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**United Republic of Tanzania\***

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## **I. Introduction**

1. The present common core document has been prepared in accordance with the provisions of paragraph 1 of the guidelines on treaty-specific documents to be submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights. The document covers information on the geographical area of the United Republic of Tanzania. It contains general information on country profile, the general framework for the protection and promotion of human rights, as well as information on non discrimination, equality and effective remedies in accordance with the guidelines. The document has also been prepared in response to the question no 1 which was raised by the Committee on whether the State Party is in the process of producing its common core document.

## **II. Background of the country**

### **A. Geographical position**

2. Tanzania is a United Republic comprised of Tanzania Mainland and Tanzania Zanzibar. The former has an area of 945,200 square kilometers while the latter covers an area of 2,332 square kilometers.<sup>1</sup> Tanzania is geographically located in East Africa between longitude 29° and 41° East and Latitude 10° and 12° south.

### **B. Population**

3. According to the Economic Survey of 2009, the population of Tanzania was estimated at 41,915,799 in 2009, of which 50.8 percent were females, while 49.2 percent were males. Tanzania mainland had an estimated population of 40,683,294, while Tanzania Zanzibar had an estimated population of 1,232,505. Population distribution of 2009 showed that 74.3 percent of the total population live in rural areas, while 10,772,360 people live in urban areas. These estimates are based on the population growth rate of 2.9 percent per annum established during the last population and housing census in 2002. The trajectories estimate the population to reach 45.8 million in 2012. The country is about to embark on a national population and housing census this year. It will be the fifth population census held since independence as others were held in 1967, 1978, 1988 and 2002. The data collected shall assist in evaluating efforts to reach the objectives of the National Strategies for Growth and Reduction of Poverty as well as the 2015 Millennium Development Goals (MDG's).

### **C. Political system**

4. The political and governance structure of the United Republic of Tanzania is composed of the Union Government and the Revolutionary Government of National Unity of Zanzibar, which has autonomy over non union matters in Zanzibar. According to Article 4 of the Constitution of the United Republic of Tanzania,<sup>2</sup> the political structure of Tanzania is divided into the Executive, the legislature and the Judiciary. Zanzibar has also a

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<sup>1</sup> Administratively Tanzania mainland has 27 Regions while Zanzibar has 5 regions.

<sup>2</sup> Tanzania attained its independence from the British rule in 1961.

separate and autonomous Executive, House of Representatives and Judiciary which operate harmoniously in the Union structure, established under the 1977 Union Constitution of Tanzania and the 1984 Zanzibar Constitution respectively.

5. Since the re-introduction of multi-party democracy in 1992, Tanzania has had 4 competitive multiparty general elections, the last of which were held in October 2010. The Government of the United Republic of Tanzania is constituted by the President who is the head of state and Government. The Cabinet of Ministers constitutes the government (Executive arm), which includes the Vice President and Prime Minister. Zanzibar has an Independent Cabinet that looks into non union matters affecting the Isle. It is also worth to note for the case of Zanzibar that the First Vice President is from the Opposition and Cabinet Ministers includes members from the opposition Party. Tanzania has also a system of Local Government and Administration.<sup>3</sup>

6. There are members of parliament and the House of Representatives who are elected by direct popular vote to serve for a five year term. The President also nominates 10 individuals as non elected members to be part of the Parliament and House of Representatives. Currently there are 350 Members of Parliament and 81 members of the House of Representatives. Parliamentary elections are conducted simultaneously with presidential elections

#### **D. Economy**

7. Tanzania's economy is based primarily on agriculture. The real gross domestic product (GDP) grew by 6.0 percent in 2009 compared to 7.4 percent in 2008. The slowdown in growth for 2009 was attributed to the impact of the global financial crisis (GFC) as well as the 2008/09 drought which affected agricultural production, hydro power generation as well as industrial production; all of which have a significant share in total GDP. The real GDP rate for 2011 was at 6.4% and inflation rates at 7.3%, 9.7%, 14.6% and 19.0% during the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2011. The inflation rate for the 1<sup>st</sup> quarter of 2012 is 19.4%.

### **III. Normative (legal) and institutional framework for the promotion and protection of human rights in the United Republic of Tanzania**

#### **A. Normative (legal) framework**

8. The Constitution of the United Republic of Tanzania, 1977 was adopted in 1977 and it is the primary source of law for the United Republic of Tanzania. It is applicable to both parts of the union in as far as union matters are concerned. The constitution recognizes that the protection and promotion of human rights is a condition sine qua non for the development of the Tanzanian society. Since 1977 to date significant amendments have been incorporated into the 1977 Constitution, reflecting the socio-political transformation of Tanzanian society, among which were the inclusion of the Bill of Rights in 1984 and the introduction of multi-party system in 1992. Thus it contains a Bill of Rights which incorporates the fundamental freedoms and human rights. These are provided for in Chapter

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<sup>3</sup> Currently there are 30 Regions and more than 105 Districts.

one part three of the Constitution and they range from Article 12 – 24, article 25 to 28 imposes duties and obligations on every individual to respect the rights of others and society. Article 29 establishes the obligation of society to every individual. Article 30 provides for the provisions for enforcing the fundamental rights in courts.

9. Furthermore, Chapter 1 Part ix of the Constitution contains directive principles of State policy that are intended to guide the Executive, Legislature and Judiciary in developing and implementing national policies; in making and enacting laws; and in the application of the Constitution and any other law as far as progressive realization of economic, social and cultural rights are concerned.

10. The 14<sup>th</sup> Constitutional amendments ensured that all the claw back clauses which were impairing the enjoyment of human rights in Tanzania were removed.

11. The Constitution is a product of the era in which it was written, thus of recent, there have been differing views from the public on the political and legal legitimacy of the same hence calling for adoption of the new Constitution. The Government has tabled a Bill in Parliament proposing the establishment of the Constitutional Review Commission that will coordinate among other things the collection of public opinion/views regarding the process.

12. Similarly, chapter three of the Constitution of Zanzibar provides for the Bill of Rights while Article 25 A of the same, provides for a procedure for enforcement of the basic rights and duties.

13. While the 1977 Constitution provides for the broad legal framework for the protection of fundamental human rights and freedoms, there are other laws specifically aimed at protecting international human rights law. Relevant legislation in this regard is as follows:

(a) The Basic Rights and Duties Enforcement Act Cap 4, which provides for the procedure for enforcing the basic rights and duties contained in the constitution;

(b) The Commission for Human Rights and Good Governance Act, which provides for the procedure for filing complaints on human rights violations before the Commission for human rights and Good Governance. It also provides for the functions, powers, privileges and other matters of the Commission;

(c) The Law of the child Act No. 21 of 2009 provides for the protection of the Rights of the child in Tanzania;

(d) The Anti-Trafficking in Persons Act No. 6 of 2008 provides for protection of personal liberty for victims of trafficking;

(e) The Non-Governmental Organizations Act No. 24 and the Society Act No. 6 of Zanzibar provide for among other things freedom of association and regulatory framework for the registration and operation of NGOs in both Tanzania Mainland and Zanzibar;

(f) The Employment and Labour Relations Act No. 6 Cap 366 RE 2002 domesticates the International Labour Organization Conventions thereby providing a conducive environment for workers to enjoy their social rights related to work. Others are Zanzibar Employment Act No. 11 of 2005 and the Occupational Safety and Health Act No. 8 of 2005 and The Labour Institutions Act No. 6 of 2004 for Mainland;

(g) The Criminal Procedure Code Cap 20 RE 2002 provides for procedures for access to criminal justice;

(h) The Refugees Act Cap 37 RE 2002 which provides for the rights and duties of refugees as well as other related matters;

(i) Laws for the protection of persons with disabilities. The Zanzibar Disability Act No. 9 of 2006, and the Protection of Persons with Disabilities Act of 2010 for Tanzania Mainland.

14. The national normative framework in which human rights are protected consists also of other ratified international human rights instruments by Tanzania.<sup>4</sup>

15. It is worth noting that Tanzania is a dualistic state and that international human rights instruments are not self-executing and require legislative implementation to be effective in Tanzania. Thus, an individual cannot complain in a domestic court about a breach of Tanzania's international human rights obligation unless the right has been incorporated into domestic law. This position was also affirmed in the case of *Transport Equipment and A versus D.P Valambhia*, Civil Application No. 19 of 1993 CAT Dsm, the Court of Appeal of Tanzania held that: Although Tanzania has ratified the International Covenant on Civil and Political Rights, admittedly, our legal position is that these instruments are not self executing. There has to be an act of parliament to make them operative.

16. Nevertheless, courts in Tanzania have in appropriate cases given judicial notice to international instruments which Tanzania has ratified or acceded to even though these have not been reduced into domestic legislation. In the case cited above, the Court of Appeal of Tanzania relied on the provisions of the International Covenant on Civil and Political Rights to interpret the obligations of Tanzania under Article 15 of the Constitution which provides for the right to personal freedom. The court held that: "The fact that an International Convention to which Tanzania is a party is not incorporated into Tanzanian law does not absolve the government of its duty to adhere to its undertakings in the agreement."

## **B. Institutional framework for the protection of human rights**

### **1. The Executive**

17. The Government through its various ministries, departments and agencies, is responsible for implementing the national policies, strategies and programmes for the protection and promotion of human rights. For instance through the Attorney General's Office,<sup>5</sup> it is entrusted with the mandate of providing legal advice on human rights issues, preparation of state party reports on human rights, drafting of bills on human rights issues and human rights litigation.

### **2. Legislature**

18. Parliament has some responsibility for ensuring the promotion and protection of fundamental human rights and duties in Tanzania. Legislative authority is exercised by parliament, which plays a cardinal role in guaranteeing human rights in the country. It seeks to establish a legal framework conducive to human rights protection by enacting laws and supervising government action. The Parliament also ratifies treaties signed by the

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<sup>4</sup> The other core human rights treaties include the International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child and its two Optional Protocols and the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

<sup>5</sup> See for instance the functions of the Office of the Attorney General's Chambers as they are provided for under the Attorney General's Office (Discharge of Duties) Act

government.<sup>6</sup> It also exercises some oversight over the executive by holding ministers accountable through urgent questions during its parliamentary sessions or through Committees of Parliament or through the Budget session. Similarly in Zanzibar, there is a House of Representatives that deliberate on non union issues.

### 3. Courts/Judiciary

19. The Constitution of the United Republic of Tanzania, 1977 provides for an independent judiciary<sup>7</sup> with an authority and responsibility to administer justice in the country.<sup>8</sup> Its primary function is to dispense justice without fear or favor, ill will or affection. Under Article 30 (4), the High Court is empowered to deal with cases on the enforcement of the fundamental rights and duties. Thus in protecting and promoting the rights, the judiciary has adjudicated on a number of cases, see for instance the case of *Legal and Human Rights Centre, Lawyers' Environmental action team and National Organization for Legal Assistance vs. the Attorney General*, Miscellaneous Civil Cause No. 77 of 2005 (unreported), High Court of Tanzania Main Registry, where the Court held that so long as a law is framed in a way which results in a differential treatment between the citizens, there cannot be equality before the law in respect of that law.<sup>9</sup>

20. For the case of Zanzibar, the Constitution of Zanzibar provides for the same provisions except that Zanzibar retains Kadhi courts. These adjudicate on family cases such as divorces, child custody and inheritance under Islamic laws. All other appeals from the High Court of Zanzibar go to the Court of Appeal of Tanzania.

### 4. The Commission for Human Rights and Good Governance

21. The Commission for Human Rights and Good Governance (CHRAGG)<sup>10</sup> is an independent government department, established as the national focal point institution for the promotion and protection of human rights and duties as well as good governance in Tanzania. The Commission was established under Article 129(1) of the Constitution of the United Republic of Tanzania of 1977 as amended by Act No. 3 of 2000. The Commission has powers to investigate on human rights violations. Since its establishment, it has dealt with 27,434 complaints out of which 25,975 are on maladministration issues. It has also dealt with a number of enquiries and provided education to the government and the public on diverse human rights issues.<sup>11</sup> The Commission has been instrumental in improving the prisons conditions in Tanzania Mainland, for instance access to inform for inmates has

<sup>6</sup> See Article 63 of the Constitution.

<sup>7</sup> The Judiciary in Tanzania can be illustrated as follows. The Judiciary in Tanzania has four tiers: The Court of Appeal of the United Republic of Tanzania, the High Courts for Mainland Tanzania and Tanzania Zanzibar, Magistrates Courts, which are at two levels, i.e. the Resident Magistrate Courts and the District Court, both of which have concurrent jurisdiction. Primary Courts are the lowest in the judicial hierarchy.

<sup>8</sup> Article 107A (1) and 107B.

<sup>9</sup> The Petitioners challenged the constitutionality of section 119(2) and (3) of the National Elections Act, Cap 343, of 1985, which allowed candidates in national elections to offer something to voters as tokens of hospitality, a condition which the petitioners saw as being discriminative against low-income candidates thus violative of the Constitution.

<sup>10</sup> It became operational on the 1st July 2001 after the coming into force of the Commission the Human Rights and Good Governance Act No. 7 of 2001 as amended by Act No. 16 of 2001 and Government Notice No. 311 of 8th June 2001. It also serves as an Ombudsman.

<sup>11</sup> Section 6(1) of the Commission for Human Rights and Good Governance (CHRAGG) Act provides for the functions of the Commission.

improved, it has emphasized on the availability of adequate food and has had an impact on the conduct of regular visits.

22. Section 3 of the Act extends the jurisdiction of the Commission to Zanzibar. This was done through the Legal Notice No. 31 of 2007 declared by the Minister responsible for human rights in Zanzibar.

#### **5. Law Reform Commission of Tanzania**

23. The Law Reform Commission of Tanzania was established under the Law Reform Commission Act of 1980. It is charged with several statutory responsibilities. The Commission keeps all the laws of the United Republic of Tanzania under review with a view to their systematic development and reform. The commission can review any law or branch of law and recommend ways and measures necessary in which that law or branch of the law can be improved, or made simpler and be brought up date in line with human rights and the current circumstances of Tanzania. In addition, The Law Reform Commission revises and simplifies complex laws for public consumption. It has researched, reviewed and prepared a number of reports on human rights related aspects. These include: the Report on the Law relating to children in Tanzania, Report on criminal law as a vehicle for the protection of the right to personal integrity, dignity and liberty of women, Report relating to persons with disability of 2009, Report on laws relating to corporal punishment, long sentences and the death penalty, Report on Law relating to Sexual Offences Special Provisions Act of 2009, Report on Laws relating to succession and inheritances of 1995 and the report on the Law of Marriage Act 1995.

#### **6. The National Electoral Commission**

24. The Independent National Electoral Commission was established by Article 74 (1) of the Constitution of the United Republic of Tanzania, 1977. Its tasks and responsibilities are to organize and supervise elections, compile, manage and maintain the electoral register. It also promotes civic education for citizens in electoral matters. As far as the promotion of human rights is concerned, the Electoral Commission provides for the conducive environment for citizens to exercise their right to participate in public affairs including the right to vote. The Commission has conducted four general elections, the most recent one conducted in October 2010. In Zanzibar, the Zanzibar Electoral Commission (ZEC) was established pursuant to article 119(1) of the Constitution of Zanzibar. It discharges the same functions as those done by the NEC.

#### **7. Prevention and Combating of Corruption Bureau.**

25. In recognition of the fact that corruption, whether given or received is a human rights issue (in the sense that it can curtail the enjoyment of the rights of others) the Government established the Corruption Bureau in order to monitor the respect and protection of human rights. The Bureau operationalises the Anti Corruption Law which is pro-human rights.

#### **8. Non-State actors**

26. These include the civil society, the media, trade unions and political parties. They complement the work of the Government by promoting human rights through various activities. For instance, the civil society conducts and disseminates public awareness programmes to the government and the public on human rights issues, they monitor and publicise human rights violations, and they conduct strategic litigation and provide legal aid in various cases. The media is the vehicle for the promotion of freedom of opinion and expression through its various programmes. It is also a means of imparting knowledge and information to the public. Trade unions, for their part, focus on defending the social rights



of workers. The political parties, of which there are 18, engage in political activities, inform and educate the people and promote the exercise of the right to associate, to vote and participate in public affairs.

#### **IV. Information on non-discrimination and equality.**

27. The Constitution of the United Republic of Tanzania<sup>12</sup> guarantees equality of all people to the enjoyment of human rights and expressly prohibits discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, gender<sup>13</sup> or other status. The principle of non-discrimination is reflected in various legislation as shown hereunder, the Labour Relations Act No. 6 of 2004 and Employment Act of 2005 of Zanzibar which prohibit discrimination at workplace. The Prevention of HIV and AIDS Act of 2008 prohibits discrimination and stigmatization against people living with HIV and AIDS. The Land Act Cap 113, the Village Land Act cap 114 and the Land Tenure Act No. 12 of 1992 of Zanzibar provide for equality between men and women in land ownership. There are also a number of equality and anti-discrimination policies such as the Education policy, the National HIV and AIDS Policy and the women and gender development policy, etc. A number of affirmative action programmes have been introduced in order to bring equality of people in various areas. For instance the 14th Constitutional amendments increased the number of women seats in Parliament.<sup>14</sup> The judiciary has seen an increase of women judges in recent years. This is also applicable to government positions. Other notable achievements include the increase of two women judges in Zanzibar out of seven and also the appointment of the female speaker in the National Assembly. The Ministry of Community Development Gender and Children is carrying out a Gender Parity strategy which is aimed at increasing the number of women in public leadership positions. Similarly the Constitution of Zanzibar provides for equality and prohibits discrimination.

28. The enjoyment of the right to equality and non-discrimination is being impaired by some customary practices such as female genital mutilation (FGM). This is practiced in 9 of the regions of Tanzania. Sources indicate that, generally the practice has decreased with mutilators laying down their tools and resorting to other income generating activities. The Government is currently implementing a National Plan of Action on Violence against women, in which FGM is included. Training programmes to mutilators, law enforcement officers and other relevant stakeholders are provided by the Government in collaboration with the NGOs. Reports also indicate that in 2010 one mutilator was sentenced to 10 years imprisonment for performing FGM and ruining the lives of 86 girls in December 2010 alone.

29. Violence against women is yet another challenge on the enjoyment of the right to non-discrimination and equality. A number of measures have been taken by the government in order to curb this problem. These include the “Say No to Violence” campaign launched by the President of Tanzania in 2008 which was aimed at raising awareness to the society on the problem and finding ways of preventing it. The aforementioned plan of action on violence against women provides for a number of activities aimed at eliminating violence against women. To go with the implementation of the Plan, the Ministry of Gender has

<sup>12</sup> See Article 12 and 13. See also the Constitution of Zanzibar.

<sup>13</sup> In 2000, the parliament amended the constitution to include gender as a ground for non-discrimination.

<sup>14</sup> Article 66(1) (b) of the Constitution guarantees the composition of women above 30 percent of the total number of the Union Parliamentary seats. In Zanzibar, Article 67 (1) provides for the requirement of 40% of women representation in the House of Representatives.

formed a National Multi-Sectoral Committee on Violence against Women; in Zanzibar there is established National Gender Based Violence Committee. Moreover, the non-governmental organizations have been active in conducting awareness programmes for the public on the issue of violence against women.

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