



# TANZANIA WOMEN'S RIGHTS SITUATION 2014



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TANZANIA



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Mikocheni "A" area, P.O Box 76215, off Chwaku street, Block F, Plot No.635

Dar es Salaam Tanzania.

Tel: +255 22 270 1995 | [wildaf\\_tanzania@yahoo.com](mailto:wildaf_tanzania@yahoo.com)

[info@wildaftanzania.org](mailto:info@wildaftanzania.org) | [www.wildaftanzania.org](http://www.wildaftanzania.org)

### **Researcher**

Adv. Clarence KIPOBOTA

LEDECO Advocates

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**Editorial Committee**

Dr. Judith N. Odunga

Adv. Anna Kulaya

Adv. Alicko Sengo

**Design and Layout**

Marco Tibasima

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It should be clearly noted that the study team is answerable for any mistake or misconception of data collected and nobody else should be held accountable.

Asante Sana!

## List of Abbreviations and Acronyms

ACHPR	African Charter on Human and Peoples Rights
ACHPRC	African Charter on Human and Peoples Rights on the Rights of Children in Africa, 1990
ACHPRW	African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2003
AfDB	African Development Bank
AIDS	Acquired Immune Deficiency Syndrome
Art.	Article
BAAC	Business Action against Corruption
BRN	Big Results Now
Cap.	Chapter of the Laws of Tanzania
CCM	Chama cha Mapinduzi (political party)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEOAC	Combined Efforts Organization Against Corruption
CHADEMA	Chama Cha Demokrasia na Maendeleo (political party)
CHF	Community Health Fund
CHRGG	Commission for Human Rights and Good Governance
CRC	Convention on the Rights of the Child
CSOs	Civil Society Organizations
CUF	Civic United Front (Political Party)
DPP	Director of Public Prosecution
EAAACA	East African Association of Anti-Corruption Authorities
EAC	East African Community
Eds.	Editors
EfG	Equality for Growth
ESAAMLG	Eastern and Southern African Anti-Money Laundering Group

ESDP	Education Sector Development Programme
FCS	Foundation for Civil Society
FDI	Foreign Direct Investment
FGM	Female Genital Mutilation
FIU	Financial Intelligence Unit
FYDP	Five Years Development Plan
GBV	Gender Based Violence
GDP	Gross Domestic Product
GDSS	Gender and Development Seminar Series
GN	Government Notice
HC	High Court
HIV	Human Immune Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICGLR	International Conference on Great Lakes Region
ICPD	International Conference on Population and Development
IGP	Inspector General of Police
ILO	International Labour Organization
LAC	Legal Aid Clinics
LAPs	Legal Aid Providers
LHRC	Legal and Human Rights Centre
LSF	Legal Service Facility
LSRP	Legal Sector Reform Programme
MDA	Ministry Department and Agencies
MDGs	Millennium Development Goals

MKUKUTA II	Mkakati wa Kukuza Uchumi na Kupunguza Umaskini Tanzania II (Anti-poverty strategy)
Mwl.	Abbreviation for 'Mwalimu', a Swahili word which means 'Teacher'
NCCR-Mageuzi	National Convention and Construction of Reform - Mageuzi
NGOs	Non-governmental Organizations
NLD	National League for Democracy (Political Party)
NRA	National Reconstruction and Alliance (Political Party)
NSGRP	National Strategy for Growth and Reduction of Poverty
PCCB	Prevention and Combating of Corruption Bureau
PEDP	Primary Education Development Programme
PGCD	Police Gender and Children's Desk
PWDs	Persons with Disabilities
R.E 2000	Revised Edition of 2000 of the Laws of Tanzania Mainland
SACCOs	Savings and Credit and Cooperatives Organizations
SADC	Southern Africa Development Community
SAFAC	Southern Africa Forum against Corruption
SEDP	Secondary Education Development Programme
SOSPA	Sexual Offences Special Provisions Act
TACCEO	Tanzania Civil Society Consortium for Election Observation
TADEA	Tanzania Democracy Alliance (Political Party)
TAMWA	Tanzania Media Women Association
TANU	Tanganyika African National Union
TAWLA	Tanzania Women Lawyers Association
TGNP	Tanzania Gender Networking Programme
TLR	Tanzania Law Report
TPF-Net	Tanzania Police Female Network

Tshs	Tanzanian Shillings
TWB	Tanzania Women's Bank
TZ	Tanzania
UDHR	Universal Declaration of Human Rights of 1948
UN	United Nations
UNDP	United Nations Development Programme
UNECA	United Nations Economic Council for Africa
UNFPA	United Nations Population Fund
URT	United Republic of Tanzania
UPE	Universal Primary Education
USD	United States of America Dollars
VAC	Violence Against Children
VICOBA	Village Community Banks
Vs.	Versus
WHO	World Health Organization
WiLDAF	Women in Law and Development in Africa
WLAC	Women Legal Aid Centre
ZLSC	Zanzibar Legal Services Centre

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Anti-Trafficking in Persons Act, 2008.

Basic Rights and Duties Enforcement Act, Cap. 3. [R.E 2002]

Citizenship Act, 1995, Cap. 356 [R.E 2002].

Commission for Human Rights and Good Governance Act, Cap. 391.

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Higher Learning Students Loans' Board Act, 2004 (Act No. 9 of 2004).

HIV and AIDS (Prevention and Control) Act, 2008 (Act No. 28 of 2008).

Human DNA Regulation Act of 2009.

Labour Institutions Act, 2004.

Land Act, Cap. 113 [R.E 2002].

Law of Marriage Act, 1971 Cap 29 [R.E 2002].

Law of the Child Act, 2009 (Act No. 21 of 2009).

Local Government (District Authorities) Act, 1982.

Local Government (Urban Authorities) Act, 1982.

Mental Health Act, 2008 (Act No. 21 of 2008).

National Defence Act, Cap. 192 [R.E. 2002].

National Health Insurance Fund Act, 1999.

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Penal Code, Cap 16 [R.E 2002].

Persons with Disabilities Act, 2010 (Act No. 9 of 2010).

Pharmacy Act, 2002 (Act No 7 of 2002).

Political Parties Act, 1992 Cap 258 [R.E 2002].

Probate and Administration of Estate Act, Cap 445 [R.E 2002].

Public Health Act, 2009 (Act No. 1 of 2009).

Rights of Persons with Disabilities Act of 2010.

Sexual Offences Special Provisions Act, 1998 Cap. 101 [R.E 2002] – now repealed.

Tanzania Food, Drugs and Cosmetics Act, 2008 (Act No. 1 of 2003).

Tax Revenue Appeals Act, Cap. 408.

Universities Act, Cap. 346 [R.E 2002].

Village Land Act, Cap.114 [R.E 2002].

Water Supply and Sanitation Act, 2009 (Act No. 12 of 2009).

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African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2003.

African Charter on Human and Peoples Rights on the Rights of Children in Africa, 1990.

Beijing Declaration and Platform for Action, 1995.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979.

Convention on the Rights of the Child, 1989.

International Covenant on Civil and Political Rights, (ICCPR), 1966.

SADC Protocol on Gender and Development, 2008.

Treaty for Establishment of the East African Community as amended in 2006 and 2007.

Universal Declaration of Human Rights, (UDHR), 1948.

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Suzana Kakubukubu Vs. Walwa Joseph Kasubi [1988] T.L.R 199.

## Preface

This is the first annual women's rights report in Tanzanian history. It is published for the first time by WILDAF Tanzania as part of implementation of its Strategic Plan's objective of mapping and sharing of women's rights situation for the purpose of positive reforms.

The report contains both primary and secondary information from various credible sources within and outside the country. It makes a critical analysis of socio-economic and political situations of women's rights and duties in Tanzania mainland for the year 2014. Situations of previous years are also considered as part of comparative analysis.

The report has seven chapters. Chapter one provides a general overview of socio-economic, political and demographic pictures of Tanzania. Moreover, State organs are briefly explained in gender perspective. Chapter two is on women's situation in civil and political rights, whereby issues like political empowerment, access to justice and constitutional rights are extensively analyzed. Chapter three accounts for economic rights, in which, economic empowerment issues, poverty, property and labour rights are assessed. Moreover, there is a brief coverage of costs associated to management and follow-up of GBV and VAC cases. Social and cultural rights are covered under Chapter four of this report. Such rights include health, education and water. Moreover, there is an analysis of HIV/AIDS situation on gender standpoint.

The remaining half of the report covers chapters five, six and seven. Chapter five is on enforcement of the women's-related rights, while chapters six and seven are on compliance with international human rights standards; general recommendations and conclusion. Policy and legal developments and enforcements at national and international levels are subject matters of these chapters.

The units of measurement for each women's-rights progress were national and international policy and legal frameworks. Therefore, each chapter, section and sub-section begins with an indication of particular applicable standards, followed by situation on the ground, discussion, analysis and specific recommendations.

Stylistically, the report could be used as an advocacy tool, learning and reference material for different users including government officials, academicians, researchers, NGOs, CBOs, FBOs, and other stakeholders involved in women's rights issues in Tanzania. Some of the issues are entwined; thus, readers are strongly advised to read all chapters.

Finally, WILDAF invites comments and other form of feedback from every one of you. It is expected that, the second and other editions will be more informative basing on this firm foundation.

Dr. Judith Odunga  
NATIONAL COORDINATOR

## Chapter One

### General Introduction

#### 1.1 Geographical Location

The United Republic of Tanzania lies between Latitudes 1<sup>0</sup> and 12<sup>0</sup>S, and Longitudes 29<sup>0</sup> and 41<sup>0</sup> E. It borders the Indian Ocean in the East and lies between Kenya and Mozambique in the North and South respectively. The coastline of Tanzania is 1,424 km long, with four major ports serving as a gateway to landlocked countries of Uganda, Zambia, Rwanda, Malawi, Burundi and Democratic Republic of Congo.<sup>1</sup> Tanzania is one of the five East African countries, which form the East African Community (EAC).

The climatic condition of Tanzania is tropical with varied seasons and weather from different zones. The coastal region is hot and humid, southern highland and western northern regions are temperate. It has two rainy seasons; the short rains are generally from October to December whereas the long rains last from March to early June. The central plateau (central Tanzania) tends to be dry and arid throughout the year especially Dodoma and Singida regions.<sup>2</sup>

The topography of the country is very exciting as it has valleys, lakes, rivers, ocean and mountains including Mount Kilimanjaro which is the tallest freestanding mountain in the world; Lake Victoria; Lake Nyasa and Lake Tanganyika. There are ranges of beautiful forests reserves and national parks including Serengeti and Ngorongoro Crater, which are ones of the seven 'wonders' of the world.

The climatic and topography conditions in Tanzania have, to a certain extent, been influencing or impacting onto women's rights in Tanzania. For instance, prolonged draught which faces most of the central and lake zone, causes women and children to trek long distances in search of water. Moreover, the conditions contribute to low agricultural productivity, which is attributing factor to income poverty in many parts of the country. As it is further urged in this report, there is an intrinsic link between poverty and human rights violation (including women's rights).

1 The ports are: Dar es Salaam, Tanga, and Mtwara and under construction Bagamoyo major port in Coastal region.

2 World Travel Guide, Tanzania Weather, Climate and Geography, accessed it from <http://www.worldtravelguide.net/tanzania/weather-climate-geography> on 7th November, 2014.

## 1.2 Historical Background and Women's-Rights Struggles in Tanzania

The United Republic of Tanzania came into being on 26<sup>th</sup> April, 1964 followed the union between Tanganyika and Zanzibar. The Union led to the making of the 3<sup>rd</sup> Constitution in the history of Constitution making in Tanzania which was named 'The Union Constitution, 1964.'<sup>3</sup> The said constitutions including the 1977,<sup>4</sup> focused on political governance and welfare state in terms of national economic development. Therefore, little attention was given to human rights issues let alone women's rights.

However, this fact does not negate the reality that, a need for freedom, equality and sovereignty (which are some of the core human rights components) formed a central part of the struggle for independence under the leadership of the Late Mwl. Julius Kambarage Nyerere. For instance, in September 1959 while opening the Pan-African Freedom Movement of East and Central Africa Conference in Moshi, Tanzania, Mwl. Nyerere said that:-

[H]ere we are, building up the sympathy of the outside world that we are fighting for our rights as human beings ... I don't believe the leaders of a people are going to behave as hypocrites to gain their ends, and then turn round and do exactly the things which they have been fighting against (oppression and inhumanity) ... we will need to have equal opportunities to everyone ...<sup>5</sup> [Emphasis Supplied].

All gender groups, including women, African actively participated in the independence struggles under the then Tanganyika African National Union (TANU) political party and its groups. According to Susan Geiger,<sup>6</sup> majority of the TANU members were actually women. The women did sensitize others to join the struggles; they (women) mobilized resources and support from house to house. Ms. Geiger names Bibi Titi Mohamed as one of the patriotic women who vigorously fought for the independence and thereafter, women's rights.

3 Note that, the first Constitution was the Independence Constitution 1961, the Second was Republic Constitution 1962, the third is the Union Constitution, 1964, the fourth is Interim Constitution 1965 and the last is the Permanent Constitution of United Republic of Tanzania, 1977 as amended from time to time cited as Chapter 2 of the Laws of Tanzania.

4 It is known as the Constitution of the United Republic of Tanzania of 1977. This is the document which was still in force as of December 2014 when this report was prepared and published. However, there was constitutional making process aimed at having a new union Constitution of Tanzania. The following stage of this process was referendum, which is scheduled from early 2015.

5 Nyerere, J (1978) Freedom and Unity: A Selection from Writings and Speeches 1952-1965. Dar es Salaam: Oxford University Press. Pages 69 and 70.

6 Geiger, Susan (1997) Wanawake wa TANU: Jinsia na Utamaduni Katika Kujenga Uzalendo Tanganyika, 1955-1965. Dar es Salaam: Mkuki na Nyota Publishers. The text book translated from English to Kiswahili by TGNP Mtandao in 2005. In this book, Ms. Geiger traces historical background and real facts of actual women's participation in the political independence of Tanganyika (Tanzania).

While the struggle resulted into end of colonialism in 1961 as stated above, Tanzania, just like so many other African States, remained hesitant to accept human rights norms in a more vivid ways. The nationalists denied human rights in practice on the grounds that their countries had to undergo a lot of socio-economic and political reforms before resorting into 'luxury' options such as human rights.

Therefore, when Mwl. Nyerere stressed the human dimension of development, and the importance of human rights, his was not a lone voice. But his conviction and authority offered a beacon of hope for citizens – to improve their welfare and ensure equal access to social services to everyone. As a result, the country made great strides in vital areas of social (gender) development.<sup>7</sup> For instance, infant mortality was reduced from 138 per 1,000 live births in 1965 to 110 in 1985; life expectancy at birth rose from 37 years in 1960 to 52 years in 1984; primary school enrolment was raised from 25% of the age group (only 16% of females) in 1960 to 72% (85% of females) in 1985 despite rapid increasing population; and the adult literacy rate rose from 17% in 1960 to 63% by 1975 (much higher than in other African countries).<sup>8</sup>

Due to a number of factors including global pressure to embody human rights in States' constitutions, the Bill of Rights and Duties was incepted in 1984 following the 5<sup>th</sup> Constitutional Amendment of 1984.

The global pressure also called for adoption of economic reforms under what was commonly referred to as 'Structural Adjustment Programme' (SAP), which, inter alia, commanded the countries to liberalize not only economy; but also, the political governance of the State in 1980s and 1990s. The civil rights groups took liberty of this opportunity. As a result, so many civil society organizations (CSOs) were established from 1990s, some being the Women Legal Aid Centre (WLAC); Legal and Human Rights Centre (LHRC); Tanzania Media Women Association (TAMWA); Tanzania Gender Networking Programme (TGNP); and of course, Women in Law and Development in Africa (WILDAF) – Tanzania chapter.

The presence of these and other gender-rights groups increased feminism and other gender movements in such a way that, the Tanzanian government

7 Read, James S. 'Human Rights in Tanzania'; in Legum, Colin & Geoffrey Mmari (Eds.) (1995) Mwalimu: The Influence of Nyerere. Dar es Salaam. Mkuki na Nyota. Pages 125-145.

8 Figures are quoted from the World Bank's World Development Report (undated), in Read, James S. 'Human Rights in Tanzania'; in Legum, Colin & Geoffrey Mmari (Eds.) (1995) Mwalimu: The Influence of Nyerere. Dar es Salaam. Mkuki na Nyota. Pages 125-145.

succumbed to the pressure by adopting a number of reforms. Some of the institutional, policy and legal reforms included:-

- a) Initiation of the specific Ministry on gender, women and children.
- b) Formulation of pro-human rights and gender policies.<sup>9</sup>
- c) Enactment of pro-human rights and gender legislation.<sup>10</sup>
- d) Mainstreaming gender into public programmes.<sup>11</sup>

### 1.3 Population and Its Impacts to Gender

The 2012 Population and Housing Census revealed that the population of the country is 44,928,923 people.<sup>12</sup> The census report showed that, the majority of Tanzanians are women (51.7% of the general population), while men are only 48.3%.

The number of households headed by women is at a ratio of 7.4 and those headed by men is 3.5.<sup>13</sup> The population characteristics based on age and sex is as follows for the selected age groups:-

Table 1: The Tanzania's Population Characteristics

Age and Sex		Total Number	Tanzania Mainland	Tanzania Zanzibar
Young Population (0-17 years)	Male	11,240,982	10,922,412	318,223
	Female	11,263,891	10,943,846	318,045
Elderly Population (60+)	Male	1,200,210	1,170,323	29,887
	Female	1,307,358	1,278,934	28,424
Elderly Population (65+)	Male	819,987	801,509	18,478
	Female	916,864	898,616	18,248

Source: Extract from Basic Demographic and Socio-Economic Profile of 2014.

- 9 The policies include: National Strategy for Gender Development of 2005; Rural Development Strategy of 2001; Policy on Women in Development in Tanzania of 1992; Women and Gender Development Policy of 2000; Community Development Policy of 1996; National Employment Policy of 1997; National Strategy for Growth and Reduction of Poverty (NSGRP/ MKUKUTA II) of 2010; and National Economic Empowerment Policy of 2004.
- 10 The laws include: Commission for Human Rights and Good Governance Act, Cap. 391; Enforcement of Basic Rights and Duties Act, Cap. 3; HIV and AIDS (Prevention and Control) Act of 2008; Law of the Child Act of 2009; Penal Code, Cap. 16; Rights of Persons with Disabilities Act of 2010; and Human DNA Regulation Act of 2009; Anti-Trafficking in Persons Act, 2008.
- 11 For instance, the Police Force of Tanzania initiated the Tanzania Police Female Network (TPF-Net), which is return, designated part of the CROs (complaints' counters) to be Police Gender and Children Desks (PGCDs). Moreover, the office of Director of Public Prosecution (DPP) has a gender-desk to ensure gender sensitivity in prosecution processes. Some of the municipal and district councils have gender policies, by-laws and committees. They have also specific budget for gender issues under the Community Development Departments.
- 12 URT, Population Distribution by Age and Sex Report, September, 2013. Page VI.
- 13 The values of these indicators are averages and not percentages (no absolute number)

The majority (31,623,919 or 70.4%) of the country's population is rural dwellers.<sup>14</sup> The rural population is characterized with the shortage of social services such as water supply and health services. The more affected population in accessing such mentioned social services is women. For instance the Demographic and Social Economic Profile of 2014 states that, the number of households that use piped water is only 3,414,896 (countrywide), other protected water sources 1,902,244 and 3,959,857 households particularly in rural areas do use unprotected water sources.

Therefore women in rural areas spent hours and hours searching for water rather than engaging in other economic activities. While women searching for water for domestic usage, for men water shortage is an economic opportunity as they search for water in order to sell and not for domestic use at household.

The literacy rate among the country's population is very high. For instance the literacy rate (5 years and above) is 71.8%. The enrolment ration in primary schools (7-13 years) now stands at 76% whereas the gross enrolment ratio in primary schools is 94.6%.<sup>15</sup> There is increased number of boys and girls enrolled in primary schools save for case to case situation whereby some families refuse to take their children to school. The statistics of students' enrolment in primary schools indicate that the number of girls enrolled is higher compared to boys; for instance, the table below summarizes the enrolment of boys and girls in primary schools for the past four years:-

Table 2: Trend of Primary School Enrolment Rates by Sex (Boys and Girls)

Year	2010	2011	2012	2013
Male	4,203,269	4,159,740	4,060,892	4,066,287
Female	4,216,036	4,203,646	4,160,892	4,165,626
Total	8,419,305	8,363,386	8,247,172	8,231,913

Source: Extract from BEST Report 2013 available at [www.moe.go.tz](http://www.moe.go.tz) (accessed on 2<sup>nd</sup> December, 2014)

Therefore the figures above indicate that the population in Tanzania has positive view on educating both boys and girls. It has been the agenda on Millennium Development Goal (MDG) number 3 to attain equality between men and women in all dimensions including education. In Education sector specifically the Universal Primary Education (UPE), Tanzania has achieved even before 2015 as the gross enrolment indicate girls are the majority in enrolment compared to boys.

<sup>14</sup> URT, Basic Demographic and Social-Economic Profile of 2014. Page 2.

<sup>15</sup> This is a success endeavor in education sector; the Millennium Development Goal two (Achieve Universal Primary Education) Aim to make sure that all boys and girls complete a full course of primary schooling.

The population of Tanzania's unity is strengthened by Kiswahili language as a unifying factor. The country has more than 120 tribes. Kiswahili language is used as a medium of instruction in schools, official and non-official social, political, economic and cultural activities. Therefore, Kiswahili makes the population of Tanzania to be different from most of the African Countries where tribalism exists to the extreme and in some countries tribal rivals have advanced into civil wars.

#### 1.4 Socio-Economic Situation of Tanzania

Tanzania is one of the African developing countries with abundant investment opportunities. The country is endowed with natural resources such as minerals, natural gas, wildlife, water bodies and forests. The natural resources available attract foreign direct investments (FDI) from various countries. The discovery of natural gas in Mtwara and Kigoma regions is expected to attract more FDIs and therefore, increase the gross domestic product (GDP) if the resources and earnings will be utilized wisely by the government.

The economy is projected to grow by 7% in 2014/ 2015 driven by transport, communication, manufacturing, agriculture and construction. The economic growth is linked with improved transport infrastructure network.<sup>16</sup> Most of the regions in Tanzania mainland are now connected with tarmac road which facilitates movements of goods especially farm produces.

The country's Gross Domestic Product (GDP) for the 2014 grew to 7.2% compared to 7.0% in 2013. The table below shows GDPs for the past four years and the projection for the 2015:

Table 3: Tanzanian GDP Growth Trends (2012-2014/2015)

Year	2012	2013	2014	2015
GDP (in %)	6.9	7.0	7.2	7.0

Source: AfDB Statistics Department

However despite the fact that the GDP of the country grows, the country's economy is still facing the following challenges; firstly, Tanzania is one of the countries with huge external debt. The external debt by 2013 grew by 23% which reached USD Dollars 13 Billion (about Tshs 30 Trillion). Secondly; the poverty level according to Household Budget Survey of 2012 (results released in November 2013), indicates that poverty rate in the country is 28.2%. The situation is worse in rural areas as the poverty rate in 33.0%, whereas in urban settings it is 21.7%. The reason being, the majority of Tanzanians are employed in agricultural sector which does grow at the rate of 5% annually.<sup>17</sup>

16 AfDB, OECD and UNDP, African Economic Outlook, Country Report: Tanzania 2014. Page 3.

17 AfDB, OECD and UNDP Ibid page 8.

This is why it has always been not easy to convince the ordinary citizen that, the country's economy is growing, while they are living in abject income poverty.

The MKUKUTA II; Gender Development Strategy of 2005; Legal Sector Reform Programme (LSRP); and so many other national and international policies and strategies, states that, there is an intrinsic link between poverty and access to justice (in which gender and human rights in general are the main issues of concern). That is why this report ventures to assess the extent in which expenses for litigating gender based violence (GBV) tend to refrain the victims and survivors of GBV and violence against children (VAC) from reporting their cases to the justice machineries in Tanzania.

It should be noted that, among the economic subsectors listed above, agricultural productivity is regarded as the backbone of the national economy, whereby, at least 70% of the Tanzanians who are living in rural areas as stated above, are wholly and exclusively depending on agriculture. At least 45% of the GDP depends on agriculture. According to various sources, the main actors in this economic subsector in rural areas are women and youths.<sup>18</sup> However, of recent years, the majority of youths have been quitting agriculture and migrating to urban areas for a more 'green pastures'.<sup>19</sup> Lack of government support; draught; and uncertainty of markets are cited as some of the factors which cause agricultural failure in many parts of Tanzania.<sup>20</sup>

The WILDAF's 2012 Study on the Effectiveness of Enforcement of the Penal Code, Cap. 16 showed that, most of the rural-based women do not report GBV cases to the justice machineries due to, inter alia, a fear of 'loosing the bread winner' even if he is a habitual perpetrator of human rights; or associated costs of going forth and back to the authorities in search of justice. All these are matters associated to income poverty. Moreover, the study asserted that, the more the women and other vulnerable groups are empowered economically, the more they dare to take action against the perpetrators of human rights violations.

It should be noted that, these and other issues are explored extensively in the coming parts of this report.

#### 1.5 Separation of Powers: Judiciary, Executive and Legislature

The 'separation of power' is one of the principles in a democratic society. The principle elucidate that each organ of the state is independent to discharge its obligations of check and balance without influence or fear of another. Article 4 of the Constitution of the United Republic of Tanzania of 1977 names the Judiciary, Executive and Legislature as the arms or pillars of the State.

18 URT, Human Development Report 2012. Page 41.

19 Athuman J.L et al (1998) Youth Migration and Poverty Alleviation: A case Study of Petty Traders (Wamachinga) in Dar es Salaam. REPOA Research Report No. 98.5 of 1998.

20 Athuman J.L Ibid page 3.

## 1.5.1 Judiciary

The Judiciary is vested with interpretation mandate of the laws in the country.<sup>21</sup> The Judicial system of United Republic of Tanzania is composed of the following; Court of Appeal of Tanzania, the High Court of Tanzania, Resident Magistrates Courts, District Courts and Primary Courts.

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>22</sup> Further, 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>23</sup>

In addition, the Judiciary has other quasi-judicial bodies or tribunals which have been established under various laws to adjudicate on specialised issues or matters, such as labour, taxes and land issues.<sup>24</sup> Despite the fact that GBV and VAC cases occupy large parts of the judicial shelves, the government of Tanzania has not yet considered this as sufficient ground to justify initiation of the specific court or session on gender-related cases.

The 2012 TPF-Net Gender Desk Mapping Report recalled the importance of initiating a special Court for gender or family related matters. The said police report stated that, some of the GBV and VAC cases drop along the way during prosecution or trial levels due to, *inter alia*, absence of gender-sensitive environment in the judiciary. It is further stated in the police report that, a viable and realistic measure to begin with could be, to have specific judicial sessions and officials namely Magistrates and Judges who will be adjudicating GBV-related cases all the time they are lodged in courts.

21 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.'

22 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].

23 The Constitutional Court is established by Article 125 of the Constitution of the United Republic of Tanzania, 1977.

24 The Labour Institutions Act, 2004 provides for establishment of institutions to adjudicate labour disputes in Tanzania; the Tax Revenue Appeals Act, Cap. 408 of R.E 2006 provides for establishment of Tax Revenue Appeals Board and the Tax Revenue Tribunal to adjudicate taxes issues; and, Land matters are adjudicated by tribunals established under the Court (Land Disputes Settlements) Act, 2002.

The police report's suggestion tries to reinforce the July 2012's International Conference on the Great Lakes Region (ICGLR) directive, whereby, under Paragraph 5 of the Communiqué (resolution),<sup>25</sup> the ICGLR states that:-

The Ministers of Justice from the ICGLR Member States commit to coordinate with their respective Chief Justices, where necessary, to establish and strengthen Special Courts to handle sexual and gender-based violence cases and provide progress reports to the Conference Secretariat by December 2012.

This was not yet done as of 31<sup>st</sup> December, 2014 being two years after Tanzania affirmed this commitment for implementation. The absence of special Courts or judicial sessions for family related issues including GBV and VAC seems to cause a lot of challenges in handling GBV cases as this report discusses in details in the coming sections. Therefore, WiLDAF joins a hand with the police to urge the government to fulfill its obligation. For instance in Venezuela, in 2007 special courts for violence against women were created in order to improve access to justice.<sup>26</sup> In the Africa continent, South Africa and Tunisia are some of the countries with ad-hoc special tribunals to deal with family cases whereby they have jurisdiction to entertain GBV cases. The UNDP has signed a Memorandum of Understanding with the government of Zambia to establish Fast Track Courts in areas prone to gender based violence incidents.<sup>27</sup>

## 1.5.2 Executive

The President of the United Republic of Tanzania is the head of the State and Commander in Chief of all military forces who also chairs the Cabinet of Ministers. The President is assisted by Vice-President and day to day executive functions are carried out by Prime-Minister (PM) who is also the head of government affairs in the National Assembly. The Prime Minister is assisted by sectoral Ministers.

The appointing authority (President) is not obliged by the Constitution of Tanzania or any other laws to abide to the gender equality in his appointment. Therefore the number of Ministers and their sexes depend on the wish of the appointing authority.

25 Reference: A Communiqué namely; The International Conference on the Great Lakes Region (ICGLR) Regional High Level Consultation of Ministers in Charge of Justice and Gender on Kampala Declaration on Sexual and Gender Based Violence (SGBV), in Grand Hotel, Kinshasa 28th July 2012.

26 OECD Development Centre (March 2013) 'Transforming Social Institutions to Prevent Violence against Women and Girls and Improve Development Outcomes. Page 7.

27 This information was accessed from (untitled article) [www.allafrica.com/stories/201412220539.html](http://www.allafrica.com/stories/201412220539.html) on 22nd December, 2014.

The general administration of executive functions is divided into two levels; the Central Government (CG) and the Local Government Authorities (LGAs). The CG is at ministerial level where Cabinet Ministers and Permanent Secretaries (PS) are responsible in discharging day to day activities. The LGAs are coordinated from district or municipal to village level. They are headed by different officials with different commanding powers under the respective laws.<sup>28</sup> The LGAs are also responsible for management of the local government elections, which were lastly conducted on 14<sup>th</sup> December 2014.

### 1.5.3 Legislature

The Parliament of United Republic of Tanzania has two parts; namely, the President and National Assembly.<sup>29</sup> The Legislature is led by the Speaker, who is assisted by Deputy-Speaker. The current Speaker of the Assembly is a lady. As for the Members of Parliament (MPs), they are 357 in total, comprised of MPs elected from constituencies; special (women) seats MPs elected from political parties with representation in the Parliament; the Attorney General; and 10 other MPs appointed by the President.

The Constitution of the United Republic of Tanzania of 1977 provides for a mandatory requirement that, in all life of the National Assembly women MPs should not be less than 30% of all MPs. The proposed new constitution draft proposes the percentage of women representation in the Assembly to be raised to 50%.

28 The Local Government (District Authorities) Act, 1982 and the Local Government (Urban Authorities) Act, 1982.

29 Article 62 of the Constitution of the United Republic of Tanzania of 1977.

## Chapter Two

# Women's Situation in Civil and Political Rights

### 2.1 Legal Standards on Civil and Political Rights

The Universal Declaration of Human Rights (UDHR) of 1948 provides for a number of rights including the political rights. It states, *inter alia*, that everyone has the right to take part in governance of the country. The term 'everyone' could include all gender groups who are eligible to participate into political activities. Article 21 of the Declaration mentions a conduct of regular elections as a means to uphold rights to politics.

The right to take part in governance came strongly in the UDHR due to the historical background as there was no equality between men and women in political sphere. Women were not allowed to vote or take any post in governing the country. Men were rulers and women subjects of men.<sup>30</sup> This trend was almost all over the world, Tanganyika inclusive. For instance, countries which today are classified as democratic previously went through the same trend as less democratic societies. Countries like United States of America (USA) did not allow women to vote up to 1872. During those times, one Susan B Anthony was arrested for casting a vote in the presidential elections of which it was classified as illegal votes. She was charged with an offence of casting illegal votes. However, Ms. Susan, who happened to be a firm feminist, demanded for the right to vote to be enjoyed by all irrespective of gender and sex. She was quoted by some literatures<sup>31</sup> arguing that:

It shall be my work this evening to prove to you that in this voting, I not only committed no crime but simply exercised my citizen's rights, guaranteed to me and all ... by the National Constitution, beyond the power of any State to deny.

The courage and strong commitment of such that and other women demanding for enjoyment of right to take part in governance, several binding and non binding instruments were made. They include international and regional legal instruments developed after the UDHR.

30 LHRC & ZLSC, Tanzania Human Rights Report of 2011. Page 131.

31 The Big Book of Great Speeches, Maanu Graphics Publishers, 2000. Page 689.

For instance the International Covenant on Civil and Political Rights, (ICCPR) of 1966 provides the right to participate in political life to everyone irrespective of gender and sex. Article 2(3) of the ICCPR provides that, the 'State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.'

Thirteen years later, the United Nations (UN) promulgated the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979. These and other instruments ignited more struggles in the world to strive for respect of those covenants. For instance in 1995 the Beijing Conference,<sup>32</sup> which was attended by women representatives across the world, reiterated a need for States, including Tanzania, to uphold their commitment to ensure equal opportunities between men and women in all spheres.

The other International legal instruments which guarantee promotion and protection of political rights to all without any gender discrimination include:-

- (a) The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), that prohibits gender discrimination in participating in democratic processes.<sup>33</sup> Article 2 requires commitment of the states parties which have ratified the convention 'to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.'
- (b) The African Charter on Human and Peoples Rights on the Rights of Women in Africa, 2003 famously as Maputo Protocol provides fundamental guarantee for enjoyment of political rights for everyone without gender and sex discrimination.<sup>34</sup> The Maputo provides that:

State Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that: a) women participate without any discrimination in all elections b) women are represented equally at all levels with men in all electoral processes; c) women are equal partners with men at all levels of development and implementation of State policies and development programmes.

<sup>32</sup> The Beijing Conference was the fourth conference that took place in 1995. Prior, to it there were other three conferences held in Mexico City in 1975 (this was the first conference and this year was named as the International year of Women), the second was in Copenhagen 1980 and the third was held in Africa land, Nairobi in 1985.

<sup>33</sup> Article 15(1).

<sup>34</sup> Article 9 of the African Charter on Human and Peoples Rights on the Right of Women in Africa, 2003.

- (c) The SADC Protocol on Gender and Development of 2008. The protocol provides for guidance on how to eliminate gender-gap in Southern Africa Development Community sub-region in order to enhance development. It calls for 50-50 representation in decision making bodies, in particular political positions.
- (d) The Treaty for the Establishment of the East African Community as amended in 2006 and 2007 safeguards and promotes gender representation and empowerment in East Africa region. One of the objectives of its establishment clearly states that; 'mainstreaming of gender in all its endeavors and the enhancement of the role of women in cultural, social, political, economic and technological development.'<sup>35</sup>

In order to enjoy political participation on equal foote between men and women in Tanzania, the Constitution of the United Republic of Tanzania of 1977 lays a foundation. It provides for this right as freedom of association provided under the bills of rights. Other related constitutional rights include the right to franchise (right to vote) under Article 5; and the right to participate in elections. However, private candidacy is not allowed in the Tanzanian electoral framework.<sup>36</sup> Therefore, one has to affiliate him/herself to a political party in order to contest for elections.

The legal framework on elections is comprised of several laws, main one being:-

- (a) The Political Parties Act, Cap. 258.
- (b) The Election Act, Cap. 343.
- (c) Local Government Authorities (Elections) Act, Cap. 292.
- (d) The Election Expenses Act, 2010.

## 2.2 Women Representation During Parties' Nominations

As stated above, the Constitution of the United Republic of Tanzania of 1977 requires affiliation to political parties in order for a person to contest for political elections.<sup>37</sup>

<sup>35</sup> Article 5(3)(e) of the Treaty for Establishment of the East African Community as amended in 2006 and 2007.

<sup>36</sup> Note that, this position now has remained so under the Constitution but with judicial precedent of the African Court on Human and Peoples Rights the position has changed. The Independent candidates are allowed to contest in countries general and local government elections (following the said Court's decision in the case of Rev. Christopher Mtikila and Legal and Human Rights Centre and Tanganyika Law Society Vs. The Government of Tanzania, Application No. 9 of 2011 and Application No 11 of 2011 to the African Court on Human and Peoples Rights).

<sup>37</sup> Article 39 and 67 of the Constitution of United Republic of Tanzania of 1977, which provides for mandatory requirement for party nomination in order one to run for presidential post and parliamentary seat respectively.



The political parties business is regulated by the Political Parties Act, Cap. 258. However each political party has set in place procedures for nominating political candidates as stipulated in their own parties' Constitutions.

The experience gathered from 2005 general elections; 2009 local government elections; 2010 general elections; and 2014 local government elections, shows that, very few women show up (or are being chosen) for nomination within political parties. As a result, there is a wider gender-gap between men and women who vie for different posts. For instance, consider the Table below which shows comparatively the number of aspirants in every party that participated in the general election in 2005 and 2010. In both elections the number of women is very minimal compared to men:-

Table 4: Number of Women Political Aspirants in General Elections of 2005 and 2010 [Last Election]

S/No.	Name of the Political Party	General Election Year(s)					
		2005			2010		
		Male	Female	% of Female	Male	Female	% of Female
1	CCM	213	19	8.18	215	24	10.04
2	CHADEMA	133	11	7.63	154	25	13.96
3	CUF	200	13	6.10	168	14	7.69
4	NCCR	63	8	11.26	52	15	22.38
5	NLD	14	15	51.72	15	8	34.78
6	NRA	21	6	22.22	13	6	37.5
7	CHAUSTA	49	12	19.67	8	5	38.46
8	TADEA	32	2	5.88	20	12	37.5
9	TLP	104	11	9.56	36	6	14.28
10	FORD	8	3	27.27	-	-	-
11	UDP	28	10	26.31	31	14	31.11
12	UMD	15	6	28.57	13	10	43.47
13	UPDP	29	13	30.95	23	13	36.11
14	Jahazi-A	46	9	16.36	15	6	28.57
15	APPT-M	16	0	0	9	7	43.75
16	DP	34	11	24.44	24	11	31.42
17	SAU	42	10	19.23	26	6	18.75
18	D'Makini	16	0	0	12	5	29.41
19	AFP	-	-	-	11	4	26.66
	<b>Total:</b>	<b>1063</b>	<b>159</b>	<b>13.01</b>	<b>845</b>	<b>191</b>	<b>18.43</b>

Source: Compiled from the Tanzania National Electoral Commission Reports of 2005 and 2010.

WiLDAF is of the view that, there is a need to invest more within political parties nomination process. If political parties give room and invest in building capacity for women aspirants, the gender gap in nomination process will decrease. It is not possible under multiparty democracy to attain 50/50 representation as envisaged if political parties do not heavily invest in preparing female candidates to run into general and local government elections.

Article 13(2) of the SADC Protocol on Gender (cited above) lays down the following issues to be considered by States Parties in respect of electoral processes, that is:-

States Parties shall ensure the equal participation of women and men in decision making by putting in place policies, strategies and programmes for: (a) building the capacity of women to participate effectively through leadership and gender sensitivity training and mentoring; (b) providing support structures for women in decision-making positions; (c) the establishment and strengthening of structures to enhance gender mainstreaming; and (d) changing discriminatory attitudes and norms of decision making structures and procedures.

It is important for the Ministry of Community Development, Gender and Children to devise a mechanism which will be implemented by all political parties in accordance to SADC protocol. Alternatively, all women rights groups and other partners could bank on the ongoing constitutional making process to ensure that, equality in political positions is guaranteed from within the political parties.

## 2.3 Political Empowerment

The political empowerment is linked to the general concept of increasing people's opportunities and capabilities to make and express choices and to transform those choices through political participation.<sup>38</sup> The United Nations Economic Commission for Africa (UNECA) describes political empowerment using three major dimensions; firstly, individual empowerment whereby an individual (oneself) increases civic competencies; secondly, collective empowerment where there is need to work in network; and lastly, creation of enabling environment for people to compete without gender discrimination.<sup>39</sup>

Before the Beijing Conference of 1995 (cited above), the political studies indicated that women had little participation in leadership and decision making bodies.<sup>40</sup>

38 Lous. H et al (2005) Linking Community empowerment, Decentralized, Governance and Public Service Provisions Through a Local Development. SP Discussion Paper No. 0535. Page iii.

39 UNECA, Assessing Political Empowerment of Women, Accessed from: <http://www.uneca.org/publications/assessing-political-empowerment-women> on 6th December, 2014.

40 UN, United Nations Focus; "Women in Politics: Still the Exception?" November, 1989. The Report of the UN Department of Public Information. It shows that by mid 1989 the countries with the highest numbers of women in Cabinet and Legislative Assemblies were Norway, Sweden, Bhutan, Cuba and Romania only.

Thus, the Beijing Platform came up with two major goals to empower women politically in order to reverse the situation,<sup>41</sup> namely:-

- (a) To take measures to ensure women's access to and full participation in power structures and decision making. The government and political parties had the following obligation under this first strategic goal:-

For the governments:

- (i) To encourage political parties to integrate women in elected or non-elected positions to reflect same proportions and levels as men.
- (ii) To institute measures to protect and promote women's equal rights with men, their freedom of association and their representation in political parties and trade unions.
- (iii) To review electoral systems with the aim of removing any differential impact on women.
- (iv) To continuously monitor and regularly evaluate progress in the efforts to increase the representation of women in decision-making positions but also all other levels of employment.
- (v) To regularly publish quantitative gender- disaggregated data to show the levels of men and women employed in the public and private sectors with a view to ensuring women's full representation in employment.
- (vi) To give special focus to indigenous women's participation.
- (vii) To support NGOs and research institutions which work to enhance women's participation, empowerment and decision-making environment.
- (viii) To ensure that government-funded organizations adopt non-discriminatory employment policies.
- (ix) To ensure gender balance in nominating, appointing or electing candidates to United Nations bodies, agencies and organizations particularly at senior levels.

41 UNECA (Undated) Five Years after Beijing Assessment Report. Page 14.

For the political parties:

- (i) To examine and take measures to ensure that the party structure does not discriminate against women directly or indirectly.
- (ii) To develop initiatives to ensure women's participation in all internal policy-making structures and appointive and elective processes.
- (iii) To incorporate gender issues in their political agenda and ensure that women participate in leadership on equal basis with men.

- (b) The second strategic goal reached at the Beijing Platform made emphasis on increasing Women's Capacity to Participate in Decision-making and Leadership. The commitments made under this goal included:

- (i) To provide leadership and self-esteem training to assist women and girls, particularly those with special needs, for example women with disabilities or Assessing Political Empowerment of Women belonging to racial/ethnic minorities, to strengthen their self-esteem and enable them to take up decision-making positions.
- (ii) To have transparent criteria for decision-making positions and ensure that the selecting bodies have a gender-balanced composition.
- (iii) To develop mechanisms and training to encourage women to participate in the electoral process, political activities and other leadership areas.

This report made an assessment of the extent of implementation of all these goals and commitments and has ascertained that Tanzania was still lagging far behind the expectation as of December 2014. As such, WiLDAF calls upon the government agencies, development partners, civil rights groups and others to team up in order to fulfil these obligations. It is further ascertained by this report that, the political empowerment by most stakeholders is still very informal arrangement.

The political empowerment is mostly implemented by development partners such as the UNDP and civil societies by providing civic education to selected districts in particular at the eve (very close) of election months. The TACCEO and LHRC 2010 report<sup>42</sup> points this as one of the weaknesses

42 TACCEO and LHRC 'Report on the United Republic of Tanzania General Elections of 2010.' Page 49.

of the Tanzanian electoral process. The said report states that both voters and civic awareness sessions are conducted on ad hoc basis. Therefore, new registered voters tend to get little knowledge on election rights before the voting dates.

WiLDAF urges the government to pour sufficient resources to the National Electoral Commission (NEC) and civil rights groups in order to ensure that, civic awareness sessions are widely conducted throughout the country and in all years before next elections. Moreover, WiLDAF urges the development partners to support CSOs which venture to raise political empowerment for women some years before and after elections.

## 2.4 Role of CSOs in Political Empowerment: Case of 2014 Local Government Elections

During the year 2014, some of the CSOs under the auspices of UN-Women (Tanzania) were implementing the election project. The project aimed at empowering women aspirants from all political parties who intend to vie for different political posts in the coming local government and general elections. The feminist networks of CSOs are implementing this project all over the country. For instance, LHRC and TGNP through the said project managed to train 240 people with influence in communities so that they can support female and persons with disabilities (PWDs) who aspire to contest in 2014 local government elections and general elections of 2015. The training was conducted in 8 regions.<sup>43</sup>

There is a need to assess the extent to which such initiatives were able to instigate more women and PWDs to vie for political positions. However, as pointed above, the challenge of these kinds of arrangement (civic awareness programmes) has been on the timing. It is always not easy to reach out all places throughout the country within a month or two before the date of elections. This is why WiLDAF urges everyone responsible to ensure that, civic awareness on electoral processes and rights is sustained throughout the years.

## 2.5 Women's Representation in Decision Making Bodies

The international standards cited above require equal representation in decision making bodies without any undue influence. For instance the SADC Protocol on Gender and Development of 2008 has set a standard of equal representation between men and women.

<sup>43</sup> LHRC and TGNP, "Capacity Building and Civic Awareness" Training Report, 2014. Page 2.

The Protocol has also set time-frame for its attainment. It provides that, 'States Parties shall endeavour that by 2015, at least fifty percent of decision making positions in the public and private sectors are held by women including the use of affirmative action measures as provided for in Article 5.'<sup>44</sup> The SADC protocol went on further to even touch of private sector as well.

While only one year remains before the said deadline, Tanzania seems to take some strides towards accomplishment of the obligation on its side. For instance, as pointed out above, as of 2014, women representation to the Parliament was not less than 30% - as mandatory requirement under the Constitution of the United Republic of Tanzania of 1977.<sup>45</sup> Secondly, the proposed constitution draft which was submitted to the Constitutional Assembly early this year (2014) put it very clear on 50-50% representation to the Parliament. The draft constitution proposed duo-runners in each constituency, whereby, one should be a man and the other one should be woman. However, the Constituency Assembly under the undue influence of the ruling party, tuned this proposal to the effect that, it is an Act of Parliament which would determine the ways of achieving or ensuring the 50-50% representation of women and men.

As for this particular issue, WiLDAF urges the general public to demand for the wording of the second draft prepared by Judge Joseph Warioba's Commission. Otherwise, the uncertainty of equal representation between the two gender groups will remain to be the same as it has been all the time.

Regarding women's representation in other senior executive, judicial, political and legislative positions in 2014, the situation stood as shown in the chart below:-

<sup>44</sup> Article 12 of the SADC Protocol on Gender and Development of 2008.

<sup>45</sup> Article 66(1)(b) provides that; "Women members being not less than thirty percent of all the members mentioned in paragraphs (a)(c)(d),(e) and (f) with qualifications mentioned in Article 67 elected by the Political Parties in accordance with Article 78 on the basis of proportion of votes."

Table 5: Women Representation Status in all Governance Pillars by December 2014

Organ	Post	Male	Female	Female Representation
Executive	President	1	0	0%
	Vice-President	1	0	0%
	Prime Minister	1	0	0%
	Ministers	21	10	32%
	Deputy Ministers	19	5	21%
	Permanent Secretaries	9	4	31%
	Deputy Permanent Secretaries	8	5	38%
	Regional Commissioners (Tanzania Mainland)	16	7	30%
	Regional Administrative Secretaries	17	6	26%
	Ambassadors	26	8	23%
Judiciary	Justices of Appeal	15	4	21%
	High Court Judges	40	29	42%
Parliament	Speaker	0	1	100%
	Deputy Speaker	1	0	0%
	Members of Parliament	239	126	35%
	TOTAL (for these sampled institutions)	414	205	33.1%
		619		

Source: Various Sources.

The overall percentage of women representation in various positions (sampled above) is 205 out of 619 being only 33.1% of all those various senior positions of sampled institutions in Tanzania.

## 2.6 Access to Justice in Gender Perspective

Access to justice is one of the core principles of the rule of law. In order to have effective and efficient justice administration machinery that do not implicate gender imbalances there is need to consider four main issues, namely; legal framework; institutional set up; social economic circumstances; and cultural perspectives. Some of these issues were deliberated and addressed in the Vienna Declaration and Programme of Action of 1993;<sup>46</sup> and the Beijing Declaration and Platform for Action of 1995.<sup>47</sup> The two instruments calls for all States to uphold human rights and fundamental freedoms regardless of their historical, cultural, economic, political or any other reasons. Therefore, the question of access to justice (as part of human rights) is not supposed to be negated by any justification.

Article 13 of the Constitution of the United Republic of Tanzania of 1977 has borrowed a leaf from Article 14 of the ICCPR cited above. It states that, all persons are equal before the law and are entitled, without discrimination, to protection and equality before the law. Article 14 of the ICCPR further states that, equality before the law goes along with guarantee of access to justice in terms of fair and public hearing by competent, independent and impartial Tribunals or Courts. Articles 2 and 15 of CEDAW call for fair trial and equal opportunities between men and women in accessing justice machineries.

46 Chapter I para. 5.

47 Chapter II para. 9.

During its 21<sup>st</sup> Session in 1984, the United Nations (UN) Human Rights Committee interpreted Article 14 of ICCPR<sup>48</sup> by stating that, 'access to justice' and 'fair trial' should be interpreted to include presence of legal representation and access to qualified lawyers, who will represent individuals in accordance with their established professional standards.

Despite those legal standards and requirements, the right to access to justice in Tanzania remained at stake during the year 2014 due to lack of sufficient provision of the current legal framework on women's rights. The current framework brings in gender imbalances as mentioned earlier. The first dimension which limits access to justice with gender imbalances is the presence of some of bad laws in Tanzania.

The following are such laws of which WiLDAF and other CSOs have been advocating for amendments over years:-

- The Probate and Administration of Estate Act,<sup>49</sup> allows for application of Customary Declaration Orders under section 92. The Customary Declaration orders deny in most cases inheritance rights to women, widow and girls. The cited section limits scope of its application on matters of inheritance in primary court when customary laws are applicable. Thus it gives room for abuse and denies access to justice by women, widow and girls to inherit.
- The Penal Code<sup>50</sup> as amended by Sexual Offences Special Provisions Act, 1998 does criminalize Female Genital Mutilation (FGM) to persons below 18 years. The law limits access to justice to women when FGM is conducted to any person above 18 years. The position of the law should criminalize FGM in totality without age limitation.<sup>51</sup>
- The Customary Law (Declaration) Orders,<sup>52</sup> 1963 denies widows the right to inheritance. Equally other orders perpetrate domestic violence against women.
- The Law of Marriage Act, 1971<sup>53</sup> allows a female below 18 years to be married whereas it denies a male person below 18 to marry. It provides that, 'no person shall marry who, being male, has not attained the apparent age of eighteen years or being female, has not attained the

48 Article 14 of ICCPR - Human Rights Committee, General Comment 13, Art. 14 (Twenty-First Session, 1984), Compilation of General Recommendations Adopted by the Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev. 1 at 14 (1994).

49 Cap. 352 [R.E 2002].

50 Cap. 16 [R.E 2002].

51 Section 169A.

52 GN. No. 297 of 1963.

53 Cap. 29.

apparent age of fifteen years.<sup>54</sup> The provision of the Law of Marriage Act, contravenes the international legal position as provided for in CEDAW which states that; 'the betrothal and the marriage of a child shall have no legal effect, and all necessary option including legislation, shall be taken to specify a minimum age and to make the registration of marriage an official registry compulsory.'<sup>55</sup>

Note that, the Law of the Child Act, 2009 provides a definition of a child as 'any person below 18 years.' Therefore the Law of Marriage Act, 1971 is in conflict with other laws.

- (e) The Citizenship Act<sup>56</sup> is discriminatory to women by its refusal to allow Tanzanian women to extend citizenship to a spouse who is a foreigner. A woman does not have the right to pass on citizenship to children while a man is allowed under these cases if he marries a foreign woman.

Therefore WILDAF considers that it is a duty of the government of Tanzania to ensure that, these repugnant laws are scrapped out of legal books. The laws therefore have denied access to justice by women in the country. There is a need to enact a comprehensive piece of legislation that will address women's rights in order to bring gender balances in access to justice.

Moreover, WILDAF is of the view that access to justice goes hand in hand with the availability of judicial infrastructures and other resources such as personnel and finances. For instance, there were only 960 (being around 50% of the required)<sup>57</sup> Primary Courts buildings countrywide as of 2014, of which 157 are dilapidated. The number of Primary Courts Magistrates was only 487, most of who were not permanently stationed in the respective Primary Courts.<sup>58</sup> Therefore this fact alone hinders justice availability to women and girls who are victims of human rights violations in terms of access and timely dispensation of justice.

Other factors which hinder access to justice for women include cultural norms and costs associated to reporting and prosecution of GBV/ VAC cases as the coming chapter of this report explains more.

54 Section 13.

55 Article 16(2); Read also; Article 6(b) of Maputo Protocol, which provides that the minimum age of marriage to woman shall be 18 years.

56 Cap. 356.

57 Basing on the number of Wards and Divisions which have been doubled in recent years following creation of new regions, districts, wards and divisions (especially between 2005 and 2014).

58 LHRC (2014) Bi-Annual Human Rights Situation Report. Page 48.

## 2.7 Women and Girls Agenda in the Proposed New Constitution Draft of 2014

Tanzania drafted its permanent constitution in 1977. The Constitutional making process in 1977 like the previous Constitution versions mentioned in Chapter one of this report, did not involve the general public at large. The general public were not consulted as the Constitution Commission led by the late Thabit Kombo came up with a constitutional draft that was tabled in Legislative Assembly which was converted into Constitutional Assembly and passed.<sup>59</sup> The second challenge about the 1977 constitution is that, it does not adequately provide for all fundamental rights. Thirdly, the current constitution does not specifically mention women's rights or offering special protection of the rights of vulnerable groups.

The processes and draft document of the proposed new constitution have tried to rectify all such challenges. The proposed new constitution incorporates a number of provisions which could be interpreted as guaranteeing the rights of special groups, namely; women and girls, children, persons with disabilities and elderly people. Some of the provisions in the proposed constitution of 2014 which give recognition of gender equality and protection of women and girls rights as one of the key vulnerable group in the society;

- a) Article 32 provides for equality of both men and women without discrimination of any kind.
- b) Article 53 provides for the promotion, respect and protection of the rights of children including guarantee of good practices for the best interest of the child.
- c) Article 57 specifically provides for the rights of women in Tanzania.
- d) Article 129(4) requires due consideration of equal representation between men and women in the Parliament of United Republic of Tanzania.<sup>60</sup>

59 The 14th Amendment of the Constitution of United Republic of Tanzania, 1977.

60 However the provision receives critics from various groups, on the ground that, the provision does not guarantee 50/50 representation however it is more of political promise that 'equal representation will be considered' of which no remedy is availed in case of breach. WILDAF further opines, that there is need to uplift 50/50 representation in all decision making bodies not only in political posts alone. It is strongly recommended the constitution should provide and safeguard representation in other bodies as well especially those that affect most women and girls.

## Chapter Three

# Women's Situation in Economic Rights

### 3.1 Legal Standards on Economic Rights

The economic related rights in gender perspective are buttressed on economic empowerment of the vulnerable groups including women, youth, persons with disabilities (PWDs) and the elderly. WiLDAF is of the opinion that, the 'economic vulnerability' is also attributed to the stance of abject income poverty, which renders a person (including men) incapable of attaining basic necessities for human being's decent life. Therefore, the fact that the majority of rural Tanzanians are poor economically, it is a gender issue as explained in chapter one of this report.

A good number of international and national legal (and non-legal) instruments make a direct link between economic growths, rights to development and human rights. Such instruments include; the Rio Declaration of Environment and Development of 1992; the UN Declaration on the Right to Development of 1985; Millennium Development Goals; MKUKUTA II; and Tanzania Development Vision 2015. Therefore, emancipating a person economically could mean also safeguarding a number of other human rights.

It is from this ground that CEDAW calls for eradication of all forms of discrimination against women (and other vulnerable gender groups). The provision of Article 5(a) of CEDAW implies the fact that, presence of discrimination of all forms causes inferiority complex of one group over the other. That situation could cause, inter alia, exploitation of that inferior gender group by the superior ones. Therefore, the government should ensure that, all human beings are equal irrespective of their social or biological differences.

### 3.2 Challenges against Women's Economic Empowerment

As it is argued in chapter one of this report, customarily, women are regarded as vulnerable in all spheres of life including economic ownership. Some of the cultural norms in Tanzania are still denying women of land ownership, access to key social services including education and participation in political governance. As a result, women remain uneducated and victims of abject poverty.

Women have been used as tools of production especially in agricultural sector, but remained poor economically. For instance, statistics indicate that 60% of women in Tanzania are poor.<sup>61</sup> Those living in urban areas too are relatively and generally poor. At least 70% of the urban dwellers especially in major cities like Dar es Salaam and Mwanza are living in informal and poor settlements. More than that percentage is earning income through informal business ventures.<sup>62</sup>

Lack of capital and entrepreneurship skills, are some of the challenges which render women's informal businesses in urban areas to stagnate and yield little profit. As a result, they remain very poor economically.

The situation is even worse for youths (both boys and girls). The male youths engage themselves in hawking petty business along the streets or drug trafficking; while female youths expose themselves to prostitution business as 'commercial sex workers.'



Picture: Drugs confiscated by the authority in Tanzania (Source: Internet).

There are places like Sinza-Mori, and Kinondoni Manyanya in Dar es Salaam where these girls own and run brothels. While commercial sex work is legal in other countries, in Tanzania, it is prohibited under the Penal Code, Cap. 16. Moreover, it is generally regarded as immoral by most of the religious groups and tribes.

61 URT, Economic Empowerment of Women and Poverty Eradication, accessed from: [http://www.mcdgc.go.tz/index.php/issues/economic\\_empowerment\\_of\\_women\\_and\\_poverty\\_eradication/](http://www.mcdgc.go.tz/index.php/issues/economic_empowerment_of_women_and_poverty_eradication/) on 6<sup>th</sup> December, 2014.

62 Kipobota, Clarence (2014) Constraints and Opportunities of Mainstreaming Informal Sector's Practices into Policy Framework: Case of Market Traders in Dar es Salaam, Tanzania. Page 12.



Picture: Purported Commerical Sex Workers in Dar es Salaam (Source: Internet)

WiLDAF prefers not to take a position on this matter at least for this particular time. However, it urges the government and other partners to find alternative means of survival for these girls; or at least, advance some reproductive health knowledge for the girls to protect themselves against unsafe sex or unplanned pregnancies which could result into sexually transmitted diseases (STDs) or/ and pregnancies (and 'street children').

The desperation for means of survival sometimes compels some of the people to opt for witchcraft practices. Killings of persons with albinism; infants; and aged women especially in the Lake Zone and Western parts of the country are linked to economic factors. It should be noted that, such killings are not only human rights issues; but are also directly connected to gender rights. This is due to the fact that, the albino, infants and old women are mistreated in that way because of their gender groups.

According to LHRC's researcher, at least 320 old women were killed between January and June, 2014 in various places in Tanzania due to witchcraft beliefs. Around 303 and 336 similar killings happened in 2013 and 2012 respectively.

Such killings are perpetuated by demands by the traditional 'doctors'.<sup>63</sup> The 'doctors' take advantage of weakness of law enforcement to openly advertise their unlawful services.

63 LHRC (2009) Tanzania Human Rights Report of 2009. LHRC and ZLSC: Dar es Salaam.

For instance, in Dar es Salaam, almost every street now has advertisements of such services. Others claim to connect needy clients to 'freemason' (which is described by many common people as kind of 'wealthy-ghosts' who could give richness over night after fulfilling the witchcraft procedures).



Picture: An advertisement of Pesa za Majini in Dar es Salaam (Source: Internet).

Others openly state that they offer 'pesa za majini' (demons' money). Moreover, others claim that they can offer a charm which will facilitate job-seekers to get well paid jobs (regardless of levels of education) or a lady to snatch well-off men even if they are married.

WiLDAF is concerned of the fact that, such kind of trends are increasing and they are, indeed, posing a huge challenge on the rights of these groups as far as gender-rights are concerned. The viable solution is to empower people economically, because the main attributing factor to this situation seems to be poverty. Moreover, it is high time for the government to take stern measures to ban on all these kinds of adverts and the related misleading services.

### 3.3 Trafficking in Persons as Indicator of Income Poverty

According to Ms. Anna Meela,<sup>64</sup> over the past three decades, trafficking in persons has emerged as an issue of considerable concern for the international community. Regarded as modern day slavery, the United Nations (UN) in 2010 cited trafficking in persons as the second most profitable crime around the world next to the drug trade. Due to its clandestine nature, the exact extent of human trafficking cannot be ascertained, however, it is estimated that 27 million people are in slavery worldwide and that, at its most general level 12.3 million people are trafficked worldwide at a given time.

64 Meela, Anna (2014) The Anti-Trafficking in Persons Act, 2008: Its Effectiveness in Combating Human Trafficking Offences in Tanzania. LW 719, Graduate Essay for the Fulfilment of LL.M Taught Programme. University of Dar es Salaam, Tanzania.

Tanzania is regarded as one of the most affected countries around the world whereby incidents of human trafficking are very high. For instance, according to the November 2014 Global Slavery Report,<sup>65</sup> which was released in Australia in December 2014, Tanzania is leading in East Africa for having more than 350,000 people trafficked and work as domestic workers within and outside the country. Tanzania is ranked at 33<sup>rd</sup> position (out of 167 countries) in the world on the list of notorious countries regarding trafficking.

There are several international legal instruments which address some forms of trafficking in persons. For instance, the CEDAW requires State Parties to take all appropriate measures including legislation to suppress all forms of trafficking in women and, exploitation of prostitute women;<sup>66</sup> the Convention on the Rights of the Child (CRC) of 1989 prohibits all forms of sexual exploitation such as child prostitution, child pornography, the sale or traffic of children or other unlawful sexual practices;<sup>67</sup> the African Charter on the Rights and Welfare of the Child of 1999, which, inter alia, prohibits abduction, the sale of, or trafficking of children for any purpose or in any form;<sup>68</sup> and more specifically, the Convention Against Transnational Organized Crime of 2000.

It was exactly half a decade in 2014 since when Tanzania responded in action to the international legal obligations showed above by enacting the Anti-Trafficking in Persons Act of 2008. However, despite this positive gesture towards anti-trafficking in person, WiLDAF sees into it that, much is still desired more than what have been achieved. Ms. Anna Meela argues in her June 2014 study (cited above) that, implementation of that law is marred with myriad of challenges, some being; i) lack of specific anti-trafficking policy to translate the 2008 law into practical terms; ii) low awareness amongst law enforcers and members of the public; iii) lack of required facilities or resources (including budget) for effective enforcement of the law.

65 Global Slavery Index Report, 2014, available at: [http://d3mj66ag90b5fy.cloudfront.net/wp-content/uploads/2014/11/Global\\_Slavery\\_Index\\_2014\\_final\\_lowres.pdf](http://d3mj66ag90b5fy.cloudfront.net/wp-content/uploads/2014/11/Global_Slavery_Index_2014_final_lowres.pdf) accessed on 30<sup>th</sup> December, 2014.

66 Articles 6 and 16 of CEDAW.

67 Articles 34 and 35 of the CRC.

68 Article 29 of this Charter.

### 3.4 Some National Efforts towards Women's Economic Empowerment

In 1983, the Court of Appeal of Tanzania tried to revise that situation (of not valuing women's reproductive and productive contributions) through the case of *Bi. Hawa Mohamed Vs. Ally Sefu*.<sup>69</sup> In this case, the Court of Appeal had to determine contribution of unremunerated work as a contribution to acquisition of matrimonial property. The Court of Appeal made a precedent in recognizing value of the unremunerated work in Tanzania as a contribution to acquisition of matrimonial properties.



Picture: A woman washing clothes, while the baby on her back (Source: Internet).

Recognizing the challenges of gender imbalances in economic monopoly the Beijing Declaration Platform for Action of 1995<sup>70</sup> set strategic goals to be achieved as a way of economic empowerment to bring in gender balance between men and women. The following goals were set:

- a) Promote women's economic rights and independence including access to employment, appropriate working conditions and control over economic resources.
- b) Facilitate women's equal access to resources, employment, markets and trade.
- c) Provide business services training and access to markets, information and technology, particularly to low income women.

a) 69 Civil Appeal No. 9 of 1983 in the Court of Appeal of Tanzania at Dar es Salaam.

a) 70 See: Para 150 to 180 of the Beijing Declaration Platform for Action of 1995.



- d) Strengthen women's economic capacity and commercial networks.
- e) Eliminate occupational segregation and all forms of employment discrimination.
- f) Promote harmonization of work and family responsibility for women and men.

The above strategic objectives are reflected in some of the International legal instruments for instance the ILO conventions, CEDAW, the Treaty for the Establishment of the East African Community as amended in 2006 and 2007, Maputo Protocol and the SADC Protocol on Gender and Development.

At the national level, there are some policies mentioned in chapter one and below which, to a certain extent, embody the Beijing goals. For instance, Paragraph 5.2 (page 5) of the Tanzanian National Plan of Action for the Prevention and Eradication of Violence Against Women and Children of 2001-2015, articulates some social, economic and cultural measures to empower women politically and economically – to imply that, some of the social norms are some of the setbacks towards women's economic empowerment.

Moreover, the Constitution of the United Republic of Tanzania of 1977 provides for the right to work and fair remuneration.<sup>71</sup> It also provides for the right to own property as one of the fundamental human rights.<sup>72</sup> The Constitution further prohibits discrimination of any kind to all its citizens.<sup>73</sup> Therefore the Constitution provides for initial legal steps to combat gender imbalances in economic empowerment.

The Employment and Labour Relations Act, 2004 marked exactly 10 years of its existence in 2014. Section 7 of this law prohibits discrimination of any kind at work places. The law charges all employers to ensure that they promote an equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice.

While employers and workers mark a decade of the existence of this law, the 2014 experience showed that, much is still desired to make this provision fully appreciated and implemented by employers. The LHRC's 2014 findings on business and human rights<sup>74</sup> showed that, some of the gender groups, in particular women and PWDs are discriminated by private companies on account of their biological conditions. Less than 1% of PWDs were employed in corporate business companies in Tanzania.

71 Articles 22 and 23.

72 Articles 24.

73 Article 12.

74 LHRC (2014) Business and Human Rights Report, Tanzania (Draft Report). LHRC: Dar es Salaam.

On policy perspective, the government through the Ministry of Community Development, Gender and Children has put in place a number of policies, guidelines and programmes to ensure there is economic gender balance in the country. Some of these initiatives include:-

- a) The Community Development Policy of 1996 which came into existence just one year after the Beijing Declaration. One of its objective under Para 15 is to empower citizens economically to enhance community development.
- b) The National Micro-finance Policy of 2000 which provides for the guidelines to achieve gender equity in accessing financial services in order to empower women economically.
- c) The National Strategy for Gender Development of 2005 provides for background information on gender empowerment.<sup>75</sup> One of the objectives under statement policy of this strategy clearly provides that, 'having women economically empowered and their opportunities enhanced.'<sup>76</sup>
- d) The National Women and Gender Development Policy of 2000 promotes women participation in economic activities for development especially in rural areas.
- e) The Five Years Development Plan (2011-2016) provides for the overall goal of the FYDP that, is to unleash the country's resource potentials in order to fast-track the provisions of basic condition for broad-based and pro-poor growth.<sup>77</sup> WILDAF considers that if the plan is successfully implemented it will change people's lives especially the poor. It will have greater impact in economic empowerment to the community.

### 3.5 Status of Ownership and Control of Property as Women's Rights

The right to own property is constitutionally guaranteed in the Constitution of United Republic of Tanzania of 1977. The Constitution provides that, 'every person is entitled to own property and has a right to the protection of his property held in accordance with the law.'<sup>78</sup> Under this Constitution the phrase 'every person' could be interpreted to mean all people without any discrimination as provided under Article 12. Therefore on right to own property the Constitution does not have gender imbalances. However, as argued earlier on, social and cultural practices in most cases denies this right to women, for instance land ownership under customary tenure.<sup>79</sup>

75 Para 2.1.6.

76 Para 2.1.6.2.

77 URT, Five Year Development Plan – 2011/2016. Page 7.

78 Article 24(1).

79 Customary Law (Declaration) Order GN No. 436 of 1963. Customary Law restricts inheritance of land held under customary law to clan lineage where kinship membership follows the male line. In Tanzania over 80% of communities are based on patrilineal lineage

There are other legislation which guarantee right to own property which includes land as a property. For instance, the Village Land Act, 1999<sup>80</sup> and the Land Act, 1999<sup>81</sup> provide for equal opportunities for men and women to own land. Section 3(4) of both laws provides that, 'the Right of every adult woman to acquire, hold, use and deal with land shall to the same extent and subject to the same restrictions be treated as a right of any man.'

WiLDAF believes that, land ownership is important to economic empowerment as with development of micro-finance landed properties have become very important. Landed property can be mortgaged by all irrespective of gender and secure loan from various banks and financial institutions. As for rural women, access to land means more than getting daily food out of farming activities. It also means assurance of their survival for so many years to come.

The right to own property in Tanzania is mostly denied and the affected people are women rather than men. Through inheritance and cultural practices women are most vulnerable in land ownership especially in rural areas and nowadays in urban settings, especially when a deceased spouse is affluence. The year 2014 did not mark any remarkable changes on this reality.

To substantiate this fact, legal aid providers (LAPs) encounter land related problems against women. For instance, TAWLA's Strategic Objective 2 is on 'promotion of land rights of women and children.'<sup>82</sup> Other LAPs have attended and recorded thousands of women's land related cases in their legal aid clinics. For instance, the following table summarizes the number of clients and case type attended by LHRC mobile clinic for two weeks in the year 2013/2014:

Table 6: Number of Land Cases – Women Clients

District	Land Cases	Matrimonial	Probate
Mbinga	20	3	4
Nyasa	52	12	2
Tunduru	10	4	2
Namtumbo	75	4	4
Songea-Rural	64	3	1

Source: LHRC Annual Progress Report, 2013.

However, this is not to neglect the fact that, women's access to and ownership of land is steadily increasing according to the general perceptions (and not specific facts) due to increased awareness. Therefore, the fact that a number of reported land conflicts by women is on the increase, could suggest that,

<sup>80</sup> Act No. 5 of 1999.

<sup>81</sup> Act No. 4 of 1999.

<sup>82</sup> <http://www.tawla.or.tz/index.php/tawla-key-objectives/women-land-rights>. Visited on 4th December, 2014.

they are becoming more aware of their rights to land ownership and in fact, they appreciate the importance of land to them.

Seeing that it is possible to enhance women's ability to demand for property ownership, therefore, WiLDAF urges the government to take pro-gender affirmative action to ensure that, the ongoing women's efforts are supported. For instance, the VICOPA, SACCOS, and the like seem to be effective economic empowerment initiatives for women both in urban and rural areas. The government can instruct all village councils to ensure that, at least 50% of the women within their jurisdictions, are actually owning land under their own names. Such kinds of initiatives could add impetus to the current state of affair.

### 3.6 The Status of Labour Rights Enforcement

The right to work, as it is already elucidated above, is part of economic empowerment. Article 25(1) of the Constitution of the United Republic of Tanzania of 1977 states that, 'work alone creates the material wealth in society, and is the source of the well-being of the people and the measure of human dignity.' Therefore, through work, one can acquire wealth and dignity. The provision confirms a link between poverty and human rights. That is, a poor person is normally disrespected because of lack of wealth to support his or her livelihood.

Furthermore, the stated Constitution provides for the right to work and receive fair remuneration according to the work done. The Employment and Labour Relations Act, 2004 enlists legal standards to follow, some being in conformity with women's-rights as argued earlier on. This law has gone further to recognize 'informal working arrangements' such as domestic work which affects women and girls in urban areas.<sup>83</sup> The law has stipulated clearly that written contract is not a mandatory requirement for one to establish that there was an employment contract. This legal position was amplified in a decision of *Director Usafirishaji Africa Vs. Hamis Mwakabala and 25 Others*<sup>84</sup> whereby, the Court ruled out that a written contract is not a must to constitute legally binding employment contract.

<sup>83</sup> Section 61 provides that, 'for the purpose of a labour law, a person who works for, or renders services to, any other person is presumed, until the contrary is proved, to be an employee, regardless of the form of the contract, if anyone or more of the following factors is present: (a) The manner in which the person works is subject to the control or direction of another person (b) The person's hours of work are subject to the control or direction of another person; (c) In the case of a person who works for an organization, the person is a part of that organization (d) The person has worked for that other person for an average of at least 45 hours per month over the last three months; (e) The person is economically dependent on the other person for whom that person works or renders services; (f) he person is provided with tools of trade or work equipment by the other person.'

<sup>84</sup> In the High Court of Tanzania, Labour Division at Dar es Salaam Labour Revision No. 291 of 2009.

Despite this reality, WiLDAF is concerned with the fact that, there has been an institutional weakness on the enforcement of the labour laws in Tanzania. According to the LHRC's human rights and business report of 2014, this reality is attributed to the fact that, there are very few labour officers across the country; and that, some of the employers take this reality for granted by exploiting and then, dismiss away their casual labourers on the ground that, they did not have written contracts. Of course, lack of awareness of labour rights among the workers is what energizes some of the unscrupulous employers to do so. WiLDAF is under process to establish the capacity gap on this matter.

As for gender mainstreaming at workplaces, the National Employment Policy, 2008 makes it very clear that both private and public institutions should safeguard equality in accessing wage employments, prohibit torture, discrimination and gender harassment at work place and provide fair and equal treatments to all at work place. The National Employment Policy, 2008 further requires institutions to have in place a gender policy and provide segregated data based on gender.<sup>85</sup>

It is not certain on how many employers have abided with this last requirement. A finding on this requires a specific study. However, as WiLDAF could speculate basing on random perception, only few employers do have such a policy and that, relatively fewer of them are implementing the policy requirements in practical forms. The government is hereby urged to strengthen monitoring of implementation of this law, by *inter alia*, calling upon all labour officers to supervise the establishment of Trade Unions within workplaces.

### 3.7 Stereotyping at Work Places: Some Empirical Examples

A recent analysis by TAWLA<sup>86</sup> found that some of the employers hesitate to employ women than men due to biological differences. They are avoiding 'number of leaves' which a woman is entitled to as an employer. Such leaves include maternity breaks, whereby a woman is supposed to be given a paid up maternity leave of between 84 to 100 days if she has delivered a single or twin babies respectively. One Dar es Salaam based CSO had to hire four temporary employees because its four female staffs coincidentally took maternity leave within the same month. Such kind of incidents tend to affray some of the employers.

<sup>85</sup> Para 3.24.

<sup>86</sup> TAWLA (2013) Position Paper on Gender Mainstreaming of the Constitution Review Process, 2013. Page 20.

Another recent study by LHRC on transportation sector,<sup>87</sup> found that 97.10% of employees in the selected regions working in the transport sector were male and only 2.90% were female. It is the case for several other subsectors. In most cases, female workers occupy inferior positions. For instance, the majority of the bar attendants are women. The majority of stage dancers of the local music bands are women, while the back vocalists are men. The circumstance forces women to wear tiny and tight skirts as part of entertainments as the picture below shows.



Picture: Stage dancers of FM Academia Band, Tanzania (Source: Michuzi Blog).

The study conducted for this report noticed that some of the employers use indignity employment terms to hire and fire women workers in their work places. For instance, in Arusha region, there is a pub by the name of 'Matako' (buttocks) which had selectively hired women with big-buttocks (all of them). The ladies are supposed to wear tight jeans which expose their morphology. Indeed, so many men are lured to go there in order to enjoy watching the boobs and buttocks. One of the ladies there told the study team in October, 2014:

[H]ere, brother is buttocks and boobs competition among us (bar attendants). That is the unique qualification we have here and so many customers are coming to see 'God's creation.' Those with relatively smaller boobs and buttocks tend to wear artificial shapes ... well, a man can touch your buttocks and buy you a bottle of beer. It all depends on how the bar maid treats her client. In one occasion during Nane-Nane festival I think, one lady customer threw a bottle of wine

<sup>87</sup> LHRC (2013) Human Rights Compliance in Transport Sector Report, 2013. Page 17.

to our colleague who hugged the lady-customer's husband on arrival at the bar. She didn't know that this time around, her male-customer came with the wife. I am sure the wife became jealous because she didn't have a huge shape like that of the bar attendants. So, these are common things here ... you have to use your 'richness' to sustain living in town here ...

There are few labour cases reported by women to the LAC's or labour court. This situation could suggest that the number of women in formal employment is fewer compared to men. For instance, the Table below shows the number of clients attended by LHRC in October, 2014:

Table 7: Number of (Labour) Cases Reported to the LHRC's Legal Aid Clinics as of October, 2014

Types of Legal Aid Case(s)/ Issues Reported	Old Clients			New Clients			Grand Total
	Male	Female	Total	Male	Female	Total	
Employment	110	35	145	58	15	73	218
Matrimonial	18	47	65	8	18	26	91
Land	230	80	310	36	16	52	362
Contract	10	10	20	4	1	5	25
Children Rights (affiliation, rape, maintenance)	2	3	5	2	6	8	13
Torts	20	10	30	0	0	0	30
Probate	15	30	45	6	8	14	59
Insurance	15	5	20	3	1	4	24
Others (loan, malicious prosecution, etc)	55	30	85	9	4	13	98
<b>Total:</b>	<b>475</b>	<b>250</b>	<b>725</b>	<b>126</b>	<b>69</b>	<b>195</b>	<b>920</b>

Source: LHRC Quarterly Report (October), 2014.

The table above shows that, more than two-third (75%) of the employment cases were filed in LHRC's legal aid clinics by men. It is almost the same situation even for other LAC's.

The fact that there are few labour cases filed by women could also mean that, they are not aware of due processes to seek legal redress once their labour rights are infringed. Other reasons as WiLDAF could speculate include preoccupation with other reproductive and productive roles. Therefore, going to LAC's or Court would be regarded as 'wastage of time.' All these are things which WiLDAF proposes to be reflected in the current legal and policy frameworks.

### 3.9 Expenses Associated with Management of GBV Cases

It is ascertained by the study for this report (2014) that, efforts have been made in Tanzania to adopt gender budgeting approach in the national budgetary plan. The main objective of this approach is to create gender equality and equity

across all sectors<sup>88</sup> known as 'equality base interventions.' However, despite the government's commitment to eradicate inequality, some constraints are still being experienced in the efforts to enhance women's legal capacity among grassroots women in both rural and urban areas. These include inadequate financial capability to sensitize the grassroots women on their rights and to provide legal assistance in the courts of law.<sup>89</sup>

Secondly, little financial resources is directed to address gender rights (which is less than 0.5% of the total national budget), it seems that, government's attention is directed more on service provisions such as supply of ARV; and health care services for pregnant women and the under five children. There is no specific known budget allocated for responding to gender related problems such as GBV and VAC. For instance, a total of 21 billion Tanzania shillings (US\$ 13 million) is budgeted and spent on HIV and AIDS at the Local Government Authorities (LGAs) level every year.<sup>90</sup> But, a GBV survivor or victim (even if she is HIV positive) could not be assisted once she approaches a LGA for legal assistance or humanitarian support such as shelter.

Thirdly, GBV and VAC cases normally involve a number of medico-legal steps or services needed including the presence of justice machinery organs where the victim can report her case; health and psychosocial supports; security and shelters; legal assistance; and education.<sup>91</sup> All these services have financial implications.

Table 8: Challenges of Pursuing GBV/ VAC Cases – Members' Public Responses

N= 128 [Multiple Responses]	Sex	
	Females	Males
Lack of proximity to law enforcement organs	50.3%	49.7%
Lack of legal aid services	81.8%	18.2%
High costs associated to follow-up of gender cases	87.5%	12.5%
Cultural obstructions (e.g taboo to sue your husband/ relatives)	85.7%	14.3%
Low awareness of (procedural) laws	68.2%	31.8%
<b>Total:</b>	<b>106</b>	<b>22</b>

Source: WiLDAF's Field Survey, November 2014

- 88 Mhina, Edward Hiza, Financing for Gender Equality and the Empowerment of Women: Experiences from Tanzania. Paper on progress made in Tanzania in implementation of Gender responsive Budgeting and proposals for Policy makers on Gender Responsive Budget Initiatives and the Roles of Various Stakeholders. August 2007. Pages 4 and 8.
- 89 Prof. Eulalia Temba, Current Experiences and Challenges in Integrating Gender Analysis in Development Plans. A paper Presented at the Economic and Social Research Foundation (ESRF) Conference Hall. 17 May, 2007. Pages 6, 7 and 13.
- 90 URT, Tanzania Third National Multi-Sectoral Strategic Framework For HIV and AIDS (2013/14 – 2017/18). Prime Minister's Office. Page 32.
- 91 USAID, Gender-Based Violence in Tanzania: An Assessment of Policies, Services, and Promising Interventions (prepared by Myra Betron of the USAID), November 2008. Pages 15-17.

The majority of women (87.5%) thought that, it is very expensive to pursue GBV and VAC cases. A lady at Shinyanga-rural district told WILDAF researcher that, she had to drop her rape case before hearing because it had already drained her more than Tshs 500,000 to make a follow up of it. She quantified that, at least Tshs 50,000 was used for reporting the case to the right police station (district level, where there is a gender desk). There, she had to hire taxi to and from the hospital and police station in Shinyanga urban. Fortunately, she had a relative in Shinyanga urban who accommodated her all the time she went to the city for her case. The case remained pending in court for a number of years.

The PGCDs, Social Welfare and other government institutions do not have shelters to accommodate the victims or survivors as stated above. Some of the CSOs (in some of the regions) have shelters for children only. Therefore, the GBV or VAC survivor has to find her own ways of surviving. In most cases, it is the individual police officers at PGCD who finance the survivors from their own pockets. The police or social welfare departments do not have specific budgets for humanitarian assistance.

## Chapter Four

### Women's Situation in Social and Cultural Rights

#### 4.1 Legal on Social and Cultural Rights

The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979 was, as stated previously, adopted in order to enforce the protection of women's dignity and bringing gender balance between men and women in the world. Following it were several regional mechanisms, which were also developed to ensure that women's dignity is recognized and respected. Some of such instruments are already covered in the previous parts of this report. The eradication of 'discrimination' in the spirit of CEDAW could mean also erasing of all harmful traditional or cultural norms, which are unfavourably applied against vulnerable gender groups.

While that happens at international level, Tanzania sustains some of its bad laws which reinforce certain forms of harmful traditional norms.

Some of the cultural norms in Tanzania are codified and enforceable as 'binding rules.' For instance, the Customary Law Declaration Order of 1963<sup>92</sup> is applicable to date. Moreover, the traditional tribesmen (Assessors or 'Wazee wa Baraza') are statutorily required to form a judicial quorum in the adjudication of civil cases in the Primary Courts. Their opinion over the case is not binding, but the presiding Magistrate adjudicating the case is required to 'take it into account' while making decision. Note that, the Court Assessors are supposed to be traditionalists, who can help the Primary Court to interpret the traditional norms of a particular society within which the Court is located.

The customary rules or traditional norms, is supposed to 'not contradict with other laws' applicable for the time being. The Tanzanian Courts of laws have been approached several times to advice on whether particular traditional practice is repugnant to the substantive law or Constitutional rights. For instance, in the case of *Ephraim Vs. Pastory and Another*<sup>93</sup>, the High Court of Tanzania ruled out that, Haya's cultural norms, which prohibited a widow from inheriting the deceased husband's estates, was unconstitutional.

92 GN No. 279/ 1963.

93 Civil Appeal No. 70 of 1989 in the High Court of Tanzania at Mwanza.

## 4.2 Policy Framework on Gender: 'Blaming' on Some of Cultural Norms

The policy framework on gender rights cast a lot of 'blames' to the presence of some of the harmful traditional practices – as being hindrances to the enjoyment of equal rights to all gender groups, in particular women, for instance:<sup>94</sup>

- a) National Economic Empowerment Policy of 2004, Paragraph 2.2 mentions some challenges in petty business activities, which include lack of knowledge and experience caused by, inter alia, inhibitive customs and traditions; lack of reliable markets and in ability to penetrate competitive markets.
- b) The National Trade Policy of 2003, Paragraph 4.4.2 states that women, as a disadvantaged group in developing economies are severely constrained by limitations in their accessibility to key production assets, including capital, education, skills and some harmful traditional norms.
- c) National Strategy for Gender Development of 2005, Paragraph 2.1.6 mentions level of women's education, traditional and reproductive roles which affect productivity and development of women as some of the challenges. The provision states further that, urban women mostly engage in small scale businesses in informal sector. They lack entrepreneurial skills, management problems, inadequate capital and security – which contribute to low productivity, persistence poverty and low social status.
- d) Agricultural Marketing Policy of 2008, Paragraph 4.11(b) states that, gender inequality exists in agricultural marketing systems. For example, while women in Tanzania produce about 70% of the food crops and also bear substantial responsibilities for many aspects of export crops and livestock production, their access to agricultural marketing services is, by and large, limited by social and traditional factors.
- e) Rural Development Strategy of 2001, Paragraph 3.3.2 points out gender biasness as one of the obstacles to rural development. It states that, 51% of the nation's population is female. 14% of rural households are female

a) 94 EfG (2013) Analysis of The Gender Gaps in Policies, Laws, Regulations and Practices Governing Market Trading in Tanzania: Case Study of Ilala Municipality, Dar Es Salaam. Equality for Growth (EfG): Dar es Salaam.

headed, and an estimated 45% of these households live in poverty. Women in general and rural women in particular, are disadvantaged in terms of access to social services and gaining entry into non-agricultural activities such as business and trade.

- f) National Microfinance Policy of 2000, Paragraph 3.2.5 is on gender equality issue. It says, an access to financial services should be available to both men and women. In order to achieve gender equity in the delivery of services, it may be necessary to make special efforts to incorporate features that make the services accessible to all.
- g) Small and Medium Enterprise Development Policy of 2002, Paragraph 5.7.2 covers gender and disadvantaged groups. The provision states that, women are a significant part of the Tanzanian labour force and as such any meaningful development effort must mainstream women. Unfortunately, they (women) have less access to productive resources such as land, credit and education due to cultural barriers. As such, it is clear that men and women stand on uneven ground and thus the need for specific measures for promoting women entrepreneurship. The same applies to youth and people with disabilities. Due to these facts there is a need to rectify the situation by facilitating their involvement in the economic activities through participation in the SME sector.
- h) Policy on Women in Development in Tanzania of 1992, Paragraphs 15 and 22: Shows that, the current laws, tradition, customs and guidelines have been unfavorable to women. Paragraph 21: need to have concrete plans to empower women to increase their ability, expertise and skills to perform their roles. Paragraph 18: Strategies for eradicating all forms of discrimination against women include: i) women to have right to own and inherit resources; and ii) right to own income accrued from their (women) own labour.
- i) Community Development Policy of 1996, calls for responding to and meeting the needs of special groups of women, children and youth in order to: i) reduce their workload; ii) strengthen family IGAs; and iii) enable them to participate in decision and ownership of family property.
- j) Tanzania Development Vision 2025. Paragraph 3 (targets of the vision 2025): i) high quality livelihood to be attained through gender equality and the empowerment of women in all socio-economic and political relations and cultures (among others); ii) good governance and rule of law; and iii) strong and competitive economy.

WiLDAF noted with concern that, despite repeated calls for effective implementation of the pro-gender rights policies, nothing much was seen to happen in 2014. There is misconnection between what the policy framework provides against what the legal framework on gender is currently embodying. This is why, while the policies condemn some of the traditional practices as being detrimental to women and other vulnerable gender groups, some of the laws, like the 1963 Customary Law Declaration Order still embody and enforce the same. Therefore, WiLDAF calls for immediate actions in order to bring the legal framework on gender in the line and spirit of the policy framework on gender.

#### 4.3 Trend of Gender Based Violence: Some Field Updates and Empirical Studies

Despite global initiatives to reduce social and cultural practices that lower the women dignity still the world account for the considerable incidences of inhuman and degrading treatment against women. Such incidences include gender based violence (GBV) in all its forms; sexual, psychological and physical torture, female genital mutilation (FGM), non-accessibility to social services such as water, education and health. In Tanzania the situation is even worse in rural areas whereby people are less informed about issues affecting gender balances as it has already been pointed out above.

The GBV can be defined as all acts that result in, or are likely to result in, physical, psychological, sexual or economic harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life.<sup>95</sup>

GBV incidents are prohibited under international and national legal instruments. The Universal Declaration of Human Rights (UDHR) of 1948 calls for respect of women as mothers<sup>96</sup> and protection of women as foundation of family unit.<sup>97</sup> Moreover, under the auspices of the CEDAW, the UN made the General Recommendations Number 19 in 1992 which clarified the GBV as 'violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under specific human rights conventions is discrimination within the meaning of Article 1 of

95 Council of Europe, Combating Violence Against Women; Stocktaking Study on the Measures and Actions taken in Council of Europe Member States, 2006 available at <http://eige.europa.eu/content/what-is-gender-based-violence> as visited on 5th December, 2014. Also read: Myra, B (2008) Gender Based Violence in Tanzania: An Assessment of Policies, Services and Promising Interventions. Page 1.

96 Article 25 of UDHR of 1948.

97 Article 16 of UDHR of 1948.

the CEDAW.' One year later the UN came up with the UN Declaration on the Elimination of Violence against Women of 1993. The Maputo Protocol carries the same spirit against GBV.

At the national level, GBV incidents are criminalized depending on the nature of violence inflicted. For instance sexual violence in Tanzania normally amounts to rape,<sup>98</sup> physical violence amounts to bodily harms or grievously body harm, and so on.

WiLDAF is concerned of the fact that, unlike other countries in Africa, in particular, Rwanda and South Africa, Tanzania lacks comprehensive legal framework on GBV. There are no specific substantive and procedural laws on GBV. As such, management of GBV cases is not uniform and usually hindered by a number of legal and administrative challenges such as poor referral mechanism among different service providers in criminal justice system; handling of medical-legal reports including the Police Form Number Three (P.F 3); taking care of GBV and VAC survivors or victims who are unwilling to return home; untimely dispensation of justice; and socio-cultural practices on relationship between men and women, whereby in most of Tanzanian community perspective men are perceived as bread earners of the family. Therefore, if a man is found guilty, the family will suffer and that, the wife's in-laws will not easily understand the action taken by the wife.

Due to those challenges highlighted above, investigation, prosecution and trial of GBV cases in the country have been in a shambling motion. Many GBV incidents are not reported to the justice machineries for the reasons mentioned in the previous parts of the report; most (at least 60%) of the reported cases drop along the way as the WiLDAF's and TPF-Net recent studies cited above showed.

WiLDAF believes that, a comprehensive and unified legal framework on GBV would have addressed some of those legal and administrative challenges. This is why, WiLDAF urges the government to enact specific and comprehensive law on GBV. As another WiLDAF's study on the status of implementation of the Penal Code, Cap. 16 showed, the war against GBV through the current Penal Code, Cap. 16 is almost fruitless because, despite the fact that it is now about 70 years since when this law came into being, incidents of GBV and other crimes are actually increasing – to imply that, there is no satisfactory deterrence effects of the current framework.

Of course, as it is already extensively argued before, there is also a need for socio-economic reforms, including economic empowerment, to address women's rights issues in their roots instead of focusing only on the effects of

98 As it was stated in the cases of: Onesphory Materu Vs. Republic, Criminal Appeal No. 334 of 2009 in the Court of Appeal of Tanzania at Tanga (Unreported); also in the case of Leonard Jonathan Vs. Republic, Criminal Appeal No. 53 of 2001 in the Court of Appeal of Tanzania at Moshi; and in the case of John Martin Marwa Vs. Republic, Criminal Appeal No. 22 of 2008 at Tabora. The cases are cited in the Tanzania Women Judges Association, Case Law Manual from Page 170 to 185.

the same. This is why WiLDAF tries to reinforce the consideration of the intrinsic links between poverty, access to justice and GBV. The CSOs should also reform their intervention strategies - to tune them into 'Legal Empowerment' based approach.<sup>99</sup> In this way, their efforts would be sustainable and of greater impact than what has happened in 2014.

Incidents of GBV takes new look every time and the nature or forms of occurrence tends to be influenced by a number of factors, some being; i) rural-urban settings; ii) certain season of the year; iii) type of tribe (cultural norms); iv) type of gender groups; and v) magnitude of income poverty.

The year 2014 witnessed the presence of various forms of GBV occurring throughout the country. WiLDAF did not conduct a specific study on the extent of prevalence of GBV in Tanzania. However, a quick media survey suggests that the number of reported incidents is actually escalating; and that, forms of GBV are becoming more horrifying than before. One could argue that, incidents are seen as increasing due to a wider coverage of media. This could be a correct argument. However, the fact that so many incidents are reported, could still inform that the incidents are still occurring in a magnitude mode. Indeed, what matters in human rights perspective is not a 'number' of violation; rather, the 'presence' of the same.

<sup>99</sup> That is, when people are imparted with legal literacy, they become assertive and therefore able to use existing laws to demand for their rights (through improved access to justice) as well as holding duty bearers accountable to the public affairs or needs. As a result, socio-economic and political changes occur in their favors (This definition was adopted with modifications from LSF's Legal Empowerment Curriculum for Legal Aid Providers and Paralegals: Creation of Education to the Community (Final Document), June 2014. Pages vii and 4).

The table below tapes some of the incidents as reported by media in 2014. Note that, the list is not exhaustive. It is just for showing that these incidents are still happening and indeed, happened in the year 2014:-

Table 9: Media Survey on Some of the GBV Incidents as Reported in 2014

S/N o.	Name of the Victim	Injuries Sustained	Place	Perpetrator	Reason(s) for GBV
1	Agnes Chacha (25 years)	Her right arm was amputated using machete.	Tarime.	Her husband, Chacha Hamis.	The husband was jealous as her wife came home late from work.
2	A woman (60 years)	Her private parts (female sexual organ removed).	Tabora.	Her Husband.	Witchcraft beliefs as wanted to sell the parts to unknown business man for 5 million shillings.
3	Nasra Dafa (30 years)	She was attacked by her husband while praying and sustained body injuries.	Dar es Salaam – Tandale.	Her husband, Iddi Mpenda.	She refused her husband to marry a second wife.
4	Paulina Joseph	She was beaten by her brother-law and her left palm chopped off.	Orkolola village – Arusha (Arumeru).	Her brother in-law.	Unspecified family conflict.
5	Martha Laurent	She was beaten and sustained head injuries.	Temeke DSM	Her Husband, Jumanne Sayi.	Not known.
6	Faustina Selaki	She was beaten by using a hammer and sustained serious injuries.	Mgeta – Morogoro.	Her Husband, Lugasiani John Miasiku.	She refused her husband to marry the second wife.
7	Tatu Hoya Mihambo	She was burnt by hot water that was poured onto her body.	Mpanda-Katavi.	Her Husband, Juma Masasila.	Not known.
8	Theresia Dotto	She was beaten and severely injured.	Mwasele – Shinyanga.	Her Husband, Edward Bundala.	Political ideology differences; the husband is a supporter of CHADEMA whereas the wife supports CCM.
9	Rehema S. Marwa	As pictured above (assault on her head).	Kinondoni – Dar es Salaam.	Her Husband, C. Mbwana.	Not known.
10	Sophia Haji	She was beaten and sustained serious injuries.	Shinyanga Urban.	Her husband, Daniel Daudi.	She did not respond to a phone call from her husband.

Source: WiLDAF's Media Survey, January – December 2014.

WiLDAF urges the government to take serious measures to end such offences. It is important for the social welfare departments in all the regions and districts to collaborate with the police force in order to empower citizens to understand issues related to GBV. Moreover, there is a need to enhance media reporting on gender issues so that they should not only focus on occurring incidents, but also, results of due legal process for each case. In this way, the perpetrators would see justice taking place against them and eventually refrain from committing such offences. The media could also be used as conduit through which gender-rights knowledge is transmitted to the general public. As such, development partners and media houses should continue supporting such kinds of initiatives.



#### 4.4 Accessibility to, Availability and Affordability of Key Social Services

##### 4.4.1 Health Rights and Gender Issues

##### 4.4.1.1 Some Standards and Obligations

The right to health is one of the fundamental social rights that safeguards and protects life of a human being. WILDAF believes that, a human being in good health is as good as saying that human life and dignity is highly promoted and respected.

Right to health is provided for by a number of International, regional and domestic legal and policy frameworks. The International Covenant on Economic, Social and Cultural Rights of 1966 states that, the right to health is a basic human right to everyone. Articles 10-16 of CEDAW and Article 14 of the Maputo Protocol considers the right to health not only on a state of being physical and mentally fit; but also, prohibits practices that may endanger women health. Such kinds of practices include all forms of GBV. The two legal instruments cited above, promotes for maternal health, access and availability to all women in the world and in Africa in General.

As a way of reinforcing the international obligations of the rights to health, the Abuja Declaration of 2001 came out with several health related resolutions, one of obligations urged African States to increase the annual budget in health sector to 15% of the total budget. The Declaration aimed at ensuring that there is timely access to health facilities, availability of health facilities and personnel and improving quality of health services provisions to all African States.

As of December 2014, only few countries were able to fulfil this obligation. Those countries are Botswana, Gabon, South Africa, Angola, Sao Tome and Principe, Lesotho, Seychelles, and Swaziland. Tanzania, on its part was still shambling towards that direction. It has formulated the Health Sector Strategic Plan 2009-2015 Third Phase (HSSP III), which, inter alia, lays down a road map for the country's budget to reach 15% allocation in health sector as per the Abuja Declaration.

The portion of the Tanzania health sector budget to the national budget since 2009 to 2014/2014 has been fluctuating over years as the table below shows:-

Table 10: Portion of Tanzanian Health Sector Budget 2009-2014/15

Year (FY)	2009/2010	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015
Budget (Billion Shillings)	963.0	1,205.9	1,209.1	1,288.7	753.9	623
Percentage	8%	11%	10%	10%	7%	6.3%

Source: Various Sources – Budget Speech.

WILDAF hereby urges the government to fulfil its obligation as promised during Abuja Declaration. The next budget for health sector should not be less than 15% as it has been a case over years.

The Constitution of the United Republic of Tanzania of 1977 does not clearly provide for the right to health as a matter of right. The right to life as provided for under Article 14 has been construed by the judiciary as a constitutional right since it guarantees, right to live in health environment. Moreover its violations can cause infringement of right to life.

Again, WILDAF is concerned of the fact that, Tanzania does not have a comprehensive policy or legal framework on health rights. However, the right to access health facilities and availability of quality health is safeguarded in a number of legislation which includes:

- a) The Public Health Act, 2009.<sup>100</sup>
- b) The HIV/AIDS (Control and Prevention) Act, 2008.<sup>101</sup>
- c) The Pharmacy Act, 2002.<sup>102</sup>
- d) Mental Health Act, 2003.<sup>103</sup>
- e) The Nurses and Midwives Registration Act, 1997.<sup>104</sup>
- f) The Tanzania Food, Drugs and Cosmetics Act, 2008.<sup>105</sup>

These laws provide different thematic areas related to provision of health services in the country.

WILDAF noted that, the Health Sector also as a matter of right has a number of policies and strategies set in place to ensure quality, access and availability of health facilities. Some of these strategies and policies set in place include:

- a) The National Health Policy 2003.

100 Act No. 1 of 2009.  
 101 Act No. 28 of 2008.  
 102 Act No. 7 of 2002.  
 103 Act No. 21 of 2008.  
 104 Act No. 2 of 1997.  
 105 Act No. 1 of 2003.

- b) The MKUKUTA II.<sup>106</sup>
- c) The Health Sector Support Programme - Phase III.
- d) The Primary Health Services Development Programme of 2007-2017.

4.4.1.2 Accessibility to Health Facilities

During the year 2014, the accessibility to health facilities has remained a major concern in the country. The rural part of the country does not have reliable access to health facilities due to poor infrastructures and lack of reliable transport.

The National Health Policy of 2003 provides for health services provision hierarchy that starts at the community level where there is Community Health Services which is at family level, Dispensaries at village level which its capacity should not exceed attending 5,000 people, Health Center which is mandated to supervise all the dispensaries in a division, District Hospitals at district level, Regional Hospitals at regional level, National Hospital, Zonal Referral Hospital and Specialized Hospitals.<sup>107</sup>

Non-availability of essential medicines and drugs in health sector is another factor that limits enjoyment of right to health services in the country. The survey carried out in 2012 indicates that 63% of essential medicines and important facilities traced were out of stock.<sup>108</sup> The situation could be the same or worse for the year 2014.

The huge influx of patients overstrained their wards' carrying capacity in such a way that, one hospital bed was to be shared with more than one patient. WILDAF speculate that, this kind of situation could be worse upcountry whereby, many districts are regarded as marginalized due to a very low level of economic development.

Moreover, in the year 2014 the health sector experienced a critical shortage of medicines in public hospitals. The shortage was caused by failure of the government to pay timely its debts to the Medical Stores Department (MSD) and the ability of MSD to order essential medicines declined.

106 'MKUKUTA II' is a Swahili acronym for the National Strategy for Growth and Poverty Reduction – Phase II. It provides for ultimate goal to reduce maternal mortality rate and improve provision of health services to women and children by year 2015.  
 107 Para 4.0 of the National Health Policy of 2003.  
 108 SIKIKA (2014) The Right to Health in Tanzania Position Paper in Constitutional Review Process. Page 1.

As a result, many public hospitals were operating without medicine, a situation which compelled some patients to opt for private services – which are relatively expensive. A Maasai youth at Mwenge Dar es Salaam, told WILDAF's study team in October 2014 that, his herbal (traditional medicine) business fairs very well nowadays because of the increase in number of customers who opt for his medicines. Moreover, there are informal advertisements placed everywhere in the Dar es Salaam's streets inviting people to consult traditional 'doctors' for 'reliable' treatments; or advertisements in local newspapers inviting people to access alternative medical services.



Picture: Newspaper advisements of local medical services. The middle one (above) is about curing men's sexual impotence.

The scientific reliability of such medicine and services is not known and the government seems to condone such practices to happen.

All these could be regarded as an indicator of the failure of formal health systems to provide adequate and reliable medical services, in particular proper and sufficient medications. The Traditional and Alternative Medicine Act, 2003 sanctions the use of herbs. But the legal and scientific tips require quality assurance and certification of the medicine before it is allowed to be administered to the patients. The statutory bodies allowed to certify use of new drugs include the National Institute for Medical Research (NIMR); Tanzania Food and Drugs Authority (TFDA); Tanzania Bureau of Standards (TBS); and the research department within Muhimbili College of Health and Allied Sciences (MUHAS). But there are several drugs in the streets which are sold without the said certifications.

WILDAF urges the government to consider these rights as unalienable to the right to life and thereupon, ensure that, medicine, medical facilities and medical staff are made adequate all the time.

4.4.1.3 Availability of Health Personnel

Availability of personnel is one of the prerequisite factors for the enjoyment of the right to health. The country has recorded a huge gap or deficit of health personnel at all levels. The Ministry of Health and Social Welfare recorded

availability of 64,500 health workers of which deficit is 113,000 workers.<sup>109</sup> The figures further highlights that 69% of medical doctors are found in urban areas and the remaining 21% attends to more than 70% rural dwellers population.<sup>110</sup>



Picture: Tanzanian nurse Helena Michael teaches a group of young mothers about the transmission of waterborne diseases and how to make ORS solution for treatment (Source: www.impatientoptimists.org, accessed January 2015). Only a few medical practitioners are available in Tanzanian rural settings.

WiLDAF takes this as a very serious concern because it, obviously, denies right to health to majority of Tanzanians especially women and children in rural areas. It is not a surprise that many of the rural families prefer traditional midwives than hospital based services. Sources indicate that, at least 60% of the pregnant women in Tanzania are attended by the said traditional midwives.

The adverse effects of that situation do not need any serious research to ascertain it. A retardation of realising MKUKUTA II and MDG's targets on infant and maternal mortality rates in Tanzania could be cited as illustrations of this reality.

Absence of proper medical services has adverse effects to other rights as well. For instance, some of the women are discriminated, stigmatized and abandoned by their husbands, relatives and friends because of fistula. The main attributing factor to fistula is lack of specialized medical personnel - to handle properly women with pregnancy complications.

Moreover, as a result of fistula, some of the women (with fistula) are expelled from their matrimonial homes. Such kinds of incidents perpetuate more GBV. For instance, the study conducted for this report in 2014 came across an incident whereby a lady in Rukwa region committed suicide after being named as 'kibudu' (decayed body) due to the ghastly odour she had, caused by fistula.

109 SIKIKA, Ibid.

110 SIKIKA, Ibid.

#### 4.4.1.4 Affordability of Medical Expenses

WiLDAF is of the opinion that, the issue of affordability of medical costs has several implications to women's-rights. For instance, an economic poor person cannot afford excessive costs, a situation which would cause him/her to die or sustain some form of disability. Moreover, imposition of costs in medico-legal investigations such as P.F 3; post mortem; and DNA would render it impossible for the poor gender group to access justice.

During the year 2014, the government continued with the implementation of some medical schemes which intended to mitigate medical costs for the poor majority as well as curbing a challenge of her financing health services especially to the poor people. The main medical schemes implemented were; first, the 'Huduma ya Msamaha' (exemption service) for PWDs, elderly, pregnant women and the under five children; and second, which was introduced just recently, commonly known as 'TIKA' (Tiba kwa Kadi or treatment through card).

The second health scheme is localized and institutionalized through by-laws in the district and municipal councils as Community Health Fund (CHF); while, the first one is implemented in the district hospitals as a requirement of the National Health Policy. The TIKKA/ CHF is not for free.<sup>111</sup>

According to the governing law on TIKKA/ CHF,<sup>112</sup> each district or municipal council is supposed to formulate by-laws which will govern and manage the CHF. The 2014 FCS' study<sup>113</sup> showed that, the imposition of the annual subscription rates of CHF is discretionary. Some of the councils charges Tshs 10,000 per family of five persons annually; while others were charging Tshs 5,000 per family irrespective of the number.

According to the FCS study (cited above), the TIKKA/ CHF scheme has several limitations, some being; i) not all medical complications could be treated by this card. Serious ones such as operational or medical examinations which are not available at the particular district hospital are supposed to be taken care by the card holder on his/her own costs; ii) the card is not applicable outside the jurisdiction of the district which it was issued.

111 The prospective beneficiaries are required pay an annual subscription rate which is proposed through the CHF's by-laws and that, each district or municipal council can has its own proposed amount.

112 The National Health Insurance Fund Act, 1999.

113 FCS (2014) State of Human Rights of Persons with Disability. Foundation for Civil Society: Dar es Salaam.

Therefore, it happens that a card holder shifts from one district to another, he or she has to pay again for the TIKA/ CHF basing on the new arrangements; and iii) cannot be applicable in private health care facilities (which are mostly available in many parts of the country).



Picture: A dispensary attendant gives directions to the patients in one of the dispensaries in Tanzania (Source: internet source).

On the other hand, the said Huduma ya Msamaha, which offers some exemptions to women, under five children, elderly and PWDs, face a number of shortfalls, some being; i) medical staff in many hospitals tend to neglect those who seek exemptions because they are regarded as accessing services free of charge while the hospitals do not have sufficient medical resources; and ii) with the introduction of TIKA/ CHF, the attention is given to the card holders instead of pro-bono (free of charges) clients at the hospitals.

WILDAF supports this form of co-financing between citizens and government as it would enhance access and availability of health service delivery in the country - taking into account that the government has not been able to allocate 15% of its budget in health sector. However, the government should not exclusively rely on it because the income poverty level is hiking up the scale as argued earlier on in this report. If it is fully implemented as a mandatory requirement for a person to access medical services, there would be a danger of some of the poor people to deflect totally from accessing formal medical services.

The experience has shown that, cost sharing schemes in Tanzania are generally difficult to implement because; i) the beneficiaries do not see the value of their money contributed; ii) they are still in 'hang-over' of the previous arrangements prior to liberalization policy, whereby, the government paid for every social service; and iii) because most of the gender groups are poor and that, in most cases, they are stacked in budget priority – to choose between food and other social necessities due to the abject income poverty they are experiencing.

#### 4.4.2 HIV/ AIDS as a Gender Issue

Tanzania is one of the countries which has taken both policy, legal and administrative measures at the same time to address HIV/AIDS. Unlike so many countries around the world, Tanzania has a specific and quite comprehensive law on prevention and control of HIV/ AIDS. The law is known as HIV and AIDS (Prevention and Control) Act, 2008. Prior to its enactment, there were already the National Policy on HIV and AIDS of 2001. The Tanzania Commission for AIDS (TACAIDS) is charged with responsibility to coordinate all HIV related activities in Tanzania including evenly distribution of resources directed for HIV/ AIDS by various institutions.<sup>114</sup>

The statistics show that the HIV prevalence rate amongst women slightly decreased in 2014. For instance, the statistics showed that, about 100,000 women tested were found to be HIV positive, which is equivalent to 5.6% of the national prevalence rates in 2013/2014.<sup>115</sup> The percentage decreased from 9.8% national prevalence rate of 2011 and 6.8% of 2012. However, according to the same source, only 53% of HIV positive pregnant women volunteer to use formal maternal facilities while the remaining percentage (47%) prefer informal facilities due to, inter alia, fear of stigma once they declare their health status. On the other hand, it is stated that more than 73% of children born with HIV are not taken to hospitals for medical attention including administration of ARV to various reasons, including income poverty (parents concentrate on income generating activities most of the time); proximity of health care services; ignorance of medical procedures; and wilful neglect.

114 Section 4(3) of the HIV and AIDS (Prevention and Control) Act, 2008.

115 Herieth Makwetta 'Watoto Wanaoishi na VVU Wakosa Kliniki', Mwananchi Newspaper, 7th December 2014, Page 3. The media source quoted Dr. Debora Mwikiibo, the Coordinator of National HIV Prevention Programme of Tanzania, who made her presentation during the health sector's stakeholders.

## 4.4.3 Right to Education and Gender Issues

## 4.4.3.1 Policy and Legal Frameworks on Education

Education is an empowerment tool and therefore, need to be accorded to everyone as a fundamental right and not as a privilege. Education is protected by different international legal instruments depending on the context. For instance the CEDAW and Maputo Protocol promote right to education to all girls without any discrimination as matter of right in order to empower women and girls.

The Convention on the Rights of Persons with Disabilities of 2006 equally promotes right to education to all PWDs; and the Convention on the Right of the Child of 1989, promotes necessity to educate both boys and girls to the highest level of education excellence. Therefore, right to education is addressed in a number of international and regional legal instruments.

In Tanzania, right to education is not provided as a matter of right under the Constitution of the United Republic of Tanzania of 1977. Instead, Article 11 of the Constitution merely imposes obligation to the government to ensure that there is enabling environment for one to acquire his or her education to the highest standard according to his or her ability. WiLDAF considers this situation as one of the weaknesses of the current Constitution. That is to say, an aggrieved person cannot challenge before Court of law when right to education is infringed.

Otherwise, education issues in Tanzania are governed by several principle laws, including the following:

- a) The Education Act, Cap. 353 [R.E 2002]
- b) The Law of the Child Act, 2009 (Act No. 21 of 2009)
- c) The Law of Persons with Disabilities Act, 2010 (Act No. 9 of 2010)
- d) The Education Fund Act, 2001 (Act No. 8 of 2001)
- e) The Higher Learning Students Loans' Board Act, 2004 (Act No. 9 of 2004)
- f) The Universities Act, 2005 Cap. 346 [R.E 2002]

The legal framework on provision of education from pre-primary, primary, secondary schools to higher learning are supplemented by Government Notice (G.N), policies and programmes. For instance in 2002 the government issued three different Government Notices to give directives in various aspects on right to education:

- a) G.N No. 296 of 2002 provides for procedures on how to expel or suspend a student with disciplinary issues.<sup>116</sup>
- b) G.N No. 287 of 2002 provides the right to live in clean and health environment.<sup>117</sup>
- c) G.N No. 292 of 2002 gives directives to all schools to furnish statistical information to the commissioner of education every year.

The government of Tanzania in realizing Development Vision 2025 in education sector, has set in programmes to ensure its implementation. Such programmes include the Primary Education Development Programme (PEDP) and Secondary Education Development Programme (SEDP). Both were effectively implemented between 1995 and 2005. The PEDP and SEDP are in line with the National Education Policy of 1995. Through such programmes the country will be able to realize the Dakar Declaration on Education for All (EFA) of 2000.

A huge step on education sector development was noticed in 2014. For instance, the 'Big Result Now' (BRN) as political initiative, resulted into increased number of children who passed their grades of education. However, many stakeholders were sceptical to count the increase as viable performance on part of the government because the Ministry of Education and vocational training lowered performance grades, whereby, pupils with low grades were also regarded as 'passed.'

Tracing on some of the progress indicators in education sector for the year 2014, WiLDAF found that:-

## 4.4.3.2 Enrolment – Primary and Other Schools' Levels

In early 1990s the government of Tanzania, like many other African States, championed for the enrolment of boys and girls in primary and secondary schools. Programmes and strategies were set in order to sensitize the general public to appreciate the importance of taking to school both boys and girls. In 1995 through the National Education and Vocational Training Policy, the government set a target that:<sup>118</sup>

- a) Primary education shall be universal and compulsory to all children at the age of 7 years until they complete this cycle of education.
- b) The establishment of co-education and girls secondary schools shall be promoted and encouraged

<sup>116</sup> It requires that, there is need to involve school committees or school governing board for primary and secondary schools respectively. There has been abuse of these G.N directives as head of primary and secondary schools can exercise such powers on their own without consultations.

<sup>117</sup> Also it provides for the need to conduct regular medical check-up, for the students and teachers.

<sup>118</sup> Paragraphs 3.2.3 to 3.2.7.

- c) Government shall not deboard existing girls government boarding secondary schools.
- d) Government shall establish girls' day streams in existing government secondary schools in communities where girls' secondary education is severely adversely affected.

More updated data on the progress made to enrol children in schools could not be found in 2014. However, the recent statistics (of 2013) showed impressive improvements on enrolment. For instance, the enrolment rates of children in different levels of education (in the year 1995) were as follows: 49.1% in primary schools; 44.7% in ordinary secondary schools (O-level); and only 24.3% in advanced secondary schools (A-level).<sup>119</sup> However, eighteen years later (that is 2013), things were different as the table below shows:

Table 11: Enrolment Rate – Year 2013 Status

Pre-Primary		Primary		O-Level		A-Level		Technical, Folk and Higher Education	
M	F	M	F	M	F	M	F	M	F
49.9%	50.1%	49.4%	50.6%	51.4%	48.6%	67.4%	32.6%	52.9%	47.1%

Source: Extract from BEST Report 2013 available at [www.moe.go.tz](http://www.moe.go.tz).

The enrolment rate in secondary school levels is boosted by an increase in number of schools through the vigorous campaign initiated and supervised by the former Prime Minister, Hon. Edward Lowasa. As of last year, there were a total of 3121 community secondary schools ('Shule za Kata') whereas the central government based secondary are only 375.<sup>120</sup>

WiLDAF commends the government and the community at large for ensuring that fifty percent or even more in enrolment is attained. However, it is concerned with changes on enrolment that as one goes up the scale one will realize that, girls are enrolled more in lower compared to higher level education. There is a need to increase efforts to fight all the hindrances and challenges that are faced by women and girls in attaining higher level of education as a matter of right. Such impediments include early marriages and school girls' pregnancies.

Moreover, WiLDAF urges the government to hasten and come out with a clear policy on re-enrolment schemes of children, especially girls, who dropped along the way due to a number of reasons such as poverty, pregnancies, and others.

119 The National Education and Vocational Training Policy of 1995.

120 URT, BEST National Data for Secondary Schools, 2013.

#### 4.4.3.3 School Girls Pregnancy and Early Marriages

The problem of early marriages and school girls' pregnancies is a global challenge that needs joint efforts to fight. According to UNFPA estimates, it is projected that between 2011 up to 2020, about 140 million girls will marry before attaining the age of 18 years globally. This is to say everyday 39,000 young girls marry in different corners of the world.<sup>121</sup> Tanzania is among the countries of which its communities still practice and entertain such practices.

The WHO is of the view that early marriages and pregnancies increase the vulnerability of a girl to health hazards. On this, Dr. Flavia Bustreo<sup>122</sup> said that, 'complications of pregnancy and childbirth are the leading cause of death in young women aged 15-19. Young girls who marry later and delay pregnancy beyond their adolescence have more chances to study, be healthier, to better their education and build a better life for themselves and their families.'

The school pregnancies and early marriage are termed as major dropout reasons affecting girl's right to education in Tanzania. The BEST National Education Data report lastly issued in 2013 indicate that, the dropout rate as a result of school pregnancy by 2012 was 4705 girls.

Table 12: Rates of Dropouts as a Result of Pregnancy in 2012/ 2013

Number of Pregnancy Recorded:	Form 1	Form 2	Form 3	Form 4	Form 5	Form 6	Total
	835	1346	1265	1246	6	7	4705

Source: Extract from BEST Report 2013 available at [www.moe.go.tz](http://www.moe.go.tz)

The report on Child Marriage in Tanzania issued by Human Rights Watch in 2014 provides the following facts about child marriage in the country, firstly it points out that 4 out of 10 girls are married before their 18<sup>th</sup> birthday especially in rural areas.<sup>123</sup> According to the age structure and education, normally an ordinary Tanzanian who commenced standard one at the age of 7 years, below 18 years is expected to be in secondary school. Secondly, a study by the United Nations Population Fund (UNFPA) points out that 37 percent of Tanzanian girls aged 20-24 were first married or live in union before the age of 18.<sup>124</sup> The statistics provided alerts that, the issue of early marriages is still a problem in the country and measures are to be taken to curb this situation.

121 Human Rights Watch 'Child Marriage: Tanzania Report of 2014.'

122 Assistant Director General for Family, Women's and Children's Health at the World Health Organisation (WHO).

123 Human Rights Watch (HRW), Child Marriage: Tanzania Report, 2014. Page 3.

124 HRW, Ibid.

WILD AF is of the view that, there is a need to revise the education and training policy so as to allow pregnant students to continue with education. Also there is a need to amend the Law of Marriage Act, 1971 so as to disallow any person below 18 to get married. The penal laws should as well criminalize all marriages of persons below 18 years so as to ensure that girls enjoy the right to education with maximum legal protection.

#### 4.4.4 Right to Clean and Safe Water

Water is an essential commodity to support human and all other living organisms on earth. The World Health Organisation (WHO) went further to set requirements of water consumption to every individual that; 50-100 litres of water per person in a day are sufficient to cover all basic human needs.<sup>125</sup> The standards set by WHO is not realized in a number of households in Tanzania. For instance in urban areas like Dar es Salaam where a gallon of water of 20 litres is sold at around 300/= shillings to 1,000/= depending on the area and season. This amount is very substantial for a household to afford.

It is a fact that; availability of safe and clean water, mostly fresh water for domestic use is an increasing problem. It is caused by a number of factors such as increase in population, over use of water, contamination of water sources and bodies and climatic change. As a result, access to safe and clean water is limited.

The right to safe and clean water was brought into light as a matter of "basic human right" in 2010 through the UN Resolution No. 62/292 where it was affirmed that, 'the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and human rights.'<sup>126</sup> The Resolution calls upon states and international organizations to 'provide financial resources, capacity building and technology transfer through international assistance and cooperation, in particular to developing countries in order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all.'<sup>127</sup>

In Tanzania legal and policy frameworks to ensure access and availability of safe and clean water and sanitation is governed by the Water Supply and Sanitation Act, 2009<sup>128</sup> and the National Water Policy 2002 respectively. The Water Supply and Sanitation Act, 2009 provides that, 'the objective of the Act is to promote and ensure the right to sustainable water supply and sanitation services for all purposes'<sup>129</sup> Also the National Water Policy, 2002 sets a goal

125 WASH United, Freshwater Action Network and WaterLex, 'The Human Right to Safe Drinking Water and Sanitation in Law and Policy.' Sourcebook, 2012. Page 39.  
 126 Preamble of the UN Resolution 62/292.  
 127 Clause 2 of the Resolution.  
 128 Act No. 12 of 2009.  
 129 Section 4(1).

for accessibility of water supply within 400 meters away from household. Therefore as a matter of right, with provision of the law and policy formulation, the right to water is promoted, however this is not the practice on the ground.



Picture: Water shortage in Bagamoyo (File picture, www.ipppmedia.com).

According to the Population and Housing Census conducted in 2012 in the country, it was revealed that among other things, still several families in the country do not have access to safe and clean water both in urban and rural settings. This accounts to 42.7% of the total households. The Statistics are as follows:

Table 13: Ration of Tanzanian Water Supply, 2014

Water source	Number of Households	Percent (%)
Piped Water	3,414,896	36.7
Other Protected Sources	1,920,244	20.6
Unprotected Sources	3,959,857	42.7

Source: URT, Basic Demographic and Socio-Economic Profile of 2014

WILD AF is concerned with water availability in the country. It is out of experience that even households with piped water connections do not have guarantee on availability of water. There are areas especially in urban settings with piped water connections but there is no regular water supply.

Furthermore, the figures if construed in a simple language considering that the household size by ratio of 4.7 per household then, the total number of

people who use unprotected water is around 18.6 million all over the country. This is approximately closer to a half of the country's population of 44 million people.<sup>130</sup> Therefore the government should take measures to ensure availability of safe and drinking water and sanitation to all, taking into account that women and girls are most affected. Women and girls in rural areas spend hours and hours in search of drinking water irrespective of whether it is clean and safe or not.

<sup>130</sup> URT, Basic Demographic and Socio-Economic Profile of 2014. Page 3.

## Chapter Five

# Status of the Enforcement of Women's Rights

### 5.1 Meaning and Scope of Enforcement of Women's Rights

The effective enforcement of women's rights does not depend on firmness legal frameworks alone; rather, it considers other factors such as good practice and conduct, programmes and plans and overall government budget including those of the local government authorities (LGAs); CSOs and even individual persons as discussed earlier on. This is due to the fact that, women's-rights redress is not only getting the culprit prosecuted or jailed. The redress also include how the laws, policies and plans are working perfectly in realization of gender balances especially the political and economic empowerments covered in sections one and two of this report.

This is why it has been WiLDAF's holistic approach that, ending GBV is more than having in place laws which impose severe punishments against the offenders. Rather, to have also pro-gender policies and practices which will, inter alia, mainstream gender rights into the development programmes. This is where the legal empowerment based approach to programming comes in.

The international legal frameworks, which are extensively covered in the previous parts of this report, impose responsibilities to the States to put in place legislative and other measures in order to address issues associated to women's rights. Such measures are partially covered already. Therefore, this part goes a little bit deeper to consider each of the measures in a more detailed way.

### 5.2 Executive Measures

The executive measures on the enforcement of the women's rights include having specific budget on gender issues; plans; facilities; specialized officers; referral mechanisms; and the like.<sup>131</sup>

<sup>131</sup> Article 35 of the of the SADC Protocol of 2008.



The government of Tanzania has incorporated a number of initiatives in a bid to implement those measures. Some of the initiations included:

- a) Directing all LGAs to have specific budget in the own sources to address gender issues. This is done through the Community Development Departments.
- b) Allocating specific budget for gender-line Ministries such as the Ministry of Community Development, Gender and Children; the Ministry of Education and Vocational Training; the Ministry of Home Affairs; the Ministry of Health and Social Welfare; and the Ministry of Constitutio and legal Affairs.
- c) Adopted a number of pro-gender plans as explained earlier on in the previous parts of this report.
- d) Designated Police Gender and Children Desks (PGCDs) in more than 417 police stations countrywide.
- e) Mainstreamed the work of Social Welfare Officers in a number of pro-gender laws such as the Law of the Child Act, 2009; the Persons with Disabilities Act, 2010; HIV/AIDS (Prevention and Control) Act, 2008; and others. Moreover, the SWOs are deployed in almost every district government hospitals; districts and municipal councils.
- f) Initiated pro-gender programmes such as Tanzania Social Action Fund (TASAF), which, *inter alia*, facilitate community-based income generating projects in the rural and urban areas.
- g) Established One Stop Centres (OSC) for handling GBV and VAC in a more convenient way - to be located in all district and regional hospitals.

Each of these is categorically discussed below.

### 5.3 Development Vision 2025: Status of Enforcement of Gender Issues

The government of Tanzania implements several strategies in order to realize vision 2025 as a nation. The vision provides clear direction where the state should be heading to. The government aims at improving quality of life of its citizens by 2015. In its commitment to enforce gender related rights the vision 2025 provides that, a high quality livelihoods for all Tanzanian is expected to be attained through strategies which ensure realization of the following goals:-

<sup>132</sup>

- a) Gender equality and the empowerment of women in all socio-economic and political relations and cultures.
- b) Access to quality primary health care.
- c) Access to quality reproductive health services for all individuals of appropriate age.
- d) Reduction of infant and maternal mortality rates by three quarters.

<sup>132</sup> Paragraph 3 of the Development Vision 2025.

### 5.4 MKUKUTA II: Status of Enforcement of Gender-Related Clusters and Goals

In order to respond to the National Vision 2025 and the MDGs, the government came out with NSGRP in 2005. The NSGRP, as stated earlier on, was to be implemented into two phases of which aim at responding to the following; reduction of abject poverty, hunger, diseases, illiteracy, environmental degradation and to end gender discrimination against women by 2015.<sup>133</sup> The strategy is implemented into two phases of five years, as the first started on 2005/2006 to 2010/2011 known as NSGRP I and the second runs from 2011/12 to 2014/15.

It is within this period of its implementation, that there emerged banks and financial institutions targeting to empower women such as the Tanzania Women's Bank (TWB) and Twiga Bancorp Bank. These two banks are leading in providing financial support (soft loans) to women as individuals and groups. The economic empowerment through financial support also strengthened the growth of Village Community Banks (VICOBA) in a number of districts in mainland Tanzania.<sup>134</sup> However:-

- a) Such initiatives are limited or accessible to only a few women. Majority of rural (even urban) based women do not access such opportunities. They remain poor and therefore, unable to pursue their rights due to poverty and ignorance – both being economic related factors; and
- b) So many similar or parallel initiatives are made without assessing impacts of previous ones. As a result, vulnerable groups have continued to be used as 'ghost policy targets.'

WiLDAF is of the view that, there is a need for the government to fully implement its programmes for the period set without regular changes. For instance before ending the NSGRP II the government introduced the Five Years Development Plan (FYDP) and as such, the key stakeholders implementing NSGRP II shifted priorities to the newly introduced plan. It is important to set programmes which can be implemented to finality otherwise people will lose track somewhere.

<sup>133</sup> URT, National Strategy for Growth and Reduction of Poverty, 2005. Page 1.

<sup>134</sup> URT, National Processes, Reforms and Programmes Implementation MKUKUTA II (Bridge Document) Ministry of Finance, November 2011. Page 1.

## 5.5 Status of Enforcement of the National Strategy for Gender Development

The National Strategy for Gender Development addresses twenty one (21) areas of gender concern according to gender related policies.<sup>135</sup> Various key stakeholders are major players to see the implementation of these 21 areas of concerns. For instance, the issue of abolition of harmful tradition and cultural practices, several civil societies are working on them on daily basis. The Anti-FGM Coalition commemorated Zero Tolerance Day in 2014 whereby several students and parents gathered for public debates on ending Female Genital Mutilation (FGM).



Picture: Students listening to a presentation during Zero Tolerance to FGM Campaign at Ngimu Ward-Singida, 2014.

WiLDAF is of the view that, the campaign against FGM in Tanzania still needs more efforts despite the fact that the national prevalence trends of FGM seem to drop from 18% in earlier 2000 to 15% in late 2000s. If one goes for specific situation of particular places he/ she will definitely note that, FGM is still a reality. For instance, Tarime district alone recorded a total of 1,628 of girls who were circumcised (FGM) between June 2013 to June 2014. This number is too high for only one district.<sup>136</sup> FGM is a gender concern because according to the Tanzania Demographic Health Survey of 2010, such practices (FGM) diminish with education level attained as the following chart shows:-

<sup>135</sup> Some of the concerns are; institutional framework; decision making and power; legal and human rights; education; training; economic empowerment; employment; general and reproductive health; HIV and AIDS; food security and nutrition; appropriate technology; environmental protection and conservation; access and ownership of resources; gender mainstreaming; gender/ sex disaggregated data; social security; community participation; customs and traditions; and gender and advocacy.

<sup>136</sup> [www.thehabari.com/habari-tanzania/watoto-984-waolewe-tarime-1628-wakeketwa](http://www.thehabari.com/habari-tanzania/watoto-984-waolewe-tarime-1628-wakeketwa) (visited on 23rd December, 2014).

Table 14: Effects FGM Practices to Girls Education

Education Level (of Girls who are FGM Victims)	Percentage
No Education	20.3
Primary Incomplete	12.9
Primary Complete	16.6
Secondary and above	3.1

Source: Tanzania Demographic Health Survey Report of 2010.

The relationship between FGM and progress of girls to their education has not been addressed scientifically. But, could be speculated that, once a girl undergoes FGM, she is culturally exposed to marital affairs because FGM is a symbol of maturity to Kurya and other tribes which practice FGM.

WiLDAF calls upon all key stakeholders to implement policy concerns falling under each sector. The 21 issues raised in the strategic plan will only be achieved if there will be checks and balances between various stakeholders. The collaboration between state and non-state actors is crucial to the realisation of gender balances.

## 5.6 Status of Enforcement of National Plan of Action of 2001-2015

The National Plan of Action for the Prevention and Eradication of Violence against Women and Children of 2001-2015, was prepared with its main objective of ending GBV in the country. It had the following objectives in order to safeguard women's rights in the country:-<sup>137</sup>

- To call for immediate amendments of legislation which affect women's rights, such as the Law of Marriage Act, 1971 on age of which a woman can contract marriage, Customary Declaration Orders, 1963 of which others have adverse effect to women rights, the Citizenship Act, 1995 and others.
- Women empowerment in all spheres of life be it social, economic, political, cultural practices by increasing level of awareness on gender based violence and other harmful practices that affect women's rights.
- Provision of services/after care to victims of gender violence. Lack of such services in communities is a big challenge. It is a hindrance to attainment of justice to cases reported in police stations. In most cases, the victims fear to go on living in their communities – some of the perpetrators intimidate them. As a result most of the GBV cases reported do not continue for prosecution due to said fear.

<sup>137</sup> URT, Gender and Children, National Plan of Action for the Prevention and Eradication of Violence against Women and Children, 2001. Also available at <http://www.mcdgc.go.tz/data/PNADN851.pdf> as visited on 8th December, 2014.

- d) Education, training and awareness building to all stakeholders (duty bearers and right holders) on issue of gender and responsiveness.

None of those objectives were met as of December 2014. The law of marriage, customary, and others were not amended. As for the empowerment of women, it is still a huge challenge. Women are still inferior in all spheres as previous chapters of this report have indicated.

WiLDAF is concerned with lack of provision after care services to victims of gender based violence (shelter house). Currently there are only two known established shelters for GBV survivors, these are the Young Women Christian Association and House of Peace both located in Dar es Salaam. The two shelters are run by the civil society organizations. There is a need for the government to establish shelters for GBV survivors in all zones. To begin with then priority should be given to regions prone to GBV such as Mara region.

## 5.7 Law Enforcement

The enforcement of gender-related rights is mainly under the police force, through a web of established police gender and children desks (PGCDs) in different parts of the country. The desks were launched in December, 2007/2008 whereby initially Dar es Salaam Special Police Zone was chosen as pilot area.<sup>138</sup> Thereafter, the idea of having special gender desk spread all over the country (police stations at district level).



Picture: One of the PGCDs in launch ceremony (file photo).

The purpose for establishing a gender desk at police station is to guarantee women and children dignity in reporting crimes against them. The Tanzania Female Police Network (TPF-Net) has managed to prepare a three years Action Plan on Gender Desks which was officially launched in 2013. UNICEF

138 Gender and Development Seminar Series (GDSS) Paper titled, 'Rudisha Rasilimali kwa Wananchi' November, 27, 2008. Page 1.

Tanzania leads in the implementation of the plan in collaboration with the police and other civil rights groups.

During the launching ceremony of the plan mentioned above, the Inspector General of Police (IGP) was quoted saying that, 'the Tanzania Police Force is committed to improving its response to survivors and victims of child abuse. To encourage survivors and victims to speak out, every police station needs to be a place where they feel safe, comfortable and supported'.<sup>139</sup>

A separate assessment is needed to state the effectiveness of having such a plan; but generally, WiLDAF recommends these initiatives taken by the police force and its stakeholders to ensure that women rights are protected by all means. These initiatives should be strongly supported by non-state actors as well by empowering communities around so as to be aware of the services offered by gender desks of the police force.

On the other hand, the Commission for Human Rights and Good Governance (CHRGG) was in 2014, at the first year of the implementation of the National Human Rights Action Plan 2013-2017 showed to support the above initiative. The Action Plan, among other things, provides for the guidance on how to bring in gender balances in the country. It has clear objectives and the plan went further to identify implementing stakeholders of the plan. On realization of women's rights the National Human Rights Action Plan has the following objectives:<sup>140</sup>

- a) Raise awareness of gender issues and women's rights in communities.
- b) Systematically implement policies and programmes addressing gender equality.
- c) Promote affirmative action policies for women to ensure their active participation in social, political and economic spheres.
- d) Domesticate CEDAW by enacting a Domestic Violence Law and reviewing other anti-discrimination legislation.
- e) Enact a modern, gender-responsive inheritance and succession law.
- f) Issue the white paper on the age of harmful effects of early marriage and trafficking in persons to reduce sexual and economic exploitation of women and girls.
- g) Promote public awareness of the harmful impact of sexual and domestic violence.
- h) Raise awareness of the prohibition of FGM in the most affected areas and strengthen the enforcement of penal legislation.

139 Launch of the Gender and Children's Desks and 3 years Action Plan demonstrate Police Commitment to Strengthen its Response to gender based violence and violence against children, accessed from: [http://www.unicef.org/esaro/5440\\_tanzania\\_gender.html](http://www.unicef.org/esaro/5440_tanzania_gender.html) on 31st December, 2014.

140 Para 2.3.1.4 of the CHRGG's National Human Rights Plan of Action 2013-2017.

- i) Promote re-admission of girls to school after giving birth.
- j) Develop skills among law enforcement agencies on the CEDAW as well as the enforcement to the Law against FGM and Anti-Trafficking of Persons Act.
- k) Provide psychosocial, counselling, shelter and vocational support to victims of FGM, GBV and domestic violence.
- l) Support economic self-sufficiency for women through micro-credit schemes and entrepreneurship training.

Apart from objective (a) above, which has been predominantly implemented by civil rights groups – without any public funding, there was no any notable efforts to fulfil other objectives as of December 2014. The proposed law reforms under objectives (d) and (e) have been campaigned for over a decade without a success.

WiLDAF is of the view that; in order for effectively realization of the programmes enshrined in this and other similar plans, there is a need to strengthen public private partnership (PPP). Non-state actors particularly CSOs; Faith Based Organizations (FBOs); and Community Based Organizations (CBOs) should be fully and effectively engaged and supported as well. The time frame-set is only five years, thus WiLDAF calls upon all stakeholders to officially start campaigns to see that CEDAW and Maputo Protocol are domesticated.

## 5.8 Judicial Measures

Judiciary is another arm of the state whose its obligation is to administer justice and providing interpretation on different international and national laws. The Judiciary has recorded a number of judicial precedents in enforcing gender balance in development.

Some of the early precedents which have been applied to date include Bi. Hawa Mohammed v. Ally Seif [1983] T.L.R 32, whereby the Court of Appeal recognized domestic duties as having monetary value for purposes of acquisition and division of matrimonial assets. This position was echoed by the court in the case of Lawrence Mtefu v. Germana Mtefu (Civil Appeal No. 214 of 2000); and Elizabeth Mtawa v. Hassan Mfaume Risasi (Civil Appeal No. 2 of 2000).

Furthermore, the right of females to inherit properties was pronounced in the cases of Bernado Epharim v. Holaria Pastory and Gervasi Kaizilegie (Civil Appeal No. 70 of 1989); and, Suzana Kakubukubu v. Walwa Joseph Kasubi [1988] T.L.R 199. The right to inherit and dispose of property (land) was also stressed in the case of Epharaim v. Pastory (Civil Appeal No. 70 of 1989).

WiLDAF encourages and urges the judiciary to continue exploring and propounding more pro-gender rights precedents which will safeguard, promote and enforce the rights of women and other gender groups in Tanzania. The international human rights instruments could be used to enrich judicial decisions in all gender-related matters that the judiciary is approached to adjudicate. For instance, Honourable Munuo, J in the case of Leonard Jonathan v. Republic, Criminal Appeal No. 53 of 2001 (the High Court of Tanzania at Moshi (Unreported)), hunched around to international human rights jurisprudence to cite Article 23 of the International Covenant on Civil and Political Rights, 1966 (ICCPR), which is about the right to family. This is a heroic judicial movement, to expand Tanzanian precedents beyond the borders.

Some of the gray areas which the judiciary is invited to pay an earnest attention to are; first, the minimum age for marriage especially of a girl child; and secondly, designation of special session for gender-related cases; and thirdly, judicial costs associated to the adjudication of the said matters.

## Chapter Six

## Compliance with International Human Rights Standards

### 6.1 Meaning and Essence of Compliance

The country is a member state to a number of international human rights treaties. The application of such treaties is guided by Article 63 of the Constitution of United Republic of Tanzania of 1977, which poses a requirement to ratify the treaties<sup>141</sup> before they are enforced in Tanzanian judicial organs.<sup>142</sup>

Some of the pro-gender human rights treaties which were ratified and domesticated as of December 2014 were; the Convention on the Law of the Child, 1989 and the African Charter on the Rights and Welfare of the Child, 1990, domesticated in Tanzania in 2009 by enacting the Law of the Child Act, 2009; and the Convention on the Rights of Persons with Disabilities, 2006, which was domesticated in 2010 by enacting the Law of Persons with Disabilities Act, 2010. The status of ratification, domestication and other forms of compliance to the gender-rights and international human rights treaties (by Tanzania), is briefly discussed below.

141 Article 63(3)(e) of the said Constitution states, inter alia, that 'for purpose of discharging its functions the National Assembly may deliberate upon and ratify all treaties and agreements to which the United Republic is a party and the provisions which require ratification.'

142 In dual or bimodal States, all international treaties need to be domesticated into municipal (national) laws before they are applied in that particular territory. Therefore, for such countries like Tanzania, an international treaty remains a persuasive source of law into domestic jurisdiction. For instance in the case of *Leonard Jonathan v. Republic*, Criminal Appeal No. 53 of 2001 (the High Court of Tanzania at Moshi (Unreported)), Munuo, J in delivering judgment, made reference to a number of international legal instruments so as to establish why a girl or a woman should exercise her freedom of choice when it comes to marriage. In this case, Article 23 on right to family of ICCPR, 1966 was referred to. Honorable Munuo stated that; "in view of the above provision of domestic and international law, the appellant seriously offended the complaints fundamental right to choose her spouse and marry on her own volition. These circumstances reinforce her complaint of rape which I have already observed, was proved beyond all reasonable doubt for the never consented to the appellant carnally knowing her or marrying her under the obnoxious customary practice of grab bing women, locking them up and sexually assaulting them in the name of Chagga customary marriage.'

### 6.2 Status of Ratification of Gender-Related Treaties

Tanzania has ratified a number of international conventions since its independence in 1961. The following table summarizes status of ratification of some of the international conventions which safeguard, promote and protect rights and welfare of women (and other vulnerable groups):-

Table 15: Status of Ratification of Pro-Gender Rights International Conventions

Convention	Some of the Provisions	Date/ Year of Ratification
Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), 1979.	Article 1 defines discrimination; Article 2 provides for States Parties' condemnation of discrimination against women; Article 7 calls upon States Parties to eliminate discrimination against women in political and public life; Article 8 imposes a duty on States Parties to ensure that women are afforded equal opportunity to represent their Governments; Article 11(1) call on States Parties to take measures to eliminate discrimination against women in employment; Article 14(2) calls for elimination of discrimination against women in rural areas; Article 15(1) provides for equality before the law.	20 <sup>th</sup> August, 1985
International Covenant on Civil and Political Rights (ICCPR), 1966.	Article 2 (1) imposes a duty upon each State Party to ensure to its people rights stipulated in the Covenant; the rights include: right to protection from cruel, inhuman or degrading treatment (Article 7); right to protection from slavery (Article 8); right to liberty and security of person (Article 9); and equality before and equal protection of the law.	11 <sup>th</sup> June, 1976
International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966.	Article 2(2) provides for guarantee of rights under the Covenant by States Parties without discrimination; Article 3 imposes a duty upon each State Party to ensure men and women enjoy equally rights stipulated in the Covenant; Article 12(1) provides for the right to highest attainable standard of health for everyone, and Article 13 provides for the right to education for everyone.	11 <sup>th</sup> June, 1976
Convention on the Rights of the Child (CRC), 1989.	A major international instrument on children rights. For instance, Article 2 prohibits discrimination of all kinds.	10 <sup>th</sup> June, 1991
African Charter on Human and Peoples' Rights (ACHPR), 1981.	Article 18(3) of the Charter provides for elimination of discrimination against women.	18 <sup>th</sup> February, 1984
African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003.	Article 1(f) defines discrimination against women; Article 2(1) calls upon Governments of States Parties to eliminate all forms of discrimination against women and also, obligates Governments to make and enact gender-sensitive policies and legislation; and Article 8, provides for equal treatment of women and men before the law.	3 <sup>rd</sup> March, 2008
SADC Protocol on Gender and Development, 1997.	It provides for the guideline on how to eliminate gender-gaps in Southern Africa Development Corporation (SADC) sub-region in order to enhance development. It calls for 50/50 representation in decision making bodies, in particular political positions. It also urges members States to initiate special tribunals/ judicial sessions for gender-based cases.	Not known.
Treaty for the Establishment of the East African Community (EAC) as amended in 2006 and 2007.	It also safeguards and promotes gender representation and empowerment in East Africa. Article 5(3)(e) of this Treaty requires mainstreaming of gender in all its endeavours and the enhancement of the role of women in cultural, social, political, economic and technological development.	Not known.

Source: WILDAF Analysis - Various website sources, 2014.

### 6.3 Status of Domestication of the Gender-Related Treaties

As for the status of domestication, this study ascertained that, there have been some efforts to incorporate pro-gender human rights principles deduced from the above mentioned (and other) treaties. The table below highlights some of the laws presumed to have been enacted in response to some of the stated treaties:-

Table 15: Status of Domestication of Pro-Gender Treaties

Gender Related Treaties	Status of Domestication
CEDAW, 1979; Maputo Protocol, 2003; and SADC Protocol, 1997.	Not domesticated as whole, but there are provisions in different laws such as: Constitution of United Republic of Tanzania, 1977, which prohibits discrimination and encourages equality for all; the Employment and Labour Relations Act, 2004, which prohibits discrimination in employment; the Penal Code, Cap. 16 which generally criminalizes FGM and Physical violence against any persons; and the Land Act, 1999 and the Village Land Act, 1999 provide for equal right to own land. Moreover, the police force of Tanzania has designated PGCDs to hear gender-related cases. The judiciary is yet to establish special sessions for gender-related cases. There is also no special courts or specific law on gender.
CRC; and the African Charter on the Rights and Welfare of the Child (ACRWC), of 1990.	Domestication of almost whole CRC and ACRWC: Law of the Child Act, 2009; and various regulations made under this law.
ICCPR, 1966; and African Charter on Human and Peoples' Rights (ACHPR) of 1981.	Domestication of only some of ICCPR provisions: Constitution of United Republic of Tanzania, 1977; the Political Parties Act, 1992; the National Election Act, 1985; the Election Expenses Act, 2010; and the Citizenship Act, 1995.
ICESCR, 1966; and EAC Treaty (cited above).	The Constitution of United Republic of Tanzania, 1977 does not protect such rights, but some of the sectoral legislation: the Education Act, 1972; the Education Fund Act, 2001; the Higher Learning Students Loans' Board Act, 2004; the HIV and AIDS (Prevention and Control) Act, 2008; the Law of Marriage Act, 1971; the Law of Persons with Disabilities Act, 2010; the Mental Health Act, 2008; the Nurses and Midwives Registration Act, 1997; the Pharmacy Act, 2002; the Public Health Act, 2009; the Tanzania Food, Drugs and Cosmetics Act, 2008; the Universities Act, 2005; the Water Supply and Sanitation Act, 2009. Moreover, there is a number of public and sectoral policies which have specifically address gender issues. Such policies include the National Economic Empowerment Policy of 2004.

Source: WiLDAF Analysis - Various website sources, 2014.

WiLDAF calls upon for the government to ensure that the CEDAW is domesticated in its entirety – to have specific law on GBV or gender rights generally. The law will be a bench for realization of women's rights in all dimensions, be it social, political, cultural or economic rights and empowerment.

### 6.4 Status of Reporting to Some of the Treaty Monitoring Bodies

Tanzania, like other States members to the above named treaties, is obliged to report to the respective treaty monitoring bodies (TMBs) about the status of the implementation of the treaties during a particular reporting period. This study has ascertained that, the government has not been systematic and somehow dilatory in reporting to TMBs as the table below shows:

Table 16: Status of Reporting to Some of the TMBs

Convention	Treaty Monitoring Body	Last Report
CEDAW, 1979.	Committee on the Elimination of Discrimination Against Women.	<ul style="list-style-type: none"> <li>This year, 10<sup>th</sup> November, 2014.</li> <li>It was a combined periodic reports of the fourth, fifth and sixth.</li> </ul>
ICCPR, 1966.	Human Rights Committee.	<ul style="list-style-type: none"> <li>Tanzania submitted its last report in 2007.</li> <li>It was supposed to submit another report in 2013 but has not yet done so as of December, 2014.</li> </ul>
IESCR, 1966.	Committee on Economic, Social and Cultural Rights.	<ul style="list-style-type: none"> <li>Last report submitted on 25<sup>th</sup> August, 2009.</li> <li>The 2009 was the second report. The first report was submitted in 1979. The third report was supposed to be before 2014.</li> </ul>
CRC, 1989.	Committee on the Rights of the Child.	<ul style="list-style-type: none"> <li>Last report was submitted on 13<sup>th</sup> January, 2012.</li> <li>Next reporting was not yet in 2014.</li> </ul>

Source: WiLDAF Analysis - Various website sources, 2014.

WiLDAF calls upon the government to effectively fulfil its international human rights obligations, by ensuring that, State's periodical reports are filed on time to the respective TMBs. Moreover, the government should ensure that, all relevant stakeholders are effectively involved in the preparation of the State's reports as well as implementation, monitoring and evaluation of the concluding observations (decisions of the TMBs). The CHRGG which could consider taking all these as part of the said national human rights strategic plan, it is currently spearheading the implementation.

## Chapter Seven

# General Recommendations and Conclusion

### 7.1 General Recommendations

Specific recommendations are already covered in each and every issue raised in foregoing parts of this report. Therefore, below are rather general recommendations, directed to government and other stakeholders in order to reinforce gender balance in Tanzania:-

- a) Ensure that, gender issues are adequately articulated in the ongoing constitution reforms. The provisions within the new constitution should, unequivocally, entrench and maintain such (socio-economic and political) women's rights.
- b) Stakeholders should continue to advocate for domestication of CEDAW and other key pro-gender international instruments in their entirety and legal reforms for laws that discriminate women and girls in Tanzania. For instance legal reforms on tender age where a girl can contract marriage as provided for in the Law of Marriage Act, 1971.
- c) Women Empowerment in all spheres of life such as political and economic empowerment, should be scaled up by both state and non-state actors. The government should allocate adequate resources to women empowerment programmes as stipulated in MKUKUTA II, Deelopment Vision 2025 and other public and sectoral policies including those relating to trade, social welfare, agriculture, education, health and leadership.
- d) The government should also ensure that, specific budget is allocated for GBV and VAC cases for effective reporting, investigation, prosecution and trial of such cases. Each district/ municipal council should endeavour to specify GBV/VAC budgets from their own sources and announce to the public about availability and accessibility procedures of such funds.
- e) There is a need to push for approval and implementation of National Plan of Action on Human Rights Education prepared by the Ministry of Education

and Vocational Training. The plan was prepared since 2010 with support from UNESCO aiming at inclusion of Human Rights components in teaching syllabuses from tertiary education to higher learning institution. Such programmes will empower the community in general on various human rights aspects therefore reduction on a number of human rights violations such as GBV, FGM, witchcraft killings, early marriages, school pregnancies, mob-violence, torture and discrimination.

- f) The government and other stakeholders should take necessary steps to ensure periodical reports to TMBs and implement timely recommendations emanated from the bodies.

### 7.2 Conclusion

This is the first report of its kind in Tanzanian history to address the annual women's rights situation in a specific and more comprehensive way. The Tanzanian commitment to the international level is also briefly explored in order to instigate a culture of engaging into international advocacy agenda. The report is made out of both field and desk work analysis of women's rights situations in 2014.

It is generally found that, Tanzania has made a strong stride towards promotion and protection of women's-related rights by, in particular, creating policy and legal infrastructures such as; i) formulating specific policies on gender issues; ii) enacting laws on specific gender groups (PWDs, children, PLWHAs, etc); and iii) launching institutional reforms such as PGCS, OSC, etc. As a result, more GBV and VAC are unveiled and secure a little bit close attention by the law enforcement and judicial organs. Some of the GBV incidents such as FGM and stigma associated to HIV/AIDS are decreasing at least to some parts of the country. Moreover, more women are seen elected and appointed for political and administrative positions. The proposed draft new constitution of Tanzania has, to a certain extent, incorporated some gender issues in a more comprehensive ways if compared with the previous/current situation. All these are recent development, which were, in the same fashion, continued to be implemented in 2014.

Despite those notable development as far as women's rights are concerned, little development was seen to happen during the year 2014. For instance, government's obligation to the international human rights instrument was, in 2014, not implemented to the required standards. Tanzania still entertains a number of bad laws which adversely affect vulnerable groups in their applicability. For instance, despite the repeated call to amend the Law of

Marriage Act, 1971, inheritance and probate laws, Ministers responsible for legal affairs and that responsible for gender issues kept on giving empty promises on legal reforms. Moreover, a follow-up on GBV and VAC cases and survivors is overwhelmingly on the shoulders of civil rights groups like WiLDAF, LHRC, TAWLA, WLAC and TAMWA. The government is still uninterested to allocate a specific budget for such cases.

As such, WiLDAF proposes adoption of affirmative and more pro-active women's programmes at the policy, legislative and administrative levels. Currently, women's-related programmes are too generalized and lack strong implementation mechanisms.

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Mikocheni "A" area, off chaku street Block F, Plot  
No.635  
P.o.Box 76215 Dar es Salaam, Tanzania  
T:+255 22 270 1995  
wildaf\_tanzania@yahoo.com  
info@wildaftanzania.org  
www.wildaftanzania.org