



**International covenant  
on civil and  
political rights**

Distr.  
GENERAL

CCPR/C/TZA/4  
17 December 2007

Original: ENGLISH

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Fourth periodic reports of State parties**

**UNITED REPUBLIC OF TANZANIA\***

[16 October 2007]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

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## **Introduction**

1. This is the fourth periodic report submitted by the Government of the United Republic of Tanzania to the Human Rights Committee, in conformity with article 40 (1) of the International Covenant on Civil and Political Rights. The report complements the previous reports submitted up to 1998 and it has been prepared in conformity with both guidelines and general recommendations issued by the Committee in 1998 (CCPR/A/53/40/1998).
2. Since the submission of the third periodic report there have been some major civil and political changes in the country with regard to the protection and promotion of human rights, the period between 1998 and 2005 witnessed the national assembly passing the 13th and 14th Constitutional amendments, various pieces of legislation as well as establishment of institutions for the promotion of human rights. This report seeks to highlight all these developments as well as measures taken to answer the concerns of the committee raised during the consideration of the last periodic report.

## **Article 1**

3. Tanzania is one State and is a sovereign United Republic as stipulated by article 1 of the Constitution of the United Republic of Tanzania. In exercise of its Sovereignty, the Government has set up a legal framework following the modes and procedures permissible in a State governed by the rule of law.
4. Tanzania recognizes the right of peoples to self-determination and it is one of the guiding principles of its foreign policy. It is a party to the United Nations Charter and other international treaties and conventions and fully subscribes to the principles of independence of nations, primacy of human rights and equality among States. Tanzania's position on the defence and promotion of the right to self-determination and independence was well explained in the previous report.
5. Tanzania is a member of various regional groupings such as the African Union, Southern Africa Development Cooperation (SADC) and the newly established East African Community.

## **Article 2**

6. Tanzania guarantees to all persons within its territory, the right to non-discrimination on any ground, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
7. Articles 9 (f), (g), (h) and article 13 (2) and 6 (e) of the Constitution of the United Republic of Tanzania provide for the right to non-discrimination. These articles reiterate that, there should be no distinction in satisfying the requirements of different persons on the basis of their nationality, tribe, place of their origin, political opinion, colour, religion or station in life. This principle of non-discrimination is also reflected in various legislation.
8. The Constitution of the United Republic of Tanzania, guarantees equality of all people to the enjoyment of their civil and political rights and expressly prohibits gender-based discrimination, a ground that was added in the 2000 constitutional amendment. The term discrimination in the Constitution means affording different treatment to different persons on

various grounds including sex, gender, tribe, place of origin, political opinion, colour, religion or station in life, such that certain categories of people are treated differently or are accorded opportunities or advantages outside the specified conditions or prescribed necessary qualifications (arts. 12 and 13). Article 13 (2) further provides that no law shall make any provision that is discriminatory either in it or in its effect.

9. In recognition of the fact that, certain groups of persons such as women, children and persons with disabilities within the society are particularly vulnerable to discrimination whether directly or indirectly institutionalized, the Government has adopted various corrective measures to remedy the situation. It has established a department that deals with NGOs under the Ministry of Community Development, Gender and Children. The department is charged with other activities of poverty reduction. In addition to this, municipal and district councils throughout the country have been directed by the President's office, regional administration and local government to allocate for special areas for business so that the poor, women and youth can run small businesses comfortably.

10. There are various financial institutions which give loans to the above-mentioned groups, these are Savings and Cooperation Societies, Pride Tanzania Limited, Small and Medium Enterprises and Equal Opportunities for All.

11. The Government has also taken corrective measures to increase women's participation in decision-making. In 2003 the Government achieved notable progress in combating gender-based discrimination by increasing the number of women in government positions from 80 in 1997 to over 100 in 2003; currently there are 60 ministers in the Cabinet, 16 are women, 6 full ministers and 10 deputy ministers which is equivalent to 26.6 per cent and an increase of 8.6 per cent of women ministers compared to the previous Government.

12. There are 27 permanent secretaries; out of these 9 are women. In the current Government there is an increase of 4 per cent in view of deputy permanent secretaries. Out of 27 ministries, there are 15 deputy permanent secretaries and there are only 2 women deputy permanent secretaries which is equivalent to 13.3 per cent. Women in ambassadorship positions are very few, out of 31 ambassadors only 3 are women which is 9 per cent.

13. The judiciary has seen an increase of women judges in recent years; out of 66 justices of the High Court and Court of Appeal 16 are women, which is 24 per cent.

14. In the current Government, out of 21 regional commissioners only 3 are women, which is equal to 14 per cent.

15. The legislature through its 14th constitutional amendment increased the number of women seats in Parliament, article 66 (1) (b) of the Constitution of the United Republic of Tanzania guarantees the composition of women members above 30 per cent of the total number of the Union parliamentary seats. In the current Parliament, which was elected after the December 2005 general elections, out of 324 members of Parliament 94 are women. Nineteen women are from constituency and 75 are from women special seats, which is equivalent to 30 per cent. Review of legislation relating to succession, rights of the child and women is a priority agenda; whereby a white paper has been prepared aiming at collecting and collating stakeholders' views on these issues. Stakeholders including civil societies, scholars,

individuals and the public at large will be involved in giving views in order to enrich the contents of the intended review of the laws relating to marriage, inheritance and children issues in the country.

16. Some pieces of legislation have been enacted to provide for a platform in which women can realize their rights to establish and maintain their own associations. The Mining Act, 1998 cap 123 Re: 2002, is geared towards ensuring probity and fair dealing in the allocation of mineral rights, creating a new intermediate tenure which will take into account the explosive increase in small- and medium-scale operations which enabled women to form their own associations. The Government has also enacted the Non-Governmental Organisations Act No. 2002 to widen the scope of the freedom of association.

17. Women as a vulnerable group are also accorded special preferences on entry requirements to higher learning institutions and places of employment in order to improve women's access to education, training and employment. The public service regulation 2003 provides for the following:

1. An affirmative action in selection of candidates - where a man and a woman are equally competent, priority should be given to the woman;
2. In the composition of the public service commissioners the President should ensure that both women and men are appointed;
3. Issues of maternity leave have also been dealt with and breastfeeding hours for women with babies have been taken into account.

18. Moreover, the National HIV/AIDS Policy was launched in 2002 after His Excellency, William Mkapa, former President of the United Republic of Tanzania declared HIV/AIDS a national disaster. The policy provides that HIV/AIDS infection shall not be a ground for discrimination in relation to education, employment, health or other social services and emphasizes that pre-employment HIV screening shall not be required. The Employment and Labour Relations Act of 2004 provides to the same effect.

19. Therefore, the Government is well aware that, in practice, there is discrimination against persons living with HIV/AIDS, including women, children or people with disabilities. There are various State and non-State organizations set up that run campaigns to raise awareness and discourage discrimination in both government and private sectors, for instance there is the Tanzania Commission for AIDS (TACAIDS) and National AIDS Control Programme (NACP) which are under the Prime Minister's Office and the Ministry of Health respectively. These came up as part of the Government's commitment to contain the spread of HIV/AIDS and to prohibit discrimination against persons living with HIV/AIDS. In addition, there are also NGOs like SHIDEPHA+, which work hand in hand with government institutions to fight the pandemic.

20. Furthermore, the Government of Tanzania, through the Ministry of Justice and Constitutional Affairs, launched a report on the review of laws affecting HIV/AIDS in Tanzania in January 2005. The task was commissioned to Tanzania Women Lawyers Association (TAWLA), an NGO dealing with law and women's rights in the country.

21. With respect to discriminatory behaviour against persons suffering or living with HIV/AIDS and the resultant stigmatization, the report recommended among other things:

- That persons living with HIV/AIDS are entitled to be protected from all forms of discrimination and their human rights be respected;
- That employment discrimination of persons living with HIV/AIDS is addressed;
- HIV/AIDS education be undertaken countrywide and the same be included in the school curricula;
- Counselling and testing should be generally voluntary;
- Privacy and confidentiality of the tests and their results be upheld at all times.

22. The Government is currently in the process of preparing HIV/AIDS legislation as part of the task force recommendations. The Ministry of Justice and Constitutional Affairs spearheaded the preparation of legislation by conducting various zonal meetings within the country to obtain stakeholders' views on the proposed HIV/AIDS legislation. This has been done in seven zones namely Dodoma, Iringa, Mwanza, Mtwara, Morogoro and Arusha. The Government has also taken steps to deal with the HIV/AIDS pandemic by setting up and allowing establishment of centres countrywide for VCT and taking measures to make cost of Antiretrovirals (ARVs) costs to be free and to bring them within the reach of the population in general and particularly the low-income earners. Recently President Hon Jakaya Mrisho Kikwete has led one of the biggest VCT campaigns ever by taking the forefront to test. This has motivated thousands of Tanzanians to go for testing and the NACP is claiming that this is one of the most successful campaigns.

23. In 2003, the Tanzania Government set a policy of making one time dosage of ARVs available freely to pregnant mothers for the prevention of mother to child HIV transmission. The Government has also encouraged manufacturing of the ARVs in the country. In 2005 a factory has been opened producing these drugs.

24. During the consideration of the previous report, the Committee recommended under this article, that the Covenant be given formal recognition and applicability in domestic law. Although the Covenant is recognized and referred to in our courts it has not yet been domesticated and incorporated into the municipal laws in its form. Some of its contents are reflected in the Constitution of the United Republic of Tanzania and other statutory laws. It has been appreciated and applied in courts of law. In the case of *Bernado Ephrahim v. Holaria Pastory* [1990] LRC (Const.) 757 while the Court was dealing with a matter under customary law it had this to say:

“What is more important is that since the Bill of Rights was incorporated in our 1977 Constitution in 1984, in the year 2000 the 13th amendments of the Constitution, discrimination against women has been prohibited. And the Universal Declaration of Human Rights, 1948, which is part of our Constitution prohibits discrimination based on sex. Moreover Tanzania has ratified the Convention on the Elimination of All Forms of Racial Discrimination against Women, 1979. That is not all. Tanzania has also ratified the African Charter for Human and Peoples' Rights, 1981 and has also ratified the

International Covenant on Civil and Political Rights, 1966 which in article 26 prohibits discrimination based on sex. The principles enunciated in the above named documents are a standard below which any civilised nation will be ashamed to fall. Short of it is clear from what I have discussed above what the customary law under discussion flies in the face of our Bill of Rights as well as the international conventions to which we are signatories.”

25. From this statement by the court it is obvious that ICCPR is applied in Tanzania as part of the international customary law.

26. The State party on acceding and ratifying the ICCPR, took a solemn declaration to respect and ensure that all individuals within its territory and jurisdiction enjoy human rights enumerated in the Covenant, and is required to furnish subsequent reports on the human rights situation in the country. Article 2 of the Covenant allows States parties to choose their method of implementation. Tanzania has adopted various measures of implementation. Though the State follows the dualistic system, the provisions of the Covenant are almost self-executing. The Bill of Rights in the Constitution incorporates among others civil and political rights. This is the reason why there is no stand-alone domestic legislation. The Civil Procedure Code cap 33 of 2002, the Criminal Procedure Act cap 20 of 2002, the Sexual Offences Special Provisions Act cap or Re: 2002, and other statutes contain various provisions that are in tandem with the Covenant, as detailed in this report.

27. Persons aggrieved on any of the grounds covered by article 2 of the ICCPR have access to courts of law established pursuant to chapter III of the Constitution of Tanzania. The Basic Rights and Duties Enforcement Act Cap 3 Re: 2002 is the law which provides for procedures to enforce the Bill of Rights entrenched in the Constitution of the United Republic of Tanzania.

28. Nevertheless in practice, the larger part of the population does not have access to the formal justice system owing to the complex and formal nature of this process and the attendant expenses. The Government acknowledges this challenge and has formulated, through the Medium Term Strategy (MTS) within the Legal Sector Reform Programme (LSRP) of 2005/2006-2007/2008, strategies to ensure that the indigent, disadvantaged and vulnerable are given free legal representation. In line with this, the Government has allowed the establishment of NGOs that provide legal aid and court representation to indigents, the Legal Aid Committee of the Faculty of Law (University of Dar-es-Salaam); Legal and Human Rights Centre; National Organization for Legal Assistance; Women’s Legal Aid Centre; Tanganyika Law Society; Zanzibar Law Society; Tanzania Women Lawyers Association and Zanzibar Legal Services Centre. Most of these legal aid clinics have representation in the regions and some have gone as far as district levels.

29. Furthermore, the Government of Tanzania in 2000, through the 13th constitutional amendments, established the Commission for Human Rights and Good Governance as an independent institution under article 129 of the Constitution to deal with human rights and good governance issues. The Parliament enacted the Commission for Human Rights and Good Governance Act Cap. 391 Re: 2002 pursuant to article 130 (1) of the Constitution, in relation to



powers, function, privileges and other matters of the Commission. Under section 3 of the Act it is stipulated that the Commission has jurisdiction to Mainland Tanzania as well as Zanzibar. The core functions of the Commission as provided by article 130 (1) of the Constitution are:

- To promote within the country the protection and preservation of human rights and duties to the society in accordance with the Constitution and the laws of the land;
- To investigate acts of violation of human rights and matters related to governance and institute proceedings in court;
- To advise the Government, public institutions and private sectors on human rights and good governance.

### **Article 3**

30. Article 3 of the Covenant requires States parties to ensure the equal rights of men and women to the enjoyment of all civil and political rights provided for in the Covenant.

31. The article, together with articles 2 (1) and 26 of the Covenant primarily deal with prevention of discrimination on a number of grounds among which sex is one; the article requires not only measures of protection but also affirmative action designed to ensure the positive enjoyment of rights.

32. The Constitution of the United Republic of Tanzania ensures that men and women have equal rights in the enjoyment of civil and political rights as set forth in the Covenant. Article 12 of the Constitution provides that all people are born free and equal and provides that every person is entitled to recognition and respect for his dignity. Article 13 (1) provides that all people are equal before the law and are entitled without any discrimination to equal opportunity before the law and equal protection by the law. Article 13 (2) prohibits legislative authorities in Tanzania from making any provision in law that is discriminatory on its face or in its effect.

33. Since the last periodic report, the State party has made some progress towards amending legislation regarded as discriminatory or violating the rights against women. This includes amendment of the Penal Code, Cap. 16 Re: 2002 of the law; enactment of Sexual Offences Special Provisions Act Cap 20 Re: 2002 that came up with criminalization of Female Genital Mutilation (FGM); statutory rape, in camera proceedings for women and children who are sexually offended etc., and the enactment of the Land Act and Village Land Act both of 1999 that recognize the right of women to own, sell and inherit land.

34. Recognizing the importance of women in decision making positions, the Government through the 14th constitutional amendment, has introduced an affirmative action, i.e. a system of proportional representation and increased the number of seats for women in Parliament to more than 30 per cent. In the current Government there is an increase of 4 per cent in view of deputy permanent secretaries. Out of 27 ministries there are 15 deputy permanent secretaries, but only 2 women deputy permanent secretaries, which is equivalent to 13.3 per cent. Women in ambassadorship positions are very few; out of 31 ambassadors only 3 are women, which is 9 per cent. This is a manifestation of the State party's political will towards promotion and enhancement of gender equality.

35. The Education Policy also portrays an affirmative action for girls. Special arrangements are made to recruit more girls in order to bridge the gap between girls and boys after a finding was made that few girls were being enrolled in school due to historical background. Most of the ethnic groups did not consider girls as children to be taken to school but ready to be married after maturity in order for the parents to get a dowry. Therefore, the Government has taken this affirmative action in order to make girls enjoy the right to education.

36. The Employment and Labour Relations Act Cap. 16 R.E. 2002 discourages discrimination at the workplace. Both men and women are given equal opportunity in employment. Section 7 of the Act provides:

“7 (1) every employer shall ensure that he promotes an equal opportunity in employment and strives to eliminate discrimination in any employment policy or practice.”

37. Moreover, the Act distinguishes between affirmative action and discrimination. Section 7 (6) provides:

“It is not discrimination -

(a) to take affirmative action measures consistent with the promotion of equality or the elimination of discrimination in the work place;

(b) to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job; or

(c) to employ citizens in accordance with the National Employment Promotion Services Act, 1999.”

38. It is important to note that discrimination in labour relations is an offence punishable by a maximum fine of 5 million Tanzania shillings. The Government has also taken an initiative to ensure gender balance at all levels. Each ministry, government department and agency has a gender desk.

### **Millennium Development Goals**

39. Tanzania is a member of the United Nations, which is implementing the Millennium Development Goals adopted by the Millennium Summit in 2000. It was agreed at the Summit that by 2015 all Member States should achieve the goals set based on indicators developed. Six goals were formulated, but of particular importance at this juncture are Goals 2 and 3 on achieving universal primary education for both girls and boys and promotion of gender equality and women empowerment. These are implemented at the national level through “Vision 2025”, National Poverty Eradication Strategy (NAPES).

40. The Women and Gender Development Policy, which has been reviewed in 2000, is aimed at providing guidelines to ensure plans, strategies and operations in leadership and developmental activities in all sectors and institutions observe gender balance. The Government is making all efforts to ensure this policy is implemented. The national goal is to ensure gender balance in all quarters.

41. The Government is in the process of reviewing laws touching the best interest of the child. Laws relating to children, marriage, succession and inheritance will be reviewed after thorough consultations with stakeholders with a view to making appropriate amendments to the existing laws to guarantee equality of all children. The Government is in the process of preparing a white paper for that purpose. Issues relating to differences in ages for marrying between a boy and a girl, criminal responsibility and inheritance rights will be among the items of the terms of reference.

#### **Article 4**

42. Article 32 of the Constitution of the United Republic of Tanzania empowers the President of the Union Government to declare a state of emergency generally or in any part of the United Republic during which time some of the fundamental rights are suspended.

43. In its previous report, the State party reported on the conditions under which the state of emergency can be declared and the laws enacted to regulate the situations. In its consideration of the previous report, the Committee was concerned with the implementation of the recommendations of the Nyalali Commission in particular the repeal or amendment of various laws; of particular importance for this article was the Emergency Powers Act, 1986. This law was amended in 1998 by Act No. 12/98 by:

(a) Deleting the phrase any specified authority which occurs in section 5 (1) and substituting it with the phrase:

“The vice president or any person exercising the powers of the president”; and by

(b) Repealing subsection (2).

44. Therefore these powers were given to either the Vice-President or any person exercising such powers. Previously the powers were concentrated with various officials like regional commissioners and district commissioners and hence were capable of being abused. However this has now changed.

#### **Article 5**

45. As already stated in the previous article, the rights amenable to suspension in Tanzania do not derogate from those provided for in the ICCPR. The regime of law does not permit the abuse of any civil and political rights of individuals.

#### **Article 6**

46. The substantive provisions of article 6 of the Covenant are stated under article 14 of the Constitution of the United Republic of Tanzania. Article 14 provides that every person has the right to life and to the protection of his life by the society in accordance with the law.

47. As stated in the third periodic report, derogation from this right is permitted by the Constitution under article 31 during a state of emergence for reasons of confronting individuals

who are believed to be conducting themselves in a manner that endangers or compromises national security. The article goes further by providing for conditions and restrictions on the derogation as per article 31 (2) and (3); this is to ensure that derogation is not done arbitrarily.

48. Secondly, the State party still maintains death penalty in murder and treason cases, and has set strong safeguards before administering capital punishment and its exceptions. These were stated at length in the previous report. This is also the position of the Revolutionary Government of Zanzibar. The argument for this punishment is still constitutional and significant. It is a means of dealing with incorrigible individuals; it is a general deterrent measure and the only form of retribution for particularly serious crimes such as murder.

49. However, most recently, the Government has started addressing the issue of the death penalty. This issue is still at its very initial stages, and nothing of substance can be reported at this juncture.

50. During the consideration of the third periodic report, the Committee urged the State party to publish details on sentences to the death penalty on the Mainland and in Zanzibar. It was concerned that the same had not been carried out recently and recommended for its abolition.

51. The following are details on the number of prisoners on the death penalty as of 1 August 2004.

**Table 1**

**Number of prisoners on death sentence as of 1 August 2004**

Region	Male	Female	Total
Dar-es-Salaam	91		91
Dodoma	118	4	122
Lindi	5		5
Mbeya	7		7
Mtwara	6		6
Mwanza	64	5	69
Tabora	17		17
Tanga	70		70
Total	378	9	387

*Source:* Department of Prisons, Headquarters Dar-es-Salaam.

52. Extrajudicial killings, mob violence and other forms of outrageous killings are also not sanctioned by law. The Government constantly condemns people who take the law into their hands. Regular statements are made by the Government as a way of educating the public at large and the police officers involved in these acts.

53. Regarding the issue of infant and maternal mortality rates, it should be noted that in the fight against these two issues, the Government has committed itself through the Millennium

Development Goals and the Millennium Declaration to see to it that the goals targeted for 2015 are reached. Among the eight goals formulated, two are on reducing child mortality and improving maternal health.

54. According to the Population Reference Bureau, the child mortality rate remained high at 154 infant deaths per 1,000 live births in 2003. However the rate dropped in 2004 to 105 infant deaths per 1,000 births. The causes of the high rate include HIV/AIDS, malnutrition, pneumonia, malaria, anaemia, prenatal mortality and acute diarrhoea. Therefore due to these challenges the Government is yet to reduce by the year 2025 the mortality rate among children under five. Noteworthy is to state that the Government is still doing its best to see to it that its goal is achieved; this can be evidenced by the dropping rate of 154 to 105 deaths within two years. The Government is also committed towards reducing by three quarters the maternal mortality rate (and improve maternal health) by 2025.

55. Being well aware of the fact that the right to life is connected to issues of peace, the State party is also striving to promote good neighbourliness and peace within the countries surrounding it. The Government is fully involved in the process of promoting peace in the subregion. A good example is the Government's involvement in the Great Lakes Initiative on Peace. The Government has played a big role in the reconciliation of the people of the Republic of Burundi who were engaged in civil war for almost a decade. The late Julius Kambarage Nyerere, the founder of the United Republic of Tanzania, and the former President Benjamin William Mkapa, engineered the peace process until the war-torn country elected their leaders democratically. Tanzania has also been a host to many refugees fleeing from potential persecution in the countries of their origin, e.g. from Rwanda, Burundi and Congo. Most of those were fleeing genocide and persecution in their countries. Since then, these countries are now peaceful, and the refugees are being voluntarily repatriated to their countries of origin.

#### Article 7

56. Article 13 (6) of the Constitution of the United Republic of Tanzania prohibits torture and inhuman or degrading treatment or punishment.

57. The Government of Tanzania is under way to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the process is still in the very initial stages. Despite the fact that ratification has not taken place, the Government has been making efforts to ensure that the international standards laid down by the Convention are met. Upon its completion, the country will oblige itself towards ensuring that acts of torture, and inhuman or degrading treatment or punishment are prohibited and punished.

58. Although this right is protected under the Constitution, there is no specific national legislation to prohibit the same. However, the right is justiciable and forms part of the laws of the land (art. 30 (3) of the Constitution). Any person aggrieved under this article may petition to the court through the Basic Rights and Duties enforcement Act, Cap. 3 R.E. 2002. Recourse may also be sought under the prerogative orders of *certiorari* and *mandamus* or with the Commission for Human Rights and Good Governance.

59. During the consideration of the third periodic report the Human Rights Committee was concerned about the repeal and or amendment of the Preventive Detention Act, 1962 as well as

the Witchcraft Act, Cap. 18 R.E. 2002, as far as they are related to article 7 of the ICCPR. With regard to the Preventive Detention Act, the position of the law is the same as it was in the previous report. In addition, the issue was referred to the Law Reform Commission for consideration and recommendations. The Commission has completed a report on the issue that is yet to be acted upon by the Government. It is noteworthy that the current application of the act provides an opportunity for the detainee to challenge his/her detention and win his or her release. It is also recommended for the maintenance of public good and order. The amended law was put to test in the case of *Dadi Karim Nuru Mohamed v. Republic*, Criminal No. 24 of 1999 High Court of Tanzania, Dar-es-Salaam registry (unreported). The detainee was remanded at Ukonga Prison in Dar-es-Salaam on the strength of a detention order signed by the Vice-President acting as the President of the United Republic of Tanzania. The order was challenged for failing to meet the conditions set in the Preventive Detention Act, Cap. 361 R.E. 2002 as amended by the Preventive Detention (Amendment Act) Act 1985. In this case the presiding judge indicated that it was improper for the executive to use its statutory power to curtail the liberty of the citizens without following the procedures set out in the law. The court ruled out that the detainee was not given an opportunity to challenge his detention; as a result he was discharged from prison.

60. Regarding the status of punishment under the Witchcraft Act, Cap. 18 R.E. 2002, the position of the law is that Tanzania does not believe in witchcraft. However, our country enacted the law to provide for the punishment of witchcraft and certain dangerous acts accompanied by witchcraft under the Witchcraft Act, Cap. 18 R.E. 2002, because there are few Tanzanians who believe in it.

61. If any person is mentioned, believed, or caught practising witchcraft and if sufficient evidence is brought before the court of law against such person(s), he/she shall be declared guilty of the offence of witchcraft and be punished in accordance with the law.

62. However it should be noted that any person who commits an offence without any intent such as causing death, disease, injury, or misfortune to any community, or injury to any property cannot be tried until the consent of the Attorney-General or the Zonal State Attorney in charge is obtained. The main reason for obtaining consent is to ensure that experienced law experts peruse the record to determine whether or not to prosecute.

63. As regards corporal punishment and the death penalty, public opinion is still divided on their appropriateness to the society. Currently the Government is collecting views from the people before it forwards the people's view to the Parliament for final decision on whether the death penalty should be abolished or not. The United Republic of Tanzania maintains the death penalty in her law books as a means of dealing with individuals who are found guilty by our courts of law for committing the offence of murder.

64. The Government of Tanzania has recognized the critical role the police play in the protection and promotion of human rights and in particular the right to freedom from torture, cruel and inhuman treatment. Towards this end, human rights education has been introduced in the curricula of police officers. The Government in collaboration with the United Nations Development Programme (UNDP) and NGOs such as the Legal and Human Rights Centre (Tanzania Mainland) and Zanzibar Legal Services Centre (Zanzibar) is conducting such trainings. A human rights training manual for the police has been introduced and is currently in

use. Members of the police force are sensitized to ensure that investigations are always guided by basic principles and norms of human rights aimed at respecting human dignity, honour and privacy of all persons. The Government has reviewed police training curricula, among other things, to be human rights compliant.

65. Moreover, the Constitution prohibits human rights abuse against detainees and prisoners by providing that human dignity shall be protected in all activities pertaining to detainees and in the execution of a sentence.

66. The Government of Tanzania has worked hard to educate her people on the value of human rights, and among the first persons to undergo such courses are the prison officers whose curricula constitutes among other things topics on human rights.

67. In recognition of this right, abuses in prisons are acted upon by charging concerned officials with appropriate disciplinary measures or offences and punishing them whenever found responsible for such acts.

68. Under this collaboration, Prison Standing Orders are being reviewed and a Code of Ethics for Prison Officers and a Clients Service Charter have been put in place. The Prisons Service has also established a weekly radio programme, "Ijue Magereza", to educate inmates and the public at large on their rights and obligations in their dealing with the prison service. Members of the police force are sensitized to ensure that investigations consider basic principles and norms of human rights. The Government has reviewed police training curricula, among other things to make it adhere to human rights principles.

69. A national prison policy document is under preparation reaffirming adherence to national and international human rights norms and standards for prisons and correctional services.

70. Regarding the issue of overcrowding of inmates and poor dieting, the Government has been addressing it positively. Every financial year the Government increases budget allocation to the Prisons Department in order to improve the human rights of prisoners. Through this improvement, the Prisons Department has been able to introduce new and deserving clothing for prisoners and sleeping facilities and mattresses have been introduced in place of sisal mats. Health services for prisoners and inmates have been improved. The Government has also already begun to provide prisons with television sets.

71. Furthermore, the Government has taken measures to control the congestion in prisons. These include the release of 8,525 prisoners between the period of July 2003 and April 2004. The mechanism used was parole, whereby 472 prisoners were released and 261 prisoners released at the end of July 2004. A total of 6,785 prisoners were released on presidential pardon signed and issued on 1 January 2004 and a total of 1,019 were put on non-custodial sentences. In December 2005, 3,000 prisoners were released to mark the independence anniversary of Tanzania. These efforts reduced the number of prisoners to 40,244 by 1 May 2004. Furthermore, in order to address this issue the Government has introduced the Community Services Act, Cap. 291 R.E. 2002 aimed at introducing community services for minor offences instead of imprisonment. Ward Tribunals are also being strengthened in order to deal with minor offences, which may not attract custodial sentences.

72. The Government has also introduced accelerated trial mechanisms to expedite the trials in the criminal justice system (section 192 of the Criminal Procedure Act, Cap. 20 R.E. 2002). This mechanism has been very helpful since it helps to reduce overcrowding of remandees in prison facilities.

### **Article 8**

73. This article embodies the principle of freedom from slavery. The Constitution of the United Republic of Tanzania prohibits forced labour, slavery and the slave trade [Article 25 (2) of the Constitution] as well as sections 254 and 255 of the Penal Code Cap. 16 R.E. 2002 of the laws.

74. During the consideration of the third periodic report of the United Republic of Tanzania, the Committee called for the implementation of the recommendations in the Nyalali Commission; among the recommendations was to repeal or amend certain provisions of the Human Resources Deployment Act of 1983 (now repealed) which led to forced labour or communal projects. It has been replaced with the National Employment Promotion Services Act, Cap. 243 R.E. 2002. This Act establishes employment promotion services. Unlike the Human Resources Deployment Act (now repealed) which contained provisions reflecting deployment of forced labour, the present Act has specific functions aimed at promoting and encouraging conducive labour relations. It is intended to provide placements, vocational guidance and employment counselling, active labour market intervention, labour market and occupational information and advisory services for lawful income generating undertakings and promotion of self-employment and coordination of training needs. This is in accordance with section 4 (1) of the National Employment Promotion Services Act Cap. 243 R.E. 2002.

75. Moreover, s.5 and 6 of the Employment and Labour Relations Act No. 6 of 2004 Cap. 243 R.E. 2002 prohibit and criminalize forced labour, child labour and all forms of discrimination as well as within trade unions.

### **Articles 9 and 10**

76. The right to liberty and security of a person is enshrined in part II, article 15 (1) and (2) of the Constitution of the United Republic of Tanzania. This article provides that every person has the right to freedom and to live as a free person and that no person shall be arrested, imprisoned, confined, detained, deported or otherwise be deprived of his freedom save only:

- Under circumstances and in accordance with procedures prescribed by law; or
- In the execution of a judgement, order or a sentence given or passed by the court following a decision in a legal proceeding or a conviction for a criminal offence.

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



78. A person who is arrested upon reasonable suspicion of having committed an offence is brought to court within 24 hours as provided by section 33 of the Criminal Procedure Act, Cap. 20 of 2002.

### **Article 11**

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

80. During the consideration of the third periodic report, the Committee urged the State to abolish imprisonment for inability to pay debt and recommended that a study be carried out on alternative means of enforcing judgement debts, such as are currently in operation in other countries.

81. With regard to the above recommendation, the position of the law still remains the same as it was before.

82. Secondly, under order XXI rule 35 (1) of the Civil Procedure Code 49 of R.E. 2002 1966, a judicial authority may order the imprisonment in civil jail of a judgement debtor for refusal to comply with a lawful order, such as an order, to pay debt or perform a specific act.

- (1) Notwithstanding anything in these rules, where an application is for the execution of a decree, for the payment of money by the arrest and detention as a civil prisoner of a judgement debtor who is liable to be arrested in pursuance of the application. The court may instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the court on a specified day in the notice and show cause, why he should not be committed to prison.
- (2) Where appearance is not made in obedience to the notice, the court shall, if the decree holder so requires, issue a warrant for the arrest of the judgement debtor.

83. It obviously follows that a person cannot be jailed solely for genuine inability to fulfil a contractual obligation. A decree for the payment of money may be executed by the detention in prison of the judgement debtor, after the court has failed to either attach or sell his property or both.

84. Furthermore, in such cases, the judgement debtor must deposit in court enough money for the upkeep of the judgement debtor in civil prison. This is an extra burden and is eschewed by many. In practice, the Courts would not have persons committed to civil jail for inability to satisfy debt. So far there is no reported case where a judgement debtor has been imprisoned.

### **Article 12**

85. Article 17 (1) of the Constitution of the United Republic of Tanzania provides and guarantees for the right to freedom of movement throughout the Republic, which entails the right

to leave and enter the country and the right not to be forced to leave or be expelled from the Republic. The freedom may be restricted by law in the interest of security, public safety, public order, public morality, and public health or in enforcing a court order.

86. The Immigration Act Cap 54 R.E. 2002 further provides entry into the country of immigrants from all countries of the world on an equal basis.

87. Section 15 of the Immigration Act governs admission of aliens into Tanzania. Possession of valid travel documents issued by recognized Governments, valid entry permits or passes issued by the Government of the United Republic of Tanzania and valid visas are the major considerations. Once legally in Tanzania, non-citizens enjoy the same rights to move and reside anywhere in the country as citizens.

88. Under section 16 of the Tanzania Citizenship Act Cap. 357 R.E. 2002 of the Revised Laws, a naturalized citizen may be deprived of his or her citizenship if the Minister is satisfied that it is not conducive to the public good that that person should continue to be a citizen of the United Republic of Tanzania. However, before the Minister responsible for citizenship affairs makes such an order, the person will be served with a notice in writing stating the grounds on which it is proposed to be made. These grounds are provided under section 15 of the Act as follows:

- (a) If has shown himself by act or speech to be disloyal or disaffected towards the Republic;
- (b) Has during any war in which the United Republic of Tanzania was engaged, unlawfully traded or communicated with any enemy or be engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war;
- (c) Has within five years after being naturalized, been sentenced in any country to imprisonment for a term of not less than twelve months;
- (d) Has been ordinarily resident in foreign countries for a continuous period of five years and during that period has not registered annually in the prescribed manner with a United Republic Consulate or by notice to the Minister indicating his intention to retain his citizenship.

89. Under section 27 (1) of the Immigration Act Cap. 54 R.E. 2002, the Director may, by a written notice under his hand, revoke any permit issued under this Act. If he is satisfied that the holder:

- (a) Has contravened any of the provisions of this Act or has failed to comply with any requirement made under this Act;
- (b) Obtained any permit by means of any representation which was false in any material particular or by means of concealment of any material information;
- (c) Has failed to observe any conditions specified in the permit;
- (d) Has become or is likely to become a charge on the United Republic in consequence of his failure to support himself and any of his dependants who is in Tanzania.

90. The Passport Control Office is an administrative section within the Immigration Department that issues travel documents in Tanzania.

91. Tanzania is a signatory to the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. In recognition of this fact, the Government of Tanzania has hosted thousands of refugees in the country from many countries including Rwanda, Burundi, the Democratic Republic of the Congo and Somalia.

92. The hosting of refugees has posed serious challenges but with the cooperation and assistance of the United Nations High Commissioner for Refugees (UNHCHR), the Government has managed to cope with these challenges. A number of negative effects of hosting large numbers of refugees have been identified, key among which are environmental degradation, theft, murder and armed robbery.

93. Any person aggrieved by the decision of the Director refusing an appointment for residence permit appeals to the Minister whose decision shall be final and conclusive. The Refugees Act, Cap. 37 R.E. 2002 governs the way the Government handles the refugee situation, and the Act provides for the rights and duties of refugees. There is a Department of Refugee Services in the Ministry of Home Affairs, established as one of the Government's commitments to protect and promote refugee matters. Currently in Tanzania there are officially 725,020 refugees, and it is estimated that about 300,000 spontaneous refugees are living unregistered in Tanzania.

94. The Government of Tanzania together with UNHCR and in consultation with the Governments of Rwanda and Burundi embarked upon a voluntary repatriation of refugees since the reasons for fleeing their countries no longer existed, i.e. genocide. Between January 2002 and June 2003, 63,462 refugees were repatriated to their countries of origin.

### **Article 13**

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

96. Under section 10 (1) of the immigration law a person is known to be a prohibited immigrant if at the time he seeks to enter the country or if he is in the country, but at the time of his entry he or she was destitute, a person suffering from mental disorder, a person who refuses to submit himself for medical examination after being held as a suspect for breaching the provisions of the immigration law or if he is suffering from a contagious or infectious disease, if he has been convicted of murder in another country but he has not been pardoned. However the convicted person may not be declared a prohibited immigrant if the offences are of a political character not involving moral turpitude. Other prohibited immigrants are those involved in living from the proceeds of prostitution, a person faced with a deportation order, a person dealing with illicit trafficking of dangerous drugs or a person whose entry or presence in the country is

unlawful under any law of the country. The Government of Tanzania, as per the Refugees Act Cap. 37 R.E. 2002 does not tolerate aliens who involve themselves in subversive actions against their country of origins. This shall lead to their deportation from Tanzania.

97. Any immigrant who has been declared a prohibited immigrant shall be expelled from the country.

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

#### Article 14

99. All persons are guaranteed equality before the courts and tribunals by articles 13 (3) and (6), 15 (2) and 29 (2) of the Constitution of the United Republic of Tanzania and this information is as in the last periodic report. These provisions of the Constitution of the United Republic of Tanzania provide that for the purposes of ensuring equality before the law, the State shall make provisions to the effect that *when the rights and duties of any person are being determined by the court of law or any other body, such a person shall have the right to be fairly heard and shall have the right to appeal against the decision of the court or such other body*. This provision gives the rules of natural justice special status in the Tanzanian legal system. Courts of law have emphasized this position in the process of determining the rights of individuals. For example in the case of *Mahona vs. University of Dar-es-Salaam* (1981) TLR at page 55, the applicant was terminated from employment by the defendant on disciplinary grounds. He complained that he was not given an opportunity to be heard; agreeing with the applicant Kisanga J., as he then was, *confirmed that there was a breach of the rules of natural justice as the grounds of appeal by the defendant were not made known to the plaintiff by the Minister and the same Minister proceeded to determine the appeal without hearing the applicant. The judge underlined the importance of the rules of natural justice and indicated that on adherence to these rules renders the decision made null and void*. The Commission of Human Rights and Good Governance Act Cap. 391 R.E. 2002 provides for another alternative avenue for redress of human rights abuses. Section 14 (1) of this Act gives an exclusive independence to the Commission, which is not subjected to any direction or control of any person or authority. The Commission has been vested with powers to inquire into complaints submitted to it, to conduct hearings and give a decision on them.

100. There is a prohibition to try someone twice for the same offence (double jeopardy). This is provided for by section 280 of the Criminal Procedure Act Cap. 20 R.E. 2002. Legal representation for an accused person is a right that is universally recognized. The legal system of Tanzania recognizes this right and where it is curtailed courts of law have intervened. In the case of *Khasim Hamisi Mnywele vs. Republic (High Court of Tanzania at Dodoma, criminal appeal No. 39 of 1990* (unreported) it was held that the right to legal representation has been guaranteed and thus ought to be protected in Tanzania. The United Republic of Tanzania ensures that the administration of justice and the principles of natural justice are well protected.

101. The right to be tried within reasonable time by an impartial court or tribunal is guaranteed. Section 32 (1) of the Criminal Procedure Act 1985 provides that a person arrested should be brought to court within 24 hours or as soon as practicable. In addition to this, section 33 requires officers in charge of police stations to report to the nearest magistrate, within 24 hours or as soon as practicable, the cases of all persons arrested without warrant within their respective stations, whether or not such persons have been admitted to bail.

102. Furthermore s.186 of the Criminal Procedure Act Cap. 20 R.E. 2002 provides for publicity of cases unless reasons are given for the interest of justice, defence, public order or morality or to the welfare of juvenile persons or for the protection of the private lives of persons concerned in the proceedings.

103. The Penal Code as amended by the Sexual Offences Special Provisions Act of 1998 ensures the protection of women and children in respect of sexual abuse related cases. The procedure for handling such cases provides for a hearing to be conducted in camera so as to protect the dignity of women and children.

104. The enactment of this Act necessitated amendments to various other laws such as the Penal Code Cap. 16 R.E. 2002 of the laws of the land, the Law of Evidence Act Cap. 6 R.E. 2002 and the Children and Young Persons Act Cap. 13 R.E. 2002.

105. Free legal aid in Tanzania is availed to persons charged in the High Court with murder and treason. By virtue of Legal Aid in Criminal Proceedings Act Cap. 5 R.E. 2002, the Government has vested the power to represent people in criminal matters to the Tanganyika Law Society. Also, there are some NGOs like the Legal Aid Committee of Faculty of Law University of Dar-es-Salaam, the Tanzania Women Lawyers Association (TAWLA), the Legal and Human Rights Centre (LHRC), Women Lawyers Aid Committee (WLAC), Tanzania Media Women Association (TAMWA), and the Environment and Human Rights Care Organisation (ENVIROCARE) which supplement and provide free legal aid services.

106. With regard to the adoption of suitable measures to eliminate the backlog of pending cases as well as to ensure expeditious procedure to determine electoral disputes, it is important to note that the National Assembly amended the Judicial Service Act No. 2 of 2005. This Act provides for judges and magistrates to deliver decisions not more than 60 days after evidence from both parties has been heard.

107. According to the Act, failure to deliver the decision within the specified period amounts to a breach of code of judicial ethics and the judge or magistrate involved may be reprimanded.

108. The Act on the hand will strengthen the independence of the judiciary as it identifies the main functions of judges and bestows the Judicial Service Commission with more powers and say on employment and discipline of judges and magistrates. The Act further empowers the Chief Justice to order judges to give him information on the cases that they are hearing, to receive and conduct an inquiry on complaints on slow hearing of cases and take any appropriate action.

### **Article 15**

109. The Constitution of the United Republic of Tanzania expressly prohibits retroactive penal legislation. Article 13 (6) of the Constitution provides that it is prohibited for a person to be punished for an act which when it was committed was not an offence under the law and it is also prohibited to impose or substitute a heavier punishment for the one which existed when the offence was committed.

110. There is no retroactivity in the criminal law system of laws in Tanzania. A person cannot be charged with an offence for an act committed before any law is legislated against such act. There is compliance with the article.

### **Article 16**

111. Recognition and protection of an individual is guaranteed in Tanzania under articles 12 (1) and (2), 13 and 14 of the Constitution. These provisions stipulate that all beings are born free and equal; every person is entitled to recognition and respect of both his dignity and life and all persons are equal before the law.

112. With regard to the protection of the right to life, sections 150 and 151 of the Penal Code Cap. 16 R.E. 2002 protect the rights of the unborn by prohibiting procurement of an abortion either by the pregnant woman or by any person other than the pregnant woman. The same section provides for the punishment by imprisonment of 7 and 14 years respectively.

### **Article 17**

113. The Constitution of the United Republic of Tanzania, in its article 16 (1) guarantees the right to privacy and protection from arbitrary actions of the State. Information regarding the circumstances, manner and extent to which the right to privacy, security of the person and his property and residence may be curtailed, remain the same as it was provided in the third periodic report. Sufficient explanations were provided on this aspect.

114. The Sexual Offences Special Provisions Act Cap. 101 R.E. 2002 was enacted in 1998 in order to ensure protection and privacy of women and children in respect of sexual offences related cases. The procedure adopted during the hearing of sexual related cases ensures this right by holding the cases in camera to protect the dignity of women and children. The enactment of this act necessitated amendments to various laws such as the Penal Code Cap. 16 R.E. 2002, the Tanzania Evidence Act Cap. 6 R.E. 2002 and the Children and Young Persons Ordinance, Cap. 13 R.E. 2002.

### **Article 18**

115. In compliance with article 18 of the Covenant, article 19 (1) of the Constitution of the United Republic of Tanzania provides for the freedom of thought or conscience, belief or faith and choice in matters of religion including the freedom to change religion or faith. This article further provides under its subarticle 2 that propagating religion; praying and disseminating information on religion will be done freely by individuals and that the organization of religious activities shall be outside the domain of State authorities. The 14th constitutional amendments removed the clawback clauses which were in one way or another limiting this article.

116. The Government has always taken positive steps to promote and protect freedom of religion. Apart from providing a conducive and peaceful environment for all the peoples to profess and exercise their religion, the Government has also taken measures to enforce the law against people who have behaved in a way that purported to injure feelings of others. The Government has encouraged friendly relations between people of different religious denominations for instance multireligious forums are held made up of leaders from different religions just for keeping friendly relations amongst themselves.

117. The Government recognizes religious studies as part of the curricula in primary, secondary and tertiary education.

118. The Government recognizes various religious associations such as the National Islamic Council (BAKWATA), Christian Council of Tanzania (CCT) and the Tanzania Episcopal Community (TEC).

119. In further protecting this right in practice, the Court of Appeal of Tanzania, which is the supreme court of the land, quashed the decision of the District Court of Morogoro in the case of *Republic v. Hamis Rajabu Dibagula (CAT) 53/2001* in which Hamis Rajab Dibagula was sentenced to 18 months imprisonment for uttering that “Jesus Christ is not the son of God” at a public meeting held by an Islamic organization in Morogoro. The Court of Appeal held that the appellant was entitled to his beliefs as long as he did not wound or injure the feelings of others.

120. Therefore, it should be noted that the court in 2003 protected this right positively.

121. However, a challenge exists in Zanzibar where the Government through the Parliament enacted the Constitution and Powers Act of 2001 whereby the Mufti who is both a religious leader and government official has been granted powers. For example, it is a requirement that Muslims in Zanzibar get a permit from the Mufti before convening meetings.

### **Article 19**

122. Article 18 (1) of the Constitution of the United Republic of Tanzania provides that, without affecting or breaking the laws of the country, every person is entitled to freedom of opinion and expression. This freedom entails the right to freely hold and express opinions, and to seek, receive and impart information and ideas through any media as well as freedom from interference with correspondence or means of communication.

123. Subarticle 2 of article 18 provides that every citizen has the right to get information at all times on events happening in the country and the world that are important to the lives of people and on activities and events important to the society in general.

124. With regard to the protection of this right since 1998, on 14 November 2003 a new mass media policy was approved by the Government. The policy included some notable improvements for media. For instance, the restriction on electronic broadcasting to only five regions in Tanzania was removed. This enabled private radio and television stations to broadcast all over the country, provided that they comply with the guidelines set by the Tanzania Communication

Regulatory Authority. Another positive development is that the policy limits the running of media organizations to local investors and under the policy, no foreigner may own more than 49 per cent of the shares in a mass media organization.

125. The Government also has recognized its duty to protect its people from harmful airwaves and has placed limitations on coverage distances.

126. Freedom of the media has enabled some print and electronic media outlets to investigate and report high profile corruption issues, which, as a result, has enabled the Government to take administrative measures against the culprits; for instance two cabinet ministers were held responsible and were accordingly asked to resign.

127. With the introduction of political pluralism, the Government has ensured freedom of the press to individuals. There have been a number of privately owned newspapers, television and radio stations. More information regarding this remains as it was in the third periodic report.

128. Furthermore, media practitioners have established a council to safeguard their rights. The Media Council of Tanzania is a voluntary, independent and non-statutory body established by journalists, with a belief that the main role of media practitioners is to state the truth guided by the principle of public right to information. The Council's objectives are to maintain freedom of the media in the United Republic of Tanzania. It is also there to ensure the highest professional standards and strict observance of and compliance with the code of ethics by proprietors, editors, journalists, directors, producers, broadcasters, and all those involved in the media communication.

129. Another function of the Council is to monitor acts of infringement of the code of ethics by members of journalists associations or owners of the mass media. The Media Council maintains a register of developments likely to restrict the supply of information of public interest and importance and keeps a review of the same and cooperates with governmental bodies at all levels. It also produces and disseminates such reports to the public. The Government on the other hand has issued a directive establishing communication desks to all ministries, departments and agencies. Recently the media has helped a lot in sensitizing the public about various abuses like sexual abuse, exploitation of minors and abuses against women, for example, female genital mutilation and its effect on women's health.

### **Article 20**

130. Article 28 of the Constitution of the United Republic of Tanzania prohibits all forms of injustice, intimidation, sedition, oppression or favouritism.

131. Sections 43 and 63 of the Penal Code Cap. 16 R.E. 2002 expressly prohibits any propaganda for war, either directly or indirectly, and provides a penalty for the offence. It also penalizes activities that advocate hatred or incitement to violence or the disobedience of lawful authority.

132. The Penal Code in its section 55 (1) further criminalizes incitement to violence and advocacy of national or religious hatred which constitute incitement to discrimination, hostility or violence.



133. The rest of the information remains as provided in the third periodic report.

### **Articles 21 and 22**

134. These articles are interrelated and they will be dealt with together. The same is provided under article 20 of the Constitution of the United Republic of Tanzania. They both provide for the right of peaceful assembly and freedom of association subject to restrictions which are necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedom of others.

135. Freedom of assembly is a constitutional right in the Constitutions of both Tanzania Mainland and Zanzibar. Section 43 of the Police Force and Auxiliary Services Act Cap. 322 R.E. 2002 provides for the procedure to be followed in order for an assembly or a procession to take place in public places. Organizers are required to give a written notification to the police in a period of not less than 24 hours before the intended assembly or procession. The enjoyment of this right may be limited where the assembly or procession is likely to cause the breach of peace or to prejudice public safety or the maintenance of public order or to be used for any unlawful purpose.

136. The right of every person to associate includes joining an association or organization for the purpose of preserving or articulating his beliefs or interests. According to the most recent 14th constitutional amendments (2005), the requirement that these rights should be exercised “in accordance with the law” has been removed. However the restrictions are still applicable under subsection 2 of the said article, which stipulates the requirements for forming and registering political parties e.g. they should not be formed for furthering tribal interests or beliefs, for the breakup of the union etc.

137. The Constitution further prohibits an individual to join any association or organization, and provides that any association or any political party can be refused registration on grounds of its ideology or philosophy. It must be further noted that the Penal Code, Cap. 16 of R.E. 2002, criminalizes unlawful assembly. The Constitution further allows a person to freely associate with other persons and to form and belong to trade unions or other associations for the protection of his interests.

138. Registration and deregistration of trade unions is done under the provisions of the Trade Unions Act, Cap. 244 of R.E. 2002, which gives employees the right to join trade unions and form a branch at work. This right has been widened; initially the law allows for formation of more than one trade union branch at one work place. However the trade unionists argue that while this idea is widening democracy, at the same time it is weakening the union as it allows for high represented trade union at work place to bargain with an employer on behalf of others. Furthermore Tanzania has ratified International Labour Organization Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, although it is not yet domesticated. The Employment and Labour Relations Act No. 6 of 2004 provides for among other things freedom of association, and the industrial rights of collective bargaining and right to strike.

139. The right to organize is further reflected among others in the Political Parties Act, Cap. 258 R.E. 2002. Registration and deregistration of political parties is done under this Act. Parties are deregistered for inter alia failure to meet conditions to qualify for registration. In 2004, a party named Tanzania Democratic Party (TDP) that had provisional legislation was deregistered for failing to meet the criteria to become a permanent registered political party.

140. According to the office of the Registrar of Political Parties, there has been an increase in the exercise of the freedom of association marked by the increase of groups aspiring to be registered as political parties.

141. The groups that have submitted application for provisional registration as of 30 May 2007 are National Democratic Union of Tanzania (NDUTA), Tanzania People's Congress (TPC), Solidarity of the United Party (SUPA), Chama cha Ukombozi wa Demokrasia ya Watu Maskini (CHUDEWAMA), National Democratic Party for Rehabilitation (NDPR - MAREJESHO) and National Patriotic Front (NPF).

142. During the year the office of the Registrar of Political Parties opened its office in Zanzibar. Formally there were only two offices located in Tanzania Mainland. The President of the United Republic of Tanzania appointed Mr. Rajab Baraka Juma from Zanzibar as Deputy Registrar of Political Parties. This has been seen as an effort to implement the political accords "Muafaka" which were concluded between the Ruling Party Chama cha Mapinduzi and the Civic United Front of Zanzibar after the 2000 general elections.

143. With regard to the right of association, the Non-Governmental Organizations Act, No. 3 of 2002 provides for the formation and registration of NGOs that deal with human rights. Others are the Societies Act Cap. 337 of R.E. of 2002, the Trustees Incorporation Act, Cap. 318, R.E. 2002 and the Companies Act, Cap. 212 of R.E. 2002. These have widened the horizon of forming and registering organizations and societies.

### **Article 23**

144. A family in Tanzanian society falls under three categories: the extended, nuclear and single parent families. The extended family's role, while still of great impact in society, is waning due to the migration of persons to urban centres where nuclear and single parent families are more prevalent.

145. The Law of Marriage Act No. 5 of 1971 governs marriages in Tanzania; the law provides for Christian, Islamic, civil and customary marriages. The Law of Marriage Act provides for marital rights and duties/obligations and sets out consequences in the event one commits an offence under the Act. The ultimate remedies in the Act are divorce, separation or a fine. Certain specific grounds are provided upon which such applications can be brought before the competent courts of the land. The spouse bringing a divorce petition can only do so two years after the celebration of the marriage and after successfully passed through the ward reconciliation tribunals. The reconciliation tribunals in practice do all that is possible to encourage spouses to try and work out their differences before granting a certificate to the parties to proceed before the Court. The grounds upon which one may bring divorce proceedings are: adultery, sexual perversion on the part of the respondent, cruelty whether mental or physical inflicted by the respondent on the petitioner or on one of the children if any of the marriage, desertion.

146. Marriage is considered to be a voluntary union between a man and a woman intended to last for their joint lives. Homosexuality is considered an unnatural act punishable under the Penal Code, Cap. 16 R.E. 2002, section 154 of which provides that any person who (1) has carnal knowledge of any person against the order of nature or (2) has carnal knowledge of an animal or (c) permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony and is liable to imprisonment for 14 years.

147. A man and women who are cohabiting can invoke the presumption of marriage doctrine under section 160 (1) of the Law of Marriage Act, No. 5 1971; this was held in the High Court decision of *Zacharia Lugendo v. Shadrack Lumilangomba, High Court of Tanzania, 1987* page 31 (unreported).

148. Courts in Tanzania as a matter of judicial prudence held that a marriage would be presumed to subsist if the couple cohabit and present themselves to the world as husband and wife. This was the judgement of the court in *Zaina Ismail v. Said Mkondo High Court of Tanzania at Tanga (1985)*, page 239.

149. The Government has submitted a cabinet paper in regard to the proposed child legislation. This will enhance promotion and protection of children's rights in all areas including the age of the child, custody, maintenance and the age of marriage for girls, in order to be in line with the principle of the best interest of the child. This is because most of these issues are not addressed adequately in our laws.

150. Men and women are deemed equal in union of marriage by law and they share equal responsibilities towards their children. The ownership of property acquired by spouses before marriage is deemed individual property. All property acquired during the marriage period is considered matrimonial property and therefore each spouse has an equal share in the same, unless otherwise stated. Nevertheless each spouse is entitled to own property in his or her own name during the marriage.

#### **Article 24**

151. The Constitution of the United Republic of Tanzania protects all people including children; see articles 12 (1), 13 (1) and (5) etc. Children, by virtue of their status have always been protected by the society and the State, and the family also accords the same protection.

152. Information regarding the position of Tanzania in registering births of children and acquisition of nationality was provided in the last periodic report. Efforts are being made to ensure that civil registrations are being strengthened. The office dealing with birth registration has been transformed into an agency called Registration and Insolvency and Trusteeship Agency (RITA), and birth registration offices have been established countrywide thus greatly decentralizing the system and making it accessible to the rural population.

153. The Birth and Death Registration Act, Cap. 108 R.E. of 2002 has been amended to cater for smooth procedures for late birth registration.

154. The United Republic of Tanzania is a State party to the Convention on the Rights of the Child and its two Optional Protocols and has endeavoured to implement the rights protected by

the Convention. Specific efforts at implementing the Convention are described in various reports submitted to the Committee on the Rights of the Child pursuant to the provisions of the Convention on the Rights of the Child. The United Republic of Tanzania is also a party to the African Charter on the Rights and Welfare of the Child. These two conventions are yet to be domesticated into national laws. However it is important to note that the Government is in the process of preparing a single unified law on child matters, and it has already submitted a cabinet paper to the cabinet secretariat for further action.

155. During the consideration of the last periodic report, the Committee remained concerned about the employment of children in industrial and agricultural activities. It urged the State party to take further steps to counter this problem.

156. The State party, while acknowledging that child labour has been an obstacle to the well-being of children and promotion of their rights in general, it has shown good will towards eradication of child labour by passing the Employment and Labour Relations Act No. 6 of 2004. Under this new law, the term “child” in labour has been clearly defined and child labour is generally prohibited. The term “child” has been defined to mean a person under the age of 14 years except that for the employment in the hazardous sector, “child” means a person under the age of 18 years as provided under section 5. The Government is committed towards ensuring that this law is implemented in a manner that will effectively achieve eradication of child labour in Tanzania.

157. The Committee recommended the abolition of the law relating to imprisonment of both the mother and father in the event of an unmarried woman becoming pregnant and noted in this connection that illegal abortion is a major cause of maternal mortality, recommending that a national review be carried out on the restrictions on abortions.

158. The Revolutionary Government of Zanzibar has taken steps to amend the Spinsters Act, which has removed a provision on criminal liability for unmarried women below 25 years of age and girls who fall pregnant.

### **Article 25**

159. This article provides for the right and opportunity of every citizen to take part in the conduct of public affairs directly or through freely chosen representatives.

160. Additionally, the Constitution of the United Republic of Tanzania states that every citizen of the United Republic is entitled to take part in matters pertaining to the governance of the country either directly or through representatives freely elected by the people in conformity with the procedures laid down by or in accordance with the law (art. 21 of the Constitution). This article is to be exercised subject to various articles of the Constitution, for example articles 39 and 67 which concern the qualifications for election as President or member of Parliament. Previously, it was subject to article 5 of the Constitution that provides for the right to vote and its conditions. These aspects were much more detailed in the previous report. However, with the latest 14th constitutional amendments of 2005, the requirement of being able to vote as per article 5 has been removed in this article and instead, article 47 has been added under article 21; therefore the exercise of article 21 of the Constitution is currently subject to articles 39, 47 and 67.

161. Both the Constitutions of Tanzania and Zanzibar do not allow private or independent candidates to contest for presidential, parliamentary or local council elections. This position was stated in the previous report; see the case *Rev. Mtikila v. Attorney General* of 1994, in which the High Court declared that it should be lawful for independent candidates to contest along with other candidates in such elections. However, the National Assembly immediately passed the 11th constitutional amendment in 1994 barring private candidates from standing for elections.

162. In 2005, the same person instituted the constitutional case *Rev. Christopher Mtikila v. Attorney General HCT Misc. Civil Cause No. 10/2005* and challenged the amendment. The High Court upheld the same decision that was delivered in 1994. The matter is still pending in the Court of Appeal of Tanzania.

163. During the period of 2004, the Government of Tanzania provided a conducive positive environment for people to participate in public affairs either directly or indirectly. In the course of the year, the monitors and observers of by-elections observed that people participated adequately in public affairs and that there were no serious irregularities.

164. The election results in Zanzibar in 2000 were bitterly contested by the opposition party; the Civic United Front (CUF); the situation generated a severe conflict between the ruling CCM and CUF that attracted the attention of the international community. Discussions were held to calm the situation that led to the signing of the second Political Accord “*Muafaka II*” in October 2001 that outlined the reform of the Electoral Commission, the Constitution and electoral laws, and the formation of an independent commission. In 2002 the Accord was implemented. There have been some positive actions such as the coming into force of the 8th and 9th Zanzibar Constitutional amendments that changed the structure of the Electoral Commission so as to include two members from the opposition, the formation of a new Electoral Commission in compliance with the Accord, the formation of the Presidential Commission to oversee the implementation of the Accord and lastly the formation of the Independent Commission of Inquiry into the events of 27 January 2001.

165. The 2004 by-elections in Pemba, Zanzibar, were conducted in a free and fair manner and there were no major election irregularities as had been the case in the past multi-party elections in the country. The police force acted impartially. All the bodies acted according to the law and the few irregularities that occurred were inevitable in any elections.

166. Regarding the issue of political parties’ registration, the Registrar of Political Parties submitted a proposal to the Government to amend the Political Parties Act, Cap. 258 of R.E. 2002. The proposal is purported to deregister political parties that do not get 3 per cent of the popular vote or a parliamentary or local government seat. The intended amendment is being considered by the Government to see its practicability.

167. With regard to the right to take part in elections, the Elections Act No. 6 of 1992 provides for both parliamentary and presidential elections. Elections are held every five years in Tanzania; the last elections were scheduled to take place in October 2005. However due to the death of the presidential candidate for the Chama cha Demokrasia na Maendeleo, the general elections were

held in December 2005. The United Republic ascribes to the principle of universal and equal suffrage; elections are conducted by secret ballots, thereby guaranteeing the free expression of the will of the electors.

168. Another notable development regarding this right is that the National Assembly passed an Electoral Laws (Amendment) Act No. 13 of 2004 that amends the Elections Act, No. 1 of 1985 and the Local Government (Elections) Act No. 4 of 1979. The amendment brought about changes that may improve the right to vote and participation in public affairs. The law among others establishes the Permanent National Voters' Register, which is supposed to be kept, maintained and updated. The register is expected to improve the electoral process and reduce costs for registration of voters each time when elections are due. The Commission conducted civic education and awareness-raising campaigns on the importance of registering. The Zanzibar Elections Commission has registered voters in Zanzibar and the National Electoral Committee registered in Tanzania Mainland. The Government has also increased special parliamentary seats for women from 20 per cent to a threshold of a minimum of 30 per cent. There is a considerable increase in the number of women in Parliament. Out of 324 members of Parliament 94 are women (19 from Constituency and 75 from Special Seats). This is equivalent to 30 per cent. In comparison, the previous Parliament had 290. Women members of Parliament were 63 (16 from constituency and 47 from Special Seats). Currently, there is one woman Deputy-speaker of the National Assembly named Anna Makinda.

169. According to the data compiled by the Inter-Parliamentary Union in July 2006, Tanzania is among the three top countries to have attained the SADC target of 30 per cent women members of Parliament.<sup>1</sup>

170. As regards ministers, Tanzania has 29 full ministers in the Government, out of which 6 are women, equivalent to 20.69 per cent.

171. There are 31 deputy ministers in the fourth phase Government. Out of these, 10 are women (equivalent to 32.26 per cent), which is an increase of 3.26 per cent. Currently there are 27 permanent secretaries, out of which 9 are women. There are very few women ambassadors in Tanzania, only 4 out of 31.<sup>2</sup> The total number of judges from the court of appeal and high court is 66, out of which 16 women (24 per cent). In the cabinet secretariat, there are nine officers; out of which four women (44.4 per cent). Out of 29 commissioners 7, or 24 per cent, are women. Their number has increased by 2 or 3 per cent from what it was in July 2002.<sup>3</sup> Of the 42 assistant commissioners 6 (14 per cent) are women. Though still low, the number is a considerable increase compared to the status in July 2002 where there was only one woman assistant commissioner. There are 112 directors in the ministries, of which 32 (28 per cent) are women. In 2002, there were 29 women directors, (26 per cent). Of the 194 assistant directors in the

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<sup>1</sup> Other countries include Mozambique with 34.8 per cent, the Republic of South Africa 33.3 and Tanzania 30 per cent.

<sup>2</sup> Ambassador Kadegehe, Mulamula, Mrs. Mwanaidi Maajar, Begum.

<sup>3</sup> Commissioners as per July 2005. Female 24 per cent and male 76 per cent.

ministries 49, or 25 per cent, are women (35 women assistant directors out of 143 in 2002 - 26 per cent). As regards chief accountants of the 29 chief accountants in the ministries 16, or 55 per cent, are women.<sup>4</sup>

### Article 26

172. This article provides for equality before the law and non-discrimination to equal protection of the law. It states that the law should prohibit any discrimination and guarantee to all people equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

173. The rule of law demands that all subjects be treated equally before the law and also requires that all functions of the State which are likely to affect the basic rights of the people be equally subject to the law. Equality before the law is one of the cornerstones of the philosophy of human rights. Article 12 of the Constitution of the United Republic of Tanzania recognizes equality of all human beings. Article 13 (1) guarantees equality and protection of all people before the law without any discrimination and article 13 (4) prohibits any discrimination.

174. Thus all persons shall be equal before courts and tribunals, there shall be no special privileges granted in favour of any individual regardless of rank or status in any criminal or civil proceedings; reference is made to the case of *Valambhia v. Attorney General, HC 2003* (unreported). In this case, the High Court of Tanzania convicted and sentenced the Governor of the Bank of Tanzania to four months' imprisonment or to pay a fine for his failure to comply with a court order following the judgement in this case whereby the Bank of Tanzania was ordered to pay a businessman Mr. Valambhia 55 million Tanzanian shillings on behalf of the Government of Tanzania for the supply of vehicles to the Government.

175. The Government has ratified the Rome Statute of the International Criminal Court, under which the law applies equally to all persons without distinction as to whether one is a head of the State, a member of the executive or a government official. Initiatives for domesticating the law are under way. For the time being its application is subject to the principle of complementarity.

176. Regarding the issue of access to justice, the Government has retained the provision of legal assistance to poor accused persons in criminal matters of two offences of murder and treason according to the Legal Aid (Criminal Proceedings) Act, Cap. 21, R.E. 2002. The provision of legal aid services is done in conjunction with non-governmental organizations. Poor litigants are also entitled to a waiver of court fees when they file their cases or certificate of legal aid to file a case.

177. The Government through the Ministry of Justice and Constitutional Affairs is implementing the Legal Sector Reform Programme. This programme is intended to overhaul the administration of justice in order to make it efficient and accessible to all. The strategy is to

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<sup>4</sup> *Women in Decision Making Positions in the Public Service*, The President's Office - Diversity Unit, Public Service Management, July 2006, pp. 11-19.

rehabilitate court buildings, construct new court buildings where there are none, increase the number of judges, magistrates and State attorneys and enhance the legal aid scheme. Equality before the law in practice is addressed in other sections of this report.

### **Article 27**

178. This article provides for the protection of the ethnic religious or linguistic minorities in places where they exist. In Tanzania, no government study has been carried out to establish whether these groups exist. Therefore, the issue still needs further discussion and studies to be carried out. There are, however, mixed feelings within the societies as to whether or not these groups exist. Those who believe that these people exist, draw their evidence from minority groups such the *hadzabe* of the central part of the country - Singida, the Maasai of the eastern part of the country - Arusha.

### **Conclusion**

179. The United Republic of Tanzania is highly committed towards the protection and promotion of the basic rights of her citizens. This is reflected in the Constitution of the United Republic and a number of legislation as indicated herein as well as the ratifying of the African Charter on Human Rights. Other international instruments are worth noting as well. We acknowledge the concerns raised by the Committee and we took them as a challenge to address and achieve our goal of attaining democratic and social justice. We confirm our willingness and commitment to accept future and further dialogue and recommendations in our endeavour to have in place a harmonized and peaceful society. While we are in this direction, there are issues of priority within our national interest which override and delay the implementation of the objectives of the Covenant. The underlying constraints - to highlight the major ones - are the limited technical know-how and human resources. The issue of funding is however not disputed and will for long remain the major obstacle. As indicated in this report, both policy and legal initiatives are being taken to ensure the realization of these rights as entrenched in the Constitution of the United Republic of Tanzania.

180. The Government of the United Republic of Tanzania undertakes to commit itself to the adherence of timely submission of periodic reports.

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