African Peer Review Mechanism (APRM)

Tanzania Country Self Assessment Report

(Final Draft)

July 2009

CHAPTER ONE

1. INTRODUCTION

1. This chapter provides a background and broad context of Tanzania's political and socio-economic history since independence in the early 1960s. It gives highlights on important milestones and landmarks of Tanzania as a Nation such as the Union of Tanganyika and Zanzibar. Tanzania's role in the frontline states, its participation in regional integration initiatives, its policy on socialism and self reliance and its implementation of socio-economic policy reform measures are introduced in the chapter together with the implementation of poverty reduction strategies and the war against corruption as part of the overall effort to enhance good governance in the country.

1.1 Historical Background

2. Tanzanian State was formed by the union of the Republic of Tanganyika, on the Mainland, and the Peoples Republic of Zanzibar. Tanganyika was a German colony, then the League of Nations mandated territory under British administration and later a UN trust territory, remaining under British control. In 1954, Mwalimu Julius Kambarage Nyerere founded the Tanganyika African National Union (TANU), which became the focus of African nationalism. Tanganyika achieved independence on 9 December, 1961 and became a republic on 9 December 1962 with Mwalimu Nyerere as the first President. In 1965 the constitution was changed ending a multi-party system and establishing a One-Party System.

3. Zanzibar became independent from Britain (who had governed in cooperation with the Sultan) in December 1963. In January 1964, a revolution overthrew the sultanate post-independence government allowing members of the majority black population their first chance to hold political power; and the Government of Zanzibar proclaimed a Revolutionary Government. Sheikh Abeid Amani Karume became the President of Zanzibar and Chairman of the Zanzibar Revolutionary Council until when he was assassinated on 7 April 1972.

4. The union of Tanganyika and Zanzibar was established in April 1964 and the new country was formally named the United Republic of Tanzania (URT) in October 1964. Mwalimu Julius Kambarage Nyerere became the first President of the URT while Sheikh Karume became the Vice President of the URT in addition to his position as the President of Zanzibar and the Chairman of the Zanzibar Revolutionary Council.

5. Zanzibar has its own President and a Legislative body known as the House of Representatives. The Parliament of the URT has Members of Parliament from both Zanzibar and Mainland Tanzania. Zanzibar Members in the Union Parliament include those directly elected from Zanzibar's electoral constituents, Women Special seats and those appointed by the President of the URT. Zanzibar is responsible for all issues that concern it as a country except for twenty-two "Union Matters".

6. Mwalimu Nyerere a pioneer of the African one party state, a leader of the non-aligned movement and an advocate of African socialism led the first phase of the Government of URT from 1964 to 1985. After stepping down as President in 1985, Mwalimu Nyerere remained an influential figure as Chairman of the rulling Party "Chama Cha Mapinduzi" (CCM) which was formed in 1977 after a merger of Tanganyika African National Union (TANU) and Afro-Shirazi

Party (ASP). Ali Hassan Mwinyi took over from Mwalimu Nyerere and became the President of the Second Phase Government of the URT. He later became the Chairman of CCM".

7. During the second phase Government under President Ali Hasssan Mwinyi a gradual process of economic liberalization and change from one democracy to multi-party democracy was started. Specifically, in 1992 the Constitution was changed to allow for a multi-party system. The first multi-party election was undertaken in the by-elections in 1994 followed by the presidential multi-party election in 1995. In the constitution a two-term Presidency rule has been upheld since 1985. Mwinyi was President of the URT from 1985 to 1995 when he was succeeded by Benjamin William Mkapa as both President of the URT and later as Chairman of the ruling Party, CCM.

8. Mkapa became the third President of the United Republic of Tanzania from 1995 to 2005. The third phase Government under Mkapa picked from the second phase Government's political and economic liberalization. It also consolidated the process of strengthening the macro-economic performance, privatization and other reforms that are critical in view of the challenges of globalization.

9. Jakaya Mrisho Kikwete became the fourth President of the United Republic of Tanzania in December 2005 and in June 2006 he was elected Chairman of CCM. President Kikwete's Government has continued pursuing sound, consistent predictable and credible macro-economic policies. The fourth phase Government continues with the promotion of good governance, rule of law, private sector development and expansion of investments, job creation, export expansion, value addition chains and scaling up on human capital development.

10. The United Republic of Tanzania is a peaceful and stable country which has successfully built a strong national unity and reduced significantly the impacts of ethnic or regional divisions. This is a legacy of Nyerere coupled with the use of Kiswahili as a national language. All the subsequent three Presidents have continued to ensure continuity of peace and stability of the country.

11. Tanzania was forced to fight with Uganda in a war that lasted from October 1978 to May 1979 after the then President of Uganda, Iddi Amin Dada, started war against Tanzania. The cost of the war was huge and its economic impact took Tanzania many years to recover. The cost was in addition to the cost of African liberation struggles and other peace keeping roles Tanzania has been playing, under the auspices of the United Nations or the African Union in other countries like Lebanon, Eritrea/Ethiopia, Burundi, Southern Sudan, Seyschelles, Sierra Leone, Cote d'Ivoire, Comoros and Sudan (Darfur).

12. The value of Tanzania's participation and leadership in the African liberation struggle is quite significant. As a key member of the Frontline States it contributed significantly to the achievement of independence of Southern African States. With independence, the mandate of the Front Line States changed from political to economic and hence the formation of SADCC which was turned into SADC. In addition, as an important member, Tanzania has played the important role of a mediator in Eastern and Southern Africa. Moreover, it also displays diplomatic leadership aimed at achieving peace in Burundi, Comoro and the Democratic Republic of the Congo in order to stabilize the Great Lakes Region and other parts of the continent.

13. Tanzania has also been affected by the prolonged crisis in the Great Lakes region. For decades Tanzania has hosted one of the largest refugee populations in Africa. UNHCR announced on January 30, 2007 that, for the first time in more than a decade, the population of refugee camps in Tanzania had dropped below 300,000. More than 250,000 refugees have returned to their homes from Tanzania since 2002. Of those that remain, as of September 2008, 130,000 are Burundian and 103,000 Congolese. Other 220,000 Burundian refugees who have lived in refugee settlements in central Tanzania since 1972 have been given the option to either return voluntarily to Burundi or become naturalised Tanzanian citizens.

14. Tanzania has generally had a positive human rights record. However, of recent, its record dropped as there have been incidents of the use of forces against political protests especially during elections in Zanzibar. The impact of this has been the diversion of effort away from development management to crisis management. The other negative records are with respects to recent incidents of killings of Albinos and elderly.

1.2 Liberalization and Policy Reforms

15. A few years after independence, in the mid 1960s, Tanzania started pursuing socialist policies of "Ujamaa" and Self Reliance as spelt out in the Arusha Declaration of 1967. The country also implemented the villagization programme.

16. Internal and external economic shocks throughout the 1970s plunged the country into economic crisis in the early 1980s. The authorities initially reacted to the economic breakdown with unsuccessful home-grown adjustment efforts. In 1986 Tanzania authorities finally agreed to the first stabilization and structural adjustment program (SAP), which was guided by the World Bank and International Monetary Fund (IMF). Macroeconomic stability was restored following completion of a wide range of structural reforms.

17. In the late 1980s and 1990s, Tanzania experienced a remarkable political and economic transition from a socialist country with a centrally planned economy to a multiparty democracy with a liberalized free market economy.

1.2.1 First Generation Reforms

18. The first generation reforms aimed at relaxing the foreign exchange controls and liberalizing foreign trade so as to ease the chronic shortages of general consumer goods and intermediate inputs for industry and other sectors. They also aimed at establishing systematic investment promotion and subsequently this led to the enactment of the Investment Promotion Act of 1990 which formed the Investment Promotion Centre (IPC) with a focus on attracting foreign direct investment.

19. Public acknowledgement of the critical role of the private sector in the development of the national economy, and the need to unleash and nurture the entrepreneurial potential of all sections of society began to take pace in 1992. In 1993, privatization of poorly performing public enterprises was considered and was followed by the formation of the Presidential Parastatal Sector Reform Commission (PSRC).

20. Initial Constraints to Development of a Private Enterprise Economy and Challenges of Reform have been extensively documented elsewhere; key to these are:

- Pervasive and enduring entrepreneurial timidity and lack of business skills among the majority of Tanzanians, borne out of the anti private enterprise policies of the post-independence era;
- Inadequately developed legal and regulatory regimes that could not meet the needs of a buoyant private enterprise economy;
- Competitive pressures from the outside world as a result of globalization;
- Undeveloped financial markets and services, hence lack of investment capital;
- Weak economic infrastructure including roads, power, water, railways, ports, telecommunications;
- Shortage of skilled human resources in almost all spheres of economic endeavor;
- Lingering lack of trust between private and public sector; and
- Gaining political acceptability for Reforms.

1.2.2 Second Generation of Reforms

21. The second generation reforms in Tanzania started in 1994. This phase is characterized by the implementation of more intensive reforms including:

(i) Formation of the Capital Markets and Securities Authority in 1994;
(ii) Launching, in 1996, of a major drive on liberalization of the financial sector which later on resulted into privatization of the major state-owned banks, namely, CRDB and NBC, and establishment of private banks reaching 22 commercial banks and 3 non-bank financial institutions;
(iii) Formation, in 1996, of the Tanzania Revenue Authority to modernize tax administration and make it efficient and user-friendly, to promote voluntary tax compliance and strengthen the revenue base of the government;
(iv) Transformation, in 1997, of the Investment Promotion Centre (IPC) into the Tanzania Investment Centre (TIC) with focus on making it a one-stop-shop to ease the strain on the international and local investing communities;
(v) Formation of the Business Registration and Licensing Authority (BRELA) in 1999 to handle business registration outside the mainstream of government bureaucracy, with a view to cutting down on red-tape and easing start up of businesses;
(vi) Initiation, in 2000, of the Business Environment Strengthening for Tanzania (BEST) program, with World Bank assistance, to embark on full-scale and integrated reform of the business environment and reducing the cost of doing business;
(vii) Formation of the Tanzania National Business Council (TNBC) in 2002 to serve as a joint platform for dialogue between the Government and the Private Sector and build a constructive partnership for policy reform to push for faster economic growth;
(viii) Formation of the Fair Competition Commission in 2003;
(ix) Enactment of the Business Activities Registration Act (BARA) in 2007 to further simplify the process of starting businesses by separating it from the revenue collection function; and
(x) Adoption of the notion of "economic empowerment" of the economically disadvantaged sections of the society as a key plank of government policy.

22. After the setback in macroeconomic performance during the first half of the 1990s, macroeconomic stability was achieved in the late 1990s. Inflation declined from about 30 percent

in the 1980s and early 1990s to single digits in late1990s, when severe fiscal imbalances were brought under control through prudent fiscal management.

23. Acceleration of structural and institutional reforms, as well as creation of new institutions, brought improvement in the investment climate, increased foreign direct investment (FDI) flows, and created more job opportunities. The balance of payments improved significantly, reflecting large donor inflows and increased export earnings, mainly from nontraditional exports.

24. Tanzania's sustained commitment to economic reforms triggered its eligibility for debt relief under the enhanced Heavily Indebted Poor Countries (HIPC) initiative in April 2000, making it one of the first countries to reach the completion point and to benefit from irrevocable and substantial debt reduction. Debt reduction in turn paved the way for additional donor inflows. The additional resources, including those from the HIPC debt reduction, allowed the government to increase budgetary expenditure allocations to social sectors and other priority sectors, such as rural roads, the judiciary and HIV/AIDS-related activities. As a result there have been improvements in social services delivery- in particular education and health.

25. Opinion on reforms, however, is widely divided. On the one side, there is improvement on macroeconomic performance. On the other, there is concern on the increasing inequalities which needs to be addressed to achieve widespread growth and poverty reduction. Partly this is due to the failure of reforms to develop local capacities to enhance productivity in key or lead sectors like agriculture, mining and small and medium enterprises.

1.3 Regional Integration

26. Tanzania along with Kenya and Uganda have since 2001 comprised the East African Community (EAC). Recently, Burundi and Rwanda joined the EAC thus making the Community to have five Member States. In striving to strengthen regional cooperation, Tanzania has entered an EAC customs union that came into effect beginning January 2005 and current initiatives involve efforts to establish a Common Market. Furthermore, Tanzania served as chair for the Southern African Development Community (SADC) for one year, starting August 2003. Tanzania is no longer a member of COMESA. Efforts are now underway by EAC, COMESA and SADC to form one Free Trade Area.

1.4 Poverty Reduction Strategies

27. In 1997 the Tanzanian Government formulated the National Poverty Eradication Strategy (NPES) as a national development strategy. Then, in 1999 it announced Vision 2025, which stipulated the course for long-term development in Mainland Tanzania (improving the quality of life, ensuring good governance and the rule of law, and developing a competitive national economy). Zanzibar has its own Development Vision 2020. Taking this as its basic policies, in 2000, Mainland Tanzania was the first among other countries to formulate a Poverty Reduction and Strategy Paper (PRSP), initiating Poverty Reduction Budget Support (PRBS) in 2001. Following this, it created the Tanzania Assistance Strategy (TAS) in 2002 and the National Strategy for Growth and the Reduction of Poverty (NSGRP or MKUKUTA in Kiswahili) in 2005 to serve as its second poverty reduction strategy. In parallel with the setting in place of such policy foundations, it also established financial foundations such as the Public Expenditure Review and the Medium-Term Expenditure Framework (MTEF) and developed a series of laws consistent with the new development trends. This was done for the implementation of the national development plans PRSP/NSGRP.

28. Zanzibar launched its first three year comprehensive Zanzibar Poverty Reduction Strategy (ZPRS) in May 2002. Later on Zanzibar developed, through a participatory process, the Zanzibar Strategy for Growth and Reduction of Poverty (ZSGRP) also known as MKUZA (2006-2010).

29. The First PRSP (2000) aimed to directly benefit specified impoverished groups via priority sectors such as health and medicine, education, and others. While holding to a policy of reducing poverty, the second poverty reduction strategy from April 2005 focuses on poverty reduction through growth and income; improving the quality of life and social welfare, and good governance and accountability. The health sector was integrated into the social welfare service cluster along with education, water and the environment. Enhancing the policy foundation posed a challenge for the sake of enabling cross-sectoral activities and financial cooperation.

1.5 Integrity and the Fight against Corruption

30. Tanzania is transforming its public service so that the service becomes truly transparent and accountable to the public. The service will thus have zero tolerance for corrupt behaviour. The service will guide the Nation as it crosses irreversibly into a poverty-free zone in the 21st Century.

31. In order to foster integrity environment and create a better environment for investment and private sector development, the Tanzania government has taken several steps. First, is the enactment of the Prevention of Corruption Act of 1971; Second, an amendment was made to the law in 1991 to establish the Prevention of Corruption Bureau (PCB), which replaced the Anti Corruption Squad. Third, the Prevention of Corruption Act No. 16 of 1971 was repealed in 2007 leading to government changing the Prevention of Corruption Bureau (PCB) to Prevention and Combating of Corruption Bureau (PCCB). PCCB remains a government department in the President's Office.

32. In 1995, the government formed the Public Leadership Code of Ethics to curb impropriety at higher levels of public service. In 1996, the government established the Permanent Commission of Inquiry (Ombudsman) to check abuse of power by government officials and its agencies. Later on it established the Commission for Human Rights and Good Governance (2001). In reality the Government was preparing the legal framework to curb corruption and bring about integrity in public service. The Presidential Commission against Corruption produced one of the most respected and commended analyses of corruption by any Africa state (commonly referred to as the Warioba Report).

33. Accordingly, the government took several measures to address the problem of corruption. Such measures include:

(i) Appointment of a Good Governance Minister within the Office of the President, who is responsible for, among other things, monitoring overall strategy and implementation of good governance; and
(ii) Adoption of National Anti-Corruption Strategy and Action Plan for Tanzania. The strategy focuses on improving the quality of public service delivery through ensuring effective and transparent system of procedure and regulations; enhancing organizational capacity to deliver high quality standard of service and increasing public awareness on procedures, standards of services, codes of conduct and their rights in general.

34. Tanzania also took holistic strategic approach to improve its governance system as reflected in "The National Framework on Good Governance (NFGG, December, 1999)". The framework gave rise to the Accountability, Transparency and Integrity (ATIP) programme. This programme aims at supporting NFGG through:

(i) Strengthening the legal and judiciary system;
(ii) Enhancing public financial accountability; and
(iii) Strengthening oversight and watchdog institutions.

35. In recognition of the necessity to build an integrity environment hand in hand with economic reforms, Tanzania took several other reform measures such as:

(i) *Tax reforms:* Aimed at streamlining the tax structure, broadening the tax base and establishing a sound institutional framework (establishment of TRA and introduction of Value Added Tax (VAT), in 1997;
(ii) *Parastatal sector reforms:* The government adopted privatisation programme whereby about more than 80 percent of 400 public entities that existed prior to 1993, had been divested by the end of 2003;
(iii) *Commercial courts:* The Commercial Court is a branch of the High Court of Tanzania. They were established in 1999 to speed up hearing of commercial disputes thus building investors' confidence. The Commercial Courts are not yet established in Zanzibar;
(iv) *Public Service Reforms:* Client service charters were introduced in all Ministries and Agencies. The President's Office assists Departments and Agencies to prepare the charters. These charters are derived from or are part of mission statements and focus on what the institution sets out to do for its customers. Charters increase accountability by setting performance standards. There are consequences when standards are consistently not achieved. Embedded in the charters are annual incentives such as awards to best performing workers and institutions. In addition, courses on public service customer care and anticorruption are being run by the department of Good Governance in the President's Office to enhance service excellence and adherence to a code of moral or ethical values including incorruptibility;
(v) *Financial sector reforms:* These have been achieved by way of privatisation of state owned banks, allowing foreign banks to operate alongside local banks, establishment of the Capital Market and Securities Authority (CMSA) and setting up of the Dar es Salaam Stock Exchange (DSE); and
(vi) *Tanzania Investment Centre (TIC):* The Centre expanded its mandate as a "one stop centre" to promote and facilitate all investments and to advise the Government on investment matters. To minimize bureaucracy, the investment code also set a maximum period of 14 working days within which relevant government agencies were to have processed applications sent to them by TIC and that "where the Centre does not receive a written objection from the relevant authority within the specified time, the necessary license or approval shall be deemed to have been granted Formation of the National Investment Steering Committee headed by Honourable Prime Minister." The Committee is entrusted with the task of investment policy formulation and solving intersectoral problems of investors on a fast track basis. Again this initiative was put in place to provide further momentum to the investment process in Tanzania.

36. Other measures taken to improve economic governance:

(i) Governance issues continue to be at the centre stage of policy making in Tanzania. The Tanzania Development Vision 2025 and Zanzibar Vision 2020 as well as NSGRP/MKUKUTA 2005 and ZSGRP/MKUZA 2007 envision good governance permeating the national socio-economic structure, thereby ensuring a culture of accountability, rewarding good performance and effectively curbing corruption and other vices.

37. Implementation of an integrated Financial Management System:

(i) Adopting an inclusive Public Expenditure Review/ Medium Term Expenditure Framework process;
(ii) Establishment of a commercial court
(iii) Revision of Public Finance Management and Public Procurement Act;
(iv) Legal Sector Reform Programme (LSRP)
(v) Local Government Reform Programme;
(vi) Public Service Act;
(vii) Recruitment and Employment Policy; and
(viii) Employment and Labour Relations Act;

38. Tanzania's good governance ranking has improved in recent years, with consequence that various indices of ranking bearing evidence indicating HDI, 159/177 countries in 2008, up from 164/177 (UNDP 2008a); Ibrahim index ranking Tanzania 15/48 countries in Africa and 1/5 countries in the EAC (www.moibrahimfoundation.org). It is worth mentioning that Tanzania qualified for MCC grant on August 19, 2006.

1.6 Structure of the Report

39. This report is organized and presented in Eight Chapters. This introductory Chapter is followed by Chapter Two which gives a background to the governance assessment process. Chapters Three, Four, Five and Six present reviews of codes and standards and show how far Tanzania has gone towards adopting, ratifying and domesticating them in their respective thematic areas; namely, Democracy and Political Governance; Economic Governance and Management, Corporate Governance and Socio-Economic Development, respectively. The four chapters also present assessment of reports and progress towards achieving the APRM objectives in Tanzania in their respective thematic areas. The Chapter Seven provides the overall conclusions on the assessment of Governance in Tanzania. It also summarizes the gaps and best practices of Good Governance in Tanzania. The final Chapter provides a detailed and costed National Programme of Action (NPoA).

CHAPTER TWO

2. THE CONTEXT OF APRM IN TANZANIA AND METHODOLOGY OF ASSESSMENT

2.1 Background

40. The primary purpose of the African Peer Review Mechanism (APRM) is to foster the adoption of policies, standards and practices that lead to the attainment of the objectives of the New Partnership for Africa's Development (NEPAD). APRM was endorsed in 2003 by African leaders to complement NEPAD. The latter was adopted earlier in 2001 when African leaders proclaimed the Declaration on Democracy, Political, Economic and Corporate Governance. This declaration was of particular importance because it acknowledged many similar declarations and frameworks for Africa's way forward which have been adopted two decades ago. The NEPAD declaration integrated them and made good governance its central plank. In adopting NEPAD whose long term objective is to eradicate poverty and place African countries on the path of sustainable growth and development, the leaders pledged to promote and protect democracy and human rights by developing clear standards of accountability, transparency and participatory governance. The African Leaders agreed that through APRM, member states will monitor their own progress in governance and good practices in four thematic areas; democracy and political governance, economic governance and management, corporate governance and socio-economic development with the ultimate goal of identifying governance deficiencies and developing ways and means to address them as well as sharing experiences and best practices, amongst themselves and their countries..

2.2 Stages of the APRM Process

41 APRM process incorporates both a country self-assessment exercise as well as an assessment exercise by other African peers. The process reflects these two aspects of evaluation. The end products of the evaluation process is production of the Country Self Assessment Report (CSAR) and The Country Review Report (CRR) which incorporates the National Programme of Action (NPoA)

42. Once a country has acceded to the mechanism voluntarily, the process begins with the development and administration of instruments for critical self assessment that are likely to expose governance gaps or deficits in the areas of assessment and conclude with the drawing up of a CSAR and NPoA. The latter builds on the existing policies, programmes and projects in the country being assessed. The CSAR and the tentative NPoA are then submitted to the APR Continental Secretariat. A visit by the Country Review Mission (CRM) follows to conduct its own consultations and appraisal and drafts the Country Review Report (CRR). Subsequently, the government of the country being reviewed is given an opportunity to respond to the findings of the CRM and its responses are appended to the CRR. The final CRR and NPoA are then submitted to the APR Forum of participating Heads of States and Governments for deliberations and the way forward.

2.3 APRM Operations in Tanzania

43. Tanzania is among 29 countries that are participating in the APRM process. By taking part in the APRM process, Tanzania aims to be part of the momentum for the reforms generated by the exchange of experience among African countries. The government acceded to the mechanism by signing the MoU on May 26, 2004 and the country's Parliament ratified the MOU on February 1, 2005.

2.3.1 Initialisation of the process in the Country

44. . Initialisation of the process in Tanzania involved first, sensitisation of key stakeholders, including Members of Parliament. The key stakeholders identified from their groups at least three quarters of the members of the National Governing Council (NGC). Secondly, it involved the visit by the Country Support Mission which advised on constituting a representative and an inclusive NGC.

2.3.2 Initial Stakeholders Seminar

45. Initial sensitization on APRM in Tanzania commenced with sensitization of Members of Parliament followed by four significant stakeholders' seminars and workshops in 2006. One of the workshops, which, was a representative of almost every possible stakeholder group, provided recommendations by which the organization, APRM Tanzania, was built. Among the resource persons for the initial sensitisation seminars were experts from Ghana and Kenya, whose experience as pioneers in APR assessment was worth learning from. Following the initial stakeholder sensitization and visit by the CSM, a National Governing Council of 20 members was constituted towards the end of 2006.

2.3.3 The Country Support Mission

46. Tanzania received the Country Support Mission, led by Professor Adebayo Adedeji, in mid June 2006. One of the outcomes of the mission was the signing of the Memorandum of Understanding by the President of the United Republic of Tanzania and Professor Adededji who represented the Committee of Heads of States and Governments participating in APRM. The mission also provided valuable advice on how to proceed with the process including constituting an all inclusive NGC and ensuring integrity and credibility of the NGC, National Secretariat and the Technical Assessment Teams.

2.3.4 Focal Point Ministry

47. In Tanzania the Ministry of Foreign Affairs and International Cooperation has been designated as the Focal Point, and a ministry official with ambassadorial rank is the Focal Point Officer. It is closely assisted by the President's Office - Planning Commission (formerly the Ministry of Planning, Economy and Empowerment), and the Office of the Minister of State for Good Governance in the President's office. The focal point Ministry is the main liaison between the government and the continental APRM structures, and between the government and the national APRM structures. It is also coordinating APRM matters within the government, while providing advice to APRM Tanzania from time to time.

2.3.5 Continued Sensitisation Seminars

48. The operations of APRM Tanzania commenced in earnest in mid 2007, when a full-fledged National Secretariat was established to support the NGC. A series of sensitization workshops were conducted to make stakeholders aware of the program and the process so that they can participate and own the process as well as ensure its credibility and sustainability. Since then a total of 153 seminars have been organized countrywide for key stakeholder groups. These include: Members of the Union Parliament, Members of the Zanzibar House of Representatives, Leaders of District Administrative Secretaries, Council Directors, Heads of Units, Regional and District Administrative Secretariats, Council Directors, Leaders of Civil Society Organizations, People with Disability, Academia, Villages (4 villages per region), Leaders of the Youth, Leaders of Faith-Based organisations (FBOs), Women leaders and the Justices and Judges. More than 2,000 people were

sensitized in this manner. While sensitization workshops were being carried out, desk research on the four thematic areas was undertaken by the Technical Assessment Teams.

2.3.6 The Country Support Follow-up Mission (CSFM)

49. The Country Support Follow-up Mission (CSFM) visited Tanzania during March 3 - 4, 2009. The team was led by Professor Adebayo Adedeji, a member of the APRM Panel of Eminent Persons and the leader for the Tanzania governance assessement process.

50. The overall objective of the CSFM was to review the progress achieved until then and to exchange views on how best to carry out the remaining activities aimed at accomplishing the process. This visit was necessary because a lot of time had elapsed since the Country Support Mission in 2006. The meetings which were conducted with different stakeholders were interactive for peer learning purposes. In the end, the CSFM agreed with the NGC on the road map for finalization of the Tanzanian process.

2.4 Methodology used for Self Assessment

2.4.1 Technical Assessment Teams (TATs)

51. In the Tanzanian context, four Technical Assessment Teams (TATs) which were selected on transparent and competitive basis conducted governance assessment in the four thematic areas. Three of these were from the University of Dar es salaam namely the Department of Political Science (Democracy and Political Governance); Department of Economics (Economic Governance and Management); and Faculty of Arts and Social Science (Corporate Governance). Assessment on Socio economic Development thematic area was undertaken by the Research on Poverty Alleviation (REPOA).

52. The assessment of governance was based on a common questionnaire prepared by the APR at the Continental level. The TATs used standard techniques for responding to the questionnaire. Those techniques included using their research knowledge; desk notes; library research; and scrutinizing of existing documents, policies, plans, programmes and reports to generate answers to the common questionnaire; asking a select sample of people a number of questions, asking “experts” similar questions, and using common-interest or focus groups to discuss various themes from the common questionnaire.

53. Since the APRM process places paramount importance on transparency and participation, and that the scientific methods may not involve a sufficient number of people, members of the public were encouraged to fill in the common questionnaire. Information obtained complemented the knowledge generated through the standard techniques mentioned above.

54. By March 2008, the four Technical Assessment Teams (TATs) had prepared the desk research reports following a series of sensitization workshops. These were followed by household and expert opinion surveys which were conducted in August 2008 in all 26 regions of Tanzania (both Mainland and Zanzibar) to elicit people’s opinions on governance. A different survey for corporate organisations was conducted with a view to establishing governance gaps and best practices in their operations in the country. Opinions and investigations on governance which were submitted by key social groups, consisting mainly of leading CSOs were also incorporated into the reports. Views were gathered from special groups, consisting of Albinos, People with Disability, People living with HIV/AIDs and the Elderly people in the lake regions, which were also incorporated in the report.

Subsequently the results of the opinion surveys were incorporated in the desk research and discussed by the stakeholders. The reports were then subjected to quality assurance exercise and validation by stakeholders. Finally, the thematic area reports were consolidated into a single report i.e. the Country Self Assessment Report (CSAR) with its accompanying National Program of Action (NPoA) aimed at addressing the identified gaps in governance.

2.4.2 Survey Methodology

55. The survey carried out in August 2008 used two instruments, one for a probability sample of household members and another for a purposive sample of a small number of experts. All the three survey design stages of planning, implementation, data processing and analysis were carried out. Furthermore, a survey organization was created to monitor and ensure timely availability of data to analysts as well as timely delivery of quality output.

56. In terms of survey management, Technical Assessment Teams (TATs) and fieldwork coordinators had the responsibility of ensuring effective planning and timely execution of the survey. In addition, the APRM NGC and Secretariat travelled all over the country sensitizing people on APRM activities as well as encouraging people to participate in the assessment process. Data coding, entry, processing and analysis was undertaken at the APRM headquarters. The SPSS version 13.0 for Windows was used for data processing and analysis.

57. The sample for the Expert Survey involved Tanzanian citizens of at least 26 years of age. A total of 110 experts were interviewed. This included 3 experts from each of the 25 regions and 35 experts from Dar-es-Salaam Region. It was also planned that at least 1 female be selected from each region and that at least 17 females be selected from Dar-es-Salaam Region.

58. With respect to the Household Sample Survey, for the case of rural areas in Mainland Tanzania, 2 districts were selected and in each district 2 villages were selected with 21 households being sampled for each village. One person aged 18 years and above, was sampled for interview in each of the sampled households. For the case of Zanzibar, 2 villages/*shehia* were selected from both districts in each region and 21 households were selected from each sampled village/*shehia*. One person aged 18 years and above, was selected for interview in each of the sampled household.

59. The sample for urban areas comprised Dar-es-Salaam Region and other 9 Municipalities in Mainland Tanzania and Urban West Region in Zanzibar. It also included a super stratum consisting of other Urban Districts in Mainland Tanzania and other urban locations in Zanzibar as listed for the 2002 Population and Housing Census. The sampling procedure for selecting the urban areas was, again, a combination of four and three stages but, in contrast with the rural sample, only 17 households were selected from the list of households in the last stage.

60. The sample had a total of 65 sampling locations out of which 48 were in rural areas and 17 in urban areas. The sample also took into account gender balance that is, out of the total 42 respondents required from each rural location, 21 were females and the other 21 were males. Similarly, out of the 34 respondents required from each of the urban locations, 17 were females and the others 17 were males. The total households sampled in the country were 2,594 of which roughly 23 percent are from urban areas and 77 percent from rural areas.

61. Data collection of the expert questionnaire extended over the period August 18 to September 20, 2008. Opinions of most of the sampled experts from the regions were collected in the period August 18 to 28, 2008. The expert questionnaire was filled in by another group of experts in Dar es Salaam in a special workshop held on September 9, 2008.

62. Overall 102 of the 110 responded – a figure representing 93 per cent response rate which is rated good. Unfortunately, only very few female respondents were captured. Male respondents were, expectedly, mainly from urban locations considering the restriction imposed on education. Most of the people with university and college education reside mainly in urban areas.

63. Data collection of the household questionnaire was done from August 18 to 31, 2008. A total of 2,559 households were covered against the planned number of 2,594 households.

2.5 Strengths

64. The strengths of the process in Tanzania include:

i. The sample size of 2,559 covered under the survey is representative of the Tanzanian population because of the homogeneity of characteristics of households and similarities in the level of development. This apart, the ideal technical sample size that meets the specified margin error is 1,897 households and thus any additional households will not add value to the survey.

ii. The relatively wider participation of people in direct governance assessment has increased public ownership of the assessment, created a greater sense of identification of the public with the assessment and enhanced credibility and legitimacy of the process.

2.6 Challenges

65. The challenges include:

i. Limitation in terms of funding as this is a very expensive undertaking given the fact that Tanzania is a vast country with a very large population. More people could have been sensitised and subsequently participate in the assessment;

ii. The common questionnaire is a lengthy document with a lot of questions. Many people found it difficult to respond to every question; and

iii. In order not to discourage responses and in the interest of a wider participation in filling the questionnaire, it was not necessary to answer every question in it. Respondents choose what to answer. This made it possible to get responses only from those who were interested or active or had easier access to the questionnaire. This encouraged biased responses as some of the thematic areas were widely responded compared to others.

CHAPTER THREE

3. DEMOCRACY AND POLITICAL GOVERNANCE

3.1 Introduction

66. This chapter presents the findings on democracy and political governance in Tanzania. The prime goal is to assess Tanzania's efforts in "the promotion of democracy and good political governance as a basis for the reduction of poverty and the attainment of sustainable development."[1] Alternatively stated, the overall goal is to evaluate Tanzania's efforts "to consolidate a constitutional political order in which democracy, respect for human rights, the rule of law, the separation of powers and effective and responsive public service are realized to ensure sustainable development and a peaceful and stable society."[2]

67. This chapter entails nine objectives as listed in the NEPAD document (NEPAD/HSGIC-03-2003 APRM/guideline/OSCI)[3], namely:

(i) Prevent and reduce intra-country conflicts;
(ii) Constitutional democracy, including periodic political competition and opportunity for choice, the rule of law, a Bill of Rights and supremacy of the constitution are firmly established in the constitution;
(iii) Promotion and protection of economic, social, cultural, civil and political rights as enshrined in all African and international human rights instruments;
(iv) Uphold the separation of powers including the protection of the independence of the judiciary and of an effective Parliament;
(v) Ensure accountable, efficient and effective public office holders and civil servants;
(vi) Fighting corruption in the political sphere;
(vii) Promotion and protection of the rights of women;
(viii) Promotion and protection of the rights of the child and young persons; and
(ix) Promotion and protection of the rights of vulnerable groups, including internally displaced persons and refugees.

3.2 Standards and Codes

68. The standards and codes with respect to democracy and political governance criteria are presented in Table 3.1.

Table 3.1 Treaties/Conventions/Protocols Ratified By Tanzania as of September 2007

S/N	Name of Treaty/Convention	Ratification/Accession
	Convention Relating to the Status of Refugees, 1951	12/05/1964
	Convention Relating to the Status of Refugees, 1967	04/09/1968
	Convention on Psychotropic Substances, 1971	07/12/2000
	Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, 1946	03/07/1964
	Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988	07/12/2000
	International Convention Against the Taking of Hostages, 1979	22/01/2003

[1] Country Self-Assessment Document, p. 18
[2] Document on Objectives, Standards …, p.5
[3] Ibid p. 5-6

S/N	Name of Treaty/Convention	Ratification/Accession
	International Convention for the Suppression of Terrorist Bombings, 1997	22/01/2003
	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992	25/06/1998
	Comprehensive Nuclear Test Ban Treaty, 1996	30/09/2004
	Convention on the Prohibition of Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997	13/11/2000
	Protocol Against Smuggling of Migrants by Land, Sea and Air	02/03/2006
	Convention Against Transnational Organised Crime	02/03/2006
	Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition	02/03/2006
	AU Convention Governing the Specific Aspects of Refugees Problems in Africa, 1969	10/01/1975
	Convention for the Elimination of Mercenaries in Africa, 1977	04/03/1985

Source: APRM Study, 2008

3.3 Assessment of Implementation of APRM Objectives

Objective One: Prevention and Reduction of Intra- and Inter-state Conflicts in Tanzania

Intra-State Conflicts

The Union Question

69. Despite the fact that the Union between Tanganyika and Zanzibar has prospered whereas others[4] in Africa have failed, since the Union founders, Mwalimu Julius Nyerere and Sheikh Abeid Amani Karume, signed the *Articles of the Union* in 1964, several problems, or rather, challenges to the Union have occurred."[5] Some of the major challenges that have been facing the Union are discontent over the distribution of revenue between the two sides of the United Republic of Tanzania. To address this delicate issue a Joint Finance Commission was set up in 2003 to advise the government on the equitable distribution of revenue. Apart from revenue distribution, the Commission had to focus on other areas of divergences such as the Exclusive Economic Zone, harbours, foreign aid, exploration and exploitation of natural resources such as oil and minerals, currency, finance and banking, income tax and external debts.

70. At one time, for instance, internal disagreements between Mainland Tanzania and the Government of Zanzibar over revenue-sharing stalled a fishing deal between Tanzania and the European Union. There were disagreements over revenue sharing and how to administer licenses to be issued to the European vessels that will be fishing in the country's Exclusive Economic Zone (EEZ) under the deal. President Jakaya Kikwete has already assented to the Deep Sea Fishing Authority Act, 2007 that will control the deep-sea fishing in its EEZ.

[4] Eritrea, for instance, broke away from Ethiopia while the Senegambian Federation between Senegal and Gambia collapsed.

[5] See Baregu, M. "Beyond the Myth of 'Island of Peace': Peace and Security Challenges Facing the Kikwete Government in Tanzania", unpublished

71. Further evidence of questions on the legitimacy and functioning of the Union even from policy makers surfaced when some legislators demanded a copy of the *Articles of Union*. The Articles of Union are, indeed, a legal foundation of the Union. Questions that are raised include those relating to the very structure of the Union, namely what was really intended and envisaged by its founders, i.e., two or three governments, a unitary or federal structure.[6] Relatedly, there is controversy over the exact number of the Union matters. Whereas the original list contained only eleven matters, with time the list has been extended to 22 matters. There are claims from some quarters, particularly from Zanzibar that the extension of the list is illegal, i.e., in contravention of the original treaty.[7] In response to the current state of affairs, the Government had pledged to make the functioning of the Union more transparent to stem off public complaints. The Government has been claiming that the current misunderstandings on the Union Question were due to relatively low understanding of Union affairs among the public. The Government believes that some of the complaints raised by the public about the Union reflected ignorance of how it worked. Also in place, is a high-powered Joint Committee, chaired by the Vice President of the United Republic of Tanzania. Since 2007 the Joint Committee had met regularly to iron out some of the thorny issues on Union matters.

72. Related to the issue of revenue sharing as mentioned above, is the aspect of economic relations. Questions have been raised from the Zanzibar side that it is getting a relatively small share of donor funding. From the other part of the Union, Mainland, Tanzania "the 4.5 percent of donor funding is considered to be high."[8] There have also been complaints from the Zanzibar business community over double taxation by the Tanzania Revenue Authority (TRA) and Zanzibar's Revenue Authority.

73. The other controversial issue has been news on the existence of oil reserves around Pemba. This is another potential source of conflict as arguments and counter-arguments have been raised as to which entity is eligible to take charge of the exploration of oil and gas in Zanzibar. According to the Constitution of the United Republic of Tanzania, oil and gas are Union matters, but there is no agreed formula yet as to how revenue could be distributed between the two constituent parts of the Union. Following this controversy, an external advisor was commissioned to provide a formula for sharing petrol and gas revenues. In its April 2009 session, the House of Representatives in Zanzibar has rejected the proposal by the external advisor.

74. The issue of Zanzibar's sovereignty within the Union has also led to persistent complaints, particularly from the Zanzibar side. The heated discussions during the Isles' House of Representatives and Union Parliament debates seem to have echoed the deep-seated suspicion on the Union itself. On 9 July 2008, Prime Minister Mizengo Kayanza Peter Pinda came under heavy criticism in the Zanzibar House of Representatives over his remarks on the Isles' sovereignty. Premier Pinda remarked that Zanzibar is not an independent country outside the Union Government within which it can exercise its sovereignty. The remark by the Premier irked several members from both the ruling party, CCM and the opposition. Some Parliamentarians and Members of the House of Representatives from Zanzibar

[6] See, for example, Issa Shivji (2008) *Pan-Africanism or Pragmatism? Lessons of Tanganyika-Zanzibar Union.* Mkuki na Nyota Publishers. Dar es Salaam; Abubakar Khamis Bakary (2006) "The Union and Zanzibar Constitutions" in Chris M. Peter & H. Othman (eds.) Zanzibar and Union Question. Zanzibar Legal Services Centre Publication Series, Book 4, pp. 1-33.
[7] See, for example, Bakary, ibid. p. 3.
[8] See Mpangala, op. cit.

disagreed with the Premier's interpretation of the issue and demanded that the Zanzibar Government clarifies their country's status. In response, the Zanzibar Attorney-General, Iddi Pandu Hassan said that the Prime Minister had erred in his interpretation of Zanzibar's status. The Attorney-General said that Zanzibar is a country with full constitutional authority to exercise its powers. He said that the Prime Minister had only mixed up the words "nation" and "state". Thereafter, President Jakaya Mrisho Kikwete also intervened in the debate and stated that internally within the United Republic, Zanzibar is a country, in the sense that it enjoys some domestic autonomy to manage its own affairs, but externally, it is not recognized as a country for it does not have sovereign power to engage in external affairs.

75. These exchanges over the controversy of the status of Zanzibar within the Union bring to the surface the long held deep-seated concerns that the current set-up of the Union is marginalizing the sovereignty and identity of the people of Zanzibar. Questions still linger on as to whether the decision to adopt a separate Zanzibar flag and a national anthem, calls for constitutional amendments which would recognize Zanzibar's President as the Vice-President in the Union Government, and demands for membership in the international organizations, are steps aimed at restoring the sovereignty and identity of Zanzibar or symptoms of an eventual break-up of the Union.

Inter-Party Conflicts

76. Conflicts have also arisen between political parties. There exists endemic hostility between the ruling party and the newly founded opposition parties. The major bone of contention is the Constitution. The new political parties are dissatisfied with the constitutional framework within which multi-partism is being re-established in the country. They argue that contrary to the recommendations of the Nyalali Commission (1991), the CCM government decided to proceed with the introduction of multipartism without a new constitution. This has created a situation in which the multiparty system is being grafted onto a constitutional order that has evolved under a single-party rule.

77. The other point of disagreement revolves around party funding by the government. The new and weaker parties have argued that the system of funding political parties needs to be revisited not only in terms of fairness with respect to the size of their memberships and popular support as reflected in the elections, but also in the spirit of capacity building for an effective democratic system. This is an issue that featured significantly in the run-up to the elections and during the process. Some political parties opted out of the elections altogether while others could not complete the elections owing to financial constraints.

78. Clashes have also occurred and may continue to grow in future between followers of contending political parties. There have been some violent clashes between members of political parties and these have essentially been confined to election campaign periods. Incidents of running battles between party supporters were reported during the by-election campaigns in February 2008 in Kiteto constituency, Manyara region and in Tarime, Mara region in October 2008. Incidents of fighting for party's gossiping centres (*vijiwe* or *maskani*) or pulling down flags of rival parties were also reported during the 2005 General Election Campaigns but they remained isolated and where they have occurred they have been associated with direct instigation and manipulation by political leaders at various levels.

Conflicts linked with Multiparty Politics in Zanzibar

79. Zanzibar as part of the United Republic of Tanzania has continued to experience protracted conflicts particularly those closely linked with multiparty politics. Although it is

on record that no major party has ever conceded defeat in all multiparty elections since 1957[9], the outcomes of the last three general elections (1995, 2000, and 2005) in Zanzibar have raised more questions than answers about the legitimacy of the formed governments.[10] These elections have fueled hatred, intolerance, and mistrust among political actors and supporters of the main rival parties in the Isles. The conduct of multiparty elections in Zanzibar has been characterized by "intense struggles among parties over meanings of the electoral outcome…" and this state of affairs has "led to a series of societal conflicts during and after general elections".[11] Significant irregularities in almost all stages of the electoral process, constant allegations of vote rigging, excessive use of force largely against opposition supporters, cases of human rights violations targeting CUF supporters and sympathizers including dismissal or demotion from jobs, arbitrary arrests and detention, and mob violence involving the 'blue' and 'green' guards of the CUF and CCM respectively, have all tainted the long cherished image of Tanzania as an "oasis of peace". Undeniably, these deplorable events have put Tanzania's international reputation as a peaceful nation in a region marred by conflicts, at stake.[12]

80. The turning point of the Zanzibar political conflicts was typified by the bloodshed of January 26 and 27, 2001, mainly in Pemba. This was the culmination of clashes between the police and the opposition party, CUF demonstrators. The upshot of the violent confrontations was fleeing of over 2000 islanders as refugees to Shimoni, near Mombasa in Kenya. Indeed, this was an uncommon phenomenon in Tanzania's history since the Union of Tanganyika and Zanzibar in 1964. The opposition party, CUF staged demonstrations to protest the 2000 election results, calling for a re-run of the elections on the ground that the election exercise had been massively flawed. It has to be noted that "besides the call for a re-run of the elections, the demonstrators demanded a new and independent electoral commission, which had been the subject of major complaints after the elections"[13]. Initially, CUF refused to recognize the President-elect of Zanzibar and the entire government, and it also decided to boycott meetings of the House of Representatives.

81. The current political situation in the Isles is far from being described as calm. In May 2008, for example, a group of Pemba elders were arrested after they had handed a petition to the United Nations Office in Dar es Salaam, calling for the island's secession from Zanzibar and the Union. State authorities viewed the elders' move as a secessionist plot that amounted to treason as it would be seeking to break a national government structure formed according to the country's Constitution, and thus a threat to the sovereignty and security of the United Republic of Tanzania. They were released on bond after spending six days in custody, being interrogated over what the police termed were possible treasonable offences.[14] The Police linked the elders move to politics and the apparent stalemate in talks with CCM. The Inspector General of Police categorically said the elders were CUF supporters and hinted they may have been incited by the party. The elders had initially accused the Revolutionary

[9] TEMCO Report (2006), " 2005 General Elections in Zanzibar: How Free and Fair?", p.13
[10] Bernadeta Killian (2006), "Do Elections Matter? The Challenges and Prospects of Democratic Consolidation in Zanzibar", in a REDET Study, Elections and Democratic Consolidation: The 2005 Elections in Tanzania, *forthcoming*.
[11] Ibid.
[12] Anita Bay Bundegaard, "Brutality in Zanzibar", a comment to the *International Herald Tribune*, published: Saturday, February 10, 2001.
[13] Shumbana Karume, (2004), "Political Conflicts in Zanzibar: A Social, Economic and Political Interpretation", S. Karume (ed.), *Dilemmas Of Political Transition: Towards Institutionalisation Of Multiparty Democracy In Tanzania*, EISA Research Report, No. 7.
[14] *The Guardian*, May 17, 2008, online.

Government of Zanzibar of ignoring Pemba's development needs and marginalizing the island politically.

The Elusive Peace Accords

82. There have been attempts to manage the socio-political conflicts engulfing the twin islands of Zanzibar using what has been termed as the "micro-level solutions"[15]. These were the Peace Accords locally known as *Muafaka*. The first reconciliation accord (*Muafaka I*) was concluded following peace negotiations between the CCM and the CUF that had been brokered by the then Commonwealth Secretary General, Chief Emeka Anyaoku. The negotiations had taken place from February 1998 to June 1999. The second reconciliation accord (*Muafaka II*) resulted from the peace negotiations between the same parties that had been held from March to October 2001. The first accord which was aimed at establishing a mutually agreeable multiparty framework and promoting good governance never took off the ground due to inadequate political will and effective mechanisms for its implementation. The problems arising during the 2000 elections were to a large extent caused by the failure to implement the first accord. The major issues addressed in the clauses of the first accord included the functioning and composition of the Zanzibar Electoral Commission (ZEC), the constitution, the judiciary, the electoral laws, the state media organs, a permanent voters' register, the freedom of political parties, civic education, attendance in the House of Representatives, promotion of good governance and democratization.[16]

83. Unlike the first accord, the implementation of the second accord became accredited for bringing about civic peace, social co-existence as well as successful 2003 by-election in Pemba. A Joint Commission was established to supervise the implementation of the accord. It was then translated into an Act of the House of Representatives. In 2002 it was entrenched in the Zanzibar Constitution through the 8th and 9th Constitutional Amendments. The normalization of the political situation following the signing of first accord took another stumble in the 2005 general elections. Once again, there were significant shortcomings in the conduct of the elections casting serious doubts on the reliability and legitimacy of the results.

84. It is an established fact that the partial implementation of reconciliation accords has not been able to ensure durable solutions to the Zanzibar conflict. But more importantly, lasting solutions have been hard to come by, because of the limited scope of the accords themselves as they have been concerned mainly with election issues. A comprehensive solution to the Zanzibar political impasse has not been found by the main actors since the conclusion of the 2005 general elections. The post 2005 talks between CCM and CUF took 14 months but ended without reaching a consensus on how to resolve the political impasse in Zanzibar. The talks have stalled over the question of power sharing. CCM, in favour of a referendum on power-sharing, has ruled out the possibility of inclusion of CUF in the government till the General Elections of the year 2010. To be sure, the tension is still high and that it may turn out to be a full-blown conflict if not addressed in time before the forthcoming general elections.

[15] Gaudens P. Mpangala, "The Zanzibar Conflict: A Search For Durable Solutions", in Martin Rupiya, Jonathan Lwehabura and Len le Roux (eds.), Civil Security Relations in Tanzania Investigating the Relationship Between the State, Security Services and Civil Society, ISS Monograph No 128, December 2006

[16] The East African, June 1999.

Intra-Party Conflicts

85. In addition to inter-party conflicts, which seem to be more volatile, intra-party conflicts are also quite common. Conflicts have been erupting between members of different factions or camps within the same party. It may be argued that most of the conflicts that have obstructed party growth and performance have resulted from differences between political leaders within their political parties. Such conflicts between leaders have normally trickled down to the membership threatening to split and even wreck the political parties. The differences have largely revolved around money particularly the grants to political parties (*ruzuku wars*) or they have emanated from leadership styles or personal political ambitions. Rarely are these differences ideological in any meaningful way. With regard to '*ruzuku wars'*, the main problem has resulted from lack of proper financial guidelines and control mechanisms. This has encouraged some political leaders to treat party funds as personal and to use them as slush funds for maintaining patronage and sycophancy. The question of leadership styles has been responsible for the break-up of several parties and the proliferation of splinter groups. This is a problem that has afflicted almost all the younger parties and CCM has greatly capitalized on it claiming that these intra-party squabbles are a sign that these political parties are not politically mature enough to be entrusted with state power.

Conflicts Relating to the Structure of Governance

86. Conflicts and tensions have been observed at the local level particularly in the District Councils that came under the control of the opposition parties after the 2000 elections. In Karatu and Moshi Districts clashes have emerged between the Councils and the District Commissioners who are appointed by the President who is also the Chairman of the ruling party, in this case CCM. Needless to say, these clashes have not only obstructed the effective functioning of the Councils but also raised even more fundamental questions on the position and role of the DC in local administration and the division and separation of powers between the DC's office, which is appointed by the President and the District Council which is popularly elected.

87. Elsewhere, a major crisis was avoided following an amicable power-sharing deal between two competing parties (CCM and CHADEMA) in a tussle to control the Kigoma-Ujiji mayorship. Of recent, there have been observed disagreements between the Central Government and Local Councilors over the apportioning and location of headquarters of newly established councils. In some cases, the difference in opinion to a Government decision has led to discord among councilors' themselves, and unnecessary stalemate in decision making.

88. To date, there has been a debate on the need for restructuring regional/local government through the adoption of a provincialism (*majimbo*) policy which would establish more politically powerful, economically diverse and ethnically mixed provinces. Currently, there is yet another local government reform program which, once again, does not aim at fundamentally altering center – local relations. It is unlikely that this latest attempt will succeed. This means that this issue may continue to trouble the current government unless it realizes early enough that local government in Tanzania can not be reformed but completely reconfigured for the following reasons:

(i) Some Districts are too small and resource starved depending probably on one crop or commodity;
(ii) The District Councils, though elected, remain too weak and dependent to make development decisions, finance and implement them; and

(iii) The office of the District Commissioner remains too powerful and unaccountable to the people of the district.

Conflicts Related to Economic Relations

89. On some occasions, members of the Field Force Unit have been called to duty to oversee the pulling down of small traders' business kiosks in a regional drive to keep the Dar es Salaam city clean. Petty traders and food vendors have been struggling to make a living through self-employment by selling their merchandise in the streets. They have no properly reserved working spaces and capital to kick-start their own small scale enterprises. Their customers have to bear the discomfort of rain, sun, dust and property security. In a latest move the Dar es Salaam city authorities have embarked on a five-storey building project that is expected to house about 10,000 petty traders and food vendors.

90. In addition to the problem of street hawkers (*machingas*), other urban migrants (street children, beggars and prostitutes) suffer frequent raids without a clear policy addressing their plight either at the local government level or national level. The problem of youth unemployment, especially in urban areas is still rising. In response to this problem, among other measures, the government has been allocating a special Presidential Fund of one billion Tanzanian Shillings. to each region in Mainland Tanzania and the Isles for use as loans to small businesses as a poverty alleviation measure. How effective this response has been in addressing the problem requires a deeper analysis.

91. Mererani is the only place in the entire world where Tanzanite gemstones are mined and has for many years been the site of a bitter conflict between the artisanal miners and a South African-owned company, namely, AFGEM. There have been often violent conflicts between the artisanal miners and AFGEM in which several miners have been shot dead or gravely wounded by AFGEM's private security guards using dogs. A Commission of Inquiry appointed by the Government in March 2002 and headed by the former Chief of the Tanzanian Defence Forces General Robert Mboma recommended, "it would be very wise to let artisanal miners to mine (tanzanite) … in order for them to be empowered economically rather than granting (the mining rights) to big foreign investors."[17]

92. Elsewhere, in August 2001, some 1260 former small-scale miners, peasant farmers and other residents of Nyabigena and Nyabirama areas of Tarime District in Mara region were forcibly evicted from their lands, settlements and had their properties expropriated by Afrika Mashariki Gold Mine when the company took over the two gold mining areas. The forced evictions were carried out with the assistance of the FFU paramilitary security forces.

93. On behalf of the small-scale miners, the Lawyers` Environmental Action Team (LEAT) lodged a complaint to the Commission for Human Rights and Good Governance in July 2003. The complaint was lodged pursuant to the provisions of the Commission for Human Rights and Good Governance Act, 2001 and the Constitution of the United Republic of Tanzania, 1977. The complaint was brought against the Afrika Mashariki Gold Mines Ltd., and East African Gold Mines Ltd., its Australian parent company and Placer Dome Inc., of Vancouver Canada that recently acquired the Tarime Mine from its Australian owners. Other persons that LEAT had asked the Human Rights Commission to investigate, include high-ranking government officials.

[17] Visit http://www.leat.or.tz

94. In November 2003 The Commission for Human Rights and Good Governance issued an order of interim injunction against the Afrika Mashariki Gold Mine (AMGM), its Canadian parent company, Placer Dome and three officials in Tarime District. The order sought to prevent them from carrying on a campaign intended to force Nyangoto village residents in Nyabirama area to accept inadequate compensation from the two companies.

95. Despite contributions to community development projects provided by large scale mining companies the country has observed conflicts featuring the mining firms versus local artisan miners. The bone of contention has been issues like low pay, growing unemployment in the mining sector, the actual profit margins recorded by the mining firms and the revenue collected by the government. The multiplier effects and interplay of these issues has raised calls for a comprehensive review of the mining contracts signed between the government and the mining firms. According to the findings of a recent study carried out by a non-governmental organisation, *Reference Group,* a total of 400,000 artisan miners have been thrown out of work following the arrival of multinational gold mining companies since the 1990s.

96. The study further revealed that the situation has been further aggravated by poor laws and policies governing the mining sector that allow mining companies to employ an unlimited number of foreigners compared to a maximum of five people in other sectors.[18] According to the research report, the government has lost an estimated USD 400 million (more than Tanzanian Shillings 400 billion) over the last ten years in low royalties, unpaid corporation tax and tax evasion.

97. Politicians and members of the society have as well been blaming the government for collecting too little from the mining sector, leaving the investors with a lion's share. Currently, investors in the mining sector pay 3 per cent royalty, corporate tax of 30 per cent and, technical services tax of 5 per cent and management fee of 15 per cent. Corporate tax is paid after the investor has accumulated profit.

98. In response to mounting pressure, the government formed a 12 person committee whose terms of references included reviewing of mining contracts and other documents related to commercial mining, taxation system in the mining sector. The committee was mandated to assess mining activities and sort out rights and responsibilities of the investor and the government.

99. Following the eviction of 135 Nyamuma villagers from their settlements in Serengeti District in 2001, the applicants through the Legal and Human Rights Centre (LHRC), filed a complaint to the Commission for Human Rights and Good Governance. The Commission recommended the evicted villagers be re-settled and compensated. The Government did not execute the verdict even after the 90 days deadline. There upon, pursuant to section 28(3) of the Act, the Commission recommended to the Legal and Human Rights Centre to apply for enforcement of the recommendations of the Commission to the Land Division of the High Court. However, the application was dismissed on the ground that the Court did not have jurisdiction. The petitioner appealed to the Court of Appeal of Tanzania. The Court of Appeal on April 24, 2008 and January 2, 2009 ordered the matter to be remitted to the High Court before another Judge to be considered on merit. The remittance of the matter now awaits to be assigned to another Judge.

[18] The study report is titled `A Golden Opportunity - How Tanzania is failing to Benefit from Gold Mining`.

100. Another flashpoint has been offers of big chunks of land extended to the foreign investors at the expense of local communities. A very recent example was an offer to United Arab Emirates Limited to buy a piece of land that host 3000 Hadzabe indigenous community in Northern Tanzania. Local human rights' activists deemed the act as disrespect of the rights of the minority groups and especially the Indigenous and constituted a violation of the ILO Convention on the Rights of the Indigenous Minority of 1989 (no. 189). Questions were also raised whether the affected communities were involved in the early stage of negotiation that resulted into the sale of their land while the negotiation took place at the District level.

101. In another instance a designated and registered village with a population of 2800 people, 388 heads of cattle, 216 goats, 280 donkeys and 2800 pigs was gazetted by government order as part of Kitulo National reserve for wildlife with the result that "…currently the village was facing an acute shortage of food. But the villagers have been forbidden to cultivate the land as they would be destroying it". The villagers have refused to leave the area.[19] In a similar incident, a foreign investor in Selous in Morogoro (Sable camp) converted some land belonging to Kisaki village to a game camp on the understanding that he would build a school, construct water wells and pay 5,000/- per visitor to the village. He was not performing because he has a separate contract with the central government.[20]

102. Relatedly, there are also resource-based conflicts emanating from exports and local consumption. This applies to many of traditional export crops which have been losing export markets and therefore attracting declining earnings. The most recent controversy in this area revolves around the expansion of the production of bio-fuels in different parts of the country. It is feared that this will divert more land and labour from food production, thus exacerbating food shortage in the country.

Conflicts between Pastoralists and Agriculturalists

103. Struggles between pastoralists and agriculturalists over the use of land are now common in the central and southern parts of the country including Morogoro, Kilosa, and Mbeya's Usangu Valley where an estimated 1.8 million pastoralists migrating from as far as Mara, Shinyanga and Singida are said to overgraze the land, displacing agriculturalists and depleting water resources to the point of affecting Mtera hydro-electric dam. These conflicts have frequently assumed an ethnic image although they have not, as yet, involved ethnic politicization and mobilization. Recently, the government embarked on a rather controversial operation that ended in a movement of hundreds of pastoralists and their herds of cattle from Ihefu in Mbarali District to Lindi and Mtwara regions. This operation came under scrutiny in the National Assembly with legislators demanding monetary compensation for the people relocated. The government justified its move as part of efforts to rescue the areas from environmental destruction accelerated by human activities.

104. Legislators faulted the operation describing it as unfair and that it violated the country's constitution. The government reacted to the legislators' concerns by forming a probe commission led by Judge Othman Chande to study the matter. Initially, the authorities had prepared land for the resettlement of the relocated people but there were concerns from MPs on whether money earmarked for the exercise had actually reached the target group. Apart from its own donation, the government received money for the relocation exercise from the

[19] *The Daily Times*, Mar. 7, 2006.
[20] *Tanzania Daima*, Mar. 7, 2006.

Tanzania National Park Authority (TANAPA) and the Ngorongoro Conservation Area Authority. One Member of Parliament, while contributing to a debate on the 2007/8 budget estimates of the Livestock Development Ministry, said that "a lion's share went into paying the allowances of the officials and askaris who supervised the exercise, without a single cent reaching the families in distress even just to support senior citizens and others, especially vulnerable victims."[21]

105. It was reported that as pastoralists were shifting to relocated areas, such as Lindi Region, a number of their stock died for lack of pasture and water on the way. The new areas also had no cattle dipping facilities. Furthermore, some of the pastoralists from the Ihefu Valley in Iringa Region who had moved to the Coast Region were given until 2 of February 2000 to leave for designated areas. They were told that they had invaded the areas. The Regional Commissioner for he Coast Region noted that Bagomoyo District already had more than sixty thousands heads of cattle most of which had been brought by the evicted pastoralists. The pastoralists were relocated to Rufiji District in the same region whose number of relocated herdsmen had already been met. The arrival of pastoralists with their herds of cattle fueled conflicts with resident farmers and pastoralists whose crops were destroyed in the process.

Social Conflicts

106. Some social conflicts are ethnic-based. Among the emerging inter-ethnic conflicts revolve around resource struggles. These are likely to grow unless the government intervenes at early stages to ensure a fair and equitable distribution of resources. Tanzania has been experiencing a number of isolated local conflicts. Tarime, a northern district of Mainland Tanzania, has emerged as a notorious 'trouble-spot' for cattle rustling, armed robbery and ethnic tensions between the Wakira, Wanchari and Warenchoka clans of the Kuria tribesmen.

107. There are also religious cleavages. Although there are no official statistics on the country's religious composition, Tanzania's population is somewhat closely balanced between Christians and Muslims. There have been recorded conflicting claims that there is an inter-religious conflict (Christians versus Muslims) triggered by a conspiracy between the Church and the State in Tanzania to marginalize and oppress Muslims. Counter-claims hold the view that tensions have existed between Christians and Muslims which are informed by fundamental theological and cultural differences, and not the conspiracy between the Church and the State. In addition to that, there is also an inter-denominational conflict which revolves around fundamentalism versus conventionalism. This kind of conflict is observable among both Muslim and Christian communities.

108. According to public perception, however, the majority of Tanzanians seem to hold the view that the leading sources of conflicts in the society are political in nature. This viewpoint is vividly supported by findings from both the household and expert surveys. As shown in table 3.2, 65.7 and 77.5 percent of the respondents from the household and expert surveys respectively, expressed the opinion that elections, intra and inter-party disputes and other related political reasons, pose as the major source of conflicts in the country. Economic factors such as inequalities and wealth distribution have been mentioned as a second major source of conflicts in Tanzania. About 72 per cent of experts interviewees and 62 percent of household respondents hold that view.

[21] "MPs want compensation for Ihefu evictees", *The Guardian*, July 25, 2007

109. Both surveys (household and expert surveys) also show that external reasons such as border problems and refugees do not pose as great threats to the country's peace. The overwhelming majority of experts interviewed (80.4 percent, and equally significant portion of respondents from the households it includes both those who gave a 'no response' and 'don't know' who add up to 80 percent downplayed external problems as a major source of conflicts in Tanzania. A large majority of respondents from the experts group (78.4) percent and half of the respondents from the household survey do not see diversity differences, such as ethnicity and religion, as major sources of conflicts in the country.

Table 3.2: Major Sources of Conflicts

Sources of conflicts	**Responses (percentage)**			
	Yes (percent)	**No (percent)**	**Don't know (percent)**	**Total no. of respondents**
Economic problems	62.1 (527)	20.7 (176)	17.2 (146)	849
Diversity differences (such as ethnicity and religion)	33.1 (274)	50.1 (415)	16.8 (139)	828
Political problems	65.7 (558)	18.3 (155)	16 (136)	849
Competing for resources	49.3 (405)	30.3 (249)	20.4 (168)	822
External reasons (such as border problems and refugees)	30.1 (248)	43.8 (361)	26.2 (216)	825

Source: APRM Survey, 2008.

Table 3.3: Percentage Distribution of Experts Opinion on Major Sources of Recent Conflicts in Tanzania

SOURCES OF CONFLICTS	**RESPONSES (percentage)**		
	YES (percent)	**NO (percent)**	**Total No. of Respondents**
ECONOMIC REASONS (Inequalities and Wealth Distribution)	72.5 (74)	27.5 (28)	102
DIVERSITY DIFFERENCES (Ethnicity and Religion)	21.6 (22)	78.4 (80)	102
POLITICAL REASONS (Elections, intra and inter-party Disputes)	77.5 (79)	22.5 (23)	102
REFUGEES, INT.DISPLACEMENT and BORDER PROBLEMS	19.6 (20)	80.4 (82)	102
CRIMINALITY (Organized Crime, Drug Trafficking and Illicit Arm Trade)	35.3 (36)	64.7 (66)	102

Source: APRM Survey, 2008
Figures in brackets represent number of respondents

Other Sources of Conflicts

110. Prominent among other sources of conflicts that we shall refer to here are (i) organised crime (ii) illicit arms trade and (iii) refugees and internally displaced persons. We shall have a brief word on each of these below.

111. Organised Crime is another source of conflict in Tanzania. The Economic and Organised Crime Control Act (1984) of the United Republic of Tanzania defines organised crime as:

> "Any offence or non-criminal culpable conduct which is committed in combination or from whose nature a presumption may be raised that its

commission is evidence of the existence of a criminal racket in respect of acts connected with, related to or capable of producing the offence in question."[22]

112. It can be noted that the Economic and Organised Crime Control Act was enacted to repeal and replace the controversial Economic Sabotage (Special Provisions) Act (1983). The Economic and Organised Crime Control Act conforms to a large extent with the United Nations Convention Against Transnational Crime of which Tanzania is a signatory. Apart from the Economic and Organised Crime Control Act, Tanzania had enacted several laws directly addressing organised crime. These include:

(i) The Proceeds of Crime Act (1991);
(ii) The Mutual Assistance in Criminal Matters Act (1991);
(iv) The Armaments Control Act (1991);
(v) The Arms and Ammunition Act (1991);
(vi) The Drugs and Illicit Traffic of Drugs Act (1995); and
(vii) The Tanzania Intelligence and Security Service Act (1996).

Initially the country had enacted the Extradition Act (1965) and the Fugitive Offenders (Pursuit) Act (1969) that could no longer match the current needs.

113. The leading criminal racket that has concerned authorities in recent years is drug-trafficking as described in another section of this report. However, a form of organised crime that has recently appeared to entrench itself in the financial sector is that of money laundering. Due to the intricacies involved in its detection and investigation, controlling money laundering has met daunting challenges for law enforcers. Some of the challenges have also emanated from the law enforcers' narrow diagnosis of the extent of the problem. Law enforcers initially had been associating money laundering with illicit drug trafficking only. Indeed, "it took time before it dawned on 'them' [law enforcers] that money laundering can be facilitated by dirty incomes derived from all the organized crime offences." [23] Tanzania is a member of the Eastern and Southern Africa Anti-money laundering group which was launched at a meeting in Arusha, Tanzania, in August 1999.

114. The legal regime that provides for the control, regulation and forfeiture of property related to drugs and prevents the illicit traffic in narcotic drugs and psychotropic substances is the Drugs and Prevention of Illicit Traffic in Drugs Act (Act no. 9 of 1995). This Act is a form of domestication of the International Convention on Narcotic Drugs and Psychotropic Substances. The Act provides for the establishment of the National Co-ordination of Drug Control Commission. The main duty of the Commission is to promote, define and co-ordinate the policy of the government on the control of drug abuse and drug-trafficking.

115. Illicit arms trade is another source of conflict. Tanzania's geographical position as a coastal state along the Indian Ocean has attracted drug traffickers who use the country's territory as a transit route for illicit drugs destined for other parts of the region, particularly Southern African region. The Armaments Control Act (Act no 1 of 1991) was enacted to provide for the machinery and mechanism of controlling and managing the acquisition, manufacture and dealing in arms of war. The Act establishes the National Armaments Control Advisory Board whose main function is to advise the government on issues relating

[22] See Section 2 of the Economic and Organised Crime Control Act (no 13 of 1984).
[23] See Saidi Ally Mwema "Current Situation and Countermeasures against Money Laundering: Tanzania's Experience". Available at: www.unafei.or.jp/english/pdf

to the implementation of policy on armaments. In performing its duty, the Board is assisted by a secretariat which provides secretarial, research and information services to the Board. In place also, is the Arms and Ammunition Act (Act no 2 of 1991) that was enacted to consolidate and amend the law relating to the control of civil arms and ammunition in the United Republic. Under this piece of legislation, it is prohibited to carry or possess arms or ammunition without a license. Licenses are issued by the Arms Authority. It should be noted that, licenses for possession or ownership of weapons issued in mainland Tanzania are not valid in Zanzibar.

116. In 1997 the Tanzanian government initiated a task force to curb the smuggling of small arms into the country from the Democratic Republic of the Congo (DRC) and Zambia. The then Minister for Home Affairs by then, Ali Ameir Mohamed, once remarked that most problematic transshipment points included the Kagera, Kigoma, Rukwa and Mbeya Regions, with the town of Tunduma serving as a major point.[24] A task force was formed by the Government in 1997 to counter an arms smuggling syndicate that moves arms from the DRC to Zambia and then into Tanzania.

117. The Tanzania National Action Plan for Arms Management and Disarmament is a five-year implementation project involving all sectors of Tanzanian society that seeks to prevent, control and eradicate the proliferation of illicit small arms and light weapons in Tanzania. The Great Lakes Region of Africa has been at the hub of the proliferation of small arms and light weapons throughout Central, Southern and Eastern Africa. "Moreover, the pressing need for comprehensive action is heightened by the strategic location and role of Tanzania, placing a particular onus on the Tanzanian government to take a leading role in the struggle against crime, terror and illicit arms in Southern, Eastern and Central Africa."[25] The Plan has been formulated in such a way as to reflect and translate in the closest possible way the aspirations and noble objectives of the UN Programme of Action and Vienna Firearms Protocol, OAU Bamako Declaration, SADC Protocol on Firearms and Ammunition, Nairobi Declaration and draft East African Firearms Protocol. All these international legal instruments provide clear guidelines for national, regional and international action. Since the national level is the main locus of implementation of practical action, Tanzania established a National Focal Point on small arms and light weapons, a national committee for arms management and disarmament and provincial task forces for arms management and disarmament in 2001. These structures have been reviewed and their responsibilities redefined following a comprehensive governmental assessment of the real extent of the problem in the country.

118. Among the implementation structures of the National Plan whose responsibilities have been redefined to cover issues relating to arms control, is the National Defence and Security Committee. The National Focal Point on Firearms and Ammunition has since served as a government interdepartmental committee functioning as the link between regional (for instance SADC and the EAC) and district-level institutions. Provincial Focal Point Agencies ensure the operationalisation of National Focal Point decisions. Besides, the National Focal Point, the National Committee on Arms Management and Disarmament (AMAD Committee) is mandated to oversee the planning, co-ordinating, fundraising and monitoring of the National Action Plan. Members of the Committee include senior police officials,

[24] See "Paramilitary Force To Check Arms Smuggling from Zaire", *PANA*, April 18, 1997. Available at: www.nisat.org .

[25] Visit the Centre for Peace and Economic Development (CEPEDE)-Tanzania's website: http://www.cepede.org/tzplan.phh

representatives of key government agencies, the project manager and representatives of national, regional and international NGOs.

119. Before liberalization, the Agriculture and Industrial Supplies Company (AISCO) had a monopoly on the weapons market. With the 1999 liberalization of the arms trades, all arms dealers and agents must obtain an import/export permit. Their applications are forwarded by the Regional Police Commander to the Director of Criminal Investigations for approval.

120. Tanzania, however, has not been free of criticisms for allowing its Dar es Salaam Port to be used as a transshipment point for consignments of weapons heading for Burundi and Uganda between 1996 and 1999. This happened during the trade embargo imposed against the Buyoya Regime in Burundi and also at the height of the war in the DRC. For instance, it was reported that in 1996, members of the Tanzanian military escorted a Chinese arms shipment of AK-47s, mortars and grenades heading for war-torn Burundi. Tanzania's facilitation of this transfer was viewed as a violation of the trade embargo which had been enacted against Burundi by Tanzania and other Great Lakes States.[26] The other consignments which headed for Uganda and whose point of origin and final destination were undetermined included armoured tanks, anti-tank and anti-aircraft missiles, automatic machine guns, grenade launchers, ammunitions and combat boats.[27]

Inter-State conflicts: Tanzania and her Neighbours

121. Tanzania has been enjoying a relatively harmonious relationship with her immediate neighbours. Accession of Rwanda and Burundi to the East African Community is likely to create conditions for even more harmony. The border situation with neighbouring countries is generally rated as calm. The problem of boundaries between Tanzania and Uganda in parts of Kagera region is still being dealt with at bilateral levels between the two governments. As observed in a recent study on Conflict Prevention, Management and Resolution mechanism in Tanzania, the problem was partly caused by local farmers from both sides of the border who own portions of land, which extend beyond the official borders.[28]

Conflict Prevention, Management and Resolution

122. The first issue is the level of ratification and accession to relevant African and international instruments for conflict prevention, management and resolution. The United Republic of Tanzania has ratified and acceded to several regional and international instruments relating to conflict prevention, management, resolution and associated issue areas.

Early Warning Systems Capacity

In regard to this issue, we shall look at the following: (i) regional institutions, mechanisms and processes and (ii) domestic institutions, mechanisms and processes

[26] See Mike Bourne, "Light Weapons and Conflict in Central Africa", in Abdel-Fatau Musah and Niobe Thompson, eds., *Over a Barrel: Light Weapons and Human Rights in the Commonwealth,* London and New Delhi: Commonwealth Human Rights Initiative (CHRI), November 1999, pp. 141-159.

[27] "Uganda Buys Arms", *Post of Zambia* , Africa News Service, February 2, 1999. Available at: www.nisat.org .

[28] See "CPMR Mechanism and Survey of Training Institutions in Tanzania" as part of the Study on East African Community Foreign Policy Coordination for the Community undertaken by Africa Peace Forum for the EAC Secretariat, 2003

(i) Regional Institutions, Mechanisms and Processes

123. As a member of the Southern African Development Community (SADC), Tanzania participates in and benefits from the regional grouping's activities related to its objectives on politics, defence and security cooperation. Tanzania has thus been involved in the operations of the SADC Organ on Politics, Defence and Security Cooperation since its establishment under Article 9 of the SADC Treaty on June 28, 1996, in Gaborone, Botswana. On August 14, 2001, in Blantyre, Malawi, Tanzania joined other SADC Member States to sign a Protocol on Politics, Defence and Security. The United Republic of Tanzania had chaired the SADC Organ from August 2006 to August 2007. In the process of overseeing the implementation of the Strategic Indicative Plan for the Organ (SIPO) during its chairmanship, Tanzania coordinated the following activities:

- It hosted the SIPO Evaluation Workshop on February 23 – 27, 2007 in Dar es Salaam;
- Deployment of SADC Electoral Observer Missions to Member States;
- The establishment of the Regional Peacekeeping Training Centre (RPTC) as a SADC Centre of Excellence for Regional Peacekeeping Capacity Building;
- The establishment of the SADC BRIGADE (SADCBRIG);
- The establishment of the Regional Early Warning Centre (REWC) and its participation in the activities of Continental Institutions such as the Committee of Intelligence and Security Services of Africa (CISSA);
- Connection of SADC Police (SADCPOL) to the INTERPOL database for information sharing;
- Cooperation on joint training, exchange of crime intelligence and crime management;
- Harmonization of the Southern African Regional Police Chiefs Cooperation (SARPCCO) as a SADC Law Enforcement Structure subordinate to the Inter-State Defence and Security Committee (ISDC), established under Article 3.2 (e) of the Protocol on Politics, Defence and Security Cooperation;
- Convened an Extra-Ordinary Summit of SADC in Dar es Salaam on March 29, 2007 to review the political, economic and security developments in the region, particularly on the situation in the Kingdom of Lesotho, the Democratic Republic of Congo and the Republic of Zimbabwe;
- The Ministerial TROIKA of the Organ meeting was held in Dar es Salaam on May 25 – 26, 2007 to among other things review the implementation of the decisions of the Extra-Ordinary Summit; and
- Fielding of an Assessment Mission to Lesotho on April 11 – 14, 2007 to assess the political situation in that country.

Tanzania has also been contributing to Peace Support Missions either under the auspices of the United Nations or the African Union in Lebanon, Eritrea/Ethiopia, Southern Sudan, Sierra Leone, Cote d'Ivoire, Comoros, and Sudan (Darfur). Tanzania is also a core member of the International Conference on the Great Lakes Region (IC/GLR) which was prompted by a dire need by the Great Lakes Region and the International Community to resolve recurring conflicts between and within Member States in the region and address development issues through a collective and holistic approach. The other Member States are Angola, Burundi, Central Africa Republic, Democratic Republic of Congo, Kenya, Rwanda, Sudan, Uganda and Zambia. As a stakeholder in regional peace, Tanzania has been actively engaged in a process of consultations with a view to addressing the root causes of the conflict situations and the teething socio-economic problems. This process culminated into the First Summit on the Great Lakes Region that gave birth to the *Dar es Salaam Declaration* (DD) on Peace,

Security, Stability and Development. The *Dar es Salaam Declaration* laid down foundation pillars for sustainable peace in the GLR based on four thematic areas namely:

- Peace and Security;
- Good Governance and Democracy;
- Economic Development and Regional Integration; and
- Humanitarian and Social Issues.

124. The Regional Inter-ministerial Committee (RIMC) has been established to implement the DD, and already a Pact on Security Stability and Development on the Great Lakes Region has been signed by the Heads of State and Government of the eleven member states on December 15, 2007 in Nairobi, Kenya. The Pact constitutes Dar es Salaam Declaration (DD), Protocols, Programmes of Action (PoA), Regional Follow-up Mechanism (RFM) and Special Fund for Reconstruction and Development (SFRD). The process of ratifying the Pact has started and reached an advanced stage in Tanzania. Tanzania has produced the first Executive Secretary to the Conference Secretariat which is headquartered in Bujumbura, Burundi.

(ii) Domestic Institutions, Mechanisms and Processes

125. The following ministries, departments and institutions coordinate activities of the SADC Organ on Politics, Defence and Security at the national level:

- President's Office;
- Prime Minister's Office;
- Prime Minister's Office, Regional Administration and Local Governments;
- Ministry of Foreign Affairs and International Cooperation;
- Ministry of Defence and National Service;
- Ministry of Home Affairs;
- Immigration, Prisons and Refugees Departments;
- Office of the Registrar of Political Parties;
- Wildlife Department; and
- Customs Department.

126. Labour tribunals are in place for dealing with conflicts emanating from labour relations. Courts deal with commercial disputes; and there are land tribunals which deal with conflict resolution and consensus building efforts on land-related conflicts. Recently, there has emerged a debate on the establishment of Kadhi Courts which seek to settle religious conflicts within Islamic Shariah law. Christian churches also have in place alternative mechanisms for handling family and marital conflicts.

127. Other national level institutions that fall within the ambit of conflict prevention, management and resolution mechanisms include: the Commission on Human Rights and Good Governance, the Tanzania Intelligence and Security Service (TISS) and the Prevention and Combating Corruption Bureau (PCCB). Some of the Commission's rulings in some of the conflicts have been highlighted in another section of this report.

128. The Tanzania Intelligence and Security Service Act (Act no 15 of 1996) formally establishes the TISS as a government department in the Office of the President, with its main function to ensure security in the country. The TISS is supposed to collect, analyse and retain information which, on reasonable grounds, is suspected to relate to activities that

constitute a threat to the security of the United Republic of Tanzania or any part of it.[29] The PCCB has been reconstituted given recent corruption revelations emanating from parliamentary oversight particularly through opposition parties.

129. Besides, as part of the government effort to ensure public safety and security in the aftermath of the terrorist attacks of the US embassies in Dar es Salaam and Nairobi in 1998, several measures have been taken including the passing of the Prevention of Terrorism Act of 2002. Parallel with such initiatives, specialized agencies have been created to intensify anti-terrorism efforts and deal with organized crimes. Related to that, community policing mechanisms have also been reinforced and police training intensified particularly in collaboration with U.S security agencies.

Opinion on the Existing Conflict Resolution Mechanisms

130. According to the APRM Household Survey (2008), the court appears to be the most favoured mechanism for resolving conflicts by ordinary people. The next preferred mechanism is the use of dialogue (20 percent), followed closely by social-based conflict resolution mechanisms, specifically through religious institutions and elders' councils/forums (18 percent).

131. Government officials and political leaders are the least favoured option for resolving conflicts in the society. Moreover, a significant portion of Tanzanians (14 percent) cannot tell which of the five mechanisms (i.e. court, social based methods, governmental councils, government officials and political leaders and dialogue method) is the most appropriate to them. This points to a serious concern over the level of awareness of the citizenry on the available conflict resolution mechanisms, and how those mechanisms actually function, as well as stakeholders' knowledge on the costs and benefits of employing the same.

132. Another revealing feature is the preference for formal or government institutions as opposed to individuals. Respondents have expressed that institutions can be relied upon as conflict resolution mechanisms rather than individuals who occupy them. This is because institutions, laws, rules and regulations may be predictable and sustainable whereas individuals come and go and are of different characters.

133. A large majority of experts (over 70 percent) feel that the existing conflict resolution mechanisms and institutions are effective in their roles. From the household survey, a significant proportion (47.8 percent) supports the experts' position. However, interpreted differently, those who express low opinion on the effectiveness of the mechanisms combined together with the 'don't knows', hold a significant proportion (48.8 percent) over the group that gives a note of approval on the functioning of the institutions.

134. A fairly large proportion of experts interviewed (59.8 percent) hold the view that sub-regional organizations tend to be involved in conflict resolution in the country. When further disaggregated, a mere 13.7 percent felt that sub-regional organizations are always involved, 19.6 percent say that they are frequently involved, and about 26.5 percent expressed the view that sub-regional organization are fairly involved. Furthermore, 33 (32.4 percent) out of 102 interviewees in this category said that the sub-regional organizations are rarely involved and only 7.8 percent commented that they are never involved.

[29] Section 14(1).

Objective Two: Constitutional Democracy and the Rule of Law

Political Rights

135. Civil and political rights in Tanzania are well entrenched in the constitution of the country. Articles 12 to 24 of the URT constitution of 1977 provide for the Bill of Rights within which political rights are enshrined. It has to be noted, however, that some rights are outside the Bill of Rights. In summary, the constitution outlines the following political rights: Right to vote [Article 5], Right to equality before the law [Article 13(1)], Right to personal freedom [Article 15], Right to privacy and personal security [Article 16], Right to freedom of movement [Article 17], Right to freedom of expression [Article 18], Right to freedom of association [Article 20], Freedom to participate in public affairs [Article21] and Right to vote and be voted for [Articles 39 and 67].

Institutions and Mechanisms that Protect Political Rights

The Constitution

136. The constitution is supposed to secure and protect the Bill of Rights. This is because it is the *Grundnorm* from which all other laws and legal rules derive their validity and authority. In this manner, the Bill of Rights cannot be easily derogated by an ordinary piece of legislation. In the Tanzanian context, in spite of measures taken over the past years to remove some claw-back clauses, there are still some restrictions to the realization of the basic rights. There is, for example, a general Article that provides for qualified terms to the Bill of Rights as a whole. This is Article 30(2) sets out limitations upon the enforcement and preservation of basic rights, freedoms and duties. It is instructive to note that only four Articles in the Bill of Rights seem to be free of the claw-back clauses, i.e., Articles 12, 13, 22, and 23. Despite the fact that the wording of the four Articles suggests absolute guarantees, in reality that is not the case. This is because those rights are not protected against encroachment or erosion by state legislation. Besides, all rights in the Bill are subjected to a blanket claw-back contained in Article 30 (2) (f) of the Constitution. Quite often, the government justifies the violation of political rights under Article 30 (2) (a) and (b). Whereas 30 (2) (a) talks of the obligation to protect other people's rights and freedoms, 30 (2) (b) talks about the duty of ensuring defence, public safety, public order and public morality. These provisions have often been interpreted one-sidedly to justify the curtailment of people's freedoms and rights.

The Judiciary

137. Article 107A (1) of the URT constitution of 1977 states that the judiciary is the organ with the final say on the administration of justice. Relatedly, Article 13(3) of the constitution still upholds that, human rights will be protected and adjudicated by the judiciary and other organs of the state established by law for that purpose. However, the judiciary is limited in a number of ways. First, the judiciary is more reactive in most cases than proactive. This is due to the fact that aggrieved parties must call upon the attention of the judiciary for its reaction. The second limitation is that, any human right case should be instituted to the High Court before three judges. However, there are still very few judges in Tanzania. Currently, there are only about 55 judges of the High Court. These judges are distributed in the zones. This implies that it is quite difficult for ordinary citizens especially from rural areas to afford expenses involved in reaching zonal courts. Besides, the judges for the specialized tribunals such as High Court Land Division, Commercial Division and Labour Division are only located in Dar es Salaam and go around the High Court zones depending on the availability of funds. This largely slows down the pace to handle land, commercial and labour related

disputes. This makes cases to take too long to be completed. This problem is worsened by insufficient funding allocated to the judiciary. The third limitation is related to costs. Hiring an advocate for an ordinary citizen is too expensive. Thus, on the whole, in spite of some improvement in accessing justice over the last few years as a result of institutional reforms, access to justice in is still limited.

The Commission for Human Rights and Good Governance

138. Article 130(1) (a) – (h) of the URT entrusts the Commission for Human Rights and Good Governance the responsibility of protecting and promoting human rights in the country. Article 130(2) provides that the Commission is an independent department in discharging its functions. The Commission, however, is constrained in a number of ways. First, the commission faces financial constraints which may compromise its independence and impartiality. Furthermore, Article 130(3) provides, that the president can order the Commission to do anything he/she deems fit. Second, the commission does not have its own budget. Third, the Commission's decisions are not binding.[30] Aside from giving its advisory opinion, it can only take human rights-related cases to the court of law.

Political Association

139. Political association basically, though not exclusively, involves political parties. There are a number of legal provisions and regulations that guide political association in Tanzania. They include the followings: The URT Constitution of 1977, Political Parties Act No. 5 of 1992 and Police Force Act, Cap 322 R.E 2002. Each law is examined separately as follows:

Police Force Act, Cap 322 R.E 2002

Sections 40, 41, 42 and 43 of this Act require any political party whether provisionally or fully registered to notify the Police Force not less than 48 hours of the place and time at which the meeting is to take place as well as the general purpose of such a meeting. However, the Police have frequently used these sections to cancel opposition political parties' meetings. The common ground or pretext has always been that the meeting is likely or intends to cause a breach of peace or to prejudice the public safety in the area.

140. There are marked contrasts in police activities at CCM and CUF meetings. The presence of many fully armed police and FFU (Field Force Unit) were the order of the day for each CUF presidential rally. Although police harassment was not present at every CUF meeting, several monitors noted a police presence approaching intimidation. Interestingly, there were no reports of police harassment or interventions at CCM rallies. Police put up roadblocks for most CUF rallies, stopping all the vehicles going to CUF rallies and ordering everybody to get out of their vehicles. They then searched each passenger. In certain cases this search caused excessive delays that forced CUF to postpone rallies.

141. The Legal and Human Rights Centre (LHRC 2000:33) observed a similar situation whereby the police in Zanzibar was conspicuously biased against CUF members. Makulilo (2007:110), likewise, observes the same behavior. A question was posed to leaders of political parties on whether they have trust and confidence in the security forces regarding

[30] The non-binding feature of the Commission's recommendations is not inherently a deficiency. However, given the nature of the political system in Tanzania, government authorities are not very receptive to Commission's recommendations. Good faith on the part of the government officials and authorities is often lacking. See, for example, the comment by Justice Kisanga (section 2.3.2 in this chapter).

party activities.[31] Out of ten (10) sampled leaders, nine (9) responded that they do not have trust and confidence in the police, and the Zanzibar forces – JKU, etc. All of these nine parties were in the opposition. It is only CCM, the ruling party which expressed a favourable opinion towards the coercive forces of the state when it comes to the engagement of those forces in the maintenance of law and order during election times. They cited cases where opposition parties' meetings and demonstrations were cancelled by the forces.

142. On the other hand, they argued that the same forces have never obstructed any activities of CCM, the ruling party. The ruling party on the other hand seems to have considerable faith in security forces. The National Executive Committee (NEC) of CCM, for example, issued a statement on the October 30, 2005 following the Zanzibar elections: "NEC congratulates the coercive forces for ensuring peace in the region to the extent that the majority of the citizenry who were threatened by CUF during campaigns got an opportunity to vote in a free environment".[32] This act of the police to be biased is contrary to Article 147(3) of the URT Constitution 1977 which provides that: *"...It is hereby prohibited for any member of the defense and security forces to join any political party save only that he shall have the right to vote…'.* Besides, it is against the professional code of ethics of the defence and security forces which require them to be politically neutral in matters of party politics.

Political Parties Act No. 5 of 1992
Party Funding
143. Section 13 (1) of the Act provides that parties which have been registered shall derive their funds from:
(i) membership fees,
(ii) Voluntary contributions,
(iii) The proceeds of any investment
(iv) Project or undertaking in which the party has interest
(v) Subvention from the Government and
(vi) Donations, bequests and grants from any other source.

There is still a critical problem regarding the requirements for a party to qualify for subvention from the government. Only registered political parties which have parliamentary seats and popular votes are qualified as follows: 50 percent of the funds shall be disbursed amongst qualifying parties on the basis of the ratio between the number of parliamentary constituencies in the United republic and the other 50 percent of the funds shall be disbursed amongst qualifying parties, i.e., those with at least 5 percent of all the valid votes cast in all constituencies in the United Republic. The disbursement of funds to the parties is on the basis of the ratio between the total number of valid votes cast for the parliamentary candidates of the party and the total number of all the valid votes cast in the parliamentary election for all the qualifying parties. From the above formula, subventions to parties after the 2005 General elections show that, only five parties out of eighteen qualified for such subsidies. The distribution of such allocation however shows great disparity: CCM receives 555.5 million Tanzania shillings per month (82.8 percent of the total), CUF - 77.2 million, CHADEMA – 35.5 million, TLP - 1.4 million and UDP - 1.4 million.[33] There is a concern among opposition parties that this wide resource disparity constrains the opposition to spread nationwide.

[31] Makulilo A. B (2007) Tanzania: A De Facto One Party State? M.A. Dissertation: University of Dar es Salaam, p. 110.
[32] Translated from Kiswahili in Makulilo, ibid.
[33] Registrar of Political Parties, 2006.

144. Section 13 (2) of the Act requires parties to disclose to the Registrar of Political Parties information relating to funds and any other resources obtained by the party. The sources and funds to be disclosed involve those from outside the United Republic, those obtained directly or through sources within the United Republic from foreign organizations stationed within the United Republic and from any person resident in the United Republic who is not a citizen of the United Republic. Subsection (3) further provides for the penalty of fine equal to the amount or of the value not disclosed or in relation to which false information was given or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment to any official of the party who fails to disclose such sources of funds and resources. The legal provision requiring parties to disclose party funds and resources shows that only external sources are the targets. Parties are, therefore, not obliged to disclose their internal sources. It is not clear whether this was done by design or otherwise**.** This is one of the major weaknesses of this section.

145. It is of interest to note that the Nyalali Commission (1991:191) recommended for the assessment and eventual handing over to the Government of CCM properties that were acquired through Government subventions, tax-payers' money or contributions from non-CCM members during the single party era. This recommendation was not implemented and, therefore, CCM entered into multiparty politics with a very strong resource base. In Tanzania, the big business overwhelmingly funds the ruling party[34], and there are serious complaints from the opposition that business people who are suspected of funding opposition parties are harshly dealt with by the government so as to undermine their business ventures (TEMCO, 2001). This may take different forms including being denied business contracts by the government and strict and experiencing unfair treatment in taxation.[35]

146. On the issue of party and election funding there is now an increasing concern that "big money" from undisclosed sources is becoming a serious threat not only to competitive elections but to the whole practice of democracy and government accountability. The expenditure particularly for the ruling party in the past general elections of 2005 is believed to have reached an alarming level to the extent of undermining the effectiveness of the government in power. Some of the major scandals of corruption and mysterious deals under the previous and the current government (see details in chapter six) could be largely attributed to the role of big money in Tanzania's electoral politics. On the other hand, policy issues and personality factors which are considered to be important factors in electoral contest have been seriously undermined by the role of money.

Political Parties' Alliances

147. The Political Parties Act No. 5 of 1992 does not provide for parties to forge alliances for electoral contests.[36] It requires existing parties that wish to forge alliances to first of all dissolve themselves before they become a completely new party. This has discouraged the initiatives by opposition parties to form electoral alliances and contest elections as a unified

[34] In November 2008, for example, one businessman of Asian origin, Somaiya donated 400 million Tshs to the CCM-Youth Wing for elections. If one businessman can contribute such large amount of funds for the intra-party elections for the youth wing, one could imagine how much the big business contribute to the ruling party for general elections.

[35] In 2006, Hon. Philemon Ndesamburo (MP for Moshi Urban) was temporarily suspended for alleging before Parliament that if one wants to succeed in his business undertakings he has to support the ruling party. He was required to provide hard (court) evidence to his claim and he failed. This, however, does not mean that what he said was untrue (see, for example, TEMCO Report 2001; 2006).

[36] In Kenya, for example, the non-existence of such a legal restriction allowed opposition parties in 2002 to form the National Rainbow Coalition (NARC) to remove KANU from power.

bloc against the ruling party. Following the passing of the 2008 Political Parties (Amendment) Bill in February 6, 2009 some amendments to the principal law (Political Parties Act, 1992) were proposed. Under the new law, a new Section (11A) to the principal legislation ostensibly allows registered parties to unite. However, in practice, the unity or alliance envisaged is fraught with unfair conditionality, including a requirement that leaders of the parties which unite should resign from all the political party positions they hold by virtue of being members of the alliance.

Independent Candidacy

148. The current constitution has some shortcomings regarding free competition. For example, Article 5 of the URT Constitution 1977 provides for the right to vote. Any person can vote provided he/she is of a sound mind and has attained the age of 18 years old. However Articles 39 and 67 which provide for the right to be voted for, require one to be a member of a political party and be sponsored by the same. The issue of independent/private candidacy has been a long standing issue in the Tanzania's constitutional debate relating to the electoral system. Since the inception of multiparty politics there have been persistent calls from opposition political parties and members of civil society for the opening up of the electoral system to allow independent/ private candidates to contest elections at all levels. To date, in spite of the court ruling to allow independent candidates to contest elections (for details see section 2.7.3), the government has not yet taken any measures to execute it. Disallowing independent candidates is considered by opposition parties and most independent analysts as a violation of constitutional rights relating to individual freedoms.

The Electoral system

149. Tanzania's electoral system comprises the legal framework as well as institutions that govern the elections. It is basically a majoritarian system, whereby seats are allocated on the basis of a simple plurality of votes. The only element of a proportional representation feature is the allocation of special seats to women, whereby political parties are now allocated seats in proportion to their votes and not seats as was the case in the past. Whereas opposition parties advocate for a mixed electoral system, the ruling party is vigorously defending the current arrangement of majoritarianism or simple plurality. In this section some of the relevant laws are reviewed and the institutions that are mandated to manage elections are assessed.

Legal and Institutional Framework

150. The legislations that guide the conduct of elections are many. The principal ones for the Union elections include the Elections Act. No. 1 of 1985, the Political Parties Act No. 5 of 1992, and the Local Government Election Act, No. 4 of 1979. In the case of Zanzibar, they include the Zanzibar Elections Act No. 11 of 1984, the Political Parties Act no. 5 of 1992 and the Election (amendment) Act No. 3 of 2000.

Institutional Framework

151. The National Electoral Commission (NEC) and the Zanzibar Electoral Commission (ZEC) are the only institutions with constitutional mandate to manage the Union and Zanzibar elections, respectively. NEC and ZEC are established under Article 74(51) of the constitution of the United Republic of Tanzania and Article 119 of the constitution of Zanzibar, respectively. Both NEC and ZEC have seven members who are presidential appointees. NEC members are appointed by the President of the URT and ZEC members are appointed by the President of Zanzibar.

152. The chairperson and the vice – chairperson of NEC must be either a judge of the High Court or of the Court of Appeal. The other five members are appointed as follows: one from amongst the members of the Tanganyika Law society, and the remaining four from experienced people in the conduct of elections. In contrast to NEC, there is no legal requirement that the chairperson of ZEC should be a judge. The vice-chairperson is elected by the members from amongst themselves. The only requirement is that out of the seven members, at least one of them must be a lawyer.

153. Unlike NEC, ZEC has political parties' representation. Currently, it is constituted by two members from CCM and two members from CUF following the second reconciliation accord (*Muafaka* II of 2001). It has been observed that when the commissioners vote on any critical decision dividing the parties, the outcome is always that CCM gets five against two votes by CUF. This implies two things: first is that while the four commissioners from CCM and CUF always vote along partisan lines, the remaining three (non-party member commissioners at least by law) have consistently been on the CCM side. This presents a de-facto fusion between the ruling party and the Election Management Body (EMB). Second, the involvement of CUF in ZEC has further brought tension between CCM and CUF. ZEC is seen as another battle ground where these two parties collide. This has undermined the capacity of ZEC to decide objectively and fairly on election issues.

154. The organizational structures of both NEC and ZEC are rather fluid. The chairpersons and vice- chairpersons are not full- time employees. The structure of the commissions has two levels. At the national level, NEC has a director who is also secretary to the Commission. The personnel of the directorate, sections and units are permanent employees of the Commission. At the field level, the structure is temporary and exists only during the election period. It is staffed by the Regional Election Co-ordinators (RECs) or Liaison Officers, Returning Officers (ROs) and Assistant Returning Officers (AROs). These are not permanent employees of the Commission. In the 1995 elections, they were recruited and appointed by NEC through advertisements in the media. However, from 2000 elections to date they are appointed from the cadre of city, municipal, town and district executive directors in compliance with the amended Election Act. Below, at the constituency level, there are presiding officers and assistant presiding officers, who administer polling stations. They form a critical and important cadre in the actual administration of the election processes. In a country with a long history of monolithic party system reliance on government functionaries in the management of the elections raises a serious credibility question.[37]

155. The ZEC structure on the other hand, is more or less similar to that of NEC except in the following aspects:
(i) There is no Regional Co-ordinator;
(ii) The Commission is represented by a Co-ordinator's Office in Pemba; and
(iii) *Sheha* (a village/street government leader) is included in the functional structure of ZEC. At this level the *Sheha* is ex- officio registration/polling agent of the commission.[38]

[37] There have serious allegations that some government functionaries in charge of managing elections are put under intense pressure by top government and party authorities and scared that in the event of defeat of the ruling party in their respective areas they will loose their salaried positions or face demotions.
[38] There have been confirmed reports that most the *Shehas* who are appointees of the Regional Commissioners are zealots of the ruling party and during election times, they are used in favour of the ruling party, particularly during voter's registration (TEMCO Report, 2005).

Independence and Impartiality of NEC and ZEC

156. With respect to the electoral bodies, there are two types of independence. The URT-Report (1998: 10-11) outlines them. The first is the actual independence of the body. This depends on factors such as legislations, especially at the level of the constitution; the caliber of the personalities appointed to serve in the body; the financial and other resources available, and the willingness of this body to exercise its powers. The second is perceived independence which depends on factors such as the transparency of the appointment procedures, the personalities appointed, and the way the electoral body performs its tasks.

157. The URT Report (1998:10-11) maintains that "the administration of elections must be the responsibility of a body which is independent of the government of the day – and which is also *seen* to possess such independence"[39] (emphasis added). This requires, *inter alia*, constitutional protection, a relative long term of office, and availability of resources (both human and material) with which to conduct the various duties connected with the electoral process without being at the mercy of others.' These requirements of an independent commission set out a true test for the credible body that can conduct itself in a freeness, fairness, transparency and impartial manner.

158. According to the URT Report, the ability of the electoral body to function both as neutral arbiters in the electoral game and as the administrator of the entire electoral process does not only depend on independence from the government of the day, but also on perceptions of the political contestants and the general public. However, the appointment of the NEC and ZEC right from the beginning to date is the subject matter of debate.

159. NEC and ZEC have adequate statutory independence. Article 74 (sections 7and 11) of the Union constitution 1977 provides for such status to the NEC at the national level. Similarly, ZEC enjoys the same constitutional status of being independent. Constitutional amendments Number 8 and 9 of the Zanzibar constitution of 1984 offer the same status of the independence and impartiality to ZEC. Legally, NEC is made supreme in managing the presidential, parliamentary and local government elections as per Article 74 (12) of the constitution and the Elections Act No. 1 of 1985 section 4(2). Again, Article 41(7) of the Union constitution states "No court is allowed to inquire into the election of a presidential candidate who is declared by the electoral commission (NEC) to have been duly elected."[40] This provision is often cited as granting independence to NEC. It does not, however, make the commission independent, but rather imposes its hegemony and encourages authoritarian tendencies. Under this provision an aggrieved party is denied his/her democratic right to query the conduct of a public institution. This is contrary to the role of the judiciary as observed by the African Union Commission and the African Association of Electoral Authorities 2003 that the judiciary should be recognized as the final forum for settling disputes arising from the management and results of elections.

160. Among other factors, the perceived lack of independence of the Commissions stems from the appointment procedure. All members of the Commissions are appointed by the incumbent presidents. According to SADC (2000), for example, one of the major features of

[39] United Republic of Tanzania, Ministry of Justice and Constitutional Affairs, Review of the 1995 General Election in Tanzania, A Report Prepared by Jorgen Elklit, Mark D. Bomani, and Chris Peter, January 28, 1998, Dar es Salaam.

[40] This finality clause which vests ultimate powers not subjected to appeal or judicial review raises a critical issue relating to exercise of rule of law and separation of powers.

the Tanzanian electoral environment is the constitutional provisions related to the unilateral character of the appointment and dismissal of the members of NEC and ZEC by respective Presidents of Tanzania and Zanzibar. The Union president is the chairman of the ruling party and the Zanzibar president is the vice-chairman of the party. The likelihood that these presidents can be non-partisan in the appointment process seems to be a wishful thinking.[41]

161. Among the most cited cases to illustrate the non-independence of the election commissioners is the case of Judge Mark Bomani. In 1995 Judge Mark Bomani, one of the NEC commissioners, resigned and sought presidential nomination through CCM. It is instructive to note that CCM requires an active membership of at least five years to qualify for such nomination. Thus this case left many questions until today. Was he a party member by 1993 when the commission was formed? Does the oath one takes before assuming the office as a commissioner really makes one a non-party member? Article 74(14 & 15) of the constitution of the United Republic of Tanzania 1977 strictly prohibits persons concerned with the conduct of elections to join any political party. It can therefore be depicted that commissioners and directors of NEC are appointed on the basis of their loyalty to the ruling party. No known critic of the government and the ruling party has ever been appointed to the Commission, except in the case of ZEC, where two commissioners have to come from the opposition party.

162. However, it is important to underline the fact that the appointing authority may not necessarily be a problem, but rather the procedures followed in effecting such appointments. Some analysts argue that the criteria for such appointments are not clear and transparent to the extent that most stakeholders loose trust and confidence in the commissions. What is to be noted here is that the claimed independence and impartiality of the electoral commissions in Tanzania is essentially an argument defended by election commissioners, government functionaries, leaders and followers of the ruling party.

163. The second argument questioning the independence and impartiality of the electoral commissions in Tanzania is the utilization of senior government officers as NEC personnel at the regional, district and constituency levels. Elections Act 7(1) of 1985 requires NEC to appoint election officers from city, municipal town and district executive directors. This makes them exercise dual loyalty (to their employer and NEC) and hence their neutrality is highly questionable. In contrast, ZEC is not obliged by law to appoint these government officers as its personnel at the local levels. However, in practice ZEC has always used such officers as well.

Public perceptions of opportunities for political competition

Perceptions of Political Parties on NEC and ZEC

164. There is abundant evidence to suggest that right from their formation to date, NEC and ZEC have not enjoyed confidence and trust of some of the key stakeholders in elections, that is, political parties (particularly the opposition parties) and a significant section of the general public). For example, on October 30, 1995 opposition parties wrote a letter to the chairperson of NEC expressing their mistrust with the Commission.

[41] In the case of ZEC, two commissioners out of seven are appointed by the President from the names proposed by the opposition party, but on the whole, party representation in the commission is not balanced.

165. In gauging the credibility of NEC and ZEC in the eyes of the political parties, Makulilo (2007:86) posed a question to leaders of political parties: "How does your party relate with NEC/ZEC? Do you have trust in these institutions? Why /why not?" Out of 10 sampled senior leaders from ten parties, 9 of them, i.e., all from the opposition parties responded that they do not have trust and confidence in the Election Management Bodies (EMBs). Two main reasons were given to explain their responses. One is that the President of the United Republic, who is the Chairperson of CCM appoints NEC members. Equally, the President of Zanzibar, who is the Vice-Chairperson of CCM appoints members of ZEC. Both are interested parties either as incumbents contesting for the second term or as outgoing leaders paving the way for their successors. Opposition parties have generally lost confidence in the capability and willingness not only of the Electoral Commissions but also of the CCM government to run free and fair elections.

166. CUF, for example, states: "It is now clear beyond doubt that CCM does not want democracy and will do all in its power to prevent Zanzibaris from choosing their own leaders. In such circumstances, it is hard to escape the conclusion that the only way to have free and fair election is to have a process administered by a third party such as the United Nations".[42] The above captioned statement indicates the existence of the highest degree of mistrust. However, it presents a narrow understanding of a free and fair election. An Election Management Body is just one element for there are other requirements for the conduct of a free and fair election. The rules of the game and institutional set up also matter a lot.

Perceptions of Experts and Ordinary People on Political Competition

167. Among the expert respondents (APRM Survey, 2008), those who are clearly satisfied with the level of political competition account for only 23.5 percent whereas those who said that the political system to some extent or fairly allows for free and fair political competition account for 53.9 percent. These two responses (i.e., "to some extent" and "fairly allows") are not definite responses. It is difficult to tell whether they indicate a positive or negative assessment. Those who are clearly dissatisfied are 22.5 percent of the respondents belonging to the category of "to a small extent" and "doesn't allow at all." Examining these percentages, one may perhaps get quite an impressive degree of assessment by experts. However, a methodological caution has to be taken into account that a large proportion of these respondents were government functionaries rather than independent experts or people in the private sector who could have given a different pattern of responses.

168. When the ordinary respondents were asked to tell whether elections are free and fair, 71.9 percent said that elections which are conducted are free and fair, only 18.6 percent said that they are not free and fair and 10.3 percent said that they do not know. The survey findings indicate that the public opinion is overwhelmingly satisfied with the conduct of elections in Tanzania. In a way, this overwhelmingly high score is compatible with the proportion of votes garnered by the ruling party in the previous general elections whose officially reported scores have been ranging from 61 percent in 1995 to 80 percent in 2005. The other explanation may be the impact of poor awareness of the electoral processes as illustrated by quite a significant percentage of respondents (10.3 percent) who responded that they do not know whether the elections are free and fair.

[42] CUF (2006) "Election Report by the Civil United Front".

169. On the question of freedom to form and join political parties among the ordinary respondents, similarly the opinion was generally positive. About 71.9 percent (i.e., the same proportion with those who said that elections are free and fair) responded in the affirmative that there is freedom to form political parties. Those who said that there is no freedom to form political parties were 14.9 percent and 13.2 percent said that they do not know. Relatedly, 80.5 percent of the respondents said that there is freedom to join political parties, whereas 10.3 percent said that there is no freedom and 9.2 percent said that they do not know.

170. The other critical question about the freeness and fairness of political competition was relating to the distribution of resources to political parties. About 39.5 percent of the respondents said that there is fair distribution of resources to political parties as opposed to 26.5 percent who said that there is no fair distribution of resources to political parties and a significant proportion (34 percent) of those who said that they do not know. Going by these figures, it is only about 40 percent of the respondents who are of the opinion that there is fair distribution of resources to political parties. That is to say, there is a serious concern among people and opposition parties that resource allocation is tilted in favour of the ruling party which benefits disproportionately not only from its members and financiers, but also due to its relatively easy access to public resources.

171. On the whole, given the legal-institutional arrangements and the political environment prevailing in Tanzania, the credibility and fairness of all the Union and Zanzibar general elections held since 1995 have been questioned by the opposition parties and election observers. However, in comparative terms, the situation has been worse in Zanzibar,[43] where the opposition is much stronger than on the Mainland. Whereas some progress has evidently been made in democratic governance and accountability as a result of institutional and legal reforms, Tanzania has still a long way to go towards establishing and institutionalizing a political system that allows free and fair competition for power.

The Legal Framework for Free Association

Statutes Governing Civil Organisations

172. Before 2002 Tanzania Mainland did not have a law specifically on NGOs. In 2002 the NGO Act was passed with the aim to establish one law for all NGOs in the country. However, the new law only streamlined the registration of NGOs leaving intact a host of previous statutory provisions dealing with the non-profit organizations. That, is to day there is no single body of law in the country for the different types of non-profit organizations in Tanzania. According to the law, all non-profit organizations are regulated centrally, although there is a certain degree of delegation of powers to the District Administrative Secretary (DAS).[44] In the case of Zanzibar, NGOs are regulated under the Societies Act No. 6 of 1995. There is now a policy for NGOs (2009).

173. The main statutes that govern civil society organizations in the country include the following:

[43] The killings of more than 30 people in Zanzibar in January 26/27, 2001 was the climax of the repercussions of electoral malpractices in Tanzania since 1995.

[44] Makaramba, R. V. (2007) "The Legal Context of the Non-Profit Sector in Tanzania" in L. Ndumbaro & S. Yahya-Othman (eds.) *The Third Sector in Tanzania: Capabilities and Challenges of Civil Society Organization*s. University of Dar es Salaam, p. 34.

(i) The Non- Governmental Organizations Act [Act No. 24 of 2002];
(ii) The Societies Act No. 6 of 1995 [only for Zanzibar];
(iii) The Societies Ordinance, Cap. 337 [now the Societies Act, Cap. 337, R.E. 2002], which governs "societies";
(iv) The Trustees' Incorporation Ordinance, Cap 375 [now the Trustees' Incorporation Act, Cap. 318, R.E. 2002], which governs trusts;
(v) The Companies Act [Act No. 12 of 2002] which repealed the colonial Companies Ordinance, Cap. 212, which governs companies limited by guarantee;
(vi) The Law of Contract Ordinance, Cap. 433 [now the Law of Contract Act; Cap. 345, R.E. [2002], which governs "partnerships";
(vii) The Building Societies Ordinance [now the Building Societies Act, Cap. 87, R.E. 2002];
(viii) The Tanganyika Law Society Ordinance, Cap. 341 [the Tanganyika Law Society Act, Cap. 307, R.E 2002], which governs the Tanganyika Law Society, a professional association for advocates;
(ix) The Wakf Commissioners Ordinance, Cap.326, which governs Islamic waqfs [trusts]. This law apparently does not appear in the Revised Edition of the Laws of Tanzania;
(x) The National Sports Council of Tanzania Act of 1976, [now Cap. 49, R.E. 2002] which governs sports organizations and clubs; and
(xi) The copyright and Neighboring Rights Act of 1999 [Cap.218, R.E. 2002] which governs copyright societies.

174. In spite of some improvement in freedom of association and formation of NGOs and unions as a result of legal reforms, there are still various legal provisions which are considered as restrictive and oppressive. For example, the Registrar of Societies is vested with vast powers to deregister any society. Besides, the law in Tanzania imposes certain restrictions on political activities by civil society organizations. For example, under Section 12 (i) of the Societies Act, the Registrar of Societies may use his discretion to cancel at any time the registration of any local society. Such powers can be exercised if the Registrar "is satisfied" that the society concerned "is a branch of or is affiliated to or connected with any organization or group of political nature established outside Tanganyika." Indeed, apart from restricting civil society organizations to have any political affiliation, the state is not tolerant of civil society organizations which seem to be critical of the government. The banning of Haki-Elimu activities in 2007 for publicizing the critical view on the government performance in the education sector is a testimony to the continuing intolerance of the critical views by civil society organizations in Tanzania.

Media and the Right to Information

175. According to Article 18 of the United Republic of Tanzania Constitution, "every person has the right to freedom of opinion and expression and to seek, receive and impart or disseminate information, and ideas through any media regardless of the frontiers" and that "every citizen has the right to be informed at all times of various events in the country and in the issues of importance to the society".

176. Newspapers are registered and regulated by the Newspaper Act of 1976. According to the legal definition, newspapers include magazines and tabloids. The Government Information Bureau is charged with the responsibility to register and regulate newspapers. However, it is difficult to get up-to-date data on ownership and diversity of the press. It is estimated that there are 245 private newspapers, over 134 newspapers owned by the

government agencies and departments and bout 44 religious newspapers. This figure includes dailies, weeklies, bi-monthlies, etc. There are four major private media houses in Tanzania. These are: (i) IPP media, which owns nine titles of newspapers, two radio stations, and two TV stations; (ii) Business Times, which owns four newspaper titles, and an FM radio stations; (iii) Habari Corporation, which owns four newspaper titles; and (iv) Mwananchi Corporation, which owns three newspaper titles. In addition to these, there are ruling party newspapers and a radio station, government media house with newspapers, radio and a TV station, religious newspapers and radio stations.

177. The Newspaper Act of 1976 contains many restrictions on the freedom of the press. Section 5(2), for example, grants vast powers to the minister responsible for Information to deregister any newspaper he/she thinks does not qualify. Similarly, section 25 (1) gives the minister powers to ban any newspaper at any time he/she deems right to do so. Again, section 22 gives the police powers to search and cease any publication, which is thought to be seditious. Besides, the Act provides criminal sanctions for libel (i.e., publishing information which the government considers to be offensive to it).

178. On the other hand, licensing and regulation of electronic and postal communications – broadcasting services, internet, mobile phones operators, private data communications, and postal and courier operators' regime - are governed by the Tanzania Communications Regulatory Authority Act (TCRA) of 2003. Unlike the Newspaper Act, the enactment of TCRA involved participation of the key stakeholders and thus it provide broader freedom than the Newspaper Act. It is argued, however, that the powers of giving directives and appointment of board members by the minister may limit the independence of the authority as a regulator.

179. Freedom of opinion and expression as enshrined in Article 18 of the URT Constitution is however constrained as it is silent on the right to access information. There are several pieces of legislation which contain provisions infringing the right to access information. The National Security Act, Cap. 47, for example, grants absolute discretion to the government to define what should be disclosed or withheld from access by the public and makes it a criminal offence to investigate, obtain, possess, comment on, pass on or publish any document or information which the government considers to be classified.

180. The concept of "classified information" has been used and may be used to hide *ultra vires* conduct by government authorities. The law contains provisions on protection of classified information. According to this law, "classified" information has been broadly interpreted. It includes all government official documents marked "confidential", "secret" or "top secret". It also includes documents of specified authorities including Local Government Authority, the ruling party, and a company dully registered under Companies Act, Cap. 212 of Laws R.E. 2002 whose 50 percent shares are owned by the government and all parastatal organizations. There have been incidents where people have unduly suffered from improper interpretations of the law. For example, in *Republic v. Adam Mwaibabile*[45], the appellant was first arrested and then sentenced to one year in jail by the district court in Songea for possessing a "classified matter" relating to National Security. Later it came to be revealed that the so called "classified" document was a letter maliciously written under the order of the Regional Commissioner to deny him a business license due to personal grudges between him and the appellant. There was nothing in the letter related to national security as it had been

[45] High Court of Tanzania, Criminal Appeal No. 1 of 1997 (unreported).

claimed. Besides, investigative journalism is seriously constrained by the lack of legal provisions guaranteeing the protection of sources of information, including whistle blowers.

181. Since 2006 there has been an attempt by the government to involve a broad range of stakeholders in drafting a bill on Freedom of Information Act. After a long process, which lasted for about 8 months the government prepared the bill which was to be tabled in parliament in 2007, but as we write this report, the bill is yet to be tabled. When it was first released it attracted considerable criticisms from the public and particularly media institutions. One of the serious deficiencies that were pointed out by the stakeholders was the absence of legal protections for whistle blowers. It seems some progress has been made and there are prospects that the new legislation will largely reflect the preferences and opinion of the public and media stakeholders.

182. Over the past ten years there have been incidents of harassment, intimidation and obstruction of journalists. Among the recent incidents include the case at Ukonga, Dar es Salaam where the journalists were severely beaten up by the prison wardens in 2005, and the arrest and detention of Mwinyi Sadallah of *the Guardian* in Zanzibar on 26 October 2007. More distressing, in January 5, 2008, Saed Kubenea (editor) and Ndimara Tegambwage, (consultant) of the Kiswahili weekly, *MwanaHalisi* were attacked by unknown criminals using acid apparently following their uncovering of a series of major corruption scandals involving highly placed government officials and big businessmen. In October 2008, *MwanaHalisi* was banned by the government for three months allegedly for having published a seditious article.[46] Besides, there have been incidents whereby journalists who are perceived to be critical of the government of the day are arbitrarily stripped off of their citizenship. In 2001, for example, Jenerali Ulimwengu, one of the seasoned and outstanding journalists in Tanzania had his citizenship withdrawn by the authorities. Again, in 2006 the late Ali Mohammed Nabwa of *Dira* journalists was also stripped off of his citizenship status.[47]

183. On the other hand, the professional code of ethics for the media is overseen by the Media Council of Tanzania (MCT), which is a voluntary self-regulatory independent body. Its responsibility is to handle complaints submitted by members of the public on alleged acts of violation of the Code of Ethics by the media outlets. On the whole, in spite of all the constraints including legal and political, the media in Tanzania, particularly the private media has been aggressively striving to assert its independence and has over the last ten years been instrumental in the democratization process and in promoting government accountability. In a context, where opposition parties are generally viewed as relatively weak, the media, particularly the private one, has been striving to fill the gap. The media, for example, has been revealing sensitive information relating to abuse of power by the authorities including publishing cases of grand corruption (see details of corruption cases in Objective Six).

[46] The article published was titled "Njama za kumng'oa Kikwete zafichuka" [literally, "Plot to unseat Kikwete uncovered"] in *MwanaHalisi*, Issue No 118, October 14, 2008). Interestingly, less than a month a government owned daily, *Habari Leo* published an article "*Kundi la Wabunge wa CCM Lasuka Zengwe la EPA* "virtually with a similar theme (suggesting that CCM MPs are against the government and the President) and some CCM members of Parliament led by Christopher ole Sendeka (MP-Simanjiro) queried the justification of banning *MwanaHalisi* and exempting *Habari Leo* (See *Mwananchi*, November 8, 2008). This suggests that the government is not simply not interested in safeguarding professional ethics in journalism but is intolerant of criticism particularly by the private owned media.

[47] Later, however, both of them had their citizenship restored. The withdrawal of their citizenship status was apparently aimed at undermining their confidence, that in spite of all the criticisms they were leveling against the government of the day "they were not *bona fide* citizens of Tanzania".

Rule of Law and Supremacy of the Constitution in Practice

184. Rule of law and supremacy of the Constitution in practice are indispensable ingredients for constitutional democracy and good governance. In this section, we shall review the legal provisions providing for the rule of law and supremacy of the Constitution. More emphasis will be devoted to the discussion on the effectiveness of the institutions charged with the responsibility of ensuring that the rule of law and supremacy of the constitution are realized in practice.

185. The Tanzanian judiciary has had also an opportunity, on several occasions, to construe the term rule of law. In the case of *Chumchua Marwa v. The Officer I/C of Musoma Prison and the Attorney General,* for instance, his Lordship Justice Mwalusanya had the following to say:

> "Rule of Law means more than acting in accordance with the law. The Rule of Law must also mean fairness of the Government. The Rule of Law should extend to the examination of the ideal; and that the law does not give the Government too much power. The Rule of Law is opposed to the rule of arbitrary power. The Rule of Law requires that the Government should be subject to the law rather than the law subject to the Government. If the law is wide enough to justify dictatorship then there is no Rule of Law". [48]

This conceptualization emphasizes one important point that it is not sufficient for the government to act in accordance with what the law provides. Rather, the law must in itself be just and fair. To put it differently, the law should not be discriminatory or oppressive either by the letters or its intent.

186. Since the term rule of law is a dynamic concept, it is difficult to assign a universal definition. However, as rightly put by Shivji, we can only define rule of law by outlining its minimum elements. According to him, rule of law embodies the following elements:[49]

(i) Exercise of political and public power in accordance with the law or rules;
(ii) The law should be made by a representative body duly authorized by the people to make law;
(iii) The law must be just and fair;
(iv) The makers of the law should not be the same people who determine what the law means;
(v) The law should treat all human beings equally regardless of their origin or socio-economic condition; and
(vi) The law should not be contrary to basic human rights.

In principle, these minimum requirements are wide enough to explain the meaning of rule of law in its broadest sense. Now the relevant question here is do these minimum standards of rule of law exist under the Tanzanian legal system? This question takes us to the review of the legal framework for rule of law in the following sections.

Legal Framework for Rule of Law

187. The foundations of rule of law are anchored in the Constitution.[50] The Articles which enshrine this constitutional principle are scattered throughout the Constitution. The first

[48] High Court of Tanzania at Mwanza, Miscellaneous Criminal Cause No.2 of 1988(Unreported)
[49] Shivji, I. G. (2003) "Constitutional Limits on Parliamentary Powers" in *The Tanganyika Law Society Journal*, October, pp. 45-46.
[50] The Constitution of the United Republic of Tanzania,1977 (Cap.2 R.E 2002)

package of these provisions runs from Articles 12 to 24. These provisions constitute the Bill of Rights. They spell out fundamental rights and basic freedoms of individuals. Generally speaking, these articles guarantee the right to life, equality before the law, freedom of movement, right to privacy, freedom of speech, right to work, right to fruits of one's labour, freedom of association, right to own private property and right of worship.

188. The other important provision is article 107A. This Article guarantees the independence of judiciary. The latter is an important component of rule of law. The judiciary adjudicates over legal disputes including breaches of the fundamental rights and basic freedoms of individuals. The realization of a meaningful rule of law therefore depends on the existence of an independent judiciary which is able to adjudicate without fear, favour or any influence from any body.

189. Apart from the judiciary, there is another institution which enforces rule of law in Tanzania. This is the Commission for Human Rights and Good Governance (CHRGG). This Commission is established under article 129 of the Constitution. One of the important functions of CHRGG is to investigate breaches of fundamental rights and freedoms of individuals and good governance. It may institute legal proceedings to prevent such breaches and violations of human rights.

The Judiciary and the Rule of Law

190. As pointed out before, the fundamental legal provisions for the rule of law in Tanzania are contained in the Bill of Rights. Some authorities have asserted that there cannot be rule of law in any society if there is no Bill of Rights.[51] This assertion is partly correct for two reasons. First, the Bill of Rights may be tailored in such a way it is practically impossible to realize those rights in practice. The second reason is that the institutions of enforcement may not be strong to enforce the Bill of Rights. However, excellent it has been formulated, in both cases one cannot claim that a particular society has a rule of law. It is argued by some scholars that the Tanzanian Bill of Rights is state-centric, vague in its formulation and incomplete.[52] Its provisions are undermined by what are known as 'claw-back clauses'. These clauses extremely qualify these rights to the extent that it is often thought by legal scholars and judges that the rights are given by one hand and taken away by the other. Despite these shortcomings, the courts have tried to be progressive in some cases to give effect to the Bill of Rights having regards to the global standards.[53] This is a positive step on the part of judiciary in upholding the rule of law.

191. There is however, a growing tendency by the Government to undermine the courts from these efforts to streamline the Bill of Rights. In 1988, for example, the High Court of Tanzania declared the whole of the Deportation Ordinance, 1921 unconstitutional. This was

[51] Wambali, M.K.B, 'The Doctrine of Rule of Law and the Functioning of Government in Tanzania' in Okema and Mtaki (eds) Constitutional Reform and Democratic Governance in Tanzania, at p.125

[52] Luoga, F.D.A.M, 'The Tanzanian Bill of Rights' in Chris Maina and Ibrhahim Juma, Fundamental Rights and Freedoms in Tanzania(eds), Mkuki na Nyota Publishers, 1998, at p.43.

[53] See: the most recent judgments in Rev. Christopher Mtikila v. Attorney General(1995) T.L.R 31; Julius Ishengoma Francis Ndyanabo v. Attorney General, Court of Appeal of Tanzania, at Dar es Salaam, Civil Appeal No.64 of 2001(Unreported); Jackson Ole Nemeteni and Others v. Attorney General, High Court of Tanzania, at Dar es Salaam, Misc. Civil Cause No. 117 of 2004(Unreported); Christopher Mtikila v. Attorney General, High Court of Tanzania, at Dar es Salaam, Misc. Civil Cause No. 10 of 2005 (Unreported); Legal and Human Rights Centre and Another v. Attorney General, High Court of Tanzania, at Dar es Salaam, Misc. Civil Cause No. 77 of 2005 (Unreported).

in *Chumchua Marwa's case*. The Attorney General did not appeal. However, the Government opted to amend the non-existent Deportation Ordinance, 1921 by trying to make it more humane.[54] The second time was in 1994 in the case of *Rev. Christopher Mtikila* (the 'first independent candidate' case). In this case the court declared that "it shall be lawful for independent candidates along with candidates sponsored by political parties, to contest presidential, parliamentary and local council elections".

192. After this decision the Attorney General filed an appeal.[55] While this appeal was still pending in the court the Government processed a bill to amend the constitution in such a way that it had the effect of rendering the ruling of the court ineffective or a nullity. In this incidence the Government was pursuing two parallel causes of action to reach the same destination. The first cause of action was to deal with the matter through the Legislature while the other was through the court of law. This amendment led to a new petition by *Rev. Christopher Mtikila* (the 'second independent candidate' case) in 2005.

193. In 2001 the Government continued this practice for the third time. This was after the Court of Appeal's decision in *Ndyanabo.*[56] In this case, the court declared section 111(2) of the Election Act, 1985 unconstitutional for breaching Article 13(1), (2) (6)(a) of the Bill of Rights which guarantees the right to access justice. This section required a deposit of Tshs. 5 Million to be provided by a petitioner as security before an election petition case could proceed to a hearing. In this third time, the then Speaker of the Parliament of the United Republic of Tanzania, Mr. Pius Msekwa made a call to Parliament to quickly enact a law which would render the court's decision unenforceable.[57]

194. Through Act No. 25 of 2002, the Election Act, 1985 was amended. Section 111(2) of the latter law which was declared unconstitutional was retained. However, a new sub-section was added to vest the court with discretionary powers to determine any other form of security less than 5 million shillings or exempt the petitioner from depositing the security.

195. The above trend does not augur well with the observance of rule of law in Tanzania. If courts' decisions are rendered impotent by the Government through Parliament by amending the constitution or legislation to maintain the unconstitutional laws and virtually the status quo, then, the practice of rule of law and separation of powers in the country are questionable. On the other hand, however, currently one can observe some improvement in the government's willingness, particularly by the parliamentary select committees to investigate cases of grand corruption (see objective six) involving highly placed government officials, a measure which reduces impunity of top government officials and businessmen. On the whole, however, there is still a long way to go before one can confidently and objectively believe that there is adequate respect for rule of law in Tanzania.

The Commission for Human Rights and Good Governance and the Rule of Law

196. The Commission for Human Rights and Good Governance (CHRAGG) was established under Article 129(1) of the Constitution of the United Republic of Tanzania of 1977 as amended by Act No. 3 of 2000. The Commission became operational in June 2001 and was officially inaugurated in March 2002 following the appointment of Commissioners by the

[54] The amendment was effected through Act No. 3 of 1991.
[55] This was Civil Appeal No. 3 of 1995
[56] This is the Supreme Court in Tanzania.
[57] Shivji, I.G. 'Constitutional Limits on Parliamentary Powers' in The Tanganyika Law Society Journal, Special Edition, October, 2003, p. 41.

President of the United Republic. The Commission was initially only operating on the Mainland due constitutional and legal problems but now it has extended its mandate to Zanzibar. It has established an office in Unguja and is in the process of establishing one in Pemba. Article 130(1) (a) – (h) of the URT entrusts the Commission for Human Rights and Good Governance with the responsibility of protecting and promoting human rights in the country. Article 130 (2) provides that the Commission is an independent department in discharging its functions.

197. The Commissioners are appointed by the President after receiving recommendations of the Appointment Committee. The Committee is comprised of the Chief Justice of the Court of Appeal, the Speaker of the National Assembly, Chief Justice of Zanzibar High Court, the Speaker of the House of Representatives and Deputy Attorney General, who is the Secretary of the Committee. The appointment procedure starts with advertisement of the positions of Commissioners in the media, then the Committee shortlists qualified applicants and advertises them to the media for receiving public comments. The shortlisted applicants are then interviewed and thereafter the committee sends its recommendations to the President.[58]

198. However, the Commission's powers and independence are limited in a number of ways. First, Article 130 (3) provides that, the President can order the Commission to do anything he deems fit. Similarly, Article 6 prohibits the Commission to investigate the president. Second, although the Commission has its own budget vote, Article 131 (3) provides that the Commission secures its budget through the minister responsible for Human Rights and Good Governance. Third, the commission's decisions are not binding. It can only take human rights' violation cases to the court of law.

199. Although the Commission is supposed to be a statutory independent body, it is highly constrained by the political environment within which it operates as the former Chairman of the Commission, Justice Robert Kisanga aptly noted in 2005 that "the lack of institutional cooperation and good faith by the Government impeded investigations as public servants either delayed in answering the Commission's letters of inquiry or outright refused to do so."[59]

200. Since its establishment in 2001, CHRAGG's record of performance is mixed. It has some success stories and distressing ones. As of July 2008 31, CHRAGG had received and dealt with 22,812 complaints relating to human rights and maladministration. Out of these, 2,237 (10 percent) were inherited from the defunct Permanent Commission of Inquiry. Out of the total number of the complaints received, 22,322 complaints (98 percent) relate to abuse of principles of good governance and 490 complaints (2 percent) relate to violation of human rights. A total of 14,954 complaints (70 percent) have been dealt with to completion by the Commission since its establishment. About 7,755 complaints are still under investigation.

According to the Commission's report, by May 2008, about 64 percent of the received cases had been investigated to completion. The findings from investigations indicated that 20.7 percent of the complaints investigated were justified and the Commission's recommendations were honoured. On the other hand, 13.3 percent of the investigated complaints were found unjustified and 45 percent were referred to appropriate authorities and out of these 20.9 percent were rejected. That is to say, government authorities are not yet clearly receptive of

[58] Although the appointment procedure seems to be rigorous, given the political environment in Tanzania, there is no guarantee that the appointment will not be influenced by politics.
[59] Cited in Global Integrity, 2006 Country Report.

the Commissions' recommendations. The rate of rejection is relatively on the high side suggesting an apparent poor goodwill.

201. There are two landmark cases where appropriate authorities did not take action as CHRAGG recommendations. The first one is the Nyamuma case. In 2001 the Commission received the first case brought by Nyamuma village in Serengeti District against the District Commissioner for Serengeti District, Office Commanding District and the Attorney General.[60] The case was brought by the village on behalf of 135 villagers who were evicted from their residential areas by the district authorities. The Commission investigated into the matter and found the district authorities responsible for the violation of human rights. The Commission was satisfied that the complainants were lawful residents of the disputed area. In line with the findings, the Commission issued a number of recommendations. These included: relocation of the complainants in their areas, the complainants had a basic right to be compensated for their properties amounting to Tshs 890 million, the complainants are entitled to urgent humanitarian assistance in order to bring them back to their normal way of life and finally that the Government should take action to some of its officers.

202. The Commission's recommendations are required, by law, to be implemented within three (3) months after they are issued.[61] In case the appropriate authority fails to implement such recommendations, the Commission may initiate legal proceedings before the court of law for enforcing its recommendations.[62] In this case the Commission's recommendations were issued on December 13, 2004. At the expiry of the three months the Government had done nothing to implement these recommendations. However, on May 18, 2005 the then Attorney General informed the Chairman of the Commission that the Government had investigated the issue and discovered that most of the recommendations made by the Commission were based on fabricated evidence.[63] In essence, the Government was denying the existence of any violation of human rights in spite of the fact that there was a full hearing of the evidence from the district authorities and the government was well represented.

203. In another landmark case, CHRAGG initiated investigation after the death of 17 convicted and remanded prisoners in Mbarali. After the investigations, CHRAGG issued a report with recommendations for an out-of-court cash settlement to relatives of the diseased and the survivers of the suffocation due to lack of air. The appropriate authorities however, were reluctant to take action that it would be prudent to wait for court decision regarding the case of manslaughter filed against the policemen who were on duty on the night when the deaths occurred. In 2008, the Court convicted some of the policemen on manslaughter and CHRAGG has revived the case by seeking administrative justice.

[60] Case No. HUB/S/1032/2001/2002/MARA.

[61] Section 28 (2) of the Commission of Human Rights and Good Governance Act, Cap391 provides 'The appropriate authority shall, within such time not exceeding three months from the date of recommendation as the Commission prescribes, make a report to the Commission with details of any action taken by such authority to redress the impugned fundamental rights or acts of maladministration'.

[62] Ibid Section 28 (3) provides 'If within the prescribed time after the report is made no action is taken which seems to the Commission to be adequate and appropriate, the Commission, may after considering the comments, if any, made by or on behalf of the department, authority or person against whom the complaint was made either, bring an action before any court or recommend to any competent authority to bring an action and seek such remedy as may be appropriate for the enforcement of the recommendations of the Commission'.

[63] Legal and Human Rights Centre, 'The Human Calamity of Evictions at Nyamuma-Serengeti' March, 2006 at page 65.

204. Apart from political constraints notably of working in a restrictive political environment where the government authorities are not quite receptive to the Commissions recommendations, the Commission is also constrained in budgetary allocations and human resources. At the moment it has 7 Commissioners and 192 members of professional staff out of 252 required by the Commission.

205. On the whole, the Commission has been improving its performance as well as its image in the eyes of the public. In addition to a number of complaints received and handled, among the success stories of the Commission include conducting prisons and police stations' inspection. By May 2008, it had inspected 173 prisons and 282 police stations in the country. It has made many recommendations for the improvement of living standards and human dignity of prisoners and detainees. Among the recommendations which have been implemented by the authorities include increasing meal budget, easing facilities outside the cells, reducing overcrowding of inmates and using spongy mattresses instead of simple mates (*virago*) and transport facilities using buses instead of unventilated trucks (*kalandinga*).[64]

206. Furthermore, the Commission has been carrying out programmes for people's awareness on human rights and good governance, conducting research and issuing reports with recommendations, monitoring compliance to international and regional conventions on human rights and has been closely collaborating with CSOs in monitoring human rights and principles of good governance.

Mob Justice and Rule of Law

207. Apart from the formal institutional arrangements, the legal system and state enforcement of the rule of law, there is also civil society's dimension in the realization of the rule in every day's life. In recent times (particularly from the mid 1980s following the collapse of socialism and the introduction of a free market economy with its attendant consequences of increased poverty and income inequalities, as well as corruption and relatively low faith in the law enforcement organs), there has been a growing phenomenon of mob justice in Tanzania which constitutes a significant threat to the rule of law. Numerous instances are reported of criminals and petty thieves or suspected thieves who are set ablaze by people in what is commonly referred to as mob justice (*wananchi wenye hasira*). The following cases are striking illustrations of this phenomenon. It was reported, for example, in Chato District in Kagera region and Ilongero village in Singida region that the problem reached an extreme edge when people invaded police stations and attacked the police in an effort to punish suspected criminals. Sadly in both incidents the mobs managed to break into the police stations and seize the accused persons, beat them up and eventually set both the accused persons and the police stations on fire.[65] Such incidents are not only reported upcountry, but they are also quite common in Dar es Salaam, the commercial capital.[66]

208. Analytically, the government cannot extricate itself from the general responsibility of maintaining law and order and ensuring security of its citizens including protection of their lives. There is no denying the fact that one of the reasons for the growing incidents of mob justice is the people's negative perception of the integrity and effectiveness of the formal institutions of the state of maintaining law and order including the police force and judiciary.

[64] Based on interviews with CHRAGG officials on May 11, 2008.
[65] The *Gurdian* 22 December, 2007.
[66] Tanzania Human Rights Report, 2005: 13.

209. According to the APRM Survey, 2008, the ordinary people's opinion regarding the rule of law in the country is sharply divided almost along the middle. Whereas 56.9 percent of the respondents said that the rule of law is always or often respected, 43.1 percent of the people are of the view that it is sometimes, occasionally respected or not respected at all. The 8 percent of the respondents who said that the rule of law is not respected at all is actually a significant minority which cannot be simply ignored. A related question was asked as to whether the rule of law is observed without discrimination - 54.2 percent of the respondents answered in affirmative, 30.5 percent said No and 15.3 percent said they do not know. The persistence of acts of mob justice attests to the fact that a significant proportion of the citizenry do not have faith in the existing degree of rule of law and hence resorting to taking law in their own hands.

210. The ordinary respondents' perception of the level of rule of law is complemented by the expert opinion which indicates that about 44.1 percent of the respondents among experts are of the view that provisions establishing the rule of law and the supremacy of the constitution in practice carry moderate weight, and 9.8 percent said carries light weight. It is only 7.8 percent who said that they carry very heavy weight and 38.2 percent said that they carry heavy weight.

Supremacy of the Constitution in Practice

211. The notion of supremacy of the constitution is in principle applicable in states with written constitutions[67]. This notion simply means that the constitution is the superior law in a national legal system. The validity of any other law must be tested from the Constitution. However, the validity of the Constitution is inherent in itself. In the case of *Kesavananda v. State of Kerala*[68] Ray, J. observed; "In the case of the Constitution the validity is inherent and lies within itself. The validity of constitutional law can not be justified by reference to another higher law. Every legal rule or norm owes its validity to some higher legal rule or norm. The Constitution generates its own validity. It is valid because it exists. The Constitution is binding because it is the Constitution. Any other law is binding only if and in so far as it is in conformity with the Constitution. The validity of the Constitution lies in the social fact of its acceptance by the community".

212. In jurisdictions with a written constitution like Tanzania, the constitution establishes the three pillars of the state namely, the legislature, executive and judiciary. It then gives powers and limitations for the exercise of such powers to each of these pillars. This means that the powers vested in these organs should not be exercised in excess. In event this happens, the judiciary invalidates any action taken in excess of the constitution.

Legal Framework for Supremacy of the Constitution

213. Article 8(1) (a) of the Constitution provides that sovereignty resides in the people and it is from the people that the Government through this Constitution shall derive all its power and authority. This article stipulates two important principles, the sovereignty of the people and supremacy of the Constitution.The supremacy of the Constitution is more evident in Article 64(5) of the Constitution. This article provides:

> This Constitution shall have the force of law in the whole of the United Republic, and in event any other law conflicts with the provisions contained in

[67] The notion does not apply in states with unwritten constitution like the United Kingdom.
[68] 1973 S.C 1461,1654, para.787

this Constitution, the Constitution shall prevail and that other law, to the extent of the inconsistency with the Constitution, shall be void.

The other provision with the same effect to that of Article 64(5) of the Constitution is Article 30(5). However unlike the former provision Article 30(5) concerns the violations of the Bill of Rights. Again this article makes options for the court to pursue when it finds any law in conflict with the provisions of the Bill of Rights. The first option is to declare the law unconstitutional while the second is to advise the Government to remedy the situation within a specific period instead of declaring it unconstitutional.

Procedure to Amend the Constitution

214. The law governing the procedure for enacting, amending or repealing any legislation is provided by Part Eight of the National Assembly Standing Orders, 2001 Edition, hereinafter reflted to as the Standing Orders. With the exception of financial matters whose legislative procedure is governed by Part Nine of the Standing Orders there is no special procedure for legislating on any other matters including Constitutional amendment. This means that the ordinary legislative procedure is applicable for Constitutional amendment. However the only difference is on the voting procedure and number required to pass the Bill. Standing Order 73(2) states: "A motion to pass any Bill for the amendment of the Constitution shall be decided in accordance with Article 98 of the Constitution at the Third Reading of the Bill. For that reason, votes shall be cast by calling the names of Members, one at a time".

According to Article 98 of the Constitution the vote required to pass a Bill on Constitutional amendment must reach two-thirds of all the Members. However, if the amendment sought to be made relates to Union matters in the First Schedule of the Constitution, the vote required is two-thirds of all the Members from Mainland Tanzania and two-thirds of all the Members from Tanzania Zanzibar. Every Bill starts by publication in the Government Gazette.[69] The publication must be made at least twice at an interval of not less than seven clear days between the first and second issue. After publication the bill has to be read for the first time (First Reading of the Bill)[70]. After the first reading, the Bill is referred to the appropriate standing committee depending on the nature of the Bill and how it relates to a specific standing committee. The standing committee considers the Bill and prepares its report. This leads to the Second Reading of the Bill.[71] The chairperson of the standing committee gives the views of the committee. If the Bill is from the Government as in the case of Constitutional amendment, the spokesperson of the Opposition parties will be given an opportunity to give the views of the opposition. But if the Bill, is a Private Bill the spokesperson of the Government will be given an opportunity to give the views of the Government. It is at this stage also members may debate the general merits and principles of the Bill.

After the Second Reading, the Bill is referred to the standing committee for the second time for scrutinizing the proposed amendments. Thereafter, the Bill is brought back to the House where the Assembly after resolving itself into a Committee of the Whole Assembly, debates and passes, or makes amendments and pass the Bill[72]. After this stage the Bill is read for the last time (the Third Reading of the Bill)[73]. At this stage a declaration is made that the

[69] National Assembly Standing Order 67
[70] Ibid 69
[71] Ibid 70
[72] Ibid 72(1)
[73] Ibid 73(1)

Committee of the Whole Assembly has scrutinized and approved the Bill without amendments or with amendments. After this third reading the bill is deemed to have been passed and a copy of the Bill is presented by the Speaker to the President for his assent.[74]

215. The amendment of the Constitution in Tanzania is not a difficult procedure as some authorities tend to think. This is because it follows the same procedure just as an ordinary piece of legislation. Since the Tanzanian Parliament is dominated by the members of the *Chama Cha Mapinduzi (CCM)*, the ruling party, any motion of the Government to amend the Constitution has never found resistance because of the principle of party whip. The two-thirds required vote of all members has always been easily reached. It is submitted that the instances where the legislature has been in tension with the judiciary on the question of supremacy of the constitution, motions for amending the Constitution had swiftly sailed in the Parliament.

216. The core of this tension is the power vested in the judiciary to declare Acts of Parliament unconstitutional where the former is satisfied that such Acts of Parliament were made in excess of the power given to it by constitution. Before the inclusion of the Bill of Rights in the Constitution in 1984 via the *5th Constitutional Amendment*, the courts had no such power. This period witnessed enactments of a number of unconstitutional laws[75]. This is because the Bill of Rights which is normally the scale against which an Act of parliament is measured was not available in our Constitution.

217. Tension started after the inclusion of the Bill of Rights in the Constitution in 1984. The Bill of Rights was suspended for three years to give the Government time to adjust its laws to conform to the Bill. The first landmark case in which the court invalidated an Act of Parliament was in 1988 in the *Chumchua Marwa's* case (supra). In this case the High Court of Tanzania declared the whole of Deportation Ordinance, 1921 unconstitutional. However, instead of appealing, the Government consolidated it and the law continued to be operational.

218. The tension between the judiciary and parliament went on until in 1993 after the decision in *Mtikila's* case (1st private candidate case) (supra). In this case the court declared unconstitutional provisions of various enactments. The Government amended the Constitution to continue to disallow private candidates in elections. The scramble for supremacy between the Constitution and Parliament reached its zenith after the pronouncement in the case of *Ndyanabo* (supra). This last case sparked off major constitutional debates across the country where the Tanganyika Law Society (the lawyers' association in Tanzania), legal academics, human rights' activists and members of the general public reacted against the then Hon. Pius Msekwa, the Speaker of the Parliament, who called upon the Parliament to exercise its power to check the judiciary. This was considered by some analysts as an act of serious erosion of supremacy of the constitution for the parliament itself is the creature of the constitution.

219. The issue of supremacy of the constitution was also given prominance in the landmark case of 'Serikali ya Mapinduzi Zanzibar' (S.M.Z) v. Machano Hamis Ali and 18 others. In this case, the eighteen accused persons were charged with treason (c/s 26 of the Penal Code Decree [Cap.13 of the Laws of Zanzibar]). The accused raised four preliminary objections. However, one interesting issue was constitutional, and very specifically, on the 'possibility or

[74] Ibid 75

[75] James Mapalala, for example, was detained without trial under the Preventive Detention Act, 1962 after petitioning to the National Executive Committee of the ruling party for the abolition of the single party system.

impossibility to commit treason in Zanzibar'. In this case the High Court of Zanzibar ruled that it is possible to commit treason in Zanzibar due to the fact that, Zanzibar assumes duty of a state government. However, the Court of Appeal of Tanzania ruled that it is impossible to commit treason in Zanzibar due to the fact that Zanzibar is not a sovereign state. Treason is the breach of security which in the United Republic is a Union matter as per the Constitution of the URT 1977.

Decentralization

220. Decentralization is another important indicator of good governance and constitutional democracy. In Tanzania, decentralization is provided for by both the legal framework and policy documents. In this section, decentralization will be viewed at two levels. The first level is decentralization within the central government itself, and at the second level, decentralization at the local government authorities. This section will discuss the effectiveness of the decentralized mechanisms in terms of decision-making, resource allocation, institutional capacity, and service delivery. It will also outline some of the measures taken to address the shortcomings that have been encountered.

Decentralization within the Central Government

221. At this level, the main focus is put on the Executive Agencies. These institutions are supposed to carry out their functions on an independent basis. Their powers are provided for in the constitution as well as in other legislations. Executive Agencies are semi-autonomous entities created to improve service delivery. Executive Agencies are legislated under the Executive Agencies Act No. 9 of 1999. They operate at an arms' length from their Parent Ministry from which they were derived. Currently there are 20 Executive Agencies in Tanzania. Operationally, an Executive Agency is managed by a Chief Executive who reports periodically to a Ministerial Advisory Board. The Board establishes a series of performance criteria for the Agency's performance and proceeds to monitor them on the basis of their output. Normally, Agencies retain high degrees of financial independence.

222. In terms of service delivery, according to the State of Public Service Report (2004), the agencies show improved service delivery but the impact of agency formation has been moderate.[76] The report stipulates further that, performance improvement has largely been in terms of levels of services delivered and not their quality. In terms of financial performance, for example, during the 2003/2004 financial year, Executive Agencies collected $US 27.9 Million in own revenue. However, the same report shows that Agencies have become more dependent on Government right from their formation.

223. Executive Agencies, it is argued by some scholars, have no adequate powers to make their own independent decisions. Kihamba (2008:110), for example, observes that government intervention limits the capacity of Executive Agencies to recruit new staff and do not have power to make decisions concerning human resource management. Most of the decisions come from the central government organs (Presidential Office – Public Service Management and the Parent Ministries). On the whole, however, it has to be acknowledged that some progress has been made in this area. If one compares how executive agencies and public corporations were operating under a single party system and centralized economy and the current situation under economic liberalization and multiparty politics, there is a marked contrast in terms of the nature and functioning of executive agencies and public corporations.

[76] Government of Tanzania (2004) State of Public Service Report.

Decentralization of Local Government Authorities

224. Local Government Authorities in Tanzania derive their powers and authority from the Constitution. Articles 145 and 146 of the Constitution of the United Republic of Tanzania 1977 provide for the establishment, purpose, composition, source of revenue and functions of Local Governments. Article 146(1) of the Constitution specifically states that the purpose of having Local Government Authorities is "to transfer authority to the people". Local Government authorities have been given power to participate and to involve the people in the planning and implementation of development programmes within their respective areas and generally throughout the country. They perform the following mandatory functions: to perform the functions of Local Government in their area; to ensure the enforcement of law and public safety of the people; and to consolidate democracy within their area and to apply it to accelerate development of the people.

225. Tanzania's Local Government system is based on political devolution and decentralization of functions and finances within a unitary state.[77] Local Governments are holistic, i.e. multi-sectoral, government units with a legal status (body corporate) operating on the basis of specific and discretionary powers under the legal framework constituted by the national legislation (i.e., Local Government Acts No. 7, 8, 9, 10 and 11 of 1982 as amended from time to time). The Local Government Policy Paper (1998) outlines four important areas with regard to decencentralization. These include the political devolution, fiscal decentralization, administrative decentralization and lastly the central – local relations to be based on partnership and not control. Besides, the Local Government Acts of 1982 mandate the Local Governments with power to carry out their functions in a frame of law.

226. The functions of Local Governments broadly include social development and public service provision within their areas of jurisdiction, facilitation of maintenance of law and order and promotion of local development through participatory processes. They are supposed to perform these functions within the limits of national policy as well as the legal framework while retaining their status as the highest political authorities within their areas of jurisdiction. The most powerful tools of councils are their annual work plans, budgets and control of resources exercised by the standing committees.

227. In terms of resource capacity, the Local Government Finance Act (1982) provides Local Government Authorities with discretion to raise own revenues through the imposition of local taxes and non-tax revenue sources from residents and businesses within their areas of jurisdiction. The adequacy and yield of local revenue collections have always been limited by shortcomings in local revenue structures and local revenue administration.

228. In terms of spending revenues, the local authorities have discretionary powers only in areas where the Central Government does not provide grants. Grants are provided for selected sectors using specific formulae. These sectors include primary education, health, agricultural extension services, water, and local roads. From 2006/2007 Local Government Authorities receive also a General Purpose Grant (GPG) whose formula consists of a fixed lump sum of 10 percent, total number of villages 10 percent, total population 50 percent, and total number of rural residents 30 percent. These grants relate to the recurrent expenditure in what is called "priority sectors". In addition to the sectoral recurrent grants, local governments also receive additional recurrent transfers for local administration, as well as a compensation grant.

[77] See Local Government Reform Policy Paper 1998.

229. For development expenditure or (capital development budget) Local Government Authorities are completely dependent on the Central Government and donors. Local Government development budget is now financed by a Capital Development Grant system (LGCDG) that is formula-based as well. The LGCDG incorporates all capital funding provided to the Local Government level, including donor funded area-based programs as well as sector specific capital development programs provided to LGAs. The implementation of the LGCDG system is guided by the *Implementation and Operational Manual, Planning Guidelines for Villages and Mitaa (Street),* and a manual for *Assessing Eligible Local Government Authorities* (URT 2007, 2004). Local Government Authorities are therefore not completely free to spend public funds made available to them.

230. The Government has designed legal and institutional mechanisms as well as instruments and procedures that bind Government agencies and LGAs in their management and disposal of public funds. In the case of LGAs these mechanisms, procedures and instruments include the following:

(i) Introduction and use of formula-based grant system;
(ii) Public funds subject to Public Expenditure Review (PER) process;
(iii) Local Government Audit Reports submitted to Local Authorities Accounts Committee (LAAC) of Parliament;
(iv) Introduction and use of minimum conditions (MCs) for LGAs to access LGCDG resources;
(v) Increased channeling of donor funds through the exchequer system/basket funding;
(vi) Development of harmonized reporting formats for LGAs;
(vii) Local Authorities Financial Memorandum 1997; and
(viii) Public Procurement Regulations 2005.

231. The effectiveness of these procedures/instruments has been mixed. Some are working well while others are not. For example the Tanzania's supreme public audit institution, the Controller and Auditor General (CAG), inspects the accounts of each LGA every year and records instances where the accounts do not give satisfactory explanation of how the money has been spent. Despite that, the CAG has done its job very well; however, no significant sanctions have been put against those who abuse the office. On the other hand, the formula-based grant system and application of minimum conditions (MCs) for LGAs to access LGCDG resources is working very well. LGAs that do not qualify for the five grants under this system do not access the funds.

Decentralization and the Quality of Governance

232. Local Government Authorities, as we have explained above, do not make policies as such but they are free to make decisions including making by-laws to operationalize national policies and programs in their areas of jurisdiction. Local Authorities enlist stakeholder to participate in public hearing meetings (*midahalo ya wazi*) and monthly ward meetings called and chaired by Councilors in their respective wards. LGAs (councils) are also required to outsource service provision and there is a Government circular to that effect. Guidelines have also been issued to LGAs that are followed in outsourcing service provision (URT 2004). It is therefore a legal and institutional requirement that the LGAs have to cooperate with all stakeholders in discharging their responsibilities, performing their functions and roles. It must be noted, however, that this cooperation is currently constrained due to a number of factors such as:

(i) The private sector is still at its infancy and lacks capacity to effectively play its role in service provision;
(ii) There is still mistrust and uneasy relations between LGAs staff and the private sectors and CSOs in general;
(iii) The concept of local ownership (PPP) is not yet fully grasped and the Central Government enjoys prerogatives to issue guidelines, directives and orders; and
(iv) The process of devolving power and authority (political and financial) beyond the council down to the wards and villages is on-going.

233. The dominant opinion among the ordinary people according to the APRM Household Survey is that the devolution of power from the Central Government and lower levels from the region to the village/street is still inadequate. From the findings the lower the level of administrative/government authorities the lower the level of devolution of power. Whereas at the regional level the average of "to a very large extent" and "to a large extent" accounts for 41.5 percent, at the district level is 38.4 percent, at district council level (36.4 percent), ward/*shehia* level (38.8 percent) and village/street level only 36.2 percent..

234. According to the APRM Expert Survey (N=102), the level of improvement in decision making, resource allocation and institutional capacity brought by decentralization has reached an appreciable degree. Among the expert respondents, 6.9 percent said that the level of improvement is highly appreciable, 41.2 percent said that it is appreciable, 40 percent said that it is moderate, 9.8 percent said that the improvement is negligible and 2 percent said that there is no improvement at all. That is to say, the overall opinion of the ordinary respondents and expert is generally positive regarding the extent to which the decentralization process has improved decision making, resource allocation and institutional capacity.

235. In the case of Zanzibar, however, the process of devolution of power to the grassroots has been seriously constrained by the political hostilities between the two main political parties. The level of decentralization of administrative authority responsibilities is very low. The village executive officer (*sheha*) who is actually a representative of the Central Government is an appointee of the Regional Commissioner. As a result of persistent political conflicts, the level of cooperation of the people in the grassroots in decision making and development activities is very low.

Accountability of Defence and Security organs

236. The main defense and security organs in Tanzania comprise the army, police, prisons and the national service forces. Article 147(2) of the Constitution states that the Government may establish these forces. In giving effect to this provision the Government established the armed forces through Acts of Parliament.[78] The President of the United Republic of Tanzania is the Commander-in-Chief.[79] He is vested with power to appoint the heads of the armed forces.[80] He can as well remove them from power.

237. Article 107A of the Constitution of the United Republic of Tanzania vests the final authority of the administration of justice in the judiciary. This logically means that the defense and security forces are also subject to oversight of the judiciary. Army officers are bound to obey the law in the same manner as ordinary citizens. When these officers violate

[78] See for example, The National Defence Act, Cap. 192 R.E 2002;The National Service Act, Cap 193 R.E 2002; The Prisons Act, Cap 47 R.E 2002 and The Police Force and Auxiliary Services Act, Cap 322.
[79] Article 33(2) of the Constitution of the United Republic of Tanzania, 1977(Cap.2 R.E 2002)
[80] Ibid Article 148(2)(a)

the law, are not supposed to receive different treatment from ordinary citizens. However, there are offences which are exclusively handled by disciplinary bodies in the army circles. Although the jurisdiction of civil courts is excluded from these offences, the aggrieved party may resort to the court of law through judicial review procedure for a remedy. For example, the martial courts are vested with exclusive jurisdiction to deal with offences stipulated in the Code of Service Discipline under the National Defense Act, Cap.192 R.E 2002. In other cases where a member of the armed forces has committed offences which have no connection with his service, the civil courts have jurisdiction to try him.

238. There are incidents in which the armed forces have operated in contravention of the rule of law. The most striking incident is that of Zanzibar killings of January 27, 2001. This incident followed organized demonstrations by CUF to protest against the 2000 general election results. The police banned the demonstrations and used excessive force against demonstrators. In this incident more than 30 people (including one policeman) were killed and many others seriously wounded. Others sought refuge in Shimoni, Kenya. Unlawful violent incidents by security forces and paramilitary establishments are cyclic, particularly in Zanzibar, as they recur after every five years during election times. The other more recent incident was in 2005, when prisons guards invaded a residential area at Ukonga, Dar es salaam and forcefully evicted and beat up the residents of the area as well as newsmen who went to the site to report what was happening.[81]

239. According to the expert opinion, the extent to which defense and security forces are subjected to the rule of law is generally moderate: whereas 54.9 percent of the respondents said that they are highly or mostly subjected to the rule of law; 33.3 percent of the respondents said they are fairly subjected to the rule of law, 8.8 percent were of the view that they are insignificantly subjected to it. And 2.9 percent said the armed forces are not subjected to the rule of law at all. These findings suggest that more serious efforts are needed to make defense and security forces subjected to the rule of law and make them more professional and responsive to public interest beyond regime's interest.

240. The armed forces are not directly accountable to the legislature. However, the only aspect which makes the armed forces accountable to the legislature relates to finance. Article 63(3) (b) of the Constitution gives mandate to the legislature to authorize budget for each department of the Government. Before this authorization the minister responsible for defense and security matters has to read his/her budget before the legislature. The latter has to scrutinize and consider before it authorizes the budget. The Parliament also scrutinizes audited accounts of these forces submitted to it by the Controller and Auditor General.

Objective Three: Promotion and Protection of Economic, Social and Cultural Rights, Civil and Political Rights as enshrined in the African and the International Human Rights instruments

Ratification of Major International Human Rights Instruments

241. Promotion and protection of human economic, social, cultural, civil and political rights in Tanzania has been undertaken not only by the government but also by civil societies and even groups of individuals. In 1984 Tanzania incorporated into her Constitution[82] a bill of

[81] The then Minister for Home Affairs, Hon. Omar Ramadhan Mapuri defended the incident on the ground that the newsmen had entered the area where there was a military operation. The Minister was later assigned other duties.

[82] Constitution of the United Republic of Tanzania, 1977 (as amended from time to time).

rights which provided for various economic, social, cultural, civil and political rights as enshrined in international and regional human rights instruments.

242. By 2009, Tanzania had ratified a number of core instruments that guaranteed civil, political, social, economic and cultural rights. The instruments ratified include: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR); 1966,[83] International Convention on the Elimination of all Forms of Racial Discrimination (CERD);[84] International Convention on the Rights of the Child (CRC);[85] The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);[86] and the International Convention on the Rights of Persons with Disabilities (ICRPD)[87]. At Regional level, Tanzania has ratified the African Charter on Human and Peoples' Rights (ACHPR),[88] the African Charter on the Rights and Welfare of the Child (ACRWC),[89] The Protocol to the African Charter on Human and Peoples' Rights and on Rights of Women in Africa (The African Women Protocol),[90] and the Protocol to the African Charter on Human and Peoples' Rights establishing the African Court of Human and Peoples' Rights, and the Grand Bay (Mauritius) Declaration and Plan of Action for the Promotion and Protection of Human Rights.

243. There are a number of legal provisions that recognise and guarantee human rights in Tanzania. As alluded to earlier, human rights guarantees were for the first time incorporated in the Constitution in 1984 via the fifth constitutional amendment which introduced the Bill of Rights under Part Three of the Constitution. This part is composed of a number of articles which provide for the rights and duties that an individual owes the community. The rights provided include: the right to work and right to just remuneration (Articles 11, 22 and 23); equality of all human beings irrespective of their colour, sex and age (Article 12); equality before the law by all persons (Article 13); the right to life (Article 14), the right to personal freedom (Article 15), the right to privacy and personal security (Article 16), the right to freedom of movement (Article 17), the right to freedom of expression (Article 18), the right to freedom of religion and faith (Article 19), the right to personal freedom of association (Article 20), freedom to participate in public affairs (Article 21); and the right to own property (Article 24).

244. Several amendments to the Constitution have been passed since then with a view to addressing the protection of gaps and providing broad protection of human rights. The Legislature has also enacted laws that promote and protect civil, political, economic and social rights.

245. On the part of Zanzibar, the Zanzibar Constitution (1984) enshrines human rights principles under part three. The rights provided include: the right to equality (Article 11), equality before the law (Article 12), the right to life (Article 13), the right to personal freedom (Article 14), the right to privacy and personal security (Article 15), the right to

[83] Ratified on September 11, 1976.
[84] Ratified on November 26, 1972.
[85] Ratified on July 11, 1991.
[86] Ratified on September 19, 1985.
[87] Ratified on April 24, 2009.
[88] Ratified on February 18, 1984.
[89] Ratified on March 16, 2003
[90] Ratified on March 3, 2007.

freedom of movement (Article 16), the right to freedom of expression (Article 17), the right to freedom of religion (Article 18), the right of assembly and association (Article 19), the right to participate in public affairs and the right to work (Article 20).

Specific Guarantees of Human Rights

The Right to Equal Access to Employment

246. The right to work is enshrined in Article 22 of the Constitution. It is clearly provided in this article that every person has the right to work and that every citizen is entitled to equal opportunity and right on equal terms to hold any office or discharge any function under the state authority. It follows, therefore, that the right to work in Tanzania is not limited to citizens; it applies to all persons within the territory. Furthermore, the Article stipulates the right to a fair and equal remuneration. Apart from the Constitution, labour related rights are provided for in the Labour Relations Act.[91] Section 7 of this Act specifically addresses issues of discrimination. It obliges employers to promote equal opportunity in employment and to strive to eliminate discrimination in any employment policy or practice. Employers are prohibited from discriminating against any employee for reasons of colour, nationality, tribe or place of origin, race, national extraction, social origin, political opinion or religion, sex, gender, pregnancy, marital status or family responsibility, disability, HIV/AIDs, age or station of life. Every employer is required to register with the Labour Commissioner, whose mandate is to promote equal opportunity and to eliminate discrimination in the work place. The Act makes it an offence for an employer to discriminate against any employee on any basis whatsoever.

247. Another important piece of legislation is the Disabled Persons (Employment) Act, 1982. This was enacted to specifically ensure that persons with disabilities are not discriminated in employment. The law has however, been criticized for failure to put in place the enforcement/compliance mechanisms and for its failure to take on board the challenges brought about by the mid 1980s economic liberalization.

248. Equal opportunity in employment is also envisaged under the National Employment Policy. The policy acknowledges the vulnerability of the youth, women and persons with disability and set the strategies to ensure that these groups are accorded equal employment opportunities in public and private sectors. [92]

249. Despite these legal and policy frameworks on equal opportunity for employment, unemployment rate remains high. The labour market provides limited opportunity to paid employment. This limits the enjoyment of the right to work by many individuals. The situation is worse for vulnerable/special groups such as women and people with disabilities.

250. In Zanzibar the right to work is provided for under Article 21 (3) and (4) of the Constitution of Zanzibar of 1984, which provides inter alia:

(i) Kila Mzanzibari anayo haki ya kufanya kazi na anastahili fursa na haki sawa, kwa masharti ya usawa, ya kuishika nafasi yoyote ya kazi na shughuli yoyote iliyoko chini ya mamlaka ya Zanzibar.

[91] Employment and Labour Relations Act, No of 2004

[92] See Employment Promotion: Special Groups under the National Employment Policy, paragraph 10.

(ii) Kila mtu, bila ya kuwapo ubaguzi wa aina yoyote ile anayo haki ya kupata ujira unaolingana na kazi yake na watu wote wanaofanya kazi kulingana na uwezo wao watapata malipo kulingana na kiasi cha sifa ya kazi wanayofanya.

Sub Article 3 basically addresses non discrimination in the labour market while sub Article 4 advocates for equal pay for a similar job which removes the possibility of double salary scales. The Constitution of Zanzibar, like the Constitution of the United Republic of Tanzania provides for the right to work as a right to be enjoyed by all citizens.

251. In 2005 Zanzibar reviewed her labour laws to accommodate the ILO Labour standards. The Labour Relations Act, 2005 and a new Health and Safety at Work Act were enacted. Among other things, the Labour Relations Act provides for non discrimination in the labour market. Despite all the efforts that have been made by the two Governments, there are some instances of discrimination based on various issues including gender, disability and political participation (in case of Zanzibar). The opinion survey indicates that enjoyment of equal opportunity in the labour market is limited. Twenty two percent of persons interviewed said they are enjoying equal opportunity, Thirty six percent said they have never enjoyed equal opportunity in the labour market and the rest confirmed moderate enjoyment of the same**.**

The Right to Education

252. The right to education is stipulated under Article 11 of the Constitution of Tanzania as one of the fundamental objectives and principles that the State has to endeavour to ensure that it is enjoyed by every person. The Article provides inter alia that:

(i) The state authority shall make appropriate provisions for realization of the right to work, to self education;

(ii) Every person has the right to self education and every citizen shall be free to pursue education in a field of his/her choice up to the highest level according to his/her merits and ability; and

(iii) The Government shall endeavour to ensure that there are equal and adequate opportunities to all persons to enable them to acquire education and vocational training at all levels of schools and other institutions of learning".

The said provision falls outside the ambit of the Bill of Rights which constitutes Part III of the Constitution and it is therefore non justiceable. One cannot, therefore, invoke the provisions of the provision of the Basic Rights and Duties Enforcement Act, 1994 to enforce her/his right to education.

253. Apart from the Constitution, the Parliament has enacted the National Education Act[93] to specifically deal with education issues in the country. It has also passed the Education and Training Policy to give directives on how education issues should be handled so as to facilitate access to education. In addition, there are the dual strategies meant to ensure compulsory primary education and improve secondary education. This is evidenced by the adoption of specific plans for primary and secondary education namely: Primary Education Development Plan (PEDP), MEMKWA and Secondary Education Development Plan (SEDP) under the 1990s government's Education Sector Development Programme (ESDP). Under these Plans, it was projected to enroll more that 7.5 million school children in primary school by 2006, and 2 million students in secondary schools by 2010. The Primary Education Development Plan (PEDP) and the Secondary Education Development Plan (SEDP) have

[93] National Education Act, 1978.

brought remarkable improvements in the education sector. New classes and schools have been constructed under the programmes and the enrollment level in primary and secondary schools has increased. For instance, primary school enrollment rose from 84.4 percent in 2006 to 112.7 percent in 2007[94]. The number of students passing their primary school examination has also increased. The increase of the number of enrollment in primary and secondary schools is also supported by the opinion survey tool which indicates that about 47 per cent of the interviewed said they are enjoying the right to education, 41 percent confirmed moderate enjoyment and only 11 percent said they do not enjoy at all.

254. There are however, some setbacks on the education sector. One of these is acute shortage of qualified teachers, and teaching and leaning materials coupled with poor learning environments. Dropout is also increasingly becoming a serious problem for primary schools. Pupils drop-out because they cannot measure the importance of education and also because of truancy and pregnancy. The situation is worse for girls who are forced out of school by early pregnancy and marriage.

255. As is the case of the Constitution of the United Republic of Tanzania, the Zanzibar Constitution does not include the right to education as one of the enforceable rights. It is rather enshrined under Article 10 (6) as one of the political objectives of the government. The right to education is provided for under the Education Act which provides for free and compulsory education.[95]

The Right to Health

256. Despite being a signatory to the ICCPR and the African Charter both of which clearly stipulate the right to enjoyment of highest attainable standard of physical and mental health, Tanzania has not included the right to health in her Bill of Rights under the Constitution. It rather appears under Part II of the Constitution as one of the fundamental objectives and directive principles of the State. Article 11 states:

> "the state authority shall make appropriate provisions for the realization of a persons right to work, to self education and social welfare at times of old age, sickness or disability and in any other cases of incapacity."

257. Although the government has been striving to improve the health sector, the provision of health services is still poor particularly in rural areas where the majority live. There is acute shortage of medical personnel, poor supply of drugs and medical equipment thus limiting the provision of meaningful health services to the people. In some places health services are still far and therefore hardly accessible by the people, and where they are accessible, they are not affordable.

Freedom of speech

258. Freedom of speech is embedded under Article 18 of the Constitution which guarantees the freedom of opinion and expression, freedom to seek, to receive and to impart or disseminate information regardless of national frontiers, the right to freedom from interference with ones communication, the right to be given at any time information on matters of public interest. In practice, the right to freedom of speech and expression is enjoyed, to a large extent, by the majority of the people. This is also supported by the survey

[94] This percent is based on government projection.
[95] Education Act, No. 6 of 1982

tool results which indicate that it is well enjoyed by about 72 percent of the respondents, and moderately enjoyed by 21 percent while only 5.8 percent do not enjoy at all.

Freedom of Worship

259. The right to freedom of worship is guaranteed under Article 19 of the Constitution. The Article provides that *every one has the right to freedom of thought or conscience, belief or faith, and the choice in matters of religion, including the freedom to change his/her religion or faith.* The Article further states that the propagation of religion shall be free and a private affair of an individual, and that, the affairs and management of religious bodies shall not be part of the activities of the state. There is, however, a proviso to the effect that the enjoyment of the freedom to religion should abide by the laws of the land, a proviso that seeks to make sure that public peace and security and the national culture are observed/promoted and protected. To a large extent, freedom of religion is respected and protected. People are free to worship and practise their religious faith. The country has also enjoyed religious tolerance among Moslems and Christians. The survey tool indicates that about 91 percent are satisfied by the protection and respect to the freedom of religion, while 6.6 percent confirms moderate enjoyment and only 1.2 said they are not enjoying the same.

The Right to Housing

260. There is no specific provision under the Constitution that guarantees the right to affordable housing for ordinary citizens. The Government does not involve itself directly in the construction and managing of houses except for civil servants particularly Government leaders, police force, army, prisons, hospitals and public schools. As such, to the majority of the population, housing has persistently remained a problem mainly characterized by inadequate affordable housing in urban areas and poor housing in rural areas. Most people in the urban areas have been forced to live in overcrowded unplanned areas with poor sanitation. The construction of houses remains to be a big problem given the high construction costs. As a result, the supply of private owned houses for rent is below the demand and the majority can not afford to construct their own houses due to low income. To fill this gap some public corporations are engaged in the construction of houses for rent and for sale. These include the National Housing Cooperation (NHC), National Social Security Fund (NSSF), and The Parastatal Provident Fund (PPF). These interventions remain nevertheless below the actual demand.

Effectiveness of the Guarantees of Rights

261. Human rights enshrined under the Constitution are enforceable in courts through the Basic Rights and Duties Enforcement Act, of 1994. The enforcement however is limited to those rights which are stipulated under Part III of the Constitution which carries the Bill of Rights. Most of the rights in this part are civil and political rights. It follows, therefore, that social and cultural rights such as the right to education and the right to health are not justiceable. Such people who are denied the right to education and do not attain their right to health are denied judicial redress.

262. The Act vests the original jurisdiction on human rights violation in the High Court of Tanzania. As such, a person whose right has been violated, has to file a petition before the High Court as the court of first instance. The appeal from the High Court lies in the Court of Appeal of Tanzania. This procedure is not only cumbersome and expensive but considerably impedes accessibility to justice. Since the High Court divisions are not found in every administrative region, victims often have to travel prohibitive distances to lodge their petitions. This is too costly for many. There is also an acute shortage of judges. The law

requires a quorum of three judges when hearing a human rights petition,[96] yet in a number of High Court divisions, there is only one or two judges.

263. Victims of human rights violation may as well seek redress by way of judicial review. For instance, those denied the right to be heard by a *quasi judicial* body may seek to enforce their right to be heard by applying before the High Court for prerogative orders of *certiorari* to quash the decision so reached or the order of *mandamus* to compel the said authority to hear the applicant. This is also within the jurisdiction of the High Court.

264. As already pointed out in the preceding sections, apart from the court, the Government in 2001 established a Commission for Human Rights and Good Governance (CHRGG), through the 13th amendment to the Constitution and the enactment of the Commission for Human Rights and Good Governance Act.[97] The Commission is vested with powers to promote and protect human rights and good governance in the country. It has the mandate to receive and hear complaints on human rights violation, investigate and thereby give recommendation to the authority concerned. It has also the power to institute and prosecute human rights violation into the court.

265. The Commission has done considerable work in protecting people from human rights violation and enabling them to secure remedy for the violation they have suffered. However the major weakness observed is that the Commissions' decision on human rights violation are in form of recommendation and the Commission has no mandate to enforce the same. One needs to go to the High Court to enforce the recommendations of the Commission. In this respect, there is a loophole for the human rights violators to ignore and opt not to implement the recommendations. This became evident when the Government openly defied the recommendation of the Commission for the Government to pay compensation to the residents of Nyamuma Village in Serengeti district whose houses and properties were burnt into ashes in a Government operation.[98] Reacting to the recommendation, the Attorney General stressed that the Government did not agree with the recommendation and was therefore not prepared to pay the recommended compensation.

266. Another obstacle arises from inadequate financial and human resource capacity. The Commission has its office in Dar es Salaam and has an office in Zanzibar and a few zonal branches in Mtwara and Lindi. All the Commissioners are located in Dar es Salaam and as a result the Commission's accessibility for rural residents and where human rights violations are common is very limited.

Major cases of violation of Citizens' Rights and liberties handled by courts over the preceding five years

267 Through the enforcement mechanisms, individuals, groups of persons and civil society organization have successfully challenged human rights violation in the High Court and the Human Rights Commissions. The judgements in some of these cases have brought remarkable changes in the protection of human rights in the country. We cite five cases adjudicated during the past decade or so.

[96] See section 10 of the Basic Rights and Duties Enforcement Act.

[97] The Commission for Human Rights and Good Governance Act, No.7 of 2001.

[98] *Ibrahim Korosso and 134 others et al v. Thomas Ole Sabaya, District Commissioner for Serengeti District et al.*

a) Legal and Human Rights Centre and 2 Others vs. A.G*, (High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Cause No. 77/2005 Unreported) expanded the locus of stand to any spirited person or group of persons and or corporate body.*

268. This was a Constitutional petition filed by three civil society organizations: Legal and Human Rights Centre (LHRC), National Organization for Legal Assistance (NOLA) and Lawyers' Environmental Action Team (LEAT) challenging the constitutionality of section 119 (2) and (3) of the National Elections Act, No. 1 of 1985 which legitimized the giving of inducements by contestants in elections to voters in the name of traditional hospitality. It was argued in part, by the petitioners that the operation of the said sections violated the right to equality before the law; and equal rights of citizens to participate in governance of the United Republic of Tanzania, including equal participation in free and fair elections by placing the well-off candidates on an advantageous position to the detriment of less- wealthy candidates.

269. Holding in favour of the petitioners on April 24, 2006, the High Court, presided over by Justices Natalia Kimaro, Thomas Mihayo, and Salum Massati, unanimously declared null and void section 119(2) and (3) unconstitutional for violating the provisions of Articles 13(1) and (2) and21(1) and (2).

b) Ibrahim Korosso and 134 others vs. Thomas ole Sabaya, District Commissioner for Serengeti District et al.

270. Residents of Nyamuma village filed a case with the Commission for Human Rights and Good Governance accusing former Serengeti District Commissioner Thomas Ole Sabaya and Officer Commanding District (OCD) Alexander Lyimo for forceful eviction and destruction of their properties following the setting on fire over 100 houses and cereal storage facilities belonging to the villagers, contrary to the law. After considering the application CHRGG passed recommendations in favour of the Nyamuma villagers and ordered the Government, among other things, to pay them compensation to the tune of over 800m/- and re-settle them at the former Nyamuma locality where they had lived before. The Government refused to comply with the recommendations of the Commission thus compelling the villagers to refer the matter to the Land Division of the High Court of Tanzania in Dar es Salaam seeking an execution order. The application was thrown overboard, with the court holding that it had no jurisdiction to execute a matter it had not heard. Aggrieved by the decision, the applicants appealed to the highest judicial body, the Court of Appeal of Tanzania and the matter is pending.

c) Elizabeth Stephen and another vs. The AG, High Court of Tanzania, *Miscellaneous Civil Cause No 82 of 2005.*

271. This petition was filed by the Women Legal Aid Centre (WLAC) on behalf of the petitioners (widows) challenging the constitutionality of the Sukuma customary law which denies widows their rights to inherit properties of their deceased husbands, contrary to the country's Constitution and international human rights conventions. The said custom allows relatives of the deceased husbands to evict the widow from the estates and also grants a lions' share of the estate to boys compared to daughters in the course of inheritance distribution process. The Court presided over by Justices Salum Masati, Augustine Shangwa and Thomas Mihayo, declined to declare the said custom unconstitutional. Reading the verdict, Justice Thomas Mihayo said, the court admits that the customary inheritance law was flawed and actually discriminates against widows and female children. Although he insisted that the said

custom could not be declared unconstitutional as the nullification would create confusion amongst members of different societies because Tanzania has many tribes.*" If the court accepts these proposals, other people from different tribes would file similar cases, challenging their customs."* noted Justice Mihayo. The court provided options to the petitioners to pursue their cases by submitting their proposals to the district councils, which will recommend to the responsible minister to modify a certain customary law. If the Minister accepts the proposals, he may publish them in the government gazette or make some amendments on the laws to suit public interests. Aggrieved by the decision, the petitioners filed an appeal before the Court of Appeal of Tanzania, and the appeal is pending.

d) **Julius Ishengoma Francis Ndyanabo v. Attorney General, Court of Appeal Civil Appeal No. 64 of 2001**

272. This was an appeal from the decision of the High Court (Kyando, and Ihema JJ, Kimaro J. dissenting), dismissing a petition filed by the appellant for a declaration that S. 111(2), (3) and (4) of the Elections Act 1985 was unconstitutional for violating Article 13(1), (2), and 6(a) of the Constitution. The appellant, an advocate by profession, contested the Parliamentary seat in Nkenge Constituency during the 2000 general election in which he lost. Aggrieved by the results, he filed a petition before the High Court, challenging the validity of the results. The hearing date was not fixed because the appellant had not paid the requisite security for costs of Tshs five million in respect of the proposed election, in accordance with section 111(2) of the Electoral Laws (Amendment) Act, 2001. The appellant decided instead, to file, under Article 30(3) of the Constitution and S.4 of the Basic Rights and Enforcement Act, 1994, a petition challenging the constitutionality of the subsection and praying for a declaration that the said statutory provision was unconstitutional on the ground that it was arbitrary, discriminatory, and unreasonable. It was argued on the part of the appellant, that the requirement of payment of security for costs constituted an unjustified restriction on the right of a citizen to be heard by the Court, on his complaint against illegalities or irregularities in the conduct of a parliamentary election. Allowing the appeal, the Court of Appeal held that the said provisions denied access to justice to indigent petitioners by making it a rule without exception that each petitioner, regardless of his financial standing, would deposit the sum of five million shillings as security for costs before his petition could be fixed for hearing. The sub-section and the sub-rule were therefore inconsistent with each other and could not co-exist.

e) Rev. Christopher Mtikila v. AG, *High Court of Tanzania at Dar es Salaam, Misc. Civil Cause No. 10 of 2005 (Unreported***)**

273. This case came for the first time before the High Court in 1993.[99] The Petitioner asserted the right to freedom of assembly and the right to contest elections as an independent candidate, prayers which were granted by the court. Aggrieved by the Courts decision, the Government lodged an Appeal to the Court of Appeal but before the determination of that appeal, Parliament amended the Constitution with the effect of rendering the decision of the High Court a nullity. The matter was for the second time brought before the High Court in 2005, the Court took the similar view by nullifying Article 39 and 67 which were brought in by the said amendments.

[99] See Rev. Christopher Mtikila v. AG, [1995] T.L.R.31, Also see AG. v Rev. Christopher Mtikila, Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No. 3 of 1994 (Unreported)

Equal access to Justice for all

274. Equal access to justice is a key requirement for the enjoyment of the right to equality before the law as per article 13 of the Constitution. Realization of this right requires institutional and legal framework that would guarantee all persons accessibility to the laws and the judicial bodies. To address this problem the Government has made effort to reform the legal sector. The effort dates back to 1993 when the Government established the Legal Task Force which did a sterling job of carrying out a comprehensive review of the problems in the legal sector. The report of the Task Force which was released in 1996 and recommendations thereof resulted in the establishment of the Legal Sector Reform Programme which among other things seeks to enhance access to justice for the poor and the disadvantaged groups. Below we provide some evidence of legal provisions, institutions and mechanisms set up to facilitate access to justice, including proximity of courts fees, legal education, and legal Aid and alternative dispute resolution mechanisms.

Proximity of Courts

275. Tanzania has a 5 – tier judiciary system: The Court of Appeal of Tanzania; the High Court; the Resident Magistrates Courts; District Courts, and Primary Courts. The law establishing the magistrate courts, the Magistrate Court Act[100] provides that there shall be a primary court and a district court in every district. [101]. Proximity of courts has persistently remained one of the major problems impending access to justice particularly in rural areas where the majority of Tanzanians live. Most primary courts are widely distributed, but the High Court and the Court of Appeal are also not proximate to the people and they have for a long time suffered from inadequate financial and human resource. For example, in 2006 there were only 1105 primary courts, 88 district courts, and 22 resident magistrate courts, 13 High Court Registries and one Court of Appeal station in Dar es Salaam in 2006.[102]

276. In addressing this problem the Government through the Legal Sector Reform Programme has embarked on a programme of bringing the legal services close to the people and to make it effective. As such, the Government has initiated the reconstruction and rehabilitation of court buildings including the temporary seat of the Court Of Appeal, rehabilitation of Iringa and Mwanza High Court Divisions, construction and rehabilitation of Resident Magistrates'Courts, District Courts and Primary Courts in several areas.[103]

277. There has also been an improved trend in the recruitment of judicial officers to address the inadequacy of staff in the courts. As such, the number of Primary Court Magistrates has increased from 699 in 2005 to 745 in 2007, District Magistrates' number has risen from 114 to 284 in the same period. Similar improvements are witnessed in the High Court and the Court of Appeal. In the High Court, the increase has been from 38 judges in 2005 to 54 judges in 2007, and in the Court of Appeal in the same period, the increase was from 9 to 12 justices. [104]

[100] Magistrate Courts Act, No. 2 of 1984
[101] See Section 3 and 4.
[102] Legal and Human Rights Centre, Human Rights Report 2006.
[103] See the Legal Sector Reform: Medium Strategy 2005/6-2007/8 Vol. 1 at p.42.
[104] See the Speech of the Minister for Justice and Constitution Affairs, Dr. Mary Nagu made before the Parliament during the 2007 Budget Session.

Court fees

278. Prior to 2000, all litigations were conducted in conventional courts of law. But most Tanzanians can not afford court fees leave alone the costs of engaging the services of an advocate. Since 2000 Government has taken a number of measures aimed at improving equal access to justice for all. The most remarkable is the introduction of quasi judicial bodies that provide adjudication services free of charge. A good example of quasi-judicial body is the Commission for Human Rights and Good Governance, Land Tribunals and the Labour Tribunal.

Legal Education

279. The majority of Tanzanians are barely knowledgeable of the law and their rights. Even those who have been to school can hardly access substantive and procedural laws due to language barriers. Typically, statutes are written and published in sophisticated legal language that a normal lay person can hardly understand. This is justification for legal literacy campaigns to give the citizens understanding of basic legal terms and particularly their human rights and duties. It was not until recently that the teaching of civics and general knowledge in primary and secondary schools were consolidated to include the relevant knowledge of basic human rights in the school curricular. Specialized legal education is offered in the high learning institutions. Currently there are about six Universities offering an undergraduate degree course in law. The Faculty of Law of the University of Dar Es Salaam also offers a certificate course in law for law enforcement officers and members of the general public. The number of graduates in these institutions is however still low as compared to the current national population of nearly 37 million.

Legal Aid

280. The provision of legal aid in Tanzania is guided by the Legal Aid (Criminal Proceedings) Act of 1969. Under this Act, the court in any criminal proceeding may certify that a person be accorded free legal aid in preparation and conduct of his/her defence or appeal if it appears desirable and in the interest of justice. Legal aid provision is limited to criminal proceedings. The Court of Appeal of Tanzania has interpreted this Act to the effect that it guarantees the provision of free legal aid to the indigent accused. However, the practice has been limiting the provision of free legal assistance to persons accused of legal capital offences such as murder charges and treason.

281. There are also various NGOs providing Legal aid to the indigent. Among these are: Centre for the Study of Forced Migration (CSFM); Legal and Human Rights Centre (LHRC); the National Organization for Legal Assistance (NOLA); the Women Legal Aid Centre (WLAC), and Tanzania Women Lawyers Association (TAWLA). The Faculty of Law of the University of Dar es Salaam and the Tanganyika Law Society have also been in the lead on the provision of legal aid. Most of these schemes are however, based in urban areas thus inaccessible to the majority in the rural areas.

282. To enhance the provision of legal aid, the Government under the Legal Sector Reform Programme has established the Legal and Human Rights network composed of all the above mentioned organisations. The network is an effort to implement a well regulated and managed country wide programme for legal aid and literacy. There are also efforts underway to establish a legal aid financing, legal aid and literacy activities implemented by NGOs, voluntary organisations, training of paralegals and dissemination of legal information.

Alternative Dispute Resolution Mechanisms

283. Tanzania adopted a civil justice reform in 1994 which introduced an alternative dispute resolution mechanism (ADR) via the amendment to the Civil Procedure Code with the aim of curbing the delay of cases and thus making the civil justice more efficient, less bureaucratic and more cost effective.[105] Under this reform all civil cases have to go through the pre-trial settlement to give the parties an opportunity to consider solving their matter amicably. The suit will only go for trial if the parties failed to reach an amicable settlement. In other words if the parties reach agreement, then, the matter ends in pre-trial settlement chambers presided over by a judge or magistrate.

> *Best Practice (1)*
>
> *Alternative Dispute Resolution Mechanisms*
> 328. Tanzania adopted a civil justice reform in 1994 which introduced an alternative dispute resolution mechanism (ADR) via the amendment to the Civil Procedure Code with the aim of curbing the delay of cases and thus making the civil justice more efficient, less bureaucratic and more cost effective. Under this reform all civil cases have to go through the pre-trial settlement to give the parties an opportunity to consider solving their matter amicably. The suit will only go for trial if the parties failed to reach an amicable settlement. In other words if the parties reach agreement, then the matter ends in pre-trial settlement chambers presided over by a judge or magistrate.

ADR has not been as successful due to inadequacy of judicial personnel particularly those with specialized training on ADR, unwillingness among the advocates to take their clients case for ADR for fear of poor economic returns, unwillingness of the parties to settle their matter amicably caused by inadequate knowledge on the purpose and advantages of ADR, and dissimilarities with the normal court procedures.[106]

284. Another example worth noting is the establishment of the Labour Tribunal and the Commission for Mediation and Arbitration of labour cases under the Employment and Labour Relations Act.[107] Filing of labour matters in these tribunals is free of charge. When a labour matter is brought to the tribunal, it goes for mediation. In case mediation fails the matter goes for arbitration. An unsuccessful litigant has the right to appeal to the labour court of Tanzania. These tribunals have become effectively operational from 18th May 2007[108] via the Government Notice Number 106 of 2007.

Preliminary Assessment of the Justice System

285. The legal sector reform programme has developed clear procedures for training, monitoring, evaluation and adjustment to ensure that progress is sustained in all aspects with a view to making the justice system more viable and accessible. The justice system has been assessed by various people, organizations and institutions. The common conclusion in these assessments, is that the justice system lags behind the minimum standards and therefore necessary reforms are required to ensure that the justice system is fair and accessible to all**.** We present two assessment reports below.

[105] Civil Procedure Code (Amendment of Shedules) Rules, 1994. See Government Notice No. 422 of 1994.
[106] At p. 5 and 6.
[107] Act No 6 of 2004
[108] via the Government Notice Number 106 of 2007.

Law Reform Commission of Tanzania: Position Paper on the Review of the Civil Justice System, 2006

286. This paper reviewed the civil justice system in Tanzania in the context of the principles of civil justice enshrined in Article 107A of the Constitution of the United Republic of Tanzania. The principles are:

(i) Delivery of justice without regard to the litigants' social or economic status;
(ii) Delivery of justice on a timely manner or without undue delay;
(iii) Provision of adequate compensation in case of injuries caused by others;
(iv) Facilitating and encouraging amicable settlement and dispute resolutions; and
(v) Delivery of justice without undue technicalities.

287. The reports identified such bottlenecks as prohibitively high court and advocates fees and the adversarial system used in courts as a hindrance to access to justice. The report concluded that the current fees imposed by advocates are high, thus affecting the right to legal representation by persons with low incomes. The report also made a conclusion that the court fees structure in the Commercial Division of the High Court is high, thus affecting accessibility of the Commercial courts by the poor. On the adversarial system, the report found that the civil procedure laws and substantive rules currently in force are complex in nature especially for a layman. Their language is couched in sophisticated and elaborate English such that persons lacking legal training have difficulty in construing the rules. The report recommended the review of legal provisions to avoid very long and convoluted sentences that are problematic to understand and to avoid the use of technical terms in the provisions of procedural and substantive laws to put litigants without training on equal footing with their law-trained counterparts.

Legal and Human Rights Centre: Human Rights Reports, 2005 and 2006

288. Both reports specifically addressed issues of legal advice and legal representation, availability of courts and accessibility of laws in a language understandable by the majority. The reports concluded that courts were still inadequate coupled with limited human resource, poor legal representation caused by low number of practising advocates and high fee charged for legal representation that affect affordability of legal services by the indigent. The report also noted poor legal aid provision for indigent and lack of support of the legal aid schemes by the Government thereby leaving the entire task on the civil society. The report also observed problems associated with case delays and their impact on the justice system.

Objective Four: Upholding Separation of Powers in Tanzania: Protection of Independence of the Judiciary and effectiveness of Parliament

Introduction

Separation of Powers in Tanzania

289. The concept of separation of powers in Tanzania has its constitutional root in Article 4 of the Constitution of the United Republic of Tanzania, 1977[109]. Article 4(2) states:

[109] Mukangara, D. R. (2002), "The Tanzania Constitutional Review: Issues for Debate". Paper presented at the 8th REDET Workshop on Democratic Transition in East Africa, Bagamoyo, July 11-12.

> *The organs vested with executive powers shall be the Government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar; the organs vested with judicial powers shall be the Judiciary of the United Republic and the Judiciary of Zanzibar; and the organs vested with legislative and supervisory powers over public affairs shall be the Parliament of the United Republic and the House of Representatives of Zanzibar.*

This Article found its way into the constitution through the Fifth Constitutional Amendment Act, 1984, which also brought the Bill of Rights into the basic law. Prior to that, the doctrine was not enshrined in any Article or section of the constitution, although it was implicit in the constitution's diverse provisions, and that had been the position since independence[110].

290. The principle of separation of powers established in Article 4 of the Constitution of the United Republic of Tanzania is also implied in Article 5A of the Zanzibar Constitution of 1984. Until 2002, the Zanzibar Constitution did not comprehensively address separation of powers in any article devoted to that issue. The doctrine was clearly spelt out in the 8th amendment of the Constitution of Zanzibar after the Political Agreement (Muafaka) between the ruling party, Chama Cha Mapinduzi (CCM) and the main opposition party Civic United Front (CUF). Prior to the 2002 amendment, the Zanzibar constitution just named the three major organs of the Government without clearly separating their functions. This can be understood considering that for a long time Zanzibar was governed without a constitution. Following the bloody revolution of January 1964, the colonial constitution was replaced by presidential decrees and decisions of the Revolutionary Council. The first Post-revolution Constitution was enacted in 1979 and was replaced by the current constitution which was enacted in 1984.

291. Since 1984, there have been a number of constitutional amendments in the Constitution of the United Republic of Tanzania and that of Zanzibar, some extensively affecting the balance of power among the branches of Government. In 1992, for example, there were many amendments which redrew the balance of powers between the executive, the judiciary and the parliament including:

(i) The authority of the ruling party's National Executive Committee was repealed through Act Number 4 of 1992. The amendment also barred the Speaker from participating in a decision to remove the President from office by reason of infirmity, transferring the ultimate authority in this determination to the Chief Justice;
(ii) The Parliament was given power to endorse a Vice-President who has been appointed by the president to take his/her position whenever he/she leaves before end of term;
(iii) The Parliament passed Act No. 20 of 1992 which introduced impeachment of the President. This is one of the major instruments available to the Parliament to check on the excesses of the Executive;
(iv) The same amendment empowered the Parliament to endorse a President's appointee for the post of Prime Minister. The amendment also introduced for the first time the "vote of no confidence in the Prime Minister";
(v) It also made it clear in Article 63(2) (e) that one of the functions of the National Assembly was to ratify non-self-executing treaties, a provision that never existed before; and

[110] Mtaki, C.K and Okema, M (1994) Constitutional Reforms and Democratic Governance in Tanzania , Faculty of Law, University of Dar es Salaam, p. 110

(vi) Article 90 of Act No. 20 of 1992 for the first time spelled out clearly the conditions that permit the President to dissolve the Parliament. Previously he could do so any time he deemed fit.

292. In 1993 there was another amendment that touched on the separation of powers. Through the 10th Amendment of the Constitution (Act No. 7 of 1993), leadership of the National Electoral Commission was taken from the Speaker of the National Assembly to a judge of the High Court. Act No. 34 of 1994 introduced changes in the office of the Vice President and especially his election. He was now to be elected as a running mate of a successful presidential candidate in a presidential election. He was also subjected to an impeachment process by the legislature.

293. Again, there was a major constitutional amendment in 2000 that affected 18 provisions.[111] This was the 13th amendment which among other things:

(i) Shortened the list of presidential appointees, thus further reducing presidential powers;
(ii) Authorized the President to nominate up to 10 members of Parliament, thereby increasing his say in the legislature;
(iii) Introduced the Commission for Human Rights and Good Governance that was, among other things, tasked to initiate litigation to prevent abuse of human rights and good governance by public servants and private entities;
(iv) The amendment also pronounced the independence of the Judiciary in article 107B, clearly stating that the judiciary will be free in discharging its duties in accordance with the constitution and other laws; and
(v) Enhanced the independence of the Judiciary as well as improving the confidence of the society in the judicial system. To that end, article 107 was amended to pronounce the Judiciary as the final authority vested with the powers to dispense justice in the United Republic.

294. In 2005, the Parliament enacted the 14th amendment of the Constitution which, among other things, amended Article 37 to the effect that in the absence of the President, his functions would be discharged by the Vice President, and if he is also absent, the Prime Minister would perform his duties. Hitherto, if the President and the Vice President were absent, the Speaker of the National Assembly would take charge and if the Speaker was also absent, the Chief Justice of the Court of Appeal would discharge the duties of the President. The amendment enhanced separation of powers because both legislative hand (Speaker) and judicial hand (Chief Justice) were removed from the list of people who could discharge presidential functions in absence of the President.

295. Another point worth mentioning about the 14th amendment is the establishment of the Directorate of Public Prosecutions as a constitutional office. The DPP was hitherto only established by a normal legislation. The 14th amendment also had a bearing on the composition of the National Assembly by raising the number of women special seats from 20 percent to 30 percent of all members of Parliament. These seats were to be allocated to political parties in proportion to their electoral votes and not seats won in the election as was the case in the past.

[111] Mukangara, D. R (2002), "The Tanzanian Constitutional Review: Issues for Debate". Paper Presentat the 8th REDET Workshop on Democratic Transition in East Africa, Bagamoyo, July 11-12, 2002.

296. Through checks and balances, courts provide checks on the actions of both the Executive and the Legislature in order to ensure that they do not contravene any provision of written law or of the Constitution. But at the same time, the Legislature is empowered to maintain checks on the Judiciary in order to ensure that it does not trespass on the territory reserved for the Executive or the Legislature. In the same manner, the Executive also has its ways of ensuring that both the Judiciary and the Legislature do not exceed their powers. It is in this context that the Government of Zanzibar enshrined the concept of "checks and balances" in its constitution in its 5th amendment in 1984. Thus the doctrine of separation of powers in Tanzania is usually addressed within that framework.

The Extent of Separation of Powers in Tanzania

297. As stated earlier, the principle of separation of powers is clearly stated in Article 4 of the Constitution of the United Republic of Tanzania and Article 5(a) of the Constitution of Zanzibar of 1984. The principle is also found in Article 34 of the Constitution of the United Republic of Tanzania which names the President as the Head of the Executive and specifies the authority of that executive organ of the Union. Articles 102, 103, and 104 of the Union Constitution name the Revolutionary Government of Zanzibar as the Executive branch and the Zanzibar President as the Head of the branch. Article 105 of the Union Constitution names the Revolutionary Council of Zanzibar as an integral part of the executive. Chapter four of the Zanzibar Constitution (1984) specifies the powers of the Executive Organ of the Government. The provisions that establish and provide for the powers of the Executive are in Articles 26-62 of the Zanzibar Constitution.

298. Articles 107(a), 108 and 117 of the Constitution of the United Republic name and specify the authority of the Judiciary. On the other hand, Articles 93 and 99 of the Zanzibar Constitution specify the authority of the Judiciary in Zanzibar. The naming and specification of the authority of the Union Legislature is done mainly in Article 64, while for Zanzibar it is found in Article 63 of the Zanzibar Constitution. The House of Representatives, as the legislative branch in Zanzibar is established by Articles 106 and 107 of the Constitution of the United Republic. Specifically, the Union Constitution states that legislative power in relation to all Union matters and also in relation to all other matters concerning Mainland Tanzania, is vested in Parliament[112]. The same powers are vested in the Zanzibar House of Representatives which enacts for all matters in Zanzibar other than Union matters[113]**.** However, unlike the situation in the United States where the Legislature is largely separated from the Executive, in Tanzania, the legislative function is shared between the Executive and the Legislature. Articles 62, 63, 106 and 107 of the Union Constitution state that the Presidents of Tanzania and Zanzibar constitute one part of the Union Parliament and the House of Representatives, respectively. Such fusion between the Executive and Parliament, plus the fact that cabinet ministers are also Members of Parliament is one major reason why Tanzania could not fully adopt the model of separation of powers advocated by Montesquieu. This is also the case in all parliamentary systems following the Westminster model.

Separation of Functionaries of the Three Branches

299. The Constitution of the United Republic has tried to separate officials of the Executive branch from those of the Legislature and the Judiciary. Firstly of all, Article 71(1) (b) and (e) states that a Member of Parliament shall vacate his seat in the National Assembly when he is

[112] Article 64(1) of the Union Constitution
[113] Article 78(1) of the Zanzibar Constitution

appointed President or Vice President of the United Republic. Such separation is also found in Article 71(b) of the Constitution of Zanzibar. Secondly, a person holding a senior office in the service of the Government of the United Republic shall not be qualified to be elected or appointed Member of Parliament[114]. If such a person decides to contest for election, his/her employment shall be considered to have ceased from the date of becoming a candidate[115]. The exception here, is the Attorney General who is a Member of Parliament by virtue of his/her position as the Government Chief Legal Advisor. Such exception is also found in Articles 64(e) and 55(3) of the Constitution of Zanzibar which makes the Zanzibar Attorney General a Member of the House of Representatives.

300. Thirdly, all Members of Parliament, including cabinet ministers and deputy ministers, are not eligible for appointment as members of the Electoral Commission, which is an organ of the executive vested with powers to supervise and coordinate elections in the United Republic. Article 119 (3) (b) and (c) of the Zanzibar Constitution also bars legislators from becoming members of the Zanzibar Electoral Commission.

301. Fourthly, ministers and deputy ministers can not be elected Speaker[116]. In that same spirit, the Zanzibar constitution bars the chief minister, cabinet ministers, deputy ministers and members of the Revolutionary Council from being elected Speaker or Deputy Speaker[117].

302. Fifthly, Members of Parliament are not eligible for appointment as members of the Judicial Service Commission[118]. Among other things, this commission appoints magistrates and is consulted by the President before he appoints Judges of the High Court.

303. Public assessment of the adequacy of the constitutional and legislative provisions establishing separation of powers was made through two instruments, namely a household questionnaire and expert's questionnaire. The household questionnaires imply asked whether or not the respondent thought those provisions were adequate, while the experts' questionnaire required the respondent to asses the degree of adequacy of those provisions. In regard to the household sample 62.6 percent said the provisions were adequate while 37.2 percent said they were inadequate, with an insignificant 0.2 percent saying they did not know. In the case of the experts sample 45.1 percent said the provisions had high degree of adequacy, 30.4 percent assessed the provision at medium adequacy, while 24.5 percent assessed them at a low degree of adequacy. This outcome would suggest that, whereas a bit less than two-thirds of the household respondents were satisfied with the provisions, about three-quarter of the expert respondents were satisfied with the provisions at medium and high levels of adequacy. On the whole, this would indicate reasonably good performance.

Independence of the organs of the Government

304. In order to discharge their constitutional duties of checks and balances, each of the three branches of the Government needs to be free and independent. This facilitates not only the separation of powers but also the rule of law which is very crucial in good governance. We shall therefore examine the independence of each branch in turns.

[114] Article 67(2) (g), Constitution of the United Republic
[115] Article 72, Constitution of the United Republic
[116] Articles 84(2) and 85(2) of the Constitution of the United Republic
[117] Articles 73 (2) and 74(1) of the Zanzibar Constitution
[118] Article 112(3) of the Union Constitution and article 102(2) of the Zanzibar Constitution

Extent of Independence of the Judiciary in Tanzania: The Judicial Service Commission and Security of Personnel

305. The Judiciary is supposed to be an independent institution in the sense that those who are entrusted by the Constitution to decide the rights or liabilities and guilt or innocence of people must be free from all kinds of pressures regardless of the corners from which those pressures come.[119] The Constitution of the United Republic establishes the independence of the Judiciary by stating that the Judiciary is the final authority in dispensing justice and adjudication of rights and obligations in the United Republic[120]. The Constitution further states that, in discharging its duties, the Judiciary shall be free and shall only be obliged to take into consideration the provisions of the Constitution and other laws[121].

306. The Zanzibar Constitution does not expressly name the Judiciary as the final authority in dispensing of justice, rather it states that the High Court of Zanzibar shall be a court of records and shall have jurisdiction over all criminal and civil matters and any other issues as may be specified by the Zanzibar Constitution and other laws (Article 93(1) of the Zanzibar Constitution). Failure by the Zanzibar Constitution to name the Judiciary as the final authority in dispensing justice is a governance gap. However, Article 113(8) of the Zanzibar Constitution states that the courts shall not be restricted from investigating any organ.

307. In order for the Judiciary to be independent, the following requirements must be fulfilled: First, judicial powers and personnel must be separated from those of the Executive and the Legislature; secondly, judicial officers must be guaranteed immunity from prosecution or litigation when discharging their duties; thirdly, there must be security of tenure for judicial officers and, fourthly, there must be security of remuneration[122]. These matters are addressed in the paragraphs that follow.

308. The Judiciary in Tanzania can be divided into two main areas. These are the higher Judiciary which is composed of the Court of Appeal of Tanzania at the top with its 8 Judges including the Chief Justice of the United Republic of Tanzania who is also the overall head of the judiciary in the country but sits in that court as a judicial officer. Then there is the High Court of Tanzania. This court has about 30 judges spread over several zones in the country including Dar es Salaam, Tanga, Moshi, Arusha, Dodoma, Mwanza, Tabora, Mbeya and Mtwara. There are initiatives to establish High Court registries in Kagera and Ruvuma Regions as well. The two courts contain the *crème de crème* of the judiciary.

309. Below the Court of Appeal and High Court are two more court levels. These are the Courts of Resident Magistrates, which also house the District Courts and the Primary Courts at the very bottom. According to Article 113 of the Constitution of the United Republic of Tanzania, the President of the United Republic of Tanzania appoints all judicial officers of these courts. The judges of both the Court of Appeal and the High Court have a very secure tenure. Firstly, once they are appointed they can only be removed from office for inability to

[119] Judge Chipeta in the case of Republic v. Iddi Mtengule
[120] Article 107A, Union Constitution
[121] Article 107B, Union Constitution

[122] Nditi, N. N, (1994) "The Independence of the Judiciary", in Mtaki, C.K and Okema, M, (1994) Constitutional Reforms and Democratic Governance in Tanzania , Faculty of Law, University of Dar es Salaam, p. 136

perform their functions or for misbehaviour. Even then, the President is duty bound to appoint a committee of inquiry into their behaviour made up of judges from other parts of the Commonwealth. It is this committee which can recommend the removal of a judge or a justice of appeal from office. Secondly, their salaries are not voted each year by the Parliament. Their salaries are charged directly from the Consolidated Fund. Therefore, Members of Parliament unhappy with court rulings are unable to touch the earnings of the judicial officers. Thirdly, the judges and justices of appeal are given transport, housing and twenty-four hour security.

310. According to Article 113 of the Constitution of the United Republic of Tanzania (1977) the power to appoint magistrates (primary court magistrates, district magistrates and resident magistrates, in that ascending order) and to appoint Registrars of the High Court and Court of Appeal (and their deputies) is vested in the President. Since 1962, however, the President has delegated this power to the Judicial Service Commission, which is established by the Constitution (Article 112) and governed by the *Judicial Service Act 1962*, and Judicial Service Regulations made under that Act.

311. On the other hand, the power of disciplinary control over the magistrates, and of terminating their appointment and removing them from office is directly vested in the Judicial Service Commission by Article 113(1) (b) of the Constitution. The Judicial Service Commission itself consists of the Chief Justice as Chairman, the Attorney General, the Principal Judge of the High Court, one judge of the Court of Appeal and two other members. The Chief Justice, the Attorney General and the Principal Judge are members of the Commission by virtue of their offices while the other three members are appointed by the President. In practice, however, the appointment and disciplinary control (including termination or removal from office) of primary court magistrates is done by what is known as the Judicial Service Special Commission which operates with the Minister's consent. In its functions, the Special Commission acts through Regional Judicial Boards which in turn act on the recommendations of District Judicial Boards. Evidently, the scheme seeks to ensure that a magistrate is not appointed or removed from office on the basis of a decision made by a single person.

Best Practice (2)

Once appointed, Magistrates at all levels enjoy a secure tenure and cannot be removed from office except for misbehaviour or for inability to perform the function of their offices and, even then, the removal can only take place after a due enquiry into the alleged misbehaviour or inability. The enquiry is conducted by the Judicial Service Commission or Judicial Service Special Commission for primary court magistrates) in a manner (deliberately designed to ensure impartiality and compliance with the principles of natural justice)

312. Once appointed, Magistrates at all levels enjoy a secure tenure and cannot be removed from office except for misbehaviour or for inability to perform the function of their offices and, even then, the removal can only take place after a due enquiry into the alleged misbehaviour or inability. The enquiry is conducted by the Judicial Service Commission (or Judicial Service Special Commission for primary court magistrates) in a manner deliberately designed to ensure impartiality and compliance with the principles of natural justice. As a whole, the general attitude of the public is that the system of appointment and disciplinary control of magistrates sufficiently safeguard their independence from the executive. The fact

that all members of the Judicial Service Commission are appointed (either directly or by appointment to the offices by virtue of which they are members of the Commission) does not seem to evoke suspicions or doubts about its independence.

313. Judges, of the Court of Appeal are appointed by the President after consultation with the Chief Justice while those of the High Court, including the Principal Judge, are appointed by the President after consultation with the Judicial Service Commission. The Chief Justice is himself directly appointed by the President. Judges of both the High Court and the Court of Appeal enjoy a secure tenure of office; once appointed they cannot be removed except for inability to perform their functions or for misbehaviour and, as we have seen, this can only happen after a due enquiry to establish the alleged misbehaviour or inability. For judges, the enquiry (for purposes of removal from office) is conducted by a specially constituted tribunal whose at least half of the members (including the Chair) must be High Court or Court of Appeal judges from Commonwealth countries (of course excluding Tanzania).

314. The fact that judges are appointed by the President has not led to a compromise in their independence from the Executive. This is partly due to the stringent screening that is done to ensure that a person has the necessary qualifications and integrity before being appointed judge. Those who have served as judges over the past three to four decades have, by and large, managed to project a judiciary keen to maintain and preserve its independence. The normal retirement age of High Court judges is 60 years and for Justices of Appeal 65 years.

315. It is significant to note that there are no provisions in the Constitution or in any other statute securing the tenure of the Chief Justice or the Principal Judge. It means that those two can be removed at any time by simply appointing some other persons to replace them. Removal of the Chief Justice or the Principal Judge, however, does not mean their removal from office as judges of the Court of Appeal or High Court, where they continue to enjoy a secure tenure. The absence of express provisions to secure the tenure of the Chief Justice and Principal Judge has so far not given rise to any problem in practice, the executive has not used this loophole to interfere with the judiciary. The first principal judge held the office for ten years, after which he was promoted to the Court of Appeal. His successor served for eight years, after which he too was promoted to the Court of Appeal, and then appointed Chief Justice after two and a half years. The two were renowned for their strong affirmation of the independence of the judiciary, both before and after their appointment to the office of Principal Judge.

316. Fortunately, the power of the President to appoint and remove the Chief Justice at any time has not been used in a way that undermined the independence of the Judiciary. Up to 1971, Chief Justices were expatriate Judges appointed on contract terms. The first citizen to hold the office of Chief Justice was extremely sympathetic to the policies of the Government, even to the extent of issuing circulars to judges and magistrates to uphold them. He served for six years. His successor, Francis Nyalali, takes much of the credit for building up an independent and well respected judiciary in Tanzania. He was known for his firm stand in defence of the Rule of Law, and served from February 1977 until he retired in February 2000. He survived three presidents, an extremely rare phenomenon in Africa. He attributes his success to his resolve to make it known to the Chief Executive that he, as Chief Justice, was determined to defend the Rule of Law and the Independence of the Judiciary even more than his incumbency in office.

317. The Magistrates Courts (District, Resident and Primary) are the busiest courts in the Tanzanian Judicial system. However, magistrates in the lower judiciary are paid very little and are not provided with any form of transport. They thus end up taking the same commuter buses carrying relatives of suspects they had just convicted. They are not provided with housing commensurate with their position in society. Some live in very dangerous neighborhoods without assurance of safety. Given these unfavourable working conditions, it is not surprising that corruption and petty bribery are rampant in this part of the judiciary. More attention needs to be paid to this level in terms of training and remuneration of personnel as well as in the provision of adequate working tools. Moreover, there is critical shortage of primary court magistrates, with the deficit approaching 500 at present. This implies a heavy case load per magistrate, hence delaying justice delivery. Justice delayed is justice denied.

318. As a principle inherited from common law, Judges of a court of record, that is judges of the High Court and Justices of the Court of Appeal are immune from prosecution or litigation for acts or words said in performance of judicial duty. Like judges, magistrates, witnesses and advocates are also protected from prosecution by the common law for anything done or said in their judicial capacity. However, according to the Magistrates Court Act, 1984, magistrates are protected from litigation for anything done or said in the performance of their judicial duties only when the acts are done or words are said in "good faith"[123] The same common law principle is used to protect judicial personnel in Zanzibar.

319. According to the APRM household survey an impressive 82.7 percent of the respondents said the judiciary had independence of action either categorically (62.1 percent) or with qualifications (20.6), while 17.3 percent said it had no independence at all. An equally impressive 85.3 percent of the experts sample judged the judiciary independent at medium (34.3 percent) or high (51 percent) levels, with 14.7 percent assessing it at low level of independence. This public view squares with the Tanzanian reality. The judiciary has adequate independence, but remains weak in delivery of justice for other reasons, such as corruption and limited resources – human (magistrates and judges) and financial (e.g. for construction of additional courts, purchase of basic facilities, funding tours of judges, etc).

Extent of Independence of the Legislature in Tanzania

320. In order for the separation of powers to function properly, the Parliament, like the Judiciary, must also be free and independent. The independence of the legislature in Tanzania is clearly stipulated in the Constitution of the United Republic of Tanzania, which states that there shall be freedom of opinion and debate in the National Assembly, and that freedom shall not be breached or questioned by any organ, court or elsewhere outside the National Assembly[124]. The same is found in the Parliamentary Immunities, Powers and Privileges Act of 1988 which created conditions under which members of the Assembly may freely and confidently perform their functions without undue apprehension of undesirable consequences befalling them as a result of what they say in Parliament[125]. Similarly, Article 86(3) of the Zanzibar Constitution provides that Members of the House of Representatives shall not be subjected to prosecution or litigation for anything done or said in the course of discharging their duties in the House. The two legislative bodies therefore have adequate legal protection for what they do while in the House.

[123] Section 66, The Magistrates Courts Act, 1984 [No. 2 of 1984]
[124] Article 100(1), Union Constitution
[125] Section 3, Parliamentary Immunities, Powers and Privileges Act of 1988

321. Although Article 100 of the Constitution of the United Republic of Tanzania provides that there shall be freedom of proceedings in the National Assembly, this has to be read in conjunction with limitations inherent in the nature of the Assembly itself and other provisions of the constitution which set limits on legislative competence of the Parliament. For example, the National Assembly cannot enact laws for Zanzibar in regard to non-union matters as that is the domain of the Zanzibar House of Representatives[126]. Secondly, laws made by the Parliament which are inconsistent with provisions of the Constitution are void (Article 65(5), Union Constitution). Thirdly, the Parliament is not permitted to upset the distribution and separation of powers between different branches of the state[127]. Likewise, the power of the Zanzibar House of Representatives is limited in the same manner, for example, it cannot enact laws on union matters even if such law is only applicable in Zanzibar[128].

322. Fourthly, unless the President has proposed the matter to be dealt with by the National Assembly, and the proposal has been submitted to the National Assembly by a minister, the National Assembly shall not deal with: (i) a bill to enact a law providing for levying tax or to alter taxation otherwise than by reduction ; (ii) the imposition of any charge upon the Consolidated Fund or any other public fund or the alteration of any such charge otherwise than by reduction ; (iii) the payment, issue or withdrawal from the Consolidated Fund or any other public fund of any moneys not charged thereon; or any increase in the amount of such payment, issue or withdrawal; and (iv) the composition or remission of any debt due or payable to the United Republic[129]. On the other hand, this kind of limitation is not expressly stated in the Zanzibar Constitution. It should be emphasized that these limitations do not necessarily curtail the oversight role of the Parliament in financial matters.

323. The Tanzanian public is currently very impressed with the level of independence enjoyed by the Parliament. A high 88 percent of the household respondents said the Parliament has independence of action either categorically (70.7 percent) or with qualifications (17.3 percent), while 12 percent said it has no independence at all. An equally high 89.2 percent of the experts judged the Parliament independent at a medium (38.2 percent) or high (51 percent levels, with 10.8 percent assessing it at low level of independence. This public perception squares with the independent performance of Tanzanian Parliament demonstrated during the past three years. For reasons we cannot get into here, this level of independence has been achieved during the Fourth Phase Government despite the fact that the ruling party has close to 90 percent of the MPs.[130]

Extent of Independence of the Executive in Tanzania

324. The Constitution of the United Republic creates conditions for the Executive to function freely. The constitution states that there shall be a Government of the United Republic which shall have authority over all Union Matters in the United Republic and over all other matters concerning Mainland Tanzania[131]. The Constitution further states that all the authority of the Government over all Union Matters in the United Republic and also over all other matters concerning Mainland Tanzania shall be vested in the President[132].

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[126] Article 64 (1) and (2), Union Constitution

[127] Shivji, I.G (2003), "Constitutional Limits on Parliamentary Powers", in The Tanzanian Lawyer, Special Edition, October 2003

[128] Article 78(1) of the Zanzibar Constitution

[129] Article 99(1) of the Constitution of the United Republic of Tanzania

[130] The handling of the Richmond case which led to resignation of the Prime Minister, is a good example; see 4.5.2 ahead

[131] Article 34(1) of the Union Constitution

[132] Article 34(3) of the Union Constitution

325. The Union Constitution states that, the President, who is the Head of the Executive, shall be free and shall not be obliged to take advice given to him by any person save where he is required by the constitution or any other law to act in accordance with the advice given to him[133]. Article 45(2) of the constitution of the United Republic states that during the President's tenure of office it shall be prohibited to institute or continue any criminal proceedings against the President. In the same manner, no civil proceedings shall be instituted against him unless a 30-day notice has been delivered to him[134]. Except where he ceases to hold office of the President through impeachment, it shall also be prohibited to institute in court proceedings against a person who was holding the Office of the President after he ceases to hold such office for anything he did in his capacity as president while he held the Office of the President.

326. The Zanzibar Constitution also provides for the independence of the Executive. Article 52(1) states that all the authority of the Government of Zanzibar shall vest in the President of Zanzibar. The President of Zanzibar shall not be obliged to follow the advice of any person[135]. Article 36(1) and (2) of the Zanzibar Constitution prohibit both criminal and civil proceedings against a sitting President. But, unlike the Union Constitution, it does not give immunity to a former president for acts he committed while in office.

327. Of the organs of the Executive branch, Defense and Security Services are usually considered the most difficult to subject to civil authority. To get public perception of this, the household and expert respondents were asked to give their assessment of the extent to which these services were subject to the rule of law and oversight of civil authorities such as the legislature and the judiciary.

328. As regards public perception, a substantial 75.1 percent of the household respondents said these services accepted subjections to civil authorities, including the legislature and the judiciary either categorically (59.2 percent) or with qualifications (15.9 percent), while 24.5 percent said they do not accept such subjection. An impressive 88.2 percent of the expert respondents assessed subjection of these services at medium (33.3 percent) and high (54.9 percent) levels, while 11.7 percent made a low assessment of subjection of the services to civil authorities, including the Parliament and the Judiciary.

Specific checks and balances among branches of Government in Tanzania

How the Parliament Checks the Executive

329. The National Assembly checks on actions of the Executive both directly and indirectly[136]. To start with, the legislature checks on the actions of the Executive by putting questions directly to any minister concerning public affairs in the United Republic which are within his/her portfolio or responsibility. Legislators are also empowered to debate the performance of each ministry during the annual budget session of the National Assembly. They can also deliberate upon and authorize any long or short term plan which is intended to be implemented in the United Republic and enact a law to regulate implementation of that plan. The Constitution also allows legislators to deliberate upon and ratify all treaties and agreements to which the United Republic is party and the provisions which require

[133] Article 37(1) of the Union Constitution
[134] Article 46(1) and (2) of the Union Constitution
[135] Article 52 of the Constitution of Zanzibar
[136] Article 98, the Constitution of the United Republic

ratification. All of these checks are outlined in Article 63(3) of the Constitution of the United Republic. The same functional checks are provided to the House of Representatives, except for the function of ratifying foreign treaties and agreements which is a union matter[137].

330. Secondly, the Legislature can check the excesses of the Executive by using the impeachment instrument, which is its biggest weapon against the Executive. To impeach the President, at least 20 percent of the legislators should sign a written notice to the Speaker to that effect, after which at least two thirds of votes of the Members of Parliament will be required to pass a resolution to remove the President from office. The President who loses office through impeachment loses all his/her benefits and immunity against prosecution for acts he did while in office[138]. However, the President can only be impeached if he has committed acts which generally violate the constitution or the law concerning the ethics of public leaders, he has committed acts which contravene the conditions concerning registration of political parties, or he has conducted himself in a manner which lowers the esteem of the office of the President of the United Republic[139]. In Zanzibar, the House of Representatives can also impeach the Zanzibar President by using Article 37 of the Zanzibar constitution. Unlike the Union Constitution where two thirds of the Members of Parliament must support the impeachment, in Zanzibar at least 50 percent of the members must support the motion to impeach the president.

331. In the same way, Article 50 of the Constitution of the United Republic allows the Parliament to impeach the Vice President. The Vice President can only be impeached if the President has submitted a certificate to the Speaker stating that the Vice-President has ceased or failed to discharge the duties and functions of the office of the Vice-President, he has committed acts which generally violate the constitution or the law concerning the ethics of public leaders, he has committed acts which contravene the conditions concerning registration of political parties, or he has conducted himself in a manner that lowers the esteem of the office of the President of the Unite Republic or the office of the Vice President.

332. Thirdly, the Parliament exercises control over the Prime Minister at two levels. The Constitution of the URT requires the President to appoint the Prime Minister from the largest Parliamentary party, or failing that, to choose a person who is most likely to be supported by the majority of MPs. The Presidential nominee for premiership has to be endorsed by the National Assembly by a simple majority of votes[140]. This arrangement was introduced in the Constitution via Act No. 20 of 1992. The same Act introduced a "Vote of No Confidence in the Prime Minister"[141]. By using this provision, the Parliament can sack the Prime Minister and hence punish the Executive. However, in order to throw the Prime Minister out, at least 20 percent of the members must sign a written notice to the Speaker and later on when the issue is debated upon in the House it must be supported by a majority of the Members of Parliament[142]. In Zanzibar, the House of Representatives can also cast a vote of no confidence in the Chief Minister but unlike in the Union legislature where such vote must be supported by a majority of the legislators, in the case of the House of Representatives at least

[137] Article 107 of the Constitution of the United Republic and article 88(1) of the Zanzibar Constitution
[138] Article 46 A (3-10), Union Constitution
[139] Article 46A (2), Union Constitution
[140] Article 51 (2), Union Constitution
[141] Article 53A (1), Union Constitution
[142] Article 53A (5), Union Constitution

two-thirds of legislators must support the motion of a vote of no confidence in the Chief Minister[143].

333. Fourthly, the legislators can moderate the powers of the President to declare a state of emergency. He/her cannot proclaim a state of emergency that can last more than 14 days unless the Parliament passes a resolution to support the proclamation within that period[144]. The Zanzibar House of Representatives does not have those powers as such since this is a union matter.

334. Fifthly, the Constitution also allows the National Assembly to form standing committees through which MPs can mount informed criticism of the deeds and misdeeds of the Executive[145]. The committees also make it easier for Parliament to exercise its supervisory powers over public affairs given to it by the constitution[146]. One such committee is the Selection Committee which may be formed to investigate any controversy which has come to the attention of the National Assembly. Article 85 of the Zanzibar constitution also allows the House of Representatives to form various committees to enable it to exercise its oversight role. Currently Parliamentary and House of Representatives Committees cover a wide spectrum of public life in Tanzania and have continued to be increased as need has arisen.

How the Executive Checks the Parliament

335. The Executive can control or influence the Parliament in several ways. First of all, the President inaugurates a new Parliament by addressing it during its first meeting and he/she may address it at any other time or send a communication to be read by a minister[147]. The President also may at any time summon a meeting of the National Assembly[148]. He is also empowered to designate a place where the Parliament should hold its meetings. Article 89(1) of the Constitution of Zanzibar also has similar executive venues for influencing the House of Representatives.

336. Secondly, being part of the Parliament, the President assents to the bills passed by the Assembly before they become operational. In other words, no law can take effect in Tanzania unless assented to by the President[149]. Article 79 of the Zanzibar constitution provides the same for the case of the House of the Representatives and the Zanzibar President.

337. Thirdly, the President is empowered to dissolve the Parliament. However, the President can only do so if the life of Parliament has expired, if the National Assembly refuses to approve a budget proposed by the Government, if the Parliament fails to pass a bill in circumstances where the President rejects a bill passed by the National Assembly and the bill is brought again to him after six months but he does not wish to assent to it, if the National Assembly declines to pass a motion which is of fundamental importance to government policies and the President considers that the way out is not to appoint another Prime Minister but to call for a general election, or if, having regard to the proportional representation of political parties in the National Assembly, the President considers that it is no longer

[143] Article 41(1) and (5) of the Constitution of Zanzibar
[144] Article 32(3), Union Constitution
[145] Article 96, Constitution of the United Republic
[146] Article 4(2)), Union Constitution
[147] Article 91(1) and (2), Union Constitution
[148] Article 92(3), Union Constitution
[149] Article 97, Union Constitution

legitimate for the government in power to continue in office , and it is not feasible to form a new government[150]. The Zanzibar constitution also empowers the isles President to dissolve the House of Representatives on almost the same grounds as stipulated in the Union Constitution[151].

338. Finally, as we have already seen, the National Assembly is prohibited from dealing with legislation in financial matters, except if the President has proposed that the matter be dealt with by the Assembly and the proposal to that effect has been submitted to the National Assembly by a minister[152]. There is no such express provision in the Zanzibar Constitution.

Specific Incidences of Conflict between the Executive and the legislature

339. Sometimes the doctrine of separation of powers involuntarily results in conflicts among the branches of government. Such conflicts in Tanzania are frequently observed between the Legislature and the Executive. For example, in 2002 a simmering conflict between the Legislature and the Executive came to the fore when the Parliament tried to push the Executive to work seriously on armed robbery that had reached an alarming level, especially when a safe containing salaries for police officers was stolen at a police station in Dar es Salaam. Hon. Leonard Derefa, then Member of Parliament for Shinyanga Urban constituency, told the Parliament that since the Police Force was no longer capable of protecting its own money, let alone the property and security of the people, it should be disbanded and a new one formed[153]. This irked the Inspector General of Police (then Mr. Omar Mahita) who retaliated arguing that those who accused the Police Force of inefficiency did not know the problems facing the Force. He charged that legislators were busy accumulating wealth by setting aside money for hefty allowances for themselves while the police force operated without the necessary equipment. He claimed that a one day allowance of a legislator was more than a monthly wage of lower ranking police officers[154]. The police being an organ of the executive, the Minister for Home Affairs had to intervene, asking the Inspector General to apologize for using such harsh words against the National Assembly. The apology cooled off the anger of parliamentarians who had threatened to field a motion that would lead to the summoning of the IGP to explain himself before the House.

340. In another incident, in November 2007, the Union Parliament formed a Select Committee to investigate a dubious electricity contract awarded to an allegedly US based Richmond Development Company Limited. Richmond was contracted to bring in generators to provide 100 megawatts of electricity after a drought early in 2006 left low water levels in dams, leading to severe power cuts. The firm, having failed to provide emergency power during a power crisis in 2006, transferred its contractual obligations to another company, Dowans, but by the time the company was ready to start operations, Tanzania's power problems had been resolved. Nevertheless, the government continued to pay the company

[150] Article 90 (2), Constitution of the United Republic
[151] Article 91(1) of the Zanzibar Constitution
[152] Article 99(1) and (2)(a) and (b)), Union Constitution
[153] Ndumbaro, L. (2004), "Migogoro Baina ya Mihimili Mitatu ya Mamlaka Tanzania," in REDET, Migogoro na Ujenzi wa Demokrasia Tanzania
[154] Ibid

more than USD 100,000 a day as capacity charges in a deal in which the country's Prime Minister was alleged to have a hand[155].

> Best Practice (3)
>
> After completing its enquiry, the Parliamentary Select Committee submitted its report for discussion by the entire House in its February 2008 session. However, the Speaker of the National Assembly, Hon. Samuel Sitta, shelved the report arguing that because of its sensitivity, it would not be discussed until he came back from an official trip to the US. Members of Parliament were angered by that unilateral decision and threatened they would not accept to proceed with deliberations of any other House business if the Richmond report was not tabled. The Speaker had to call off his trip to the US. When the report was eventually tabled, the then Prime Minister, Mr. Edward Lowassa, resigned. Subsequent House debates which demonstrated the zeal to fix firm checks against abuse of power by the Executive compelled two other cabinet ministers to resign. In the aftermath, President Jakaya Kikwete dissolved the cabinet and formed a new one. This was a clear and dramatic indication of authority of the legislature in checking Executive's abuse of power.

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342. Yet in a more recent case between February and March 2009, the Parliament demonstrated its clout to check the Executive by refusing the proposal by the Tanzania Electricity Supply Company (TANESCO) and the Government to buy used power generating machines owned by Dowans, a company that was believed to be associated with Richmond Company (a fraudulent company involved in a major scandal which led to the resignation of the former Prime Minister and two other ministers).

How the Executive Checks the Judiciary

343. One area where the Executive is said to check the Judiciary is the appointment of judges. All judges must be appointed by the President after consultation with the Judicial Service Commission[157]. The Chief Justice is also appointed by the President.[158] As we have already seen, the President cannot remove a judge from office unless a special tribunal recommends so,[159] but can suspend a judge pending investigation by the tribunal[160]. The fact that the President appoints judges and that he can suspend them does not augur well with the

[155] The Citizen, November 14, 2007
[156] Guardian, February 8, 2008
[157] Article 109(1), Union Constitution
[158] Article 118), Union Constitution
[159] Article 110 A(4), Union Constitution
[160] Article 110A (3), Union Constitution

principle that requires judges to adjudicate without fear or favour, especially in matters where the Executive is pitied against other parties in litigation. Furthermore, the fact that the Head of the Executive appoints the Head of the Judiciary makes the Judiciary appear subordinated, thus creating a feeling of subservience to the Executive. The same arrangement is found in the Zanzibar Constitution where the Zanzibar President appoints High Court Judges and the Chief Justice on recommendation of the Zanzibar Judicial Service Commission.[161]

344. Secondly, the President can alter sentences given by the Judiciary. He may grant a pardon to any person convicted by a court of law of any offence; he may grant any person a respite either indefinitely or for a specified period, of the execution of any punishment imposed on any person for any offence; he may remit the whole or part of any punishment imposed on any person for any offence, or remit the whole or part of any penalty of fine or forfeiture of property belonging to a convicted person which would otherwise be due to the Government on account of offence.[162] The same powers are granted to the Zanzibar President under article 59 of the Zanzibar Constitution. These are nowadays pretty standard powers given to Heads of the Executive, problems arise only if they decide to abuse them.

345. Thirdly, the President can suspend any law during a state of emergency, meaning that courts cannot apply such law during the state of emergency[163]. Since the Zanzibar president is not allowed to declare a state of emergency, he is not vested with the power to suspend any law during that time. Again, a problem arises only if the President decides to abuse the power by declaring a sham emergency for political gains.

346. Fourthly, the Executive controls the judiciary by enlisting the assistance of the Parliament to enact laws with clauses ousting or derailing the jurisdiction of the courts in various administrative matters. This includes a provision in the Government Proceedings Act which requires that the Executive should receive a 90 days notice before an aggrieved individual takes it to court. Also the courts have been prohibited from enquiring into anything done by the Electoral Commission **(**Article 74(12), Union Constitution**)** and the results of the Presidential elections **(**Article 41(7), Union Constitution**)**. In the same manner, the decision of the Registrar of Societies to refuse to register a society cannot be challenged in a court of law (Society Ordinance, 1954), while the decision of the Registrar of Political Parties is final and no court can challenge how he/she performs his/her responsibilities[164]. In Zanzibar the courts have also been prohibited from inquiring into acts done by the Zanzibar Electoral Commission[165]. In the same way Article 34(7) of the Zanzibar Constitution prohibits anyone from challenging presidential election results in courts of law. In our view, this area of "ouster clauses" needs to be reviewed since not all of them are justified.

How the Judiciary Checks the Executive

347. The Judiciary checks on the Executive by controlling administrative actions through what is known as Judicial Review. This is a process whereby courts of law are called upon to examine the legality of administrative actions or subsidiary legislation by applying their settled principles for the interpretation of statutes[166]. Through judicial review, a rule, regulation or administrative action which is not authorized by statute will be considered *ultra*

[161] Article 94(2) of the Zanzibar Constitution
[162] Article 45 of the Constitution of the United Republic of Tanzania
[163] Section 7 and 18, Emergency Powers Act No. 1 of 1980
[164] Section 20(1) of the political Parties Act, 1992
[165] Article 119 (13) of he Zanzibar Constitution
[166] Oluyede P.A, Administrative Law in East Afrca, Nairobi: East African Literature Bureau, p 66

vires, void and of no legal effect. Grounds for review include breach of rules of natural justice, an error in law, unreasonableness, abuse of power and excess of power. For example, in the case of *Sheikh Muhammad Nassor Abdulla v. The RPC Dar es Salaam and 2 Others***,** a religious leader was arrested at his house in Dar es Salaam, detained and later deported to Zanzibar allegedly on the orders of the President. His deportation was challenged in court on the ground that the President of the United Republic of Tanzania has no legal powers under the Deportation Ordinance, 1921 under which he purportedly acted to deport a person from Tanganyika to Zanzibar as the law allowed him to deport within the country which meant Tanganyika then. Therefore, by deporting this particular religious leader to Zanzibar, the President had exceeded his powers. The application was granted by Judge Mapigano, J. (now retired) and the order of habeas corpus issued. The executive had to implement the court decision.

348. In the same manner, the court can order the Executive to stop a certain process which is likely to injure the rights of citizens. For example, in late 2007, the court ordered a temporary injunction, putting a halt to a process to establish Kadhi Courts in Tanzania. Earlier in the year, the Government had invited the public to debate on the issue but Reverent Christopher Mtikila, Chairman of the Democratic Party , filed a constitutional petition in the High Court of Tanzania in Dar Es Salaam, contesting establishment of the courts, saying it runs counter to the country's Constitution.

349. Secondly, when the National Assembly is about to impeach the President, the Chief Justice of the United Republic chairs a special Committee of Inquiry to inquiry into the charges facing the President[167]. The Zanzibar Chief Justice is also a key participant in the impeachment of Zanzibar President in that he chairs a special committee to investigate whether the President should be impeached or not.[168]

350. Where the Tanzanian Cabinet finds that the President is unable to discharge the functions of his office by reason of physical or mental infirmity, it may submit to the Chief Justice a resolution requesting him to certify that the President is unable to discharge the functions of his office. The Chief Justice then appoints a medical board to inquire into the issue and advise the Chief Justice accordingly. The Chief Justice may then present to the Speaker a certificate certifying that the President, due to physical or mental infirmity, is unable to discharge the functions of his office and the office shall be deemed vacant[169]. The same arrangement for the removal of the Zanzibar President on grounds of infirmity is found in Article 32 of the Zanzibar Constitution. Thus the Judiciary plays a significant role in the removal of the President from his seat by impeachment or through certification of inability to perform duties because of ill health.

Specific Incidences of Conflict Between the Judiciary and the Executive

351. There have been incidences in which court decisions have been contravened in what is known as contempt of court. It is commonplace for Government agencies and institutions to disregard or simply ignore court orders, which they are supposed to enforce[170]. For example, in the case of *Lesinoi Ndeinai and Another v. Regional Prisons Officer and Another*, the applicants were arrested by police in August, 1979. From the police custody they were

[167] Article 46A (5) of the Constitution of the United Republic
[168] Article 37(3) of the Zanzibar Constitution
[169] Article 37(2) of the Union Constitution
[170] Chris Maina Peter, (2006) "Independence of the Judiciary in Tanzania: Many Rivers to Cross," address at Kituo cha Katiba Zanzibar, 2006

transferred to prison without formal charges being preferred against them. They filed an application for habeas corpus in the High Court. The High Court granted the application and ordered their immediate release. However, the unexpected happened. On stepping outside the courtroom as free men, the two were re-arrested and returned to prison. The order of the court that they be released as their detention was illegal was totally disobeyed by both the police and prison officials.

352. Similarly, in *Ally Lilakwa v. Regional Prisons Officer Arusha and Another*, (High Court of Tanzania at Arusha, Miscellaneous Criminal Cause No. 26 of 1976) (unreported), court orders were ignored by the prisons and police authorities. The applicants had been arrested by police and detained in prison. While their application was still pending in court in Arusha, the police and prisons officers, against the orders of the court, decided to transfer the applicants to Dodoma, another town in another region about 300 kilometres away from the court in which their application was pending.

353. In *Edward Mlaki and another v. Regional Police Commander Kilimanjaro and Another* (High Court of Tanzania at Arusha Miscellaneous Criminal Case No. 36 of 1979) the police in Moshi had seized two saloon cars, which the applicants used as taxi cabs. They applied to the High Court for the order of mandamus so that the two vehicles could be released. The Regional Police Commander and the Secretary of the Regional Security Committee refused to accept court summons from a fully authorized process server of the court. This refusal by both respondents was an indication of the degree of hostility between the judiciary and the other organs of the State.

How the Judiciary Checks the Parliament

354. Since the primary function of the Parliament and the Judiciary is to enact laws and to interpret laws, respectively, the two organs seem to overlap, especially when the Judiciary interprets law in ways that seem to create what is known as judge-made laws. When the courts are interpreting laws that touch on the fundamental rights of the people, they invariably declare void laws that are found to be inconsistent with the Constitution in what is known as judicial review. This doctrine was not written into the Constitution of the United Republic until the 5th Amendment in 1984, in which the supremacy of the Union constitution over all other laws, and the High Court's authority to strike out the latter, were stated (Articles 64 and 30 respectively)[171]. In the same way, the political agreement between the ruling Chama Cha Mapinduzi (CCM) and the opposition Civic United Front (CUF) enabled the Zanzibar Constitution to be amended in Article 25A to enable people to challenge laws or actions violating the Constitution. Through Judicial review, people can easily challenge legislative acts that seem to be inconsistent with the Constitution. For example, in the case of *Chumchua S/O Marwa v. Chief Officer of Musoma Prisons and the Attorney General*, Mr. Marwa challenged the Deportation Ordinance. Judge Mwalusanya declared the ordinance null and void because it contravened the Union Constitution.

355. Though the High Court has inherent powers to strike out a law that does not conform to the provisions of the constitution, such powers have led to a direct confrontation between the Parliament and the Judiciary. Such a confrontation occurred in 1994 when the Judiciary struck out a law prohibiting private candidature in elections, compelling the Parliament to

[171] Mukangara, D. R (2002), "The Tanzanian Constitutional Review: Issues for Debate", Paper Presented at the REDET's 8th Workshop on Democratic Transition in East Africa in Dar es Salaam in 2002

enact a constitutional provision restraining courts from declaring a law invalid. The provision states that:

> "….where in any proceedings it is alleged that any law enacted abrogates any of the basic rights, freedoms and duties set out in the Constitution, and the High Court is satisfied that the law concerned to the extent that it conflicts with the Constitution, is void or is inconsistent with the Constitution, then the High Court, if it deems fit, or if the circumstances or public interests so require, instead of declaring that such law is void , shall have power to decide to afford the Government or other authority concerned an opportunity to rectify the defect found in the law within such a period and in such a manner as the High Court shall determine, and such law shall be deemed to be valid until such time the defect is rectified or the period determined by the High Court lapses, whichever is the earlier."[172]

However, as we shall see later, this has not deterred the courts from exercising its inherent powers.

How Parliament Checks the Judiciary

356. The Parliament checks the Judiciary by enacting laws nullifying any unreasonable or undesirable court decision. This was clearly seen in the case of *Mtikila v. Attorney General* {1995} T.L.R 31, when Mtikila, Chairman of the Democratic Party challenged provisions of the Election Act 1985 that banned private candidates. The court declared the provisions unconstitutional. The Government hastily prepared a bill which the Parliament passed, inserting provisions in Article 21 to the effect that the ban on private candidature became constitutionally nullified. This has since remained one of the most debated issues in Tanzania. These series of actions in which the Parliament enacts a legislation that is nullified by the Court but later the Parliament enacts another law to nullify the court decision seems like a "hide and seek" game of power. Advocates of checks and balances argue that this is one vivid example of the mechanism of checks and balances in action. The nullification of a law by the judiciary is not done arbitrarily since judges can only nullify a law that conflicts with the Constitution. In doing so the judiciary does not usurp the powers of the legislature, nor does it encroach on the province of legislation since the legislature may still reformulate the offending law into a conforming one. But also the Parliament is constitutionally empowered to amend any law whether enacted by the Parliament or made by other authorities[173]

Specific Incidences of Conflict between the Parliament and the Judiciary

357. Although the Constitution expressly provides that the role of Parliament is to make laws while that of the Judiciary is to determine disputed questions of fact and law in accordance with the law, sometimes the two organs find themselves in direct confrontation over those roles as clearly indicated in the case of *Julius Ishengoma Francis Ndyanabo v. Attorney General* Court of Appeal (Corum: Samatta C.J. Kisanga and Lukagakingira JJA) Civil Appeal No. 64 of 2001[174], the appellant, an advocate by profession, contested the Parliamentary seat in Nkenge Constituency in the 2000 general elections. He lost the election according to the election results. He was aggrieved by the results and in accordance with s

[172] Article 30(5) of the Constitution of the United Republic

[173] Mukangara, D. R (2002), "The Tanzanian Constitutional Review: Issues for Debate", Paper Presented at the REDET's 8th Workshop on Democratic Transition in East Africa in Dar es Salaam in 2002.

[174] Refer to major cases of violation of citizens rights and liberties handled by courts in Objective Three.

111(1) of the Elections Act, 1985 he filed a petition before the High Court, challenging the validity of the declared victory of one of his opponents in the elections. The hearing date was not fixed because the appellant had not paid the requisite security for costs of shillings five million in respect of the proposed election, in accordance with s. 111(2) of the Electoral Laws (Amendment) Act, 2001. The appellant decided instead to file, under Article 30(3) of the Constitution and Section 4 of the Basic Rights and Enforcement Act, 1994, a petition challenging the constitutionality of the subsection and praying for a declaration that the said statutory provision was unconstitutional on the ground that it was arbitrary, discriminatory, and unreasonable.

358. The majority decision of the High Court did not accept this reasoning and decided that the petition lacked merit and that s. 111(2) of the Elections Act, 1985 as amended was in tandem with Article 30(1) and 2(a) and (f) of the Constitution, imposing limitations upon the enforcement and preservation of basic rights, freedoms and duties. On appeal, the Court of Appeal of Tanzania held that the Elections Act effectively denied access to justice to indigent petitioners and made it a rule without exception that each petitioner, regardless of his/her financial standing, would deposit the sum of five million shillings as security for costs before his/her petition could be fixed for hearing. The sub-section and the sub-rule were therefore inconsistent with each other and could not co-exist. The appeal was allowed and Section 111(2) of the Elections Act, 1985 was declared unconstitutional ab initio. The court restored the payment of a she. 500/- fee. It said plainly that the Parliament exceeded its powers by enacting the unconstitutional provision. It added that the legislative competence is limited to make laws which are consistent with the constitution.

359. Following that decision, Members of Parliament led by Hon. Pius Msekwa, the Speaker of the National Assembly (as he then was), were extremely annoyed. Msekwa wrote an article saying that there are no transparent limits that have been created by law on the general power of Parliament to legislate as the only legal limitation imposed on our Parliament 's legislative powers is clearly stated in Article 64(1) of the Constitution of the United Republic which strictly confines those powers to Union matters of the whole United Republic , thus it cannot legislate on non-Union matters in and for Zanzibar because that power is vested in the Zanzibar House of Representatives by Article 64(2). He said apart from that there is no legal limitation on parliamentary powers of legislation[175]. Msekwa further added that even if it was true that the Parliament exceeded its powers, the Court of Appeal should have asked the Parliament to correct the error itself, in accordance with procedure laid down in Article 30(5) of the Constitution.

360. Hon. Msekwa's remarks were rebutted by lawyers led by the Tanganyika Law Society. Thomas Mihayo, the then President of the Tanganyika Law Society led the attack, arguing that the absence of clearly and absolutely defined limits to the powers of Parliament is deliberate as it is assumed that the Parliament would use its wisdom to determine that what it is enacting is constitutional[176]. In the event the Parliament fails to so determine, the courts will come in and do the determination upon invitation by an affected person. Regarding Msekwa's suggestion that the court should have asked the Parliament to correct the error, the President of Tanganyika Law Society said courts never ask, they issue orders. He said insisting on the application of Article 30(5) of the Constitution would place the Parliament in

[175] Bunge News bulletin of July 2002 vol. 16
[176] The Tanzania Lawyer, special Edition, October, 2003, p.9

the embarrassing position of a receipt of orders and directives from the judiciary which would be opposed by many people. He further said that declaring of a law's incompatibility with the Constitution is insufficient especially in circumstances like the one which Ndyanabo found himself in, because he needed his petition to proceed to hearing and mere declaration would not enable that to happen.

361. However, in November 2002, the Parliament amended the Election Act, 1985 in section 111 by repealing subsections 2, 3 and 4 and substituting them with new ones. The amendment stated that the Registrar of the High Court shall not fix a date of the hearing of any petition unless the petitioner has paid into the court, as security for costs, a sum of five million shillings in respect of each respondent, but where the court is satisfied that compliance with such provisions will cause considerable hardship to the petitioner, the court may direct that:

(i) The petitioner give such other form of security the value of which is not less than five million shillings, as the court may consider fit; and
(ii) The petitioner be exempted from payment of any form of security for costs.

This case caused a debate over the boundaries and limits of Parliament and the Judiciary in their role of checking each other.

Resolving conflicts among the branches of the government

362. In the course of checking on each other, the three branches do conflict from time to time. However, the checks need only remain at the level of restraining one branch from exceeding the limits of its power. If the conflicts among branches were left to take the shape of confrontation, fight and war, they would have gone beyond the boundaries of the principle set by the doctrine of separation of powers and especially in the context of checks and balances in parliamentary systems such as that of Tanzanian. The few specific examples of conflicts between the branches of the Government have taught us that we need to have a mechanism for resolving conflicts among these organs. Unfortunately Tanzania does not have such an organ, and we feel it is high time the country designed one.

Some analysts have recommended that Tanzania could make use of the special Constitutional Court of the United Republic as recommended by the Nyalali Commission (1991). The court could help the country resolve conflicts among the Executive, the Legislature and the Judiciary whenever they surfaced[177]. The establishment of such a court is in line with Article 125 of the Union Constitution which states that there shall be a Special Constitutional Court. Article 126 provides that the sole function of the court is to hear and give decision over a matter referred to it concerning the interpretation of the Union Constitution where such interpretation or its application is in dispute between the Government of the United Republic and the Revolutionary Government of Zanzibar. The Constitution can be amended to ensure that the conflicts among the branches of the Government fall under the jurisdiction of this Constitutional court.

[177] Ndumbaro, L (2004), "Migogoro Baina ya Mihimili Mitatu ya Mamlaka", in REDET, Migogoro na Ujenzi wa Demokrasia Tanzania, 2004

A Summary of Major Issues:
Fusion of the Executive and the Legislature

363. The fusion of Executive and Parliament complicates the functioning of the doctrine of separation of powers in Tanzanian. For example, Tanzania's Constitution requires all cabinet ministers and deputy ministers to be appointed from among Members of Parliament.[178] This sometimes hinders accountability of cabinet to Parliament as legislators regard the ministers as their colleagues in the House. The fact that the President who is the Head of the Executive is part of the Legislature further complicates the implementation of the doctrine of separation of powers in Tanzania. Furthermore, a law passed by the Parliament or House of Representatives cannot take effect unless assented to by the President. This elevates the Executive over the legislature.

Excessive Powers of the Executive
364. Generally the Executive is well placed to widen its sphere of action because of its wide discretionary powers and the fact that it controls most of the resources needed by the other powers. The Executive also controls the coercive instruments of the state thus it is possible for the executive to take "*utra vires*" actions without the other powers raising a finger[179].

365. Secondly, the fact that the President can dissolve the Parliament intimidates Members of Parliament when debating or criticizing what the President does not want debated or criticized. We should also mention his power to suspend any judge pending investigation aimed at removing him from office. But on another level, using ouster clauses, the Executive has been avoiding checks mounted by courts of law by prohibiting application for prerogative remedies in courts of law. These clauses make the administration immune from judicial review, enabling the Executive to jump the barrier of checks by the Judiciary on some of its activities[180].

366. Thirdly, the constitution prohibits institution in court of any criminal proceedings against the President during his tenure of office[181]. For those who wish to institute civil proceedings must provide him with a notice of 30 days. Except where he ceases to hold office by way of impeachment, it is prohibited to institute in court, criminal or civil proceedings against a person who holds the office of the President after he ceases to hold such office for anything he did in his capacity as President[182]. The major argument against the protection is that if a sitting President can be impeached why shouldn't a former president be taken to court for the alleged evils he may have committed during his tenure[183]. This issue is still being debated in Tanzania[184].

367. Another excessive power of the Executive is found in Article 36 of the Union Constitution which empowers the President to constitute and abolish any office in the service of the United Republic. He may, therefore, form administrative tribunals that may usurp the powers of the Judiciary. In the same manner, the President is empowered to appoint up to 10

[178] Article 55(4), the Constitution of the United Republic of Tanzania
[179] Mushi, S. S, (2001) "Separation of Powers and Checks and Balances in Modern Government" in REDET, Civics: A Reader, p. 11
[180] Chris Maina Peter, (2006) "Independence of the Judiciary in Tanzania: Many Rivers to Cross" address at Kituo cha Katiba Zanzibar (2006)
[181] Article 46(1) of the Union Constitution
[182] Article 46(3) of the Union Constitution
[183] Kiula, N. in Kulikoni , February 27, 2008
[184] See *Tanzania Daima* of February 27,2008 in connection with accusations against former President Mkapa

Members of Parliament[185]. This increases the presence and muscle of the Executive in Parliament as these appointees may be inclined to toe the line of the Executive in Parliament. This provision, reintroduced in the constitution by the 13th Amendment (2000), has been decried as a "step backwards" in the process of democratization.

Non compliance with the Principles of Separation of Powers

368. This involves the tendency by state agencies to ignore court orders or decisions of Parliament. This sometimes leads to contempt of court or contempt of Parliament but most significantly it erodes the efficacy of the doctrine of checks and balances. For example, in the case of Happy George Washington Maeda v. Regional Prisons Officer Arusha (High Court of Tanzania at Arusha Miscellaneous Case No. 36 of 1979, the late Judge Mnzavas, J.K. ordered the release of the applicant from custody as both his arrest and detention were unlawful. However, on leaving the judge's chambers as a free man, the applicant was apprehended by police officers in civilian attire who were waiting for him outside the court. He was re-arrested and returned to custody[186].

Struggle for Power over Resources

369. It must be noted that it is the Parliament which enacts the Finance Bill or in either terms approves the budget of the government. On the other hand, it is the Executive which controls the funds that have been endorsed by Parliament. The Judiciary keeps watch over any misuse of funds, giving orders over any financial disputes whenever invited to do so. Thus each has a stake in public funds and they sometimes clash over control and use of these funds. The fact that each branch checks on the other sometimes fuels a tug of war but is an important development.

Massive representation of the ruling party in Parliament

370. The massive presence of members of the ruling party in Parliament has a bearing on the doctrine of separation of powers in Tanzania. Most of the time legislators from the ruling party find themselves inclined to support the Government even against their conscience. For example, when the opposition parties sought to convince the Parliament to form a select committee to investigate the corruption and irregularity in mining contracts in 2007, legislators of the ruling party objected to this and went ahead to expel the opposition legislator who had floated the idea. The MP had to stay out of Parliament for five months, though later on the President formed a Government Committee that included the expelled legislator to investigate the same. In the same year, another opposition MP, alleged fraud in the administration of the External Payment Account [EPA] and suggested that a Select Committee should be formed to investigate billions of shillings which had been lost through payments to sham companies. When legislators from the ruling party seemed opposed to the idea he withdrew his motion to appeal to the public through the use of the media. Reacting to this opposition initiative, the Government appointed an external auditing firm that confirmed that Tshillings 133 billion had been paid out erratically, probably through corrupt deals.

Shortcomings in Implementation of the Concept of Independence of the Judiciary

371. Article 142 (5) of the Union Constitution states that the moneys for the salaries, pension and gratuity paid to justices of Court of Appeal, judges of the High Court of the United Republic shall be a charge on the Consolidated Fund of the Government of the United Republic, meaning that the payment with the exception of allowances shall not be varied in a

[185] Article 66(1) (e), Union Constitution
[186] He was thereafter illegally detained

manner which is less beneficial to them (Article 142(3). However, the same arrangement is lacking for salaries of magistrates. This is a shortcoming.

372. While judges of the High Court and Justices of the Court of Appeal are immune from prosecution or litigation for acts or words said in performance of judicial duty, magistrates are protected from litigation for things done or said in the performance of their judicial duties only when the acts are done or words are said in "good faith"[187]. While judges and Justices of Appeal cannot be removed from office unless it is recommended by a commonwealth judicial board, magistrates can be removed from office by a Judicial Service Special Commission composed of members' majority of whom are politicians and officers from the Executive. This does not augur well for the upholding of the concept of independence of the Judiciary. While salaries of judges and Justices of Appeal are payable out of the Consolidated Fund thus ensuring security of remuneration for them, there is no security of remuneration for Magistrates. These shortcomings need to be addressed.

Use of Separation of Powers to abrogate checks and balances

373. There have been cases where the Parliament enacts a law which is finally challenged in court and declared null and void for being inconsistent with the constitution. Instead of appealing in court, the Executive rushes to the National Assembly to enact another law whose effects nullify the court decision. Since courts do not usually move on their own motion unless invited by an aggrieved person to review a certain law, such re-enacted law remains on the statute books even when they were obnoxious. An example is the case of Mtikila v. Attorney General (High Court of Tanzania at Dodoma, Civil Case No. 5 of 1993). The applicant, among other things challenged Articles 39, 67 and 77 of the Constitution that required all candidates in elections to be members and sponsored by political parties. In its judgment, the court declared that it shall be lawful for independent candidates, along with candidates sponsored by political parties, to contest presidential, parliamentary and local council elections.

374. Instead of appealing to the Court of Appeal or just allowing private candidates to contest elections as directed by the High Court, the Government chose to table in Parliament a bill that amended the Constitution to the effect that the ban against private candidates remained intact. Some analysts claim that the Parliament has powers where necessary to nullify any unreasonable Court decision. They refer to a decision which was made by the British Parliament in 1965. In that year, the British Parliament enacted a law to prevent the implementation of a decision by the House of Lords, the highest court in Britain. The House of Lords acting in its judicial capacity decided in its judgment that a Burma Oil Company be paid compensation for the huge losses it had incurred as a result of a retreating British Army's action to destroy the Company's oil storage tanks in Burma, in order to prevent their capture and use by the Japanese Army which was fast advancing. Some analysts argue that such nullification of judicial decision by legislation is part of the Parliament's role to check on the Judiciary[188]. Pius Msekwa argues that the nullification of court decisions in the case of Tanzania is brought about by the failure of the courts to observe constitutional principles. He argues that instead of striking down the impugned provision as being in breach of

[187] Section 66, The Magistrates Courts Act, No. 2 of 1984

[188] Msekwa, P (2003), "Separation of Powers Between the Parliament and the Judiciary", in The Tanzania Lawyer, Special Edition, October, 2003

fundamental rights provisions, the court may provide an opportunity to the authority concerned to rectify the law as provided for in Article 30(5)[189].

375. On the other side of the debate, some writers, including the Father of the Nation, the late Mwalimu Julius Kambarage Nyerere, describe actions by the Executive and Parliament to nullify court decisions as very dangerous, especially when they involve amending the Bill of Rights for political ends. Nyerere argues that if one section of the Bill of Rights can be amended, what is to stop the whole Bill of Rights being made meaningless by qualifications of, and amendments to all its provisions?[190] Nyerere is supported by Shivji who argues that the court cannot give an opportunity to the authority to correct an unconstitutional act or law because Article 30(5) of the Union Constitution is contrary to the whole constitutional scheme in that courts do not advise but decide and adjudicate. He referred to the case of N.I.N. Munuo Ng'uni v. The Judge I/c of High Court, Arusha (Civil Cause No. 3 of 1993, and Civil Appeal No. 45 of 1998). In that case, the full bench of the High Court, presided over by Justice Mapigano, observed that Article 30(5) was an absurdity and could not be applied with any judicial condo and they thus ignored it. The Court of Appeal endorsed the position of the High Court, further buttressing their argument by citing Article 107A of the Union Constitution which gives the judicature final authority on the dispensation of justice and adjudication of rights and obligations.

Objective 5: Ensuring Accountable, Efficient and Effective Office Holders and Public Servants

Legal Provisions and Institutions

376. The Government has taken steps to have a policy and legislation in place for it to be able to establish executive agencies. Executive agencies are somewhat autonomous institutions which are expected to be more efficient and effective as opposed to the mainstream department in a ministry. Executive agencies can have their own salary structure as a way to motivate employees, and given that they operate more or less like a private company, they are expected to self-finance through funds generated through their core business. They are however, under a parent ministry which just oversees their proper implementation of the policy area they are in operation.

377. The second measure is the enactment of the Public Service Management and Employment Policy as well as the Public Service Act No.8 of 2002 both of which aim at the restoration of meritocratic principles in public service human resources management. The selection and promotion procedures for the civil service in Tanzania are in principle supposed to be based on merit. This is not a new principle – it has been in existence since the colonial era. On the whole, meritocracy has been adhered to in the recruitment and promotion of civil servants. In January 1999, the Government launched a Public Service Management and Employment Policy sub-titled "In Pursuit of Public Service through Merit and Result Oriented Management". The policy purports to take into consideration major changes taking place in the economic, political and social domains which call for the adoption of new management and administrative skills.

[189] Msekwa, P. (2002), "Parliament's Dilemma Caused by the Court of Appeal of Tanzania", in Daily News, March 26, 2002

[190] Nyerere, Julius (1995) Our Leadership and the Destiny of Tanzania, Harare: African Printing Group, 1995. p.9

378. Regarding recruitment, the policy insists on the use of an open competition for public jobs which are supposed to be advertised in the media. Qualified applicants from within and outside the public services are eligible to apply. However, the recruitment of personnel to fill senior positions is done internally. This followed an amendment of Public Service Act No.8 of 2002 in 2007. Filling positions through internal sources aimed at promoting career development within the public service. Before the final selection, objective criteria for short-listing have to be adhered to. These are to be preserved in permanent records for future reference, inspection and audit. The selection criteria included the concern for an appropriate balance between academic/professional qualifications and other job related requirements which include experience, track record and learning potential.

379. The policy stipulates that all forms of discrimination (e.g., gender, people with disabilities, ethnic, religious, regional, etc) should be avoided in the process of recruitment. Applicants are awarded points using pre-determined criteria. Successful applicants will be those with the highest points. Panel marking sheets are kept for record and inspection purposes. All applicants – successful and unsuccessful – are informed of the results in writing within ten days after selection has been done. Promotions are also awarded dependent upon one's performance for a number of years, usually three years. This would include the candidate's demonstration of suitability for the job, matching one's qualifications, skills and experience as well as possession of requisite competences.

380. The third measure has been the enactment of the Medium Term Pay Policy, with two hallmarks (i) defining medium term targets for enhancing salaries of priority professional cadres, and (ii) emphasizing rapid enhancement of pay for personnel with managerial, professional and technical skills and responsibilities to increase prospects for Government to compete in recruitment and retention of such personnel. Salaries in Tanzania have been generally low and the Government has been taking various measures to try to improve them. Such measures include the retrenchment of some employees so that those who remain are better compensated; regular review of the real value of the salaries of its employees; and the establishment of executive agencies where salary and other benefits are determined as per performance of the agency in question. There has been need for the Government to build capacity to compete with the private sector when it comes to recruitment. At most the Government has been the place where employees gain experience and then they go for greener pastures in the private sector. So the Government has had to enact these policies in order to partly reduce this problem.

381. Fourth, Chapter seven of the constitution of the URT contains provisions regarding finances of the United Republic. It stipulates the need to prepare estimates of Revenue and Expenditure of the Government on yearly basis and submit them to Parliament. The Parliament has the oversight role and the government has to account for expenditure of tax payer's money. The Parliament has two committees – The Public Accounts Committee and the Local Authorities Accounts Committee – which deal with public finances in both central and local levels. Connected to this is the Public Finance Act 2001 which provides the legal framework for the revenue, expenditure control and accountability. The Act repealed the former Exchequer and Audit Ordinance of 1961.

382. Fifth, the Public Procurement Act No.21 of 2004 (which repealed the Public Procurement Act 2001) provides rules, regulations and procedures for public procurement. For many years there had been wastage and pilferage in the procurement process in Government and there was need to curb that. The law stipulates many things with regard to

public procurement including the processes required, the minimum personnel qualifications needed for employees in the procurement sections, issues of penalties and so on.

383. Sixth, the Local Government Finance Act No.9 of 1982 (as amended by Miscellaneous Act No. 6 of 1999) that stipulates the requirements and procedures to be followed by local government authorities in preparing annual estimates of revenues and expenditures was put in place. This aims at making sure that local government finances are well managed and that there is transparency in operations, and reporting.

384. Lastly, there are Government Circulars that come out from time to time. These are issued by the Government outlining regulations and procedures to be followed on budget, Financial Matters, recruitment etc.

385. In Zanzibar, the Constitution has provisions that require the creation of the Civil Service Commission that is vested with power to supervise recruitment and disciplinary actions in the civil service **(**Article 116(1), Zanzibar Constitution**).** The Commission is composed of a chairman and other five members who must necessarily not be members of the civil service, the cabinet, the legislature or Revolutionary Council. Furthermore the Zanzibar House of Representatives has enacted the Zanzibar Employment Act that guides all labor and employment matters including protection of workers and their remuneration **(**Act No. 11 of 2005**)**.

386. Zanzibar is still developing such a program that is expected to put in place mechanisms for proper recruitment, promotion and management of civil servants. At the moment, transparency and accountability mechanisms are not well developed within government ministries.[191] However, the Zanzibar Strategy for Growth and Reduction of Poverty has recommended the adoption of the civil service reform that will include the review of the payroll structure, and the wage bill starting with the audit of the civil servants in the Government.[192]

387. While Mainland Tanzania has developed client charters to provide opportunity for citizens to express their opinions on the quality of service delivery, Zanzibar has no such mechanism yet. As a result the participation of citizens in shaping the behavior and service delivery in public service is very limited.

Administrative Reform Profile

388. Since attaining independence, Tanzania has at various intervals pursued structural, institutional, systems and process reforms with the aim of improving performance in the Public Service Institutions (PSIs) and service delivery to the public. For example after independence up until around the mid-1980s the Government took some measures to intervene in the following areas, among others:

(i) Reforming Foreign and Defense sectors to make Tanzania operate as an independent state;

[191] Revolutionary Government of Zanzibar, Zanzibar Strategy for Growth and Reduction of Poverty – ZSGRP, paragraph 29.

[192] Zanzibar Revolutionary Government: Strategic Framework for the Zanzibar Poverty Reduction Plan (ZPRP) Review.

(ii) Undertaking massive infrastructural development in roads, schools, hospitals and in residential areas;
(iii) Human capital investments through construction of institutions of higher learning, i.e. a set of tertiary institutions specialized in different sectors were put in place;
(iv) Nationalization of the commanding heights of the economy; and later the reversal of the policy to meet current conditions whereby the state had to withdraw from direct involvement in production of goods and services in many areas. This was in line with the current philosophy on societal management, as well as the need to align oneself to pressure from the so called development partners;
(v) Measures to ensure employment to all Tanzanians completing their education at different levels. This was possible and sustainable for some years in the past but with reforms in the economy, it has not been easy for the government and its agencies to fulfill this noble aim. For instance from 1986 the then ministry charged with manpower development stopped allocating University graduates employment immediately after they finished their studies; and
(vi) Decentralization Policy which involved the transfer of decision making powers to regions. Efforts were made but they were not very successful. Local governments were abolished at some point but later reinstated. Different models have been tried and more are being tried in order that the people can have some say in the political, economic and social affairs.

389. The results of these interventions went a long way to create a semblance of a functioning Public Service. However the rapid and vast expansion of the public service (in terms of institutions and personnel and as a result of the *ujamaa* (socialist) orientation of the economy, contributed in some measure to the crisis of the public service which came to surface in the early 1980s.

In the 1990s, the public service continued to be in pathetic condition. It was bloated in terms of the number of institutions and employees:

(i) There were no reliable systems and guidelines, (those in place were out of date);
(ii) Indiscipline in its many facets was a common feature;
(iii) "Ghost" workers were in tens of thousands in the Government payroll;
(iv) The wage bill and other public expenditures were out of control;
(v) Ministries could not produce reliable accounts on a timely basis;
(vi) There was a lowly paid and therefore unmotivated public service;
(vii) Unmanageable public expenditure;
(viii) There was low revenue collection;
(ix) There were high domestic and international debts;
(x) There was poor service delivery;
(xi) There was low level of accountability;
(xii) Generally there was poorly performing public service institutions; and
(xiii) A huge government structure.

390. By the early 1990s a consensus emerged that the shift towards a free market economy needed to be reflected in the structure and size of the nation's public service. This consensus was expresses through the Civil Service Reform Programme (CSRP) which was officially launched in 1991.The overall objective of CSRP which ran until

1999 was to achieve a smaller, affordable, well compensated, efficient, and effective Civil Service. Its main focus was on:

(i) Cost containment;
(ii) Re-defining the role of the state in Tanzania and rightsizing of Government in order to control public expenditures, especially the wage bill;
(iii) Reduction and control of the workforce; and
(iv) Rationalization of the Government functions and structure and redefining the role of state.

CSRP had the following achievements:

(i) Streamlined Government structures resulting in reduction of Ministries, Departments and Units;
(ii) Reduced the number of public service employees from 355,000 in 1992 to 264,000 by the end of 1998;
(iii) Elimination of 16,000 ghost employees; and
(iv) Reduction in the wage bill.

391. Despite the achievements of the CSRP shown above, the following challenges remained:

(i) No significant improvement in service delivery to the public;
(ii) Low productivity in the public service institutions compared to the expenditure levels;
(iii) Low levels of accountability due to corruption, embezzlement and negligence;
(iv) Resistance to change by public service staff;
(v) CSRP (Phase I) reform content and process was directed by a small team based at the Civil Service Department and was seen to be driven by donors;
(vi) No sense of ownership to MDAs; and
(vii) Most importantly, the reform was not linked adequately to generating movement and change in the entire government machinery including the fact that there were no links to the other public sector reform efforts.

392. In 1998 the government adopted Public Service Management and Employment Policy. The policy identified the major weaknesses in the management systems in Public Service Institutions (PSIs) which hindered the performance and service improvement to the public; it also called for management systems that are efficient and effective in all public service delivery i.e. to hold PSIs and individual employee to account for performance and results. In response to those efforts and to support the implementation of PSMEP, a reformulated reform programme, known as the Public Sector Reform Programme was inaugurated in 2000. PSRP is a broader, wider and more comprehensive programme and is aimed at the total transformation of the public service into an efficient, effective and outcome-based institution. In the light of the above, PSRP has been planned to have three overlapping phases:

(i) Phase 1: Instituting Performance Management Systems (originally planned from 2000 – 2005 but implemented from 2000 to June 2007);
(ii) Phase 2: Enhancing Performance and Accountability (originally planned from 2005 – 2008, but to be implemented from July 2007); and
(iii) Phase 3: Instituting Quality Improvement Cycles (originally planned to be implemented from 2008 - 2010).

393. To sustain changes, the government has already taken steps to address the regulatory capacity of the public service by formulating and starting to implement a Legal Sector Reform Programme (LSRP). Other reform programmes include Local Government Reform Prgramme (LGRP), Public Financial Management Reform Programme (PFMRP) and various sector reforms programs (agriculture, education, health etc).

Public Assessment of Effectiveness of the Measures Taken

394. Results from the expert questionnaire and the household survey indicate that many citizens rate the measures as being moderately effective. More than half of the respondents on both expert and households fall in the middle value. Very few believe that the measures have made the public service better at around 5 percent. Similarly, those who see that there has not been any significant change are very few too at 2 percent. Again when it comes to the effectiveness of measures taken to enhance accountability the majority of respondents on the expert panel were for the average value of "moderate". But if we combine the 'moderates' and the 'highs' an 80 percent figure comes out implying that there is some significant development towards accountability.

Mechanisms of Promoting the Evaluation of Civil Service Delivery

395. The Tanzania Public Service has from time to time conducted Service Delivery Surveys (SDSs). For example, on the course of the implementation of PSRP I, SDSs for 27 MDs were undertaken and results are posted in the PO-PSM website: www.estabs.go.tz. SDS has been used to gauge information on the access, use, and satisfaction with the provision of Service.

396. Also Client Service Charters (now in existence in all MDAs as well as that of providing a mechanism for citizens to give feedback to the MDAs on the satisfaction or dissatisfaction of services delivered were established.[193]

Meritocracy in Public Service

397. There are reports on the evaluation of how the public service is performing. Examples are State of the Public Service Report (2005) and Report on Service Delivery Surveys. The latter was done in 27 Ministries and Departments. The Public Service Act No.8 of 2002, (later amended by the Public Service Act no….. of 2007) the Public Service Regulation of 2003 and the Public Service Scheme of 2003 provide the legal framework for meritocracy as advocated in the Public Service Management and Employment Policy of 1999. The Public Service Regulations, 2003 6 (a-h) vested powers of appointments, confirmation of appointments and promotion of public servants other than those appointed by the president to the following in their respective departments:

(i) Chief Executive Officers of MDAs;
(ii) Ministry of Local Government and Regional Administration;
(iii) Teachers' Service Department; and
(iv) Local Government Authorities.

The recruitment process contained in the Public Service Regulations paragraph 12 was designed to ensure that vacancies are filled in an open and meritocratic manner. All posts are advertised (except for the higher posts, i.e. superlative substantive posts as per circular letter

[193] See Client Service Charter Manual, President's Office, Public Service Management.

number C/AC.45/257/01/C/14 to attract the right candidates in a sufficient manner. All candidates are to be assessed in a fair and equitable process such that the most qualified candidate is selected. However, after joining the public service, the employee will be evaluated annually through an open appraisal system which is known as Open Performance Review and Appraisal System (OPRAS).The results of this system are expected to be used in several human resources management processes.

398. In Zanzibar, the procedure for recruitment in the Civil Service has been severely criticized by analysts, including the government itself. Studies have shown that there have been cases where filling of vacant posts by the Department of Civil Service in Zanzibar is not done on transparent criteria and the competition for jobs is stifled because posts are not usually publicly advertised.[194] A special government security organ (GSO) plays a big role in the recruitment and selection of personnel in the public service. GSO screens applicants on the basis of various factors, but mainly political, i.e. the position of the applicant in the historical divides of Zanzibar and makes final recommendations to civil service department. Zanzibar has not put in place the Open Performance Review and Appraisal System (OPRAS) that is used in the Mainland.

399. However, the Zanzibar Revolutionary Government has an elaborate mechanism of taking measures against errant civil servants. These measures include warnings, demotion and even summary dismissal. The Constitution of Zanzibar (Article 118(1), requires the government to establish the Civil Service Commission as the sole authority vested with powers to penalize and remove civil servants from service. Thus a person who is removed from his job by authorities other than the Civil Service Commission can always be reinstated by courts of law. Removal of civil servants from employment must be done by the Civil Service Commission as per the Zanzibar Constitution.

400. This was illustrated in the case of *Rukia Utope .v. Permanent Secretary, Ministry of State, Women and Children Affairs*[195] in which the Permanent Secretary dismissed Rukia using her powers vested in her by the Security of Employment Act of 1988 for discussing politics at the workplace. The dismissal was quashed and the legislation was declared null and void. Apart from courts some other bodies may also cause a dismissed worker to be reinstated. For example, following the death of a score of opposition supporters during a demonstration in January 2001, a Presidential commission of inquiry suggested that about 160 opposition supporters who had been sacked from employment in the civil service should be reinstated. The Government reinstated some of the workers in 2004.[196]

401. The statistics show that many of the respondents to both the expert and household instruments flock at the median values with very few seeing the civil service recruitment processes as being transparent. When responding to an alternative question posed for a 'yes' and 'no' answer, the household respondents were more negative than positive about the civil service adhering to the laid down procedure and criteria for recruitment. Some 861 respondents constituting 33.5 percent said the civil service did observe the criteria while 1243 constituting 48.4 percent said no. Some 16 percent of the respondents said they did not know. Generally one can say that there is no significant difference between experts and household

[194] Zanzibar Revolutionary Government, Institutional and Human Resources Reform, April 2003, a report drawn to consolidate findings obtained in various reforms up to 2003..

[195] Miscellaneous application no. 15 of 1999 from a miscellaneous civil appeal no. 3 of 1999.

[196] Radio one bulletin 11/4/2004.

respondents with regard to this variable. This could be interpreted as a situation where the public has similar view of the phenomenon as employment touches every household.

Incentives for Rewarding Well-performing Civil Servants

402. The operationalisation of OPRAS was aimed at providing a mechanism for rewarding the best performers in the Public Service. Since 2007, OPRAS has been implemented in the public service and it will soon be applied in all parastatal organizations. Information obtained through OPRAS have been used to make promotions in the public service and awarding increments as stipulated in the Public Service Management and Employment Policy. However, there are no readily available statistics as to its effectiveness.

Disciplinary Sanctions

403. Disciplinary sanctions in public service for non-performers include dismissal, demotion and reduction in salary. However, there is little or no authentic statistics to show that the system has been used for the above purposes. In fact, it has been very hard to fire civil servants in Tanzania and even the PO-PSM admits that rather than executives in their own departments firing the non-performers, they tend to send them back to the PO-PSM for reallocation to other offices.

Tanzania's Public Service Commission

404. The Public Service Commission (PSC) was established under the Public Service Act No. 8 of 2002. The creation of PSC is one of the efforts to implement the Public Service Management and Employment Policy endorsed by Government in 1999. The establishment of the PSC in the implementation of the principle of the above policy is to bring about fundamental shift in the management of the Tanzania Public Service, especially in the Management of employees as human resource management replaces the existing personnel administration concept (PSMEP para 6.1) The functions of the Commission are provided in section 10(1), (2) and (3) of the Public Service Act No.8 of 2002, as amended by Act No 18 of 2007 to make it a regulator.

Code of Conduct for Public Office Holders and Citizens' Charters

405. The public service of Tanzania is guided by the Code of Ethics and Conduct for the Public Service. This Code has been made by the Minister of State, President's Office Public Service Management under the authority of Section 34 of the Public Service Act No. 8 and Regulations 65(1) of the Public Service Regulations, 2003 (see code of ethics and conduct for public service, 2005). The code is based on the following values:

(i) Pursuit of Excellence in Service;
(ii) Loyalty;
(iii)Diligence;
(iv)Impartiality;
(v) Integrity;
(vi)Accountability;
(vii) Respect of Law; and
(viii) Proper use of Official Information.

406. In order for the Public Service to serve its citizens and customers well, in year 2001 the Government introduced the Client Service Charter (CSC). The CSC is basically a written commitment on the part of the institution concerned to their clients on the standards and

quality features of their main services and output. It also provides for arrangement for seeking remedy where an output fails to comply with the set standards.

During the implementation of the charter, MDAs will receive feedback from the clients in the form of complements, suggestions and complaints. PO-PSM is now piloting mechanisms for receiving feedback and handling complaints because they are important in improving service delivery.

Objective 6: Fighting Corruption in the Political Sphere

Introduction

407. Tanzania like many post-colonial states has been taking several measures in fighting corruption since independence. Several legal and institutional measures have been put in place to combat corruption. More recently, the National Anti-Corruption Strategy and Action Plan (NACSAP) and the Prevention and Combating Corruption Act, 2007 were adopted. Also international instruments for prevention and combating corruption such as the Southern Africa Development Community (SADC) Protocol Against Corruption, 2001; African Union Convention on Prevention and Combating Corruption, 2003 and United Nations Convention Against Corruption, 2003 which Tanzania was among the signatories have been ratified by the Tanzanian Parliament. During the single party era, the war against corruption was largely done on government discretion and considered as a state affair. However, with the introduction of plural politics, the involvement of the general public in the war against corruption has increased significantly. In the preparation of the NACSAP, for example, there was a significant level of participation of members from the private sector and civil society. Recently, there has been some systematic civic education aimed at increasing citizens' awareness about corruption and actions to take in case they fall victim of such a vice and where to report.

Combating Corruption: Legal and Institutional Framework

408. Legal and institutional measures to combat corruption in Tanzania can be traced back to the colonial era. In 1958, for example, the colonial government enacted the Prevention of Corruption Ordinance (Cap 400) of 1958 as a tool to fight corruption in the country. At that time corruption was more prevalent among lower and middle grade officers particularly those responsible with public services delivery. That legislation remained even after independence in 1961. In 1971 the government enacted the Prevention of Corruption Act No. 16. The law was adopted partly in response to changes in the socio-economic and political environment following the adoption of the Ujamaa policy in 1967.

409. In 1966 Tanzania formed an ombudsman-like institution called the Permanent Commission of Inquiry. This Commission was mandated with the tasks of monitoring and checking the abuse of power among civil servants. The Commission survived until 2001 when the Commission for Human Rights and Good Governance was formed to replace it.

410. The need to have a specialized enforcement institution to implement the requirements of the Prevention of Corruption Act of 1971 made the government amend the 1971 Prevention of Corruption Act in 1974 to provide for the establishment of Anti-Corruption Squad. The Squad was established in 1975 under the Prime Minister's Office. Later, it was relocated to the President's Office. This was the first specialized anti-corruption body in the country. The squad was charged with investigation and prosecution of offences under the Prevention of Corruption Act of 1971 and other offences involving corrupt transactions. The

Squad was also required to take necessary measures for the prevention of corruption in all sectors in the country and to advise the government and parastatal organizations on ways and means to prevent corruption. However, the Squad's authority to investigate corruption cases was subordinated to the authority of the Director of Public Prosecutions (DPP).

411. Moreover, the economic hardships of early 1980s led to critical shortages of commodities in the country. This created a conducive environment for rampart corruption. As a result, the Parliament passed the "Economic and Organized Crimes Control Act 1984 to deal with corrupt officials and "economic saboteurs." This law by implication defined all corruption offences as economic offences. This law also gave the powers to the DPP to determine cases to be prosecuted.

412. Twenty years after the enactment of the Prevention of Corruption Act of 1971, an amendment was made to the law in 1991 to establish the Prevention of Corruption Bureau (PCB), which replaced the Anti Corruption Squad. PCB was given the mandate to perform several functions including investigating corruption offences, conducting research on corruption matters, raise public awareness on corruption, prosecuting and giving advice to any entity in the fight against corruption in the country. The Bureau was located in the President's Office and it was headed by the Director General who was an appointee of the president. There was no procedure stipulated under the law for the appointment of the head of PCB.

413. Changes in the domestic, regional and international context regarding the war against corruption necessitated the repeal of the Prevention of Corruption Act No.16 of 1971 in 2007. With time, the weaknesses of the 1971 Act were realized which included for example the fact that some of the corruption offences were not captured by the 1971 Act. In addition, the law focused more on the public sector and little attention was paid to the private sector. Provisions for involvement of citizens in the war against corruption including protection of informers and whistle blowers and systematic provision of civic awareness were missing. Moreover, the DPP had enormous powers over the Bureau's prosecution process which made it functionally look like a department under that Directorate. Besides, the National Anti-Corruption Strategy and Action Plan 1999-2005 had come to an end and NACSAP II 2006-2010 was adopted in 2006 which partly contributed to the need of a new legal instrument.

414. Technological changes in science and communication have not only made corruption cases more complex but also created conducive condition for the development of national, regional and global networks of corruption. All these called for a significant improvement in the anti corruption legal framework and institutions to make them more efficient and effective in the war against corruption in the country.

415. In 2007, the 1971 Act was repealed and replaced by the Prevention and Combating of Corruption Act, 2007. The 2007 Act gave prevention and combating of corruption equal weight, the move that necessitated a change of the anti corruption bureau's name from the Prevention of Corruption Bureau (PCB) to the Prevention and Combating of Corruption Bureau (PCCB). PCCB, however, remains a government department in the President's Office. The new legislation has given the Bureau more legal force in preventing and combating corruption in the country. The new law has increased the power and mandate of the Bureau in fighting corruption. It has also widened the scope of corruption offences and thus providing room for prosecuting more corruption offences and related offences before the court of law than the repealed Act. The repealed Act had only three corruption offences and

not any corruption related offences. The new law has fifteen offences including: corrupt transactions in general; corrupt transactions in contracts; in procurement; in auctions; in employment; bribery of foreign public official; use of documents intended to mislead the principal; obtaining advantage without lawful consideration or for an inadequate lawful consideration; advantage received on behalf of accused; sexual or any other favours; possession of unexplained property; embezzlement and misappropriation; transfer of proceeds of corruption and false pretence to be an officer.

416. Furthermore, the new law gives powers to the Bureau to require any public official to give an account of all properties in his possession as well as in the possession of his agent and how such an official acquired such property. If the public official fails to comply with the requirement of a notice addressed to him to declare his property alleged to have acquired corruptly, the officer will be committing an offence and shall be liable, on conviction by the court of law, to a fine not exceeding five million Tanzanian shillings or imprisonment for a term not exceeding three years or both. Moreover, the new law provides room for cooperation with other international anti-corruption agencies. In terms of resource capacity, the PCCB has investigators with advanced training in different disciplines. The PCCB also have offices in all regions and districts on Tanzania Mainland. The PCCB, with their own prosecutors, can investigate and bring to court corruption cases.

417. The Bureau is headed by the Director General who is assisted by Deputy Director General. It is divided into four divisions (investigation, research, education and administration); two units and one secretariat. Among the cited weaknesses of the law establishing the Bureau include: the appointment power of the President over the two top positions of the bureau - the Director General and Deputy Director-General. The law neither provides for qualities of persons to be appointed to those positions nor procedures for removing the incumbents from office. The president can remove any of them at any time he/she deems fit. Moreover, the Bureau is located in the President's Office. The placement of the Bureau under the Presidency may render it powerless in investigating corruption where the Chief Executive and his lieutenants have strong vested interests.

418. Section 57 of the Act, for example, compels PCCB to seek the consent of the Director of Public Prosecution (DPP) in prosecuting grand corruption cases. It is only on petty corruption offences that the Bureau can institute prosecutions to offenders at its own volition. Grand corruption offences are committed by powerful people some of whom are in the government who may also be connected to the president. The president is also the appointing authority of the DPP. The Director of Public Prosecution retains the powers of ending any criminal case against any person through *nolle proseeque prerogative.* These institutional arrangements which separate investigation from prosecution powers are consonant with Havana Declaration of 1990. The declaration requires prosecuting authority to be different from the investigating authority in order to protect the rights of people from being abused. This arrangement, however, may be used to frustrate PCCB initiatives.

419. Furthermore, section 37 (1) of the Prevention and Combating of Corruption Act, prevents the media, civil society organizations or individual persons from reporting alleged offences under investigation by PCCB. Yet it does not describe procedures that are to be followed to make officials of the PCCB responsible when they announce or publish cases or names of people under investigations. This provision may be used to conceal people alleged to be involved in corruption. It also risks eliminating the public in the war against corruption

and thus ought to be struck off as it befits only judicial organs where rights are determined. These weaknesses of the new law raise the propensity of the Bureau to be used as a political tool at the expense of its entrusted mandate.

420. The Prevention and Combating of Corruption Act is meant also to protect whistleblowers. Section 51 of the Act protects informers. Section 52 of the Act provides protection of witnesses, experts and victims. However, there are many complaints that whistleblowers are often neglected and thus left to be harassed and victimized.

421. Apart from PCCB, the Ethics Secretariat was also created to monitor corruption among the leadership fraternity. Specifically its mandate is to curb the misuse of public office by top public officials. The body came into being in 1995 vide the Public Leadership Code of Ethics Act No.13 of 1995. The Ethics Secretariat was established in accordance with Section 132 of the Constitution. It is primarily designed to deal with breaches of ethics by public officials, which may or may not be corruption related. All high-ranking elected and non-elected officials are required to make a declaration of their assets and liabilities. Section 9(1) of the Act holds that every public leader shall within thirty days after taking office, at the end of each year and at the end of his/her term of office declare in a prescribed form, all assets owed by, or liabilities owed to him, his/her spouse or unmarried minor children. Section 12 of the Act bars a public leader from acquiring dishonestly any pecuniary advantage or assisting any other person to acquire any pecuniary advantage. A public leader is also obliged to disclose any pecuniary interest to forum vide section 13 of the Act. Further, section 14 of the Act requires a public leader to declare his interest in a contract that is made, or is proposed to be made. The interest of the public leader in this case includes the interest of the spouse or spouses or of the children of a public leader in relation to the government contract.

422. All declarations required from public leaders are submitted to the Commissioner of Ethics Secretariat. Failure to make declaration or making false declaration constitutes a breach of the code. Any breach to the code shall result in warning and caution or demotion, suspension, dismissal, resignation, imposition of other penalties provided for under the rules of discipline related to the office of the leader; and initiating action for the leader to be dealt with under the appropriate law. However, there are no hard data which show that there is any public leader who has ever been held accountable for breaching the public leadership code of ethics since the establishment of the secretariat. While this is the case, there is a growing public outcry on increasing breaching of the code amongst the leadership fraternity with impunity.

423. The head and chief executive of the Ethics secretariat is the Ethics Commissioner. The commissioner is appointed by the president amongst persons of a high proved or provable integrity, who are holding or have held or are eligible for appointment to hold the office of permanent secretary, the office of a judge of the high court, or any other high public office. The commissioner holds office for a term of five years and is eligible for reappointment for another one term. The president may remove the commissioner from office for good cause.

424. The government has also enacted Anti-Money Laundering Legislation as one of its actions to curb corruption. Anti-money laundering Act of 2006 requires banks and financial institutions in the country to maintain proper records of information regarding their customers in order to enable state apparatuses to track the occurrence of dirty transactions. The legislation establishes the Financial Intelligence Unit (FIU) to track suspicious movements of money that involves a predicate offence in the banks and other financial

institutions. Currently, commercial banks operating in the country require additional detail information in addition to basic banking information from new clients seeking to open new accounts. Required additional information includes signature specimens, thumb prints, voter registration cards, passports and tax identification numbers. The regulation requires banks to seek advice from the embassy or consular officer in the country of origin for foreigners seeking banking services in the country. The legislation came into force in 2007.

425. There is also the Good Governance Office within the President's Office. This office has the mandate: to coordinate the implementation of the National Anti-Corruption Strategy and Action Plan; to monitor the public leaders' ethics and abuse of power; to coordinate state organs involved in the fight against corruption; to strengthen the legal regime for fighting corruption and to link government and civil society efforts against corruption.

Major cases of alleged corruption prosecuted and disciplinary sanctions taken in the past five years

426. In the past five years, there has been an increase of alleged cases concerning corruption, especially in the energy, minerals and banking sectors. These cases include the Radar deal with a British firm, BAE, Bank of Tanzania Twin Tower scandal, Alex Stewart (ASSAYERS), Buzwagi Mining contract, Mchuchuma mining deal, Mwananchi Gold deal, Meremeta Limited, Tangold Limited, Mwananchi Trust CoLtd, Chimela Co.Ltd, VMB holdings Co, External Payment Arrears (EPA) Accounts and 172.9bn/- worth contract with Richmond Power Generation Ltd. PCCB has reported that it is investigating all these allegations.

427. The prosecution proceedings on corruption case against former Tanzania's envoy to Italy, Prof. Costa Ricky Mahalu and the then chancellor to the Embassy, Grace Alfred Martin is now on progress since, August, 2008. The dual were arraigned for allegedly, corruptly conspiring and stealing from the United Republic of Tanzania causing the loss of the sum of Euro 2,065,837.60 to the government of Tanzania. Two former cabinet ministers namely, Basil Mramba and Daniel Yona, for Finance, and Energy and Minerals, respectively, were on November 25, 2008, arraigned in court facing charges of abuse of office related to procurement and offering undue advantages to M/s Alex Stewart (Assayer's). UK and its subsidiary company, M/s Alex Stewart (Assayer's) Government Business Corporation as it is related to signing and execution of gold auditing agreement in Tanzania. Two former prominent cabinet ministers are charged with 13 counts of abuse of office, dubiously exempting tax allegedly occasioning loss of about TZS 12 billion, to the government of Tanzania.

Best Practice (4)

Also, in an unprecedented move, in 2007, the Parliament formed a committee to probe a controversial contract between the Government and Richmond Development Company on power generation. The Parliament Select Committee presented its findings in February 2008. The Committee implicated the Prime Minister in the scam, some cabinet ministers and senior government officials. As a result, the Prime Minister, Mr. Edward Lowasa, tendered his resignation followed by the Minister for Energy and Minerals, Mr. Nazir Karamagi, and the Minister for East African Cooperation, Dr. Ibrahim Msabaha – the predecessor of Mr. Nazir Karamagi in Ministry of Energy and Minerals. The Parliament directed the Government to take legal and administrative actions against all public officials implicated in the scam. Furthermore, on January 9, 2008, President Jakaya Kikwete revoked the appointment of the then Governor of the Bank of Tanzania, Mr. Daudi Balali, after an audit investigation involving the repayment of the country's external debt. The investigation was carried out by the accounting firm known as, Enest and Young, and it revealed that more than 133 billion Tshs ($116 million) had been fraudently paid to 22 firms through BOT's external payment arrears account (EPA) in one financial year alone. The Parliament also called the government to take appropriate measures against the Director of the PCCB after the latter's report on the Richmond contract seemed to hide the truth about the scam.

428. For many years now the government has been accused of focusing its war on corruption largely on petty corruption cases ignoring grand corruption cases. However, the current grand corruption cases under prosecution as shown above, when viewed together with the manner in which the parliament dealt with the Richmond ordeal, sends signals that the culture of impunity on grand corruption cases is giving way to accountable governance.

429. For the last five years a total of 22,184 corruption cases have been reported. Overall, in this period, out of all reported cases, only a negligible amount of cases have recorded conviction (74 cases). This shows that the capacity of the PCCB to handle corruption cases is severely limited. Table 3.4 shows the general trend in the fight against corruption in Tanzania.

Table 3.4: The State of Corruption Cases in the Last Five Years (2003-2007)

Category/year	Information received	Completed investigation files	New filed cases in court	Conviction cases recorded
2003	2,285	540	51	9
2004	2,223	458	60	6
2005	3,121	540	50	6
2006	6,320	1688	71	18
2007	8,235	2014	195	35
TOTAL	22,184	5240	427	74

Source: The Prevention and Combating of Corruption Bureau, 2008

Perceptions on Corruption

430. The perception of Corruption in Tanzania today is rather bleak. Currently, corruption has become a sensitive political issue and an issue of wider public debates. According to the 2007 Transparency International Perception Index, the Tanzania's score is 3.2 and is ranked 94th from 180 of the world's 193 countries which were included in the survey. The scores range from ten, most uncorrupt to zero-highly corrupt country. It, therefore, means that Tanzania has a serious corruption problem. However, this is a slight improvement from 2002 when the score was 2.7. Furthermore, according to the 2007 U4 Report, grand corruption is entrenched in Tanzania.

431. The findings from the latest Afro-Barometer Report (April 2006) shows that the perception of the extent of corruption amongst public officials is high. The same survey shows that public officials who have the most contact with citizens in the delivery of services or other interactions with government such as the police, health workers and teachers/school administrators are viewed as most corrupt by the public than more distant ones such as those in the office of the president.

432. The general perception of the people in 2002 showed that a majority of people (about 80 percent) encountered corruption directly or indirectly in their daily lives, albeit with variations in magnitude among sectors (ESRF and FACEIT, 2002). In a nation wide survey that was conducted by Research and Education for Democracy in Tanzania (REDET) in October 2007, PCCB scored the lowest in people's satisfaction about its performance. Only 17 percent of respondents said they are very satisfied with PCCB performance compared with 33 percent who said they were not. Those who were somehow satisfied represented 24.7 percent of the respondents. This is a clear indication that the general public is not satisfied with the performance of PCCB. The recent findings by the Parliamentary Committee on the Richmond saga that PCCB report did not reveal the truth about the corrupt practices involved in the deal may have worsened public image. Indeed, PCCB ranks very low when compared with other government institutions in terms of performance.

433. Furthermore, APRM household survey shows that the majority of people (50.8 percent) think that the current anti-corruption measures in the country are unlikely to bear the expected results. The large part (41 percent) of experts' opinion obtained in the same survey also think that measures and actions taken to combat corruption in the country are less effective. Thus, whereas there is no shortage of legal and institutional measures to fight corruption in Tanzania, cases of corruption are reported to be on the rise with limited/minimal rate of convictions

Legal and Institutional Framework for Preventing and Combating Corruption in Zanzibar

434. In 1975 the Government of Zanzibar institutionalized anti-corruption framework through the Prevention of Corruption Decree, No.4 of 1975. The decree established anti-corruption Commissions. Members of the Commission were appointed by the President (s. 3.2). Section 4 of the Decree stipulated that any ASP Department may, on suspicion that any person has committed an offence under the Decree, submit a report to the Political Bureau for consideration before referring the allegations to the Commission for investigation. The Attorney General, if satisfied that investigation by the Commission established prima facie case, may file a case by way of information to the High Court (s.5). The Decree created a number of offences including obtaining accepting, soliciting, attempting to obtain any benefit or inducement, reward or otherwise in relation to his/her official duty. The Commission was

empowered to require public officers to give account of their property. The Attorney General was given extensive powers in relation to corruption investigation including powers to authorize investigation of bank account.

435. The Decree was amended in 1976 through Decree No. 1 of 1976. The amendment introduced a requirement of public officers including their spouses, agents and trustees to declare their property in a special form. It is however not clear whether the declaration had to be made annually or just once. The amendment also vested powers of arrest to the Commission and granted statutory immunity while in the course of their duties.

436. The 1975 Prevention of Corruption Decree was further amended in 1980 through Decree No. 2 of 1980. Under the amendment, an Anti-Corruption Unit was established under the control and supervision of the Chairman of the Revolutionary Council. The Unit consisted of Director of the Unit and not more than four other members appointed by the Chairman of the Revolutionary Council. Functions of the Unit were to assist government and the Party to prevent corruption and also to investigate corruption cases. A substantive law on corruption remained to be Decree No. 4 of 1975.

437. Decree No. 10 of 1985; Penal Amendment Act diluted special status of anti corruption initiatives by repealing The Prevention of Corruption Decree of 1975 and reverting anti corruption provisions to the Penal Decree under Part X of the Penal Decree, Chapter 13 of the Laws of Zanzibar. The repeal of Prevention of Corruption Decree also meant that a special Anti-Corruption Unit was also officially disbanded. Corruption now was treated just like any other offence investigated by the Police under special direction of the Attorney General. The only new initiative was the empowerment of the Minister of Legal Affairs to create new offences under Part X of the Penal Decree.

438. Now anti-corruption provisions are contained in Part XLI of the Penal Act, No 6 of 2004. The provisions are not broad enough to cover the current aspects of corruption as envisaged by the International standard and laws of many other jurisdictions including Mainland Tanzania.

439. Unlike Mainland Tanzania which has a fully blown Prevention and Combating Corruption Bureau (PCCB), Zanzibar does not have a specialized agency for fighting corruption, meaning that corruption cases are treated as ordinary criminal wrong doings. The same applies to the Ethics Secretariat. The Ethics Secretariat, among other things, supervises the declaration of interests, assets and liabilities of political leaders and senior civil servants on the mainland but does not cover Zanzibar. Nevertheless some of Zanzibar leaders including the Zanzibar President, the Chief Minister, and Zanzibar Regional Commissioners are included in the list of the Union leaders who are required to declare their property and liability before the Secretariat.

Objective Seven: Promotion and Protection of the Rights of Women

440. The Constitution of the United Republic of Tanzania enshrines the well established rights to non discrimination. This is reflected in Article 12 and 13 which specifically state that all human beings are born free and are equal and they are equally entitled to the recognition and respect for their rights[197]. Moreover the Constitution requires that all persons

[197] Article 12 of the Constitution of the United Republic of Tanzania, 1977, as amended.

are treated equally before the law and prohibits the enactment of laws with discriminatory effects.[198] This therefore entails that men and women are equal and enjoy the same protection before the law. Also, the Bill of Rights prohibits discrimination based on all grounds including those based on gender.

441. The Poverty and Human Report Development Report (2007) reveal that there has been a steady increase of women in senior civil service since 2003, reaching almost 30 percent by 2006. Similarly the proportion of women representatives in National Assembly has reached the MKUKUTA target of 30 percent. But the proportion of women who are elected through the normal electoral process continues to be low. At the local level for instance, only 5 percent of district counselors are directly elected, the rest are through the special seats arrangements.

In senior management positions, women participation is very low as illustrated in the following table:

Table: 3.5 Women and Men in Public Decision Making Organs: 2003-2006

Position	Number of women			No. of Men			Percentage of women		
	2003	2004	2006	2003	2004	2006	2003	2004	2006
Ministers	4	4	6	23	23	23	15 percent	15 percent	21 percent
Deputy ministers	5	5	10	12	12	51	29 percent	29 percent	32 percent
Regional Commissioners	1	2	2	19	19	19	5 percent	10 percent	10 percent
Regional Administrative Secretaries		4	5	20	17	17		19 percent	20 percent
District Commissioners	19	19	23	88	88	84	20 percent	18 percent	21 percent
District Administrative Secretaries	20	14	14	89	85	85	10 percent	14 percent	14 percent
District Executive Directors		14	23		86	86		14	21
Permanent Secretaries	4	6	7	21	19	18	16	24	28
Ambassadors	1	1	1	29	34	34	3	3	3
Chief Justice				1	1	1			
Referral Court Judges			1						
High Court Judges	3	6	7	33	33	42	9	14	16
Magistrates		33	33		82	82		29	0

Source: Prime Minister's Office (2005) *Taarifa na Mafanikio ya Serikali ya Awamu ya Tatu*; REDET (2006) *Serikali ya Awamu ya Tatu: Tathmini ya Utendaji Wake;* ECA Report "The Quality of political leadership and independence of the civil service.

Rights of Women

Accession and Ratification of International Instruments

442. Tanzania is one of the African countries which have ratified the relevant United Nations and African Union Instruments protecting the rights of women. Tanzania signed the 1979 UN, Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), on July 17, 1980 and ratified the same on August 20, 1985. The Convention on

[198] *Ibid*; Article 13.

the Elimination of All Forms of Discrimination against Women constitutes the pinnacle of the United Nations' standard-setting work on gender equality. This landmark treaty moves beyond guarantees of equality in earlier, specialized legal instruments, such as the Convention on the political rights of women of 1952, as well as general human rights treaties. The Convention sets out, in legally binding form, a comprehensive legal framework for women's equality that it is often described as an international bill of rights for women. It consists of a preamble and 30 articles and defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. The Convention defines discrimination against women as:

> "Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."[199]

443. By accepting the Convention, Tanzania has committed itself to undertake a series of measures to end discrimination against women in all forms, including among others:-

(i) To incorporate the principle of equality of men and women in their legal systems, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;[200]
(ii) To establish tribunals and other public institutions to ensure the effective protection of women against discrimination;[201] and
(iii) To take all appropriate measures to eliminate all acts of discrimination against women by persons, organizations or enterprises.[202]

The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life, including the right to vote and to stand for election as well as education, health and employment.[203]

444. Tanzania is also a signatory to the Beijing Declaration and Platform for Action, 1995. Although the Beijing Declaration is a non-binding instrument, yet it operates as a worldwide campaign forum calling for states to implement all international instruments relating to the rights of women. In addition, Tanzania is among the 23 countries that have ratified the AU Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003). This marked a milestone in the protection and promotion of women's rights in Africa, creating new rights for women in terms of international standards. These rights include; the reproductive right of women to medical abortion when pregnancy results from rape or incest or when the continuation of pregnancy endangers the health or life of the mother.[204] More importantly, the Protocol explicitly calls for legal prohibition of female genital mutilation[205], and prohibits the abuse of women in advertising and pornography. State

[199] . Article 1 of the UN Convention on the Elimination of all Forms of Discrimination against Women, 1979.
[200] . *Ibid*; Article 2 b.
[201] . *Ibid*; Article 2 c.
[202] . *Ibid*; Article 2 e.
[203] . *Op Cit*; Article 7.
[204] . Article 14 (2) (c) of the Protocol.
[205] . *Ibid*; Article 5 (b).

parties are obliged to prevent and condemn trafficking in girls and women[206] and adopt such other legislative, administrative, social and economic measures to ensure the prevention, punishment and eradication of all forms of violence against women.[207]

Gender Based Violence

445. Tanzania has ratified the 1993 UN Declaration on the Elimination of Violence against Women. This Declaration generally reiterates the fact that women are entitled to equal enjoyment and protection of all rights and fundamental freedoms in the political, economic, social and cultural, civil or any other field.[208] States are required to condemn violence against women and should pursue by all appropriate means and without delay a policy of eliminating violence against women. At the regional level, Tanzania is a signatory to the SADC Declaration on Gender and Development.

The Tanzania health Survey 2004-2005, (NBS) conducted in 2004, revealed that a majority of both men and women reported that it is acceptable for a husband to beat his wife in some circumstances. An indication of the extent to which gendered violence is accepted is the fact that proportionately more women (60 percent) said it was justified than did men (42 percent). A noteworthy aspect of the analysis of these responses is that the proportion of both women and men who said that it was acceptable was higher among young men and women than among the older. Such attitudes do have a bearing on continuation of gender based violence within and outside the households, as per incidents of media reports as illustrated in the following section.

Case 1

" **Hill jealousy student stabs a girl to death** (The African: 08-06-09)

A student at the University of Dar es Salaam, Bertha Mwarabu (23) has died after being stabbed with a knife by her colleague, police confirmed. The Kinondoni Police Commander, Mark Karugenyeye, said yesterday that the incident took place at the UDSM' Mabibo hostel on Saturday at around 2.00 pm when Msaba Msiba (27) a second year education student pierced Bertha at her left breast and abdomen. Bertha died while being rushed to the hospital.

Case 2

Gang rape Kills Singida woman (The African 25/3/09)

A Singida resident Holo Nziga, (26) died after she was raped and sexually assaulted by about seven suspects who are yet to be identified. The acting Singida Police Commander, Liberatus Zibiliza, said the woman was a resident, of Shelui ward, Iramba district in Singida. He said the awful gang rape incident occurred in the wee hours of Monday morning in a house that was being looked after by Mwangu John. The RPC said that on the fateful day, the woman was allegedly seduced by one of the suspects and agreed to spend a night with him. They later went to a board house where they booked for a room for the night. According to RPC, after the first man was satisfied with his sexual desires, he disappeared in mysterious circumstances, and as soon as he left the room a gang of seven men broke into the room, raped and sexually abused the woman until she died and they

[206] . *Ibid*; Article 4 (2) (g)
[207] . Article 4 of the Protocol.
[208] . Article 3 of the UN, Declaration on the Elimination of Violence against Women, 1993.

immediately took off.

Case 3

A resident of Michikichini Mr. Emmanuel Marandu (37) is alleged to have killed his wife by hanging and thereafter chopped off her head. Mr. Emmanuel Marandu (37 was brought before the district magistrate of Kinondoni district in Dar es Salaam for causing murder of his wife for suspecting a love affair with his friend. . The Mwananchi Newspaper 21/06/09 reported.

Case 4

Another aspect of gendered violence is female genital mutilation/cutting, which affects 15 percent of all women in Tanzania. The practice is still common in particular regions, for example in Manyara, 81 percent of women reported that they had been circumcised. More than half the women in Dodoma (68 percent) and in Arusha (55 percent) reported having been circumcised. In almost all cases the form of circumcision involved cutting, with some flesh removed, but with no stitching. Circumcision was more common among the poorest and older women (REPOA: 2007)

Violence Against Elderly Women

446. Tanzania has also ratified the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 22 of which commits States to protecting older women from violence and abuse, whereby States Parties undertake to:
ensure the rights of elderly women to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.

447. *Tanzania attended the Second World Assembly on Ageing and endorsed the Madrid* International Plan of Action on Ageing (MIPAA) in 2002. MIPAA recognises that *older women face greater risk of physical and psychological abuse due to discriminatory societal attitudes and non-realisation of the human rights of women. Some harmful traditional and customary practices result in abuse and violence directed at older women, often exacerbated by poverty and lack of access to legal protection* (para 108). It provides recommendations to contribute towards the elimination of all forms of neglect, abuse and violence of older persons and the creation of support services to address elder abuse. These include:

- *Abolish widowhood rites that are harmful to the health and well-being of women* (110 b)
- *Enact legislation and strengthen legal efforts to eliminate elder abuse* (110 c)
- *Eliminate harmful practices involving older persons* (110 d)
- *Minimising the risks to older women of all forms of neglect, abuse and violence by increasing public awareness of, and protecting older women from, such neglect, abuse and violence, especially in emergency situations* (110 f)

448. A national Policy on Aging (NAP) 2003, has addressed violence against older women in a specific objective of which is challenging outdated customs that are harmful, including the killing of older women as a result of witchcraft allegations (Section 3.9). Similarly the target of eradicating of all forms of abuse and discrimination against women is included in the poverty reduction strategy, the *National Strategy for Growth and Reduction of Poverty*, June 2005, also known as the MKUKUTA (Cluster 3, Goal 4.17). The Mkukuta also recognises older people as a vulnerable group.

449. Despite this, older women continue to experience gender-based violence. In particular older women are often subject to accusations of witchcraft which can result in psychological abuse, intimidation, banishment from their homes and communities, isolation, violence and in extreme cases, killings of older women. Whilst accusations are common across the country, the extent to which these result in violence varies from region to region, being most extreme in the North Western parts of Tanzania. However reports in the media have indicated that killings of older women have spread to Rukwa region in the south west of the country13. Even in regions where witchcraft is not associated with extreme violence, it has negative social consequences, boosting the occult economy in divination and protection, deflecting savings of the poor and eroding social capital.

The context in which accusations of witchcraft are made is complex. Deep seated cultural beliefs, the low status of women, poverty, and the need to apportion blame and seek redress for a negative event, such as a death in the family or crop failure, all contribute to a culture in which these allegations and subsequent violence is tolerated. Older women are often targeted due to their low status, their low levels of literacy, and their inability to defend themselves and, in the event of widowhood, family members wishing to take control of property and assets.

Exact statistics are hard to come by and figures reported in the media and from other sources vary as to the extent of the killings. The statistics on the number of killings 2000 – 03 provided by the Government in their *Combined fourth, fifth and sixth periodic report of States parties*, 16 April 2007 (CEDAW/C/TZA/6) (page 24) only include those killings reported to the police. As many of the attacks go unreported, it has been estimated that as many as 1000 people lose their lives annually to witchcraft related violence14. The majority of those falling victim to witchcraft related violence are women over the age of 50. A report in This Day newspaper on July 8, 2006 reported that between 2003 – 2006 there had been 2,700 killings in the Mwanza and Shinyanga regions, 92 per cent of which were of older women.

Adequacy of the Constitutional Provisions

450. The Constitution of the United Republic of Tanzania enshrines the well established rights to non discrimination. This is reflected in Articles 12 and 13 which specifically state that all human beings are born free and are equal and they are equally entitled to the recognition and respect for their rights.[209] Moreover the Constitution requires that all persons are treated equally before the law and prohibits the enactment of laws with discriminatory effects.[210] This, therefore, entails that men and women are equal and enjoy the same protection before the law. The Bill of Rights also prohibits discrimination based on all grounds including those based on gender.

Other Legislations

There are specific legal provisions in different statutes that articulate and guarantee the rights of women in the country and mechanisms to enforce these rights including but not limited to resource allocation, affirmative action and mainstreaming gender equality.

[209] Article 12 of the Constitution of the United Republic of Tanzania, 1977, as amended.
[210] *Ibid*; Article 13.

Affirmative Action in Representative Bodies

451. It is important to mention that compared to men, women lag behind in terms of numerical representation in decision making bodies. Even with the adoption of affirmative actions, women constituted only 16.7 percent and 21.5 percent of all Members of Parliament (MPs) in 1995 and 2000 respectively. This number has increased to 30 percent in 2005. In Zanzibar, the number of women in decision-making bodies also remains rather low. Female members of the House of Representatives constitute only 22.8.percent.

Because of the low number of women in representative bodies particularly the Parliament and councils, Tanzania adopted a quota system for women. According to Article 78 of the constitution of the United Republic (1977), special seats for women in parliament are allocated to political parties in proportion to secured votes in parliamentary elections.[211] These special seats should be at least 30 percent of the total number of members of Parliament. It is important to note that the law applies to only those political parties that have attained a 5-percent threshold of national-wide parliamentary votes. Consequently, only three political parties were able to qualify for the special seats in 2005 after meeting the 5-parcent threshold, thereby excluding a majority of political parties.

In the past two general elections (1995 and 2000), however, the special seats were apportioned to parties in proportion to the number of parliamentary seats. Following this rule, five political parties were able to get parliamentary seats in each election.[212] In the council elections, local government elections Act states that women are supposed to be not less than one third of the elected councilors. These special seats in the councils are apportioned in accordance with the number of seats a political party has won in the council. In the 2000 elections, a total of 940 women councilors from different political parties were selected through special seats arrangement.[213] CCM got 93 percent of all the seats allocated for special seats (NEC, 2000: 76). In the 2005 elections, special seats for women councilors were 988. CCM received 89.5 percent of all the special seats.

452. However, the challenge still remains within political parties in nominating women as candidates. There is a wide gender gap in the number of candidates nominated by political parties. Only 5 percent and 8 percent of all the candidates were women in the 1995 and 2000 parliamentary elections respectively. In the 2005 elections, women constituted only 13 percent and 5.8 percent of all candidates for parliamentary and Councilors seats respectively (NEC reports). The other critical challenge is the concern that increased women representation in terms of numbers may not necessarily translate into any qualitative change in women socio-economic and political status in society, hence the urgent need to mainstream gender issues in all aspects so as to achieve meaningful gender equality.

The Land Act, no 4 of 1999 and the Village Land Act, No. 5 of 1999

453. These Acts together try to end the injustice in land ownership caused by customary law and practices that undermine women's right to own land. The Acts specifically provide for

[211] In case of a constituency with unopposed candidate, the valid votes cast for presidential candidate of that particular party shall be used in determining the proportionality.

[212] Given that fact that the ruling party wins an overwhelming number of seats in the 'winner -takes all system', both formula tend to increase the degree of disproportionality between the share of votes and seats and thereby exaggerating the CCM victory.

[213] There are about 2,537 wards in the country

gender balance in land ownership, land acquisition, transfer and participation in land administration and decision making. Section 17(2) of the Land Act requires that in appointing members of the National Land Advisory council, the minister should consider the importance of fair balance of men and women in the council. The 2004 amendments to the Act also make it mandatory for equal right for men and women to mortgage their matrimonial home/land. More examples can be cited in sections 3 (2) and 23 (2) of the Village Land Act that provide for the right of women to be allocated land and imposes a duty on the Village Council to ensure that women have maximum protection of their rights. Women's representation in the Village Adjudication Committee is stated in Article 53 (2) that women should constitute not less than three persons in a 6-9 member committee. However, the Customary Law (Declaration) Order, 1963 tends to undermine good intentions stipulated in the Land Act and Village Act through the codification of customary laws. It contains most of the customary rules that discriminate against women such as the customary law of inheritance that denies daughters the right to inheritance and the customary laws on maintenance and custody of children.

The Sexual Offences (Special Provisions) Act of 1998

454. It provides safeguards against sexual abuses against women, girls and children. This law sets the age for consent for sexual activity to be 18 years of age. This however tends to contradict the Marriage Act of 1971 that sets the age of consent to be 15 years of age.

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

455. This Act specifically criminalizes sexual and gender based crimes such as rape, attempted rape, indecent assault, sexual harassment and female genital mutilation.[214] Despite protecting women by punishing the perpetrators of the above mentioned offences, the Act has some weaknesses such as sanctioning the marriage of girls as young as 15 years by exempting men married to girls of the age of 15 from being convicted for statutory rape.[215]

456. The law prohibits female genital mutilation (FGM), also known as female circumcision; however, the law provides that anyone who has custody, charge, or care of a girl under 18 and who causes her to undergo FGM commits the offense of cruelty to children. Penalties for practising FGM on females under 18 are from five to 15 years' imprisonment, a fine not exceeding $235 (300,000 shillings), or both. The law also provides for the payment of compensation by the perpetrator to the person against whom the offense is committed. However, the law does not establish a minimum fine and does not provide legal protection for women 18 years of age or older. Many observers believe that the law mainly targets the parents or relatives of the victim; it is not widely perceived to target the practitioners or *ngaribas*, hired to perform FGM. The practice is still common in particular regions, for example in Manyara, 81 percent of women reported that they had been circumcised. More than half the women in Dodoma (68 percent) and in Arusha (55 percent) reported having been circumcised. In almost all cases the form of circumcision involved cutting, with some flesh removed, but with no stitching. Circumcision was more common among the poorest and older women (REPOA: 2007)

[214] . Part XV of the Penal Code, Cap 16 [R. E. 2002] covers offences against morality.
[215] . *Ibid*; Section 138

Women's Political rights and Affirmative Action

457. In Tanzania, women parliamentarians are recruited from either popular constituency votes, or through the special seats arrangements which were introduced in the country in 1985, or through presidential appointment as per constitutional powers granted to the president of the United Republic of Tanzania through. In the first post independence parliament in Tanzania, (1962-1965) women constituted only 7.5 percent of the total parliamentarians. This fell to 3.5 percent during the 1970-75 parliamentary elections. In the 1985 elections, which were the first to test a quota system, women suffered yet another setback in terms of constituency seats, where only two percent of female MPs won Constituency seats in 1985, a decline of 5.5 percent compared to the general elections of 1961. From 1961 to 1985, therefore, women members of parliament constituted less than 10 percent of total number of parliamentarians. In 1992, a constitutional reform resulted in the quota for women being increased to 15 percent of special seats in parliament and 25 percent of seats on local councils. This is in addition to normal constituency representation elections. This led to an increased percentage of women in parliament to 16.5 percent.

458. Following the Beijing Declaration, and the Cabinet Decision to prioritize women's political empowerment, and in line with SADCC Declaration of 1997, which had set a benchmark of 30 percent female representation in Parliaments, a constitutional amendment in 2000 resulted in the percentages of special seats being further increased to 20 percent in parliament and 33.3 percent on local councils. It is to be noted that the constitutional amendment target was below the SADC benchmark. Further constitutional amendment in 2005 set a target of 30 percent benchmark as per SADC benchmark (Meena R (2002). The government is now working towards instituting another benchmark of 50/50 by 2010 inline with the AU's constituent declaration.

459. The 2005 elections increased the numbers and percentage of women Members of Parliament from 21.5 percent in 2000 elections to 30.3 percent in the 2005 elections. Out of the 323 seats, women held 97 seats, out of whom, 17 were elected from the constituencies which is an increase from 12 in 2000, and only 8 in 1995. Another 75 were elected from the special seats an increase from 48 in 2000, while 3 were appointed by the president an increase from 2 in the 2000 elections. Two are from the Zanzibar House of Representatives. After the 2005 elections, more women were appointed as cabinet ministers some of them holding very strategic positions such as Minister of Finance, Minister of Constitutional Affairs, Minister of Education and Culture and Minister of Foreign Affairs (Meena R: 2002, TGNP : 2007) .

460. In the council elections, Local Government Elections Act states that women are supposed to be not less than one third of the elected councilors and members of Parliament in each council. These special seats in the councils are apportioned in accordance with the number of seats a political party has won in the council. In the 2000 elections, a total of 940 women councilors from different political parties were selected through special seats arrangement.[216] CCM got 93 percent of all the seats allocated for special seats (NEC, 2000: 76). In the 2005 elections, special seats for women councilors were 988. CCM received 89.5 percent of all the special seats

[216] There are about 2,537 wards in the country

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

461. The Law of Marriage Act recognizes a married woman's right to own property on equal footing with her husband. The relevant section of the Act provides that:

> "A married woman shall have the same right as has a man to acquire, hold and dispose of property, whether movable or immovable, and the same right to contract, the same right to sue and the same liability to be sued in contract or in tort or otherwise."[217]

These legal rights provided in the Marriage Act however, cannot be fully enjoyed due to provision of customary and religious norms and practices allowed by law. Most of matrimonial cases are handled by lower courts of law which normally apply customary law in settling marriage disputes in matters of inheritance. In the majority of cases, such practices discriminate against women and girl child.

The Act, however, fuels gender discriminatory practices by allowing marriage for girls as young as 15 years while the age of marriage for boys is eighteen years and above.[218] Under the Law of Marriage Act, a girl can get married at the age of 15 years and even below the age of 15 years by leave of court for what is referred to as exceptional circumstances. The relevant International Instrument relating to Minimum Age for Marriage[219]requires that states in their municipal laws should set up minimum age for marriage which should not be below 15 years. However, Tanzania having ratified the AU, Protocol on the Rights of Women in Africa, which as mentioned earlier requires that a minimum age of marriage for a woman shall be 18 years, then is equally bound to conform to the said Protocol.

The Citizenship Act, 1995

462. The citizenship law is gender discriminative in respect of naturalization. Section 11 of this law gives privilege for naturalization to alien women married to Tanzanians while giving no similar privilege to alien men married to Tanzanian women. The law also under section 9 entitles children of Tanzania male citizens by decent who are born outside of United Republic of Tanzania to naturalization whilst at the same time it is silent on naturalization of children born out of female citizens with the similar status.

The Status of Women

463. The gender gap between men and women has been increasing. For example, the African Gender Index (Tanzania chapter) (TGNP: 2004), revealed that between 1995 and 2000, the overall equality in economic power that is, opportunities between women and men decreased by 10 percent. This is attributed to the fact that income and time use or employment, between women and men as well as wages remained the same while equality in access to resources deteriorated by 50 percent. This index further revealed improvement by 20 percent in relative equality between women and men in the public sector component and a 10 percent improvement in relative equality between women and men in civil society component. However, despite these slight improvements, the inequality gap between women and men in Tanzania is still wide.

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[217] . Section 56 of the Law of Marriage Act, Cap 29 [R. E. 2002]; See also section 114 on the right to property after divorce.

[218] . Section 13 of the Law of Marriage Act, Cap 29 [R. E. 2002]

[219] . The UN Convention on Consent to marriage, Minimum Age for Marriages and Registration of Marriages; 1962.

The overall Gender Status Index i.e. the relative equality measure between women and men in Tanzania mainland, which is a combination of social, economic and political power, shows a very small improvement of about (3 percent) between 1995 and 2000. The overall equality between women and men in the country is significantly reduced by the high level of inequality between women and men in the political power block whose indices were (0.1) and (0.2) in 1995 and 2000 respectively (TGNP: 2005).

464. It is clearly observed that the government has tried, to a certain level, to promote rights of women in the country. Evidence can be drawn from some legal provisions incorporated in different legislations that specifically protect the rights of women in various aspects such as the protection against sexual abuse and other forms of violence as provided for under the Penal Code and the right to property under the Law of marriage Act, the Land Act as well as the Village Land Act.

465. The extent of women's involvement in various decision-making organs has considerably improved as compared to the previous years. Evidence may be drawn from the Village Land Act, No.5 of 1999 which seeks to enhance women's participation in decision making over land issues by making it mandatory that women be represented in land committees at village and ward levels. Also, some notable progress has been made to increase the number of women in senior leadership positions in the government; for instance, the percentage of women cabinet ministers increased from 11 percent in 1995 to 21.5 percent in 2006. The percentage of women as permanent secretaries rose from 19 percent in 1995 to 28 percent in 2006. (Chapter 6, Page 400, Table 6.26).

466. Moreover, there are efforts to enhance women's role in the society through various institutions, national or local programmes and policies through which women are enabled to participate in different activities in the society including participation in politics and leadership positions. Furthermore, since the amendment of the constitution that created special seats for women, the number of women in the parliament has significantly increased as discussed above. These efforts have enabled Tanzania to achieve the SADC 30 percent benchmark for women MPs in its parliament as well as having, in its current Cabinet, more women ministers than ever before. From the APRM expert survey, about 53 percent of experts were of the opinion that measures put in place to enhance participation of women are either very much effective or very effective. Some 39 percent of the experts reported that those measures are fairly effective. Only a few respondents said that that the measures to enhance women's participation are not effective at all (1 percent). Also, 45 percent of experts reported that measures to promote women's rights are fairly effective. To a certain extent, the experts' opinion seems to coincide with households surveys. In assessing the extent to which women's rights are respected and protected in several areas like participation, education, land etc, a majority of respondents fall into the category of those who say that 'women's rights are 'considerably protected' or 'fairly protected'

467. Efforts towards realization of women's human rights are faced with a number of challenges. Domestic violence against women remains widespread. For instance, the law prohibits assault but does not specifically prohibit spousal battery. Cultural, family, and social pressures often prevent women from reporting abuses and authorities rarely take action against physical abusers of women. Police are often unwilling to pursue domestic abuse cases. For example, in December 2005 Agnes Mbuya Majuu, a woman who endured severe

beatings for more than five years from her husband, told reporters that the beatings endangered her life, but that police had not taken her complaints seriously.[220]

468. Traditional customs that subordinate women remain strong both in rural and urban areas. Under customary law women are regarded as an inferior sex compared to men and their enjoyment of human rights is, therefore, limited. They are for example, not allowed to inherit or own landed property and they are not accorded their matrimonial property rights. Indeed, compared to other areas, a significant proportion, close to 30 percent, of the respondents are of the opinion that women's rights to property ownership and land are hardly or not respected and protected at all.

469. Relatively low awareness and illiteracy also constitute serious challenges. Women, particularly those in the rural areas, are still not aware of their rights and, therefore do not seek to enforce the same. For instance, the good intention of the Land Acts is affected by the fact that they (the Acts) are still unknown to many citizens particularly those in the rural areas. Women do not know the existence of these laws let alone their land rights the fact that makes them obey the gender discriminatory practices.[221] This raises the need for legal education to make women aware of their rights particularly in the rural areas where majority of women suffer from gender discriminatory rules and practices over land rights. Another related problem is that the legal system does not reach the majority of women in the rural areas at the same level as in urban areas. Moreover, empowerment of women is very much constrained by increased poverty and vulnerability among women. About 60 percent of women in Tanzania live in absolute poverty.[222]

470. Further challenges are identified by the Tanzania Gender Networking Programme (TGNP) (2006) as follows[223]:

(i) The application of the Gender mainstreaming approach is limited especially at the situation/problem analysis phase of the policy process, in monitoring and evaluation and in impact tracking;
(ii) Poor gender disaggregated data in most of the government sectors is still a problem;
(iii) Developing tangible gender indicators remains a problem in most of the development sectors; and
(iv) Inadequate technical backing to support gender mainstreaming efforts at various sectors.

Some Indicators of Gender Mainstreaming

471. The government of Tanzania has undertaken various efforts geared at mainstreaming gender in development policies and processes. The Poverty Reduction Strategies have

[220] Tanzania Human Rights Report, 2006.
[221] A research done by LHRC, TAWLA, ENVIROCARE, WLAC and WAT in Kahama, Kyela, Hai, Moshi rural, Mwanga and Mufindi districts found that customary laws are still dominant, and that women do not own land either because they do not know their land rights or because the land is owned by men under the traditional system and no land is left for women.
[222] Tanzania National website www.tanzania.go.tz
[223] TGNP (2006) Gender Mainstreaming in Development Policies and Programmes; Policy Dialogue Seminar at ESRF, May

incorporated gender in some of its targets and outcome areas. In 2000, the government revised the Women Development Policy of 1992 and charged the Ministry of Community Development, Gender and Children with the task of coordinating gender issues. Based on this, the Ministry developed a strategic plan on gender in 2006. Efforts at gender mainstreaming are carried out including such actions as creation of gender focal points and adoption of Gender Budgeting Initiative (GBI). The role of civil society organizations in these initiatives is equally recognized by the government.

472. Deliberate attempts have been made by the government to appoint women in top positions. In 1996, the Cabinet endorsed a decision to increase the number of women in all decision-making bodies. Despite the fact that women still lag behind men in holding senior positions in government, improvements have been realized in key posts. Gender mainstreaming is also encouraged in institutions of higher learning by creating gender units and task forces that are charged with the responsibility of promoting gender-related policies and programs.

Objective Eight: Promotion and Protection of the Rights of the Child and Young Persons in Tanzania

473. Tanzania demographic data reveal that the country has a young population. The 2002 population census revealed that Tanzania had 18, 749,265 (9,226,010 boys and 9,320,225 girls) children under the age of 18, an equivalence of 50.6 percent of the Tanzania total population. This has a bearing on the country's capacity to provide services that will enhance promotion and protection of children's rights.

Under the general statutes with regard to identity, citizenship, and of the majority and other general statutory schemes, the child is defined as one below the eighteen years of age in consonance with the International Conventions and Standards.

International Agreements

474. The government of the United Republic of Tanzania is a party to various international and regional instruments for the protection of children's rights. The governments of Tanzania and Zanzibar have made serious attempts to raise the consciousness of the people in respect to the fundamental human rights including the rights of children and young persons. These attempts involve the creation of institutional arrangements and legislation as well as adherence to international standards.

At the global level, Tanzania is a signatory to a number of international agreements on the rights of the child and, implicitly, young persons. As a common law country, international treaties have to be specifically adopted into domestic legislation before they become binding within the state (dualistic system). This is usually accomplished through enacting a piece of "stand alone" legislation, or more commonly amending existing legislation through "consequential amendments". These conventions provide a definition of the child, and their main thrust lies in protecting and developing children to their full potential. Among other things, they require the states to design and apply national policies to ensure effective enforcement and promotion of the rights of the child and young persons.

Convention on the Rights of the Child (CRC), 1989

475. This is the most widely ratified human rights document in the world, though the United States and Somalia have not ratified it. The Convention on the Rights of the Child is the first legally binding international instrument to incorporate the full range of human rights-civil, cultural, economic, political and social rights. In 1989, world leaders decided that children needed a special convention just for them because people under 18 years old often need special care and protection that adults do not. The CRC is largely premised on the universal human rights principles as well as on the logic that "the child by reason of his physical and mental immaturity needs special safeguards and care, including legal protection, before as well as after birth."[224] Consequently, childhood is entitled to special care and assistance. The convention spells out the children rights in 54 mutually supportive Articles.

476. Tanzania ratified the Convention on the Rights of the Child (CRC) on July 10, 1991. By ratifying the Convention the Tanzanian state demonstrates its commitment and desire to enforce and promote the basic rights of the child including survival, development, protection, participation, and the right not to be discriminated against. However a report by the United Republic of Tanzania pursuant to Article 8 of the Optional Protocol to the Convention on the Rights of the Child reveals that the government has not yet incorporated some of the international humanitarian laws (such as the Convention on the Rights of the Child and its Optional Protocol) into its domestic legislation.[225] Anecdotal evidence reveals that the government of the URT is exploring appropriate modalities for the incorporation of international humanitarian laws into its domestic legislation. As well, the government has already embarked on the process of establishing an International Humanitarian Committee (IHC) that will be responsible for ensuring compliance with the requirements of international humanitarian laws, including the CRC and its Optional Protocols.

Optional Protocols to the CRC

477. In May 2002, the UN General Assembly adopted the two Optional Protocols to the Convention on the Rights of the Child and on the sale of children, child prostitution and child pornography. The protocols defined some specific areas that should receive more attention because they needed to be addressed urgently.

Tanzania ratified the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography in April 2003. Moreover, the country acceded to the Optional Protocol to the Conventions on the involvement of children in armed conflict in November 2004. The government has three ministries which are responsible for the implementation of the Optional Protocol. These are the Ministry of Defense and National Service (MDNS); Ministry for Community Development, Gender and Children (MCDGC); and the Ministry of Justice and Constitutional Affairs (MJCA).

African Charter on the Rights and Welfare of the Child, 1990

478. This charter is nested into the charter of the Organization of African Unity (OAU) which recognizes the importance of, and respect to human rights. The Charter was adopted by the Assembly and heads of state and government of the OAU at its 16th Ordinary Session in Monrovia, Liberia in 1979. The African leaders recognized the need to take appropriate

[224] See the 1989 Convention on the Right of the Child Preamble. P.1.

[225] United Nations. (2007). "Report by the United Republic of Tanzania pursuant to Article 8 of the Optional Protocol to the Conventional on the Rights of the Child on the Involvement of Children in Armed Conflict", p.4 Available at:*http://www2.ohchr.org/English/bodies/crc/docs/ CRC/C/OPAC/TZA.1.pdf*

measures to promote and protect the rights and welfare of the African child. The charter is anchored largely on the basic premise that:

> The child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality, the child should grow up in the family environment in an atmosphere of happiness, love and understanding. As well the child requires legal protection in conditions of freedom, dignity and security.[226]

The charter and its prescriptions on the rights of the African child are not divorced from the virtues of the cultural heritage, historical background and the values of the African civilization. These are recognized and should be used to inform the interpretive criteria of the rights and welfare of the child in the context of an individual African country. Moreover, the charter is critical on social customs, traditions, cultural and religious practices that are inconsistent with the rights, duties and obligations contained therein. Tanzania ratified the African Charter on the Rights and Welfare of the Child on March 16, 2003, that is four years after its adoption by OAU member states.

Minimum Age Convention (MAC), 1973

479. This is the International Labour Organization (ILO) instrument which compels members to pursue a national policy specifically designed to ensure, among other things, the effective abolition of child labour and progressive rise of the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. The Convention sets 18 years as the minimum age for admission into any type of employment or work which by its nature is likely to jeopardize the health, safety and morals of young persons. In totality, the convention has 9 Articles which are aimed at achieving the total abolition of child labour.[227]

Tanzania ratified the Minimum Age Convention (MAC) on December 16, 1998. Despite the ratification of the Convention, anecdotal evidence shows that various forms of child labour still exist in Tanzania especially in mining, commercial agriculture and fishing sectors as well as domestic household services.

Worst Forms of Child Labour Convention, 1999

480. This Convention was adopted on June 11, 1999 by the General Conference of the International Labour Organization (ILO). Its major objective is to prohibit and eliminate all worst forms of child labour. All state parties to this ILO Convention No. 182 must submit a detailed report, including all relevant laws, regulations and administrative provisions which are specifically designed to safeguard children against all worst forms of child labour.

Tanzania ratified this convention on September 12, 2001. Tanzania is one of the three countries in the world carrying out the Time Bound Programme (TBP) for the elimination of the worst forms of child labour, which was launched in Geneva in June 2001.[228] In implementing the programme the government established the National Inter-Sectoral

[226] See the Preamble for the 1999 African Charter on the Rights and Welfare of the Child. Pp.1-2.
[227] ILO Minimum Wage Convention (1973) No.138.
[228] See report by the Ministry of Community Development, Gender and Children and the Women's Information Centre (WIC) Report of Briefing Session on Children Issues held at WIC Documentation Centre on 17TH March 2004, p. 4.

Coordination Committee (NISCC) at national level in order to facilitate coordination of various activities and interventions geared at eliminating the worst forms of child labour.

By ratifying the conventions, Tanzania was duty bound to review its legislations in order to make sure that they are compatible with the provisions spelt out in the conventions. The decision of the Government of the United Republic of Tanzania to ratify all major conventions which provide for the protection and promotion of the rights of the child and young persons is an indicator of the fact that the country has made strong international commitments to its children. These commitments represent pledges of the Tanzanian people and government to fulfill all children's rights to survival, protection, development and participation.

International Conventions: Lessons from Experience

481. There are remarkable achievements and challenges in the manner and extent to which Tanzania abides by the international conventions. Much as Tanzania has ratified the major international conventions, there are areas in which Tanzania needs to make a difference in order to facilitate effective protection and promotion of the rights of children and young persons.

Achievements

There are a number of measures either already in place or on the drawing board regarding the adoption of the international conventions on the protection and promotion of the rights of children and young person. The political decision to ratify all the major conventions reveals the political leadership's and Tanzania's commitment to the protection and promotion of the rights of the child and young persons consonant with the provisions of the conventions. Moreover, Tanzania acceded to and ratified the conventions voluntarily.

482. The Government is looking into appropriate ways of incorporating into domestic legislation international humanitarian laws such as the Geneva Conventions, the Rome Statute of the International Criminal Court (ICC), the Convention on the Right of the Child (and its Optional Protocols). Moreover, the Government of Zanzibar is in the process of domesticating the Optional Protocols to the CRC, that is, the Optional Protocol on Involvement of Children in Armed Conflicts and on the Sale of Children, Child Prostitution and Child Pornography.

483. The Government is in the process of establishing an International Humanitarian Committee (IHC) that will be responsible for ensuring compliance with the requirements of international humanitarian laws, including the optional protocols to the CRC. In May 2006, the Ministry of Community Development, Gender and Children (MCDGC) disseminated the optional protocol to its senior staff through a training programme that focused on the child rights. The training also included discussion on the CRC and its two Optional Protocols as well as the African Charter on the Rights and Welfare of the Child. An action plan was adopted for implementing child rights within participants' respective areas of work, including training communities so as to promote and safeguard child rights. The MCDGC intends to expand training to all regions and up to the ward level. Some of the major documents on international conventions have been translated into Kiswahili language to facilitate wide spread dissemination and readership.[229] It is also of interest to note the fact that ILO in

[229] United Nations. (2007). "Report by the United Republic of Tanzania pursuant to article 8 of the Optional Protocol to the Conventional on the Rights of the Child on the Involvement of Children in Armed Conflict", p.4 Available at:*http://www2.ohchr.org/English/bodies/crc/docs/ CRC/C/OPAC/TZA.1.pdf*

collaboration with the Tanzania Vocational Training Programme (VETA) have been running a special Counselling Programme for children formerly engaged in bad employment.

484. In military operations, the United Republic of Tanzania has never recruited or used young persons or children in hostilities. Although in exceptional circumstances the law allows for recruitment of persons under the age of 18 years, in practice there has been no such recruitment, and no members of the Tanzania People Defence Forces (TPDF) are under 18. The concept of "child soldier" is alien in Tanzania. The Ministry of Community Development, Gender and Children (MCDGC) has already submitted to government a proposal to establish a national coordination body to be responsible for coordinating all matters related to child rights and welfare at all levels. The government cooperates very well and constructively with non-state actors, including international bodies such as UNICEF, ILO, WHO, AXIOS and local NGOs to improve the well being of all children and young persons, including the Orphans and Vulnerable Children (OVCs).

Challenges

485. There are areas of weaknesses which Tanzania needs to improve regarding the implementation of International Conventions. For instance, Tanzania has not yet incorporated some of the Convention on the Rights of the Child into its domestic legislation. Although Tanzania has signed and ratified a number of international Conventions it has not yet changed its laws to give practical effects to its obligations under these treaties. Since ratifying the CRC the state has been working to finish one comprehensive national law on children the strength of that effort and the actual progress made, however, had its limitations.[230] There is no institutional framework or a specific organ which is created and mandated to ensure effective enforcement and implementation of the international conventions aimed at safeguarding the rights of the child and young persons. Limited effort has so far been made to educate the public in its entirety on the fundamental rights of the child and young persons which are enshrined in different international Conventions ratified by the country.

- The different definitions of the term Child in various enactments have resulted in depriving certain categories of children of their rights and protection under the law;
- Various laws touching on inheritance and successions maintain unnecessary discrimination based on status, nationality, religious belief sex or lineage group that one belongs to;
- The Adoption Ordinance needs to be re-examined particularly bearing in mind its rigid
- formalities and probable socio-economic difficulties that a prospective adopter may face as a result of his age or in-ad equalities with a child;
- Child labour and juvenile prostitution are at present real problems as a result of which children are exploited, maltreated or abused both physically and mentally;
- The state of law touching on children s welfare as a whole as it is at present calls for review and change (Law Reform Country Report 1996)

Domestic Legal and Institutional Frameworks

486. The Constitution of the United Republic of Tanzania, 1977 and the Constitution of Zanzibar, 1984 contain a Bill of Rights, which reaffirm fundamental rights and basic freedoms. Among these are the rights to equality (that all human beings are born equal), the right to life, right to be registered following birth, freedom of expression, rights to enter and leave the country and freedom of association. All these rights extend to nationals and resident

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[230] see NGO Report on Tanzania to the Committee on the Convention of the Rights of the Child, Nov. 15, 2000; Available at: *http://lrct-tz.org/pdf/watoto.pdf*

non-nationals alike. The constitution, among other things, provides for, and guarantees the protection of human rights. There are several articles which either implicitly or explicitly, include the protection and promotion of the rights of Children and young persons. These include the following provisions:

(i) Human dignity and other human rights are respected and cherished;[231]
(ii) Every person has the right to self education and social welfare and the government has to ensure availability of equal and adequate opportunities for the services;[232]
(iii) All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law;[233]
(iv) No person shall be subject to torture or inhuman or degrading punishment or treatment;[234]
(v) Every person has the right to freedom of opinion and expression;[235]
(vi) Every person in the URT has the right to enjoy fundamental human rights and benefits of the fulfillment by every person of his duty to society; and
(vii) Every person in the URT has a right to equal protection under the laws of the United Republic.[236]

487. In the light of the preceding it seems plausible to argue with confidence that the Constitution of the URT is not silent on matters pertaining to protection and enforcement of the rights of the child and young persons.

Among the pieces of legislation guaranteeing children and young persons' rights include:
(i) The Children's Homes (Regulation) Act, 1968;
(ii) The Penal Code and the Affiliation Ordinance;
(iii) Law of Marriage (Act No. 5 of 1971);
(iv) The Penal Code;
(v) The Sexual Offences Special Provision Act;
(vi) The Children and Young Persons Ordinance Cap 13;
(vii) The Employment and Labour Relations Act, 2004;
(viii) Education Act No. 25 of 1978;
(ix) Refugee Act of 1998;
(x) Day Care Centres Act, 1981;
(xi) Births and Deaths Registration Ordinance of 1920;
(xii) National Refugee Act, 1998;
(xiii) Employment Act, (Mainland);
(xiv) Empoyment Act, 2005 (Zanzibar); and
(xv) Other legislations on Children issues include the Day Care Centres Act; 1981 (No.17) of 1968; Penal Code Cap 16; and Adoption Ordinance, Cap 335.

Developments on Legal Framework
488. The Government was taking serious steps to either review or amend some of the existing legal instruments governing the protection and promotion of the rights of the child and young persons. As such the government created the Law Reform Commission (LRC) to

[231] URT Constitution, Article 9-(a).
[232] URT Constitution, Article 11.
[233] URT Constitution, Article 13-(1)
[234] URT Constitution, Article 13-(6e).
[235] URT Constitution, Article 18 (1).
[236] URT Constitution, Article 29.

facilitate, among other things, review of the legislations. The Government is also reviewing the Laws of Inheritance and Succession and the Law of Marriage Act No.5 of 1971 with a view of incorporating the best interests of the child. Recently, the Births and Deaths Registration Decree of Zanzibar was amended to make registration of children immediately after birth mandatory.

489. The Education Act 1982 of Zanzibar, which is critical to the promotion and protection of the rights of the child, has been reviewed. According to Section 20 (4) of this Act, a female pupil who is found pregnant before completion of basic education shall be expelled from school. The same applies in the mainland in accordance with the provisions of the Education Act, No 25 of 1978. Moreover, the Revolutionary Government of Zanzibar is in a process of reviewing the Spinsters, Widows and Female Divorcees Protection Act No. 4/85 which makes it an offence for a spinster, on her own free will to become pregnant. If found guilty one is liable for a sentence of two years imprisonment.

Lessons Emanating from Domestic Legislation

490. The existence of the various pieces of legislation which govern the child and young persons' rights shows the government's commitment to protecting the child. However, there are some weaknesses which we must illuminate regarding the legal regime and instruments governing the protection of the rights of children in Tanzania. First, the clauses addressing children's welfare are scattered in different Acts. These require harmonization and aggregation. The government needs to accelerate the work on Tanzania Children Act for without it children in conflict with the law will continue to be incarcerated with adults.[237] Second, there are no elaborate mechanisms for enforcing and ensuring that the children's rights are protected according to the spirit and the letter of the existing laws.

491. Third, there are still clauses and practices which are incompatible with the spirit of promoting children and young persons' rights. The corporal punishment which is unreasonably and excessively administered in schools and households attests to our observation. Fourth, not enough work has been done to prohibit and combat the old-valued customs, norms and practices which undermine the governments' effort to protect the children and young persons' rights. These include practices such as early marriage, female genital mutilation and other forms of gender discrimination. Lastly, incidences of pregnancies to school girls are reported frequently in the media despite the existence of a piece of legislation to take care of the culprits. A trend of pregnancy cases in primary and secondary schools is somewhat alarming and undermines the young girls' rights to education.[238]

492. The legislation which provides for permanent expulsion of school girls who become pregnant is obnoxious and draconian.[239] Denying these girls the right to education is not an option. Very few actors supporting children's rights and welfare are conversant with the legal framework for child protection. As well, most of the Tanzanian public has inadequate knowledge on the child protection laws. Under the Tanzanian law as it currently stands, there is an almost total absence of legal representation for children in matters affecting them; although a handful of NGOs have attempted in recent years to provide legal representation to

[237] Rodney Phillips (2006). "Speech at the Opening of the National Stakeholders Meeting to Discuss Report on Child Abuse". UNICEF, Dare s Salaam. Available at: http//www.chragg.org/publication_files/speech_Unicef.doc.

[238] MOEVT (2007); Basic Education Statistics in Tanzania (BEST)

[239] Some religious organizations, however, are strongly opposed to the idea of changing that law. More discussion ought to be held among the key stakeholders to find an amicable solution.

children in courts of law, there are no legal provisions mandating it outside of the adoption context.

493. With regard to abuse and neglect, although the Penal Code and the Affiliation Ordinance create parental duties and corresponding sanctions against parents who fail or neglect to take care of their children, such parental duties are subject to a theory of punishment that punishes the parent/guardian without regard to the welfare of the child[240]. Currently, Tanzania does not have a full fledged foster care system, and efforts to establish an effective foster care programme have been insufficient. Legal advocates for children have recommended that an effective foster care system be created, and that views of the child be considered when deciding on a foster care placement if the child has the capacity to express an informed opinion.[241]

Orphans[242] and other vulnerable children

494. The total number of the Most Vulnerable Children (MVC) in Tanzania was estimated to be 968,439, i.e. 5.3 percent of the total population of children under 18 years.[243]. Orphans are considered as the most vulnerable children due to lack of care by biological parents. The last population census in 2002 showed that nearly 10 percent of all children in Tanzania had been orphaned - close to 2 million children. Paternal orphans are more common - 7.4 percent of children had lost their father, 3.4 percent had lost their mother, and 1.1 percent had lost both parents. Orphan-hood was most common in areas with high current or past prevalence of HIV/AIDS. The 14 districts where more than 14 percent of children had lost either mother or father were in parts of Kagera and Mara, as well as Iringa and Mbeya. In Makete almost one-quarter of all children had been orphaned. Generally the rate of paternal orphan-hood was about double that of maternal orphan-hood. It is not possible to know from these data directly whether orphan-hood is the result of HIV/AIDS or of other causes. Indirect demographic analysis by UNAIDS, WHO and UNICEF in 2005 estimated that 44 percent of orphan-hood in Tanzania was the result of HIV/AIDS. This would suggest that about 1 million children have been orphaned as a result of HIV/AIDS.

Institutions and Policies for Protecting and Promoting Child Rights

495. The Government has in place institutional and policy instruments for the protection and promotion of children's rights in Tanzania. A review of documented sources of data shows that there are about ten different policies which provide guidelines for safeguarding the rights of children and young persons in Tanzania. Table 3.6 shows the major institutions and policies which facilitate the protection and promotion of the rights of the child and young persons in Tanzania.

[240] See Report of the Law Reform Commission on the Law Relating to Children in Tanzania, 1994. pp.49-59. Available at: http://lrct-tz.org/pdf/watoto.pdf

[241] J. Clement Mashamba "*Institutional Care and Support to Orphaned and Vulnerable Children in Tanzania: A Legal and Human Rights Perspective*" in National Organization for Legal Assistance, Using the Law to Protect Children's Rights in Tanzania: The Unfinished Business 17 (2004), supra note 1.

[242] Information for this section has been extracted from a paper by Valerie Leach on: Children and Vulnerability in Tanzania. A sythesis special Paper 07.25. Repoa (2007.

[243] For detailed analysis and computations see URT (2006) *The Costed MVC Action Plan 2006-2010*, Ministry of Health, pp. 4-6

Table 3.6: Major Institutions and Policies for Safeguarding Children and Young Persons Rights

Institutions	Policies	Major Thrust
Ministry of Community Development, Gender and Children	Child Development Policy (1996)- a new policy (2007) awaits cabinet approval	Addresses child participation in all issues concerning their lives; effects of the HIV/AIDS pandemic; protection of children from worst forms of child labour; non-discrimination of children; and the protection of most vulnerable children.
	Community Development Policy (1996)	Provides a national framework for carrying out all community development initiatives including those aimed at protecting and promoting the rights of the child and young persons
	Women and Gender Development Policy (2000)	Focuses on accommodation of gender concerns and promotion responsibilities of both parents in the care and development of children.
Government of Zanzibar	Child Survival, Protection and Development Policy (CSPD) (2000)	Provides a broad framework for the protection of Children's' Rights including child participation in matters of concern to children.
	Women's Development policy (2001)	Has particular emphasis on gender strategies. The Policy is directly linked to CSPD Policy.
	Health Policy (2000)	This policy incorporates important issues on children such as Basic Health and Welfare Services, HIV/AIDS and immunization.
	Policy on People with Disability (2003)	Focuses also on children with disabilities
	Zanzibar Education Policy	To guide children's rights to educational opportunities
Ministry of Education and Vocational Training	Education and Training Policy (1996) *under review*	To provide a national framework for ensuring the right of the child and young persons to qualitative education
	Complementary Basic Education in Tanzania (COBET)	Governs the provision of non-formal basic education to out-of-school children and youth
Labour, Employment and Youth Development	Youth Policy (1996)	Provide a national framework for initiatives and strategies aimed at addressing matters related to the development and rights of the young persons
	Cultural Policy (1997)	Among other things the policy requires that children should be availed every opportunity for cultural development.
Ministry of Health and Social Welfare	Health Policy (1990) *revised 2002*	Provision of free antenatal and under five children health services; and focuses on people at risk, encourages Health Centres to be more responsive to HIV/AIDS.
	HIV/AIDS Policy (2001)	Provides a framework for leadership and co-ordination of the national multi-sectoral response to the HIV/AIDS epidemic.
Ministry of Home Affairs	National Refugee Policy (2003)	The policy provides, among other things, good condition of refugee children.
Ministry of Agriculture, Food Security and Cooperatives	National Food Security Policy	Takes care of vulnerable groups affected by food insecurity particularly children under the age of 5 years.

496. Moreover, the governments of Tanzania and Zanzibar have two Poverty Reduction Strategies (PRSs) namely, the National Strategy for Growth and Reduction of Poverty (NSGRP) popularly known as MKUKUTA for the URT government and the Zanzibar Poverty Reduction Plan (ZPRP) popularly referred to as MKUZA. The macro-policy

documents address in different ways issues related to the protection and promotion of the rights of the child and young persons. For instance, MKUKUTA's three clusters[244] either explicitly or implicitly have implications to the initiatives and strategies for the protection and promotion of the rights of the child and young persons. For instance, NSGRP operational education targets[245] with implications to protection and promotion of children and young persons' rights are spelt out as follows:

(i) Increase number of pre-primary education;
(ii) Increase the Net Enrolment Ratio (NER) from 90.5 percent in 2004 to 99 percent in 2010;
(iii) Increase percentage of children with disabilities in schools from 0.1 percent in 2004 to 20 percent in 2010;
(iv) Increase percentage of orphans and vulnerable children in schools from 2 percent in 2000 to 30 percent in 2010;
(v) At least 75 percent of boys and girls pass Primary School Leaving Examinations (PSLE) by 2010;
(vi) Achieve average daily attendance of at least 85 percent; and
(vii) Improve learning environment of all children in schools with all educational institutions; safe, violence free, child friendly and gender sensitiveness.

The Realization of Children's Rights

497. From the preceding, it is clear that the political leadership and government have taken serious measures to put into effect the provisions enshrined in the international conventions which the country has acceded to and ratified. These include the following steps:

Legal Framework

498. The government has enacted new legislations to facilitate the implementation of the conventions. These include the Employment and Labour Relations Act of 2004, which protects children from the worst forms of child labour. A decision has been made to facilitate reviews of existing legislations with a view of amending or enacting new laws. These include the Laws of Inheritance and Succession; Marriage Act No.5 of 1971; Education Act 1982 of Zanzibar; Children and Young Persons Ordinance; and Sexual Offences (Special Provisions) Act No. 7 of 1998

499. Moreover, the Government of Zanzibar is now reviewing the Spinsters Act (No. 4 of 1985) with a view to abolishing it, as it is oppressive of young girls and women. Furthermore, the Government is in the process of drafting a single piece of legislation i.e. the Child Law, related to children, which would, *inter alia*, provide a uniform definition of the term "child" and protect children from abuse, neglect and other violation of their rights as well as harmonize a plethora of legislations on the child existing today in the statutes books.

500. Some of the salient gaps in the legal framework governing the protection and promotion the rights of the child and young persons in Tanzania include:

[244] The three clusters are Growth and Reduction of Income Poverty; improved quality of life and social well-being; and governance and accountability. See URT (2005). *National Strategy for Growth and Reduction of Poverty (NSGRP)* Dar es Salaam: Vice President's Office. pp. 41-42

[245] Ibid, pp. 42-43. See also URT (2006). Educational Sector Development Programme (ESDP): Primary Education Development Programme II (2007-2011), Dar es Salaam: MOEVT, pp 3-4.

(i) Clauses addressing children welfare are scattered in different Acts. These require aggregation and harmonization;
(ii) There is no effective mechanism to ensure that the rights of the children and young persons are protected due the fact that legal literacy in Tanzania is very low. Children, like other people living with, and affected by HIV/AIDS, continue to face stigma, discrimination and other violation of their rights; and
(iii) Few actors supporting child rights and welfare are conversant with the legal framework for child protection.

Institutional Framework

501. In the year 2000, the Commission for Human Rights and Good Governance was put in place. This is a body created by URT government to facilitate, among other things, the protection, promotion and enforcement of human rights, including the rights of the child and young persons.

502. Moreover, the government has created specific institutions and vested in them the duty and responsibility of championing and protecting the rights of the child and young persons as defined in the international conventions and local legislations. These are ministries such as Community Development, Gender and Children; Ministry of Health and Social Welfare; Labour, Employment and Youth Development; Home Affairs; and Education and Vocational Training, etc. Besides, it has to be noted that non-state institutions – religious and traditional institutions including extended families, play a great role in helping children, particularly orphans.

Policy Framework

503. The Government of the United Republic of Tanzania has formulated a number of policies[246] to provide the national frameworks for implementing, among other things, the provisions enshrined in the international conventions and local legislations. Government of Zanzibar established the National Children's Rights Committee (NCRC) in 2001. This Committee is under the Ministry of Youth, Employment, Women and Children Development (MYEWCD). It brings together representatives from both Government and Non-Governmental institutions. The major role of this Committee is to mainstream the policy of children's development and CRC in all child related organizations. The Committee facilitates the implementation process of the Children's Policy, CRC and the preparation of National Programme of Action.

504. Tanzania Mainland has taken into account in its Public Expenditure Review (PER) cross cutting issues relating to children, adolescents and young people. The public expenditure for this population category has been increasing considerably year after year from the fiscal year 2000. Television and Radio stations in both Zanzibar and Tanzania Mainland air special programmes on children's rights related to the CRC provisions. The programmes have to a certain extent created and increased public awareness to the rights of the child and young persons.

505. The Government is collaborating with a number of local and international NGOs (UNICEF, ILO, AXIOS, etc.) in the promotion, protection and enforcement of the rights of the child and young persons. However, the existence of laws in governments' statute books and public policies for promoting and protecting the rights of the child and young persons is

[246] See the major policies in Table Number 1.

one thing but the effectiveness of the measures[247] is a different thing. The data gathered from the opinion surveys, generally reveal that the measures taken to promote and protect the rights of the child are generally effective. It was found that the majority of respondents (75.5 percent) perceive the measure taken by the government as either fair or very effective. This indicates that to a great extent the promotion and protection of the rights of the child is guaranteed.

Health Care and Welfare for the Children and Young Persons

506. The general principle of the best interests of the child has now been taken into account in the proposed harmonized "Children's Law" as well as in the reviewed Child Development Policy, 2007. In order to implement the objectives of the Convention, the government has established projects, programmes and services, which have an input to children's development. There are programmes such the Child Survival Protection and Development (CSPD); Integrated Management of Child Illnesses (IMCI); and Time Bound Programme (TBP) on the Elimination of the Worst Forms of Child Labour (EWFCL).

507. The governments of the URT and Zanzibar in collaboration with various non-governmental institutions have taken a number of measures to ensure the right to life, survival and development of children. These are first, the Prevention of Mother to Child Transmission (PMCT) programmes on reduction of severe impact of HIV and AIDS to children. Second, Reproductive and Child Health Programme undertaken throughout the country, for the under five children and pregnant mothers get free medical services. Lastly, education of infant mortality rate, whose major causes include malaria, diarrhea malnutrition, lack of essential micronutrients, which include the low use of exclusive breast feeding for new born babies, anemia, and HIV and AIDS.

Antenatal Care

508. Antenatal care from a trained provider is important in order to monitor the pregnancy and reduce the risks for the mother and child during pregnancy and at delivery. According to the 2004-05 TDHS results, 94 percent of women who gave birth in the 5 years preceding the survey received antenatal care from a health professional at least once. With the exception of a few regions, nine out of ten women received care from a trained provider at least once, regardless of background characteristics.

Child Health

509. The 2004-05 TDHS data reveals that Childhood mortality rates have decreased dramatically in the past five years. Still, one in every nine children in Tanzania dies before his or her fifth birthday. For the most recent five-year period, the infant mortality rate is 68 deaths per 1,000 live births and the under-five mortality rate is 112 deaths per 1,000 live births. In 1999, the infant mortality rate was 99 and the under-five mortality rate was 147 (deaths per 1,000 live births).

This decrease may be due to improved breastfeeding practices, increased vitamin supplementation and reductions in malnutrition. Mortality rates differ dramatically throughout Tanzania. Both infant and under five mortality levels are higher in rural areas than in urban areas.

[247] We refer to all concrete measures, including enactment of legislation and policies taken to promote and protect the rights of children.

510. Neglected children do not thrive. Unfortunately many children in Tanzania suffer from active abuse and violence. 30 percent of adolescent girls in Mwanza reported that their first sexual experience was a forced one. Many children report that they are abused by adults, including teachers. Discipline at home is frequently meted out with physical chastisement, and this practice is socialised – children report being bullied by older children at school or travelling to or from school. In a survey about travel to school of over 200 schoolchildren in Magu and Ilemela, Mwanza, the most commonly reported bad experience, by 70 percent of them, was harassment, fighting among other students and young people. Reports of abuse by bus conductors of schoolchildren in Dar es Salaam are clearly not only the result of the lower fare to which schoolchildren are entitled. There are more general social attitudes towards children which are at play, and they are reflected also in the high level of gender violence (Valerie Leach: 2007).

Best Practices (5)

The government of United Republic of Tanzania has established procedures which allow all cases involving mistreatment of sexually abused children to be heard in camera. This is a good practice. The public and media are not allowed in the chambers while the victim is giving evidence. Furthermore, the Sexual Offences (Special Provisions) Act of 1998 amends the Children and Young Persons Ordinance, to the affect that: "where a child of less than eighteen years of age is a witness, a victim, giving evidence, co accused in a case involving a sexual offence, the child shall be tried in 'camera and separately from the adult co accused or the evidence of the child shall be adduced in camera. The Government of Zanzibar through the MYEWCD has established a Counseling Unit whereby neglected children can send their complaints. The Unit is responsible for resolving problems and ensuring that the neglected child receives care/maintenance services from his/her father.

511. The data from the 2004-05 Tanzania Demographic and Health Survey (TDHS)[248] reveals significant trends. Infant mortality rate has decreased from 99.1 in 1999 to 68 in 2004/05. Under-five mortality rate decreased from 146.6 in 1999 to 112 in 2004/05. More kids i.e. 36 percent (under five years of age) are sleeping under nets compared to 21 percent in 1999.

512. Children with fever (proxy of malaria) declined from 35 percent in 1999 to 23 percent in 2004/05. About 70 percent of children are fully immunized; and about 80 percent of urban children are fully immunized compared with 69 percent of rural children and malnutrition rate has decreased, e.g. stunting from 43.8 in 1999 to 38 percent in 2004. Moreover, 70 percent of children of less than two months of age are exclusively breastfed. Two-thirds of children are anemic; the disparity between Mainland and Zanzibar is alarming – 42 percent and 63 percent, respectively.

513. Moreover, the right to medical, preventive and curative services is also extended to people with disability, including the children and young persons. Statistical data from an opinion survey reveal that to a great extent people with disability access medical services.

[248] The 2004-05 Tanzania Demographic and Health Survey (2004-05 TDHS).

Best Practice (6)

In an attempt to ensure that children's views and aspirations are taken into account, in December 2002, children in Tanzania established a Junior Council of the United Republic of Tanzania. The Junior Council of the URT is a nation wide initiative led by children for children. The Council comprises two representatives from each region of Tanzania Mainland and Tanzania Zanzibar. Membership is limited to persons under 18 years, representing a broad range of backgrounds, with special representation of vulnerable children. The Junior Council strives to be an institutionalized avenue at national level for children to contribute to the national development agenda and child development. In Zanzibar, children have initiated children's councils in three districts of Unguja. Efforts are being made to enable children in other districts to initiate similar councils.

Respect for the Views of the Child

514. In an attempt to ensure that children's views and aspirations are taken into account, in December 2002 children in Tanzania established a Junior Council of the United Republic of Tanzania. The Junior Council of the URT is a nation wide initiative led by children for children. The Council comprises two representatives from each region of Tanzania Mainland and Tanzania Zanzibar. Membership is limited to persons under 18 years, representing a broad range of backgrounds, with special representation of vulnerable children. The Junior Council strives to be an institutionalized avenue at national level for children to contribute to the national development agenda and child development.

515. In Zanzibar, children have initiated children's councils in three districts of Unguja. Efforts are being made to enable children in other districts to initiate similar councils. Moreover, Various Government and private media institutions run programmes for and with children and young people. Television and Radio Stations such as Radio Tanzania, Clouds FM, Radio Kwizera, Radio Free Africa, Television Zanzibar (TVZ), Tanzania National Television (TVT), Independent Television (ITV) and Star Television (Star TV), all run regular programmes produced by involving children. The weekly children's show on Clouds FM and ITV is unique as it is produced and presented by children themselves. In Zanzibar, children organize and broadcast themselves in a daily news bulletin and artistic display in TV–Zanzibar.

516. Children also participate in school gatherings, Children's *Barazas* during the commemoration weeks of DAC and the Child Effective Media Project. They took part in the preparation of the Outcome Document: A World Fit for Children and Africa Fit for Children and participated in the United Nations General Assembly Special Session for Children (UNGASS) on children in May, 2002.

Civic Rights: Birth Registration

517. The Registrar General has facilitated a number of training programmes aimed at sensitizing the public on the importance of registering births and deaths. Registration of births and deaths has been made mandatory, and it is undertaken in local government authorities, dispensaries and health centres. The government has instituted a mechanism to supervise the compulsory registration down to village level.

518. The Government of Zanzibar has established a Birth Registration office in all districts and "*Shehias*". This is in conformity with domestic law governing births and deaths. The Births and Deaths Registration Decree requires parents of the child to notify the Registrar of births within forty-two days of the birth of the child. A form is available at the *Shehia* office, as a first step in obtaining birth certificate from the District Registrar's office as an identity and proof of nationality.

Police Brutality and Corporal Punishment

519. The incidence of police brutality has declined through advocacy programmes conducted by national media bodies; training of Police Officers, seminars and workshops on Human Rights of children. The government has introduced the subject of Human Rights in the Police and Prison College's curricula so as to increase awareness on human rights including children's rights.

520. A campaign to educate the public and law-makers on the dehumanizing character of corporal punishment and the rights of children is going on in Tanzania. It was initiated by the MCDGC in 2000. The government provided guidelines on the regulation and control of corporal punishment in schools, in which the number of strokes have been reduced from 6 – 4. According to the new regulation, only the Head teacher/Headmasters of schools are allowed to administer corporal punishment, and there is provision for penalizing teachers who go against these regulations. Also, the government in its efforts to regulate corporal punishment has put a provision, which puts limit to the number of strokes that may be inflicted upon a school pupil. "No sentence of corporal punishment shall in any case exceed twenty strokes in the case of adults and twelve strokes in the case of juveniles" as it is provided for under section 8 (2) of the Corporal punishment ordinance, Cap 17.

Family Environment and Alternative Care

521. The 2002 population census revealed that Tanzania had 18, 749,265 children (9,226,010 boys and 9,320,225 girls) under the age of 18, an equivalence of 50.6 percent of the Tanzania total population. The total number of the Most Vulnerable Children (MVC) in Tanzania was estimated to be 968,439, i.e. 5.3 percent of the total population of children under 18 years.[249]

522. The URT government has undertaken serious measures to improve alternative care systems in the country.[250] Some of these include the development of the National Plan of Action for Children for Tanzania as an outcome of the "World for Children" agreed at the 2002 UN General Assembly. The government has developed the National Guidelines for Community Based Care, Support and Protection of Orphans and Vulnerable Children (OVC). In addition, the URT has reviewed the 1996 Child Development Policy in order to incorporate MVC/OVC issues. Plans are at an advanced stage to formulate a comprehensive policy on MVC/OVC.

523. With assistance from the World Bank and UNICEF, the government launched the Early Childhood Development Programme for supporting children (0-8 years) affected by HIV/AIDS; developed the National Guidelines for Institutional Care and Support of MVC/OVC aimed at providing standards for care and support of MVC/OVC living in institutions. Moreover, the government developed training manuals (for Parenting Skills and

[249] For detailed analysis and computations see URT (2006) *The Costed MVC Action Plan 2006-2010*, Ministry of Health, pp. 4-6

[250] Ibid. p.ix

Community Justice Facilitation) and put in place national facilitation teams to train facilitators at the district and community levels. Moreover, the government conducted a situational analysis of orphaned children in order to determine the magnitude of the MVC/OVC problem. The government provided subscriptions to support care and maintenance of children in Children's Homes; allocated adequate financial resources, and one such example is through the Poverty Reduction Strategy.

524. Moreover, URT has undertaken efforts to mainstream MVC/OVC issues in all planning and development activities at all levels; developed Community level plans of action for care, support and protection of MVC/OVC. The government has provided secondary education support for the most vulnerable children, this started in the financial year 2003/2004 where a total 6,091 children were supported by the government. However, this was only 1.2 percent of all MVC/OVC who needed support. Lastly, the government has established the national OVC management and coordination structure with a National Steering Committee, a National Technical Committee and district level committees.

525. The Revolutionary Government of Zanzibar has also undertaken almost similar measures aimed at taking care of the MVC/OVC, consonant with the provisions of the international conventions. There are still some gaps in extending care to the MVC/OVC. First, there is very little effort to increase public awareness especially in rural communities, of the specialized challenges and needs of MVC/OVC. Second, the government has not taken a leading role in taking care of the MVC/OVC in terms of allocation of resources and providing required facilities. In most cases this responsibility has been left to the NGOs and donors. Third, the MVC programme has not yet been rolled out throughout the country. The programme covers only 17 local councils

Abuse, Neglect, Abandonment, Maltreatment and Violence against Children

526. In Mainland Tanzania, Government and a number of the NGOs have undertaken studies and measures against sexual abuse, neglect, abandonment, maltreatment and violence against children. The Ministry of Community Development Gender and Children (MCDGC) in 2003 developed a National Plan of Action (NPA) aiming at combating violence against women and children. The main goal of the NPA is to attain sustainable equality and equity between women and men in Tanzania, and to provide a framework for actions to be undertaken by stakeholders to prevent violence against women and children. On the other hand, NGOs have established community programmes on children's rights that identify children with problems so that action is taken to help them. Cases of domestic violence, ill treatment and abuse (sexual, physical and psychological) of children are now reported more often and Offenders punished.

527. The Government of United Republic of Tanzania has also established a procedure, which allows all cases involving mistreated or sexually abused children to be heard in camera. The public and the media are not allowed in the chambers while the victim is giving evidence. Furthermore, the Sexual Offences (Special Provisions) Act of 1998 amends the Children and Young Persons Ordinance, to the affect that: "where a child of less than eighteen years of age is a witness, a victim, accused or a co-accused in a case involving a sexual offence, the child shall be tried in 'camera' and separately from the adult co-accused or the evidence of the child shall be adduced in proceedings conducted in camera".

528. The Government of Zanzibar through the MYEWCD has established a Counseling Unit whereby neglected children can send their complaints. The Unit is responsible for resolving problems and ensuring that the neglected child receives care/maintenance services from his/her father.

Children in Households Headed by Children,

529. Increased concern about the impact of HIV/AIDS has also led to growing incidents of child headed households. According to the 2002 census about 1.2 percent of the households were headed by a child. Children heading households are on average between 14 and 15 years of age. District correlates show higher probabilities of child-headed households in the least poor districts. In urban areas just over 30 percent of 15 year olds living in child-headed households are working. In adult-headed households the corresponding figure is 11 percent in Dar es Salaam and 18 percent in other urban areas. In rural areas 44 and 34 percent of the 15 year olds in child and adult headed households respectively are working.

530. Close to 3 percent of all households are occupied by children and the elderly (age 60 years and above) only - they are households without any adult between 18 and 60 years of age. They are, as may be expected, more prevalent in districts with higher rates of orphanhood. Urban children in such households are worse off than their peers in other households. However, there seems to be little difference in indicators of poverty between rural children in such households and those in households with adults 18-60 years.

Children with Disabilities

531. One group of children who are particularly vulnerable are those with disabilities. In the national data sets, the clearest indication that they are more likely to be denied the opportunities of their able-bodied peers is provided by their much lower rates of school enrolment. The largest deficits in schooling are of children with disabilities, who attend school on average 2 years fewer than children without a disability. Overall, the national data sets under-report the population with disabilities. This includes the Population Census, which in 2002 attempted to establish the extent to which the population experienced disabilities. It reported that 2 percent of the population has some form of disability, the most common forms being physical loss of use of limbs. With sustained immunization programmes, the proportion of children and adults who suffer from polio will be reduced over time. Nonetheless, much more is needed to be understood about experiences of disability.

532. The Government has included the aspect of children with disabilities in the National Population and Housing Census of 2002 so as to generate information for understanding the magnitude of the problem and initiate programmes to support this problem. The Muhimbili Orthopaedic Institute (MOI) has been established whereby children with disabilities are given priority care. Given that Muhimbili serves very few children with disabilities, there is a need for enhanced access for all children with disability.

533. Zanzibar Association of the Disabled (ZAD) has a comprehensive Community-Based Rehabilitation Programme (CBRP) for supporting people with disabilities (especially children). This is a pilot program involving two districts in Unguja, and one district in Pemba. A survey to determine the status of children with disabilities in Zanzibar has been conducted by ZAD. Presently, 1,548 children are in this programme.

Abuse and Neglect

534. The issues most commonly cited as important by Tanzanian children in a poll for presentation to the United Nations' General Assembly's Special Session on Children in 2002 were education and then neglected and abuse.

535. The measures taken by the governments of the Revolutionary Government of Zanzibar and United Republic of Tanzania to promote and protect the rights of vulnerable groups, including children and young persons, in the light of public perception seems to be largely effective as revealed by the statistical information gathered from the APRM opinion surveys. Most of the Tanzanians (71.6 percent) perceive the measures taken by both the government of the United Republic of Tanzania and Zanzibar to promote and protect the rights of vulnerable groups, including children and young persons as generally effective. This implicitly shows that the organs created to enforce the measures are doing the right work.

Right to Education, Learning and Development

536. The Government of Tanzania recognizes the central role that education plays in improving the welfare and well-being of society, including children and young persons' development. The government of Tanzania since the year 2000 has taken deliberate measures and formulated strategies for ensuring equitable access to quality pre-primary schooling; primary and secondary education for boys and girls.

Pre-Primary Schooling

537. In the Tanzanian context pre-primary schooling is a formal school system for children aged between 5 and 6 years. The pre-primary school cycle lasts for two years with no examination for promotion purpose. Enrollment in both government owned pre-primary schools and non-government pre-primary schools has been increasing tremendously. The number of children enrolled for pre-primary education has been increasing since 2004, rising by 18.4 percent in government pre-primary primary schools from 653,485 in 2006 to 775,313 in 2007. In private pre-primary schools enrollment has risen by 25.8 percent from 15,652 in 2006 to 19,698 in 2007. Both the Gross Enrollment Ratio (GER) and Net Enrolment Ratio (NER) have not been impressive.

Pre-primary school enrolment in 2007 was 33.2 percent of school age (5-6 years) population. The estimated population of 5-6 year olds in 2005 was 2,191,300. The number of children enrolled in pre-primary schools was 638,591, translating into 29.1 percent Gross Enrolment Rate and 27.7 percent Net Enrolment Rate. In totality, significant progress has not been made in increasing children's access to pre-primary schooling in Tanzania.

Primary School Education

538. The Government initiated and implemented the Education Sector Development Programme (ESDP) under which Primary Education Development Programme (PEDP) phase one (2002-2006) was implemented. This has been succeeded by PEDP Phase Two (2007-2011) which is currently on the implementation stage. Significant progress has been made in the last five years in the providing access to primary education to children in Tanzania. Key achievements in primary school education include increased enrollment of children in primary schools as shown in Figure 8.6. In 2005, there were 14,257 primary schools with

7,541,208, a Gross Enrolment Rate (GER) of 109.9 percent and a Net Enrollment Rate of 94.8[251].

539. The Government has increased enrolment in Primary Schools from 6,562, 772 in the year 2003 to 8,316,925 in 2007. The average increase since 2003 is 438,538 students, equivalent to 6.7 percent per annum. As such, Tanzania has made primary school education compulsory and universal. The Government of Zanzibar has established the Zanzibar Education Master Plan (ZEMAP), with the goal of delivering quality education in Zanzibar.

540. The increase in the enrollment rate during the implementation of PEDP Phase One (2002-2006) was, among other factors, due to the abolition of school fees. The GER and NER improved from 84 and 65.5 percent in 2001 to 112.7 and 96.1 in 2006, respectively. The number of primary schools increased from 11,873 in 2001 to 14,700 in 2006; the transition rate from primary to secondary school increased from 22.4 percent in 2001 to 49.3 percent in 2005,[252] official enrollments reached almost 8 million in 2006, an increase of 3 million pupils, as can be seen from the table below. While these figures need to be adjusted for increasing numbers of 'repeaters' the increase is still significant. Overall net enrollment increased from 67 percent in 2001 to 96 percent in 2006. Gender parity has also been largely achieved in primary school enrolment in Tanzania

Table 3.7: New Standard I Enrollees (2002-2006)

YEAR	TOTAL		
	M	F	T
2001	2,474,344	2,407,244	4,881,588
2002	3,052,018	2,929,320	5,981,338
2003	3,365,420	3,197,352	6,562,772
2004	3,626,241	3,456,822	7,083,063
2005	3,855,712	3,685,496	7,541,208
2006	4,051,676	3,908,208	7,959,884

Source: Basic Education Statistics in Tanzania (BEST), 2006

541. In addressing issues of quality and inclusion, the government introduced a fund for schools known as capitation grant.

Best Practice (7)

In addressing issues of quality, the government set aside a grant known **as** the ***capitation grant***, set at US $10 in policy documents (about Tshs 12,000 in 2006 /07) per enrolled pupil per annum, is perhaps the most powerful component of PEDP because it creates a simple mechanism Its formula-based structure was designed to make the fund avoid historical disparities in fund disbursements, which have been extremely large in Tanzania. Its simplicity and requirement to

[251] URT. (2006). *Educational Sector Review, Aide Memoire*, Dar es Salaam: Education Sector Development Programme (ESDP)

[252] URT. (2006). *Education Sector Development Programme: PEDP II (2007-2011).* Dar es Salaam: Ministry of Education and Vocational Training.

publish the information in newspapers would enable tracking and make it easy to claim entitlements.

Various assessments of the effectiveness of the capitation fund done reveal some few challenges related to implementation of this fund. Studies by REPOA revealed that there are problems related to disbursement of the fund from central level. Lack of information among stakeholders at all levels and the involvement of multiple players have complicated administration of the fund (three ministries are involved in disbursing the fund three funding partners). Some of these problems create room for leakage and corruption. Rural based schools receive less funds than urban based schools while the administrative capacity of districts remains much to be desired (Bertil Tungodden: 2005)

The effect of these problems has undermined the initial spirit of the capitation fund in improving quality and inclusion. The government has however responded to these challenges by consolidating the grant into one vote in the budget books as of 2007/08. This might simplify the process and minimize leakages.

Secondary School Education

542. In 2004, the government decided to expand secondary education in order to increase access to secondary schooling so as to accommodate the outputs of PEDP (2002-2006) programme. Consequently, the Secondary Education Development Plan (SEDP) (2004-2009) was launched. SEDP is a three phase programme of five years each, beginning with the first phase in 2004 to 2009. Significant achievements have been made especially in increasing the enrolment rate for secondary education (Form I-VI).

Remarkable achievements of SEDP in three years of its existence include increased enrollment in secondary education (Form I-VI) from 432,599 in 2004 to 1,020,510 in 2006. There has been an increase of GER from 9.4 percent in 2004 to 22.1 in 2007; while NER increased from 5.9 percent in 2004 to 20.6 percent in 2007. Transition rate from primary to secondary level also increased from 36.1 percent in 2004 to 67.5 percent in 2007. The number of secondary schools increased from 1,291 in 2004 to 3,485 in 2007. Thus there have been, comparatively, significant achievements in the improvement of access and equity. The overall goal of SEDP is to increase the proportion of Tanzania youths completing secondary education with acceptable learning outcomes.

543. In recent years several initiatives, including Access and Complementary Basic Education in Tanzania (COBET) has been taken with support from UNICEF and NGOs. The main focuses of this programme is to ensure that children who are unable to access formal schooling are able to enjoy their rights to basic education. The major thrust of COBET includes extending access to free education for adults. The primary learning cycle of standard I to V was decelerated from 5 to 3 years.

544. In Zanzibar the Secondary Education Plan has been developed and it is currently being implemented. The plan aims at improving secondary education through expansion of enrolment of students from 19.5 percent to 50 percent by 2015 and giving equal access to secondary education to regions and districts.

Children with Disabilities

545. While over two million new children have been enrolled under PEDP, NGO and media reports suggest that few of these have been children with significant disabilities. Reliable data on children with disabilities is hard to come by; advocates often cite an overall WHO estimate of 10 percent of the population experiencing some form of disability. A handful of special schools exist, but in the rest there is little inclusive education practiced. The Government's main policy document (NSGRP/MKUKUTA) estimates that less than 2 percent of children with disabilities were enrolled in primary school in 2002

The Government has also taken measures to ensure that children with disability are given access to education. Table 3.8 shows the enrolment trend of children with disabilities.

Table 3.9: Enrolment of Children with Disabilities in Schools: 2007

Type of Disability	Primary Schools			Secondary Schools		
	Male	**Female**	**Total**	**Male**	**Female**	**Total**
Albino	786	652	1,438	39	23	62
Multiply Impaired	328	196	524	2	1	3
Mentally Impaired	2,907	2,069	4,976	11	5	16
Children with Autism	218	139	357	0	1	1
Physically Impaired	4,946	3,175	8,121	393	215	608
Visually Impaired	855	618	1,473	43	18	61
Hearing Impaired	2,175	1,857	4,032	65	46	111
Dumb	534	402	936	5	3	8
Others	1,225	921	2,146	30	22	52
Total	**13,974**	**10,029**	**24,003**	**588**	**334**	**922**

Source: MOEVT (2007). Basic Education Statistics in Tanzania (BEST). pp. 36-37 and 69

However, statistics on the exact number of children and young persons with disabilities is inaccurate. In Tanzania there is a great concern for the care of the Orphans and Vulnerable Children (OVC) and Most Vulnerable Children (MVC). The Government has made efforts to ensure that these children access education.

546. In Primary schools children without two parents constitute 30.3 percent whereas with one parent 69.7 percent enrolled in schools in 2007. In secondary schools orphans with one parent form 67.8 percent of the total while orphans without two parents form 32.2 percent of the total number of orphans.

547. Moreover, the data gathered from the APRM Survey revealed the right to education for the disabled people was to a great extent respected. A majority of the respondents (74.2 percent) were of the opinion that the right to education for the people with disability in Tanzania was respected to a satisfactory rate. In addition, people with disability who were admitted in the institutions of higher learning in the country and abroad were granted an

adequate loan by the Tanzania Higher Education Loan Board to enable them meet the cost of education. In some of the validation seminars the majority of participants were of the view that the existing infrastructures in schools and in all public places are not disability-friendly. The APRM survey further revealed that measures undertaken by the URT and the government of Zanzibar were not effective.

548. However, despite the measures that the URT and Zanzibar Governments had put in place to promote and protect the rights of the vulnerable groups including the children and young persons with disability, an opinion survey carried out by APRM-Tanzania revealed that in the light of the public perception, the measures were not very effective. In spite of the fact that there are specific measures in place to protect the rights of people with disabilities, however, the people have different perceptions regarding the effectiveness of the measures taken by both the governments of the United Republic of Tanzania and Zanzibar. The majority of respondents (64.7 percent are somewhat satisfied with the effectiveness of the measures that are in place for the purpose of protecting the rights of people, including children with disability.

549. Despite the remarkable achievements, especially in improvement of children and young persons' access to both primary and secondary schooling, there are critical areas of concern and challenges, and some of these include:

(i) Declining quality and standards of education;
(ii) Inadequate resources, including teachers, finance and instructional materials;
(iii) Ineffective mechanisms for monitoring and evaluation as well as quality assurance;
(iv) Lack of reliable statistics on children and young persons with disabilities;
(v) There are "street children" and young persons who are not accessing formal educational opportunities in Tanzania;
(vi) Inadequate incentives for teachers especially in rural areas; and
(vii) Increase in the drop out rate due to a number of reasons, including pregnancy, truancy, parent problems, etc.

The dropout rate is considerably high among children and young persons attending primary and secondary education in Tanzania. Truancy is the leading causal factor. Remedy for controllable causes of dropout is therefore called for.

Leisure, Recreational, Cultural Activities

550. According to the Government of Tanzania Cultural Policy (1997) children must be availed every opportunity for cultural development. The policy, among other things, requires that cultural education be an integral part of the entire education process-from Pre-Primary, Primary to Secondary levels. It prescribes that cultural subject be included in the learning packages and examination systems at least in Pre-primary to secondary school levels. Almost all schools except some in urban centres (cities, municipalities and towns) have play grounds for the children.

551. Moreover, children's recreational or cultural activities utilize about one percent of the total budget for culture. There are two official children playgrounds in Zanzibar, one in Unguja and one in Pemba but both are not in use. In Mainland Tanzania, there are no such facilities. On the whole, more serious efforts need to be taken in designating and furnishing special play grounds in both urban and rural areas in Tanzania.

Refugee Children

552. Over 520,000 refugees have settled in the Western part of Tanzania[253]. This has made Tanzania the largest refugee host country in Africa. Among these about 100,000 children are under five years of age while about 200,000 are school aged children and youths. It is estimated that over 20,000 new babies are born within the camps every year[254].

553. In order to ensure the protection of asylum seekers and unaccompanied children especially girls, the government of URT has instituted measures, which will ensure their adequate protection. All refugees and asylum seekers, including unaccompanied girls, are properly registered and documented upon arrival at entry points before they are sent to designated areas.

554. Refugee children have adequate access to health, education and other social services. During the implementation of refugee care and maintenance programmes, particular attention is given to the special needs of refugee children. Refugee children enjoy health care just like any other refugee; they have access to informal and formal education provided in camps as well as to other social amenities like water provision and recreation facilities.

555. A National Refugee Policy of 2003 has been adopted by the Government. It covers various aspects of the management of refugee matters in Tanzania. There is in place, the Refugee Act, which was enacted in 1998. This law protects the interest of the child through various provisions. Section 35 of the Act deals with reunion of the family, where the child can be reunited with his/her mother or father or his/her relative. The Act is, however, silent on the issue of unaccompanied children. Section 31(1) of the Act makes primary education compulsory. According to the Act, every refugee child shall be entitled to Primary Education in accordance with the law of the nation.

Children in Conflict with law: Administration of Juvenile Justice[255]

556. In Tanzania, the youth policy defines a youth as any person aged between 15 - 21 years old and children below the age of 15. This is in accordance with the UN World Youth Program of Action, which also acknowledges that the youth age of reference may differ depending on the socio-, cultural- and political contexts in the society. Although due to age, youth are still dependent on adults, when it comes to issues of justice, youth offenders have to stand alone in courts and face their responsibilities. Similarly, children under 15 years can be held accountable and prosecuted for their actions down to the age of 8. They cannot however, be sentenced to jail, but are normally administered punishments such as corporal punishment, or sent to 'approved schools, or verbal warnings.

[253] Of late the refugees especially those from Burundi are voluntarily returning to their motherland. However, a good number (about 80,000) have applied for Tanzanian citizenship.
[254] MCDWC (2004) Country Report …, (op.cit.) p. 73.
[255] Information on juvenile justice has been extracted from Cecillia A and Aki Staverou in a report titled: Youth Delinquency and The Criminal Justice System in Tanzania: A snap short Survey- April, 2000.

557. In Dar es Salaam, the youth cases are heard in a juvenile court (there is only one juvenile court in the country, and 5 remand homes in Tanzania these are located in Tanga, Moshi, Arusha, Mbeya and Dar es Salaam.), whereas in the remaining regions the cases are heard in separate chambers (on camera). Here, the patent parties alone are allowed to attend except in cases where the youths are jointly charged with adults. In the court (after reading the case) the youth is given a chance to answer (pleading guilty or not guilt) unless it is a murder or treason case. Then the court states whether the bail is open or closed. If it is open and there are sureties, he/she is granted bail, otherwise he/she is committed to custody - remand home, in the five regions where such institutions exist. In the absence of such institutions, the youth are held in remand prisons, which are basically special chambers in the adult prisons to accommodate youth.

558. The delay in the investigation of the case depends on the nature of the offence. Normally murder cases take longer for investigation and their hearing are subject to High Court sittings, which again depend on financial allocations. In most other cases, investigations take under 60 days. Youth cases tried in juvenile court take a shorter period, e.g. 2 weeks to 3 months (except for murder case again which take longer periods).

559. In all juvenile cases in Dar es Salaam, the probation officers are involved from the moment the youth are brought to court, except in upcountry regions where probation officers are few. Officers are given two weeks to make social enquiry reports, which assist the courts in the administration of justice. After the court hearing, the suspected youth are either convicted or set free. Upon conviction the court can 1) make a probation order; 2) commit the youth to an Approved School; 3) There is only one Approved School, which is at Irambo – Mbeya Region order corporal punishment; 4) impose a fine or 5) grant conditional discharge.

Administration of Juvenile Justice

560. The country's first juvenile court was established in 1997 in Dar es Salaam and similar courts have been established in other regions. It is the intention of the Government to ensure that the juvenile justice system is available and accessible to all children. In Tanzania, district courts have designated juvenile courts, when a case involves juveniles. This is in accordance with the Children and Young Persons Ordinance, Section 3. It provides, *inter alia* that such cases should as far as possible be heard *in camera* to maintain the privacy of the child, except where the child is charged with an adult. On the other hand, the Prisons Act, 1967 provides that juvenile offenders should not be confined together with adults.

561. In Zanzibar, Juvenile Courts are established under Section 3 of the Children and Young Persons Decree, Chapter 58 and Magistrate Court's Act, 1985. The juvenile courts are maintained by Regional Magistrates and are established for the purpose of hearing charges against children or young persons. A Juvenile court may try a child or young person in accordance with section 8 of this Decree for any offence other than manslaughter as stated above, juvenile delinquents in remand or jail are by law supposed to be separated from adults. In compliance with the CRC (Article 40), the Decree in Zanzibar imposes certain standards of treatment and reaffirms a number of established procedural guarantees for children in conflict with the law. In particular, the Decree demands treatment that is consistent with the promotion of children's sense of dignity and worth. Consistent with the CRC (Article 3) the Decree embraces the best interests of the child as a primary consideration in all court proceedings relating to children.

Some of the challenges which youth and children face when they come into conflict with law include:

- _ Growing up in a neighbourhood with a high crime rate
- _ A history of poor academic performance
- _ Victim of physical, sexual and / or emotional abuse or exploitation
- _ Poor parental monitoring and support
- _ Associations with deviant peers
- _ Use of drugs and / or alcohol
- _ Feelings that life is oppressive and lacks hope for the future

Children Deprived of their Liberty

562. The Government has remand homes in Tanzania mainland. These are located in Tanga, Moshi, Arusha, Mbeya and Dar es Salaam. Remand homes are managed by the Social Welfare Department, but commitment of children to remand homes is done by the courts. Measures which have been taken to improve the situation of remand homes include training of staff on how to deal with such children and attitude of the staff towards the children. There is so far only one approved training school in that field. It is located in Mbeya Region. The school is currently being renovated and provided with new physical facilities. The school provides primary education and vocational training skills (carpentry and tailoring) depending on the educational level of the child during admission to the Remand home.

Drug Abuse

563. The problem of drug abuse in Tanzania is fast growing especially for the youth and young people in schools. In an effort to combat this menace, the Drug Control Commission (DCC) is undertaking an extensive mass awareness campaigns. The awareness creation campaigns are conducted through special national or international events such as the International Women's Day, the Day of the African Child, "Farmers Day" Day and International Day Against Drug Abuse and Illicit Trafficking. In addition, the Commission conducts training workshops for teachers, mass media personnel, artist and community leaders. The Government has enacted a law for the prohibition of smoking cigarettes in public places, but there are no effective enforcement mechanisms.

564. In Zanzibar, a Department of Drug and Substance Abuse has been established and services are being provided. In 2002, Zanzibar town had 173 victims which was the biggest number compared to other districts in the island. The drug and substance abuse unit provides counseling and where appropriate, refers the cases for admission to relevant institutions.

Sexual Exploitation and Abuse

565. According to a Rapid Assessment conducted in Tanzania in November 2001, the phenomenon of children engaged in prostitution was growing quickly and largely un-noticed. Child prostitution is found in many parts of the country and highly pronounced in major towns and at main truck stops along the highways where state, administrative, military and commercial activities are located. The Government of Tanzania adopted the Yokohama Global Commitment 2001 for protecting children from sexual exploitation.

566. Sexual exploitation of children is an offence under section 145 B(1) of the Penal Decree Acts of Zanzibar. Act which lead to the commission of this offence, include acting as a procurer of a child for the purposes of sexual intercourse or any form of sexual abuse, including a person being a client of a child for sexual abuse of indecent exhibition or show.

567. The Government has taken further steps to prevent children aged 9 – 18 years old from entering prostitution. The Programme for Withdraw, Rehabilitation and Reintegration of child commercial sex workers has been operating since 1999 in three regions of Mainland Tanzania, namely Iringa, Mbeya, Ruvuma and Tabora and has been supported by ILO/IPEC. The main objective of the programme is to prevent, withdraw, rehabilitate and reintegrate such victims. The programme targets vulnerable children between the ages of 7 – 17 years. By May, 2003, a total of 1200 children in commercial sexual exploitation have been withdrawn, 850 were placed in rehabilitation centres and 350 were reintegrated into primary school's, 16 children in Secondary Schools and an additional 850 were reintegrated in vocational training.

Objective Nine: Promotion and Protection of the Rights of Vulnerable groups including internally Displaced Persons and Refugees

International and Regional Standards on the Rights of Refugees

568. Under this objective we examine the promotion and protection of the rights of vulnerable groups. These include persons who are exposed or likely to be exposed to danger or harm. The term refers to persons such as, refugees, internally displaced persons, women, children, persons with disabilities and persons of old age. In this section the focus will be on few categories of those considered as the most vulnerable groups including: refugees, internally displaced persons, as well as people with disabilities. Some other aspects of vulnerability including elderly women, orphans and child headed households have been dealt with in sections discussing children and women's rights.

569. This section reviews two international instruments on refugees and asylum seekers. The instruments are the UN Convention Relating to the Status of Refugees (1951) and the Africa Refugee Convention (1969). Many African states are parties to both the African Refugee Convention (1969) and the UN Refugee Convention (1951). Tanzania is one of African states which have ratified the two conventions. The African Refugee Convention should be seen as a complement to the UN Refugee Convention. This is provided for under Article 8(2) of the African Refugee Convention which states: "The present Convention shall be the effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugees."

It is therefore correct to say that the African Refugee Convention does not set up different standards on the rights of refugees. It was adopted to harmonize the United Nations Convention on the Status of Refugees. In view of the above, we shall only discuss the standards set out by the 1951 United Nations Convention on the Status of Refugees as modified by the Protocol of January 31, 1967.[256]

[256] . The UN Protocol Relating to the Status of Refugees of January 31, 1967.

The UN Convention Relating to the Status of Refugees (July 28, 1951)

570. The Refugee Convention does contain a range of provisions relating to refugees' rights that are not found in other refugee instruments. Under the UN Refugee Convention, protection of refugees' rights is thus not simply a question of humanitarian assistance but is a matter of a legally binding international obligation. However, as will be seen, even the UN Refugee Convention contains only limited protections of those rights. The relevant provisions of the UN Refugee Convention are set out hereunder and Article 7(1) sets the tone. It provides that: "Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally as follows:

(i) Right to Employment;
(ii) Right to Housing and Education;
(iii) Free Access to Courts;
(iv) Right to Property; and
(v) Freedom of association and movement in accordance with the governing law".

Rights of Refugees in Tanzania

571. The Tanzania Government published, for the first time, a refugee policy (The National Refugee Policy). Before adopting this written policy, Tanzania had a long history and experience in handling and managing refugees. The consistency in which refugees were hosted prior to the policy document, and particularly prior to the 1990s, is a clear testimony that the country had a policy which guided the handling of refugees in the country. This is what has come to be known as an "open door" policy. The basis of this open door policy can be found on the broad philosophy thought out by the first leadership of the country, after independence, and translated itself in different forms and at different levels. The first leadership believed in the idea of Pan- Africanism.[257] The Tanganyika African National Union (TANU) creed proclaimed that: (i) all human beings are brothers (and sisters) and Africa is one and; (ii) that all human beings are equal. It was largely on these basic principles that Tanzania fully supported liberation struggles in Africa and hosted people from countries still under colonial rule.

572. Equally important, Tanzania hosted hundreds of thousands of people from its neighbouring countries who fled their countries because of political instability and other factors. It is because of this "open door" and humanistic approach to the refugees Tanzania hosted refugees from Burundi, the Democratic Republic of Congo, Malawi, Mozambique, Rwanda, Somalia, South Africa, Uganda, and Zimbabwe. For decades the country "welcomed refugees, offered them land for settlement, integrated them among the local populations and, on occasion, even made offers of citizenship to some of the long-term refugees".[258] The country's refugee's policy was so generous that it received a worldwide acclaim. It was also a considered view of the first leadership of Tanzania that granting citizenship to refugees, especially from Rwanda and Burundi was part of a solution to the problems engulfing these countries, and the long term solution could be a regional political integration which would also include those countries.

[257] URT, The National Refugee Policy, p. 2.
[258] UNHCR Report 1999.

573. The tone of the Tanzania Government on refugees has changed. Refugees are now considered a burden. A number of issues are raised to substantiate this claim. Some of the issues include: environmental degradation, the rise of crime rate and a threat to the general security of the country, overburdening of the country's infrastructure as a result of catering for a huge number of refugees, especially where support for refugees from foreign and multilateral sources was declining. In 1995, for example, Tanzania closed her borders with Burundi to prevent the influx of refugees. The refugee question became so important to the local political domain during the campaigns for the 2000 General Elections. The ruling party's Election Manifesto stated that, "In cooperation with the UN High Commission for Refugees (UNHCR), the Government will continue to return refugees to their countries of origin".[259] This was apparently a restatement of what had already happened in 1996 when most (if not all) of the recent refugees from Rwanda were returned to their country in a massive operation organized and carried out by the Government of Tanzania. Besides, from the 2000s the Government of Tanzania has been arguing and promoting the idea of 'safe zones' whose implication is closure of most of the refugee camps in the country. The National Refugee Policy thus has to be seen in relation to what happened and the apparent change of perception/philosophy of the Government of Tanzania toward refugees.

Accession and Ratification of International and Regional Instruments

574. As mentioned earlier, Tanzania is among African countries which have either ratified or acceded to the 1951 UN Convention relating to the Status of Refugees and the 1969 African Refugee Convention. Accession is a method through which a nation that did not participate in the formation of a particular convention seeks to adopt and become a party. On the other hand, a state becomes party to a convention by ratification where it participated in the formation of a particular convention which it adopts.

Tanzania became a member of the United Nations soon after attaining her independence. As such she did not therefore participate in the formation of the 1951 UN Convention relating to the Status of Refugees because at that time it was not a member state. It follows therefore that Tanzania became a party to the said Convention by accession. Tanzania acceded to the 1951 UN Refugee Convention on May 12, 1964. It also acceded to the Protocol on September 4, 1968. It is however worth mentioning that for countries with dual legal systems like Tanzania, an international agreement does not automatically become part of municipal laws unless a separate legislation is enacted to such effect.

Measures Taken to Implement the Conventions

The Constitution

575. Looking closely at the Constitution of the URT, there are two main categories of rights: Rights applying to all persons on one hand, and the rights whose enjoyment only extends to citizens, on the other. There are no specific provisions which provide for the rights of refugees in the Constitution. The constitutional provisions guarantee the rights of all persons; it does so without discrimination. This suggest that it also covers persons of refugee status and asylum seekers as reflected in Articles 12 and 13 which state that all human beings are born free and are equal, and they are equally entitled to the recognition and respect for their rights.[260] Moreover, the Constitution requires that all persons are treated equally before the law and prohibits the enactment of laws with discriminatory effects.[261] A bunch of other

[259] CCM, Ilani ya Uchaguzi Mkuu Oktoba 2000, p. 113.
[260] Article 12 of the Constitution of the United Republic of Tanzania, 1977, as amended from time to time.
[261] . *Ibid*; Article 13.

rights covered under Articles 14 to 29 of the Constitution provide for the right to work,[262] freedom of association and assembly, to mention but a few. All these rights are enforceable and any person who feels aggrieved or denied such rights may pursue the matter according to the law.[263] Education[264] is also a right to all persons but is not enforceable. One may therefore argue, on the basis of this assertion, that refugees enjoy the same protection and rights as nationals since the wording of the provisions refer to "all persons". This however may not be the practice largely because refugees' matters are guided by a different policy and a separate piece of legislation.

576. Furthermore, the provisions of Articles 12 and 13-29 of the Constitution are too general to give special protection to vulnerable groups such as refugees. It is considered that lack of specific provisions relating to the rights of refugees in the Constitution is clearly a gap in protecting the rights of refugees in the country. Thus laws, policies, practices which do not adequately protect refugees continue to be in place due to this gap. If there were specific provisions guaranteeing the rights of refugees in the Constitution, being a mother law of the country, all refugees legislations would be bound to conform to the same.

Other Legislations

577. Tanzania implemented the UN Refugee Convention by enacting the Refugee (Control) Act in 1965.[265] This Act however, was viewed by some scholars as a mechanism of controlling and restricting refugees' movement in the territory and discouragement for refugees who would like to seek asylum in Tanzania. It was said to be a response to the influx of Rwanda refugees who were fleeing the civil war which arose in 1965. The OAU Refugee Convention was adopted in 1969. Therefore, Tanzania being a member and signatory to the said OAU Convention found it difficult to enforce her restrictive Refugee Law and was obliged to adopt an open door policy in which refugees continued to be received and given asylum in the territory.[266]

578. Much more significant was the enactment of the Refugees Act in 1998[267] which replaced the Refugees (Control) Act.[268] Different from its predecessor, the Refugees Act is more protective. This law serves as a principal law regulating all matters relating to refugees in the country. It addresses matters of refugees' admission, their rights, and solutions to their problems in line with international refugee laws. The Act tries as much as possible to conform to some of the standards set out under the UN Refugee Convention such as the right to education, housing and the right to employment.[269] This Act, however, serves as a double edged sword which seeks to promote and protect the refugees' rights while at the same time taking those rights away by imposing restrictions over the enjoyment of those rights. The Act strives to serve two purposes, i.e. fulfilling the state's international obligation and saving the nation's interests and priorities.[270] Balancing of those two purposes is difficult, thus making the rights of refugees restrictive to some extent.

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[262] *Ibid* Article 22.
[263] The law applicable here is The Basic Rights and Duties Enforcement Act. Cap. 3, Revised edition, 2002.
[264] *Op. Cit.* Article 11
[265] . Act No. 2 of 1965.
[266] . Masabo, J.; "Sexual and Gender Based Violence Against Refugee Women in Western Tanzania: The Case Study of Refugee Camps in Kibondo District"; LLM Dissertation; University of Dar es salaam; 2005; p. 86.
[267] . Act No. 9 of 1998.
[268] . Act No. 2 of 1995.
[269] . See section 31 and 32 of the Refugees Act, 1998.
[270] . Masabo, J.; *Op Cit*; p. 87.

579. The international standard requires that a refugee shall be accorded freedom of movement which should be subject to the regulations applicable to aliens generally. Refugees in Tanzania are obliged to remain in the areas designated for that purposes (camps).[271] They are not allowed to leave those areas without the permission of the Director of Refugee Services or the Settlement Officer. Permits granted to refugees to leave the designated areas normally end in fourteen days (maximum).[272] This makes total control of their freedom of movement in the territory contrary to the standards set out by UN convention on the treatment of refugees. Refugee freedom of movement seems to be even more curtailed and stringent. The UNHCR Global Report of 2004 makes the following observation with regard to refugee freedom of movement:

> Unfortunately, the presence for more than a decade of a large concentration of refugees has gradually given rise to resentment on the local authority and national politicians. *Limitations on freedom of movement for refugees were applied more strictly*.[273]

580. The Refugees Act also provides for the right to education. Refugee children are entitled to primary education in accordance with the National Education Act.[274] Refugee adults as well are entitled to adult education if they so require.[275] Examining the wording of the relevant provisions, it is clear that the right to education as provided for under the Act conforms to the standard set out by the UN Convention which requires that for elementary education refugees are to get the same treatment as nationals. According to the UNHCR report, refugees' enrolment in schools tends to vary. Overall it ranges from 95 percent to slightly over 100 percent. The report specifically noted that:

> Enrolment in primary education was at least 95 per cent in all Burundi refugee camps. In Congolese refugee camps enrolment technically exceeded 100 per cent, with children outside the normal primary school age also admitted. Half of the pupils were girls. All schools operated double shifts due to a shortage of teachers and classrooms.

581. As regards employment, the rights of refugees to work are limited. For example, refugees' rights are limited to the right of employment within camps, and they could engage in small income generating activities within the camps. The limitation is also in the sense that it is only enjoyable by very few refugees who qualify for certain types of work and who manage to obtain work permits from the Director of Refugees. The Director is vested with unlimited powers over the permits. He may at any time revoke the permit for what is called "good cause" which is nowhere defined under the Act.[276]

582. In addition, the Refugees Act, 1998, does not provide for each and every affair that a refugee may be involved. In this case, laws relating to immigration, land, labour, education, business, licensing, taxation, deportation and extradition, among others, may apply to refugees in some specific instances enumerated in those laws. The Act does not, for instance, provide expressly the protection of the refugees' right to property. On the contrary, the Act

[271] . Section 17 (1) of the Refugees Act, 1998.
[272] . Ibid; Section 17 (5) (b).
[273] UNHCR, Global Report, 2004; p. 166.
[274] . Act No. 25 of 1978.
[275] . Section 31 of the Refugees Act, 1998.
[276] . Op Cit; Section 32.

authorizes the detention and slaughter of refugees' animals and taking possession of their vehicles.[277]

583. Tanzania's national refugees' policy and laws recognize the fact that no person with refugee status shall be forced back to his or her country of origin. The law also provides for fair and humane screening procedures for asylum seekers. However, the UNHCR and the international community at large have been under pressure from the Government of Tanzania which has adopted a 'hostile' approach and attitude towards refugees. The Government has been advocating for creation of 'safe zones' within the territories of countries which produce refugees. As a result of this thousands of refugees have either been denied entry to Tanzania and others have been 'involuntarily' forced to leave Tanzania and go back to their countries. A good number of reports shows this trend and some argue that in carrying out this mission the Tanzania Government has been grossly violating the rights of refugees under international refugees' instruments. This has, according to UNHCR report, reversed a long and admirable history of hospitality to refugees.[278]

584. Generally speaking, the Refugees Act of 1998 has a number of glaring defects which need to be corrected to make it comprehensive. There are efforts made towards having a new legislation relating to refugees. There is already a draft of the proposed new Refugees Act which was submitted to the government in 2003. Though the Act is not yet operational to date a few observations can still be made.

585. The preliminary provisions of the Act provide the environment within which the proposed Act should operate. The provisions deal with the territorial application, interpretation and general guidelines which should govern the implementation of the proposed Act. The general guidelines for instance, require compliance with the Act both by actors on refugee matters and the beneficiaries, that is, refugees and asylum seekers. The principle of non-discrimination is upheld in the guidelines and that the legality of the measures being put in place by the proposed Act are drawn from the Constitution and the spirit of international and regional laws on refugees. Unlike the current Act, in the proposed Act, there is also a requirement that orders made by various authorities under the Act must be justifiable.

586. Part VII of the proposed Act deals specifically with the rights of refugees to education, employment and family reunification as stipulated in the current Act. The only new item that has been added is *regulations* to back up some of its provisions. It is also important to mention that, in recognition of the fact that refugee matters should be dealt with more efficiently, the Government established the Refugee Services Department as an independent unit under the Ministry of Home Affairs to specifically deal with refugees issues. The Department is responsible for all issues related to refugees such as admission, status determination, protection and finding solutions for refugees.

587. In 2003 the National Refugee Policy was adopted to give directives on how refugees' issues should be handled within the territory, thus adding to the efforts already in place. However, the policy has a number of provisions which to a great deal affect the rights of refugees. For example, it strongly advocates for repatriation of refugees and the idea of the creation of *safe zones* in their countries of origin.

[277] . *Ibid*; Section 13 and 14.
[278] UNHCR; Report 1999.

Internally Displaced Persons

588. Internally displaced persons are people forced to flee their homes and land but, unlike refugees, they do not flee their countries. There is no any international instrument that deals with matters relating to internally displaced persons. It follows therefore, that there is no legal definition of internally displaced persons as there is for refugees. However, a United Nation's report, *Guiding Principles on Internal Displacement* provides the following definition:

> Internally displaced persons are persons or group of persons who have been forced or obliged to flee or leave their homes or places of habitual residence in particular, as a result of or in order to avoid the effects of armed conflicts, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.[279]

589. The Guiding Principles lay out the responsibilities of states to prevent displaced people. The principles have been endorsed by the UN General Assembly, The African Commission on Human and People's Rights (ACHPR) and by the signatories to the Pact on Security, Stability and Development in the Great Lakes Region, which include Sudan, DRC and Uganda. The Guiding Principles, however, are non-binding. The absence of non-binding international legal regime on internal displacement is a grave lacuna in international law.

Internally Displaced Persons in Tanzania

590. There have been some incidents of forced internal displacement in the country. Most of the cases cluster around land alienation. Displacement through land alienation is systemic. Communities around different parts of the country had their lands been alienated to other users with the help and protection of the state. Those whose lands are alienated wonder around from one place to another in search of new settlements. Others are pushed to marginal areas as the best land or lands in prime areas are alienated to rich people. Communities of pastoralists, especially from North Eastern Tanzania, have been constant victims of these systemic forces of displacement.

591. Various reports by civil society organisations reveal that villages have been internally displaced due to legal contracts with foreign investors which do not involve them, or which manipulate village government leaders to release village land for investment purposes. The two cases cited below illustrate this.

[279] Deng, Francis, 'The Guiding Principles on Internal Displacement', February 11, 2000, United Nations, New York.

Case Five: **Sun biofuel**
It is a UK biofuel company operating predominantly in developing countries. The company strategy is to cover all areas of the biofuel from growing and production process to marketing. It has applied for 20,000 hectares of land, but has received only 9,000 hectares. The land is a home to 11 villages including: Muhaga, Matamba, Marumbo, Parka, Kidugalo, Kului, Mtakayo, Vilabwa, Mitengwe, Mzenga A, and Chakaye. Much of the land targeted by Sun Biofuels is miombo woodlands. Miombo is a vernacular word which has been adopted by ecologists to describe those woodland ecosystems dominated by trees in the general Bachystegia, Julbernardia, and Isoberlinia (legu minosae, sub family Caesalpioidae). Miombo woodlands are central to the livelihoods systems for millions of rural and urban dwellers in Tanzania. Goods and services from the Miombo woodlands include: medicines, food fibers, craft materials, honey, and construction products.

According to the Sun Biofuel, this land is not inhabited. But there is admission that it supports livelihoods of about 250,000 households on the account of which affected villagers become entitled to compensation. But the compensation awarded was based on planted trees, and not on the commercial/market value of the land being disposed. The analysis of the costs and payment was conducted by the University College of Lands and Architectural Studies (UCLAS). As a result, the maximum amount paid is Tanzanian shillings 250,000 (roughly US$ 250) for giving up livelihood supporting land.

Case 2: Another case study involves a Swedish company which is in the process of securing 400,000 ha for sugarcane production in Wami River basin in Bagamoyo district. Evidence suggests that about 1000 small scale farmers will need to move, and are not eligible for compensation as the lands is “general land not ‘village land.

592. In addition, communities of people who reside near big cities such as Dar es Salaam have also fallen victim of this process. Since the 1990s; trends suggest that the number of internally displaced persons is increasing. This is because foreign investment, land speculation, tourism, conservation and environmentalism have added more pressure and demands on land. In addition, rapid urbanisation and growth of cities and land re-development have had negative effects to poor people residing in peri-urban areas and villages around rapidly growing towns and cities. In some cases, where internally displaced persons move into other areas they tend to create pressure on land, resulting into disputes and sometimes violent conflicts as demonstrated by events in Kilosa district in December 2000 and November 2008.

593. In Zanzibar, there are also numerous cases of internally displaced persons. Just like on the Mainland, foreign investment particularly in tourism has had a negative impact on local communities, particularly along the beach areas. Quite a large number of people have been forced to part with their land without commensurate compensation. Additionally, apparently

as a result of hostile politics in Zanzibar[280], scores of people in Zanzibar town have had their houses demolished by the government and forced to flee to Pemba, Dar es Salaam and other places within and outside the country.

594. Nationally there is neither a policy nor legal guideline on how to deal with internally displaced persons. The Government deals with such persons on an ad hoc and case by case basis.

Persons with Disabilities

International Instruments

595. The *Convention on the Rights of Persons with Disabilities* and its Optional Protocol were adopted by the United Nations General Assembly in December 2006. It was opened for signature in March 2007, signed on September 4, 2008 and ratified on April 24, 2009. The aim of the Convention is to ensure that persons with disabilities enjoy human rights on an equal basis with others. State parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.[281]

596. On people with disabilities, the country has a policy and legislation on persons with disabilities some of which date back to the 1980s. However, there is no effective mechanism to ensure adherence to the principles and cannons established. There is a general dissatisfaction on many areas regarding persons with disabilities' access to education, health, employment, and public building[282], among others. There is need for the country to put more emphasis on improving on these areas so as persons with disabilities are treated equally and in a dignified manner as it deserves any other human persons.

The State of Persons with Disabilities at the National Level

597. It is estimated that Tanzania has 3,456,900 persons with disabilities[283] And their distribution along the categories are shown in Table 3.9 below:

Table 3.9: The State of Persons with Disabilities

Category	Number	Percentage
Physically Impaired	967,932	28
Visually Impaired	933,363	27
Hearing Impaired	691,380	20
Intellectually Impaired	276,552	8
Multiply Impaired	138,276	4
Others	449,397	13
	3,456,900	**100**

Source: National Policy on Disability; United Republic of Tanzania, 2004

[280] There is very strong evidence to the effect that the Zanzibar Government decision to demolish houses in the unsurveyed areas was due to political reasons rather than urban planning. In the reconciliation accords of 1999 and 2001, the Government committed itself to compensate the victims.

[281] . Artcle 4 (1) of the UN Convention on the Rights of Persons with Disabilities, 2006.

[283] Tanzania (2004) National Policy on Disability; Government Printer, Dar es Salaam, P. 3.

598. The table above eliminates certain categories of disabilities such as Albinos who have been the current victims of massacre by individuals who are driven by belief that their body parts have some medicine which will enable them to prosper in their varied businesses. Although the killings of albinos are believed to have existed in our society for a very long time, currently it has surfaced due to media coverage. A quick survey conducted recently for this report revealed horrific stories of the brutalities perpetuated and which silence existed. For instance, in Magu district, a case was cited which a family of four people with one female albino was massacred leaving one boy alive who will have to live with the trauma of this brutality for the rest of his life. In the same district, a mother of two albinos has been forced to flee from her home after the killing of one of the daughters who is an albino.

As a response to these mass killings, the regional government acted by collecting all albino children into one centre who numbered 100 and whose families were unable to offer them security of life. While the good intentions of protecting these children exist, the centre lacks necessary basic services. The separation of the children from their families brings in a new insecurity dimensions which have not yet been addressed. The Albino children have indeed been internally displaced.

599. Historically, Tanzania has recognised persons with disabilities by passing and adopting laws and policies from time to time. In 1981, the Cabinet of the URT passed a resolution, which among other things, emphasised the need to provide services to such persons as a way of protecting the dignity of persons with disabilities. In 1982, a law was enacted to enable persons with disability to secure employment by introducing a quarter scheme and reservation of posts for them. However, inspite of the improvement in the legal framework, there are no adequate mechanisms for the implementation of the conventions.

Legal Protection of Persons with Disabilities

600. The rights of persons with disabilities are provided for under Article 11 of the Constitution of the United Republic of Tanzania which states that:

> "*the state authority shall make appropriate provisions for the realization of a person's right to work, to self education and social welfare at times of old age, sickness or disability and in any other cases of incapacity*."

601. It follows therefore that a state's relevant authority should put in place specific legal and institutional mechanisms to ensure the protection of persons with disabilities. To carry out this obligation, the Government in 1992 enacted two legislations, i.e., *the Disabled Persons (Employment) Act* and the *Disabled Persons (Care and Maintenance) Act*. The Acts sought to ensure equal opportunities for persons with disability in employment and to ensure that they are provided with care and maintenance. The Disabled Persons (Employment) Act,[284] for instance, prohibits employers in the public and private sectors to discriminate against people on the basis of their disability, and obliges them to offer employment for persons with disabilities.

602. On the other hand, The Disabled Persons (Care and Maintenance) Act[285] gives a primary duty of care and maintenance of a disabled person to his/her relatives. If a relative wilfully neglects to perform that duty, he/she may be compelled to do so by order of the

[284] .Cap 184 [R. E 2002]
[285] . Cap 183 [R. E. 2002]

court.[286] The Act also urges local authorities to maintain settlements for disabled persons. Disabled persons who have no relatives who can provide for their care and maintenance shall be admitted and taken care of in settlements for disabled persons.[287]

603. Whereas both pieces of legislation provide for special care and treatment of disabled persons, there is however, no institutional mechanism to ensure compliance of the provisions of these Acts. As a result, persons with disabilities continue to face discrimination and stigmatization in their homes, society, and in employment. Provisions of services and special needs to support persons with disabilities in schools, buildings, and public means of transport, to mention but a few, are inadequately provided. On average however, there is satisfaction on measures the country has taken to promote and protect the rights of vulnerable groups.

604. According to the APRM Household Survey, over 55 percent of the responses are of the view that the measures taken to promote and protect the rights of vulnerable groups are effective. Of this aggregate percentage, only over 17 percent feel that the measures are very much effective and over 37 feel that the measures are very effective. Responses showing dissatisfaction to the effectiveness of the measures constitute less than 45 percent, whereby 27.6 percent feel that the measures are fairly effective, 6.2 percent feel that they are less effective and over 6.2 are of the view that the measures are not effective at all. So it would appear that there are efforts being taken to promote and protect the rights of vulnerable groups. This however, calls for more efforts so that such measures are seen to be benefiting many people. This is because the percentage of very much effective which is the highest level of satisfaction is small.

605. Whereas there is generally a positive view on the measures taken to promote and protect the rights of vulnerable groups there is a slight difference in relation to the question of access to persons with disabilities to various services: decision making, public buildings, education, human dignity, and reproductive health to mention but a few. The APRM survey also sought to solicit responses on the "initiative to protect rights of people with disabilities with regard to access to health services, access to information, access to education, access to public buildings and infrastructure, and the right to dignity and safety".

The responses from the survey indicate that access to most services and facilities falls below 50 percent. For example, responses which suggest that access is very much effective and very effective, constitute 38 percent for decision making, 47.7 for education, 52.4 percent for health, 25.3 for employment, 38.2 percent for public buildings, 50.5 percent for human dignity, and 54.4 percent for reproductive rights. Access to reproductive rights, education, and human dignity are the best case scenarios. The worst case scenarios, according to the responses, include (on the basis of summing up percentages for each category which represent fairly effective, less effective and not effective at all): access to employment 74.7 percent, access to public buildings 61.8 percent, decision making 61.7 percent, education 52.3 percent, human dignity 49.5 percent, health 47.5 percent, and reproductive rights 45.5 percent. The variables with the highest level of dissatisfaction responses require some more effort in order to improve the situation. From the above analysis, it is important to note that there is a need to address and improve the effectiveness of the measures in all areas, since the scores for "very (much) effective" are below 50 percent.

[286] . *Ibid*; Section 15.
[287] . *Ibid;* Section 17

606. Some of the practical problems facing refugees in accessing their entitlements have been discussed above. The previous discussion has revealed the fact that the question of refugees protection in Tanzania has not been adequately dealt with. Much as Tanzania has tried to implement the UN Convention on the Status of Refugees by enacting a specific law relating to refugees, it has failed to conform to some of the standards set out by the said Convention.

607. However, with regard to refugees' protection, even the system of protection put in place by international law through the 1951 UN Convention on the Status of Refugees and its 1967 Protocol is experiencing significant problems. This makes it unable to respond adequately to the refugees question worldwide. Major constraints in the system include: the design of the system itself which was intended to address the refugee question created by the World War II and the advent of the Cold War, growing lack of resources resulting from lack of commitment from countries party to the Convention, and a discriminatory tendency on handling refugees from different continents.

608. There is, however, another, related issue and that is: When does a person *become* a refugee? This may seem odd, but it is of crucial importance in practice. The problem is caused by the relationship between international refugee law and domestic law. While the refugee conventions set out definitions of who is to be classified as a refugee, they contain no enforcement mechanisms, and the task of deciding who satisfies the definition is left to domestic law and policy. Frequently, domestic law classifies a person as an "asylum seeker" until the relevant domestic authorities have decided that she/he qualifies as a refugee under domestic law and/or policy. On the other hand, domestic authorities may consider that the person is to be treated as a refugee as of the date of his/her application, the date of entry into the country, or some later date.

609. Under international law a person is to be considered a refugee simply by virtue of satisfying the definition in the relevant refugee convention regardless of the domestic status determination process. Domestic authorities generally will consider that asylum seekers are not entitled to the specific protections of the UN Refugee Convention. In addition, many states tend to refuse refugee status and instead grant a form of humanitarian residence status that enables a person to stay in the country of refuge legally for a period, but which will not entitle him or her to access the provisions of the UN Refugee Convention. Domestic refugee status determination procedures are often very lengthy. Indeed, it may take years until the refugee status of an individual asylum seeker is decided.[288] Equally, a person ceases to become a refugee after he returns to his country of origin or is naturalized in a host country or assumes another status granted by any other country.

610. The UN Refugee Convention is clearly limited in protecting the rights of refugees. Firstly, it only applies to those countries that are parties to the Convention. Secondly, it contains no provisions in relation to certain rights, for example, regarding an adequate standard of living or physical and mental health, and no clearly binding provisions regarding the role of the family. Lastly, refugees may be unable to access entitlements under the Convention until they have formally been classified as refugees by domestic authorities.

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611. Tanzania has tried to implement the UN Convention on the Status of Refugees by enacting a specific law relating to refugees, but it has failed to conform to some of the standards set out by the said Convention and has reduced its hospitality to refugees.

612. On internally displaced persons, given the various factors and trends which suggest that the number of displaced people in the country is on increase and that this is somehow becoming a common phenomenon. Unfortunately, there are no laws or guidelines on how to handle such cases. It would be appropriate for the country to desist from exacerbating the situation. This can be avoided if for example the government strictly adheres and respects its own land laws and good governance practices, especially the need to listen to the voices of the poor and politically incompetent. But where such situations arise for any unforeseeable reason the government should put in place a policy or guidelines on how to deal with such situations in a systematic manner.

3.4 Conclusions and Recommendations

Objective One: Prevent Intra and interstate conflicts

613. The major intra-state conflicts that have been highlighted in this part include those related to the Union matters; the existing constitutional framework; intra and inter-party conflicts; local artisanal miners versus large mining firms investing in the country and land disputes resulting from forcible evictions of local communities from their lands, settlements and properties. Other major sources of conflicts which have been referred to in this part are organized crime, illicit arms trade, and refugees and internally displaced persons. The majority of Tanzanians seem to hold the view that the leading sources of conflicts in the society are political in nature. It has been shown through the household and expert surveys respectively that elections, intra and inter-party disputes and other related political reasons, pose as the major source of conflicts in the country. Economic factors such as inequalities and wealth distribution have been mentioned as a second major source of conflicts in Tanzania.

614. Another interesting insight coming from the surveys is that Government officials and political leaders are the least favored option for resolving conflicts in the society. This is a worrying situation which also raises questions on the actual practice and political will of Government officials and politicians in resolving societal conflicts. It is a clear pointer to the fact that they may not 'practice what they preach' on the question of resolution of conflicts in the country. Relatedly, there is a serious concern over the level of awareness of the citizenry on the available conflict resolution mechanisms, and how those mechanisms actually function, as well as stakeholders' knowledge on the costs and benefits of employing the same. Another revealing feature is the preference for formal or government institutions as opposed to individuals. Respondents have expressed the view that institutions can be relied upon as conflict resolution mechanisms rather than individuals who occupy them.

615. Zanzibar is part of the Union saddled with perennial post-elections conflicts. From the foregoing observation, the picture is crystal clear that the legitimacy of electoral processes has fallen short of expectations in the Isles. It has once again been validated that elections in Zanzibar have neither resolved issues of political legitimacy nor succeeded in creating political equilibrium. It is also clear that "while CUF's dominance in Pemba seems to trouble the ruling CCM, the former has shown to be greatly concerned with the management of the general elections and electoral outcome in Zanzibar, particularly in Unguja. Elections have once again sparked off restive relationship between the two major

political forces in the Islands. The current state of affairs saves only to mitigate possibility of political co-existence whose highest level was attained when talks leading to *Muafaka II* came to fruition."[289] The people of Zanzibar now want a 'truce' much broader and more comprehensive than the *Muafaka* accords to salvage the situation before the next general elections.

616. On inter-state relations, it has been observed that Tanzania has been enjoying a relatively harmonious relationship with her immediate neighbours, and that accession of Rwanda and Burundi to the East African Community is likely to create conditions for even more harmony. The border situation with neighbouring countries has generally been rated as calm.

Recommendations

(i) Efforts should be directed at finding a comprehensive settlement to the Zanzibar political impasse. A much broader and comprehensive resolution ought to transcend electoral politics, and thus the need to address all issues of contention confronting ordinary Zanzibaris of all walks of life;

(ii) Government functionaries and local authorities should stop to unfairly evict local communities in clear violation of the 1989 ILO Convention on the Rights of the Indigenous Peoples. Recommendations of the Probe Commission led by Judge Chande to study the relocation of pastoralists from Ihefu in Mbarali District to Lindi and Mtwara regions, first, have to be made public, and second, action be taken so that justice is done and is seen to be done to the evicted pastoralists;

(iii) The Government has to respect decisions reached by ombudsman bodies and independent departments whose powers have been embodied in the Constitution. The tendency by the Government of disregarding recommendations by the Commission for Human Rights and Good Governance, like in the Nyamuma's inquiry, is not healthy for the governance paradigm in the country. There is need to review the legal mandate of the Commission so as to make its decisions more enforceable;

(iv) While religious tensions seem to be on the rise in Tanzania, the Government should make use of the existing inter-religious forums and organizations to diffuse religious tensions and conduct a national inter-religious dialogue that will discuss religious tolerance and other issues, including the operations of Kadhi courts;

(v) Since cattle rustling and ethnic tensions have raised serious security concerns, the government should revamp the existing early warning systems to prevent such events in future. And due to the trans-sovereign nature of the problem, regional efforts through the EAC can be exploited to the utmost advantage;

(vi) Laws and policies governing the mining sector and all other sectors whose operations have been a major source of conflicts between the local people and foreign investors be reviewed; and

(vii) Effective mechanisms of implementing decisions reached by the Joint Union Commission in dealing with sticking points related to union matters be instituted.

The Government should commit itself to comprehensively address all the major issues of contention relating to inter and intra-state conflicts.

[289] See an article by Rasul Ahmed (2006); "Pemba as an Opposition Enclave: Reflections on Political Co-existence and Democratic Consolidation", forthcoming.

Objective two: Constitutional Democracy and Rule of Law

Conclusion

617. On the whole, there has been some improvement in constitutional democracy and rule of law in Tanzania since the introduction of multiparty politics in 1992. It is important, however, to note that Tanzania consists of two different polities (Mainland and Zanzibar) with varying scales of failures and achievements. Political competition on the Mainland is still a serious problem but there have been some improvements in the sense that the opposition parties, in spite of some reservations, have at least not seriously contested the validity of all the past three general elections. Zanzibar, however, is fundamentally a different political scenario, whereby political competition is still facing a formidable challenge. The opposition in Zanzibar has, with reasonable grounds, seriously contested the validity of all the past three general elections. Contestable election processes and outcomes in Zanzibar have led to increased political hostilities and gross abuse of human rights particularly during elections times and their aftermath.

618. The legal framework and institutional arrangements in Tanzania as a whole are still considered too restrictive to allow a well-functioning multiparty system. Opposition parties and civil society organizations have been raising critical issues on constitutional deficiencies and even putting demands for a new constitution. Laws governing elections, political parties, media and civil society organizations are also seriously contested by opposition parties and civil society organizations. To put it in simple terms, democratic governance in Tanzania is still fragile - it still faces critical challenges, including the fact that one of the basic prerequisites of democratic governance, i.e., general consensus on the basic rules of the game is still lacking.

Recommendations

(i) Since there is no general consensus on the constitutional and legal framework governing multiparty politics for both the United Republic of Tanzania and Zanzibar, new constitutions that will lay a firm foundation for constitutional democracy, competitive multiparty politics and rule of law are needed;

(ii) Basic rights and freedoms should be constitutionally guaranteed against encroachment or derogation by state legislation;

(iii) Although under the Constitution and Political Parties Act, 1992, political parties are allowed to conduct their political activities, including holding public rallies and demonstrations without undue obstruction, under Police Force Act, Cap 322, R.E 2002, political parties' meetings, particularly of opposition parties are still unduly obstructed by the Police Force. The Government should put in place a systematic programme of civic education to police commanders and officers, a programme that will induce their attitudinal and behavioral change;

(iv) The role of "big money" in current Tanzania's electoral politics is becoming a serious threat to democracy and government accountability. The Government should put in place a legal framework that will help minimize the role of big money in electoral politics;

(v) While the current Section 11(a) of the Political Parties Act of 1992 ostensibly allows registered parties to unite, in practice the unity or alliance envisaged is fraught with unpalatable conditionalities. It is recommended to liberalize the conditions for forming electoral alliances and coalitions;

(vi) In spite of the court ruling to allow independent candidates to contest elections, the Government has decided to appeal. The government should accept the

decision of the court by preparing the modality of implementing the decision before the 2010 general elections;

(vii) The existing electoral system in Tanzania, i.e., simple plurality or first-past the post (FPTP) rule seems to undermine democracy by denying representation to significant sections of the population. It is recommended to design a mixed electoral system so as to promote competitive politics and widen citizen representation in governance;

(viii) The independence, impartiality and integrity of election management bodies (both NEC and ZEC) are highly contested by opposition parties and independent analysts. It is therefore recommended to form election management bodies that will enjoy the confidence and trust of the electorate, particularly political actors;

(ix) There are some legal constraints on the freedom of association. There are still various legal provisions which are restrictive and oppressive. The vast powers given to the Registrar of Societies, for example, need to be curtailed so as to prevent deregistration of civil society organizations. The government on its part should be more tolerant of the CSO which are critical of the government;

(x) The Newspaper Act of 1976 is too restrictive to the freedom of the press and free speech. Fundamental reforms in the law are needed so as to promote media freedom;

(xi) The initiative started by the Government since 2006 to involve a broad range of stakeholders in drafting a bill on Freedom of Information Act should be completed. The sticking points that divided the stakeholders need to be ironed out so as to come up with acceptable legislation which meets national and international standards;

(xii) There have been quite a number of cases in which the government has been reluctant to respect the rule of law by refusing to implement court decisions. It is recommended that the government change its attitude in dealing with judiciary rulings as a way of abiding by the principle of rule of law, separation of powers and checks and balances;

(xiii) The gradual increase of Executive Agencies has improved the performance of the government. However, most of these agencies would need more autonomy in terms of making key decisions relating to human and financial resources. The central government should reduce its interference in the management of independent government institutions;

(xiv) Remarkable achievements have been realized on the Mainland in the functioning of local governments in terms of decision-making, resource allocation, institutional capacity, and service delivery. However, there are still critical problems in local government management particularly in matters relating to financial management and accountability. The central government needs to put in place more effective measures for financial accountability and control within local governments; and

(xv) There are no functioning local governments in Zanzibar. Part of the democratization process in Zanzibar should involve the establishment of local government structures with considerable powers and autonomy to manage their own affairs.

Objective Three: Promotion and Protection of Economic, Social, Cultural, Civil and Political Rights

Conclusion

619. Although Tanzania has signed and ratified a number of human rights instruments, it lags behind in terms of domestication. Tanzania being a dualist state requires domestication of international instruments so as to give them legitimacy. Most of the instruments have not been domesticated. This hinders the full implementation of those instruments. In practice, access to justice in Tanzania is hampered by a wide range of factors, including inadequate legal personnel and shortage of basic facilities. The systemic factors, including corruption and the political environment also negatively affect the dispensation of justice in the country.

Recommendations

(i) Tanzania has not ratified the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 1984, and the Second Optional Protocol to the International Covenant on Civil and Political Rights which prohibits the death penalty. It is therefore recommended that the country ratify these instruments and abolish the death penalty which is cruel, inhuman and degrading;

(ii) The catalogue of the Bill of Rights should conform to international instruments of human rights. It should, for instance, incorporate the second and third generation rights;

(iii) Although the Bill of Rights which was incorporated in the Constitution in 1984 has been amended several times, it still has serious limitations. The most serious is the derogation clause under Article 30(2). It is therefore recommended that this be removed from the constitution or be substituted by a liberal provision;

(iv) The Bill of Rights in the Constitution does not include social, economic and cultural rights. They are instead being provided for in part II of the Constitution which is non justiceable. It is therefore recommended that the Bill of Rights be amended to include social, economic and cultural rights. It is also recommended that the government take serious steps to ensure the enjoyment of these rights by all individuals;

(v) The Government should endeavour to put in place strategies that can eradicate discrimination, social and cultural barriers to the enjoyment of social, economic and cultural rights by women, people living with HIV/AIDS, people with disabilities and other marginalized groups;

(vi) Vesting the original jurisdiction on human rights violation in the High Court of Tanzania seriously impedes accessibility to justice by the victims. It is therefore recommended that Article 30 (1) of the Constitution and Section 10 of the Basic Rights and Duties Enforcement Act, of 1994, should be amended to allow the district courts to serve as courts of first instance;

(vii) The Government should endeavour to ensure equal access to justice for all. In this respect it is recommended that more court rooms should be built, and more magistrates and judges be recruited; and

(viii) It is also recommended that provision of legal aid be compulsory to persons charged with committing crimes. It should not be limited to persons charged with committing capital offences. The provision of legal aid should not only be left to NGOs. The government should take an active role in ensuring that legal service is accorded free to the indigent.

(ix) The public needs legal literacy as many cases of human rights abuse including violation of women's, children, individuals with disabilities results from lack of awareness of peoples entitlements, which will lead to demand and holding public duty bearers accountable for violation of these rights and for failing to institute processes and systems to ensure full enjoyment of such rights.

Objective Four: Upholding Separation of Powers in Tanzania

Conclusion

620. The fusion of the Executive and Parliament complicates the functioning of the doctrine of separation of powers in Tanzanian. Both constitutionally and in practice, the political system in Tanzania is characterized by the excessive powers of the Executive. These powers range from control of resources, the possession of the coercive instruments of the State, the power to dissolve Parliament, presidential powers to appoint up to 10 members of Parliament, powers to constitute and abolish any office in the service of the United Republic. The dominance of the ruling party in Parliament further erodes the powers of Parliament versus the Executive.

621. Similarly, the principle of separation of powers and checks and balances relating to the independence of the judiciary sometimes seems to be disregarded, particularly by the Executive. There have been cases where the Parliament enacts a law which is finally challenged in court and declared null and void for being inconsistent with the constitution. Instead of appealing in court, the Executive rushes to the National Assembly to enact another law whose effects nullify the court decision. From the foregoing, it is apparent that the Executive in Tanzania has excessively elevated itself to render both parliamentary oversight and judicial review ineffective. Thus, in order to effectively uphold the principle of separation of powers and checks and balances, a wide range of measures ought to be taken.

Recommendations

(i) In order to promote effective checks and balances, cabinet ministers and their deputies should not be appointed from among members of Parliament;

(ii) Article 46 (1) of the URT Constitution which prohibits the institution in court of criminal or civil proceedings against a person who holds the Office of the President after he ceases to hold such office, for "anything" he did as a President, should be abolished;

(iii) The non-compliance of court orders and decisions by the Executive and its agencies erodes the efficacy of the doctrine of checks and balances. The Executive should develop a culture of accepting and respecting court orders;

(iv) The effectiveness of parliamentary oversight is seriously undermined by the over-representation of the ruling party in Parliament and in the House of Representatives. The plurality electoral system should be replaced by proportional representation or a mixed electoral system;

(v) Whereas (Article 141 (5) of the URT Constitution states that funds for salaries, pension, and gratuity paid to Judges of the Court of Appeal and High Court shall be charged on the Consolidated Fund of the Government, the arrangement does not apply to magistrates. The remuneration of magistrates should be made secure just like that of judges; and

(vi) Since there have been instances of conflicts among the Executive, the Legislature and the Judiciary, it is recommended to make an effective use of

the Special Constitutional Court which is in line with Article 125 of the URT Constitution. The Constitution should be amended to ensure that the Court does not only handle disputes between the Government of the United Republic and the Revolutionary Government of Zanzibar, but also resolves conflicts among the three branches of government as they arise.

Objective Five: Ensuring Accountable, Efficient and Effective Office Holders and Public Servants

Conclusion

622. A wide range of public service reforms from the central government, executive agencies and parastatal institutions to the local government have been effected in Tanzania and noticeable achievements have been realised, particularly on the Mainland. Zanzibar, however, is glaringly lagging behind in most of the public service reform measures. Zanzibar's sluggishness is largely attributable to its endemic political conflicts that are yet to be settled. Unless a viable political settlement is achieved in Zanzibar, it is difficult to contemplate any meaningful and far reaching public service reforms.

Recommendations

(i) Whereas Tanzania Mainland has recorded remarkable gains from the implementation of the Public Service Reform Program (PSRP), which has been in place for many years, Zanzibar is in the process of developing such a programmme. It is recommended to speed up the adoption and implementation of the public service reform in Zanzibar so as to improve public service delivery;

(ii) Whereas Tanzania Mainland has introduced Client-Service Charters with a view to improve public service delivery, Zanzibar has not yet introduced such a device. It is therefore recommended that the reforms to be introduced in Zanzibar should include such a mechanism that will enhance the capability of the demand side of accountability;

(iii) Most of the reform measures adopted in Tanzania have been supported by donors in terms of expertise and financial resources. There is a concern that these measures are difficult to sustain in the absence of donors. However, the government gradually owns them. It is recommended that the two governments endeavor to own the reforms in order to ensure their sustainability; and

(iv) Although significant achievements have been realized in terms of structural change, a lot has to be done to inculcate behavioral change among public office holders.

Objective Six: Fighting Corruption in the Political Domain

Conclusion

623. A wide range of measures to fight corruption have been taken by the government in terms of both legal reforms and institutional arrangement. The general perception among the citizens is that most of the specialized institutions charged with the task of fighting and

preventing corruption are still ineffective. There is therefore an urgent need to continue with legal reforms and strengthen the anti-corruption agencies in terms of both resources and autonomy to discharge their responsibilities. Relatedly, from the experience, it has been observed that the success of the war on corruption in Tanzania largely dependents on the strength and competence of the civil society, i.e., the demand side of accountability rather than the government which itself may have vested interest in some of the corrupt dealings.

Recommendations:

(i) Operationally and administratively the PCCB works under the Office of the President. The positioning of the PCCB under the presidency without legal limitations of the powers of the president to its operations may subject the PCCB to undue political interference or control. Efforts thus should be made to guarantee PCCB operational autonomy;

(ii) At the moment Zanzibar lacks a specialized anti-corruption agency. It is therefore recommended that either PCCB's mandates should be extended to Zanzibar or Zanzibar should create its own specialized anti-corruption agency;

(iii) Inadequate investigation expertise constitutes one of the critical challenges facing PCCB. More serious efforts should be promoted to strengthen its investigation capacity;

(iv) There is still an urgent need to build expertise in the areas of awareness raising and prevention especially with current increasing complexity of corruption;

(v) It is therefore recommended that since the existing law is defective in dealing with breach of ethics by public officials resulting from failure to separate business and politics, legal reform should be effected to give the Ethics Secretariat adequate powers to handle cases of breach of ethics;

(vi) The operational autonomy of the Ethics Secretariat should be strengthened by removing it from the President's Office and place it under the Legislature;

(vii) The success of anti-corruption measures will largely depend among other factors on the strengthening of the demand side of accountability. Political parties and non-state actors should be seriously empowered so as to play their indispensable role in the fight against corruption. In this regard, civic education should be promoted systematically so as to increase citizens' awareness on corruption and the means to hold the government accountable; and

(viii) There is need to establish a mechanism which will be an overseer of the PCCB and the Ethics Secretariat.

Objective Seven: Promotion and Protection of the Rights of Women

Conclusion

624. The government has been taking a wide range of measures aimed at promoting gender equality. In the political domain, a significant achievement has been realized in terms of legislation for political affirmative action, including increasing the number of women in representative organs. The challenge has been addressing the larger context which discriminate women in areas of economic empowerment, legal capacity as well as challenging the patriarchy norms and value which position women in low socio-economic status. Violence against women in both public and private domain remains challenges which need action by both government and the public at large.

Recommendations

(i) There is a need to increase women's representation not only in representative bodies like the Parliament, House of Representatives and councils, but also in other organs of influence, including the Judiciary, the Civil Service and political parties. The increased representation should not only be in terms of numbers, but also in terms of empowerment and capacity building. In the political sphere, the focus has been on numbers without paying adequate attention to political norms and values which are leading to structural inequalities that position women in low socio-economic status;

(ii) In the legal sphere, changing a few laws in favour of women is necessary but not sufficient to transform patriarchal political norms and values that continue to prevent women from accessing political resources Legal reform has to be complemented with civic education that will address the unwritten laws, the belief systems, and social practices that continue to position women in low socio-economic and political position. In our context, the co existence of with customary/religious law with civil law complicates efforts to enhance legal capacity of women. The main challenge here is transforming the mindset of the majority of Tanzanians who continue to embrace the patriarchy ideology;

(ii) More efforts should be undertaken to make use of the gender mainstreaming approach in all stages of policy-making process, including situation/problem analysis, monitoring, evaluation and in impact tracking; and

(iii) There is a need to carry out extensive awareness campaign on existing land laws and on how they can be applied by women to seek their rights over land ownership, access and usage.

Objective Eight: Promotion and Protection of the Rights of the Child and Young Persons

Conclusion

625. Tanzania has ratified almost all international conventions which govern the protection of the rights of children and young persons. The country is a party to the CRC and its Optional Protocols as well as other internationally recognized conventions and instruments designed to facilitate the protection and promotion of the rights of the child and young persons. This is cogent proof of the commitment of the government of the URT and Zanzibar as well as the political leadership to promoting, protecting and enforcing respect to the rights of children and young persons. As it has been demonstrated in this work, both the URT and Zanzibar constitutions, to a great extent guarantees the rights of the child and young persons.

626. The Governments of the URT and Zanzibar have several pieces of legislation which facilitate not only the implementation of the international conventions on the rights of children but also provide an elaborate legal framework for implementing the requirements of the conventions. The two governments have formulated a plethora of policies and created several specific institutions for implementing and safeguarding the rights of the child and young persons. To a great extent, the two governments in the URT have created space and a conducive environment for the NGOs to complement efforts, hence attaining the most desired synergy in the endeavour to enhance respect, in deeds, to the rights of the child.

627. The Governments-NGOs partnership in Tanzania regarding the protection and promotion of the rights of the child is worth emulating by other countries. It seems plausible to point to one indisputable fact that the country has made very good progress in the protection and promotion of the children and young persons' rights. Despite the success stories there are a number of challenges and areas which the two governments need to address in order to make a difference and attain world class standards in enforcing and promoting the rights of the child and young persons.

Recommendations

(i) The legal provisions for addressing childrens' welfare are scattered in different pieces of legislation. Hence, the Government should accelerate the process of harmonization and aggregation. The activities pertaining to protection and promotion of the rights of the child and young persons are cross-cutting. As such, the mainstreaming, coordination, monitoring and evaluation of policies in all sectors are required;

(ii) The Government should make more concerted efforts and strategies for creating public awareness, especially to the adults and law enforcement organs on the rights of the child and young persons;

(iii) Draconian and obnoxious laws which are still intact in the statute books, and consequently undermine the implementation of the rights of the child and young persons should be repealed. In this regard, the Governments and other stakeholders need to review corporal punishment in our schools and households; so as to promote non-violent forms of discipline;

(iv) More serious efforts need to be taken to provide infrastructural and other facilities to children with disabilities;

(v) There is a need for the Government to develop a special programme to help street children;

(vi) The Government should make appropriate arrangements to permit school children who become pregnant to resume their studies after delivery. The current practice of expelling such girls is detrimental to protection and promotion of their right to education;

(vii) More serious efforts and political commitment are required to prohibit old social valued customs, taboos and norms such as early marriage, female genital mutilation and other forms of gender discrimination; and

(viii) The Governments should formulate a comprehensive policy on the care of the most vulnerable children and orphans.

Objective Nine: Promotion and Protection of the Rights of Vulnerable Groups including Internally Displaced Persons and Refugees

Conclusion

628. Good political governance entails, among other things, the promotion and protection of the vulnerable groups, including internally displaced persons, refugees and people with disabilities. Tanzania, on the whole, has had a mixed record of achievements and failures in those areas. As regards refugees, it has been observed that the long established tradition of

generously handling refugees in Tanzania seems to be changing. Although Tanzania has tried to implement the UN Convention on the Status of Refugees by enacting a specific law relating to refugees, it has failed to conform to some of the standards set out by the said Convention.

629. On people with disabilities the country has a policy and legislation on persons with disabilities. However, there is no effective mechanism to ensure adherence to the principles and cannons established. There is a general dissatisfaction on many areas regarding persons with disabilities' access to education, health, employment, public building, among others.

Recommendations

(i) There is need to establish effective institutions and mechanisms to ensure that persons with disabilities are treated equally and in a dignified manner as it deserves any other human persons;

(ii) There is a lacuna in the legal and institutional framework governing the rights of internally displaced persons. In the light of the rising number of internally displaced persons, the Government should enact laws and guidelines on how to handle such cases;

(iii) The Government should earnestly address the underlying factors that could produce internally displaced persons and should also develop a culture of listening to the voices of the poor and the politically incompetent citizens;

(iv) Problems of land alienation and displacement of the pastoralists and the marginalised is avoidable if government authorities recognise that pastoralism is a form of production and a means of livelihood of some million people, and that even the marginalised have the right to dwell in cities. Pushing them to marginal lands is a violation of their rights over their land and improvement of their livelihood;

(v) Tanzania should continue to uphold its humanistic approach to refugees as was the case before the 1990s. Nobody should be forced to return and refugees should enjoy the legal right of determining their return voluntarily;

(vi) In refugee camps their rights of employment and education, freedom of movement, among other rights, should be strictly adhered to.

(vii) Tanzania should continue to uphold its humanistic approach to refugees as was the case before the 1990s. Nobody should be forced to return and refugees should enjoy the legal right of determining their return voluntarily. The idea of 'safe zones' within the refugees countries of origin much as it sounds convincing but is built upon the notion of refugees as a burden justifying forced returns of refugees;

(viii) In camps, refugees' rights of employment and education, freedom of movement, among other rights, should be strictly adhered to, to ensure that refugees ejoy life as nationals in host country.

CHAPTER FOUR

4. ECONOMIC GOVERNANCE AND MANAGEMENT

4.1 Introduction

630. This chapter dwells on issues concerning economic governance in Tanzania, as part of African Peer Review Mechanism (APRM). The chapter's discussion is guided by the following objectives:

(i) Promotion of macroeconomic policies that support sustainable development;
(ii) Implementation of transparent, predictable and credible government economic policies;
(iii) Promotion of sound public finance management;
(iv) The fight against corruption and money laundering; and
(v) Process of accelerating regional integration by participating in the harmonization of monetary, trade and investment policies.

631. Economic governance is described around two key areas, namely, public finances and management of the economy. The distinguishing features of good Economic Governance centre on public financial management and accountability as well as credibility of monetary and financial systems (ECA 2005). The elements of Public Financial Management include:

(i) Use of structured planning and programming;
(ii) Resource allocation in a unified budget;
(iii) Integrating budgeting and accounting;
(iv) Use of accounting principles that match service delivery with service costs;
(v) Encouragement of financial accountability;
(vi) Measurement of outputs as well as inputs; and
(vii) Preparation of consolidated reports (UN 2000).

632. There is abundant empirical evidence which consistently shows a significant positive correlation between good economic governance and socio-economic outcomes such as Human Development Index (HDI), high income growth, increment in national wealth and better social achievements. UN (2000) describes exhaustively the basic principles and guidelines for ensuring effective economic governance.

633. The dividends of good economic governance are considerable: improved competitiveness, improved economic growth, good regulatory quality, improved international rating, etc.

634. Transparency and accountability (public expenditure management) are key elements of economic governance. Empirical evidence has shown that transparency enhances economic rates of return of projects.[290] The focus of economic governance is on:

[290] There is no one agreed check list of economic governance indicators. For example, the Millennium Challenge Corporation (MCC) has a check list with only six attributes (regulatory quality, credit rating, days taken to start a business, trade policy, inflation and fiscal policy) while ECA has more than 50 attributes..

(i) Government budget;
(ii) Disclosure in use of public resources;
(iii)Procurement process; and
(iv)Independent external audit.

635. In Tanzania, economic governance has to be seen within the context of the resolve to improve overall governance. Tanzania's good governance ranking has improved in recent years, with many indicators showing this: HDI, 159/177 countries in 2008 up from 164/177 (UNDP 2008a); Ibrahim index ranking Tanzania 15/48 countries in Africa and 1/5 countries in the EAC (www.moibrahimfoundation.org). It is worth mentioning that Tanzania qualified for MCC grant on August 19, 2006.

636. Governance issues are at the centre stage of policy making in Tanzania. The Tanzania Development Vision 2025, Zanzibar Development Vision 2020, The National Strategy for Growth and Reduction of Poverty (NSGRP/MKUKUTA; URT 2005) for the Mainland and Zanzibar Strategy for Growth and Reduction of Poverty (ZSGRP/MKUZA; RGOZ 2007) (whose details are discussed in background chapters) envision good governance permeating the national socio-economic structure, thereby ensuring a culture of accountability, rewarding good performance and effectively curbing corruption and other vices.

637. There are many initiatives to monitor economic governance in Tanzania. They include Public Expenditure Reviews (PERs), Medium Term Expenditure Framework (MTEF), Report of Controller and Auditor General as well as initiatives such as Public Expenditure Tracking Survey (PETS) and Public Expenditure and Financial Accountability Review (PEFAR). See also URT (2006b).

4.2 Standards and Codes

638. Most of the standards and codes are not for ratification because they are merely Declarations (not enforceable as legal documents). Only treaties /conventions /protocols are subject to ratification.

639. Signing, ratifying and adopting Standards and Codes is the mandate of the Union Government. As such, Zanzibar being part of United Republic of Tanzania is implementing and complying. Tanzania has adopted International Standards and Codes as outlined in the APRM base document as well as other best practices and is keenly implementing almost all of them. Table 4.1 shows Standards and Codes under implementation.

Table 4.1: Matrix on Implementation of Standards and Codes in Tanzania

S/N	Title of Standard or Code	Adopted Standard or Code	Date of Ratification or Accession	National Legislation	Institution/s
1.	NEPAD Framework Document (2001)	Priority areas under the Framework include the health sector.	Not for Ratification	• The National Health Insurance Fund Act, Cap. 395 • The Community Health Fund Act, Cap. 409 • HIV and AIDS (Prevention and Control) Act, 2008 • The Tanzania Commission	• Ministry of Foreign Affairs and International Co-operation • Ministry of Health and Social welfare • TACAIDS

S/N	Title of Standard or Code	Adopted Standard or Code	Date of Ratification or Accession	National Legislation	Institution/s
				for AIDS Act, Cap. 379	
2.	Constitutive Act of the African Union (2000)		Not for ratification	Parliamentary Resolution to Ratify Constitutive Act of the African Union	Ministry of Foreign Affairs and International Co-operation
3.	Code of Good Practices on Fiscal Transparency			• Bank of Tanzania Act, 2006 • Banking and Financial Institutions Act, 2006	• Bank of Tanzania
4.	Guidelines for Public Debt Management		Not for Ratification	The Public Officers (Recovery of Debts) Act, Cap. 76; The Student Loans Board Act, 2004; The Bretton Woods Agreements Act, Cap. 362[291]; The Foreign Service Fees and Charges Act, Cap. 354; Foreign Exchange Act, Cap. 271; Public Procurement Act, 2004; The Accountants and Auditors (Registration) Act, Cap. 286; The General Loan and Stock Act, Cap. 255[292]; the Finance Act, 2007/8; and the Government Loans, Guarantees and Grants Act, Cap. 134	• National Debt Management Committee (NDMC) • Technical Debt Management Committee (TDMC)
5.	International Standards in Auditing	International Standards on Auditing (ISA)	Not for Ratification	The Co-operative Audit and Supervision Act, Cap. 185; Public Procurement Act, 2004; The Accountants and Auditors (Registration) Act, Cap. 286; the Local Government Finances Act, Cap. 290; Finance Act, 2007/8 and National Board of Materials Management Act, Cap. 179.	National Board of Accountants and Auditors
6.	International Accounting System	International Accounting Standards (IAS)	Not for Ratification	The Accountants and Auditors (Registration) Act, Cap. 286	National Board of Accountants and Auditors
7.	Code of Good Practices on Transparency in Monetary and Financial Affairs		Not for Ratification	The Exports Control Act, Cap. 381; Public Procurement Act, 2004; The Accountants and Auditors (Registration) Act, Cap. 286; The Public Finance Act, Cap. 348; Finance Act, 2007/8 and The Economic and Organized	• Auditor-General • Paymaster-General • Accountant -General • Public Procurement Regulatory Authority

[291] This is the 1962 legislation, enacted to make provision with respect to acceptance by the government of Tanzania of the agreements for IMF and International Bank for Reconstruction (World Bank) and development matters.

[292] The law to declare the terms and conditions applicable to loans authorized to be raised by the government of Tanzania and to provide for creation of Tanzania stock.

S/N	Title of Standard or Code	Adopted Standard or Code	Date of Ratification or Accession	National Legislation	Institution/s
				Crime Control Act, Cap. 200	
8.	Principles for Payment Systems		Not for Ratification	• Public Finance Act, Cap. 348 • Public Procurement Act, 2004	• Paymaster-General • Accountant-General
9	Government Finance Statistics	Government Finance Statistics (GFS) 2001	Adoption (not for ratification)	• Budget formulation	• Ministry of Finance and Economic Affairs
10.	Core Principles for Security and Insurance Supervision and Regulations		Not for Ratification	• Insurance Act, Cap. 394 • National Health Insurance Act, Cap. 395 • National Social Security Fund Act, Cap. 50 • Provident Fund (Government Employees) Act, Cap. 51 • Parastatal Organizations Pensions Scheme Act, Cap. 372 • Local Government Authorities Provident Fund Act, Cap. 407	• Ministry of Finance and Economic Affairs • Commissioner of Insurance
11.	Core Principles of Effective Banking Supervision		Not for Ratification	• Bank of Tanzania Act, 2006 • Banking and Financial Institutions Act, 2006	Bank of Tanzania
12.	African Union Convention on Preventing and Combating Corruption 2003		February 22nd 2005	• Prevention and Combating of Corruption Act, 2007 • Anti-Money Laundering Act, 2006 • Proceeds of Crime Act, Cap. 256 • Prevention of Terrorism Act, • Mutual Assistance in Criminal Matters Act, Cap. 254 • Extradition Act, Cap. 368 • Public Service Act • Public Leadership Code of Ethics Act • Commission for Human Rights and Good Governance Act, Cap. 391	• Prevention and Combating of Corruption Bureau (PCCB) • Director of Public Prosecution • Financial Intelligence Unit (Statutory Extra-Ministerial Department) • Ethics Secretariat • Commission for Human Rights and Good Governance • Public Service Commission
13.	United Nations Convention Against Corruption 2003		May 25, 2005	Prevention and Combating of Corruption Act, 2007	• Prevention and Combating of Corruption Bureau (PCCB) • Director of Public Prosecution • Financial Intelligence Unit (Statutory Extra-Ministerial Department) • Ethics Secretariat • Commission for Human Rights and

S/N	Title of Standard or Code	Adopted Standard or Code	Date of Ratification or Accession	National Legislation	Institution/s
					Good Governance
14.	SADC Protocol Against Corruption, 2001				Foreign Affairs, Finance, Industry and Trade
15.	Abuja Treaty establishing the African Economic Community		Not for Ratification	Parliamentary Resolution to Ratify the Abuja Treaty establishing the African Economic Community	Ministry of Foreign Affairs and International Co-operation
16.	Best Practices for Budget Transparency		Not for Ratification	• The Public Finance Act, Cap. 348 • Local Government Finances Act, Cap 290	• Parliament • House of Representatives • President's Office • Treasury
17	Principles of Corporate Governance (International and National)	• Principles of Corporate Governance (OECD and Common -wealth) • International Accounting Standards • International Standards on Auditing • Labour Codes of ILO • Codes on Industrial and Environmental Safety and Hygiene of WHO	Not for Ratification	• Companies Act, Cap. 212 • Public Corporations Act, Cap. 257 • The Accountants and Auditors (Registration) Act, Cap. 286 • Banking and Financial Institutions Act, 2006 • Capital Markets and Securities Act, Cap. 79 • Employment and Labour Relations Act, 2004 • Labour Institutions Act, 2004 • Environmental Management Act, 2004 • Occupational Health and Safety Act, 2003 • Industrial and Consumer Chemicals (Management and Control) Act, 2003	• BRELA (Registrar of Companies) • NBAA • Bank of Tanzania • CMSA • DSE • NEMC • OSHA • CAG • Labour Commissioner • Labour Court
18.	Relevant Treaties, Conventions and Protocols of Regional Economic Communities		Not for Ratification	• Treaty for the Establishment of the East African Community Act, 2001 • Parliamentary Resolution to Ratify the SADC Treaty •	• Ministry of Foreign Affairs and International Co-operation • Ministry of East African Co-operation • Ministry of Trade and Industry

640. APRM Assessment survey results showed that experts are of the opinion that, Tanzania is putting moderate and fair efforts in the implementation of the APRM standard and codes. The conclusion is based on the fact that, overall, 74.5 and 86.7 percent of the experts surveyed, in Mainland Tanzania and Zanzibar respectively, appreciated the implementation process.

4.3 Assessment of Performance of APRM Economic Governance and Management Objectives

Objective One: Promotion of Macroeconomic Policies That Support Sustainable Development

641. The development agenda in Tanzania is guided by a number of policy frameworks, whose details are explained in the background chapters. These policy frameworks include:

(i) Long term visions: The Tanzania Development Vision 2025, The Zanzibar Development Vision 2020;
(ii) Medium Term Poverty Reduction Strategies: First Generation Poverty Reduction Strategies (The National Poverty Eradication Strategy, Poverty Reduction Strategy Paper, Zanzibar Poverty Reduction Plan);
(iii) Medium Term Poverty Reduction Strategies: Second Generation Poverty Reduction Strategies (National Strategy for Growth and Reduction of Poverty, Zanzibar Strategy of Growth and Reduction of Poverty; and
(iv) Supportive plans and programmes: (The Tanzania Mini-Tiger Plan 2020 and Joint Assistance Strategy for Tanzania).

642. The above frameworks guide the preparation of all national and sectoral policies and programmes, particularly in areas that aspire for high quality livelihood, high growth and strong economic performance that may later lead to poverty reduction, promotion of FDI and Special Economic Zones and management of development assistance. Most of these frameworks came in the wake of reform period.

643. In addition to the above frameworks, Tanzania has adopted and is implementing a number of macro and sector policies, reform programmes and specific initiatives. Specific reforms in economic management were aimed at employment creation, diversification from non-traditional crops, improvement in infrastructure and provision of legal and regulatory framework. The interventions aim at fostering growth and at the same time creating foundations for good economic governance. Institutional reforms aimed at fostering the contribution of non-state actors in the development process, stimulating growth and improving service delivery. The reforms in human resources, on the other hand, are intended to provide necessary skills and expertise needed for economic and social development.

644. Like in Mainland Tanzania, the Government of Zanzibar has taken many measures to make the macroeconomic framework sound and supportive of sustainable development. The overview, in both Mainland Tanzania and Zanzibar, of economic performance and in-depth discussion of the policies and reform programmes is discussed below:

Overview of Economic Performance

645. Economic performance in Mainland Tanzania shows three distinct phases: mixed economy strategy, 1961 to 1966; socialist phase, 1967-1985 and the phase of reforms, after 1986. Economic performance was good during the first phase. A combination of internal and external factors especially after mid 1970s led to an economic crisis unprecedented in depth and intensity disrupting both internal and external equilibrium. The lowest growth rate of the economy was recorded in 1983 at negative 2.4. Fiscal deficits were high and mainly financed through money creation. Inflation had reached 30.1 percent in 1984. (URT Economic Survey, various). Even the home grown reforms could not bail the country out of the economic crisis.

646. In 1986 the government adopted reforms that were supported by the International Monetary Fund (IMF) and the World Bank. Since then, the country has stayed the course of reforms with differing intensities. GDP growth improved considerably during the reform intensification period 1995-2008. The GDP growth rate averaged 6.5 percent during the period 1995-2008 compared to 7.8 percent, 2.9 percent, 5.0 percent and 4.0 percent respectively for the period 1961-66, 1967-85, 1986-2007 and 1986-1994[293].

647. Though the period after 1986 is generally referred to as the period of reforms, a distinction is drawn on the intensity of reforms. The first phase of the reforms (up to 1994) saw "mild" implementation of macroeconomic policies. The results were mixed, with reversals in some indicators. During the second sub period (after 1994) the reforms were intensified, especially in monetary and fiscal policies.

648. Like Mainland Tanzania, Zanzibar started experiencing economic difficulties after mid 1970s, following unfavourable external and internal factors and especially falling clove prices in the world market. By mid 1980s, it became apparent that a change in economic policy was unavoidable. In 1988 Zanzibar also adopted economic reforms that were supported by the IMF and World Bank in order to restore major economic balances and liberalize the economy. Though there has been an improvement in GDP growth and growth of per capita income, a marked difference in performance was experienced between sub periods; 1980-1998 where there was an average negative growth of both real GDP growth (-5.2 percent) and per-capital GDP growth (-5.9 percent) and 4.9 percent and 23 percent, respectively, for sub-period 1980-2008.[294]

Recent performance

649. Macroeconomic and structural reforms implemented in recent years have resulted into strong macroeconomic performance and stability, characterized by relatively high economic growth and low inflation. These achievements have been reflected in the steady rise in GDP growth as well as increase in Foreign Direct Investments. Real GDP growth rate in real terms was 7.1 percent in 2007 and 7.4 percent in 2008. (Table 4.2), in part due to improved performance of agriculture and power generation and strong performance in construction, transport and communication, trade, financial intermediation, real estate and business services. GDP per capita has been rising as a result. The foreign reserve position has improved to an average of 5-6 months of imports of goods and services.

650. Balance on current account continued to widen, from (-) US$ 717.4 million in 2003 to (-) US$ 3403.2 million in 2008. The Tanzanian currency also depreciated during the same period. Lending rates remained at double digit with long term rates rising steadily.

651. Despite the said achievement, the Mainland Tanzania APRM Assessment survey results show that households were of the view that the economy was not properly managed (42.6 balance). Experts though, saw the effectiveness of policies in promoting market economy as being effective (51.7 balance). There is no contradiction in these views in that experts were more concerned with macro economic fundamentals of a market economy. This is reconciled by the view that the effectiveness of measures linking the macro and micro is rated moderate. The "moderate" assessment is quite reflective of the real situation. A strong macro-micro link

[293] Computed from URT Economic Survey (various)
[294] OCGS (2005) Socio-Economic Survey 1999 and 2004

translates into poverty reduction. However, poverty reduction has been modest. Thus more challenges remain in strengthening this link.

652. Inflation has remained above the country's medium target of 5.0 percent, reaching 7.0 percent in 2007 and 10.3 in 2008, mainly fuelled by rising prices of oil and food stuffs. Investments have surged as well, as evidenced by the Investment to GDP ratio (Table 4.2).

Table 4.2: Mainland Tanzania: Selected Macroeconomic Indicators, 2003-2008

Indicator/Year	2003	2004	2005	2006	2007	2008
Population (million)	34.2	35.3	36.2	37.5	38.3	39.3
Real GDP Growth (2001 prices) (percent)	6.9	7.8	7.4	6.7	7.1	7.4
Per capita income real (T.Shs.)	304,788	318,406	333,373	343,498	360,363	377,312
Per capita income growth (perce t) real	5.0	4.5	4.7	3.0	4.9	4.7
Per capita income (US Dollars) current	340.9	363.3	392.8	382.2	444.8	526.5
Inflation (percent)	5.3	4.7	5.0	7.3	7.0	10.3
Interest rate, short term (percent) per annum	16.40	15.70	16.06	15.80	13.93	1393
Savings rate, (percent) per annum	3.50	4.30	4.41	6.60	7.69	6.39
Investments/GDP (percent)	18.5	21.0	17.0	19.4	29.6	29.8
Private Investments/Total Investments (percent)	60.7	62.2	66.7	71.4	73.6	73.9
Current account balance (USD mill)	-87.5	-383.2	-867.6	-1,353.2	-2041.5	3403.2
Exchange rate T.Shs per 1 USD (year average)	1,038.4	1089.4	1,122.7	1,251.9	1,232.8	1,196.3
Fiscal deficit before grants as (percent) of GDP	-7.7	-9.3	-11.3	-12.6	-6.7	7.7

Sources: URT 2009 *Economic Survey 2008; computations*; June

653. Global economic slowdown, financial crisis and rising oil and food prices are risks that threaten to undermine economic performance. Policy strategies to mitigate these risks have been drawn. They include more prudent monetary and fiscal policies supported by government initiatives designed to improve domestic food production and availability, to contain inflation.

654. Results of the APRM assessment survey show that inflation was a thorny issue and Mainland Tanzania households rated effectiveness of policies in controlling inflation as good (48.4 percent) and poor (41.8 percent) as shown in Table 4.3. This response is not surprising given the trend in inflation especially in recent years.

Table 4.3: Households: Effectiveness of Government Policies in Controlling Inflation: Mainland Tanzania, 2008

Response	Valid (Percent)	Cumulative (Percent)
Very good	9.8	9.8
Good	48.4	58.2
Poor	41.8	100
Missing 1.0 percent		
Total	99.0	
Sample size 2,113.		

Source: APRM National Survey, 2008

655. In Zanzibar, as in Mainland Tanzania, macroeconomic and structural reforms implemented in recent years have resulted into strong macroeconomic performance and stability, reflected in the steady rise in GDP and per capita income growth, as well as increase in Foreign Direct Investments (Table 4.4).

Table 4.4: Zanzibar: Selected Macroeconomic Indicators 2003-2007

Indicator/Year	2003	2004	2005	2006	2007
Real GDP Growth (percent)	5.9	6.5	4.9	6.1	6.5
Per capita income (US Dollars)	273	303	327	367	415
Per capita income growth (percent)	4.2	11.0	7.9	12.2	13.0
Inflation (percent)	9.0	8.1	9.7	11.4	13.1
Foreign Direct Investments (US$ mill.)	18.9	8.0	15.7	107.2	665.1
Exchange rate (Tshs per US Dollar	1,032	1083	1122	1242	12559

Source: RoGZ (2008)

656. Inflation bounced to double digit figure in 2006 persisting to 2007 due to increases in the price of oil and food items (Zanzibar depends much on food imports). In the APRM assessment survey, inflation was a thorny issue and households rated effectiveness of policies in controlling inflation as poor.

657. In Zanzibar, the APRM assessment survey showed that households were of the view that the economy was properly managed (50.1 percent). Experts though, saw the effectiveness of policies in promoting market economy as being moderate (60 percent). There is thus room for policy refinement in order to improve household welfare. This is explained by the opinion that the effectiveness of measures linking the macro and micro is rated moderate as shown in Table 4.5.

Table 4.5: Experts: Effectiveness of Measures Linking Macro and Micro Economic Policies: Zanzibar, 2008

Response	Valid (percent)	Cumulative (percent)
Effective	13.3	13.3
Moderate	46.7	60.0
Less effective	33.3	93.3
Not effective at all	6.7	100
Total	100	

Source: APRM National Survey, 2008

658. Zanzibar experiences severe shocks almost annually due to the volatility of its economic endowments. The price of its main export commodity, cloves, has been unstable for the past five years. The price has been declining from USD 4,500 per tonne in early 2002 to almost USD 3,200 per tonne in early 2007. The price of oil which is the main ingredient in production and rendering of services has been increasing steadily. This has rendered it difficult to accelerate economic growth and create employment opportunities. Performance in other indicators was as follows:

(i) Current Account balance: due to high levels of imports compared to low level of exports, the overall current account balance has remained negative for the past five years and many years before that;
(ii) Zanzibar has diversified its export base by mobilizing small farmers to grow seaweed to supplement clove export. Similarly tourism as a service export has been strengthened through various incentives to ensure an increase in earnings. On the other hand the government is implementing irrigated-agriculture schemes in order to increase local production to minimize imports of food;
(iii) Terms of Trade have been unfavourable to Zanzibar for the past five years due to limited export products in the face of increasing demand for consumables, intermediate and capital goods; and
(iv) Sources of foreign exchange earnings are limited. Hence at all times net foreign assets are negative, with transfers being higher than receipts.

659. Measures taken to reduce Zanzibar's vulnerability to internal and external shocks include:

(i) Diversifying the economy by introducing other cash crops to supplement cloves;
(ii) Developing a growth strategy which centers on trade and tourism as growth drivers of the economy; and
(iii) Making service sectors contribute more to the overall economy

Sector Policies/Reforms and initiatives to Support Economic Growth and Private Sector Development

660. The government has adopted policies, reform programmes and established a number of initiatives to support growth in different sectors, including the private sector. These policies/reforms focus on macro-micro linkages, in addition to fiscal, monetary, legal, regulatory and institutional reforms. Some of the sector policies/reforms include:

Local Government Reform Programme (LGRP) of 1998

661. The programme aims at improving the delivery of quality services to the public. The main strategy is decentralization, which is being implemented through the Local Government Reform Programme (LGRP). The effective decentralization of Government and the reform of Local Government will be part of the foundations of change in agriculture. The reform programme includes the following transformations:

(i) Devolution of roles and authority by the Central Government by transferring political, financial and development planning authority to LGAs;

(ii) Freedom of to make policy and operational decisions consistent with the laws of the land and Government policies, without interference by the Central Government institutions;
(iii) LGAs being responsible for efficient and effective delivery of social and economic services to the people;
(iv) LGAs being responsible for facilitation of the participation of the population in deciding on matters affecting their lives, planning and executing their development programmes and fostering partnerships with civic groups;
(v) Central Government institutions, including sectoral ministries, being confined to facilitation and supporting LGAs in service delivery, policy formulation, development and management of local regulatory framework, monitoring and quality assurance; and
(vi) Financial and performance audit.

Land Policy

662. The basis for the Land and Village Land Act of 1999 provides the framework for stronger local control of land resources, especially by villagers, and establishes the basis of a more effective land market. Progress in improving land tenure is crucial to the agricultural sector, though there remains a great deal to be done to clarify the application of the legislation in the field.

663. Though the policy is elaborate, there are a number of problems related especially to control on land by villagers which is deemed to be practically non existent. Also resolving land disputes remains a challenge, demonstrated recently, for example, between pastoralists and farmers. In addition, acquisition of title deeds has been problematic. All these call for more reforms as far as land issues are concerned.

664. In practice, the United Republic of Tanzania has two land policies, one for the Mainland and one for Zanzibar. Despite having legislations in place, land disputes are common and a number of operational problems have arisen in Mainland and Zanzibar. Given that there are two land policies operating in the Republic of Tanzania, the issue of harmonization with the Mainland policy needs to be considered.

Modernization of the Cooperative sector

665. Cooperatives have long been recognized as important entities for fostering development in Tanzania, dating back to colonial times. The Cooperative Societies Act No. 20 of 2003 availed many opportunities. However, a number of challenges continued to face this sector, including:

(i) Inflexible cooperative structure;
(ii) Weak cooperative leadership and management;
(iii) Submissive and small membership;
(iv) Weak economic base and lack of strategic planning;
(v) Lack of adequate capital and sustainable financing;
(vi) Weaknesses in cooperatives support institutions; and
(vii) Too much power vested to the registrar of co-operatives.

666. In order to address these and other challenges, the "Cooperative Reform and Modernization Program (CRMP), 2005-2015" was launched in 2005. The overall objective of CRMP is to initiate a comprehensive transformation process of cooperatives

to become organizations which are member owned and controlled, competitive, viable, sustainable and with capacity of fulfilling members' economic and social needs. Seven specific objectives have been specified (URT 2005)

Micro-Finance Policy

667. The policy establishes a basis for an efficient and effective micro-financial system in the country that serves the low-income segment of the society thereby contributing to economic growth and to reducing poverty. The policy covers the provision of financial services to households, smallholder farmers, as well as small- and micro-enterprises in both rural areas and the urban sector.

Support to informal sector

668. Estimate of the size of the informal sector (also referred to as "extra-legal") in Tanzania vary, the highest being fifty per cent (Maliyamkono and Bagachwa 1990). The importance of such activities is significant, for example, accounting for about 90 per cent of non-farm employment. ILD (2005) estimated that about 95 percent of businesses operating in Dar es Salaam are extra-legal. Close to 1,447,000 extra-legal urban properties in Tanzania (both Mainland and Zanzibar had estimated value of US$ 9.5 billion (close to total formal economy). Extra-legal rural land was estimated at US$ 16.9 billion while extra-legal businesses at around 2.9 billion. In terms of "dead capital" this amount is equivalent to 34 times the investment in infrastructure projects during 1990-2000 and nine times FDI flows during the period 1964-2003 (p 107).

Property and Business Formalization Programme (PBFP)

669. The Property and Business Formalization Programme (PBFP), formally adopted in 2004, is an initiative of the Government of Tanzania, aimed at economically empowering the poor by increasing their access to property and business opportunities. PBFP aims at facilitating transformation of property and business entities in the informal sector into legally held and formally operated entities in the formal sector of the economy. The programme mainly targets property owners in the informal sector whose entry into the formal market economy will enhance their opportunities in using their assets to access capital. The ultimate goal of PBFP is to address economic and legal imbalances, and develop a property and capital formation system that is tailored to the circumstances of the disadvantaged. PBFP is being implemented in four phases: diagnosis, reform design, implementation and capital formation and good governance. At the time of preparing this report, the PBFP was at the diagnosis phase which is intended to establish the size and nature of the extra-legal sector and as to why this sector continues to thrive.

Rural Development Strategy

670. Formulated in 2001, this strategy focuses on stimulating economic growth and reducing poverty in the rural areas. The strategy is based on the assumption that economic growth is essential if rural households are to be less vulnerable to climatic and economic fluctuations. It also acknowledges that good governance and social justice are an integral part of creating a positive environment for the development of rural areas, and recognizes the interaction between rural communities and urban centers as a fundamental component of the strategy. There are four categories of strategic interventions: promoting widely shared growth, increasing opportunities and access to services, reducing risk and vulnerability and promoting good governance. Like many other government policies, the challenge of disseminating the Rural Development Strategy to the implementers needs to be addressed.

Agricultural Sector Development Strategy (ASDS)

671. The need for developing agriculture sector has been long standing despite policy statements giving priority to agriculture. The strategy builds on the Agricultural and Livestock, and Cooperative Development Policies. ASDS is important given that over 70 percent of the population lives in rural areas with agriculture as the mainstay of their livelihoods. The strategy:

(i) Targets improvements in farm incomes;
(ii) Emphasizes availability and access to food, and thus advances food security; and
(iii) Provides a comprehensive, sector-wide programme for agricultural development, which is key to national economic development.

The government has allocated more resources to agriculture during Fiscal Year 2009/10 in order to improve its performance in terms of increased productivity and contribute to poverty alleviation.

Small and Medium Enterprise Policy

672. The aim of this policy is to promote income-generating activities and support diversification of private sector activities. In the context of the agricultural sector, this includes the development of commercial opportunities in marketing and processing agricultural produce. The policy acknowledges existence of an unfavourable legal and regulatory framework, undeveloped infrastructure and poor business development services. A series of measures are proposed in the strategy to solve these problems, with particular attention given to rural industrialization, which would stimulate local marketing and processing, and realize value-added products close to the source of production.

Promotion of Private Sector/Business

673. For the sake of private sector development, the government, in consultations with the private sector itself, has implemented a number of policies, strategies and initiatives to promote the private sector in Tanzania. The "Private Sector Development Strategy", in draft form by 2008 has detailed measures and actions for development of the sector. The private sector in both the Mainland and Zanzibar, exhibits typical characteristics of a private sector in a developing economy– numerous informal enterprises, peasants, formal micro, small, medium enterprises and relatively large-scale modern firms. The private sector is relatively strong in areas of trade and tourism. Below are the programmes and initiatives adopted by the government to specifically support the private sector.

Business Environment Strengthening in Tanzania (BEST) Programme

674. The Government, in collaboration with Development Partners (DPs) established the BEST programme with the aim of improving the business environment through removing unnecessary bureaucracy and constraints in order to reduce the cost of doing business.

The pillars of the programme are:

(i) Good business principles (achieving better regulation);
(ii) Improving resolution of commercial disputes;
(iii) Strengthening Tanzania Investment Center;
(iv) Improving delivery of public services; and
(v) Strengthening the private sector.

Tanzania National Business Council (TNBC)

675. TNBC was established by a Presidential Circular in September 2001 to provide for a forum for public/private sector consultations. It became fully operational in March 2002. The Council is chaired by the President of the United Republic of Tanzania, and its Co- Chairman is the President of the Private Sector Foundation. Other active forums are the Local Investors Round Table (LIRT) and the International Investors Round Table (IIRT) organized by the TNBC which bring together stakeholders from the private sector, the public sector and civil society to discuss common problems affecting growth and development of the Tanzanian economy. In Zanzibar the counterpart forum is called Zanzibar Business Council.

National Economic Empowerment Council

676. This was established in 2006 with the aim of implementing the national economic empowerment policy. The objective of the policy is to empower Tanzanians to participate fully in the economic activities. An Economic Empowerment Credit Guarantee Scheme was established in 2006, with the aim of empowering the grassroots both rural and urban to access soft loans. The Scheme also aims at empowering individual entrepreneurs, Savings and Credit Cooperative Societies (SACCOS), and other legally registered economic groups dealing with production of goods and services or business. Furthermore, special training was provided to District Executive Officers to administer the Scheme.

Other Programmes or Initiatives which Support Development of Private Sector

677. Non-governmental organizations (NGOs) and Community Based Organizations (CBOs) also serve as intermediaries for resources flowing from funding organizations, both local and foreign, and also from the public sector. For example, the Tanzania Social Action Fund (TASAF) is one of the safety nets programme in which communities are required to identify projects, meet 20 percent of the costs of the projects and be eligible to receive up to 80 percent from the Fund. The public sector has also initiated the Small Entrepreneurs Loan Facility (SELF). The facility is implemented by the Vice President's Office (VPO) in collaboration with Micro-Finance Institutions (MFIs). The programme is intended to reach people, especially the rural areas, through extending credit for income generating activities.

Presidential Funds

678. This facility involves allocation of funds (initially T.Shs 1 billion) to each of the Regions of the Mainland in order to support entrepreneurship. The fund is administered by designated commercial banks. Many challenges have been encountered in the administration of the fund including its design, administration and bank conditionality. While in the mainland the fund was launched almost immediately after the Presidential elections in 2005, in Zanzibar, the fund was officially launched on 16th April 2008.

Investment Promotion through the Tanzania Investment Centre

679. The Investment Act of 1990 was revised in 1997 with the purpose of cutting down bureaucratic procedures encountered in approving investment request and increasing efficiency in service delivery related to investment through the Tanzania Investment Centre. TIC has become a "one stop centre" and offers business incentives and an enabling environment to local as well as foreign investors.

680. Measures taken by the Zanzibar government to promote private sector development include crafting the investment policy and creating investment promotion institutions such as

the (Zanzibar Investment Promotion Authority, (ZIPA); Zanzibar Free Zone Authority, (ZAFREZA); and Free Port Authority) and supporting the Zanzibar Chamber of Commerce, Industry and Agriculture (ZNCCIA).

681. The vehicles for Zanzibar's private sector development have included:

(i) The Zanzibar Investment Promotion Act of 1986;
(ii) The Banking and Financial Institutions Act of 1991 and establishment of Export Processing Zones (EPZs) in 1992; and
(iii) Establishment of Free-Port Authentices in 1998 and the Zanzibar Investment Policy (ZIP), 2003.

Impact of the Various Measures of Promoting Private Sector

682. Evidence of the impact of these measures is abundant. They include:

(i) Increased flow of Foreign Direct Investments, for example from USD 308.2 million in 2003 to USD 512.5 million in 2007;
(ii) Dominance of private sector infrastructure in the financial system;
(iii) Dominance of private sector activities in all sectors, including mining and manufacturing; and
(iv) Growth of financial sector credit to private sector more than doubling from 6.1 percent of GDP in 2003 to 13.7 percent in 2007.

683. A number of challenges facing the private sector remain, including:

(i) Limited international exposure on external markets (both input and output markets);
(ii) Low international competitiveness;
(iii) Low negotiation skills (with government and international actors);
(iv) Low ICT exposure; and
(v) Inadequate funding.

Measures to make the macroeconomic policy framework sound and supportive of sustainable development

684. The Governments of Mainland Tanzania and Zanzibar have, during reform period, established sound macroeconomic policies which are supportive to sustainable development. Some of these efforts include:

Improving the planning process

685. Since the macro-economy is based on the micro-level and the different "spending units" as sector Ministries, Departments and Agencies (MDAs) and regional administration and local government authorities, the government has evolved systematic planning and monitoring mechanisms in order to ensure that the outcomes at the macro-level bear a fair level of consistence with the realities on the ground.

The government also issued a manual to guide the MDAs and other stakeholders on the evolving mechanism. The manual inter alia prescribes the role and responsibility of accounting officers, the Budget Committee, the directorates of planning and policy at the ministries all the way to the preparation of MDAs' inputs to the Strategic Budget Allocation System (SBAS) and the Zanzibar Budget Allocation System (ZBAS) etc., all of which are

done at the sector ministry level where also checking for consistency with institutional priorities and ceiling, etc. are done.

Strengthening Monitoring and Evaluation

686. The monitoring and evaluation for the NSGRP triggered revision of the national monitoring system with a view to improving on data collection and integrating the targets of NSGRP and Millennium Development Goals (MDGs) fully into the poverty monitoring system (PMS). It should be noted that Monitoring and Evaluation is an integral chapter of the NSGRP. Although the chapter gives more weight to the monitoring of poverty, the strategy's elaborate macroeconomic framework led to MDAs being required to put in place an effective Management Information System (MIS) that provides data on monitoring and measuring NSGRP operational outcomes (e.g. on inflation, external debt etc).

In Zanzibar, the government developed and is utilizing a financial management system (PFMS) which aims among others at expanding revenue collection base; improve accountability and transparent system of financial operations. Also, the government is developing a specific sector monitoring indicators as well as a Monitoring Master Plan for MKUZA which will be used to assess development and impact.

687. The most pertinent data and information for the macroeconomic framework fall within the prerogative of the Ministries of Finance and Economic Affairs and the relevant departments/agencies under it for the consolidation function (e.g. the National Bureau of Statistics, the Office of Chief Government Statistician, Bank of Tanzania, Tanzania Revenue Authority) – understandably other sector ministries remain important as sources of key macroeconomic data even though at less aggregated levels.

Utilization of Independent advice/Analyses in Assessing Macroeconomic Outlook

688. The Government of Tanzania receives advice and results of analyses of macroeconomic outlook mainly from the Bank of Tanzania. The Bank is established by law and its officials are given immunity against prosecution with respect to the conduct of the businesses of the bank carried out in good faith. The Governor of the Bank is an appointee of the President, but enjoys a latitude of security of tenure in that he/she cannot be relieved of his/her of his duties before the end of his/her tenure without a good cause. An analysis by the Bank of Tanzania, which informs the government on matters pertaining to macroeconomic policy, is therefore relatively independent.

689. The Government of Tanzania also cooperates with the IMF and the World Bank and seeks and receives technical advices from these institutions from time to time. The IMF through her organ AFRITAC (EA) provides advice, training and consultancy to install Government Finance Statistics (GFS) program, to improve its statistical base and have better and efficient use of the data on economic and financial management..

690. The National Bureau of Statistics (NBS) and Office of the Chief Government Statistician (OCGS) collects, processes and reports on important statistics such as inflation and employment. Some measures have been undertaken to increase the independence of these institutions, the latest being the transformation from a government department into agencies, and thus reducing the direct control that the parent ministry used to exercise over the processing and reporting of national statistics.

691. Apart from the above said institutions, outputs of independent analyses by academia, research institutions, CSOs, FBOs, NGOs, etc have been instrumental in informing government policy making. The government often utilizes such inputs. Similarly, in Zanzibar, the Government also utilizes independent analysis by research institutions such as Universities and the Zanzibar Institute of Finance Management (ZIFA). Examples of results used are with respect to financial requirements of meeting ZSGRP targets by ZIFA in 2007 which were fully incorporated in the 2008/09 Budget (RGOZ 2008a).

Challenges to the Country's Macroeconomic Framework

Over-dependence on aid and effects of large aid inflows

692. Overdependence on foreign aid for development and recurrent expenditure remains as worrisome as ever and the medium-term strategy is to get out of much of it through development of a strong and expanded domestic revenue base. In the meantime, macroeconomic management is confounded by large aid inflows, a tendency and fear for such effects as an appreciation of the real exchange rate and the crowding out of domestic savings, particularly so if aid is not used to strengthen the capacity of the economy to grow. The growth-effectiveness of aid can be enhanced by easing absorptive capacity constraints in the economy and targeting reduction of aid that finances such recurrent expenditure as wages since these are not easy to scale back. To enhance growth and the revenue base, aid can also be targeted to develop the private sector which is still small in Tanzania. The continuing agenda on aid delivery modalities remains crucial, but the most important thing is its effectiveness for growth, whichever modality.

693. In Zanzibar, low level of financial resources hinders effective implementation of plans. The country currently meets less than 50 percent of what is required to implement its programs. Also, political concerns especially from donors lead to suspension of aid thus stalling implementation of projects. With regard to the narrow revenue base, the Government is determined to expand the tax base and at the same time make sure that there is minimal or no leakage in the revenues collected.

694. It goes without saying that reduction in overdependence on foreign aid is necessary for Tanzania. Towards this end, the Government has recorded some positive developments towards this. For example, during 2009/10 Financial Year, dependence on foreign financing had been reduced to 34 percent, while the entire recurrent budget is now financed through domestic revenue. This, however, has to go hand in hand with efforts and strategies to increase exports in order to boost the foreign reserve position and further reduce dependence on aid. The 2008/09 global financial crisis has provided useful lessons on the need to mobilize domestic revenue to finance development.

Capacity constraints

695. Capacity building relates to the enhancement of the capacity for planning, implementation, monitoring and evaluation of development programmes as well as efficient and effective coordination of development efforts between sectors, among regions, central and local government and within public and private sectors. Due to capacity constraints, capacity building for harmonizing and achieving greater policy coherence and synergy among processes are imperative (URT 2006a). There have been concerted efforts to

emphasize competence (human development) and clear lines of responsibility and integrity of the accounting officials and other bureaucrats (institutional development).

696. Capacity constraints are also common in Zanzibar. Zanzibar has low technical capacity to oversee and implement the programs indicated in the national policies. Zanzibar lacks macroeconomic model (financial and economic) which can be used in forecasting future outcome of the economy. Zanzibar is determined to roll-over many of the programs undertaken on the Mainland in order to be up to date with its macroeconomic tools of analyses. In this regard, the country is training its staff to ensure that adequate knowledge is available to address any of the shortcomings. In particular capacity building should be sustained for policy analysis at key institutions such as the Bank of Tanzania, Tanzania Revenue Authority, National Bureau of Statistics, Office of Chief Government Statistician, etc.

Outline of the Sectoral or Microeconomic Policies and Programmes Adopted and Implemented in Support of Sustainable Development

697. The World Commission on Environment and Development (WCED), popularly known as the Brundtland Commission, defines sustainable development as a development that meets the current needs without compromising the needs of the future generations. Key to sustainable development is a well managed natural environment. Several policies, programs and activities have been undertaken by the Government in relation to environmental management. Of significance is the enactment of the Environmental Management Act in 2004, which gives legal force for the implementation of various environmental regulations and laws (Box 4.1). Among other things, the Act provides for the mandatory Environmental Impact Assessment (EIA) before any major project is undertaken.

Management of environmental resources has not been free of challenges, especially rationalization of land use between conservation and needs of populations surrounding reserves.

Box 4.1: Environmental Laws Enacted in Tanzania

1. EIA:
(i) The Marine Parks and Reserve Act;
(ii) The Mining Act;
(iii) The Forest Act;
(iv) The Beekeeping Act;
(v) The Consumer Chemicals (Management and Control) Act No.3 of 2003;
(vi) The Fisheries Act No. 22 of 2003; and
(vii) Export Processing Zone Act No. 11 of 2002.

2. Pollution Prevention and Control:
(i) The Public Health (Sewerage and Drainage) Ordinance Cap.336;
(ii) Water Utilization (Control and Regulation) Act;
(iii) The Territorial Sea and Exclusive Economic Zone Act;
(iv) Plant Protection Act;
(v) The Merchant Shipping Act No.21 of 2003;
(vi) The Explosives Act; and
(vii) The Occupational Health and Safety Act No.5 of 2003.

3. Natural Resources:
(i) Ngorongoro Conservation Area Ordinance Cap.413;
(ii) National Parks Ordinance Cap 412;

(iii) Wildlife Act;
(iv) Water Utilization Act;
(v) Marine Parks and Reserve Act;
(vi) The Mining Act;
(vii) Forest Act;
(viii) Beekeeping Act; and
(ix) Fisheries Act No. 22 of 2003.

4. Land Use Planning:
(i) The Town and Country Planning Ordinance Cap.378;
(ii) National Land Use Planning Commission Act;
(iii) Land Act 2004; and
(iv) Village Land Act.

5. Hazardous Waste:
(i) Plant Protection Act;
(ii) Tanzania Bureau of Standards Act;
(iii) Tanzania Food and Drugs Act, No 1 of 2003; and
(iv) Atomic Energy Act No.3 of 2003.

6. With Standards
(i) National Environment management Council Act;
(ii) Tanzania Bureau of Standards Act; and
(iii) Water Utilization (Control and Regulation) Act.

7. Environmental Researches:
(i) National Environment Management Council Act;
(ii) Tanzania Pesticide and Research Institute Act;
(iii) Tanzania Fisheries Research Institute Act;
(iv) The Commission of Science and Technology Act;
(v) Tanzania Industrial Research and Development Organization Act; and
(vi) Tanzania Wildlife Research Institute Act.

Source http://www.nemctan.org /

698. Tanzania is also signatory to a number of international protocols and conventions on environment, such as the Montreal Protocol and Kyoto Protocol. Several laws have been enacted to protect the environment.

Overall assessment of sustainable development

699. Within the limitations of a developing country, Tanzania has made commendable achievements with regard to integrating environmental concerns in the development agenda. All sector policies contain agenda on sustainable development. Through the various organs such as NEMC, Tanzania has been able to enforce Environmental Impact Assessment (EIA) in all projects of significance. Conservation has witnessed increase in Protected Areas (PAs), both terrestrial and marine, in addition to afforestation programmes. If current efforts are sustained, Tanzania will be on the right path of sustainable development.

700. In the APRM assessment survey, there were differences in perceptions about the performance of macroeconomic policies in sustaining the environment. Households rated them as good (60.2 percent) while experts rated them as inconsistent. In Zanzibar, households rated them as good (58.6 percent) while experts as rare (46.7 percent).

701. Differences in opinion between the two groups of respondents could be caused by the terminology. While households appreciate local campaigns such as tree planting as elements

of sustainable development, experts would be more concerned about issues of global concern such as global warming to which Tanzania as a developing country is meeting many challenges.

702. Gender is a developmental issue in that the existing gender imbalances and inequalities in the society prevent it from realizing its full potential in all the activities of development in economic, social, and political dimensions. Gender issues are currently integrated in planning and budgeting in order to strengthen the relationship between men and women, which is the main thrust in development.

703. Gendered assumptions, however, contribute to a process whereby most women are allocated low paying, unskilled or lesser skilled work in both the formal and the informal sectors of the money economy. The terms upon which women and men compete for employment are set by wider social relations, including cultural, economic and political arenas. These include the assumption that a woman's primary commitment is to care for a family at home, in the 'reproductive' sphere of life; and that each woman depends on a male provider for cash needs.

704. In order to reduce the above said gender gaps, the National Employment Policy states that "employment promotion for women will be accorded priority not only on gender equal rights basis but also due to the fact that women constitute 54 percent of the labour force on Mainland Tanzania".

705. The policy stipulates the following steps for increasing female employment:

(i) Strengthening the fund for providing loans to women;
(ii) Removing discriminatory laws against women. Such laws include those pertaining to ownership of land and inheritance of property;
(iii) Ensuring unconditional employment in terms of gender and encourage women to acquire economic power through involving themselves in various commercial activities;
(iv) Emphasizing the use of labour saving technologies in order to reduce drudgery and workload facing women in domestic chores; and
(v) Affirmative action on female employment.

706. Also, Tanzania has developed a Gender and Development Policy (2000). The National Programme for Gender Sensitization, as part of the National Strategic Plan of 2006 was operationalized in 2006/07 and gender focal points were established in all ministries. A framework for mainstreaming gender issues in national polices has also been adopted. In view of this, the comprehensive national poverty reduction strategy, NSGRP/MKUZA, has mainstreamed gender, as a cross-cutting issue in order to target gender equity.

707. Through various organs such as the Tanzania Gender Networking Program (TGNP), gender programmes and strategies have been implemented, though a number of challenges still remain, especially in the economic sphere.

Progress toward Sustainable Development
Growth in Employment and Output by Sector

708. Tanzania uses two different definitions of employment. The international definition of employment is referred to as the "standard definition" and refers to a person who worked for at least one hour in any of a wide range of economic activities or was temporarily absent from such activity. The "national definition" excludes all persons who were temporarily absent from work during the reference period because they could not find more work, no suitable land was available for cultivation or it was the off-season. In addition, persons who were working but whose work was not reliable with regard to its availability and adequacy in terms of hours were considered unemployed. For this report, we use the national definition.

709. In 2006, 89.6 percent of the population aged 15 years and above was recorded as economically active, with rates of 90.5 percent for males and 88.8 percent for females. However, because females outnumber males in the overall population, females account for 51.9 percent of the total economically active. Across all areas, the participation rate is higher for males than females, with the disparity between males and females greatest in Dar es Salaam. As a result, in Dar es Salaam, economically active males slightly outnumber females.

710. Married persons have the highest participation rate, at 95.6 percent, with little difference between males and females. Widowed people have the lowest participation rate, at 76 percent. The lower rate for widowed people is partly explained by the fact that they tend to be older. Among single people, the rate is noticeably higher for males (82.1 percent) than females (77.0 percent), while for widowed and divorced/separated people the rate is slightly higher for females than males.

711. In 2006, 88.3 percent of the currently economic active population was employed, with the proportion employed somewhat higher for males (89.3 percent) than for females (87.4 percent). Dar es Salaam has the lowest employment ratio (i.e. employed as a proportion of the total population), at 58.6 percent, while for other urban areas the rate stands at 72.7 percent and for rural areas 84.0 percent. The lower employment ratio in Dar es Salaam is due to both higher unemployment rates and more females being economically inactive. The overall employment ratio for females is 77.6 percent compared to 80.8 percent for males. In Dar es Salaam the female and male rates are 50.3 percent and 67.2 percent respectively, while in rural areas the ratios are more or less the same for both sexes. (ILFS: 2006)

712. The overall employment ratio increased from 69.3 percent to 89.0 percent between 2001 and 2006 for the population aged 10 years and above. The male ratio increased from 71.4 percent to 90.0 percent and the female ratio increased from 67.4 percent to 88.1 percent. The female employment ratio thus increased by 20.7 percentage points compared to 18.6 points for males.

713. Unfortunately, analysis of trends from an earlier period are complicated by the fact that the 2000/1 survey was the first time that Tanzania included collection of fuel and water as employment, in line with the 1993 revisions to the System of National Accounts. The results of the 1991 labour force survey are thus not strictly comparable, and it is thus difficult to know how to interpret the reported increase in the labour force participation rate from 72.0 percent to 79.6 percent over the period. Other indicators suggest that this increase does not necessarily reflect economic growth over the period 1991-2001 in that the unemployment rate for those aged 10 years and above increased from 3.6 percent in 1991 to 5.1 percent in 2001.

The gender profile of the economically active remained more or less constant – with 50.2 percent female in 1991 and 50.9 percent female in 2001. The period 1991 to 2001 did, however, see a gender-related locational change, in that 9.9 percent of economically active females were in urban areas in 2001, as compared to 7.4 percent in 1991, whereas the percentage of economically active males in urban areas remained more or less constant at around 9.3 percent.

714. Tanzania's population is estimated to be growing at 2.9 percent per annum. Likewise, the labour force has been growing over time, almost doubling between 1990/91 and 2005/06. The latest Integrated Labour Force Survey (2006) indicates that 19,678,259 people were employed in different sectors of the economy. There is a structural shift in the distribution of employment across sectors over time, with employment in the parastatal sector declining significantly over time (Table 4.6). This decline is attributed to privatization measures undertaken since 1985 and more comprehensively from 1995. Employment in the private sector, both formal and informal, has been growing, again reflecting the relatively radical changes that have taken place in terms of reducing the public sector through privatization. Traditional agriculture has continued to be the largest employer followed by the private informal sector.

Table 4.6: Mainland Tanzania: Trend in Employment by Sector, 1990/91 – 2005/06

SECTOR	1990/91	2000/01	2005/06
Government (Local and Central)	319,455	344,839	439,355
Parastatal	180,767	78,270	66,307
Private-Informal Sector	955,647	1,439,848	2,256,024
Private Non-informal Sector	317,404	756,046	1,525,226
Traditional Agriculture	9,115,932	13,694,935	14,687,702
Housework		600,867	703,646
TOTAL	10,889,205	16,914,805	19,678,259

Source: URT (ILFS, 1991, 2001 and 2006).

715. Two thirds (67.2 percent) of employed persons work on their own farm or *shamba* with females being more likely to have this status (71.7 percent) than males (62.4 percent). In contrast, 15.3 percent of males are paid employees while only 6.1 percent of females have this status. Generally males are more likely than females to be in all categories of employment status except for non-agricultural unpaid family helpers and those who work on their own farm or *shamba*.

716. Tanzania is unusual in considering those involved in collecting fuel and water for at least one hour in a seven-day period as employed. Those collecting firewood and fetching water as their main occupation account for 3.1 percent of the total employed persons – 5.1 percent among females and 1.1 percent among males. This activity is most likely to be given as the main economic activity among those aged 15-24 years, where it accounts for 10.3 percent of employed females and 3.6 percent of employed males. Overall, 83.0 percent of those employed in collecting firewood and fetching water as their main economic activity are female. Nearly half (47.2 percent) of all those having this as their main economic activity are females aged 15-24 years. Rural areas account for the highest share of persons collecting firewood and fetching water, at 41.1 percent, while Dar es Salaam accounts for 31.6 percent and other urban 27.2 percent. The share for Dar es Salaam proportion is higher than for other urban because more females in Dar es Salaam are not engaged in other economic activities.

In contrast, there is a relatively low proportion of persons engaged in this activity in rural areas because most of persons in rural areas are employed in agriculture as their main activity.

717. In 2006 the National Bureau of Statistics (NBS) included a time use module in the Integrated Labour Force Survey (ILFS). This time use module measures how Tanzanians spend each day of the week. Tanzania is one of the very few countries which have computed the time use for both men and women at household level. Some of the key findings include the following:

- *The value of unpaid work is equal to:*

-63 percent of the GDP of Tshs. 16,616,000m for 2006.
-88 percent of all cash earnings for that year
-nearly 30 times of that individual income tax
-5 times domestic revenue
-nearly 8 times the value of government health and education expenditure

- *Unpaid work matters and women are the major providers of unpaid care. And that this work represent a significant portion of national economy*

718. The absolute number of unemployed persons aged ten years and above decreased by 4.3 percent to 2.2 million in 2006, from 2.3 million in 2001. This occurred despite the increase in population over this period. The unemployment rates thus increased even more rapidly. All localities of Mainland Tanzania experienced a decline in the unemployment rate, with the rural unemployment rate declining by 1.3 percentage points and urban unemployment rates declining by more than 10 percentage points. This turn-around in the unemployment trend can be attributed to economic growth, in that the real GDP growth rate increased from the previous five-year average of 4.2 percent to 6.1 percent.

719. Females register a higher rate of unemployment than males in all areas of Mainland Tanzania, except rural. In Dar es Salaam, the female rate stands at 40.3 percent, while the male rate is 19.2 percent. Unemployment rates tend to increase with increasing levels of education. However, for Dar es Salaam, the situation is reversed as the unemployment rate decreases as education level rises. The female population exhibits higher unemployment rates than males at all educational levels except for the never attended school group. There is an especially large margin between the unemployment rates of males and females with secondary education and above.

720. In 2006, 40 percent of all households in Mainland Tanzania engaged in informal sector activities – 55 percent in urban areas and 33 percent in rural. Employed women are slightly less likely than employed men to work in this sector. The wholesale and retail trade employs over half of those whose main job is in the informal sector. For both the main and secondary activity, the overriding reasons for the males' and females' engagement in the informal sector are the inability to find other work and the need for families to get additional income. These two reasons are more likely to be offered by females than males.

721. Unemployment and under employment in Tanzania is difficult to compute because of the way employment is defined in national statistics. Data on employment does not capture the seasonality of employment or under employment of the majority of the rural poor who

conduct subsistence farming which rely on rain water. The following table illustrates economic activity by gender as per current from the LFS statistics.

Table: 4.7 Economic Activity Rate (15-64) females &males (trend data)

Population	Male	Female	Total
Active	8420261	9213962	17634223
Inactive	727795	901753	1629548
Total	9148056	10115715	19263771
% active	92.0 percent	91.1 percent	91.5 percent

Source: ILFS 2006 (Debbie's calculations from the ILFS 2006)

Table 4.8: % of Employed Population (15-64) in primary, secondary & tertiary sectors (female& males)

Sector	Male	Female	Total	%females	% Males	Total %
Primary	5770978	588670	855838	6 percent	3 percent	5 percent
Secondary	1424824	877859	2302682	72 percent	69 percent	71 percent
Tertiary	957291	1075416	2032708	12 percent	11 percent	12 percent
Unspecified	267168	588670	855838	6	3	5
Total	8420261	9213962	17634223	100 percent	100 percent	100 percent

Source: LFS: September 2006 (Debbie's calculations from the ILFS: 2006)

722. The majority of Tanzanians do not have access to social security facility. Only formally employed citizens have access to social security, informal sector operators, farmers and unemployed persons do not have any form of social security. This in turn forces majority of poor households to have large families as children are considered as a form of social security during old age.

723. Zanzibar's employment growth in trade and tourism have recorded fast increase, more than doubling employment between 2002 and 2006 (Table 4.7).

Table 4.9: Zanzibar: Growth of Employment in Main Sectors: 2002-2006 (percent)

Sector	**2002**	**2003**	**2004**	**2005**	**2006**
Agriculture and fishing	4.2	4.5	4.3	4.8	5.2
Trade and Tourism	8.2	8.8	12.2	15.6	18.0
Manufacturing (SME)	3.2	4.0	4.2	4.8	5.0
Other service sectors	1.8	2.2	2.2	2.5	2.7

Source: RGZ (various)

724. Tables 4.9 and 4.10 show trends in the output of key sectors of the Mainland Tanzania and Zanzibar economies during 2003-2007. In Mainland Tanzania, services constitute the largest sector in the economy, followed by agriculture. Growth in the agricultural sector has not been impressive. In Zanzibar, agriculture has remained the main source of GDP, followed by tourism.

Table 4.10: Mainland Tanzania: Output of Key Economic Sector, 2003-2008 (Tshs. Million, Real)

Year ⇒	2003	2004	2005	2006	2007	2008
Agriculture	2,850,956	3,017,988	3,148,384	3,268,238	3,399,648	3,554,488
Mining	219,000	254,000	295,000	341,000	377,559	386,998
Manufacturing	893,000	977,000	1,071,000	1,162,000	1,263,435	1388515
Trade	1,405,698	1,486,931	1,585,906	1,736,631	1,906,821	2097503
Tourism	275,836	285,732	301,873	314,921	328,859	343,658
GDP	10423734	11239735	12068090	12881163	13801921	14828345
Source: URT Budget 2009, Economic Survey 2008, June						

725. Tanzania has a rich mineral resource base. Mining sector has grown fast in recent years due to increased production attributed to new gold mining investments such as Geita (Mwanza), Nyamongo (Mara), and Tulawaka (Kagera), during the late 1990's. In the year 2003, the mining sector registered the highest growth of 17.1 percent followed by a decline in growth over the period 2004 through 2006 during which established investments started to operate at near optimal capacity (URT 2007a).

726. Despite the high growth, the government and the people of Tanzania have been described as not benefiting enough from the multinational mining activities in the land. This is attributed to the low royalty rates and unpaid corporate taxes. The report 'A Golden Opportunity?' released by the Christian Council of Tanzania (CCT), the National Muslim ouncil (BAKWATA) and the Tanzania Episcopal Conference (TEC) in collaboration with Christian Aid (UK) and Norwegian Church Aid shows that the government and its people do incur great losses of tax revenue in the extractive industry. 'We calculate that Tanzania has lost at least $265.5m in recent years as a result of an excessively low royalty rate, government tax concessions that allow companies' to avoid paying corporation tax and possibly even tax evasion by some companies if allegations are true. This is a very conservative estimate, in that it does not cover all the gold mining companies or all figures for recent years (which are not publicly available). Neither does it cover the financial costs of other tax incentives such as VAT exemption, which are extremely difficult to estimate. These extra revenues could of course provide a huge boost to tackling poverty in Tanzania,' reads the executive summary of the second edition of the report.

727. Commissioned by the three main religious bodies in Tanzania and concerning a South African company, this report states that, 'Company figures show that AngloGold Ashanti has paid taxes and royalties totalling US$144m in 2000-07 and over the same period has sold around $1.55bn worth of gold, meaning that it has paid the equivalent of around 9 per cent of its exports in remittances to the government. Barrick, meanwhile, does not state on its website how much in taxes and royalties it pays to the Tanzanian government - our calculations show that it is paying a figure equivalent to around 13 per cent of its export sales in remittances to the government.'

728. On their visit to the Bulyanhulu Gold Mine site owned by Barrick Gold Corporation, the general manager, Greg Walker, told the journalists that Barrick is not paying corporation taxes, 'we will only start paying corporation taxes in 2014 when we will begin realising profits.'

729. This is confirmed further by the report 'A Golden Opportunity?' which states that, 'Few mining companies have paid corporation tax (levied at 30 per cent of profits) because they have consistently declared losses. Our analysis, drawing on AGA and Barrick company reports, shows that both companies are making gross profits in Tanzania.'

730. The report also pinpoints the loopholes from the government of Tanzania's tax regime which give the investors in the extractive industry opportunities for manipulation. 'The country's generous tax concessions mean that they and other companies are able to avoid declaring a taxable income. The Public Accounts Committee (PAC) presented a report to parliament in February 2007 noting that mining companies declared losses of US$1.045bn between 1998 and 2005. It put the losses down to the capital expenditure allowance and weak documentation of records by the Ministry of Energy and Minerals,' reads the report.

731. While the investors in the mining sector declare losses all the time, in the wake of the uproar from the citizens about the rampant looting of the natural resources, the government contracted for an independent audit which found that the mining companies were fabricating their losses.

732. 'An independent audit conducted by Alex Stewart Assayers (ASA) in 2003, and leaked to the media in 2006, alleged that four gold mining companies, including Barrick and AGA, overstated their losses by US$502m between 1999 and 2003, indicating that the government lost revenues of US$132.5m. The audit also noted that thousands of documents were missing that would have shown whether royalties valued at US$25m were, in fact, paid.'

733. The *Golden Opportunity* report further states that large-scale mining operations have impoverished Tanzanians far more than those of artisan mining:. The country's six major gold mines employ a total of 7,135 people. However, large-scale mining has made many more unemployed. Before the arrival of multinational companies, small-scale artisan miners dominated gold mining; they used simple tools and techniques, providing small incomes for a large number of people who were generally uneducated and poor. One study estimated that by the late 1990s, the sector employed between 500,000 and 1.5m people. By 2006, a report commissioned by the World Bank estimated that there were around 170,000 small-scale miners in Tanzania. Comparing these figures, large-scale mining may have made around 400,000 people unemployed, as per Golden Opportunity report.

Poverty and Inequality and social policies

734. The government of the United Republic of Tanzania defines poverty as “a state of deprivation, prohibitive of a decent human life” (URT, 1999). Poverty in Tanzania is measured in two ways. The first is the food poverty line, which is the price of a minimum food basket to provide minimum calories necessary for an adult per day. The second is a basic needs poverty line to allow for non-food consumption. In Tanzania the basic needs poverty line was set at Tshs 262 per adult equivalent per day in 2001 and the food line was calculated on the basis of 2,200 calories per day.

735. The poor however, do not define poverty in terms of income (alone). Instead they emphasize the importance of access to and control over productive resources such as land, inputs, and production oriented services, social security. In other words the poor would tend

to focus on conditions which have led to their inability to earn a decent income that will enable them to improve their living conditions. (TzPPA 2002/2003).

736. Using income poverty as the measure, data from the Household Budget Surveys of 1991/2 and 2000/01 revealed that levels of poverty have not changed much during the 1990s, despite the impressive growth in macroeconomic performance discussed in the previous section of this report. Approximately 36 percent of Tanzanians were living below the poverty line in 2000/01; only 3 percentage points less than the 39 percent estimated in 1992. During the same period, the incidence of poverty in rural areas decreased from 41 percent to 39 percent. In Dar es Salaam the decrease was from 28 percent to 18 percent and in other urban areas from 29 percent to 26 percent (URT: 2000/01). Poverty remains an overwhelmingly rural phenomenon with about 87 percent of the poor located in rural areas, a similar proportion as in 1991/92. In absolute terms it estimated that some11.4 million Tanzanians were living below the poverty line in 2000/01 compared to the 9.5 million in 1991/92[295].

737. Poverty is unevenly spread nationally. Regions with the highest levels of poverty include: Mwanza, Shinyanga, Singida, and Manyara. The regions with the lowest levels of poverty include: Dar es Salaam, Arusha and Mbeya (URT: 2005). Coincidentally, Dar es Salaam and Mbeya have higher levels of HIV& AIDS prevalence rates.

738. The majority of Tanzanian men and women do not earn a living wage to enable them and their families to lead a decent life. The government minimum wage which had been set at Ths. 17,500 per month since 1995 was only increased to Ths. 60,000 per month during the budget year 2005/06. Though the figures might look impressive, when adjusted to the US dollar the increase is not as impressive. Whereas, in 1995/96 one US dollar was worth Tshs. 575-580, in 2004 the equivalent was Tshs. 1,060. This means that the increase was from US$ 30 per month to US$ 54 in 2004. When you take into account the increased prices of all consumer goods, this minimum wage can hardly support a worker to sustain and reproduce himself or herself and the family.

739. There is a clear gender gap in levels of income. Data from the recent Integrated Labour Force Survey (ILFS) indicate that in 2006, the median monthly income of male paid employees aged 15 years and above stood at Tshs. 50,000, compared to Tshs. 32,000 for females. Similarly, the median monthly income of self-employed males stood at Tshs. 40,000, compared to Tshs. 20,000 for females. In terms of educational achievements, paid employees with secondary education or above had a mean monthly income of Tshs. 207,433, compared to Tshs 40,134 for those who had never attended school. For the self-employed, mean monthly earnings stood at Tshs. 129,494 and Tshs. 48,920 for the more and less educated respectively.

740. The above earnings related to those fortunate enough to find paid employment. Every year, approximately 700,000 young people enter the labour market. This is creating a problem of either under employment or unemployment. In 2006, in Dar es Salaam the unemployment rate stood at 31.5 percent, while in other urban centers it was 16.5 percent and in rural areas 7.5 percent. The national aggregate figure is 11.7 percent (ILFS, 2006). This suggests that a significant number of Tanzanians do not have a secured means of income for a decent living.

[295] This calculation is based on the 1988 census data which projected a population growth of 3% annually.

741. While poverty is widespread, there has been a gradual increase in the degree of inequality. The Gini Index increased from 0.34 in 1991/92 to 0.35 in 200/01 (URT: 2005) and to 0.36 in 2004 (UNDP: 2006). The relatively low value of the index reflects the widespread nature of poverty across the nation. The Gini index for the rural sector is low and unchanging at 0.33 (URT: 2005). In Dar es Salaam the Gini Index rose from 0.30 in 1990/91 to 0.36 in 2000/01 (URT: 2005).

742. Inequality is also reflected in the distribution of national income: the richest 20 percent of the population enjoy 42.4 percent of the nation's income whereas the poorest 20 percent have access to only 7.3 percent of national income (UNDP: 2006).

743. The Human Development Index (2006) goes beyond measuring income-based poverty in that it brings together, in one composite measure, measures of per capita gross domestic product with measures of educational and health achievements. The HDI calculated for the 2006 report ranks Tanzania at 162nd out of 177 countries for which the index was calculated.

744. Indicators of well-being that go beyond income-based poverty show a rather mixed picture. Primary school enrollment rates have increased but retention rates and transition rates to higher levels are still very low. Literacy rates have improved but a good number of Tanzanians are still illiterate. Infant mortality rates and under-five mortality rates have decreased but maternal deaths have either stagnated or increased. Access to safe water is still a challenge to some Tanzanians particularly those dwelling in rural sector. The HIV&AIDS pandemic has emerged as a major force of impoverishment which is posing a big challenge to the social fabric of the Tanzanian society generally and tends to overburden the economy. The non-income poverty indicators show unevenness across geographical location, gender, and class. The following section will highlight this in a more detailed manner.

Table 4.11: Zanzibar: Output of Key Economic sectors: 2003-2006 (current Tshs million)

Sector	2003	2004	2005	2006	2007
Agriculture and fishing	61.3	80.4	92.5	152.2	160.4
Tourism	16,100	19,900	38,600	45,300	55.8
Manufacturing	16,800	17,200	19,400	23,400	23.4
Construction	13,800	20,500	24,600	38,300	51.5
Financial services	4,600	5,600	7,8008	8,000	10.4

Source: URT (Various)

745. APRM assessment survey results show that households were of the view that macroeconomic policies and employment creation were not effective (58.9 percent) while experts saw some policies being effective in promoting employment (43.7 percent).

Poverty reduction

746. Table 4.12 depicts trends in some welfare indicators. Poverty has declined only by about 6 percent between 1990 and 2007. There have also been small gains in terms of nutritional status of children as measured by anthropometric indices.

Table 4.12: Selected Indicators of Well-being on Mainland Tanzania 1990-2007

Indicator	1990	2000/01	2004/05	2007
Proportion of population living below the basic needs poverty line	39	36	36	33.2
Proportion of population living below the food poverty line	22	19	-	16.5
Percentage of under weight children below 5 years of age (wasting)	28.8	29.5	21.9	-
Percentage of stunted children below 5 years.	46.6	44.0 (1999)	38.0	-

Sources: DHS, (2004) DHS, (1991/2), TRCHS (1999), HBS (1991/92, 2000/01, 2007)

747. The net enrolment ratio in primary education has also increased over the years, from 54.2 in 1990 to 97.2 in 2008 (URT 2008d). This achievement is mainly due to the elimination of cost-sharing in the primary education, the implementation of primary education development plan and a nation-wide campaign to increase enrolment.

The prevalence of HIV and AIDS declined from 7.0 percent in 1991 to 6.0 percent in 2007.

Table 4.13: Prevalence of HIV and AIDS and Contraceptive Use, 1991/92-2008

	1991/92	**1999**	**2005**	**2008**
HIV prevalence among adults (15-49 years)	5.5	7.1	7.0*	5.70
Contraceptives use prevalence rate	6 percent	17 percent	20 percent	-
Source: URT 2008 HIV/AIDS and Malaria Indicator Survey				

Source: URT (various)

Objective 2: Implementation of Transparent, Predictable and Credible Government Economic Policies

748. Government economic policies are greatly influenced by the macro economic situation. Credibility and predictability of policy will very much depend on the accuracy of outcomes. After mid 2000 the focus of policy has been on poverty reduction. There is greater ownership of policies since most of them have been formulated under wide consultations of stakeholders, government and non state actors.

Macroeconomic Policies and Macroeconomic Projections: Processes and Methods

Background and Context

749. Macroeconomic projections take into account quite a number of key aspects, cumulating from sector planning processes and the Budget Guidelines. Sector development strategies are implemented through different programmes and annual plans, whereby the annual plans are devised to operate in line with the medium term plans (3-years mostly). The medium term frameworks serve as projections which at the sectoral level take into account the current and desired performance and capacity and quality of the sector and cross-sector supporting institutions and interactions.

750. At the macro-level, stock is taken of the sectoral performance trends and projections as well as exogenous factors such as vagaries of weather and global trends such as commodity prices and inflation in major trading partners. All these affect the planning and budgeting and monitoring and evaluation taking place within these institutions and, in turn, influence the macroeconomic outcomes and targets. It is against these outcomes that the assessment can be made of the quality of projections.

751. The planning process involves seven key steps:

(i) Situational analysis to identify the main problems and their dimensions;
(ii) Strategic plans for MDAs to chart out their broad direction forward and help clarify priorities and unify staff in the pursuit of shared objectives;
(iii) Budgeting entails projection of revenue, costing of Strategic Plans, personnel and pining down priorities and ensuring the costs are within available resource envelopes;
(iv) Action planning whereby institutions schedule their activities for the up-coming year and prepare disbursement schedules (or cash flows), procurement and training plans;
(v) Implementation brings into spotlight the financial control and financial monitoring chores by the government e.g. using the IFMS (Integrated Financial Management System) to enforce the budget;
(vi) Monitoring and evaluation, performed internally to track progress in implementation and identifying any snags; and
(vii) Reporting of the results to management, clients, politicians, regulators, and the general public. The process is iterative and involves learning and feedback. The institutions are guided by national and sector strategies and by policies and they also have their own "planning cycles" from formulation, M&E, and reporting.

752. The "participatory" element that is emphasized all the way to the local government units (villages and *mitaa* or streets or *shehia*), and the feedback mechanisms that are supposed to work for the monitoring and evaluation and reporting (including improved accuracy in data collection and use), aim at more adequately addressing the development needs, sustainable development for the country's population and social groups. A particular example is the budget process and the Public Expenditure Review, also the Public Expenditure and Financial Accountability Review (PEFAR).

753. For the purpose of illustration of policy credibility as well as transparency and predictability, the following key macroeconomic indicators – GDP (growth), inflation and government revenue effort/revenue performance are discussed. The policies and performance of these indicators are inter-dependent. This fact is mentioned here because an attempt to explain the (causes of) deviations of the projections should entail incisive identification of the factors determining the indicators (outcomes) – something which would demand dedicated studies on each macroeconomic variable at a time to specifically associate the outcomes and the determinants (more empirically). What is possible, however, is to point out indicator trends, to note the deviations where data of the projections are clearly identified and then attempt a qualitative assessment of the deviations. Often, however, only the outcome indicators are readily available from the annual Economic Surveys and Bank of Tanzania's Economic Bulletins and independent studies or policy papers that have accessed files /information at these institutions. The Plan and Budget Guidelines (PBGs) are prepared by the Ministry of Finance and Economic Affairs.

Assumptions

754. Specific methods for making projections differ from one macroeconomic target to the other; and the level of simplicity or complexity of the methods used varies across sectors and departments. However, more realism is breathed into the forecasts by a clear reference, albeit descriptive, to the analyses of the socio-economic realities inside and outside the country. Ability to take on board the aspirations of the citizenry (whether populist or otherwise) may influence the stated desired (projected) level or state of the target. The quantitative and qualitative assessments that inform final decisions on the stated targets (appearing as projections) are known together as assumptions (Boxes 4.2 and 4.3). For more detailed explanation of the method see URT 2008a.

Box 4.2: Mainland Tanzania: Macroeconomic Assumptions for the period 2008/09 –2010/11

- Increased impetus in the implementation of MKUKUTA, and resource allocation in the areas that have rapid multiplier effects in the economy in the medium term;
- Sustaining key macroeconomic indicators, including economic growth, inflation, domestic revenue, and the exchange rate;
- Further improvement in fiscal performance, with enhancing domestic revenue collections via tax administration reforms, the formalization of businesses, the expansion of tax base, and sustained growth in productive sectors;
- Further improvement in socioeconomic reforms in the medium term, and current macroeconomic reform achievement sustained
- Foreign inflows, including grants and concessionary loans to drop slightly in relation to GDP, HIPC debt relief to stay on course and multilateral debt cancellation initiative to be fully delivered;
- Increased progress in private sector development, including increased local and foreign direct investments, further improvements in the business environment; and
- A supportive monetary policy manifested in an appropriate fiscal space, low inflation, a narrowing interest rate spread, and increased credit to the private sector.

Source: Extracted and paraphrased from URT (2009, 2009/10 Budget guidelines)

755. The macroeconomic projections and policy targets for the period 2008/09 to 2010/11 are:

(i) Attain a real GDP growth rate of 7.8 percent in 2008; 8.1 percent in 2009; and 8.8 percent in 2010.
(ii) Control Consumer Price Inflation (CPI) at below 5 percent; and
(iii) Increase domestic revenue collection to the equivalent of 16.4 percent of GDP in 2007/08; 16.7 percent in 2008/09; 16.8 percent in 2009/10 and 16.9 percent in 2010/2011.

Box 4.3: Further list of assumptions for the macroeconomic outlook in the medium term

- The agriculture, hunting and forestry sector is projected in 2007 to register a growth which is the same as in the 2006;
- Improvement in rural roads and irrigation infrastructure, marketing and credit, sufficient rainfall and implementation of ASDP are expected to make the agricultural sector to grow in the medium term;
- Mining sector growth rate is expected to fall due to completion of major investment in the sector;
- Manufacturing sector is expected to continue growing as production in divested

industries picks up and new investments in MSMEs and SEZs come on stream;

- That despite the threat of drought but due to government efforts, the water and electricity sector are expected to grow;
- Increasing public expenditure on infrastructure and in commercial and residential buildings hence, higher growth of the construction sector in the short term, tapering-off in the medium term, as major projects get completed;
- Wholesale and retail trade sector, including tourism, is expected to continue growing;
- Expansion of telecommunication services, increased passenger transportation following road improvements;
- Growth of the sector of finance, insurance and business services is expected to rise; and
- Growth of public administration sector is expected to increase steadily, as Government implements public service reforms, including pay enhancement in the public service, and increased expenditure on social services (education and health).

Source: Extracted and paraphrased from URT (2008a)

756. The assumptions are drawn through consultations with background inputs from the different sector ministries, independent departments and agencies (MDAs). The fact that different sector representatives are drawn can be deduced from the APRM assessment survey which show that households were generally of the opinion that there was transparency and accountability in economic policies (54.7 percent and 69.6 percent on Mainland and Zanzibar respectively), and experts were of the opinion that the level of transparency is moderate (37.9 percent) for Mainland and low (40 percent) for Zanzibar. The issue of transparency can be enhanced through a number of measures such as making the report of CAG public.

757. The macro-economic projections are based on both quantitative (quantifiable) and qualitative (not quantifiable but readily verifiable) assumptions, assumptions that reckon the outlook and performance of the different sectors – contributing to GDP, inflation pressure, etc. It is possible to quantify most of the variables in boxes 4.2 and 4.3 at the level of MDAs.

758. For GDP growth rates, for example, the projections are usually based on the anticipated performance of the rest of the sectors; similarly, inflation projections are also based on the expectations in the performance of the economy (the different sectors) although particular attention is devoted to performance in agriculture, especially food prices, trends in the price of oil imports and prices of major trading partners. For government revenue effort (measured usually as revenue/GDP ratio), Tanzania Revenue Authority (TRA), the only ISO certified public institution in Tanzania, makes its forecasts basing on the estimated performance of the economy particularly the revenue effort (domestic revenue collection as a percentage of GDP) and spending needs which in turn are tied to the national growth / development priorities.

759. The management of monetary policy takes into account the behaviour of fiscal balance and policies related thereto, growth of output and a desire to control inflation rate and foreign payments regime. The assumption has been stated as “contain the growth rate of broad money supply (M2) within a band that is consistent with GDP growth and inflation targets”, and “maintain adequate official foreign exchange reserves at not less than a value equivalent to six months of imports of goods and non-factor services”, while the Bank of Tanzania is expected to “maintain a market determined exchange rate”, with Bank’s intervention exclusively limited to smoothing fluctuations and/or liquidity management purposes.

Predictability and Credibility of Government Economic Policies
Variance in Projections of Key Macroeconomic Variables in the Past 5 Years

760. An attempt to conclusively assess the variance in the projections is limited by the lack of consistent baseline projections and the fact that the actual performance data sometimes slightly differ in the different sources. Nevertheless, a level of credence may be allocated at least to the design of the planning process even if not all steps may be followed by all the agents and institutions. The design is elaborate, followed by a purposeful preparation and deliberation of the "assumptions" which are intended to instill realism in the macroeconomic targets. The strong presumption is that the spending units (MDAs) will have themselves evolved the numbers following a thorough planning cycle before eventually passing them on to the Ministry of Finance and Economic Affairs. This fact can be partly explained by the results of the households and experts APRM assessment survey, which show that experts and household are of opinion that time allowed for parliamentarians and other stakeholders to review the budget was adequate (70.2 percent and 54.5 percent of respondents), respectively.

761. In Zanzibar, the level of predictability of government economic policies was rated by experts as moderate (66.7 percent of respondents).

Achievement of macroeconomic projections
762. It may be noted, at least in passing, that the attainment of the macroeconomic projections is rated to have been satisfactory in the past five years, at least from the rising trend in real GDP. Another indication that the macro-level projections were met is the steady, albeit slow revenue effort (domestic revenue collection as a percentage of GDP).

763. This, however, is not to underrate other underlying macroeconomic stresses such as the large fiscal deficit as percentage of GDP both before and after grants. The main challenge here is on how to reduce dependence on grants to close the deficit.

764. In Zanzibar, the Government through the Ministry of Finance and Economic Affairs (MOFEA) is adopting a simplified macroeconomic model in undertaking macroeconomic projections. With respect to the projections, the following can be said:

(i) Variances in projections have been very small taking into account the method of assessing actual performance done in the previous 3 to 5 years;

(ii) The degree to which these macroeconomic projections have been achieved is high, because in most cases what is projected does not deviate much from what actual performance turned out to be; and

(iii) The adequacy of methods is still not high, taking into account the constraint that the Office of Chief Government Statistician (OCGS) faces in terms of collecting, compiling and computing these statistics.

Adequacy and reliability of macroeconomic statistics
Projections for real GDP growth

765. The projection of GDP growth rate for 2007 was higher, far above the average of 5.5 percent over 1997-2006, a period of 10 years (See Economic Survey, various) a high level, heading toward the 8 percent-11 percent aspired for by NSGRP by 2010. The difference was

a modest 0.1 percent point. The assumptions for maintaining or even accelerating the momentum for higher real GDP lies in how policy affects the "key drivers" of growth building a knowledge-economy, that is investing in human capital development, exports and their competitiveness.

Projected government revenue against record in the past 5-10 years

766. Government revenue projections are also predicted to grow and they should, if the country has to become less and less dependent on aid. The past ten or so years have seen quite an improvement in tax administration, leading to increased revenue effort. Although overall the trend in total revenue shows an upward trend, performance of different revenue components is variable. Tax revenue is dominated by Income Tax followed by VAT (value added tax). The two are the main sources accounting for about 60 percent of total revenue. The main area of concern with regard to taxes has been exemptions, especially for foreign investments.

767. Overall performance has been attributed to government efforts to improve tax administration as outlined in TRA's corporate plan. Improvements that will lead into a steady rise in collections include further simplification of procedure in order to reduce the cost of tax payment and compliance to the tax payer (e.g. VAT and income tax have been brought under one roof, options for electronic-filing of tax returns and payment of taxes through banks and special incentives for bona fide large tax payers). In addition, the reasons for the higher predictability is the result of improved economic conditions in terms of increased output in agriculture, increased number of tourists and thus increased output and revenues. With time, as domestic demand increases, more investments are made, thus leading to expansion in production and hence increased potential for more revenue collection.

768. Despite the fact that there are still challenges, the Mainland Tanzania APRM assessment survey results show that experts considered reliability of the statistics as inputs to or output from policy processes fair (48.3 percent of respondents). The challenges that remain nevertheless revolve around there being multiple institutions, for example, for the customs administration, port authority, food and drugs authority, TRA and others that need to be coordinated in order to improve efficiency. Other possibilities for raising revenue collection include further streamlining of the tax exemptions and fiscal incentives designed to attract foreign investment and turning greater surveillance on non-tax revenues as well as tightening the taxation of the mining and other natural resources-based sub-sectors. There is hope also that property and business formalization will make it possible for the tax base to expand as more and more business activities come out in the open.

769. In Zanzibar, a number of key measures have been taken in terms of legislation, policies and programs, institutional development and resource allocation to ensure the effective and transparent functioning of government economic policies. The measures include:

(i) Involving private sector and civil societies in different forums to participate in sharing ideas and contributions, e.g., in Public Expenditure Review (PER), monitoring physical and financial implementation of programs and policies;
(ii) Involving private sector independent institutions and public institutions in the Budget Ceiling Committee which determines resource allocation to different MDAs of the economy on monthly basis; and

(iii) Involving different stakeholders, including private sector and civil societies in preparing key policy documents, e.g., MKUZA and ZGS costing exercise. In most cases, those who participate in the forums are competent and knowledgeable people who can share and represent fully private sector and civil society concerns. Similarly, the frequency of meetings and deliberations on the findings depends on the nature of the issue under discussion. Further, there are procedures that have been laid down in each case to determine at what time who participates and the outcome expected from the forum.

770. The Government of Zanzibar has established collaborative arrangements at sub-national authorities in implementing economic policies and programmes. District authorities undertake activities related to different sectors at district and lower *shehia* levels. Activities at times are implemented through civil society organizations or recognized institutional arrangements (private or public) and further measures to enhance predictability have included the following:

(i) Resource transfer to spending MDAs from the central fiscal authorities is managed by a system of monthly ceiling allocation of resources based on the available resources at the particular time. IFMS keeps track of allocation and timely utilization of the disbursed funds;
(ii) National projects and programmes are rarely abandoned. The only fact that can delay completion of a project is delay in financing the programme from both local and external funding if the programme or project is partly funded from outside sources, or is scheduled to another period for technical reasons; and
(iii) Absorptive capacity is not high due to limited technical capacity from the implementing authorities. This is coupled with slow process in disbursing funds, reporting before getting next disbursement and inability to report on time.

771. The APRM assessment survey shows that experts are of the opinion that Zanzibar has fairly reliable government economic policies (60 percent of respondents). As far as independent advice is concerned, expert opinion showed that it was taken into account for the mainland (63 percent of respondents). In Zanzibar, independent advice in expert opinion showed that it was rarely taken into account (73 percent of respondents).

Objective 3: Promotion of Sound Public Finance Management

Financial Framework

772. Tanzania's current financial framework which aims at enhancing resource mobilization and intermediation is based on the implementation of the recommendations of the Presidential Commission of Enquiry into the Monetary and Banking System in Tanzania (1990), and those of the 2003 IMF/World Bank Financial Sector Assessment Programme (FSAP) mission.

773. The Commission made recommendations aimed at revamping and strengthening the financial system, and the more significant ones, as will be outlined later, entailed new Parliamentary legislation in the 1990s. The recommendations included those that called for the reform and diversification of ownership in respect of commercial banks to enhance competition; the reform of development finance institutions to facilitate investment financing; ensuring viability, integrity and sustainability of financial institutions;

strengthening the Central Bank's role in the design and conduct of monetary policy; reforming the insurance sector; and putting in place support facilities such as credit guarantee schemes.

774. A number of Acts were passed by Parliament in the 1990s to implement the recommendations of the Presidential Commission. The first measure was the passing of the Banking and Financial Institutions (BFI) Act in 1991, aimed in part at liberalizing commercial banking and other financial sector activities, thus encouraging competition and mobilization of resources. In the same year, the Loans and Advances Realisation Trust (LART) Act was passed, with the objective of creating an instrument to assume and subsequently realize the non-performing loans of state-owned banks.

775. The following year (1992) saw the passing of the Foreign Exchange Act that aimed at liberalizing external trade and the foreign exchange regime. Later in 1994, the Capital Markets and Securities Act were passed to facilitate the introduction and growth of a market for mobilizing medium and long-term investment financing. This provided an environment for establishing a stock exchange. In the following year (1995), the Bank of Tanzania Act was amended to strengthen the Central Bank's roles in monetary policy and bank supervision. The Bank of Tanzania would focus on fostering price stability and ensuring the soundness of the financial system. The enactment of the Insurance Act in 1996 provided a framework for liberalization and regulation of insurance business, including the licensing of private insurance companies.

Outcome of Reforms

776. The reforms have resulted in not only in a new landscape for the country but also a new culture of doing business. The banking sector that had only three commercial banks before the reform is now comprised of 26 relatively competitive commercial banks and five non-bank financial institutions (NBFIs). The Loans and Advances Realization Trust assumed and subsequently realized non-performing loans of the state-owned banks, resulting in the restructuring and privatization of two of the banks and liquidation of the third one. An Inter-bank Foreign Exchange Market thrives; operation of market determined exchange rates for the Tanzanian Shilling. The reforms in the insurance sector have seen the number of insurance companies increase from 2 to 13, of which eleven are privately owned. The enactment of the Capital Markets legislation led, among other things, to the establishment in 1998 of the Dar es Salaam Stock Exchange (DSE). There has also been an increase in Cooperative Credit Societies.

777. In respect of land, progress has been made to increase property-based lending by banks and financial institutions through the amended Land Act in 2004 – which sought to bring a proper balance between the commercial interests of lending institutions and borrowing entities.

778. The outcomes of the reforms can also be gauged by looking at some simple indicators of financial intermediation - notably the ratios of broad money (M2) and private sector credit to GDP; the proportions of savings and capital formation to GDP; as well as the share of population with access to finance, (including microfinance and saving facilities). The ratio of money to national product, at the simplest level, reflects progress in monetizing economic activities but, to the extent that various bank deposits (savings) are included in the money definition, it also indicates progress in saving mobilization. The ratio of broad money to

national product rose progressively from an average of about 16 percent in the three years 2002 – 04 to approach 20 percent over 2005-06.

779. The Government efforts to improve financial intermediation are supported by the results of the APRM assessment survey where experts on Mainland Tanzania and Zanzibar, were of the opinion that government has encouraged financial intermediation as expressed by 83.9 percent and 66.6 percent of respondents respectively.

Remaining Challenges and Road Ahead

780. In 2003, an IMF/World Bank Financial Sector Assessment Programme (FSAP) was conducted in Tanzania in order to identify the strengths, vulnerabilities, and general soundness of the country's financial system. The assessment recognized that there are clear indications that the foundation of a sustainable financial system had been laid as a result of the existing macroeconomic stability. However, the FSAP mission report also observed that the Tanzania financial system still plays a limited role in the economy, and its current depth and efficiency fall short of what is needed to support economic growth.

781. Access to financial services is still inadequate, and interest rates on loans are very high. As well, there are macroeconomic risks for the economy due to dependency on low technology in agriculture and volatile aid flows, and to constraining regulations on lending by banks. The financial markets are also largely underdeveloped. The FSAP mission report recommended a number of legal and institutional reforms that would remove the main obstacles to lending; deepen financial intermediation and further help develop the financial system. The specific recommendations pertain to enhancing access to financial services; undertaking further legal and judicial reforms; addressing the framework for long-term investment; managing systemic liquidity, market intervention and infrastructure; further improving bank regulation and supervision; and strengthening crisis preparedness.

Second Generation Financial Sector Reforms (SGFSR)

782. A number of challenges were still identified in the financial system: limited role played in the economy, inadequate depth and efficiency, inadequate access to financial services and high interest rates. The IMF/World Bank Financial Sector Assessment Programme (FSAP) made a number of recommendations to meet these challenges. Implementation of the recommendations is on-going on a broad front.

783. The SGFSR consolidates achievements made during the first generation reforms and addresses remaining structural constraints to the development of the financial sector. Emphasis has been made on:

(i) Establishment of a framework for lease and mortgage financing (Special Financing Bill, 2008);
(ii) Credit information data bank;
(iii) Legal and regulatory basis for a credit information bureau; and
(iv) Unifying legal and regulatory framework and investment guidelines for pension funds.

784. Though generally representing a marked improvement over the past, the financial system still faces a number of challenges including:

(i) Inadequate development finance infrastructure;
(ii) Existence of few large banks which are NBC, CRDB and NMB, thus exhibiting oligopolistic market structure;
(iii) High cost of borrowing (high interest rates on loans not reflecting the bank rate); and
(iv) Low savings rate (thus discouraging deposits).

Public Finance

The Budget Process and Formulation of the Medium Term Expenditure Framework

785. Tanzania's budget process involves the determination of resources and their uses for attainment of government objectives. It also serves as a tool for economic and financial management and accountability. It further serves as a mechanism for allocation of resources to different needs and priorities as well as bringing economic stability and growth. The whole process essentially involves budget formulation, scrutiny of budget proposals and dialogue, budget execution and budget monitoring and control.

786. Government budget is an important instrument for implementation of policy decisions; its formulation thus requires a series of processes linked to a chain of interventions and legal and regulatory mechanisms. These processes facilitate the preparation of budget estimates, authorization, implementation, control and accounting.

787. The legality of the budget is stated in articles of the Constitution of the United Republic of Tanzania of 1977 (as amended from time to time), and in a number of regulations. Prominent regulations include; the Local Government Finances Act Cap. 2000, the Public Finance Act Cap. 348, the Finance Act, and the Appropriation Act. The Public Finance Act provides for the legal framework of the budget system with regard to revenue, expenditure control and accountability. The Appropriation Act provides powers to the Minister for Finance to draw money from the Consolidated Fund and allocate it to the various votes. The Finance Act grants powers to the Minister of Finance to raise money by imposing taxes to raise funds to finance the budget.

788. Tanzania's three year Medium Term Expenditure Framework (MTEF) is built along the budget process. In practice, the ministries' MTEF are finalized after the budget guideline is released. The budget guidelines document is prepared by a Committee which comprises representatives from the Ministry of Finance and Economic Affairs, Prime Ministers Office, Civil Service Department and Regional Administration and Local Government. The document contains an overview of macroeconomic performance and projections, priority sector medium term budget frame (prepared by Sector Working Groups in the Public Expenditure Review process) and vote expenditure ceilings based on expected resource availability.

789. In consultation with donors, the budget estimates are formulated in line with detailed macroeconomic forecasts on future growth, inflation and external sector (import) trends. The forecasts are used as a base for setting the policy targets and for formulation of goals, objectives and budget priorities which should be achieved in the coming financial years. These are then presented to the Parliament.

790. In the budget process, there is a Task Force hosted by the Ministry of Finance and Economic Affairs (MoFEA) and chaired by the Deputy Permanent Secretary, Policy and Resource Mobilization. The Task Force invites opinions of all stakeholders from the

Government, companies, private sector, civil society organizations, faith-based organizations, academic community, research institutions and other specialists in the economic sector. The aim of the Task Force is to promote transparency in tax policy development, and harness the expertise of the various stakeholders. The Task Force provides a forum for both the public and private sector to engage in open debate and dialogue as well as review presentations and submissions regarding amending tax laws and the way that they are administered in the United Republic of Tanzania.

791. The involvement of other stakeholders has greatly improved the budget process and awareness of the general public on budget issues. One case in point is the Task Force on Tax Issues. Inputs from stakeholders have helped improve tax administration and as a result perceptions of tax payers on tax administration have also been more positive with time.

792. Additionally, the Inter-Ministerial Technical Committee (IMTC) of all permanent secretaries has a role to scrutinize budget proposals before they are finally approved by cabinet. To facilitate the discussions, the MoF prepares a Draft Cabinet Budget Paper that covers the budget frame, the financial demands, Government priorities and financial implications, after consultations with MDAs. After a thorough review, IMTC may require MoF to make further technical improvements on the paper or put up recommendations for consideration by the Cabinet. The budget is then discussed by the Cabinet after a preliminary review by IMTC. The role of the Cabinet is to deliberate on the budget and then approve Government budget proposals for the fiscal year in question before they are submitted to the Legislature.

793. The process of obtaining Parliamentary authorization starts with discussions by Parliamentary Sector Committees. Preliminary briefs are prepared by the Minister responsible for Finance and Economic Affairs. Each MDA's detailed budget is then submitted to respective Parliamentary committees for scrutiny. After the budget estimates have been reviewed by the sector committees of the Parliament, they have to be tabled before full the Parliament for debate and authorization. The Minister for Finance presents the government budget proposals to Parliament through a budget speech. Then Parliamentary debates/discussions on sector estimates are submitted by each minister responsible and thereafter, Parliament approves the estimates by passing the Appropriation Bill. This action empowers the Minister for Finance to raise the money required to finance the budget. Normally there is only one amendment made before the Finance Bill is passed.

794. Not only the government institutions that play a greater role in budget and development process, but also the media have been playing a greater role in Tanzania, from the budget formulation process to that of reducing transaction cost, through creating public awareness on all issues of public concern.

795. In Zanzibar, Government Accounts were in the past only accessible to the House of Representatives (HoR) Committee on Revenue and Expenditure, usually once a year. With the incorporation of private sector and the civil society in different committees the situation is improving.

796. Fiscal operations of the Revolutionary Government are coordinated by the Ministry of Finance and Economic Affairs. The proposed budget, after being approved by all PSs of MDAs, is presented to the Committee of the House and later submitted to the full House of

Representatives for debate and authorization. Under the current setting of the House, members from both sides of the House deliberate on the votes of each institution item by item. Upon being satisfied the HoR approves the budget, thus authorizing the release of funds.

797. The budget process in Zanzibar is based on the time table drawn following initial appraisal by the Committee to individual ministries and institutions, and later to the overall budget and to the HoR. The time allowed for appraisal is between April and end of May to give time to individual MDAs to discuss again with MoFEA on any issues raised by the Committee during their appraisal.

798. The number of amendments will depend on the issues and complaints submitted to them by the MDAs, or on what they found out. In most cases hardly two to four amendments are done per year. Challenges encountered include:

(i) Frequency of submitting reports;
(ii) Inappropriate ways in which the fiscal framework is framed; and
(iii) Lack of a fiscal model to be used in forecasting revenues and expenditure.

799. Efforts taken to address these challenges include:

(i) Developing a budgetary forecasting model to be used in conjunction with a macro model, to provide a clear picture of the projection ahead; and
(ii) More involvement of the private sector in the financial management operations to create a speedy system of operation.

The Expenditure Process

800. The expenditure process is guided by a participatory process called the Public Expenditure Review (PER) which came into operation since fiscal year 1998/99. The key stakeholders in the process are the Ministry of Finance; President's Office; Public Service Management, Regional Administration and Local Government; sector ministries; Tanzania Revenue Authority; Bank of Tanzania; research institutions; development partners; and civil society. The overall objective of the PER/Medium Term Expenditure Framework for a three year period is to monitor the budget process in terms of management, control and accountability and to improve budget management in general. The main focus of PER is on improving predictability of the budget, to enhance budget sustainability, to promote prioritization of expenditure objectives and allocative efficiency and to strengthen an output oriented budget that focuses on service delivery improvements.

801. In such a process, PER provides such inputs as updated sector MTEFs for key sectors, and donor commitments in support of the Government's expenditure strategy for incorporation in the government budget estimates – both for the forthcoming financial year as well as for the medium term.

802. Actual domestic revenue out-turns to target have been exceeding 100 percent, showing the efforts made by the Tanzania Revenue Authority (TRA), in the tax collection process.

803. Looking at the actual expenditure out-turn to target, except for year 2003 and 2004, other years' actual expenditure has been falling short of the expected targets. This is sometimes contributed by either failure of government and donors to disburse the funds timely or failure to execute some development projects in a respective year. It also shows that

the government is fully committed to maintaining a stable macroeconomic stability by not borrowing much from the Central Bank when revenue falls short of target. In the APRM assessment survey, households were of the opinion that government spending in the last five years has been high, expressed by almost 60 percent of respondents.

804. In Zanzibar, revenue collection has closely matched target especially after 2005/06. Contrary to the observations, in the APRM assessment survey, households were of the opinion that government spending in the last five years has been high, expressed by 55.5 percent of respondents.

805. In an endeavor to improve revenue collection in Zanzibar, a fiscal policy unit has been established. In addition, efficiency in Zanzibar has been improved through staff training and incentives to revenue collection agencies (ZRB, TRA and others).

Public Finance Reforms in Tanzania

806. Since early 1990s, Tanzania has been undertaking the Public Sector Reform Programme which included reforms of the financial sector management. The Central Payment System (CPS) was created at the Treasury to effect all payments for Government ministries, departments and agencies. This was in response to the observed indiscipline in expenditure management by MDA (ministries, departments and agencies). In the same regard, a cash budget system was introduced in both Mainland Tanzania and Zanzibar so that the Government could use and apply only those funds that were reasonably available and in the process limit the need to borrow from the Bank of Tanzania.

807. In order to facilitate the reporting system, in 1998, selected ten MDAs were connected to a computer network system under the Integrated Financial Management System (IFMS), which was later connected to all MDAs in 1999. To make it legal, the IFMS is supported by the 2001 Public Finance Act. The IFMS were also established in Zanzibar for the same purpose.

808. In the same vain, IFMS was rolled out to all the Regional Sub Treasuries and Regional Administrative Secretaries (RAS) offices in the country. Also, in 2002/2003, the Government, through the Accountant General's Department, put in place mechanisms intended to ensure that MDAs do not incur debts that cannot be met from their budgets due to lack of funding and that there is no accumulation of suppliers' debts. This has been possible through the introduction of a commitment control system. This has resulted into falling of the level of supplier debts, hence increasing the standing and credibility of the Government to the general public. Also, effective M&E systems which can monitor physical and financial performance of the national policies and programs have been installed on the Mainland and Zanzibar.

809. In addition, the Public Finance Management Reform Programme (PFMRP) was established in order to improve the employee capacity. A number of staff were sponsored to pursue further studies. Also, the Office of the Accountant General has prepared Accounting Manuals as well as Internal Auditing Procedure Manuals. These manuals are intended to streamline and consolidate the accounting and internal audit functions in the Government. The government through the Accountant General has also ensured that each MDA has the Audit Committees which are mandatory under Regulation 30 of the Public Finance Act, 2001. These committees aim at ensuring accountability of public funds by individual MDAs

and meet quarterly in a financial year and provide copies of minutes of the committee's deliberations to the Treasury.

Government Expenditure Reporting

810. There are a number of key documents that are used to report the budget execution process (i.e. the collection and accounting for revenue, provision of services through the recurrent budget and implementation of development projects). These documents are among others, the Revenue and Expenditure estimates books, action and cash flow plans and budget memorandum.

811. Also, the Ministry of Finance and Economic Affairs publishes quarterly Budget Execution Reports which aim at maintaining transparency on actual use of public funds in line with the budget estimates approved by Parliament. As well, monthly flash reports on revenue collections and expenditure are produced together with the quarterly and annual performance reports.

812. In each year, the Controller and Auditor General (CAG) releases the CAG reports that highlights on the expenditure of different tiers of government. Over time transparency has increased over the report of CAG.

813. Apart from government processes of monitoring expenditure, civil society organizations have also been reviewing public expenditure through Public Expenditure Tracking Surveys (PETS). The findings of PETS, especially in education sector (primary), have greatly improved effectiveness of spending, with much of the allocated funds now reaching the targeted beneficiary.

814. The Government has also introduced GFS program of storing finance data, and Strategic Budget Allocation System (SBAS) and Zanzibar Budget Allocation System (ZBAS) to improve efficiency in budgeting and allocation of resources. The SBAS and ZBAS are designed so that MKUKUTA and MKUZA interventions are well mainstreamed with the MTEF of MDAs and that targets are met within a specified period of implementation.

815. Despite the efforts undertaken by the Government in reporting and controlling expenditure, the APRM assessment survey on control of government expenditure and government procurement shows that experts were of the opinion that it is an issue of concern (87.4 percent and 81.6 percent of respondents respectively). Households' opinion, in both Mainland and Zanzibar pointed out poor effectiveness of government in controlling its expenditure, where 63.2 percent and 47.4 percent of respondents respectively pointed out this.

816. Like on the Mainland, the Zanzibar APRM assessment survey expert opinion pointed out control of government expenditure and government procurement being an issue of concern (73.3 percent and 73.3 percent of respondents, respectively).

Challenges to implementing the Medium Term Framework

817. Although the government has been embarking on implementing a medium term framework, there are several challenges to meeting a predictable medium-term fiscal framework. The challenges among others include:

(i) Inadequacy in capacity to manage the funds at regional and ministry levels as well as misuse of public money. In order to improve the situation, in 2007/8 the government introduced the Expenditure Tracking Unit to monitor government expenditure. Reports of the Controller and Auditor General are used as monitoring tools although it can fully achieve better outcomes if the financial audit can be done along with undertaking the Performance Audit which was abolished in 1995.

(i) Problems with projections: this is generally as a result of unpredictable foreign resources. Also failure of donors to fulfill budget support adds to problems of meeting the MTEF objectives. All these bring difficulties in the planning process. Currently the Government is designing an incentive structure to the Tanzania Revenue Authority so that it can maximize domestic sources of revenue to fill up the foreign financing gap. The problem is also attributed to low level of technical know how on the operation and analysis of finance data and information. The Government is addressing these challenges through mobilizing both local and foreign investors and has embarked on training programmes to improve on financial data analysis.

Fiscal Decentralization

818. Despite most of the financial issues being conducted at the central government level, the United Republic of Tanzania for a long time has developed a decentralization system. The legal framework governing decentralization is enshrined in the Constitution of the United Republic of Tanzania (Chapter 8), which provides for establishment of Local Government Authorities (LGAs) through empowering people to decide on the best use of resources through participatory planning and implementation.

819. Apart from being given powers in the constitution, a number of legislations have also been passed aiming at creating a conducive environment for the Local Government to work. In Zanzibar however, despite the fact that the system has a legal backing, it creates constraints in the course of implementation because responsibility falls to nobody in case of any mismanagement. The legislation in Mainland Tanzania among others, include:

(i) The Local Government (District Authorities) Act, which provides for matters connected to the organisation of the same in Mainland Tanzania;

(ii) Local Government (Urban Authorities) Act, which established urban authorities for the purpose of Local Government, provides for the functions of those authorities and for other related matters connected with or incidental to those authorities;

(iii) The Local Government Finances Act, cap. 290 which provides for sources of revenue and the management of funds and resources of Local Government Authorities and for matters connected or incidental to securing the proper collection and sound management of finances in the Local Government system; and

(iv) The Regional Administration Act which has a provision for restructuring Regional Administration for purposes of strengthening and promoting the local government system.

820. LGAs, through these provisions, are allowed to generate their own development policies and programmes. This process allows for consistency of programmes along the

development challenges of the respective regions, without being interfered with by the Central Government.

821. In that regard, Local Governments collect their own revenue although most (90 percent) of Local Government financing comes from the Central Government. The Central Government funds most Local Government salaries directly. In addition, the Central Government transfers recurrent grants (for agricultural extension, education, health, water, roads and administration) and grants for development expenditure to Local Councils. Also, the Local Governments set their own revenue policy within the limits set by the Central Government. They retain all their revenue and use it as part of their own budgets – these revenues do not form part of Central Government revenue.

Reform process in the Local Government setting

822. Since the local Government has been given mandate to manage the resources and plan, beginning 2001, reform programmes were implemented in all LGAs. These reforms are being implemented in seven components namely:

(i) Good governance component-to ensure good governance of LGAs;
(ii) Fiscal empowerment-to improve the revenue capacity of LGAs;
(iii) Human resource development-to improve the capacity of the LGAs' employees;
(iv) Restructuring of the local authority in line with the decentralisation process;
(v) Legal and institutional framework-to continue improving regulations that still impede smooth working of LGAs;
(vi) Decentralization by Devolution (D by D) which allows for authority, powers and resources to be devolved to LGAs such that they have mandate over their priorities. There are also ongoing processes to review the legal structure in order to facilitate the D by D; and
(vii) Capacity Building.

Challenges facing the decentralization process

823. There are several challenges facing the decentralization process, among them being:

(viii) Inadequate capacity of the local government officials to develop and execute local plans and budgets;
(ix) Insufficient capacity of LGAs to generate enough revenue for undertaking developmental and recurrent programmes; and
(x) Narrow tax base rendering LGAs unable to meet a large part of their recurrent and development expenditures (as high as 90 percent[296]). Most of the resources have to be met by the central government hence affecting governance issues of LGAs.

824. In order to address the local government revenue constraint, the Local Government Capital Development Grant System was introduced to provide development funding to local government. This is done under strict conditions imposed to LGAs. Adherence to good governance and ensure quarterly Financial Reports are prepared. LGAs that adhere to these conditions qualify for subsequent disbursements. During 2007/8, for example, only 109 out of 121 LGAs qualified for funding.

[296] URT 2006e

825. The issue of inadequate capacity has been addressed by the central government through the Capacity Building Grant. During 2007/8, for example, the Capacity Building Grant was set at around USD 35,000 per Local Government Authority and associated with conditionality such as submission of credible capacity building plan by the Council and accounting for previous years' grant.

826. According to the Local Government Fiscal review of 2006, more work is still to be done in order to:

(i) Clarify the distinction between the central government administration at the local level and local government authorities;
(ii) Distinguish between concurrent, exclusive and delegated functions;
(iii) Keep the transformation of the local government revenue system on track;
(iv) Enhance transparency and enforcement of local government revenues;
(v) Improve local planning in accordance with MKUKUTA; and
(vi) Ensure predictability, sustainability and vertical fiscal balance in the intergovernmental transfer system.

827. In Zanzibar, a number of challenges are encountered in the decentralization process. These are:

(i) Although MDA officers at district level are coordinated by the District Planning Officer, they still receive directives from main sector offices (headquarters). This weakens coordination and unified development of the district;
(ii) Capacity of sub-national authorities to generate and manage fiscal resources, and plan and implement economic policies is limited. These sub-authority officers have no control of resources and all the planning is done at the head offices;
(iii) As in the Mainland, the issue of limited capacity in manpower and other resources for undertaking responsibilities and activities at sub-national levels is challenging;
(iv) Close proximity of district centres to the headquarters, make the need to have a fully fledged decentralization system unviable; and
(v) Lack of a viable decentralization system which suits a small island economy.

Public Financial Management and Accountability
The Public Procurement Act

828. In February, 2001 Public Procurement legislation was passed by Parliament and was subsequently assented by the President. (The Public Procurement Act No. 3 of 2001). The act requires each institution to establish a tender board. At the moment every ministry has established its tender board. The act also provided for establishment of the Public Procurement Appeals Authority to settle procurement disputes before judicial review process. This Act repealed the former, Exchequer and Audit Ordinance of 1961. Under this legislation four fundamental principles govern the controls:

(i) No tax shall be imposed and no money shall be spent without authority of the National Assembly;

(ii) Expenditure shall be made only for the purpose authorized by Parliament;
(iii) There shall be a single fund known as the Consolidated Fund for receiving and recording all revenues and expenditures, unless otherwise directed by Parliament; and
(iv) All money spent on the Consolidated Fund must be accounted for to the Parliament.

829. In 2004, a diagnostic study carried out in 2003 reviewed all areas of public procurement systems in the country including: the legislative framework; the performance of the regulatory functions; the enforcement regime; the capacity of public sector institutions to conduct procurement; and the effects of corruption on procurement. This led to the passing of new procurement Act No. 21 of 2004, which became operational at central government level since 2005. The Act abolished the Central Tender Board, fully decentralized the procurement function to MDAs and established a procurement oversight body, the Public Procurement Regulatory Authority (PPRA). Since its enactment, the PPRA has put priority on the dissemination of the new Act and the associated Regulations.

830. The PPRA still faces a number of problems related to bureaucratic procedures. This unnecessarily adds cost to goods and services procured. The rules apply to procuring entities at all levels, irrespective of contract value, for which the procurement is financed from public funds. It covers all types of procurement, namely goods, works, non consultancy services and disposal of public assets by tender. The law equally applies to Parastatals.

Procurement and Budgeting Systems: Transparency and Accountability

831. Since the launching of the PFMRP, the Government has endorsed various assessments of its public financial management environment. Specifically, in 2001, the Country Financial Accountability Assessment (CFAA) recommended various improvements to government processes including: financial planning, budgeting and budget execution; accounting and financial reporting; public sector auditing; legislative scrutiny, ethics and integrity; local government financial accountability; public access to information. Following this, in 2002, the Report on the Observance of Standards and Codes (ROSC) made further proposals for enhancing transparency with respect to budget preparation, execution and reporting.

Controls in the Government Budgeting

832. The budget process is linked to a chain of interventions and legal/regulatory mechanisms that involve a number of players and stakeholders. Since the budget is a public instrument, it is based on a legal framework, which gives it the necessary mandate. The budget process is thus a legalized and formalized work cycle of preparing budget estimates, authorization, implementation, control and accounting for it. The legal base is that body of laws, administrative regulations that regulate the budget format, timing and procedures as well as the allocation of formal powers and responsibilities and rights in the budget cycle or process. These instruments provide the legality of the budget.

General Budget Support (GBS)

833. Government in collaboration with development partners (both bilateral and multilateral) embarked on General Budget Support (GBS). GBS is a type of aid programme which provides un-earmarked funds to the general budget (exchequer) of the governments of recipient countries. The World Bank participates in GBS in the form of Poverty Reduction

Support Credit (PRSC), which replaced its structural adjustment loans whereas bilateral donors participate through Poverty Reduction Budget Support (PRBS). Total budget support loans and grants during the first half of 2007/08 was Tshs 956,038 million which exceeded estimated budget by 12 percent (URT 2008a).

Reforms under General Budget Support (GBS)

834. Public Service Reform Program (PSRP): PSRP is implemented by the President's Office Public Service Management. Its main components are to:

(i) Improve efficiency of public services delivery utilizing market mechanisms (e.g., through privatization and establishment of specialized agencies);
(ii) Introduce a performance-based evaluation system for each Ministry; and
(ii) Improve the quality of public services, to be more customer-oriented.

Local Government Reform Program (LGRP)

835. Tanzanian has established a more flexible "Formula-based" system in which budget allocation to LGAs is to be determined based upon predetermined criteria and indicators. The Government of Tanzania has been taking actions against corruption in line with its National Anti-Corruption Strategy and Action Plan (NACSAP). Both the Good Governance Coordination Unit under President's Office (PO-GGCU) and, the Vice President's Office perform monitoring roles.

Objective 4: The Fight against Corruption and Money Laundering

Introduction

836. In economic governance, corruption is abuse of entrusted power for private gains (financial, material, non material). Corruption affects people's livelihoods; it is a disincentive to investments, drains scarce resources and diminishes a country's prospects for development. Corruption is evident in both government and non government offices.

837. In Tanzania corruption is viewed as a vice and a crime. For operational purposes corruption is categorized into grand (subverting significant aspects of the manner in which the state or market system works and hence reaping significant gains) and petty (mainly in service delivery systems such as health, education etc). The gains are meager, in some cases only to make ends meet. There are National Anti-Corruption Strategy and Action Plan (NACSAP), whose details are explained in chapter three.

The Fight against Corruption

838. The legal basis for preventing and combating corruption is embedded in the Constitution of the United Republic of Tanzania, 1977. The Constitution is the fundamental law of the land and it is above all other pieces of legislation. The obligation to safeguard and protect state and all property which extends to preventing and combating corruption is impliedly provided for in Article 27(1) which stipulates that:

> *"Every person is obliged to safeguard and protect the natural resources of the United Republic, State property and all property jointly owned by the people, as well as to respect another person's property."*

839. The Constitution further provides in Article 27(2) that:
"All persons shall be by law required to safeguard state and communal property, to combat all forms of misappropriation and wastage and to run the economy of the nation assiduously, with the attitude of people who are masters of their fate of their own nation."

840. The above articles are what connect economic governance with the need to fight corruption in Tanzania. If natural resources and communal properties are well safeguarded then a country can attain better economic governance.

841. In strengthening the legal and institutional framework against corruption, the Parliament in 2007 enacted the Prevention and Combating Corruption Act, 2007 which repealed the Prevention of Corruption Act, 1971. The enactment was preceded by Tanzania signing and the Parliament ratifying three important multilateral and international instruments relevant to preventing and combating corruption. The three legal instruments are:

(i) The Southern African Development Community (SADC) Protocol Against Corruption, 2001;
(ii) African Union Convention on Prevention and Combating Corruption, 2003; and
(iii) UN Convention against Corruption, 2003 which came into force on December 14, 2005.

842. There are a number of other relevant laws for Prevention and Combating Corruption dealing with economic aspects in Tanzania. Laws passed by the Parliament as envisaged in the Constitution include:

(i) Economic and Organised Crimes Control Act, cap. 2000;
(ii) Anti Money Laundering Act, 2006;
(iii) Public Finance Act, cap. 348; and
(iv) Public Procurement Act, 2004.

843. In the new Prevention and Combating of Corruption Act, 2007, there are provided wider powers to investigate compared to the repealed law. It has also widened the scope of offences from three in the repealed law to about fifteen in the new Act. The following offences that are related to economic governance are provided in the new Act:

(i) Corrupt transactions (section 15);
(ii) Corrupt transactions in contracts (section 16);
(iii) Corrupt transactions in procurement (section 17);
(iv) Corrupt transactions in auctions (section18);
(v) Corrupt transaction in employment (section 20);
(vi) Bribery of foreign public official (section 21);
(vii) Use of documents intended to mislead principal (section 22);
(viii) Obtaining advantage without lawful consideration or for an inadequate lawful consideration (section 23);
(ix) Advantage received on behalf of accused (section 24);
(x) Failure by public officials to give accounts of properties;
(xi) Possession of unexplained property;
(xii) Embezzlement and misappropriation;

(xiii) Transfer of proceeds of corruption; and
(xiv) False pretence to be an officer.

844. The newly enacted legislation (Prevention and Combating of Corruption Act, 2007), apart from the stated factors for its enactment, conform to the principles of the relevant international and regional instruments. For example, Article 5 of the UN Convention against Corruption, 2003 directs state parties (including Tanzania) to develop and implement or maintain effective anti-corruption policies (laws) that reflect the principle of rule of law, transparency and accountability.

845. This shows the level of implementation of the UN and AU Conventions by the government of Tanzania. The point here is that, apart from ratifying the conventions, the government has gone further to start domesticating (put as part of international laws) the same in the municipal/ national laws.

846. Like in the Mainland, there are concerns about the level of corruption in government and private institutions in Zanzibar. The issues commonly raised about corruption in Zanzibar revolve around:

(i) Increasing incidences of corruption in private and public sectors;
(ii) Financial mismanagement of public funds; and
(iii) Poor investigation and prosecution capacity in corruption cases.

847. The fight against corruption in Zanzibar has been articulated in Zanzibar Development Vision 2020 (RGOZ 2002a) and outlined in various strategic documents such as Zanzibar Poverty Reduction Plan (RGOZ 2002b), Zanzibar Good Governance Strategic Plan (RGOZ 2003) and MKUZA (RGOZ 2007). Measures that have been suggested for combating corruption in Zanzibar include:

(i) Establishing Anti-Corruption and Leadership Ethics Authority;
(ii) Expediting the adoption process of the anticorruption and leadership ethics draft legislation;
(iii) Implementing anti-corruption strategy and codes of ethics for police, prison staff, the judiciary, prosecutors, hospital staff and revenue collectors;
(iv) Enforcing the provisions in the Penal Act that deals with sexual harassment;
(v) Strengthening Controller and Auditor General's Office;
(vi) Closing gaps that sustain corruption;
(vii) Enforcing Public Procurement and Disposal of Public Assets Act;
(viii) Improving public financial management;
(ix) Enhancing good corporate management practices;
(x) Improving prosecution skills and investigation on corruption cases; and
(xi) Strengthening capacity of police to investigate corruption cases.

848. The legislation on corruption that is, the Prevention and Combating of Corruption Act, 2007 is applicable in Mainland Tanzania only. Zanzibar has its own anti-corruption measures. It does not have specific law on corruption matters but the Penal Decree, Act No. 6 of 2004, contains relevant provisions. This law came in operation after major amendments on

August 16, 2004. Part ten of the law, which is comprised of sections 76 to 91 is titled as "Corruption. Abuse of Office and Other Economic Offences". The Act also covers a range of offence, which are almost the same as the ones covered by the Prevention and Combating of Corruption Act, 2007 of Mainland Tanzania. It provides that,

> *"Any person, being employed in the public service and being charged with the performance of any duty by virtue of such employment, corruptly asks for, solicits, receives, or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office; or corruptly gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, to, upon, or for any person employed in the public service, or to, upon, or for any person, any property or benefit of any kind on account of any such act or omission on the part of the person so employed, shall be guilty of an offence".*

849. Other corruption offences created by this law include extortion by public officers, favouritism, false claim by public officers, abuse of public office, and the like. Unlike the Mainland's legislation, the Penal Decree, Act No. 6 of 2004 of Zanzibar targets mainly public officers.

850. Other noticeable legal sector measures to control corruption in Zanzibar included establishment of the Office of Controller and Auditor general as an independent government unit, establishment of the Office of Director of Public Prosecution and setting up of a Judicial Service Commission.

851. There are initiatives to put in place a Prevention and Combating of Corruption Act, on part of Zanzibar. A draft bill on Anti-corruption Act of Zanzibar was submitted to the Revolutionary Government of Zanzibar in 2007 but was later returned to the Revolutionary Council for more inputs in the same year.

852. The supervisory role of the Bank of Tanzania on the financial system covers Zanzibar. As such the Bank's Circular Number 8 on Money laundering also applies to Zanzibar.

Development in the fight against corruption

853. Tanzania has implemented many programmes aimed at combating corruption: for example strengthening the Anti Corruption Bureau, increasing incentives to civil servants, increasing transparency as well as introducing competitive climate at work places.

854. There are positive developments in the war against corruption in Tanzania as discussed in chapter three. The media has been active in exposing and detailing cases of corruption. There are a number of examples of corruption and power abuse that are of interest in economic development of Tanzania. In some of the cases, the former Prime Minister and three Cabinet Ministers were forced to resign in 2008 for being linked to corruption scandal.

855. It is worth noting that no case of corruption has been brought before the courts of law in recent years in Zanzibar. Therefore, one challenge that remains is the need to harmonize issues of corruption between the Mainland and Zanzibar, particularly when it comes to implementation.

856. Despite such signs of positive developments in combating corruption more could be achieved if following measures were implemented: transparency in contracts of national interest, observing accountability by professionals and stepping up awareness campaigns against corruption.

857. Corruption is still regarded as an issue of concern. The results of the APRM assessment survey show that both households and experts, in the Mainland and Zanzibar, expressed the opinion that corruption is a societal scourge. Evidence points to the fact that cases of corruption are on the increase. The cases of corruption increased from 51 in 2003 to 195 in 2007. In addition, Households in both mainland and Zanzibar were of the opinion that the ability of government to fight corruption was small, where in Zanzibar 55.8 percent considered it to be small compared to 31.4 percent who were of the opinion that the ability was great.

858. On effectiveness of measures by the government to fight corruption, the APRM assessment survey in Mainland Tanzania shows that households were of the opinion that the effectiveness was poor as expressed by 61.3 percent of respondents while experts on the other hand saw the measures as being fairly effective. In Zanzibar, households were of the opinion that the effectiveness was poor as expressed by 52.7 percent of respondents and experts on the other hand had diverse opinions between seeing the measures as being fairly effective and not being effective (40 percent each).

Money Laundering

859. Money laundering is a process whereby the origin of funds generated by illegal means is concealed (drug trafficking, gun smuggling, corruption, etc.). The objective of the transaction, which usually takes places in several stages, consists in making the capital and assets that are illegally gained seem as though they are derived from a legitimate source, and inserting them into economic circulation.

860. Money laundering in Tanzania is linked to proceeds from drug trafficking, gems smuggling, corruption, major frauds, economic crime/fiscal offences, poaching, violent crimes, arms smuggling, car theft and illegal betting and most recently terrorism. But the full extent of money laundering is not easy to establish in large part because the transactions are shrouded in secrecy and possibly also due to lack of knowledge and skills on the part of law enforcement agents to detect such activities. So shady also are the crimes that give rise to foreign-sourced funds being laundered in the country as are the sources of the foreign funds laundered in Tanzania.

861. Further, the opening up of the economy has made it possible for both genuine investors (FDIs) and potential organized criminal syndicates to infiltrate their operatives into Tanzania. Financial crime is one variant that involves illegal dealing in or transfer of money proceeds acquired through illegal transactions.

862. Illegal profits are sought from such local organized crimes as outright theft, growing of cannabis, illicit brewing and smuggling of the loot (vehicles, goods, stock, drugs, humans etc.) across borders or “trans-national organized crime”. Trans-national organized crime is a relatively recent phenomenon in Tanzania and involves mainly drug trafficking, gems smuggling, small arms smuggling, vehicle theft and money laundering. The criminal groups are organized linking local and foreign partners in clandestine schemes. Drug traffickers, for instance, get involved in money laundering in order to

avoid taxes, thus depriving the government of revenue, and use the proceeds or "dirty money" to acquire real estate and to carry out or finance other crimes (vendetta killings and terror).

863. Money laundering has become a major problem in the modern world. Organized crime is a vice that cuts across ages, nations and political regimes in search of proceeds and profits that fuel further crimes. They hurt the formal economy, social justice and tend to erode the authority of legitimate governments. Criminals move the proceeds of economic crime across territorial borders in order to evade detection and take any advantage of loopholes and weaknesses in law enforcement. Weak financial and foreign exchange regulations make countries vulnerable to the infusion of tainted funds or "dirty money" from abroad.

864. Countries in the world have decided to work together against an increasingly sophisticated combination of techniques like the use of experts and professionals to disguise the true ownership and control of illegal proceeds. In poor countries, money launderers, terrorists and such criminal groups exploit weak financial systems and weak law enforcement to transfer moneys so earned so as to continue financing crime.

865. Tanzania's evolving financial sector is still weak, relatively less sophisticated and therefore susceptible to manipulative machinations by corrupt and criminal elements. Tanzania has close to 30 banks and non-bank financial institutions including insurance services. Since 1994, the country's capital market has been growing. The government is working keenly towards an expanding competitive financial sector but the sector has to be protected from financial crime. Some of the vulnerabilities that make Tanzania susceptible to money laundering have been identified.

866. Though the scale of money laundering has not been large in Tanzania, recent criminal activities related to corruption, trafficking in humans (within and across the country), drug trafficking and incidences of terrorist activities that are related to money laundering call for appropriate legislation and capacity building in order to address them. The government sees the fight against financial crime as part of good governance and a major challenge calling for increased capacity to keep abreast with increasingly more sophisticated techniques of the vice.

867. Tanzania has taken steps to effectively deal with the problem of money laundering which is closely tied to corruption, drug trafficking and terrorism. The steps taken include the enactment of the Anti-Money Laundering Act, 2006 which became operational on the July 1, 2007. The fast growth of the financial sector and opening of the economy poses potential threats of financial crime motivated by desire for super profits.

868. The meeting between the Director of Tanzania's Criminal Investigation Department and financial institutions held in September 2001, explored ways of combating money laundering. The meeting raised issues of banking secrecy and the entry of 'dirty money' into the banking system. The Tanzanian government prepared an Anti-Money Laundering Bill which aimed at cracking down huge sums of 'dirty money' laundered in the country every year. The legislation also aimed at complying with the United Nations Convention against Trans-National Organized Crime, to which Tanzania is a signatory.

869. Tanzania recently enacted the Prevention and Combating Corruption Act, 2007, to compliment the Anti - Money Laundering Act, 2006. Other similar legislations include the Prevention of Terrorism Act, the Bank of Tanzania Act 2006, the Banking and Financial Institutions Act 2006, the Proceeds of Crime Act, Cap 256, the Economic and Organized Crime Control Act Cap 200 and the Mutual Assistance in Criminal Matters Act, Cap 250.

870. The Anti-Money Laundering Act created the National Multidisciplinary Committee on Anti-money laundering and the Financial Intelligence Unit (FIU), the latter charged with "the responsibility of receiving, analyzing and disseminating suspicious transaction reports and other information regarding potential money laundering or terrorist financing received from reporting institutions and other sources from within and outside Tanzania". As Tanzania's Anti-Money Laundering Act 2006 came into operation in 2007 capacity-building in the form of training on Anti-Money Laundering and Combating Financing of Terrorism, Financial Crime has been undertaken. The Anti-Money Laundering Act, 2006 has better provisions for prevention and prohibition of money laundering and disclosure of information on money laundering. Awareness and Prevention is emphasized by:

(i) The importance of sustainable partnership between the public and private sector in developing policies, laws, regulations and industry practices that address this challenge in a cohesive way;
(ii) Effective legal, regulatory and preventive measures;
(iii) Regime of strong and capable enforcement mechanisms – capacity of prevention, investigation, apprehension, prosecution and punishing criminals who attempt to benefit from the proceeds of criminal activities;
(iv) Sharpen investigative techniques, including financial information gathering and analysis; and
(v) Pursuit and recovery of the proceeds of financial crime can therefore make significant contribution to crime reduction and creation of a safe and just society.

871. All banks are required to report suspicious transactions (e.g. large deposits that are followed with immediate withdrawals). Currently transactions above TZS 10m must be transferred through inter-bank system.

872. As for the money laundering offences, Zanzibar does not have a specific legislation on this, though some provisions of the Penal Decree, Act No. 6 of 2004 are similar to those of the Mainland's Anti-Money Laundering Act, 2007. For example, Section 76 (2) of the Penal Decree, Act No. 6 of 2004 provides, inter alia, that;

> "Where in consequence of investigation or of a search or investigation of a bank account pursuant to any relevant laws, any public officer is found to be or to have been in possession of any property or is found to have received the benefit of any services, which he may reasonably be suspected of having corruptly acquired or received when he held public office, such public officer may be charged with having had in his possession property reasonably suspected or having been corruptly acquired …"

873. Though not explicitly mentioned, the problem of drug trafficking in Zanzibar should be seen as part of money laundering. Public education is greatly needed in order to address morals in the society.

Objective 5: Process of Accelerating Regional Integration by Participating in the Harmonization of Monetary, Trade and Investment Policies

874. Mainland Tanzania's aspirations for a competitive economy as enshrined in Tanzania Development Vision 2025, is implemented through the trade policy (URT 2003) which aims at:

(i) Stimulating growth of trade;
(ii) Effecting structural change with respect to exports (diversification);
(iii) Employment generation;
(iv) Regional dispersal; and
(v) Development of Small and Medium Scale Enterprises (SMEs).

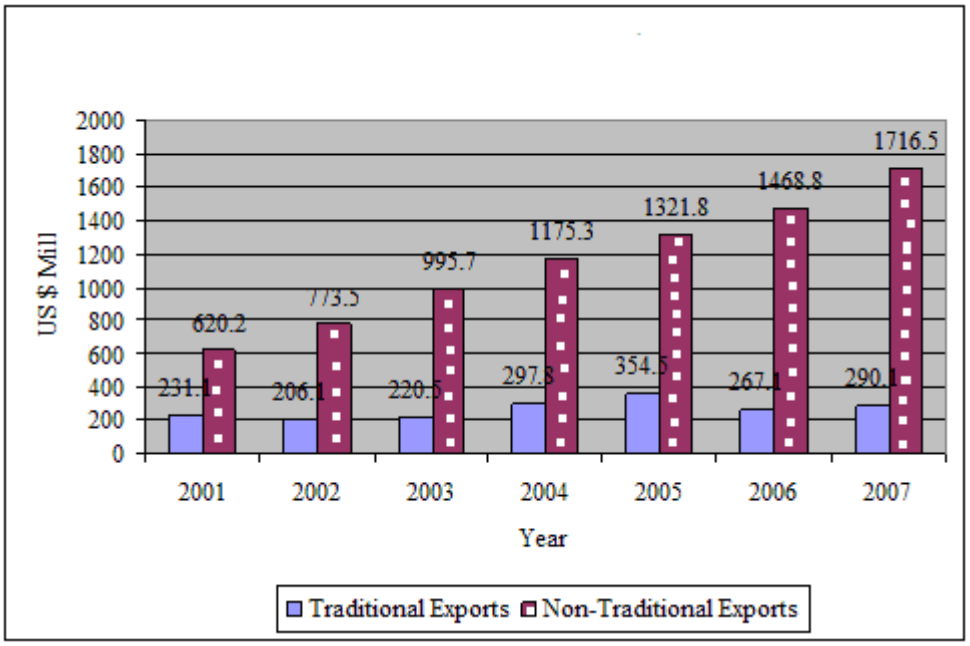
875. The instruments for achieving these aims have been spelt out as:

(i) Tariff-based instruments (ad valorem);
(ii) Non-tariff barriers/measures;
(iii)Trade defence instruments;
(iv) Trade development instruments; and
(v) International Policy instruments.

876. Zanzibar Development Vision 2020 (RGOZ 2002a) and Zanzibar Trade Policy (RGOZ 2004) guide the participation of Zanzibar in international trade, and participates in regional integration schemes through the Union Government. Zanzibar officials and experts from both public and private sectors provide expertise in the Union Government on regional integration issues.

877. As a result of the various measures to promote exports Mainland Tanzania has realized overall expansion of exports with composition changing in favour of non-traditional exports. From a total value of USD 231 million in 2001 (about a third of traditional exports), non traditional exports grew steadily to reach USD 1,716.5 million in 2007 (close to six times the value of traditional exports at USD 290.1 million).

Figure 4.1: Mainland Tanzania: Merchandise Exports, 2001-2007



878. Zanzibar has continued to face trade deficit with both the Mainland and the rest of the world. Import cover rates are low and declining in recent years, from 22.7 percent in 2003 to 16.4 percent in 2007 while trade deficit to GDP ratio has been at around 20 percent.

879. For Zanzibar to benefit from competitive export trade, it must ensure that high quality goods are produced to meet export markets standards. In this respect, there is need to develop the legal framework and strategic plan to implement Trade Policy and export strategy and develop domestic capacity to supply high quality products and services. Continued support will be provided for the development of the informal sector SMEs undertake product diversification for export and carry out complete liberalization of clove marketing. Other challenges include low capacity of Zanzibar airport and Malindi port. This calls for modernization of two gateways to regional trade. While this has been done for Malindi port, the Airport facility is in urgent need of facelift.

880. It is in order, to point out here that the recent global financial crisis may lead to low tourist arrivals thus lead to underutilization of the airport facility (and thus less foreign exchange earnings and higher imbalances on current account.)

Regional Integration

881. Tanzania, like many other developing countries, has been facing problems in multilateral liberalization under the World Trade Organization (WTO) which led to a shift of attention to Regional Trading Arrangements (RTAs). Tanzania has a broader view of trade in terms of development agenda and how to reduce overall trading cost within and outside the trading block. Tanzania participates in three RTAs, the most important being EAC and SADC. However, the position of Zanzibar as part of the Union in regional integration schemes needs to be amplified for it to realize more gains. This is an issue for the Joint Commission.

Tanzania's participation in EAC

882. East Africa has a long history of regional integration. Indeed, Kenya and Uganda first formed a customs union in 1917, with the then Tanganyika (current Mainland Tanzania) joined in 1927. Subsequently, the three countries including Zanzibar had close economic relationships in the East African High Commission (1948-61); the East African Common Services Organization (1961-67); the East African Community (1967-77); and the East African Cooperation (1993-99).

883. The present EAC has its origin in the Mediation Agreement for Division of Assets and Liabilities of the (old) EAC that collapsed for a variety of political and economic reasons in 1977. In that Agreement, signed on 14 May 1984, the three countries agreed to explore areas of future cooperation, and to make concrete arrangements for such cooperation. Subsequent meetings of the three Heads of State led to the signing of the Agreement for the Establishment of the Permanent Tripartite Commission (PTC) for East African Cooperation on 30 November 1993. Full fledged cooperation started on 14 March 1996 when the Secretariat of the PTC was launched at the headquarters of the EAC in Arusha, Tanzania. On 30 November 1999, the Treaty for the Establishment of the (current) East African Community (EAC) was signed, and entered into force on 7 July 2000.

884. EAC members are also eligible for non-reciprocal preferential treatment under the Generalized System of Preferences (GSP); the Cotonou Agreement with the EC; and the U.S. African Growth and Opportunity Act (AGOA). As least-developed countries (LDCs), Tanzania and Uganda are eligible for the Everything-but-Arms (EBA) initiative of the EC, while Kenya is not.

885. The EAC's legal framework mainly consists of:

(i) The Treaty for the Establishment of the EAC;
(vii) The EAC Protocol; and
(viii) The EAC Customs Management Act.

886. The key objective of the EAC is to develop policies aimed at widening and deepening cooperation in all fields for the mutual benefit of its members (Article 5 of the EAC Treaty). The EAC is thus to be an economic area (including customs and monetary unions, with harmonized macroeconomic policies, and ultimately a political federation), although no timetable has been established yet.

887. The EAC's specific objectives include: (a) promoting a sustainable growth and equitable development of its members, including rational utilization of the region's natural resources and protection of the environment; (b) strengthening and consolidating the long standing political, economic, social, cultural, and traditional ties of its members; (c) enhancing the participation of the private sector and civil society; (d) mainstreaming gender in all its programmes and enhancing the role of women in development; (e) promoting good governance, including adherence to the principles of democratic rules of law, accountability, transparency, social justice, equal opportunities, and gender equality; and (f) facilitating peace and stability within the region.

888. The third EAC Development Strategy (2006-2010) is focusing in the following thematic areas:

Cross-Cutting Priority Intervention Areas

(i) Macro-Economic Convergence;
(ii) Capital Markets Development ;
(iii) Development of Lake Victoria and its Basin;
(iv) Science and Technology ;
(v) Human Resource Development;
(vi) Combating HIV and AIDS Pandemic;
(vii) Promoting Participation, Publicity and Marketing; and
(viii) Relations with Other Regional and International Organizations.

Sectoral Priority Intervention

889. Interventions that deal with social services include:
(i) Agriculture and Food Security;
(ii) Industry;
(iii) Tourism and Wildlife;
(iv) Environment and Natural Resources;
(v) Provision of Adequate and Reliable Supporting Infrastructure;
(vi) Health;
(vii) Education;
(viii) Urban Development and Housing; and
(ix) Legal and Judicial Affairs.

Institutional Capacity Development of Organs and Institutions of the Community

890. The EAC has the following institutions:
(i) The EAC Council/EAC Summit;
(ii) EAC Secretariat;
(iii) East Africa Legislative Assembly (EALA);
(iv) East Africa Court of Justice (EACJ);
(v) Lake Victoria Basin Commission;
(vi) Lake Victoria Fisheries Organization;
(vii) East Africa Development Bank; and
(viii) Inter-University Council of East Africa.

Development of East African Policies/Laws/Standards

891. Under the Protocol on the Establishment of the EAC Customs Union (Article 3), the objectives of the customs union are: further liberalization of intra-regional trade in goods on the basis of mutually beneficial trade arrangements among member States; promotion of efficiency in production within the EAC; enhancement of domestic, cross-border and foreign investment in the EAC; and promotion of economic development and diversification in industrialization in the EAC. The Protocol contains nine Annexes: common external tariff (CET) (Annex I); internal tariffs (Annex II); rules of origin (Annex III); antidumping (Annex IV); subsidies and countervailing measures (Annex V); safeguards (Annex VI); and dispute settlement mechanism (Annex IX).

892. In accordance with the provisions of Article 75 of the EAC Treaty, the Protocol provides for application of the principle of asymmetry. The Protocol states that the establishment of the customs union "shall be progressive in the course of a transition period of five years from the coming into force of this Protocol". It was signed on March 2, 2004,

and entered into force on January 1, 2005. The EAC's CET was adopted as from 2005: it has three bands (0, 10 percent, and 25 percent), although rates above 25 percent apply to a selected number of "sensitive" products (Chapter III (3) (i)). EAC members are to review the maximum rate of the CET after January 1, 2010.

893. The free-trade area component of the EAC customs union is yet to be established. Trade in goods between Tanzania and Uganda, as well as imports from Tanzania and Uganda to Kenya, is duty free as from January 1, 2005, while goods from Kenya to Tanzania and Uganda fall under either Category A (for immediate duty free treatment) or Category B (gradual tariff reduction). Internal tariffs on Category B goods (some 880 tariff lines at the HS six-digit level in the case of Tanzania, and some 443 lines in the case of Uganda), specified in Annex II of the Protocol, are to be phased out as follows: a 10 percent tariff rate in 2005; 8 percent in 2006; 6 percent in 2007; 4 percent in 2008; 2 percent in 2009; and zero thereafter. The launch of the EAC Custom Union had raised expectations of increased productivity and trade in the region, has recently admitted two more members namely, Burundi and Rwanda.

Tanzania's participation in SADC

894. SADC was crafted out of the Southern Africa Development Co-ordination Conference (SADCC) in Lusaka, in 1980. At the beginning, the organization focused on functional cooperation in key sectors and used a decentralized structure of sector coordinating units and commissions for managing its program of action. The Sector Coordinating Units were directly coordinated by Member States and reported through the Secretariat to the Ministers responsible for the sectors and to the Summit. In 1992, the Summit transformed SADCC into SADC to pursue deeper cooperation

895. The SADC block comprises fourteen member states: Angola, Botswana, Democratic Republic of the Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe, each with own trade policy (having general objectives and country-specific objectives). In addition, the member states belong to multiple blocks, some with own Customs union.

Measures to promote participation and accelerate integration

896. Tariff reduction remains a key aspect of RTAs. Tanzania has made considerable progress in tariff reduction in conformity with the Protocols signed. Even before the EAC and SADC Protocols were signed, Tanzania had made considerable gradual tariff simplification from eighteen levels with rates ranging from 0 to 200 percent in the mid 1980s to seven ranging from 0 to 100 in 1988/89 and further to only four categories ranging from 0 to 25 percent (0, 10, 15 and 25).

897. With respect to regional trade, Tanzania has also made significant tariff phase down offers. By 2006 the Final Bound and Applied MFN averages were very compatible with regional integration. The simple average total final bound was 120 (agriculture 120, non-agriculture 12.7) while the simple MFN average applied tariff was 19 (agriculture 11.7 and non-agriculture 120). The maximum duty for all products was 120 (bound) and 100 (MFN applied). The number of distinct duty rates (all products) was 1 (bound) and 20 (MFN applied). In total the number of MFN applied tariff lines (all products) was only 5,425.

Table 4.14: Tanzania: Tariff Phase Down Offers-Tariff Lines at 0 (Percent)

Year	2001	2005	2006	2007	2008	2112
Tariff Line 6,215	17.5	24.4	42.8	43.1	86.3	99.3

Source: SADC Protocol on Trade

898. Tanzania's efforts and measures to address imbalances in regional trade were seen by both Mainland Tanzania and Zanzibar respondents, in the APRM assessment survey, to be effective.

Macroeconomic convergence

899. Macroeconomic convergence is necessary to promote regional integration and is desired for the following reasons:

(i) To guide certain key aspects of future economic and financial policy and its management;
(ii) To strengthen regional integration as "weaker" economies are challenged to improve their economic performance;
(iii) Reaping advantages of macroeconomic stability, as individual countries or collectively (less inflationary, stable output and prices, certainty of exchange rate);
(iv) Efficiency as transaction costs are lowered;
(v) Enhanced discipline in the conduct of fiscal policy;
(vi) Equity as "weak" economies are helped to catch up; and
(vii) Where a monetary integration is envisaged (macroeconomic convergence is necessary).

900. Regional Economic Communities (RECs) usually adopt formal frameworks (for harmonization) to guide progressive convergence. The frameworks also define deadlines and requirement for countries to submit their domestic policies for monitoring and coordination as well as measures taken towards accelerating progress to convergence. Unfortunately there is no agreed package of incentives and sanctions in this area. Many studies have shown that smaller sub groups have higher likelihood of achieving convergence faster.

901. In order to accelerate the integration process, member states in both EAC and SADC signed MOUs on convergence (both blocks in year 2000). The convergence criteria are:

(i) Budget deficit/surplus as percentage of GDP: EAC < 5 percent; SADC <5 percent by 2008
(ii) Inflation: EAC: below 5 percent; SADC: single digit by 2008
Real growth rate: EAC: minimum of 7 percent per annum; SADC: not less than 7 percent
(iii) Public debt as percentage of GDP: EAC none; SADC: less than 60 percent
Current account balance as percentage of GDP: EAC: sustainable levels; SADC: 9 percent<

902. Tanzania had achieved most of these convergence criteria of both EAC and SADC blocks by 2006 except in budget deficit and current account balance.

Benefits of Participation in Economic Integration Arrangements

903. Over time, a number of benefits are expected to prevail in Tanzania as a result of regional integration. The benefits of participation are both economic and non economic and include:

(i) Free trade in goods;
(ii) Free trade in services;
(iii) Free movement of people;
(iv) Free movement of capital;
(v) Company legislation; and
(vi) Structural funds.

904. In EAC agreement are ongoing to allow implementation of the blocking procedures that can allow countries to have the above said benefits. Member states in particular and the regional trading block in general can deepen the process of integration through:

(i) Identification of priority export sectors and priority external markets;
(ii) Strengthening market positioning of the priority export sectors and products;
(iii) Policy reforms (trade, investment and private sector development) to enhance incentives for exporting activities and to improve external market access;
(iv) Export–related business services for eliminating constraints to exporting activities;
(v) Initiating specific assistance programmes for enhancing export competitiveness and exploiting export opportunities;
(vi) Exploring production sharing opportunities; and
(vii) Strengthening production clusters and marketing networks.

Challenges and lessons learned

External Trade

905. Though trade has been growing between Tanzania and other members of both EAC and SADC, the trade balance has been mostly against Tanzania.

Table 4.15: Tanzania's Trade Balance in EAC and SADC (USD Million)

Region/ Year	2003	2004	2005	2006	2007	2008
SADC	-233.7	-213.4	-103.2	-284.8.	-355.4	-510.2
EAC	-35.5	-42.3	-64.0	-56.7	66.5	110.7

Source: Bank of Tanzania, Ministry of Finance and Economic Affairs

906. Except for 2007and 2008 (case of EAC) Tanzania faced trade deficit for the past five years or so (2003-2008). This calls for intensified efforts to empower Tanzanians to compete in regional integration schemes.

Overlapping Membership in Regional Arrangements

907. Several regional arrangements are already in place in the Eastern and Southern Africa region. These are COMESA, EAC, IOR, SADC, SACU and most countries are members of more than one such organization. E.g. seven countries are members of both COMESA and SADC. One member of the EAC is a member of SADC while two members belong to COMESA.

908. In addition to the EAC, Kenya, Tanzania, and Uganda are also members of the African Economic Community (AEC) and the African Union (AU), the Regional Integration Facilitation Forum (RIFF), and participate in different regional trade agreements. Kenya and Uganda are members of the Inter Governmental Authority on Development (IGAD), and the Common Market for Eastern and Southern Africa (COMESA), whereas Tanzania is considering re-entering COMESA after its withdrawal in 2000.

909. Kenya and Tanzania participate in the Indian Ocean Rim-Association for Regional Cooperation (IOR-ARC). Unlike Kenya and Uganda, Tanzania is member of the Southern African Development Community (SADC). In practice, this overlapping membership poses certain difficulties to the EAC countries, mainly because of differences in, inter alia, origin criteria, and intra-regional trade liberalization scenarios under the agreements.

910. Belonging to multiple regional arrangements has costs. Resources and capacity for negotiation become stretched. There are administrative costs related to often complex rules of origin. Multiple membership fees are expensive to pay and maintain. Conflicting objectives among rival arrangements have the potential of slowing progress in some areas.

911. This notwithstanding, within the Abuja Treaty (1995) framework a common market for Africa is envisaged within thirty years (a moratorium for establishing new blocks was imposed). There is also call for harmonization of arrangements among the trade blocks. The Treaty thus implicitly allows a country to belong to more than one block.

There are inherent conflicts that Tanzania faces under the two arrangements. The EAC wants complete unification of the countries involved and SADC intends to reach the next stage of integration in a relatively short period.

912. SADC will carry out a plan of transforming the block into a common market. The timetable is a free market by 2008, a Custom Union by 2010 and a Common Market by 2015. SADC held its annual meeting mid 2006, where some tough decisions needed to be taken. A few years ago, in Kampala, it was decided that Tanzania would go for SADC as a framework to negotiate an EPA with the EU. The EAC has a good relation with COMESA and signed a memorandum of understanding. Tanzania accepts what Kenya and Uganda negotiate in that framework. Tanzania has attended most of the meetings. Tanzania would like to do the same with SADC, but faces the domination of South Africa in the Southern African region, through the Southern African Customs Union (SACU). Tanzania has few trade experts to make all these negotiations.

Perceived or real losses

913. There has been quite a heated debate on Tanzania's gains in both EAC and SADC especially given the trade deficits that Tanzania consistently shows. This poses quite a challenge on acceptability by some sections of the society.

Perceived "loss" of national sovereignty

914. The unfounded fear is that now important decisions will be taken at the block level and there will be no or else very little room for Tanzanians to influence domestic policy making.

Inadequate sensitization of the population

915. The general population has not been sensitized enough on the economic benefits of integration.

Slow integration of the economies

916. The desire to integrate the economies has as derivative, a monetary union. In as much as Tanzania would wish to achieve faster results, the situation in other member states poses quite a challenge to which Tanzania can influence less (different stages in the integration process,) differing economic policies, etc. It thus did not come as a surprise when the motion of fast tracking EAC federation was rejected in a popular vote by Tanzanians.

Recent developments: COMESA, EAC, SADC to form FTA

917. In the first Tripartite Summit held in Uganda on 22nd October 2008, the Heads of State and Government from three Regional Economic Communities (RECs) namely COMESA, EAC and SADC approved the expeditious establishment of Single Free Trade Area encompassing the three RECs towards realization of an African Economic Community. The three RECs have already commissioned studies to come with, among other things, modalities and road map for establishment of FTA; as well as a legal and institutional framework to underpin FTA.

918 A single FTA for the three RECs will open an opportunity for a larger market that Tanzania has the potential of benefiting (Tanzania had pulled out of COMESA). The number of member/partner states involved is 26.

4.4 Conclusions and Recommendations

919. It is clear that there is some progress in the macro-aggregates of the economy and some move towards a greatly transparent, efficient but the main challenge has been the widening of the gaps between the rich and the poor and corresponding gender gaps. The major problem remains that of translating the macro-successes into micro-successes through some "trickle-down" mechanisms or purposeful redistribution. This is in view of the fact that despite the rosy picture at the macro-level, the ordinary households continue to remain poor (if not getting poorer).

920. The role of the public sector in directly productive areas continues to shrink. The irony of this all is that encouragement to private sector developments has, until recently, been skewed in favour of the foreign investors. This is changing, albeit slowly, and should ultimately usher in a system where there is close partnership between the local and foreign private investors as well as the public sector and civil society.

921. It is also worth to note that there is a trend toward more transparency in some areas of procurement and budgetary operations where corruption and other unethical practices were

not uncommon only five years ago. However, it is important to note also that five years are really not sufficient to clear a backlog of over thirty years of accumulated problems in the procurement and budgetary systems.

922. Other measures taken to improve economic governance in summary were:

(i) Implementation of an integrated Financial Management System;
(ii) Adopting an inclusive Public Expenditure Review/ Medium Term Expenditure Framework process;
(iii) Establishment of a commercial court – as stated earlier;
(iv) Revision of Public Finance Management and Public Procurement Act;
(v) Legal Sector Reform Programme (LSRP);
(vi) Local Government Reform Programme; and
(vii) Reforming Cooperatives

923. Though the scale of money laundering has not been large in Tanzania, recent criminal activities related to corruption, trafficking in humans (within and across the country), drug trafficking and incidences of terrorist activities that are related to money laundering call for appropriate legislation and capacity building to deal with such incidences. The government sees the fighting against financial crime as a part of Good Governance and a major challenge calling for capacity to keep abreast with increasingly more sophisticated techniques of crime.

924. Tanzania has put in place the requisite policy framework to guide its participation in international trade and regional integration. The country participates in a number of Regional Trading Agreements (RTAs) and Regional Economic Communities, the most important being EAC and SADC. The country has made considerable progress in promoting participation and accelerating regional integration through tariff reduction in conformity with signed protocols. Although trade has been growing between Tanzania and other member states, both EAC and SADC, the trade balance has been mostly against Tanzania. This calls for more intensified efforts to empower Tanzanians to compete in regional integration schemes. Another challenge faced by the country is multiple memberships in regional arrangements, causing resource constrains and problems of implementing conflicting objectives.

CHAPTER FIVE

5.0 CORPORATE GOVERNANCE

925. Corporate governance is concerned with the ethical principles, values and practices that facilitate holding the balance between economic and social goals and between individual and communal goals. The aim is to align as much as possible the interest of individual corporations and society within a framework of sound governance and common goal.

5.1 Introduction

926. This chapter makes an assessment, evaluates and responds to the following issues in relation to corporate governance objectives which are to:

( ) Provide an Enabling Environment and Effective Regulatory Environment for economic activities;

(i) Ensure that corporations act as good corporate citizens with regard to Human Rights, Social Responsibility and Environmental Sustainability;

(ii) Promote the adoption of codes of good business ethics (e.g. Cadbury and King Codes) in Achieving the objectives of the organization;

(iii) Ensure that corporations treat all their stakeholders (shareholders, employees, communities' suppliers and customers) in a fair and just manner.

(iv) Provide for accountability of corporations and directors

Corporate Governance Development in Tanzania

927. When Tanganyika became independent in 1961, the country leadership declared **poverty, ignorance and diseases** as the three enemies of the newly independent state. It embarked on a modernisation strategy based on a western growth model. Industrialisation, and mechanized farming, through private property was intended to stimulate growth which would have had a 'spill **over'** effect to the rest of the country. In practical terms, this meant a continuation with emphasis on expansion of primary production (coffee, tea, cotton etc); processing of the primary products, expansion of mineral extraction for exports to the global market rather than meet local needs. Five years later, the country recorded what the then first president Mwl. Julius Nyerere termed "growth ***without development*****"** or "development **of things not people".** Indeed, Gross National Product recorded impressive growth at a rate of 5 percent but the real per capital income was hardly 1 percent.

928. Partly due to the frustration generated by the rather slow growth of social and economic development in the immediate post independence period, the ruling party then (TANU) and its Government charted out a growth path based on the principles of socialism and self-reliance enshrined in what is popularly known as the Arusha Declaration. Development on the basis of socialism and self reliance in turn called for, amongst other things, institutionalizing comprehensive planning, effective local control of the major means of production and distribution in the economy and equal and equitable growth amongst people and regions in the society. The thrust of this model was appropriate in a poor country like Tanzania as the market could not be obliged to distribute the wealth created without state

intervention; hence the role of state in managing the major means of production was imperative. Secondly, basing on the traditional extended family principles of ***sharing, respect and human dignity***, the state through applying principles of ' good governance' was expected to support citizens in their collective endeavours to make use of their human and natural resource base, to fight poverty, ignorance and diseases.

929. The socialist experiment was however, short-lived due to a host of factors, including, the economic crisis of the 1970s, poor management of the state owned enterprises as well as a "U-turn" by the donors who had supported initiatives such as universal primary education, universal health care services, mass literacy programmes, as well as the villagization programmes. (The World Bank for instance, supported the building of ujamaa villages in Kigoma Region).

930. Under the pressure from the International Financial Institutions, and the western countries, the country was forced to submit to conditions of World Bank whelms. The signing of the Agreement between the IMF and Tanzania in 1986 was a major landmark for Tanzania's socio- political history. The government of Tanzania hence accepted the conditions of the Agreement which included: de-confinement, liberalization, and devaluation of the local currency. The key reform measures undertaken include: divesture of most state controlled and managed institutions; Financial sector reforms; Public Service reforms; Local Government reforms etc. These reforms were initiated in order to create a conducive business environment for successful private sector development and competitiveness in the national economy.

931. The Implementation of the Structural Adjustment Programs during the 1980s and 90s under the IMF/World Bank conditions, included among other things, liberalisation of the political system to facilitate the re defined role of the state in creating a regulatory and legal environment supportive of market driven economy. This is the context within which the government of Tanzania was expected to sign to existing codes and standards which regulate and support the growth of market driven economy. The following are some of the codes and standards which the country is a party to.

5.2 Standards and Codes

932. The 6th Summit of the African Heads of State and Governments Implementation Committee held in Abuja, Nigeria on the 9th March, 2003 resolved to adopt the codes and standards for economic and corporate governance. In fact, these heads of states resolved to adopt the OECD/Commonwealth Codes and Standards for economic and corporate governance. These Codes and Standards are listed as:

(i) Code of Good Practices on Transparency in Monetary and Financial Policies;
(ii) Principles of Corporate Governance;
(iii) International Accounting Standards;
(iv) International Standards on Auditing;
(v) Code of Good Practices on Fiscal Transparency;
(vi) Core Principles for Effective Banking Supervision; and
(vii) Best Practices for Budget Transparency;
(viii) Guidelines for Public Debt Management;
(ix) Labour Codes of the International Labour Organization (ILO); and
(x) Codes on Industrial and Environmental Safety and Hygiene of the World

Additionally, included in the NEPAD Framework is the African Charter on Human and Peoples Rights.

933. The African Heads of States and Government decided to adopt the OECD/Commonwealth Principles of Corporate Governance as they appear to be universally useful, and they are emulated by many countries in the world. They compose internationally accepted best practices for corporate governance. There are six principles of corporate governance in this area which are:

(i) Ensuring an effective corporate governance Framework;
(ii) Guaranteeing the rights of shareholders and key ownership functions;
(iii) Ensuring equitable treatment of shareholders;
(iv) The role of stakeholders in corporate governance;
(v) Ensuring disclosure and transparency; and
(vi) Clear responsibilities of the Board.

934. The above principles are premised on the fact that corporate governance is a set of relationships among shareholders, management, stakeholders and the Board of Directors. It is noted that there are controlling shareholders who may be individuals, family holdings, alliances or other corporate actors such as institutional investors. These can significantly influence corporate policy and behaviour. As owners of equity, institutional investors, for example, may influence decision in certain inclinations.

935. Tanzania has in principle taken various steps in a bid to conform to, and ratify many of the codes and standards adopted by the NEPAD as will be discussed in the following section addressing the APRM objectives.

Objective One: Promote an Enabling Environment and Effective Regulatory Environment

Legal and Regulatory Environment

Adoption and Adaptation of Acceptable Codes and Standards

936. Tanzania has endeavoured to develop a combination of some mandatory and voluntary standards, some of which are driven by the Trade Policy (2003), and some of which are in conformity with standards such as the International Standards Organization (ISO). Nonetheless, Tanzania still faces several challenges to adopt internationally operating good corporate standards and codes. These challenges are, *inter alia*:

(i) Development and adaptation of national standards to the international standards;
(ii) Building of an institutionalized and systematic enforcement capacity,
(iii) Developing a culture of observing the set standards; and
(iv) Building a scientific capacity to develop and operationalise standard tools in conformity with global standard setting organizations such as the World Trade Organizations (WTO) the Organization for Economic and Development (OECD) and ISO.

937. One major policy reform in the core corporate business portfolio is the adoption of Tanzania's Trade Policy (2003) which basically identifies the Trade Technical Barriers (TTB) such as the general infrastructure, health conditions and reference to specific standards

and codes to authenticate the quality and performance of corporate practice in conformity with internationally accepted standards which ensure consumer protection.

International Accounting Standards

938. The Auditors and Accountants Act of 1972 (as amended in 1995) requires all companies as legal persons, incorporated or unincorporated, and with assets and turnover exceeding set levels (which are reviewable from time to time) to employ at least one qualified Certified Public Accountant (CPA). Additionally, the Income Tax Act of 2004 requires corporations to make financial reports as tax returns twice a year. However these must be certified by a Certified Public Accountant (CPA) in public practice. Thirdly, only qualified and approved accountants can practice as tax consultants.

939. The Public Finance Act of 2001 generally defines internationally accepted and recognized procedures of some professional organizations. The National Board of Accountants and Auditors (NBAA) has the mandate of setting standards for training and accounting/auditing professional practice. It has the mandate of ensuring conformity to, and compliance with, the International Standards on Auditing (ISA), the International Accounting Standards (IAS), the International Financial Reporting Standards (IFRS) as well as the Tanzania Financial Accounting Standards (TAS). All of these have been adopted by Tanzania. Implementation is in process but a major challenge remains that of enforcement across the board. The overseeing body i.e. NBAA is too thin to ensure compliance among practitioners.

940. The mandate given to the NBAA is huge. It is rather overstretched when it comes to its capacity to conduct spontaneous, on-site and off-site inspection to ensure that the set standards are fully complied with. The NBAA needs a development of more capacity to function as (a) a regulator of standards and (b) a professional accounting body. It is seen to be doing more of the professional accounting body than being an effective regulator of adherence to standards and codes. It simply means that even though Tanzania has adopted the IFRS, IAS and ISA since 2004, it lacks an effective institutional mechanism to ensure full compliance with these standards.

Core Principles of Effective Banking Supervision

941. Tanzania is a signatory and has adopted the Basel I and to some extent Basel II on Principles of Effective Banking Supervision. The Bank of Tanzania (BOT) regulates financial reporting by banks and non-banking financial institutions as provided for by the Banking and Financial Institutions Act, 2006 and the Banking Supervision Regulations. The NBAA and the BOT require IFRS and IAS conformity as well as subscribing largely to Basel II. Banks must prepare and submit unaudited financial statements in the prescribed format, which are apprarently not totally in conformity with the IAS, to the BOT's Directorate of Banking Supervision. It also requires relevant institutions to submit audited financial statements within 45 days after the end of the quarter and publish results in newspapers. In addition to the above requirement, the corporations' annual accounts must have been drawn up in accordance with the Companies Act, Cap. 212 which became effective in 2006 and which replaced the Company Ordinance of 1931 which had been in force for nearly 70 years.

942. Banking and Financial Institutions Act (2006) has the following important provisions.

(i) Section 23(3):

- Every bank or financial institution shall have an **"Audit Committee**"

chaired by a non-executive member of the Board of Directors.

- Every bank and financial institution shall also have internal auditors appointed by the Board who shall report to the Audit Committee. They will be responsible for verifying the correct and efficient implementation of the internal control system and timely identification and management of credit, financial, market, operations, legal and any other risk affecting the bank or financial institution.

(ii) Section 45(1):

- Every bank or financial institution shall at all times make available a copy of its last audited financial statements, including notes to the accounts in a conspicuous media to the public.

(i) Section 53(1):

- Approval of BOT for voluntary liquidation/winding up or dissolution of a bank or financial institution shall not prejudice the rights of depositors or creditors to payment in full of a claim, owner of funds/property held by the bank or financial institutions to the return thereof.

943. The provisions under the Banking and Financial Institutions Act 2006 and other instruments imply that Tanzania largely subscribes to acceptable international principles, standards and codes, in financial controls and reporting, even to a large extent, the protection of stakeholders and shareholders in the event of a company liquidation as stipulated in Section 53(1) and 45(1).

Core Principles for Securities and Insurance Supervision and Regulation

944. There is an Insurance Supervisory Department within the Ministry of Finance and Economic Affairs. This regulates the financial reporting practices of registered insurance companies under the Insurance Companies Act (1996), and the Insurance Regulations (1998). Apparently the provisions under these instruments do not make it mandatory that insurance companies' accounts should be in conformity with the IFRS/IAS. The instruments just state that insurance companies should conduct their businesses in accordance with international accounting standards without specifying the relevant and applicable standards.

945. Notwithstanding the above weakness, the NBAA prescribes the IFRS/IAS and ISA to companies given its mandate to set accounting standards in the country. The NBAA accounting standards are mostly informed and moulded according to IAS and ISA because the NBAA has resolved to adopt the IFRS/IAS and ISA wholesale with effect from 2004. As stated above, compliance with these standards is difficult to assess because the NBAA lacks the capacity for systematic enforcement.

Labour Codes of the International Labour Organisation

Subscription to the ILO and Social Security

946. Tanzania has been a member of the International Labour Organization (ILO) since 1962. As a member of United Nations, she has participated in the annual International Labour Conferences (ILC) which, amongst other functions, adopts International Labour Standards (ILS) in the form of Conventions and Recommendations. To-date, a total of 185 Conventions and 194 Recommendations have been adopted by the ILC. Tanzania has ratified 45 Conventions since becoming a member of the ILO, and it is therefore obliged, as all other members of the ILO are, to implement them through law and practice.

947. Since 1919, the International Labour Organization has maintained and developed a system of International Labour Standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity. In today's globalized economy, international labour standards are essential components in the international framework for ensuring that the growth of the global economy provides benefits to all.

948. The capacity of the International Labour Codes, made up of all conventions and recommendations serve as a regulatory instrument that depends on the extent of ratification by member states, the actual application and enforcement of the norms and the degree to which the norms match national and local circumstances. Various provisions of the Conventions that Tanzania has ratified have been integrated into the legal fabric of the country through various labour laws and regulations that have been enacted since the country's independence in 1961. Among the Conventions that Tanzania has ratified are the following:

(i) Freedom of Association and Protection of the Right to Organise No. 87 of 1948 and the Right to Organise and Collective Bargaining No. 98 of 1949;
(ii) Forced Labour Convention No. 29 of 1930 and Abolition of Forced Labour Convention No.105 of 1957**;**
(iii) Equal Remuneration Convention, No. 100 of 1951 and Discrimination (Employment and Occupation) Convention No.111 of 1951;
(iv) Minimum Age Convention. No 138 and Worst Forms of Child Labour Convention 182 of 1999;
(v) Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16);
(vi) Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148);
(vii) Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152); and
(viii) Chemicals Convention, 1990 (No. 170).

949. These International Labour Standards are backed by a supervisory system that is unique at the international level, and that helps to ensure that countries implement the conventions they ratify. The ILO regularly examines the application of standards in member states and points out areas where they could be better applied. If there are any problems in the application of standards, the ILO seeks to assist countries through social dialogue and technical assistance. Tanzania is one of such countries that have been subjected to such procedures of the ILO, and has benefited from assistance in this regard.

950. The principles enshrined in ILO Conventions are applied through law and practice. As mentioned earlier, having ratified ILO (Core) Conventions, the government has enacted laws since independence aimed at giving effect to the provisions of the conventions at the national level. Various amendments to the labour law regime have taken place over the years, aimed at both ensuring effectiveness to the provisions of ratified conventions and ensuring that the laws facilitate the socio-economic reforms the country has been implementing over the last decade. Unfortunately, application of the labour law regime, and consequent adherence to the principles enshrined in the ratified conventions to which Tanzania subscribes have not been without hiccups. The reluctance, for example, of some employers to recognise trade unions at workplace in particular in the mining industry and reluctance of some employers to accept labour inspectors in their premises, continue to be obstacles to compliance with International Labour Standards.

Economic Regulation and Fair Competition

951. The government is committed to a fair competition policy in order to enhance the freedom of trade, choice by consumers, and fair access to markets. In this regard the country has enacted the Fair Competition Act of 2003. This is a legislation which regulates the conduct of companies in the market against unfair competition. It is administered by the Fair Competition Commission which is based in the Ministry of Trade, Industry and Marketing.

952. The Commission prohibits anti-competition practices and abuse of one's dominant market position. Some industries in the country have absolute opportunities to become monopolies. The cement industry in the country, for example, enjoys a unique monopoly whereby the demand for their commodity by the fast growing construction industry far surpasses its present production at the Mbeya, Tanga and Dar es Salaam factories. The Canadian company, Barrick, and the South African firm AngloGold Ashanti (AGA) are the main giants in the mining industry in Tanzania. It is because of this and other potential trading monopolies that the government has decided to establish the Fair Competition Commission which has replaced the Fair Competition Bureau.

The Banking and Financial Institutions Regulatory Framework

953. The finance legal framework is structured by several instruments including:

i) The Bank of Tanzania Act of 2006;
(ii) The Banking and Financial Institutions Act, 2006;
(iii) The Cooperative Societies Act of 1991;
(iv) The Microfinance and Micro-Credit Activities Regulations (2005);
(v) The Financial Cooperative Societies Regulation (2005); and
(vi) The SACCOs Regulations (2005).

954. There are some important institutions and instruments set out to regulate behaviour in dealing with financial management. These control-oriented institutions institute requirements and conditions provided for overseers such as:

i. BRELA and Registrar General of Zanzibar when companies are registered;
ii. National Board of Accountants and Auditors (NBAA);
iii. The Registrar of Co-operatives;
iv. Tanzania's Accounting Standard No. 8 on Disclosure in the Financial Institutions; and
v. International Standards on Accounting and Audit and the International Financial Reporting Standards to which the NBAA strives to strike conformity.

Facilitation of Corporate Business Growth

955. In addition to the financial institutional framework, the infant Tanzanian corporate entity requires the establishment of nurturing policies, institutions and legislation. These have included, *inter alia:*

(i) The National Investment Policy, and Zanzibar Investment Policy, for the purpose of promoting investments by the government's granting of investment fiscal and non fiscal incentives;
(ii) Establishment of more transparent legal framework like the review of Tanzania's Company Act, 2002;
(iii) Employment and Labour Relations Act, 2004 which guarantees harmony and safeguards the interests of the investors and employees;
(iv) The implementation of the Investment Policy itself by the creation of the Zanzibar Investment Promotion Authority (ZIPA) and Tanzania Investment Centre (TIC) as

one-stop-centres where the would-be investors can efficiently get all the necessary information required to establish and manage business in Tanzania;

(v) Tax incentives to attract investors in which the tax incentives include investment allowance on capital expenditure, investments allowances on infrastructure expenditure, preferential tax rates for withholding tax on dividends, royalties and interest and other preferential tax treatment;

(vi) Low corporate taxes which are competitive enough to ensure profits and to attract more investments; and

(vii) Establishment of public-private sector dialogue institutions like Tanzania National Business Council and Zanzibar Business Council.

Facilitation by the National Microfinance Framework

956. The National Microfinance Policy (NMP) was adopted in 2000 and its implementation started in 2001. It is supposed to harness the potential microfinance capacity of stakeholders in order to transform that potential for industrial development. In this regard the policy objective is to make microfinance an integral part of the mainstream financial system and thereby stimulate the country's financial markets and flows.

957. The National Microfinance Policy has given rise to several actions to better facilitate the growth of the corporate (business) sector. First there has been established the Microfinance and Micro-Credit Activities Regulations (2005) which set conditions for minimum core capital and other licensing requirements. Companies falling in this bracket are subject to the supervision of the Bank of Tanzania. The minimum core capital for microfinance companies is set at Tsh 800 million (with companies with branches in various areas in the country), and Tshs. 200 million for companies without branches.

958. The Financial Cooperative Societies (FICOS) Regulations of 2005 also set standards for a minimum deposit of Tsh 800m to be supervised by the Bank of Tanzania. It is noted that as SACCOs grow in capital, their supervision passes on from the provisions under the SACCOs Regulations (2005) and Cooperative Act of 2003 to the FICOS regulations upon the crossing of the set benchmarks.

Tanzania's Corporate Framework

959. Tanzania is a member of regional, continental and international organizations in which common and mutual benefit standards, principles and codes have been agreed upon. Therefore Tanzania has ratified and adopted some codes and standards against which her corporate governance can be measured.

960. Tanzania has adopted quite a number of internationally accepted corporate governance standards and codes. It is on the basis of these that some discussion can be pegged. There are also some internal and institutional codes and standards which are in conformity with international standards and codes. Most of the domestic regulatory and legal instruments like, for example, the Banking and Financial Institutions Act of 2006, the Microfinance and Micro-credit Activities Regulations of 2005 and the Fair Trade Practices Act of 2004, and the law institutionalizing the National Board of Accountants and Auditors are instruments which are in conformity with the internationally accepted standards of the OECD, ILO, WTO, ISO, IAS, ISA etc.

961. In effect Tanzania's approach has been to ratify, adopt and implement the codes and standards with a view to improving corporate governance in accordance with the agreed APRM Objectives, Standards, Codes, Criteria and Indicators (OSCI) as specified in the APRM official document to guide corporate governance reform. The APRM's Objectives Standards, Codes and Criteria (OSC) identify five broad objectives for guiding corporate governance reform in Africa. These have been mentioned in the introductory part of this chapter.

962. Suffice here to emphasize that Tanzania has adopted, ratified and signed many conventions, some of which are mentioned above. These codes and standards are meant to address and pursue the APRM Objectives, Standards, Codes and Criteria (OSC). Operationally there is a difference between an agreement to adopt a Standard or a Code and endorsing it in a national policy and legal frameworks for the purposes of implementation. Therefore adoption as such is not necessarily equivalent to ratification (interfacing of what has been globally adopted with the national or sector specific interaction program effects) interpretation and specifically programming for it. It is after an adoption that ratification comes into play, and finally an implementation, that is, various actions to achieve the objectives of the standards and codes. In Annex one, we show some of the codes and standards which have been adopted by Tanzania. We attempt to examine the extent of their ratification and make some evaluation of the extent of adoption which leads to implementation.

Nurturing an Infant and Growing Private Sector

963. Prior to Tanzania's economic liberalization the economy was state dominated and driven and the private sector played an insignificant role because of the government's policy of nationalization. Therefore the domestic private sector in Tanzania is relatively small and infant when compared to countries like Kenya where the private sector was encouraged to grow and the State playing a facilitating role. Tanzania therefore faces many challenges. The ongoing government reforms in the corporate sector are in many ways geared at nurturing an infant corporate business and industrial sector. In countries where they had encouraged private sector growth one can easily see an appreciable growth of private companies. Kenya, a neighbouring country, for example, has three of its companies listed on the Dar es Salaam Stock Exchange, while Tanzania has no company which is cross-border listed on the stock exchange business in the region. Capitalization through stock exchange is very low but growing in Tanzania as there are also deliberate state initiated efforts to facilitate its growth.

964. Following the country's policy of denationalization and privatization, the government has had to sell out (divestiture policy option) its formerly state owned companies to foreign companies with little participation by the domestic private companies given the fact that the domestic private sector has had little experience and is devoid of enough capital to be able to compete with seasoned foreign companies vying for business opportunities available in the country.. Medium and large scale mining, financial, insurance and manufacturing entities have insignificant domestic private capital participation. Tanzania has more or less been pre-occupied with developing, and reforming its institutions to facilitate the growth and participation of the private sector in a globalizing corporate economic development. Given the country's infancy of the domestic private sector, one sees the dominance of the foreign private capital participation in areas such as banking and mining, while the domestic private capital participation is trailing behind, and occupying micro projects such as artisan works, shop keeping and relatively few medium and small scale enterprises. The mining industry for

instance, two Canadian companies, Barrick and Tanzania Royalty Exploration Corporation control over 50 percent of Tanzania's gold projects. Barrick owns three of the seven major gold mining projects in Tanzania, while TRE controls over 60 percent of the mining rights in the mineral rich area of Lake Victoria.

965. The structure of the corporate sector shows some discouraging statistics. The Business Survey of 2003-2005 by the National Bureau of Statistics shows the following business ownership structure as shown in Table 5.1.[297]

Table 5.1: Business Ownership Structure in Tanzania Mainland

Business Ownership Type	Number	(Percent) Business	(Percent) Workers
Wholly/Mostly Government Owned	2,473	4.0	30.5
Joint Government/Private Venture	157	0.3	2.0
Private Company only	2,479	4.0	14.1
Individual/Family Owned	53,286	86.8	42.2
Others	3,009	4.9	11.2
	61,404	**100.0**	**100.0**

Source: *National Bureau of Statistics: Business Survey 2003-2005.*

966. The distribution of businesses in the manufacturing industry was 51.3 percent mainly furniture, 25.2 percent in textiles and 16.9 percent other manufacturing entities (NBS Business Survey 2003 – 2005). Again such statistics indicate that the manufacturing sector is fairly undeveloped in Tanzania, hence the predominance of trading activities (retail and wholesale) as shown in Table 5.3. This situation applies to Zanzibar as well as shown in Table 5.3.

967. Again the National Bureau of Statistics Survey shows that the trading type, by and large, dominated the market to a level of 54 percent followed by hotels and restaurants category (15.1 percent) as shown in Table 5.2.

Table 5.2: Mainland Tanzania Structure of Business Participation by Type of entity and Category

	Type of Entity	Business (Percent)	Workers (Percent)
1.	Manufacturing	10.5	11.0
2.	Trade	53.9	15.8
3.	Hotels and Restaurants	15.1	10.5
4.	Public Adm. & Other Services	3.1	21.5
5.	Transport & Communication	2.4	3.1
6.	Financial Intermediation	0.6	1.0
7.	Other categories	14.4	27.1
		100.1	100.0

Source: *National Bureau of Statistics, Dar es Salaam Region Business Survey 2003-2005. Business classification was according to the International Standard Industrial Classification (ISO) Revision 3.*

[297] Categorization by ownership structure in terms of local, joint local-foreign and foreign owned, was not provided by the survey.

968. Table 5.3 reveals the dominance of trade (53.9 percent) over the other categories. Manufacturing contributes only 10.5 percent to the total and employs a proportionately large number of employees. The Trade category is mainly shop-keeping business on medium and small scale with some disproportionate number of employees owing to the fact that the small scale shop-keeping is a family or household business. We therefore note that the corporate entities and local capitalization processes are in their very early stages of growth.

969. Much as it is known that the Ministry of Industry, Trade and Marketing covers both the mainland and isles in the area of external trade, it is important to disaggregate the industrial and business statistics to throw more light on Zanzibar as shown on Tables 5.3 – 5.7. As a small island economy, Zanzibar has a long way to go in terms of industrial development. This is why ZIPA is currently concerned with campaigns to attract direct foreign investments.

970. Tanzania is compelled to create very generous conditions in order to attract foreign capital investments. Tanzania goes a mile further by giving confidence to foreign investors to plough back their profits to revamp the manufacturing sector. Big foreign companies like the Ashanti Gold, Barrick Gold Mines, De Beers and "starred new hotels" operating in Tanzania have their stocks listed abroad. They are not listed on the DSE. Originally wholly government owned banks like the National Micro-finance Bank (with branches all over the country) and the National Bank of Commerce with foreign majority share holding are not listed on the Dar es Salaam Stock Exchange (DSE) at the moment. Corporate governance and facilitation have many challenges, and a long way to go to make a significant impact on the national (domestic) economic growth including the creation of policy conditions to have the above big companies to start participating in the DSE capitalization initiative.

971. There have been concerns by both citizens and the government on the abuse of this flexibility by foreign companies particularly in the taxation regime and fiscal policies. In his inaugural address to the nation in December 2005 for instance, President Jakaya Kikwete outlined the need for Tanzania to benefit from the mining sector. Furthermore, during his May Day Speech in 2006, he promised to review the mining contracts to ensure that the nation is benefiting from the minerals. The same month a committee[298] was formed to review the Mineral Development Agreement signed with the companies. In September 2006, the review committee submitted its report to the government, recommending both substantive changes to the mining and fiscal laws relating to mining. Some of the proposals included, state participation in development of infrastructure at the mines, corporate tax to be paid at the start of production and not after recovering investment costs, compensation for people displaced by mining to be pegged to the values of mineral exploitation on their land; and mining companies to contribute to a government fund for environmental rehabilitation. Most of these proposals were rejected and never took off the ground.

972. The State of infancy of the corporate sector in Zanzibar is not much different from that of Tanzania Mainland. The corporate sector in Zanzibar is characterised by small enterprises as shown in Table 5.3.

[298] The committee was chaired by Mark Bomani and is referred to as Bomani's Committee.

Table 5.3: Comparable Sizes of Business Entities: Zanzibar and Mainland

	Zanzibar	Dar es Salaam	Other (Mainland)
Micro Entities (1-9 Workers)	34 percent	14 percent	10 percent
Small (10-49 Workers)	54 percent	37 percent	49 percent
Medium (50-99 Workers)	11 percent	22 percent	14 percent
Large (100-499 Workers)	0 percent	20 percent	23 percent
Very Large (500+ Workers)	0 percent	7 percent	4 percent

Source: World Bank Survey of Investment Climate, 2008.

973. It is noted that Zanzibar is a relatively small island economy with very few large scale business undertakings. Many of the enterprises are in the area of firms employing 1-49 workers which engage about 88 percent of corporate sector workforce, compared to Dar es Salaam's 51 percent and 59 percent in other parts of Tanzania Mainland.

974. Small scale manufacturing entities of sole proprietorship engage 58.5 percent of the workforce in the manufacturing concerns. The trading sector in the category of sole proprietorship engages 75.6 percent of the workforce in that category. On the whole the sole proprietorship engages 69.4 percent followed by partnership (14.3 percent) and private company (10 percent). Table 5.4 presents the state of Zanzibar's corporate sector, at least using employment statistics.

975. The Revolutionary Government of Zanzibar, like that of the United Republic, offers very generous and attractive terms and incentives to the potential and actual private sector investors in order to change the structure of Zanzibar's corporate business and dominance of single proprietors and small scale enterprises to companies engaging more in manufacturing than in retail trade. Upon examining the characteristics of registered businesses in Zanzibar one realises that the corporate sector is in its miniature state as shown in Table 5.4.

Table 5.4: Zanzibar: Private Sector by Type of Registration and Sub-Service

Registration	Mining and Quarrying	Manufacturing	Electricity and Water	Construction	Trade	Trans-port	Finance	Total	Percent
Sole Proprietorship	5	1,096	2	3	7,262	388	32	8,788	84 percent
Partnership	19	238	0	1	896	56	4	1,214	11.7 percent
Cooperatives	4	95	0	0	117	17	2	235	2.3 percent
Private Company	0	16	1	4	59	41	8	129	1.2 percent
Others	0	0	0	0	4	4	0	8	.07 percent
Total	28	1,445	3	8	8,338	506	46	10,374	100 percent

Source: Revolutionary Government of Zanzibar and UNIDO, 2003

976. One realizes the predominance of the sole proprietorship (84 percent) across the various goods and services produced in Zanzibar. Again like on the mainland Tanzania, the category of trade on that group of sole proprietorship (predominates (83 percent), and this is mainly small scale trade which also happens to be the biggest employer (75 percent) as shown in Table 5.6. Entities or investments such as domestically held private large scale companies are in their relative infancy. But the category of companies is largely dominated by trading investments to a tune of 57 percent while manufacturing occupies only 18 percent of employment places as shown in Table 5.5.

Table 5.5: Zanzibar: Employment in the Private Sector

Registration	Mining and Quarrying	Manufacturing	Electricity and Water	Construction	Trade	Transport	Finance	Total
Sole Proprietorship	37	3,865	40	30	15,210	1,079	98	20,359
Partnership	128	1,145	0	2	2,668	240	16	4,199
Cooperatives	54	1,056	0	0	566	112	9	1,797
Private Company	0	540	0	224	1,675	480	34	2,953
Others	0	0	0	0	10	13	0	23
Total	219	6,606	40	256	20,129	1,924	157	29,331

Source: Revolutionary Government of Zanzibar and UNIDO, 2003

Reflections on Investment Incentives

977. It is important to note that there is a generous corporate investment climate which has been provided to foreign and local private investors. This is not free from abuse. Investors have stayed in the country for years without paying significant taxes simply by manipulating tax-related investor related incentives.

978. The Tanzania Investment Act attracts investments to Tanzania by creating very attractive conditions (Act No.26 of 1997 Section 17.1) under certificate of incentives which allow investors to be exempted from taxes levied under the provisions of the Income Tax Act of 1973, the Customs Tariff Act of 1976 and the Sales Tax Act of 1973. The tax exemptions are unconditionally granted (Section 21), and under section 19.1, any amendments on the Act shall not be made to the detriment of the investor enjoying the benefits thereby provided. Such benefits include for example, unconditional transferability through any authorized dealer bank in any convertible currency of:

(i) Net profits or dividends attributable to the investment;
(ii) Royalties, fees and charges in respect of any technology transfer agreement;
(iii) Loan servicing; and
(iv) Remittance of proceeds.

979. Therefore, without any proper regulation in place and strict supervision by the two one-stop centres, that is, the Tanzania Investment Centre and Zanzibar Investment Promotion Authority, investors can over-exploit and abuse the incentives provided under the Acts. They can playing around with the loop holes to make unjustifiable profits, and to avoid substantial amounts of tax dues. When all this is happening an informed public can continue watching hopelessly, especially those who have no participative power to exploit such business opportunities. To some extent, the public cannot be blamed because all these transactions are supposed to be confidential, and done by some people entrusted with public office to care for common resources and interests. Investment contracts are presumed to be confidential in Tanzania.

980. APRM study indicated that it is the same authorities who allow foreigners to abuse the business opportunities reserved for local small-scale investors. This study observes another anomaly also. Today in the Kariakoo area of Dar es Salaam city and other areas in Zanzibar, it is common to find small scale foreign investors involved in petty venture mainly reserved for the local people. These petty traders include tour guides, retail trader in items like selling plastic flowers. In the process the local business persons fail to compete because of reduced investment opportunities to exploit the investment incentives and other exemptions as investors which small scale investors do not have[299].

981. In addition to the incentives mentioned above, there are also critical other tax holidays the country has provided. These include the following:

(i) Recognition and protection against non commercial risks;
(ii) Zero percent on import duty on project capital goods;
(iii) Abolition of Pre-shipment Inspection on imported raw materials;
(iv) Pay and refund scheme for excise duty on fuel purchased by eligible companies;
(v) Zero rated VAT on exports;
(vi) Indefinite carry forward of losses against future profits;
(vii) VAT exemption on ground transport run by tour operators, milk packaging materials, computers printers, hospital equipment and medicaments; and
(viii) Land rent at Tshs. 200 per acre per annum on commercial agriculture forms, livestock ranches and forests.

982. The report 'A Golden Opportunity?' released by the Christian Council of Tanzania (CCT), the National Muslim Council (BAKWATA) and the Tanzania Episcopal Conference (TEC) in collaboration with Christian Aid (UK) and Norwegian Church Aid shows that the government and its people do incur great losses of tax revenue in the extractive industry. 'We calculate that Tanzania has lost at least $265.5m in recent years as a result of an excessively low royalty rate, government tax concessions that allow companies' to avoid paying corporation tax and possibly even tax evasion by some companies if allegations are true. This is a very conservative estimate, in that it does not cover all the gold mining companies or all figures for recent years (which are not publicly available). Neither does it cover the financial costs of other tax incentives such as VAT exemption, which are extremely difficult to

[299] This awkward situation had been addressed in the now repealed National Investment (Promotion and Protection) Act, 1990 (Act No. 10 of 1990) which clearly set out areas for investment by foreigner and those specifically reserved for the local people.

estimate. These extra revenues could of course provide a huge boost to tackling poverty in Tanzania,' reads the executive summary of the second edition of the report.

983. Commissioned by the three main religious bodies in Tanzania and concerning a South African company, this report states that, 'Company figures show that AngloGold Ashanti has paid taxes and royalties totalling US$144m in 2000-07 and over the same period has sold around $1.55bn worth of gold, meaning that it has paid the equivalent of around 9 per cent of its exports in remittances to the government. Barrick, meanwhile, does not state on its website how much in taxes and royalties it pays to the Tanzanian government. Our calculations show that it is paying a figure equivalent to around 13 per cent of its export sales in remittances to the government.'

984. On their visit to the Bulyanhulu Gold Mine site owned by Barrick Gold Corporation, the general manager, Greg Walker, told the journalists that Barrick is not paying corporation taxes. They will only start paying corporation taxes in 2014 when they will begin realising profits. The report also pinpoints the loopholes from the government of Tanzania's tax regime which give the investors in the extractive industry opportunities for manipulation.

985. 'The country's generous tax concessions mean that they and other companies are able to avoid declaring a taxable income. The Public Accounts Committee (PAC) presented a report to Parliament in February 2007 noting that mining companies declared losses of US$1.045bn between 1998 and 2005. It put the losses down to the capital expenditure allowance and weak documentation of records by the Ministry of Energy and Minerals,' reads the report.

986. While the investors in the mining sector declare losses all the time, in the wake of the uproar from the citizens about the rampant looting of the natural resources, the government contracted an independent audit which found that the mining companies were fabricating their losses. 'An independent audit conducted by Alex Stewart Assayers (ASA) in 2003, and leaked to the media in 2006, alleged that four gold mining companies, including Barrick and AGA, overstated their losses by US$502m between 1999 and 2003, indicating that the government lost revenues of US$132.5m. The audit also noted that thousands of documents were missing that would have shown whether royalties valued at US$25m were, in fact, paid.'

987. The *Golden Opportunity* concluded that large-scale mining operations have impoverished Tanzanians far more than those of artisan mining. For instance, it claimed that the country's six major gold mines employ a total of 7,135 people. However, large-scale mining has made many more unemployed. Before the arrival of multinational companies, small-scale artisan miners dominated gold mining; they used simple tools and techniques, providing small incomes for a large number of people who were generally uneducated and poor. One study estimated that by the late 1990s, the sector employed between 500,000 and 1.5m people. By 2006, a report commissioned by the World Bank estimated that there were around 170,000 small-scale miners in Tanzania. Comparing these figures, large-scale mining may have made around 400,000 people unemployed, as per Golden Opportunity report.

988. There are also many complaints of actual killings of artisan miners and the removal of small scale miners from Bulyanhulu before Barrick Gold took over from Sutton Resources (another Canadian mining company). These families' lives are currently full of hardship and uncertainty; their resettlement from Bulyanhulu left much to be desired. One miner lamented to the team of the members of the Golden Opportunity that;

'My sons were buried alive in the mining shafts when they went back to continue with artisan mining activities by permission from the government. I know that Barrick will not let the truth be known but will continue to call us into meetings which have no other purpose than to silence us with empty promises,' said Melania Baesi, an artisan miner and a mother whose two sons were allegedly buried alive in the takeover operation.

989. It is noted that the potential local investors are unaware of the incentives. They do not apply for the TIC and BRELA certificates, and they can hardly enjoy these incentives.

990. It is noted further that the term "tax holidays" is used rather generously to indicate preferences and redemptions on investors. It must not be construed that local investors are totally excluded from tax preferential treatment on all listed aspects. Local investors can, for example exploit the provisions under the tax exemption on commercial land rent, zero-VAT rated exports and VAT exemption on computers, printers, hospital equipment and pharmaceutical raw materials importation.

Small Scale Business Enterprises and the Informal Sector:

991. The Tanzania Government has recently recognized that the informal sector has both economic and social value, and that it has a critical role in combating poverty. The Tanzanian Government believes that a third of the GDP originates from the small and medium enterprise (SME) sector. The SMEs operating in the informal sector alone consist of more than 1.7 million businesses engaging about 3 million people, or about 20 percent of the Tanzanian labour force.((Ministry of Trade and Industry: 2001) The Government estimates that there are about 700,000 new entrants into the labour force annually, which cannot be absorbed in the formal sector employment. A large segment of this labour force is absorbed in the informal sector. In 1990, the informal sector was estimated to be contributing only 33 percent to the GDP of Tanzania. As a major provider of jobs, the sector does contribute in the informal transfer of knowledge from one generation to another.

992. Most of informal sector operators engage in these activities because they do not have alternative income earning activities, and yet, most of informal sector operators claim that formal banking shun them. Informal sector operators including cross border traders do not have access to banking and formal credit facilities, and when they get access, the amount of credit is too small to facilitate their expansion of the businesses. Microfinance policies emphasize group collateral, and hence disadvantage individual small scale operators who would wish to access credit on their own individual capacity they also do not have access to market information. This again perpetuates poverty levels of small scale traders as they are unable to transit from small scale informal to medium and large scale formal trade. Additionally, the tax regimes are anti poor traders and double disadvantages women who have very little or no information on taxation policies (Meena R, Mary Rusimbi, and Makinda J (2008)

993. Currently there is a Presidential Fund accessible to all Tanzanian citizens who wish to acquire capital for the small and medium scale enterprises. The funds are given as soft loans to individuals with business plans, but who cannot find collateral to get normal bank loans.

994. In the process of the growth of the SMEs, they become re-categorized when they employ 5-49 persons, or having some capital investment amounting to Tanzanian shillings

(Tsh) 5 million to Tsh. 200 million. The categorization is further shown in Tables 5.4.-5.6 in which the level of investment is normally taken to be the deciding factor.

Table 5.6: Categorization of Enterprises by size in Tanzania

Category	Employees	Capital Investment in Machinery in Tshs.
Micro Enterprises	1 - 4	Up to 5,000,000
Small Enterprises	5 - 49	Above 5,000,000 to 200,000,000
Medium Enterprises	50 - 99	Above 200,000,000 to 800,000,000
Large Enterprises	100+	Above 800,000,000

Source: *Small and Medium Enterprise Development Policy 2001-2011*

995. It is noted that the Tanzanian government appreciates the fact that the country lacks the required internationally competitive large scale companies. It is in this spirit that it has formulated the Small and Medium Enterprises Policy (2001-2011) with the express intention to nurture, develop and facilitate the informal sector. It has gone a step further to formulate the "Sustainable Industrial Development Policy (2006-2020)".

996. It is also in this line of policy development that the ILO, UNIDO and the UNDP did sponsor a "***Road-map Study of the Informal Sector in Mainland Tanzania"*** in 2002. At that time there had been some feeling that the investment climate in Tanzania was not conducive, and tended to discourage large scale investors. However, a lot has been done to remove some of the stumbling blocks faced by large scale investors.

997. The *"Informal Sector Roadmap"* identified some key strategies and regulatory constraints on micro and small enterprises. These constraints have been addressed by various government policies including the National Trade Policy and the Sustainable Industrial Development Policy (2001-2011).

998. In terms of institutional and policy facilitation, Tanzania has taken a number of steps to assist the growth of the corporate micro entities that may one day become medium and large scale enterprises, capable of contributing to the capitalization of development investment.

***The National Microfinance Framework: National Microfinance Policy (NMP*)**

999. This was approved in 2001. It was meant to harness microfinance stakeholders in the industry. The NMP aims at formalizing and making microfinance an integral part of the country's financial system, to make it a possible source of market capitalization (financial markets) and to have clear action by which the government will be playing a guiding role and creating an enabling environment.

1000. In order to facilitate a process of capitalization, the Capital Market and Securities (CMSA) was established to regulate the stock-market growth in the country. The role of the CMSA and its powers are articulated in the Capital Markets and Securities Act (2004) which empowers it to regulate entities whose shares or debts are publicly traded and brokers, dealers and investment advisors at the Dar es Salaam Stock Exchange (DSE).

1001. There have been other financial reforms in the country. These have included, for example, the liberalization of interest rates, the strengthening of the Bank of Tanzania (BOT)

regulatory and supervisory roles, and most conspicuously, the restructuring of the state owned financial institutions thus allowing for the private capital entry or a majority share take-over.

1002. The Bank of Tanzania regulates financial institutions reporting in terms of statutory disclosures of all banking and non banking financial institutions. The oversight role of the BOT is provided for by the "Banking and Financial Institutions Act of 2006, and the Bank Supervision Regulations. Among the provisions of the 2006 Act, banks are required to submit audited annual financial reports and statements to the BOT Director of Banking Supervision within 15 days after the respective company's audited accounts have been approved by the company's Board of Directors, and not later than 105 days after the year end. The audited accounts are to be published in (public) newspapers.

1003. The Dar es Salaam Stock Exchange (DSE) was incorporated in 1996 but it began actual trading in 1998. This was a follow up in the implementation of the Capital Markets and Securities Act of 1994, and the establishment of the Capital Markets and Securities Authority (CMSA) which was mainly charged with a regulatory role of developing capital markets in Tanzania as well as regulating the industry. Up to October 2008, there were twelve companies listed at the DSE and they are shown in Table 5.7.

Table 5.7: Companies Listed on the Dar es Salaam Stock Exchange

	Listed Company	Year of Listing	Product
1.	Tanzania Oxygen Limited	1998	Production and distribution of gases and equipment
2.	Tanzania Breweries Ltd	1998	Brewing and distribution of beer
3.	Tanzania Tea Packers Ltd	1999	Growing, processing and marketing of tea
4.	Tanzania Cigarette Company Ltd	2000	Manufacturer of cigarettes
5.	Tanga Cement Company	2000	Manufacture of Cement
6.	Dar es Salaam Airports Handling (SWISS PORT).	2003	Airport handling services
7.	Twiga Cement Company Tanzania Portland Cement Company Ltd (Twiga)	2006	Manufacture of Cement
8.	National Investment Company Ltd (NICOL)		Financing and Banking Services
9.	Dar es Salaam Community Bank Ltd (DCB)	2008	Financing and Banking Services Financing Services
10.	National Micro Finance Bank (NMB)	2008	Financing and banking services
11.	Simba Plastics		Manufacture of plastic ware
12.	Kenya Airways	-	Air transport
13.	East African Breweries	-	Production of beer
12.	Jubilee Holding Insurance	-	Insurance services

Source: Capital Markets and Securities Website, October, 2008.

1004. Two financial institutions (NBC and CRDB) are some of the largest and most known for the purposes of local capitalization in Tanzania. They also have outreach branches in remote areas of Tanzania. They therefore hold a good potential for capitalization of SMEs across the country by getting listed on the DSE

1005. The list in Table 5.8 is just too short for the purposes of investment capitalization. Besides in terms of capitalization on the DSE, the East African Breweries (based in Kenya) seems to be contributing more to the volume of the market than the others. This reminds us of the infant nature of the Tanzanian business sector. We do have new big companies coming onto the Tanzanian business sector. These include, for example, the mining companies which most often have their marketed capital stock listed outside Tanzania rather than on the Dar es Salaam Stock Exchange. This is a challenge facing the attraction of investment capital in Tanzania where it appears that there is more capital flight than capital retention to invest in the local markets.

The Emerging Categories of Business in Tanzania

1006. Upon an examination of the size of business sector in Tanzania one realizes that this sector is at its infancy and the government is making concerted efforts to build capacity for a domestic private sector growth. Most of the businesses are of the small and medium category mainly owned by some individuals or families (87 percent) and engaging about 42 percent of the business sector workers.

1007. The structure of the business type and categories also show trade dominating (54 percent) as a category employing 16 percent of the workforce in the sector. The manufacturing sector employs a meagre 11 percent of the workers in the business sector. The investment climate has been quite attractive with some incentive packages which have included "tax holidays" for some investors. The next biggest type or category of business is hotels and restaurants (15 percent).

1008. It can be hoped that given the attractive business climate in Tanzania, more manufacturing entities will be established. However, it is also noted that what seems to be attracting foreign investors are the extractive business ventures, especially in the area of mining and forest products. This orientation seems to create a potential for sustainable environmental development. The financial (banking and non-banking) enterprises are another category which is fast coming up.

1009. There are not many large scale enterprises in Tanzania as Table 5.7 shows. It is owing to this concern that the country has deliberately started to embark on efforts to develop the informal, the small and the medium enterprises. As stated above the Small and Medium Enterprises Policy (2001-2011) has a deliberate mission to nurture, develop and facilitate the informal sector growth as well as the small and medium size enterprises. Another supportive policy in this area is the Sustainable Industrial Development Policy (2006-2020). While dealing with the development of the formal sector, Tanzania faces problems as to how best to manage the "underground economy" – something more than the open-ground informal economy.

Institutional Reform and Targeted Programs

1010. Tanzania remains quite open and inviting to foreign investment though she is a late comer in inviting the private domestic and foreign capital investments. In this regard,

Tanzania has embarked on policy and economic reforms since 1986 which have led to the following:

(i) Denationalization and divestiture of hitherto public owned enterprises such as banks and some industries;
(ii) Review of laws and regulations affecting the private sector development;
(iii) Creation of investment incentives such as some tax exemptions aiming at attracting private investments;
(iv) Enactment of laws which are more appropriate in the regulation of corporate governance;
(v) Creation of some institutional mechanism which are better poised to facilitate the private sector participation in the economy; and
(vi) Calling upon corporate entities to subscribe to, to conform to, and comply with, some acceptable international codes and standards of corporate governance such as the International Accounting Standards (IAS), the International Standards Organization (ISO) and the Basel I and Basel II Codes of Corporate Governance.

1011. The government of Tanzania has also embarked on specific programs aiming at the facilitation of corporate (business) development. This has been in response to trying to fill in some institutional and regulatory framework gaps such as specific capacity building actions. Examples have included:

(i) The Financial Sector Assessment Project (FASP) which has aimed at improving the provision of credit to cover short, medium and long term dimensions as well as a facilitation of micro-finance access to various sectors of the economy;
(ii) The BEST program has been started with one of its objectives being to improve the regulatory framework with a view to reducing the cost of doing business in Tanzania, especially making it faster in obtaining business licenses;
(iii) The establishment of the Export Credit Scheme has been with a main objective of broadening more business participation by calling into the export marketing the non-traditional commodity sales. In effect this move also aims at creating some business opportunities to the farming populations; and
(iv) The development and transformation of properties by formalization of the informal business entities has their capacity building been managed by the Property and Business Formalization Program (PBFP) to widen the spectrum of business development to a wide section of the country's population.

1012. On the Zanzibar side, this policy has come up with a number of initiatives:

(i) Enactment of Private Investment Promotion and Protection Act in 1986 which was later amended in 1991 and later repealed in 2004 vide the Zanzibar Investment Promotion and Protection Act, 2004 (Act No. 11);
(ii) Adoption of the Economic Recovery Programme the first phase of which was in 1988 followed by the second phase in 1989;
(iii) Establishment of the Zanzibar Investment Promotion Agency (ZIPA);
(iv) Establishment of Commission for Tourism in 1992;
(v) Adoption of the Free Economic Zones Policy and Creation of Zanzibar Free Economic Zones Authority (ZAFREZA) in 1992; and

(vi) Establishment of Free Port Authority in 1998 in Zanzibar Port Corporation.

1013. In short Tanzania recognizes the fact that its formal corporate (business) sector was retarded by some historical orientations which have resulted into glaring gaps in corporate business development, and for which several efforts in terms of specific programs have been developed to address the limitations to business development and participation especially by the local private sector. A whole range of conventions have been adopted, ratified with various levels of compliance can be seen as summarized in Annex 1.

The Legal Framework

1014. On the legal framework some notable steps have been taken to enhance corporate business development in Tanzania. This is in appreciation of the fact that the pre-economic liberalization legal framework was largely inappropriate for private sector participation. The laws which have been enacted are in the areas of:

(i) Promotion of Private Investments (Investment Act, 1997);
(ii) Public Procurement;
(iii) Environment Protection;
(iv) Business Registration; and
(v) Taxation (The Income Tax Act (2004) requires corporations to submit annual returns (for the purposes of taxation) within 6 months of year end. These reports must be prepared or certified by a true and qualified Certified Public Accountant. The Companies Act (2002) requires financial reporting by all (private and public) companies.

Evolving Professional and Business Organizations

1015. Since the start of Tanzania's policy of liberalization the government has taken some deliberate measures to facilitate the growth of the private (business) sector participation in the economy. The government works in collaboration with some key organizations having a stake in the development of the private sector. The key organizations include the Tanzania Private Sector Foundation (TPF), the Tanzania National Business Council (TNBC) and the Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA):

(i) ***The Tanzania National Business Council (TNBC)*** was established through a Presidential Circular as an institution dedicated to providing fora for public/private dialogue with a view of striking levels of trust, understanding and consensus on strategic economic development and business issues. The primary aim of this initiative was/is the creation of an interactive, facilitative and conducive environment between the government as a facilitator of business development through policy, regulation and legislative actions, and the private business sector. The two sides share a common goal of economic development and growth. It is currently chaired by the President of the United Republic of Tanzania.

(ii) ***The Tanzania Private Sector Foundation (TPSF)*** is an all inclusive organization, aiming at coordinating, harmonizing and developing the private business. It is a wide representative body composed by the government (relevant) ministries, the chamber of commerce and industry members, and some strategic invited persons.

(iii) ***The Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA*)** was established with an express aim of strengthening private business sector in Tanzania through the promotion and assistance to business men and women and other corporate entities to succeed in establishing and developing their business. It has Regional Chambers in 21 regions and has presence in 67 districts in Mainland Tanzania. It has an express mission to strengthen the private business sector. It also aimed, at the point of its initiation, to create a movement from a hitherto national centralized state controlled economy to a mixed economy with a view to increasing a significant participation of the private business sector. The TCCIA has more than 500 members and network organizations such as the *Federation of Women Entrepreneurs of Tanzania (FAWETA).* The TCCIA carries up some specific functions such as availing business information on opportunities, training, advocacy, assistance in processing business licenses, business promotions at trade fares and missions etc.

1016. In Zanzibar, organisations of this nature include:
(i) Zanzibar National Chamber of Commerce, Industry and Agriculture (ZCCIA);
(ii) Zanzibar Business Council (ZBC);
(iii) Zanzibar Exporters Association (ZEXA);
(iv) Association of Small Scale Producers (UWAZI); and
(v) Zanzibar Tourism Investors Association (ZTIA).

External and Internal Factors that Impact on Business Activities

1017. We have noted in the previous sections that a number of policies, initiatives and programmes have been undertaken to promote private sectors' participation in the national economy, as well as to improve the business environment in the country. These notwithstanding, a number of factors do impact negatively on "doing business" in the country.

1018. In a recent survey (2007) Tanzania's economy is ranked as being 56.4 percent free, which makes it the world's 103rd freest economy. Its overall score is 2.9 percentage points lower than the previous year (2006). Tanzania is ranked 15th out of 40 countries in the sub-Saharan African region and its overall score is slightly higher than the regional average. It is further underscored that the country enjoys strong fiscal freedom and freedom from government. The top personal income and corporate tax are moderate, and the overall tax revenue is relatively low as a percentage of GDP. Government expenditures are fairly low and state-owned businesses produce only a small portion of overall tax revenue.

1019. The survey's summary on doing business in Tanzania was as follows:

> *"Economic development has been hurt by weak property rights, freedom from corruption, financial freedom and business freedom. The overall regulatory environment is poor, and most business operations are seriously restricted. A slow civil service hurts Tanzania's trade score, as fairly high tariff rates are complemented by an inefficient customs service. As in many other sub-Saharan African nations Tanzania's judiciary is underdeveloped and subject to the political whims of the executive.*

Exacerbating these problems is a high level of corruption, although the problem is not as acute as it is in some other African nations."

1020. Our field study tallies well with the World Bank's sponsored survey quoted above that the lack of transparency in the way corporations are managed creates a ground for corruption in business transactions.

1021. Our observations are corroborated in Table 5.8 where the case of doing business in Tanzania is summarized. What is obvious in Table 5.9 shows the fact that the situation in 2008 has not improved when compared to the 2007 performance. The ranked placement in most of the indicators is bellow average i.e. above 90th rank in the 178 places except for indicator such as enforcement of contractors and protection of investors. However there are local complaints against some bad investment contracts and over protection of investors by the Government.

Table 5.8: Overall Ease of Doing Business in Tanzania by Rank (out of 178 Economies)

Ease of:	Doing Business 2008 Rank	Doing Business 2007 Rank	Change Rank
Doing Business	130	129	-1
Starting a Business	95	101	+6
Dealing with Licenses	170	168	-2
Employing Workers	151	150	-1
Registering Property	160	156	-4
Getting Credit	115	111	-4
Protecting Investors	83	81	-2
Paying Taxes	104	98	-6
Trading Across Borders	100	90	-10
Enforcing Contracts	35	34	-1
Closing Business	109	107	-2

Source: World Bank, Doing Business Report, 2008

1022. The indicator characteristics painted by Table 5.8 show the fact that there are a number of factors which impact negatively on Tanzania's business competitiveness and business activities as a whole in Tanzania. These very factors are responsible for impeding Tanzania's competitiveness in regional and global economy. One is left with yet an unanswered question concerning the divergence of views between the World Bank's assessment and what the local Tanzanian newspapers say. It is generally agreed that there are more than adequate incentives provided under the policies and the laws to in investors in Tanzania. This in effect contradicts the low level scoring on the World Bank score indicators.

1023. In more detailed studies on Tanzania, six clusters appear conspicuously as the main problem areas in relation to private business and general economic non-competitiveness of

the country, even as some efforts continue to be directed at rectifying the situation. Briefly summarized, these are:

(i) Administrative and Other Barriers under which the Tax Regime and Trade Policies are listed (tax rates, tax administration, tax harmonization with neighbouring countries, multiple taxation at different government levels, anti-export bias in trade, bureaucracy and red-tape in licensing and taxation, and limited harmonization of trade policies with neighbours).

(ii) Poor Quality Economic Infrastructure where low-quality, insufficient coverage and high cost of most infrastructure and economic services are listed. These include the road, marine, air system, rail system, energy, and telephones. In addition, the inadequacy of a clearly defined regulatory framework for such core services is listed out as a major handicap.

1024. Financial Services Constraints: Micro, rural and Corporate Finance: This cluster has the following core concerns: a fragmented and shallow financial market, high urban concentration financing mainly trade-related activities, limited rural and micro-finance, inefficiencies in the largest banks, high cost of credit, and underdeveloped capital markets.

1025. Operational and Procedural/Administrative Constraints: Six areas have been identified as deserving priority attention due to procedural problems and poor relations with customers:-

(i) Import clearance bureaucratic delays at the country's ports;
(ii) Business and trade licensing take off delays;
(iii) Obtaining expatriate work permits;
(iv) Investor immigration permits; and
(v) Land acquisition.

1026. There are also constraints in the Legal and Judicial framework. Under this there are the following aspects:

(i) Absence of transparent and supportive legal and regulatory framework; and lagging behind legal (and land) reforms.
(ii) Limited real commercial orientation of the current judicial system in line with the shift to a market-oriented economy.

1027. Some steps can be taken to reduce the constraints, for example, there is a need to review some basic laws that apply to the Tanzania business environment, especially in the critical areas of Corporate Law, Land Laws, Labour Law; and speed up implementation of those already on paper (Land Laws are a case in point).

1028. There is an overlap of activities and duplication of functions as a result of lack of coordination among the agencies dealing with corruption and inefficient law enforcement.

1029. Generally, there are also economic losses from corruption in terms of reduced income from taxes, losses through misappropriation of public assets; and substandard quality as well as quantity of physical and social services delivered by the public sector as a result of diversion or abuse of public resources through corrupt practices. The recent public dissatisfaction with way top ranking officials have handled and managed corporate contracts

causing loss of huge sums of money was discussed in Parliament resulting in the resignation of the then Prime Minister and two cabinet ministers.

1030. There are other more cross-cutting constraints which include the following:

(i) Human resources: A significant proportion of the economically active population (mainly the youth) is either unemployed or underemployed due to low level of education and lack of specialized skills.
(ii) Knowledge Resources: The use of information and communication technology and exchange is limited to few private and public institutions mainly in urban areas.
(iii) Demand Conditions: The average per capita income in Tanzania is US dollar 0.70 per day. The savings rate is 17 percent of GDP. These low levels are indicative of a small market for goods and services, leading to a slow growth of business activities.

1031. In the APRM corporate governance survey of 108 corporate executives, managers and government high ranking officials, there evolved a generalisation that the business environment in Tanzania is improving despite the country's low scores at international rankings. About 67 percent of the respondents are of the opinion that the way the government is facilitating the growth of corporate entities is efficient as summarised in Table 5.9.

Table 5.9: Efficiency of Corporate Business Facilitation in Tanzania

	Very Good	**Good**	**Slightly Good**	**Slightly Bad**	**Bad**	**%**
Central Government	8	68	24	1		100
Relevant Ministries	9	63	25	3		100
Bank of Tanzania	11.8	61.3	19.4		7/5	100
Judiciary	5.2	45.8	32.3		16.7	100

Source: Field Research on Corporate Governance, August-September, 2008

1032. Table 5. 9 shows an average performance- and not very good, in the manner broad based public institutions have been behaving or acting in their respective role in the facilitation of corporate business development.

Objective Two: Ensure that Corporations act as good corporate citizens with regard to Human Rights, Social Responsibility and Environmental Sustainability

Corporate Citizen with Regard to Human Rights

1033. Corporations are expected to observe human rights . This is in accordance with the 5th Amendment of the Constitution of the United Republic of Tanzania of 1977 which introduced fundamental rights *(in the constitution)* which has had a profound effect on all branches of the law in Tanzania. This is because the amendment provides a mechanism of citizens to challenge legislations and actions by the government which infringe on those

rights. Chapter one, Part III of the Constitution contains several provisions of relevance to employment and labour law. These include:

(i) Protection against discrimination (Article 13 of the constitution);
(ii) Protection against torture or degrading treatment (Article 13);
(iii) The right of freedom of association (Article 20);
(iv) The right to work (Article 22); and
(v) The right to remuneration commensurate with the work done (Article 22).

1034. These fundamental rights embody the values which underlie an open and democratic society based on human dignity, equality and freedom.

1035. Apart from the above provisions in the constitution, it is worth noting that Tanzania is a signatory to the African Charter on Human and People's Rights. The Charter has been localised and is essentially implemented through the Commission for Human Rights and Good Governance. The Commission is an independent body established in 2001 to serve as a focal point for the promotion and protection of human rights and good governance.

1036. Regarding worker's rights at work place Tanzania is signatory to numerous International Labour Organization Conventions. Presently, Tanzania has ratified all eight core Conventions which form the bare minimum for the creation of a decent environment within which to work.

1037. Labour standards are designed to protect the employee's rights. Nonetheless, ratifying convention is one thing and complying with the labour standards is quite another. It has been observed from the field survey report that, enforcement of labour standards is sometimes seen or considered by some employers as an obstacle to greater business efficiency. Within this context, one of the major roles of the Labour Inspectorate Department is to promote compliance with the ILO conventions and recommendations through national labour legislations as well as good labour practices in an attempt to realise basic workers' rights and social justice.

Recognition and Observance of Labour Laws and the Rights of Employees

1038. Labour relations are relations *(i.e. relationship between individual workers, between workers and their employers, between employers and workers organisations)* which emanate from the employment relationship in the course of the production process. These relations include the processes through which these relations are expressed *(such as collective bargaining, workers involvement in decision making and grievances, and dispute settlement)*, and the management of conflict between employers, workers and trade unions when the need arise. These relationships are influenced by the government and its agencies through policies, enactment of labour laws, most of which are guided by a broader political, social, economic, technological and cultural characteristics of each country. It is therefore through the labour laws, rules and policies that conditions of work are determined. These conditions cover mostly, hours of work, leave, training, termination of employment as well as occupational safety and health, social security and conditions applying to special categories of workers.

1039. The existing new legal framework puts in place policies, laws and regulatory structures that are more flexible, conducive to economic efficiency and employment promotion. Laws based on policies promote employment, protect labour and at the same time

allow enterprises to grow and compete in the modern economy. The main objectives of new legal framework include:

(i) To promote economic development through economic efficiency, productivity and social justice;
(ii) To provide the legal framework for effective and fair employment relations and minimum labour standards regarding conditions of work;
(iii) To provide a framework for collective bargaining;
(iv) To regulate the resort to industrial action as a means to resolve disputes;
(v) To provide a framework for the resolution of disputes by mediation, arbitration and adjudication; and
(vi) To give effect to the provisions of the Constitution of the United Republic of Tanzania of 1977, in so far as they apply to employment and labour relations and conditions of work.

1040. In brief, ELRA provides core labour rights, basic employment standards, a framework for collective bargaining and for the prevention and settlement of disputes.

1041. Apart from the existence of the law which provides the framework for the protection of workers rights, there are various mechanisms which work to ensure corporations recognise and observe labour laws and the rights of employees. Some of these measures include the following:

Disputes resolution through mediation, arbitration and adjudication
1042. The new system of industrial dispute settlements consists of three main procedures, namely, mediation, arbitration and adjudication

Mediation
1043. Under the Act all disputes must be referred to CMA. The mediator under Section 86 (4) of ELRA is required to resolve the dispute within thirty days of the referral or within such longer period as the parties may agree in writing. In any mediation, a party to a dispute may be represented by a member or an official of that party's trade union or employer's association or an advocate (section 86 (6). Where the mediator fails to resolve a dispute within the prescribed period, different consequences will follow depending on whether the dispute of interest or a complaint. If it is a dispute of general interest other than a dispute in essential services, a party may give notice of its intention to commence a strike or a lock out in accordance with section 80 and 2 of ELRA. If the dispute is a complaint, then a party may refer it to arbitration or to the labour court for a binding decision. Similarly, disputes in essential services shall be referred to compulsory arbitration.

Arbitration
1044. Arbitration refers to the process where a third party attempts to assist parties to reach an amicable settlement but he or she has power to impose one on them. Under Section 88 of ELRA the following disputes must be referred to arbitration.

(i) A dispute of interest if the parties to the dispute are engaged in essential services;
(ii) A complaint over the fairness of an employee's termination of employment; or any other contravention of any labour law in which the amount claimed is below the pecuniary jurisdiction of the high court

Adjudication

1045. Part VIII, sub part C of ELRA vests in the Labour Division of the High Court wide ranging adjudicatory powers including exclusive jurisdiction over the application, interpretation of the provisions of the Act and to decide, complaints other than those that are decided by arbitration under the Act.

Collective bargaining forums

1046. The provision of a forum between registered trade unions and employer's association to discuss their differences provides for the prevention and settlement of disputes in a fair and amicable manner. In so doing, collective bargaining further protects the rights of both employer and employees.

Plans to eliminate discrimination at work place

1047. Section 7(4) and (9) of the ELRA prohibits an employer to discriminate an employee on the basis of colour, nationality, tribe, place of origin, race, sex, gender, pregnancy, disability and HIV/AIDS. This provision creates a legal obligation on the part of the employer to develop plans to eliminate discrimination at work place. To this effect, employers are required to ensure that they promote equal opportunity in employment and strive to eliminate discrimination in employment policy and practice. Employers are therefore required to register with Labour Commissioner Plans to promote equal opportunity and elimination of discrimination (Section 7 (1 – 2) of ELRA).

Labour Inspection

1048. The implementation of the employment standards is not discretional but rather mandatory. The effectiveness of implementation of the fundamental rights and employment standards *(such as under payment of wages, examining working conditions, usage of protective gear)* rests on effective labour inspection. The main purpose of labour inspection therefore is to protect core rights of all employees. It has been recognized that the capacity of the labour department is clearly low in terms of human resources, and therefore plans are underway to reinforce the existing labour force of labour inspectors.

Wage Boards

1049. Tanzania has ratified Convention 26 regarding minimum wage fixing machinery and convention 95 on the protection of wages. Both Conventions make it obligatory for Tanzania not only to establish a minimum wage fixing machinery but also to actually fix minimum wages. The latter obligation arises only if the wages can not be effectively regulated through collective bargaining. All SADC countries have wage fixing machinery. In Tanzania, minimum wages are fixed on a sectoral basis. This is to provide sector specific minimum wage terms in order to accommodate differences that occur from sector to sector. Section 34 and 35 of Labour Institutions Act of 2004 empowers the Minister for Labour to appoint Wage Boards. Among other things, the wage board may investigate remuneration and terms and conditions of employment in any sector.

Public awareness on the new labour laws

1050. Most of the conflict and violation of employee's rights at work place occurs because of ignorance of labour laws. In view of this factor, the tripartite constituencies *(i.e. employer's association, workers organisations and the government)* have since the introduction of the new labour laws been conducting sensitization seminars, workshops and in house training to educate the workers on the new laws.

Employee's rights including the Right to Unionize

1051. Employees at work place are entitled to certain rights and obligations. However, one of the weaknesses of the Employment and Labour Relations Act, 2004 was its failure to expressly embrace the fundamental rights stipulated in the eight core ILO conventions which Tanzania has ratified. The Act explicitly prohibits only two fundamental rights. i.e. child labour and forced labour. The other fundamental rights such as discrimination and freedom of association could be noted from the Constitution. The latter could also be found in the Trade Union Act, 1998. ELRA has made substantial changes in the existing law. The fundamental rights and protections have now been consolidated and placed under part II of the Act. These rights can be summarized along the following lines:

(i) The prohibition of child labour including the worst forms of child labour *(See convention 138 – Minimum Age Convention 1973 and Convention 182);*

(ii) The prohibition of forced labour *(See Convention 29 – Forced Labour 1930 and Convention 105 – abolition of forced labour 1957);*

(iii) The prohibition of discrimination (See Convention 100 – Equal Remuneration 1951 and Convention 111 – Discrimination *(Employment and Occupation 1958);*

(iv) The Right of Association *(See convention 87 – Freedom of Association and the Right to Organize 1948);*

(v) The right to free collective bargaining *(See Convention 98 – the Right to Organize and Collective Bargaining 1949);*

(vi) Right to Equal Remuneration and Severance pay;

(vii) Rights to information *(in case of organized labour);*

(viii) Right to strike;

(ix) Right to annual leave; and

(x) Right to sick leave, maternity/ paternity leave.

1052. In particular, the right to unionize is provided under Section *9 sub part D and section 10(1–3)* of the ELRA that workers should enjoy adequate protection against acts of anti-union discrimination, including requirements that a worker can not join a union or relinquish trade union membership for employment, or dismissal of a worker because of union membership or participation in union activities. Workers' and employers' organizations should enjoy adequate protection against any acts of interference by each other, in particular the establishment of workers' organizations under the domination of employers or employers' organizations, or the support of workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations. The convention also enshrines the right to collective bargaining.

1053. With regard to observance and recognition of the above workers rights is concerned, this report relied on the ILO's committee of experts. It reveals weakness in observing and recognising the above rights.

Freedom of Association

1054. The Committee had previously requested the Government to ensure the right to organize for employees in the prison service and to provide clarifications on the types of workers in the national service, both services being excluded from the scope of the Employment and Labour Relations Act (ELRA) under section 2(1) (iii) and (iv) respectively. The Committee noted the Government's indication that the prison service and the national service are excluded from the right to organize as they are based on military codes: the nature

of the duties in these services is such as to require a different working environment, with stricter rules than those provided for under the ELRA. In this connection, the Committee recalled that the only admissible exceptions to the right to organize are those explicitly provided for under Article 9 of Convention 87, i.e. the armed forces and the police. All other categories of workers, without distinction whatsoever, should enjoy the right to establish and join organizations of their own choosing. The Committee considered that the functions exercised by prison guards are different from the regular functions of the army and the police and do not justify their exclusion from the right to organize *(see General Survey of 1994 on freedom of association and collective bargaining, paragraph 56)*. The Committee requested the Government to amend section 2(1) (iii) of the ELRA so that prison guards enjoy the right to establish and join organizations of their own choosing. With regard to the national service, the Committee regrets that the Government has not provided adequate information on the types of workers included in this category and requests the Government to include this information in its next report so that it may assess whether they qualify for the exceptions of Article 9 of the Convention or not.

Right of workers and employers to establish organizations

1055. It was noted that, there was absence of specific time limit within which the trade union registration procedure should be concluded. Noting the Government's position that, the time limit provided under the Act is intended to ensure that freedom of association is not abused by allowing unions to organize and bargain without legitimacy, the Committee pointed out that section 48 of the ELRA, which provides for the process of registration, does not set forth a time period in which the registrar must either approve or refuse an organization's application. The Committee recalls, in this connection, that problems of compatibility arise where the registration procedure is long and complicated *(see General Survey, op. cit., paragraph 75).* It requested the Government to consider amending the ELRA so as to provide for a reasonable time period for the processing of applications for registration.

Right to strike

1056. The Committee noted that sections 4 and 85 of the ELRA allow for protest action, i.e. strikes in disputes that are not interest disputes, but that, under section 4, such action is apparently not lawful when taking place in relation to a dispute in respect of which there is a legal remedy. The Committee noted the Government's statement that protest action may apply in such circumstances as a means to promote and defend the socioeconomic interests of workers, and that when a dispute has a legal remedy, protest action becomes unlawful and any aggrieved party should pursue the matter through the procedures prescribed under the ELRA. In this connection, the Committee recalled that the solution to legal conflicts arising as a result of a difference in the interpretation of a legal text should be left to the competent courts, and that the prohibition of strikes in such situations does not constitute a breach of freedom of association. However, prohibiting protest action in respect of all disputes possessing a legal remedy may unduly infringe upon the right to strike. In this connection, the Committee further asked the Government to provide information on the scope of section 4 on the definition of protest action - in particular the types of dispute referred to for which there might be a legal remedy.

Equal Remuneration

1057. As much as the legal framework has incorporated (payment in accordance with qualifications, experiences and time invested) principles pertaining to equality of remuneration, the practice as to how these provisions are enforced remain unclear. One

finds, for example, minimum wage levels differing from one company to another in Tanzania. In its most recent report the ILO's Committee of Experts requested the government to provide information on the practical application of the various laws (such as the Public Service Act, the Employment and Labour Relations Act), including information on measures to address wage discrimination and promote the principle of equal remuneration for men and women for work of equal value provided for in equality plans adopted under Employment and Labour Relations Act.

1058. According to the ILO the Government acknowledges lack of information on the application of the current law(s) in force governing equal remuneration. However, there have been complaints in recent years from the trade unions that remuneration/ basic salaries especially in foreign firms/ companies have often had disparities between nationals and non-nationals, the latter earning more despite both having equal qualifications and sharing a common job description and doing the same work. There is no information regarding how objective are job appraisals in various workplaces, public and private, upon which an assessment may be made as to justify how far are the principles of equal opportunity being applied. Employment contracts of foreign controlled company workers are kept confidential (as company secrets?) in order to avoid a situation in which the local Tanzanian workers would compare their wages to those of the foreigners. This is a strategy to stave of complaints and labour unrests. In terms of written law, regulations and procedures, Tanzania is quite abreast of other countries but at the level of implementation it is still lagging behind.

Prohibition of Discrimination

1059. Similar to Convention 100, the practical application of this convention in Tanzania remains unclear. On a parallel note, there are instances of institutionalised discrimination in both public and private institutions that contradict the convention and the Employment and Labour relations Act in which the convention is embodied. HIV/AIDS-related discrimination, although not publicly acknowledged *(except in the armed forces and the police)*, is common practice in the health sector and in private security firms. Reports on the application of this convention make no reference to such incidences, despite having been public knowledge.

Prohibition of Child Labour

1060. Concerning the implementation of the *Minimum Age Convention, 1973 (No. 138)*: a national policy designed to ensure the effective abolition of child labour was drafted by the government. The ILO requested a copy of this Child Labour Policy which remains yet to be received. The Government informed the ILO that there is a Child Development Policy of 1996 under the Ministry of Community Development, Gender and Children which was being reviewed by the Cabinet. In its periodic report to the ILO's Committee on the Rights of the Child of 24 August 2005 (CRC/C/70/Add.26), the Government noted that the Child Development Policy of 1996 has been revised, and that the revision has been necessitated by the desire to address the emerging issues of HIV/AIDS, the protection of children from the worst forms of child labour, non-discrimination of children and the protection of the most vulnerable children.

1061. With regard to the practical application of the Convention, the government has provided a copy of the ILO/IPEC 2000 – 01 Integrated Labour Force and Child Labour Survey, titled Child Labour in Tanzania. The report provides detailed information and statistics on many aspects of child labour in Tanzania.[300] It therefore appears that, while there is a legislative framework in place for the elimination of child labour, there are many problems in its practical application. The ILO has expressed its deep concern about the actual situation of young children in the United Republic of Tanzania who are compelled to work out of personal need, and it strongly invites the government to redouble its efforts to progressively address the situation. Nonetheless, through the implementation of TBP the government has created and strengthened the policy and legal environment necessary for assessing worst forms of child labour. To this effect, policies and legislations relevant to child labour have been formulated, reviewed and or enacted to provide an enabling framework for responding to the problems of child labour in the country. The government has also included in its medium term growth and poverty reduction strategy of 2005 – 2010 indicators on child labour. The strategy commits the government to reduce child labour from the current level of 25 percent to 10 percent by 2010. It is also envisaged that the reduction of child labour will substantially reduce all worst forms of child labour by 2010.

Employers' Rights

1062. On the other hand the employers equally have rights and obligations enshrined in the labour laws. Some of these rights include the following:

(i) Right to form or join Employers Association;
(ii) Right to lock out;
(iii) Right to refer dispute to Commission for Mediation and Arbitration for resolution;
(iv) The right to discipline employees;
(v) Contractual rights e.g. right to hire employees, right to receive labour services from employees, right to supervise work and right to fire an employee;
(vi) Right to deduct from employees remuneration to recover loss covered;
(vii) Right to manage the business;
(viii) Right to finished products; and
(ix) Right to profit.

[300] The findings reveal that 1,271,813 children aged 5 to 9 and 2,204,687 children aged 10 to 14 years are economically active. At least 1.2 million children are involved in the worst forms f child labour. Furthermore, the report provides that only 26% of children aged 5 to 9 and 56 % of children aged 10 to 14 are attending school. The information provided in the NCLES further states that due to limited resources, very few work places and primary schools have been visited with a view to inspect and enforce the ban on child labour and compulsory education laws. The NCLES also noted that commercial sexual exploitation is on the rise in the united republic of Tanzania, and that the working conditions of girls between the ages of 9 and 15 working as household domestic can be both exploitative and abusive. It is estimated that children in this sector work between 12 and 18 hours per day.

Procedures for Handling and Settling Labour Disputes

Handling of Labour Disputes

1063. Tanzania has established new labour dispute and arbitration mechanism to suit the new labour market needs and forces of globalization which impinge on the economy. The establishment of the Commission for Mediation and Arbitration (CMA) is meant to ensure both quality and efficiency in labour dispute settlement. Within this context, mediation and arbitration is seen as the central pillar of the dispute prevention and resolution. The Commission for Mediation and Arbitration established under section 12 of the Labour Institutions Act, is one among other institutions established to deal with labour matters. The core functions of the CMA are three folds namely:

To mediate any dispute referred to it in terms of any labour law;
To determine any dispute referred to it by arbitration; and
To facilitate the establishment of a forum for workers participation

1064. It is a requirement of the law (ELRA) that, where parties fail to resolve a dispute referred to mediation under section 86, the Commission should appoint an Arbitrator[301] to resolve the dispute; and determine the time, date and place of the arbitration hearing. The appointed arbitrator may conduct the arbitration in a manner that he or she considers appropriate in order to determine the dispute fairly and quickly. Further, the Arbitrator should deal with the substantial merits of the dispute with minimum legal formalities. That is to say, resolution of disputes through arbitration should be done expeditiously and where parties to the dispute reach consent, the Arbitrator may suspend proceedings and resolve the dispute through mediation.

1065. In any arbitration hearing, parties to the dispute may at their choice, be represented by a member or official or that party's trade union or employers association or by an advocate. At the conclusion of the arbitration proceedings, an arbitrator should make an appropriate award, but may not make an order for costs unless a party or person representing a party acted in a frivolous or vexatious manner. The award should be made within thirty days of the conclusion of the arbitration proceedings and should contain reasons thereof signed by the Arbitrator. The arbitration award has a binding effect on the parties to the dispute and may be executed in the Labour Court as if it were a decree of a court of law (Ss 88-89 of ELRA).

1066. Correction of any arbitration award may be done by an Arbitrator on application or on his own motion, on clerical mistakes or errors arising from any accidental slip or omission. Further, revision of an arbitration award may be applied to the Labour Court within six weeks of the date of the award on grounds of improper procurement of the award. The labour Court as an institution for adjudication may set aside an award on grounds that, there was misconduct on the part of the Arbitrator or the award was improperly procured, and where the award is set aside, the Labour Court may determine the dispute in a manner it considers appropriate and make the necessary orders. *(Ss 90-91 of ELRA)*. Basically, arbitration

[301] At the formal inception of the CMA on 4th May, 2006 it had only 21 Mediators and Arbitrators to manage its operations. Administratively, CMA operations are executed on zonal basis. The 11 identified zones are Dar es Salaam and Coast; Arusha, Manyara and Kilimanjaro, Dodoma and Singida, Mwanza, Kagera, Mara and Shinyanga; Mbeya and Rukwa, Tanga, Morogoro, Tabora and Kigoma, Ruvuma, Mtwara and Lindi, and Iringa.

proceedings conducted by the CMA, do not fall under the ambit of the Arbitration Ordinance Cap. 15.

Challenges to the new Procedures for Handling and Settling Labour Disputes

1067. The system of mediation and arbitration is still a new system among many employers and employees and because of that; there is a dire need to sensitize the public on the new labour dispute resolution system. The Commission is still operating under difficult conditions including lack of proper office accommodation, inadequate staff not only Mediators and Arbitrators, but also other administrative supporting staff, inadequate working tools, equipment and furniture, transport facilities and limited financial resources. Further, there is great need to have well trained mediators and arbitrators *(both full time and part time)* in order to improve their competence in handling labour disputes and confidence among investors. Because of that, it remains to be seen how effective is the new system of handling labour disputes, this calls for field investigation.

Assessment of Corporation's Compliance with Labour Laws and Human Rights Provisions

1068. The tripartite parties *(i.e. government, trade unions and employers association)* must work in a coherent manner to ensure that ILS are upheld both by law and in practice. The first part of ensuring implementation of ILS, through the integration of conventions into national law, has been quite successful as evidenced by the current labour law regime which took cognizance of conventions that have been ratified by Tanzania. The second part requires coordination and collaboration amongst the tripartite partners.

1069. Nonetheless, ELRA did take into consideration the existence of special circumstances obtaining in various employments undertakings. For example, the ELRA require employers to give employees who work continuously for more than five hours, a break of sixty minutes as a break in a working day. However, rapid assessment reveals that, the Commercial Banks find difficulties to comply with this provision, more so in respect to tellers providing banking services at the counters, who are constantly and continually placed to provide the service. On the other hand, employers in the mining Sector as well have difficulties in complying with the provisions of section 19 regarding hours of work. Whereas, the nature of the mining works especially the underground works demand working for long hours, the provisions of section 19 sets maximum working hours and provide that employers shall not require or permit employees to work more than 12 hours in any day. Further, the provisions of section 19(3) set limit in respect of overtime, whereas employers are restricted from requiring or allowing employees to work overtime more than 50 hours in any four week cycle. Port services demand 24 hours of service and the practice in the Tanzania Ports Authority which is managing the port services, is that workers have survived through working for long hours i.e. with over 50 hours overtime, places them economically at a loss, for less earning. The same is the case with the hospitality industry i.e. the tourist class hotels and lodges, where services are to be provided 24 hours. A survey carried out by Rhoda Mbwelwa, Charles Bonaventura and Haji Semboja (2000:ILO), revealed that workers in flower industry work for 10.5 hrs per day, in five of the ten companies covered in this survey, one had 12 hours per day and the rest had nine. Weekends and holidays were working days without compensation of over time.

1070. Practice indicates that there are serious challenges when it comes to the compliance with labour laws. The main ones relate to recruitment procedures which are cumbersome; wages – whereby employees are paid wages lower than the statutory minimum wages; and

non-compliance with disciplinary procedures where necessary. Some of these challenges are caused by employees' ignorance of their rights and knowledge of the labour laws and regulations. A good example where labour laws are hardly complied with is in the Mining Sector due to its specific nature which calls for working in the mines for long hours.

Safe Working Environment and Fair Wages

1071. A quick survey from OSHA revealed that, workers in many corporations in Tanzania are exposed to unsafe working environment. This is largely because of non-compliance by many employers and employees to uphold health and safety measures at work places**.** ILO standards on occupational safety and health provide essential tools for governments, employers, and workers to establish such practices and to provide for maximum safety at work[302]. Among the reasons provided by OSHA for non compliance was that, many ILO conventions on occupational health and safety have not been ratified. These include; Convention No. 155 on Occupational Health and Safety; Convention No. 161 on Occupational Health Services; Convention No. 167 on Safety in Building and Construction Sites; Convention No. 172 on Safety and Health in Mines; Convention No. 184 on Safety and Health in Agricultural activities. Secondly, there is no comprehensive national Occupational Safety and Health policy, to promote occupational safety and health and to improve working conditions. Such policy is relevant because it guides employees, employers and other stakeholders on what is expected of them in dealing with health and safety matters.

1072. In a survey carried out by Rhoda Mbwelwa, Charles Bonaventura and Haji Semboja (2000: ILO) findings indicate that the production of flowers in Tanzania is associated with the heavy use of chemicals. It further revealed that although workers are provided with protective gear, this is not at all levels. Only spraying teams are provided with masks and respirators; graders and packers (who handle the flowers every now and then) are not. Complaints were made about illnesses such as headaches, chest pains and allergic reactions that are associated with the frequent use of chemicals. The majority of employees are females aged between 18-35 years whose level of education does not exceed primary school. Employment is mainly on a temporary basis for 75 per cent of the employees. Casualty of the work itself was a complaint. .

1073. In as far as fair wages is concerned, it should be noted that, wages are protected by the protection of wages convention No. 95 of 1949. The convention, among other things, provides that wages should be paid in legal tender or partially in kind and that wages should be paid directly to the worker. In so far as remuneration is concerned ELRA provides the following:

(i) A table in the first schedule dealing with the determination of hourly, daily, weekly and monthly wages rates where necessary (Section 26);
(ii) It enjoins employers to pay employees' remuneration during working hours at the place of work on the agreed day;
(iii) It authorizes payment of salary advances;
(iv) It restricts employers to make any deductions from employees remuneration unless the deduction is permitted by law, collective bargaining, wage

[302] The ILO has adopted more than 40 standards specifically dealing with occupational safety and health, as well as over 40 Codes of Practice. Nearly, half of ILO instruments deal directly or indirectly with occupational safety and health issues.

determination, court order, arbitration award or with the consent of the employees when called upon to discharge a debt; and

(v) It criminalizes any contravention of section 28 of the Act.

1074. While some companies might be claiming to be paying a fair wage to its employees, there are complaints over discriminative practices. The Golden Opportunity report revealed that the average pay for mineworkers is Tshs. 160,000 to 300,000 (US$ 128 to US$ 240) a month. This is a high salary compared to other jobs in other areas where few other jobs are availed. However, the report notes that the Barrick's Chief Executive, Greg wilkins, received US$ 9.5 million in 2006, including basic salary, bonus and stock options. It would take an average Tanzanian miner over 500 years to make this amount of money.

1075. A former employee of Barrick Gold Corporation lamented that 'We were asking the company to make clear issues relating to medical insurance as they always fired workers who were affected by the chemicals used in the operations. But there were also salary, capacity building and other benefits which other employees from other countries enjoy but not accorded to local manpower who do most of the most dangerous jobs in the dark tunnels,' said Salum John, former employee of Barrick Gold Corporation's mining site in Bulyanhulu. Among other complaints directed at the company, Barrick Gold Corporation in Tanzania is the way it treats its employees. In October 2007, it fired over 1,370 employees after the latter demanded their rights. The employees complained before the journalists who visited them at the end of November 2008 of how Barrick creates problems in order to get rid of the enlightened employees standing up for their rights.

1076. Apart from the fairness provided in the ELRA, the Labour Institution Act No. 7 of 2004 establishes the Wage Boards. These are tripartite institutions meant to advise the Minister on Minimum Wage and Terms and Conditions of employment on sectoral basis. These have to conduct investigations and make recommendations on a sectoral minimum wage to the Minister. The sectoral Wage Boards may also be established by the Minister responsible for the public service to cater for the public sector. It is also important to note that, some public corporations have been engaged in collective bargaining in determining the minimum level of wages. In some cases some of the corporations have agreed to pay wages/salaries well above the fixed statutory minimum, which can be noted as commendable.

1077. One of the challenges in Tanzania concerning safe working conditions is the creation of awareness among the employers and employees on the need of health and safety measures at work place. This effort is still inadequate. Secondly, there is a need for tripartite partners, namely government, employers' and workers' organizations, to work together towards ensuring that the laws and practices related to safe working conditions are effectively implemented.

1078. Regarding failure to pay the minimum wage announced by the government, it is explained that wages have to be determined carefully after a thorough investigation of several factors at play. The most important factors being productivity, competitiveness and affordability. This is due to the fact that at the end of the day, we should have sustainable enterprises that are able to create more jobs. Secondly, there is need to create more Sectoral Wage Boards by subdividing some of the current big boards like trade, industries, commercial and services; transport and communications; and domestic and hospitality services. This will take into account the peculiar features of specific areas within these

sectors. The government should find ways to deal with non-compliance by employers who fail to pay the government stipulated minimum wage.

Corporation's handling of Employee Disputes and Compensation for Injury in the Work Place

1079. The handling of employees' disputes, safety issues and compensations is a function of both employers and employees level of awareness on their rights and obligations. However, the new labour laws have introduced new concepts, methods and procedures for resolving disputes. These are new to the users (employers, employees). This means most of the users at corporation level have no adequate knowledge and experience in the use of these new methods and procedures. As such, their effectiveness in handling or resolving labour disputes at work place leaves much to be desired. However, with time and through training their capability to handle labour disputes will improve.

1080. In as far as workers compensation is concerned, most of the employers are guided by Workmen's Compensation Act 2008. However, reports from the labour department indicate that, in cases where accidents occur, some employers have been reluctant to pay compensation to injured workers as per the law. The statistics drawn from Dodoma Region Labour Office illustrates that, most of the industrial accidents which were reported from 2005 – 2007 were either not compensated in time or were not compensated at all (Table 5.10).

Table 5.10: Reported work related accidents in the Public and Private Organizations from 2005 – October, 2007 in Dodoma Region

Years	Status of the organization							
	Central Government	Local government	Parastatal Organization	Private Organization				
	Reported Accidents	Compensated Accident	Reported Accidents	Compensated Accident	Reported Accidents	Compensated Accident	Reported Accidents	Compensated Accident
2005	12	4	14	-	10	-	14	2
2006	26	5	17	-	11	2	22	9
2007	14	-	7	-	6	-	9	3

Source: *Labour Department, Dodoma*

1081. Many of these accidents and other related tragedies are preventable through the implementation of sound prevention, reporting and inspection practices.

1082. However, it is worthy noting that, the government has passed a bill *"The Workers Compensation Act, 2008".* Among other things the bill aims at:

(i) Providing for adequate and equitable compensation for employees who suffered occupational injuries or contract occupational diseases arising out of, and in the course of their employment, and in the case of death for their dependants;

(ii) Providing rehabilitation of employees who have suffered occupational injuries or contracted occupational diseases in order to assist in restoring their health, independence and participation in society;
(iii) Providing for a framework for the effective, prompt and empathetic consideration, settlement and payment of compensation benefits to employees and their dependants; and
(iv) Providing for the establishment, control and administration of workers compensation fund, and the legal framework for contributions to and payment of funds

Number of Trade Unions and Effectiveness in Resolving Labour Disputes

1083. According to the Registrar of Trade Unions in Tanzania, there are 21 registered trade unions in Tanzania. However, we could not get an analysis of the percentage of the share of workforce in different work settings belonging to trade unions and the other percentage that does not. These Trade Unions however, play a watchdog-cum-activist role in ensuring that its members, workers, enjoy their rights as prescribed by law. According to ELRA unions have an important role of ensuring that Tanzania as a country fulfils its obligations as a member of the ILO to uphold the principles enshrined in conventions it has ratified. In the recent past few years Trade Union Congress of Tanzania (TUCTA) has conducted research on the adherence of decent work in selected industries in the EPZ zone in Dar es Salaam. Although their findings have never been published, they have shared some of their findings at various *fora*. They have pointed out that many industries located in the EPZ zone prohibit workers to join and/or form trade unions, which is in contravention with the conventions related to freedom of association.

1084. Non adherence to occupational health standards has also been cited as prevalent in industries/factories. HIV-related discrimination has been reported as a common practice not only in a number of private sector workplaces but also in the public sector. Trade unions in Tanzania still represent a very small fraction of workers in the country, a result of which may be construed as inhibiting their capacity, and *locus standi*, to speak on behalf of other non-unionized workers. Any trade union's strength lies in its membership. With dwindling membership, experienced overall by trade unions around the globe, TUCTA has its work cut out already.

1085. Furthermore, on the aspect of effectiveness in handling labour disputes, available evidence reveals that trade unions have low capacity. They, for example, poor competence in negotiation skills, data collection and data analysis, legal and economic issues which are relevant in understanding conflict dynamics and conflict resolution. However, notable achievements of the trade union movement in the country includes the role played by the Tanzania Teachers Association in 2005 which managed to push the government to endorse the disbursement of outstanding teachers arrears, and campaigning for higher minimum wages in 2007.

Number and frequency of mass industrial and labour disputes and strikes

1086. The latest documented report indicating the number and frequency of mass industrial and labour disputes in Tanzania was produced in 1989. Since then, the department of labour has not documented any statistical data on the nature and frequency of labour dispute in

Tanzania. However, since the establishment of a new dispute resolution machinery, available data from CMA indicates that between January and May 2006, a total number of 1977 labour disputes were registered from the zones and 925 disputes *(i.e. 46.8 percent)* were settled by June 30, 2006. A total number of 2582 labour disputes were registered with the CMA between July 2006 and September 2007 and 1092 had been settled through mediation and arbitration, *(i.e. 42.3 percent)*. From October to December, 2007, 2682 labour disputes were registered and 871 cases settled *(i.e. 32.4 percent).*

1087. However, there are challenges facing CMA in registering and handling labour disputes. One of the challenges is the fact that since its establishment, CMA has been handling the disputes in a fast, efficient and effective manner and most of the disputes have been resolved through mediation and arbitration. Up to the writing of this report, only 7 applications for revision of arbitration awards have been filed to the Labour Court. Further, only 4 labour disputes have been referred to the Labour Court on ground of pecuniary jurisdiction. Capacity Building of CMA is an issue of critical concern. Initiatives have been taken, and two training sessions for the Mediators and Arbitrators have been conducted based on the new labour laws including the rules and regulations. Further, efforts are being made to ensure that CMA is properly accommodated by mid February 2008 at the Dar es Salaam Regional Labour Office Building presently under rehabilitation. However, although CMA is operating under strained conditions, prospects for its sustainability are promising, more so when the initiatives herein explained have been accomplished.

Prosecution of Corporations in respect of violation of employees' rights

1088. There is scanty information on prosecuted corporations in respect of violation of employee's rights in the department of labour. However, reports available in the department only indicate the number of cases filed in the court, but do not specifically indicate the cases in respect of breach of which provision of the law.

Corporate Social Responsibility in Social and Economic Development Programmes
Add an introduction

Legal Instruments and Corporate Social Responsibility (CRS)

1089. Recently, there have been debates in the Parliament of Tanzania to the effect that a law be passed to require business corporations to contribute part of its profit to social and community development. Although there has not been an agreed statutory requirement on this issue (except for Vocational Education levy which goes to Vocational Education Training Authority VETA), there are several Acts which propound the wider aspect of CSR. The three Acts which are mentioned in this regard are the Occupational Health and Safety Act or the OSHA Act (URT, 2003) and the Environmental Management Act (URT, 2004).
The OSHA 2003, and the Village and Lands Acts 1999, Tanzania Investment Act.

1090. The Occupational Safety and Health Act (OSHA) is a replacement of the former Factories Ordinance. Its primary aim is to make provisions for safety, health and welfare of persons at places of work. It also seeks to provide protection of persons other than person at work against hazards to health and safety arising out of or in connection with activities of persons at work. The OSHA prescribes the responsibilities of employers in ensuring that their employees are working in hazard-free environments with appropriate protection gears. It also relays responsibility to managers and supervisors for acts done by their subordinates under

their supervisions. OSHA specifies what companies need to adhere to as well as penalties for proven offences.

The Environmental Management Act 2004

1091. This Act repealed the former Act of 1983 and provided for continued existence of the ***National Environmental Management Council (NEMC)***. As stated in the Act it was enacted:

> *" to provide for legal and institutional framework for sustainable management of environment, to outline principles for management, impact and risk assessments, prevention and control of pollution, waste management, environmental quality standards, public participation compliance and enforcement ..."*

1092. Alongside the above responsibilities, the Act provides for implementation of the international instruments on environment and the National Environmental Policy. Above all, the Act provides direction on compliance and enforcement on environmental management issues.

1093. The Act outlines principles for environmental management such as precautionary principle; polluter pays principle; and the principle of public participation in development policies, plans and processes for the management of the environment. The Act also provides for impact and risk assessments, prevention and control of pollution, waste management, environmental quality standards, public participation as well as compliance and enforcement. The Act establishes the Environmental Appeals Tribunal and the National Environmental Trust Fund.

1094. In practice however, many companies do not compensate environmental damages resulting from their activities. In North Mara where Barrick has a mining site, the tailings dam is freely running into the pastures and fields, and the heavily contaminated waters from the processing plant adversely affect the local people by leaking into their water sources. 'During a meeting with village leaders from 7 Wards surrounding North Mara mine, it was reported by members of the environmental committees from the respective wards that their sources of water have been polluted by the waste water coming from the mining area which leaks from the pond in the mine. This has affected the health of the people around the mining area together with their livestock and crops. Complaints have been forwarded several times to leaders but the situation remains the same,' reads 'Mining for Life' a report by the Religious Leaders in Tanzania on mining issues.

1095. Apart from the environmental degradation, the 'Mining for Life' report says that, 'The technology and equipment used by the mining companies break down the environment in the mining area. We witnessed little activity for environmental conservation compared to the level of destruction that is taking place in all mining areas. We saw a very good and strong example of such destruction when the team visited Buhemba Gold Mine which is now out of production. Some questions are still lingering: How did reclamation fund help in restoring the destruction? Was it given to the authorities? In addition to the situation, if funds were not provided and the company closed its business what would be the fate of the open pits left in the area?

1096. In addition to environment and people's health, corporate social responsibility entails a host of other aspects. On the one hand, it requires corporate activities to contribute to wealth creation which generally contribute to poverty reduction and improvement of peoples livelihoods. It also requires corporate entities to conduct their activities in a manner that will not endanger the lives and property of the citizens.

1097. In Tanzania there are widespread concerns that foreign investments are not benefiting the citizens. The Presidential Commission appointed by President Kikwete (2007) and chaired by Judge Mark Bomani (also known as the Bomani Commission), set up to probe the accusations of 'plunder' of natural resources and gross human rights violations, found out that Tanzania does not benefit sufficiently from the multitude of natural resources in the land.

1098. The report states that, 'Despite the presence of such a huge amount of mineral reserves, the contribution of this sector to the national economy and community development seems not to be meeting citizens' expectations compared to other sectors of the economy. The Bomani report states that, 'Collectively the small scale minors were demoralized because of being left out in law and protocol enforcement in the mining industry.' This group of people has always fought with the multinational mining companies and are an after-thought in the government's mind when allocating land for mining activities'.

1099. Furthermore, the Bomani Commission noted that, 'The citizens do not know the basic criteria for computing the compensation amounts when their land is taken for investment. Basically, the real situation shows that the whole compensation process is not clear and not fair - hence, unsatisfactory. Assessment for compensation is usually done without heeding the key issues identified in the law (i.e. disturbance, transport and the value of the properties depending on where they are). Many people have been displaced without being paid the compensation or being allocated alternative places,' states the Bomani Commission.

1100. The Golden Opportunity report on the other hand, claims that large-scale mining operations have impoverished Tanzanians far more than those of artisan mining.' Some estimates are that mining in Tanzania has created around 10,000 jobs in the past decade. The country's six major gold mines employ a total of 7,135 people. However, large-scale mining has made many more unemployed. Before the arrival of multinational companies, small-scale artisan miners dominated gold mining; they used simple tools and techniques, providing small incomes for a large number of people who were generally uneducated and poor. One study estimated that by the late 1990s, the sector employed between 500,000 and 1.5m people. By 2006, a report commissioned by the World Bank estimated that there were around 170,000 small-scale miners in Tanzania. Comparing these figures, large-scale mining may have made around 400,000 people unemployed, as per Golden Opportunity report.

1101. The mining Act is clear on compensation to villagers whose land has been affected. The mining policy states that 'the Land Act (1999) and The Village Land Act (1999) are currently the two main legislations responsible for land issues including compensation'. These two laws provide a legal basis on ownership and compensation on land matters. The Mining Act (1998), section 96 states that, 'The license offered shall be utilized without causing any harm to the land owner or the rightful resident. Section 96(3) states that compensation for the resident should match the market value, rightful and sufficient. Under section 96(5), the Act states that in case of any dispute relating to the compensation paid under section 96(3), the complainant may submit the complaints to the Commissioner of

Minerals who shall address them using his authority rendered to him under Part VIII of the Mining Act.' Despite the compensation guidelines set out in the Land Act, 1999, it is apparent that some of the criteria are not applied during the preparation and the actual payment of compensation. The following story illustrates this.

Case (6) Negative Experience

Story from Envirocare:

Sun biofuel

It is a UK biofuel company operating predominantly in developing countries. The company strategy is to cover all areas of the biofuel from growing and production process to marketing. It ahs applied for 20,000 hectares of land, but has received only 9,000 hectares. The land is a home to 11 villages including: Muhaga, Matamba, Marumbo, Parka, Kidugalo, Kului, Mtakayo, Vilabwa, Mitengwe, Mzenga A, and Chakaye. Much of the land targeted by Sun Biofuels is miombo woodlands. Miombo is a venecular word which has been adopted by ecologists to describe those woodland ecosystems dominated by trees in the general Bachystegia, Julbernardia, and Isoberlinia (legu minosae, sub family Caesalpioidae). Miombo woodlands are central to the livelihoods systems for millions of rural and urban dwellers in Tanzania. Goods and services from the Miombo woodlands include: medicines, food fibers, craft materials, honey, and construction products.

According to the Sun Biofuel, this land is not habited. But there is admission that it supports livelihoods of about 250,000 households on the account of which affected villagers become entitled to compensation. But the compensation awarded was based on planted trees, and not on the commercial/market value of the land being disposed. The analysis of the costs and payment was conducted by the University College of Lands and Architectural Studies (UCLAS). As a result, the maximum amount paid is Tanzanian shillings 250,000 ***(roughly US$ 250****) for giving up livelihood supporting land.*

Estimated incomes for Sun Biofuel.

One hectare can produce 3,200 -4,800 kilos of seeds per year. With an extraction rate of 25percent one hectare can yield 800 to 12000 kilos of ail per year. If properly managed 20,000 thousand hectare can yield 2,400,000,000. One litre of jastropha oil is sold at 2,000 Tshs, therefore 4,800, 000, 000, 000 Tshs at a very conservative local price.

Other Legal Provisions

1102. In the wake of the likely hazards of global warming, the environment is a top agenda in most economic and social activities in the world today. Tanzania adopted a Policy on the Environment back in 1997. This was followed by the establishment of an institution to deal with the environmental issues in the country – the National Environmental Management Council (NEMC) in 1983. The latest instrument on the protection of the environment is the Environmental Management Act, 2005.

1103. Other legislation touching on the environment in various sectors includes the following:

(i) *Environmental Impact Assessment*

Marine Parks and Reserve Act, 1994 (Act No. 27 of 1994); Mining Act, 1998 (Act No. 5 of 1998); Forests Act, 2002 (Act No. 14 of 2002); Beekeeping Act, 2002 (Act No. 15 of 2002); Consumer Chemicals (Management and Control) Act, 2003 (Act No. 3 of 2003); Fisheries Act, 2003 (Act No. 22 of 2003); and Export Processing Zone Act, 2002 (Act No. 11 of 2002);

(ii) *Pollution – Prevention and Control*

Public Health (Sewerage and Drainage) Ordinance (Cap. 336); Water Utilization (Control and Regulation) Act, 1974 (Act No. 42 of 1974); Territorial Sea and Exclusive Economic Zone Act, 1989 (Act No. 3 of 1989); Plant Protection Act, 1997 (Act No. 13 of 1997); Merchant Shipping Act, 2003 (Act No. 21 of 2003); Explosives Act, 1963 (Act No. 56 of 1963); and Occupational Health and Safety Act, 2003 (Act No. 5 of 2003);

(iii) *Natural Resources*:

Ngorongoro Conservation Area Act (Cap. 413); National Parks Act (Cap. 412); Wildlife Act, 1974 (Act No. 12 of 1974); Water Utilization (Control and Regulation) Act, 1974 (Act No. 42 of 1974); Marine Parks Reserve Act, 1994 (Act No. 29 of 1994); Mining Act, 1998 (Act No. 5 of 1998); Forests Act, 2002 (Act No. 14 of 2002); Beekeeping Act, 2002 (Act No. 15 of 2002); and Fisheries Act, 2003 (Act No. 22 of 2003);

(iv) *Land Use Planning*:

Town and Country Planning Ordinance (Cap. 378); National Land Use Planning Commission Act, 1984 (Act No. 3 of 1984); Land Act, 1999 (Act No. 4 of 1999); and Village Land Act, 1999 (Act No. 5 of 1999);

(v) *Hazardous Waste*:

Plant Protection Act, 1997 (Act No. 13 of 1997); Tanzania Bureau of Standards Act, 1975 (Act No. 3 of 1975); Tanzania Food and Drugs Act, 2003 (Act No. 1 of 2003); and Atomic Energy Act, 2003 (Act No. 3 of 2003);

(vi) *Standards*:

Tanzania Bureau of Standards Act, 1975 (Act No. 3 of 1975); Water Utilization (Control and Regulation) Act, 1974 (Act No. 42 of 1974); and National Environmental Management Council Act, 1983 (Act No. 19 of 1983); and

(vii) *Environmental Research*:

Tanzania Wildlife Research Institute Act, 1980; Tanzania Industrial Research and Development Organisation Act, 1979 (Act No. 5 of 1979); Commission for Science and Technology Act, 1986; Tanzania Fisheries Research Institute Act, 1980 (Act No. 6 of 1980); Tanzania Pesticide and Research Institute Act, 1979; and National Environmental Management Council Act, 1983 (Act No. 19 of 1983).

1104. In addition, the United Republic of Tanzania has ratified several international legal instruments in the area of the environment including, those initiated by the United Nations in 1982, the Montreal and Kyoto Protocols and supported the adoption of the Rio Declaration.

1105. On the effectiveness of the policies and legislation on environment, there is a problem of double standards where implementation appears to be enforced rather unsystematically. While some enterprises are subjected to strict compliance, there seems to be laxity in dealing with others. There is therefore an implementation gap in the enforcement of some instruments. There also seems to be a loophole in the country's investment privileges. They are silent on the duties of the investor to the environment. It is therefore not surprising to find investors being allowed to go into business without doing an objective environment impact assessment – which should be compulsory in areas such as mining. A case in point, is the Buzwagi Mining Agreement signed in London between the Government of Tanzania and Barrick Gold Company in 2007. The Agreement seems to have been entered into hurriedly - a gesture that raised public eyebrow. The contract was kept secret even to the eyes of the peoples' representatives. Its legality was debated as suspicions of corruption were raised.

1106. One can see that Tanzania has numerous laws and regulations for environmental management to ensure quality of goods and services, consumer protection, pollution control etc. It has established some institutions to ensure an interpretation of these instruments. Examples are National Environmental Management Council, Tanzania Bureau of Standards, Tanzania Weights and Measures and Tanzania Food and Drugs Authority. Inspite the existence of all these institutions, there are still a lot of violations. Sub-standard and counterfeit goods have been impounded in warehouses in Dar es Salaam and other places on several occasions. Such unacceptable goods have been incinerated by the TFDA and other relevant authorities.

1107. APRM survey of the views of corporate managers and officers in August/September 2008, express an average level of capacity of the regulatory enforcement institutions. The survey revealed serious doubts as to the efficiency of the courts and the regulatory instruments.

Table 5.11: Quality, Capacity and Efficiency of Compliance Enforcement Institutions

S/N		Low	Average	Good
1.	Institutional Enforcement Capacity	10.4	61.4	28.2
2.	Facilitative Capacity of the Legal System	20.3	55.1	24.2
3.	Quality and Efficiency of Courts System	31.0	24.1	44.9
4.	Record of Quality and Efficiency of Police	7.5	51.6	40.9
5.	General Quality and Efficiency of Regulatory System	3.4	40.0	56.6

Source: APRM 'Corporate Survey of Managers' Views, September, 2008.

1108. As it appears from the survey, there is a lot to be done, especially in the areas of the court system and capacity of the legal instruments enforcement. On a general assessment, the performance in all aspects under Table 5.11 is just slightly average.

1109. We note that there are obvious limitations in the enforcement of policies, laws and regulations relating to ensuring appropriate corporate governance in Tanzania. On the critical areas such as the legal system, the courts of law, the policy programmes, etc. most of the respondents think that their capacity, quality and efficiency are of an average performance rating. The court system is seen to have a low quality, but the general performance of other systems' scores is an average rating. There are no significant differences between Zanzibar and the mainland on the attributes contained in Table 5.12.

Table 5.12: The extent of Protection of Stakeholders Rights by the use of Corporate Governance Framework

Stakeholders Category	Rights	Established Mechanisms (framework) to Protect the entire Rights	Relevant laws, policies and procedures	Remedies available upon infringements of stakeholders rights	Effectiveness of measures
1. Shareholders.	1.Involvement in various levels in decision making. 2.Equitable distribution of corporate profit	Structural framework such as: 1. Governing boards/Board of Directors - as policy formulators. 2. Management teams -as policy implementers. 3. Company Act	1. Public Private Partnership Policy 2. Privatisation Policy	Determined by Courts of Law or Quasi-judicial bodies	Effective to a large extent It is murky for corporations whose main stakeholders are non resident
2.Employees	1.Involvement in decision making 2. Freedom of association and right to organize. 3. Equitable Remuneration for works of equal status. 4. Right to work/equal opportunity for employment. 5. Staff development.	1. Workers council. 2. Workers Associations. 3. Labour Institutions e.g. CMA and Labour Court established in high court.	Labour laws e.g. Employment and Labour Relation Act, Labour Institution Act and the URT Constitution of 1977. Public Service Act 2002 Public Service Regulation of 2003. Public Service Policy of 1999.	In case of unlawful termination i. Reinstatement. ii. Re-engagement. In case of unfair treatment, compensation of damage incurred	Fair performance but better Executed on the mainland than Zanzibar
4.Suppliers	1. Right to compete in provision of goods and services.	Regulatory framework such as: 1. Public procurement regulatory authority. 2. National Boards of Materials management. 3. Tender boards.	Public Procurement Regulation of 2004. Public Finance Regulation 2004. Public Procurement Act. Public Finance Act.	Fines Warnings Quasi-judicial bodies	Because of in-built transparency and flexibility it is effective except in few cases of grand corruption

Objectives 3: Promote Adoption of Codes of Good Business Ethics in Achieving the Objectives of Corporations

Introduction:

1110. Under this objective, we examine the policy and institutional framework that is in place for the promotion of good business ethics in Tanzania. It is argued that although the Government has established institutions to prescribe codes and standards for corporations, their effectiveness is constrained by relatively low human resources capacity.

Internal and External Codes of Ethics and standards

1111. The NBAA has a Code of Ethics for Auditors and Accountants. The Code was issued in 1999 as a bye-law of the Auditors and Accountants. This code of ethics carries a mandatory application to all the NBAA members. The Code requires some amendments so that it better

conforms to the international accounting codes of ethics. It is noted however that the Auditors and Accountants Act has made an impact, and it has facilitated the development of an enabling environment for the auditing and accounting practices in Tanzania. The Act, for example, made it compulsory and mandatory for big companies to employ Certified Public Accountants(CPA holders or accreditation) approved by a professional accounting body. However, there are still constraints to verify and ensure compliance.

1112. The NBAA subscribes to, and prescribes, the IFRS/IAS and ISA standards. The NBAA has the legal mandate to set accounting and auditing standards, as well as professional ethical requirement. The existing ones have given to the IAS and ISA. It has adopted the IFRS/IAS and ISA wholesale with effect from July 2004. In this regard, the NBAA has issued more than 30 local accounting standards, 17 auditing standards and other recommendations to guide the attainment of ethical practice. Examples include:

(i) Tanzania Financial Accounting Standard (TFAS) in which TFAS 12 include Directors' Report format;
(ii) TFAS 23: Accounting for VAT;
(iii) TFAS 24: Public Sector Financial Reporting; and
(iv) Tanzania Statements of Recommended Practice such as Basic Recording keeping and Accounting Practices for Non-Governmental Organizations in Tanzania and Governance in the Public Sector.

1113. The Commission of Insurance monitors acts to verify and monitor compliance with financial reporting of insurance companies. This is done by a *Department of Insurance Supervision* in the Ministry of Finance and Economic Affairs but it essentially monitors financial reporting by insurers.

Engineering Works: Quality and Safety Matters

1114. The Engineers Registration Board (ERB) monitors the professional ethics and practices of its members in the engineering and construction works. There exists a law which empowers the ERB to take actions against engineers who do not comply with specified ethics, codes and standards of practice.

1115. The Engineers Registration Act (1997) empowers the relevant Minister to create an Engineering Board composed of 9 members. The Board is fairly representative [schedule, Section 3(3)], including 3 registered engineers from the government, one registered engineer from a higher institution of learning, 2 engineers outside the government service, a representative from the Attorney General's Chambers nominated by the Attorney General, and a representative from an engineers registered professional body.

1116. Section 26 in the general provisions (part VII) clearly states that any person (a) who fraudulently makes, or causes or permits to be made, any false or incorrect entry in the Register, or (b) who fraudulently procures or causes any persons to be registered commits a crime.

1117. Section 34 provides for the Board to make by-laws (with consent of the Minister) for the better carrying out of its objectives and functions. Among other functions, it also endorses and prescribes certificates, diplomas and other awards which may be conferred by the Board, as well prescribing conditions which must be satisfied before any diploma, certificate or other awards may be granted. All these Board powers are meant to ensure that engineering works are carried out ethically and professionally.

1118. We note that having codes of ethical practice is only one of the conditions for ethical practice. An effective enforcement of the ethical requirements, processes and standards is another matter. We have seen several high-rise buildings crumbling down in the process of construction in Dar es Salaam. We see some construction sites with buildings going up without the postings of who the contractors are, as a matter of procedural and quality requirement.

1119. We note with concern that there exists no professionally based organization like the ERB on the isles (Zanzibar). Supervision and monitoring remain a responsibility of the relevant Ministry rather than a specialised institution.

Corporate Integrity and Ethics

1120. The government of Tanzania has taken several broad measurers to address the problems relating to corporate ethics in the country. However, existing Procedures guide the relationship between government and the corporate entities they do not necessarily bind the corporate entities with the exception of the financial intuitions which are regulated by the Bank of Tanzania

Such measures have included:

(i) The creation of a Good Governance portfolio in the President's Office with ministerial portfolio to monitor overall anti-corruption programmes and strategies;

(ii) The creation of the Prevention and Combating of Corruption Bureau (PCCB) to investigate and assist/participate in prosecuting cases of corruption after consultations with the Director of Public Prosecution;

(iii) The establishment of the Commission for Ethics which is charged with the responsibility of enquiring into and administrative follow up of cases of senior public officials who might be involved in a breach of ethical practice such as conflicts of interest while in public office;

(iv) As of December 1999, there was established a National Framework on Governance to follow-up on matters of accountability by strengthening the legal and judiciary system, enhancement of financial accountability and strengthening oversight institutions; and

(v) The enactment of the Public Procurement Act (PPA) of 2004 Act which established the Public Procurement Regulatory Authority (PPRA) provides for:

(a) Procedures for Central Tender Boards;
(b) Procedures for Ministry Tender Boards;
(c) Procedures for District Tender Boards;
(d) Procedures for Parastatal Tender Boards; and
(e) Public Procurement Appeals Authority.

1121. The National Anti Corruption Strategy (NACSAP) and its related operational action plans are government measures aiming at bringing collaboration of public and business stakeholders to work together against corruption. The NACSAP works to improve good corporate governance in the sense that some of the supervisory roles of government, concern

even in the private sector. Corruption is rife in procurement transactions in the public private sector partnerships relations. NACSAP envisages:

(i) Effective and transparent system of procedures and regulations affecting business relations;
(ii) Creation of public awareness on the established regulations and procedures; and
(iii) The expected levels of quality of services provided by companies.

1122. Despite all these State-engineered efforts, corrupt practices are still rampant in many sections of Tanzania's corporate practices especially at the level of procurement, bureaucratic practices, business license acquisition and payment of taxes. Several steps are however being taken by the government as it is aware of the short falls in the implementation of regulations to improve the corporate business environment.

1123. The government has put in place the Business Strengthening for Tanzania (BEST) which aims at smoothening the process of doing business in Tanzania. There a lot of corporate ethical expectations provided for by the BEST programme as are summarized in Table 5. 13.

Table 5.13: Summary of the Interlinked Components of the BEST Program

Component	Minimum Output
1. Achieving better Regulation	Unnecessary regulation removed Sustainable process established for ensuring business friendly laws, regulations and administrative procedures Improved efficiency and transparency of government institutions dealing with business
2. Improving Commercial Dispute Resolution	Improved accessibility to the court system for formal and informal business Speedy and quality of service provided for court system for business improvement
3. Strengthening the Tanzania Investment Centre	Increased number and value of local and foreign investors in Tanzania Enhanced promotion of Tanzania as an investment destination
4. Changing culture of government	Improved customer services ethos for services provided.
5. Empowering private sector advocacy	Improved capacity of private sector stakeholders to identify regulatory problems and solutions and advocate for improved business environment

Source: *United Republic of Tanzania (URT), BEST Program, Vol. 1, 2003*

1124. It needs to be noted that what happens in the government sector greatly affect the private business sector. Components 4 and 5 are quite important in this regard.

1125. Ethical practice is most often compromised by a number of influences from outside the corporation as summarised in the following Table 5.15.

Table 5.14: External Influences against Ethical Practice (Percent)

S/N		Influenced	Moderate Influence	Not Influenced
1.	Anti-Corruption Institutions Influenced Against Ethics Enforcement	18.4	58.5	23.4
2.	Legal and Court System Influenced Against Fair Practice	11.6	57.9	30.5
3	Taxation System Influenced Against Corporate Good Practice	6.3	70.5	23.2
4.	Environmental Control Organisations Influenced Against Ethical Practice	7.4	67.3	25.3

Source: Field Survey Data of Responses by Managers and Government Officials, September, 2008

1126. Table 5.14 paints a generalisation that ethical practice will be difficult to be realised if government authoritative organs like the courts of law, tax administration and environmental control institutions are prone to external influence, even if this influence can be rated as low. The respondents are of the view that by and large corporate governance processes are likely to be influenced and subjected to unethical events at various points in their operational systems.

Objective Four: Ensure that Corporations treat all their Stakeholders (Shareholders, Employees, Communities, Suppliers and Customers) in a fair and just manner.

Stakeholders Protection

1127. There are several stakeholders in business entities. These include not only the company management, but also labour organisations, social organisations such as NGOs and regulatory organs.

1128. For many years company stakeholders were protected by the Companies Ordinance, 1931 (Chapter 212 of the Revised Laws of Tanzania). This law was repealed by the Companies Act of 2002. The new law has several provisions, as the old one did, for protecting directors, shareholders, employees, suppliers and communities.

1129. The Companies Act, 2002 requires directors to conduct their duties in good faith and in the best intentions, in pursuit of objectives and interests of the company. The Act also compels the directors to be keen and safeguard the interests of the company's employees. It also requires the directors' service contracts to be available and ready to be inspected by members and the public, if need be, at the company's registered premises in the event that there are problems such as a need to remove a director. During our field survey, we noted a high degree of secrecy shrouding managers' contracts as well as other company affairs.

1130. Under the old law, companies could easily disclaim responsibility and liability by reason of the director's acts being *ultra vires* (beyond) its authority. Now people with justifiable claims against companies have a better protection. The new law gives protection to persons having to deal with companies in that they need not enquire into the capacity of the director or company or its other authority on the account of *ultra vires* situations. This is an

important provision aiming at dealing with some unscrupulous company authorities who tend to give priority to company interests at the expense of the interests of third parties.

1131. Furthermore, the Business Registration and Licensing Authority (BRELA) has been empowered to call for information if it wants to examine the degree of the company's compliance to set regulations and to fairness in dealing with its stakeholders. Of course there must be a serious cause for concern by BRELA if it has to try to make some remedial interventions or to require the company to take actions of redress to the afflicted or the complaining parties. BRELA is one of the business facilitation agencies which play the role of an overseer. Our survey has shown that BRELA, like many business control and facilitating institutions has an average, if not a limited, capacity to carry out its full mandate.

1132. The Companies Act 2002 is expected to protect minority shareholders in a registered company. Minority shareholders are protected against unfair company procedures, biases and prejudice and other actions originating from the company, but inflicting upon its shareholders. The aggrieved persons can apply to courts of law to prosecute and defend their interests.

1133. It is one thing to have legal provisions as those in the new legislation and another to make the stakeholders aware of their rights to be protected against company malpractices where such companies put their own interests ahead of those of the shareholders.

1134. The survey which we conducted to study the degree to which certain stakeholders can influence corporate behaviour shows that many of the actual and potential stakeholders have an insignificant influence, especially the regulatory instruments as summarised in Table 5.15.

Table 5.15: Stakeholders Power Influence on Corporate Behaviour (percent of responses)

S/N	Stakeholder	Insignificant Influence	Moderate Influence	High Influence
1.	Courts of Law	62.1	26.3	11.6
2.	Labour Organisations	64.9	25.5	9.6
3.	Taxation Authorities	55.6	33.3	11.1
4.	Non-Governmental Organisations	71.9	20.8	7.3
5.	Financial Organisations	63	30	7

Source: Survey of Corporate Managers and Officers.

1135. Table 5.16 shows that at the moment Tanzania deals with a rather unmanaged corporate behaviour. This is because of her commitments to the dictum "let the managers rule" without interference. It is not clear as to how much freedom is guaranteed by private sector investment incentives. Labour organisations have insignificant influence on the management of corporations. There are companies which have experienced management-labour disputes, and at times the management frowns upon the existence of labour organisations. On many aspects which can be expected, to make corporate management more responsive to stakeholders' interests, we noted more than 60 percent of the respondents are of the opinion that the degree of influence is insignificant**.**

1136. The Environmental Management Act, 2004 which came into force in 2005 has some sections protecting communities against poor environmental management by corporations. Section 4 requires corporations to ensure communities' rights to a clean, safe and healthy environment and that such corporations have a duty to protect the environment (Section 6).

The Act provides for compensations to persons or communities who will have been victims of corporation's actions against safe environmental management. Section 80(2) empowers the Minister responsible for the environment to make regulations and rules on economic instruments thereby prescribing:-

(i) How best to oblige individuals or firms when making decisions about production, consumption and investment, to consider environmental consequences;
(ii) Measures to be adopted to internalize environmental costs without relying on pricing mechanism; and
(iii) Price-based measures, user charges and subsidies to internalize environmental costs and benefits.

1137. Section 81(1) prescribes that any person, being a proponent or a project developer must make an Environmental Impact Assessment study at his or the company's costs. This Environmental Impact Assessment Study must be carried out before the commencement or financing of a project. Section 82(1) empowers the responsible Minister to specify, make regulations and guidelines on how the environmental impact assessment shall be conducted under the Act, and for which a certificate must be obtained to allow a project commencement.

1138. Much as there exists a requirement for all investments and development projects to undertake an EIA, there are problems caused by several factors. One of them is the fact that Tanzania is competing in the market to attract investors. It can ill afford to give them stringent conditions. There is a problem in the process of approval involving land officers, TIC officials, BRELA officials, environmental officials, etc. based in various institutions.

1139. The environmental impact assessment is done on terms of reference specified by the project proponent or developer at his/her own cost within the government provided assessment guidelines. This in effect undermines the objectivity of such assessment in a way that the project proponent or developer makes an influence on what finally comes as an impact assessment report. An "acceptable report" is one of the considerations for an award of an impact sensitivity certificate in favour of the investor. This state of affairs needs to be reviewed.

1140. Some cases are yet to be resolved despite aching policy concerns for a long time. An example includes the concerns of the Birdlife Africa Partnership (BAP) which expressed a deep concern regarding a soda ash processing project proposed to be located around Lake Natron in Northern Tanzania. The project has been proposed by TATA Chemicals and other partners to construct the soda ash extraction plant.

1141. According to the *Ramsar* Convention, to which Tanzania is signatory, Lake Natron is a designated wetland area - home to about 75 percent of the worlds' lesser flamingos. It is also a breeding area for these rare birds. Yet an approval had been secured to establish a heavy industrial plant in the area. In the long-run a township would grow and the natural habitats would be displaced. Yet Tanzania uncritically campaigns through the TIC to attract more investors using an indicator of the number of attracted investors, irrespective of some negative long lasting and long term outcomes some investments may bring about.

1142. Again there have been many cases of environmental pollution by manufacturing companies. Some action has been taken, including, for example, a temporary closure of a textile manufacturing company. However, much still remains to be done. One may wish to

consider the impact of mining corporations on the environment, especially when the gold, diamonds and tanzanite are exhausted. The mining exhaustion aftermath comprises barren land, heaps of sand and trenches abandoned by the investors. It is difficult to conclude that corporations in Tanzania largely and systematically comply with requirements of environmental protection. The reason for this generalisation is the fact that the behaviour of most of the enforcement organs play safe, lest they get accused of interference and eroding the generous incentives awarded to investors. While at the same time there are campaigns to attract more investors, one would want to have in place strong enforcement mechanisms to guard against negative environmental impacts. Secondly, our field survey data has shown that various regulatory and oversight institutions have little or no influence on the conduct of private corporations.

1143. Having an elaborate institutional set up with policies, laws and regulations, is one important requirement for appropriate corporate governance. However, making them work well as initially intended is another matter and is wanting in Tanzania's corporate governance context. The institutions, policies, laws and regulations have set in place an appropriate investment climate - albeit theoretically. What goes on in this attractive investors' climate results in the undermining of stakeholders' interests, especially the communities of consumers and the health of the population at large.

Objective Five: Providing for Accountability of Corporations, Directors and Officers

1144. In practical terms accountability calls for the dimensions of (a) whether the directors and their companies are controllable, (b) whether the actions of the companies and their directors are transparent, and (c) whether these companies and their directors are systematically and spontaneously answerable to the legal authorities and to the general public, shareholders and consumers.

1145. In the broader economic, social, and political contexts, there are laws in the country which call for an observation of controllability of companies and directors to ensure that their policies and decisions conforms to their mandates and procedures. There are legislated and professional instruments which require companies and directors to be controlled. The Companies Act, 2002 is one such instrument. More specific related control instruments include - among others:

(i) The Environmental Management Act, 2004;
(ii) The Banking and Financial Institutions Act, 2006;
(iii) Capital Markets and Securities Act, 1994;
(iv) Income Tax Act, 2004;
(v) The National Board of Accounts and Auditors Act;
(vi) The Fair Competition Act, 2003; and
(vii) The Companies Act, 2002 etc.

1146. The Banking and Financial Institutions Act (2006) section 23(3) requires every bank and every financial institution to have an Audit Committee chaired by a non-executive Board Member. This ensures management and professional accountability of corporations, if auditing is broadened to include the management and materials accounting dimensions.

1147. There are supervisory institutions including the Bank of Tanzania, BRELA, TBS and the Insurance Supervisory Department in the Ministry of Finance and Economic Affairs Development. There is also the Commercial Division of the High Court of Tanzania to which litigations can be lodged against companies in default of legal requirements.

1148. Another important instrument is the Security of Employment provisions in the Employment and Labour Regulations Act (2004) section 99(i) (a) and (b) under which the Minister responsible is empowered to issue codes of good practice to ensure answerability and accountability.

1149. However there seems to be a gap between these good principles or instruments and the capacity of the enforcement institutions. The professional bodies such as the NBAA and the ERB can make their members accountable to some extent in terms of their ethical practice requirements, but they are also deficient in their enforcement capacity.

Accountability: Capital Markets and Securities Authority (CMSA)

1150. The Capital Markets and Securities Authority is an institution which regulates and requires companies intending to enlist on the DSE to discourse their financial standing. The Dar es Salaam Stock Exchange (DSE) takes over the role of regulating financial reporting of the listed companies. The Capital Markets Act (1994) and its related regulations empower the CMSA to regulate entities whose shares are traded on the DSE. The CMSA Accounting and Financial Requirements (1997) as amended in 2003 requires brokers, dealers and investment advisors to prepare annual financial statements in accordance with the Tanzania Financial Accounting Standards as issued by the NBAA. It has been noted that the NBAA subscribes and conforms to the IAS even though the format prescribed in the NBAA regulations is not quite the same as the IFRS.

1151. The Bank of Tanzania regulates the banking and financial institutions (non-banking) reporting as provided for by the Banking and Financial Institutions Act (2006) and the BOT's Bank Supervision Regulations. It is required that the registered bank must submit audited financial statements to the Director of Banking Supervision, not later than 105 days of year end. It needs to be noted that the supervisory role of the Bank of Tanzania in Zanzibar is carried out by the People's Bank of Zanzibar (PBZ) under a memorandum of understanding between PBZ and the BOT.

Ministry of Finance and Its Corporate Enforcement Accountability Role

1152. The Ministry of Finance and Economic Affairs has a specific department to regulate insurance institutions. The Insurance Supervisory Department (in the ministry) regulates financial reporting practices of the Insurance Companies as provided for under the Insurance Act (1996) and the Insurance Regulations (1998).

1153. In short, Tanzania has several and requisite institutional and regulatory frameworks for the facilitation of good corporate management. If these were effectively and efficiently operational, one could easily see Tanzania boasting about higher levels of good corporate governance. The structures, laws and regulations are institutionally in place, but there are some problems and limitations to ensure monitoring and enforcement for compliance to the desired national and international standards.

1154. APRM survey of the opinions of corporate officials concerning the pendulum of control and answerability shows that the existing institutional framework is in place and functions averagely well as shown in Table 5.16. One notes with concern however, that accountability to stakeholders at large is little or poor and ineffective yet there exist the institutions and regulatory mechanisms in place to protect stakeholder's interests as will be discussed under objective four.

Table 5.16: Whether the Corporate Framework Policies and Regulations Ensure Accountability to Stakeholders (Percent)

S/N		Very Effective	Average/Fair	Little/ None
1.	Rights of Stakeholders	2.0	41.1	56.8
2.	Availing timely and Accurate Information and Disclosure	11.0	64.0	25.0
3.	Framework Protects Stakeholders' Interests	35.3	49.0	15.7
4.	Integrity of Corporations	18.6	61.8	19.6

Source: Field Survey of Opinion of Experts on Corporate Governance, August/September, 2008

1155. One notes the high degree of ineffectiveness in upholding the rights of stakeholders, ensuring availability of timely and accurate information for disclosure, and the protection of stakeholders' rights, especially consumers of goods and services.

Illegal Business as a challenge to corporate Governance

1156. Due to weaknesses in law enforcement mechanisms illegal transactions are thriving in country. This weakness has resulted into an existence of unofficial ports along the Indian Ocean, especially from Kilwa to Mtwara. These "unmanaged import tunnels" make it quite difficult to ensure that the export and import of goods are of quality. Instead there are inferior goods on which no customs duties or value added taxes have been charged. This also undermines fair market competition as the errant traders usually sell their goods quite cheaply because they are un-taxed.

1157. The Tanzania Revenue Authority has posted clerks and customs officers in some small harbour-towns such as Mafia, Kilwa and Lindi. Quite unfortunately the area south of Kilwa, all the way to Mtwara (a major operating harbour) has deep sea areas close to the mainland, thereby making it possible to have numerous small towns and villages becoming unofficial natural harbours for importing and exporting (smuggling) goods unnoticed by tax and customs authorities in Tanzania. Bagamoyo and Pangani are other undeclared ports for the informal economy. The natural-harbour channels into and out of the country create some informal conduits to import some questionable goods in terms of their quality. There is existence of fraudulent business across the neighbouring countries. Transit goods have little tax costs compared to goods for distribution within the country.

Money Laundering and its Effects on Corporate Governance

1158. Tanzania, like many countries, faces a problem of money laundering. In compliance with the regional and global anti-money laundering and financing of terrorism instruments,

Tanzania has criminalized money laundering since 1991, and it has adopted laws and regulations with provisions that address money laundering and financing of terrorism. These include:

(i) The Anti-Money Laundering Act, 2006;
(ii) The Prevention and Combating of Corruption Act, 2007;
(iii) The Drugs and Prevention of illicit Traffic in Drugs Act, 1995;
(iv) The Banking and Financial Institutions Regulations, 1997;
(v) The Bank of Tanzania Circular No. 8 on Money Laundering Control 2000; and
(vi) The Prevention of Terrorism Act, 2002.

1159. The Anti-Money Laundering Act, 2006 is in line with international standards and provides for, among others, establishment of the Financial Intelligence Unit, establishment of the National Multidisciplinary Committee, sanctions for acts of money laundering, reporting suspicious transactions, protection of reporting persons and obligation to report physical cross boarder transportation of cash or bearer of negotiable instruments.

1160. In February 2007, consequential amendments to various laws to give effectiveness to Anti-Money Laundering Act, 2006 were made through the Written Laws (Miscellaneous Amendment) Act No. 12 of 2007. The amended Acts include:

(i) The Extraction Act, 1965;
(ii) The Evidence Act, 1967;
(iii) The Economic and Organized Crime Control Act, 1984;
(iv) The Criminal Procedure Act 1985;
(v) The Proceeds of Crime Act 1991;
(vi) The Mutual Assistance in Criminal Matters Act, 1991;
(vii) The Banking and Financial Institutions Act, 2006; and
(viii) The Gaming Act, 2003.

1161. Tanzania has also ratified and acceded to a number of UN Conventions and Regional Protocols on combating money laundering and the financing of terrorism including:

(i) Single Convention on Narcotic Drugs (1961) – Acceded in 1993;
(ii) UN Convention on Psychotropic Substances (1971) – Acceded in December 2000;
(iii) International Convention Against the Taking of Hostages (1979) – Acceded on January 22, 2003;
(iv) International Convention for the Suppression of Terrorist Bombing (1977) – Acceded on January 22, 2003;
(v) International Convention for Suppression of Financing of Terrorism (1999) – Acceded on January 22, 2003;
(vi) UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna 1988) – Acceded in 1996;
(vii) Protocols on Combating Illicit Drug Trafficking in East African Region, SADC Protocol on Mutual Legal Assistance in Criminal Matters and Extradition and SADC Protocol on Combating Illicit Drug Trafficking – Acceded in 2003. The SADC Protocol on Corruption was ratified in 1996; and
(viii) United Nations Palermo Convention Against Trans-national Organized Crime (2000) – Acceded in July 2005.

Overall Assessment of the Regulatory and Corporate Integrity Framework

1162. Tanzania has taken a wide range of measures to promoting good corporate governance based on best practices. These measures include:

(i) Putting in place an effective legal framework with specified rights and obligation of a company, its directors, shareholders and other stakeholders;

(ii) Soliciting the services of professional and industry associations to develop good corporate governance principles;

(iii) Promoting high quality financial disclosure requirements and proper ownership structures;

(iv) Ensuring appropriate and effective supervisory arrangements that encourage the adoption of sound corporate governance practices; and

(v) Building capacity in corporate governance through training and educational programmes at all levels, including for directors, senior management, financial regulators, and for improving the performance of SMEs.

1163. However, while it is gratifying to see that the country has been instituting mechanisms for good corporate governance and adopting some of the principles of good corporate governance, it should be recognized that an overall assessment on the level of implementation and compliance to best practices and standards is yet to be undertaken. Nonetheless, some sectoral assessment has been conducted using diagnostic tools like procurement audits, Country Financial Accountability Assessment (CFAA), Public Expenditure and Financial Accountability (PEFA), Public Expenditure and Financial Accountability Report (PEFAR).

1164. Upon an assessment of these diagnostic tools, one may contend that Tanzania has made some good progress towards enhancing the integrity of its corporate entities. The PEFAR-(2005) concludes that ["generally Tanzania has a sound system of application of the financial rules and regulations. Most of the recommendations contained in the 2001 Country Financial Accountability Assessment (CFAA) report have been implemented or are already included in the Public Financial Management Reform Program (PFMRP). There has been an improvement on controls over non-tax revenue collected and retained in Ministries, departments and agencies (MDAs) that provide services. Inbuilt controls in the Integrated Financial Management Systems (IFMS) also provide a greater degree of assurance about the accuracy of transactions… "]

1165. It is noted that budgets are presented and discussed in the Parliament of the United Republic of Tanzania which sits representatives from the mainland and isles. In any case most of the items or indicators concern "union affairs" of the United Republic of Tanzania. Separate non-union budgetary matters are reviewed and discussed in Zanzibar's House of Representatives.

1166. The evaluative diagnostic tools (PEFAR and PEFA) show clearly that the country is making good progress as far as corporate governance is concerned. However, there are a number of constraints which inhibit faster progress. These range from low technical capacity amongst key groups, poor data sets, to ineffective sanction for non-compliance.

1167. It needs to be underscored that the initiatives for promotion of adoption of codes of good business practice do cut-across sectors, both public and private. Further, a number of institutions, public and private, are involved. On the public side, all ministries, departments and agencies are the subjected to the exercise. For example, the National Board of Accountants and Auditors is actively engaged in promoting adoption of best practices in accounting and audit. This is achieved not only by preparing accounting and auditing manuals, but also by conducting short- term and long-term training to upgrade the technical capacity of accountants and auditors.

1168. On the private sector side, a number of professional associations have been formed and are active in inculcating (nurturing) the culture of good business ethnics to the stakeholders in their constituencies. Such associations include: Tanzania Exporters Association; Tanzania Consultancy Association; Dar es Salaam Merchant Chamber; Tanzania Civil Engineering and Construction Association; Tanzania Private Sector Foundation; Tanzania Oil Marketing Association; Tanzania Chamber of Commerce, Industry and Agriculture; Tanzania Bankers Association; Tanganyika Law Society; and Tanzania Chamber of Agriculture and Livestock. These associations are avenues not only for enhancing professional integrity of their members, but also for lobbying and advocacy with view to improving the business environment.

1169. Recently, these private sector associations, through information sharing, have been able to raise alarm on the influx of counterfeit products in the country. This did trigger government action in terms of reforming internal policies, laws and regulations in order to effectively address the problem.

1170. It needs to be recalled that most legislation do contain clauses which prohibit the corporations from unfair business practices, and engaging in conduct that is misleading or deceptive. Indeed, these restrictions are aimed at enhancing good corporate governance and boosting the integrity of the corporations in the eyes of the public.

1171. Several regulating agencies and instruments have been established to enhance good corporate governance. The Bank of Tanzania and its agency services in the people's Bank of Zanzibar has been empowered by the 2006 Banking and Financial Institutions Act and the Bank of Tanzania Act (2006).

1172 . Other institutions include, *inter alia:*

(i) National Insurance Commission;
(ii) Business Registration and Licensing Agency;
(iii) Capital Markets and Securities Authority;
(iv) National Board of Auditors and Accountants;
(v) Tanzania Investment Centre;
(vi) National Environmental Management Council;
(vii) Tanzania Bureau of Standards;
(viii) Zanzibar Investment Promotion Agency; and
(ix) Zanzibar Directorate of Environment.

5.4 Conclusion and Recommendations

5.4.1 Conclusion

1173. Generally, and by definition, corporate governance calls for and requires an acceptable level of disclosure and transparency to their Boards of Directors and stakeholders with regard to the conduct of corporations. The required transparency would facilitate supervision and various forms of accountability to ensure that corporations comply with existing legal obligations and remissions, accountability to responsible officials and stakeholders, including shareholders, employees, suppliers, creditors, customers and affected communities. In the same token and logic, corporations would be held accountable for sustainable environmental management.

1174. Tanzania has quite elaborate policies, institutions, laws and regulations to ensure the above definitive provisions required under good corporate governance. These notwithstanding, most corporations appear to fall short of promoting transparent, accountable corporate practice. This can partly be explained by two main factors. Firstly, companies (especially foreign ones) hide their actions by labelling many of their procedures as company secrets. Researchers and newspapers are usually avoided through this excuse, implying that perhaps some companies bear foul practices. See Appendix 4 (APRM Study on Corporate Governance: Reasons for Non response).

1175. Secondly, there is a low level of awareness even on the part of those who are expected to know, monitor, evaluate and enforce the conduct of good corporate practice in the responsible ministries and the public at large. The overseer institutions **hardly** understand their responsibilities.

1176. Tanzania has adopted ratified and developed a number of international codes and standards which are internationally acceptable. Tanzania also subscribes to the objectives, standards and codes of the OECD, the Commonwealth, International Standards on Accounting, International Standards on Auditing, International Standards Organization, Based I and II Core Principles for effective banking, etc. However the level of application and enforcement of such codes and standards remains low.

1177. This can be partially explained by the laxity to interpret and understand responsibilities coupled with low levels of technical capacity on the part of the enforcement organizations such as the NBAA, the Bank of Tanzania, the TBS, EWURA, SUMATRA and the relevant professional organizations. A second explanation stems from the low level of awareness of good corporate governance matters on the part of the general population, CSO stakeholders and enforcement organizations.

1178. Our findings show an existence of various policies, institutions, laws and regulations purposely created for a possibly good corporate development framework and practice. These include, for example, the company Act (2002), the Capital Markets Authority, the Fair Competition Commission (and its Act), Investment Promotion Act for the mainland and Zanzibar, the Business Registration and Licensing Agency (BRELA), the Employment and Labour Regulations Act (ELRA) (2004), the Public Procurement Act No. 21 of 2004, Investment Promotion and Protection Act No. 11 for Zanzibar, Environment Management Act No. 20 of 2004, Capital Markets and Securities Act of 1997 (revised in 2002), and the Banking and Financial Institutions Act No. 6 of 2006 among others.

1179. The existence of institutions and legal instruments do create an aura of satisfaction that Tanzania is doing well on the first APRM objective. We have argued that it is one thing to have these instruments and attributes in place. However they can mean little if there are inadequate capacities for programming, enforcement, monitoring, evaluation and an elaborate feed back mechanism.

1180. Therefore the business facilitation in Tanzania is in principle quite on course and in accordance with the expectations as there have been a liberalization of imports, free movement of capital and money, including foreign currency remittances, generous investment incentives and restructuring of the banking and financial sector and the above mentioned set of legal instruments.

1181. The inadequate level of enforcement of codes and standards is partly explained by the fact that corporate governance in Tanzania has relatively poor attributes of transparency and accountability from stakeholders down the hierarchy of companies' management and the surrounding communities in general. No information is easily available on the internal company management. Confidentiality can largely undermine professional practice and poor compliance to codes and standards.

1182. Tanzania has adopted a number of human rights related conventions like those of the ILO. It has ratified, and it has created instruments such as the ELRA and OSHA among others. There are also organizations which remind corporations about their social responsibilities e.g. professional organizations, CSOs, labour unions and some national and international NGOs. At the operational level, the study found a poor practice level where labour disputes are recurrent and sometimes unresolved implying little or no labour-action effectiveness in some companies. Most companies offer one to two years of work contracts, and these contracts are conditionally renewable upon a decision of the management rating of an employee performance contracts. Workers fear to voice complaints lest they risk renewal of their contracts at their expiry. This state of affair creates room for silencing workers and it is an unfair treatment of employees.

1183. Tanzania is signatory to several international conventions and instruments covering anti-money laundering anti–terrorism as well as being committed to the UN and AU resolutions on good ethical practice in corporate governance. Tanzania has created institutions such as the Prevention and Combating of Corruption Bureau (PCCB), the Good Governance Unit in the President's Office among others. It also hosts the Eastern and Southern Africa Anti-Money Laundering Organization. There are also institutional and professional organs to advocate for professional ethical corporate governance practice.

1184. The government has sponsored the establishment of ethics enforcement institutions. There have been legislations targeted at empowering some professional organisations such as the NBAA and the ERB. There are also other entities seeking to enforce ethical corporate practice. The NBAA, the ERB and the Tanzania Procurement Regulatory Authority. There are professional organisations for, example, materials management professionals, medical practitioners, pharmacists, transport operators, etc. these businesses and professional associations have voluntary codes and standards for promoting ethical practice.

1185. Despite the above arrangements, practice is still at an average performance rating as seen from the survey. This is partially explained by poor and systematic enforcement and coordinated framework and reporting.

1186. The efforts to create acceptable ethical practice are undermined by collusion, rent seeking behaviour, corruption and a lack of corporate integrity. Such factors have been revealed by, for example Parliamentary Select Committees in the cases of defective and expensive energy contracts, misappropriation of government funds from the Bank of Tanzania, the controversial Kiwira Coal Mine allegedly involving high dignitaries making appropriation by use of office - a sheer conflict of interest.

1187. Inadequate effective oversight mechanism is another handicap. The level of awareness of stakeholders is extremely low among affected communities. Stakeholders hardly know their rights with regard to what a company does in its neighbourhood, and how they should relate their interests to the companies. Some respondents of the government for example were of the opinion that it is the responsibility of the government to take care of the environment rather the corporations. Many of the corporations think that once they have paid the required taxes, the rest is hardly their responsibility.

1188. The 2002 company law has several provisions for holding corporate managers and officers accountable for their professional responsibilities and accountability to the corporate hierarchy. The provisions are not clear on the other forms of accountability such accountability to social and political concerns. The Environmental Management Act No. 20 of 2004 calls for sustainable environmental management to be the responsibility of everyone including corporate managers and officers.

1189. Other pieces of legislation relating to accountability concerns include the Banking and Financial Regulations Act No. 6 of 2006, the Capital Markets and Securities Act of 1994, chapter 79 of the 2002 revised edition, Employment and Labour Relations Act No. 6 of 2004, the Engineers Registration Act No. 15 of 1997 especially chapter 63 of the revised edition of 2002, the Zanzibar Investment Promotion and Protection Act No.11 of 2004, and the Public Procurement Act No. 21 of 2004 among others.

1290. We note that it is not that Tanzania lacks the regulatory framework and instruments to ensure accountability. The inadequate level of corporate accountability derives from the fact that these Acts and the overseer institutions are uncoordinated. There are no systematic mechanisms to follow up on matters of corporate accountability.

1191. A second explanation derives from corporate low level of disclosure, such that unethical and unprofessional actions of corporate managers and officers can be covered by a black smoke-screen of confidentiality, collusion and corruption until they are unveiled by investigative parliamentary enquires and the mass media. Cases of environmental pollution, seizure of substandard goods including dangerous chemicals, electronics and pharmaceuticals have been reported frequently to perhaps indicate that a lot more is going on in the corporations whose levels of accountability is low by the vice of concealing a lot of what they do.

1192. This discussion resulted from a desk research and was corroborated by field research. It concludes that Tanzania has, on the average, been on the fore front in the adoption of

international conventions, standards and good practice standards. This in itself has largely influenced the country's reforms in the efforts to create some level of appropriate corporate governance, especially at the levels of institutional development and reforms, as well as policy, legal and regulatory reforms. These reforms are discussed in section one as initiatives toward the creation and reforming of corporate governance related institutional, policy and regulatory frameworks.

1193. Once the conventions, codes and standards have been adopted the next step is that of ratification. Many of them have been ratified. However there seems to be a slow down when it comes to practical implementation. Upon examining our survey data (of government bureaucracy and corporate management), the score in this regard is about an average performance.

1194. The relatively generous conditions given to some investors have sometimes been abused. Some formerly government owned enterprises sold to private investors have not improved productivity and employment, for example Air Tanzania, Aluminium African Ltd, Bora Shoes, Tanzania Railways Corporation, Dar es Salaam Water and Sewage Company, and Tanzania Electricity Company - whose management contract with the Net Group Solution had to be terminated prematurely, etc. This state of affairs stands to question to operational procedure involved in the privatization and contract-making. This also questions the capacity of the government's oversight institutions.

1195. Despite the above stumbling blocks there has been an improvement in corporate governance practice, at least at the level of creating a conducive climate for private capital involvement. The government's efforts to create institutions and programs such the Tanzania Investment Centre, the Zanzibar Investment Promotion Authority, the Tanzania National Business Council and Zanzibar Business Council among others are efforts in the making of appropriate corporate governance.

1196. Policies and Acts such as the National Micro-finance Policy, the 2004 Public Procurement Act, the National, the Capital Markets and Securities Act, the 2002 Company Act, the Employment and Labour Relations Act, the Tanzania Investment Act, the Environmental Management Act, the 2006 Banking and Financial Institutions Act, among others, are meant to improve corporate governance good practice. There are however, weaknesses and slowness in the enforcement and implementation of these good corporate governance enabling instruments.

5.4.2 Recommendations

1197. The corporate Governance part of Tanzania self assessment reviews embarked on evaluating performance according to five objectives which we now briefly touch upon**:**

(i) There were responses from the survey showing that there were delays in the "doing of business in Tanzania". It is important for the government to improve public awareness and speed in dealing with investors in processing applications, with attention on indicators where Tanzania is scoring lower ranks;

(ii) Create and execute a more elaborate review and implementation mechanism of corporate indicators of good corporate governance;

(iii) A better definition of the ownership of land, water and other assets will reduce conflict between investors and local populations in the investment designated lands;
(iv) Develop tailor-made training programmes for potential would be entrepreneurs to increase local awareness of existing investment opportunities and participation in the corporate investment opportunities; and
(v) Tanzania needs to consider and effect ways to attract some Tanzanians in the Diasporas through equity venture capital financing to increase citizens' participation in the country's corporate development opportunities. This mainly refers to Zanzibar and Pemba which have potential citizens currently in places like the Arab Emirates and Europe.

1198. To make corporations act as responsible citizens with regard to human rights, social responsibility and environmental sustainability recommendation are:

(i) There is a serious requirement for a comprehensive regulatory framework to have corporation assume an elaborate, transparent and programmatic social responsibility to complement the existing corporate governance framework;
(ii) Mechanisms need to be instituted with awards and or penalties for practice in enhancing or contravening corporate social responsibilities. These could be in terms of tax refunds or fines for non-compliance, whichever the case;
(iii) Develop guidelines for corporate social responsibility in corporate governance such that corporations get to how that it is a responsibility (not a philanthropic voluntary gesture), and what is expected of them, and what communities should expect from corporations in their neighbourhoods;
(iv) Enhance the capacity of labour departments in the regions and districts to monitor corporate compliance with labour codes and standards and development of a national labour policy;
(v) Develop a programme to educate and sensitise corporations, communities, CSOs around the subject and concerns of corporate social responsibility;
(vi) Corporations should be required to become more transparent with regard to not only reporting their statements of accounts, but also management accounting and corporate social responsibility reports publicly and systematically been made available, at least on quarterly basis; and
(vii) There is a need to recast the new labour laws which are still under a grace period and there is also a need to harmonise all legislations which deal with workers' rights. Such discrepancies are also reflected in different public organizations and agencies which appear uncoordinated.

1199. There is a need to develop a national workers' health care policy to augment the existing guidelines falling under the responsibility of various institutions.

1200. Recommendation on the existing corporate governance framework promotes an adoption of good business ethics in the achievement of corporations' objectives include:

(i) As investors get invited into the country, there should be elaborate requirements in the form of rights of employers, rights of employees, shareholders, Boards of Directors and other stakeholders;
(ii) Contract making between investors and the government should be transparent

and should have a representation of the local communities in which projects are to be located;

(iii) Shareholders and stakeholders need frequent and systematic education, information and communication about the conduct and impact of corporations in which their interests are involved;

(iv) Create mechanisms to systematically deliver information to stakeholders whose interests are involving or affected by corporate activities in their local areas, or areas of business interest;

(v) There is a need for consumer protection legislation in Tanzania. Tanzania is experiencing an influx of fake and counterfeit substandard products imported by unscrupulous business entities; and

(vi) NGOs and CSOs should be encouraged to start consumers' organizations to educate, inform and campaign against dangerous and substandard goods and services.

1201. To make the existing corporate governance framework provide for accountability of corporations' directors and officers, the following actions should be in place:

(i) There should be developed some legislation to require corporate entities, both public and private, to make relevant and material information to the stakeholders and the public at large;

(ii) Supervisory authorities such as the BOT's Directorate of Banking Supervision, NEMC, ERB, BRELA, NBAA, PPRA, etc. should develop and enhance monitoring and evaluation that may result into increased disclosure and an enforcement of penalties for non compliance, in cases of breaches;

(iii) There be created a coordinated mechanism well institutionalized for the purposes of ensuring corporate accountability for corporate actions as they systematically affect the interests of the community and other stakeholders;

(iv) There be developed a summary of codes of corporate ethics, standards and clear responsibilities expected of corporate managers and officers. These should be published, widely distributed and publicly posted; and

(v) There should be a list of issues to be systematically disclosed by corporations, and with specific periods e.g. quarterly.

CHAPTER SIX

6.0 SOCIO-ECONOMIC DEVELOPMENT

6.1 Introduction

1202. This chapter deals with the findings of the performance assessment of the social economic development governance objectives which include the following:

(i) Promote self-reliance and build capacity for self sustaining development;
(ii) Accelerate socio-economic development to achieve sustainable development and poverty eradication;
(iii) Strengthen policies, delivery mechanisms and outputs in key social development areas including education for all, and combating HIV and AIDS and other communicable diseases;
(iv) Ensuring affordable access to water, energy, finance (including micro-finance), markets and ICT to all citizens, especially the poor;
(v) Progress towards gender equality, particularly equal access to education for girls at all levels; and
(vi) Encouraging broad based participation in development by all stakeholders at all levels.

1203. The evolution of social policy debates and regimes in Tanzania has been influenced by the historical colonial system, efforts to de-colonize the colonial social policy regimes, the socio-economic crisis of the 1970s and 1980s, and the conditions imposed by the International Monetary Fund (IMF) and World Bank through structural adjustment programmes (SAPs) as well as the current move to liberalise the economy.

1204. There are three major post-colonial phases of socio policy regimes in Tanzania. The first phase is the immediate post-colonial period from 1960 to 1967, the second spans the period from the Arusha Declaration of 1968 until 1986 and, finally, the third spans the structural adjustment and liberalization era from 1986 to date.

1205. The colonial policy regime had excluded the majority of people on the basis of race, geographical location, gender and social class. Investment in the social sector during the colonial era was based on this hierarchy, and driven by the goal of supporting the colonial economy. State institutions provided selective services to a few government officials and medical and educational facilities were provided in a few geographical locations by faith-based institutions. However, the majority of citizens depended upon traditional support systems including traditional healers and family and social network. This colonial legacy influenced the social policies of the independent state of Tanganyika[303].

Social Policies under the Modernisation Era: 1961-67

1206. Although the post-colonial leadership declared poverty, disease and ignorance enemies of the post-colonial state, from 1961-1967 the country did not formulate a comprehensive social policy to fight the declared three ‘enemies’. The social policy regime of this period can

[303] Before the country united with Zanzibar, in 1964, it was known as Tanganyika. After Union, it was renamed Tanzania.

be categorised as a conservative/residual model based on exclusionary principles inherited from the colonial regime. The government provided a few selected services, anticipating that the market-driven economic policies of modernisation would have a 'spill-over' effect for the majority of citizens. Gender differences were not considered in the formulation of economic policies and hence the gendered social impact of the policies of the modernisation approach was ignored. (Mchovu A Tungaraza F at.al: 2002)

The Arusha Declaration: Socialism and Self Reliance (1967-1986)

1207. In 1967, Tanzania declared "Socialism and Self Reliance" as the philosophy which was to guide both economic and social development of the country. The Ujamaa philosophy, as it was known, stressed the concept of equal rights and opportunities for all members of society. It aimed to create a system in which all members could live in peace with their neighbours without suffering or imposing injustice, being exploited, or exploiting, and in which all would have a gradually increasing basic level of material welfare before any individual lived in luxury (Nyerere, 1968). This approach arose from the concern that development during the first phase of independence had led to, or sustained, social differentiation, inequality and disparities in national development. In addition to raising the standards of living of the people, the Ujamaa philosophy aimed at empowering people to participate in decision-making processes in order to enable them to take control of their own lives.

Structural Adjustment and the Market Economy (1986-2000)

1208. As a result of the socio-economic crisis in the 1970s and 1980s the Tanzania government experienced serious difficulties in financing the social services it had developed in the 1970s. In the education sector, government resources were insufficient to pay teachers' salaries, buy text books and other teaching materials and maintain the school buildings. Similarly in the health sector, government resources were not sufficient to supply the necessary medical equipment and drugs, pay salaries and maintain the physical infrastructure. As a result, the infrastructure crumbled, schools went without books, adult classes could not be sustained, literacy levels relapsed, health indicators, deteriorated, and rural water infrastructure could not be maintained. The situation was worsened by the implementation of IMF austerity measures which forced the government to play a minimal role in the provision of social services, and attempted to transfer part of the cost to the users through various mechanisms including the introduction of user fees.

The current period 2000+

1209. The current period can be seen as a continuation of the previous period. Recent years have, however, seen the development of a number of overarching development policies that envisage more comprehensive provision of social services that would reach all citizens, including the poor, alongside healthy economic growth. An attempt to balance growth with equity is spelt out in most of macroeconomic policy frameworks including the National Vision of 2925, MKUKUTA/MKUZA and sector policies. This is the context within which the objectives of the socio economic governance are going to be discussed. Before we do it, we turn to the codes and standards relevant to this section.

6.2 Standards and Codes

1210. The Country Self-Assessment for the African Peer Review Mechanism (CSAAPRM) requires the review of the following standards and codes for socio-economic development in Tanzania:

(i) NEPAD Framework Document (2001);
(ii) Right to Development in the African Charter on Human and Peoples' Rights (1981) including the protocol on the Right of Women in Africa (Ratified on March 3, 2007);
(iii) African Charter for Popular Participation in Development (1990);
(iv) World Summit on Sustainable Development (WSSD) Johannesburg (2002);
(v) United Nations Millennium Declaration (2000);
(vi) United Nations Declaration on the Right to Development;
(vii) The African Charter on the Rights and Welfare of the Child (ACRWC) (1990) (2001) (Ratified on March 16, 2003);
(viii) World Summit on Social Development Plan of Action (1995);
(ix) Constitutive Act of the African Union (2000) (Ratified on April 6, 2001);
(x) Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (Ratified on August 20, 1985);
(xi) Beijing Declaration and Platform for Action (1995);
(xii) United Nations Convention on the Rights of Persons with Disabilities, 2006;
(xiii) ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 2000; (Ratified on September 12, 2001); and
(xiv) Protocol on the African Charter on Human and People's Rights on the Establishment of African Court of Human and Peoples' Rights (Ratified on February 7, 2006)

1211. The Government of the United Republic of Tanzania (URT) has adopted, signed and ratified a number of the standards and codes (see Table 6.1). However the review further shows that more effort is required to accelerate the ratification of the unratified standards and codes as well as to "domesticate" them within existing Tanzanian regulations and operational frameworks so that they may be effectively complied with. Although Tanzania is party to the Vienna Convention on the Law of the Treaties 1969, a domestication process is a pre-requisite for application and implementation of the standards and codes since Tanzania follows a dualist approach in carrying out its obligations under international agreements.[304] In Tanzania, international treaties and conventions are not self-executing,[305] they must be applied by Acts of Parliament, after having been accepted through ratification, acceptance, approval and accession by state parties. In view of this, Tanzania's normal practice is first to express its consent to be bound by a treaty without involving the Legislature. Thus making the treaty applicable to it internationally first and second to involve the Legislature when transposing the treaty to make it enforceable domestically. Domestication in Tanzania may take a number of ways. One of the ways is to incorporate directly the provision of the treaty in domestic law by giving it the force of law whether in whole or specific provision of the same. The other way is to incorporate the treaty by enacting the same as a domestic law. A good example of enacting a treaty as a domestic law is the Treaty for the Establishment of East African Community which was enacted as Act No. 4 of 2001 of the Laws of Tanzania.

304 This dualist approach is mostly followed by Commonwealth Countries, inherited from British practice.
305 See Article by Bahame Tom Nyanduga and Chritabel Manning, Guide to Tanzanian Legal System and Legal Research, htt://www.nyalawglobal.org/globalex/Tanzania.htm

NEPAD Framework Document (2001)

1212. The Tanzania Government has taken steps to adopt policies and legislative measures that ensure the attainment of NEPAD objectives.[306] Programmes and various initiatives in the priority sectors of infrastructure, water and sanitation, energy, and the environment have been designed and are at varying stages of implementation, though resources are inadequate to fully implement many of the programmes in question.

Infrastructure - Communications

1213. In the area of infrastructure the Government has adopted a new policy in the area of Communications and ICT. A National Policy on ICT and the Postal Policy were adopted in 2003. A National Telecommunication Policy has been in place since 1997. Legislative instruments to implement the policies were also passed by the Government. There is already a Tanzania Communication Regulatory Authority Act of 2003 and Tanzania Communication Act of 1993. Institutional structures are also in place to oversee implementation. A vibrant Tanzania Communication Regulatory Authority is in place and capacity measures have been taken to ensure that it is up and running.

Infrastructure - Roads

1214. Similarly, comprehensive measures have been taken in the area of developing road infrastructure and transportation. A Road Policy has been implemented by the new Road Act 2007 and efforts are being made to put in place operational Regulations.

Agriculture

1215. Concerning agriculture, the Government has adopted the following programmes with the main aim to raise the production of food and hence incomes and reduce the proportion of Tanzanians who are poor:

(i) Agriculture Sector Development Programme, which was developed in collaboration with Development Partners, Private sector, Civil Society Organizations (CSOs) and farming communities;
(ii) National Irrigation Master Plan;
(iii) Integrated Pest Management Programme: this programme is coordinated with other regional member states; and
(iv) Participatory Agriculture Development and Empowerment Programme (PADEP) which has a specific focus on women in agriculture.

Water

1216. The Government has adopted a new Water Policy of 2002, and the process of passing new legislation setting/implementing legal framework has been initiated. A pro-poor focused programme has been designed, adopted and implementation has started. The main focus of the Water Sector Development Programme is to achieve the objective of Tanzania's Development Vision 2025, which aims at achieving an absence of abject poverty and attaining a high quality of life for all people by 2025 as well as the National Strategy for Growth and Reduction of Poverty (NSGRP/MKUKUTA) whose outcomes and targets mirror

[306] The objectives include the eradication of poverty in line with the MDGs, the promotion of sustainable development, integration of Africa into the global economy and empowerment of women.

the Millennium Development Goals (MDGs) for access to safe water, sanitation and a sustainable environment.

1217. Tanzania also collaborates with other countries in the region to promote sustainable development through the equitable sharing of resources. The programmes in which Tanzania collaborates in include the Nile Trans-boundary Environmental Action Project and the Lake Tanganyika Sustainable Management Programme - which brings together Tanzania, Burundi, Congo and Zambia.

Right to Development in the African Charter on Human and Peoples' Rights (1981), including the protocol on the Rights of Women in Africa

1218. The African Charter on Human Rights and Peoples' Rights is the continent's commitment to comply with international obligations to promoting human rights as provided under the UN Declaration on Human Rights. Tanzania was one of the first countries to become a signatory to the Convention on May 31, 1982, subsequently ratifying the Convention on February 18, 1984. The implementation context of the Charter, in particular the provision relating to the Right to Development, is demonstrated by the incorporation of peoples' focused right in the Constitution of United Republic of Tanzania. Article 9 of the Constitution spells out the attainment of the objective regarding the welfare of the people as provided for under Article 22 of the Charter. The Article is very categorical that the national resources will be used for the benefit of all the citizens and that the government and its organs will accord equal rights to all the people without discrimination on the basis of race, tribe, religion or social condition of an individual. Other key elements incorporated in the Tanzanian constitution include the right of participation in the affairs of the government, right of access to education, health and freedom of rightful remuneration for legitimate work.

1219. Regarding the right to social, economic and cultural development, the Government has taken positive international measures to attest its commitment to the Charter by acceding to the United Nations Declaration on the Right to Development. Other international instruments to which Tanzania is an implementing party include the Protocol on the Establishment of an African Court on Human Rights and Peoples' Rights and the Protocol on the Rights of Women.

African Charter for Popular Participation in Development and Transformation (1990)

1220. Tanzania was a founding state-party to the Charter for Popular Participation in Development and Transformation in 1990 by hosting the African Conference of Ministers Responsible for Economic Planning and Development which adopted the Charter.[307] The charter was adopted by the Economic Commission for Africa on May 19, 1990. Following the adoption, Tanzania supported the submission of the Charter to the United Nations General Assembly through a letter dated July 6, 1990.

[307] The Document was adopted at the twenty-fifth meeting of the Economic Commission for Africa and the sixteenth meeting of the Economic Commission for Africa Conference of Ministers responsible for Economic Planning and Development for its presentation to the General Assembly of the United Nations at its Forty-fifth session, which was held on May 19, 1990. The Charter was elaborated and adopted at the International Conference on Popular Participation in Recovery and Development Process in Africa which was held in Arusha, United Republic of Tanzania from 12 to 16 February, 1990.

1221. There is no evidence to show that Tanzania has acceded or ratified the Charter. Yet measures to cause the ratification or accession can be traced from the efforts made by the government to implement various aspects of the Charter through deliberate policy and legislative initiatives. Other efforts include the adoption of a model of participation and involvement of the people in development activities. The Constitution of the United Republic of Tanzania represents the key fundamental norm for complying with the principles of popular participation in the affairs of the government and in the promotion of social, economic and political development of the country. Article 8 of this Constitution recognises that the country is a state which adheres to the principles of democracy and social justice and accordingly calls for the government to be accountable to the people, and for people to participate in the affairs of their government in accordance with the provisions of the Constitution. Article 18 encourages transparency and accountability through the right to information.

1222. Article 146 of the Tanzanian constitution cements the issue of participation and involvement of the people as a constitutional obligation of local governments as institutions which have closer regular interaction with the people. The obligation under the article is elaborated under the Local Government Law (section 4) which requires the promotion of local governmental institutions geared and devoted to the pursuance of meaningful involvement of and participation by the people in the making of decisions affecting or connected with their livelihood and well-being. The same emphasis is maintained in the Policy on Decentralisation which is implemented under the Local Government laws[308].

1223. Other efforts made include the emphasis for participation and inclusiveness under the Development Vision 2025 and the National Strategy for Economic Growth and Poverty Reduction (MKUKUTA), particularly cluster III on good governance and accountability.

1224. The Government has adopted the process known as 'Opportunities and Obstacles to Development' or 'O&OD' as a preferred approach to participatory planning, thus making the process start at the lowest levels of governance and community. Participatory monitoring has also been introduced to ensure that the framework is complied with in line with national commitment to international frameworks. The monitoring framework encompasses the following:

(i) Public Expenditure Tracking (PETS) which involve communities and Civil Society Organisations CSOs; and
(ii) Participatory Service Delivery Assessments (PSDA). This is going beyond 'following the money' to look at whether the allocated expenditure is having an impact.

1225. Despite the efforts made by the government, the State is faced with the following challenges to attain full compliance with the charter:

(i) Access to information;
(ii) Communication barriers complicated by the language used in policies, plans and reports;
(iii) Harmonisation of various participatory processes;

[308] The Government adopted a Policy Paper on Local Government Reform which presented a framework for Decentralization by Devolution - 'D by D'. The policy was implemented under Act No. 6 of 1999, which amended comprehensively the existing Local Government Laws – The Local Government (District Authorities) Act No. 7 of 1982 and the Local Government (Urban Authorities) Act No. 8 of 1982.

(iv) Awareness of rights and obligations, and
(v) Capacity constraints at individual and organisational levels, particularly at the lowest levels of a town / village's structure, the *mtaa* (urban) and *kitongoji* (rural).

United Nations Millennium Declaration (2000)

1226. The United Nation Millennium Declaration is a comprehensive framework comprising eight major goals ranging from halving extreme poverty to halting the spread of HIV and AIDS and providing universal primary education; these goals have a target date of 2015. The eight goals under the declaration include:

(i) Eradication of extreme poverty and hunger;
(ii) Achieve universal primary education;
(iii) Promote gender equality and empower women;
(iv) Reduce child mortality;
(v) Improve maternal health;
(vi) Combat HIV and AIDS, malaria and other diseases;
(vii) Ensure environmental sustainability; and
(viii) Develop a global partnership for development.

1227. For Tanzania these targeted goals were not new, but rather part of the already declared war against poverty, ignorance and diseases, embedded in Vision 2025 and strategies such as Poverty Reduction Strategy Paper (PRSP).

1228. The Declaration was adopted by all Member States in 2000 and Tanzania was one out of the 189 Member States that signed the declaration, effectively accepting its implementation within the national context. Currently in Tanzania, the Ministry of Finance and Economic Affairs (MoFEA) plays the central role in budget allocation and monitoring plans and programmes to achieve Tanzania's national targets. The National Strategy for Growth and Reduction of Poverty (NGSRP) presents a framework of three major clusters which address all social, economic and political sectors of the country. MKUKUTA is the successor to the earlier narrower framework – the Poverty Reduction Strategy Paper (PRSP).

1229. Tanzania has also taken other policy and legislative measures aimed at reaching development targets; these measures include the:

(i) Economic Empowerment Act;
(ii) Education Policy;
(iii) Health Policy;
(iv) HIV and AIDS policy and legislation;
(v) HIV and AIDS Programme as part of global framework against HIV and AIDS; and
(vi) Property and Business Formalization Programme (PBFP) popularly known as MKURABITA in Kiswahili (*Mpango wa Kurasimisha Biashara za Wanyonge Tanzania).*

1230. These frameworks are all guided by the Development Vision 2025, which provides a framework for the future of Tanzania in line with its international obligations.

United Nations Declaration on the Right to Development

1231. The United Nations Declaration on the Right to Development is an integral part of the United Nations Universal Declaration of Human Rights. Since the Universal Declaration on Human Rights[309] was adopted in 1948 it has been translated in Regional Charters, conventions and other forms of international instruments, as well as being incorporated into most of the UN Member States' Constitutions, thus making it enforceable in the national laws of the countries involved. The Convention on the Right to Development was adopted by the overwhelming majority of members of the UN 38 years after the Universal Declaration of Human Rights. This Convention states unequivocally that the right to development is an inalienable integral part of fundamental human rights. Other international conventions which are important in this area of international law and which are addressed as part of Tanzania's compliance to the Convention on the Right to Development are the Covenant on Civil and Political Rights[310] and the Covenant on Economic, Social and Cultural Rights.[311]

1232. Tanzania acceded to the UN Declaration on the Right to Development on June 11, 1976. Tanzania as a State party to the Convention, has taken positive steps both at the national and international levels to ensure attainment of its international commitments. A clear desire to ensure the objective of guaranteeing the right to development as an inalienable right (Articles 1, 2, 3) has been shown by enshrining the same right in the Constitution of United Republic of Tanzania in Articles 8 and 146. These articles state that the role of both central and local government is to promote the welfare of the people. Emphasis under the Constitution has resulted in the development and adoption of people centered development programmes such as MKUKUTA, the Primary Education Development Plan (PEDP) and others, as will be reported further in this report.

1233. Regarding individual and collective steps to formulate the international framework on the Right to Development (Article 4), the Government of Tanzania has been in the forefront in all regional and international initiatives. These initiatives include its accession to the NEPAD, Southern Africa Development Community (SADC) and other programmes under the East Africa Cooperation. The Agricultural Sector Development Programme (ASDP), which is implemented under a decentralized system of governance, represents a model of participatory rural development programme.

1234. On the obligation to ensure peace and security, there is strong evidence that Tanzania has not only been a safe harbor for refugees from neighboring countries, but has also been proactive in regional, continental and international peace initiatives. This is due to the belief of the Government that the right to development can only be realized if there is peace and tranquility, and that every citizen has guaranteed freedom and a right to participate in development activities, regardless of gender, ethnicity and religious, national and/or political belief or orientation.

1235. Tanzania's efforts to achieve the objective of the Convention of ensuring that every human being is given an opportunity to participate and contribute to and enjoy economic,

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309 The UN Universal Declaration of Human Rights was adopted and proclaimed by General Assembly resolution 217 A (III) of December 10, 1948. The Declaration is recognized as the International Bill of Rights, when read together with the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. In Tanzania the Declaration has been adopted.

310 International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.

311 International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976

social and political development as their inalienable fundamental human right has not run smoothly. There are a number of challenges to comply fully with the Convention, including the necessary capacity to implement national and international frameworks and enlisting the participation and involvement of people in economic, social and political development programmes at local, national and international levels. Financial constraints hinder capacity to carry out various programmes.

The African Charter on the Rights and Welfare of the Child (1990)

1236. The African Charter on the Rights and Welfare of the Child (ACRWC) was adopted on July 5, 1976 and formally came into force on September 22, 1990. Tanzania adopted the Charter on October 23, 1998 and ratified the same in March 2003. The ratification also included the two optional protocols to the Convention on the Rights of the Child: first, the Optional Protocol on the Involvement of Children in Armed Conflicts; and second the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

1237. Tanzania has taken positive steps nationally and internationally to comply with the Charter. As a part of ensuring effective implementation of national obligations towards children as well as putting priorities on matters of children, the Government has for the last decade or so maintained in its ministerial portfolio a fully fledged ministry with responsibilities for Children.[312] At the 62nd United Nation General Assembly in 2007 the Ministry submitted a comprehensive report showing its compliance with regional treaties as well as international obligations including the Convention on the Rights of the Child.

1238. Evidence of compliance with the Charter is scattered in all areas of intervention. As part of an effort to ensure the rights of the children are safeguarded, in June 2001 the Government ratified the International Labour Organization's (ILO) Convention on the Elimination of the Worst Forms of Child Labour. In line with the international commitment under the Conventions, the Government has taken a number of measures nationally. A Child Development Policy has been developed. Key issues addressed under the policy include strategies for protection of all rights of children as recognized by various international treaties and conventions; strategies to address the effects of HIV and AIDS; protection of children, non-discrimination and protection of other vulnerable groups.

1239. The National Health Care Policy provides for antenatal and under five health care services without a fee. There are also programmes such as the provision of mosquito nets which are free for children under five. A number of institutional mechanisms are also in place to ensure that children who have reached school age are registered and attend and complete primary education. The Primary Education Development Programme (PEDP, 2002-2006) is a comprehensive programme aimed at ensuring all school-age children are registered and facilitated to complete primary education. The Education Act, No.25 of 1978 provides for compulsory registration of children to undertake primary education starting at the age of 7 years.

1240. Other policy measures include the Family Development Policy which provides strategies on how both parents will carry out their responsibility of taking care of the development of a child. The Government is also in the process of developing other child

312 Ministry of Community Development, Gender and Children

related policies such as in Water and Sanitation, HIV and AIDS Policy, Youth Policy and early Childhood Policy.

1241. Despite the progress that has been made to ensure compliance with Tanzania's international obligation under the Charter, there are still enormous problems and challenges of fully complying with the spirit and later of the provision of the Charter. One area which has not been adequately addressed is that of children with disabilities. These children have special needs when it comes to education, health and other general conditions in society. Only few of these needs have been addressed by the government as part of the implementation of the charter.

1242. There are challenges related to constraint on human and financial capacity of the public and private institutions which are responsible for achievement of the obligation under the Charter. A number of strategies have been deployed to surmount the challenges. Private, public and other measures have been taken in an effort to address the resource constraints.

1243. Another massive challenge which is currently being addressed by the Government is the harmonisation of various national laws with the Charter. There are already suggestions of consolidating various legal frameworks into a single piece of legislation. The harmonisation will also include existing land legislation, Employment and Labour Relations Act of 2004, the Law of Marriages Act No. 5 of 1971, the Birth and Registration Ordinance of 1920 to ensure the attainment of the obligation on the registration of all children and the Education Act. The Government is also working with other countries in the world to support the initiative of the United Nations on the World Fit for Children by adopting a National Plan of Action for Children.

World Summit on Social Development and Plan of Action (1995)

1244. Tanzania participated in the World Summit (March 6 - 12, 1995), which adopted the Social Development Plan of Action. The Tanzanian Government is a signatory to the declaration, represented by the then President of the United Republic of Tanzania, H.E. Ali Hassan Mwinyi.[313] The Summit's resolutions and Declaration call for countries to give social development and human well-being the highest priority, by taking urgent measures to address social problems especially social exclusion and unemployment. The declaration also calls upon state parties to take effective measures to respond to material and spiritual needs of the people, their families and communities. Other measures taken as urgent include ensuring effective dispensation of justice to all, maintenance of peace and security, sustainable social development and environment, poverty reduction, human rights and equitable social development focusing on the poor.

1245. Tanzania has taken numerous measures to comply with its commitments under the Declaration and the Plan of Action. The government is currently implementing a comprehensive strategy on economic growth and poverty reduction (MKUKUTA) which focuses on all the major aspects of the Summit's frameworks. The details of this programme are reported in the specific objective areas of this report.

313 World Summit for Social Development Report, United Nations, A/Conf.166/9 of 19 April 1995.

Constitutive Act of the African Union (2000)

1246. Tanzania formally signed the Constitutive Act of Africa Union on December 15, 2000 and ratified the same on April 6, 2001. Tanzania, as a founding member of the AU, participated effectively in the drafting of the Constitutive Act as well as in the development of various instruments for implementation. The former President of Tanzania H.E. William Benjamin Mkapa as well as the current President H.E. Jakaya Mrisho Kikwete have taken effective stands in all the meetings of the African Union by supporting various initiatives aimed at ensuring the achievement of the objective of its establishment including the NEPAD initiative. Tanzania also assumed the AU Chair in 2008 and took the lead in solving election crises in Kenya and Comoro.

1247. Apart from the support from the highest level of the Government, Tanzania has shown unwavering commitment to all institutions and organs of the Africa Union. The first President of the Africa Union Parliament, Mrs Getrude Mongella, is a Tanzanian. Her election as the President of the Africa Union Parliament was a testimony of Tanzania's dedication to the course of the Union.

Convention on the Elimination of all Forms of Discrimination against Women

1248. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nation General Assembly in 1979 and put into force on the of July 17, 1980. Tanzania adopted the Convention on July 17, 1980 and thus become one among the first countries which facilitated its coming into force. The initial report of Tanzania was submitted as part of compliance procedures on March 9, 1988; with the second and third periodic reports submitted on September 25, 1996. The combined fourth, fifth and sixth periodic reports were submitted for consideration by the UN Committee on the Elimination of Discrimination against Women on April 16, 2007.

1249. Evidence of compliance includes enacting the following:

(i) Taking measures towards equality (Articles 2 to 5);
(ii) Protecting women against violence (Article 6);
(iii) Political and public position empowerment of women (Article 7);
(iv) Ensuring citizens' rights for women (Article 9);
(v) Giving women access to education (Article 10);
(vi) Ensuring equal opportunity at the workplace (Article 11);
(vii) Providing health care (Article 12);
(viii) Economic and social empowerment (Article 13);
(ix) Rural women – provision of social services and improving the infrastructure; and
(x) Ensuring equality before the law.

1250. The Government established a fully fledged ministry with responsibilities for women's affairs, later revised to reflect gender concerns, with a female minister and permanent secretary (chief executive).[314]

1251. The Government has taken policy and legislative measures to ensure compliance with the Convention. In the area of ensuring equality for and the advancement of women, the government has continued with measures to adhere to the constitutional embodiment and provision of relevant statutes regarding non-discrimination. Other measures reported in the

[314] Ministry of Community Development, Gender and Children

combined fourth, fifth and sixth reports mentioned above include the ratification of the optional Protocol to the CEDAW. The CEDAW monitoring indicators were developed in 2002 in order to enhance follow-up.

1252. Regarding violence against women, a number of measures have been taken including the development of a national action plan in 2001 to combat violence against women and children. Similar measure has been taken to combat Female Genital Mutilation (FGM). The Government has also signed the SADC Declaration on Gender and Development 1997 and the Addendum on the Prevention and Eradication of Violence Against Women and Children. The Commission on Human Rights and Good Governance has also been established to investigate allegation involving violation of human rights including violence against women.

1253. In the area of education, training and employment, Tanzania continued to implement the Education and Training Policy of 1995 and the Education Act of 1978. This Act is currently under review. Various programmes have been adopted to improve the delivery of and access to education and training in Tanzania. These include Primary Education Development Programme, (PEDP) and Secondary Education Development Programme (SEDP).

1254. In the area of political and public empowerment, measures have also been taken. A Constitutional amendment enables women to exercise their right to a political and social position which were hitherto the province of men. Women have reserved positions representing 30 percent of the parliamentarians in the National Parliament and 30 percent in all local government councils. The electoral laws were amended in 1990 to provide for the reserved seats as part of the democratization process which saw Tanzania shifting from single party politics to a plural political system.

1255. Another measure to eliminate all forms of discrimination against women is the enactment of the Sexual Offences Act.

1256. Regarding health care, the Government recently finalized the Health Policy (2007) following extensive consultations with stakeholders. Proposals to enact comprehensive HIV and AIDS legislation are underway, as well as other measures covered in this report.

Beijing Platform for Action

1257. Tanzania adopted the Beijing Platform for Action for Women's Empowerment[315] as a participating country in the Conference held in September 1995. The Platform of Action is part of the Beijing Declaration which calls for removing all the obstacles to women's active participation in all spheres of public and private life through a full and equal share in economic, social, cultural and political decision-making. The Platform for Action also reaffirms the fundamental principle that the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights and thus seeks to promote and protect the full enjoyment of all human rights and the fundamental freedoms of all women throughout their life cycle.

[315] The Platform of Action is part of implementation of the Nairobi forward-looking strategies for the advancement of women. The United Nations Fourth World Conference on Women, Beijing, China, September 1995.

1258. The Platform calls for concerted action by all, particularly Governments, international organisations and institutions at all levels to create a peaceful, just and humane world based on human rights and fundamental freedoms, including the principle of equality for all people.

1259. Tanzania has taken positive steps to comply with the Platform of Action on the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). The context of Tanzanian compliance is set out in the Constitution of the United Republic of Tanzania, which apart from setting out elaborate provision for the Bill of Human Rights[316], also provides for advancement of women to ensure the development of their potential and equal participation in decision making[317].

1260. Other measures taken are on the legislative and policy fronts, whereby one pronounced policy measure is the decision by the Government to mainstream gender equality in all policy decisions and planning and budgeting processes. Regarding legislative measures, the government has introduced amendments to the Election laws,[318] Criminal laws[319] and employment laws with the view to ensuring that they comply with the Government's commitment to the Platform of Action.

1261. The Report of the Commission on the Status of Women presented to the Economic and Social Council[320] in 2007 attests that Tanzania has adopted a dual strategy in mainstreaming gender perspectives. One strategy is the incorporation of the gender perspective in the development, and adoption and execution of all budgetary processes. The second strategy is financing initiatives for gender equality and empowerment of women[321]; with sectoral budget guidelines incorporating the gender perspective in order to ensure compliance.

1262. Attaining full compliance with the Beijing Platform of Action is a challenging undertaking. Tanzania, like many other developing countries, is facing the following challenges and problems:

(i) Resource constraints, particularly those required to finance gender equality targeted initiatives;
(ii) Technical and financial capacity for gender mainstreaming;
(iii) Inadequate national and local machineries for advancement of women; and
(iii) Lack of gender disaggregated data to measure progress in gender empowerment.

United Nations Convention on the Rights of Persons with Disabilities (2006)

1263. The United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on December 13, 2006. Tanzania signed the Convention on March 30, 2007. The Government endorsed a comprehensive National Policy on Disability in July, 2004.

316 Article 12 through 29 of the Constitution of the United Republic of Tanzania
317 Article 30
318 National Elections Act No. 1 of 1985 [Cap. 343 R.E 2002]
319 Sexual Offences Act, which is incorporated in the Penal Code Ordinance, [Cap. 16 R.E 2002]
320 United Nations Economic and Social Council E/CN 6/2008/5 of December 14, 2007
321 Seen esponse on the strategies taken by Tanzania at http://www.un.org/womenwatch/draw/review/english/response.htm

1264. The National Policy on Disability provides guidelines and sets parameters for continued and enhanced provision of welfare service to people with disability with a strong focus on the development, rights and dignity of people with disability. Another key element of the Policy is its statement of national commitment to various international instruments including the dedication to cooperate to bring to effect and implement the United Nations Convention on the Rights of Persons with Disabilities. Other related instruments to which Tanzania is committed include UN Declaration on the Rights of Persons with Disabilities, 1975, Convention on the Rights of Child 1989, and the Standards and Rules on the Equalization of Opportunities for Persons with Disabilities, 1993.

1265. Various legal instruments relate to the rights and dignity of persons with disability. These instruments include the Disabled Persons Care and Maintenance Act, No. 3 of 1982, and Disabled Persons Employment Act, No. 2 of 1982. The National Policy on Disability expresses the need to carry out a comprehensive review of the existing laws with a view to ensuring implementation of the Policy as well as the Government's international commitments.

1266. The need to build institutional and financial capacity is well articulated in the National Policy on Disability. The main focus on capacity building is on key support sectors such as improvement of health of people with disabilities with emphasis on early recognition and immunization of children as part of preventive measures to avoid disabilities. Other health interventions include focus on mental health and HIV and AIDS intervention specifically for people with disabilities. Education is also an area of focus. The emphasis is to achieve equal access to education for people with disabilities as well as reorganizing the education system to deliver facilities and access for people with disabilities. Other key sectors of focus are employment, care and welfare, improvement of skills for people with disabilities, human rights and legal protection. The policy has also placed emphasis on the need to establish a Development Fund for People with Disabilities.

1267. Specific capacity building interventions relate to Local Government Authorities (LGAs), Non-Governmental Organisations (NGOs) and Community-Based Organisations (CBOs). The capacity of LGAs needs to be strengthened to enable them to carry out assessment of people with disabilities, provide protection, basic needs, include people with disabilities in planning and programme implementation and coordinate NGOs. The Policy also recognises the role of NGOs and the need to build their capacity to enable them to provide outreach support to people with disabilities.

1268. Of recent, there have been albino killings in Tanzania as the their organs, particularly genitals, limbs, breasts, fingers and the tongue are reportedly to be in high demand by people involved in mining and fishing activities in the Lake Victoria Zone, especially Mwanza, Shinyanga and Mara regions. As the organs are still in high demand, so the killings are most likely to increase. Given their small number and vulnerability, Tanzanian albinos need adequate social and legal protection so that they, too, can fully enjoy their right to life and freedom to move freely as other Tanzanians do without fear. According to World Health Organisation (WHO) sources, albinos hardly exceed 170,000 in number in the entire country.

1269. So far, a total of 172 suspects had by March 2009 been arrested in connection with the killings of Albinos in the country, according to local media reports. Some of the suspects admitted to have been advised by traditional healers to have albino organs if they wanted to get rich quickly.

1270. The Government of Tanzania has undertaken to put in place security arrangements that would reduce Albino risks and Local Government Authorities have been tasked to work hard towards that end. The Police Force has also been instructed to crackdown on traditional healers involved in the Albino killings. Tanzanians as a whole have been urged to collectively fight against the perpetrators of the crime.

ILO convention on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (2000)

1271. The ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 2000 was adopted by the International Labour Conference on June 17, 1999 and came into force in November, 2000. Tanzania is a signatory to the Convention. Tanzania ratified the Convention on September 12, 2001

1272. Implementation of the Convention in Tanzania has followed a number of ways. At international level the Tanzanian Government has committed itself through its ratification to cooperate with the international community to achieve the objectives of the Convention. There are a number of international programmes and projects which are implemented by the Government as part of that commitment, including the Time Bound Programme which aims at eliminating the worst forms of child labor in a defined period of time. National labor reform measures which culminated in comprehensive labor laws which are consistent with the ILO conventions including Convention No. 138 and 182.

1273. The new labor law has specific provisions which address all the elements of the Convention. These include the need to take immediate and effective measures to prohibit and eliminate the worst forms of child labor, including prostitution, pornography and forced recruitment for use in armed conflict and use of children in illicit or hazardous activities for all those under 18 years of age.

Protocol to the African Charter on Human and Peoples' Rights, on the Establishment of an African Court on Human and Peoples' Rights

1274. The Protocol to the African Charter on Human and Peoples' Rights is an instrument of the African Union for the establishment of an African Court on Human and Peoples' Right. The Protocol was adopted by the Heads of State and Governments of the Organisation of African Union at its thirty fourth session held in Burkina Faso on June 8 – 10, 1998. Tanzania participated at the session thus becoming instrumental to the passage of the Protocol. Tanzania was among the first 15 countries which presented ratification instruments to allow the Protocol to come into force.

1275. The main objective in establishing the Court was to complement and reinforce the mandate given to the African Commission on Human and Peoples' Rights and allow a judicious interpretation of the African Charter on Human and Peoples' Rights, thus affording the opportunity of access to a judicial interpretation of regional instruments. The objectives of establishing the court go some way in line with the Constitution of The United Republic of Tanzania which provides guarantees for Human and Peoples' Rights through an independent judicial system.

1276. Tanzania's commitment to its obligations under the Protocol has taken a number of forms. Firstly, Tanzania accepted the location of the Court within its territory. The Court will operate from the Northern Municipality of Arusha. Secondly, Tanzania has not only signed and ratified the Protocol to allow its coming into force but has also adopted a number of international instruments which promote smooth implementation of the protocol. These instruments include the AU Charter, various international and regional human rights treaties and conventions, the NEPAD Framework and African Peer Review Mechanism, which emphasize the need to promote, protect and observe human and peoples' rights. Tanzania has also adopted a comprehensive programme for the reform of its legal sector. The Legal Sector Reform Programme Medium Term Strategy was launched in 2005. The Programme's overall vision is to provide timely justice to all. The objectives (key result areas) of the programme are;

(i) Strengthening and harmonizing the national legal framework
(ii) Access to justice for the poor
(iii) Improving the observance of human rights
(iv) Enhancing the legal profession, and
(v) Improving service delivery capacity in key legal sector institutions.

Table 6.1:Summary of Actions taken by the Government of Tanzania to Comply with Charters and Conventions

Name of Standard and Code	Date of Adoption	Date of Entry into Force	Date of Signature	Date of Ratification	Evidence of Domestication
NEPAD Framework Document (2001)	July 11, 2001	NA	NA	NA	Adoption of (i) National Strategy for Economic Growth and Poverty Reduction (MKUKUTA) (ii) Agriculture Development Programme (iii) National Policy on ICT (iv) Roads Act, 2007, National Water Policy, 2002 etc.
Right to Development in the African Charter on Human and Peoples' Rights (1981), including the protocol on the Rights of Women in Africa	June, 1981	Oct. 21, 1986	May 31, 1982	February 18,1984	Constitution of United Republic of Tanzania. Article 9, 11, 12, 22, 24
African Charter for Popular Participation in Development and Transformation (1990)	February, 1990	No evidence	No evidence	No evidence	Adoption of (i) National Strategy for Economic Growth and Poverty Reduction (MKUKUTA), particularly cluster III on good governance and accountability. (ii) Participatory planning and budgeting framework i.e. 'Opportunities and Obstacles to Development' or 'O&OD'
United Nations Millennium Declaration (2000)	September 8, 2000	September, 2000	NA	NA	Adoption of MKUKUTA
United Nations	No	No	June 11,	No evidence	URT Constitution

Name of Standard and Code	Date of Adoption	Date of Entry into Force	Date of Signature	Date of Ratification	Evidence of Domestication
Declaration on the Right to Development	evidence	evidence	1976.		
The African Charter on the Rights and Welfare of the Child (ACRWC) (1990) (2001)	July1990	Nov. 29, 1999	October 28, 1998	March 16, 2003	MKUKUTA, PEDP and Sector Reform Programmes i.e. Water, Agriculture, Health etc
World Summit on Social Development Plan of Action (1995)	March 1995	March 1995	NA	NA	NA
Constitutive Act of the Africa Union	July 11, 2000	May 26, 2001	December 15, 2000	April 16, 2001	NA
Convention on the Elimination of all forms of Discrimination against Women	1979	July 17, 1980	July 17, 1980	August 20, 1985	National Women and Gender Development Policy URT Constitution, 1977 Sexual Offences Special Provisions Act, No. 4 of 1998[R.L Cap. 101]
Beijing Platform for Action)	September 15, 1995	September 15, 1995	NA	NA	Same as above
Cultural Charter for Africa	July 5, 1976	September 22, 1990	No evidence	Oct. 12, 1978	National Cultural Policy
Treaty Establishing the African Economic Community	June 3, 1991	May 12, 1994	June 3, 1991	January 10, 1992	NA
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	July , 2003	Nov. 25, 2005	Nov. 5, 2003	March 3, 2007	National Women and Gender Development Policy; URT Constitution, 1977 Sexual Offences Special Provisions Act, No. 4 of 1998 [R.L Cap. 101]
African Charter on Democracy, Elections and Governance	January 30, 2007	Not in Force	Not signed	Not Ratified	NA
African Union Convention on African Charter on Human and Peoples Rights	June 1981	Oct. 21 1986	May 31, 1982	Feb. 18, 1984	URT Constitution Article 6 through 32
World Summit on Sustainable Development (WSSD) Johannesburg (2002);	September, 2002	September, 2002	NA	NA	NA
United Nations Convention on the Rights of Persons with Disabilities, 2006;	Dec. 13, 2006	May3 , 2008	March 30, 2007	Not Ratified	National Policy on Disability, July, 2004;
ILO convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child	June 17, 1999	Nov. 2000		Sept. 12,2001	URT Constitution, 1977, Article 11 Time-bound Programme

Name of Standard and Code	Date of Adoption	Date of Entry into Force	Date of Signature	Date of Ratification	Evidence of Domestication
Labour, 2000;					
Protocol to the African Charter on Human and Peoples Rights, on the Establishment of an African Court on Human and Peoples Rights.	June 10, 1998	January 25, 2004	June 9,1998	February 7, 2006	URT Constitution Article 6 through 32; Legal Sector Reform Programme, New Prosecution Services

Note: NA=Not Available

6.3 Assessment of the Six Socio-Economic Development Objectives

Objective One: Promote Self-Reliance in Development and Build Capacity for Self Sustaining Development

Introduction

1277. The Tanzania's Vision 2025 considers mobilization and effective utilization of domestic resources (natural, financial and human) as the foundation in which the realization of the vision rests. This is the thrust of promoting self reliance. In the light of this, the capacity to anticipate and effectively respond to external changes is considered as central driving force in the competitive global economy. Self reliance hence means, mobilization and effective utilization of domestic resources (natural, financial and human in developing and improving the economy and peoples livelihoods. This is achieved through democratic and participatory planning processes (which are also addressed under Objective 6) and financing of public services through increasing domestic revenues, supplemented where necessary by external financing which is programmed according to national priorities and accounted for through national systems.

1278. Sustainable development is considered differently by various authors. Some consider it as a system of economic development which ensures that the use of resources and the environment today does not compromise the needs of the future generation (www.learn.com/environment/env. And yet others see it as the act of economic growth and social advancement in ways that can be supported for the long term by conserving resources and protecting environment (www.vp.ca/bcsciencecluster/glossary. Finally there are those who consider it as reduction of hunger and poverty in environmental sound ways. It includes meeting the basic needs, expanding economic opportunities, protecting and improving the environment and promoting pluralism and democratic participation. This last definition is guiding our assessment of this objective.

Participation in Development Process

1279. The United Republic of Tanzania has put in place institutional and policy instruments to facilitate participatory processes in decision making processes during planning, budgeting and policy formulation. Central to this is the Local Government Reform which aimed at among others devolving power to communities in order to facilitate participation of communities in decision making processes.

1280. The Local Government Reforms were aimed at mandating local governments the responsibility for social development and public service provision within their jurisdiction.

As such, local government reforms have direct and indirect effects on rural development and poverty reduction. Several observations can be made with regards to local government reforms, namely:

(i) While the policy for local government reform states categorically the resolve to devolve powers to local communities through decentralisation structures, there remains some resistance in achieving this in practice; and
(ii) The size and complexity of the local government reforms necessitates strong co-ordination. However, co-ordination between sector ministries and local authorities is weak and the mechanism for co-ordination needs to be greatly strengthened. The establishment of a full-fledged central ministry under the Prime Minister's Office has improved opportunities for co-ordination, but the current capacities of the PMO-RALG to carry out the co-ordination function are insufficient.

1281. In order to enhance the decentralization process by devolution, the Local Government Authorities which were re-established by Act No.7 – 10 of 1982 in accordance with the constitution of the United Republic of Tanzania of 1977 under articles No.145 and 146 which allow the establishment of Local Government Authorities to facilitate transfer of authority to the people. These Local Government Authorities have the right and power to participate, and to involve the people in the planning and implementation of development programmes within their jurisdiction and generally throughout the country

1282. Tanzania's National Strategy for Growth and Reduction of Poverty (NSGRP) – (mostly commonly known by Kiswahili acronym-MKUKUTA), and Zanzibar's National Strategy for Growth popularly known as MKUZA, resulted from the review of the PRS, completed in June 2005 for implementation over the period 2005-2010. They build on Tanzania's Development Vision 2025, especially with an increased focus on equitable growth and governance with targets and poverty reduction outcomes which are consistent with, and indeed in many cases go beyond, the Millennium Development Goals (MDGs).

1283. MKUKUTA/MKUZA were based on extensive consultations with central and local government, parliament, civil society, faith based groups, private sector, districts and villages, and development partners. They are guided by the principles of national ownership, political commitment to democratisation and human rights, maintenance of macroeconomic and structural reforms, building on sector strategies and cross-sectoral collaboration, strengthening local partnerships for citizens' engagement in policy dialogue, harmonisation of aid, equity and sharing of benefits, sustainable development, decentralisation, and mainstreaming cross-cutting issues.

1284. There are three clusters of broad outcomes:

(i) Growth of the economy and reduction of income poverty;
(ii) Improvement of quality of life and social well being; and
(iv) Governance and accountability.

1285. Tanzania has made considerable efforts to develop its monitoring and evaluation systems and practices, including the strengthening of statistical systems, although considerable work remains. The development and implementation of MKUKUTA/MKUZA have taken place in the context of a significant overhaul of national planning and budgeting systems with the intention of boosting results based management, increasing domestic accountability and greater alignment and harmonisation of external financing. In line with

this approach, the government has pursued a programme for integration of external financing within national systems, carrying through reforms in a manner which builds domestic accountability

1286. Although Tanzania prepared the Poverty Reduction Strategy Paper (PRSP) in response to the enhanced Highly Indebted Poor Countries (HIPC) initiative, through which Tanzania was declared eligible for debt relief in April 2000, the resources which were freed up from debt relief were to be channeled towards poverty reduction. The PRSP framework translated the processes described above into priority actions and developed assessment indicators. While the PRSP committed the government to little that was new, it brought specific focus in programming for poverty reduction, for example by eliminating fees for primary school, and it contributed to strengthening the link between programming for poverty reduction and the fiscal framework. The PRSP process made the availability of resources for poverty reduction more predictable, (and hence more sustainable) and together with improvements through the PER process, there were significant improvements in public expenditure management. The poverty reduction strategy had been subjected to reviews annually since 2000 giving room for improvements as lessons were being learnt in the process of implementation. The review processes are based on consultative processes with various stakeholders.

1287. Apart from the macro-policy initiatives covered above, strategies for poverty reduction in Tanzania also incorporate various sectoral policies and strategies. Key sectoral policies include the Agriculture and Livestock Policy (1997), The Co-operative Development Policy (2002), The National Land Policy of 1995, The National Water Policy of 2002, The National Micro-finance Policy of 2000, and the Gender Policy of 2000.

1288. The Rural Development Policy (RDP) (2002) is a coordination framework for sectoral ministries. It does not replace sectoral policies, but gives a holistic view of the entire rural development process. The rationale behind the formulation of this policy centres on the need for harmonisation, coordination, integration and multi-sectoral interaction of development initiatives and policy strategies. It also reflects the need for empowerment and full involvement of people in the development process and service delivery to ensure sustainability

Institutional Setup

1289. The outcome based approach especially that adopted in MKUKUTA brings to the fore issues of cross-sector collaboration, linkages and synergies in achieving priority outcomes. Key actors include central government ministries and local government authorities, independent departments and agencies (MDAs), the private sector, Civil Society Organisations (CSOs) and communities. Parliament plays an oversight role over the government in the implementation process, and Development Partners (DP) play a supportive role. Based on the synergies and inter-linkages, key actors can be categorised into five broad sectors or areas of collaboration, namely: the macro sectors; productive sectors; social service sectors; economic service sectors; and public administration sectors.

Macro Sectors

1290. Collaboration on macro policy frameworks, cross-sectoral issues and coordination and supervision/monitoring at national level involves institutions such as the Ministry of Finance and Economic Affairs, the Planning Commission, President's Office – Public Service

Management, Prime Minister's Office – Regional Administration and Local Government, Ministry of Justice and Constitutional Affairs, Bank of Tanzania, the Tanzania Revenue Authority, the private sector, and Civil Society Organisations who are involved in dialogue on macro policies.

Productive Sectors

1291. Areas of collaboration in the productive sectors concern public and private investments, markets and regulatory institutions, communication, employment and cross-cutting issues. Key sectors include agriculture, mining, trade and industry. The main actors in this area include central government ministries responsible for productive sectors, which play an enabling and regulatory role in selected areas of production, and the private sector.

Social Service Sectors

1292. These sectors include education, health, water and sanitation. Areas of collaboration include improvement in access of quality and equity in delivery as well as social protection. The actors involved are central government ministries responsible for social sectors, local government authorities, the private sector, and civil society organisations - including those that are faith-based.

Economic Services Sectors

1293. These include roads, construction, transport and communication, energy, water, lands, storage facilities and information and communication technology (ICT). Areas of collaboration are investment, joint ventures, regulatory framework, and employment, infrastructure and cross-cutting issues. Actors include the respective central government ministries and local government authorities, the private sector and the community at large.

Public Administration Sectors

1294. Areas of collaboration include policy guidelines, administration of law, peace, security, protection of human right and stability. The actors include central government, ministries and local government authorities. Parliament maintains its oversight role over government ministries based on the current structure of Parliamentary select committees, by sector. The MKUKUTA and budget processes are at the centre, with outputs of the MKUKUTA monitoring process feeding into the Public Expenditure Review process, which again informs the preparations of budget guidelines, sector budget and Medium Term Expenditure Framework (MTEF) preparations.

1295. Development Partners have made efforts to harmonise and rationalise their support by encouraging joint missions and reviews. There has been substantial progress in harmonizing donor assistance through the Joint Assistance Strategy (JAST). Fourteen agencies provide increasing amounts of funding though General Budget Support (GBS), an instrument for consolidating efforts towards supporting poverty reducing interventions in the country.

Resource Allocation

1296. Public expenditures play a critical role in Tanzania's efforts to achieve sustained growth and to reduce poverty. Total government expenditures have increased from 16 percent of GDP in 1998/99 to 26 percent in 2004/05, and expenditures aimed at promoting economic growth and social services[322] have increased at a faster rate than other public expenditures.

[322] Growth related expenditures include the following administrative categories used by the National Bureau of Statistics: Fuel and Energy Affairs and Services; Agriculture, Forestry, Fishing and Hunting Affairs and Services, Mining, Mineral, Manufacturing, and Construction Affairs and Services, Transportation and Communication

1297. Estimates of the cost of achieving the outcomes and targets of MKUKUTA suggest that they by far exceed currently available resources. This calls for developing an appropriate strategy for mobilising and managing the resources required to finance the implementation of Tanzania's strategy for growth and poverty reduction.

1298. Potential sources of financing (aside from contributions by households, the private sector, and NGOs) are taxation, non-tax charges and levies, domestic and foreign borrowing, and foreign aid. Each source of financing has different macro-economic cost. Conceptually, as long as the marginal benefits of government spending are higher than the marginal cost of funds, it would be advisable to expand spending.[323] .

1299. Each year the government issues guidelines for preparing the plan and budget for the next financial year, with indicative ceilings also for the subsequent two years in a medium-term framework. A consultative Public Expenditure Review (PER) / Medium Term Expenditure Framework (MTEF) process, which was initiated in 1997, has become a key part of the budget review and management process. Numerous thematic and sector-wide working groups are operating in an effort to integrate governmental and development partners' efforts to improve and monitor the performance of sectoral programmes and overall development in general.

1300. At local levels, the adoption of Opportunities and Obstacles to Development (O and OD) and other participatory planning processes by Local Government Authorities are efforts to reflect the needs and priorities of communities in planning at the grassroots level.

Table 6.2: To what extent have you participated in the following?

	Planning (percent)	Budget preparation (percent)	Implementation (percent)	Monitoring and evaluation (percent)
Yes	50	32	53	41
No	38	53	34	41
Do not know	12	16	14	18

Source: APRM survey 2008

1301. More Tanzanians participate in planning processes and programme implementation than those who do not. However, a substantial percentage of survey respondents reported that they do not participate in planning or other aspects of programme execution and more efforts are needed to encourage increased participation, especially in budget preparations and monitoring and evaluation.

Affairs and Services, and Other Economic Affairs and Services; social expenditures include Education Affairs and Services, Health Affairs and Services, Social Security and Welfare Affairs and Services, Housing and Community Amenity Affairs and Services, and Recreational, Cultural, and Religious Affairs and Services; Administration and Security includes General Public Services, Defense Affairs and Services, and Public Order and Safety. Other Expenditures include Debt Service, Financial and Capital Subscriptions, and Pensions and Gratuities.

323 Note that issues related to resource mobilization have been addressed in detail in the Economic Governance component of APRM.

The Responsiveness of Development Projects to Community Needs

1302. The survey for the APRM which constituted a sample of 2,579 shows that more respondents (41 percent) of development projects were planned within their villages/mitaa compared to only 25 per cent who said that they were planned elsewhere. A substantial percentage of the survey respondents (35 percent) reported that they do not know whether development projects implemented in their locality were locally planned or planned elsewhere. A large proportion of them may well be those who also reported that they did not participate in planning processes.

1303. More than 50 per cent of respondents in the survey indicated that they voluntarily contribute to village/mtaa activities, compared to only 14 per cent who said that they do not contribute voluntarily. Consistently, more than 60 percent reported that a large or average share of the budget spent in the development projects in their village/mtaa is from citizens themselves. Only 27 percent and 11 percent reported that the budget for projects in their locality is in small amount from citizens or nothing at all respectively.

1304. More than 80 percent of the survey respondents approve performance of Local Government, of whom about 50 percent feel that the performance is good and the remaining 50 percent perceive that the performance is at the average level. Only 15 percent of the respondents reported that performance of local government is bad.

1305. The involvement of communities in the planning process is part of the implementation of the Local Government Reforms, where there are two classifications of planning: in Local Government Authorities (LGA) and in Lower Level Local Government Authorities (LLGA).

Multi-sectoral Planning Approach

1306. Since the initiation of the Opportunities and Obstacles to Development (O & OD) in 2002, planning of development projects has been implemented in line with community needs. Under this arrangement, communities identify projects which they determine to be their priority, and then plan the budget and the modalities of funding their desired projects.

1307. O&OD participatory planning has become increasingly important to promote community initiatives. Under this approach, the planning process begins with the preparation of the Village Development Plan (VDP) in rural Local Government Authorities (LGA) and the Ward Development Plan (WDP) in urban LGAs. The VDP is discussed by the Ward Development Committee (WDC), which gives technical advice before approval at the Village Assembly; after this it is then submitted to the LGA. The WDP is prepared by representatives selected in each *mtaa* (street council). The LGA is expected to incorporate VDPs or WDPs into the LGA Plan. A major challenge in this planning process is the limited representation of citizens who are involved in identifying priorities. It is possible that projects are identified whose implementation may have no significant impact on improving livelihoods of the majority of the locality. Also, limited resources to implement projects at the local level may bias selection of projects. This is specifically the case when donors are interested in a particular project, which may not be the highest priority of citizens. In this case, implementation of a project follows the interests of the funding agency rather than citizens as a whole.

1308. Indeed, the effectiveness of the participatory planning process is dependent on the extent to which citizens effectively participate in village/mtaa meetings. The survey data

shows that a large percentage of respondents report high participation in village/mtaa meetings. About 47 percent of the respondents reported high participation and 32 percent reported average participation in the village/mitaa meetings. On the other hand, only 10 percent reported low participation and 12 percent not participating in the village/*mitaa* meetings.

Sectoral Planning Approach

1309. The sectoral planning approach is based on sector programmes for:

Education	-	Primary Education Development Plan (PEDP) and Secondary Education Development Plan (SEDP);
Health	-	Health Sector Strategic Plan;
Agriculture	-	Agriculture Sector Development Plan (ASDP); and
Water	-	National Rural Water Supply and Sanitation Plan

1310. Within the sectors, planning is done by local committees: school committee, health committee, water committee, etc. Sectoral plans are approved by the village council after being submitted by the sector committee. The village council plans are subject to approval by the village assembly, after which they become the basis for disbursing funds.

Tanzania Social Action Fund

1311. The Tanzania Social Action Fund (TASAF), initiated in 2000, aims to protect the poor through investments on communities. The fund covers the whole nation, channeling the funds for community projects through the LGA and village/*mtaa* levels.

1312. Using participatory rural appraisal, and other participatory approaches such as O&OD, community members with the support of a TASAF coordinator and ward officers, prepares proposals which must be approved by the village assembly. The proposals are then appraised and approved by the local government management team and then forwarded to the Sector Expert Team at the national level, which is chaired by Prime Minister's Office - Regional Administration and Local Government (PMO-RALG) and includes representatives of sector ministries. The function of this team is to review the proposal, provide technical support and monitor the implementation of the project.

Ensuring Sustainable Ownership of Development Plans

Strengthening Capacity

Best Practice (8)

For the multi-sectoral planning approach, the Government has set a number of minimum criteria to access a Local Government Capital Development Grants (LGCDG). The local authority will only access this grant if it meets the set criteria. Such criteria include participatory planning, clean audit reports, and adequate staffing levels of employees in the finance departments.

1313. For the multi-sectoral planning approach, the Government has set a number of minimum criteria to access a Local Government Capital Development Grants (LGCDG). The local authority will only access this grant if it meets the set criteria. Such criteria include participatory planning, clean audit reports and adequate staffing levels of employees in the finance departments.

1314. The main purpose of setting minimum criteria as well as inclusion of resources for capacity building in sectoral allocations is to make sure that development programmes are oriented towards self reliance and capacity building. However, some stakeholders do not feel that programmes are very much oriented towards those objectives. The results of interviews conducted for experts as part of the APRM survey are summarized in the Table 6.3.

Table 6.3: Orientation of National Development Programmes to the Promotion of Self-Reliance and Capacity Building

Response option	Percentage of Respondents
Highly oriented towards those objectives	33
Somehow oriented towards those objectives	60
Not oriented towards those objectives at all	7

Source: APRM survey of experts, 2008

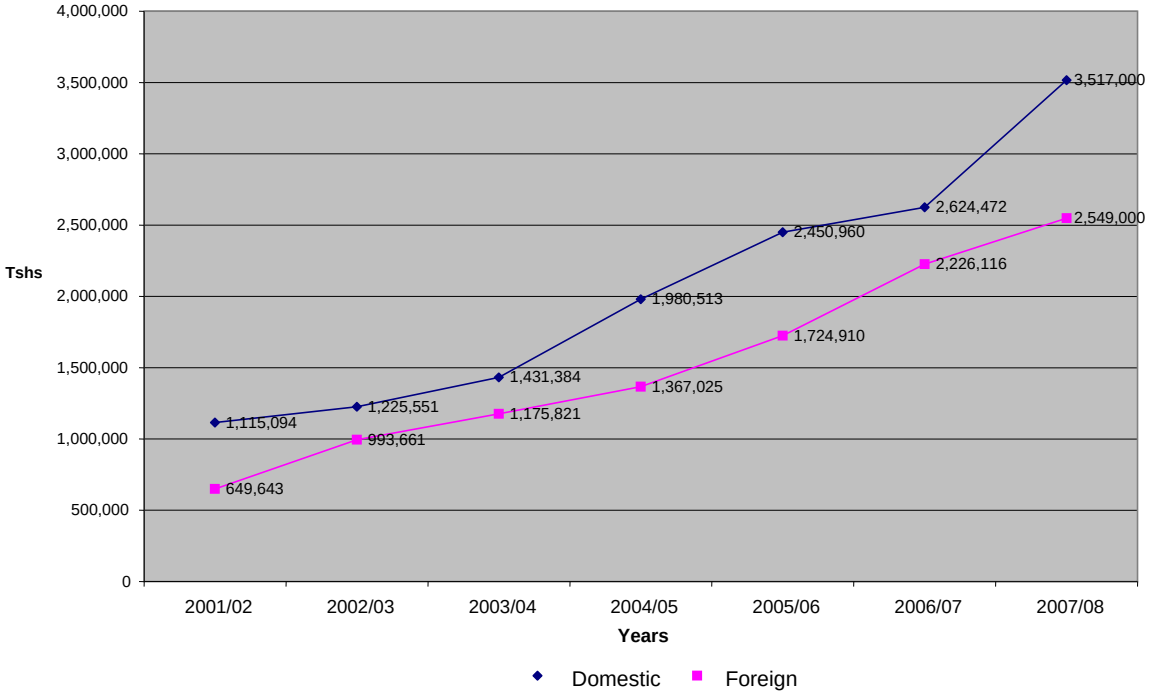
1315. A large majority of respondents (60 percent) said that development programmes are only somehow oriented towards objectives of promotion of self reliance and capacity building, while 33 percent reported that programmes are highly oriented towards those objectives. The survey data shows that 7 percent of the expert respondents feel that national development programmes are not at all oriented towards promotion of self reliance and capacity building.

Internal and External Resources for the National Budget, Particularly with Respect to National Investment Programmes

Trend of Government Revenues

1316. Over time, the trend of government revenue has increased from Tshs 1.8 trillion in the financial year 2001/02 to Tshs 4.9 trillion in the financial year 2006/07. The current budget estimates for the financial year 2009/10 indicate that the government's revenue will reach Tshs 5.1 trillion. Internal sources of revenue are mainly tax and non tax collections, draw down of reserves, privatization proceeds and non-bank borrowings. The figure below shows the trend of revenue in terms of domestic and foreign sources from 2001/02 to 2007/08:

Figure 6.1: Revenue, 2001/02 to 2007/08 (Tshs million)



Source: URT, Economic Surveys (various years)

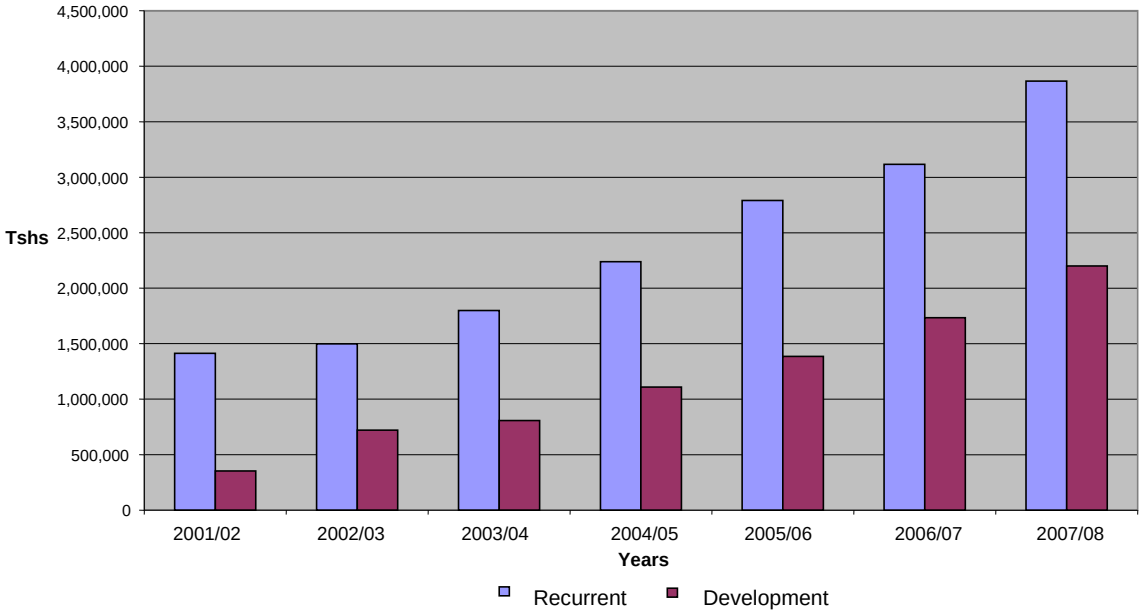
1317. The whole period from 2001/02 to 2007/08 has been characterised by an increasing trend in both domestic and foreign components of government revenue, though the rate of change of the two sources over time shows some difference. The rate of increase of domestic components from 2001/02 to 2003/04 was much slower than the foreign component, consequently the gap between the two decreased during this period. Thereafter, the rate of change of domestic sources of government revenue increased much faster than that of foreign sources, hence widening the gap. While domestic sources are greater than foreign sources, the government needs to put more efforts to improve domestic sources, since the absence of foreign sources would lead into a big deficit. Overdependence upon foreign sources also risks the nation's sustainable growth given that these foreign sources are not always predictable.

Trend of Government Expenditure

1318. Government expenditure has followed the revenue trend. As with revenue, expenditure has increased from 2001/02 to 2007/08. The survey conducted by the APRM confirms this. More than 50 percent of the respondents in both Mainland and Zanzibar were of the opinion that over the last five years, the government expenditure has been high, compared to only 9 percent who thought government expenditure was low. Within the same context, 32 percent were of the opinion that government expenditure for the last five years has been at an average level.

1319. The figure below shows the allocation of expenditure between recurrent and development spending for the financial year 2001/02 to 2007/08.

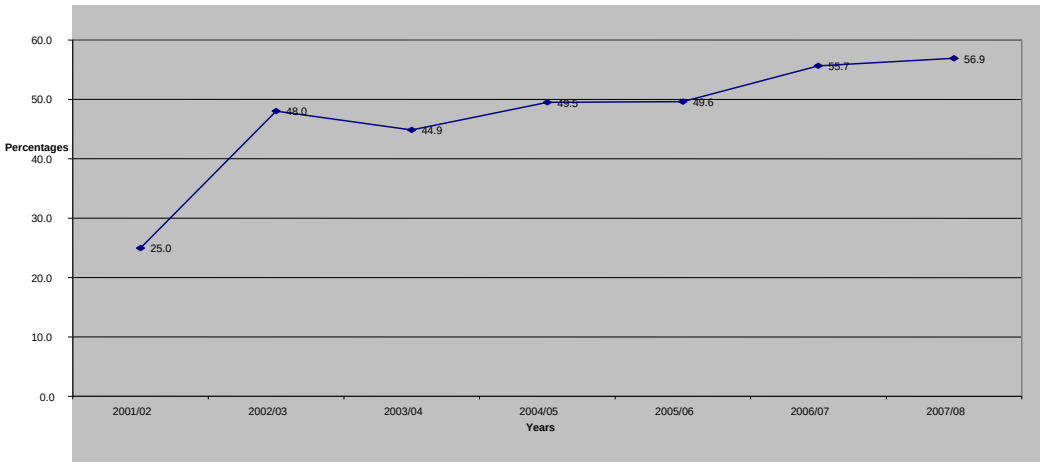
Figure 6.2: Government Expenditure 2001/02 to 2007/08 (Tshs million)



Source: URT, Economic Surveys (various years)

1320. The whole period under review shows that both recurrent and development expenditure has been on an increasing trend. While recurrent expenditure has increased from less than Tshs 1.5 trillion during the financial year 2001/02, to close to Tshs 4 trillion in 2007/08, development expenditure has increased from less than Tshs 0.5 trillion to more than Tshs 2 trillion in the same period. While in absolute terms recurrent expenditure is bigger than development expenditure, the rate of increase of the later is faster than the former, as shown in Figure 6.3.

Figure 6.3: Development Expenditure as a Percentage of Recurrent Expenditure, 2001/02 to 2007/08



Source: URT, Economic Surveys (various years)

1321. The percentage of development expenditure to recurrent expenditure increased from 25 percent in the financial year 2001/02 to more than 50 percent in the financial year 2007/08. During 2001/02 to 2002/03 the proportion of development expenditure increased from 25 percent to 48 percent. It should be noted that this period coincided with the initial years of the implementation of the PRS(P) under Highly Indebted Poor Countries (HIPC) initiative on debt relief which brought about increased expenditure in development.

1322. While increased development expenditure over recurrent expenditure over time might be considered an important impetus for growth, it is important to find out the source and more precise the purpose of this expenditure. From Government publications of budget books for various years, it is shown that the share of the development expenditure funded from external sources is bigger than the share funded from domestic sources. While foreign resources directed to development expenditure increased from Tshs 0.3 trillion in 2001/02 to Ths 1.5 trillion in 2007/08, domestic resources increased from Tshs 0.05 trillion to Tshs 0.7 trillion in the same period. This means that between 70 percent and 80 percent of the development budget has been financed from foreign sources. Overall, foreign funding of the total Government budget, including contributions to general budget support, mean that about 40 percent of public spending is externally financed.

1323. The survey conducted by the APRM team shows that the citizens are also of the opinion that most of the development programmes are funded by foreign sources as seen in the table 6.4.

Table 6.4: The Level of Dependence to External Financing of National Development

Response option	Percentage of Respondents
Funded by internal sources	14
Equally funded by internal and external sources	30
Funded by external sources	56

Source: APRM survey, 2008

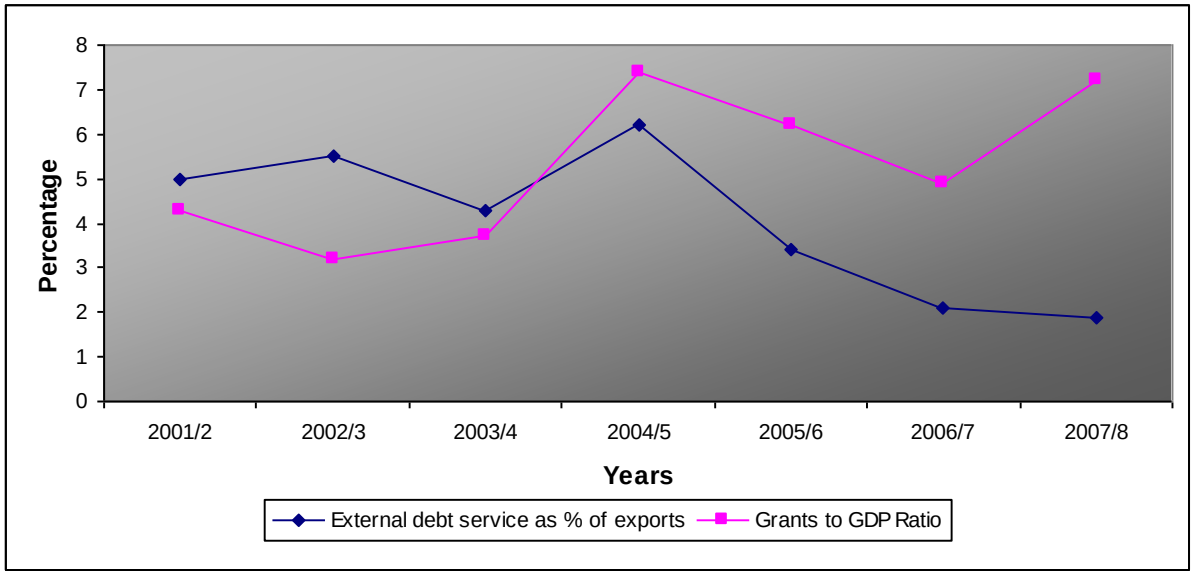
1324. A majority of citizens (56 percent) are of the opinion that national development programmes are funded by external sources, compared to only 14 percent who perceive that they are funded by internal sources. On the other hand, 30 percent of respondents believe that development programmes are funded equally by internal and external sources.

1325. The share of domestic to foreign development expenditure has increased from 17 percent during the financial year 2001/02 to more than 50 percent in 2007/08. This should be considered a positive trend since it suggests that the dependency on foreign resources to fund development expenditure is decreasing over time. However, more effort is needed because the absolute share of external resources in the budget is still large, which means that any attempt to cut down foreign resources would lead to a huge reduction of development expenditure, something which is a threat to future growth and development.

Assessment of Tanzania's Dependency on Aid

1326. The assessment of a country's aid dependency is measured by the ratio of total aid to GDP and the ratio of the external debt service ratio to exports. The figure below shows the trend of these ratios over time.

Figure 6.4: Tanzania's Dependency on Aid, 2001/02 to 2007/08



Source: Bank of Tanzania 2008

1327. The country's Grants to GDP ratio[324] averages 5.3 percent for the period from the financial year 2001/02 to 2007/08. It was at a low of 3.2 percent in the financial year 2002/03 and increased to 7.4 percent in 2004/05, thereafter it decreased in the following two years to 4.9 percent in 2006/07, before going up again to 7.2 percent in 2007/08. The decline in the ratio of aid to Gross Domestic Product (GDP) is slow, suggesting that more efforts are needed.

1328. The external debt service ratio to exports averages 4 percent for the period from the financial year 2001/02 to 2007/08. What this ratio tells us is that on average the country pays annually 4.5 percent of its export earnings to service its external debt – making payments on interest and reducing the stock of debt. The trend shows that there has been improvement over time, reaching 1.9 percent in 2007/08.

1329. In Zanzibar, the formulation of the Poverty Reduction Plan in 2002 brought with it a new thrust in involvement of key stakeholders and communities in prioritising their development needs. The involvement of the stakeholders in the formulation of PRSP had been largely at the national level, involving people from Ministries, Departments, and Agencies (MDAs), Civil Society Organisations (CSOs) and a few Private Sector Organisations. The formulation of MKUZA involved much more intensive participation of stakeholders. The review of ZPRP implementation, achievements, and challenges which led to the formulation of MKUZA was carried out in a participatory manner. It brought together a wider array of stakeholders and in so doing it brought into the review of all the sectors of the economy as well as the cross-cutting themes such as gender, environment and HIV and AIDS.

[324] Calculated on the basis of GDP at factor cost

1330. There were three rounds of consultations.[325] The first round involved structured consultations whereas the second round targeted focused groups and grass-root consultations, while the last round brought together representatives from the first and second rounds of consultations along with development partners. The inputs from the three rounds of consultations were compiled, synthesised[326] and formed the basis of MKUZA. Qualified facilitators facilitated the consultations and a drafting team was appointed to record and synthesise deliberations by stakeholders.

1331. The First Round of Consultations, which was launched in October 2005, involved MDAs, CSOs, young people, children, women, trade unions and the private sector. Directors of planning and administration represented their MDAs while other institutions were represented by their respective heads. The Drafting Team, which was well trained[327], guided these consultations. Prior to the launch of the consultation process, the Drafting Team met with the directors of planning from ministries, members of Zanzibar Trade Union Congress (ZATUC), Faith Based Organizations (FBOs) and youths to brief them on the procedures to follow and carried out structured consultations in their groups. The report format for the whole process was also discussed and agreed upon.

1332. The consultation meetings were organized in both Unguja and Pemba. Subsequently, a joint meeting was held in Unguja, where the ideas from the two islands were combined, synthesised and submitted to the Drafting Team. Development Partners (DPs) attended the joint meetings. Participants outlined the achievements of the ZPRP, the challenges it has faced and suggested the way forward; these issues were then shared with principal secretaries of the ministries.

1333. The Second Round of Consultations was conducted through focused group discussions as well as questionnaires administered to individual households. The focused group consultations were led by the Association of Non-Governmental Organizations of Zanzibar (ANGOZA). Participants were young people, women, and people with disabilities, people who had been widowed or, retired, farmers, community leaders, members of the House of Representatives, and representatives of political parties. Special consultations were also conducted for people with special needs, such as those living with HIV and AIDS. As was the case for all other consultations, the focus was on three issues: the achievements of ZPRP, the challenges faced, and strategic actions needed for the new poverty reduction strategy—MKUZA.

1334. The Third Round of Consultations brought together stakeholders from the first and second rounds along with the Development Partners. The forum provided an opportunity for stakeholders to identify and fill in gaps in the draft framework for MKUZA, particularly in the proposed broad outcomes, goals, strategic interventions and their related implementing institutions. It was also an opportunity to assess the extent to which cross-cutting issues and national and global commitments had been adequately reflected. The involvement of gender based Non Governmental Organisations, such as the Tanzania Gender Networking Program (TGNP) from Tanzania Mainland, was useful in making sure that gender issues were addressed in the new strategy.

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[325] See Revolutionary Government of Zanzibar [RGoZ] (2007), "The National Strategy for Growth and Reduction of Poverty (MKUZA)," Chapter II—ZPRP Review Process.

[326] The details of consultations are found in Consultations Synthesis Reports Volume 1 and II of 2006.

[327] The drafting team was composed of experts from MDA's, CSO's, Private Sector and Development Partners.

1335. As the consultation process proceeded, the following critical challenges to the implementation of new strategy were identified as follows:

(i) Weak institutional capacity at all levels for planning and implementation, inadequate monitoring of the ZPRP at all levels and hence, difficulties in benchmarking' sequencing and prioritising strategic interventions for growth and poverty reduction;
(ii) Lack of inter-sectoral collaboration and synergies, lack of coherence and alignment between sectors' objective and funding;
(iii) Communities' weak capacity, inadequately organised for planning and implementation; and
(iv) Failure to integrate poverty reduction activities at grassroots level, and little focus on most vulnerable groups.

The Responsiveness of Development Programmes to Community Needs

1336. Evidence of the responsiveness of development programmes to community needs may be drawn from several projects that are demand driven. There are several examples of such projects; evidence is provided below of two important projects.

Participatory Agricultural Development and Empowerment Program (PADEP)

1337. The main goal of the programme is to contribute to the reduction of rural poverty through increased food production, farm incomes and assets of the participating households and farmer groups in a sustainable manner, through the implementation of small agricultural development sub-projects managed by communities/farmer groups. Communities are involved in identifying their own agricultural development interventions which are funded under the programme. There are two modalities of contributions from participating farmers and groups. In the first, farmers are required to form groups for the Farmer Group Investment Subproject (FGIS). They then receive a grant which matches their own contributions. In the second, support is provided through Community Investment Subprojects (CIS) which also matches contributions in cash from the benefiting communities. So far, PADEP has benefited 7,520 households in about 94 *Shehias* in 5 participating districts (2 in Pemba and 3 in Unguja). CIS have been formed in 94 communities.

1338. Some of the challenges which have been cited in implementing PADEP include:
(i) Ineffective livestock laboratory services;
(ii) Slowness of farmers to meet their matching contributions;
(iii) Lack of enough resources for extension services;
(iv) Unreliable weather conditions that affect crop growth;
(v) Crop and livestock pests and diseases;
(vi) Price inflation which increases the cost of implementing the project;
(vii) Lack of processing and storage technologies and facilities which result in low;
(viii) Producer price; identification of subprojects with costs over and above allocated investment budgets which hinders implementation; and
(ix) Crops and livestock thefts that discourage community efforts towards development.

Tanzania Social Action Fund (TASAF)

Best Practice (9)

The Tanzania Social Action Fund (TASAF), initiated in 2000, is another approach that involves communities in identifying their own development needs using participatory approaches and the implementation of identified interventions. Several sub-projects have been implemented under the TASAF initiative, one example of which is the Community AIDS Response Fund (CARF) sub component under the Zanzibar AIDS Commission (ZAC), which provides support for community-initiated projects. As at the end of June 2007, a total of 75 Subproject Interest Forms (SPIFs) had been received from communities of Unguja and 54 from Pemba for consideration by the Management team. All SPIFs were sent to ZAC for review before a decision by the Management team. A total of 22 subprojects were received by the TASAF Management Unit for funding, being 11 subprojects from Pemba as well as 11 subprojects from Unguja. A total of 7 subprojects valued at TShs 43 million have been endorsed by the National Steering Committee for funding. It is anticipated that more subprojects will be forthcoming because this fund provides 100 percent funding for such community-initiated projects, with no obligations for contributions from communities. To speed up implementation of sub-projects, brochures and posters for CARF component were jointly developed and shared by ZAC management. The materials have been approved and are currently in production before distribution to stakeholders[328].

1339. It is worth noting however that, just like other donor funded projects, the sustainability of these two projects is questionable if concerted efforts are not made to stimulate ownership by the people.

1340. More evidence on partnership and participation was obtained from the survey conducted by the APRM team in August 2008. When citizens were asked about how much of the budget spent in the development projects in their village/street is from citizens, the majority acknowledged local contributions.

Table 6.5: How much of the Budget spent in the Development Projects in our Village/Mtaa is from Citizens?

Response option	*Percentage of the respondents*
Big amount	28
Average	33
Fairly small amount	25
Nothing from citizens	13

Source: APRM Survey, 2008

1341. Just over 80 percent of respondents reported that some amount of the budget comes from local contributions. However, the involvement of citizens in planning, budgeting, implementation and monitoring and evaluation of development programmes and projects is less extensive.

[328] For more details see TASAF (2007), Fourth Quarter Progress Report (April - June 2007), Dar es Salaam.

1342. Only about one-third of respondents reported that they had participated in planning, and even fewer in budgeting, implementation and monitoring and evaluation processes. While development programmes and projects may be conditioned on full participation of citizens in all stages, actual participation still seems to be limited, except in the form of cash contributions.

1343. There is a general feeling that projects originate from their villages/*mitaa*. When asked their views about whether development projects that are implemented in their villages/*mitaa* are planned locally, 47 percent of respondents said that they were, compared to 31 percent who said that they were not, and 22 percent who could not give their views on this question. Perhaps these findings indicate that decisions on development projects in Zanzibar are made by local leaders rather than citizens themselves.

Marine and Coastal Environment Management Project (MACEMP)

1344. MACEMP is a six year project funded by the World Bank which started 2005. The project seeks to improve the regulatory and institutional framework for management of marine resources particularly establishing the links between the marine environment and the fishery resource and what are expected to be conservative estimates of sustainable commercial exploitation of marine fishery resources. It also aims to fill gaps in the data describing the fishery in Tanzanian marine waters and the coastal and offshore environment upon which the fishery depends. The objective is to enhance the contribution of these resources to economic growth and reduction of poverty, and to develop the scientific understanding of the status of the resources and major threats to them. Under the project, activities are designed to assist the Government in implementation of the National Coastal Environmental Management Strategy, the National Fisheries Master Plan, and the Fisheries Act.

1345. Beneficiaries include Tanzanians and residents of the wider region both now and in the future who will realize a stream of enhanced benefits and reduced costs associated with improved management of marine and coastal resources. Specific immediate beneficiaries include relevant national and local level agencies responsible for the management of marine resources, coastal communities of Mainland Tanzania and Zanzibar and the broader society who will benefit through increased revenues from improved management of marine and coastal resources. Key expected outcomes include:

(i) Increased incomes through improved management of marine resources through increased productivity and added value from improved post-harvest processing and market access;
(ii) Reduced vulnerability to external shocks through diversification of local production systems; diminished market risks through mutually beneficial private sector and community partnerships; and stabilization, and where possible, reversal of current trends in marine resources degradation and productivity;
(iii) Increased Government revenues from improved management of off-shore fisheries; and
(iv) Improved ecosystem services and conservation of globally significant marine and coastal biodiversity.

Ensuring Sustainable Ownership of Development Plans

1346. Participation in formulation of national plans and development programmes is one crucial aspect for enhancing national ownership. Another aspect is a clear mechanism for feedback on the implementation process and its outcomes. Zanzibar has developed Communication Strategy which is considered to be a vehicle for agenda setting and empowerment.[329] It provides information and education to enhance understanding and public engagement. A variety of communication methods is used in the implementation of MKUZA to ensure that all target audiences have access to information.

1347. The Communication Strategy aims to build ownership through appropriate involvement and participation; promote awareness, behavioural and attitudinal change towards promotion of poverty reduction initiatives; enhance partnership between public and private sector in broader terms by recognizing responsibilities, transparency and accountability for growth and national income; strengthen feedback mechanisms where stakeholders may provide their views on the impact of the implementation of MKUZA; encourage community initiatives in planning self help projects through facilitating decision making: and advocate for cross cutting issues (Gender, Environment, Population, HIV and AIDS) in MKUZA.

1348. The MKUZA Monitoring Master Plan has been established, supported by a Technical Committee and Secretariat and by four Technical Working Groups (TWGs).[330] Members to the TWGs come from all Ministries, Departments and Agencies, academic institutions, civil society, Development Partners and the private sector. The set up of the Monitoring System includes:

(i) MKUZA Technical Committee and MKUZA Secretariat;
(ii) Research, Analysis and Advisory TWG;
(iii) Census, Surveys, and Routine Data TWG;
(iv) Communications TWG; and
(v) The Public Expenditure Review TWGs - three TWGs, one per cluster of MKUZA.

1349. Indicators for monitoring the progress of MKUZA have also been developed and included in monitoring system. The indicators include core indicators for each cluster as well as additional sector specific indicators. The Participatory Service Delivery Assessment (PSDA) has been adopted as a feedback mechanism from users of services. In a bid to include the voices of the poor in the implementation of MKUZA, PSDA is to be carried out annually to evaluate service delivery.

1350. Several sources of information have been identified. Within the Revolutionary Government of Zanzibar (RGoZ), there are four levels at which planning and decision-making and hence information generation takes place. These are the national, MDAs, district and *Shehia*. At the national level the sources of information include surveys and censuses managed by the Office of the Chief Government Statistician (OCGS). Data produced are usually at national level and disaggregated to sub-national levels, by gender, rural/urban and so on. At the MDA level, sources of data are the surveys and censuses from the OCGS which

329 See RGoZ (2007), "The Zanzibar Strategy for Growth and Reduction of Poverty (MKUZA) Communication Strategy 2007-2010," Ministry of Finance and Economic Affairs.

330 See RGoZ (2007), "MKUZA Monitoring Master Plan," Ministry of Finance and Economic Affairs.

cover issues of specific interest to particular MDAs, the official statistics collected by these institutions as part of their routine work (routine data) as well as their annual plans and reports, either annual or bi-annual. At district level, the sources of data are the surveys and censuses from the OCGS disaggregated to that level, Community Based Management Information System (CBMIS) and district routine data systems. Likewise at the *Shehia*, the data sources include the above together with the *Shehia* register.

1351. Challenges in implementing the monitoring system include the need to revise the institutional framework and membership of TWGs so that each sectoral ministry is represented. The revival of administrative and routine data systems is to be given priority and so is the strengthening of the existing CBMIS, (Village Register at the *Shehia* level). MDAs will strengthen their Management Information Systems (MIS). There is need for second level analysis so that the data already collected can provide pointers for policy and decision makers. To make this possible, capacity building is needed in MDAs, universities and in research institutions. The availability of both the 2002 census and the 2004/05 Household Budget Survey (HBS), information disaggregated to the district level is useful and could be used to produce a poverty map for Zanzibar as a whole and poverty profiles at district level. Also data from the 2004/05 HBS and annual feedback from the monitoring system can inform the Ministry of Finance and Economic Affairs (MoFEA) when allocating resources during the budgeting process.[331]

1352. In order that MDAs and districts produce reliable annual reports on performance appraisals using indicators agreed upon, the Management Information System in each MDA as well as at the district level must be strengthened. The MDAs and districts are expected to work in close collaboration with the OCGS, in line with the Statistical Act No. 9 of 1999. This collaboration will avoid having different levels of detail of data obtained for the purpose of monitoring within and between sectors and get rid of the problem of inconsistency in indicators reported by the various sectors.

Development Allocations for Clusters of MKUZA

1353. In terms of allocations from the development budget to MKUZA clusters in 2006/07, the largest allocation was directed to interventions in cluster I (61 percent), whose objective is to improve income and which is expected to have an impact also on the outcomes of both clusters II and III. Thirty per cent of the development budget was directed to Cluster II's interventions necessary for improvement of social services and well being. Only 9 percent of development funding was allocated specifically for Cluster III. It should be noted, however, that many of the policy initiatives for Clusters II and II involve routine public administration and services which are funded through recurrent budgets.

331 See Revolutionary Government of Zanzibar (2006), "Household Budget Survey 2004/05," Office of the Chief Government Statistician. In this document this reference is termed HBS 2004/05.

Table 6.6: Development Funding per MKUZA Cluster (TShs Million)

Cluster	Projects	Govt Contribution	Grants	Loans	Total	% of Total Dev Budget
1. Growth and Reduction of Income Poverty	11	5,414	9,415	50,687	65,516	61
2. Social Services and Well-being	21	2,651	25,781	7,413	35,845	30
3. Good Governance and National Unity	8	793	2,290	-	3,084	9
Total	**40**	**8,858**	**37,487**	**58,100**	**104,445**	**100**

Source: RGoZ (2007), *Mapitio ya Hali ya Uchumi na Utekelezaji wa Mpango wa Maendeleo Zanzibar 2006/2007, Kitabu cha Kwanza*, Ministry of Finance and Economic Affairs.

Internal and External Resources to Fund the National Budget

Trend of Government Revenues[332]

1354. Over time, the trend of government revenue has been increasing from TShs 66.5 billion in 2002/03 to 112.4 billion in 2005/06 financial year.[333] Internal sources of revenue are mainly tax collected through Zanzibar Revenue Board and Tanzania Revenue Authority and non tax collections. This entire period from 2002/03 to 2005/06 has been characterised by an increasing trend in both domestic and foreign components of government revenue. Three major problems have been mentioned in relation to revenue collection:

(i) An inadequate and inefficient fiscal environment;
(ii) Lack of tax policy and weak tax administration; and
(iii) A narrow revenue base, an example of which is the low contribution of revenue from tourism to Government revenues.

Trend of Government Expenditure

1355. Government expenditure has followed the revenue trend, whereby the period under review shows that both recurrent and development expenditure have been increasing. Recurrent expenditure has increased from about TShs 60 billion in 2002/03 to about TShs 93 billion in 2005/06 while development expenditure has increased from about TShs 24 billion to more than TShs 45 billion in the same period. While increased development expenditure over recurrent expenditure over time is considered an important trend towards growth, it is important to find out where the funding for this expenditure come from. The bulk of revenue for development expenditure comes from foreign sources. Foreign expenditure on development accounts for 94 percent of the total development expenditure, a situation which raises concern for sustainability and self-reliance.

1356. Table 6.7 below shows recurrent and development expenditure as a percentage of GDP, clearly depicting that recurrent expenditure takes a big share of GDP growth compared to development expenditure.

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332 See RGoZ (2007), "*Mapitio ya Hali ya Uchumi na Utekelezaji wa Mpango wa Maendeleo Zanzibar 2006/2007," Kitabu cha Kwanza*, Ministry of Finance and Economic Affairs.

333 Note that at the time of study revenues and expenditures for 2006/07 are available for only 3 quarters (see RGoZ, 2007).

Table 6.7: Recurrent and Development Expenditure as percent of GDP

	2003/04	2004/05	2005/06	2006/07	2007/08
Recurrent Expenditure (in mil.)	68,843	65,215	57,543	104,461	105,303
Recurrent percent of GDP	21.82	17.64	12.72	19.02	18.00
Development Expenditure (in mil.)	27,230	29,939	22,180	73,091	73,906
Development percent of GDP	8.63	8.10	4.90	13.31	12.63
DGP at market price (in mil.)	315,450	369,600	452,450	549,250	584,951

Source: RoGZ (2007), the Economic Survey.

Assessment of Zanzibar's Debt Sustainability

1357. A country's external debt sustainability may be assessed by the ratio of external debt to Gross Domestic Product (GDP). Zanzibar's external debt stock as a proportion of GDP was highest in 2004 at 36 percent, but it declined after that to 24 percent in 2007.

Table 6.8: Trends in Debt Ratio to Gross Domestic Product

ITEM	UNIT	2003	2004	2005	2006	2007
Total Debt	Mill US$	97.4	166.0	150.5	162.0	158.6
	Change	0.0	70.5	-9.3	7.6	-2.1
Stock of External Debt	Mill US$	54.7	113.7	90.7	102.9	106.3
	Change	-6.1	107.9	-20.2	13.4	3.3
Stock of External Debt as percent of GDP	Percent	19.82	35.98	25.94	25.20	23.48

Source: Ministry of Finance and Economic Affairs (2008), Revolutionary Government of Zanzibar Economic Indicators.

Objective Two: Accelerating Socio-Economic Development to Achieve Sustainable Development and Poverty Eradication

Legal, Policy and Institutional Steps Taken to Accelerate the Process

Legal Context

1358. The Constitution of the United Republic of Tanzania (1977) in its preamble states that Tanzania aims to build a democratic society founded on the principles of freedom, justice, fraternity and concord, in which the Executive is accountable to a Legislature composed of elected members and representatives of the people and also a Judiciary which is independent, dispenses justice without fear or favor, thereby ensuring that all human rights are preserved and protected.

1359. The present legal system is mainly based on Common Law introduced during the time when Tanganyika was a British mandate. As a result, laws are often out of date, certainly not reflective of the significant social and economic changes which have taken place since the 1980's. In addition, a substantial part of the legislation and institutions, even where subsequently amended, were fashioned for a centrally planned economy and therefore cannot be efficacious in a competitive market system with privatized industry.

1360. Reform of the country's legal sector began in 1997 as a result of a report submitted by the Legal Sector Task Force. The problems affecting the legal sector identified by the Legal Sector Task Force, which were widely acknowledged, include:[334]

(i) A fragmented, excessively bureaucratic and outdated legal and regulatory framework;
(ii) Weak management and coordination of legal sector institutions;
(iii) Low competence and morale of public sector legal personnel;
(iv) Inadequate numbers of professionally trained legal personnel in the country;
(v) Constrained independence and low integrity of the legal system;
(vi) Ignorance and poverty of the majority of the citizens; and
(vii) Excessively limited and poorly maintained work environment for all public institutions in the legal sector.

1361. The key challenges identified for the sector included the rapid social, political, economic and technological changes taking place in the country and internationally, and in particular, how to rapidly develop the legal system to facilitate the efficient development of a private-sector and market-led economy, and for due protection of consumer rights.

1362. The medium term perspective in the implementation of the Legal Sector Reform Programme (LSRP) was aimed to address the following five key result areas:

(i) National legal framework;
(ii) Access to justice for the poor and the disadvantaged;
(iii) Human rights and administrative justice;
(iv) Knowledge and skills of legal professionals; and
(v) Service delivering capacity in key legal sector institutions.

1363. In response, the Government, with the support of the development partners, has implemented the following projects: Quick Start Project, Capacity Building, Preparation of the Proposed Tanzania Accountability Transparency and Integrity Project, Law Reform Commission Project, and Strengthening Capacities to Improve Human Rights Standards in Tanzania. And as already pointed out, the Commercial Court and the Commission for Human Rights and Good Governance have been established.

1364. However, in spite of the initiatives by the legal sector institutions and development partners in recent years, the quality of legal services available to the people and entities in Tanzania remains well below standards in most respects. This state of affairs is reflected in:

(i) Inordinate delays in resolving disputes and dispensing justice. In spite of recent efforts to address this problem, there remain large backlogs of both criminal and civil cases in the legal system;
(ii) Limited access to legal services for the majority of citizens, who either lack awareness of their basic rights and the opportunities for judicial redress, cannot afford legal services, or do not have confidence in the integrity and fairness of the legal system;
(iii) Corruption;
(iv) Outdated system which is non-responsive to social, political, economic and technological changes; and

[334] United Republic of Tanzania, Legal Sector Reform Programme, Medium Term Strategy FYs 2005/6-2007/8

(v) Increasing resource constraints, despite the initiatives of the Government to improve budgetary allocations to the sector.

Policy Context

1365. Since the late 1990s, accelerating socio-economic development to achieve sustainable development and poverty reduction has been guided by key policy documents, notably the Development Vision 2025, the Local Government Reform Programme (LGRP); the National Poverty Eradication Strategy (NPES); the Poverty Reduction Strategy Paper (PSRP); Rural Development Policy (RDP); and the National Strategy for Growth and Reduction of Poverty (NSGRP – known more commonly as MKUKUTA). Generally, the current policy framework is conducive with efforts towards achieving sustainable development and poverty reduction.

1366. The Development Vision 2025 aims to have a country that has graduated from a least developed country to a middle-income country by 2025, attaining the highest level of human development possible within that period. In order to achieve this goal, the strategy envisions transforming the economy from a low productivity agricultural economy to one which is semi-industrialised. This entails modernising agriculture, industry and services and laying solid foundations for creating a well-managed dynamic, stable and competitive economy. Tanzania should become a nation that has the five attributes of:

(i) High quality of livelihood, peace, stability and unity, good governance;
(ii) A well educated and learning society; and
(iii) A competitive economy capable of producing sustainable growth and shared benefits.

1367. The Local Government Reforms were aimed at mandating local governments the responsibility for social development and public service provision within their jurisdiction. As such, local government reforms have direct and indirect effects on rural development and poverty reduction. Several observations can be made with regards to local government reforms, namely:

(i) Although the policy for local government reform states categorically the resolve to devolve powers to local communities through decentralisation structures, there remains some resistance in achieving this in practice; and
(ii) The size and complexity of the local government reforms necessitates strong co-ordination. However, co-ordination between sector ministries and local authorities is weak and the mechanism for co-ordination needs to be greatly strengthened. The establishment of a full-fledged central ministry under the Prime Minister's Office has improved opportunities for co-ordination, but the current capacities of the PMO-RALG to carry out the co-ordination function are insufficient;

1368. The National Poverty Eradication Strategy (NPES), issued in 1998, complements the Development Vision 2025 and sets out government's objectives and targets for reducing absolute private consumption poverty by half by 2010, and eradicating it by 2015. It aims at involving people, especially the poor, in identifying, planning, implementing, monitoring and evaluating poverty eradication programmes. Agriculture has been identified as one of the priority sectors that can contribute to poverty reduction.

1369. Tanzania prepared the Poverty Reduction Strategy Paper (PRSP) in response to the enhanced Highly Indebted Poor Countries (HIPC) initiative, through which Tanzania was declared eligible for debt relief in April 2000. The resources expected to be freed up from

debt relief were to be channeled towards poverty reduction. The PRSP framework translated the processes described above into priority actions and developed assessment indicators. While the PRSP committed the government to little that was new, it brought specific focus in programming for poverty reduction, for example, by eliminating fees for primary school, and it contributed to strengthening the link between programming for poverty reduction and the fiscal framework. The PRSP process made the availability of resources for poverty reduction more predictable, and together with improvements through the PER process, there were significant improvements in public expenditure management. The poverty reduction strategy had been subjected to reviews annually since 2000 giving room for improvements as lessons were being learnt in the process of implementation.

1370. The Rural Development Policy (RDP, 2002) is a coordination framework for sectoral ministries. It does not replace sectoral policies, but gives a holistic view of the entire rural development process. The rationale behind the formulation of this policy centres on the need for harmonisation, coordination, integration and multi-sectoral interaction of development initiatives and policy strategies. It also reflects the need for empowerment and full involvement of people in the development process and service delivery to ensure sustainability.

1371. Tanzania's National Strategy for Growth and Reduction of Poverty (NSGRP) – (mostly commonly known by the Kiswahili acronym-MKUKUTA), resulted from the review of the PRS, completed in June 2005 for implementation over the period 2005-2010. It builds on Tanzania's Development Vision 2025, especially with an increased focus on equitable growth and governance with targets and poverty reduction outcomes which are consistent with, and indeed in many cases go beyond, the Millennium Development Goals (MDGs).

1372. MKUKUTA was based on extensive consultations with central and local government, Parliament, civil society, faith based groups, private sector, districts and villages, and development partners. It is based on the principles of national ownership, political commitment to democratisation and human rights, maintenance of macroeconomic and structural reforms, building on sector strategies and cross-sectoral collaboration, strengthening local partnerships for citizens' engagement in policy dialogue, harmonisation of aid, equity and sharing of benefits, sustainable development, decentralisation, and mainstreaming cross-cutting issues.

1373. There are three clusters of broad outcomes:

(i) Growth of the economy and reduction of income poverty;
(ii) Improvement of quality of life and social well being; and
(iii) Governance and accountability.

1374. Tanzania has made considerable efforts to develop its monitoring and evaluation systems and practices, including the strengthening of statistical systems, although considerable work remains. The development and implementation of MKUKUTA has taken place in the context of a significant overhaul of national planning and budgeting systems with the intention of boosting results based management, increasing domestic accountability and greater alignment and harmonisation of external financing. In line with this approach, the government has pursued a programme for integration of external financing within national systems, carrying through reforms in a manner which builds domestic accountability.

1375. Apart from the macro-policy initiatives covered above, strategies for poverty reduction in Tanzania also incorporate various sectoral policies and strategies. Key sectoral policies include the Agriculture and Livestock Policy (1997), The Co-operative Development Policy (2002), The National Land Policy of 1995, The National Water Policy of 2002, The National Micro-finance Policy of 2000, and the Gender Policy of 2000.

Challenges Encountered and Measures Taken

1376. The focus of economic policy during the past decade has been primarily on macro-economic stabilization and more recently on poverty reduction with relatively little emphasis on the quality of economic growth and structural transformation. In addition, economic management has been fragmented among a variety of institutions which creates a certain lack of coordination of policy formulation and implementation. A number of challenges need to be addressed in order to ensure that economic policy making is able to support and sustain high economic growth and to react appropriately to the evolution of the domestic and international economy.

Need for Greater Focus on Economic Growth

1377. There is need to underpin Tanzania's development with faster and more sustainable growth, hence the need for a clear, coherent and prioritized growth strategy. Such a strategy should identify potential growth drivers based on an accurate analysis of their comparative and competitive advantage within the global context for Tanzania. This does not mean Tanzania has taken the wrong path in recent years in the management of the economy and the priority given to public investments in education, health and roads. This direction has been necessary given the state of development in the mid-1990s. Prudent fiscal and monetary management was established, and was combined with expansion of social services and implementation of key public sector reforms. These provided the foundation for a step-change in growth. Yet it is important to recognize that strategic choices are now needed in order to increase the pace of growth and development.

1378. Strategic choices mean that issues of effectiveness and efficiency in public spending need to be considered with even greater importance. Critical investment choices are needed to support an accelerated growth path which will reduce poverty, and innovative financing strategies need to be established which will enable strategic programmes to be funded.

A Platform for Dialogue on Policy Related Issues

1379. In line with the transformation from a centrally planned to a market oriented economy, the process and content of policy formulation and coordination clearly needs to be an open one which encourages dialogue and participation by stakeholders. Tanzania has been very successful in establishing processes that allow for dialogue between the government and stakeholders and which draw on resources outside of government for the formulation of plans and strategies, particularly the Public Expenditure Reviews and MKUKUTA and its monitoring system. However, currently, a platform for dialogue in the area of economic growth and structural transformation is not in place. This has resulted in a situation where a variety of initiatives proceed with inadequate interaction or coordination. A platform based with an existing or a newly established institution to serve as a convener of stakeholders might be a useful tool for consideration and discussion of strategic choices for economic policy.

Redefining Government – Private Sector Relationships

1380. Public – private sector interaction is important in finding appropriate approaches that will result in higher growth and poverty reduction both at the micro and at the macro-economic level. Private – public sector interface now takes place through central government institutions such as the Tanzania Investment Centre (TIC), the Tanzania Revenue Authority (TRA), Ministry of Industries and Trade (MIT), and agriculture sector ministries. There might be reconsideration of these processes with a view towards redefining the interaction so that it becomes a problem-solving interaction, rather than purely regulatory or administrative.

Strengthening Private Sector Institutions

1381. An important aspect of economic policy formulation is to seek involvement from the private sector on understanding that prosperity of the private sector is one pillar in boosting economic growth but also growth of the private sector can maximize social benefits. This requires that the private sector itself develops appropriate institutions to make its views heard. A variety of such institutions exists, including the Tanzania Private Sector Foundation (TPSF), Confederation of Tanzania Industries (CTI), Tanzania Bankers Association (TBA), Tanzania Chamber of Mines (TCM), Tourism Council of Tanzania (TCT), Tanzania Oil Marketing Companies (TOMC), Tanzania Chambers of Commerce, Industry and Agriculture (TCCIA), Tanzania Association of Consultants (TACO), Tanzania Chamber of Agriculture and Livestock (TCAL). An important issue would be to survey these institutions with respect to their role in the government – private sector dialogue, their satisfaction with the dialogue, and their capacity to effectively represent their constituents.[335]

Strengthening the Capacity of Institutions at the Regional and District Levels

1382. Tanzania's ongoing decentralisation process touches on important elements of the growth agenda. In particular, responsibility for service delivery in agriculture and infrastructure (district roads, water) is being shifted to local authorities, while the role of the central government is focused on policy formulation, setting norms and standards and monitoring. Funding for service delivery is primarily through earmarked transfers from the central government. A formula based system for budgetary transfers to the districts has been adopted, based on demographic and socio-economic indicators. In order to ensure that local authorities play a supportive role for regional growth, it will be important that the use of these resources is guided by a regional growth strategy that has been developed in partnership between local authorities, the private sector, and other stakeholders.

1383. Strengthening of accountability arrangements at the local level needs to accompany increased resource flows to the local authorities. Regional or district level growth strategies combined with strong accountability arrangements form also the basis for a successful switch from conditional to unconditional transfers, which is envisaged in the medium term. Unconditional transfers will provide local authorities with greater scope to implement a growth strategy that is tailored to the specifics of the district or region.

1384. The division of revenue sources between central government and local governments is also of importance. At present, the revenue sources for local authorities are limited and typically provide only 10 to 20 percent of a district's revenue. A system where resource availability at the local level is more closely linked to revenue generation at the local level might provide more incentives for a greater focus on economic growth at the local level.

[335] Note that measures to strenghthern the private sector have been addressed in detail in the Economic Governance component of APRM.

Trends in Economic Indicators and Measures to Address Challenges

Growth Performance

1385. Although growth appears to have increased steadily since 1998, a close examination of its trajectory reveals a sharp increase between 2000 and 2002, followed by a lower rate of growth between 2002 and 2004. Between 2004 and 2006 economic growth declined from 7.7 percent to 6.7 percent, before increasing slightly to 7.1 percent in 2007. This trajectory over time of slowing growth is of concern. Sustaining and increasing the pace of growth while ensuring its benefits are broadly shared remains a significant challenge[336].

Status of Poverty

1386. Tanzania is undeniably off track in achieving both the MKUKUTA and MDG poverty reduction targets[337]. The Household Budget Surveys of 2000/01 and 2007 show limited declines in income poverty levels over the period. Some 33.4 percent of Tanzanians fall below the basic needs poverty line and 16.5 percent below the food poverty line in 2007, a slight decline from the 2000/01 levels (which were 35.6 percent and 19 percent for basic needs and food poverty lines respectively). The fall in poverty over the period from 1991/92 to 2007 is larger, where nationally there has been a decline of about 5 percentage points in the proportions below the two poverty lines. The fall in poverty is mostly confined to Dar es Salaam and other urban areas, but for rural households there has been little change. Yet still, even for Dar es Salaam and other urban areas, the pace of reduction is much lower between 2000/01 and 2007 than the earlier period between 1991/92 and 2000/01.

Table 6.9 Incidence of Poverty in Tanzania

Incidence of poverty					
	Year	**Dar es Salaam**	**Other Urban Areas**	**Rural Areas**	**Mainland Tanzania**
Food	1991/92	13.6	15	23.1	21.6
	2000/01	7.5	13.2	20.4	18.7
	2007	6.7	12.9	18.4	16.5
Basic Needs	1991/92	28.1	28.7	40.8	38.6
	2000/01	17.6	25.8	38.7	35.6
	2007	16.2	24.1	37.4	33.4

Source: URT, NBS, Household Budget Survey 1991/92, 2000/01, and 2007.

1387. Poverty remains highest in rural areas, where 37 percent of the population falls below the basic needs poverty line. Dar es Salaam has the lowest level of poverty, with 16 percent below the same line. Since 1991/92, poverty has declined most in Dar es Salaam and least in rural areas. However, since 2000/01 the declines seem to be of a similar magnitude.

Inflation

1388. Since the mid 1990s, the strong focus on macro-economic stability and the quality of public financial management has involved strong control of government expenditures to minimise domestic and non-concessional borrowing by government. This reduced the rate of inflation until 2002. However, since 2004, there has been a rise in inflation which may be a reflection of the increase in government expenditure exerting inflationary pressures in the short run. In addition, a severe drought in the 2005/06-rain season adversely affected food

[336] MKUKUTA indicates that a sustained growth rate of 6 percent to 8 percent is needed to reduce poverty.

[337] MKUKUTA targets a reduction in basic needs poverty levels to the levels of 24 percent and 12.9 percent in Rural and Urban areas respectively by 2010, while the MDGs aims to reduce the incidence of poverty between 1990 and 2015 by 50 percent. In 1991/92, poverty estimate was at 39 percent, so the objective is to reduce it to 19 percent by 2015.

production and hydropower generation, and there was also a persistent increase in petroleum prices.

Fiscal Deficit

1389. Substantial progress has been made in strengthening tax administration, which underlies most of the recent increase in revenue mobilisation. Domestic revenue collection as a percentage of GDP has increased from 12.2 per cent 01 in 2001, to 14. percent in 2006/07[338]. The major contributors to this performance are VAT on imports and excise duty on domestic goods and services, as well as income tax. However, while there is a need to continue strengthening tax administration through the implementation of various policy and structural reforms in the tax system, the key challenge is to increase tax revenue without increasing the tax rate. In the medium to long run, domestic resource mobilisation should rely primarily on expanding the revenue base through sustained economic growth.

1390. The fiscal deficit as a percentage of GDP (after grants) has been widening since 2001/02, and more so since 2002/03 when it was less than 2 percent until it reached 6.6 percent in 2005/06. This shows that despite revenue increases, public expenditure as a proportion of GDP is also on the increase.

Exports and Foreign Currency Reserves

1391. There has been an increase in exports as a percentage of GDP since 2000/01 reaching 24.1 percent in 2003/04. The increase has been largely the result of non-traditional exports, especially gold and manufactured goods. Overall, although export earnings have been rising, they have been more than offset by the increase in imports, resulting in an increase in the trade deficit. Foreign currency reserves have also been declining continuously from 9.2 months of imports in 2003 to 5.3 months in 2006. Thus, a main challenge for the Tanzanian economy remains to strengthen its export competitiveness.

Credit

1392. Credit to the private sector has maintained an upward trend since 2000, and the outstanding stock of private sector credit was equivalent to 12.5 percent of GDP in 2006. However, despite these indications of progress, access to credit is still limited to a small number of enterprises with solid collateral in key urban areas, while small and medium-sized enterprises and firms located outside the main urban areas are virtually excluded. The financial system is ineffective in supplying long-term funds to the local private sector and a large portion of bank liquidity is invested in government securities.

1393. The spread between lending and savings rates decreased from 16.6 percent in 2000 to 11.8 percent in 2003. It then started to increase slightly to 11.9 percent in 2004 and 13.3 percent in 2006. This reflects a continuation of the high cost of borrowing from commercial banks, which in turn is a reflection of the banks' perceptions of the high risks of lending. These high rates will continue to deter investments especially by small and medium scale enterprises.

1394. Overall, this picture reflects the low level of development of the financial sector. There are still a number of structural impediments to lending. Poor credit culture, structural rigidities that have made it difficult for commercial banks to assess the credit worthiness of

[338] In comparison with neighbours, Kenya's Revenue/GDP ratio in 2006/2007 was estimated to be slightly more that 20% while, for Uganda it is about 13 percent

private borrowers, problems associated with the handling of commercial disputes and lack of suitable collateral are some of the major factors limiting financial intermediation.

Foreign Direct Investment

1395. Following the completion of major investments in the mining sector and stabilisation of production activities, the percentage increase in new Foreign Direct Investment (FDI) has been slowing down from 25.6 percent in 2000 to about 7.0 percent in 2005. FDI remains heavily concentrated in the natural resource sectors such as mining and tourism. FDI is capable of complementing domestic investments by 'linking up' with other investments, and stimulating the establishment of new businesses through a "crowding-in effect." However, this crowding-in effect, does not seem to have been tapped sufficiently, as is shown by the rather stagnant share of gross domestic investment in GDP. Hence, a major challenge now is to stimulate investments beyond the natural resource sectors and generate higher level of linkages in the economy.

1396. Tanzania has a large potential to attract increased FDIs. However, for this potential to be exploited, investor confidence will need to be strengthened. More needs to be done to lower the cost of doing business and to undertake vigorous promotion of the country's rich resource base.

Unemployment

1397. Through positive growth over the past few years, the economy has managed to slightly reduce unemployment in both rural and urban areas. The MKUKUTA operational target is to reduce unemployment from the 2000/01 rates of 12.9 percent to 6.9 percent by 2010. According to the Integrated Labour Force Survey (ILFS) in 2006, the rate of unemployment of the population aged 15 years and above, measured by the national definition was 12 percent, 31.5 percent, 16.5 percent and 7.5 percent in Dar es Salaam, other urban and rural areas respectively. Overall, gender disparities in employment particularly in urban areas continue to persist. A larger proportion of urban women are unemployed compared to men. The unemployment problem is most severe among young people, who are the majority of new entrants into the labour market and tend to lack skills and experience.

1398. As for Zanzibar, the most recent reliable national data about poverty comes from the 2004/05 HBS which reveals that almost one half (49 percent) of Zanzibar households are poor, too poor to meet their daily basic needs, falling below the basic needs poverty line. More than one in ten (13 percent) households falls below the food poverty line. The incidence of poverty was found to be higher in rural areas compared with urban areas – 55 percent of people in the rural areas live below the basic needs poverty line, compared with 41 percent in the urban areas. Men earn about three times more incomes than women, in both rural and urban areas. However, the distribution of poverty by sex of household head shows little difference, if any, in poverty risks between female and male headed households.

Legal and Institutional Reforms

1399. The country has been implementing several governance reforms aimed at accelerating sustainable development and poverty reduction. The Good Governance Reforms Programmes have identified four areas which are: legal system and access to justice; government integrity, transparency and accountability; participatory democracy; and political stability and

tolerance.[339] Government continues to review laws and procedures, improve facilities and working conditions along with building the capacity of workers in the legal and judicial system. The capacity of the judiciary has been increased and the Judicial Service Commission has been established. However, there is no mechanism for alternative dispute resolution, and limited alternatives exist for expediting cases. Further, court facilities are of low standards with computerisation being introduced at a slow pace.

1400. Improvements in the process of revising and preparing legislation have been supported by training lawyers in the Attorney General's Chambers and House of Representatives in legal drafting. The office of the Registrar General has been strengthened and intellectual and all other property rights, documents and vital statistics registration have been improved. Administration of criminal justice has been strengthened by forming an independent Director of Public Prosecution (DPP) office whose services have been extended to the district level since 2007. Legal aid and access to legal information has also been strengthened with the registration and operation of a number of legal NGOs. It should be noted however that there is no formal legal aid programme in the Isles, there are low levels of legal literacy and the availability of legal information is inadequate. However, NGOs in the Isles are in the forefront in facilitating the process of establishing formal legal aid programme.

1401. Several measures are in place to enhance government integrity, transparency and accountability:

(i) The legal framework procedure and practice for transparency and accountability in public procurement has been boosted by the establishment of the Public Procurement and Disposal of Public Assets Act of 2005. Several training sessions have been conducted to improve human and institutional capacity in public procurement;

(ii) To ensure efficient, transparent, and accountable financial management, the budgeting system has been reviewed to incorporate a Medium Term Expenditure Framework (MTEF) and Public Expenditure Review (PER) cycle. An institutional framework has been put in place involving participation of Bank of Tanzania, Tanzania Revenue Authority, Zanzibar Revenue Board, Office of the Chief Government Statistician, and Ministry of Finance and Economic Affairs;

(iii) A Fiscal Policy Unit has been put in place to undertake medium term revenue forecasting;

(iv) A Bill on Anticorruption and Leadership Ethics has been drafted;

(v) In enhancing public sector auditing, the Office of the Controller and Auditor General (OCAG) has been strengthened and its operations have been extended to the local government level with the establishment of the Local Authority Auditing Unit. However, the technical, professional, and institutional capacity of the OCAG is still weak to meet challenges in MDAs. Further, the existing Audit Regulations and procedures are yet to be effectively used; and

(vi) In enhancing participatory democracy the electoral process has been reviewed to enhance the capacity and independence of the Zanzibar Electoral Commission and to increase the number of women representatives in decision-making bodies. The process of putting in place a Non-Governmental

339 See chapter 4.0 (Good Governance Reforms) of the draft Zanzibar Economic Bulletin (2008)

Organisation Policy has been initiated to encourage effective participation of people at the grassroots and to widen democratic space. The capacity of Civil Society Organisations (CSOs) is improving and the Government-CSO partnership is getting stronger. The Local Government Reform Programme is underway. All these are necessary in making the government accountable to its people in the management of resources for development.

1402. Several institutional and human resources reforms have also been undertaken. The reforms in human resources development aim to develop strategic skills and provide better incentives for employees. When opportunities for on-the-job training become available, priority is given to newly recruited employees. Motivation is given to skilled employees and professionals in order to improve their performance. Currently, the Government is developing a Civil/Public Service Reform Programme. A Human Resources Development Policy is being formulated and will address various issues including education and awareness creation on HIV and AIDS.

1403. The second reform area aims to improve the performance of NGOs. The Government is committed to building capacity of Community Based Organisations (CBOs) and NGOs as they are expected to complement the Governments' efforts in the development process. Emphasis is placed in broadening NGOs' activities in the rural areas where the incidence of poverty and disease is highest.

1404. The third area of reforms seeks to promote Private Sector Development. Zanzibar's Private Sector is still at an infant stage, not yet sufficiently well established effectively to lead the economy. The private sector is expected to play a pivotal role in addressing the challenges facing Zanzibar, including high levels of unemployment and weak export sector. Under the reforms, the Government has initiated and is implementing measures such as offering attractive and competitive investment incentives in order to increase private sector operations in Zanzibar. A new Investment Policy has been formulated and approved.

1405. The Government also is keen to strengthen the legal framework to support economic growth by reviewing and revising if necessary commercial laws and regulations and environmental policy and legislation. Interventions to be done in this area include:

(i) Reviewing and updating commercial, contract, and bankruptcy laws;
(ii) Streamlining business entry procedures;
(iii) Reviewing and revising tax and tariff rates and improving the transparency and accountability of revenue collection processes;
(iv) Implementing and enforcing environmental policy and legislation;
(v) Completing a mapping process and streamlining commonly required government processes that enable businesses to operate;
(vi) Strengthening the Zanzibar Business Council;
(vii) Strengthening the Zanzibar National Chamber of Commerce, Industry and Agriculture;
(viii) Putting in place labour institutions and regulations;
(ix) Reviewing laws to ensure that they comply with and reflect international obligations;
(x) Enforcing copyright law;
(xi) Improving commercial arbitration facilities;
(xii) Establishing and operationalising a commercial court; and

(xiii) Providing access to alternative dispute resolution mechanisms, such as commercial arbitration.

Financial and Economic Management Reforms

1406. There are six important reform areas for improving financial management. The first is harmonisation of financial matters with the United Republic of Tanzania (URT). The formation of the Joint Finance Commission (JFC) is intended to clear most of the impediments in current financial relations between Zanzibar and the URT. The Tax Administration Programme (TAP) has been rolled out to Zanzibar from Tanzania Mainland. The programme will enhance efficiency in tax administration and the capacity of the Zanzibar Revenue Board. The Memorandum of Understanding (MoU) for working collaboration between the Tanzania Revenue Authority (TRA) and the Zanzibar Revenue Board (ZRB) has been signed and is in force.

1407. The second area relates to the Public Expenditure Review (PER) and Medium Term Expenditure Framework (MTEF). The implementation of the PER and MTEF processes within Government and public enterprises has improved both financial planning and budgeting processes. This has resulted in enhanced transparency and predictability of resource outlays, along with improvements in budget execution. An institutional framework for Public Expenditure Review has been instituted and the review process brings together key macro stakeholders, namely, the Central Bank, the TRA, the ZRB, the Chief Government Statistician, the Ministry of Finance and Economic Affairs, and the Private Sector and Civil Society. A revenue-forecasting model has been developed. A remaining challenge is to align the MDAs budget with key strategic interventions outlined in MKUZA.

1408. The third reform area centres on financial accounting and reporting within Government. Government financial accounting and reporting has improved as a result of the finalisation and publication of Financial Administration Regulations and the use of information technology in accounting and reporting. The formation of a strong Fiscal Policy Unit and the introduction of an effective but liberal tax administration system have greatly enhanced domestic revenue collection.

1409. The fourth area is in the Central Payment Office (CPO). The CPO has been instituted to facilitate centralisation of all Government accounts. Through the CPO, the Government of Zanzibar operates four accounts with the Bank of Tanzania (BoT). This system has improved the management of Government's financial operations. MDAs now make their expenditure requests on the basis of quarterly cash flow plans approved by the ceiling committee. This has enhanced the quality of cash management.

1410. The fifth reform area is in the Central Payroll System (CPS). The Payroll System has been centralised and housed in the Ministry of Finance and Economic Affairs. The CPS unit prepares payment vouchers for all Government employees and scrutinises the Government payroll list, a process which has reduced the problem of ghost workers. These changes, together with the ongoing civil service reform initiative, will determine the optimal size of the civil service. This, in turn, will inform future policy on the structure, size and quality of the civil service.

1411. Sixth, are reforms related to the Management of National Debt. The establishment of a National Debt Management Unit has improved management of Zanzibar's public debt. The Unit coordinates the formulation and implementation of the debt strategy that will be used to

guide the Government on issues such as the limits to borrowing, on types of loans and their maturities, including an assessment of repayment capacity and repayment schedules. The strategy will ensures that debt service is in line with budget operations.

1412. Economic management reforms focus on two areas, namely, economic diversification and infrastructure development. Economic diversification for employment creation and income generation are being pursued to enable Zanzibar to diversify out of the clove-industry trap that has hitherto dominated its economic growth path. Export diversification efforts for non-traditional commodities (such as vegetables, fruits, flowers and spices) promise increased contribution to GDP.

1413. As part of efforts towards infrastructure development, a comprehensive transport and communications network, covering both urban and rural areas, is being laid out. The airport in Unguja and the seaports in Pemba are being improved. The water and electricity supply infrastructure is being improved in order to meet the growing demand. The energy sector reform aims at strengthening the financial operations of the Zanzibar Electricity Corporation (ZECO), formerly the State Fuel and Power Corporation (SFPC), by: cutting down on technical and other power losses; improving billing collection through regular tariffs; reviewing tariffs and promoting increased use of prepaid meters; improving the institutional and human capacity of ZEC; and reviewing, formulating and implementing energy sector policy. New legislation was introduced in 2005. This was followed by the revision of electricity tariffs and enactment of water legislation, which created an independent Zanzibar Water Authority.

1414. Promotion of private sector participation in development process has been through the institutions like the Zanzibar National Chamber of Commerce, Industry and Agriculture (ZNCCIA) and Zanzibar Business Council (ZBC). However, these institutions are not performing to their full capacity and the need for strengthening them is imperative.

Policy Measures

1415. The strategic view of Zanzibar's Development Vision 2020 and the framework of MKUZA have been reported under Objective 1 above, along with the participatory process which lead to MKUZA's formulation and which are embedded in its monitoring process. Several policies are related to MKUZA's objective of increased economic growth and reduction of poverty. Notable ones include:

Agricultural Sector Policy (2002)

1416. The overall goal of Agricultural Policy is to promote sustainable development of the agricultural sector for economic, social and environmental benefits with the main objective of attaining household and national food security and improving the nutritional status of the people, in particular children and breast feeding mothers.

The Small and Medium Enterprise (SME) Policy (2006)

1417. The overall objective of the SME policy is to create a conducive environment for the promotion of small and medium sized enterprises with the aim of increasing employment and income earning opportunities. The policy has direct links to food security and nutritional issues in promoting household food accessibility through increased opportunities for self employment, creation of stable enterprises and increased diversification of livelihoods. However, not much has been done on the ground in terms of implementing this policy.

Zanzibar Tourism Development Policy (2004)

1418. The policy stresses quality of tourism while considering its environmental impact, and offers institutional and market incentives to those who are involved in the provision of essential services for the tourism industry. A master plan has been formulated which lays down a framework of measures for the sustainable development of tourism in Zanzibar.

Trade Policy (2006)

1419. Zanzibar's trade policy seeks to facilitate the smooth running of all trade related activities in Zanzibar. It aims to strengthen private sector participation in the trade of goods and services in Zanzibar and to ensure that trade related initiatives are implemented in a coordinated manner. However, implementation on the ground is still lacking.

Zanzibar Industrial Policy (1998)

1420. The industrial policy seeks to address critical issues facing the industrial sector and provides for the optimal exploitation of existing strengths in natural resources, particularly agriculture, marine products and forestry. The policy aims to provide incentives for investment which would improve opportunities in the agricultural and other related productive sectors

Zanzibar Investment Policy (2005)

1421. The policy provides major structural and institutional changes aimed at promoting private investment. The policy takes into consideration the trade development requirements of having an efficient Freeport and Export Processing Zones and improves import-export marketing efficiency. In addition, the policy considers the need for improving the service sector and provides linkage to the tourism industry with promotional services, training for hotels and catering, conservation and site development.

Draft Employment Policy (2007)

1422. The overall objective of this Policy is to increase national productivity and attain full, gainful and freely chosen gender responsive productive employment in order to reduce unemployment and underemployment rates, enhance labour productivity and reduce poverty levels as envisaged in MKUZA. The government is committed to provide an enabling and conducive environment to accelerate investment. At the same time, investors are expected to contribute to accelerating economic growth by increasing investment and by paying appropriate taxes and rents. Provision of financial services, training and business development services for micro, small, and medium size enterprises (MSMEs) is also envisaged.

Major Macro and Sector Outcome Indicators[340]

1423. Since 2000, economic growth has been robust with an average growth rate of 6.8 percent over the period 2000 – 2004. The economy grew at 5.6 percent in 2005. The growth rate peaked in 2001 and 2002 and from 2003 onwards growth has remained at an average of about 6 percent annually. With a population growth rate estimated at 3.1 percent over the period covering 1990-2005, the per capita GDP growth rate slightly increased from 2.1 percent in 1995 to 2.5 percent in 2005.

[340] See Annex 4 for MKUZA and MDGs Targets and Status by Key Indicators

1424. Economic growth has been driven mainly by the increasing contribution and growth of the service sector, which now represents up to 51 percent of GDP. The service sector has grown at an average rate of 8 percent over the period (2000 – 2004), due mainly to tourism related activities. Tourism related income rose from TShs 108.2 million in 2001/02 to TShs 198.5 million in 2004/05. The high contribution of the service sector to GDP is followed by agriculture (23 percent) and industry (14 percent). The sectoral composition of GDP has changed since the 1990s when agriculture accounted for up to 35 percent of GDP, with industry accounting for 22 percent and Services with 32 percent. Overall, the declining share of agriculture in GDP could be explained partly as a consequence of the rising contribution of other sectors, particularly public administration, trade, transport and tourism. The fall of production and price of cloves has also contributed to the same.

1425. The rate of inflation has also been contained in single digits even though above the target of 5 percent. Inflation was recorded at 5.2 percent in 2002, 9.0 percent in 2003 and 8.1 percent in 2004, its increase mainly attributed to low production of domestic food commodities, the high prices of imported food commodities and fuel.

Challenges for Economic Growth

1426. There are several macroeconomic challenges to accelerating economic growth. Constraints to long-term growth have been identified as low levels of productivity and low rates of investment. Others include population increase, which puts pressure on public expenditure and domestic savings, not only reducing the effect of GDP growth on improving per capita income, but also contributing to the problem of youth unemployment.

1427. In the agricultural sector, challenges include absence of a comprehensive framework for enhancing food security, invasion of agricultural land, insufficient provision of agricultural services such as credits, extension services, and frequent outbreaks of crop and zoonotic diseases. Other challenges are insufficient technical know-how to reduce post harvest losses, insecure tenure of agricultural land, over-dependence on rain-fed agriculture, inadequate budgetary support, low land and labour productivity, inadequate rural micro-finance system, poor marketing of agricultural produce, weak linkage with the tourism sector, weak inter sectoral linkages for addressing issues such as HIV and AIDS, drought, trade and poor infrastructure.

1428. The main challenges in manufacturing sector include the lack of a well established industrial infrastructure for attracting Foreign Direct Investments (FDIs) and local investors, low industrial skills, cumbersome licensing and investment approval procedures, low quality of products, low knowledge among the business community for accessing market, as well as limited credit facilities.

1429. Challenges in the tourism sector are poor and inadequate infrastructure services such as road networks, airports, power, water, hotels, weak linkages between tourism and other related sectors particularly agriculture, low capacity for collecting revenue, low skills in tourism management as well as dilapidating historical, heritage and tourist attractions. Other challenges include the existence of multiple trade licensing agencies, application of non-tariff barriers on Zanzibar's exports, multiple trade/exports examination points, absence of an export strategy and poor information as a result of inadequate market research and market intelligence.

Objective 3: Strengthen Policies, Delivery Mechanisms and Outputs in Key Social Development Areas, Including Education for All, Combating HIV and AIDS and Other Communicable Diseases

Historical Background on the Provision of Social Services

1430. Tanzania has a long history of provision of basic social services by the Government and Faith Based Organizations (FBOs). Following independence in 1961, the expansion of the social service infrastructure and service provision, most of which occurred during the 70s, was impressive. Achievements during this period enabled about 90 percent of the population to be within 10 km of a health facility, and nearly three quarters to be within 5 km of public health services. Expansion in the education sector was even more rapid, allowing each village to have its own primary school. Not surprisingly, social indicators during 1970s and 1980s showed decreasing infant and maternal mortality rates, increased school enrolment rates and near universal adult literacy. Tanzania's health indicators were consistently above the average in relation to its per capita income.

1431. Unfortunately, social services began to erode in the face of severe economic crises in the 1980s. The health system decayed, and infrastructures dilapidated. Poorly remunerated staff, poorly maintained physical facilities, and limited provision of drugs and supplies undermined service provision. These deficiencies were compounded by poor roads and inadequate management systems for transportation and other infrastructure. Since the late 1990's a number of enabling policies and strategies have been adopted and substantially increased funding has been made available for social services.

National Policies and Strategies Adopted to Make Progress towards Social Development Targets

1432. Overall development strategies in Mainland Tanzania including Development Vision 2025, PRS, MKUKUTA, already outlined in the text above, aim to achieve a high quality livelihood for all Tanzanians and provides a framework for increasing public allocations to social sectors, with a strong emphasis on education and health (including HIV and AIDS).

1433. Strategies for ensuring basic provision of social services - notably health, education, water and sanitation - for all, and controlling the spread of HIV and AIDS are recognized to be critical inputs towards improving livelihoods and promoting equitable growth and development. Successful implementation of MKUKUTA depends both on the active participation of all stakeholders, in particular local government authorities as primary providers of services, as well as on the availability of human and financial resources.

Policy and Institutional Reform

Education

1434. Rights to education are legally recognized in the Constitution and in ratified international conventions. Education for Self Reliance (ESR), launched in the 1960s, was a politically derived intervention questioning the purpose, content and outcome of the education process. ESR set out a vision for the education sector and linked it to the socio-economic vision for the nation. Since 2002, Tanzania has seen an ambitious set of policy reforms in primary and more recently in secondary education. The Primary Education

Development Plan (PEDP, 2002-2006) and the Secondary Education Development Plan (SEDP) implemented starting in 2004 have led to significant improvements in provision of basic education in the country.

1435. The government committed major resources to achieve Universal Primary Education (UPE) by 2006, nine years ahead of the MDG target, through the PEDP, to provide all children with their basic right to education, including all disadvantaged children (orphans and children with disabilities). It is in line with Tanzania's international treaty commitments and is also consistent with the Development Vision 2025 and the PRS/MKUKUTA, which emphasize quality education for all, understanding that this will contribute to poverty reduction.

1436. The significance of the PEDP objectives becomes clear when situated in the context of education inequalities in 2000, which were in sharp contrast to the major achievements of UPE in the 1970s and early 1980s. The Gross Enrollment Ratio (GER), which had reached 98 percent in 1981 in an earlier strategy to achieve UPE, had declined to 73 percent by 1989, and increased only slightly to 78 percent in 2000. Net Enrollment Ratio (NER) had also declined from 70 percent in 1981 to 54 percent in 1991, and 59 percent in 2002.[341]

1437. The PEDP takes a comprehensive approach to primary education development. Its four key components are access, quality, capacity building and finance and institutional arrangements. It also intends to focus on the critical cross-cutting issues of gender and HIV and AIDS. The main thrust of PEDP has been to increase enrolment of girls and boys using existing teachers and classrooms more effectively and recruiting new teachers and constructing new classrooms. To ensure that no child is denied access to school, the Government made primary schools free by abolishing all school fees and compulsory cash contributions. In addition to increasing allocation to the education sector, a new capitation grant (USD 10 per pupil of school age per year) to the schools was established to facilitate quality improvements. Consistent with local government reform, school committees consisting of elected parents and pupils are expected to play an active role in the management of schools.

1438. For older children who have not enrolled by age 10 years or who had dropped out of school for various reasons, the Government is committed to providing non-formal education. The principle is that every child in Tanzania should enjoy their right to primary education.

1439. Several ministries share the management of the formal and non-formal education system, with the Ministry of Education and Vocational Training responsible for policy and standards for primary, secondary, vocational and teacher education, and university education. Delivery of basic education is the responsibility of local government authorities, under the supervision of the Prime Minister's Office, Regional Administration and Local Government (PMO-RALG).

1440. The Ministry of Community Development Gender and Children has responsibility for Folk Development Colleges which offer adult and non-formal education. The Prime Minister's Office is also responsible for the coordination of the education sector. Given the institutional specificity of the sector (several ministries, local governments as service

[341] URT/UNICEF 2001

providers, many other core institutions) and the budgetary importance of the sector, coordination is a very demanding task.

1441. At the national level, stakeholders in education and in health participate in technical meetings through the year, annual joint sectoral review meetings, and Public Expenditure Review (PER) meetings.

Health

1442. In 1985, a combination of domestic resolve and external donor pressure prompted the government to initiate a set of broad-ranging institutional and policy reforms to improve the efficiency and accessibility of health care services. In 1994, the government formally entrenched equity as the guiding principle in the provision of health services - a principle that has endured through subsequent phases of policy development and revision. The process of Health Sector Reforms (HSR) is essentially associated with the development of a more rational use of resources by establishing priorities according to the burden of disease and cost-effective intervention and by addressing the organization of health services and managerial capacity to effectively finance and deliver health care services.

1443. The process is to be achieved through the following nine strategies (subsequently grouped into three components: district health services, secondary and tertiary health services, and central support to central ministries and regions:

(i) District health services;
(ii) Provision of secondary and tertiary referral hospital services;
(iii) Central support systems;
(iv) Addressing the challenges of human resource development to ensure well trained and motivated staff are deployed at an appropriate level;
(v) Ensuring sustainable health care financing through public and private funds as well as donor resources, and exploring financing options such as insurance, and cost sharing ;
(vi) Public private partnerships;
(vii) The role of the central Ministry of Health and Social Welfare (MoHSW);
(viii) Donor coordination; and
(ix) Combating HIV and AIDS.

1444. These reforms have included the introduction of cost-sharing; the establishment of Community Health Funds (CHF), and the adoption of the Sector-Wide Approach (SWAp) to coordinate and finance health programmes, which entails pooling government and donor resources into “common baskets” of funding for specific issues; and a decentralisation of health services and programme management. Reforms have also led to the formation of participatory structures such as district-level Council Health Management Teams (CHMTs) and Council Health Services Boards (CHSBs). These structures are designed to bring together various health professionals, including government health officers, civil society and faith-based organisations, as well as the private sector, to set priorities and plan health interventions at the community and district levels.

Health Sector Provisioning

1445. As noted above, during the SAP era the government instituted cost-sharing policies in order to contribute to health funding. User fees were introduced in Tanzania at the hospital level in 1993, as part of the broader package of reform referred to as the Health Service Fund. Further charges were introduced in 1999 through the drug revolving fund at hospital level with subsequent rolling out of the Community Health Fund (CHF). Currently, user fees are charged in practically all public hospitals and have also been introduced at lower levels of facilities, namely health centres and dispensaries. As discussed further below, the rolling out of user fees in primary facilities is happening in tandem with the rolling out of the CHF. Waivers and exemptions were supposed to protect the poor from the negative effects of cost sharing and user fees in vital services such as health and education. In health, for example, cchildren under five, pregnant women, and people suffering from chronic diseases were theoretically entitled to free medical care in all public health institutions. Institutions were expected to exempt those classified as poor. This can be considered as a good practice.

1446. However, exemptions of the above categories did not necessarily benefit the poorest, while waivers were unsystematically implemented. In particular, there were difficulties in defining who was poor, and should thus enjoy a waiver, in a situation of pervasive poverty. Further, health facilities were not reimbursed for losses incurred through waivers and exemptions, resulting in reluctance to implement them. Mamdani & Bangser (2004) argue that "health care charges have placed financial burden on the poorest households who are often excluded from using health facilities when they most need them." The authors further observe that, in addition to paying user charges, the poor incur other costs including transport, time spent, as well as unofficial costs such as bribes and payment for drugs and supplies.

1447. In addition to these direct costs, there are a range of other costs which patients or their careers have to bear. These include transport, purchase of medicine, and provision of items such as gloves for women who are delivering as well as, in some cases, bribes and similar under-the-counter payments. These costs have the potential of inhibiting access by the poor to health facilities. Several studies confirm that cost is not the only barrier to access to quality health services. Additional barriers include inadequate information, health care seeking practices, and lack of trust (ibid,).

1448. The exemptions and waiver policies described above in respect of the SAP era have remained, as do the problems with implementation. Above it was suggested that the exemptions are implemented more readily than waivers. However, even with the former, there are problems. Thus, for example, a recent evaluation (Health Research for Action (HERA), 2006) revealed that faith-based organisations (FBOs) were reluctant to give exemptions to patients in the specified categories because they were not reimbursed for the foregone income. This disadvantaged rural Tanzanians living in areas served by the FBOs. There are also problems in identifying the aged given lack of proof as well as lack of support from health staff.

1449. The Views of People Survey (REPOA: 2007) revealed that nearly half (48 percent) of all the elderly surveyed were not aware that they were entitled to free medical treatment in government facilities. Furthermore, of those who sought medical treatment during the months preceding the survey, only 10 percent received free medical treatment. Reasons given for not receiving free services included lack of money to pay for services (18 percent) and lack of

proof of their age (13 percent). In some cases these elderly people are themselves care givers, which doubly disadvantages them if they fail to get access to free medical care for themselves.

1450. The waiver system is even more problematic. The criteria to be used for waiving of the user fee are left to the discretion of the health facility or community leadership. There have been problems of defining the poor in a context of widespread poverty. Additionally, many of the poor are not aware of their rights to free services;

- Exemptions might benefit the better off more often than the poor, most of the exemptions are for children under five, chronic diseases and pregnant women which are the highest cost items; many of those exempted belong to households which would be able to pay the public services fees or for community health fund (CHF).
- The poorest who are not able to pay often do not have access to waivers; either due to lack of information and/or denial of the waiver by a provider
- Waived patients experience stigmatization and disadvantaged while attending health services compared to those who pay for services.
- With the introduction of user fees and CHF at primary level of care, there is the risk that access of the poorest to essential health care is substantially decreasing
- Identification/application procedures and screening criteria for waivers are unclear
- The exemption and waivers procedures have loopholes that allow the misuse and sometimes abuse of the system.
- There is a potential conflict between the attempt to generate revenue and protection of the vulnerability (Euro Health Group (2006) pg.8.

1451. Continuing resource shortages for the health sector induced the government to reintroduce private health practice for profit in 1991, after it had been restricted since 1977. The aim is that private services complement health care services provided by the government[342] . The aim of the 2001 National Health Policy is to ensure fair, equitable and quality services to the community. Furthermore, the policy aims at empowering communities and involving them in health services provision. However, most of the existing health centers are operating without adequate space for maternal and child health services. People living in rural areas and those in poverty remain disadvantaged both in terms of service uptake and outcomes. In an attempt to expand the coverage of health facilities throughout the country and bring services closer to the people, the new 2007 Health Policy directs the establishment of a dispensary in every village, a health centre in every ward and a district hospital in each district.[343] .

1452. The recently designed Primary Health Sector Development Programme (PHSDP), 2007-2012, seeks to address some of the dominant constraints facing the health system: infrastructure at the primary level; shortages of skilled human resources for health; short supply of essential equipment, pharmaceuticals and medical supplies; poorly functioning referral systems including the absence of emergency transport and communication systems;

342 Currently the private sector is contributing approximately 40 percent percent of the provision of health service delivery, 35 percent by Faith Based Organisations, which are mostly located in disadvantaged areas of the country. Some of them receive funding from the government through grants, basket funds and other forms of support e.g. medicines, equipment, staff secondment and training. Almost 90 percent of private for profit health facilities are situated in urban areas, a ratio that is inconsistent with the population distribution in the country whereby about 80 percent live in rural areas and only 20 percent in urban areas.

343 Primary health facilities include 4,679 dispensaries, 481 health centers and 95 district hospitals. The shortfall is 5,162 dispensaries, 2,074 health centers and 8 district hospitals.

and inadequate financial allocation to the sector. Accordingly, the following seven programme components have been designed: District Primary Health Care Systems; Human Resources for Health; Maternal Health; HIV and AIDS; Malaria; Tuberculosis; and Institutional Arrangements.

1453. The National Health Sector Strategic Plan (NHSSP) for 2007-2010 aims to enable the MoHSW to critically examine and identify areas that are core to its mandate and to strategically allocate the resources available to priority areas, i.e. those with the greatest impact, in line with MKUKUTA and other national policy frameworks.

1454. Specific programmes and strategic plans with targets have been developed to address those diseases which are of greatest burden, including malaria, TB and HIV and AIDS. Programmes are also in place for maternal and new-born care, child health and health services for adolescents.

1455. Under the National Malaria Medium-Term Strategic Plan 2002-2007, the MoHSW advocated the following four main strategies to fight malaria: improved malaria case management, vector control through the use of Insecticide-Treated Nets (ITNs)[344], prevention and control of malaria in pregnancy, and epidemic preparedness, prevention and control. The overall objective of the strategic plan is to prevent malaria related mortality and to reduce morbidity due to malaria in all 21 regions of the Mainland by 25 percent by the year 2007. All malaria control strategies are implemented at the district level, following the Comprehensive Council Health Plan.

1456. Launched in 1977, the vision of the joint National Tuberculosis and Leprosy Control Programme (NTLP) as stated in its strategic plan for 2005–2009, is to control TB and leprosy to the point where "they are no longer a public heath problem in Tanzania" and to provide "quality and effective interventions to control TB and leprosy in Tanzania with a focus on gender mainstreaming, equity, accessibility and those most at risk." Specifically, the NTLP aims to reduce the incidence of TB through early diagnosis of as many TB patients as possible.

1457. The programme introduced the concept of the internationally recommended DOTS (Directly Observed Treatment-short course) strategy, mainly in public health facilities with treatment directly observed by trained health staff. Since the inception of the NTLP in 1977, one governmental action stands out as a landmark in the history of TB control in Tanzania. The government has ensured the provision of first-line drugs for TB treatment free of charge - a clear manifestation of political will to eradicate TB.[345]

1458. The reduction of maternal and newborn deaths is a high priority, reflected in the Development Vision 2025 and the PRS/MKUKUTA. In response to these commitments, in 2006 Tanzania developed the National Roadmap Strategic Plan (2006-2015) on maternal and newborn health. The goal of the Roadmap is to accelerate the reduction of maternal and newborn mortality and morbidity in Tanzania. The Roadmap also complements the

344 Malaria funding from Global Fund has been largely channeled to subsidies to enable uptake of bed nets provided through private sector activity.

345 Community-based DOTS programs have demonstrated positive treatment outcomes at relatively low cost and have made TB services more accessible and affordable to patients by bringing treatment closer to patients' homes. Unfortunately poor patients often find associated costs (including fees for consultation, initial costs for diagnostic services, and the cost of transportation to and from health clinics) a significant barrier to accessing treatment and lack of funding calls their sustainability into question.

Reproductive and Child Health Programme, which was designed for adults, but in recent years, has been modified to meet the needs of adolescents as well.

1459. The Maternal and Child Health covers all activities aimed at promoting and maintaining the optimal growth and development of children age 0 - 18 years, including early childhood health care, neonatal health care, school health services, adolescent health services, antenatal care services, maternal health care, and the expanded programme on immunization.

1460. In 2003, the MoH elaborated the Health Sector HIV and AIDS Strategy for 2003-08. Based upon this document, the Ministry created the National Care and Treatment Plan for People Living with HIV and AIDS (PLHAs)[346], which serves as a coordinating framework for all care and treatment programmes and projects. With partners[347], the MoHSW has laid out a medium term goal of funding treatment for 440,000 PLHAs by the end of the fifth year of the programme. The Plan has four main components: to provide quality, continuing care and treatment to as many PLHAs as possible; to contribute to health system strengthening efforts (through expansion of healthcare personnel, facilities and equipment and comprehensive training in the care and treatment of PLHAs); to foster information, education and communication efforts focused on increasing public understanding of care and treatment alternatives, reducing the stigma associated with HIV and AIDS and providing ongoing prevention campaigns; and to contribute in strengthening social support for care and treatment of PLHAs through Home Based Care (HBC), local support groups and treatment partners.

1461. Under the national HIV and AIDS policy, the government aims to promote early diagnosis of HIV infection through voluntary testing with pre and post-test counseling (VCT). Mother-to-child transmission remains the leading cause of HIV infection in children.[348] Prevention of Mother to Child Transmission (PMTCT) programmes provide a package of services that include counseling and testing for pregnant women; short course preventive anti retroviral (ARV) regimes to prevent mother-to-child transmission; counseling and support for safe infant feeding practices; family planning counseling or referral; and referral for long term ARV for the child. However, the low proportion of births delivered in health facilities impedes the ability to implement effective PMTCT. In 2001, the government, in a major initiative to prevent MTCT, began a programme that seeks to make ARVs available for PMTCT at no charge to all HIV-positive pregnant women over the next five years. Prevention of Mother to Child Transmission services were expanded to all regional hospitals and 145 other hospitals including district and faith based operated hospitals, 182 health centers and 332 dispensaries. Guidelines have been developed and providers have been trained. The plan is to reach 1,400,000 pregnant women by strengthening PMTCT programme management and coordination by 2012. The National AIDS Control Programme (NACP) plans to increase facility coverage through integration of PMTCT services into routine RCH services in hospitals, health centers and dispensaries and to provide anti-retroviral (ARVs) prophylaxis to 75 percentof all HIV+ pregnant women who are not eligible for anti-retroviral therapy (ART).

346 In collaboration with the Clinton Foundation and other partners

347 Including the Clinton Foundation, World Bank, Global Fund for AIDS, Tuberculosis and Malaria (GFATM), and Axios Foundation

348 Of 800,000 women who delivered in health care facilities nationwide during 2000, 106,400 (13.3 percent) were infected with HIV.

1462. The current capacity to treat Opportunistic Infections (OI) throughout the health system is highly constrained, with wide variability in availability of OI drugs. The objective of the Accredited Drug Dispensing Outlet (ADDO) programme[349] is to establish a regulated system of profitable ADDOs to provide a range of quality drugs and professional services to underserved populations, in collaboration with the Tanzanian Pharmacy Board.[350] The initiative has import for HIV/AIDS as it seeks to render quality drugs for OI treatment more accessible in rural areas and underserved populations. This important initiative is linked to other existing and planned accreditation and certification interventions.

The National Multi-sectoral Response to the HIV and AIDS Pandemic

1463. The national response to HIV and AIDS has consisted of developing strategies to prevent, control, and mitigate the effect of the HIV and AIDS through health education, multisectoral response, and community participation. There are encouraging signs of increasing awareness and interventions from different parts of the country by various public and private institutions, and civil society organizations. It has made significant progress in establishing an institutional framework required to scale up the response. All districts have prepared HIV and AIDS plans. Tanzania has successfully secured major external financing, including World Bank loans and PEPFAR and GFATM grants, to scale up HIV and AIDS interventions.

1464. Altogether, it is a conducive strategic environment with high donor support, global and bilateral focused initiatives, policy and strategic support framework. However, despite the commitment, goodwill and a rapid increase in donor funds, conflicting priorities, poor coordination and inadequate capacities at community level impede progress in actually implementing a multisectoral response to address the pandemic.

1465. The national multi-sectoral response was articulated in a National Policy on HIV and AIDS approved in 2001. The National Policy admits that, *"it is beyond the capacity of the Government to provide adequate funds for the national response programme. Therefore development partners and the private sector also share the responsibility and moral obligation to complement the Government efforts"*[351]. In 2001, the Tanzania Commission for AIDS (TACAIDS) was established and legally mandated (through Act 22 of 2001) to provide strategic leadership and to coordinate the national response. TACAIDS is positioned under the Office of the Prime Minister – a principle agreed by the African Union and endorsed by United Nations General Assembly Special Session (UNGASS) – in order to enhance its political clout, give it neutrality in order to carry out its role of coordinating multiple sectors and ministries and most important, offer a demonstration of Tanzania's political commitment. In December 2002, TACAIDS issued a new National Multi-sectoral Strategic Framework on HIV and AIDS 2003-2007 (NMSF)[352] that served to translate the 2001 National Policy into meaningful and concerted guidance for programme planners from every sector of the society – both governmental and private. The NMSF identifies the following four thematic areas:

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349 Funded by the Bill and Melinda Gates Foundation, and managed by Management Sciences for Health (MSH)

350 Tanzania has only 350 pharmacies, primarily located in major urban areas, whereas it has over 4,000 drugs shops [*duka la dawa baridi*]. Drug shops are licensed only to sell over-the-counter drugs, but sell prescription drugs as well.

351 PMO, 2001

352 Recent initiatives in response to the HIV and AIDS epidemic during 2003-2005, include: guidelines for the establishment of District AIDS Committees for LGAs aimed at facilitating more community mobilization and involvement in the fight against HIV and AIDS; and modules for training members of the District AIDS Committees and technical functionaries have been developed and training has been ongoing since November 2003.

cross-cutting issues including enabling environment; prevention including gender; care, treatment and support; and mitigation of socio-economic impact.

1466. A revised draft NMSF is in place with a much clearer link between output targets, the allocation of responsibilities for achieving them, and the programming of the required Government and donor resources. The revised five year strategy will run from 2008-2012.

1467. This framework as a broad national strategic plan is designed to guide the country's response as a whole to the epidemic. It calls for scaling up the comprehensive multi-sectoral response in prevention, care and treatment and impact mitigation that is gender responsive. As expected, it puts strong emphasis on prevention of new HIV infections with special focus on women, the youth and high risk groups. It also emphasizes quality continuum of care for AIDS patients and better management of most vulnerable children. It is expected that all sectors, public, private, faith based organisations, civil society organisations and community based organisations will prepare their own strategic plans and well focused interventions to implement this framework according to the sector's comparative advantage and environment. The Government will continue to create conducive environment so that all stakeholders can perform their roles effectively

1468. With effect from 2005, Government Ministries, Departments and Agencies (MDAs) have been developing plans for mainstreaming HIV and AIDS intervention into routine activities, including workplace interventions and integrating HIV and AIDS control activities in the ministry's Medium Term Expenditure Frameworks.

1469. The national response initiative enjoys a very good partnership with Development Partners, CSOs, the private sector and FBOs. A Memorandum of Understanding with the Government confirms development partners' commitment and joint support to the NMSF and to the National Response. The various task forces and groups supporting TACAIDS include the UN Theme Group on HIV and AIDS, development partners, the National Coordinating Mechanism for HIV and AIDS, Tuberculosis and Malaria (which facilitates coordination of all HIV resources from other sources like Tanzania Multi-sectoral AIDS Project (TMAP), PEPFAR, the Global Fund), numerous CSOs and FBOs, the private sector and the national NGO Policy Forum.

1470. The UNAIDS Three Ones Principles have been endorsed in the centrality of TACAIDS. There is one HIV and AIDS coordinating body which is TACAIDS, one national multi-sectoral strategic framework providing strategic direction to the implementation of HIV and AIDS activities, and one monitoring and evaluation framework to monitor and measure the national HIV and AIDS response initiatives at country level. The increased demands on TACAIDS mean that clarity in roles and relationships, and enabling political, legislative, policy and institutional environments, are more important than ever. The environment in which TACAIDS operates has become increasingly complex and challenging.

1471. The objectives of the National Policy on HIV and AIDS include creating a legal framework by enacting a law on HIV and AIDS, addressing legal and ethical issues in HIV and AIDS, and revising the legal status of families affected by HIV and AIDS to provide them with access to family property after the death of a parent(s). Another objective is to identify HIV and AIDS related human rights abuses and to protect PLHAs against all forms of discrimination and social injustice.

1472. The HIV and AIDS Bill was tabled for the first time in Parliament in November 2007 and adopted in February 2008. Concerned stakeholders had urged the government to review the Bill which they considered to have many drawbacks; particularly that it views the pandemic as a health problem, in contradiction with the policy now in use.

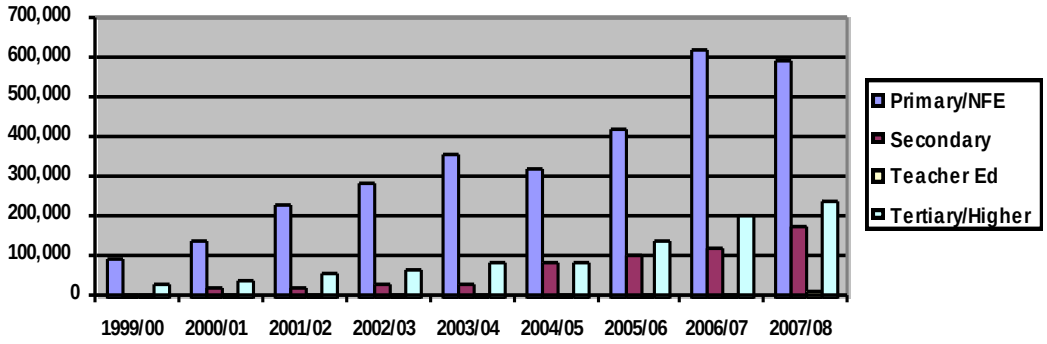
Resource Allocations for Education and Health

1473. The Government's Medium Term Plan and Budget for 2007/08 – 2009/10 has a prime objective of allocating resources so that the gains made in social service delivery, particularly with regard to primary and secondary education and in connection with primary health care, are consolidated so as to sustain delivery least to current levels[353]. The 2007/08 budget allocates 18 percent and 10 percent of all spending to education and health respectively.

Education

1474. Budget allocations to education increased from Tshs 218,051m in 2000/01 to Tshs 1,027,991m in 2007/08, almost a five fold increase.

Figure 6.5: Budget Allocation to Education Sub-sectors (TShs. Millions), 1999/2000 – 2007/08



Source: Research and Analysis Working Group, Poverty and Human Development Report (RAWG, PHDR), 2007

Table 6.10: Breakdown of Education Budget by Sub-Sectors, Financial Years 2000/01 and 2007/08

Financial Year	Primary, Non-formal (percent)	Secondary (percent)	Tertiary (percent)	Teachers Education (percent)	Total (Tshs million)
2000/1	67	10	21	2	218,051
2007/8	58	17	23	2	1,027,991

Source: Assad and Kibaja, 2007

Health

1475. According to the 2007 PER update for the health sector, the overall allocation to the health sector has increased from Tshs 499.6 billion in 2006/07 to Tshs 682.6 billion in 2007/08. Within this, the allocation to regions has increased from Tshs 24.6 billion in

353 URT, PMO-RALG, 2007

2006/07 to Tshs 82.5 billion in 2007/08. Councils' allocations have increased from Tshs 142.0 billion in 2006/07 to Tshs 181.9 billion in 2007/08, with allocation for Comprehensive Councils' Health Plans from US$ 0.5 to 0.75 percent capita.

1476. The level of expenditure on health (10 percent of government total expenditure), falls short of the Abuja target for health expenditures which is 15 percent of the total government expenditure. More importantly, the allocation is not adequate to meet the increasing demands of primary health care functional accessibility.

1477. Tables 6.10 and 6.11 provide an overview of health sector budget for 2005/6 and 2006/07 (recurrent and development budget respectively). It excludes two sources of funds – anticipated expenditure arising from user fees and Community Health Funds, and from donor health projects that have not been captured in the budget books (off budget).

Table 6.11: Health Sector Recurrent Funding, 2005/06 and 2005/6 (TShs millions)

Recurrent	2005/06 Budget	2006/07 Budget	Increase / Decrease	% Change
Accountant General (National Health Insurance Fund-NHIF)	20,457	29,550	9,093	44 percent
Ministry of Health (Govt.)	180,306	195,981	15,675	9 percent
of which Personal Emoluments (PE)	*6,407*	*17,473*	*11,066*	173 percent
of which Other Charges (OC)	*173,899*	*178,509*	*4,610*	3 percent
Regional Administration (Govt.)	11,532	18,978	7,446	65 percent
Local Government Authorities	95,389	135,622	40,233	42 percent
Government funds	75,314	112,528	37,214	49 percent
Donor basket fund	20,075	23,094	3,019	15 percent
Total Recurrent	**307,684**	**380,131**	**72,447**	**24 percent**
Total Recurrent excl NHIF	*287,227*	*350,581*	*63,354*	*22 percent*

Sources: 2005/6 Estimates from PER 2006 (draft); 2006/7 Estimates from Budget Books vol 2,3,4 as presented to National Assembly (Source: Commentary on the Health Sector Budget)

Table 6.12: Health Sector Development Funding, 2005/06 and 2005/6 (TShs millions)

Development	2005/06 Budget	2006/07 Budget	Increase / Decrease	% Change
Ministry of Health	90,863	90,859	- 4	0 percent
Government funds	5,000	7,123	2,123	42 percent
Donor basket fund	28,486	20,400	- 8,086	-28 percent
Foreign (non-basket)	57,377	63,336	5,959	10 percent
Foreign Total	85,863	83,736	- 2,127	-2 percent
PMO-RALG	19,838	22,436	2,598	13 percent
Government funds	100	70	- 30	-30 percent
Donor basket fund	19,738	12,990	- 6,748	-34 percent
Regions	5,049	4,871	-178	-4 percent

Government funds	1,169	2,277	1,108	95 percent
Foreign (non-basket)	3,880	2,594	- 1,286	-33 percent
Local Government Authorities				
Government funds	2,579	2,500[4]	- 79	-3 percent
Total development	**118,329**	**120,666**	**2,336**	**2 percent**
Total Health incl. NHIF	**426,013**	**500,796**	**74,784**	**18 percent**

Sources: 2005/6 Estimates from PER 2006 (draft); 2006/7 Estimates from Budget Books vol 2, 3, 4 as presented to National Assembly (Source: Commentary on the Health Sector Budget)
Notes:

- MoHSW total for 2005/6 in the budget books has a typographical error. This comes from a typo in the Curative Services sub-vote, shown as 199 billion instead of 99.5 billion. The basket funds figures for Local Government, MoHSW and PMO-RALG are provisional figures as provided by at the Joint Annual Health Sector Review. The "non-basket foreign" element of the development budget has been calculated as a residual (total foreign less basket fund estimate).
- LGA development budget 2006/7 is approximate figure, extrapolated from previous year

1478. Overall, recurrent funds for health have increased over the previous years. Most of this increase is found at the local council level, and a significant portion will likely be absorbed by the increase in health sector salaries because of larger numbers of health personnel.

Resource Allocation for HIV and AIDS

1479. The resources committed to HIV and AIDS have grown at an extraordinary rate in the last five years. From 2001/2002 to 2006/2007, the annual budget for the multi sectoral response to the pandemic increased from Tshs 17 billion to over 399 billion (US$ 332.5 million). Estimates for 2007/2008 are Tshs 596bn (US$ 496.7mn)[354], and the level of support is likely to be sustained around this level for the next few years[355]. Spending on HIV and AIDS represented less than 3 percent of foreign grants and loans in 2002/03, close to 10 percent of external assistance in 2005/6, and in 2006/2007 accounted for a staggering one third of all aid to Tanzania[356]. Total ODA support for HIV and AIDS represents over 95 percent of the total HIV and AIDS expenditure. The increase has been from off budget sources. Compared to 47 percent in 2005/6, only 23 percent of expected aid in 2007/8 is included in the budget books. The enormous dependence on external support is therefore very worrying, not least because of its implications for sustainability.

1480. The Global Fund, the World Bank Tanzania Multisectoral AIDS Project (TMAP) and the U.S. President's Emergency Plan for AIDS Relief (PEPFAR) are the biggest and most prominent initiatives responding to the pandemic. PEPFAR and the Global Fund alone account for 86 percent of donor support expected in 2007/8, and may reach more than 90 percent of the total in 2008/9. Existing commitments are largely focused on care (excluding palliative care) and treatment, estimated to account for 60-70 percent of all HIV and AIDS

354 This estimate of expenditure is an under-estimate of all spending as it does not capture significant spending on HIV and AIDS financed from the health basket and from Local Government's own revenues. It also excludes the 40 percent share of staff costs estimated to be accounted for by HIV and AIDS, as well as any share in the capital costs of hospital beds and other facilities..

355 NMSF 2008-12, HIV and AIDS PER 2005/6, HIV and AIDS PER 2006/7

356 IMF ODA data (quoted in HIV and AIDS PER 2006/7) – dollar exchange rate has fluctuated from Tshs 1,000-1,300 in 2006/7. Using an exchange rate of $1= Tshs 1,200

spending. Prevention accounted for just 15 percent, and economic and social support (i.e. support towards orphans and vulnerable children) about 8 percent.

1481. PEPFAR, by far the biggest and perhaps the most consistent supporter, has been providing substantial contributions since 2004. Coordination poses a major challenge. Although PEPFAR and the government agree that support should be based on the priorities outlined in the National Multi-sectoral Framework (NMSF), the practical reality is that PEPFAR remains largely external to the harmonisation process. PEPFAR manages its funding outside of government frameworks. Roughly $25mn of the $205mn allocated in 2006/7 was centrally managed from Washington. Implementation is through a large number of NGO partners. The number of individual activities and actors involved remains huge, incurring large management and overhead costs of the contracted partners who actually deliver the programmes.[357]

1482. The pace of new funding is staggering. Even though the need for funding is great, it is a challenge for Tanzania to absorb these dramatic increases in HIV resources that are far larger than all other public health spending. The amount of funding and the insistence of the US Government, and thus PEPFAR, in using its own standard funding mechanisms have resulted in an increase in the scope of work required to coordinate and ensure effective use of aid and domestic resources for HIV and AIDS. Given that almost all of the HIV funds are externally funded and less than a quarter included in budget, it is difficult for Government to exercise effective leadership and accountability and have a positive influence on how funds are allocated and managed, to understand fully what is being financed, how it is managed, and what impact it is having. There are also many different targets and reporting requirements (which challenges the UNAIDS), among them national strategic plans, UNGASS, Global Fund, TMAP, PEPFAR, and stakeholders lack understanding of the full picture at the national and lower levels.

Local Government Authoritities' Budgets for Strengthening the Delivery of Services

1483. According to the Guidelines for Preparation of Local Government Authorities' Medium Term Plan and Budgets for 2007/8-2009/10[358], the resource envelope for LGAs for 2007/08 consists of the following:

(i) Revenue from Own Sources; and
(ii) Intergovernmental Transfers.

1484. Three types of transfers are provided from central government: formula-based recurrent block grants through the mainstream Government budget; other transfers (subventions) from ministries, departments and agencies for recurrent purposes, such as for the PEDP capitation grant and from the health sector basket fund; and development grants and funds, including grants from the Local Government Capital Development Grant (LGCDG) system as well as other development resources.[359]

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357 TACAIDS, February 2008, p22

358 To guide planning and budgeting at District or Local level; they are drawn from the National Budget Guidelines in that they are not expected to contradict each other (URT, PMO-RALG 2007-2009).

359 There is also the *Urban Development and Environmental Management (UDEM) Grant (UDEMG)* to enable increased funding flows for improved living conditions of the urban communities in Tanzania by facilitating the decentralized implementation and monitoring of sustainable urban development and environmental management in the LGA sector.

1485. The recurrent block grant formulae differ from sector to sector reflecting the differing characteristics of the services being funded. To ensure that no single local government authority should experience a decline in sectoral local services under the block grant scheme, a "hold harmless baseline" is computed at the beginning of each budget process, which assures that each council will receive at least an amount equal to its current wage commitment plus an amount equal to its "fair" (formula-based) share of funds for other recurrent costs ("Other Charges" (OC)). However, those Councils "held harmless" receive more than their formula-based share of the grant pool and may not see an increase (or even a decline) in their resource allocation. The formula-based allocation is determined objectively, and the intention is to provide LGAs with more stability in their budget allocations and financial planning. In budgeting and spending of block grant resources, LGAs are expected to comply with a number of general conditions, as well as specific sectoral block grant conditions of the respective line ministries. The sector grants to LGAs for primary education and health have been allocated on a formula basis since 2004/05. Formula-based grants for HIV and AIDS are yet to be operationalized. LGAs have a critical role in addressing the HIV and AIDS epidemic in Tanzania, since many of the activities can only be successfully implemented at the local level, whether they are targeting prevention, care and treatment or mitigating the impact of HIV and AIDS. For the financial year 2008/09 and onwards, a formula specific to HIV and AIDS will be developed, along the same lines as the health block grant, possibly take into account overall population, prevalence rates, as well as the number of orphans across different local government authorities. It would be useful to consider child headed households resulting from loss of parents due to HIV and AIDS.

Trends in Indicators

Education

1486. Overall, available data show positive trends – an increase in pre-primary, primary and secondary school enrolment, in the percentage of pupils passing the Primary School Leavers' Examination and transiting to secondary schools, and recent improvements in the pupil-teacher ratio in primary schools. These national data, however, hide major disparities – regional, urban/rural, between rich and poor and private and public schools – in access to quality education, and especially with respect to availability of teachers and performance in examinations. Moreover, while gender parity has been achieved in primary enrolment and is close in lower secondary enrolment, fewer girls gain passing marks in examinations. The quality of education remains a concern, and this concern is exacerbated by the strains of increasing enrolment, now at secondary level. There are shortages of teaching and learning materials, and of teachers and teachers' houses. There are also limited opportunities for technical and skills training and higher learning.

1487. According to 2002 census estimates, the literacy rate of population aged 15 years and above was 72 percent (78 percent for males and 62 percent for females). The rate for those aged between 15 and 24 is higher and with a much smaller gender differential: 81 percent for males and 76 percent for females. Adult literacy programmes face resource constraints, though the on-going expansion of primary and secondary education will have an overall positive impact on the literacy level of the population as a whole.

Pre-primary and Primary Education

1488. Net enrolment at pre-primary level, for children of 5 and 6 years of age, indicates an increasing trend from 24.6 percent in 2004 to 28.5 percent in 2006.[360] The draft MKUKUTA implementation report (2008) show further improvements; the Net Enrolment Ratio increased from 33.1 percent in 2007 to 36.2 percent in 2008 whereby Gross Enrolment Ratio increased from 35.2 percent in 2007 to 38.1 percent in 2008. Enrolment of children with disabilities increased from 685 in 2007 to 2,146 in 2008. However, the pupil-teacher ratio in pre-primary schools worsened from 1:45 in 2007 to 1:55 in 2008 of which calls for an immediate interventions to increase recruitment of pre primary teachers in order to meet the arising demand.

1489. Net primary school enrolment has gone up from 59 percent in 2000 to 97.3 percent in 2007 and 97.2 in 2008, very close to attaining the MKUKUTA target of 99 percent. There has been a remarkable increase in the enrolment of orphans from 748,641 in 2007 to 915,234 in 2008. Enrollment of children with disability increased from 24,003 in 2007 to 34,661 in 2008. The largest increase in enrolment came in 2002, coinciding with the official abolition of the Universal Primary Education (UPE) levy and other mandatory contributions and the launch of the Primary Education Development Plan 2002-2006 (PEDP). The challenge of getting the hard to reach children at an appropriate age remains – those living in remote areas, those for whom the opportunity cost of attending school is very high, and those with a disability. Though orphaned children are not much less likely to be in school than children who have not been orphaned[361], the proportion of children from very poor households who go to school is lower than that of their better-off peers. A survey in 2004/05 showed that 20 percent of children in the poorest quintile of households did not attend school.[362].

1490. The Views of the Children Survey[363] shows that illness and cost of education were major reasons for absenteeism. Financial contributions were expected in all the schools surveyed and children are being excluded for non-payment. There are serious shortages of primary and secondary school teachers, especially of qualified teachers. Although the number of classrooms and desks in primary schools has increased, the ratio of primary pupils to teachers (PTR) remains high. It increased from 46 in 2000, to 54 in 2002 to 59 in 2004 and now stands at 53:1, against the target of 45:1. There are significant regional variations from 69:1 in Shinyanga to 41:1 in Kilimanjaro. The percentage of teachers with relevant qualifications shows steady progress from 50 percent in 2001 to 69.2 percent in 2006 to 73.1 percent in 2007. The target is to have 90 percent of all primary schools with adequate competent and skilled teachers by 2010.

1491. In the APRM survey conducted at household level in August 2008, 95 percent of the respondents said that there was a school in their village, while only 5 percent said there was not. Respondents' perceptions of the provision of services at primary schools were positive; 73 percent of the respondents thought there had been improvement. When asked about the quality of education services provided, 61 percent of the respondents thought it was good, while 30 percent thought it was average. Only 7 percent thought it was poor.

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360 Data refers to 5 and 6 year-olds enrolled in pre-primary classes associated with primary schools and therefore does not capture the full range of provision for young children – for example, does not include those enrolled in early childhood development centres.

361 A follow-up survey in Kagera however found that children who were orphaned at a young age and who had lost their mother were much less likely to be in school than other children.

362 Tanzania Demographic and Health Survey, 2005

363 RAWG, PHDR, 2007

1492. Results of the survey also revealed that the Government was perceived as being the most active institution involved in education, while NGOs/CSOs, and donors were the least active. Communities are actively involved in some areas, although not in many others.

I493. In the survey of experts, the majority (54 percent) thought that the trend in enrolment of girls was going upward fast, and 38 percent thought the trend was going upwards slowly. Only 7 percent thought the trend was stagnant, and 1 percent thought it was slowly sliding backwards. None of the experts thought it was sliding backwards fast.

1494. Almost all the children of the respondents interviewed attended Government owned schools at all levels (pre-primary, primary, secondary, and tertiary). Private and FBO/CSO schools and institutions accounted for small percentages, though slightly more for children at pre-primary age.

Secondary Education

1495. In 2002, 21 percent of children leaving standard VII of primary school made the transition to secondary school. In 2007, 67.5 percent of children leaving standard VII made the transition to Form 1, so the MKUKUTA target of 50 percent has already been well exceeded, through expansion in the number of places at government schools. Net secondary enrolment is also expanding very fast from a base of 6 percent in 2002, to 13.4 percent in 2006, 20.6 percent in 2007 and to 23.5 percent in 2008. With this rate of progress, net secondary enrolment is on target for 2010. The rise shows a higher proportion of students are of the requisite age for secondary education- probably because the first cohorts supported by PEDP are now entering secondary school. The gender balance deteriorates with the transition to secondary schooling; though there has been improvement in the past few years, with 46.4 percent of pupils being girls in forms 1-4 in 2007. The gender parity index at secondary school for the year 2007/2008 remained at 0.8 for 'O' level and 0.7 for 'A' level. However the government supplement measures of enhancing gender balance by addressing other dimension of gender balance in subject specializations.

1496. As with primary education, the quality of secondary education remains a concern. The percentage of students passing the Form 4 examination (division 1-3) shows a slight improvement, but since 2002 the results hover at the mid 30 percent level – only half way towards the target of 70 percent of students attaining division 1-3. Other indicators of quality show slight improvement, with promotion rates rising gradually and drop-out and repetitions rates slowly falling.

Higher Education

1497. Gross enrolment in higher education institutions in 2006/7 stands at 75,346, a significant increase compared to 22,065 in 2000/01. The target of 90,000 students by 2008 is just about attainable. There has been increase in budgetary allocations since 2005/6. The percentage of women enrolled was 35.6 percent in 2007, compared with 32.2 percent in 2006 and 23.9 percent in 2001. Private universities have a marginally better record on female enrolment at 37.5 percent. About 14.2 percent of students are in private universities or technical institutes.

Health

1498. Life expectancy at birth has not changed much since 1988. According to the National Population and Housing Census 2002[364], for mainland Tanzania, life expectancy at birth was 51 years for both males and females, up only marginally from 50 years in the 1988 Census. This lack of improvement is attributed in part to the stagnation of child mortality during the 1990s as well as substantial increases in adult mortality attributable to HIV and AIDS. However, positive trends are expected following recent improvements in child mortality, coupled with a reduction in the prevalence of HIV and the advent of anti-retroviral therapy.

1499. Findings from demographic and health surveys in 2004/05 and 1999 suggest that Tanzania has made great strides in improving child health. Infant mortality dropped from 99 per 1,000 live births to just 68[365]. Under-five mortality dropped from 147 to 112 per 1,000 live births. These findings refer to the five-year period prior to the surveys in question. A disaggregated analysis to generate annual estimates shows a sharp decline in mortality, with under-five mortality reaching 83 in 2004.[366] The decline in mortality may be largely attributable to the more effective prevention and management of malaria.

1500. Further reductions in infant mortality will require a particular focus on neonatal mortality – deaths in the first month of life – that has not changed much since 1999. Out of the 68 children who die before their first birthday, nearly half die during the first month largely due to the poor status of mother's health during pregnancy and complications at delivery. Tackling neonatal deaths must therefore go hand-in-hand with renewed emphasis on improving maternal health and provision of essential post-natal care.

1501. Enormous disparities in under-five mortality persist in different regions of the country. The probability of children dying before their fifth birthday was 3 to 4 times higher in Mtwara or Lindi than in Kilimanjaro or Arusha. Reaching the national targets therefore also requires special efforts to accelerate progress in the worst-affected parts of the country.

1502. Child Immunization statistics have improved significantly. According to the Expanded Programme on Immunization (EPI) statistics from the MoHSW, coverage of DPT-HB3[367] for 2006 stood at 87 percent- exceeding the MKUKUTA target of 85 in percent. Indeed the rate for each of the last five years (2002-2006 inclusive) has been at or above the MKUKUTA target – a commendable achievement.[368] There are however, some worrying signs of a slight drop in performance since 2004, a consequence of the devolution of EPI logistics to the

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364 National Housing and Population Census, 2002; Vol X Analytical Report (August 2006), NBS (p137).

365 The under-five mortality statistics from the Census also found a decline between 1988 and 2002. However, the estimates differ from the Tanzania Demogrpahic and Health Survey (TDHS) estimates. This is because the Census uses an "indirect estimate" of child mortality, based on the death rates of children from different age cohorts of women, up to 10 years before the census date. The TDHS uses a "direct estimate", measuring the number of deaths per year against the respective denominator, for the five years before the survey. Both methods are subject to error, but the direct estimates are widely regarded as more reliable, particularly for trend analysis.

366 RAWG, PHDR 2007

368 Though the EPI routine statistics are facility based and cannot be compared directly with survey data that are population-based, the two estimates accord well. The latter measures coverage in children 12-23 months, most of whom received their immunization the year before. The EPI program, measures vaccines administered per year against the expected number of infants (0-11 months) in that year. The survey result (end 2004, DPTHB3: 86 percent, +/- 3 percent) corresponds closely with the 2003 EPI statistic (89 percent). Note also that the TDHS annual analysis also found a steady increase in DPT3 coverage, from 77.5 percent five years before the survey, to 84 percent in the most recent cohort, confirming the rise found by EPI statistics.

Councils (largely due to issues with vaccine forecasting, ordering, cold-chain supplies and maintenance, and supervision in some of the Councils)[369].

15003. The TDHS 2004/5 data suggests significant improvements in all measures of malnutrition among children under five compared to 1999 and 1996, possibly because of better malaria control and improvements in Vitamin A coverage[370], and perhaps longer duration of exclusive breastfeeding (up from 58 percent to 70 percent in the first 2 months of life). Nonetheless, the proportion of children who were moderately or severely stunted still stood at 38 percent, while the proportion underweight was 22 percent.

1504. Weaknesses in the health system have a direct impact on the delivery of maternal and newborn services. The maternal mortality (the ratio of women who die during childbirth) remains very high and shows no improvement since the previous survey in 1996, with 578 women dying from conditions related to pregnancy, delivery, and related complications, for every 100,000 live babies born[371]. This implies that roughly one woman can be expected to die every hour from maternal causes in Tanzania.

1505. A majority of the maternal deaths are due to direct causes that include obstetric, hemorrhages, obstructed labor, pregnancy induced hypertension, sepsis and abortion complications. The majority of maternal deaths can be prevented if pregnant women can be assured of access to skilled attendance at childbirth and emergency obstetric care when pregnancy related complications arise. A key challenge will be raising the availability of emergency obstetric care services. According to the Tanzania Service Provision Assessment Survey (2006), even the most basic equipment for emergency obstetric procedures were seldom available in health centers, and were often absent even in many hospitals. Furthermore, the referral system has serious challenges including limited number of ambulances; unreliable logistics and communication system; and low community based facilitated referral system.

1506. The proportion of births attended by a skilled health worker is an indicator of access to reproductive health care and a proxy indicator for maternal mortality. In 2004/05, only 43.3 percent of deliveries were attended by skilled attendants (using the WHO definition of "skilled attendance").[372] Corresponding figures from surveys in 1991/92 and 1999 were 44 percent and 36 percent, respectively. [373]

1507. There is a major gap in skilled attendance at delivery between urban areas (79 percent), and rural areas (34.5 percent).[374] Given that a majority of the deliveries take place in rural areas, the skilled attendance indicator cannot be expected to improve until a higher proportion of rural deliveries are carried out in adequately equipped health facilities and attended by skilled personnel.

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369 URT, MOHSW. EPI Annual Evaluation Meeting Report 19-23 March 2007

370 Estimated to have increased from around 15 percent in 2000 to around 85 percent in 2002

371 TDHS 2004/5 measured maternal deaths over the 10 year period preceding the survey

372 The 2004/5 TDHS estimated skilled birth attendance for births that occurred in the five years preceding the survey. Further analysis of the TDHS data on 12 month intervals confirms that there has been no increase in the proportion of facility-based births within this five year time-frame (PHDR 2007).

373 PHDR 2003

374 Note also that the number of deliveries in rural areas (1.3 million per year in 2006) outnumbers those in urban areas (300,000) by a factor of more than 4.

1508. In the APRM survey, respondents were asked if there are health services in their villages. About 60 percent of them said yes, while only 40 percent said no. When asked about the quality of health services in the past five years, only 41 percent of the respondents thought there had been an improvement; 59 percent reported no improvement. Where services were available, the Government was perceived by respondents as being the most active institution involved in the provision of health services. When asked where the respondents went to receive services, the majority attended Government owned hospitals, health centres and dispensaries, and a few went to private pharmacies. Hardly anyone reported using traditional healers, and those who did reported using them only as a source of medicine.

1509. Experts interviewed for the survey were asked about the general trends in health indicators during the past five years. The majority (61 percent) thought that the trend is going upward slowly and 13 percent thought the trend is going upwards fast.

HIV and AIDS

1510. The Mainland is experiencing a "mature, generalized HIV pandemic," using the WHO terminology, which demonstrates the widespread nature of the pandemic. The first 2003/04 population-based HIV survey[375] estimated the overall HIV prevalence at 7.0 percent among adults aged 15-49 years which decreased to 6 percent.[376] More women (7 percent) tend to be infected than men (5 percent). HIV prevalence among women raises sharply with age from 1 percent among women age 15 -19 to peak at 10 percent among women age 30-34 before falling to a level of 7 percent among those age 45-49. Among men age 15-49, the HIV rate rises more gradually with age to a peak at age 35-39 (10 percent), before declining to 6 percent among men age 45-49. The higher prevalences among younger women point to a strong possibility of a correlation between age and gender inequities and HIV transmission. The predominant mode of transmission of the virus in Tanzania is through heterosexual sexual intercourse. Gender inequalities compound HIV transmission as women in male-dominated societies find it difficult or impossible to speak to their male partners about using safe sexual. Stigma also plays a role in complicating prevention methods.

1511. The survey findings also indicate:

(i) Higher infection levels (10.9 percent) in urban than rural in residents (5.3 percent)
(ii) Adults with secondary or higher education are almost twice as likely to be infected as those with no formal education.
(iii) Increased prevalence with wealth (infection rates among the poorest men 4.1 percent and women 2.8 percent; least poor men 9.4 percent and women 11.4 percent). Strong regional variation, ranging from between 11 percent and 14 percent in Mbeya, Iringa, and Dar es Salaam, to around 2 percent in Kigoma and Manyara.

1512. There are signs that HIV prevalence might be stabilising and even gradually decreasing. Information from the national surveillance systems shows a decline in HIV prevalence among blood donors aged 15 years and above from 9.9 percent in 2000 to 8.4 percent in 2006.[377] Data from surveillance systems of pregnant women attending antenatal

375 Tanzania HIV and AIDS Indicator Survey, 2003-04, URT (2004)
376 Tanzania HIV and AIDS and Malaria Indicator Survey, 2007-08, URT (2008)
377 Note this sample is heavily biased towards urban areas and males and estimates arising should not be interpreted as representative of the national population.

clinics[378] also suggest a decline in HIV prevalence – from 9.6 percent in 2001/2[379] to 8.2 percent in 2005/6.

1513. There has been an impressive increase in the number of people getting tested for HIV and /AIDS – from 3,338 in 2000 to 326,322 in 2005, almost a hundred fold increases.

1514. Towards the end of 2006, 200 sites were providing anti-retroviral therapy and a cumulative total of 125,139[380] patients had been enrolled – slightly over 10 percent of those who were then living with HIV. Out of these, 60,341 were clinically eligible[381] for ARV therapy and started on treatment. Nearly 30 percent of patients on ARV treatment were enrolled in the Dar es Salaam region. Of all adult patients enrolled on ARVs 61 percent were female – marginally higher than the female proportion (approx 57 percent) of all people 15-49 who are HIV positive, indicating a more or less equal level of treatment provision for women and men. About 10 percent (5,985) of the total number on treatment were children under the age of 15. This is consistent with the target proportion expected.

1515. However, except for a few programmes there is no adequate data regarding the number of patients continuing treatment and adherence to treatment regiment, or survival after 12 months on ARV treatment. These information systems are yet to be established. Other challenges related to ARVs include procedures of importation and distribution whereby quality is not ensured, lack of supportive free medicine to go with the ARVs, children under 18 not allowed to know their HIV status to enable them start medication, lack of modern and accurate machines for CD4 T-cell test, to ensure people affected start using ARVs at appropriate time.

1516. Knowledge and behavior Indicators are improving, with 99 percent of individuals surveyed in the TDHS 2004/05 reporting that they had heard of AIDS, and 46 percent reporting comprehensive knowledge of HIV and AIDS transmission and prevention. With respect to young people in particular:

(i) 44 percent of young women and 49 percent of young men know five of the most important elements of HIV and AIDS transmission;
(ii) Over 50 percent of young women and 75 percent of young men know a place to get condoms;
(iii) 17 percent of young women and 26 percent of young men aged 15-24 years had reportedly used condoms the first time they had sexual intercourse;
(iv) Among sexually active youth aged 15-24 years, 37 percent of females and 81 percent of males engaged in higher risk sexual activity in the past one year i.e. with non-regular partners;

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378 Three rounds of surveys have been undertaken since 2001/02, the latest being in 2005/6.Comparison with earlier surveillance findings and discernment of trends are rendered difficult as prior to the introduction of a standardized HSS system in 2001, sites used a variety of non-standardized methods and substandard quality control measures to test for HIV and report findings.

379 Ranging from 5.6 to 16.0 percent across six regions

380 The data available do not indicate the number of new patients enrolled per period, or the number currently on treatment (presuming that a certain proportion will have died or been lost to follow-up).

381 Only those with advanced HIV infection (WHO Stage III and IV) whose immunity is becoming seriously weakened (CD4 <200) are considered "clinically eligible" to commence ARV treatment. In a country which has not yet scaled up ARV treatment, this is expected to be about 20 percent of people living with HIV at any one time. In Tanzania's case, we would therefore expect that about 240,000 would require ARV treatment. The number currently on treatment therefore amounts to roughly a quarter of those who currently need it. Note also that the number requiring treatment will grow year-on-year as new cohorts continue to join those currently on treatment.

(v) Young males who engaged in higher risk were slightly more likely than women to use a condom (47 percent versus 42 percent); and
(vi) Urban youth, both female and male are more likely than their rural counterparts to engage in higher risk (49 percent for urban female youth and 86 percent for males versus 41 percent for rural females and 79 percent for males).

1517. Despite generally widespread knowledge of condoms, urban-rural differentials with regard to ability to obtain condoms are high among both men and women. Poverty also constrains individuals' choices about sexual behavior and makes them more vulnerable to infection, especially those who are additionally marginalized or disempowered such as women and young people.

Tuberculosis

1518. HIV and AIDS has contributed to a marked resurgence of tuberculosis (TB) in recent years and placed a severe strain on the national health system, compromising the delivery of even basic services. Between 1983 and 2003, the number of TB cases increased by almost six-fold, from approximately 12,000 cases to 64,500. In 2004, the government registered a total of 65,665 cases. TB is now the leading cause of death among HIV-positive people.

1519. It is especially prevalent in congested, urban areas like the largest city, Dar es Salaam, where 25 percent of the nation's TB cases were recorded in 2003 and where HIV and AIDS and TB are the leading causes of death for adults. Government statistics on the number of TB cases detected underestimate the severity of the epidemic in Tanzania. Many people with TB symptoms go undiagnosed due to a lack of public awareness and the inaccessibility of diagnostic services in some areas of the country.

1520. Efforts to control tuberculosis centre on maintaining successful completion of TB tr7atment[382] above 80 percent and increasing case-finding. There is a steady improvement with the latest treatment success rate standing at 82.6 percent[383] in 2005. This compares well to a WHO "gold standard" for treatment success of 85 percent and is considerably better than most other countries in the region. However, the case detection rate is only 47 percent.

1521. Experts interviewed for the APRM survey were asked about trends in fighting HIV and AIDS. The majority (62 percent) thought that the fight has been slowly gaining pace, and 21 percent thought the fight has been fast gaining pace. Only 14 percent thought it has stalled, and 3 percent thought it has been gradually losing pace. A mere 1 percent of the experts thought the fight has been fast losing pace.

382 In line with international convention, the indicator here represents treatment success for new smear positive cases only. The denominator is the total number of smear positive cases notified – whether or not the treatment outcome was known. Cases are designated to have been treated successfully if they are confirmed cured by laboratory confirmation or if the treatment regimen is certified as completed (treatment success = AFBP cases cured + AFBP completed treatment / total AFBP cases notified). The indicator reported here is for Tanzania mainland only. For 2005, treatment success rate for all cases (smear positive, smear negative and extra-pulmonary) for Tanzania including Zanzibar was 82.1 percent.

383 The treatment success rate for 2006 will not be known until all patients who started treatment that calendar year have completed treatment.

Table 6.13: Perceptions on Trends in Fighting HIV and AIDS

Response	Percentage (%)
The fight has been fast gaining pace	21
The fight has been slowly gaining pace	62
The fight has stalled	14
The fight has been gradually losing pace	3
The fight has been fast losing pace	1

Source: APRM Survey of experts 2008

Social Protection

1522. The goals for social protection in MKUKUTA were developed in recognition of widespread vulnerability resulting from generalised insecurity in Tanzania. To address this, a national social protection framework began to be developed in 2007 to guide a more coordinated effort to address the needs of the most vulnerable groups in the society. MKUKUTA indicators include child labour, children with disabilities attending primary school, orphaned children attending primary school, elderly people's access to medical exemptions, and satisfaction with health services.

1523. Child work and child labour are issues which formed special modules in Tanzania's 2000/01 and 2006 Integrated Labour Force Surveys. Indeed, Tanzania was one of the first countries to introduce such a module and to track the trends. The MKUKUTA indicator on child labour monitors numbers of children in child labour as a percentage of all working children. The latest estimates from the ILFS 2006 shows that 21.1 percent of children age 5 to 17 years are working long hours or in hazardous conditions such that they are considered to be child labourers. The vast majority are rural children working long hours in their family farms or in domestic work.

1524. The most current estimate of children who have been orphaned (i.e. lost one or more parents) is that 10 percent had lost one or both parents and that 1 percent had lost both parents. [384] About 90 percent of 10 – 14 year olds who had been orphaned attend school. Other analyses reported in the PHDR 2005 also indicated no significant difference in primary schooling between children who had been orphaned and others.

1525. The number of children with disabilities attending school has increased from 18,982 to 24,003 during recent years. This number represents a much lower percentage of all children in school who are disabled than in the population as a whole.

1526. In Zanzibar, Cluster II of MKUZA gives direction for all social sector-related interventions, and sectors have developed plans for achieving MKUZA outcomes, which mirror the MDGs. Several examples of sectoral policies are provided.

The Health Policy (2002)

1527. To operationalise the health policy, plans have been formulated such as the Malaria Strategic Plan which guides the implementation of anti malaria activities. These activities

[384] Tanzania Demographic and Health Survey (2004)

include the introduction of an effective anti-malaria drug (use of artemisinin compounds), and the promotion of Insecticide Treated Nets (ITNs).

Education Policy (2006)

1528. The New Education Policy aims to address existing problems and face the new challenges resulting from socioeconomic reforms and the increasing demand for human resource development in line with fast changing technological advancement. The Policy calls for a Sector Wide Approach to education development in order to redress the problem of fragmented interventions. Among the essential elements is the extension of basic education from 10 years to 12 years, improvement of the quality of education, strengthening teachers' training, alternative learning for out of school youths and general skills development. The country has also drafted the Zanzibar Education Development Programme (ZEDP) 2008-2011.

Zanzibar Vocational Education and Training Policy (2005)

1529. The overall objective of this policy is to provide a framework for learning opportunities for young people with the aim of creating employment opportunities and fostering entrepreneurship values and skills.

HIV and AIDS Policy (2007)

1530. The goals of the policy are to prevent new HIV infections in the population; treat, care and support those who are infected; and mitigate the impact of HIV and AIDS on the social and economic status of individuals, families, and communities. The policy further stresses the enhancement of institutional capacity/key implementers' capacity to develop/implement HIV and AIDS interventions while emphasising gender and human rights approaches. A five year multi-sectoral HIV and AIDS Strategic Framework has been developed to operationalise the policy.

The Draft Zanzibar Food Security and Nutrition Policy (2008)

1531. The policy seeks to create a conducive environment that enables all Zanzibaris to have equitable access at all times to safe, nutritious, and culturally acceptable food in sufficient quantities for an active and healthy life, and to provide special protection for vulnerable population groups from the effects of emergency situations on their food security and nutrition situation.

Social Development Outcomes

Health Outcomes

1532. Infant mortality has shown a declining trend from 99 per 1,000 live births (Census, 1988) to 75.3 per 1,000 in 1996 (Demographic and Health Survey, 1996), to 83 per 1,000 in 1999 (Tanzania Reproductive and Child Health Survey, 1999) and further to 61 per 1,000 in 2004/5 (Demographic and Health Survey, 2004/5). Under-five mortality has declined slightly from 107.5 in 1996 to 101 per 1,000 live births in 2004/2005. The decline is partially attributed to an increase in immunisation coverage. On average, at district level, coverage reached 88.8 percent for DPT-HB3. Over all, Zanzibar fares better than Tanzania Mainland in terms of infant and child mortality. The estimates of infant and under-five mortality refer to a five-year period prior to the survey. The next round of surveys are expected to show further reductions in mortality rates because of measures taken to reduce the toll of malaria.

1533. Maternal mortality in Zanzibar is high. The most recent data available shows that maternal mortality in 1998 was 377 per 100,000. The proportion of births attended by skilled

personnel increased from 37 percent in 1996 to 51 percent in 2004/2005; this is an indication of the potential for reducing maternal mortality. The fertility rate is still high and the full demand for contraceptives is yet to be met. The contraceptive prevalence rate has increased from 16 percent in 2002 to 18 percent in 2005, implying that universal access to family planning and strengthening of reproductive health care services is required.

Table 6.14: Infant, Under-5 and Maternal Mortality

	Zanzibar		Tanzania Mainland	
	1996	**2004/05**	**1996**	**2004/05**
Infant Mortality (per 1,000)	75.3	61	94.7	83
Under 5 Mortality (per 1,000)	114.3	101	146	133
Maternal Mortality (per 100,000)	377**	Not available	529	578
Percentage of births assisted by health professional[385]	37	51	36	46

Source: National Bureau of Statistics (NBS); Tanzania Demographic and Health Survey (2004/2005); Tanzania Reproductive and Child Health Survey (1999) ** 1998 UNICEF Study

1534. Child under-nutrition, measured by stunting, is prevalent present in Zanzibar with 23 percent of all children being under-nourished (1 in 5) and 7 percent suffering severely from under-nutrition (Demographic and Health Survey, 2004/05).

Prevalence of HIV and other Communicable Diseases

1535. A survey conducted in 2002 showed that HIV prevalence in Zanzibar was 0.6 percent in the general population, however these figures date back five years. Estimates using data from ante-natal clinics indicated the HIV prevalence to be 0.87 percent.[386] in the age group 12-65 years by the end of 2005. The total number of cases diagnosed has increased from 3 in 1986 to 3,926 in 2004 and the number is estimated to be 9000 by the end of 2005[387]. Newly reported HIV positive patients among specific groups support the upward trend of the HIV epidemic.

1536. HIV prevalence rates in the general population in Zanzibar are less than 5 percent and therefore the HIV pandemic is classified as a "concentrated epidemic," where HIV prevalence is highest amongst particular most–at-risk-populations (MARP). There is great concern about the alarming HIV prevalence among substance abusers and other MARP given that these groups can act as "bridging populations" for HIV to cross over into the general population. Research has shown that the HIV pandemic in Zanzibar is a concentrated epidemic in high-risk groups that affects three populations: substance users (SUs), in particular injecting drug users (IDUs); sex workers (both male and female) and their clients; and men who have sex with men (MSM). Studies carried out in 2005 showed that HIV prevalence was 13 percent among SUs, and 26 percent among IDUs[388].

Funding for Health Services

385 Doctors, clinical officers, nurses, midwives and MCH aides

386 See Zanzibar AIDS Control Programme (ZACP), HIV Prevalence Data from Antenatal Clinic Attendees (2005).

387 Ibid

388 See Dahoma M., A. A. Salim, R. Abdool, A. A. Othman, A. Abdullah, and A. S. (2005). "Prevalence of HIV, Hepatitis B and C and Syphilis Infection in Substance Users in Zanzibar, Tanzania."

1537. Figures on nominal spending from the Ministry of Health and Social Welfare (MoHSW), show that, in nominal terms, the budget reached TShs 6.6bn in 2006/07, representing growth of 5 percent between FY2005/06 and FY2006/07.[389] This was a substantial improvement on the previous year which had seen a rise of only 2 percent. Over the period 2003/04 to 2006/07, the budgets have grown only slowly, perhaps because actual expenditures had been below the budgets allocated. Expenditure in 2005/06 was much closer to the budget, and may be the reason for a larger increase in the budget for the following year.

Table 6.15: Nominal MoHSW Spending, FY2003/04 – FY2006/07 (TShs Million, Current prices)

	2003/04		2004/05		2005/06		2006/07
	Budget	**Expend**	**Budget**	**Expend**	**Budget**	**Expend**	**Budget**
Recurrent	6,342	4,872	6,011	4,814	6,108	5,775	6,361
Development	211	30	222	5	233	291	270
Total MoHSW	6,553	4,902	6,233	4,819	6,341	6,066	6,632
percent growth, year on year	10 percent	12 percent	-5 percent	-2 percent	2 percent	26 percent	5 percent

Source: RGoZ (2007), Zanzibar Health Sector Public Expenditure Review 2007.

1538. Proportion of actual to budgeted expenditure for 2004/05 and 2005/06 and the expected budget for financial year 2006/07, according to the source of funds (RGoZ. 2007)[390] reveal that budgets have increased substantially over this period, though expenditures have been consistently below budgets in each year. Donor funding is by far the dominant source of funds for the three years, providing over TShs 4 billion in 2006/07 out of the total budget of TShs 4.7 billion. It is noteworthy to compare this external financing with the total budget of the Ministry of Health and Social Welfare.

Table 6.16: Expenditure and Financing of HIV and AIDS Activities for Period July 2004 to June 2007 (TShs million)

	2004/05		2005/06		2006/07
	Budget	**Expend**	**Budget**	**Expend**	**Budget**
Govt Expenditure	261.60	47.47	220.70	80.05	494.35
Total donor public sector support	2,726.53	1,296.70	3,859.68	2,001.83	4,171.46
Total public sector expenditure on HIV and AIDS	2,988.13	1,344.17	4,080.38	2,081.88	4,665.81

Source: RGoZ (2007), Public Expenditure Review for HIV and AIDS.

Education Outcomes

1539. Primary school enrolment rates have increased over time with near gender parity and improving completion rates. The net enrolment ratio (NER) for primary education increased from 51 percent in 1990 to 79 percent in 2002 and 77 percent in 2005. The remaining 23 percent are children of school going age (7-13 years) who have not been enrolled. Some children enrol at earlier or, more commonly, at older ages than the official school age, and are

389 RGoZ (2007), "Zanzibar Health Sector Public Expenditure Review 2007," Ministry of Health and Social Welfare.
390 RGoZ (2007), "Public Expenditure Review for HIV and AIDS," Zanzibar AIDS Commission.

therefore not counted in the net enrolment ratio. Primary transition rates have been consistently high at around 80 percent since 1990. Secondary transition rates are still low although there has been an improvement from 10 percent in 1990 to 44 percent in 2004. There is gender parity in enrolment in secondary education.

1540. These statistics indicate progress towards much greater access to schooling. Factors which explain why some children may not be enrolled in school include:

(i) Distance to school, especially for secondary; although 92 percent of urban students live within 2 kms of a primary school, 66 percent of rural pupils live so close, and 48 percent of rural children live within 2 kms of a secondary school, compared with 86 percent of urban children;
(ii) Low awareness of the value of education on the part of some households and communities;
(iii) Inadequate classrooms leading to overcrowded classes; and
(iv) Inadequate education facilities including lack of specialised teachers for the disabled, coupled with negative attitudes of some parents towards the importance of education to the disabled children.

1541. As noted in the Education Sector Country Status Report 2003, over the years Zanzibar has been recording a relative high participation in tertiary and higher education, which has continued in the aftermath of the emergence of universities in Zanzibar since that report.

1542. Some challenges facing development of higher learning in the Isles has been pointed out. These include: unpredictability of funds; weak public-private partnership; poor qualifications of students; inadequate government regulation of private universities; uncertainty of the quality of education offered in private universities; lack of collaboration between the institutions of higher learning; low absorption of graduates in the labour market.

Financing of Education

1543. The Government has been spending substantial resources on the education sector, in particular basic education (primary and secondary education). Although the bulk of the budget has gone to basic education, the percentage allocation to higher education has increased in the past few years.

Table 6.17: Government Recurrent Budget Allocation to Education Sector (TShsMillions)

	2003/04	2004/05	2005/06	2006/07
National Budget	70,467	91,511	91,476	110,356
Education Sector Budget	14,027	19,314	18,354	20,279
Higher Education Budget	1,033	1,730	1,887	3,021
Percent of national budget to education	20.0	17.8	20.0	18.4
Percent of education budget to higher education	7.4	10.6	10.2	14.9
Percent of national budget to higher education	1.5	1.9	2.1	2.7

Source: URT, (2007g).

Challenges in social sector development

1544. The major challenges which have been identified in delivery of social services include weak capacity at different levels; inadequate human resources of requisite capacity; turn-over of staff due to demoralisation; problems in attracting human resources to more remote and marginalised areas; depleted infrastructure due to poor maintenance; and under funding of programmes.

Objective Four: Ensuring Affordable Access To Water, Sanitation, Energy, Finance (including Micro-Finance), Markets, ICT, Shelter and Land to all Citizens Especially the Rural Poor

1545. The National Development Vision 2025 for Mainland Tanzania aims for universal access to safe water by 2025. MKUKUTA targets include increased proportion of rural population with access to clean and safe water within 30 minutes of time spent on collection of water from 53 percent in 2003 to 65 percent in 2010; and from 73 percent in 2003 to 90 percent in 2010 in urban areas; increased access to improved sewerage facilities from 17 percent in 2003 to 30 percent in 2010 in urban areas; 100 percent of schools to have adequate sanitary facilities by 2010; 95 percent of people to have access to basic sanitation by 2010. These are intermediate targets to the MDG target of halving the population without access to safe and clean water by 2015.

Water Supply

Policy, Strategies and Institutional Steps to Achieve Targets

1546. The Government reviewed the 1991 Water Policy and passed a new National Water Policy (NAWAPO) in 2002. NAWAPO leads the sector towards realization of these targets through various instruments including the National Water Sector Development Strategy (NWSDS), which guides implementation of various water supply and sanitation service delivery and water resources management interventions through the Water Sector Development Programme (WSDP) according to the principles of the Sector Wide Approach (SWAp) to planning adopted since 2006. This framework provides mechanisms whereby Government, Development Partners and other non-state actors support a common implementation arrangement under Government leadership and through pooled funding or through earmarked budgets.

1547. Regulation of the Commercial Water Supply Sewerage Authorities (CWSSAs) is the responsibility of the Energy and Water Utilities Regulatory Authority (EWURA), while regulation of Community Owned Water Supply Organisations (COWSOs) is a responsibility of the Ministry responsible for Water, delegated to local authorities. Regulation of sewerage services is a responsibility of EWURA and other sanitation services are included in the portfolio of the Ministry responsible for Health, with some powers delegated to Local Governments and other actors.

1548. Sector coordination and dialogue with national partners and donors, based on JAST principles, involves joint review of performance on an annual basis and provides a platform for Government, development partners and non-state actors to review performance, deliberate policy choices, effectiveness of resources expenditure and to deliberate the best course forward. A second Joint Water Review was held in 2007.

1549. To align sector reforms and the requirements of the new water policy, legislation has been reviewed. The review of the Water Utilization Act of 1974 and its amendments - the principal legislation governing water resources management - has led to draft legislation to address the new institutional framework as set out in the National Water Sector Development Strategy.

Sector Funding

1550. Sustainable implementation of the water sector initiatives requires stable planning and financing, financial mechanisms and availability of adequate funds for capital investments, infrastructure expansion, and rehabilitation and capacity development measures. Channeling of the resources to the prioritized needs according to approved strategies and plans is also required.

1551. Sources of funds include the Government, development partners, NGOs, user fees, community contributions, private sector investments, and other contributions from individuals and institutional stakeholders. Water sector allocations from the Government and donors have increased over the years, but increased funding is still required for full implementation of the WSDP. The Ministry of Water and its partners developed and costed the NWSDS and took the following steps to secure full funding for the WSDP up to 2010 from domestic and foreign resources:

(i) Reflect the financial requirements of the WSDP in the budget for 2007/2008 and MTEF projections for subsequent FYs; and
(ii) Developed a basket funding mechanisms where by IDA and Germany through KfW and the Netherlands have agreed to contribute to the Water Sector Basket. Additional contributions are being made by AFD (French) and the Africa Development Bank (AfDB)

Commitment to Low Income Groups in Rural and Urban Areas

1552. The Water Policy identifies water for low income groups as one priority. Historically urban water supply has received more funding than rural water supply. Budget allocation for the Ministry of Water for FY 2006/2007 from both local and foreign funds reflects this fact. Human capacity is also concentrated in urban authorities. A combination of these factors has resulted in better coverage figures in urban areas than in rural areas.

1553. This disparity in allocation concerns both domestic and foreign resources. Even though it is likely that urban water service delivery is more expensive than that in rural areas because of differences in service levels and technology, the current allocation of resources between rural and urban areas does not seem appropriate in view of the service gap between rural and urban areas.

1554. The policy objective of the Government is to improve living standards of the poor population which largely live in rural areas. Therefore, the government is putting extra efforts to improve outcomes in the rural water sub-sector:

(i) The Government has also operationalised mechanisms by which funds are channeled from the Ministry of Finance directly to implementing authorities at local level and agencies to curb implementation delays and speed up coverage. In addition, the

Government is employing qualified personnel (water engineers) to boost implementation capacity at local level;

(ii) In urban areas, low income and peri-urban areas are targets for community standpoints in order to reduce the impact of price pass-on from connected and metered households to poorer neighbors. Representation of Board members from specific groups of people and low income areas facilitates decisions of UWSSA to increasing coverage in these areas as required in their performance assessment criteria; and

(iii) Water sector operational guidelines require community participation in all stages of the project through contribution to development, operation and maintenance of the schemes to increase functionality and sustainability of community schemes.

1555. This arrangement can however bring its own challenges especially in areas where high technology levels (deep boreholes with pump and engines) imply that the community has to contribute large sums of cash for both source development and continuous operations and maintenance of the schemes. Beneficiaries of such schemes are forced to pay high prices per bucket up to Tshs 50 per bucket – which forces people with low incomes to continue to use mixed sources of water to reduce expenses, the improved source for cooking and drinking and unimproved sources for other household uses. This is not preferred because it increases chances of consuming contaminated water.

Progress in Accessing Water Supply

1556. Access to water is measured through two systems that produce different results. First is coverage figures based on engineering estimates by District Water Engineers and Urban Water and Sewerage Authorities and reported by Ministry of Water. Second are population based surveys such as HBS, DHS and Census. Survey statistics have the advantage of being relatively free from bias in measuring outcomes, whereas routine statistics offer the advantage of more regular monitoring.

1557. The performance of the water sector has declined over time as portrayed by population with access to piped and protected water sources, a measure of quality of water. Overall, some 48 percent of all Tanzanian households, and 60 percent of the population in rural areas, depended on an unprotected source of drinking water in 2007 compared to 46 percent and 45 percent in 2000 respectively. Almost 34 percent of households have use of piped water and another 18 percent use a protected well or spring. As would be expected, use of a piped source is much more common in urban areas.

1558. There has also been a decrease in the use of piped water and other protected sources in all areas. In the Dar es Salaam, the proportion of households with any piped water and with water piped into the dwelling have both declined. There has been an increase in reliance on other sources. Some 35 percent of households in Dar es Salaam now depend on a neighbor for water. The water supply system in Dar es Salaam appears to have suffered a serious decline in the proportion of the population it serves, perhaps in part due to the growth in population.

1559. Distance (physical access) to the source of water is another quality indicator measured in HBS. Household drinking water supplies are much closer in urban areas than in rural areas. Over half of rural households have to travel more than one kilometer to their drinking water source in the dry season. There has been an increase in the proportion of households reporting

a drinking water source within one kilometer in the population as a whole, although this is largely due to the increased proportion of the population that is urban, since access has improved only slightly in rural areas and appears to have deteriorated in urban areas. Overall, there has been a slight decrease in the mean distance to drinking water for the population as a whole.

1560. The APRM household survey found similar trends when compared to the official statistics provided above; 55 percent of rural households and 86 percent of urban respondents reported availability of improved water supply services in their localities, and similar responses came from males and females. Only 35 percent of rural respondents reported to have seen some improvement in water supply services in the past five years. A larger proportion (45 percent) indicated that there has been no improvement and the remaining 20 percent felt that the services have remained the same. More urban dwellers (55 percent) reported to have seen some improvement in services. Answers were similar from male and female headed households.

1561. When asked about the quality of services, 49 percent of rural households ranked their services as average or above, compared to 84 percent in urban areas, and more rural respondents ranked the services as below average 23 percent compared to 11 percent in urban areas.

1562. The survey results underscore the importance of the government's focus towards improving services in rural areas and pose a challenge to the government to speed up interventions in these areas.

1563. Nevertheless, improving access to water for rural populations faces several challenges including the following:

(i) The funds allocated by the Government to finance various water sector activities through different windows are not coordinated and prioritized towards sector targets. Sector funding has increased considerably over the last few years, from both domestic and foreign resources. However there has been no clear prioritization in allocations by sub-sectors and individual projects;

(ii) The disparity in coverage figures needs to be addressed. During the second Joint Water Sector Review in 2007, it was agreed that an equity monitoring indicator needs to be developed;

(iii) Reallocation of staff is needed within the central Ministry and from central government to LGAs to maximize the utilization of the existing labor force according to sector needs and to boost implementation capacity at local level; and

(iv) The 5 percent contribution required of communities towards capital costs, intended as a measure of demand, can be unaffordable to some communities given their economic status. The issue is compounded when technology feasible in a particular location is of higher level, for example deep boreholes where day to day operation and maintenance is costly.

Sanitation

1564. Tanzania's efforts to improve sanitation coverage were kick-started by the 'Mtu ni Afya' campaign dating back to the 1970s. Since then Tanzania is reported to have high rates of access to sanitation facilities, hovering between 83-97 percent for both urban and rural areas. Availability of public toilets, according to the HBS 2007 Community Characteristics is

extremely low; 17.5 percent in Dar es Salaam, 19.7 percent in other urban areas, and 15 percent in rural communities.

1565. Data on school sanitation facilities show a small increase through 2006 (to 38.9 percent) in the ratio between the actual number of toilets available and the required number according to Government policy. Given the large increase in student enrolment, the relatively constant ratio is encouraging. The HBS Community Characteristics report shows that where there are school's toilets, 83.3 percent are built by the local communities themselves.

1566. With the coverage figures reported, MKUKUTA targets are likely to be achieved. The government has realized it has a role to play and sanitation is now reflected in the budget for FY 2007/08 of the Ministry of Water - every eligible district received TShs 20 million for sanitation and hygiene. Year 2008 was the international Year of Sanitation and Tanzania was expected to take advantage of that opportunity to woo funds into the sector. However, there are several challenges:

(i) Sanitation has often been considered as an individual household/family responsibility, and subsequently tends to be severely under-funded in sector investment programmes. There is also minimal consideration of increasing the budget allocations for software interventions;

(ii) Different agencies have responsibilities with sanitation and hygiene services with inadequate coordination. The Ministry of Health is responsible for policy and standards. Planning and designing is the responsibility of LGAs. Implementation is with the District Water and Sanitation Team. Technology transfers, training and capacity building is done by NGOs, MoW, MoH and Regional Secretariats. This diversity of stakeholders offers a great opportunity but inadequate coordination among them is constraining development in the sub-sector. Stakeholders are calling for a single policy on sanitation to give direction to the way in which sanitation is to be taken care of in Tanzania;

(iii) The reported coverage of facilities in public areas is very low. With increasing urbanization, public facilities need to be improved to safeguard against health hazards; and

(iv) Despite very high coverage figures for use of latrines, there are variations in data reported mainly arising from enumerators' and analysts' interpretations of the term 'basic sanitation facilities'.[391] In the second Joint Water Sector Review in 2007, the Government reported that an in-depth analysis of facilities has indicated that over a half of latrines used are temporary. If quality of latrine is considered, the coverage figures would be much lower than those commonly reported.

Energy

1567. The electricity sector in Tanzania involves a number of stakeholders both government and non-state actors. Their degree of involvement varies significantly from users of energy, providers of energy equipment, financiers of projects in research and development. The Ministry of Energy and Minerals (MEM) is responsible for all energy related matters in the country including electricity, coal and petroleum. Other key institutions include the Energy

[391] The following is the agreed definition of basic sanitation as indicated in the Annual Water Sector status report (2006/2007): Sanitation is a practice that separates people from excreta and protects transmission of feacal contaminant and is easily accessible in all seasons.

and Water Utilities Regulatory Authority (EWURA), the Tanzania Petroleum Development Cooperation (TPDC).

1568. With rapid urbanization and the celebrated growth rates that Tanzania has enjoyed in the recent past, demand for energy and especially electricity and petroleum has also been expanding very rapidly. However, electricity coverage countrywide is still very low and capacity to extend coverage is limited. The sub sector has experienced serious setbacks with four electricity crises in over a decade.

1569. Use of domestic electricity is almost exclusively for urban dwellers. According to data from the 2002 population census, even in urban areas coverage is low - estimated at 10 percent of the population, compared to less than 2 percent for rural population. Of the 20 districts with a relatively high degree of access to electricity only 2 are rural districts: Mwanga and Hai. Even in Dar es Salaam where access is highest, fewer than 50 percent of households are connected.

1570. The proportion of households in Tanzania that report a connection to the electricity grid has increased slightly, from 10 percent in 2000/01 to 12 percent in 2007. This is due to increased urbanization and a small increase in coverage in rural areas, since there has been a decrease in use in urban areas. This may partly be due to changes in the classification of areas as urban since 2000/01 (URT, Household Budget Survey (Draft Report), 2008). Nevertheless, the grid still predominantly serves the urban population. It is worth noting that the flow of electricity has not been steady and there are frequent cuts due to several reasons including old infrastructure, cost of fuel, and drought.

1571. When asked whether they have seen any improvement in the past five years, 60 percent of urban respondents in the APRM survey said they had, compared to only 7 percent in rural areas. These results may indicate that the Government is focusing more on urban areas. However because of the low coverage countrywide, the government has devised strategies to expand coverage in both rural and urban areas. Progress is more noticeable in urban areas because of the historical pattern of investment in infrastructure there, while in rural areas, progress will take time because of the background work required in laying down the infrastructure required and the need for a policy and legal framework to allow independent suppliers and off the grid distribution of electricity.

1572. In the past, rural electrification has been carried out through fragmented donor initiatives focused mainly on grid extension and small off-grid pilots, with access rates barely keeping up with the population growth. Key constraints were the limited reach of TANESCO's grid; TANESCO's lack of financial strength to finance rural access expansion; absence of policy, regulatory and financing mechanism for off-grid alternatives, poor targeting of Government's scarce financial resources (TANESCO subsidies, which benefit largely non-poor population strata versus funding investments for access expansion) and relatively high costs of service provision coupled with low income, calling for alternative low-cost solutions in line with local capacity to pay.

1573. Aware of these challenges, the Government of Tanzania has redefined its rural energy access policy. The latest National Energy Policy of 2003 takes into consideration the need to reform the market for energy services and establish an adequate institutional framework, which facilitates investments, expansion of services, efficient pricing mechanisms and other

financial incentives; and the need to enhance the development and utilization of indigenous and renewable energy sources and technologies.

1574. The Rural Energy Act of 2005 established the Rural Energy Board (REB), the Rural Energy Agency (REA) and the Rural Energy Fund (REF) to be responsible for promotion of improved modern energy services in the rural areas of Mainland Tanzania and through the fund to provide grants and subsidies to developers of rural energy projects. Sources of funding include the Government, contributions from international financial organisation, and development partners.

1575. The Rural Energy Working Group was formed in 2006 to provide technical advice, to facilitate integration of sector policies, to provide energy baseline data, identify suitable energy projects and promote research and development initiatives in rural areas. The government is implementing a number of rural electrification initiatives including projects in Ukerewe, Simanjiro, Urambo, Serengeti and Makambako.

1576. Other challenges include diversification of energy power from heavy reliance on hydro and move towards gas, solar and wind to allow reliable generation of power. Some steps towards this are already in place. Also, with recent and planned increases in electricity prices, affordability is becoming a bigger issue for both urban and rural residents.

Finance

1577. Financial sector reform in 1991 aimed at gradually establishing more open credit markets, achieving flexible and liberal interest rates and enhancing financial intermediation. The policy was followed by the Banking and Financial Institutions Act 1991 and 2006, the Cooperative Society Acts of 1991 and 2003 (SACCOS), Bank of Tanzania Act, 1995 and 2006 and the National Micro-finance Policy 2000.

1578. The Banking and Financial Institutions Act, 1991 and the Bank of Tanzania Act 1995 and 2006 allowed the existence of private banks and provided for enhancement of regulation and supervision of the financial sector. Studies have shown that the reforms have had an appreciable impact in the development of the financial system: the entrance of private banks has resulted in more competition and the development of financial markets with new and more efficient financial services. State-owned banks had been restructured in order to comply with the stringent prudential requirements and to be able to face competition. The reforms also brought about recognition of the need for autonomy of the central bank, not only in the formulation of monetary policy, but also in the regulation and supervision of the financial sector (Chijoriga and Robert 2004; Maje 1996). However, these reforms actually widened the institutional gap in the delivery of financial services. Thus the government took action to facilitate the development of microfinance in Tanzania and formulated the National Micro-finance Policy, 2000.

1579. The objective of the National Micro-finance Policy, 2000 is to establish a basis for the evolution of an efficient and effective micro financial system in the country to serve the low-income segment of the the society, and thereby contribute to economic growth and poverty reduction. The policy has specific objectives whish are: establishing a framework within which micro-finance operations will develop; laying out the principles that will guide operations of the system; serving as a guide for coordinated intervention by the respective

participants in the system; and describing the roles of implementing agencies and the tools to be applied to facilitate development.

1580. The Government itself has initiated independent programmes that aim at ensuring access to finance by disadvantageous communities. Some of those programmes are:

(i) Rural financial services programme which commenced in 2002 with five components: improvement of the managerial capacity and performance of grassroots Micro-financial Institutions (MFIs); rural financial systems development; empowerment of the rural poor; monitoring and evaluation; and management and coordination;
(ii) Small Entrepreneurs Loan Facility whose implementation commenced in 2000, as a wholesale microfinance lending project to extend loans to MFIs, such as NGOs, Savings and Credit Cooperative Societies (SACCOs) and Community Banks for lending to rural and urban under- served entrepreneurs; and
(iii) President's Fund for Small Entrepreneurs whose aim is to empower the people economically. The government set aside TShs 21 billion in the 2006/2007 budget as credit guarantee for loans to the people in all regions in Tanzania Mainland. These funds were extended as loans to entrepreneurs, through SACCOS, by CRDB and NMB banks. However, the first year of implementation has given rise to popular complaints rather than praises for the initiative. In the APRM household survey carried out in August 2008, 53 percent of the respondents were aware of this facility.

1581. The number of SACCOS has increased dramatically in the past few years from 1875 in 2005 to 4780 in 2008. In 2009, the number of cooperative societies stands at 7500. Despite the increase in these facilities, in the APRM household survey carried out in August 2008, 71 percent of the respondents from mainland expressed difficult in accessing credit, while 29 percent felt that they could access credit. Responses were the same for both males and females. There was a substantial difference between urban and rural respondents; only 24 percent of the rural respondents reported that they had access to credit, compared with 48 percent of urban respondents. In the same survey, 25 percent of the respondents reported that they had access to a bank.

1582. In the first comprehensive survey in Tanzania of demand for financial services, carried out in 2006, the survey also identified barriers to access. The study noted impediments to financial markets to include: low levels of financial literacy; poverty, especially among the rural population; and poorly developed infrastructure especially roads, communications, electricity, transportation and the like. The combination of these barriers leads to lower participation and poor financial accessibility; increased transaction costs per monetary unit of financial intermediation; increased risks for any financial institution attempting to serve rural clients; formal financial institutions largely avoiding serving rural areas; and financial services being provided by informal agents or mechanisms which offer a narrow range of financial services to limited customers.

1583. Capacity constraints are increasing as the gap between requirements and the supply of people with skills for banking and microfinance operations is expanding. This is one of the causes of the slow pace of growth of regional and rural banks (community banks). In addition, the regulatory framework may need attention to facilitate the pace of growth of these banks.

1584. There has been notable progress in the area of microfinance since the financial sector reforms came into force in the 1990s. However, for various reasons, the sector is still characterized by exclusion, where a large segment of the adult population (54 percent overall; 45 percent of urban, 57 of rural) has no access at all to financial services, either formal or informal [overall, 9 percent has a formal bank account (11 percent men, 5 percent women, 16 percent urban, 4 percent rural), 2 percent has access to semi-formal finance (NGOs, SACCOs) and 35 percent has access to informal finance like ROSCAs and moneylenders – these categories are mutually exclusive]. Only 20 percent of the population has access to formal banks within 1 hour walking distance.

1585. Most NGO-type of MFIs are registered as companies limited by guarantee, societies or trusts. The main players include PRIDE-Tanzania (More than 90,000 active borrowers), FINCA-Tanzania (more than 43,000 active borrowers), SEDA (>17,500), BRAC[392]-Tanzania (>50,000) and Presidential Trust Fund (>10,000) (Facet, 2007). Also, most of the NGO-type of microfinance players are credit-driven and mainly based in (semi-) urban areas. Some (SEDA, PRIDE, FINCA) are in the process of transforming into Microfinance Companies (MFCs), so as to be able to attract savings from the public. Todate, FINCA and PRIDE have reached financial self-sufficiency (on a self-reporting basis). Recently (January, 2009), PRIDE-Tanzania declared its intention of turning into full microfinance bank.

1586. There are other informal savings and credit associations, in their various forms which play a significant role in creating access to financial services in Tanzania (Facet, 2007). These include:

(i) *Village Savings and Loan Associations (VSLA):* These are informal, time-bound accumulating savings and credit associations (ASCAs) of 15-30 people. CARE Tanzania has been using this model since 2001. Initially, CARE supported the establishment of VSLAs in Zanzibar between 2001 and 2002. The groups continue to function and grow under an apex organisation that they run themselves, the Jozani Savings and Credit Associations (JOSACA). In July 2006, there were 158 VSLAs with a total membership of 4,552 (70 percent women). Various other CARE-supported projects have also adopted (and/or adapted) the methodology. Roll-out of the Zanzibar model to one or two mainland regions was expected in 2008.

(ii) *Village Community Banks (VICOBA):* These are informal, village based savings and credit groups being promoted in various parts of Tanzania. For example by:
   (a) Land Management Programme (LAMP), implemented by local authorities of Babati, Kiteto, Simanjiro and Singida districts, Kilimanjaro region (funded by SIDA, with project management and technical assistance from Orgut, a Swedish consultancy firm);
   (b) Floresta Tanzania, an environmental NGO in Kilimanjaro (13 village banks with nearly 400 members); and
   (c) World Conference on Religions for Peace (WCRP) Tanzania supports VICOBA in Dar es Salaam for youth employment creation;

[392] BRAC (NGO) formally stands for: Bangladesh Rural Advancement Committee. BRAC-Tanzania was established in 2006, and it now has created over 2,700 microfinance village organizations with over 80,000 members and has already disbursed more than $17 million. Over 480 community health promoters, 380 agriculture program volunteers and 436 poultry and livestock volunteers have been trained (according to BRAC annual report, 2007)

(iv) *Community Conservation Banks (COCOBA:* These are informal savings and credit associations supported by World Wildlife Fund (WWF) in various regions of Tanzania as part of their conservation programmes, amongst others in Ruaha and on Mafia Island. A similar model is used by the Wildlife Conservation Society Tanzania, around Pugu forest, close to Dar es Salaam (7 groups, 300 members); and

(v) *Financial Services Associations (FSAs) International* is supported in Tanzania by Plan International. In 2006, they had a total membership of 4,412 (52 percent women) in 5 FSAs around Mwanza, Lake Zone11.

1587. VICOBA scheme operates largely in rural areas. The VICOBA methodology has proved to be a far more successful scheme for rural communities than any other system practised in most rural communities in Tanzania. This savings and credit model builds on and improves traditional African methodologies, which are rigid and provide limited and inflexible access to accumulated savings. VICOBA is primarily a Savings Club with a membership that does not exceed 30 participants per group. Members meet once per week and make contributions as shares to the club. At the same time members are encouraged to use the funds for short-term needs as loans on which they have to pay interest. These loans allow individuals to meet their small and short-term financial needs for income generating activities, social obligations, and emergencies without having to borrow from money lenders or their relatives. The establishment of VICOBA in a poor community goes through different phases including an introduction, intensive training, development and maturity phases. All in all, this takes about 10 months.

1588. The methodology has many strengths, eg: there is no need for initial funds; transactions are simple and completely transparent; interest earned on loans goes to the group and not to service providers; internal social pressure and group by-laws encourage members to reimburse on time (in many cases, loan recovery is 100 percent); membership in VICOBA does not prevent participants from being members of other savings and credit systems; and distribution of savings at the end of a cycle allows members to acquire useful amounts of capital that can be invested in longer-term activities.

Markets

1589. Liberalised access to markets can be traced back to 1984/85, when the agricultural marketing system was liberalized and the cooperative movement re-introduced. Recent programmes and policies which address marketing are the following. Agricultural Marketing Systems Development A programme which was initiated in 2005 with four components:

(i) Agricultural Marketing Policy Development

1590. The objective of the policy component is to support a regulatory and legislative reform process that contributes to improving marketing systems efficiency as a whole so as to benefit all participants in the marketing system including smallholder producers, intermediaries and consumers. The process includes reforms at both the central and local government levels. It aims at creating a conducive environment for a competitive, efficient and transparent marketing system to emerge for the benefit of all marketing participants. In

particular, it aims to enhance the empowerment of smallholder farmers who currently lack bargaining power in view of the limited competition in the market.

1591. The programme seeks to intervene in the various stages of the policy formulation process, starting from impact and needs assessment studies as well as a sector study to be followed by consultative and participatory dialogue workshops and working groups, policy formulation committees, implementation arrangements well as monitoring and evaluation.

(ii) *Producer Empowerment and Market Linkages*

1592. The objective of this component is to increase the benefits smallholder farmers and small-scale traders/processors obtain from interacting with the market in an organized and sustainable manner by strengthening the social and organizational structure of smallholder producer and small-scale trader/processor groups including grassroots institutions by:

- Empowering them through improved market information and extension services to enhance their leverage and bargaining power vis-a vis more organised agro-processors, wholesalers, and exporters; and
- Establishing vertical and horizontal linkages with formal market actors to minimize the risks associated with the lack of assured rural opportunities and therefore fluctuating prices for both inputs and outputs.

(iii) *Financial Market Support Services*

1593. The main objective of the Financial Market Support Services Component is to address liquidity constraints facing smallholders and small and medium scale rural traders and processors by enhancing their access to financial services. This objective is to be achieved through establishment of a:

- Rural inventory credit scheme targeted at smallholder groups and small and medium-scale traders/processors; and
- Loan guarantee scheme targeted predominantly at medium-scale traders/processors and micro-finance institutions serving small groups.

(iv) Rural Market Infrastructure

1594. The objectives of the Rural Marketing Infrastructure Component are to:

- Improve access of smallholder farmers, producers and traders to agricultural markets;
- Improve rural market facilities; and
- Strengthen the capacity of district Councils to manage roads and their maintenance.

1595. Councils have responsibilities to construct and manage markets as part of service provision to the citizens and which may serve as a source of own revenue. Increased revenue from markets might indicate that there has been expansion in markets and market activities. In the early 1990's LGAs collected about 10 percent of their own revenue from markets, compared to more than 25 percent in last three financial years.

1596. In the APRM survey of experts carried out in August 2008, almost half of the respondents (49 percent) had the opinion that there has been improvement in access to

market in the past two to three years, while 31percent had not seen change, 16 percent had seen slight deterioration and 4 percent had seen considerable deterioration.

1597. The Government formulated the National Trade Policy in 2003. The mission of the National Trade Policy is "to stimulate the development and growth of trade through enhancing competitiveness aiming at rapid socio-economic development". Its Vision is "to transform the economy from a supply constrained one to a competitive export-led entity responsible for enhanced domestic integration and wider participation in the global economy through national trade liberalization".

1598. This policy has very clear objectives which are to stimulate a process of trade development as a means of triggering higher performance and capacity to withstand intensifying competition within the domestic market. This includes establishing improved physical market-place infrastructure and stimulating dissemination of market information and increasing access to the market. It involves economic transformation towards an integrated, diversified and competitive entity capable of participating effectively in the Multilateral Trading System (MTS), and entails the stimulation and encouragement of value-adding activities on primary exports as a means of increasing national earnings and income flows even on the basis of existing output levels. Investment flows will be stimulated into export-oriented areas in which Tanzania has comparative advantages as a strategy for inducing the introduction of technology and innovation into production systems as the basis for economic competitiveness. Long-term current account balance and balance of payments will be attained and maintained through effective utilization of complementarities in regional and international trading arrangements as a means of increasing exports combined with initiatives for higher efficiency in the utilization of imports. The ultimate target is to enhance income generation and the people's earning power at the grass-roots level as the key to poverty reduction.

Information Communication Technology

1599. Access to Information Communication Technology (ICT) is supported by the National ICT Policy, 2003. Tanzania has made remarkable progress in deploying ICT in a liberalised market. This has been facilitated by the Tanzania Communications Regulatory Authority (TCRA) established by Act No. 12 of 2003 which is an independent Authority for postal, broadcasting and electronic communications industries in Tanzania. The objectives of the authority include:

(i) Promotion of effective competition and economic efficiency;
(ii) Protecting the interests of consumers;
(iii) Promoting the availability of regulated services;
(iv) Licensing and enforcing license conditions of broadcasting, postal and telecommunications operators;
(v) Establishing standards for regulated goods and services;
(vi) Regulating rates and charges (tariffs);
(vii) Managing the radio frequency spectrum;
(viii) Monitoring the performance of the regulated sectors; and
(ix) Monitoring the implementation of ICT applications.

1600. TCRA has issued the following regulations covering various aspects of ICT: Broadband Regulations, 2005, Consumer Protection Regulations, 2005, Content Regulations, 2005, Dispute Resolution Regulations, 2005, Licensing Regulations, 2005, Importation and Distribution Regulations, 2005, Infrastructure Sharing Regulations, 2005, Installation and

Maintenance Regulations, 2005, Interconnection Regulations, 2005, Numbering and Electronic Address Regulations, 2005, Postal Regulations, 2005, Quality of Service Regulations, Radio Communication and Frequency Spectrum Regulations, 2005, Tariff Regulations, 2005; and Type Approval Regulations, 2005.

1601. Based on TCRA statistics, growth in this sector has been impressive. By March 31, 2008, there were about 9.5 millions subscribers to telephone services. Mobile telecommunication accounts for the bulk of the market – 98 percent of subscribers, compared to 2 percent with fixed line services.

1602. In a case survey carried out by the Agricultural Marketing Services Development Project (AMSDP) in 2005 concerning ICT use, discussions with groups (producers, processors, traders, partner agencies) revealed the following:

(i) Use of mobile telephones was high – 70 -90 percent of group members and 60 percent of the general population in the Northern regions surveyed;
(ii) Use was lower but still at least 50 percent in less well connected regions, for example districts close to Mbeya;
(iii) Short messages (SMS) use was common and increasing;
(iv) The mobile phone was initially used for contact with family and friends but then increasingly for business contact, especially contact with traders, middlemen and transporters and to find costs of inputs and new technology;
(v) Perhaps one third had seen a computer but very few had yet used one directly;
(vi) Awareness of Email and the Internet was similar. However, most of those who had seen a computer also had a friend or relative who used it and there was considerable interest in the possibilities;
(vii) Television had been seen by most at some point, though was watched regularly by perhaps 20 percent. The main use was for national and international news; and
(viii) Radio was widely owned and listened to (perhaps 90 percent of respondents).

1603. The majority of Tanzanians still have difficulty in accessing technology. Tanzania's telephone density stood at 0.32 telephones per 100 inhabitants in 2005, well below the average for Kenya 0.92 and far below SADC 3.4, Asia 3.86, Europe 35.36 and the world. The situation is changing fast, as many more people subscribe to mobile telephone services. The APRM household survey carried out in August 2008 indicated that 21 percent of the respondents from Mainland had access to technology. This was more or less the same for both males and females. Thus about 80 percent of the respondents had difficult in accessing technology.

1604. The AMSDP study noted that internet services are widely available in all regional towns through internet café and post offices. Smaller town have this service also, but to a lesser degree while villages do not in general have any direct access. The same study found only 3 percent or fewer of villagers have used this service.

Shelter

1605. Information from the Household Budget Survey (2008), shows that the use of modern housing materials has increased in the population as a whole. Nearly a third of all households are constructed with durable walls, a third with non-earth floors and over half with a metal roof. The use of metal roofing sheets is commonest in urban areas. There have been increases

in the use of these materials in all areas since 1991/92, suggesting an increase in household wealth over the period. Improvements since 2000/01 are observed in rural areas and urban areas outside Dar es Salaam. The apparent reduction in the use of these materials in Dar es Salaam since 2000/01 might be due to the growth of peri-urban housing.

Land

1606. Tanzania is largely a country of smallholders, with up to 80 percent of the population, including pastoralists and urban dwellers, depending on agriculture for its livelihood. Land is a key asset, and all attempts to reform land laws are bound to have strong social, political and economic connotations.

1607. Although land appears to be ample, rural areas suffer from a frequency of disputes over land and insecurity of tenure that one would expect to see only in a country with higher density of settlement and hence greater competition for land. To address the growing problems, the country passed the national land policy (NLP) of 1995. The Policy forms the basis of existing Land Laws and addresses four major areas:

(i) Land tenure and administration;
(ii) Surveying and mapping;
(iii)Urban and rural land use planning; and
(iv)Land use management,

1608. The classification intends to respond to what the government identifies as core issues with regards to land matters mainly the value of customary tenures; political pluralism; resolving land conflicts; and land speculation, investment and development. In so doing, the policy recognizes that land problems are not confined only to individual claims to tenure but also involve issues such as the economic use of land, rural and urban development, housing, squatting, the quality and security of title, advancement of agriculture and the protection of the environment which all call for a policy that is holistic and aimed at giving substance to the government's development objective.

1609. The National Land Policy was the basis for the subsequent drafting of the Land Act Bill in 1998, which ultimately formed the basis of the new Land Laws. The Acts maintain the dual land tenure system: statutory or granted rights of occupancy on the one hand, and customary rights of occupancy on the other hand, with the difference that customary land rights are no longer 'deemed' but now also 'granted', therefore with equal status and effect. Land is still centrally managed with the Commissioner of Lands exercising full control. Procedures pertaining to land matters are detailed in the 2001 Land Regulations.

1610. Public land is divided into three categories: (a) general land: all land that is not village or reserved land; (b) village land; land within the jurisdiction of a village, and (c) reserved land which includes forests, national parks, and land reserved for public utilities. This categorization aims to facilitate land management, allocation and administration but it is not uncommon to find provisions relating to Village Lands and customary titles in the Land Act and vice versa. Land can be transferred from one category to another, as it is still liable to acquisition for public interest. Similarly, titles can be revoked on a number of grounds. Payment of compensation is, however, provided in case a right of occupancy is acquired.

1611. The process to formulate the Land Policy occurred parallel with the work of the Land Commission which was appointed by the President in 1991 to inquire into land matter. The Commission identified five areas of concern:

(i) Pervasive insecurity of tenure;
(ii) Radical title vesting in the presidency (powers of control and administration over land);
(iii) Overlapping institutional structures over land allocation and administration, and dispute adjudication;
(iv) Lack of transparency and popular participation in the administration of land; and
(v) Poor institutional structure for adjudication of land rights and disputes.

1612. The Commission found that most Tanzanians, especially in rural areas, do not have security of tenure over land. It also established that the land regime is plagued with structural problems demanding radical interventions. The move towards a land market economy, necessitated a change in Tanzania's land policies as well as traditional notions about the value and ownership of land. Land is now a commodity, attracting market value.

1613. The fundamental tension with regards to land i.e. land as a market commodity on the one hand and protecting the users and occupiers of land on the other, remains unresolved. This results, in part, from the fact that the Land Acts adopt recommendations made by the Land Commission and, Land and Gender Activists in piece meal fashion an approach that can hardly achieve the intended objective. Further, the Land Act of 1999 attempts to address major shortcomings identified in the land structure through interventions that are managerial rather than structural, an approach that falls short of adopting a radical approach to land ownership.

1614. The structural basis of the inequalities in land must be addressed- the cultural dimension of organizations and the societal dimension of gender. Men and women are the product of a biased gender system, simply providing for quotas in organs dealing with land does not guarantee that gender justice will be served. Rather, the key is in heightened awareness on gender issues, on the one hand, and the ideological basis of sexism built on preserving male dominance on the other.

1615. Likewise, participation and equity cannot be realized under the present or recommended structures unless they take into account a transformative culture when organizing and working, one that is not concerned with hierarchies but functional roles. Much remains to be done towards adopting a responsive land tenurial framework. Similarly much needs to be done with respect to conduct concerted advocacy and awareness creation on land laws and regulations not only in what should be but also in monitoring implementation.

1616. Indeed, whether the new legislation is achieving what it intended to achieve remains an open question. Experiences on the ground with regard to the application of the Land Acts and particularly on routine matters such as gazetting of directives, issuance of certificates, registration of titles, adjudication and the payment of compensation remain under researched areas and thus do not inform the content of advocacy agendas. Similarly, there is need to bridge the diverse initiatives and voices concerned with the wider spectrum of land matters to provide a more holistic and comprehensive frame of analysis, on the one hand, and a more representative platform on the other. Nonetheless, the Land Policy and the Land Acts make laudable efforts to counter gender discrimination, but in a context where discriminatory laws in social and property relations continue to exist limiting the impact of an otherwise

progressive legislation. Countering discrimination requires legislative intervention to repeal all discriminatory laws. It is equally imperative to recognize women's agency with regard to land matters and incorporate the same in statutory and customary laws. Meanwhile, effort should be made in safeguarding existing rights, which are often ignored in favour of modern interpretation of property and ownership.

1617. In Zanzibar, MKUZA is the overarching strategy that gives mandate to implementation of interventions leading to the desired outcomes under objective 4. The following are some of the sector policies and strategies:

National Water Policy (2004)

1618. The Zanzibar water policy recognizes the right to adequate and clean and safe water as a prerequisite for sound health conditions. It provides guidance on accessing clean and safe water for people while considering nature conservation.

National Land Use Plan (1995)

1619. Access to arable land is an important prerequisite for agricultural production and thus increased income, food security and nutrition for many rural families. The National Land Use Plan (NLUP) for Zanzibar recognises that agriculture absorbs about 60 percent of the total land area. The Plan advocates security of land tenure to provide access to and control of land resources. However, the current National Land Use Plan does not guarantee security of tenure which should motivate farmers to invest and manage farm properly. The additional policy inadequacy in NLUP is lack of land zoning, which results in encroachment of potential agricultural land. Moreover, there is an inaquate on enforcement of existing land legislation that was enacted to implement NLUP.

Zanzibar Land Husbandry Improvement Strategy and Action Plan (2003)

1620. The strategy outlines the integrated participatory approach towards improving soils and land husbandry practices that could improve and sustain agricultural production and productivity and overcome escalating threats of soil degradation and mismanagement of land resources.

1621. The government has formulated a Microfinance Policy and efforts to develop and implement the National Information Communication Technology (ICT) Policy and Energy Policy are underway.

1622. MKUZA Cluster II has a goal of providing adequate and sustainable human settlements. This is an area that had not been given due attention in the previous poverty reduction strategy. There are several challenges in meeting this goal. The land use plan is not adequately enforced and this has contributed to proliferation of unplanned human settlements in both rural and urban areas. The inadequency in enforcement of the land use plan is partly due to weak inter-institutional linkages and institutional coordination in implementing human settlement plans, and partly due to inadequate human and financial capacity to implement settlement programmes. To address those bottlenecks, the following interventions are envisaged:

(i) Formulating a housing and urban development policy with the objective of ensuring increased and improved access to settlements, particularly in rural areas and among disadvantaged communities;
(ii) Developing a comprehensive action plan for involving the private and non-profit sector, community based organisations and other actors in providing adequate and affordable shelters for people, particularly those belonging to disadvantaged groups;
(iii) Improving institutional coordination in implementing settlement plans; and
(iv) Establishing credit facilities for human settlement to further assist in the provision of decent housing.

Outcomes

Water and Sanitation

1623. The quantity and quality of water supplies in Zanzibar is one of the top priorities. This is because the water demand is not being adequately met and some sources are contaminated. However, while access to water for Zanzibar's population has increased, the supply is still low in certain districts. The latest estimates from the Household Budget Survey (2004/05) indicate that 86.2 percent of households in Zanzibar have access to protected water sources (80 percent rural and 96 percent urban).

Table 6.18: Percentage of Households by Source of Drinking Water and Area

Source of Drinking Water	Area		Total
	Rural	Urban	
Piped Water	**58.7**	**91.7**	**70.8**
Private piped water in Housing	11.8	47.5	24.9
Private piped water outside housing unit	15.6	26.5	19.6
Piped water elsewhere	31.3	17.7	26.3
Other protected Sources	**21.8**	**4.2**	**14.4**
Public well: Protected	18.8	2.5	12.8
Private well: Protected	2.0	1.6	1.9
Spring protected	1.0	0.1	0.7
Unprotected sources	**18.9**	**1.4**	**12.5**
Public well: Unprotected	17.4	1.2	11.4
Private well: Unprotected	0.7	0.2	0.5
Spring: Unprotected	0.7	0.0	0.5
River/dam/lake	0.1	0.0	0.1
Other sources	**0.5**	**2.8**	**1.3**
Total	**100.0**	**100.0**	**100.0**

Source: HBS, (2004/05)

1624. The coverage figures are very similar to those obtained from the APRM household survey where 83 percent reported to have access to improved water sources. This is a big progress compared with, for example, 1991 where only 46 percent of people in rural areas in Unguja had access to improved water sources. In the APRM survey, 62 percent of interviewed households reported to have seen improvement in services within the past five years. When asked about the quality of water supply services, about 81 percent of households reported the quality as average or above. This is despite some sector reports indicating that in many areas the quality of water is not good for peoples' health and plans to address this problem are urgently needed.

1625. Overall, about 90 percent of households have access to protected water supplies, 80 percent of the poorest households have such access. About 11 percent of the general population relies on an unprotected source of water in public wells. The situation is worse among the very poor, as almost 20 percent of them rely on unprotected public wells as their primary water source.

Table 6.19: Source of Drinking Water

Source of Water Supply	Poverty Status			
	Very Poor[393]	Poor[394]	Least Poor[395]	Total
	percent	percent	percent	percent
Private piped water in housing unit	16	22	35	28
Private piped water outside housing unit	15	20	19	19
Piped water on neighbour's housing unit	5	4	4	4
Piped water on community supply	22	21	20	20
Public well: Protected	19	15	10	13
Public well: Unprotected	19	13	8	11
Private well: Protected	2	1	2	2
Other Sources	2	4	3	3
Total	**100**	**100**	**100**	**100**
Total population	**139,150**	**378,969**	**537,806**	**1,055,925**

Source: HBS 2004/05

1626. With regard to sanitation, the 2004/2005 HBS has revealed that 67 percent of the population (50 percent rural and 96 percent urban) is using improved toilets and Ventilated Improved Pits (VIPs). This is an improvement over the situation in 1991, when 48.3 percent had no toilets and only 43 percent had pit latrines. Nearly a half of all households, 46 percent, reported that they throw their garbage outside their compounds[396].

Access to Financial Services

1627. In the financial sector, commercial lending rates have been relatively high, ranging between 13 to 17 percent but negotiated lending rates have been lower ranging between 7 percent and 11 percent. Savings rates, on the other hand, have been extremely low, averaging 2.4 percent since 2002. The challenge is to narrow the spread between lending and savings rates. Micro Finance Institutions (MFIs) have been lending at relatively higher interests rates compared to commercial banks; the average lending rate is about 30 percent. There is a need to reduce the lending rates with a view to attracting more borrowers and hence increase multiplier effects of the loans and create employment opportunities and higher income generation.

1628. Small and Medium Enterprises (SMEs) and individual business ventures have been financed by MFIs. For example, the number of MFIs increased from 62 in 2002 to 86 in 2005 while MFI membership increased from 5,522 in 2002 to 12,203 in 2005; an increase of 121 percent. The money lent out by MFIs amounted to TShs 4,491.76 million by May 2005.

1629. Despite the increase in the number of facilities, membership and money lent out, perceptions from the APRM household survey carried out in August 2008 showed that 60

393 Population who cannot afford food and basic needs.
394 Population who cannot afford basic needs.
395 Population who can afford to attain food and basic needs.

percent of the respondents in Zanzibar expressed difficulty in accessing credit, while 40 percnt felt that they could access credit. Responses for both male and female respondents were almost the same whereby 38 percent and 42 percent respectively reported that they had access to credit. In rural areas a greater percentage of women (43 percent) than men (36 percent) reported that they had the possibility of accessing credit. In urban areas both male and female respondents reported equal possibilities of accessing credit. The respondents proposed for establishment of Development Bank in Zanzibar as one outlet that can facilitate access to credit.

Shelter

1630. Dwelling units show greater use of modern construction materials. About 62 percent of Zanzibaris roof their dwellings using metal sheets, 37 percent have concrete/cement/stone or baked/burnt brick walls, and 56 percent have floor furnished by concrete/cement/tiles or timber.

Table 6.20: Construction Materials of Main Dwelling Unit by Area (percentage)

Material	Area		
	Rural	**Urban**	**Total**
Floor			
Earth	60.2	14.2	43.3
Concrete/cement/tiles/timber	39.4	85.2	56.2
Other	0.4	0.6	0.5
Total	**100.0**	**100.0**	**100.0**
Wall			
Poles + branches/grass	17.3	3.5	12.2
Poles/mud/stone	50.6	22.3	40.2
Mud + poles	6.8	2.3	5.1
Mud bricks	3.6	6.9	4.8
Baked/burnt bricks	0.4	0.9	0.6
Concrete/cement/stone	21.1	64.1	36.9
Others	0.3	0.0	0.2
Total	**100.0**	**100.0**	**100.0**
Roof			
Grass/leaves	47.4	12.9	34.7
Concrete	0.8	4.5	2.1
Metal sheets	50.6	81.1	61.8
Asbestos sheets	0.2	0.4	0.3
Metal tiles	0.3	0.4	0.3
Cement/clay tiles	0.5	0.6	0.6
Others	0.1	0.1	0.1
Total	**100.0**	**100.0**	**100.0**

Source: HBS (2004/05)

1631. More than 90 percent of the households dwelling units in rural areas lack electricity, compared to less than half (43 percent) of the households in urban areas. Only 25 percent of households use electricity as their main source of energy for lighting as opposed to three quarters (73 percent) of households who depend on paraffin.

Objective Five: Progress towards Gender Equality in all Critical Areas of Concern

Legal Provisions

1632. The overall framework for legal and human rights for women and men is the Constitution (1977), its various amendments and the Bill of Rights (1984). The Constitution states that all persons are born equal and are entitled to recognition and respect. In the 13th amendment of the Constitution, article 13(4) clearly states that no person shall be discriminated against by any person or any authority acting under any law or in the discharge of the functions of business of any state office. Discrimination is further defined under Section (5) to mean "satisfy the needs, of different persons on the basis of nationality, tribe, gender, places of origin, political opinion, color, religion or station in life such that certain categories of people are regarded as weak or inferior and are subjected to restrictions of conditions whereas persons of other categories are treated differently or accorded opportunities or advantage outside the specified conditions or the prescribed necessary qualifications".

1633. Tanzania is also committed to the implementation of several regional and international protocols including:

(i) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
(ii) The Beijing Declaration and Platform for Action;
(iii) The Optional Protocol on CEDAW;
(iv) Optional Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa;
(v) AU Declaration on Gender Equality;
(vi) Millennium Development Goals (MDGs); and
(vii) SADC Declaration on Gender Development and the Addendum on the Prevention and Eradication of Violence Against Women and Children.

1634. Article 2(f) of CEDAW calls for elimination of all forms of existing laws, regulations, customs and practices which constitute discrimination against women. The Government's Law Reform Commission in 1990 reviewed laws to bring them in line with the Constitution and Bill of Rights. Twelve pieces of legislation which in one way or another were found to be discriminatory against women were recommended for revision. These are the Law of Marriage Act of 1971; the Probation of Offenders Ordinance of 1962; the Affiliation Ordinance of 1964; the Adoption Ordinance of 1964; the Disabled Persons (care and maintenance) Act of 1982; the Employment Ordinance Cap 366; the Education Act No.25 of 1978; the Penal Code Cap 16; the Age of Majority (Citizenship) Act No24 of 1970; the Customary Law Declaration Order of 1963 and the Probate and Administration (Deceased Estates) Ordinance Cap 445. Many of these legislations remain to be revised.

1635. The Government has also enacted new laws to promote gender equality: the Sexual Offenses (Special Provisions) Act (SOSPA) of 1998 (now part of the penal code), Land Act No.4 of 1999 and Village Land Act No.5 of 1999. The two pieces of legislation on land enhances gender equality by giving women and men the right to own land on equal status.

Institutions, Policies and Programmes

1636. Tanzania has put in place institutions, policies and programmes both at national, sectoral and local levels to promote social transformation and gender mainstreaming in all identified areas of concern. Gender equity and equality objectives are included in both Development Vision 2025 and the PRS/MKUKUTA, with specific sections stipulating that gender imbalances contribute to poverty and articulating a vision for gender equity by 2025. Vision 2025 states that "by the year 2025, racial and gender imbalances will have been redressed such that economic activities will not be identifiable by gender or race. All social relations and processes which manifest and breed inequality in all aspects of society (law, politics, employment, education and culture) will have been reformed" (Vision 2025, page 3). MKUKUTA states that "gender biases in favor of males for instance in terms of land (property) or girl's access to education add to the pain of poverty by reducing current and prospective earning of females. In this regard eradicating these biases is a critical challenge''. MKUKUTA also went further to name gender specific strategies in the different clusters (see Annex 2) and wherever possible the MKUKUTA Monitoring System provides data on indicators disaggregated by gender.

1637. In 2000 the Government revised and approved a gender policy known as "Women and Gender Policy." The main objective of the policy is to provide guidelines to ensure that plans, strategies and operations in leadership and development activities in all sectors and institutions observe gender balance. The Ministry of Community Development, Women Affairs and Children was thereafter renamed the Ministry of Community Development, Gender and Children (MCDGC) in 2002. MCDGC is mandated to be the lead ministry for gender and women advancement and central to the coordination and advocacy for gender mainstreaming in all sectors. Also in 2002, the Government established Gender Focal Points in all Ministries, Independent Departments, Agencies, Regional Secretariats and Local Authorities. The measure provides an opportunity for gender to be mainstreamed in policies, strategies and programmes of those institutions and structures and for easy monitoring of progress on gender indicators.

1638. Gender Responsive Budgeting (GRB) which Tanzania has embarked on is worth mentioning as a best practice in equitable allocating of resources. GRB is about ensuring that government budgets and the policies and programs that underlie them address the needs and interests of individuals that belong to different social groups. Thus, GRB looks at biases that can arise because a person is male or female, but at the same time considers disadvantage suffered as a result of ethnicity, caste, class or poverty status, location and age. GRB is not about separate budgets for women or men nor about budgets divided equally. It is about determining where the needs of men and women are the same, and where they differ. Where the needs are different, allocations should be different

1639. The gender budgets initiative initiated in Tanzania by TGNP has been conducted in two phases. The first phase which extended from 1997-2000 focused primarily on information collection, research and dissemination, and capacity building. The second phase of this process, starting in the year 2001, has focused on influencing the macro-economic policies and frameworks to adopt gender while continuing its investment in data collection and capacity building of various budgeting actors.

1640. The second phase of the initiative launched a campaign for gender responsive budgeting as a policy advocacy tool. The focus of the campaign was to mobilize the general public and civil society in order to strengthen their capacity to demand for participation in

planning, budgeting and implementing as well as monitoring development programmes and allocation of resources, with the key results in this area including:

(i) Willingness of the government of Tanzania to link gender budget work with the ongoing macroeconomic policy processes (GDP, SAM, and MACMOD) is a good indication of further institutionalization of gender budgeting in Tanzania's budgetary and planning processes;
(ii) The effort of Tanzania government to attempt to institutionalize gender budgeting work in macro economic modeling provides a role model to other regional countries as well those countries outside Africa;
(iii) Gender budgeting work has broken new grounds for closer collaboration between key government policy and planning departments and the civil society organizations. National Bureau of Statistics (NBS), for example, has been working closely with TGNP in trying to mainstream unpaid labor into macro-economic models used to forecast economic growth such as GDP. As a result, the National Bureau of Statistics has agreed to include Time–Use survey as part of its Integrated Labor force Survey; and
(iv) Gender budgeting work continues to draw support from different stakeholders such as donors' Gender Desks under Gender MACRO Policy Group (GMPWG) who have become interested in the issue of Time-Use survey and started selling the idea to solicit financial support for the activity.

1641. There are several CSOs and networks dedicated to advocating for gender equality who work hand in hand with the Government. The following institutions/networks are worth noting; Tanzania Gender Networking Programme (TGN), Feminist Activist Coalition (FemAct), Tanzania Media Women Association (TAMWA), Legal and Human Rights Centre (LHRC), and Tanzania Women Lawyers' Association (TAWLA).

1642. Apart from progress outlined above, the following other initiatives to promote gender equity and equality are worth noting as indicated below:

Table 6.21: Key National and Sector Initiatives to Promote Gender Equity and Equality

Year	Institution	Instrument Developed/Initiated	Commitment
1997	Vice Presidents' Office	National Environment Policy	Recognises the need to involve women in environmental protection and sharing of benefits from environmental resources
1999	Ministry of Lands, Housing and Human Settlement Development	Land Act No 4 of 1999 and the Village Land Act No 5 of 1999 *[Legislation]*	Legal framework to address issues of rights to land of both women and men
1999	Ministry of Education and Vocational Training	Complimentary Basic Education in Tanzania (COBET)	Giving children who dropped out of primary school or unable to enroll into primary school, opportunity to undertake primary education in 3 years instead of 7 (girls form majority of this group)
2000	Ministry of Finance (Central Bank)	National Microfinance Policy (2000)	Provides guidelines to achieve gender equity in accessing financial services to empower

Year	Institution	Instrument Developed/Initiated	Commitment
			women economically
2000	Ministry of Community Development Gender and Children (MCDGC)	Women Development Fund (WDF)	Provides soft loans to women for economic activities. In 2000, the fund lowered interest rates from 24 percent to 10 percent to make credit terms easier at local level.
2000	Prime Minister's Office	HIV and AIDS policy	Formation of TACAIDS in 2001 and a NMSF to address the pandemic with a greater awareness of the gender specific aspects of HIV and AIDS
2001	Ministry of Finance in collaboration with TGNP	Gender Budget Initiative	Development of Gender Budgeting Checklist to provide guide to gender responsive budgeting in all MDAs. This initiative has been taken aboard in the budget guidelines.
2001	Ministry of Education and Vocational Training	Primary Education Development Programme (PEDP)	Enrolment of all school aged girls and boys. PEDP has helped to move towards gender parity in primary education
2001	Ministry of Science and Higher Education	University of Dar es Salaam Girl Student Access Enhancement Programme Female Undergraduate scholarship programme	Offer remedial classes to female students Scholarships to female undergraduate students
2002	MCDGC	National Plan of Action to Combat Female Genital Mutilation 2001-2015 National Plan of Action to Combat Violence Against Women	
	Presidents Office – Public Service Management	Civil Service Capacity Building Fund	Targets women in middle levels
2003	Ministry of Labour, and Youth Development	Employment and Labour Relations Act 2004	Provides for equal opportunities to men and women in access to employment services and requires employers to report on their plan to promote equal opportunities. Protects women employees during pregnancy by providing social security hence shifting the cost from the employer to social security funds.
2003	Prime Minister's Office	Community Based Strategic Framework for Protection of	Emphases involvement of people in combating HIV and

Year	Institution	Instrument Developed/Initiated	Commitment
		Women and Children Against HIV and AIDS (2001-200)	AIDS
2004	Ministry of Justice and Constitutional Affairs	Constitutional Amendment	Increased the proportion of women in parliament from 15 percent in 1995 to 20 percent in 2000 and 30 percent in 2004 and increased Local Authorities Special Seats for women from 25 percent in 2000 to 33.3 percent in 2004
2005	Ministry of Community Development Gender and Children	National Strategy for Gender Development, 2005	Provides framework for guiding implementation of the Women and Gender Development Policy, laws and programmes
2006	Ministry of Education and Vocational Training (MoEVT)	MoEVT Gender Strategy	MoEVT has issued a guide to primary school teachers on 'Gender Friendly Schools' and guide to gender friendly curriculum development

Source: Gender Mainstreaming Working Group for Macro Policies, 2006

1643. Based on the above, Tanzania has made positive steps in providing a legal and policy framework for promoting gender equality. But are these good policies and programmes enough to achieve equality?

1644. The overwhelming majority of experts (89 percent) interviewed for the APRM survey indicated that there has been good progress towards gender equality in the past five years. According to the household survey, more than half of ordinary Tanzanians – 54 percent in rural and 60 percent in urban areas - also hold similar views. In both locations fewer women than men believe that Tanzania has made good progress towards gender equality (50 percent vs 59 percent in rural and 57 percent vs 63 percent in urban areas).

1645. These views are not far from what past assessment reports and the progress on indicators say about gender. They acknowledge that gender indicators are moving in a positive direction but also point to substantial remaining challenges.

Trends in Gender Related Indicators

1646. Presented below are trends in gender indicators as compiled from several reports.[397] Some of the gender relevant indicators have already been presented in earlier sections and therefore will not be repeated here. These include sex disaggregated data on education (access for primary and secondary schools), and information about maternal deaths, all provided under Objective Three.

[397] Information for the various indicators has been compiled from various Sector Reports, TGNP (2007), URT (2004), URT (2005) Poverty and Human Development Report

Gender Ratios at Higher Levels of Education and Training

1647. Information in the table below shows male and female enrolment in tertiary education and vocational training. Despite steady improvement in numbers of females, more efforts are needed to enroll more girls as the gap is still too high.

Table 6.22: Number Students Enrolled in Higher Learning Institutions for year 2001/02 - 2005/06, by Sex

Category	2001/2002		2002/2003		2003/2004		2004/2005		2005/2006		2006/2007	
	Male	*Female*	*Male*	*Female*	*Male*	*Female*	*Male*	*Female*	*Male*	*Female*	*Male*	*Female*
Public Universities	12828	4142	13871	7536	20566	8344	22784	11329	24496	11110	27937	13341
Private Universities	1084	652	1221	819	1704	1060	2277	1277	3240	2035	6719	4033
Technical Institutions	2065	158	2090	202	1858	245	1895	347	2201	509	2777	767
Institutions of other ministries.	1725	949	3395	1629	4274	2133	5498	2829	7474	4231	11559	8213
Total	**17702**	**5901**	**20577**	**10186**	**28402**	**11782**	**32454**	**15782**	**37331**	**17803**	**48992**	**26354**

Source: Basic Statistics on Higher Education, Science and Technology 2001/02 - 2005/06. July 2006

Women in Decision Making Positions

1648. The table below provides a snapshot of women and men in leadership and decision making positions from 2003 to 2006. As noted in Table 6.23, there has been a steady increase in number of women in such positions but more need to be done if gender parity in decision making positions is to be realized.

Table 6. 23: Women and Men in Public Decision-Making Positions

Decision Making Position	Number of Women			Number of Men			% Women		
	2003	2004	2006	2003	2004	2006	2003	2004	2006
Ministers	4	4	6	23	23	23	15	15	21.5
Deputy Ministers	5	5	10	12	12	51	29	29	32
Constituency Members of Parliament	63	63	97	213	213	213	22.5	22.5	30.4
Nominated MPs	12	12	19			218		5	5
MPs Special Seats		48	48					100	100
Appointed MPs		2	2		8	8		20	20
Regional Commissioners	1	2	2	19	19	19	5	10	10
Regional Administrative Secretaries		4	5	20	17	17		19	23
District Commissioners	19	19	23	88	88	84	20	18	21
District Administrative Secretaries	20	14	14	89	85	85	10	14	14
District Executive Directors		14	23		86	86		14	21
Permanent Secretaries	4	6	7	21	19	18	16	24	28
Deputy PSs					7	7			
Directors		29	30		83	83		26	26
Commissioners		2	3		16	16		11	15

Ambassadors	1	1	1	29	34	34	3	3	3
Chief Justice					1	1			
Referral Court Judges			1			8			11
High Court Judges	3	6	7	33	33	42	9	14	16
Magistrates		33	33		82	82		29	0

Source: President's Office – Public Service Management

Participation of Women in Key Economic Activities and Employment

1649. Economic empowerment of women remains a very hard challenge for Tanzania. Through various initiatives as outlined earlier, the Government and other stakeholders are working to enhance/create opportunities for women to take a bigger role on the economy.

1650. Available data show that the employment ratio, the proportion of the population aged 15 years and above that is employed, increased from 69.3 percent to 71.0 percent between 2001 and 2006. The male ratio increased from 71.4 percent to 72.6 percent and the female ratio increased from 67.4 percent to 69.6 percent. The female employment ratio thus increased by 2.2 percentage points compared to 1.2 points for males.

1651. The proportion of females working in agriculture (78.9 percent) is slightly more than that of males (70.2 percent). In Dar es Salaam, almost a third (31.4 percent) of employed females are working in elementary occupations compared to only 12.3 percent of males. In contrast, the proportion of females in white-collar jobs is less than that of males regardless of the geographical area. Women are thus more involved in occupations which typically have lower earnings.

Table 6.24: Currently Employed Persons by Occupation, Sex and Area, 2006 (percent)

Occupation	Male				Female				Total			
	DSM	Other Urban	Rural	Total	DSM	Other Urban	Rural	Total	DSM	Other Urban	Rural	Total
Legislators and Administrators	1.2	0.5	0.2	**0.3**	0.4	0.2	0.0	**0.1**	0.8	0.3	0.1	**0.2**
Professionals	3.8	2.1	0.2	**0.9**	2.7	1.3	0.1	**0.5**	3.4	1.7	0.2	**0.7**
Technicians and Associate Professionals	5.4	4.3	1.4	**2.2**	4.8	3.6	0.7	**1.4**	5.1	3.9	1.0	**1.8**
Office Clerks	2.0	1.2	0.1	**0.4**	3.2	0.8	0.1	**0.4**	2.5	1.0	0.1	**0.4**
Service and Shop Sales Workers	33.0	23.4	4.1	**10.0**	36.2	24.2	2.4	**8.2**	34.4	23.8	3.2	**9.1**
Agricultural and Fishery Workers	11.2	38.8	84.7	**70.2**	15.8	47.8	90.9	**78.9**	13.2	43.4	88.0	**74.7**
Craft and Related Workers	20.7	14.3	3.4	**6.8**	4.6	5.1	0.6	**1.6**	13.8	9.6	2.0	**4.1**
Plant and Machine Operators and Assemblers	10.6	5.8	0.7	**2.5**	0.9	0.9	0.1	**0.3**	6.4	3.3	0.4	**1.3**

Elementary Occupations	12.3	9.7	5.1	**6.6**	31.4	16.2	5.0	**8.6**	20.5	13.0	5.1	**7.6**
Total	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**	**100.0**

Source: NBS, Analytical Report for Integrated Labour Force Survey (ILFS) 2006, Tanzania Mainland

1652. Women and men are encouraged to form productive groups and join SACCOS and Community Banks to bolster their chances of receiving grants/capital for micro enterprises. Data from the then Ministry of Cooperatives and Marketing (MoCM) in 2004 shows that over 60 percent of the established groups are rural based. In 2002 there were 26,667 women members in SACCOS (17 percent) of the total membership. In 2003 and 2005, women's representation had risen to 32,728 (20 percent) and 85,949 (34 percent) (MoCM, 2004).

Challenges in Gender Mainstreaming

1653. Despite the positive performance reported in the many assessment reports, there are persistent views that translation of the good policies into implementation plans with realistic targets and with resources is yet to take place effectively[398] thus constraining optimal progress. Some of the challenges are elaborated below:

1654. The major challenge remains that of changing mindsets - social transformation of gender relations and women's empowerment. There is need to enhance understanding of the human rights of women in the following areas:

(i) Poor people, men and women, often fail to exercise their rights for lack of awareness of their legal rights and due to[399] structural and financial constraints and inadequate support from local institutions. Tanzania has a three tiered legal system: customary, religious and statutory law. Most cases from the grassroots level are heard at primary courts which in practice gives precedence to customary laws (the legal system has not been able to override regressive customary practices). The multi-tiered judicial system also poses structural constraints for poor people to access legal redress. It is costly for people at the grassroots level to access services and higher levels of appeal if judgment under customary law is based on patriarchal interpretation of the rights of men and women and therefore favours the former. As such women specifically may not be in a position to reap the benefits of favourable statutory law and some choose not to confront the situation in order to reduce conflict within the household and the community at large; and

(ii) Some of the pieces of legislation are still under review and there has been much debate about the reasons for delays. One law which has been a subject of much debate is the Marriage Act 1971.

Economic empowerment of women remains the biggest challenge in the formal, the private, and the informal sector:

398 Economic Commission for Africa and TGNP (2003) African Gender Development Index- Tanzania Report TGNP (2007) Gender Profile of Tanzania: Enhancing Gender Equity United Republic of Tanzania (2004), Country report on Implementation of The Beijing Platform for Action and the Outcome Document of the 23rd Special Session of the General Assembly

399 For example, many people remain ignorant of their rights under the 1999 Land Act, including women's rights of inheritance.

- Raising the economic status of the rural and urban poor in the informal sector is still a major challenge. A secondary challenge is how to facilitate women's movement from informal to the formal sector;
- In the formal sector, the average income of men was almost twice that of women, even in cases where educational qualifications were at par (TGNP and ECA, 2003); and
- 2006 ILFS indicates high rates of unemployment for women in Dar es Salaam and other urban areas compared to men (3.30).

Gender Mainstreaming and Budgeting:

- In spite of greater awareness of gender mainstreaming within the Government, the practice of mainstreaming is still inadequate in most MDAs due to both capacity and structural constraints. Gender Focal Points face resource constraints and their position within most MDAs is not officially recognised and given due support. In addition, tracking of financial resources for gender specific outputs is not easy due to uncoordinated programmes and the absence of a specific code in the MTEFs.

Provision of social services:

- Persistent problems in reproductive and maternal health services as well as those in education have been discussed under Objective Three.

1655. In Zanzibar, gender has been recognised as a cross-cutting issue in MKUZA, addressed in all the three Clusters of MKUZA, and the Monitoring System reports data disaggregated by gender. In 1992 the Government established the Ministry of Labour, Youth, Women and Children Development. Further, each MDA has a gender focal point.

1656. Despite the efforts and affirmative actions to mainstream gender in the development process, there are still a number of challenges in this area. These include the perpetuation of development-inhibiting socio-cultural practices; gender issues not being fully mainstreamed in public policies and programmes; and gender- based violence, which is still common.

Specific Gender Related Targets

1657. MKUZA's monitoring and evaluation indicators/targets are disaggregated by gender as much as possible. The table below provides examples of gender-disaggregated indicators in education, as presented in the MKUZA Monitoring Master Plan.[400] .

Table 6.25: Gender-disaggregated Indicators in Education

Operational targets	Indicator	Baseline and year	Source of data	Time
Early childhood care and development -Increase gross enrollment rate for pre-school from 15.9 percent in 2005 to 50 percent in 2010.	GER at pre-primary by sex and district	15.9 percent in 2005	MoEVT (school census)	Annually
	NER at preprimary by sex and districts			

[400] RGoZ (2007), "MKUZA Monitoring Master Plan," Ministry of Finance and Economic Affair.

Primary education - increase net enrollment rate from 77 percent in 2005 to 90 percent in 2010	Net Intake Rate by sex and district		MoEVT (school census)	Annually
	NER at primary by sex and district	77 percent in 2005		

Source: RGoZ (2007), MKUZA Monitoring Master Plan.

Progress in Achieving Gender Equality

1658. In order to ensure greater and effective participation by women, the constitution of Zanzibar was reviewed in 2003. This move led to a further increase in the percentage of special seats for women in the House of Representatives from 25 percent to 30 percent. Despite efforts such as these, women continue to be under represented at various levels of decision making as shown in the table below.

Table 6. 26: Representation of women in decision-making positions

Positions	Male		Female		Total	
	2000	2006	2000	2006	2000	2006
Members of the House of Representatives	60	61	19	18	79	79
Ministers	11	9	1	4	12	13
Deputy Ministers	4	5	1	1	5	6
Principal Secretaries	11	14	1	1	12	15
Deputy Principal Secretaries	7	8	2	2	9	10
Regional Commissioners	5	5	0	0	5	5
District Commissioners	9	9	1	1	10	10

Source: Ministry of Labour, Youth, Women and Children Development (2006)

1659. The APRM survey sought general views on the status of gender equality in Zanzibar. Almost 60 percent of those interviewed reported that there is gender equality in Zanzibar, and responses were similar from men and from women. About 20 percent disagreed, while the remaining 20 percent had no opinion on the matter.

1660. When asked about their views regarding government's efforts towards achieving gender equality, 47 percent of households acknowledged them. More men (51 percent) than women (42 percent) commended government efforts but 15 percent had no opinion on the matter. The remaining 38 percent feel that the government is not putting much effort in this matter. Although this is not the majority, it is still a substantial proportion of the population, and may reflect the remaining challenges.

1661. It is worth noting that gender is one of cross cutting issues addressed in MKUZA and several efforts have been directed towards mainstreaming gender in all development processes. As such all MKUZA monitoring and evaluation indicators/targets are disaggregated by gender as much as possible. Although gender gap has almost closed at primary school, there are still a number of challenges in this area. These include perpetuation of development-inhibiting socio-cultural practices, gender issues not being fully mainstreamed in public policies and programs, gender based violence is still common, and

insufficient support to vulnerable groups such as women, youth, children and people with disabilities.

Objective Six: Encourage Broad-Based Participation in Development by All Stakeholders at All Levels

Introduction

1662. This objective aims at ensuring that all categories of stakeholders in the State are given an opportunity to participate in decision making processes which have a bearing on their livelihood. The NEPAD instrument clearly spells out the indicators to use in measuring effective participation. The indicators to be assessed relate to the following:

(i) Evidence of legal, policy and institutional steps to ensure broad based participation in the development process by all stakeholders including civil society, private sector, media, rural communities, women groups, minorities and marginalized groups;
(ii) Evidence of governance systems, particularly with regards to budgeting and disbursements system;
(iii)Evidence of real practices of broad based participation; and
(iv) Evidence of identification of challenges and interventions taken to sustain progress.

1663. Institutional mechanisms aimed at promoting and encouraging participation are expected to exist within sectors and within the various levels of government i.e. local and central government. This assessment will therefore be looking for national institutions e.g. commissions, councils, task forces, technical working groups, committees and sector committees or working groups which in one way or another contribute towards the targets of the objective.

1664. Various instruments have been put in place in Tanzania to pave the way for the participation of stakeholders in government activities and for formation of institutions (committees, working groups and associations etc) which enhance and ensure that stakeholders participate effectively in activities that concern them. These instruments are in the form of legal frameworks (the Constitution and other legal instruments), national policies (sector based), and regulations/guidelines, operating manuals, circulars and directives.

Legal Framework Enhancing Participation

1665. The country has in place various legal instruments which encourage broad-based participation in development by all key stakeholders at all levels. These ranges from the Constitution and other enacted laws to quasi-legal instruments such as circulars and sectoral guidelines. They are described below:

(i) Article 8.-(1) The United Republic of Tanzania is a state which adheres to the principles of democracy and social justice;
(ii) Sovereignty resides in the people and it is from the people that the Government through this Constitution shall derive all its power and authority;
(iii) The primary objective of the Government shall be the welfare of the people;

(iv) The Government shall be accountable to the people; and the people shall participate in the affairs of their Government in accordance with the provisions of this Constitution;

(v) Article 18. - (1) Every person has the right to freedom of opinion and expression, and to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers, and also has the right of freedom from interference with his communications;

(vi) Article 18. - (2) Every citizen has the right to be informed at all times of various events in the country and in the world at large which are of importance to the lives and activities of the people and also of issues of importance to society;

(vii) Article 21. -(1) Subject to the provisions of Article 5, 39 and 67 of this Constitution and of the laws of the land in connection with the conditions for electing and being elected or for appointing and being appointed to take in matters related to governance of the country, every citizen of the United Republic is entitled to take part in matters pertaining to the governance of the country, either directly or through representatives freely elected by the people, in conformity with the procedures laid down by, or in accordance with, the law;

(viii) Article 21- (2) Every citizen has the right and the freedom to participate fully in the process leading to the decision on matters affecting him, his well-being or the nation;

(ix) In recognition of the people's role in spearheading socio-economic development, the Constitution provides for the establishment of local government authorities which are empowered to make decisions affecting their livelihood, and more important to have the people involved in making decisions relating to their development;

(x) Article 145.- (1): There shall be established local government authorities in each region, district, urban area and village in the United Republic, which shall be of the type and designation prescribed by law to be enacted by Parliament or by the House of Representatives; and

(xi) Article 146.- (1): The purpose of having local government authorities is to transfer authority to the people. Local government authorities shall have the right and power to participate, and to involve the people in the planning and implementation of development programmes within their respective areas and generally throughout the country.

The Local Government Laws

1666. The Local Government Laws of 1982 put in place the mechanisms for people's participation in important socio-political and economic decisions affecting their lives. In the area of finances, the Local Government Finance Act no. 9 of 1982 takes the issue of access to information specified in the Constitution to a new level by specifying broadly the sort of information that should be disclosed to people. The specified requirements are amplified through the Local Government Financial memorandum.

Local Government Financial Memorandum, 1997

1667. The Local Authority Financial Memorandum has been prepared pursuant to sec. 42 of the Local Government Finance Act no. 9 of 1982. It further operationalises access to

information in a more practical sense. For example, the memorandum provides details of responsibilities of the various Council officers and Council organs including the Full Council with respect to financial management in a council. These officers include the District Executive Director (DED), the District Treasurer (DT), and the Internal Auditor (IA). The Memorandum also provides for ways in which financial reports prepared by the Council will be shared among the various stakeholders/users - publication of financial statements in newspapers, postings on the notice board, etc. Some of the most important orders in the Memorandum which have a bearing on participation are presented below.

1668. Order 89 requires that audited reports shall be tabled before the Finance Committee and later before the Council. There is an implicit assumption that once the Full Council is informed about the use of financial resources within a district, that same information will be passed down to communities, and that communities will be informed about how resources have been used. However, recent studies (see Mushi and Melyoki, 2005) have found that even Councilors are usually not well informed about how resources have been used in their own district.

1669. Order 90 states that the Council shall undertake to publish at its own offices and in the local newspaper within its area the audited consolidated balance sheet and statement of income and expenditure (abstract of Accounts); and the signed audit reports on the accounts. It further requires that publication of the accounts and audit report shall be made within six months of the receipt of the report of the auditor in compliance with the requirements of section 49 of the Local Government Finance Act no. 9 Act of 1982.

PMO-RALG Planning and Budget Guidelines

1670. In addition to the laws requiring the executive and the representatives to provide information to the people, every year the government issues guidelines pursuant to the Public Finance Act 2001, specifying how the stakeholders in the councils are to be involved in the planning and budgeting processes. For example, the Medium Term Plan and Budget Guidelines for preparation of Plans and Budgets for 2005-2008 addresses issues of transparency and participation. The Guidelines encourage Local Governments to share plans and budgets with a number of stakeholders including civil society organisations. For example:

(i) s. 56 requires Heads of Department in the local authorities to follow a participatory planning process from the grassroots level to the District level; to submit proposals of projects and estimates of the costs for delivery of services to the relevant Council Committee meeting in which stakeholders and the civil society organisations operating in the council's area of jurisdiction should participate;

(ii) s. 59 requires the Council Director to publicise widely the date of the meeting of the Council that shall approve the plan and the budget in order to facilitate attendance to those who want to listen to the intentions and targets of the Council for the following year;

(iii) s. 60 requires that copies of the plan and budget that have been approved by the Council should be sent to the Regional Administrative Secretariat (RAS), District Commissioner (DC) and major stakeholders at the regional/Council levels such as NGOs, CBOs; and

(iv) s. 61 requires the approved plan and budget to be posted at public places of the Council offices and extracts of the plan and budget should be posted in public places in the Wards, Villages and *Mitaa*.[401]

LGRP Assessment Manual and the Local Government Capital Development Grant (LGCDG) System

1671. The Local Government Reform Programme (LGRP) has included financial transparency in its assessment manual as one of the criteria against which Local Governments will be assessed annually under the performance measures. According to the manual, assessment will include looking at whether information is displayed on notice boards for the people's attention. This includes the following:

(i) The posting of Indicative Planning Figures (IPFs) for Wards and Villages/Mitaa for the current financial year at the respective Council headquarters and other public places. Under the LGCDG, the national Indicative Planning Figures within which sub-districts (Ward and Villages/*Mitaa*) can plan will be used; 50 percent of the Capital Development Grant (CDG) will be planned at the District/Urban Council level and 50 percent at the sub-district level;
(ii) The posting of approved projects of Council for the current financial year at the Council offices, sub-district offices and other public places;
Communication to sub-district level of information on projects to be implemented in their respective areas in the current financial year using CDG and Capacity Building Grants (CBG);[402]
(iii) Posting of summary annual budgets plans and audited accounts on public notice board at the LGA offices;
(iv) Evidence that participatory planning procedures have been adhered to in accordance with the planning guidelines;
(v) That the planning process shows evidence of the participation of other stakeholders – which would be shown in the minutes of the work of the planning officer; and
(vi) Demonstrating that gender and environmental issues have been integrated into planning.

1672. It should be noted that with respect to financial transparency and accountability, the LGRP assessment manual actually assesses districts in terms of the extent to which they satisfy the requirements of financial transparency as stipulated in the Local Government Financial Memorandum.[403] Failure to adhere to the criteria results in the council missing development funds.

Policy Framework

1673. The government has various policies which guide socio-economic development activities in the country. Most of these policies provide participatory space for the people.

401 Mtaa is the lowest level of government in the urban Councils while a village is the lowest level of government in the rural councils.

402 Development Grants issued to the Councils carry different names with earmarked purpose.

Policy of Decentralisation by Devolution (D by D)

1674. The Tanzanian local government system is based on political devolution and decentralisation of functions and finances within the framework of a unitary state. The policy states that local governments will be holistic, i.e. multi-sectoral, government units with a legal status (body corporate) operating on the basis of discretionary, but general powers under the legal framework constituted by the national legislation.

1675. Decentralisation of government includes political decentralisation, which is devolution of powers and the setting of the rules for councils and committees, the chairpersons etc, including the integration of the previously centralised service sectors into a holistic local government system installing councils as the most important local, political body within its jurisdiction. Financial decentralisation is based on a definition of the principles of financial discretionary powers of local councils, i.e. powers to levy local taxes and the obligation of central government to supply local governments with adequate unconditional grants and other forms of grants. The principle also allows local councils to pass their own budgets reflecting their own priorities, as well as including mandatory expenditure required for the attainment of national standards. Administrative decentralisation makes local government staff accountable to local councils. The role of central government versus local councils is changed into a system of inter-governmental relations with central government having the over-riding powers within the framework of the Constitution. Line ministries change their role and functions into becoming:

(i) Policy making bodies;
(ii) Supportive and capacity building bodies;
(iv) Monitoring and quality assurance bodies within the local government legislation framework;
(v) Regulating bodies (legal control and audit); and
(vi) The Minister responsible for local government to co-ordinate central-local relations

1676. Under D by D, the people are empowered to make decisions. The roles of the various stakeholders at the Council and sub district levels are clearly defined. These D by D principles are an important element of downward accountability, because it is the success of D by D that determines its practicability, by limiting excessive demand for upward accountability that may potentially limit council's capacity and willingness to be accountable to the electorates and service users.

Other Sector Specific Policies

1677. Sector policies also emphasise the need for the people to be involved in the planning, implementation and monitoring of programmes undertaken by the sector. A few examples are indicated below:

National Water Policy

1678. The Policy is cognisant of the fact that water management and development should be based on a participatory approach, involving users, planners, and policy makers in respect of catchment areas and formation of catchment water committees;

1679. The policy states that the large size of our River Basins makes water management difficult since basin staff are distant from water users. In order to remedy this, catchment

water committees and sub-catchment water committees will be established, and will be composed of representatives from the public and private sector, and from the Water User Associations within the respective basin. The role of the Catchment Water Board includes preparation and implementation of catchment plans, and resolution of conflicts within the catchments. Women play central role in the use, management and protection of water resources and thus should be involved fully in the decision making process.

1680. Water User Associations (WUAs) or Water User Groups (WUGs) are the lowest appropriate level of management. These associations are to be responsible for local level management of allocated water resources, mediation of disputes among users and between groups within their areas of jurisdiction, collection of various data and information. They participate in the preparation of water utilisation plans, conservation and protection of water sources, and catchment areas, efficient and effective water use and ensuring return flows, enforcement of the law and implementation of conditions of water rights, and control of pollution. They provide legitimate representatives in basin boards and catchment committees.

1681. Communities in general play a major role in the water sector because they are the primary users, guardians and managers of water sources. Participation of both men and women in decision-making, planning, management and implementation of water resources management and development is to be enhanced. Youth and children as the future managers of water resources have to be involved from the early stages for better management and future sustainability. Youth and children will be educated in the management, protection, conservation and development of water resources.

1682. Sustainability of rural water supply and sanitation (RWSS) services requires that communities take the lead in developing their WSS facilities and be fully responsible for the operations and maintenance (O and M) of their schemes. The private sector provides support to communities in planning, design, construction and supply of materials, equipment and spares. The government continues to provide the necessary technical and financial support as well as co-ordination and regulation of the RWSS development activities.

Land Policy

1683. The institutional framework of the land policy states that implementation will require the participation of many actors. Section 8.2.1 (ii) states that local authorities shall work together with the Minister responsible for lands to ensure the proper land administration in their respective areas of jurisdiction and (iii) states that non-governmental and community based development organisations will be encouraged to participate in effective utilisation of land.

National Environment Policy

1684. The policy recognizes the important role that the public can play. Section 34 states that if sustainable development is truly to be our common goal, it must engage the interest and actions, not only of government experts, but of all Tanzanians in all walks of life. Environmental management must be everybody's responsibility. Everybody has the opportunity to make environmentally responsible choices that can reduce or minimize their impacts on the environment and promote sustainable development. That responsibility can only be met through cooperative efforts at all levels of the society.

Practices on the Ground

1685. In this subsection we examine practices on the ground particularly those relating to legal compliance, planning, budgeting, implementation, and reporting and monitoring where participation by stakeholders is considered of critical importance.

Compliance with Legal and Policy Requirements

1686. Compliance to the various laws and policies has generally remained theoretical. Awareness among the citizens on issues of their right to participate in social economic development activities has been very limited. Most of the documents/instruments have remained in circulation mainly within government offices. Besides, there has been minimal investment in awareness education to communities about their rights to be involved in decision making concerning their well being. This is not surprising because past decision making practices have been top-down.

1687. The current policy of decentralization by devolution aims at correcting such practices. Furthermore, development programmes being prepared to implement the various policies are now emphasizing involvement of communities. For example, the water sector development programme is financing the establishment of Water Users Associations in rural areas and along water basins[404]. In spite of the latter efforts, there is a long way to go before the aspirations of the government as stated in the various laws and policies become a reality.

1688. Past practices have emphasised upward accountability rather than horizontal or downward accountability. Downward accountability is now being promoted under the policy of decentralisation by devolution. It is, considered to be an important vehicle for promoting good governance (transparency and accountability) and in turn reduce corruption, fraud and other unethical behaviours, and ensuring that resources allocated for developmental purposes are actually used for the intended purpose. Reforms taking place in the public sector, and in particular through the local government reform programme, are emphasising downward accountability.

1689. However, progress is jeopardized by inadequate institutional mechanisms and will on the part of some officials. An example is seen in the area of provision of financial information to non-government actors and communities. While many Councils place financial reports in newspapers and Council notice boards, the same does not take place at the lower levels of government, namely the ward and village level. Some villages or wards lack necessary infrastructure (offices and notice boards) or supplies for posting such information. Also, village accounts are not prepared and posted as required by order 92 (Mushi and Melyoki, 2005). But there is also a problem of formats and language used in the publication of information. If information appears in English, the question one would ask is; how many Tanzanians can read and understand this language? Also, if the formats or statement structures used in presenting the information are the professional ones, how many ordinary citizens can read and interpret such statements? More recent efforts have seen the government prepare guidelines[405] for enhancing downward accountability, with particular emphasis on provision of information to lower levels. The framework looks good, but the system is yet to be implemented by the different levels of government.

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404 The Ministry of Water and Irrigation budget for 2007/2008 had funds for formation of Water User Associations.

405 See PMO-RALG 2007, Public Expenditure Tracking Systems (PETS), Guidance for Local Government Authorities, PMO-RALG and Regional Secretariats. Dar es Salaam,

The Planning and Budgeting Process

1690. Real participation can be measured from the point of view of stakeholders' involvement in determining their destiny through planning and resource allocation. Plans are intended to implement policies, programmes and other priorities. Hence, if stakeholders are actively involved in the planning processes, this implies that the roles identified by the various policies are being put into practice. The issue is, to what extent are non-state actors involved in the formulation of plans and budget? Planning and budgeting can be examined from a development or recurrent perspective. These two areas of planning and budgeting are approached differently in their formulation. The practices are analysed and summarized in the following subsections.

Development Plans and Budgets

1691. The planning and budgeting processes for activities categorized as 'development' at the Council are broadly guided by the guidelines for the preparation of LGAs' Medium Term Plans and Budgets which are issued annually by PMO-RALG. The guidelines require that plans and budgets to be prepared in a participatory manner using the O & OD methodology and organisations operating in the Councils' jurisdiction should participate. The guidelines state that: 'the heads of department, following a participatory planning process from the grassroots level to the District level, submit proposals of the projects and estimates of cost for delivery of services to the relevant Council committee meeting in which stakeholders and the civil society organizations do participate.

1692. While the O & OD methodology is required to be comprehensive in including all plans and budgets in the sub-district, currently there are sectoral planning processes that also take place, to a large extent controlled by the central government for education and health, and there are planning processes that take place using the project frameworks, such as those implemented under TASAF, PADEP[406] which nonetheless are expected to use participatory planning processes.

1693. Tanzania has a long history of the use of participatory methods in formulating programmes and projects. For example, under the integrated rural development programmes implemented mostly in the 1980s and 1990s, non-state actors were involved in their formulation. The same can be said of the Land Management Programme (LAMP) implemented in some districts. What makes the current approach more likely to succeed in involving the non-state actors is the fact that the sub-district levels have been given mandates to manage the funds they have planned and budgeted for. But as pointed above, there are constraints in implementation, a serious one being capacity limitations, particularly low level of skills in planning and budgeting among staff/officials and other stakeholders in the sub-district organs. Another constraint relates to financial discretion at the lower levels. The majority of funds going to the villages are earmarked (granted under the local government capital development grants system whose decisions are made by PMO-RALG or the Council itself). Hence the villages are limited in what they can plan and budget for.

1694. Additional information on some of the steps in the figure above is provided in the table below for further clarification.

[406] For details of these plans see the PMO-RALG/JICA study on planning methodology, October, 2006

Table 6. 27: Additional Information on Steps in the Planning and Budgeting Cycle

Step	Details
1	The LGA is informed of what level of grant it has qualified for under the LGCDG in November following the assessment process carried out in September/October. This will give an idea of the size of the grant it will receive but formal notification come through the budget guidelines in December which will provide the allocations for LGCDG and other grants.
3	The LGA provides the budget guidelines to the WDC and gives the IPFs totaling 50 percent of the allocation to the district/rural council to the Wards in proportion to the population.
4	The Ward facilitators will ensure that the Field Appraisal, the Desk Appraisal and the Environmental Checklist are properly completed as given in the Planning Guidelines for Villages and Mitaa.
6	The individual village plans are submitted to the WDC where they are prioritized against the IPF for the ward and the selection of projects for against the various funding sources is agreed by consensus amongst the WDC members.
10	The District/Urban Council may not cancel or reprioritize projects coming from the village/*mtaa* through the WDC where there is IPF or other funding available. It may only refer them back for correction of technical errors or because of non-compliance with the investment menu.
11	Following approval of the council development plan, the WDC will be informed of the projects approved for their villages/mtaa.

Source: PMO-RALG - Guidelines for planning and budgeting at Village/Street, April, 2004

Recurrent Plans and Budgeting Processes

1695. Plans and budgets for recurrent activities are usually developed by Heads of Departments at the Council level and therefore are not prepared in a participatory manner. The recurrent budget covers Personnel Emoluments (PE) and Other Charges (OC). For example, the DALDO, who is the head of department of Agriculture and Livestock Development Department, is charged with the responsibility for preparing the budget for PE and OC for his/her department. The District Treasurer consolidates the plans and budgets and submits to council committees and the full council for scrutiny and approval. Recent studies indicate that the lower level government (village and wards) and other stakeholders are not consulted as far as preparation of the recurrent expenditure budget is concerned.

1696. As regards revenue plans and budget there is limited participation as most of the work is done by the Council Treasury. The Treasurer takes into consideration policies and decisions made by Central Government (the Ministry of Finance) and prior Council decisions. Discretional financing at Council level is quite limited in view of the fact that more than 80 percent of Council revenues come from grants from the Central Government. The allocation of own revenues within the Council varies from Council to Council. In some Councils, the revenues collected are shared with the villages and wards from which the revenues have been collected. Some Councils give back to villages about 20 percent of the collections from the villages, while in other Councils about 40 percent of the revenue is given back. The sub-district levels have little discretion on matters of raising revenues. Whereas they can have their own bylaws to raise taxes, most of the sources of taxation which could be used by them were 'banned' by the central government under the banner of 'nuisance taxes'.

People's Perceptions on Stakeholders" Participation

1697. What are the people's opinions and experiences of stakeholder participation on socio economic development activities? Various questions were asked in the APRM survey and the

responses are summarized in the following sub-sections. The summaries consider both the rural-urban and gender differences.

Community Participation in Planning

1698. The survey results show that the participation of communities/people in planning in the rural areas is yet to cement itself. The results show that in rural areas 38 percent of respondents said that they had participated in planning, 36 percent said they had not participated while the rest said that either they had somewhat participated or they did not know.

1699. On a gender basis, more men indicated they had participated (44 percent) compared to women (32 percent) and a larger percentage of women said they had not participated (43 percent), compared with 30 percent for men. These findings tend to confirm existing men's dominance in meetings or functions.

1700. The survey results of urban respondents posit a gloomier picture. Only 24 percent of all respondents indicated they had participated in planning. A larger percentage (44 percent) indicated they had not participated. On a gender basis, 28 percent men and 20 percent women indicated they had participated in planning. The men and women who said they had not participated were 47 percent and 41 percent respectively. The iniquity between men and women continues to be apparent.

Community Participation in Budget Preparation

1701. The survey results about participation in budget preparation do not portray a very different picture from that observed under planning given that budgeting goes with planning. In rural areas, only 24 percent of the respondents indicated they had participated in budget preparation. The percentage of men and women indicating participation were 28 percent and 19 percent respectively.

1702. The survey results for urban respondents again paint a gloomier picture. Only 10 percent of respondents indicated having participated in budget preparation. From a gender point of view, 12 percent and 7 percent men and women respectively indicated participating in budget preparation.

1703. Overall, the observed trends in participating in budgeting tend to confirm existing practices whereby most of the budgeting work is done either by officials at village/ward level or by officials at council level. Communities may participate in generating the plans, but budgeting is done elsewhere.

Community Participation in Implementation of Plans

1704. Community participation in the implementation of plans is also very low, although there is some improvement compared to participation in budget preparation. In the rural areas 37 percent of respondents indicated that they were involved. Of men and women in rural areas, 42 percent and 32 percent respectively indicated involvement. From the survey results, 25 percent of urban respondents indicated having been involved in implementation of plans. Of men and women, 29 percent and 22 percent respectively indicated involvement.

1705. Overall, the disparities between rural and urban, and men and women appear once again. Urban communities appear less active than communities in the rural areas. Also fewer women appear to be participating compared to men, and the situation is worse in the urban areas where fewer women participate compared to those in rural areas.

Community Participation in Monitoring and Evaluation

1706. Survey results also paint a gloomy picture in this function. In the rural areas only 27 percent of respondents indicated involvement in monitoring and evaluation of the implementation of development plans. Of men and women 32 percent and 21 percent respectively reported participation.

1707. Survey results from urban areas point to minimal participation in monitoring and evaluation. Only 19 percent of respondents in urban areas indicated they were involved. Of men and women, 24 percent and 15 percent respectively indicated involvement in monitoring and evaluation.

1708. These findings are further corroborated by answers provided to a question that asked 'whether villages/street/wards in mainland Tanzania participate in generating plans'. The responses pointed to an unsatisfactory stance as well. In the case of rural Tanzania, 45 percent of all respondents answered yes i.e. agreeing that plans originate in the village, while 22 percent said no and 33 percent said they did not know. Almost half, 48 percent, of men were positive, compared with 42 percent among female respondents.

1709. These responses are a clear indication that the involvement of the wider community in planning issues is still not as high as it could be, and the fact that more males reported involvement reflects the real situation where attendance in village/mtaa meetings (assemblies) is male-biased.

1707. In urban areas, the situation is worse. Among all respondents, only 25 percent said that plans originate in the *mtaa*/street, while 34 percent said that they do not and 40 percent answered that they do not know. From a gender perspective, only 25 percent of male respondents answered that plans originate in the community, compared to 27 percent of females. Also more men responded negatively – 42 percent, compared to 28 percent of females. The percentage of respondents indicating that they did not know was higher on the part of females – 45 percent, compared to 34 percent of men.

1708. The general picture is that urban communities are less well informed about government planned activities than is the case in rural areas. This situation calls for more action to sensitise communities to play a greater role in generating plans using participatory planning methodologies.

1709. The responses of the APRM survey of experts indicated that there is good amount of encouragement about the extent to which people participate in planning. The cumulative percentage of experts who are highly encouraged to fairly encouraged is 85 percent while the rest, 15 percent, report being hardly encouraged or not encouraged. Only 2.9 percent indicated that they are not encouraged. This viewpoint attests to measures being taken to apply the O & OD methodology. However, the very good perceptions of the experts are not supported by perceptions of households as already summarized above. The recommendation

made above concerning the need for more sensitization and encouragement of communities to participate in community planning is still appropriate at this juncture.

The National Strategy for Growth and Reduction of Poverty

1710. The consultation process for the NSGRP/MKUKUTA was influenced significantly by the experiences in formulating, implementing and monitoring programmes such as the first phase Poverty Reduction Strategy (PRS), the National Poverty Eradication Strategy (NPES) and the Tanzania Assistance Strategy (TAS). Weaknesses associated with the formulation of PRS were particularly important in making improvements to the consultation process for MKUKUTA.

Box 6. 2: Weaknesses associated with consultations for PRS (P), 2000

- Participatory structures were formed on an ad-hoc basis
- Collaboration with stakeholders was less frequent and joint decision -making on relevant aspects of pro-poor policy was limited
- The PRS process was exceptionally compressed (six months duration); too tight timeframe for consultation limited the participation of stakeholders
- CSO involvement and their impact on the outcome of the processes have been very limited
- Inadequate background and understanding of PRS(P) limited stakeholders participation
- Inadequate resources to implement PRS consultations
- Problem of synchronization where TAS was supposed to provide PRS framework but was not completed before the PRS(P)
- The composition of participants in the workshop did not represent adequately all sections of the society: women, youth, people with disabilities, elderly, people living with HIV and AIDS, orphans were not adequately represented in PRS(P) process
- Participation of the poor in the PRS was not institutionalized within the LGRP
- Very few Trade unions were not involved in the PRS participatory process
- Inadequate analysis of "Voice s of the Poor" through the zonal workshops
- Inadequate mechanism in dealing with cross -cutting issues such as environment, HIV and AIDS, gender, employment
- Limited of PRS communication strategies
- Inadequate capacity in key Government institutions (PRS technical committee, PRS steering committees, and PRS inter -ministerial committee).
- CSO had limited access to key documents and adequate mechanism to provide feedback
- Inadequate capacity of several CSOs to engage in policy issues discussions

Public consultations in the review of the PRS and the formulation of MKUKUTA s

1711. Public consultations in the review of the PRS and the Formulation of MKUKUTA started off during Poverty Policy Week of October 2003. The process sought to deepen participation in and ownership of the strategy by actors at levels of Government, the citizenry – poor and non-poor, civil society, community entities and development partners. The issues that emerged from the consultation process and which influenced the design of the strategy are presented at two levels of consultation – internal (within government) and nationwide (all stakeholders).

Consultations: Internally and Nationwide

Internal Consultations

1712. Deliberations were carried out through PER review meetings, cross-sector meetings, government-donor, government-civil society consultations and Poverty Policy Week.

Nationwide Consultations

1713. Consultations took place mainly at sub-national level, including involvement of Members of Parliament. The first round of nationwide consultations was planned early in December 2003 with the meeting of the lead-stakeholders. It was followed by series of training of trainers' workshops for facilitators who were then deployed in the country. The Association of Local Authorities of Tanzania (ALAT) played a significant role. District level consultations were conducted through workshops in which representatives from district council secretariats, faith based organisations and the elderly, children, youth, women, persons with disabilities, persons living with HIV and AIDS, widows, orphans, CBOs, and CSOs, private sector, trade unions and the informal sector were all invited and participated. Village level consultations were undertaken through Village Assemblies. consolidated views were forwarded to regional headquarters and compiled to form regional reports. Workshops, seminars, radio programmes, TV broadcasts, fliers, interviews and music were used for awareness creation and soliciting stakeholders' idea. A special questionnaire was prepared and circulated throughout the country. About 500,000 questionnaires were distributed throughout the country and on the internet. Over a hundred Members of Parliament were involved through Parliamentary committees and through special seminars.

1714. Results of the first-round of consultations were incorporated into the first draft of MKUKUTA which was sent back to lead-stakeholders for scrutiny and comments. The draft was also widely circulated through the internet and its summary translated into kiswahili. Further deliberations on a second draft were made during a National Workshop in September 2004. The National Workshop brought together representatives of government and non-state actors, including CSOs. Comments from this workshop were used to improve the draft which was then presented at Poverty Policy Week in November, 2004.

1715. Discussion during poverty policy week focused mainly on implementation arrangements, monitoring and financing as had been suggested in the draft. The main objective of the PPW was to build further consensus, foster ownership, increase awareness and deepen understanding of the proposed MKUKUTA. Outputs of the Poverty Monitoring System in Tanzania were also made public. Further comments from PPW on specific issues that still needed tightening in the second draft were worked on to develop the final draft of MKUKUTA.

MKUKUTA Monitoring

1716. The Poverty/MKUKUTA Monitoring System (P/MMS) is implemented through an institutional structure comprising Technical Working Groups and the NSGRP/PMS Technical Committee.

1717. The technical working groups of the monitoring system provide for broad representation in membership.

Participation in the Implementation of MKUKUTA

1718. It has been pointed above that participation in formulating, implementation and monitoring of plans and budgets by the communities is in practice encouraged by the government, but the actual involvement of the people is still not as deep as would be desirable. A question asked in the APRM household survey was: What has been the level of community contribution in respect of education, health services, water services, roads and energy (electricity)?[407] The responses vary by programme and area of residence, as summarized below.

Community Contribution towards Education

1719. The proportion of respondents reporting contributions by communities in educational programmes is very high. In both rural and urban areas, those indicating average (*wastani)* to high (*kikubwa)* participation add to 93 percent. Similar results were reported by men and women. The high level rate of participation is an outcome of the policies pursued in the primary and secondary education programmes whereby school contributions became a matter of village government/ward business and not only that of parents of children in schools.

Contribution Towards Health Services

1720. Contributions towards health services in both rural and urban areas are more modest, but are still reported in about two-thirds of communities. In rural areas, those indicating average to high participation add to 64 percent, and in urban areas it is 69 percent. About one-third report 'no effort' or 'no service' which was 34 percent and 31 percent in rural and urban areas respectively.

1721. Of rural men and women 68 percent and 63 percent respectively reported contributions, while in urban areas 70 percent of men and 68 percent of women reported contributions. The relatively lower rate of contribution to health services can be explained by the smaller number of health facilities compared with schools in both rural and urban areas.

Contribution towards Water Services

1722. The survey results show that about half of respondents report community contributions to water services in rural areas; 50 percent indicated average to high involvement. About 25 percent of respondents indicated lack of service while another 25 percent indicated 'no effort'. Note that under Objective 4 above, data have been reported about coverage of rural clean and safe water supplies.

1723. In the urban areas, a higher percentage of respondents, 69 percent, indicated average to high contributions. Those saying there is no service account for only 5 percent compared to the 25 percent in rural areas. Again, this is reflective of the concentration of services, mainly in the urban areas, especially the Dar es Salaam City and all regional urban centers.

1724. The water sector development programme, outlined under Objective 4 above, puts greater emphasis on reaching rural communities. Contributions to water schemes by communities will be compulsory.

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[407] The context for contribution is involvement in development activities and does not mean paying for the concerned service

Contributions towards Road Construction

1725. In rural areas about 51 percent of all respondents indicated some involvement in road construction activities, while in the urban areas participation was better at 72 percent. There is no significant difference in responses by men and women. In rural areas men's and women's participation is 51 percent and 52 percent respectively, while in the urban areas they were the same, at 72 percent.

Contributions towards Energy Services (Electricity)

1726. Community contributions towards energy services show a major difference between rural and urban areas. In rural areas about 10 percent of respondents indicated involvement, while in urban areas the involvement is as high as 78 percent. The variation between the rural and urban areas is explained by the past policies of supplying energy. As already pointed out under objective 4 above, it is only 2 percent of rural population which has domestic electricity compared to 10 percent in urban areas.

Other Consultative Processes which Link the Various Levels of Government (Local and Central Government)

1727. The opportunity for communities and other non-governmental actors to participate in deliberations of matters relating to local authorities and the central government (at least at district and regional level) is provided through the consultative council/committee established at regional and district level. The Regional Consultative Council (RCC) brings together representatives of all major stakeholders in the region. The Council deliberates and advises on matter of development, welfare and security. Development matters include plans and budgets of all the Councils in the region. On the other hand, the District Consultative Committee (DCC) has been vested with powers to deliberate and advise the Council(s) on matters related to, among others, the plans and budgets, and security. The DCC draws its membership from all major stakeholders in the district.

1728. The RCCs and DCCs have limited influence on matters relating to plans and budgets in view of the limitation imposed by earmarked funds coming from the central government and the flow of funds which depends on levels of revenue actually realised. The central ministry (Ministry of Finance and Economic Affairs) can change recommended plans and budgets without consultations with Councils or RCCs/DCCs.

Challenges

Concentration of Powers at Central Authority

1729. Concentration of powers at central authority undermines participation at lower levels. Elected bodies at each level do have considerable authority. The Full Council is deemed to be powerful in all visited districts and their decisions are seen to carry weight. Also the Ward Development Committees (WDCs) seem to have a good measure of authority, although there appears to be somewhat weak downward links of accountability between the WDCs and Village Assemblies, which in a strictly legal sense should be the supreme organ at Lower Level Government (LLG) or sub-district level. The DCs probably have a higher impact on the decision making process than they are meant to have; they are not intended to be a level of governance and planning, but to assist and facilitate villages and to coordinate upward and

downward reporting. In spite of the improvements that could occur as a result of such advice and coordination, the current practice at Ward level potentially undermines downward accountability.

1730. At the village level, both the Village Chair and Village Executive Officer exercise authority. Combined, the two probably possess enough power to control much of what is decided by the Village Government. There are no documented examples of the Village Assembly overruling decisions by village leaders (PMO-RALG 2007)

Limited Engagement of the Full Council in Proper Planning and Oversight

1731. At the district level, the authority of the Full Council notwithstanding, elected representatives have only limited impact on decision making and the implementation of budgets and plans. This is in part due to Councilors' limited capacities but also due to the poor quality of the information that they receive. The information tends to be very bulky and lacks summaries that can enable the Councilors to understand and focus on specific priorities of their choice. Consequently, the Full Council is severely limited in fulfilling their oversight function at the district level.

Limited Institutionalisation of Processes of Planning and Budgeting

1732. There are limitations in both development and recurrent plans/budget:

(i) As regards development plans/budgets, the planning processes are yet to be implemented fully. There are several reasons for this situation. First, the operationalisation of the O & OD process is still transitional and many districts are yet to adopt it. Even where the methodology has been adopted, its application can fall short of expectations and limited credible plans come from the village governments. Hence when the wards submit the plans, they are subjected to further scrutiny and ranking (prioritization) by both Council management and the Council committees. The changes to the ward plans do not end at the Council. This is because the planning and budgeting guidelines from PMO-RALG do not provide final ceilings for planning recurrent and capital expenditure. Central Government issues final ceilings in May/June, while the Councils' plans and budgets are approved around March. Thus the finally approved figures could be far less than the sums requested initially; and

(ii) As regards recurrent plans/budgets, the lower levels of local government and other stakeholders rarely participate in their formulation. And yet, this is where most of the resources in the Councils are spent: on salaries, various allowances, running costs for social sector infrastructure and services etc.

Multiplicity of Funding Sources for Local Government Spending

1733. Discretional funding at local government level is limited. More than 80 percent of funds at Council level come from the central budget. Local communities have no authority to alter the prescribed allocations.

Institutional and Organisational Aspects of Accountability

1734. Weak accountability mechanisms affect effective participation. Decisions by the lower organs at sub district level can be overruled by officials at high levels. Downward accountability is being nurtured under the Decentralisation by Devolution (D by D), and yet

the whole process of accountability is still dominated by the directive culture which will take time to overcome.

1735. In Zanzibar, the MKUZA Monitoring Master Plan, Communication Strategy and PER review processes are some of mechanisms that have been put in place to promote and encourage effective participation in development processes by key stakeholders. The PER review process forms the basis for consultation to review and relate budgets with priority interventions as outlined in the MKUZA outcome clusters. MKUZA represents a multi-sectoral/outcome approach and a cluster based PER process provides the means for sectors to collaborate in implementation by harmonising and aligning the allocation of resources and in analysing progress towards MKUZA targets and outcomes.

1736. The involvement of stakeholders in the preparation of MKUZA has already been described under Objective 1 above in discussing ways in which consultation and participation help build capacity for self-reliance in development. Information was also presented there about the extent to which respondents in the APRM survey reported participation in development programmes.

1737. The APRM survey asked about participation in individual programmes such as education, health, water services, road construction, and energy. Here the results appear to be much more satisfactory with higher levels of rating those from the overall assessment of participation in general planning, budgeting and monitoring and evaluation. Differences continue to show up where participation is higher in rural areas than in urban areas, and also when participation is examined from a gender point of view, with a higher level of involvement by men than women.

1738. Average to high rates of participation in education were reported by 86 percent and 85 percent of rural and urban respondents respectively; in health services it was 71 percent and 75 percent of rural and urban respondents respectively; in water services it was 70 percent and 82 percent for rural and urban respondents respectively; in road construction activities it was 63 percent and 71 percent for rural and urban respondents respectively; and finally for energy it was 73 percent and 79 percent for rural and urban respondents respectively.

1739. In summary, the field survey results indicate that citizens have a higher level of participation in programmes to provide services, education, health, water, roads and energy, than in more general planning and budgeting processes, and this may be reflective of earlier approaches or interventions put in place by government to involve communities in contributing to and overseeing the implementation of sub-sector plans. Prior to the introduction of the LGCDG System three years ago, and still at its infancy stage, there was no comprehensive development planning at community level. With stronger moves towards decentralisation, processes need to be put in place to encourage active community participation. Also special attention needs to be paid to processes which will facilitate the more active participation of women. The challenge remains that of designing interventions which can enhance participation.

6.4 Conclusions and Recommendations

1740. The legal and policy framework has emphasised strongly the role of all stakeholders in playing a decisive role in matters of development. The Constitution strongly emphasises

people's participation, and this has further been amplified by laws governing local government and various guidelines issued by the ministry responsible for local government.

1741. Participation in programmes prepared at national level is growing stronger as the capacity of most stakeholders is strengthened. In particular, CSOs have improved their capacity of understanding national issues and are therefore increasingly having their voices heard, sometimes experiencing some resistance from officials bureaucrats who may not agree with their point of view and may ignore their advice. Participation has been characterised by consultations, special review workshops open to all stakeholders, formation of committees and technical working groups which continuously work on the implementation and monitoring of the programmes.

1742. Nevertheless, participation at local level, particularly in local authorities where most decisions are implemented, poses big challenges. The government's policy of DbyD implies that the lowest levels of government (village/mtaa) need to be involved fully in planning, budgeting and monitoring processes. However, low human and physical capacity, inflexible bureaucracy, low capacity to generate own funds and the slow pace of implementing local government reform impede progress.

1743. PMO-RALG has prepared a framework for downward accountability[408]. The Framework for Downward Accountability sets the approach for ensuring that citizens are engaged fully in what happens in the councils. It encourages participation and accountability at levels of local government. The need for full implementation of this framework is imperative.

1744. Another major challenge lies with provision of information to stakeholders for timely intervention. The mechanism for continuous and timely flow of the right information and services between the macro- and the micro-level decision making institutions, including households, firms, communities, and CSOs, faith-based organisations and cooperatives is of the essence.

1745. The issue of language of communication is crucial. In order to enhance participation, the use of Kiswahili language should be encouraged.

1746. The sustainability of any development strategy depends heavily on the extent to which the formulation of the strategy itself has involved the people mostly affected by it. To some extent, it depends on the level and sources of funding. At the national level, a wide range of stakeholders has been involved in policy formulation in Tanzania. This was very much so during the formulation of the Strategy for Growth and Reduction of Poverty (MKUKUTA) and MKUZA. Stakeholder involvement has also been adopted in the designing and implementation of sectoral programmes such as Primary Education Development Plan, Secondary Education Development Plan, etc). Perception surveys conducted by the APRM team show that a majority of Tanzanians from both Mainland and Zanzibar report that they participate in government processes.

1747. Notwithstanding the challenges in effective participation, the Government budget has been increasing in nominal terms from both internal and external sources although the largest share of development expenditure is financed from external sources which undermine self-

[408] See PMO-RALG, Public Expenditure Tracking System (PETS); Guidance for Local Government Authorities, PMO-RALG and Regional Secretariats. December 2007. (Unpublished)

sustaining development. The country's debt stock as a proportion of GDP is high but trends have shown slight improvement overtime.

1748. Socio-economic development is not only a matter of policy and strategies; they are necessary but not a sufficient condition for development. A critical constraint to implementation of several of Tanzania's policies has been the lack of costed strategic action plans and concomitant financing. Perhaps, therefore, it is not surprising that there are mixed results from the APRM survey of people's perceptions of the effectiveness of government policies/strategies in tackling poverty. The results reveal that more than half of the respondents (52 percent) did not know how effective they were, 22 percent thought they were partially effective, 21 percent thought they were not effective. Only 5 percent of survey respondents thought government efforts were effective. The fact that more than half of the respondents did not know, might be an indication that Government policies/strategies are not well understood at the grassroots level, that people do not know who may be responsible for any changes which may be occurring.

1749. The indicators on education, health and HIV show that progress is being made, even if more slowly than would have been hoped, though for school enrolments and child mortality remarkable improvements have been recorded. Constraints in capacity and financing continue to be critical, especially in providing quality services to the rural citizens.

1750. The APRM surveys reported above have also shown that people perceive that government's efforts in education, health and in combating HIV are making progress, more quickly in education than in other services.

1751. Overall, when experts were asked about the effectiveness of measures taken by the Government to strengthen delivery mechanisms (like concentrating resources on education, health and infrastructure) and monitoring outcomes in order to monitor progress towards social development strategies, 33 percent said that they thought that the measures were effective, 56 percent thought they were fairly effective and only 5 percent thought they were not effective.

1752. When household respondents were asked if they thought the Government was putting enough effort in ensuring that social services are availed in their community, their responses were more mixed. While 41 percent of the respondents said yes, 38 percent said no and 21 percent did not know.

1753. The Government has adopted several measures to promote gender equity and equality. Such measures include adoption of the Women and Gender Policy 2000, and formation of a fully fledged Ministry to deal with gender issues; the Ministry of Community Development, Women Affairs and Children. Gender Focal Points have also been established in every ministry, department and agency of government to facilitate mainstreaming of gender in all Government undertakings. Most assessments show that the results are largely positive especially in education and training, access to microfinance, representation in decision making positions etc.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

1754. It is clear from the discussion that the Government has made significant progress towards the ratification and subsequent implementation of a number of these codes. However, there is inadequate awareness of some standards particularly due to the fact that all the codes and standards are not yet translated into Kiswahili. The process of translating and domesticating the standards and codes into local laws is being pursued in a number of cases. The Government has also taken measures to establish institutions, such as The Commission on Human Rights and Good Governance, to promote the achievements of the objectives of the codes and standards. The concern which remains is that some implementing agencies are not adequately informed about the status of the treaties. More efforts are therefore required to domesticate the frameworks so as to be effectively complied with. These include having among others focal points/strategic points to coordinate the domestication process, establishing institutions with requisite personnel who will be responsible for the domestication process, and translating the standards and codes in Kiswahili in order to facilitate access by majority.

1755. The sustainability of any development strategy depends heavily on the extent to which the formulation of the strategy itself has involved the people mostly affected by it. To some extent, it depends on the level and sources of funding. At the national level, a wide range of stakeholders has been involved in policy formulation in Tanzania. This was very much so during the formulation of the Strategy for Growth and Reduction of Poverty (MKUKUTA) and MKUZA. Stakeholder involvement has also been adopted in the designing and implementation of sectoral programmes such as Primary and Secondary Education Development Plan. Perception surveys conducted by the APRM team show a similar trend that a good majority of Tanzanians from both Mainland and Zanzibar participate in government processes.

1756. Notwithstanding the challenges in effective participation, the Government budget has been increasing in nominal terms from both internal and external sources although the largest share of development expenditure is financed from external sources which to a large extent have the danger of undermining self-sustaining development. The country's debt stock as a proportion of GDP is high but trends show slight improvement over time.

1757. The country both in Mainland and Zanzibar has recorded several achievements in the area of socio-economic development. In the area of health, infant mortality has shown a declining trend, the proportion of births attended by skilled personnel has been increasing, which is an indication of the potential for reducing maternal mortality. In education, primary enrolment rates have increased over time with near gender parity and improving completion rates, net enrolment rate for primary education has increased and primary transition rates have been consistently high. Access to protected water sources has increased whereby both rural and urban populations respectively have access to protected water sources. This is a big progress compared with, historical performance. However, a critical constraint to implementation of several policies has been the inadequacy of costed strategic action plans and concomitant financing.

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1758. The indicators on education, health and HIV show that progress is being made, similarly for school enrolments and child mortality remarkable improvements have been

recorded. Constraints in capacity and financing continue to be critical, especially in providing quality services to the rural citizens. The APRM surveys show that people perceive that government's efforts in education, health and in combating HIV are bearing fruits. However, in terms of availability of services at community level, responses were mixed whereby 41 percent of the respondents said yes, 38 percent said no and 21 percent did not know. Experts had an overall perception that measures taken by the Government to strengthen delivery mechanisms (like concentrating resources on education, health and infrastructure) and monitoring outcomes were thought to be effective.

1759. At the policy level the Government has formulated a number of policies and put in place instruments relevant in ensuring affordable access to water, sanitation, energy, finance, markets, and ICT. On the ground, some progress has been made and public opinion reflects an overall appreciation of gains in some aspects but huge challenges still remain in almost all areas. ICT is perhaps the only sector where growth has been impressive. In the water sector, supply in rural areas remains low although urban water supply coverage is substantially higher. Electricity coverage countrywide is still very low and capacity to extend coverage is limited. There has been notable progress in the area of microfinance, but the sector needs more attention in rural areas. As for marketing, despite liberalization, improvements have been minimal. Sustainable implementation of the various initiatives particularly in water, energy and ICT requires not only planning but also adequate funding for capital investments, infrastructure expansion and rehabilitation and capacity development measures. Funding remains a huge challenge.

1760. As for shelter, the use of modern housing materials has increased in the population as a whole. Nearly a third of all households are constructed with durable walls, a third with non-earth floors and over half with a metal roof land is a key asset for socio-economic development, and although it appears to be ample in Tanzania, there are still disputes over land and insecurity of tenure in both rural and urban areas. The current Land Policy and the Land Acts make laudable efforts to address these major shortcomings in the land structure, but whether the new legislation is achieving what it intended to achieve remains an open question.

1761. The Government has adopted several measures to promote gender equity and equality. Such measures include adoption of the Women and Gender Policy 2000, and formation of fully fledged Ministries to deal with gender issues. Gender Focal Points have also been established in every ministry, departments and agencies of government to facilitate mainstreaming of gender in all Government undertakings. A number of studies show that the results are largely positive especially in education and training, access to microfinance and representation in decision making positions.

1762. Despite positive developments, challenges still remain. Assessments agree that men and women are not fully utilising the opportunities of favorable legal and policy frameworks. In spite of much greater awareness of gender mainstreaming within the Government machinery, the practice of mainstreaming is still inadequate in most MDAs due to both capacity and structural constraints. The major challenge remains that of balancing growth with equity issues in a market driven economy. In the light of this market forces push the marginalized into extreme forms of deprivation with women carrying a disproportional burden. Economic empowerment of men and women will require some amount of state intervention as the market has no ethnical reasons to consider issues of people rights to

development, decent livelihood and expanded opportunities unless such issues have a bearing on profit making.

1763. The legal and policy framework has emphasised strongly the role of all stakeholders in playing a decisive role in matters of development. The Constitution allows people's participation, and this has further been amplified by laws governing local government and various guidelines issued by the ministry responsible for local government.

1764. Participation in programmes prepared at national level is growing stronger as the capacity of most stakeholders is strengthened. In particular, CSOs have improved their capacity of understanding national issues and are therefore increasingly having their voices heard, sometimes experiencing some resistance from officials who may not agree with their point of view and may ignore their advice.

1765. Nevertheless, participation at local level, particularly in local authorities where most decisions are implemented, poses big challenges. The government's policy of D by D implies that the lowest levels of government (village/mtaa) need to be involved fully in planning, budgeting and monitoring processes. The Opportunities and Obstacles to Development (O&OD) is a planning process that has been adopted for communities to identify their development priorities. However, low human and physical capacity, inflexible bureaucracy, low capacity to generate own funds and the slow pace of implementing local government reforms impedes progress.

1766. PMO-RALG has prepared a framework for downward accountability. The framework sets the approach for ensuring that citizens are engaged fully in what happens in the councils. It encourages participation and accountability at levels of local government. The need for full implementation of this framework is imperative.

1767. Other challenges include access to information by stakeholders for timely intervention. There is need to have a mechanism in place to access public information specifically between the macro- and the micro-level decision making institutions, including households, firms, communities, CSOs, faith-based organisations and cooperatives is of the essence. The issue of language of communication is also crucial. In order to enhance participation, the use of Kiswahili language should be encouraged.

Recommendations

1768. Overall, there is indeed an acceleration of growth in Tanzania, but increasing and sustaining this growth and ensuring that growth generates benefits which are equitably shared so that poverty is reduced is a difficult challenge. To sustain and accelerate growth, the country will have to tackle several barriers and constraints to greater productivity and investment.

1769. Strengthening domestic resource mobilization is essential. While there is need to continue strengthening tax administration through the implementation of various policy and structural reforms of the tax system, the key challenge is to increase tax revenue without increasing the tax rate. It is also important to recognize that in the medium to long run, domestic resource mobilization should rely primarily on expanding the revenue base through sustained economic growth.

1770. Strengthening export competitiveness - Sustained economic growth will depend on the ability of the economy to increase competitiveness. This will require efforts to enhance the capacity to innovate and find new areas of economic activity where Tanzanian enterprises can successfully compete, hence, the need for an accurate analysis of the comparative and competitive advantages of the country.

1771. The provision of low cost and reliable energy supply is critical for the growth and development of the country. This should go together with improving the whole range of basic infrastructure including roads, airways, railways, and communication.

1772. In the social sectors, gains achieved in access to education (i.e. enrollments) need to be sustained through on-going investment in the quality of education, particularly in terms of recruiting qualified teachers , increasing pre-service teacher training, providing subsidies for purchase of teaching and learning materials and motivation to teach. In the health sector, there is need to ensure that all facilities are adequately staffed, equipped, supplied and maintained. The plan should be to increase training output of skilled health workers, strengthen maternal health services, intensify control of malaria, TB, Leprosy and HIV/AIDS and improve health education and promotion. Motivation is also an issue, as in the absence of additional incentives, it is hard to motivate medical personnel to take up positions in areas with inadequate of housing, no good schools, and low quality medical facilities. As for access to water, progress to improve rural households' access to water should be made a priority so that the MKUKUTA target for rural water supply coverage will be met.

1773. Efforts to achieve gender equality and equity should be strengthened, which includes gender gaps and inequality between men and women. Gender concerns should be incorporated in plan. Strategies and programmes with a view of implementing commitments at international, regional and national levels. inclusive governance implies gender equity in decision making.

1774. Progress in the participation of the people in the development process is evident in Tanzania, but significant effort is needed to improve several areas including aceess to information. Government accountability through publicly accessible information is on the up-swing, but there is still far to go in terms of information about public income and expenditure particularly at local level. Strengthening of accountability arrangements at the local level needs to accompany increased resource flows to the local authorities.

CHAPTER SEVEN

7.0 OVERALL CONCLUSIONS ON THE COUNTRY SELF ASSESSMENT REPORT

7.1 Conclusion

1775. The preceding four chapters of this Report dealt with four thematic areas regarding governance assessment of Tanzania: democracy and political governance; economic governance and management; corporate governance; and socio-economic development. The appraisal was based on desk research, household, experts and corporate organization surveys and opinions submitted by key social groups. The findings were then subjected to validation by same and other stakeholders.

1776. In general, Tanzania is well on course in its efforts to enhance the quality of governance; many challenges still remain, though, which need further action and must be addressed in order for the country to fully meet the ultimate objectives of NEPAD and the APRM. Substantial progress has been made in all thematic areas, despite a number of specific issues of deficiencies for each. There are also issues that are of a recurring or cross-cutting nature and have been identified in more than one thematic area.

1777. In the area of democracy and political governance, Tanzania's reputation as a peaceful country has been successfully maintained since independence. There has been a clear and impressive improvement in constitutional democracy and rule of law since the introduction of multiparty politics in 1992 and the process of political pluralism as a whole. The liberalization of and freedom given to mass communication instruments in recent years (organizations) has opened up the avenue for people to air their views more freely than ever before about the existing political and governance systems in the country. Despite this improvement however, critical assessment of its democracy and political landscape reveals some challenges which, if not addressed, would undermine the country's quest for sustainable development. Democratic governance is still fragile and one of the basic prerequisites of good political governance, i.e. general consensus on the basic rules of the game, is still inadequate. Zanzibar which is part of the Union has been saddled with cyclic post-elections conflicts. Contestable election processes and outcomes have led to increased political hostilities and allegations on abuse of human rights particularly during and in the aftermath of some elections. The Government should commit itself to comprehensively address all major issues of contention relating to inter and intra-state conflicts. Other sources of conflicts pointed out in the Report include organized crime, illicit arms trade, refugees and internally displaced persons. These should continue to be adequately dealt with.

1778. Despite efforts made by the government to protect the rights of various groups in the society, challenges still remain. Such groups include; children, vulnerable groups, people with disability, albinos, elderly people and people living with HIV/AIDs. Children face problems of shortage of remand homes, special courts and approved schools. In addition, the government need to increase efforts to address the increasing number of orphans due to HIV/AIDs pandemic and increasing number of child headed households. On the part of people with disabilities, improved and accessible infrastructure is needed especially to public buildings. Generally, efforts need to be stepped up to get rid of socio-cultural values that results into killing of some groups of people in the society. In addition, efforts should be made to train welfare officers and special lawyers and afford access to such services by the above mentioned groups.

1779. A lot of progress has been made in the area of economic governance and management at the macro-level in respect to the macro-aggregates of the economy. Noticeably, the move towards satisfactory levels of transparency and efficiency economic system in Tanzania is indeed self evidence and clear. The role of the private sector to the economy has been given immense importance and has not only been growing but has also begun to deliver despite the fact that it is only almost five years since serious consideration was given to it. Yet still the economy remains relatively weak and highly vulnerable to external shocks from the world economy. But the major challenge is that of translating the macro-successes into micro-successes through some "trickle-down" mechanisms or purposeful redistribution. This is in view of the fact that despite the rosy picture at the macro-level, the ordinary households continue to remain poor.

1780. Regarding the area of corporate governance, globalization and the liberalization of the economy have led to growth of the private sector consequently placing a new emphasis on the need for good corporate governance in the country. Tanzania has put in place very elaborate policies, institutions, laws and regulations that are meant to hold corporations accountable to their stakeholders and for sustainable environmental management. However, awareness on corporate governance in general and of corporate social responsibility in particular appears to be quite low. In addition, there has been inadequate understanding of the roles of the public and private sectors. Efforts to create acceptable ethical practices are sometimes undermined by collusion, rent seeking behaviour, corruption and low corporate integrity. Inadequate oversight mechanism and relatively low levels of disclosure by corporate entities remain to be serious constraints. Cases of environmental pollution, sub-standard goods (including dangerous chemicals, electronics and pharmaceuticals) have been reported frequently which perhaps indicate that more is going on in the corporate sector which means that there is a problem with respect to follow up on matters of corporate accountability. This calls for vigorous improvement in the mechanisms that have been put in place for following up on corporate accountability.

1781. The country has recorded a number of positive achievements in the area of socio-economic development. The pursuit of socio-economic development is not new in Tanzania. It has held a central place in the country's development strategies and politics since independence when three main challenges of development - poverty, ignorance, and disease were identified and early development efforts focused on addressing these challenges. In recent years, under the National Strategy for Growth and Reduction of Poverty (NSGRP), popularly known as MKUKUTA, indicators of social service delivery (i.e. education, health, water, housing and sanitation) show that fast progress is being made, although aspects of quality have to be dealt with. In addition, there is evidence to show clearly that in both the Mainland and Zanzibar, a good majority of the Tanzanians are increasingly participating in government processes, that economic growth has been increasing and that substantial progress has been made in the areas of HIV and AIDS, energy and ICT. Yet still, some challenges remain, which Tanzania must urgently address if the APRM objectives are to be met. Constraints in capacity and financing continue to be critical, especially in providing quality services to the rural citizens.

1782. The legal and policy framework has emphasised strongly the importance of involving all stakeholders in matters of development. While participation in development programmes prepared at national level is growing stronger as the capacity of most stakeholders is strengthened, at local level, particularly in local authorities where most decisions are

implemented, there is still more to be done. Low capacity levels (both human and physical), problems of bureaucracy, low capacity to generate own funds, problems of access to information and the relatively slow pace of implementing local government reforms impede progress in that front.

1783. It is clear that the Government has made significant progress towards the ratification and subsequent implementation of a number of codes and standards. However, there is a general inadequacy in the area of awareness of some of them particularly due to the fact that, all the codes and standards are not yet translated into Kiswahili. Similarly, the ratification status of some of the codes cannot be ascertained from implementing institutions and other official sources. The process of translating and domesticating the standards and codes into local laws is being pursued and institutions are being established to promote the achievement of the objectives of the codes and standards. The concern which remains, is that some of the implementing agencies are not well informed about the status of the treaties. More efforts are, therefore, required to domesticate the frameworks so as to be effectively complied with. These include having, among others, focal points/strategic points to coordinate the domestication process, establishing institutions with requisite personnel who will be responsible for the domestication process and translating the standards and codes into Kiswahili in order to facilitate access by majority.

1784. Tanzania's planning framework is well serviced with many policies and strategies. Many of them are relevant and adequate in addressing development challenges. However, a critical constraint and perceivably the greatest challenge to development efforts in the country, is a relatively low level of implementation of these policies and strategies. Good policies are necessary but not a sufficient condition to bring about development.

There are many reasons for the low level of implementation, some of which are interlinked. These include the problems of inadequate political will, a relatively weak resource base, budgetary and capacity constraints in institutions hoisted to implement these policies. Another problem is relatively poor coordination of efforts by institutions involved in policy formulation and implementation which disrupts smooth implementation. In some cases, reliance on external policy analysis also brings in the perception of weak national ownership which adversely impacts on implementation.

1785. Although the importance of human and institutional capacity building for sustained development is now almost universally recognized, the record of achievement in Tanzania remains far from satisfactory. While the limited gains are historically accounted for by the legacy of colonial rule, the political and economic difficulties that have beset the country after independence also account for the current state of affairs. Tanzania's ability to manage its own affairs is contingent upon the existence of an effective government system. Public institutions are responsible for economic policy formulation, articulation and enforcement. Plainly, reorientation of the structures, organizations and skills is required to cope with the re-defined role of government in managing a market oriented economy in the new era of openness and globalization.

1786. There are severe capacity constraints in most of the sectors, characterized by shortages of skilled staff, weak institutional environments which undermine the proper utilization of existing capacity, limited opportunities for professional development and skill enhancement, and outdated bureaucratic infrastructures and regulatory frameworks not suitable for a

complex economic system. Where skills are available, they are under utilized because of poor deployment, weak institutional environment, low morale and sometimes political interference in administration and assigning of responsibilities and therefore limited capacity to satisfy the need for skilled people. It has been easier, under such circumstances, to rely upon donor assistance. However, donor activities have often exacerbated capacity problems through approaches that have been supply driven and geared to satisfying internal institutional demands rather than attacking the more difficult task of helping the country build capacity to do things for itself and take full responsibility for its own economic and social development. Thus, given the low levels of capacity development and utilization in the country, the need for a targeted strategic approach in this area remains a high priority.

1787. Corruption which is a publicly acknowledged phenomenon, remains prevalent in all spheres and cross-cuts all thematic areas of governance. A wide range of measures to fight corruption have been taken by the government in terms of both legal reforms and institutional arrangement. The general perception is that most of the specialized institutions charged with the task of fighting and preventing corruption have low effectiveness. There is therefore, an urgent need to continue with legal reforms and strengthen the anti-corruption agencies in terms of both resources and autonomy to enable them discharge their responsibilities efficiently. Government alone cannot tackle corruption without the active support and involvement of citizenry. A successful campaign demands the full participation of all segments of society, particularly the organized civil society (i.e. the demand side of accountability). The civil society must continue to play an active oversight role to ensure that the government and other actors are held accountable for whatever they do in relation to development.

1788. Despite constitutional and other legislative provisions to protect and preserve the rights of women, the marginalisation of women remains a challenge in Tanzania. The Government has taken several measures to promote gender equity and equality, including the adoption of the Women and Gender Policy, formation of fully fledged ministry to deal with gender issues, and establishing Gender Focal Points in MDAs to facilitate mainstreaming of gender in all Government undertakings. Results on the ground are positive especially in primary and secondary education and training and representation in decision making positions. However, despite positive developments, challenges still remain. Inspite of greater awareness within the Government machinery, the practice of gender mainstreaming is still inadequate in most MDAs due to both capacity and structural constraints. A major challenge remains that of changing mindsets (i.e. perceptions on social economic transformation of gender relations). Values and culture of society that foster discrimination against women have not fully changed. Equal access to basic social services, productive and employment-generating activities remains a challenge.

1789. Tanzania must be proud of the gains and advances recorded over time in its effort to enhance the quality of governance. Yet this report has made an attempt in identifying some of the challenges the country faces within the context of the objectives and programmes of NEPAD. It must be realized that for democracy and political governance, economic governance and management, corporate governance and socio-economic development, to advance in tandem, they require a holistic package of policies, strategies, and plans on human development, taking on board the major challenges identified in this Report. The problem of governance cannot be solved by government alone, and hence all segments of society must be involved. The package must have the overarching objective of demonstrating that **THE PEOPLE MATTER** because they collectively embody **NATIONAL SOVEREIGNTY**.

7.2 Best Practices

1790. The African Peer Review Mechanism aims at monitoring progress in governance and good practices in the four thematic areas outlined above. Following the assessment, it is envisaged that experiences of various African countries will be shared, deficiencies pointed out, best practices encouraged and needs addressed. Generally, Tanzania has adopted, ratified and domesticated most of the international codes and standards, and has put in place legal and policy frameworks. However, to a large extent, implementation is till lagging behind. Below is a summary of some of the identified best practices in governance in Tanzania.

Democracy and Political Governance

(i) Home grown solution known as "Muafaka Accords" – has been provided as one of the efforts to resolve party conflicts, specifically between CCM and CUF. Although not yet implemented, it is an internal conflict management and resolution mechanism that could be emulated by other countries;

(ii) Tanzania has harmonious relations with neighbours. Tanzania has not been involved in interstate conflicts with its neighbours in recent years;

(iii) Tanzania has ratified core instruments that guarantee civil, political social, economic and cultural rights. It has established a Commission for Human Rights and Governance which has so far performed well;

(iv) Tanzania ratified the Worst Forms of Child Labour Convention in 2001. It is one of the three countries in the world carrying out the Time Bound Programme for elimination of the worst forms of child labour;

(v) Tanzania has played a big role in resolving conflicts of neighboring countries e.g. Burundi, Rwanda, and Kenya;

(vi) Tanzania has been a leading country in Africa in hosting many refugees;

(vii) Tanzania has improved policy and legislative environment to strengthen public institutions for efficient and effective public service e.g.
- Executive Agencies creation
- Public Service Act no. 18, 2007
- Public Procurement Act 2001;

(viii) Tanzania has put in place several measures for fighting corruption e.g.
- National Anti-corruption Strategy and Action Plan (NACAP), PCCB. It has ratified international instruments for prevention and combating of corruption.
- Now deals with grand corruption like Richmond and EPA cases, etc.
- It has enacted laws aimed at combating corruption and enhancing good governance in the country;

(ix) Tanzania has promoted the rights of women. This has included:
- Putting in place legislation in that direction
- Enhancing the involvement of Women in decision-making organs:
- The number of Women Cabinet ministers increased from 11 percent in 1995 to 12.5 percent in 2005.
- The number of Women Permanent Secretaries increased from 10 percent in 1995 to 28 percent in 2005.
- The number of women in Parliament has increased from 16.7 percent in 1995 to 30 percent in 2005.
- Mainstreaming gender efforts have been put in place which includes Gender Based Budgeting;

(x) Tanzania has implemented a policy of decentralization within the government which aims at improving service delivery e.g. it has created executive agencies;

(xi) The law in Tanzania (Legal Aid Criminal Proceedings Act of 1969) provides for free legal aid to persons accused of criminal offences, especially capital offences such as murder charges and treason. There are also many NGOs providing legal aid to the indigent e.g. Women Legal Aid Centre, TAWLA, LHRC. This is an effort to make legal services accessible to all;

(xii) Tanzania committed to promotion and protection of Rights of the Child and Young Persons.

- Raised consciousness among people on fundamental human rights including rights of children and young persons.
- Ratified almost all international conventions which govern the protection of the Rights of the child and young persons.
- The constitution guarantees Rights of the child and young persons
- Government has created space and conducive environment for NGOs to complement efforts to enhance respect for the rights of the child;

(xiii) The usage of one language of Kiswahili. Tanzania has more than one hundred and twenty tribes using their different vernaculars but, also speak Kiswahili. This language has built trust and confidence among the communities hence paving way for peace, security and solidarity;

(xiv) Tanzania has enjoyed relatively strong leadership internally and is internationally respected which has also significantly contributed to the prevalence of peace and unity. Tanzania Mainland witnessed only one unsuccessful army mutiny in 1964 as opposed to fashionable military coups which were experienced by other African countries in the 1960s and 1970s. This of course is relatively different from what has been experienced in Tanzania Zanzibar. Tanzania was a champion in the condemnation of the world imperialism leading to abject poverty of the underdeveloped countries. She championed the campaign for a New International Economic Order and against stringent conditions of the World Financial Institutions including the World Bank and the International Monetary Fund (IFM). This is still a valid agenda to date;

(xv) The country managed to pave an amicable and peaceful transition from single party politics to multiparty politics different from what was experienced by neighbouring countries and other African countries. With an exception of Zanzibar, the country has held three peaceful multiparty elections. However, more efforts should be made to ensure the autonomy of the electoral bodies and the review of Political Party Act of 1992 paving way to more transparent, free and fair elections. For Zanzibar, more concerted efforts are needed to ensure that they first have peaceful elections and finally open, transparent, free and fair elections;

(xvi) Tanzania has institutionalized smooth transfer of powers of the presidency since 1985 by enacting a law providing for only two terms presidency of five years each.

(xvi) Impressive proliferation of Electronic and Print Mass Media Organizations in terms of newspapers, radios, televisions, internet services to a country which has just emerged from monopolistic politics could be conceived as one of the best practices. The mass media has played a pivotal role not only during the series of multiparty elections, but also in the war against corruption. There are now many private and public newspapers, radio stations and television, etc.

(xvii) Tanzania has installed affirmative action to promote women participation in elective positions, attaining the SADC benchmark and now moving towards the AU rate of 50/50 involvement.

(xviii) Establishment of Junior Councils affording young people a platform to air their views
(xix) Action to harmonise Children Laws
(xx) Pilot Project on addressing Gender Based Violence, should be implemented in other areas of the country.

Economic Governance and Management

(i) Tanzania's good governance ranking has improved in recent years to 159/177 from 164/171.
(ii) Tanzania has initiated several macroeconomic and structural reforms which have resulted into strong macroeconomic performance and stability (sustained growth rate, low inflation, improvement in foreign reserve position) e.g. Local Government Reform Programme, Land Policy, Micro-Finance Policy. SME Policy, MKUKUTA, MKUZA, etc.
(iii) Tanzania has policies in place, which support economic growth, private sector development, improvement in planning process through participatory mechanism e.g. The Budget Process and Public Expenditure Review, Public Expenditure and Financial Accountability Review (PEFAR).
(iv) Efforts have been made in the fight against money laundering. Established the Financial Intelligence Unit (FIU), BoT Circular no. 8, Zanzibar Penal Decree, Act No. 6 of 2004.
(v) Public –Private Partnership (PPP) is a new concept and is working well in Mainland Tanzania at least at the National level. Private institutions such as TCCIA and TNBC are actively and democratically engaged. It is strongly advised that such an active engagement should be practiced at the grassroot level.

Corporate Governance

(i) Tanzania has taken steps to enhance corporate business development in Tanzania by putting in place appropriate legal and regulatory environment e.g. It has established institutions such as Tanzania Bureau of Standards, FCC, CMSA, WMA, TRA etc.
(ii) Tanzania has ratified various conventions which aim at creating an enabling environment for corporations to operate and protect workers' rights at work places e.g. OECD/Commonwealth Principles of Corporate Governance, ILO Conventions.
(iii) There is a legal framework that protects communities against poor environmental management by corporations. (Environmental Management Act 2002) Tanzania has,
- Put in place an effective framework with specified rights and obligations of a company, its directors, shareholders and other stakeholders.
- Developed good corporate governance principles by using the services of professional and industry associations.
- Promoted high quality financial disclosure requirements and proper ownership structures.
- Enhanced the effectiveness of supervisory bodies such as NEMC
- Built capacity in corporate governance through training and educational programmes at the level of directors, senior managers, financial regulations with a view to improving the performance of SMEs e.g. CFAA, PEPA, PEFAR, Private Sector Foundation, BEST Program etc.

Socio-Economic Governance

(i) Tanzania has acceded to various UN Declarations which enhance the right of women, children and people with disabilities.
   - Convention on Elimination of all forms of Discrimination against women (1979)
   - The African Charter on the Rights and Welfare of the Child (2001)
   - Beijing Declaration and Platform for Action (1995)
   - United Nations Convention on the Rights of Persons with Disabilities (2006).

(ii) Tanzania has taken measures to ensure broad-based participation in the formulation of policies and strategies e.g. MKUKUTA, PEDEP etc.

(iii) Tanzania is implementing various reforms aimed at sustainable development and poverty reduction within the framework of Vision 2025. Local Government Reform Programme (LGRP), NPES, PSRP, RDP (Rural Development Policy) MKUKUTA (NSGRP).

(iv) Since 1990s, a number of enabling policies and strategies have been adopted to ensure provision of basic social services. (Health, Education, Water, Combating the HIV-AIDS pandemic). The indicators on education, health and HIV show that progress is being made e.g. school enrolment and child mortality.

(v) The Government of Tanzania has adopted several measures to promote gender equity and equality; Formulation of Women and Gender Policy 2000, formation of Ministry of Community Development, Women Affairs and Children.

(vi) Various instruments have been put in place in Tanzania to facilitate broad based participation by all stakeholders in decision-making. There is legal and Policy framework for enhancing participation. The Constitution, National Water Policy, Land Policy, National Environment Policy. Local Government Laws of 1982

(vii) Zanzibar Government has initiated policies aimed at promoting self reliance in development and built capacity for self-sustaining development.
   - Involvement of stakeholders in the formulation of development programmes e.g. MKUZA.
   - Ensuring sustainable ownership of Development Plans.

(viii) Zanzibar government has also taken measures to eradicate poverty. Policy framework is in place e.g. Agricultural Sector Policy (2002); Zanzibar Tourism Development Policy (2004);Zanzibar Investment Policy (2005); etc.

(ix) Zanzibar Government has taken policy measures to strengthen delivery mechanism and monitor outcomes in order to make progress towards social development targets; e.g. Health Policy (2002); Education Policy (2006); HIV and AIDS Policy (2007).

References

CHAPTER THREE: REFERENCES

Afro barometer and REPOA (2006): *Combating Corruption in Tanzania*: Perception and Experience, Afro barometer Briefing Paper.

Ahmed, R. (2006): **"Pemba as an Opposition Enclave: Reflections on Political Co-existence and Democratic Consolidation"**, forthcoming.

Bakari, M. A and Mushi, S. S. (2005): "Prerequisites for Democratic Consolidation in Tanzania" in *Democratic Transition in East Africa*, REDET Publications. Dar es Salaam: E&D. Limited.

Bakary, M.A. K (2006): "The Union and Zanzibar Constitutions" in Chris M. Peter and H. Othman (eds.) *Zanzibar and Union Question. Zanzibar* Legal Services Centre Publication.

Baregu, M. "Beyond the Myth of 'Island of Peace': Peace and Security Challenges Facing the Kikwete Government in Tanzania", unpublished paper.

Bourne, M. (1999): "Light Weapons and Conflict in Central Africa", in Abdel-Fatau Musah and Niobe Thompson, eds., *Over a Barrel: Light Weapons and Human Rights in the Commonwealth,* London and New Delhi: Commonwealth Human Rights Initiative (CHRI), November.

Bundegaard, A. B (2001): "Brutality in Zanzibar", a comment to the *International Herald Tribune*, published: Saturday, February 10, 2001.

Bunge News Bulletin of July 2002 vol. 16.

Burton, J. W. (1969): *Conflict and Communication,* London: Macmillan.

Chris Maina Peter, (2006): "Independence of the Judiciary in Tanzania: Many Rivers to Cross," address at Kituo cha Katiba Zanzibar.

CUF (2006): "Election Report by the Civil United Front.**"**

Dicey, A. V. (1982): *Introduction to the Study of the Law of the Constitution.* Indianapolis: Liberty Fund.

ESRF and FACEIT (2002): **"**The state of corruption in Tanzania – Annual Report 2002", Commissioned by the Prevention of Corruption Bureau, Tanzania.

Government of Tanzania (2004): State of Public Service Report.

Haussman, Karen (Ed) (2007): Anti-Corruption Policy Making In Practice: What Can Be Learned For The Implementation Of Article 5 of UNCAC? A Report of Six Country Case Studies: Georgia, Indonesia, Nicaragua, Pakistan, Tanzania and Zambia.

Karume, S. (2004): "Political Conflicts In Zanzibar: A Social, Economic and Political Interpretation", in S. Karume (ed.), *Dilemmas Of Political Transition: Towards Institutionalisation Of Multiparty Democracy In Tanzania,* EISA Research Report, No. 7.

Kihamba. J. S. (2008:) *Marketization of Public Service Delivery and its Effects on Management Perfomance: The Case of Tanzania's Executive Agencies,* M.A Dissertation: University of Dar es Salaam.

Killian, B. "Do Elections Matter? The Challenges and Prospects of Democratic Consolidation in Zanzibar", in a REDET Study, *Elections and Democratic Consolidation: The 2005 Elections in Tanzania, forthcoming.*

Luoga, F. D. A. M. (1998): "The Tanzanian Bill of Rights" in C. M. Peter and I. Juma (eds.) Fundamental Rights and Freedoms in Tanzania. Dar es Salaam; Mkuki na Nyota.

Makaramba, R. V. (2007): "The Legal Context of the Non-Profit Sector in Tanzania" in L. Ndumbaro and S. Yahya-Othman (eds.) The Third Sector in Tanzania: Capabilities and Challenges of Civil Society Organizations. University of Dar es Salaam.

Makulilo A. B (2007): Tanzania: A De Facto One Party State? M.A. Dissertation: University of Dar es Salaam.

Masabo, J. (2005): "Sexual and Gender Based Violence Against Refugee Women in Western Tanzania: The Case Study of Refugee Camps in Kibondo District"; LL.M dissertation; University of Dar es salaam.

Mashamba, J. C. (2004): "Institutional Care and Support to Orphaned and Vulnerable Children in Tanzania: A Legal and Human Rights Perspective" in National Organization for Legal Assistance, Using the Law to Protect Children's Rights in Tanzania: The Unfinished Business 17 (2004), supra note 1.

MOEVT (2007): Basic Education Statistics in Tanzania (BEST).

Mpangala, G. P. (2006): "The Zanzibar Conflict: A Search For Durable Solutions", in Martin Rupiya, Jonathan Lwehabura and Len le Roux (eds.), *Civil Security Relations in Tanzania Investigating the Relationship Between the State, Security Services and Civil Society*, ISS Monograph No 128, December 2006.

Msekwa, P (2003): "Separation of Powers Between the Parliament and the Judiciary", in *The Tanzania Lawyer*, Special Edition, October.

Msekwa, P. (2002): "Parliament's Dilemma Caused by the Court of Appeal of Tanzania", in *Daily News*, March 26, 2002.

Mtaki, C.K and Okema, M (1994): Constitutional Reforms and Democratic Governance in Tanzania , Faculty of Law, University of Dar es Salaam.

Mukangara, D. R (2002): "The Tanzanian Constitutional Review: Issues for Debate". Paper Presented at the 8th REDET Workshop on Democratic Transition in East Africa, Bagamoyo, July.

Mushi, S. S (2001): "Separation of Powers and Checks and Balances in Modern Government", in REDET, *Civics: A Tanzanian Reader,* E and D Publishers, Dar es Salaam.

Nditi, N. N, (1994): "The Independence of the Judiciary", in Mtaki, C.K and Okema, M, (1994) *Constitutional Reforms and Democratic Governance in Tanzania* , Faculty of Law, University of Dar es Salaam.

Ndumbaro and S. Yahya-Othman (eds.) *The Third Sector in Tanzania: Capabilities and Challenges of Civil Society Organization*s. University of Dar es Salaam.

Ndumbaro, L (2004): "Migogoro Baina ya Mihimili Mitatu ya Mamlaka", in REDET, *Migogoro na Ujenzi wa Demokrasia Tanzania.*

Nyalali Commission - *The Presidential Commission on Single Part or Multiparty System in Tanzania, 1991 Vol. One*, Dar es Salaam University Press.

Nyerere, Julius (1995): *Our Leadership and the Destiny of Tanzania*, Harare: African Printing Group.

Oluyede P.A, *Administrative Law in East Afrca,* Nairobi: East African Literature Bureau.

Othman M, Othman (2008): " Dimension of Corruption in Zanzibar: History, Current Policy and Legal Framework**":** Presentation Made at Anti-corruption Training Organised by the AG's Office Zanzibar. Neptune hotel, 26-29 April, 2008.

Shivji, I. G. (2008): *Pan-Africanism or Pragmatism? Lessons of Tanganyika-Zanzibar Union.* Mkuki na Nyota Publishers. Dar es Salaam.

Shivji, I.G. (2003): 'Constitutional Limits on Parliamentary Powers' in *The Tanganyika Law Society Journa*l, Special Edition, October.

TEMCO (2001): "Report on the 2000 Tanzania General Elections", Tanzania Election Monitoring Group.

TEMCO Report (2006): " The 2005 General Elections in Zanzibar: How Free and Fair?"

TGNP (2006): "Gender Mainstreaming in Development Policies and Programmes", Policy Dialogue Seminar at ESRF, May.

The Constitution of the United Republic of Tanzania 1977 Government Printer.

The UN Convention on Consent to marriage, Minimum Age for Marriages and Registration of Marriages; 1962.

United Republic of Tanzania (1995): The Public Leadership Code off Ethics Act No.13 of 1995**,** Dar es Salaam.

United Republic of Tanzania (2007**):** The Anti-Money Laundering Act,2006, Dar es Salaam.

United Republic of Tanzania (2007): Prevention and Combating of Corruption Act No 11 of 2007**,** Dar es Salaam.

United Republic of Tanzania Local Government Reform Policy Paper 1998.

United Republic of Tanzania President's Office-Public Service Management: State of the Public Service Report 2004.

United Republic of Tanzania (2006): *Educational Sector Review, Aide Memoire*, Dar es Salaam: Education Sector Development Programme (ESDP).

United Republic of Tanzania (1998): Review of the 1995 General Election in Tanzania, A Report Prepared by Jorgen Elklit, Mark D. Bomani, and Chris Peter Maina for the Ministry of Justice and Constitutional Affairs, January 28, 1998, Dar es Salaam.

United Republic of Tanzania (2005): *National Strategy for Growth and Reduction of Poverty (NSGRP)* Dar es Salaam: Vice President's Office.

United Republic of Tanzania (2006): *Education Sector Development Programme: PEDP II (2007-2011).* Dar es Salaam: Ministry of Education and Vocational Training.

Wade E. C. S and Brandley, A. W (1970): *Constitutional Law*, 8th Edition, London.

Wallensteen, P. (1988): "Understanding Conflict Resolution: A Framework", in Peter Wallensteen (ed.), *Peace Achievements and Challenges*, Westview Press Inc.

Internet Sources

Centre for Peace and Economic Development (CEPEDE)-Tanzania's website: http://www.cepede.org/tzplan.phh

Mwema , S. A. **"**Current Situation and Countermeasures against Money Laundering: Tanzania's Experience". Available at: www.unafei.or.jp/english/pdf

"Paramilitary Force To Check Arms Smuggling from Zaire", *PANA* , April 18, 1997. Available at: www.nisat.org .

Report of the Law Reform Commission on the Law Relating to Children in Tanzania, 1994. pp.49-59. Available at: http://lrct-tz.org/pdf/watoto.pdf

"Uganda Buys Arms", *Post of Zambia* , Africa News Service, February 2, 1999. Available at: www.nisat.org

Tanzania National website www.tanzania.go.tz

Transparency International (2007): The 2006 Transparency International Corruption Perceptions Index**,** www.transparency.org.

United Nations (2007): “Report by the United Republic of Tanzania pursuant to article 8 of the Optional Protocol to the Conventional on the Rights of the Child on the Involvement of Children in Armed Conflict”, p.4 Available at:*http://www2.ohchr.org/English/bodies/crc/docs/ CRC/C/OPAC/TZA.1.pdf*

CHAPTER 4

Key references

Economic Commission for Africa. 2005. *African Governance Report 2005*. Addis Ababa

Jordaan, E.2006: “Inadequately Self-Critical: Rwanda’s Self –Assessment for the African Peer Review Mechanism” *African Affairs*, 105/420, pp. 333-351, 2006.

New Partnership for Africa’s Development (NEPAD). 2003: “Objectives, Standards, Criteria and Indicators for the African Peer Review Mechanism (The “ARM”),

New Partnership for Africa’s Development (NEPAD)/African Union. *und*. “Country Self-Assessment for the African Peer Review Mechanism (Master Questionnaire)”.

New Partnership for Africa’s Development (NEPAD)/African Peer Review Mechanism (APRM) 2007: Workshop on Streamlining and Fast Tracking the APRM Process, Algiers, Algeria – Background Documents

New Partnership for Africa’s Development (NEPAD). 2001: “Declaration on Democracy, Political, Economic and Corporate Governance”, Lusaka

Organization of Economic Cooperation and Developmet (OECD) 2002: “Building Coherent Global Economic Governance: What Role for the OECD?” TUAC Discussion Paper

Other references

African Peer Review Mechanism (APRM) 2005: *Country Review Report of the Republic of Ghana, Final Report*, June

African Peer Review Mechanism (APRM) 2006a: *Country Report of Republic of Kenya, Final Report*

African Peer Review Mechanism (APRM) 2006b: *Country Review Report of the Republic of Rwanda*, Final Report.

Assey P., S. Bass, B. Cheche, D. Howlett, G. Jambiya, I. Kikula, S. Likwelile, A. Manyama, E. Mugurusi, R. Muheto. and L. Rutasitara, 2007: "Environment at The Heart of Tanzania’s Development: Lessons Learned from Tanzania’s National Strategy for Growth and Reduction of Poverty (MKUKUTA)" Natural Resources Issues Series No. 6. International Institute for Environment and Development, London, UK

Bagenda P. M. 2003: “Tanzania Case Study”, Chapter 4 in Gastrow P. (*ed*) *Penetrating State and Business Organized Crime in Southern Africa*, Volume 1 Published in Monograph No 86, September 2003

Bank of Tanzania (BOT) 2000: “The Money Laundering Control”, Circular Number 8 to Banks and Financial Institutions in Tanzania

Bhavnani, R., S. Lucas and S. Radelet. 2004: “2004 MCA Threshold Programme: A Comment on Country Selection” *mimeo*.

Bank of Tanzania (BOT) 2008a:Economic Bulletin for the Quarter Ending March, 2008, Vol.XL No.1, Dar es Salaam

Bank of Tanzania (BOT) 2008b: *Monetary Policy Statement*, June

East African Community (EAC), 2006: *EAC Development Strategy 2006 – 2010: Deepening and Accelerating Integration,* EAC Secretariat, Arusha

Economic Commission for Africa. 2005: *African Governance Report 2005*. Addis Ababa

Gampat, Ramesh, 2007: "Approaches to corruption". HDRU Brief no. 03/2007 prepared for the Asia Pacific Human Development Report *Tackling Corruption, Transforming Lives*. Colombo: UNDP Regional Centre.

Goredema C. 2003: "Money Laundering in East and Southern Africa: An Overview of the Threat" *Occasional Paper 69*, Institute for Security Studies, April 2003

Haiti. 2006. "Recent Progress in Economic Governance Reforms", October.

Human Development Report Unit (HDRU) Team. 2007: "Corruption Myths or Myths on Corruption?" HDRU Brief No. 02/07 prepared for the Asia Pacific Human Development Report *Tackling Corruption, Transforming Lives*. Colombo: United Nations Development Programme (UNDP) Regional Centre.

Institute of Liberty and Democracy (ILD). 2005. "Programme to Formalize the Assets of the Poor of Tanzania and Strengthen the Rule of Law – The Diagnosis", Peru

Institute for Security Studies (ISS) 2006: "Money Laundering Monitor *(The Monitor)",* Organised Crime and Money Laundering Programme, Newsletter, Issue 5, December 2006, Institute for Security Studies, Cape Town

Kahyarara Godius (Forthcoming) "Labour Market Segmentation, Growth and Poverty Reduction in Tanzania"., Research and Analysis Technical Working Group (RAWG).

LHRC/ZLSC, 2007: "Tanzania Human Rights Report 2007: Incorporating Specific Part on Zanzibar", Dar es Salaam/Zanzibar.

Maliyamkono and M.S.D. Bagachwa. 1990: *The Second Economy in Tanzania*, Dar es Salaam: Dar es Salaam University Press

Moshi, H.P.B and A.V.Y. Mbelle (*eds*), 2008. *Zanzibar: Overcoming the Challenges of Poverty Reduction,* RECOCE, Dar es Salaam and Zanzibar

Ndulu, B.J., L. Chakraborti, L. Lijane, V. Ramachandran and J. Wolgin.2007: *Challenges of African Growth: Opportunities, Constraints and Strategic Directions*. Washington, the World Bank.

Ngowi, Daniel, 2005: "Effects of Budgetary Process Reforms on Economic Governance Evidence from Tanzania" ESRF Paper Series

Organization of Economic Cooperation and Developmet (OECD). 2002: "Building Coherent Global Economic Governance: What Role for the OECD?" TUAC Discussion Paper

Rajivan, Anuradha, 2006: "Questioning Corruption: Is Choice and Voice a Vaccine Against it?" HDRU Brief no. 01/2006 prepared for the Asia Pacific Human Development Report *Tackling Corruption, Transforming Lives*. Colombo: UNDP Regional Centre.

Rajivan, Anuradha, 2007: "Understanding Corruption from a Development Perspective: How Can it be Curbed?" HDRU Brief no. 05/2007 prepared for the Asia Pacific Human Development Report *Tackling Corruption, Transforming Lives*. Colombo: UNDP Regional Centre.

Revolutionary Government of Zanzibar (RGOZ). 2002a: *Development Vision 2020,* Zanzibar.

RGOZ 2006: *2004/05 Household Budget Survey*, Office of the Chief Government Statistician, Zanzibar, September

RGOZ, 2004: *Zanzibar Trade Policy*, Zanzibar

RGOZ, 2008a: *Economic Survey and Development Plan 2008/09*, Zanzibar, June

RGOZ, 2008b: Speech by the Minister for Finance and Economic Affairs on Development Plan, Revenue and Expenditure Estimates for Financial Year 2008/09 to the House of Representatives, Zanzibar, June

RGOZ, 2003: *Zanzibar Good Governance Strategic Plan*, Zanzibar

RGOZ. 2002b: *Zanzibar Poverty Reduction Plan,* Zanzibar.

RGOZ. 2007a: *Zanzibar Strategy for Growth and the Reduction of Poverty (ZSGRP/MKUZA)*, February

RGOZ.2007b: *Zanzibar's Growth Strategy (2006-2015)*, Zanzibar

Stulz, N.M. 2007: "African States Experiment with Peer Reviewing", Brown University, *mimeo*

Transparency International. 2007. *Corruption Perceptions Index*.

UNDP 2008b: "2007/08 Human Development Index Rankings", New York

UNDP.2008c: Human Development Database ***http://hdr.undp.org/statistics***

United Nations Development Programme (UNDP). 2008a: *Tackling Corruption, Transforming Lives.* Asia Pacific Human Development Report. New Delhi: Macmillan

United Nations. 2000: *Economic Governance: Guidelines for Effective Financial Management,* New York.

United Republic of Tanzania (URT). 1999: *National Framework for Good Governance*, Dar es Salaam.

United Republic of Tanzania (URT) 2005a: *The Cooperative Reform and Modernization Programme CRMP 2005-2015*, April

United Republic of Tanzania (URT) 2005b: *National Strategy for Growth and Reduction of Poverty (NSGRP)* Vice President's Office, Dar es Salaam, June: Tanzania Printers Ltd

United Republic of Tanzania (URT) 2003a: *Cooperative Development Policy, 2002*, Government Printer, Dare s Salaam, February.

United Republic of Tanzania (URT) 2004: The Third Progress Report, Vice President's Office, Dar es Salaam.

United Republic of Tanzania (URT) 2004a: The Cooperative Reform and Modernization Program 2005-2015, Dar es Salaam, April.

United Republic of Tanzania (URT) 2007c: "Report of the Financial programming Working Group Workshop", Dar es Salaam, December.

United Republic of Tanzania (URT) 2008a: *Economic Survey 2007*, Ministry of Finance and Economic Affairs, Dar es Salaam, June.

United Republic of Tanzania (URT) 2008d: *Basic Education Statistics in Tanzania 2004-2008*, National Data, Ministry of Education and Vocational Training.

United Republic of Tanzania (URT) *Monetary Policy Statement*, Bank of Tanzania 2000-2007 (annual) Bank of Tanzania.

United Republic of Tanzania (URT) Websites.

United Republic of Tanzania (URT), 2007b: "Medium Term Strategic Planning and Budgeting Manual", October

United Republic of Tanzania URT, 2007a: Speech by Deputy Minister For Finance, at the official opening of *Training Workshop on Anti-Money Laundering and Combating Financing of Terrorism, Financial Crime Awareness and Prevention* organized by Downtonhill, Dar Es Salaam 23rd July, 2007

United Republic of Tanzania (URT) 2005: *The National strategy for Growth and Reduction of Poverty (NSGRP)*. Dar es Salaam.

United Republic of Tanzania (URT) 2006c: *Joint Assistance Strategy for Tanzania (JAST)*, Dar es Salaam, December.

United Republic of Tanzania (URT) 2006d: *MKUKUTA Status Report 2006: Progress Towards the Goals for Growth, Social well-being and Governance in Tanzania*, Dar es Salaam, Ministry of Planning, Economy and Empowerment.

United Republic of Tanzania (URT) 2006e: "Local Government Fiscal Review", Dar es Salaam.

United Republic of Tanzania (URT) 2003b: *National Trade Policy – Trade Policy for a Competitive Economy and Export-led Economy*, Ministry of industry and Trade, Dar es Salaam

United Republic of Tanzania (URT) 2006a: Guidelines for the Preparation of Medium Term Plan and Budget Framework (for the period 2006/7 –2008/09), Ministry of Planning, Economy and Empowerment and Ministry of Finance, Dar es Salaam

United Republic of Tanzania (URT) 2006b: "Macroeconomic Convergence in Southern Africa Development Community (SADC): an Assessment of Tanzania's Recent Macroeconomic Growth Performance, Prospects and Programme of Action towards Meeting Regional Targets" - Country Draft Report to The SADC Secretariat Ministry of Finance, Dar es Salaam

United Republic of Tanzania (URT) 2008b: Speech by the Minister for Finance and Economic Affairs When Introducing to the Assembly the Estimate of Government Revenue and Expenditure for Financial Year 2008/9, on 12th June 2008

United Republic of Tanzania (URT) 2008c: "2007 Household Budget Survey Preliminary Data" National Bureau of Statistics, Dar es Salaam, September

www.mof.go.tz

www.bot-tz.org

www.esrf.or.tz

www.tanzania.go.tz

www.nbs.go.tz

United States Agency for International Development (USAID). 2004: "Public Expenditure and Service Delivery Monitoring in Tanzania: Some international best practices and a discussion of present and planned Tanzanian initiatives," Report.

Utz, R.J (*ed*). 2007: *Sustaining and Sharing Economic Growth in Tanzania*, the World Bank, Washington DC

World Bank. 1998: *"Support to the Government of Tanzania's Anti-Corruption Programme".* Washington, World Bank

World Bank (2004): *"Investment Climate Assessment-Improving Enterprise Performance and Growth in Tanzania"* Washington D. C

World Bank, 2008: *World Trade Indicators 2008 Benchmarking Policy and Performance*, The World Bank, Washington DC

World Economic Forum, 2008: *The Global Competitiveness Report 2008-2009*, Geneva

www.moibrahimfoundation.org

CHAPTER 5

Books

Bolton, Dianne, 1985: Nationalisation – *A Road to Socialism? The Lessons of Tanzania*, London: Zed Books Ltd.

Commission for Africa, March, 2005: *Our Common Interest: Report of the Commission for Africa*, London: Commission for Africa.

Eze, Osita C., 1975: *The Legal Status of Foreign Investments in the East African Common Market*, Leiden: A.W. Sijhoff.

Njau, A. and T. Mruma (eds.), 2004: *Gender and Development in Tanzania: Past, Present and Future*, Dar es Salaam: Women Research and Documentation Project (WRDP).

Nyong'o, Peter Anyang', 2002: *New Partnership for Africa's Development NEPAD: A New Path?* Nairobi: Heinrich Boll Foundation Regional Office for East and Horn of Africa.

Peter, Chris Maina, 1994: *Foreign Investments in Tanzania: The Mainland and Zanzibar*, Dar es Salaam (Tanzania): Friedrich Ebert Stiftung and Department of International Law of University of Dar es Salaam.

Peter, Chris Maina, 1989: *Foreign Private Investments in Tanzania: A Study of the Legal Framework*, Konstanz (Germany): Hartung-Gorre Verlag.

Peter, Chris Maina, 1990: *Private Investments in Tanzania: A Comment on the New Investment Code*, Dar es Salaam (Tanzania): Friedrich Ebert Stiftung.

Revolutionary Government of Zanzibar, June, 2005: *Zanzibar Investment Policy (ZIP)*, Zanzibar: RGZ.

Sinare, Hawa, 1983: *Legal and Economic Effects of Expropriation and Nationalisation of Foreign Investments*, Konstanz: Hartung – Gorre Verlag.

Society for International Development, 2006: *The State of East Africa Report 2006: Trends, Tensions and Contradictions: The Leadership Challenge*, Nairobi: SID.

Southall, Roger and Henning Melber (eds.), 2006: *Legacies of Power: Leadership Change and Former Presidents in African Politics*, Cape Town: HSRC Press.

Tanzania Industrial Studies and Consulting Organization, 1980: *A Manual for Investors in Tanzania*, Dar es Salaam: TISCO.

United Nations Industrial Development Organization, 1992: (UNIDO), *Investor's Guide to Tanzania*, Vienna: UNIDO.

United Republic of Tanzania, June, 2005: *National Strategy for Growth and Reduction of Poverty (NSGRP)*, Dar es Salaam: Vice President's Office.

United Republic of Tanzania, 2003: *National Trade Policy – Background Papers: Trade Policy for a Competitive Economy and Export – Led Growth*, Dar es Salaam: Dar es Salaam University Press Ltd.

United Republic of Tanzania, 2005: *Poverty and Human Development Report 2005*, Dar es Salaam: Mkuki na Nyota Publishers.

United Republic of Tanzania, July, 2005: *Summary of the National Strategy for Growth and Reduction of Poverty*, Dar es Salaam: Vice President's Office.

United Republic of Tanzania, 2003: *Tanzania Investors Guide – 2002 and Beyond*, Dar es Salaam: Tanzania Investment Centre.

United Republic of Tanzania, November, 2004: *Tax Administration and Structure in Tanzania* (4th Edition), Dar es Salaam: Tanzania Revenue Authority.

United Republic of Tanzania, October, 1996: *The National Investment Promotion Policy*, Dar es Salaam: President's Office – Planning Commission.

World Commission on the Social Dimension of Globalization, 2004: *A Fair Globalisation: Creating Opportunities for All*, Geneva: International Labour Organisation.

Articles

Bagachwa, Mboya S.D., 1992: The Challenges and Potentials of the New Investment Promotion Policy," in BAGACHWA, Mboya S.D.; Amon V.Y. MBELLE; and Brian Van Arkadie (eds.), *Market Reforms and Parastatal Restructuring in Tanzania*, Dar es Salaam: Economics Department and Economic Research Bureau, University of Dar es Salaam.

Bradley, A.W., 1967: "Legal Aspects of the Nationalisations in Tanzania," Volume 3 No. 3 *East African Law Journal*, p. 149.

Dias, Clarence, 1970: "Tanzanian Nationalisations 1967 – 1970," Volume 4 No. 1 *Cornell International Law Journal*, p. 49.

Ebke, Werner, 1985: "Double Taxation," Volume 8 *Encyclopaedia of Public International Law*, Amsterdam: North – Holland, p. 138.

Green, R.H., 1978: "A Guide to Acquisition and Initial Operation: Reflections from Tanzanian Experience 1967 – 1974," in FAUNDEZ, Julio and Sol Picciotto (eds.), *The Nationalisation of Multinationals in Peripheral Economies*, London: The Macmillan Press Ltd., p. 17.

Lubar, C.G., 1971:"Government Protection of Foreign Investment in East Africa," Volume 7 *East African Law Journal*, p. 108.

Mihyo, Paschal B., 1977: "Foreign Private Investment and Foreign Aid in Tanzania after Arusha Declaration," Volume 6 *Dar es Salaam University Law Journal*, p. 1.

Msambichaka, Lucian A. et al, 2006: "Making Globalisation Work: Measures to Attract Foreign Direct Investment to Tanzania," in MSAMBICHAKA, Lucian A. et al (eds.), *Globalisation and Challenges for Development in Tanzania*, Dar es Salaam: Dar es Salaam University Press, p. 139.

Nsereko Daniel D., 1970: "The Tanzania Nationalisation Laws," Volume 3 No. 1 *Eastern Africa Law Review*, p. 1.

Nyerere, Julius K., 1968: "Public Ownership," in NYERERE, Julius K., *Freedom and Socialism*, Dar es Salaam: Oxford University Press, p. 251.

Nyong', Peter Anyang, 2002: "Governance Poverty and Sustainable Development in Africa," FUCKS, Ralf and Aseghdech Ghirmazion (eds.), *Sustainable Development, Governance and Globalisation: African Perspective*, Nairobi: Heirich Boll Foundation, in p. 38.

Peter, Chris Maina, 1993: "Double Taxation Avoidance in Tanzania," Volume 19 No. 3 *International Trade Law and Practice (Droit et Pratique du Commerce*), p. 602.

Peter, Chris Maina, July - October, 1990: "Imperialism and Export of Capital: A Survey of Foreign Private Investments in Tanzania During the German Colonial Period," Volume 25 Nos. 3-4 *Journal of Asian and African Studies*, p. 197.

Peter, Chris Maina, 1989: "MIGA and GRIP: Two International Investment Insurance Programmes," Volume 12 No. 3 *World Competition: Law and Economics Review*, p. 95.

Peter, Chris Maina, 1991: "Promotion and Protection of Foreign Investments in Tanzania: A New Investment Code," Volume 6 No. 1 *ICSID REVIEW: Foreign Investment Law Journal*, p. 42.

Peter, Chris Maina, 1996: "Protection of Investments in Tanzania: Some New Issues from Zanzibar," (with Prof. Dr. Carsten Thomas Ebenroth), Volume 8 Part 4 *African Journal of International and Comparative Law*, pp.

Peter, Chris Maina, 1988: "Settlement of Investment Disputes," Volume 5 No. 1 *Journal of International Arbitration*, p. 67.

Peter, Chris Maina, 1991: "Tanzania: The National Investment (Promotion and Protection) Act, 1990 - Introductory Note," Volume 30 *International Legal Materials*, p. 890.

Peter, Chris Maina, 1989: "Taxation of Foreign Private Investments in Tanzania: An Overview," No. 4 *Intertax: International Tax Review*, p. 136.

Peter, Chris Maina, 1988: "The 1986 Investment Protection Act of Zanzibar," *ICSID REVIEW: Foreign Investment Law Review*, p. 338.

Peter, Chris Maina, 1990: "The New Patent Act for Tanzania," Volume 21 No. 1 *IIC: International Review of Industrial Property and Copyright Law*, p. 57.

Rugumamu, Severine, 1988: "State Regulation of Foreign Investment in Tanzania: An Assessment," Volume 13 No. 4 *African Development*, p. 5.

Rwezaura, Barthazar A., 1988: "Legal Protection of Intellectual Property in Tanzania," Volume 4 No. 1 *Lesotho Law Journal*, p. 239.

Temu, Peter, 1967: "Nationalisation in Tanzania," Volume 4 No. 3 *East Africa Journal*, p. 35.

Thanawalla, S., 1970: "Foreign Inter Parties Judgements: Their Recognition and Enforcement in the Private International Law in East Africa," Volume 19 *International and Comparative Law Quarterly*, p. 430.

Umozurike, U.O., 1970: "Nationalisation of Foreign Owned Property and Economic Self-determination," Volume 6 No. 1 *East African Law Journal*, 79.

Voss, J., 1987: "The Multilateral Investment Guarantee Agency: Status, Mandate, Concept, Features, Implications," Volume 21 *Journal of World Trade Law*, p. 5.

Wandia, Mary, 2003: "NEPAD and Privatisation," in GHIRMAZION, Aseghedech and Anne Nyabera (eds.), *Perspectives on Gender Discourse: Gender Dimensions of NEPAD*, Nairobi: Heinrich Boll Foundation, p. 67.

Wanyande, Peter, 2004: "NEPAD and Security in the IGAD Region," MWAGIRU, Makumi (ed.), *African Regional Security in the Age of Globalisation*, Nairobi: Heinrich Boll Foundation, p. 67.

Zar, W., 1972: "Double Taxation Treaties in African Countries," No. 5 *African Law Studies*, p. 47.

Thesis, Dissertations, Monographs and Reports

Eskola, Elina, 2005: *Agricultural Marketing and Supply Chain Management in Tanzania: A Case Study*, Dar es Salaam: Economic and Social Research Foundation (Working Paper Series No. 16).

Intern Report on Harmonization of Employment Policies and Legislation in East Africa Community Africa Centre for Research and Legal Studies, Kampala Uganda.

Kabelwa, George Michael, March, 2004: *Technology Transfer and South African Investment in Tanzania* (Working Paper Series No. 10), Dar es Salaam: Economic and Social Research Foundation.

Luoga, Florens D.A.M., 1988: *Ability to Pay: The Basis for Fair Income Taxation in a Developing Country – A Study of the Tanzania Income Tax Act, 1973*, A Dissertation Submitted in Partial Fulfilment of the Requirements of the Master of Laws of the Queens University, Kingston, Ontario, Canada.

Mapunda, Benedict Thomas, 1993: *Compensation for Expropriation of Foreign Private Investments: The Problem of Standards*, A Dissertation Submitted in Partial Fulfilment of the Requirements of the Master of Laws of the University of Dar es Salaam.

Miller III, Sutherland and Marc Shiman, January, 1999: *Tanzania Investor Roadmap*, Dar es Salaam: United States Agency for International Development and PriceWaterhouseCoopers.

Mkenda, Beatrice Kalinda, August, 2005: *Globalisation and Rural Household Welfare in Tanzania*, Dar es Salaam: Economic and Social Research Foundation (Working Paper Series No. 15).

Mkenda, Beatrice Kalinda, September, 2006: *The Impact of Globalisation on Labour Market: A Case Study of Tanzania*, Dar es Salaam: Economic and Social Research Foundation (Working Paper Series No. 18).

Mlulla, Allan Syril, October, 2006: *Capital Markets: The Case of Tanzania*, Dar es Salaam: Economic and Social Research Foundation (Working Paper Series No. 19).

Mlulla, Allan Syril, March, 2007: *Rural Transformation in the Globalisation Context: Experiences from Foreign Direct Investment' Philanthropy in Tanzania*, Dar es Salaam: Economic and Social Research Foundation (Working Paper Series No. 21).

Mnyele, G.S., 1995: *Legal Protection of Foreign Investment: A Quest for the New Capital Importing Countries' Integrated Approach*, A Dissertation Submitted in Partial Fulfilment of the Requirements of the Master of Laws of the University of Warwick, Coventry, United Kingdom.

Mutua, Makau, 1984: *Foreign Investment Protection in Tanzania*, A Dissertation Submitted in Partial Fulfilment of the Requirements of the Master of Laws of the University of Dar es Salaam.

Ndlovu, Tchaka, March, 2007: *The Impact of Globalisation on Poverty and Income Inequality: Evidence from 32 African Countries*, Dar es Salaam: Economic and Social Research Foundation.

Ngeleja, William Mganga, 1998: *Private Investment Climate in Tanzania Mainland: An Appraisal of the Tanzanian Investment Law*, A Dissertation Submitted in Partial Fulfilment of the Requirements of the Master of Laws of the University of Dar es Salaam.

Tanzania Investment Centre, October, 2002: *Annual Reports – 1998-2001*, Dar es Salaam: TIC.

United Republic of Tanzania, October, 1996: *The National Investment Promotion Policy*, Dar es Salaam: President's Office – Planning Commission.

The Employment Act. No. 11 of 2005: Government Print Zanzibar

The Labour Relation Act. No.1 2005: Government Print Zanzibar

The Safety and Health Act, No. 8, 2005: Government Print Zanzibar

The Worker's Compensation (Amendment) Act, No. 5, 2005: Government Print, Zanzibar

The Zanzibar Social Security Fund Act, No. 2, 2005: Government Print, Zanzibar

United Republic of Tanzania (URT) (2008): Bill Supplement – The Workers Compensation Act. 2008 ISSN.0856 – 035x.

United Republic of Tanzania (URT) (2004): The Employment and Labour Relation Act. No. 6 of 2004

United Republic of Tanzania (URT) (2004): The Labour Institution Act. No. 7 of 2004

United Republic of Tanzania (URT) (2004): Labour law Reform; Ministry of Labour, Youth Development and Sports, Dar es Salaam

Wellington, J.O., 1975: *Patents and Other Legal Forms: Role in Transferring Technology to Developing Countries with Emphasis to Tanzania*, A Dissertation Submitted in Partial Fulfilment of the Requirements of the Master of Laws of the University of Dar es Salaam.

ACTS

Auditors and Accountants Act, 1972 and the 1995 Amendments

Bank of Tanzania Act, 1995 (Act No. 1 of 1995) [Chapter 197 of the Revised Edition of 2002].

Banking and Financial Institutions Act, 2006 (Act No. 6 of 2006).

Banking and Financial Institution Act, 2006

Capital Markets and Securities Act, 1994 (Act No. 5 of 1994) [Chapter 79 of the Revised Edition of 2002].

Capital Markets and Securities Act, 2004

Civil Procurement Code, 1966 (Act No. 49 of 1966) [Chapter 33 of the Revised Edition of 2002].

Companies Act, 1931 (Ordinance No. 46 of 1931) [Chapter 212 of the Revised Edition of 2002].

Employment and Labour Relations Act, 2004 (Act No. 6 of 2004).

Engineers Registration Act, 1997 (Act No. 15 of 1997 [Chapter 63 of the Revised Edition of 2002].

Employment and Labour Regulations Act, 2004

Environmental Management Act, 2004 (Act No. 20 of 2004).

Fair Competition Act, 2003.

Finance Act, 2004.

Foreign Exchange Act, 1992 (Act No. 1 of 1992) [Chapter 271 of the Revised Edition of 2002].

Income Tax Act, 2004 (Act No. 11 of 2004).

Insurance Regulation Act, 1996

Labour Institutions Act, 2007

Land Act, 1999 (Act No. 4 of 1999) [Chapter 113 of the Revised Edition of 2002].

National Microfinance Bank Ltd Incorporation Act, 1997 (Act No. 22 of 1997) [Chapter 44 of the Revised Edition of 2002].

Protection from Radiation Act, 1983 (Act No. 5 of 1983) [Chapter 188 of the Revised Edition of 2002].

Public Finance Act, 2001

Public Procurement Act, 2004 (Act No. 21 of 2004).

Surface and Marine Transport Act, 2001 The Workers' Compensation Act, 2008.

Tanzania Investment, 1997 (Act No. 26 of 1997) [Chapter 38 of the Revised Edition of 2002].

Tanzania Investment Act, 2002

Zanzibar Investment Promotion and Protection Act, 2004 (Act No. 11 of 2004).

Zanzibar Employment Act No.11, 2005

Zanzibar Free Economic Zone Act No.17, 1992

Zanzibar Social Security Act No.2, 2005

CHAPTER 6

Adede Domestication of International Obligations,
http://www.commonlii.org/ke/other/KECKRC/2001/14.HTML

African Peer Review Mechanism (2008): a Survey on Stakeholders' Views on Social Economic Development in Tanzania

Assad, M and S. Kibaja (2007): "Resource Allocation and Challenges of Education Reform in Tanzania," paper presented to Education Sector Review Workshop, October.

Bank of Tanzania (2006): Tanzania Microfinance Institutions Directory 2005.

Bank of Tanzania (2007): Economic Bulletin for the Quarter Ended March.

Bahame, Tom Nyanduga and Chritabel Manning, Guide to Tanzanian Legal System and Legal Research, htt://www.nyalawglobal.org/globalex/Tanzania.htm

Bureau of Statistics (NBS) [Tanzania] and ORC Macro (1997): *Tanzania Demographic and Health Survey 1996*, Dar es Salaam, Tanzania: National Bureau of Statistics and ORC Macro and Office of the Chief Government Statistician

Bureau of Statistics (NBS) [Tanzania] and ORC Macro (1999): *Tanzania Reproductive and Child Health Survey 1998*, Dar es Salaam, Tanzania: National Bureau of Statistics and ORC Macro and Office of the Chief Government Statistician

Bureau of Statistics (NBS) [Tanzania] and ORC Macro (2005): *Tanzania Demographic and Health Survey 2004-05*. Dar es Salaam, Tanzania: National Bureau of Statistics and ORC Macro and Office of the Chief Government Statistician.

Dahoma M., A. A. Salim, R. Abdool, A. A. Othman, A. Abdullah, and A. S. (2005): Prevalence of HIV, Hepatitis B and C and Syphilis Infection in Substance Users in Zanzibar, Tanzania.

DEGE Consult (2007): Local Level Service Delivery, Decentralization and Governance (unpublished report prepared for JICA).

Economic Commission for Africa and Tanzania Gender Networking Programme (2003): African Gender Development Index, Tanzania Report

Evans, A and E. Ngalewa (2003): Fighting Poverty in Africa: Are PRSPs Making a difference? in Booth D. (Eds), Fighting Poverty in Africa pp.247-273

Facet, T (2007): Tanzania Country Scan Microfinance for Hivos/MicroNed

http://www.commonlii.org/ke/other/KECKRC/2001/14.HTML (see article by Dr Adede, Domestication of International Obligations)

htttp://www.unhchr.ch/development/approaches

Ministry of Education and Vocational Training (various years), Basic Statistics in Education, Dar es Salaam, MoEVT

Ministry of Planning and Economic Empowerment (2006): MKUKUTA Status Report Progress towards the Goals for Growth, Social well-being and Governance in Tanzania

Ministry of Water (2006): Water Sector Development Programme 2006-2025, Dar es Salaam

Ministry of Water (2007): Sector Report to the Joint Water Sector Review, Dar es Salaam

Ministry of Water (2007): Annual Water Sector Status Report (2006/2007), Dar es Salaam

Ole Therkildsen (1988): *Watering White Elephants? Lessons from Donor Funded Planning and Implementation of Rural Water Supply in Tanzania*, Scandinavian Institute of African Studies

PMO-RALG (2004): Guidelines for Planning and Budgeting at Village/Mtaa, Dar es Salaam: PMO-RALG and Regional Secretariats

PMO-RALG (2006): Guidelines for Preparation of Plans and Budgets of LGAs for 2006/07-2008/09

PMO-RALG (2007): Public Expenditure Tracking Systems (PETS), Guidance for Local Government Authorities, Dar es Salaam: PMO-RALG and Regional Secretariats

PMO-RALG and JICA (2006): A Study on Planning Methodology

REPOA and UNICEF (2006): Update of the Situation Analysis of Women and Children in Zanzibar, October.

REPOA and HAKIKAZI (2007): PETS Training Manual – English version, Dar es Salaam and Arusha

Research and Analysis Working Group (2003): Poverty and Human Development Report 2007, Dar es Salaam: Mkuki na Nyota Publishers

Research and Analysis Working Group (2005): Poverty and Human Development Report Dar es Salaam: Mkuki na Nyota Publishers

Research and Analysis Working Group (2007), Poverty and Human Development Report 2007, Dar es Salaam: Mkuki na Nyota Publishers

Revolutionary Government of Zanzibar (2005): HIV Prevalence Data from Antenatal Clinic Attendees, Zanzibar AIDS Control Programme (ZACP)

Revolutionary Government of Zanzibar (2006): Household Budget Survey 2004/05, Office of the Chief Government Statistician

Revolutionary Government of Zanzibar (2007): the National Strategy for Growth and Reduction of Poverty (MKUZA), Zanzibar: Ministry of Finance and Economic Affairs

Revolutionary Government of Zanzibar (2007): MKUZA Monitoring Master Plan, Zanzibar: Ministry of Finance and Economic Affairs

Revolutionary Government of Zanzibar (2007): *Mapitio ya Hali ya Uchumi na Utekelezaji wa Mpango wa Maendeleo Zanzibar 2006/2007, Kitabu cha Kwanza*, Zanzibar: Ministry of Finance and Economic Affairs.

Revolutionary Government of Tanzania (2007): Zanzibar Health Sector Public Expenditure Review Ministry of Health and Social Welfare

Revolutionary Government of Zanzibar (2007): Public Expenditure Review for HIV and AIDS, Zanzibar AIDS Commission

Revolutionary Government of Zanzibar (2008): Revolutionary Government of Zanzibar Economic Indicators, Zanzibar: Ministry of Finance and Economic Affairs

United Republic of Tanzania (2008): Zanzibar Economic Bulletin, Zanzibar: Ministry of Finance and Economic Affairs. .

Tanzania Gender Networking Programme (2007): Gender Profile of Tanzania: Enhancing Gender Equity

United Republic of Tanzania [URT] (1977): The Constitution of the United Republic of Tanzania

United Republic of Tanzania (1998): Tanzania Vision 2025

United Republic of Tanzania, (2002): Household Budget Survey 2000-2001, Dar es Salaam: National Bureau of Statistics

United Republic of Tanzania, (2003): Population and Housing Census 2002, Dar es Salaam: National Bureau of Statistics.

United Republic of Tanzania (2004): Country Report on Implementation of the Beijing Platform for Action and the Outcome Document of the 23rd Special Session of the General Assembly

United Republic of Tanzania, (2005): Agricultural Sample Census 2002-03, Dar es Salaam: National Bureau of Statistics

United Republic of Tanzania (2005): National Strategy for Growth and Reduction of Poverty (NSGRP), Vice Presidents Office, June.

United Republic of Tanzania (2005): Legal Sector Reform Programme Medium Term Strategy FYs 2005/6-2007/8

United Republic of Tanzania 2005: Tanzania HIV and AIDS Indicator Survey 2003-04, Dar es Salaam:

TACAIDS, National Bureau of Statistics; and Calverton, Maryland: ORC Macro.

United Republic of Tanzania (2006): Health Sector Public Expenditure Review, MoHSW

United Republic of Tanzania (2006): Tanzania Service Provision Assessment Survey

United Republic of Tanzania (2006): Analytical Report for Integrated Labour Force Survey (ILFS), NBS: Dar es Salaam

United Republic of Tanzania (2006): Gender Mainstreaming Working Group for Macro Policies

United Republic of Tanzania (2006): MKUKUTA Monitoring Master Plan, Ministry of Planning, Economy, and Empowerment

United Republic of Tanzania (2007): National Multi-sectoral Strategic Framework for HIV and AIDS (NMSF) 2008-12, Dar es Salaam: TACAIDS

United Republic of Tanzania (2007): HIV and AIDS Public Expenditure Review for the year 2006, Dar es Salaam: TACAIDS

United Republic of Tanzania (2007): EPI Annual Evaluation Meeting Report 19-23 March 2007, MoHSW

United Republic of Tanzania (2007): TASAF Fourth Quarter Progress Report (April - June 2007), Dar es Salaam: TASAF

United Republic of Tanzania (2008): HIV and AIDS Public Expenditure Review for the year 2007, Dar es Salaam: TACAIDS

United Republic of Tanzania (2008): Tanzania Regulatory Communications Authority

United Republic of Tanzania 2008: Tanzania HIV and AIDS Indicator Survey 2006-07, Dar es Salaam:

TACAIDS, National Bureau of Statistics and Calverton, Maryland: ORC Macro

United Republic of Tanzania, (2008): Household Budget Survey 2006-2007 (Draft Report), Dar es Salaam: National Bureau of Statistics

United Republic of Tanzania (2008): MKUKUTA Annual Implementation Report 2007/08, Dar es Salaam: Ministry of Finance and Economic Affairs.

United Republic of Tanzania, (various years), the Economic Surveys, Dar es Salaam: National Bureau of Statistics.

WaterAid (2005), Water and Sanitation in Tanzania: An update based on the 2002 Population and Housing Census

World Health Organisation (WHO) and UNICEF (2006): Meeting the Drinking Water and Sanitation MDG Target: the Urban and Rural Challenge of the Decade.

ANNEX I

Ratified ILO Conventions from 1962-2001 by Tanzania

Convention	Ratification date	Status
C11 Right of Association (Agriculture) Convention, 1921	19/11/1962	Ratified
C12 Workmen's Compensation (Agriculture) Convention, 1921	19/11/1962	Ratified
C15 Minimum Age (Trimmers and Stokers) Convention, 1921	30/1/1962	Denounced on 16/12/1998
C16 Medical Examination of Young Persons (Sea) Convention, 1921	30/1/1962	Ratified
C17 Workmen's Compensation (Accidents) Convention, 1925	30/1/1962	Ratified
C19 Equality of Treatment (Accident Compensation) Convention, 1925	30/1/1962	Ratified
C26 Minimum Wage-Fixing Machinery Convention, 1928	19/11/1962	Ratified
C29 Forced Labour Convention, 1930	30/1/1962	Ratified
C50 Recruiting of Indigenous Workers Convention, 1936	30/1/1962	Ratified
C59 Minimum Age (Industry) Convention (Revised),1937	30/1/1962	Ratified
C63 Convention concerning Statistics of Wages and Hours of Work, 1938	19/11/1962	Ratified
C64 Contracts of Employment (Indigenous Workers) Convention, 1939	30/1/1962	Ratified
C65 Penal Sanctions (Indigenous Workers) Convention, 1939	30/1/1962	Ratified
C86 Contracts of Employment (Indigenous Workers) Convention, 1947	30/1/1962	Ratified
C87 Freedom of Association and Protection of the Right to Organise Convention, 1948	19/4/2000	Ratified
C94 Labour Clauses (Public Contracts) Conventions, 1949	30/1/1962	Ratified
C95 Protection of Wages Convention, 1949	30/1/1962	Ratified
C98 Right to Organise and Collective Bargaining Convention, 1949	30/1/1962	Ratified
C100 Equal Remuneration Convention, 1951	26/2/2002	Ratified
C105 Abolition of Forced Labour Convention, 1957	30/1/1962	Ratified
C111 Discrimination (Employment and Occupation) Convention 1958	26/2/2002	Ratified
C131 Minimum Wage Fixing Convention, 1970	30/5/1983	Ratified
C134 Prevention of Accidents (Seafarers) Convention, 1970	30/5/1983	Ratified
C135 Workers' Representatives Convention, 1971	19/8/1983	Ratified
C137 Dock Work Convention, 1973	30/5/1983	Ratified
C138 Minimum Age Convention, 1973	16/12/1998	Ratified
C140 Paid Educational Leave Convention, 1974	30/5/1983	Ratified
C142 Human Resources Development Convention, 1975	30/5/1983	Ratified
C144 Tripartite Consultation (International Labour Standards) Convention, 1976	30/5/1983	Ratified
C148 Working Environment (Air Pollution, Noise and Vibration) Convention, 1977	30/5/1983	Ratified
C149 Nursing Personnel Convention, 1977	30/5/1983	Ratified
C152 Occupational Safety and Health (Dock Work) Convention, 1979	30/5/1983	Ratified
C154 Collective Bargaining Convention, 1981	14/8/1998	Ratified
C170 Chemicals Convention, 1990	15/3/1999	Ratified
C182 Worst Forms of Child Labour Convention, 1999	12/9/2001	Ratified

Source: *ILO Area office – Dar es Salaam 2008.*

ANNEX 11

Table 1: Summary of Mainland Tanzania Budget Process (Objective 3)

Date	Main Activities/Process	Key Actors	Remarks
November-December	Formulation of Budget Policy and Resource Projections: ○ Macro economic review by the Budget	○ National Budget Committee ○ Sectors	○ At this stage many players provide relevant information, most

Date	Main Activities/Process	Key Actors	Remarks
	Guideline Committee; o Assessment of performance of previous budget assumptions and targets; o Economic growth; o Rate of inflation; o Government finance o Sector performance especially those under Poverty Reduction Strategy (PRS) o Projection of GDP; o Resource projections/budget frame o Expenditure objectives and priorities– sectors level; and o Set resource ceilings both sectors and institutional level.	o PER Forum o Donors	importantly: The Bank of Tanzania; Research organisations such as ESRF and University of Dar es Salaam; NGOs and CBOs. o PER studies and discussions begin. This involves government officials, NSA and donors. o Local government plans and resource requirements from the village level to the district begin at this stage.
December-January	Issuance of Budget Guidelines and draft Cabinet paper for discussion and review by Cabinet Secretariat, Inter-Ministerial Technical Committee (IMTC) and then Cabinet.	o Budget Guideline o Committee, o Cabinet secretariat o IMTC o Cabinet	o Managerial issues arising from implementation of the previous budget are also addressed at this stage.
January-March	Revenue and Expenditure Estimates by Ministries, Regions and Local Governments: o Reviewing past and current budget performance; o Preparing detailed plans and targets; o Identifying activities and costing o inputs; o Preparing a three-year performance based budget –MTEF; and o Submission of Draft Budget estimates for MoF for scrutinisation.	o Ministries and independent Departments (MDAs) o Development partners (donors) o Non-State Actors (NSA)	o The PER process provides input in the budget formulation, especially for the Priority Sectors (PRS). o NSA such as GNP (gender issues); TAWLA (women legal issues); REPOA (poverty issues); TCCIA (taxation issues), etc, are very active at this stage.
April-May	Finalisation of Budget preparations o Scrutiny of MDAs estimates by Ministry of Finance; o Donor/Government consultations; o Submission of estimates to Cabinet Secretariat, IMTC and then Cabinet; and o Approval of the Budget Frame and Expenditure proposal by Cabinet; o Computerisation of the Budget data o Printing of the Budget Books by Government Printer	o Development Partners (Donors) o MDAs o Cabinet Secretariat o IMTC o Cabinet o Government Printer	o Critical stage where trade-off decisions are made to ensure funding conforms to priorities, strategies and Vision 2025. o Scrutiny of budget proposals by the nine Parliament Portfolio Committees as well as the Non-portfolio committees (Public accounts and Local authority Accounts Committees).
June-July	Budget authorisation by parliament: o Review and discussion of sectors plans and budgets by Parliamentary Committees; o Presentation of Public Speech on macroeconomic performance and projections by the Minister of planning and Privatisation; o Presentation of the government Budget proposals to the Parliament by the minister of Finance through a Budget Speech; o Parliamentary debates/discussions	o Parliamentary Committee o Ministries o Po-P&P o Minister of Finance o Sector Ministers	o Democratic budget debates by both the ruling part members and the opposition.

Date	Main Activities/Process	Key Actors	Remarks
	on ministerial estimates submitted by each Minister responsible; o Parliamentary approval of estimates by passing the Appropriation Bill; and o Parliamentary approval and passing the Finance Bill that empowers the Minister of Finance to raise the money to finance the Budget.		
July-June	Budget Execution: o Release of funds by the Ministry of Finance; o Collection and accounting for revenue collections by Tanzania Revenue Authority (TRA), and other MDAs. o Delivery of services and project implementation by institutions; o Maintenance of proper accounts for control and accountability; o Reporting on budget performance (both financial and physical) and evaluation; and o Project inspection and expenditure monitoring	o MoF o TRA o MDAs o Development Partners	o Accounting officers are appointed by the relevant body specified under the Public Finance Act, 2001) to become Receivers of Revenue and also accountable for expenditure in accordance with the Public finance Act, 2001. o Management issues arising from budget executions also dealt with at this stage. o Supplementary and additional estimates done according to need – approval follows normal parliamentary procedures.
July-June	Monitoring and control: o Accountability to ascertain appropriateness of expenditure and revenue and their conformity to authorities through financial reports and audits; o Periodic reporting and follow-up; o Internal audit; o Parliamentary Control; o Budget Review and Adjustments; and o Project inspections, etc.	o Parliament, Controller and Auditor General o Auditors o MDAs o PER Forum	o Specific monitoring and evaluation formats have been developed and issued for budget monitoring and follow-up. o Management issues arising from implementation taken up based on reviews and evaluations.

Table 2: Supervisory Methodologies, Key Acts, Regulations and Circulars under Control of the Bank of Tanzania

ACTS	
Bank of Tanzania Act, 1965 as amended in 1978 was repealed and replaced by the ***Bank of Tanzania Act, 2006***,	functions and objectives: regulation and supervision of banks and financial institutions
The ***Banking and Financial Institutions Act, 2006*** (BFIA, 2006)	consolidates the law relating banking, to harmonize the operations of all financial institutions, regulate credit operations
The ***Foreign Exchange Act, 1992***	provisions for the efficient administration and management of dealings in o gold, foreign currency, securities, payments, debts, import, export, transfer or settlement of property
REGULATIONS	
Banking and Financial Institutions Regulations, 1997:	conditions of entry or exit into banking industry, in general licensing requirements

The Management of Risk Assets Regulations, 2001:	providing prudential guidance on management of risk assets and basis for providing for losses on loans and other risk assets
The Capital Adequacy Regulations, 2001*	providing for capital adequacy requirements for various forms of banking institutions in Tanzania.
The Liquid Assets Ratio Regulations, 2000	to provide guidance on measuring and monitoring liquidity of banks and financial institutions
The Publication of Financial Statements Regulations, 2000	Informing the general public on the condition and performance of banks and financial institutions. Quarterly publications of balance sheet, income statement and cash flow statement and audited financial statements once annually required.
The Independent Auditors Regulations, 2000	to guide banks and financial institutions to appoint independent auditors recognized and registered by the National Board of Accountants and Auditors and by the Bank of Tanzania.
The Credit Concentration and Other Exposure Limits Regulations, 2001 **	provide for risk diversification and curtail excessive concentration of risk exposure of any bank or financial institution to one customer or group of customers, industry, economic sector or activity, stabilizing the financial system.
The Internal Control and Internal Audit Regulations, 2005	providing for internal controls and internal audit functions for banking institutions; prescribing roles of various stakeholders in the internal control and internal audit functions
The Microfinance Companies and Micro-credit Activities Regulations, 2005	provides for microfinance and micro-credit activities in Tanzania
The Foreign Exchange (Bureaux de Change) Regulations, 1999	governing bureaux de change operations in Tanzania.
CIRCULARS	
Circular No.1: ***Reserves Against Deposits and Borrowings***	requires banks to maintain statutory minimum reserves on their total deposits, including foreign currency deposits, received and funds borrowed from the general public. Non-bank financial institutions are not required to maintain minimum reserves.
Circular No.5:***Foreign Exchange Exposure and Placements, Purchases, Sales and Balances***	sets limits on placements with the correspondent banks by banks and financial institutions, requires the institutions to maintain a net open position not exceeding 20 percent of the core capital.
Circular No.7*: Instructions for Filling Reports under the Banking and Financial Institutions Act, 1991.* became effective on 30th June, 2000.	guides banks and financial institutions on how to properly fill returns submitted to the Bank of Tanzania; aim is to capture accurately and uniformly compiled information.
Circular No. 8: ***The Money Laundering Control-*** became effective on 1st September, 2000	aims at guiding banks and financial institutions on uncovering, reporting and controlling money laundering.

* repealed "Guidelines for Measuring Capital Adequacy" of 1st October, 1993 and the Addendum to Circular No. 3 on Capital Adequacy of March 27, 1996

**repealed "The Guidelines on Concentration of Credit and Other Exposure Limits" issue on 22nd December, 1992

Source: Bank of Tanzania

ANNEX III

Table 1: Status of MKUKUTA and MDG Targets

	1990 (or closest available)	2007 (or closest available)	2010 MKUKUTA Target	2015 MDG Target	2010 MKUKUTA Target - at current trend	Target – with better policies, institutional and additional funding
Goal 1: Eradicate extreme poverty and hunger	2015 target = halve 1990 level of income poverty and malnutrition					
Income - % below the national poverty line	39 percent	36 percent	24 percent		No	Yes
- % below dollar a day poverty line	61percent	58 percent		31 percent		
Child malnutrition - % of children under 5 underweight	29 percent	22 percent		15 percent		
- % of children under 5 stunted	43 percent	38 percent	20 percent		No	Uncertain
- % of children under 5 wasted	6 percent	3 percent	2 percent		Yes	Yes
Goal 2: Achieve universal primary education	2015 target = net enrolment of 100 percent					
Net enrolment in primary school	51 percent	96.1 percent	99 percent	100 percent	Met	Yes
Goal 3: Promote gender equality, empower women	2015 target = equal gender ratio					
Girls / boy ratio enrolment in primary school	1.01	0.99	1	1	Met	Yes
Girl / boy for enrolment in secondary school	0.70	0.81	1	1	Yes	Yes
Goal 4: Reduce child mortality	2015 target = reduce 1990 child mortality by two thirds					
Under five mortality (per 1000)	141	112	79	47	Yes	Uncertain
Infant mortality (per 1000)	92	68	50		Yes	Uncertain
Goal 5: Improve maternal health	2015 target = reduce 1990 maternal mortality by three fourths					
Reduce maternal mortality by three quarters (per 100,000 births)	529	578	265	132	No	Uncertain
Births attended by skilled staff (% of total)	53 percent	46 percent	80 percent		No	Yes
Goal 6: Combat HIV/AIDS, malaria, other diseases	2015 target = halt and begin to reverse AIDS etc.					
HIV prevalence in the total population (%)	n.a.	7.0 percent		<7.0 percent		
HIV prevalence among 15-24 year pregnant women	n.a.	7.6 percent	5 percent		No	Uncertain
Goal 7: Ensure environmental sustainability	2015 target = integrate into Govt. policies, reverse loss of environmental resources, halve proportion of people without access to safe water and sanitation					
Proportion with access to clean and safe water in urban areas	92 percent	91 percent	90 percent	90 percent	Met	Yes
Proportion with access to clean and safe water in rural areas	36 percent	47 percent	65 percent	90 percent	No	Yes

	1990 (or closest available)	2007 (or closest available)	2010 MKUKUTA Target	2015 MDG Target	2010 MKUKUTA Target - at current trend	Target – with better policies, institutional and additional funding
Proportion of people with access to basic sanitation in urban areas	98 percent	96 percent	95 percent		Met	Yes
Proportion of people with access to basic sanitation in rural areas	91 percent	92 percent	95 percent		Yes	Yes
Goal 8: Develop global partnership for development	2015 target = sustainable debt, make available benefits of new technologies					
Debt service (% of exports of goods and services)	32.9 percent	6.8 percent				

Note: Blanks indicate that an indicator is not a NSGRP or MDG indicator
n.a. = not available
Source: MPEE 2007, MKUKUTA Monitoring Report

Table 2: Gender Strategies/Interventions in MKUKUTA

Cluster	Strategy/Intervention
Cluster 1: Growth	**Exporting activities**: what potential for women SMEs? (identify sectors for supply chain analysis (production processes, quality standards, marketing)
	Marketing: enhance on-going initiatives to increase access for women to local, regional and global markets
	Affirmative employment action to create opportunities for women: what policies and programmes are needed?
	Small-scale industries: promote programmes that increase income-generating opportunities for women (and men) in rural areas, non-traditional products and traditional crafts.
	Farm technologies: research technologies and practices in rural areas: promote modern enviro-friendly
	Micro-finance: increase coverage in rural areas
	Savings and credit promotion especially SACCOs and revolving funds
	Laws: identify and review laws**,** and advocate against cultural practices which deny women and youth access to productive and financial assets, including inheritance laws and personal property rights
	Jobs: promote equal access to jobs and treatment at workplace for women and youth
Cluster 2: Quality of Life	**Primary education**: ensure all girls and boys are able to access high quality, child friendly and gender sensitive education.
	Secondary education: interventions to increase girls' access, completion and performance
	Teacher training: expand life-skills based and gender sensitive teacher training to cope with increased enrolment (all levels of education)
	Education curriculum: reform primary, secondary and teacher's education ….to incorporate gender (including gender sensitive text books)
	Higher education: increase funding for women's education and training
	Literacy for rural women and youth: enhance literacy, skills entrepreneurship training and vocational guidance.
	Skills training and basic literacy for older women and men
	Neonatal care: targeted nutrition education, supplements, and screening for development disabilities
	Reproductive health: promote and protect rights…which allow choice and control of fertility

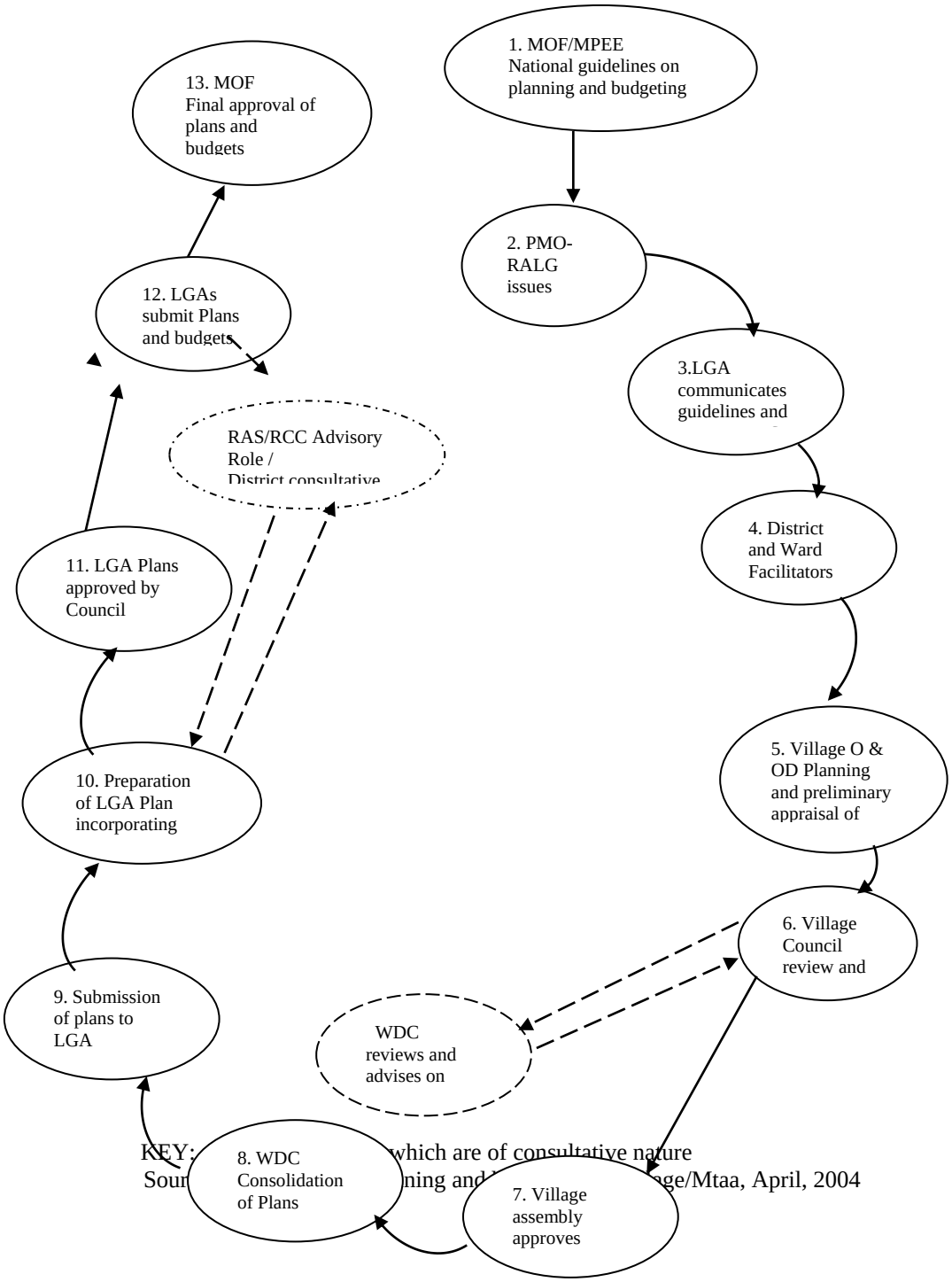
Cluster	Strategy/Intervention
	People Living with HIV and AIDs: implement and support a programme of continuity and care, including community based initiatives
	HIV andAIDs: integrate measures to prevent mother-to-child transmission
	Preferential treatment…in public land programs such as titling and land reform. Special attention to eliminating bottlenecks for women and widows to access credit.
	Violence: implementation of national plan of action to eradicate all forms of violence against women
	Assist HIV and AIDs affected households headed by young women, children and the aged with support
	Health care exemption: eliminate barriers to exemption for the poor, pregnant women, older persons…remove unofficial charges, reduce distance, and improve treatment.
Cluster 3: Governance	**Violence**: legislature & admin procedures reviews and awareness campaigns…to protect women against violence, promote rights to seek redress, and ensure protection and
	Civic education and gender knowledge: equip men and women, girls and boys
	Employment policies (legislation and conventions) reviews and adaptation of legislation requiring employers to utilize and adhere to equal opportunity employment policies that do not discriminate
	Gender monitoring: mainstream good governance and gender into policies, plans and budgets, and implement mechanisms including gender monitoring and assessment indicators for good governance.
	Laws: review through consultation, succession, inheritance, custonmary, Marriage Acts and other laws to provide equal rights to children, women, men, girls and boys
	Violence: strengthen monitoring of police, prisons and judicial systems by ensuring that accessible channels of redress are available and data on crimes are reported, gender based violence cases, complaints, etc so they are comparable across districts
	Abuse and discrimination: eradicate all forms especially against women, children and other vulnerable groups

Table 3: Zanzibar: Status of MKUZA and MDGs Targets

GOALS, TARGETS AND INDICATORS	1990	2000	2005	2015	State of Progress
GOAL 1, ERADICATE EXTREME POVERTY AND HUNGER					
Target1: Halve by 2015, the proportion of people living below poverty line.					
Proportion of People living below National basis needs poverty line (%)	60		49	30	On track
Target2: Halve by 2015, the proportion of people who suffer from hunger.					
Proportion of People living below National poverty line (food poverty)	25	24	13	12.5	On track
Percentage of under weight under five children	39.9	25.8	19	19.9	On track
Percentage of under height under five children(strunting)	47.9	35.8 (1999)	23.1	24	Achieved
GOAL 2: ACHIEVE UNIVERSAL PRIMARY EDUCATION					
Target 3: Ensure by 2015 children everywhere, boys and girls alike, will be able to complete a full course of primary schooling					
Primary net enrolment ratios (%)-(IMF)	50.9	67	76/78	100	On track
Primary gross enrolment ratio (%)-(IMF)	N/A	N/A	112.7		Achieved
Proportions of pupils starting grade 1 who reach grade 7 (%)		70	79		
GOAL 3: PROMOTE GENDER EQUALITY AND EMPOWER WOMEN					
Target 4: Eliminate gender disparity in primary and secondary education preferably by 2005, and to all levels of education by 2015					
Ratio of girls to boys in primary school (%)	0.26 (1991/92)	0.49	0.82	1	On track
GOAL 4: REDUCE CHILD MORTALITY					
Targer 5: Reduce by two-thirds, between 1990 and 2015, the under five mortality rate					
Under five mortality rate (per 1,000 live births)	202	141	101	67	Needs attention
Infant mortality rates (per 1,000 live births)	120	89	61	40	Needs attention
Proportion of children vaccinated against measles		75	85	100	On track

GOALS, TARGETS AND INDICATORS	1990	2000	2005	2015	State of Progress
GOAL 5: IMPROVE MATERNAL DEATH					
Target 6: Reduce by three quarters, between 1990 and 2015, the maternal mortality rate					
Maternal mortality rate (per 100,000 live births)	377 (1996)	323	220	170	On track
Biths attended by skilled health personnel			49%	60%	Needs attention
GOAL 6: COMBAT HIV and AIDS, MALARIA AND OTHER DESEASES					
Target 7: Halt and begin to reverse the spread of HIV and AIDS					
HIV cases detected		0.6	0.6	<0.6	On track
Target 8: Halt and begin to reverse the spread of Malaria and other Major diseases					
Number of malaria cases and incidences (cases per 100,000)		29,076	26,946	5,957	Needs attention
Number of tuberculosis cases and incidences (cases per 100,000)	24		51		Needs attention
GOAL 7: ENSURE ENVIRONMENTAL SUSTAINABILITY					
Target 9: Integrate the principles of sustainable development into country policies and programs and reverse the loss of environmental resources					
Proportion of people using solid fuels (wood, charcoal, dung)	96	0.96	96		
Target 10: Halve by 2015, the proportion of people without sustainable access to safe drinking water and sanitation					
Proportion of population with sustainable access to an improved water source (Rural Urban)		42/85 (2002)			Needs attention
Proportion of people with access to improved sanitation (Rural Urban)		91 (2002)	88.9 (Rural 98.5 Urban)		On track
GOAL 8: DEVELOP A GLOBAL PARTNERSHIP FOR DEVELOPMENT					

Annex 3 Figure 1: LGA Cycle for Development Plan and Budget[409]



KEY: which are of consultative nature

Sour ning and ge/Mtaa, April, 2004

409 In year 2008 the Ministry of Planning and Economic Empowerment (MPEE) was abolished and its activities transferred to the Ministry of Finance to form the Ministry of Finance and Economic Affairs