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August

20 - 26

Monday 20	Tuesday 21	Wednesday 22
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Thursday 30	Friday 31	Saturday 1
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September

03 - 09

Monday 3	Tuesday 4	Wednesday 5
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Thursday 6	Friday 7	Saturday 8
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10 - 16 September

	Monday 10	Tuesday 11	Wednesday 12
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	Thursday 13	Friday 14	Saturday 15
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September

17 - 23

Monday 17	Tuesday 18	Wednesday 19
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Thursday 20	Friday 21	Saturday 22
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24 - 30 September

	Monday 24	Tuesday 25	Wednesday 26
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October

01 - 07

Monday 1	Tuesday 2	Wednesday 3
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08 - 14 October

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Articles

Strengthening Civil Rights in Tanzania Through Legal Reform Processes: An Overview After Fifty Years of Independence

By: Justice Augustino S. L. Ramadhani, Retired Chief Justice of Tanzania

Introduction

In order to appreciate the achievements in strengthening civil rights through legal reform process in the fifty years of independence of Tanzania Mainland, there is a need to glance at what was inherited in December 1961.

Before colonization there was no such entity as Tanganyika, but there were a number of tribes, each with its own organization. Some tribes were centralized, under strong chieftains, but others were not. Overall, there was no room for civil rights. The will of the chief was paramount.

In 1886, *Deutsch Ostafrika (German East Africa)* was founded, comprised of what later became the nations of Burundi, Rwanda and Tanganyika. Here we focus on the situation in Tanganyika, that is, Tanzania Mainland. The approach taken in the administration of justice was to separate 'natives' from 'non-natives'. The latter were subjected to German law, while the former had a mixture of German law, local customs and traditions.

Following the end of World War I in 1918, what became Tanganyika Territory[1] was first a British Mandate and then a British Trusteeship Territory[2]. The administration of justice continued to be segregationist, with 'the natives' being subject to the so-called local courts. Furthermore, the administration of justice for the local people also involved the Executive, then titled District Commissioners and Provincial Commissioners. There was no separation of powers, which is one of the basic prerequisites for the strengthening of civil rights.

The New Government's Intention to Strengthen Civil Rights

Shortly after independence, Prime Minister Mwalimu Julius K. Nyerere made a declaration of intent to strengthen civil rights in an Independent Tanganyika using the following words:

> *Our judiciary at every level must be independent of the executive arm of the state. Real freedom requires that any citizen feels confident that his case will be impartially judged, even if it is a case against the Prime Minister himself.*[3]

This was immediately followed by legal reforms, brought about by the Magistrates' Courts Act, 1963, which had two results: Firstly, the Local Courts were integrated completely into the High Court, creating a single court system throughout the country.

1 The Tanganyika Order-in-Council of 1920.

2 Trusteeship Agreement – Imperial Laws 1920-1957.

3 Nyerere Julius K. Freedom and Unity. Oxford University Press: Dar es Salaam, p. 131.

Secondly, the coupling of executive and judicial functions by District Commissioners (Area Commissioners) and Provincial Commissioners (Regional Commissioners) was abolished. The Executive had no judicial function whatsoever, thus strictly observing the doctrine of the separation of powers.

However, this separation of powers must be contrasted with the leaderships' refusal to include a Bill of Rights in the Constitution of Tanganyika, 1961[4] (The Independence Constitution). At the time of independence, the British unsuccessfully attempted to include a Bill of Rights in the Constitution. At the time of forging the Republican Constitution, the Bill of Rights was declared a luxury that would only invite unnecessary conflict and constrain the zeal of the new Government in developing the country.[5]

Legal Reforms Processes

There are two kinds of legal reforms processes that have strengthened civil rights, firstly through judicial decisions, and secondly through legislation.

Judicial Decisions Process

Four judicial decisions, among others, administered civil rights remarkably on Tanzania Mainland:

1. Women Property Rights

In the case of *Ndewawiosia d/o Ndeamtzo vs. Immanuel s/o Malasi*[6] Justice SAIDI[7] declared null and void a Wachagga customary law prohibiting the inheritance of land by daughters. In that case a man died, leaving behind a piece of land, which a subordinate court granted to *Immanuel*, his nephew. *Ndewawiosia*, the youngest of the deceased's five daughters, appealed the judgment, and the High Court's response was:

> *It is quite clear that this traditional custom has outlived its usefulness. The age of discrimination based on sex is long gone and the world is now in the stage of full equality of all human beings irrespective of their sex, creed, race or colour. On grounds of natural justice daughters like sons in every part of Tanzania should be allowed to inherit the property of their deceased fathers whatever its kind or origin, on the basis of equality.*

Another landmark case is that of *Bi. Hawa Mohamed vs. Ally Sefu*[8]. The Primary Court of Ilala, Dar es Salaam, annulled the marriage between *Bi. Hawa* and *Ally*, but denied *Bi. Hawa* any share in the matrimonial house because she was a mere housewife and thus had not contributed to its acquisition. *Bi. Hawa's* first appeal to the High Court failed,

4 The Constitution of Tanganyika (Order-in-Council) No. 2274.

5 Parliamentary Debates (Hansard) the National Assembly 3rd Meeting, 1088, 28th June 1962.

6 (1968) HCD n. 127.

7 He later became the first Tanzanian to be the Chief Justice.

8 [1983] TLR 32.

but she succeeded in her second appeal to the Court of Appeal where it was held that:

> *Since the welfare of the family is an essential component of the economic activities of a family man or woman, it is proper to consider contribution by a spouse to the welfare of the family as contribution to the acquisition of matrimonial or family assets*

Thus, the Court of Appeal decided that the domestic activities of a housewife are her contribution to the acquisition of matrimonial property.

2. Proceedings Against the Government

The Government Proceedings Act, 1967[9], required a person wanting to sue the Government to obtain permission from the Minister responsible for justice. The High Court in *Peter Ng'omango vs. Gerson M. K. Mwangwa and Another*[10] criticized this provision. Judge Mwalusanya considered three judgments of the High Court of Zanzibar[11] in which the Chief Justice of Zanzibar[12], using the island's civil procedure, held that the fiat of the Minister of Justice is not required when suing Union Government departments operating in Zanzibar. The Court of Appeal confirmed that the requirement of obtaining the Minister's fiat before suing the Government in *Pumbun & Another vs. Attorney General & Another*[13] was inappropriate. These two judgments resulted in the Government amending the law, as will be explained below.

3. Human Rights in the Absence of a Bill of Rights

The Presidential Commission for the Establishment of the Democratic One-Party State[14] continued to object to the inclusion of a Bill of Rights in the Constitution, instead offering two recommendations. Firstly, the insertion of a Preamble in the Constitution, to contain fundamental rights and freedoms in a loose form. Secondly, the establishment of a Permanent Commission of Enquiry (PCE), the equivalent of an ombudsman, was suggested. Both recommendations were then incorporated. The High Court relied extensively upon the Preamble in the provision of human and fundamental rights.

Legislation Process

There have been some legislative amendments resulting from various

9 Act No 16 of 1967.

10 Civil Case No 22 of 1992 (Dodoma High Court Registry) (unreported).

11 Himid Mbaye. The Brigade Commander of the Nyuki Brigade, Civil Case No 8 of 1981; Shabani Khamisi v. Samson Goa and Another, Civil Case No. 18 of 1983 and Khalfan Abeid Aman v. The Director of Civil Aviation, Civil Case No 20 of 1986 (all three unreported).

12 Justice Augustino S. L. Ramadhani was then the Chief Justice of Zanzibar and he later became Justice of Appeal and the Chief Justice of Tanzania.

13 Civil Appeal No. 32 of 1992 (Court of Appeal). Reported in [1993] 2LRC 317.

14 The Report of the Presidential Commission for the Establishment of the Democratic One-Party State

judicial decisions, but other legislative reforms were due to the global 'wind of change'.

1. Legislations due to Court Decisions

Due to the High Court's judgments in *Peter Ng'omango* and those of the Court of Appeal in *Pumbun*, the Government enacted the Government Proceedings (Amendment) Act, 1994[15]. This Act requires a person wanting to file a suit against the Government to give the Attorney General a notice of no less than ninety days, after which the suit may proceed. Authorization by the Minister of Justice is no longer necessary.

2. The Enactment of a Bill of Rights

The Fifth Amendment of the Constitution[16] incorporated a Bill of Rights, which came into force in March 1985. However, the Bill of Rights could only be enacted after the expiry of three years[17], giving the Government the opportunity to examine the existing laws and rectify them to avoid conflicts with the Bill of Rights.

3. The Re-introduction of Multi-Partyism

Prior to independence, both Tanganyika and Zanzibar had many political parties. Following independence however, these were prohibited, leaving only the ruling parties of the *Tanganyika National Union* (TANU) and the *Afro-Shirazi Party* (ASP), which merged in 1977 becoming *Chama cha Mapinduzi* (CCM). However, the Russian *perestroika* sent waves of political change throughout the globe, including Tanzania. The Government created a Commission under Chief Justice Francis Lucas Nyalali to seek the views of the people on whether or not to reintroduce a multi-party state. The Government accepted the recommendation of the Commission that the ban on political parties should be lifted, and it accordingly amended the Constitution[18], enacting the Political Parties Act in 1992.

Conclusion

Bi. Hawa and *Ndewawiosia* as well as other cases have helped to strengthen the rights of Tanzanian women to property, among other rights. The two legislative reforms, firstly including the Bill of Rights into the Constitution and secondly allowing multiple political parties, have made far-reaching contributions in strengthening civil rights in Tanzania in the fifty years of independence.

Members of Parliament now come from six different political parties, making the Parliament extremely effective in voicing the civil rights concerns of the people. The Bill of Rights has given the citizens access to courts, and that in itself is a profound civil right. Furthermore, the courts now deal with universally recognized human rights.

15 Act No 40 of 1930 of 1994.

16 Act No 15 of 1984

17 Constitution (Consequential, Transitional and Temporary Provisions) Act, 1984, Act No. 16 of 1984.

18 Section 5 of Act No. 4 of 1992.

The rights of women are no longer dependant on court judgments or the degree of a judge's progressiveness, rather they are declared explicitly in the Constitution.

Lastly, the current resolved political will to re-write the Constitution is clear evidence that civil rights are being strengthened through legal reform processes. Some examples of this have been given above. Nonetheless, there are still glaring areas of civil rights that require the reform of the Constitution as the ultimate legislative reform. Three examples will suffice: Firstly, there is the burning issue of the abolition of the death penalty. A conference on the abolition of the death penalty was held in London from 19th until 20th of September 2011, where more than twenty-five countries recommended abolition. Secondly, there is the question of allowing independent candidates to stand for elections. The Court of Appeal, in *The Attorney General vs. Rev. Christopher Mtikila*, Civil Appeal No. 45 of 2009, expressed the opinion that this issue must be settled through an amendment to the Constitution by Parliament, and not by the Court. Finally, the independence of the media ought to be included in the Constitution.

Can the EAC Integration Process Strengthen the Civil Rights of Tanzanians?

By: Dr. Azaveli Feza Lwaitama
University of Dar es Salaam

Introduction

Civil rights are often referred to as constitutional rights and they are often clearly incorporated into a country's constitution as "a bill of rights." Civil rights are universally recognized since member states of the United Nations first adopted them in 1948 as the Universal Declaration of Human Rights, and later as the 1966 International Covenant on Civil and Political Rights (Sieghar 1985). The promotion of the civil rights of Tanzanians has been at the centre of all social, economic and political developments that have taken place during the 50 years of independence (Hellsten & Lwaitama 2004: 61-66). It is important to observe that civil rights include the right to vote, as well as the right to stand as a candidate in elections for positions of authority at various levels of government in ones country.

The struggle for independence from colonial rule was a struggle to promote the civil rights of Tanzanians. Even after gaining independence, and especially after the adoption of the multi-party system in 1992, it was necessary to continue fighting for these rights through constitutional amendments (Mukangara 1998-2001). This article argues that a people-centered East African Community integration process can further strengthen the enjoyment of civil rights by the majority of Tanzanians.

The struggle for independence in Tanganyika and Zanzibar, united in 1964 to give birth to Tanzania, was itself a process that sought to strengthen the civil rights of Tanzanians through vigorous and persistent participation in social, political and economic integration at national levels. Following independence, it was evident that the civil rights gained by both Tanganyikans and Zanzibaris were not adequate, but rather ridden with pitfalls and in the long term deemed reversible. In former colonial states in Africa, envisaging the true attainment of civil rights by the majority of the population outside the context of Pan-African unity was difficult, as only within such a context could one guarantee economic prosperity for all (Shivji, 1996). As the founding President of Tanzania, late Mwalimu Julius Kambarage Nyerere, is reported by Shivji (1996:8) to have observed:

> *What freedom has our subsistence farmer? He scratches a bare living from the soil provided, the rains do not fall; his children work at his side without schooling, medical care, or even good feeding. Certainly, he has freedom to vote and speak as he wishes. But these freedoms are much less real to him than his freedom to be exploited. Only as his poverty is reduced will his existing political freedom become properly meaningful and his right to human dignity becomes a fact of human dignity.*

The struggle for independence was simultaneously a struggle to consolidate economic integration within territorial national borders, in order to support economies of scale at that level and thus tackle the problem of poverty within such borders. The struggle for greater unity at a regional and continental level is based on the realization that pursuing the aforementioned integration, at both an economic and political level, is the only way to reduce poverty in Africa.
Indeed, the independence granted to Tanganyikans in December 1961, and that granted to Zanzibaris in December 1963, was inadequate in alleviating the poverty of the majority, and worse still, it seemed to be benefiting a minority in both Tanganyika and Zanzibar. As a result, the majority of Zanzibaris, mainly belonging to the Afro Shiraz Party (ASP), participated in the 1964 Revolution and most Tanganyikans, the majority belonging to the Tanganyika African National Union (TANU), marched in support of the Arusha Declaration in 1967. This led to the nationalization of the commanding heights of the economy and ushered in the adoption of a people-centered development ethos in Tanzania (Lwaitama 2002)

The non-comprador socialist oriented, and thus people-centered Pan-African leadership of TANU and ASP sought greater unity and thus brought about the Union between Tanganyika and Zanzibar in 1964 as well as the Arusha Declaration in 1967. It was only through such leadership that the national social, political and economic systems of Tanganyika and Zanzibar could be unified, resulting in the establishment and consolidation of the emerging supra-national entity of Tanzania. It is only such leadership that is capable of acknowledging that the way to promote the civil rights of all Tanzanians in the 21st century is by safeguarding the Union of Tanganyika and Zanzibar. The growing hostile climate of global and extreme capitalist-oriented hegemony often stifles the true economic liberation of former colonial states, and thus the civil rights of most people living in such as post-colonial states as Tanzania. **Only a non-comprador, socialist oriented and Pan-Africanist leadership understands what the Arusha Declaration means when it asserts that the people of Africa have been exploited and oppressed because Africans have long lacked unity.** For this reason, it is argued in this article that a people-centered integration process within the East African Community can strengthen the attainment of civil rights by the majority of Tanzanians. It is therefore also being argued, albeit indirectly, that an East African Community integration process that is not people-centered cannot improve the enjoyment of civil rights by Tanzanians.

Civil Rights and the EAC Vision

Culturally, Tanzanians are products of the slave trade and of colonial experiences. These experiences had the unfortunate outcome of producing Western educated elite, termed by one of

Africa's greatest sons, Franz Fanon, as *Black Masks* and *White Skins*. The anti-colonial struggle was partly a struggle to raise awareness amongst the Western educated elite, and people elsewhere in the world, be they of African ancestry or not, that non-African people have not always ruled Africa. It was a struggle to reassert the civil rights of people of African origin.

Unfortunately, independence was followed by a period, long in some countries and short in others, when Africa was ruled by irresponsible politicians whose black skins were a mere mask hiding what amounted to no less than racist white supremacist skins. This relates to the irresponsible and inhumane manner with which they ruled over their fellow African people, especially the poor, on behalf of global capitalist forces. Fifty years after independence, elements of such irresponsible leadership can still be witnessed in Africa. However, more and more people are accessing the enjoyment of civil rights and such irresponsible leaders are increasingly removed from positions of power. Elements of enlightenment, inspired by the dreams of Pan-African nationalist leaders such as Kwameh Nkrumah and Mwalimu Nyerere, are increasingly taking over the reins of economic and political power. These enlightened elements, that have imbibed the vision of regional integration, include the leadership that is now promoting the integration process in the East African Community (EAC), as well as that of continental integration, in the African Union (AU). These enlightened elements, a non-comprador socialist oriented, and thus people-centered Pan-Africanist elite, seek to reconnect Africa's present with its past and glorious culture of humanism (ubuntu); now bringing together people of all colors, races, and languages, as well as embracing many gods and goddesses from all parts of the continent and beyond (Brock-Utne &Lwaitama 2010:340-342).

It is these enlightened elements that wish to strengthen the civil rights of citizens in individual EAC member states like Tanzania. Leaders who inspired the scripting of the all-important Article 5 of the 1999 EAC Treaty, which states the vision of the EAC as follows:

> *1. The objectives of the Community shall be to develop policies and programs aimed at widening and deepening co-operation among the Partner States in political, economic, social and cultural fields, research and technology, defense, security and legal and judicial affairs, for their mutual benefit.*
> *2. The Partner States under take to establish among themselves and in accordance with the provisions of this Treaty, a Customs Union, a Common Market, subsequently a Monetary Union and ultimately a Political Federation.*

It is an EAC vision whose ultimate goal is enshrined in the same provision of Article 5 of the 1999 EAC Treaty, which states in sub-section 2 that:

...in order to strengthen and regulate the industrial, commercial, infrastructural, cultural, social, political and other relations of the Partner States to the end that there shall be accelerated, harmonious and balanced development and sustained expansion of economic activities, the benefit of which shall be equitably shared.

Although bourgeoisie scholarship often wishes to characterize civil rights as so-called "natural rights", it is important to observe that one can only enjoy them under certain socio-economic conditions. Where human beings are complete slaves of blind natural phenomena such as severe droughts, floods, earthquakes, hurricanes, tsunamis, and the like, they are invariably unlikely to be in a position to enjoy their civil rights. Military contingencies and natural and human-made disasters of various kinds often create conditions that are exploited by some in society to deny civil rights to others. The struggle for the enjoyment of civil rights ought not to be treated as a request for a charitable offer by the powerful to the less advantaged. This is presumably what was meant by US President Thomas Jefferson when he observed in his 1774 *A Summary View of the Rights of British America* that „a free people [claim] their rights as derived from the laws of nature, and not as the gift of their chief magistrate." However, it is equally true that Tanzanians need to reduce the extent to which they are beholden to the brute forces of nature, such as extreme heat and lack of rain, if they are to enjoy their civil rights. Only when Tanzanians can witness "accelerated, harmonious and balanced development and sustained expansion of economic activities, the benefit of which shall be equitably shared" in the entire EAC region, can each and very Tanzanian sustain the increasing enjoyment of civil rights. Only partial and precarious enjoyment of civil rights by the majority of Tanzanians can be achieved outside of a sustained and accelerated realization of an EAC as envisaged in the 1995 EAC Treaty quoted above.

Civil Rights Guarantees and the EAC Political Federation

The enjoyment of civil rights presupposes that citizens receive public services such as hospitals, schools, and public transport and that such services are organized in manner promoting civility, not militaristic and often chaotic, inhumane and unprofessional behavior on the part of service providers and recipients. The EAC integration process, taking into account the exploitation on an economic scale and the comparative advantages, is likely to sound attractive even to social forces least inclined to promote a people-centered development in East Africa. For this reason, this article argues that the promotion of civil rights for all Tanzanians requires that the political federation of the EAC is envisaged as a step in the EAC integration process, a process that cannot be delayed for long. A political federation is the best way of ensuring that the enjoyment of civil rights will be made available for all Tanzanians and East Africans.

At the same time, the implementation of the trade related aspects of the EAC integration process, such as the customs union, common market, and common monetary union, must continue to move forward. The various international legal instruments (See *Annex of African Human Rights Instruments*) available to citizens of Tanzania and East Africa when seeking redress for the violation of their civil rights can best be utilized in the context of a political federation. The adoption of a protocol on good governance ought to act as a first step leading us towards the development of a set of commonly agreed principles and values that should guide the process towards an EAC political federation.

Conclusion

The majority of Tanzanians, 50 years after they won their independence from colonial rule, give the impression that the Tanzanian *hoi polloi* (Greek: the many)[1], unlike their legendary Greek democratic city-state counterparts, feel that the state of their politics, both at home and abroad, are bleak. The Tanzanian *hoi polloi* seem to feel that a minority (Greek *hoi oligoi* - the few) of fellow citizens, who happen to be in power and act on their behalf, lead a life too good to be true. This small group of Tanzanian *hoi oligoi*, forming a socio-economic and political oligarchy, are so pampered and steeped in hedonistic pleasures, preventing them from giving adequate intellectual attention to the fact that for most Tanzanians poverty reduction can only be achieved in the context of accelerated economic and political integration, both regionally and continentally. The *hoi oligoi*, fail to realize that most Tanzanians and East Africans will struggle to survive in the absence of such integration.

These city gentry are blinded by the hedonistic consumerism and extravagant opulence in which they now wallow, while those around them, the *hoi polloi*, equivalent to the ancient Greek city-state's property-less masses, suffer in silence. These Tanzanians are hardly in the position to enjoy their civil rights as the pressures of life of the wretched of the earth means that they are con-

1 In a major ancient Greek work of literature written by Thucydides called *History of the Peloponnesian War*, Book 2.34-46, the claimed term *hoi polloi* is used positively to mean „the many", or „the majority." *This is illustrated in the sentence "It is true that we are called a democracy, for the administration is in the hands of* ***the many*** *and not of the few"*. However, in later usage of the term in English and French literature, *hoi polloi* refers to " the masses", "the common people", "multitude", "plebeians", "proletariat", "rank and file", "riff-raff", "the herd", "the plebs", or "the working class". This alludes to the legend of Queen Marie Antoinette, the wife of the French King Louis XVI, who was overthrown during the French Revolution. Queen Marie Antoinette, upon being told that her subjects were starving because they had no bread, is said to have remarked, „Let them eat cake!" This is said to have angered the revolutionaries, who took her remark as a confirmation that the French gentry, represented by the Queen, were pampered and out of touch with the reality of life for the *hoi polloi* (i.e. the poor). She did not seem to realize that cake was unlikely to be affordable for the poor who could not even afford bread. For her impudence, the revolutionaries are said to have convicted her of treason, and had her executed in 1793, months after her husband had received the same punishment.

demned to being ewers of wood and drawers of water. Only the successful implementation of the EAC vision as embraced in the 1999 EAC Treaty gives hope to these Tanzanian *hoi polloi*, who now are told that if they cannot find bread for breakfast, why not try cake for lunch. Nevertheless, the EAC integration process must be people-centered if it is to promote and strengthen the civil rights of the majority of Tanzanians, and indeed, of East Africans.

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Human Rights Protection and Enforcement in Tanzania

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Introduction

Many will agree that respect for human rights and the rule of law is very important if the people in a state are to flourish and develop. In recognition of this importance, states must ensure that human rights receive considerable weight in legislative, judicial and administrative undertakings. This would result in protection and enforcement mechanisms through which an individual could pursue development.

Tanzania, just like any other country in the globalised world, faces challenges in protecting and enforcing human rights. These challenges range from historical background to socio-economic circumstances and cultural diversity among the people in the world. The late Rashid Mfaume Kawawa once said, *"A Bill of Rights merely invites conflicts. It is a luxury which we cannot afford."*[1] This statement leads to the inception that challenges faced in the protection and enforcement of human rights in Tanzania is a historical one. However, taking the Cold War and the time of the statement into account it becomes clear that there was no malicious intent.

The Independence Constitution and the following three Constitutions did not contain a Bill of Rights. Human rights were protected through laws such as criminal laws, which in their very nature intend to punish the violators of the rights of others, and therefore curb the problem of violation of human rights.

Some years later, Tanzania (former Tanganyika), incorporated a Bill of Rights into its Constitution, restored multi-party democracy, which was abolished soon after independence, signed and ratified a number of human rights instruments, including becoming one of the few African states to accept the jurisdiction of the African Court for Human Rights and Peoples Rights to receive individual complaints. Nevertheless, challenges are eminent; people are evicted from their homes in the name of investment, discriminatory laws are still in place and there is a growing gap between rich and poor.

This paper would like to examine and analyze how human rights are protected and enforced in Tanzania and how the Government promotes and protects human rights, especially in the advanced technological world of today.

Protection and Enforcement of Human Rights in Tanzania

An effective human rights regime should contain tools that feature suitable and effective promotion, protection and enforcement of human rights and basic freedoms. Being the theme of this paper, protection and enforcement of human rights have been discussed *in seriatim*.

1 See http://www.parliamentarystrengtherning.org/humanrightsmodule/pdf/human rightsunit2.pdf, accessed on 23.09.2011.

Starting with protection: In Tanzania, human rights have been protected by incorporating them into the constitution and statutory laws that create bodies responsible for the promotion and protection of human rights.[2] By incorporating human rights into the Constitution and other laws means that human rights are made known to the people and enforced through the means provided by the Constitution and the statutory laws.[3]

Incorporating human rights into the Constitution places the duty on the government to take all reasonable and necessary administrative, legislative and judicial measures to ensure that human rights are respected, protected and enforced, as provided by in the Constitution.[4]

In Tanzania, the Fifth Constitutional Amendment Act incorporated the Bill of Rights into the Constitution in 1984.[5] However, the Bill of Right only came into operation three years later, when the government deemed it fit to do so.[6] This was contrary to what happened in Zanzibar, where the Bill of Rights became operational in the same year in which it was incorporated.[7] There were no prescribed procedures on how these rights would be enforced by the courts.

Despite having the Bill of Rights in the Constitution, the catalogue of the Bill of Rights is very restricted to some civil and political rights, and hardly two socio-economic rights.[8] This is contrary to international call that socio-economic rights be incorporated into the domestic laws of states, to ensure their enforcement.[9] Poor incorporation of socio-economic rights into the Constitution is a result of rigid classification of human rights into civil and political rights, social, economic and cultural rights. These classifications make the socio-economic rights beyond the reach of the courts of law, thus rendering the principles that all human rights are equal, indivisible and interdependent meaningless.[10] Sta-

2 See inter alia the Commission for Human Rights and Good Governance Act, The Law Reforms Commissions Act, The Non Governmental Organizations Act.

3 See I. Shivji et al (Edts.). 2004. Constitutional and Legal System of Tanzania: A Civics Sourcebook, Mkuki na Nyota Publishers: Dar es Salaam, p. 89.

4 See J. C. Mubangizi. Constitutionalisation and Justifiability of Social Rights: Prospects and Challenges in the Protection and Enforcement of Socio-Economic Rights: Lessons from the South African Experience. A Paper Presented on VII World Congress of the International Association of constitutional Law, Athens, and 11th 15 June 2007.

5 Act No. 15 of 1984.

6 See I. Shivji et al (Eds.). 1996. Supra, Note 3.

7 See I. Shivji et al (Eds.). 1991. Supra, Note 3. The second post revolution constitution of 1984 contained the Bill of Rights, and that it started to operate on the same year 1984.

8 See article 22, 23 and 24 of the Constitution of United Republic of Tanzania, 1977 as amended from time to time (articles containing economic rights). See also: C. J. Mashamba. 2008. Casting the Net Wide: Litigating Socio-economic Rights Beyond Bill of Rights in Tanzania. The Justice Review 1, p. 50.

9 F. Viljoen. 2007. International Human Rights Law in Africa, Oxford University Press: Oxford, p. 571.

10 General Comment No. 9 (1998) on Domestic application of International Covenant on Economic, Social and Cultural Rights, UN Doc. E/1999/22 paragraph 22. Quoted by C. J. Mashamba, Casting the Net Wide: Litigating Social Economic Rights Beyond the Bill of Rights

tes like Tanzania that have not incorporated, or poorly incorporated, socio-economic rights into their domestic instruments, always lean on poverty as the hindering factor.[11]

Moreover, the Bill of Rights has many limitation clauses that hinder the enforcement of human rights as provided by the Bill of Rights. Limitation clauses contained in the Bill of Rights of the Tanzanian Constitution make human rights unreachable for the people, because they make it difficult for the people to invoke the jurisdiction of the courts to enforce their rights. Limitation clauses are, however, not entirely prohibited by the international standards on human rights; it is required that the limitation clause should not arbitrarily and/or unreasonably make the rights in question unreachable to the people.[12]

Unfortunately, the limitation clauses contained in the Bill of Rights of our Constitution do not adhere to the international accepted standards of limitation clauses.[13] The limitation clause which is acceptable should not water down the meaning of the right itself; meaning the limitation imposed should be proportional to the likely effects of that limitation.[14] Similarly, Article 30 of the Constitution, which is a derogation article as far as the Bill of Rights is concerned, does not meet the accepted international standards of limitation clauses.[15] However, on Zanzibar the case is different: In 2002, Zanzibar's constitution was amended and the derogation clause, similar to Article 30 of the Constitution of the United Republic of Tanzania, was likewise amended. A more useful and meaningful clause, which is neither arbitrary nor disproportional, was adopted.

In the constitutional protection of human rights, an entrenched Bill of Rights may be adopted.[16] This restricts the amendment of the provisions of the Bill of Rights by setting a special way to amend the provisions of the Bill of Rights. In Tanzania, the provisions of the Bill of Rights are amended in the same way as any other provision of the Constitution: In accordance with article 98 of the Constitution. This has resulted in unjustifiable amendments to the provisions of the Bill of Rights. For instance, the government quickly filed an appeal against the decision of the court in the case of **Rev. Christopher Mtikila vs. Attorney General**[17], which held that

in Tanzania, 7 The Justice Review 1, 2008, pp. 37-102.

11 Enforcement of socio-economic rights depends on economic situation of the country; however, in case of non-enforcement the state must prove that its resources do not suffice to enforce those rights.

12 See I. Shivji et al (Eds.). 1992. Supra, Note 3.

13 See I. Shivji et al (Eds.). Supra, Note 3. Also, see Art. 30 of the Constitution of United Republic of Tanzania, 1977, as amended from time to time as an example of arbitrary limitation clause.

14 See M. Bagaric. 2007. Analysis of Limitation Clauses in the Victoria and Act and Human Rights Acts, 3 High Court Quarterly Review 3, p. 122.

15 See I. Shivji et al (Eds.). 1992. Supra, Note 3.

16 See I. Shivji et al (Eds.). 1992. Supra, Note 3.

17 [1995] TLR 31.

...the requirement that participation shall be through a political party only is not a procedural matter but a substantive condition taking away the right to participate for citizens who do not belong to political parties.

However, the government later withdrew the appeal and sent a bill to Parliament to legislate in anticipation against that decision of the court. The Parliament accepted the bill and legislated against the decision of the court, as requested by the Executive. As a result, a claw-back clause was added to Articles 20 and 21 of the Constitution, limiting the right to association and the right to participate in public affairs respectively. There is a danger of rendering the whole Bill of Rights meaningless if this kind of amendment is not controlled, as Nyerere reiterates:

This is very dangerous. Where can we stop? If one section of the Bill of Rights can be amended, what is to stop the whole Bill of Rights being made meaningless by qualifications of, and amendments to, all provisions? I am saying that the basic Rights of the Citizens of this country must be regarded as sacrosanct. The right to participate in Government is essential to democracy. The Right to vote and the Right to stand for elective office are Rights of Citizenship.[18]

Provisions relating to amendments of the Bill of Rights need to be considered if the state wants to have democracy, and a meaningful Bill of Rights to protect its citizens and their property.

Respect and protection of human rights and democracy go hand in hand with the doctrine of constitutionalism. Tanzania is said to have respected the doctrine of constitutionalism, as its Constitution contains principles of constitutionalism; however, how these principles will be implemented is still a question.

In 1992, a good step was made with respect to democracy and human rights in Tanzania. This was the restoration of multi-party democracy. This was done as a response to recommendations made by the Nyalali Commission, which also proposed the removal of 40 repressive legislations from the statute books. The restoration of multi-party democracy was implemented using the Eighth Constitutional Amendment Act.[19] The existence of multiple parties in a country widens the venue for participation of the people in political issues within their country, through either voting or association. As noted by Mwalimu Nyerere, participation of the people in the public affairs is very important in a democratic society.[20]

With the multi-party system of democracy, free and fair elections are an important aspect. So far, the people of Tanzania have experienced four multi-party elections since 1995. In all four of these elections, corruption and other

18 J.K. Nyerere. 1995. Our Leadership and the destiny of Tanzania, African Publishing Group: Harare, pp. 9-10. Quoted by P. Alluwalia and A Zegeye. 2001. Multiparty Democracy in Tanzania: Crises in the Union, African Security Review 3, p. 10.

19 Act No. 4 of 1994.

20 See J.K. Nyerere. Supra, Note 20.

malpractices were reported.[21] To cure the problem of corruption in elections, the government enacted a law to govern election expenses, especially during campaigns.[22] There are some complaints regarding the Act, especially regarding the provision prohibiting the exchange of promises during campaigns, which is an essential element of campaigns.[23] Moreover, the Act was criticized as it conferred excessive powers to the Registrar of Political parties, allowing the removal of any candidate holding a political post, and a recommendation to the party sponsoring him or her to nominate another candidate once there is reason to believe that provisions of the Act have been violated.[24]

Moreover, since the 2005 General Elections, loss or fall in franchise has been experienced. This can be explained by various factors. The first factor is the requirement set by the Election Act[25] that every voter should appear in person at the polling station during the election.[26] As result of this requirement, people who are not in the area of a polling station are unable to vote. Furthermore, this affects citizens who are outside of the country during elections. The second is the introduction of the Permanent National Voters Register, which stipulates that only those with correct information in the registry be allowed to vote. These factors led to a tremendous decrease in the number of people who exercised their right to vote in almost all elections. In the 2005 General Election, for instance, there were 16,401,694 registered citizens, whereas only 11,875,927 voted. According to these statistics, 4,525,667 people failed to vote in that election.[27]

In all four elections, an independent candidate was not allowed. The Constitution prohibits an independent candidate.[28] Despite struggles by human rights activists, this provision remains. The Court of Appeal of Tanzania declared that the power to decide on whether to allow independent candidates is a matter for Parliament, not the Court.[29]

At the same time, several government agencies have been established with the primary objective of promoting and protecting human rights, and in some occasions assume powers resembling those

21 http://www.jamiiforums.com/uchaguzi-tanzania-2010/73516-is-democracy-political-competition-under-threat-in-tanzania.html. Accessed on 10.02.2011. Also, see LHRC, Tanzania Human Rights Report, 2006, 39.

22 See Election Expenses Act, No. 6 of 2010.

23 See http://allafrica.com/stories/201009020037.html. Accessed on 10.02.2011. Also, see section 21 of the Elections Expenses Act, No. 6 of 2010.

24 See Mwananchi Newspaper of Wednesday 24 March 2010; also see Section 24 of the Act No. 6. of 2010

25 Act No. 1 of 1985.

26 See Section 17 Supra, Note 27.

27 See Tanzania Human Rights Report of 2005, issued by Legal and Human Rights Center, Dar es Salaam, 34

28 See articles 39 (1) (c) and 67 (1) (b) and 77(3) (a) of the Constitution of the United Republic of Tanzania, 1977 (as amended from time to time).

29 See Attorney General vs. Rev. Christopher Mtikila, Court of Appeal of Tanzania, Civil Appeal No. 45 of 2009.

of the court to receive and entertain allegations of violation of human rights. The Commission for Human Rights and Good Governance, which was established under Article 129 of the Constitution of the United Republic of Tanzania[30], and the Commission for Human Rights and Good Governance Act[31], is one such body that promotes and protects human rights in Tanzania.[32] Moreover, Commission has been given the power to receive allegations of human rights violations, institute proceedings in the courts of law on behalf of the victims of human rights violations, among others powers.[33]

On 20 June 2002, the Commission received a complaint[34] from Ibrahim Kiroso, 134 others and the Legal and Human Rights Centre (LHRC). The complainants represented the villagers of Nyamuma, who were evicted from their land; their houses were burnt under the command and supervision of the District Commissioner. In this case, the Commission found that right to own property, the right to adequate standards of living, the right to privacy and family integrity, the right to fair treatment and protection, the rights to settlement and citizenship, the rights to equality and freedom from discrimination, were all violated.[35] The Commission recommended that the victims be paid compensation for their lost properties, and that humanitarian assistance be provided.

However, a challenge facing the Commission is economic dependence on the government. This has affected the functions of the Commission not only in terms of independence, but also in terms of accessibility by the people. The Commission's economic dependence on the government means that on certain occasions it sides with the latter in protecting the so-called public interest in investment. This happened in 2007, when officials of the Commission persuaded the *Hadzabe* people to accept a government proposal to give a portion of their land in Yaeda Chini village to an investor.[36] In this case, *Hadzabe* peoples' refusal denotes of lack of involvement of the people in decision-making processes, especially in matters affecting them directly.[37] The Commission for Human Rights and Good Governance must ensure the participation and involvement of the people in decision-making processes, and not side with the government, thus violating peoples' right to participation in public affairs. Regarding accessibility of the Commission by the people, poor resource allocation by the government has resulted in a lack of Commission branches in

30 The Constitution of the United Republic of Tanzania, 1977 (as amended from time to time).

31 See Act No. 7 of 2001. the Commission started its operations in 2002.

32 See Article 130 (1) of the Constitution of United Republic of Tanzania, 1977 as amended from time to time

33 See Section 6 of the Act No. 7 of 2001.

34 HBUB/S/1032/03/MARA.

35 See P. F. Kiwelo., The Human Rights Commission in Tanzania: An Idea Takes Shape. East African Journal of Human Rights and Democracy. 2006, p. 54.

36 See LHRC, Human Rights Report, 2007, p. 104.

37 See Supra, Note 38.

many regions and districts. This makes it difficult for people residing outside of Dar es Salaam to access the Commission. Furthermore, the Commission's recommendations are not enforceable as a court decree.[38] The Commission has no power over the Office of the President of United Republic of Tanzania or the Office of the President of the Revolutionary Government of Zanzibar.[39] Despite all these limitations, the Commission is an important factor in promoting and protecting human rights and good governance in Tanzania.

Another government agency that through its mandates and functions promotes and protects human rights is the Law Reform Commission, established by the Law Reform Commission Act of 1980.[40] The Commission was established to review laws and recommend whether they violate principles of human rights and good governance. In performing its functions, the Commission must discourage arbitrariness of the law by promoting fairness and respect of human rights in accordance with national and international instruments.[41]

In recent years, the Commission has reviewed Police, Prisons and Road Traffic Laws, which were considered by the commission to be incompatible with human rights. Unfortunately, the government is working slowly in implementations the recommendations of the Commission concerning these laws.

In fact, the Judiciary of Tanzania is responsible for the enforcement of human rights. As pointed out earlier, the Bill of Rights was incorporated into the Constitution without a law stipulating its enforcement. In 1994, the Basic Rights and Duties Enforcement Act[42] was introduced to provide for the enforcement of the Bill of Rights.[43] This Act serves two main roles; firstly, it demands that the state respect, protect, promote and enforce the Bill of Rights, secondly it enables the enforcement of the Bill of Rights. The latter is achieved through the creation of avenues of redress, by which complaints can be filed, via a special mechanism set by law, against the state or any other person violating the provisions of the Bill of Rights.[44]

It is right of any person[45] whose rights have been, or are likely to be violated, to apply to the High Court for redress.[46] Still, there many difficulties in enjoying these rights for the majority of the people in Tanzania. The mechanisms set by law to enforce human rights in Tanzania are cumbersome: The procedures are

38 See Section 17 of the Commission on Human Rights and Good Governance Act, No. 7 of 2001.

39 See Section 16, Supra, Note 40.

40 See Act No. 11 of 1980.

41 See Section 13 of the Law Reform Commission Act of Tanzania, Cap. 171 R.E 2002; also see A. Mgeyekwa., Participatory Approach in Law Reform. Law Reformer Journal 1. 2009, p. 11.

42 Act No. 33 of 1994.

43 See Section 3 of the Basic Rights and Duties Enforcement Act, No. 33 of 1994.

44 See J. C. Mubangizi. Supra, Note 4.

45 Persons who can petition to the High Court include individuals and/or body of persons whether corporate or non corporate

46 See Section 4 of Basic Rights and Duties Enforcement Act, No. 33 of 1994.

very technical and long, the venue is not easily accessible to the people, and it is very expensive.

The High Court is the only court with original jurisdiction to receive and determine human rights petitions.[47] Due to the nature of the country, particularly relating to the locations of the High Court registries, many people, especially in rural areas, fail to access the Court. Moreover, being a constitutional issue, the determination of human rights matters requires the court to be constituted with three judges. Due to the fact that there are but few judges present in most High Court Registries, human rights cases are delayed, to wait for the *coram*.[48]

On a more positive note, some of the contributions of the judiciary can be discussed *in extenso*. The contribution of the judiciary in enforcing human rights started even before the incorporation of the Bill of Rights into the Constitution. During this time, the judiciary spearheaded and proclaimed itself as the temple of justice, open to everyone for seeking legal redress, as provided by law.[49] In light of this proclamation by the court, the judiciary was not only telling the people that it is the final body dispensing justice in the country, but was also enforcing the right to access to court, which is a very important right as far as human rights jurisprudence is concerned.

On another occasion, the judiciary enforced the right to individual ownership of property, despite the fact that during that time the country was ruled by strong ideas of socialism. This was in the case of ***Latata Msangawale vs. Henry Mwamlima***[50], where the court held that

> *In this country, we still respect the law on individual ownership of property and hence the appellant had invested his labour on this piece of land, those other people who took it over should have paid him compensation as rightly decided by the trial court.*[51]

The court reached this decision as the piece of land of the appellant, which was within an *Ujamaa* village, was confiscated without any compensation. The reasoning was that the appellant was also required to live as a socialist as per the country's policy at that time. This case was preceded by another case of the same nature, where the court held that compensation should be paid to an individual who was expelled from an *Ujamaa* village.

47 See Section 8, read together with Section 4 of the Basic Rights and Duties Enforcement Act, No. 33 of 1994.

48 See Section 10 of the Basic Rights and Duties Enforcement Act; also see I. Shivji, Supra, Note 3, 1996.

49 See Joseph Kivuyo and Others v Regional Police Commander of Arusha and Another, High Court of Tanzania at Arusha, Miscellaneous Civil Application No. 22 of 1978 (Unreported).

50 High Court of Tanzania at Dodoma, Civil Appeal No. 99 of 1975; Reported (1979) LRT No. 3.

51 Quoted by Kijo-Bisimba and C.P. Maina, 2005. *Justice and Rule of Law in Tanzania: Selected Judgments and Writngs of Justice J. Mwalusanya and Commentaries.* Legal and Human Rights Centre: Dar es Salaam, p. 13.

The compensation was for the power and labour invested by this individual on the *Ujamaa* farm.[52]

As mentioned earlier, the Bill of Rights was incorporated into the Constitution in 1984. The Bill of Rights came into motion three years later, but the law for its enforcement was only introduced ten years later. This means that if the judiciary was not eager to enforce the basic rights, freedoms and duties contained in the Bill of Rights, then it would have waited until the enactment of the law as required by Article 30(4) of the Constitution.

Showing its concern concerning the enforcement of the basic rights, freedoms and duties of the people, in the case of ***DPP vs. Daudi Pete***[53], the judiciary started that *"until the parliament legislates under article 30(4) of the Constitution the enforcement of the basic rights, freedoms and duties may be effected under the procedure and practice"*. In this holding, the Court of Appeal allowed the High Court to enforce the basic rights, freedoms and duties by applying its original jurisdiction. Moreover, the principle that a court may *suo motu* raise the issue of constitutionality of an Act of Parliament was raised during this time.[54] In this case, the judiciary widened the avenue for protection and enforcement of basic rights, freedoms and duties contained in the Bill of Rights.

Furthermore, the right to access to court was also protected and enforced by the courts, despite the absence of procedural law to that effect. This was done in the case of ***Peter Ngomango vs. Attorney General***.[55] In this case, the court declared that provisions of the Government Proceedings Act[56], which required that the consent of the Minister be obtained before the government can be sued, was unconstitutional as it bars access to court, contrary to Article 13(3) of the Constitution. The mentioned cases serve as examples that the court did achieve much in the promotion, protection and enforcement of human rights, both before and after the incorporation of the Bill of Rights and before the enactment of the Basic Rights and Duties Enforcement Act[57], as per article 30(4) of the Constitution.

In the case of ***Rev. Christopher Mtikila vs. R***[58], the Court enhanced and protected the right to freedom of opinion and expression of politicians. It held that the words used by the appellant were merely political propaganda, meant to win the public and not to breach peace, and therefore did not amount to a criminal offence under Section 89(a) of the Penal Code.[59]

52 See Laiton Kigala v Musa Bariti, High Court of Tanzania at Dodoma, High Court (PC), and Civil Revision No. 148 of 1975.

53 High Court of Tanzania at Mwanza, Miscellaneous Criminal Cause No. 80 of 1989.

54 See *Attorney General v. Marwa s/o Magori*, Criminal Appeal No. 95 of 1988 (Unreported).

55 High Court of Tanzania at Dodoma, Civil Case No. 22 of 1992.

56 Act No. 16 of 1996 as amended by Act No. 40 of 1974

57 Act No. 33 of 1994.

58 High Court of Tanzania at Dodoma, Criminal Appeal No. 90 of 1992.

59 Cap. 16 of the Laws of Tanzania.

In the case of ***Francis Ndyanabo vs. AG***[60], the right to access to court for election petitioners was protected by the court by declaring that the provision of the Elections Act[61], which requires a petitioner to deposit 5 million TSHS as a security for costs incurred, is unconstitutional and violates the right to access to court. This decision does not only protect the right to access to court for election petitioners, but it reminded the parliament that fees to file a case in the court of law can be a barrier in accessing courts for poor people.

Conclusion

Having discussed how human rights are protected and enforced in Tanzania, and highlighted the pitfalls of the mechanisms used to do the same, this paper concludes by pin pointing some challenges facing Tanzania as far as human rights are concerned. Homosexuality, which is prohibited in Tanzania and many African countries, is emerging rapidly as a human rights issue, as activists lobby for the respect of the rights of homosexuals by the government[62]. Corruption and impunity are issues eating away at the civil, political, social and economic rights of many Tanzanians. We may speak of some achievements in the field of human rights, but we must remember to address these issues and work on the pitfalls evident in our human rights jurisprudence.

This paper concludes by recommending an entrenched Bill of Rights with a wide range of human rights. Firstly, the Bill of Rights must be taken into consideration, the number of human rights increased, giving special consideration to socio-economic rights and the rights of special groups, such as disabled persons. Secondly, there should be deliberate intention to remove unnecessary limitation clauses that are unreasonable and disproportional, for instance Articles 20 and 21 in our Bill of Rights, to ensure that the rights are both reachable and meaningful. Lastly, it is believed that this is more attainable if incorporated into the New Constitution.

60 Civil Appeal No. 64 of 2001.

61 Act No. 1 of 1985.

62 See Edward Qorro, Tanzania: Activists Petition UN over Gay's Rights, AllAfrica.com 15.07.2009

Legal Reform Processes and the Recognition of Paralegals in Tanzania

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Nature, Context and Scope of Paralegal Practise in Tanzania

The term paralegal in Tanzania has various definitions. However, it is imperative to adopt a working definition from the outset. In plain English, the term refers to a *"person trained in subsidiary legal matters but not fully qualified as a lawyer"*[1]. However, this definition does not augur well with that used in the legal jurisprudence, in which the term refers to *"a person who assists a lawyer in duties related to the practice of law but who is not a licensed attorney".*[2]

The above two definitions notwithstanding, in practice paralegals in Tanzania are defined according to the objectives of each mentor or user. For instance, the Tanganyika Law Society (TLS) defines a paralegal as:

> *A non lawyer who has attended trainings given by lawyers and acquired the basic knowledge on different legal and human rights issues and who serves in the grassroots areas by providing legal advice, raises awareness on different legal and human rights issues and monitors human rights violation.*[3]

The Women's Legal Aid Centre (WLAC) defines a paralegal as *"a person who has basic knowledge on legal issues and who can serve the community at his/her own door-steps"*[4], while the Tanzania Women Lawyers Association (TAWLA) defines a paralegal as *"a person with basic knowledge on laws and comes from the community which he/she serves"*[5]. The Law Reform Commission of Tanzania (LRCT) divides paralegals into two separate categories, based on the legal assistance they offer: *"First is that group of individuals who provide legal services through experience and /or acquired knowledge and they normally charge a fee for their services"*. This group is referred to as **"professional paralegals"**[6]. The second group is defined as *"the one organized by NGOs and this group is based on the provision of legal aid and so offers its services free of charge"*. This group is referred to as **"voluntary paralegals"**[7].

1 Concise Oxford Dictionary-Tenth Edition (Soft-copy version)

2 Garner, B. A. (edt.) (2004) Black's law Dictionary. Thomson West, USA, 8th Ed, p 1143.

3 Tanganyika Law Society (2010) "Concept Note" on Stakeholders' Forum to Discuss the Legal Sector Reform Programme Paralegals Baseline Survey Report, Dar es Salaam: Tanganyika Law Society.

4 An interview with the Ms. Scollastica Jullu in May 2011

5 An interview with Ms. Grace Mkinga, 2011

6 Law Reform Commission of Tanzania (2004) Report on the Scheme for Provision of Legal Services by Paralegals, Dar es Salaam: Law Reform Commission of Tanzania. December. p12.

7 Ibid

Based on the above definitions, as well as on the categorization made by the Law Reform Commission of Tanzania, one can define a voluntary paralegal in the Tanzanian context as ***a person based in a community who has gained elementary/simple knowledge of basic laws and procedures governing legal and human rights. Competent lawyers offer the training, and the paralegals use this knowledge to educate and to create awareness among community members.***

Voluntary paralegals are therefore trained in different legal aspects, depending on the mentor organizations' areas of interest. Mentor organizations are comprised mainly of non-government organizations (NGOs), each with different training durations and no harmonized or common curriculum. The capacities of paralegals differ greatly, as the areas taught are determined by the training organization. For instance, while some decide to concentrate on land issues, others focus on inheritance and marriage laws or provide training on children's rights.

It is an undisputed fact that paralegals have a wider scope of geographical reach than mainstream legal professionals do. These paralegals work in the grassroots, especially in rural settings, and are always very close to those who require their assistance, as they belong to the same community[8].

Establishment

In 1992, the Women's Legal Aid Centre opened its first paralegal unit in Tanga. This pilot project gradually transcended to Morogoro, Kateshi and Mbeya and to date 27 paralegal units have been established, monitored by WLAC.

The Legal and Human Rights Centre (LHRC) established nine paralegal units in some districts of Tanzania Mainland in 1998 as a pilot project of their Mass Education Programme. The focus was on districts where land disputes and violation of human rights, particularly those of women, such as Female Genital Manipulation (FGM), were frequently reported. These units have expanded to cover districts such as Maswa, Bariadi, Geita and Ukerewe, the necessity of paralegal units in these districts due mainly to superstitious beliefs, sexual abuse of women and children, as well as human rights violations in the fishing and mining industries.

Other organizations involved in the training of paralegals include ENVIROCARE, which has established gender, legal and human rights committees[9] in 585 villages in the Kilimanjaro region. Moreover, TAWLA have established paralegal units in Njombe and Bahi districts in an effort to sensitize the communities on human rights and the land rights of women. Paralegal units also exist in other areas, such as Lindi, Mtwara, Arusha, Shinyanga, Kigoma,

8 An interview with Ms. Loyce Lema of the Environment, Human Rights Care, and Gender Organisation (ENVIROCARE)

9 The institution did not recognise this cadre as paralegals in the first interventions. Only in 2010 did they
adopt the term "paralegal units".

and are under the umbrella of different NGOs.

Legal Framework

The current system of providing paralegal services in Tanzania is uncoordinated and not adequately institutionalized. The on-going trend is such that activities of paralegals are self-regulated, meaning that they are conducted according to the wishes of the providers.

Many Tanzanian laws forbid a paralegal to assist another person in a court of law. For instance, the Civil Procedure Code provides that the party in person, his recognized agent or an advocate duly appointed to act on his behalf may make appearances in court[10]. Authorized agents include persons holding the powers of attorney[11]. Accordingly, Section 41 of the Advocate Act, Cap 341 of 2002, Revised Edition, prohibits any unqualified person to act as an advocate, and thereby prohibits paralegals instituting, defending, or representing another person, in civil or criminal matters, before a court of law.

The non-recognition of paralegals in our domestic laws has serious ramifications in terms of access to justice, as well as the attainment of timely justice for all. This contradicts the milestones that paralegals have reached so far, and contradicts the fact that paralegals have been hailed as playing a critical role in complementing legal aid services[12].

There have been some attempts to recognize paralegals in the country: Initially, in 2005, WLAC organized a national paralegal symposium with the objective of "sharing experience and identifying common issues in order to promote the role of paralegals in Tanzania, as well as to identify important issues for advocacy towards promotion of their role"[13]. This symposium was seen as one of the strategies for the founding organizations of paralegal work in Tanzania to advocate and influence policy-makers to recognize paralegals as part of the legal cadre. In the same year, WLAC compiled the Tanzania Paralegal Profile, which aimed to provide further information about paralegals in terms of location, opening hours, and their focus areas. Another symposium followed in 2008, which ultimately managed to form the Tanzania Paralegals Network (TAPANET), with the goal of creating a common voice on issues relating to development of paralegals in Tanzania[14].

Furthermore, TLS was commissioned by the Legal Sector Reform Program (LSRP) to conduct a Paralegal Baseline Survey. The survey found, among other things, that the majority (65.7%) of paralegal units have acquired legal registration, while 32.9% have not.

10 Order III Rule 1 of the Civil Procedure Code, Cap 33 of 2002 Revised Edition.

11 Order III Rule 2 ibid

12 Dr. Asha-Rose Migiro the then minister for Community Development Gender and Children addressing the National symposium for Paralegals held in Movenpick Hotel, 2005.

13 Women's Legal Aid Centre. (2005) Proceedings Report on the National Paralegals National symposium for Paralegals held in Movenpick Hotel, 2005.

14 See the Tanzania Paralegals' Network, Memorandum and Articles of Association, at p.2.

Most paralegal units not registered indicated plans to register in the future (33 out of 46)[15].

Challenges

Paralegals face two main challenges: The first challenge is **non-recognition**. As shown elsewhere, the law does not empower them to undertake any legal work, even in the lowest courts and tribunals. The non-recognition is attributed to several factors, such as the lack of a (harmonized) curriculum to train paralegals, and lack of a common understanding among mentoring organizations as to the type of paralegals needed[16]. Another hindrance is the resistance from advocates, who regard paralegals as „bare foot" or „bush lawyers" and who therefore cannot be trusted to participate in the legal fraternity[17]. The fact that paralegals operate either as loose entities or under the umbrella of other organizations is considered a factor that could compromise their legitimacy.

The second challenge is that of **sustainability**. As stated in this paper, the majority of paralegals operate on a voluntary basis, or alternatively using grants from mentoring organizations. As a result, no paralegal unit can be sure of its existence; the mentoring organization can change its course, or the spirit of volunteerism can wither away. With guaranteed financial support, paralegals would reach more clients with legal problems, as they would have the means to follow-up on cases, as well as the opportunity to conduct legal sensitization activities in their communities.

Attempts Made to Recognize Paralegals

Apart from the efforts made by NGOs to support paralegal work in Tanzania, the government commissioned the LRCT to undertake a study on the Scheme for Provision of Legal Services by Paralegals. In this study, it was suggested that "paralegals be allowed to represent parties in Primary Courts presided by any competent magistrate provided that such paralegals act as agents of the respective parties and not purporting to be advocates"[18].

The Government has also introduced the Legal Sector Reform Programme Medium Term Strategy (MTS), which prioritizes components that require prompt intervention. The MTS provides a strategy for the training of paralegals. The targeted result is to enhance access to legal aid for the disadvantaged and the poor, and to disseminate legal information. The rationale is that the government, using a consultative process, will design and implement well-regulated and countrywide programs that monitor and build up a legal network[19].

15 See The Legal Sector Reform Programme (2010) *Tanzania Paralegal Baseline Survey*, Dar es Salaam, p.15.

16 From an interview with Ms. Mafole of LHRC, 2011

17 See a *Report on the Scheme for Provision of Legal Services by Paralegals*, LRCT, 2004 at pp. 35&36.

18 Ibid at 2.1 and 2.2

19 For further reference, see Mwaimu, M.M. (2005) "Legal Sector Reform Program and the Position of Paralegals in the Judicial System"

At the beginning of 2010, committee members of the Inter Ministerial Technical Committee (IMTC) tabled and discussed a cabinet paper. During this discussion, it was noted that the concept of a "Paralegal" was relatively new and confusing to the majority of the committee members. For this reason, the issue at stake was returned to the Ministry of Constitutional and Legal Affairs with directions for the ministry responsible to prepare a **Concept Paper** to enable the Committee Members to obtain insight into the idea behind paralegals in the legal system. So far, all these processes have stalled and at the point of writing this paper, progress has not been forthcoming.

Recommendations

In order to overcome the predicaments mentioned earlier, this paper recommends the following:

1. A legal aid law is needed that will recognize paralegals and provide the criteria for their admission.
2. Paralegals should be allowed to represent parties in Primary Courts and ward tribunals where they can act as agents of the respective parties, while not purporting to be advocates.
3. An independent regulatory body for the paralegal cadre is needed to oversee the following: a) the establishment of a paralegal cadre, b) accreditation of training institutions, c) curriculum for paralegal training, and d) establishment of code of conduct for paralegals"[20].
4. Financial support is necessary to ensure that paralegals can focus exclusively on paralegal work. Currently, the majority of paralegals need to engage in economic activities to support themselves; therefore, they cannot offer their services on a permanent basis.
5. To counter the decreasing number of paralegals, and to improve working conditions, further training and support is needed. Furthermore, the introduction of a motivation scheme may be helpful.

Conclusion

The legal status of paralegals in Tanzania leaves much to be desired. This leads to the conclusion that recognizing the services provided by paralegals at community and district levels is not enough: Institutionalization and coordination, along with the introduction of laws to support the operations of paralegals, are paramount. The danger is that without adequate coordination, the well-intended efforts of paralegals in serving the poor majority and marginalized groups of our society might be nullified.

Supporting and acknowledging the importance of coordinating and institutionalizing paralegal activities, the Women's Legal Aid Centre coordinated

A Paper presented at the National Paralegal Symposium.

20 LRCT Ibid p. 44

the Tanzania Paralegal Profile in 2005. This profile combines information on paralegals and NGOs working with paralegals with the purpose of enhancing networking and collaboration among paralegals and paralegal mentor organizations.

The Baseline Survey, on its part, provides essential information on paralegal work in the country. It clearly indicates where, what and with whom the paralegals render their legal services. The survey calls for the enhancement of laws to establish the services that can be provided by paralegals. Additionally, it calls for a code of conduct regulating paralegal work.

In view of the above, and taking into consideration the crucial role played by paralegals in facilitating access to justice, particularly for poor and disadvantaged people, there is a need to have a clear policy on legal aid, a law on legal aid and paralegals, as well as guidelines to govern the activities of paralegals. The government should therefore play an active role in coordinating the activities of paralegals and ensuring that all Tanzanians enjoy equal access to justice.

The Rights of Women Against Violence in Tanzania

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Violence Against Women

The definition of violence against women includes physical and sexual violence, as well as economic, psychological and emotional abuse, as outlined below:

(a) Violence occurring in the family, in such forms as threats, intimidation, battery, economic deprivation, marital rape, femicide, female genital mutilation (FGM) and traditional practices harmful to women.

(b) Violence occurring in the community, for instance threats, rape, sexual abuse, sexual harassment or intimidation, trafficking in women and children, forced prostitution as well as violence against women in armed conflicts.

c) Violence against women perpetrated or condoned by agents of the state.[1]

From this definition, it is clear that violence against women includes a very wide spectrum of issues.

Rights of Women Against Violence

In Tanzania, all tribal customs, based on their own definition, shun violence against women according to their understanding of the definition, and each family, tribe or community has established its own way of protecting the rights of women against violence. For example, in the Pare tribe elders secretively summoned and punished men notorious for beating their wives "unreasonably"[2]. Traditionally, every man had to go through an initiation process. Young men were taken to initiation forests, where elders taught them about adulthood, mainly regarding the duties and responsibilities of a grown-up man in society. The initiation period lasted for approximately one month. During initiation teachings, love, protection and caring for both wife and children were emphasized. Violence was discouraged and thus men who beat their wives "unreasonably" were punished; it was against the norm. Hence, in an historical context, the rights of women against violence were recognized and protected even at a family level.

The Law

At the State level, there are laws that recognize and protect rights of women against violence. The Constitution of the United Republic of Tanzania[3] guarantees the right to personal security, generally under the Penal Code,[4] and specifically under the Sexual Offences Special Provisions Act, (SOSPA)[5] as well as under the International Conventions and Instruments, of which Tanzania is party.

1 *An addendum to the 1997 Declaration on Gender and Development by SADC Heads of States or Government.*

2 Interview I held with Pastor Aggrey Tenga of Chome- Pare.

3 (art 14, 29),

4 Cap 16 R.E 2002

5 Cap 101 R.E 2002

When Tanzania became an independent state in 1961, despite the fact that the Universal Declaration of Human Rights was already in place, the right to personal security could only be enforced under the Penal Code, specifically under general assaults and offences against morality, including for instance rape, indecent assault and abduction. Subsequently, SOSPA was enacted in 1998 to specifically address the issue of violence against women. In contrast to the Penal Code, SOSPA criminalizes acts of violence against women such as Female Genital Mutilation (FGM), threats, harassment and intimidation among others, as well as imposing harsh punishments upon the perpetrators of such offences. The enactment of SOSPA was a big step forward; however, violence against women thrives in our communities to such an extent, as though it were both condoned in our societies and legal.

Concerned with this situation at both a national and international level, further measures have been taken aimed at preventing and eradicating violence against women. Following the Universal Declaration of Human Rights, subsequent Conventions and resolutions, both at regional and international levels, have been passed, all stipulating measures that state parties commit themselves to eradicating violence against women.[6]

In March 1998, members of State within the Southern African Development Community (SADC), including Tanzania, met in Durban, South Africa, and reaffirmed their commitment to the prevention and eradication of violence against both women and children in the region. The reason behind the meeting was the realization that despite signing various UN Conventions, as well as the SADC Declaration on Gender and Development in Blantyre, Malawi in September 1997, the cases of various forms of violence against women and children continued to increase. The measures in place to protect women and children were inadequate, ineffective and biased against the victims.

The Practice

Despite Tanzania's Constitution and Law, as well as the Conventions it has ratified, the question remains if the rights of women against violence have improved 50 years after independence. For lack of official data, it is difficult to state whether the situation of violence against women in Tanzania has

6 Key among the International instruments to which Tanzania has either recognized or ratified are:

- The universal Declaration of Human Rights (UDHR)
- The Conventions on the Elimination of All forms of Discrimination against Women (CEDAW), ratified on 20 August 1985
- The International Covenant on Civil and Political Rights (ICCPR), ratified on 11 September 1976
- The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified on 11 September 1976
- The African (Banjul) Charter on Human and Peoples Rights (African Charter), ratified on 5 May 1978 and entered into force on 21 October 1986.
- The Convention on the Rights of the Child (CRC), ratified on 10 July 1991
- The African Charter on the Rights and Welfare of the Child (ACRWC), signed on 23 October 1998

improved or deteriorated. The government does not keep official statistics, **but from my own experience**, I am certain that violence against women is prevalent and widespread in Tanzania. **Data gathered by Non-Governmental Organizations (NGOs) and accounts by officials and community leaders** indicate that violence against women is a widespread problem and that it is escalating.[7] Doctors in Tanzania indicated that domestic violence frequently occurs and beaten women suffer from a wide range of injuries. For example, a **doctor at a private hospital** interviewed on 27 March 2002 by a fact-finding team of WLAC and Georgetown International Women's Human Rights Clinic, USA, indicated that he sees approximately ten to fifteen domestic violence victims per week who admit that their husbands or boyfriends injure them. A doctor at a public hospital indicated that he sees approximately ten to fifteen women per month who say that they are victims of domestic violence. Yet, many women do not speak of their abuse, especially in the rural areas, where eighty percent of women live. According to the interviewed doctors, the injuries most commonly treated range from bruises, soft tissue injuries, black eyes, swollen jaws, lacerations, broken teeth, swollen joints, broken bones, internal bleeding, and vaginal lacerations due to forced sexual intercourse. These few incidences do not tell everything, but they do provide an indication that violence against women is common despite the legal framework in place.

Let me pause here and highlight some other common forms of violence against women, forms that are rarely discussed in Tanzania. I want our society to perceive these issues and to address them. When discussing violence against women, people tend to rush to rape, FGM, common wife battery and abuse, often ignoring other forms of violence against women, such as:

Marital Rape

According to the Committee on the Elimination of Discrimination against Women (CEDAW), as well as other Conventions, forced sexual intercourse amounts to violence against women. In SOSPA, marital rape or domestic rape is only an offence if forced sexual intercourse occurs between separated couples, if the couple lives together; marital rape is not an offence. From the interviews with the doctors mentioned above, it is evident that many doctors treat women who suffer vaginal injuries and internal bleeding, resulting from

7 For example, a police report from 2005 to 2007 indicates that in years 2005, 2006 and 2007, 3997, 4278 and 8894 women respectively were raped, and 420, 512 and 597 women respectively were sodomised. In 2008, the World Health Organization (WHO) published a report that indicates that 1820 women in Dar es Salaam and 1450 women in Mbeya were interviewed between 2000 and 2003, 41% of these women who were married or had male partners in Dar es Salaam and 56% in Mbeya, had been sexually abused by their husbands or male partners, 29% sustained bodily injuries. 15% in Dar es Salaam and 23% in Mbeya were rendered unconscious by the inflicted violence. In a crisis center that sees between ten and twenty women a day, about half of those are victims of domestic violence.

their husbands forcing them to have sex, including anal sex. Neither is society vocal on this issue, nor does the law protect women who are victims of this kind of violence. How long are we going to remain silent about this cruelty, how long are we going to tolerate this? Tanzania needs to amend its laws to be in line with the Conventions that it has ratified and to ensure that marital rape is criminalized and the perpetrators brought to justice in the same manner as other rapists. We need to sensitize women to speak out about these issues and to report perpetrators to the police.

Human Trafficking and Prostitution

The act of human trafficking is a criminal offence under the Sexual Offences Act. However, there is no official statistics on this and there are no steps taken by the Government of Tanzania to address the trafficking of young girls. For example, there are unofficial agencies in Dar es Salaam dealing with the "recruitment" of young girls from rural areas, mainly Iringa. Most of them are primary school leavers and secondary school dropouts. These young girls are brought to Dar es Salaam to work as house-girls or as bar attendants. Girls who have just arrived from the rural areas can be found and negotiated for at Tazara railway station or Ubungo bus terminal, or at the office of an agent, where it possible to choose from those who are available. Some of these agents recruit girls for the Arab market as well. They organize the logistics, including passports and visas. This common practice thrives unmonitored by the organs of the state. In many cases, these young girls are abused, some ending up as prostitutes and in other unacceptably inhumane situations. SOSPA could be used to prevent this problem; however, the law is underutilized here.

Polygamy

Despite the fact that the Tanzanian Constitution and International Human Rights Laws guarantee the right to dignity[8], equal protection without gender discrimination, health and equality in marriage, the Law of Marriage Act, the Islamic Law, and the Customary Law all permit polygamous marriages. Not only is this in violation of these rights, but also the laws are discriminatory as only the male gender has the right to multiple spouses. The study conducted by the Women Legal Aid Centre (WLAC) in 2000, as part of the Social Watch Programme, reveals that the dignity of women living in a polygamous marriage is violated. She is humiliated by her husband, forced to share her husband with another woman, in some cases with a younger female who is favored. It is telling that 93 % of the interviewed women preferred monogamous marriage to polygamous ones. Furthermore, polygamy exposes women to health hazards, as the chance of contracting HIV and other sexually transmitted diseases increases, hence violating a woman's right to health.

Apart from the humiliation and health hazards, polygamy also negatively af-

8 The Right to Dignity is fundamental. Article 12(2) of the Constitution of United Republic of Tanzania.

fects women due to reasons such as jealousy, hatred and competition for love of a shared husband. This leads to tension, conflict and lack of confidence, directly or indirectly lowering the self-esteem of women and thus having negative impacts in various spheres of her life. For example, in economic development, instead of focusing on major issues that lead to progress, women in polygamous marriages invest time and resources to secure their threatened position in a marriage. Studies conducted by the Organization for Economic Co-operation and Development (OECD) reveal that women in monogamous societies perform better economically than women in polygamous societies. Tanzania cannot achieve meaningful social or economical development unless it promotes the development of all its citizens, including women; this is the main reason why polygamy must be outlawed. The CEDAW Preamble emphasizes the problems that result when the rights of women to dignity are not respected. It **"hampers the growth of the prosperity of society and the family, and makes difficult the full development of the potentialities of women in the services of their countries and humanity."** Tanzania's second and third state reports to CEDAW indicated that it is difficult to outlaw polygamy because it is rooted in both customs and the Islamic religion, to which an estimated 50% of the Tanzanian population belongs. A combination of good political will and an extensive national education program could pave the way in repealing all laws legalizing polygamy. A leaf can be borrowed from staunch Muslim countries where polygamy has been outlawed, countries such as Tunisia with a 98% Muslim population and Turkey with 99%.[9]

I echo the UN Human Rights Committee General Comment No 28 in its 68th Session, which stated, "Polygamy vio-

9 For general information, see:

- Ross, Susan Deller. (2002). Polygamy as a Violation of Women's Right to Equality. In Marriage: An Historical Comparative and International Human Rights Overview, 24 Delphi L.Rev.22, pp. 22-27.
- Judaism originally permitted polygamy but banned it over a thousand years ago, see:
- Hyman, Paula E. (1999). On Jewish Fundamentalism. In: Howland, Courtney W (edt.). Religious Fundamentalism and the Human Rights of Women.
- Christianity always condemns polygamy, see:
- Krause, Harry D. Family Law Cases, Comments and Questions.
- The United States of America successfully enforced its general laws criminalizing polygamy against Mormon polygamists.
- The Russian Empire once allowed Muslims to marry polygamous but successfully banned the practice through decrees and laws issued in 1917, 1919 and 1926, see:
- Hazard, John N. (1953). Law and Social Change in the U.S.S.R.
- China outlawed polygamy in 1950 and Vietnam did so in 1960, see Ross, Supra.
- -India banned polygamy for Hindus in 1955, see:
- Singh, Kirt. (1994). Obstacles to Women's Rights in India, in Human Rights of Women: National and International Perspective.
- Overview: polygamy is criminally prohibited for all in the Americas, Europe, Australia, the countries of the former Soviet Union, China, Vietnam, Nepal, Rwanda, and the majority of Muslim countries such as Tunisia, Turkey, Benin, Cote d'Ivoire and Mauritius.

lates the dignity of women. It is an inadmissible discrimination against women. Consequently, it should be definitely abolished wherever it continues to exist."

Bride price

Bride price is a common practice amongst Tanzanian tribes. It requires a payment by the groom in form of money or other items to a bride's family before marriage, a practice putting a price tag on the bride-to-be. Studies have shown that bride price not only negates equality in a marriage by reducing women to personal property, but also encourages domestic violence and marital rape, as it perpetuates the belief that as their property, men are free to treat women as they please. It gives men justification for controlling their wives, and often this involves physical, sexual and emotional violence. The fact that a bride price must be refunded in the case of a divorce, the system encourages married women to remain in abusive marriages.[10] It is noteworthy that approximately 80% of women in Tanzania live in rural areas, where this practice is extremely common. Although mistreatment does not occur in all marriages where a bride price has been paid, generally it does reinforce the subordination of women and creates a culture that tolerates domestic violence. This cannot be tolerated and is against the Tanzanian Constitution and the Conventions that Tanzania has ratified. The abolishment of bride price is crucial as it leads to violence against women and the violation of women's rights.

Customary Law of Inheritance:

The Tanzanian Law of Inheritance is composed of the Customary Law of Inheritance, which applies to Native Tanzanians, the Islamic Law, which applies to Muslims, and the Indian Succession Act, which applies to Non Natives. Under this system of the law, women do not inherit the property of their deceased husbands and daughters do not inherit on an equal basis with their brothers. Furthermore, the system allows the inheritance of women, known as the cleansing of women, which forces widows to engage in sexual intercourse with a chosen relative of her deceased husband immediately after the burial. The system also encourages property grabbing by male relatives rendering widows destitute. Aside from material loss, these practices lead to humiliation, physical and emotional violence and loss of dignity, which are all against the Constitution of the United Republic of Tanzania and the Conventions Tanzania has ratified. The Customary Law of Inheritance is responsible for much suffering of women, and yet is not viewed as a system that causes violence against women. Worse still, there is no indication when this system will change. In its third and fourth state reports to CEDAW, Tanzania indicated a willingness to repeal this barbaric law, which is repugnant to both justice and morality, but failed to provide a time frame

10 Local Customary Law (DECLARATION) Order, Government Notice (GN) 279/1963, Schedule 1, Laws of Persons (Sheria Zinazohusu Hali za Watu).

for implementation of this long-awaited repeal. Fifty years after independence, the majority of women in Tanzania are still suffering from this form of violence inherent in the Customary Law of Inheritance.

Conclusion

The United Republic of Tanzania, through its own Constitution and through the ratification of the Conventions and Instruments stated above, has committed all state authorities and agencies to formulate their policies and programmes in a manner that ensures that Human Dignity and other Human Rights are respected and cherished. Furthermore, it guarantees the eradication of all forms of injustice, intimidation, discrimination, violence and oppression. Additionally, it promises to engage all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute or enhance violence against women. Fifty years after Independence, only one piece of legislation has been passed that specifically enhances the rights of women against violence. I commend the effort made by the Government to address violence against women through the enactment of SOSPA. However, these efforts are minimal and the legislation does not cater for domestic violence, particularly marital rape, wife battery and non-physical abuse that continue to affect women. The Penal Law is inadequate and has not been effective in addressing domestic violence; a specific law on protecting women from domestic violence is paramount.

Another issue is that the existing legal system is neither understandable nor is it accessible to the majority of women, especially those living in rural areas. There are few courts and they are understaffed, while most women are unable to pay court fees and lack legal assistance. The few legal aid clinics that do exist are run by NGOs and receive no budget support from the Government. It is recommended that the government allocate a budget line that facilitates the establishment of legal aid clinics as well as supporting legal aid providers. Furthermore, the government must address the trafficking of young girls; it must design mechanisms aimed at combating trafficking, and put in place a monitoring framework to track progress on the issue.

Lastly, an amendment to the Constitution of the United Republic of Tanzania has redefined discrimination to include gender. Although this is a positive step, the said amendment has not been translated into all legislations, including The Probate and Administration of Estate Act, The Law of Persons, CAP358 R.E 2002, and The Law of Marriage Act. Lack of legal protection for women in regards to inheritance rights remains a major problem to date. The Customary Law that discriminates in inheritance by sanctioning bride price and polygamy has not been changed, despite the recommendations by the CEDAW Committee in 1996 and the National Plan of

Action. These above-mentioned issues are extremely sensitive, in both the private and public arenas, and are practically taboos, are hardly discussed for fear of offending a large percentage of the population. It should be noted that Tanzania ratified CEDAW without reservations.

I urge the Government, and recommend to all stakeholders to urge the Government to repeal all gender discriminatory laws and provisions, and to put in place a timetable for the enactment of new laws. The timetable must take into account the urgency of the matter, as women continue to suffer from the existence of these discriminatory laws and the current situation hinders Tanzania's achievement of the Millennium Development Goals.

GOD BLESS TANZANIA

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Fifty Years of Advocating for Access to Information:

Reflections on Progress, Challenges and Way Forward in Campaigning for a New Right to Information Regime in Tanzania

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Introduction

As Tanzania commemorates 50 years of independence, much can be said regarding the country's struggle for freedoms. Extending Jaramagi Oginga Odinga's[2] concept of Africa's independence, one expert opinion states it clearly: 'Tanzania is not yet a Democracy'[3]! This is especially true in regards to the country's search for an access to information law that would guarantee freer and easier access to publicly held information and entrench freedom of expression, association, movement and related rights, such as press freedom.

Access to information is an important aspect in promoting transparency and accountability in any country. In Africa, where systems for ensuring the accountability of leaders and governments are pivotal, an access to information law is a necessary landmark. An important example of citizens advocating for the enactment of laws to protect the search for and access to information by citizens from public offices is Tanzania's Right to Information Coalition. This article seeks to document the lessons learnt from the work of the Media Council of Tanzania (MCT) led Coalition, whose work has been recognized by many, both in and outside of Tanzania. I am glad to have joined and taken active part in the Coalition since 2007.

Starting in 2006, the inspiration for the Right to Information Coalition's came from the media monitoring project in the early 2000s, which was successfully implemented by MCT, the Media Institute of Southern Africa-Tanzania (MISA-TAN) and Tanzania Media Women Association (TAMWA), to name but a few. Further momentum came from the government's call for interested citizens and stakeholders to provide inputs for a draft bill to govern media services and access to information in Tanzania. The Coalition expanded its membership to include civil society organizations beyond media related institutions. The Coalition has a two-fold mandate dealing with information policy to influence the creation of an access to information legal framework.

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2 Odinga, O (1968) Not Yet Uhuru – The Autobiography of Oginga Odinga, June 1968

3 Shivji, I.G.S (1998) Not Yet Democracy: Reforming Land Tenure in Tanzania, IIED (London), 1998.

History of Information and Broadcasting Policy and Legislation in Tanzania

The change of national policies and laws to accommodate the liberalization of the national economy from 1992 is considered a key factor behind the demand for change in the media and information sectors. From the 1990s[4] onwards, the government passed or amended a number of policies and laws, for instance the privatization of public corporations and permitting individuals to own media houses, enhancing access to information and reaching a greater proportion of the Tanzanian population.

In 1993, Tanzania passed its first Information and Broadcasting Policy. The Policy made directives to promote private media operations and private ownership of broadcasting companies, whereas the periodically amended Newspapers Act had governed newspaper ownership since 1976. The result was the emergence of new independent press challenging the media monopoly, such as IPP Media. The Broadcasting Services Act and Communication Services Act were likewise passed in 1993 to enforce the above-mentioned policy directives. The former established the Tanzania Broadcasting Commission[5] as a body corporate with its own seal and perpetual succession. Cautious of potential impacts of media liberalization, private media ownership was restricted to companies whose 51% shares were beneficially in the hands of Tanzanians. The coverage of broadcasting was also limited to 25% of the nation.[6] This is how we started!

In 2003, a new Information Broadcasting Policy replaced the 1993 policy, incorporating inputs from a number of stakeholders, and the Tanzania Communications Regulatory Authority (TCRA) Act of 2003 was enacted. The major impact of this was the establishment of a single regulatory body for both broadcasting and communication, hence merging the functions of the former Tanzania Broadcasting Commission and the Tanzania Communications Commission. The TCRA now regulates broadcasting communication operations, while print media remains under the control of the Information Services, MAELEZO.[7] Besides the TCRA and MAELEZO, MCT, established by stakeholders in 1997, is also an independent regulatory authority. MCT has handled various cases involving breaches of the code of ethics and professionalism by journalists and media practitioners, which are reported to MCT by members of the public, including public leaders.[8] By the end of 2008, the Ethics Committee of

4 Generally, these years saw an opening up of political economy systems in the world to pluralism. Tanzania was not spared in this!

5 Section 5, The Broadcasting Services Act 1993

6 For better account of media development in Tanzania since 1990s read: Media Council of Tanzania, State of the Media 2007, Dar es Salaam 2007, Ch.1

7 Supra. Note 7.

8 The author has in a number of cases served as Rapporteur in the Ethics Committee chaired by highly experienced retired Judge Mark Bomani.

the MCT had successfully resolved 90% of all cases presented before it for mediation, in which both parties involved complied with the decisions of the Committee. The MCT has attracted the attention of media practitioners from other parts of Africa due to its self-regulation. Governed by its constitution, the council's strength is its membership and governing board, regularly elected by the members. The day-to-day operations of MCT are run by an independently established secretariat, led by the Executive Secretary, currently Mr. Kajubi Mukajanga.[9]

Reforming Information Regimes: State of the Art in Tanzania

"The free press is only in its embryo stage in Tanzania'', writes Michael Bech from MS Tanzania. According to him, Tanzanians are accustomed to top-down socialistic rule and to media control by the government. In the past, viewpoints communicated were almost exclusively those of the government and many people informed themselves via a single media only. This indicates how far we have come to date.

Whilst Tanzania's Constitution and the acceptance of international human rights guarantees freedom of assembly and association, in practice the government often interferes in peaceful gatherings of religious, scholarly and political nature. Particularly worrying, from the perspective of Tanzania's democratic development, are reports that opposition party rallies during and after elections are often interfered with or banned. In recent years, there have been reports of non-governmental organizations (NGOs) and the media being targeted, with evidence of government harassment of journalists, causing great concern among members of the press. In fact, 2011 began with discouraging news regarding government plans to enact a law to control and curb rallies and demonstrations![10]

A number of human rights observers have raised concerns about the situation regarding freedom of expression and association in Tanzania. A 2006 report by the UN Special Representative of the Secretary General on Human Rights Defenders, Hina Jilani, drew attention to the uncertain conditions for NGOs in Tanzania. While she recognized that the introduction of multi-party democracy in Tanzania meant that "the environment for human rights defenders is becoming increasingly open", she pointed out that the 2002 NGO legislation might be obstructing freedom of association. The 2002 NGOs Act attempts to regulate NGOs in a way that creates "serious obstacles" to exercising freedom of association and hence freedom of expression. In particular, the law obliges NGOs to register with a state NGO Board; the registration may be rejected if the NGO does not act in the "public interest".

9 Both Mr Kajubi Mukajanga and his predecessor, Mr Antony Ngaiza are people of high caliber, known especially for their stand to uphold professionalism in Journalism.

10 Neville Meena & Habel Chidawali (2011) Sheria ya Kudhibiti Maandamano yaja, Mwananchi, 29 July 2011

Furthermore, the President of Tanzania can appoint the director of NGOs, and the government can set policy guidelines within which an NGO may act. Most of these practices are in contravention to the principle of self-regulation, an important pillar for any professional association to operate freely and ethically. As a result, the government has occasionally taken a heavy-handed approach to critical NGOs: in September 2005, the government banned Haki Elimu, a local NGO, from publishing any articles on schools or the education system, arguing that the NGO disparaged the education system and failed to follow government policy.

A similar problem exists regarding freedom of expression in media. While the political and constitutional climate for a free, diverse and critical media in Tanzania has undoubtedly improved since the introduction of a multi-party democracy, the specific legislation and regulations in place pose threats to journalists' freedom of expression[11]. Although Tanzania has seen an explosion in the number of privately owned and operated publications and media houses, journalists have been unable to overcome the "hangover of state control of the media" in their attempts to establish a more favorable and protective legal and regulatory position. Laws such as the Newspaper Registration Act, the Broadcasting Services Act and the National Security Act, which date back to more authoritarian times, give the government wide powers to influence and control the media.

In October 2003, the government released and Information and Broadcasting Policy drafted under the auspices of the office of the Prime Minister. The Policy is progressive in outlook and seeks to create an environment in which information and broadcasting sectors can flourish, in accordance with the guarantee of freedom of expression found in Article 18 of the *Constitution of Tanzania* and Article 19 of the *Universal Declaration of Human Rights* (UDHR). The Policy contains a number of positive and specific recommendations, including a commitment to bring Tanzanian law and practice in line with international and constitutional standards, and to promote an independent and diverse media sector. However, the Policy still contained a number of features either in breach of international standards or raising cause for concern[12].

Even the greatly welcomed efforts by the government to draft a Freedom of Information Bill in 2007 have ended up being a mere illusion. The Freedom of Information Bill was supposed to codify the Constitutional right to information and freedom of expression, sorely needed in Tanzania. Unfortunately, the Bill included provisions that stifle free

11 Media Institute of Southern Africa (2005) So This Is Democracy?: Report on the State of Media Freedom and Freedom of Expression in Southern Africa available at http://www.misa.org/documents/STID2005.pdf, (accessed on August 01, 2011).

12 Article XIX (2004) Note on the United Republic of Tanzania Information and Broadcasting Policy, Article 19 Global Campaign for Free Expression, London.

expression, access to information and open debate. Perhaps the most egregious aspect of the draft Bill was its section on sedition. If enacted, the law would criminalize those seen to encourage criticism of the government or its policies. It was strongly criticized by media and information stakeholders for being draconian and reminiscent of colonial times; it suffices to remember that more than 50 years ago, in 1958, the editor of SAUTI YA TANU, Julius Kambarage Nyerere, was charged with sedition and heavily fined[13] under provisions very similar to the contents of the draft Bill.

The draft Bill defined sedition as an intention to ''excite disaffection against the lawful authority of the United Republic of Tanzania or the Government thereof'' or to ''raise discontent or disaffection among any of the inhabitants of the United Republic''. Thus, any person broadcasting, printing, publishing, distributing or reproducing anything with seditious intent or content can be found guilty and may be imprisoned for up to 3 years or receive a fine of up to 1.5 million[14]. In my view, this Bill was worse than most colonial laws that were applicable to black Africans in Tanganyika fifty years ago!

In Zanzibar, the media is more restrictive than on the mainland, as the Zanzibar News Act allows the government to withdraw publishing licenses and punish journalists. In November 2003, the authorities banned Zanzibars only and last private and independent newspaper, Dira, after publishing accusations against the government[15]. The mainland government's new media policy does not apply to Zanzibar and even some of the institutional safeguards on the mainland are not applicable. For instance, the Tanzania Commission on Human Rights and Good Governance, despite having an office in Zanzibar, has no authority to investigate on the island[16]. Even the Africa Peer Review Mechanism that currently assesses the observance of good governance is only symbolically applicable to Zanzibar. Despite the above, the government of Zanzibar has been responsive to appeals for a less restrictive regulatory media framework.

International Standards and Best Practice

Article 19 of the UDHR guarantees the right to freedom of expression in the following terms:

> *Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*[17]

13 According to Rakesh Rajani and Ruth Carlitz in *The African*, 8 January 2007, p.8

14 According to Section 170 of the Freedom of Information Bill, 2007.

15 Freedom House (2005) *Freedom of the Press* 2005 New York, NY: Rowman and Littlefield

16 Commission on Human Rights (2006) *Report submitted by the Special Representative of the Secretary –General on human rights defenders* (E/CN.4/2006/95/Add.5).

17 UN General Assembly Resolution 217A(III), adopted 10 December 1948.

The UDHR, as a UN General Assembly resolution, is not directly binding for states. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948. The *International Covenant on Civil and Political Rights* (ICCPR), a treaty ratified by over 145 States, including Tanzania, imposes formal legal obligations on state parties to respect its provisions and elaborates on many of the rights included in the UDHR[18].

Internationally, freedom of expression is protected in all three regional human rights instruments: Article 9 in the *African Charter on Human and Peoples' Rights*, Article 10 in the *European Convention on Human Rights* and Article 13 in the *American Convention on Human Rights*, although Tanzania is only legally bound to the *African Charter*[19]. Freedom of expression assumes a fundamental role in underpinning democracy and, in its first session in 1946, the UN General Assembly adopted Resolution 59(I) which states: "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated." The obligation to promote pluralism implies that no legal restrictions as to who may practice journalism are permitted, and that licensing or registration systems for individual journalists are incompatible with the right to freedom of expression.

This is stated in a Joint Declaration issued in December 2003 by the UN, the Organization for Security and Co-operation in Europe (OSCE) and the Organization of American States (OAS). International standards of public broadcasting dictate that broadcasters should be independent and have a mandate to serve the public interest. For instance, a recommendation by the Council of Europe stresses that the "legal framework governing public service broadcasting organizations should clearly stipulate their editorial independence and institutional autonomy" in all key areas, as well as introducing measures to ensure that there is no political or other interference. Good international freedom of expression practice would ensure that the media operates independently of government control, ensuring that the media assumes its role as a public watchdog and that the public has access to a wide range of opinions, especially on matters of public interest.

Reviewing Tanzania's Information Broadcasting Policy, 2003

Tanzania's Information Policy is anchored towards ensuring that media outlets and/or professionals adhere to professional codes of ethic and seeks to ensure that media owners employ qualified professional. The legitimacy of these provisions in relation to guaranteeing freedom of expression depends on the interpretation. While it is true that the realization of rights depends on the actions of citizens, it is a concern that the Policy does not recognize the primary

18 UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.

19 Ibid

responsibility of the State to ensure respect for these rights. It is legitimate to encourage media outlets to render public services and be independent, but to enforce this by law is likely to be highly problematic. Similarly, it is certainly legitimate for the Policy to *encourage* media outlets and professionals to adhere to professional codes and to employ professionals but to *oblige* them to do so is contrary to the very idea of professional ethics, which are norms adopted by a profession for its own regulation. Enforcing ethics by law is of dubious benefit, since this is ultimately impossible, and it is contrary to international standards of freedom of expression. Some of the terms used in the Policy imply going beyond encouragement. International best practices prefer self-regulation.

In section 2.5.2, the Policy states that newspapers and magazines must continue to be registered by the government of Tanzania. If such a regime is to be maintained, the register should be run as a purely administrative matter, akin to company registration. Furthermore, the Policy contains a number of very stringent restrictions on the participation of foreigners in the Tanzanian media. Foreigners may not run media institutions and foreign investment in any media outlet may not exceed 49%, so that the local partner will "have a final say at all times." Foreigners may be employed as technical experts but only if such expertise is not available locally (sections 2.3.1 and 2.3.2). It is common to restrict foreign investment in and control of broadcasters, but imposing such restrictions on the print media is difficult to justify and its legitimacy is questionable. While no country would like to see its media industry controlled by foreigners, possibly undermining democratic processes, foreign investment and involvement often attracts scarce resources to the sector and provides valuable expertise and experience. Furthermore, a key objective is to promote local programming, and a far more effective and less restrictive means of doing this would be to set minimum local content quotas.

The Policy provides, in section 3.7, that "the Government through authorities established for that purpose should carry the regulation of information and broadcasting sector." It fails to specify that the regulatory bodies it envisages must be independent. The potential consequences of not doing so are clear: regulatory decisions will be based on political considerations rather than respecting freedom of expression and promoting the free flow of information and ideas to the public. The issue of media concentration is not adequately addressed, stating simply that investors will be allowed to own more than one media outlet. While this is uncontroversial in itself, it fails to consider the situation where one investor owns many media outlets, perhaps cutting across the broadcasting and print media sectors. Undue concentration of media ownership leads to excessive power vested in one individual or family and may thus undermine democracy and the right of the public to a diverse and vibrant media sector. It is

advisable to address media concentration issues before they become a serious problem, since retroactive rules are difficult to apply and give rise to allegations of political interference. This can be addressed in a number of ways, for instance through restrictions on broadcast ownership, on cross-ownership issues or limiting overall control of a media sector by an individual. Regardless of the preferred approach, it is important that media policy and media law address this issue immediately.

The Draft Freedom of Information Bill, 2006

The draft Bill replicated many shortcomings in the aforementioned Policy and the MCT Coordinated Civil Society Coalition raised most of these issues. In April 2006, the Director of MAELEZO appointed a committee of media experts to prepare a draft bill addressing freedom of information issues. The committee was chaired by Mr. Salva Rweyemamu[20] and twelve other members.[21]

The draft Freedom of Information Bill[22] was published on the government of Tanzania's website in October 2006 and was downloaded by media and information stakeholders who circulated it widely for discussion amongst their networks. The purpose of the draft Bill was stated as follows:

> *An Act to make provisions for the right of access to information, to provide for the Promotion and protection of privacy of individuals, protection of reputation, protection of journalists, confidential sources of information and regulations governing operations of the media, promoting independent, pluralistic broadcasting, protection of minors and to provide for other related matters.*

Once enacted into law, the Bill was to apply to accredited media practitioners, public authorities, private bodies and individual persons in possession of records and documents in Tanzania mainland. The Bill did not override the prevention of access to records or documents of a public or private body, pursuant to any other legislation, policy or practice.[23] The Act did not apply to a commission of inquiry formed by the President.[24]

Basic Features of the Draft Freedom of Information Bill, 2006

The *Right to Access Information* reiterates the rights to seek, receive and impart information regardless of the frontier, as recognized by the Constitution of the United Republic of Tanzania 1977 (amended in 2005)[25]. However, limits

20 Salva Rweyemamu was then the regional Chairperson of Media Institute of Southern Africa (MISA). He is currently the Director of the Communication Directorate in the State House.

21 Kassim Mpenda, Waraka wa Mashauriano wa Wadau kuhusu Muswada wa Habari na Muswada wa Huduya ya Vyombo vya Habari, Idara ya habari MAELEZO, Dar es Salaam, 21/02/2007, Pg. 6.

22 Draft 4 of the Draft Bill for the Freedom of Information, October 2006

23 Freedom of Information Bill, 2006, Section 2(1) and (3)

24 Ibid. Section 2(2)

25 Article 18, Constitution of the United Repub-

on how these rights can be exercised exist within the provisions of the draft Bill (once enacted into law).

The *Time to Access Information* provides that a request to access information must "as soon as reasonably possible, but in any event within twenty one days after the request is received, either be granted or refused, as the case may be."[26] In case of a refusal, the decision notice should state adequate reasons for the refusal, according to the provisions of the law, and include details about the right to appeal.[27]

The *Exempt Documents and Discretionary Power to Refuse Access to Information* acts limits the right to access information, giving a public body the power to refuse access on a number of grounds, as stated in Part 3 of the Bill. In Section 38, the circumstances under which exempt documents or information can be accessed by members of the public are outlined.

The *Right to Appeal* outlines three steps to appeal a case of denied access to records held by a public or private body: firstly, an internal appeal to the designated public or private body, secondly, an appeal to the Media Standards Board and thirdly an appeal to the High Court of Tanzania by way of Judicial Review. This is a complicated process, mixing two different procedures of entry into the High Court and the three different procedures allow for an even higher level of confusion.

The *Protection of Whistleblowers* provides protection of the identity of people who disclose information as long as that person acted reasonably and in good faith. It also protects the disclosure of a journalist's confidential sources.[28] Such sources may only be disclosed in compliance with the lawful order of the High Court.[29] A party aggrieved by a disclosure order may appeal to the Court of Appeal.[30]

The *Establishment of New Bodies* proposes the establishment of new public bodies to ensure that the provisions of the Bill are met, namely the independent regulatory Media Standards Board.[31] Complaints that were eligible to be brought before the Board include advocacy, incitement to commit genocide, racial hatred, and religious intolerance, hate speeches, incitement to lawlessness and breach of peace, publication of exempt documents according to the Act, and many more. The Media Development Fund, which was to be established under section 72(1) of the draft Bill, was supposed to be managed by the Media Standards Board, disbursing the funding for training journalists. However, the draft Bill has no provisions to ensure effective operations of the Fund. Other regulatory bodies include the appointment of a privacy commissioner by the President, as recommended by a parliament committee; media regulation through a licensing requirement for broadcas-

lic of Tanzania, 1977 (14th amendment of 2005)

26 Ibid. Section 16(1)

27 Ibid. Section 16 (5)

28 Ibid. Section 52

29 Ibid. Section 53(1)

30 Ibid. Section 54

31 Ibid. Sections 57 and 58

ters and newspapers, by which existing laws were reproduced into a new legislation;[32] the *Protection of Children and Young Persons* act sought to protect the interests of children against certain publications or broadcast contents.[33]

To date, the Right to Information Coalition is composed of eleven members: MCT, MISA-TAN, TAMWA, Tanganyika Law Society (TLS), Legal and Human Rights Centre (L&HRC), Tanzania Gender Network Programme (TGNP) Tanzania Legal Education Trust (TANLET), Media Owners Association of Tanzania (MOAT) and National Organization for Legal Assistance (NOLA). Other members are Commonwealth Human Rights Initiatives (CHRI) based in India and Article XIX based in the United Kingdom.

A number of events were organized by and on behalf of the Coalition with some remarkable achievements. The period of December 2006 to January 2007 was used to enhance the general knowledge of stakeholders as to why the draft Freedom of Information Bill of 2006 was not accepted by stakeholders. The coalition representatives organized and held stakeholders' workshops, seminars and press events in Dar es Salaam, Mwanza, Arusha and Mbeya regions and events were organized in Zanzibar. The participants were brought from crosscutting socio-economic sectors in order to ensure the rights to seek, receive and impart information, as is internationally recognized and guaranteed by the Constitution of the United Republic of Tanzania 1977.

Conclusion

In conclusion, I wish to remark that the Freedom of information and Media Services Acts are long overdue and needed now. Without these pieces of legislation, it is useless to have access to information, freedom of expression and association as guaranteed in the United Republic of Tanzania's Constitution articles 18, 19 and 20. There is a need for Acts to expand on the articles of the Constitution.

Looking ahead, I see a lot of future in regard to the right to access of information in Tanzania. After some loss of interest in the previous phase of the government, the new Government seems to have the will to take the enactment of information laws forward. At this point in time, information and media stakeholders will need to work harder to ensure that the new Minister for Information is able to honor his promise and ensure that the two pieces of legislation are enacted in the shortest period of time possible.

Along with engaging with the Ministry and government in general, there is also need for mass awareness on the necessity of information laws. This, in my opinion, can best be done now as the nation embarks on the writing up of a new Constitution for Tanzania. I see the Constitution making process as an huge opportunity for expanding the base for access to information. Of course, the

32 The Newspapers Act, 1976 and the TCRA Act 2003

33 Ibid. Part XI

country will also need to ratify the Africa Model Law on Access to Information which African Union members are agreeing to use as a model for enacting freedom of information legislation.

I call upon the Government to wake up and revert back to the information Bill process which civil society has continued to spearhead. Fifty years after independence, Tanzania cannot use such colonial and draconian media and information laws, such as the Newspapers Act, 1976. It is necessary for the Coalition, under the leadership of TCIB and MCT, to meet with the legal drafting offices in the Government and discuss the rights to information and to iron out differences that have prevented the progress of the draft laws in the past!

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Labour Relations Reform Process in Tanzania

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Introduction

The Labour Relations Reform Process in Tanzania became a necessity as the old Labour Law Regime consisted of outdated laws dating back to the Colonial Era. However, with the introduction of the Employment and Labour Relations Act 2004, new laws have been promulgated that suit the current Labour Relations requirements.

Historical Background of Trade Unions in Tanzania

During the Colonial Era, before Independence, free and independent Trade Unions existed, forming the Tanganyika Federation of Labour (TFL). TFL was a partner of the Tanganyika African National Union (TANU) in the struggle for independence; but ran into disfavor with the post-independence Government for attempting, among other things, to assert the autonomy of the Trade Union Movement. The Government resorted to the same authoritarian methods of the colonial state, ensuring that Trade Unions were under the firm grip of the state. Four pieces of legislation exist that significantly influenced the Trade Union Disputes (Settlement) Act, 1962. This Act virtually abolished strikes by introducing a complex procedure of compulsory arbitration and settlement of labour disputes.

The second enactment of the abovementioned legislation was the Trade Union Ordinance (Amendment) Act 1962. It stipulated that the continued legislation of any Trade Union would be subject to an affiliation with the Federation of Labour, as designated by the State. The Law empowered the Registrar of Trade Union to cancel the registration of any trade union that failed to become a member of the designated federation within three months of registration. TFL was under the supervision and control of the state, through the Minister of labour relations as well as the Registrar of Trade Unions. In 1962, amendments to the Trade Union Ordinance were followed by the enactment of the Civil Service Negotiating Machinery Act 1962. The Act excluded Civil Servants earning more than Tshs.702 per annum from becoming members of Trade Unions. In essence, this law was aimed at undermining the leadership of Trade Unions; the movement's literate and articulate members and leadership came from the Civil Service. In 1964, TFL was abolished and the National Union of Tanganyika Workers (NUTA) established. NUTA became the sole trade union and an affiliation of the ruling political party, TANU. This meant that top leaders of the new Union were Presidential appointees for life; and the General Secretary of the Union was at the same time a Cabinet Minister responsible for labour matters. The so-called workers union

was de facto a government department under complete control of TANU.

The state enacted the Parliament Labour Tribunal Act of 1967, which set up machinery for controlling wage increases and provided for arbitration of industrial disputes. The establishment of the Tribunal deprived NUTA, in a subtle way, of its last important role as a trade union responsible for collective bargaining of wage increases and better working conditions. Following the merger of Tanganyika's TANU and Zanzibar's Afro Shiraz Party (ASP) in 1977, the Union of Tanzanian Workers or Jumuiya ya Wafanyakazi Tanzania (JUWATA) was formed as a trade union on 5 February 1978. The JUWATA Act, 1979, was introduced and JUWATA made the sole body representative of all employees in Tanzania. In 1991, following the dissolution of JUWATA, the Organization of Tanzania Trade Union (OTTU) became the sole union representative of all workers in Tanzania. Again, the registrar, who was appointed by the President, had powers to cancel the registration of trade unions as stipulated in Section 9 of the OTTU Act 2, 1991. In 1992, the eight departments under OTTU were made fully-fledged trade unions under The Tanzania Federation of Free Trade Unions (TFTU), however, TFTU had no legal status and so the trade unions under it continued to operate officially under the OTTU Act of 1991. The enactment of the Trade Union Act Number 10 of 1998 was an attempt by the government to implement two conventions of the International Labour Organization (ILO). The first, Convention 87, concerns Freedom of Association and the Right to Organize, while the second, Convention 98, concerns the application of the Principles of the Right to Organize and Bargain Collectively, both of which were ratified in 1995. The Bill of Rights, as contained in the Constitution, further necessitated the implementation of the aforementioned Trade Union Act.

Despite such amendments, weaknesses prevail, for instance the fact that the registrar, who is a government employee, still holds considerable power over the trade unions. Furthermore, at least twenty members are needed to form a trade union, according to Act No.10 of 1998. The formation of a Federation requires two or more registered trade unions to merge, as per Section 22 (1) of the same Act. Moreover, the registrar has the power to cancel a pretext under Section 15 (1) The idea behind these stipulations is to weaken the solidarity of workers and their unions. Following the dissolution of OTTU, the Trade Union Congress of Tanzania (TUCTA) was formed during a Congress from 27 – 28 April 2001, under the Trade Unions Act Number 10 of 1998. TUCTA functions as the common voice of working class and is responsible for defending the interests of the workers against the government. The National Centre is also a channel for workers to express their opinions and make their demands heard.

The backbones of the Labour Reform Process in Tanzania, initiated by the

Parliament of the United Republic of Tanzania, include the enactment of the Employment and Labour Relations Act, 2004 (Act Number 6), and the Labour Institutions Act, 2004. This process was divided into two phases, the first covering the Workman's Compensation Act and the second the Social Security Act.

Employment and Labour Relations Act, 2004

The Employment and Labour Relation Act 2004 is geared towards fulfilling the requirements of the socio-economic situation prevailing in the country, with the following objectives: Firstly to ensure economic development, productivity and human rights. Secondly, to provide legal guidance regarding issues such as industrial relations, employment rights and basic conditions of employment. Thirdly, to offer guidance in solving disputes at the workplace through mediation, and arbitration as well as through judgments issued by the courts.

The impact of this Act has been the improvement of workers' rights in the private sector. The ability to partake in Collective Bargaining Agreements with employers regarding the betterment of working conditions has improved, thus raising the standard of living, and in the long term contributing towards enhanced productivity and trade union availability as well as ensuring human rights are adhered to at the workplace. These Acts also provide reasonable ground for negotiations between workers, through a trade union of their choice, and employers. The success of such negotiations creates improved industrial relations, enhances employment rights and improves employment conditions; thereby contributing positively to the ILO Agenda of Decent Work. Furthermore, the Acts are sources of guidance regarding how to deal with various disputes at the workplace, which, upon emergence, can be taken to the Commission for Mediation and Arbitration, or if necessary to the Labour Division of the High Court.

The Employment and Labour Relations Act, the Labour Institution Act and the Public Service Negotiating Machinery Act

The Employment and Labour Relations Act (ELRA), 2004, builds the foundation of workers' rights in Tanzania Mainland. Considering that labour matters are not Union matters, but rather settled individually for Zanzibar and Tanzania Mainland, ELRA is applicable mainly to workers in the private sector, with the exception workers in the Maritime Sector, who are covered by the Merchant Marine Act 2003. The Public Service Negotiating Machinery Act of 2003 deals with remunerations of workers employed in the public sector. It is our recommendation that both Acts namely the ELRA and the Public Sector Negotiating Machinery Act be harmonized to avoid anomalies, especially when both the former and latter deal with the same issues. Stakeholders need to develop recommendations to review the Employment and Labour Relations Act, the Public Service Negotiating Machinery and

the Labour Institutions Act in order to improve achievements made so far.

Labour Institutions Act, 2004

The Labour Institutions Act is charged with the enforcement of the Employment and Labour Relations Act, 2004, as well as providing a platform for social dialogue in the area of the Labour Economic and Social Council (LESCO). LESCO serves as a council for discussions between employers, employees and the Government, and is an advisory body to the Minister and the Government on social and economic issues, including policies. The Labour Institutions Act also includes the Commission for Mediation and Arbitration, dealing with disputes at the workplace. If necessary, disputes can then be brought before the Labour Division of the High Court of Tanzania. Furthermore, the Essential Services Committee designates services in terms of Section 76 (3) of the Employment and Labour Relations Act, and determines disputes regarding the engagement of an employee or employer in the designated essential services. The Wage Board is an institution that investigates minimum remuneration and conditions of employment, promotes collective bargaining between registered trade unions, employers and registered employers' associations and makes recommendations to the Minister on minimum wages and employment conditions. The Labour Inspection and Administration is a very important institution inspecting the workplace to determine whether the employer adheres to the requirements of the Labour Laws.

The Public Service (Negotiating Machinery) Act, 2003

The Public Service Act was enacted in 2003 and repealed the Civil Service (Negotiating Machinery Act 1962) and the Local Government Negotiating Machinery 1982. It was formed to better provide for the participation of public servants in negotiating and rendering advice to the government, as well as settling disputes in the public service sector. The objectives of the Act are firstly to secure cooperation between the Government as an employer and public servants, through their respective trade unions. Secondly, to provide a conducive environment for participatory consultations and negotiations between the government and public servants on matters affecting the efficiency and well being of public services. Lastly, to provide machineries that deal with the grievances of the public services.

Contradictions Between Employment and Labor Relations Act, 2004 and the Public Service Negotiating Act Machinery, 2003

In the Employment and Labour Relation Act, 2004, the Law provides for the right of workers to strike in Section 75(a), while placing various restrictions on the same right in Section 76 (1). In Section 85(1), workers rights to participate in protest actions are provided for, however, procedures to be followed be-

fore a strike or protest action can take place are indicated in Section 80(1). This Act requires a notice period of 30 days to be given to the Government. In contradiction, the Public Service Negotiating Machinery Act, 2003 provides for the right to strike in Section 26(1), but Section 26 (2) requires sixty day notice be given to the Government.

The contradictions between the two Acts in respect to workers' rights require clarification as to which Law will prevail when problems relating to strikes and other issues affecting workers in the public service arise, especially considering the fact that the Public Service Negotiating Machinery Act was enacted in 2003, and the Employment and Labour Relations Act in 2004.

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Ebert, a Social Democrat from a humble craftsman background rose to hold the highest political office in his country. In response to his own painful experiences in overcoming social barriers of his time, he proposed the establishment of a foundation to pursue the following aims:

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- facilitating access to university education and research for gifted young people by providing scholarships,
- contributing to international understanding and cooperation.

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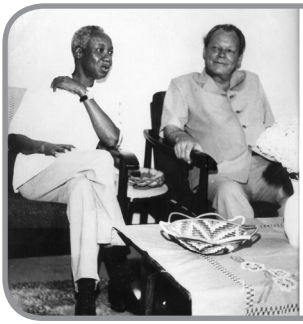

North-South Dialogue: Julius Nyerere, former President of the United Republic of Tanzania and Willy Brandt, former Chancellor of the Federal Republic of Germany

Willy Brandt:
„International co-operation is far too important to be left to governments alone."