

PERIODIC REPORT SUBMITTED BY THE GOVERNMENT OF THE
UNITED REPUBLIC OF TANZANIA UNDER THE OAU CHARTER ON
HUMAN AND PEOPLES RIGHTS

I N T R O D U C T I O N

This is the first report submitted by the Government of the United Republic of Tanzania to the African Commission on Human and Peoples Rights, in conformity with Article 62 of the African Charter on Human and Peoples Rights.

The report has been prepared in keeping with guidelines issued by the Commission vide its letter Ref. AFR/COM/HPR/CM/AD 38 of the 20th February, 1990.

1. Reception and Dissemination of the
Charter to the public

Tanzania signed the charter on the 31st May, 1982 and ratified the same on the 18th February, 1984.

Tanzania has always subscribed to the ideals of both the OAU Charter on Human and Peoples Rights as well as to those contained in the Universal Declaration on Human Rights. Both the Interim Constitution of 1965 and its successor the Constitution of the United Republic of Tanzania of 1977 contained a bill of rights in their preambular paragraphs, which set out the principal human rights guaranteed to citizens by the Tanzanian Government.

However, the inclusion of a Bill of Rights in the preamble was a major drawback on enforcement of these rights by the citizens. This was mainly due to the perennial controversy of whether or not a preamble forms part of a constitution. For all practical purposes, the preamble, in Tanzania, was not considered as forming part of the Constitution. The Bill of Rights thus ended by being seen as merely a guiding light for what Tanzania was aspiring for in the field of Human Rights.

In 1983, the Government of the United Republic of Tanzania made a proposal to amend the Constitution in order to incorporate the Bill of Rights as part of the substantive body of the Constitution, rather than in the preamble as hitherto had been the case. A debate was opened and public opinion was sought through the mass media and party meetings at all levels, where the public was given an opportunity to comment on the proposed amendments.

Tanzanians all over the country responded positively, coming out with different views and opinions as to how best human rights could be safeguarded and enforced in the United Republic of Tanzania.

Finally by the Act of the Fifth Amendment to the Constitution of the United Republic of Tanzania, (Act No. 15 of 1984), the Bill of Rights was incorporated into the text of the 1977 Constitution, and the act came into force on the 15th March, 1985.

2. Legislative, Administrative and Judicial
Measures taken to effect implementation
of Human Rights and difficulties encountered
in promoting them

The application of the Bill of Rights in the Constitution was initially suspended for a period of three years under Section 5 (2) of the Constitution, (Consequential, Transitional and Temporary provisions) Act of 1984. This period was considered as necessary in order to enable the Government to review all acts and to amend or repeal those found to be ultra vires to the Bill of Rights in the Constitution.

However, with effect from the 1st March, 1988, Tanzanians can enforce the basic rights provisions contained in the Bill of Rights, by petitioning the High Court which, under section 30 (3) of the Constitution, has exclusive original jurisdiction in such proceedings.

In addition to the amendments to the Constitution, the Preventive Detention Act of 1962 has been amended to bring it more into line with the provisions of the Constitution and the African Charter on Human and Peoples Rights. A detainee is now able to petition the High Court,

to challenge the legality of his detention on any ground under section 3 of the Preventive Detention Act.

Furthermore, a detainee has to be informed of the grounds of his detention not later than fifteen days from the date of his detention, failure of which the detainee must be released under section 6 (1) and 6(2) of the same Act. The detainee must also be afforded an opportunity of making a written representation to the President with respect to his detention.

Finally, the names of all detainees have to be published in the Gazette, under section 6A of the Act.

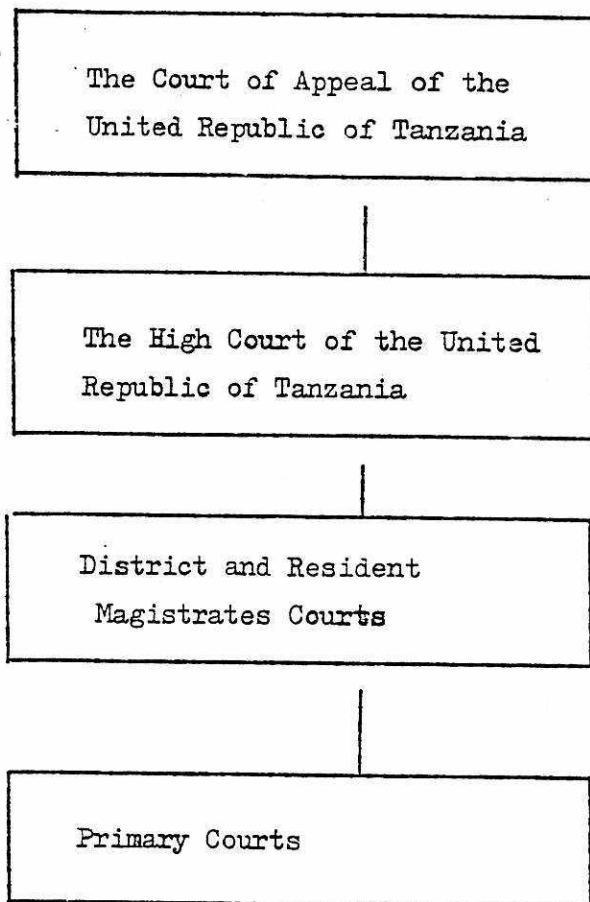
Amendments have also been made to the Criminal Procedure Code which was repealed and replaced by the Criminal Procedure Act of 1985, to give greater protection to the rights of accused persons during investigations.

While violations of human rights do occur occasionally, only two cases have so far been cited by Judges of the High Court as involving the violation of basic rights. The major obstacle encountered in promoting human rights, is the low educational level of the vast majority of the rural population and a lack of awareness of the basic rights of citizens. It is only a small percentage of the population living in urban areas which has an inkling of human rights and the enforcement mechanism in Tanzania. There is therefore, need for publicising further, human rights enforcement mechanisms in Tanzania.

The high costs involved in instituting petitions in the High Court is a contributory factor in dissuading people from seeking redress from the High Court in cases involving the violation of basic rights.

3. Organisation and Functioning of the Courts in Tanzania

The Legal system of Tanzania is a four tier system with the following hierarchy:



(1) The Court of Appeal of the United Republic of Tanzania

The Court of Appeal is the supreme court of the land. It has got only appellate jurisdiction on **cases** emanating from the High Court. Cases in this court are heard by three Justices of Appeal.

(ii) The High Court of the United Republic of Tanzania

The High Court has original jurisdiction in cases of murder and in cases involving violations of human rights, and appellate jurisdiction in other instances whereby appeals emanating from District and Resident Magistrates Courts are determined. Proceedings in the High Court are presided over by High Court Judges.

THE CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA

The Constitution of the United Republic of Tanzania is the basic Law of the Land. It establishes the Government of the United Republic of Tanzania, and other state organs and provides for their powers. The constitution also proclaims the supremacy of the Party as well as for the establishment of the Judiciary and the Legislative branches of the Government.

Briefly, the Constitution is divided into ten chapters. These are further subdivided into parts dealing with specific matters. The following is a rough breakdown of the constitutional provisions:

Chapter One has three parts. The first part proclaims the United Republic of Tanzania, composed of Tanzania mainland and Tanzania Zanzibar, including the territorial waters thereof.

This part also declares that Tanzania is a democratic and socialist state with CCM being the sole political party, and final authority in all matters in Tanzania. Thus, all political activity within and concerning the United Republic of Tanzania can only be conducted under the auspices of CCM.

Finally, Part One of the Constitution provides for the separation of powers between the Executive, the Judicial and the Legislative branches of government.

The Second part, sets out the fundamental objectives and guiding principles of state policy.

The last part of the chapter enunciates the basic rights and duties of Tanzanians. These are basically the same as those recognised by the OAU Charter on Human and Peoples Rights, and include inter alia, the right to life, the right to equality, the right to freedom of conscience, the right to work as well as the duties of the individual to society.

Chapter Two provides for the Executive branch of the Government. Part one deals with the President, who is both the Head of Government and Commander-in-Chief of the Defence Forces. He is vested with executive power over all union matters, as set out in the First Schedule to the Constitution. This part also spells the qualifications

for election as President, the discharge of Government business, Presidential powers and functions as well as the protection of the President from legal proceedings in respect of anything done or purported to be have been done whilst in office.

Part II of this chapter, deals with the offices of the two Vice Presidents, the Principal Assistants of the President in respect of all the affairs of Tanzania. This provides for the manner of determining who shall be designated as the First Vice President and Second Vice President. One of the Vice Presidents is also the President of Zanzibar while the other is to function as Prime Minister of the mainland.

Part III deals with the Office of the Prime Minister, the Cabinet and the Government. The Prime Minister is appointed by the President from amongst members of the National Assembly and has responsibility over the day to day running of the affairs of the Government. He is also the leader of Government business in the National Assembly.

The Cabinet is the principal advisory organ of the President. It is composed of the Vice Presidents and all the Ministers who are appointed by the President in consultation with the Prime Minister. Its meetings are presided over by the President.

Chapter three provides for the Legislature, described as consisting of two parts, namely the President and the Members of Parliament. The National Assembly is charged with responsibility of supervising and advising the Government and its agencies in the exercise of their functions.

Part II of chapter three sets out the various categories of the Members of the National Assembly, together with the qualifications for Membership, and their tenure of office, as well as the procedures for the election of these members.

This chapter also sets out the procedures, powers and privileges of the Parliament, including the offices of the Speaker and Deputy Speaker and their roles. Furthermore this part describes the procedure in the National Assembly, the quorum needed at every sitting, as well as the mode of the exercise of legislative power.

Lastly, chapter three protects the freedom of speech of the Members of Parliament, in the discharge of their functions.

Chapter four proclaims the Revolutionary Government of Zanzibar, the Zanzibar Revolutionary Council, and the House of Representative of Zanzibar. The Revolutionary Government under the President of Zanzibar, has executive authority over all matters for Tanzania Zanzibar, which are not union matters. Other provisions relating to the President of Zanzibar follow closely the provisions relating to the Presidency of the United Republic as described under chapter 2.

Part III of this chapter vests legislative authority in respect of all matters in and for Tanzania Zanzibar other than Union Matters in the House of Representatives of Zanzibar. The Union discharges functions similar to those of the National Assembly of the Union Government.

Chapter five of the Constitution gives provision for the establishment of the High Court, the Judicial Services Commission, the High Court of Zanzibar, the Court of Appeal of the United Republic of Tanzania and the Special Constitutional Court of the United Republic.

The High Courts of Tanzania and Zanzibar have unlimited jurisdictions to hear and determine civil and criminal cases over their respective territories. The High Court of Tanzania mainland also has original jurisdiction to determine cases of the abuse of basic rights provided in chapter one.

Chapter Five furthermore, sets out the qualifications required for appointment to the Office of Judge and for the tenure of such Judges as well as their age of retirement.

The Court of Appeal is the supreme court of the land having only appellate jurisdiction on cases emanating from the High Courts of Tanzania mainland and from Zanzibar. It is headed by the Chief Justice who has overall control over the Judiciary.

Cases in the Court of Appeal are heard by three Justices of Appeal who like their colleagues in the High Court enjoy security of tenure.

Finally part vi of Chapter Five establishes the Special Constitutional Court of the United Republic to exercise jurisdiction in hearing and making reconciliatory decisions in respect of disputes submitted before it.

Chapter Six makes provisions for the establishment, of the Permanent Commission of Enquiry, the Ombudsman (PCE) and the Leadership Code Enforcement Commission. The PCE is empowered to investigate cases of misuse of power by public officials, while the Leadership Code Enforcement Commission is there to ensure that leaders abide by the regulations contained in the Leadership Code.

Chapter Seven contains provisions relating to finances, including contribution to and allocation from the revenue of the United Republic, as well as expenditures to be charged from the consolidated fund. The Controller and Auditor-General of the United Republic of Tanzania, who enjoys security of tenure and can only be removed for inability to discharge functions, after following the procedures, set out in the removal of Judges.

Chapter Eight makes provision for the exercise of peoples power through Local Government Authorities and Local Councils.

Chapter Nine provides for the Armed Forces and the powers of the Commander-in-Chief. It also prohibits the establishment of irregular forces in Tanzania.

Lastly, Chapter Ten contains the miscellaneous provisions including the First Schedule which specifies Union matters of the United Republic of Tanzania. These include interalia, matters relating to the Constitution, External Affairs, Defence and Security, the Police, Emergency powers, External Trade and Borrowing, currency matters, mineral oil resources and the Court of Appeal of the United Republic of Tanzania.

(iii) The District and Resident Magistrates
Courts

District and Resident Magistrates Courts have both original as well as appellate jurisdiction over cases from Primary Courts. These courts are presided over by District Magistrates and Resident Magistrates respectively.

(iv) Primary Courts

Primary Courts have original jurisdiction in customary and simple disputes and are presided over by Primary Courts Magistrates.

(v) The Bar

The Bar consists of Private Advocates, Lawyers in the Tanzania Legal Corporation, a public corporation, and State Attorneys in the Attorney General's Chambers.

There is in existence, in addition, the Legal Aid Committee in the Faculty of Law of the University of Dar es Salaam which gives legal assistance to low income earners having legal problems.

4. Texts governing the Judicial
System in Tanzania

The main provisions governing the judicial system in Tanzania are to be found in Chapter Five of the Constitution of the United Republic of Tanzania, as amended by Act No. 15 of 1984.

Sections 108 - 128 of the Constitution provide for the establishment of the Court of Appeal, (section 117(1), The High Court (Section 108 (1) and the Judicial Services Commission (section 112 (1)).

Under section 118 (1), the Constitution provides for the Office of the Chief Justice, while the offices of Principal Judge and other Judges of the High Court are provided for in section 109(1).

Furthermore the Constitution also provides for the establishment of the Judicial Services Commission, responsible for the appointment,

disciplining and dismissal of District and Resident Magistrates under section 112(1), as well as for the Organisation and functioning of the various courts.

On the other hand, Primary Courts are controlled by the Judicial Services Special Commission.

Other texts guiding the operations of the courts are as follows:

- (i) The Magistrates Courts Act 1984
- (ii) The Appellate Jurisdiction Act 1979
- (iii) The High Court Rules
- (iv) The Criminal Procedure Code
- (v) The Penal Code
- (vi) The Civil Procedure Code
- (vii) The Advocates Ordinance
- (viii) Primary Courts Provisions relating to Civil Jurisdiction of Primary Courts, 1963
- (ix) Primary Court provisions relating to criminal jurisdiction of Primary Courts, 1963.

5. The Status of the Judiciary in Tanzania

There is a clear separation of powers between the Executive, Legislature and the Judiciary in Tanzania, under section 4 (1) of the Constitution. Though not expressly spelt out in the Constitution, the judiciary is independent in the discharge of judicial functions.

The independence of the judiciary is guaranteed through the security of tenure of judges which is entrenched in the Constitution. Under section 109 (2), Judges are appointed by the President in consultation with the Chief Justice of the Court of Appeal. However once appointed, a judge cannot be removed from office until reaching the age of retirement, save for inability to perform his functions or for misbehaviour.

Where the question of removing a Judge from office arises, an elaborate procedure set out in section 110 (6) must be followed. Under that section, the President must set up a Commission whose Chairman and at least half of the members should be persons holding the office of Judge of the High Court or the Court of Appeal of a Commonwealth country,

to investigate the matter, and report its findings to the President. It is only after the Commission has advised that a Judge be removed after investigation that the President can proceed and remove him from office.

Furthermore, the emoluments of Judges are charged from the consolidated fund, and are therefore not the subject of debate by Parliament every year.

At a lower level, District and Resident Magistrates fall under the Judicial Services Commission, composed of the Chief Justice who is Chairman of the Commission, a Judge of the Court of Appeal, and the two other members appointed by the President. The Judicial Services Commission is responsible for the appointment, discipline and dismissal of such magistrates.

These measures go a long way to ensure that court decisions are based entirely on the evidence adduced in court, and are not influenced by either the Executive or Legislative branch of Government.

Please find enclosed herewith a brief commentary on the Constitution of the United Republic of Tanzania.

c.c: MFA

" Hon. Judge R.H. Kisanga - Court of Appeal.