

# COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE



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## SUBMISSION FOR TANZANIA THIRD CYCLE UNIVERSAL PERIODIC REVIEW AUGUST 2021

<b>LIST OF ABBREVIATIONS</b>	
BHR	Business and Human Rights
CHF	Community Health Fund
CHRAGG	Commission for Human Rights and Good Governance
CMIS	Complaints Management Information System
CPI	Corruption Perception Index
CSOs	Civil Society Organizations
EFD	Electronic Fiscal Device
GBV	Gender Based Violence
GePG	Government Electronic Payment Gateway
ICT	Information and Communication Technology
LGAs	Local Government Authorities
MDAs	Ministries, Departments and Agencies
MTEF	Medium Term Expenditure Framework
NACSAP	National Anti-Corruption Strategy and Action Plan
NAP	National Action Plan
NHRAP	National Human Rights Action Plan
NPA VAWC	National Plan of Action on Violence Against Women and Children
PGCD	Police Gender and Children Desk
PWA	People with Albinism
SDGs	Sustainable Development Goals
TASAF	Tanzania Social Action Fund
UNGPs	UN Guiding Principles on Business Human Rights
UPR	Universal Periodic Review
URT	United Republic of Tanzania
VNR	Voluntary National Review

## **A. Introduction**

1. Commission for Human Rights and Good Governance (CHRAGG), the national human rights institution and office of the Ombudsman established under the Constitution of United Republic of Tanzania, 1977<sup>1</sup>. This report, hereby submits the 3<sup>rd</sup> cycle UPR report 2021. This report assesses implementation of the 2<sup>nd</sup> cycle UPR recommendations, and other human rights concerns in the country. The United Republic of Tanzania (URT) has developed and implemented the second National Five-Year Development Plan 2016/17– 2020/21 for implementing the Tanzania Development Vision 2025 and the Zanzibar Strategy for Growth and Reduction of Poverty III 2016-2020 (abbreviated as MKUZA in Kiswahili) which the Sustainable Development Goals (SDGs) are mainstreamed. Achievements of the plans and strategies have been noted in access to justice, social services and economic growth.

## **B. Methodology**

2. CHRAGG engaged Government institutions and Civil Society Organizations (CSOs) from Mainland Tanzania and Zanzibar in preparation of this report.

## **C. Access to Justice and Equality Before the Law**

3. The state is commended for implementing the Judiciary Strategic Plan 2015-2020; Child Justice Strategy 2013-2017; enacting Legal Aid Act 2017; commitment to use Kiswahili as a language of the court and pieces of legislation as means to overcome language barriers; construction of court structures; deployment of judicial personnel; and increasing use of ICT. Despite the progress; delay of cases, shortage of judicial personnel and limited public knowledge in legal issues have been noted.
4. **Recommendations:** CHRAGG recommends for the state to continue: (i) employing more judicial personnel (ii) enhancing use of mobile courts and strengthen ICT communication (iii) providing public legal education as per the Legal Aid Act 2017.

## **D. Prisons and other Detention Facilities**

5. CHRAGG monitored conditions in detention and correctional facilities in Mainland Tanzania and Zanzibar respectively 2017 and 2020 and noted some reforms<sup>2</sup>. The President of URT pardoned 43,819 prisoners in Mainland Tanzania between 2016 - 2021, and commuted sentences to 4262 inmates who were given the opportunity to engage in community services. The President of Zanzibar pardoned 121 prisoners<sup>3</sup> ;

80% of correctional facilities were renovated in Zanzibar; and video conference facilities in maximum prisons in Mainland Tanzania and Zanzibar were installed.

6. However, overcrowding, inadequate use of alternative penal system; and some complaints on food ratio poor working conditions remain the main challenges.
7. **Recommendations:** The State is urged to: (i) renovate and build accommodation facilities for inmates (ii) continue reducing overcrowding through alternative sentences (iii) provide adequate transport for inmates (iv) equip prisons with adequate resources.

#### **E. Ratification and State Obligations to Treaties**

8. The state is yet to ratify some of international human rights instruments<sup>4</sup>. Likewise, 2016-2021 the State was supposed to submit reports to ICESCR, CEDAW and CRPD. However, the state has not complied with the reporting obligation.
9. **Recommendations:** CHRAGG urges the state to consider complying with the reporting obligations.

#### **F. Corruption**

10. CHRAGG commends the state for implementing the NACSAPIII 2017-2022<sup>5</sup>; establishment of the Corruption and Economic Crimes Division of the High Court of Tanzania in 2016<sup>6</sup> and the pledge to establish the same in Zanzibar; enhancing capacities of oversight and watchdog institutions<sup>7</sup>; requiring companies sign integrity pledge; widening scope from preventing corruption to establishing ethics, anti-corruption and human right clubs in schools and higher learning institutions; collecting taxes by EFDs and GePG; improved score in CPI and rating of the corruption decrease by 72%.<sup>8</sup>. Despite the achievements, delay of corruption related cases, sextortion; incapacities of integrity committees and oversight institutions, bureaucratic red tape and knowledge gap on ethics and human rights have been noted.
11. **Recommendations:** CHRAGG recommends for the State to: (i) continue strengthening capacities of oversight institutions and integrity committees (ii) continue engaging non-state actors in implementing the NACSAP III (iii) carry out country wide awareness campaigns on integrity and human rights.

#### **G. Sustainable Development Goals**

12. State is commended for progress made in implementing the SDGs. Some key achievements noted include: sustaining GDP around 7% per annum; reducing food

inflation rate from 7.6% in 2016 to 3.7% in 2018; increasing budget for pro-poor sectors from 60% in 2016 to 62.2% in 2017<sup>9</sup> and being upgraded to-lower middle-income status.

13. **Recommendations:** CHRAGG appreciates the progress made and recommend for (i) mobilizing financial support for continued implementation of the SDGs (ii) consolidating gains of the implementation of Vision 2025.

## **H. Land Rights**

14. The state is commended for the National Land Use Management Plan Policy 2013-2033 and legislative frameworks that have reduced land disputes<sup>10</sup>.
15. Despite the state initiatives, CHRAGG noted the following gaps: most of the villages and towns are not planned; delayed and inadequate compensation; knowledge gap on land matters; inadequate engagement of communities in decision making related to land matters; persistence of boundary disputes around reserved lands, as well as disputes between pastoralists and farmers, investors and communities
16. **Recommendations:** The state is urged to: (i) hasten land use management plans for unplanned areas (ii) conduct more awareness campaigns on land rights (iii) engage the communities in the process of land acquisition.

## **I. Right to Health**

17. The State is commended for establishing referral hospitals at national, regional and district levels; increasing number of health centres and dispensaries; increasing supply of health facilities and medicines; reducing child mortality during birth and for children under five years and increasing skilled personnel, delivery facilities and services in Zanzibar<sup>11</sup>.
18. Despite the initiatives still there are challenges in accessibility to health services in terms of insufficient supplies of medicines; equipment, personnel, health centres and dispensaries, especially in rural areas.
19. **Recommendation:** The State is advised to continue increasing health sector budget to improve accessibility to health services.

## **J. Rights to Water and Sanitation**

20. The state enacted Water Supply and Sanitation Act of 2019 that establishes water authorities in urban and rural areas<sup>12</sup>; the Zanzibar Water Authority was established by law in 2006; continue implementing Water Sector Programme II; implemented 2769 water projects to increase availability and accessibility to water supply in rural and urban areas<sup>13</sup>. However, there is a disparity between urban and rural in accessing water services.
21. **Recommendations:** The State is advised to continue improving, financing water infrastructure in order to increase water and sanitation services.

## **K. Person with Albinism**

22. Measures taken by the state through MDAs, LGAs and CSO in the coordination of CHRAGG have resulted into decreased attacks and killings<sup>14</sup> and neither killings nor attacks of PWAs have been reported since 2017. However, stigma in some communities still exists due to knowledge gaps on the concept of albinism.
23. **Recommendations:** The state is advised, in collaboration with CHRAGG and CSO, to continue strengthening public awareness campaigns on the rights of PWA.

## **L. Rights of Elderly Persons**

24. CHRAGG noted efforts in implementing the National Strategy to Eradicate Elderly Killings in Tanzania 2019 -2023; provision of free medical services and special identity cards; establishment of 14,883 Elderly councils; supporting 680,056 households through TASAF by 2019 in Mainland Tanzania and Zanzibar; and inclusion of elders of aged 70 and above in Zanzibar Social Pension scheme<sup>15</sup>. While Zanzibar has enacted Elder Person Affairs Act of 2020, yet there is no specific legislation for the Elderly in Mainland Tanzania.<sup>16</sup>.
25. **Recommendations:** CHRAGG recommends for the state to: (i) fast track the process of the enactment of the legislation for the elderly in Mainland Tanzania (ii) take measures for establishment of universal pension schemes to the needy elders in Mainland Tanzania.

## **M. Women Rights**

26. The State adopted the NPA VAWC 2017-2022 in Mainland Tanzania and Zanzibar to enhance empowerment and protection of women<sup>17</sup>. Some achievements of the NPA

VAWC include: establishment of 16,343 child protection and GBV committees in Mainland and 15 in Zanzibar ; 428 and 161 Police and prison Gender and Children Desks established respectively<sup>18</sup>; 13 and 8 One Stop Centres as well as 4 and 1 safe houses were established in Mainland Tanzania and Zanzibar retrospectively for victims of VAWC<sup>19</sup>; number of women in decision making positions increased to 383 from 137 in 2020 and registering 2,612 paralegals in 26 regions of Mainland Tanzania, which are helping the provision of legal services to women. Despite the efforts, GBV still exists.

27. **Recommendations:** The State in collaboration with stakeholders ought to step up public awareness campaigns against GBV.

## N. Children Rights

28. CHRAGG has noted the decision of Court<sup>20</sup> to declare Sections 13 and 17 of the Law of Marriage Act that provide for girls marriages at ages 14 and 15 as unconstitutional; presence of the NPA VAWC 2017-2022 that provides for protection of violence in Mainland Tanzania and Zanzibar; ; ensuring justice and shelters for victims of violence; implementing the Five Year Strategy for Child Justice Progressive Reform of 2021-2025, issuance of Judicial circular on protection of children identities before the court;<sup>21</sup> establishing Legal Aid Providers Database; establishing 147 designated juvenile courts in Mainland Tanzania and 5 in Zanzibar ; withdrawing 4,300 from child labour in Mainland and 1500 in Zanzibar ; enrolling children 360 and 2,410 to schools and vocational colleges respectively in Mainland<sup>22</sup> and 5,067 resumed schools in Zanzibar<sup>23</sup>.
29. Despite such efforts, noted challenges include: The state has yet to enforce the decision of the Court on the Law of Marriage ; inadequate resources for implementation of child related plans; limited knowledge on child rights and harmful traditional practices in some communities still exist
30. **Recommendations:** The state is advised to-:(i) Fast track the amendment of the Law of Marriage Act to reflect the rights of the girl child (ii) allocate adequate resources for the implementation of children rights related plans (iii) conduct more awareness campaign against harmful traditions practices.

## **P. Education Rights**

31. CHRAGG noted the following achievements on accessibility to education: construction of schools and classrooms; raise in number of enrolment of learners; enhancing inclusive education and providing assistive devices to learners with special needs in Mainland Tanzania; tracking pupils records through the Primary Record Management PREM<sup>24</sup> and initiating School Information System (SIS); increase in higher education loans from 314bn in 2014/15 to 402 in 2020/21<sup>25</sup>; amendment of the law in Mainland Tanzania to protect girls against marriages and pregnancies<sup>26</sup>. Zanzibar allows pregnant girls to continue schooling and in 2017 the public was educated through 180 radio programmes on early marriage and pregnancies<sup>27</sup>.
32. In terms of quality, achievements in Mainland Tanzania and Zanzibar were noted: employment of more qualified personnel; construction of more laboratories; improved availability of teaching and learning materials and increase in pass rate in secondary schools<sup>28</sup>.
33. Despite the improvements, still there are shortage of qualified personnel<sup>29</sup> and limited regular in-service teachers' training.
34. **Recommendations:** CHRAGG recommends for the state to: (i) continue allocating adequate resources to enhance accessibility and quality education (ii) employ, deploy and provide in-service trainings (ii) Train and employ appropriate teachers for pupils with special needs.

## **Q. Right to Association and Assembly**

- 35 The CHRAGG acknowledges the initiatives by the state: for inclusion of the right to association and assembly under Article 20 of both the URT constitution of 1977 and Zanzibar of 1984; the Political Parties Act 5 of 1992 that provides for principles of good governance, non discrimination, equality, peace and harmony and procedures of holding public meeting for political parties; the Police Force and Auxiliary Service Act Cap 322 that provide for procedures for assembly in public places; Employment and Labour Relations Act of 2004 of Mainland Tanzania that provide for formation of trade unions, employers associations and federations.

36 CHRAGG has observed a legal confusion between the URT and Zanzibar constitutions on one hand; and the Police Force and Auxiliary Services Act and Political Parties Act on the other; and it is because of this some of requests for assembly from some political parties are turned down by the Police Force. Besides, the Police Force reveals that some political parties do not follow required procedures in submitting their requests.

37 **Recommendations:** The state is advised to amend Section 42 of the Police Force and Auxiliary Services Act and Section 11 of the Political Parties Act in order to realize the freedoms of association and assembly provided under Articles 20 of the URT and Zanzibar constitutions respectively.

## **R. Freedom of Media and Access to Information**

38. The state has enacted several legislation, which regulates freedom of expression that include: Article 18 of the Constitution of URT; article 18 of the Constitution of Zanzibar of 1984; the Electronic and Postal Communication Act of 210 and the regulations made thereto; the Media Services Act of 2016 and its regulations; the Access to Information Act of 2016; the Statistic Act of 2015 and the Media Services Act of 2016 and its regulations that regulate professional ethics of journalists.

39. The CHRAGG observes that the media industry and news outlets in Tanzania enjoy high levels of freedoms. The period leading to March 2020; saw 183 radio stations, (from 98 in 2014); 43 broadcasting services (from 36 in 2014) and 229 newspaper and magazines being fully operational in Tanzania Mainland. By 2016, there were 25 radio stations and 12 TV stations in Zanzibar. While the current legal and regulatory framework has helped to generate acceptable media content and enforce professionalism; media practitioners complain that it limits freedoms provided for in the constitutions and expose them to censorship and severe punishments

40. **Recommendations:** The state is advised to: (i) orient media practitioners about media and information legal compliance requirement (ii) collect feedback from media stakeholders and practitioners about the usefulness of available media and access to information acts; and review them accordingly.

## **S. Business and Human Rights**

41. The State has been engaged in the preparation of Baseline Assessment on BHR 2017; cooperated with CHRAGG during monitoring and investigation of incidences and complaints on human rights violations by the corporate<sup>30</sup>; now engaged in dialogues among stakeholders; and provided technical support in the improvement of CHRAGG's CMIS<sup>31</sup> putting in place legal frameworks advocating for protecting natural resources<sup>32</sup>; facilitating compensation<sup>33</sup>; established royalty in the extractive industries<sup>34</sup> and Zanzibar has enacted the Oil and Gas (Upstream) Act of 2016 which incorporates most of the BHR issues.
42. Despite the progress, there are still challenges on implementation of UNGPs that include: knowledge gap among stakeholders<sup>35</sup> and absence of NAP on BHR.
43. **Recommendations:** The state is urged to: (i) develop and implement NAP on BHR (ii) Collaborate with stakeholders and to conduct public awareness on BHR.

## **T. National Human Rights Action Plan**

44. The State mainstreamed NHRAP 2013-2017 in MDAs, LGAs and public corporations, CSOs and trade unions plans of action and enhanced human rights knowledge amongst stakeholders; incorporation of human right education in primary and secondary schools curricula and the enactment of the Legal Aid Act of 2017 .
45. Notwithstanding, unclear coordination of the implementation of the NHRAP; inadequate financial resources and deficiency to mainstream activities of the NHRP in the MTEF are noted. The NHRAP ended in 2017. The 2<sup>nd</sup> NHRAP 2018-2022, is yet to be adopted.
46. **Recommendations:** The State is urged to: (i) adopt the 2<sup>nd</sup> NHRAP and resolve challenges of the 1<sup>st</sup> NHRAP (ii) enhance mainstreaming the NHRAP in the MTEF (iii) facilitate CHRAGG to monitor implementation of the NHRAP.

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<sup>1</sup> Article 129

<sup>2</sup> CHRAGG (2018), The Detention and Correctional Facilities Inspection Report for 2017/2018

<sup>3</sup> The Zanzibar Correctional Facilities, Statistics for 2020.

<sup>4</sup> Some of ungratified instruments include: the Convention against Torture; the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families; the International Convention for the Protection of All

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Persons from Enforced Disappearance and Optional Protocol to the Convention on the Rights of the Child on Communication Procedure 2011.

<sup>5</sup> In July 2017, Tanzania adopted NACSAP III (2017-2022) after successful implementation of NACSAP I (2001-2005) & NACSAP II (2006-2011). NACSAP III is mainstreamed in the Government Structure through integrity and consultative committees. NACSAP III is being implemented in alignment with the National Vision 2025, the National Five Years Development Plan (2016/17-2020/21) the Speech President when inaugurating the 11th Parliament of URT in Dodoma on November 20, 2015 and the Manifesto of the Ruling Party Chama cha Mapinduzi, 2015.

<sup>6</sup> The Economic and Organized Crimes Control Act of 2016, Cap 200

<sup>7</sup> Some of the oversight and watchdog institutions include: the Prevention and Combating of Corruption Bureau (PCCB) under PCCB Act Cap 329 that has a net of offices up to district levels; the Commission for Human Rights and Good Governance under Article 129 of the Constitution of the United Republic of Tanzania of 1977 Cap 2; the Ethics Secretariat under Article 132 of the Constitution Cap 2; the Public Procurement Regulatory Authority (PPRA) under the Public Procurement Act, Cap 410; the Public Services Commission (PSM) under the Public Service Act, Cap 298 and the National Audit Office under Cap 418 in which sits the Controller and Audit General (CAG)- a position established by the Constitution.

<sup>8</sup> Tanzania score in the Corruption Perception Index (CPI) has been improving since 2015 with a rank of 99 out 180 countries in the 2018.

<sup>9</sup> The United Republic of Tanzania (2019), Voluntary National Review (VNR) 2019: Empowering People Inclusiveness and Equality. A Report on the Progress of the United Nations SDGs Implementation in the United Republic of Tanzania; Submitted to the High Level Political Forum (HLPF), United Nations.

<sup>10</sup> Tanzanian's Budget Speech of the Minister for Land, Housing and Human Settlement Development of 2020/2021

<sup>11</sup> The Revolutionary Government of Zanzibar (2019), Revised Draft of the 6th Report on The Implementation of the Convention On The Rights Of The Child, Submitted to the United Nation Committee on the Rights of a Child , September, 2019

<sup>12</sup> UNICEF Report on Tanzania Saving mothers' and children's lives through innovative, sustainable, and comprehensive reproductive, mother, child and adolescent health services, 2015-2019 End line Evaluation Report 04August2020-Final Report; Budget Estimate Speech by the Minister responsible for Health, Social Welfare, Gender, Elderly and Children- submitted to National Assembly during the Financial Year 2020/021.

<sup>13</sup> *ibid*

<sup>14</sup> Prime Minister's Office, Fact sheet: Overview of Achievements on Implementation of the National Plan of Action to end Violence against Women and Children (NPA VAWC) 2017/18-2021/22

<sup>15</sup> The Elder Person Affairs Act No. 2 of 2020,

<sup>16</sup> Currently the elders matters are covered in the Penal Code, Cap 16; Witch Craft Act, Cap 18; the National Disability Policy, 2004; Persons with Disabilities Act, Cap 183; the National Health Policy, 2007; the National Strategy to Eradicate Elderly Killings in Tanzania 2018/19 -2022/23; the Tanzania Development Vision 2025 and National Five Year National Development Plan 2016/17-2020/21.

<sup>17</sup> The Government enacted the Legal Aid Act of 2017 for the purpose of regulating the provision of legal aid services, including strengthening access to justice for financially challenged women who cannot afford legal representation.

<sup>18</sup> The enactment of Legal Aid Act, 2017 in Mainland Tanzania and Zanzibar Legal Aid Act, 2018 helped to fast-track the provision of legal aid to disadvantaged women.

<sup>19</sup> Prime Minister's Office, NPA VAWC Implementation Report for 2019/2020

<sup>20</sup> Court of Appeal of Tanzania, Civil Appeal No 204 of 2017, The Attorney General Vs Rebeca Z. Gyumi ( Appeal from the Judgment of the High Court of Tanzania at Dar es Salaam, Misc. Civil Cause No. 5 of 2016

<sup>21</sup> Circular No. 2/2018 on Protection of Identities of Children before the Court (of Parent and Guardian of the Child in the Adoption Proceedings and of Victims of Sexual Offences of whatever Age) issued by the Chief Justice URT.

<sup>22</sup> Prime Minister's Office: Overview of Achievements on the Implementation of the National Plan of Action to end Violence against Women and Children (NPA VAWC) 2017/18-2021/22 )

<sup>23</sup> United Republic of Tanzania (2019), Reported submitted to the United Nations-Committee on the Rights of the Child

<sup>24</sup> United Republic of Tanzania; Voluntary National Review (VNR), 2019 on the Progress of the Sustainable Development Goals (SDGs) Implementation in the United Republic of Tanzania; submitted to the High-Level Political Forum (HLPF), United Nations). Pg.56--57

<sup>25</sup> Public Statement of the Chief Government Spokesperson on the implementation of various activities of the Government on March 08, 2021

<sup>26</sup> Section 60A of the Education Act, Cap 315 , as amended by Section 22 of the Written Laws (Miscellaneous Amendments (no 2) Act of 2016, Cap 353

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<sup>27</sup> The Revolutionary Government of Zanzibar (2019), Revised Draft of the 6th Report on The Implementation of the Convention On The Rights Of The Child, Submitted to the United Nation Committee on the Rights of a Child , September, 2019

<sup>28</sup> Public Statement of the Chief Government Spokesperson on the implementation of various activities of the Government on March 08, 2021

<sup>29</sup> UNICEF report on Sustainable Development Goals and Children in Tanzania “Sustainable Changes start with Children” December, 2019 Pg. 60-64

<sup>30</sup> CHRAGG in collaboration with a local NGO- Business and Human Rights Tanzania (BHRT) and an international non-governmental organization-International Peace Information Services (IPIS) conducted four monitoring missions in July and August, 2019 CHRAGG conducted four (4) facts finding missions in Shinyanga, Tanga and Morogoro and Ruvuma regions. The criteria for the selection was the complaints lodged before the CHRAGG and information reported by media and CSOs.

<sup>31</sup> The e-GA (e-Government Authority) provided technical support in developing the CMIS.

<sup>32</sup> Section 11(1) (2) of the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017

<sup>33</sup> The Government intervened and mediated conflict between Barrick Gold Mine Co. and Nyamongo residents whereby on 20<sup>th</sup> May 2020 Barrick paid compensation to 1,639 residents of Nyamongo village amounting to TZs 33 Billion. This conflict had lasted for 10 years. (<http://www.mara.go.tz/new/rais-magufuli-amaliza-mgogoro-nyamongo>: last visited on 11<sup>th</sup> March, 2021)

<sup>34</sup> In addition, the amendments introduced a clearing fee of 1 per cent (as a new requirement) on the value of all minerals exported outside Tanzania from 1 July 2017. The second round of amendments in 2017 came into effect in July in terms of the Written Laws (Miscellaneous Amendments) Act, 2017 whereby it is mandatory for all Mining Licensees or Special Mining Licence holders to give the Government at least a 16 per cent free carried interest in the capital of their companies. The Government is also entitled to acquire (in total) up to 50 per cent of the shares in a mining company, proportional with the quantified value of tax expenditures incurred by the Government in favour of the mining company.

<sup>35</sup> Identified as challenges in the National Human Rights Action Plan (2013-2017) p.79.