

# Tanzania Human Rights Situation 2013/2014 by Dr.Helen Kijo-Bisimba

## 1.0 Introduction

Tanzania is one of the East African countries encompassing 947,300 square kilometers making it larger than the other four East African countries combined together that is Uganda, Rwanda, Burundi and Kenya.<sup>1</sup> Water bodies occupy 61,500 square kilometers while land is 885,800 square kilometers. Arable land used for agricultural activities is only 12.25% where permanent crops occupy 1.7% and other uses occupy 85.96 including national parks, game reserves, mining, residences, and virgin land.<sup>2</sup> The area occupied with water includes the maritime claims of territorial sea which is 22.2 kilometers and exclusive economic zone of 370.4 kilometers.<sup>3</sup> The country is worth of natural resources both to its land and water bodies.<sup>4</sup>It is a highly investment potential mainly in the agricultural sector as well as potentiality of the availability of gas and prospects of harnessing oil.<sup>5</sup>

Tanzania is bordered by eight countries namely; Kenya, Mozambique, Uganda, Burundi, Rwanda, Democratic Republic of Congo, Zambia and Malawi as well as the Indian Ocean. Six of the bordering countries are landlocked and they are served by four major ports in Tanzania<sup>6</sup> The geographical location of Tanzania makes it a strategic tourist destination in Africa and the world. The country is endowed with the natural tourist's attractions like Mountains, Lakes, Ocean, National Parks, Game Reserves and dense forests reserves. There are famous historical sites which include Stone town in Zanzibar, Bagamoyo Slave market, Kilwa Masoko and Kilwa Kisiwani, Amboni Caves and Isimila Old Stone Age site.

## 1.1 People

The people of Tanzania are multi-lingual as there are more than 120 different ethnic groupings united by the Kiswahili language as a medium of communication and official language in business, national official affairs and formal education in primary schools. Kiswahili language has spread to other jurisdiction across East Africa and beyond. Now

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<sup>1</sup> Uganda 236,040 square kilometres, Rwanda 26,338 square kilometres, Burundi 27,830 square kilometres and Kenya 582,650 square kilometres. Found in the Tanzania Human Rights Report 2013 by the Legal and Human Rights Centre pg 1

<sup>2</sup> [www.geographia.com/tanzania/](http://www.geographia.com/tanzania/) accessed on 29<sup>th</sup> October

<sup>3</sup> Territorial water or sea is defined as the waters under the jurisdiction of a state, especially the part of the sea within a stated distance of the shore. Exclusive economic zone is defined as a sea zone prescribed by the United Nations Convention on the Law of the Sea over which a state has special rights over the exploration and use of marine resources including energy production from water and wind. Read more Horace B. Robertson, JR "Navigation in the Exclusive Economic Zone" in Virginia Journal of International Law, Vol. 24:4 at page 865. It is available at [www.scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1418&context=context=faculty\\_scholarship](http://www.scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1418&context=context=faculty_scholarship) as visited on 29<sup>th</sup> October, 2013.

<sup>4</sup> The country is surrounded with African Great lakes of Victoria, Tanganyika and Nyasa apart from the Indian Ocean. There other small lakes which include Lakes Manyara, Rukwa, Eyasi, Natron, Jipe, Amboseli, Babati, Burigi, Chala, Mdotu and Sagara See, LHRC & ZLSC (2012) Tanzania Human Rights Report, 2012 at page 2.

<sup>5</sup>Emma, M "Oil and Gas Exploration – General Overview" A presentation to the Delegation from Tanzania Private Sector Foundation TPSF, 2013 at page 12

<sup>6</sup> The ports are: Dar es Salaam, Tanga, Mtwara and under construction Bagamoyo major port in Coast (Pwani) region

Kiswahili is being taught in various universities across the world as important language<sup>7</sup> and it is recognized as African Union official language.<sup>8</sup>

The census conducted in 2012 revealed that women accounts for 51.7% of the population of Tanzania and male accounts for 48.3%.The youth aged between 15 to 35 years forms majority group as to classification based to age.. The working class in Tanzania accounts for 52.2% of the population and it can be said to be the engine for the economic growth of the country. The population growth rate is 2.7 per annum whereby women of reproductive age account for 47.3% of the female aged between 15 to 49 years.<sup>9</sup>

The country's population is mostly rural with only 29.6% living in urban areas<sup>10</sup>.The primary activity of the people in Tanzania is agriculture which contributes 24% to the countries GP and accounts for 75% of the workforce. The thrust of the Tanzania development agenda since independence has been on economic growth and poverty reduction.<sup>11</sup> So far the country is striving to improve its economy and improve quality of life to its citizens by reduction of poverty. There are several economic strategies contributing to the realisation of the Tanzania Development Vision 2025. The National *Strategy for Growth and Reduction of Poverty (NSGRP)* which was implemented in two phases. The Planning Commission has made a *comprehensive Tanzania Long Term Perspective Plan 2011/2012 – 2025/2026 (LTPP)*. This plan is a road map for taking Tanzania to a Middle Income Country by the end of 2026. Six Key Performance Indicators (namely Agriculture, Education, Energy, Finance, Transport and Water<sup>12</sup>) were identified in 2013 for *Big Results Now* initiative for the improvement of quality of life and poverty reduction.

## 1.2 Governance System

The country's governing structure comprises the executive, the legislature and the judiciary. These three bodies are established by Article 4 of the *Constitution of the United Republic of Tanzania of 1977*.

The executive arm of the state is made up of the President, who is the head of state and the government, and the Cabinet. The Cabinet includes the Vice-President, the Prime Minister, the President of Zanzibar and all ministers.

There are central and local governments that operate pursuant to Article 145 of the *Constitution of the United Republic of Tanzania, 1977* and local government laws that apply to the regional and district levels of government.<sup>13</sup>

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<sup>7</sup> For example in China, United States of America , Rwanda etc.

<sup>8</sup> Languages defined by African Union as official languages of Africa are Arabic, English, French, Portuguese, Spanish and Swahili

<sup>9</sup> The United Republic of Tanzania, 2012 Population and Housing Census; Population Distribution by Administrative Areas, March, 2013 at page 3.

<sup>10</sup> The United Republic of Tanzania, Population Distribution by Age and Sex, September, 2013 at page VIII.

<sup>11</sup> The United Republic of Tanzania, President's Office, Planning Commission, The Tanzania Five Years Development Plan 2011/12 -2015/16 at page 1

<sup>12</sup> [www.mipango.go.tz/kpi.asp](http://www.mipango.go.tz/kpi.asp) as visited on 30th October, 2013.

<sup>13</sup> The local government laws include the *Local Government (District Authorities) Act*, Cap. 287, R.E. 2002 of the Laws of Tanzania; the *Local Government (Urban Authorities) Act*, Cap.288 R.E. 2002 of the Laws of Tanzania; the *Local Government (Elections) Act*, Cap.292 R.E. 2002; the *Regional Administration Act*, Cap.97, R.E. 2002 of the Laws of Tanzania.These laws have been amended by the *Local Government Laws (Miscellaneous Amendments) Act, 1999*, Act No. 6 of 1999 and the *Local Government Laws (Miscellaneous Amendments) Act, 2006*, Act No. 13 of 2006.

### 1.3 The Judiciary

The Judiciary is a constitutional organ and an arm of the state vested with powers to interpret the laws of the country.<sup>14</sup> Tanzania's legal system is based on English common law. Judicial functions are administered by various courts established in accordance with the law.<sup>15</sup> The judicial hierarchy in Tanzania Mainland (in descending order) consists of the following structures: the Court of Appeal is the highest court in the country, followed by the High Court of Tanzania, Resident Magistrates Courts, District Courts and Primary Courts. In the Court of Appeal and High Court, adjudicators are called judges. In all other courts, they are called magistrates.

Judges are appointed by the President, in consultation with the Judicial Service Commission of Tanzania.<sup>16</sup> Magistrates are appointed directly by the Commission.<sup>17</sup> The High Court of Tanzania has three major divisions, dealing with land, labour and commercial matters respectively. There is also a court martial process meant to deal with cases related to armed forces personnel.<sup>18</sup> Moreover, there is a special Constitutional Court, which is an *ad hoc* court for resolving disputes related to interpretation of the *Constitution of the United Republic of Tanzania, 1977*.<sup>19</sup> The sole function of the special Constitutional Court is to make decisions on disputes about the interpretation or application of the Constitution between the Government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar.<sup>20</sup>

### 2.0 Human Rights Situation

Looking at the structure of governance in the country it is evident that Tanzania is a democratic country and it has a Constitution as have been mentioned above. The Tanzanian Constitution is of 1977 and has been amended 14 times. The country is in the process of writing a new constitution since 2011. The current Constitution did not have a bill of rights prior to the 5th amendment in 1984. The bill of right as it stands does not guarantee all human rights. It is mainly based on the civil and political rights more than the economic and social rights. This irrespective the bill of rights has been used since 1988 to claim rights from the state which has been infringed although with very cumbersome procedures. The Basic Rights Enforcement Act was enacted to direct the use of the bill of rights but it has become one of the hitches in accessing rights. For example under this Act a constitutional case where

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<sup>14</sup> Article 107(A) 1 of the Constitution of United Republic of Tanzania, 1977 provides that “*The Authority with final decision in the dispensation of justice in the United Republic shall be the Judiciary.*”

<sup>15</sup> See: Articles 108, 114 and 117 of the *Constitution of the United Republic of Tanzania of 1977* also provisions of the *Magistrates Court Act*, Cap. 11, R.E. 2002.

<sup>16</sup> Articles 109 and 118 of the *Constitution of the United Republic of Tanzania of 1977*.

<sup>17</sup> Article 113(1) of the *Constitution of Tanzania*.

<sup>18</sup> Court Martial, including general court martial, disciplinary court martial and standing court martial, are governed by the provisions of the *National Defence Act*, Cap. 192, R.E. 2002.

<sup>19</sup> The Constitutional Court is established by Article 125 of the *Constitution of the United Republic of Tanzania, 1977*.

<sup>20</sup> Article 126 of the *Constitution of the United Republic of Tanzania of 1977*.

one is seeking rights has to be adjudicated by three Judges<sup>21</sup> while serious matters like murder cases are adjudicated by only one Judge.

## 2.1 Human Rights and the Laws of Tanzania

Although there is a bill of rights in the Constitution still there are laws which are infringing upon the rights. For example the penal code has death penalty as one punishment against a person convicted of murder while the bill of rights under its article 14 every person has the right to life. Of course this article has enabled the penal code to put up a section of this nature as it subjects the right to life to the laws of the land. Other laws which are not in line with human rights include Customary Law Declaration orders of 1961 which provides for customary inheritance matters and matrimonial and custody of children issues. These laws have very discriminatory sections against women and can be said to condone violence against women. The customary Declaration order recognises wife battery and it provide for punishment to a husband who has beaten his wife to pay either a goat or a lamb if he has broken her leg or eye etc. The Newspaper Act 1976 infringes upon the right to information as it allows the Information Minister at will to ban or to deregister a newspaper where he decide that the newspaper has acted contrary to the law. This Act has been used against Newspapers which provide news which are not acceptable to the authorities and this ban or closure is done arbitrarily as the newspaper personnel are not given the right to be heard. Example is the Mwanahalisi Newspaper banned indefinitely since 2012, the Mtanzania Daily Newspaper banned for three months (2013)and Mwananchi banned for seven days 2013.

Some of these laws might be corrected by the new Constitution the 2nd draft Constitution which has been tabled to the Constituent Assembly will become the New Constitution.

## 2.2 The Human rights Situation in 2013/2014

Generally Tanzania is seen as a very peaceful country and incidences of human rights abuse are not as notorious as in many other African countries .This has made Tanzania not to be in the limelight of the international media. There are however human rights monitors in the country who monitors what happens in the area of human rights in the country annually and issues human rights situation reports. On such report is the Report prepared jointly by the Legal and Human Rights Centre (LHRC) and the Zanzibar Legal services Centre (ZLSC). This report provides an account of Human rights situation in the country for that year. The latest report is that of 2013 as can be found in [www.humanrights.or.tz](http://www.humanrights.or.tz). From this report and by a bi annual 2014 report prepared also by the LHRC there are incidences of human rights abuse which have been noted in the country and which needs to be addressed.

### 2.2.1 The Right to life

As mentioned above the right to life is a basic right found in the Constitution of Tanzania under its article 14. This right unfortunately is abused in various ways and in 2013 as well as beginning of 2014 it continued to be bused. It is being abused in different forms such as extrajudicial killings, mob violence, killings related to

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<sup>21</sup> According to section 10(1) of the Basic Rights and Duties Enforcement Act 1994

witchcraft, attacks on people with albinism and road accidents. As earlier noted this right is also prone to abuse through death penalty, which has continued to be imposed by Tanzanian courts, subjecting people to endless psychological torture.

a) Extra Judicial Killings

Extra Judicial Killings are arbitrary killings conducted by the law enforcement forces such as the police force, the Tanzania Peoples Defense Force, *sungusungu* and *polisi jamii*, game wardens, etc.,. Such killings violate the Constitution of the United Republic of Tanzania, penal laws as well as international human rights laws. e increase as 23 people were killed in this manner in six months only.

b) Mob violence Mob violence also named as mob justice is another way the right to life is being abused. This is an arbitrary act committed by a group of people with common intent to harm. Victims of mob violence are usually people alleged to have committed a crime. In most cases the victims are alleged thieves or those accused to be involved in witch crafts. For the year 2013 mob justice was witnessed in many districts and it is on the increase. 1669 people were killed by acts of mob violence prior year which was an increase of about 35% of the killings which occurred in 2012 where 1,234 people were killed.

c) Killings related to Witch craft Belief

In the Tanzanian society and specifically in many rural areas people believe in witchcraft to the extent that when somebody dies they will always associate such death with witch craft killings. What follows after such beliefs is accusing other people and especially old people of killing by use of witchcraft. The incidence of killings due to such beliefs has seen an increase in 2013 and the main victims have been old women. **765** people were killed for witchcraft beliefs in 2013 out of which **505** were women and **260** were men. The *Witchcraft Act, 1928* has not been helpful in dealing with this abuse .This law is one of the 40 laws which the late Justice Nyalali Commission had cited for repeal. The human rights report has mentioned some of the traditional practices which entertain witchcraft beliefs and hence leads to witchcraft killings. An example is that of *Dagashida* which is a council in Sukuma land empowered by the society in the area to identify and sentence witches. Incidences of killings due to witchcraft beliefs are notorious in the Lake zone as found in the police statistics cited in the Human right report of the LHRC. The region lake zone includes Geita, Shinyanga, Mwanza and Simiyu ranking very high in witchcraft killings. Other regions with such practices are found in the southern highlands and part of the western zone namely Njombe, Mbeya, Rukwa, Katavi, Kigoma and Kagera

d) Attacks of People with Albinism

This is yet another abuse which is witnessed in Tanzania and which was witnessed mainly in 2009 and 2010. In 2013 there was a decrease in such attacks after a very big campaign against such brutal acts. However 4 incidents were reported in 2013 and in

2014 up to June there were three incidences reported. There was one death and chopping off of body parts in 2013. This is a big challenge which calls for a very intensive protection mechanism. The United Nations and the African Commission on People and Human Rights made Resolutions in 2013 to address the attacks and discrimination of People with Albinism.

e) Right to life curtailed by Road traffic accidents

Road accidents have become yet another big way in which the right to life is being curtailed in Tanzania. Road accidents have become a huge monster taking away people's life. It has been claimed that roads of low quality, road users who are not knowledgeable and poor legal mechanism are the reasons for the road accidents and these are on the increase each year. In 2013 24,480 incidents of road accidents were reported costing the lives of **4,091** people. The newly introduced means of transport by motorcycles commonly known as *bodaboda* has hiked the number of accidents in the country and has led to deaths of 1,106 people while 6,581 people were left injured.

### 2.2.2 Freedom from Torture

Every human being is supposed to enjoy his life and be free from any kind of torture. The Constitution of Tanzania provides for this freedom although the Country has not ratified the International Convention against Torture of 1984. Under this Convention the term torture is defined as: *any act of inflicting severe pain or suffering intentionally for the purpose of obtaining information or confession.*

Torture in this nature was reported to have been performed by State agents in different occasions such as in the *Operation Tokomeza Ujangili* which was mainly to fight against poaching of national trophies mainly elephants. During this operation suspects of poaching activities were tortured and some were reported dead. Allot of suspects were subjected to humiliation and their property being destroyed or confiscated.

### 2.2.3 Right to information

This is yet another basic right which has continued to be a challenge and has been suppressed. In the absence of a law to address the enjoyment of this right it has become difficult irrespective of the fact that this is a constitutionally guaranteed right. In 2013 the media has been suppressed using an old draconic law. This is the case of the *Mtanzania* and *Mwananchi* newspapers which were banned for some time as discussed above. *Imaan FM*, *Kwa Neema FM* radio stations were as well suspended; and *Clouds FM* radio was fined. Journalists have continued facing threats in performing their activities for example the Torture of Absalom Kibanda a news editor and, harassment of Kassim Mikongolo a journalists terrorised when reporting in Mtwara region on the issues of gas and people's reaction.

#### 2.2.4 Political Rights

The political rights include also the freedom of association as well as freedom of assembly, right to take part in governance. All these rights are enshrined in the Tanzanian 1977 Constitution but there were problems in the enjoyment of these rights in 2013. Main issue was on the right to gather and demonstrate and protest. These rights faced hitches in certain areas due to misinterpretation of notification to the police prior to demonstrate. In most cases where the police are not politically directed to tolerate such demonstration they will use the notification as a request for permission and they will disallow the demonstration. This was observed in 2013 in Lindi and Mbeya where people were demonstrating against the newly introduced EFD machines and in Mtwara over the use of gas. Where the police refuse permission always riots ensue and the consequences is arbitrary use of force by the police and violence which affects even people who were not part of the demonstration.

In 2013 bomb blasts incidences which occurred in Arusha during a by -election interfered with the right to assembly as well as the right to take part in governance. Four people were killed in the incident and many others were injured.

#### 2.2.5 Freedom of Worship:

The freedom of worship is guaranteed under the United republic Constitution. For many years Tanzanian have lived in harmony with religious tolerance of a very high order. In recent years there have been indication of religious intolerance in some places and there also have been big rallies where religious groups abuse other religion. The year 2013 witnessed religious conflicts following the differences over who has the right to slaughter. In Geita a person was killed and several others were injured and in Tunduma in the southern highlands bordering Zambia, there were reports of attacks to a mosque and some fights over the same reason of who has the right to slaughter.

### 2.3 Human rights situation of vulnerable groups

#### 2.3.1 Rights of Women and Girl Child

The trend of Women being victims of discrimination and marginalization continued in the country in 2013/14. Women and girls are reported to be subjected to battery by spouses and in most cases such matters are rarely reported. In this reporting time 964 incidences were reported of battered women. There also were incidences of women being killed serially as they go to work in the field in Mara region. About ten women were reported to have been killed in the same fashion in three months time. Another violence of women's right which is not protected by the Tanzanian laws is marital rape. Women who are married are in some cases raped in the marriage and they cannot report as this is not a recognised offence in the laws of the land.

Female Genital Mutilation (FGM) is still practiced among Tanzanian women in almost all regions. Reports indicate that there is change in how the practice is

conducted to make it more difficult to detect. FGM is now performed to infants instead of girls. In other places it is performed to women who are having birth at the time of delivery. The law does not protect women against FGM it only caters for children below the age of eighteen.

### Children's Rights

There is a new law protecting children's rights the 2009 Law of the Child Act. Irrespective of having this law children still suffer from abuse perpetrated by adults being parents, relatives, teachers as well as religious teachers and even strangers. Reports show children being abused physically as well as sexually. Corporal punishment is still being used in schools.

Statistics for the year 2013 reveals the extent of child abuse. 863 children were sodomised, and ten were defiled. 250 children were abandoned or dumped while 142 children were abducted. The data shows the need for child protection in the country as these are just a few reported incidences as many children matters go unreported as they do not have means to report.

### Other Vulnerable groups

The country has enacted a law to protect People with disabilities but the situation of this group of people needs to be looked after. The right to education and employment is still a challenge. The right to access is yet to be fulfilled as many places are not accessible to people with disabilities.

The elderly person as mentioned earlier suffers from abuse and killings with no proper mechanism to protect them.

### Corruption:

Corruption is being fought in the country but it has remained to be a thorn in the society. Corruption is known as evil but it is still practiced in form of petty and grand. A society which is corrupt cannot ensure enjoyment of rights as corruption can be used to curtail rights of others.

### Conclusion

The Human rights trend in Tanzania is not heading the right way. Although the legal framework is being improved by the ratification of most of the human rights instruments and the constitution has a bill of rights the practice does not move with the pace of the laws. The structure in place such as the courts, tribunals and even the Corruption bureau has not been able to make big strides in protecting the people from human rights abuse. It is also unfortunate that the right to life is being perpetrated by state agents and the public through mob violence and with impunity. The several operations taken in 2013 against poaching and illegal immigrants abused the rights of the people to the extent of making such operations look like anti human rights.

The end of 2014 is said to be an FGM season in the Mara region especially in Kurya areas of Tarime and Serengeti. About 5,000 girls are facing the threat of being mutilated. This is known but the issue is whether the system is active and sharp enough to protect the girls from such practice. The human rights environment in the country can be better if the protection system begin to work towards addressing the human rights abuse in the country.