

Moshi Co-operative University

From the Selected Works of MWAKISIKI MWAKISIKI

Summer April 9, 2017

HUMAN RIGHTS LAW IN TANZANIA

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MOSHI CO-OPERATIVE UNIVERSITY



FACULTY OF LAW



HUMAN RIGHTS LAW



A STUDENT COMPENDIUM

BY

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Mwakisiki, M.E. (2017). Compiled Notes on Human Rights Law: A student Compendium.
Moshi Co-operative University: Moshi



This compendium is designed to expose students to the concept of human rights and the legal framework for the protection of human rights at the global, regional and national level. It also aims at familiarising the students with the contemporary issues and recent developments in relation to human rights protection.

<u>TOPIC 1: GENERAL INTRODUCTION TO HUMAN RIGHTS</u>



- At the end of this topic a human rights law student should be able to demonstrate competence in the general overview of human rights and more specifically be able to explain the followings:-
- Historical development of Human Rights
- Sources of Human Rights norms and standards
- Evolution of the Concept of Human Rights
- Definition, nature and scope of Human Rights



❖ **MEANING, NATURE & SOURCES OF HUMAN RIGHTS**

- Human Rights law is a branch of public law that deals with the body of laws, rules, procedures, and institutions designed to respect, promote and protect human rights and the national, regional and international levels.
- Many international and National Organizations and Institutions have come up with various definitions of human rights however, in general terms human rights are inherent rights of human beings.
- Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. Human right is quintessentially general and thus ‘universal’ in character implying that all human beings enjoy it and consequently it is a ‘fundamental’ right.¹
- Human rights are the rights a person has simply because he or she is a human being.
- They are the basic entitlements or minimum standards to be met for individuals to live with dignity.
- Human rights are rights of individuals in society. Every human being has legitimate, valid, justified claims upon his or her society...to various ‘goods’ and benefits’...These rights are defined and listed in international instruments and are deemed essential for individual well being, dignity, and fulfillment, and that they reflect a common sense of justice, fairness, and decency.

¹ Banik, Dan(2010) 'Support for human rights-based development: reflections on the Malawian experience', The International Journal of Human Rights, 14: 1, 34-50

- Human rights are aggregate of privileges, claim, benefits, entitlements and moral guarantees that pertain to man because of his humanity.
- HR is a system of values or elements which are inherent to human dignity
- **why does man have rights?** human person possesses rights because of the very fact that it is a person, a whole, master of itself and of its acts and which consequently is not merely a reason to an end but an end which must be treated as such.
- **Connection between a human person and his possession of his rights**, any human society if it is to be well ordered and productive must lay down as a foundation the principle that ever human being is a person, and that his nature is endowed with intelligence and full will. By virtue of this he has rights and duties flowing directly and simultaneously from his very nature.

❖ **HUMAN RIGHTS AS DISTINGUISHED FROM OTHER RIGHTS**

- Human rights are part of natural rights in the sense that they are God given, which means they are inherent in human beings by virtue of humanity. Human rights differ from other rights in the following way.
- First any state or law or any other worthy institution does not guarantee them because they are inherent in human beings because of their humanity. They are not gifts to be guaranteed by any good person, neither are they items to be purchased at any price.
- Human rights are inalienable in a sense that human rights cannot be separated from human existence, which means that they cannot be compromised, by any state action or omission.
- Human rights are equally applicable to all human beings.
- Human rights are rights against the state, which means that it is the duty of the state to respect, promote and protect human rights. Likewise, any human rights claim must be submitted to adjudication before a competent, impartial and independent tribunal.
- This tribunal must apply well settled legal procedures for the enforcement of human rights and these procedures must maintain full equality and fairness of all parties and such tribunals must determine human rights disputes in accordance with clear, specific and preexisting laws.

- Constitutions do not create human rights, as they (human rights) are part of humanity. It's only the guarantees of such human rights to protect them and to set up entitlements of human rights known as ***bills of rights***

❖ NATURE OF HUMAN RIGHTS

- Human rights are formally expressed and legally guaranteed by international human rights law. The law obligates states to ensure and implement human rights and/or restrains states from violating human rights.
- Their proponents argue that human rights law does not establish human rights, as human rights are inherent entitlements that adhere to individuals even if official laws or actors do not recognize or protect them.
- Every individual (human being) is entitled to some basic rights, without which we cannot live as human beings. All these rights, which are essential for the maintenance of human dignity, may be called as human rights. These are the rights, which no one can be deprived without a grave affront to justice.
- Therefore, human rights in an older idiom used to be called as natural rights, now they are called basic rights or fundamental rights. Not all the rights held by human beings are 'human rights'; for example, contractual rights are held by humans but are not 'human rights'.
- Human rights are those held simply by virtue of being a person. To have a human right one need not be or do anything special, other than be born a human being.

❖ HISTORY OF HUMAN RIGHTS

- Human rights as understood today can be traced from natural law philosophies of the enlightenment period.
- **John Locke 1632-1704.** His philosophical principle was liberalism and according to him
- "The state can and should be an instrument for the defense of rights, liberty and the existence of its people".
- According to him the main concern should be the protection of individual rights as laid down by God's will as enshrined in the law.
- **J.J Rosseau 1712-1778**
- He had a philosophy of participatory democracy. Although he did not oppose Holmes and Lockes social contract paradigms, he discarded the idea that sovereignty was transferred

from the people to the state and it's rulers by virtue of social contract. According to him, sovereignty not only originates in the people, it ought to stay there (in the people).

- **The overall impact of enlightenment philosophy to modern human rights thinking.**
- It is those philosophers who suggested the importance of securing the rights of individuals, popular sovereignty, majority rule and division of powers within parliamentary government and these philosophical aspects are still the main *backbone* of the present day constitutionalism.
- Moreover they have also been recognized universally as the main minimum standard for the development of pro-democratic culture and such pro-democratic culture is a fertile ground for the promotion, enforcement of human rights in any country.

❖ ENGLISH DOCTRINES OF HUMAN RIGHTS

- In England fundamental rights have for centuries been promoted and protected. Early beginnings of human rights in England can be found in the statements of the 13th century document called *the Magna Carta*.
- The *Magna carta* is a document, which came about after long protracted struggles, which ended with king John of England being forced by the barons to comply with the church and the nobility to compromise some of his powers.

❖ SIGNIFICANCE OF THE MAGNA CARTA

- It was a significant landmark in the history of the rise of struggles of the people of England against personalized and oppressive political system.
- This document opened the way of other structural guarantees of individual rights in England. E.g. The Petition of Rights Act of 1627, The Habeas Corpus Act of 1679, The Act of Settlement of 1689 and the bill of rights act of 1700. Among the rights proclaimed by the above statutes include,
- The right to personal liberty and freedom from unlawful detention or restriction of personal movement and all these rights were further extended later by the habeas corpus act of 1618 and in the world, other historical documents of outside England include the United States of America's Bill of rights of 1776 and the French declaration of the rights of men of 1789.
- All these documents of the 18th century in general were undoubtedly documents of historical significance and sanctity as far as human rights are concerned and although not

all of them had legal force, they indeed inspired legal reforms in other countries and indeed they have been held as valuable references and take off points in the development and articulation of Human Rights.

❖ **Historical roots of human rights in Dicey's rule of law paradigm.**

- Dicey included human rights in the third part of his definition of rule of law in the following words,
- “The rule of law lastly may be used as a formula for expressing the fact that ...the law of the constitution, the rules which in foreign countries form much of the constitutional court, are not the source but the consequence of the rights of the individuals as defined and enforced by the courts”.²
- The promotion, protection and enforcement of human rights can be done at the international level or at the domestic level. At the international level, there is the international bill of rights. This includes the universal declaration of human rights of 1948, the international covenant on civil and political rights and the international economic and social act.
- Immediately after the 2nd world war, there was a decision made during the formation of the U.N that as a result of the atrocities, which occurred in Germany, the world had to become concerned and it was decided that Human rights would be promoted and protected by the U.N.
- The United Nations did not provide for any legally enforceable rule. They were only declarations to be promoted by the international community.
- It was then directed that efforts should now be made to provide for the legalization of Human rights in the same Universal Declaration of Human Rights 1966 the UN passed for two covenants of human right declaration i.e. the universal declaration for political and social rights, the universal covenant of economic, social and cultural rights.
- This history demonstrates that the idea of human rights existed from eternity which incidentally seems to begin with the beginning of European history. As one critic puts it: “It is held by these scholars, summarized briefly, that the 1789 French Declaration of the rights of man and citizen closed a two-thousand years old, uninterrupted evolution, for

² Dicey AV 1885 7th Ed, Introduction to the study of the law, Mc Millan, London.

the idea of human rights had been part of the political thinking ever since the time of stoic, consequential upon Rome having adopted the concept of equality which is of stoic origin”.

- However the idea of human rights has undergone changes in its content and formulation in its long voyage. Hence the modern conception of human rights is a kind of perfected version, valid and applicable to all human kind therefore universal.

❖ ORIGIN, SOURCE & DEVELOPMENT OF HUMAN RIGHTS

- The importance of human rights was realized and visualized only after the establishment of United Nations Organizations (UN) in 1945. Since the emergence of UN on 24-10-1945 there has been a tremendous growth and development in the field of protection of human rights. *The Charter of the United Nations* (hereinafter “UN Charter” or the “Charter”) itself contains several provisions relating to human rights.
- Preamble to the UN Charter clearly states that “... to reaffirm faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of nations large and small”. The preamble continues to state that “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom”.
- Generally, the Charter aims to maintain international peace and security, by eradicating wars, human suffering and to establish international co-operation in solving international problems of economic, social, cultural, or humanitarian character, and promote and encourage respect for human rights and fundamental freedoms for all (See, Article 1).
- Other relevant articles in the UN Charter are 13(1)(b), 55, 56, 62(2), 68.

❖ MODERN CONCEPTION OF HUMAN RIGHTS

- The concept of human rights can be traced to the origin of the human race itself. All major philosophies and religions embrace the human rights idea.
- However the modern conception of human rights is based on the Universal Declaration of Human Rights. This document was adopted by the UN General Assembly on 10 December 1948, as the result of the experience of the Second World War which ended in 1945.

- With the end of that war and the creation of the United Nations through the Charter of the United Nations of 1945; the international community vowed never again to allow atrocities like those of that conflict to happen again.
- World leaders decided to complement the UN Charter with a road map to guarantee the rights of every individual everywhere. The Universal Declaration of Human Rights replaced the phrase natural rights which fell in its disfavor in part because the concept of natural law to which it was intimately linked had become a matter of great controversy.
- The document also accommodated a common language on diverse cultural backgrounds and philosophies of different communities in the world. It summarized the secular and religious notions of rights that had evolved throughout centuries.
- The first 19 Articles of the declaration provides for the rights related to various personal liberties (life, security of one's person, diverse protections against cruel treatment, equality before the law etc,) these were the rights which were fought for during the enlightenment in Europe⁴³.
- Articles 20-26 provides for the rights which were championed during the Industrial Revolution era in Europe they include social security, the right to work, the right to just remuneration, the freedom to join trade unions, limitation of working hours, periodic holidays with pay and the right to education.
- Articles 27 and 28 focused on the rights associated with communal and national solidarity advocated during the late 19th C and early 20th C and throughout the post-colonial era.

❖ THE UN & THE UNIVERSAL DECLARATION OF HR

- Although there was mentioning of human rights in the Charter, the Charter did not include a bill of rights. Instead, there were proposals for developing one through the work of a special commission that would give separate attention to the issue.
- That commission was contemplated by the Charter under Article 68, which provides that one of the UN organs, the Economic and Social Council (ECOSOC), "shall set up commissions in economic and social fields and for the promotion of human rights". In

1946, ECOSOC established the Commission on Human Rights (UN Commission on Human Rights), which has evolved over the decades to become the world's single most important human rights organ.

- The Commission first met in 1947. Its members (who were representative members of the Commission) including such distinguished founders of the human rights movement Rene Cassin of France, Charles Malik of the Lebanon, and Eleanor Roosevelt of the United States.
- Some representatives urged that the draft bill of rights under preparation should take the form of a declaration that is, a recommendation by the General Assembly to Member States (see Article 13 of the Charter) that would exert a moral and political influence on states rather than constitute a legally binding instrument.
- Other representatives urged the Commission to prepare a draft convention containing a bill of rights that would, after adoption by the UN General Assembly (UN-GA), be submitted to states for their ratification. The first path was followed. In 1948, the UN Commission adopted a draft Declaration, and by its strenuous efforts, in the same year, the General Assembly adopted the *Universal Declaration of Human Rights 1948* (UDHR), with 48 states voting in favour and eight abstaining Saudi Arabia, South Africa, and the Soviet Union together with four East European states and a Soviet republic.
- The UDHR seemed to cover most of human rights fields, including economic and social rights (see Articles 22-26) as well as civil and political rights.
- The UDHR was meant to precede more detailed and comprehensive provisions in a single convention that would be approved by the General Assembly and submitted to states for ratification.
- On 10 December 1948, the UN General Assembly unanimously adopted the Declaration as an enduring international commitment to human rights. Recoiling from the massacres of the Holocaust and desiring peace in the aftermath of World War II, the UDHR represented an unprecedented step as states acknowledged the treatment of individuals was not solely subject to state governance.
- The years of drafting the UDHR was characterized by the struggles of Cold War. The human rights movement was buffeted by ideological conflict and the formal differences

of approach in a polarized world. One consequence was the decision in 1952 to build on the UDHR by dividing its provisions between two treaties, one on civil and political rights and the other on economic, social and cultural rights. Thus the two principal treaties, namely, the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) made their ways to the Commission and finally to the General Assembly, where they were approved in 1966. But still, another decade passed before the two Covenants achieved the number of ratifications necessary to enter into force in 1976.

❖ **INTERNATIONAL BILL OF HUMAN RIGHTS**

- The International Bill of Human Rights is said to be “a summary statement of the minimum social and political guarantees internationally recognized as necessary for a life of dignity in the contemporary world.” (Donnelly 1998). It consists of UDHR, the ICESCR, and the ICCPR and its two Optional Protocols. The ICCPR has two Optional Protocols. The First Optional Protocol creates an individual complaints mechanism. The Second Optional Protocol abolishes the death penalty.
- The Universal Declaration of Human Rights (UDHR) is the primary UN document articulating human rights standards and norms. At inception, the declaration was intended to be a nonbinding statement of objectives to be followed by all states. However, now, many if not all of its provisions are accepted as declaratory of customary international law, i.e. law that is binding on all states as it is derived from the consistent conduct of states acting out of the belief that the law requires them to act that way (state practice and opinion juris).
- The Declaration represents the global consensus or “common standard” of entitlements for all persons. It comprises a broad range of rights that are drafted with sufficient breadth to cover people of all cultures and religions. It does not distinguish between or elevate civil-political versus socio-economic rights. Instead, the Declaration affirms the equality and inalienability of all its codified rights and freedoms.
- ICCPR and ICESCR translate into legally binding instruments the rights articulated in the UDHR.

- The ICCPR and ICESCR were both adopted in 1966 and entered into force in 1976. Approximately one-quarter of UN Members are not party to the covenants and accordingly are not bound by their provisions.

❖ **Historical Sequence and Typology of HR Instruments**

- The history of human rights instrument globally can be put under a four-tiered normative edifice as follows:
- The UN Charter, although it relatively has little to say about human rights, the UN Charter has been accorded great significance. Through interpretation and extrapolation, as well as frequent invocation, the Charter has constituted as a basic document through which the human rights movement has been anchored.
- The *Universal Declaration of Human Rights* which is viewed by some as a further elaboration of the brief references to human rights in the Charter. It has remained the single most important cited human rights instrument.
- The two principal covenants, which among the universal treaties have broad coverage of human rights topics. They contain more detailed provisions of human rights.
- A host of multilateral human rights treaties (usually termed ‘conventions’, as well as resolutions or declarations with a more limited or focused subject than the comprehensive International Bill of Rights.
- This fourth tier consists of a network of treaties, most but not all of which became effective after the two Covenants. These include, the *Convention on the Prevention and Punishment of the Crime of Genocide*, effective 1951, the *International Convention on the Elimination of all Forms of Discrimination against Women*, 1979, the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984, the *Convention on the Rights of the Child*, 1989, and *Convention on the Rights of Persons with Disabilities*, 2006, and many other relevant and important treaties have been concluded under the auspices of the ILO, UNESCO, and other UN specialized agencies, as well as various regional organizations e.g. The *European Convention on Human Rights*, 1950, *American Convention on Human Rights*, 1969 and the *African Charter on Human and People’s Rights* 1981.

❖ TYPES OF HUMAN RIGHTS

- Human Rights are indivisible and interdependent, and therefore precisely there cannot be different kinds of human rights. All Human Rights are equal in importance and are inherent in all human beings. The UDHR did not categorize the different kinds of human rights. It simply enumerated them in different articles. However, the subsequent developments made in the human rights field under the UN system make it clear that human rights are of basically of two kinds namely:
- Civil (individual rights) life, liberty, and security of the person; privacy and freedom of movement; ownership of property; freedom of thought, conscience, and religious belief and practice; prohibition of slavery, torture, and cruel or degrading punishment are examples of civil rights.
- Civil rights or liberties are referred to as those rights, which are related to the protection of the right to life and personal liberty. They are essential for person so that he may live a dignified life.
- Political Rights freedom of expression, assembly, and association; the right to take part in government; and periodic and meaningful elections with universal and equal suffrage are examples of political rights Political rights may be referred to those rights, which allow a person to participate in the Government of a State.
- Rights related to Rule of Law equal recognition before the law and equal protection of the law; effective legal remedy for violation of rights; impartial hearing and trial; presumption of innocence; and prohibition of arbitrary arrest are rights related to R.L.
- In effect they are civil rights. The nature of civil and political rights may be different but they are interrelated and inter-woven.
- Economic and Social Rights an adequate standard of living; free choice of employment; protection against unemployment; "just and favorable remuneration"; the right to form and join trade unions; "reasonable limitation of working hours"; free elementary education; social security; and the "highest attainable standard of physical and mental health" are all economic and social rights.
- Economic, Social and Cultural rights are related to the guarantee of minimum necessities of life to human beings. In the absence of those rights the existence of

human being is likely to be endangered. Right to adequate food, clothing, housing and adequate standard of living and freedom from hunger, right to work, right to social security, right to physical and mental health and right to education are included in this category of rights.

- Economic, social and cultural rights are based fundamentally on the concept of social equality. Realization of these rights, which is generally called the rights of second generation, has been somewhat slow in coming. They are regarded only as general principles and not legally binding specific rules. However, recently they have begun to come of age and implemented.
- Collective Rights, In addition to the above rights there is another kind of rights which may be enjoyed by individual collectively such as right to self-determination or the physical protection of the group such as through prohibition of genocide. Such rights are referred to as collective rights which are sometimes called the third generation of human rights. So, self-determination and protection of minority cultures are examples of rights in this category.

❖ GENERATIONS/PHASES OF HUMAN RIGHTS

▪ Enlightenment (17th-18th Century)

- The first tier or "generation" consists of civil and political rights and derives primarily from the seventeenth and eighteenth-century political theories noted earlier which are associated with the English, American, and French revolutions.
- Think "life, liberty, and the pursuit of happiness." This approach favors limiting government by placing restrictions on state action. The rights set forth in Articles 2-21 of the [Universal Declaration of Human Rights](#) include: freedom from discrimination; freedom from slavery; freedom from torture and from cruel, inhuman, or degrading treatment; freedom from arbitrary arrest and detention; the right to a fair and public trial; freedom of thought, conscience, and religion; freedom of opinion and expression; and the right to participate in government through free elections fall under this phase.

▪ Socialist tradition (19th century)

- The second generation of rights broadens the primarily political focus of earlier views to include economic, social, and cultural rights. This view originates primarily in the

socialist traditions of Marx and Lenin. According to this view, rights are conceived more in positive rather than negative terms, and thus encourage the intervention of the state. Illustrative of these rights are Articles 22-27 of the Universal Declaration of Human Rights. They include the right to social security; the right to work; the right to a standard of living adequate for the health and well-being of self and family; and the right to education.

▪ **The third generation of "solidarity rights" (20th century)**

- These views are a product of the rise and decline of the nation-state in the last half of the twentieth century. These rights have been championed by the Third World and remain somewhat controversial and debated. The specific rights include the right to political, economic, social, and cultural self-determination; the right to economic and social development; and the right to participate in and benefit from "the common heritage of mankind."
- Environmental, cultural and developmental rights. These include the rights to live in an environment that is clean and protected from destruction, and rights to cultural, political and economic development.

▪ **Summary**

- Kinds/Generation of Rights *Karl Vask's division follows the French Revolutions slogans – Liberty, Equality, & Fraternity*
- **1st Gen of Civil and Political Rights aka 1st gen of liberty rights**
 - individual rights against the state and are partly seen as negative
 - due to the development of democratic society
 - serves as the protection of the individuals from arbitrary exercise of police power
 - examples
 - right to life, liberty and security of person
 - right against torture
 - right to equal protection against discrimination
 - right against arbitrary arrest and detention
 - right to a fair and public hearing by an independent and impartial tribunal
 - right to be presumed innocent until proven guilty

- right to privacy, freedom of opinion and expression
- **2nd Gen of Economic, Social and Cultural rights aka 2nd generation of equality rights**
 - people realized that possession of first generation of liberty rights would be valueless without the enjoyment of economic, social and cultural rights
 - struggle against Colonialism, Socialism and encyclicals of the Pope
 - ex
 - right to work
 - right to social security
 - right to form and to join trade unions
 - right to education
 - right to rest and leisure
 - right to health
 - right to shelter
- **3rd Gen Solidarity or Collective rights aka 3rd generation of solidarity rights**
 - benefits individuals, groups and people
 - realization will need global cooperation based on international solidarity
 - examples
 - right to peace
 - right to development
 - environmental rights
 - right of self determination
 - right to food
 - rights of women
 - rights of children
 - right to humanitarian disaster relief

❖ **CHARACTERISTICS OF HUMAN RIGHTS**

- Human rights do not have to be bought, earned or inherited; they belong to people simply because they are human. Human rights are inherent to each individual.

- Human rights are the same for all human beings regardless of race, sex, religion, political or other opinion, national or social origin. We are all born free, and equal in dignity and rights human rights are universal.
- Human rights cannot be taken away; no one has the right to deprive another person of them for any reason. People still have human rights even when the laws of their countries do not recognize them, or when they violate them - for example, when slavery is practiced, slaves still have rights even though these rights are being violated. Human rights are inalienable.
- To live in dignity, all human beings are entitled to freedom, security and decent standards of living concurrently. Human rights are indivisible.

▪ **Summary**

- **Inherent**
 - rights are the birthright of all human beings
 - exists independently of the will of either individual human being or group
 - not obtained and granted through any human action or intervention
 - when one is born, he carries with them these rights, they cannot be separated or detached from him.
- **Inalienable**
 - no person can deprive any person these rights and no person can repudiate these rights by himself
 - rights cannot be subject of the commerce of man
- **Universal**
 - rights belong to every human being no matter what he or she is like
 - promotion and protection are the duty of all states, regardless of cultural, economic or political systems.

❖ **HUMAN RIGHTS PRINCIPLES**

- Human rights are **universal** and **inalienable**; **indivisible**; **interdependent** and **interrelated**.

- They are universal because everyone is born with and possesses the same rights, regardless of where they live, their gender or race, or their religious, cultural or ethnic background.
- Inalienable because people's rights can never be taken away.
- Indivisible and interdependent because all rights political, civil, social, cultural and economic are equal in importance and none can be fully enjoyed without the others.
- They apply to all equally, and all have the right to participate in decisions that affect their lives. They are upheld by the rule of law and strengthened through legitimate claims for duty-bearers to be accountable to international standards.
- **Universality and Inalienability:** Human rights are *universal* and *inalienable*. All people everywhere in the world are entitled to them. The universality of human rights is encompassed in the words of Article 1 of the *Universal Declaration of Human Rights*: “All human beings are born free and equal in dignity and rights.”
- **Indivisibility:** Human rights are *indivisible*. Whether they relate to civil, cultural, economic, political or social issues, human rights are inherent to the dignity of every human person. Consequently, all human rights have equal status, and cannot be positioned in a hierarchical order. Denial of one right invariably impedes enjoyment of other rights. Thus, the right of everyone to an adequate standard of living cannot be compromised at the expense of other rights, such as the right to health or the right to education.
- **Interdependence and Interrelatedness:** Human rights are *interdependent* and *interrelated*. Each one contributes to the realization of a person's human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others. For instance, fulfilment of the right to health may depend, in certain circumstances, on fulfilment of the right to development, to education or to information.
- **Equality and Non-discrimination:** All individuals are equal as human beings and by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of race, color, ethnicity, gender, age, language, sexual

orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as established by human rights standards.

- **Participation and Inclusion:** All people have the right to participate in and access information relating to the decision-making processes that affect their lives and wellbeing. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups.
- **Accountability and Rule of Law:** States and other duty bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in international human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law. Individuals, the media, civil society and the international community play important roles in holding governments accountable for their obligation to uphold human rights.

- **Summary**

- **Universality**
 - rights belong to and are to be enjoyed by all human beings without distinction of any kind, such as race, color, sex or language, religion, political and other opinion, national or social origin, property , birth or other stature
 - HR belongs to everyone wherever they are because they are human beings endowed with dignity
 - Internationally recognized human rights are the basic core minimum to be observed everywhere without regional differences
 - HR belongs to everyone, everywhere by virtue of being human
 - no one, no group, no place in the world should be denied the enjoyment of human rights.
- **Indivisibility and Interdependence**
 - first generation of liberty rights and second generation of equality rights are inter related and are co equal in importance

- forms an indivisible whole and only if these rights are guaranteed that an individual can live decently and in dignity
- international community must treat human rights in equal manner, same footing and same emphasis
- we cannot enjoy civil and political rights unless we enjoy economic, cultural and social rights → must enjoy economic cultural and social rights (equality) to be able to enjoy civil and political rights (liberty).

❖ STAGES OF HR

- **Idealization**
 - notions about human rights have started in the realm of ideas that reflect a consciousness against oppression, dehumanization or inadequate performance by the state.
- **Positivization**
 - support for the ideas become strong
 - stage is set to incorporate them in some legal instrument, whether domestic or international law
- **Realization**
 - last stage where these rights are enjoyed by citizens of the state by transformation of the social economic and political order.

❖ WHO IS BOUND BY IHR LAW

- Unlike individual sovereign states, the community of nations has no international legislature empowered to enact laws that are directly binding on all countries. As we have already noted, resolutions or declarations adopted by the UN General Assembly are not binding, of course the declaration will have solemn effects as the formal act of a deliberative body of global importance.
- Its subject matter, like that of UDHR, may be of greatest significance. But when approved or adopted it is hortatory and aspirational, recommendatory rather than, in a formal sense, binding.

- However, decisions of the UN Security Council adopted under Chapter VII Mandate are legally binding on all UN Members, and a number of such decisions in the past decades have been directly relevant to human rights concerns.
- Nevertheless, states establish legally binding obligations among themselves in other ways, principally by expressly consenting to an obligation by ratifying a treaty or other international agreement, or through wide acceptance of a rule as binding customary international law. Thus, the covenants and conventions bind the states parties in accordance with its terms, subject to such formal matters as reservations under the doctrine of *pacta sunt servanda*.
- So, international law, including human rights law, is applicable to states rather than to individuals. Consequently, these international rules generally can become a source of domestic legal obligations for a state's officials and of domestic rights for that nation's citizens only through their incorporation in some manner into the state's own internal law.
- In practice, therefore, the most important sources of international human rights law is international treaties, which directly create international obligations for the parties. But treaties are binding only when they are in force and only with respect to the nations that have expressly agreed to become parties to them.
- Thus, in determining whether a treaty is legally relevant to the human situation in a particular country, it is important to ascertain the following issues:
 - Whether the treaty contains express language requiring the parties to respect the particular human rights at issue;
 - Whether the treaty is in force, since multilateral treaties typically do not take effect until a certain number of nations have deposited their ratifications (formal instruments indicating their intent to be bound);
 - Whether the nation involved has in fact ratified the treaty, since signature alone may not legally bind a nation to the obligations of a multilateral treaty; and
 - Whether the nation in question has filed any reservation that expressly modifies its treaty obligations.

❖ STATE OBLIGATIONS

- Human rights instruments have been jointly drafted by the world community, and the associated obligations have been voluntarily undertaken by each State Party as a result of signing particular treaties. States are thus bound by their own consent to a set of obligations concerning their treatment of individuals, without discrimination, within their jurisdiction.
- The precise obligations of states vary from treaty to treaty but in general, States Parties can be regarded as obliged to ‘respect’, ‘protect’ and ‘fulfil’ the rights contained within the treaty. The latter includes the obligations to facilitate, promote and provide those rights.

▪ RESPECT

- States are obliged to ensure that human rights are fully respected in the context of state policies, laws and actions. This obligation requires states to ensure that none of its ministries or public servants violate or impede enjoyment of human rights by their policies or actions.

▪ PROTECT

- States are obliged to ensure that enjoyment, by everyone without discrimination, of all their human rights is protected from abuse by third parties ie from the actions of individuals and groups at all levels of society, including corporations, institutions and public and private bodies. This protection should be through the introduction of laws to protect human rights, and the provision of affordable and accessible redress procedures in the event of abuse of the rights.

▪ FULFILL

- States are obliged to take the necessary steps to ensure the realization of human rights in practice through the adoption of legislative and other measures, such as the provision of education and other public services and policies designed to ensure access for everyone to basic needs.
- The obligation to fulfil includes the obligations to facilitate, promote and provide. In the context of economic, social and cultural rights, states are obliged to take all measures to achieve the progressive realization of the rights.

- **In practice, human rights laws require states to:**
- Incorporate into national law the rights enshrined in international human rights instruments.
- Undertake a review of national law, policies and actions to ensure that they adequately protect and respect the equal rights of everyone and protect against discrimination in enjoyment of rights
- Analyze the realization of the rights within all sectors of the community (best achieved in partnership with representatives of civil society including people living in poverty and social disadvantage) in order to identify any groups not adequately enjoying their rights.
- Develop policies and programmes in line with international human rights law and the introduction of all appropriate measures to ensure realization of the human rights by all people without discrimination; this may include providing support for those unable to meet their own needs
- Promote the observance of human rights through education and training in human rights and responsibilities.

▪ **Summary**

- Three Obligations of State Parties to International Covenants
- **Respect** - art 2(1) of the International Covenant on Civil and Political Rights
 - indicates that the negative character of civil and political rights
 - commands State Parties to refrain from restricting the exercise of these rights where such is not expressly allowed
 - ex. Art. 7 of ICCPR – prohibits torture in absolute terms under all circumstances
 - provisions which prohibit only arbitrary interference
 - Art 6(1) right to life
 - Art 17 right to privacy
 - provisions which authorize the state parties to impose restrictions political freedoms in Art. 18 – 22.

- **Ensure** – art 2(1)
 - positive character of civil and political rights and economic social and cultural rights
 - state parties must be proactive to enable individuals to enjoy their rights
 - obligation to adopt executive, judicial and legislative measures to provide an effective remedy to victims of human rights violators under
 - safeguard certain rights by means of procedural guarantees and legal institutions
- **Protect**
 - preventing private individuals, groups or entities from interfering with the individuals civil and political rights
 - horizontal efforts (application of human rights between individuals or other private subjects) depend on the wording of such rights
 - ex. of provisions which apply on the horizontal level
 - prohibition of slavery
 - prohibition of advocacy of racial hatred
 - right to protection of law - need to take positive means to protect children, family and rights to life liberty and equality

❖ **DEBATE ON UNIVERSALITY OF HUMAN RIGHTS**

- Until to date almost half a century since UDHR was adopted, there is still a debate whether or not human rights are universal. Critics are still asking whether anything in our multicultural, diverse world can be truly universal. Some do ask, isn't human rights an essentially Western concept and thus does not take into account different cultural, economic and political conditions of other parts of the world, particularly the South?
- Another question posed is Can the values of the consumer society, e.g. civil and political rights, be applied to societies that have nothing to consume? Isn't talking about universal rights rather like saying that the rich in the North and the poor in the South have the same right to fly first-class and to sleep under bridges? The fact is that there are serious objections to the concept of universality of human rights.

❖ **CORE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS**

- There **seven core human rights treaties**
- The **International Covenant on Civil and Political Rights**, adopted in 1966 and entered into force 23 March 1976
- The **International Covenant on Economic, Social and Cultural Rights**, adopted in 1966, entered into force 3 January 1976
- The **International Convention on the Elimination of All Forms of Racial Discrimination**, adopted in 1965, entered into force 4 January 4 1969
- The **Convention on the Elimination of All Forms of Discrimination Against Women**, adopted in 1979, entered into force 3 September 1981
- The **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, adopted in 1984, entered into force 26 June 1987
- The **Convention on the Rights of the Child**, adopted in 1989, entered into force 2 September 1990
- The **Convention on the Rights of Persons with Disabilities**, adopted by UN General Assembly on 13 December 2006; opened for signature on 30 March 2007. Following ratification by the 20th party, it came into force on 3 May 2008.

❖ **DISTINCTIONS BETWEEN A TREATY, CONVENANT, DECLARATION, AGREEMENTS & A CONVENTION**

- **Treaty**
- A treaty is an international political or military agreement between two or more willing countries. In terms of international law, a treaty is an agreement between two or more international legal persons for regulating a relationship governed by international law.
- This agreement entails rights and obligations on both parties thereto. A treaty is called “bilateral” if it is made between two governments, and “multilateral” if made between more than two countries.³
- A treaty involves legal consequences and addresses certain issues, such as the settlement of a political issue, the establishment of an alliance, identification of rights and

³ <http://www.nebraskapress.unl.edu/product/Handbook-of-International-Human-Rights-Terminology>

obligations of the parties, the adoption of general rules or drawing up boundaries and limits of truces, reconciliation or peace.

- Treaties are executed through official legal channels that commence with negotiations, followed by signing the treaty by the authorized signatories, then to be endorsed by the president of a State or his or her representative, and finally the parties will exchange instruments of ratification after having it approved by the respective legislative (regulatory) authorities, which would render it ready for implementation.⁴
- **Convention**
- This term is used for the agreements that address technical issues, which results in a technical or professional effect that is known to be an international practice. A convention is an international agreement that is less important than the convention, though some international instruments do not differentiate between them.
- A convention addresses, in particular, technical aspects, such as social, economic, trade, postal, consular, military affairs, or the settlement of a dispute between two parties, and identification of both parties' rights and obligations.⁵
- A convention implies general international principles and rules which the signatories undertake to respect and observe, such as, for example, The Hague Convention and Geneva multi-purpose conventions. The term "convention " is used to denote the agreements that are of less important or for specific purpose, though all of them have same binding force, and each is used for specific purposes.⁶
- Typical examples of convention includes Convention on the Elimination of All Forms of Racial Discrimination (1965: came into force 1969), Convention on the Elimination of All Forms of Discrimination Against Women (1979:in force 1981) and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984; into force 1987)
- **A declaration**
- can be understood as a document where states have agreed to act in a particular manner. However, the key distinction between a declaration and a convention is that unlike a

⁴ Ibid

⁵ Ibid

⁶ Ibid

convention which has a legal validity, a declaration does not. Here are some examples of declarations.

- UN declaration on the rights of Indigenous people Universal Declaration of Human Rights Although declarations play a significant role in the international arena, some countries violate the standards of behavior; especially, in the case of the rights of indigenous people.⁷
- **Covenant**
- Binding agreement between states; used synonymously with Convention and Treaty. The major international human rights covenants, both passed in 1966, are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- Customary International Law: Law that becomes binding on states although it is not written, but rather adhered to out of custom; when enough states have begun to behave as though something is law, it becomes law "by use"; this is one of the main sources of international law.⁸
- **Agreements**
- The term "agreement" can have a generic and a specific meaning. It also has acquired a special meaning in the law of regional economic integration.⁹
- **Agreement as a generic term**, The 1969 Vienna Convention on the Law of Treaties employs the term "international agreements" for instruments, which do not meet its definition of "treaty". Its Art.3 refers also to "international agreements not in written form". Although such oral agreements may be rare, they can have the same binding force as treaties, depending on the intention of the parties. An example of an oral agreement might be a promise made by the Minister of Foreign Affairs of one State to his counterpart of another State.¹⁰
- **Agreement as a particular term**: "Agreements" are usually less formal and deal with a narrower range of subject-matter than "treaties", It is employed especially for instruments of a technical or administrative character, which are signed by the representatives of

⁷ <http://www.nebraskapress.unl.edu/product/Handbook-of-International-Human-Rights-Terminology>

⁸ Ibid

⁹ Retrieved from <https://www.treaties.un.org/Pages/overview.aspx?>

¹⁰ Ibid

government departments, but are not subject to ratification. Typical agreements deal with matters of economic, cultural, scientific and technical cooperation. Agreements also frequently deal with financial matters, such as avoidance of double taxation, investment guarantees or financial assistance.¹¹

- **However the above well elaborated terms can be distinguished from one another though some of them might be used interchangeably:-**
- **In distinguishing Convention and Declaration** for example a convention has legal binding while A declaration does not have legal binding also In the case of a violation of convention, the UN can take actions against the member states if it is a convention and In the case of a violation, the UN cannot take actions against the member states if it is a declaration.¹²
- **In distinguishing a convention and a treaty**, A convention is a special type of international treaty while A treaty comes into force as an attempt to end conflict or disagreement between a few countries whereas a convention is an attempt by many countries to discuss global issues and reach an agreement to be followed by signatories. Also Convention is a process that begins with deliberations and ends in an agreement that is drafted and ratified by member countries. On the other hand, a treaty is signed straight away by the members.¹³
- **In distinguishing treaty and declarations**, treaty has signed participants who pass legislation pursuant to it while A declaration is just the UN declaring something.¹⁴
- **The difference between covenant and treaty is that covenant** is (legal) an agreement to do or not do a particular thing while treaty is (international law) a binding agreement concluded by subjects of international law, namely states and international organizations.¹⁵

¹¹ Ibid

¹² <http://www.nebraskapress.unl.edu/product/Handbook-of-International-Human-Rights-Terminology>

¹² Retrieved from <https://www.treaties.un.org/Pages/overview.aspx>? On 16 march 2016 At 10:00PM.

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

❖ MONITORING THE CORE IHR

- Each of the seven core human rights treaties has its own monitoring body (known collectively as the treaty bodies), established to oversee compliance by States Parties with their obligations under that treaty. These bodies comprise committees of independent experts elected by UN Member States. They are created in accordance with the provisions of the treaty that they monitor.
- There are eight human rights treaty bodies including [The Committee on Migrant Workers \(CMW\)](#)
- [Human Rights Committee \(CCPR\)](#) monitors implementation of the International Covenant on Civil and Political Rights (1966) and its optional protocols;
- The [Committee on Economic, Social and Cultural Rights \(CESCR\)](#) monitors implementation of the International Covenant on Economic, Social and Cultural Rights (1966);
- The [Committee on the Elimination of Racial Discrimination \(CERD\)](#) monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- The [Committee on the Elimination of Discrimination Against Women \(CEDAW\)](#) monitors implementation of the Convention on the Elimination of all Forms of Discrimination against Women (1979) and its optional protocol (1999);
- [The Committee Against Torture \(CAT\)](#) monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984);
- [The Committee on the Rights of the Child \(CRC\)](#) monitors implementation of the Convention on the Rights of the Child (1989) and its optional protocols (2000); and
- [The Committee on Migrant Workers \(CMW\)](#) monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) which was signed on 18 Dec 1990 and entered into force 1 July 2003.
- [The Committee on the Right of Persons with Disabilities \(CRPD\)](#) monitors implementation of the International Convention on the Rights of Persons with Disabilities (2006).

- Each treaty body receives secretariat support from the Human Rights Treaties Branch of OHCHR in Geneva. CEDAW, which was supported until 31 December 2007 by the [Division for the Advancement of Women \(DAW\)](#), meets once a year in New York at United Nations Headquarters. Similarly, the [Human](#)
- [Rights Committee](#) usually holds its session in March/April in New York. The other treaty bodies meet in Geneva, either at Palais Wilson or Palais des Nations.
- **Main Functions of the Committees.**
- The treaty bodies perform a number of functions in accordance with the provisions of the treaties that created them. These include: [Consideration of State parties' reports](#), [Consideration of individual complaints or communications](#). They also publish [general comments](#) on the treaties and organize discussions on related themes.
- **How is it done**
- **Consideration of State parties' reports**
- When a country ratifies one of these treaties, it assumes a legal obligation to implement the rights recognized in that treaty. But signing up is only the first step, because recognition of rights on paper is not sufficient to guarantee that they will be enjoyed in practice.
- So the country incurs an additional obligation to submit regular reports to the monitoring committee set up under that treaty on how the rights are being implemented. This system of human rights monitoring is common to most of the UN human rights treaties.
- To meet their reporting obligation, States must report/ submit an initial report usually one year after joining (two years in the case of the CRC) and then periodically in accordance with the provisions of the treaty (usually every four or five years).
- In addition to the government report, the treaty bodies may receive information on a country's human rights situation from other sources, including non-governmental organizations, UN agencies, other intergovernmental organizations, academic institutions and the press.
- In the light of all the information available, the Committee examines the report together with government representatives. Based on this dialogue, the Committee publishes its concerns and recommendations, referred to as "concluding observations".

- **Consideration of individual complaints or communications**

- In addition to the reporting procedure, some of the treaty bodies may perform additional monitoring functions through three other mechanisms: the inquiry procedure, the examination of inter-state complaints and the examination of individual complaints.
- Four of the Committees (CCPR, CERD, CAT and CEDAW) can, under certain conditions, receive petitions from individuals who claim that their rights under the treaties have been violated.

- **Complaining about human rights violations**

- The ability of individuals to complain about the violation of their rights in an international arena brings real meaning to the rights contained in the human rights treaties.
- There are three main procedures for bringing complaints of violations of the provisions of the human rights treaties before the human rights treaty bodies: [individual communications](#); [state-to-state complaints](#); and [inquiries](#).
- The Committees also publish their interpretation of the content of human rights provisions, known as [general comments](#) on thematic issues or methods of work.

❖ **INDIVIDUAL COMMUNICATION**

- Five of the human rights treaty bodies ([CCPR](#), [CERD](#), [CAT](#), [CEDAW](#) and [CRPD](#)) may, under particular circumstances, consider individual complaints or communications from individuals:
- The [Human Rights Committee](#) may consider individual communications relating to States parties to the [First Optional Protocol to the International Covenant on Civil and Political Rights](#);
- The [CEDAW](#) may consider individual communication relating to States parties to the [Optional Protocol to the Convention on the Elimination of Discrimination Against Women](#);
- The [CAT](#) may consider individual communications relating to States parties who have made the necessary declaration under [article 22 of the Convention Against Torture](#);

- The [CERD](#) may consider individual communications relating to States parties who have made the necessary declaration under [article 14 of the Convention on the Elimination of Racial Discrimination](#); and
- The [CRPD](#) may consider individual communications relating to States parties to the [Optional Protocol to the Convention on the Rights of Persons with Disabilities](#).
- The [Convention on Migrant Workers](#) also contains provision for allowing individual communications to be considered by the [CMW](#); these provisions will become operative when 10 states parties have made the necessary declaration under article 77.

❖ **WHO CAN COMPLAIN?**

- Any individual who claims that her or his rights have under the covenant or convention have been violated by a State party to that treaty may bring a communication before the relevant committee, provided that the State has recognized the competence of the committee to receive such complaints. Complaints may also be brought by third parties on behalf of individuals provided they have given their written consent or where they are incapable of giving such consent.

❖ **INTER-STATE COMPLAINTS**

- Several of the [human rights treaties](#) contain provisions to allow for State parties to complain to the relevant treaty body about alleged violations of the treaty by another State party. **Note: these procedures have never been used.**
- CAT and CMW: Article 21 [CAT](#) and article 74 [CMW](#) set out a procedure for the relevant Committee itself to consider complaints from one State party which considers that another State party is not giving effect to the provisions of the Convention. This procedure applies only to States parties who have made a declaration accepting the competence of the Committee in this regard.
- CERD and CCPR: Articles 11-13 [ICERD](#) and articles 41-43 [ICCPR](#) set out a more elaborate procedure for the resolution of disputes between States parties over a State's fulfillment of its obligations under the relevant convention/Covenant through the establishment of an *ad hoc* Conciliation Commission. The procedure normally applies to all States parties to ICERD, but applies only to States parties to the ICCPR which have made a declaration accepting the competence of the Committee in this regard.

- [Resolution of inter-State disputes concerning interpretation](#)
- Resolution of inter-State disputes concerning interpretation or application of a convention is as follows:
 - CEDAW, CAT and CMW: Article 29 CEDAW, article 30 CAT and article 92 CMW provide for disputes between States parties concerning interpretation or application of the Convention to be resolved in the first instance by negotiation or, failing that, by arbitration.
 - One of the States involved may refer the dispute to the [International Court of Justice](#) if the parties fail to agree arbitration terms within six months. States parties may exclude themselves from this procedure by making a declaration at the time of ratification or accession, in which case, in accordance with the principle of reciprocity, they are barred from bringing cases against other States parties.

❖ INQUIRIES

- The [Committee Against Torture](#) and the [Committee on the Elimination of Discrimination Against Women](#) may, on their own initiative, initiate inquiries if they have received reliable information containing well-founded indications of serious or systematic violations of the conventions in a State party.
- Inquiries may only be undertaken with respect to States parties who have recognized the competence of the relevant Committee in this regard. States parties to CAT may opt out, at the time of ratification or accession, by making a declaration under article 28; States parties to the CEDAW Optional Protocol may similarly exclude the competence of the Committee by making a declaration under article 10.

❖ INQUIRY PROCEDURES

- Article 20 of the [Convention Against Torture](#) and articles 8 to 10 of the [Optional Protocol to CEDAW](#) set out the following basic procedure for the relevant Committee to undertake urgent inquiries:
 - The procedure may be initiated if the Committee receives reliable information indicating that the rights contained in the Convention are being systematically violated by the State party.
 - In the case of CAT, the information should contain well-founded indications that torture is being systematically practiced in the territory of the State party; in the case of

CEDAW, the information should indicate grave or systematic violations of the rights set forth in the Convention by a State party.

- The first step requires the Committee to invite the State party to co-operate in the examination of the information by submitting observations.
- The Committee may, on the basis of the State party's observations and other relevant information available to it, decide to designate one or more of its members to make a confidential inquiry and report to the Committee urgently. The CEDAW procedure specifically authorizes a visit to the territory of the State concerned, where warranted and with the State's consent.
- The findings of the member(s) are then examined by the Committee and transmitted to the State party together with any appropriate comments or suggestions/recommendations.
- The CEDAW procedure sets a six-month deadline for the State party to respond with its own observations on the Committee's findings, comments and recommendations and, where invited by the Committee, to inform it of the measures taken in response to the in
- The Committee may decide, in consultation with the State party, to include a summary account of the results of the proceedings in its annual report.
- In both cases, the procedure is confidential and the cooperation of the State party must be sought throughout.
- There are also procedures for complaints which fall outside of the treaty body system - through the [special procedures](#) and the [Human Rights Council Complaint Procedure](#) and through the [Commission on the Status of Women](#).

❖ [SPECIAL PROCEDURES](#)

- "Special procedures" is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world.
- Currently, there are 31 [thematic](#) and 8 [country](#) mandates. The Office of the High Commissioner for Human Rights provides these mechanisms with personnel, policy, research and logistical support for the discharge of their mandates.

- Special procedures' mandates usually call on mandate holders to examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as country mandates, or on major phenomena of human rights violations worldwide, known as thematic mandates.
- Various activities are undertaken by special procedures, including responding to individual complaints, conducting studies, providing advice on technical cooperation at the country level, and engaging in general promotional activities.
- Special procedures are either an individual (called "Special Rapporteur", "Special Representative of the Secretary-General" or "Independent Expert") or a working group usually composed of five members (one from each region) . The mandates of the special procedures are established and defined by the resolution creating them.
- Mandate-holders of the special procedures serve in their personal capacity, and do not receive salaries or any other financial compensation for their work. The independent status of the mandate holders is crucial in order to be able to fulfill their functions in all impartiality.
- Most Special Procedures receive information on specific allegations of human rights violations and send [urgent appeals or letters of allegation](#) to governments asking for clarification. In 2008, a total of 911 communications were sent to Governments in 118 countries. 66% of these were joint communications of two or more mandate holders.
- Mandate holders also carry out [country visits](#) to investigate the situation of human rights at the national level. They typically send a letter to the Government requesting to visit the country, and, if the Government agrees, an invitation to visit is extended.
- Some countries have issued "[standing invitations](#)", which means that they are, in principle, prepared to receive a visit from any special procedures mandate holder. As of 30 June 2010, 72 States had extended standing invitations to the special procedures. After their visits, special procedures' mandate-holders issue a mission report containing their findings and recommendations.

❖ HRC COMPLAINT PROCEDURE

- On 15 March 2006, the General Assembly adopted resolution A/RES/60/251 to establish the Human Rights Council and abolish Human Rights Commission which was established in 1946.
- On 18 June 2007, the Human Rights Council adopted the President text entitled "UN Human Rights Council: Institution Building" (resolution 5/1) by which a new Complaint Procedure is being established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.
- The new Complaint Procedure is established in compliance with the mandate entrusted to the Human Rights Council by General Assembly resolution 60/251 of 15 March 2006, in which the Council was requested to review and, where necessary, improve and rationalize, within one year after the holding of its first session, all mandates, mechanisms, functions and responsibilities of the former Commission on Human Rights, including the 1503 procedure, in order to maintain a system of special procedures, expert advice and a complaint procedure.
- Accordingly, ECOSOC resolution 1503 (XLVIII) of 27 May 1970 as revised by resolution 2000/3 of 19 June 2000, served as a working basis for the establishment of a new Complaint Procedure and was improved where necessary to ensure that the complaint procedure be impartial, objective, efficient, victims-oriented and conducted in a timely manner.
- Review of the 1503 procedure
- In compliance with the mandate entrusted to it by the General Assembly, the Council decided on 30 June 2006 to establish the Working Group on the implementation of operative paragraph 6 of General Assembly resolution 60/251 (decision 1/104), to formulate concrete recommendations on the issue of reviewing and when necessary, improving and rationalizing all mandates, mechanisms, functions and responsibilities of the former Commission on Human Rights, including the 1503 procedure.

- **How does the complaint procedure work?**
- Pursuant to Council resolution 5/1, the Complaint Procedure is being established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances. It retains its confidential nature, with a view to enhancing cooperation with the State concerned. The procedure, inter alia, is to be victims-oriented and conducted in a timely manner.
- Two distinct working groups - the Working Group on Communications and the working Group on Situations (Confidential 1503 procedure) - are established with the mandate to examine the communications and to bring to the attention of the Council consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms.
- ill-founded and anonymous communications are screened out by the Chairperson of the Working Group on Communication, together with the Secretariat, based on the admissibility criteria. Communications not rejected in the initial screening are transmitted to the State concerned to obtain its views on the allegations of violations.
- The Working Group on Communications (WGC) is designated by the Human Rights Council Advisory Committee from among its members for a period of three years (mandate renewable once). It consists of five independent and highly qualified experts and is geographically representative of the five regional groups. The Working Group meets twice a year for a period of five working days to assess the admissibility and the merits of a communication, including whether the communication alone or in combination with other communications, appears to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms. All admissible communications and recommendations thereon are transmitted to the Working Group on Situations.
- The Working Group on Situations (WGS) comprises five members appointed by the regional groups from among the States member of the Council for the period of one year (mandate renewable once).

- It meets twice a year for a period of five working days in order to examine the communications transferred to it by the Working Group on Communications, including the replies of States thereon, as well as the situations which the Council is already seized of under the complaint procedure.
- The Working Group on Situations, on the basis of the information and recommendations provided by the Working Group on.
 - **The criteria for a communication to be accepted for examination?**
- A communication related to a violation of human rights and fundamental freedoms is admissible, unless:
 - It has manifestly political motivations and its object is not consistent with the UN Charter, the Universal Declaration of Human Rights and other applicable instruments in the field of human rights law; or
 - It does not contain a factual description of the alleged violations, including the rights which are alleged to be violated; or
 - Its language is abusive. However, such communication may be considered if it meets the other criteria for admissibility after deletion of the abusive language; or
 - It is not submitted by a person or a group of persons claiming to be the victim of violations of human rights and fundamental freedoms or by any person or group of persons, including NGOs acting in good faith in accordance with the principles of human rights, not resorting to politically motivated stands contrary to the provisions of the UN Charter and claiming to have direct and reliable knowledge of those violations. Nonetheless, reliably attested communications shall not be inadmissible solely because the knowledge of the individual author is second hand, provided they are accompanied by clear evidence; or
 - It is exclusively based on reports disseminated by mass media; or
 - It refers to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights; or

- Communications, presents the Council with a report on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms and makes recommendations to the Council on the course of action to take.
- Subsequently, it is the turn of the Council to take a decision concerning each situation thus brought to its attention.
- The domestic remedies have not been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.
- The National Human Rights Institutions (NHRIs), when they are established and work under the guidelines of the Principles Relating to Status of National Institutions (the Paris Principles) including in regard to quasi-judicial competence, can serve as effective means in addressing individual human rights violations.

- **Commission on the Status of Women**

- The Commission on the Status of Women (“CSW” or “the Commission”) is a functional commission of the [United Nations Economic and Social Council \(ECOSOC\)](#), dedicated exclusively to gender equality and advancement of women.
- It is the principal global policy-making body. Every year, representatives of Member States gather at United Nations Headquarters in New York to evaluate progress on gender equality, identify challenges, set global standards and formulate concrete policies to promote gender equality and advancement of women worldwide.
- The Commission was established by ECOSOC resolution 11(II) of 21 June 1946 with the aim to prepare recommendations and reports to the Council on promoting women's rights in political, economic, civil, social and educational fields. The Commission also makes recommendations to the Council on urgent problems requiring immediate attention in the field of women's rights.
- The Commission's mandate was expanded in 1987 by ECOSOC resolution 1987/22 to include the functions of promoting the objectives of equality, development and peace, monitoring the implementation of measures for the advancement of women, and reviewing and appraising progress made at the national, sub regional, regional and global levels.

- Following the 1995 [Fourth World Conference on Women](#), the General Assembly mandated the Commission to integrate into its programme a follow-up process to the Conference, regularly reviewing the critical areas of concern in the [Beijing Platform for Action](#) and to develop its catalytic role in [mainstreaming a gender perspective](#) in United Nations activities.
- The [Economic and Social Council \(ECOSOC\)](#) again modified the Commission's terms of reference in 1996, in its resolution 1996/6, to include, inter alia, identifying emerging issues, trends and new approaches to issues affecting equality between women and men.
- Forty-five Member States of the United Nations serve as members of the Commission at any one time.
- The Commission consists of one representative from each of the 45 Member States elected by the Council on the basis of equitable geographical distribution: thirteen members from Africa; eleven from Asia; nine from Latin America and Caribbean; eight from Western Europe and other States and four from Eastern Europe. Members are elected for a period of four years.

- **Universal Periodic Review (UPR)**

- The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all 192 UN Member States once every four years. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. The UPR also includes a sharing of best human rights practices around the globe. Currently, no other mechanism of this kind exists.
- As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed. The UPR is designed to prompt, support, and expand the promotion and protection of human rights on the ground.
- To achieve this, the UPR involves assessing States' human rights records and addressing human rights violations wherever they occur. The UPR also aims to provide technical assistance to States and enhance their capacity to deal effectively with human rights

challenges and to share best practices in the field of human rights among States and other stakeholders.

- Ban Ki-moon, UN Secretary-General said that -The Universal Periodic Review "has great potential to promote and protect human rights in the darkest corners of the world."
- The UPR was created through the UN General Assembly on 15 March 2006 by resolution [60/251](#), which established the Human Rights Council itself. It is a cooperative process which, by 2011, will have reviewed the human rights records of every country. The UPR is one of the key elements of the new Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of this new mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur.
- **Who conducts the review?**
- The reviews are conducted by the UPR Working Group which consists of the 47 members of the Council; however any UN Member State can take part in the discussion/dialogue with the reviewed States. Each State review is assisted by groups of three States, known as "troikas", who serve as rapporteurs. The selection of the troikas for each State review is done through a drawing of lots prior for each Working Group session.
- **UPR Sessions**
- According to the Human Rights Council's "institution building package", the Universal Periodic Review Working Group will hold three two-week sessions per year. During each session 16 countries will be reviewed, therefore 48 countries per year and 192 countries by 2011, or the entire UN membership over the course of the first UPR cycle (2008-2011). On 21 September 2007, the Human Rights Council adopted a calendar detailing the order in which the 192 UN Member States will be considered during the first four-year cycle. Each review is facilitated by groups of three States, or "troikas", who act as rapporteurs.
- **UPR documentation**
- In accordance with the Human Rights Council's "institution-building package", the documents on which the reviews are based are:

- Information prepared by the State concerned, which can take the form of a national report, and any other information considered relevant by the State concerned, which could be presented either orally or in writing.
- Information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents, compiled in a report prepared by the OHCHR.
- Information provided by “other relevant stakeholders” to the universal periodic review, which will be summarized by the OHCHR in a document. Stakeholders include, inter alia, NGOs, NHRIs, Human rights defenders, Academic institutions and Research institutes, Regional organizations, as well as civil society representatives.
- **What are the reviews based on?**
- The documents on which the reviews are based are: 1) information provided by the State under review, which can take the form of a “national report”; 2) information contained in the reports of independent human rights experts and groups, known as the [Special Procedures](#), human rights [treaty bodies](#), and other UN entities; 3) information from other stakeholders including non-governmental organizations and national human rights institutions.
- **How are the reviews conducted?**
- Reviews take place through an interactive discussion between the State under review and other UN Member States. This takes place during a meeting of the UPR Working Group. During this discussion any UN Member State can pose questions, comments and/or make recommendations to the States under review.
- The troikas may group issues or questions to be shared with the State under review to ensure that the interactive dialogue takes place in a smooth and orderly manner. The duration of the review will be three hours for each country in the Working Group.
- **NGO's INVOLVEMENT**
- NGOs can submit information which can be added to the “other stakeholders” report which is considered during the review. Information they provide can be referred to by any of the States taking part in the interactive discussion during the review at the Working Group meeting.

- NGOs can attend the UPR Working Group sessions and can make statements at the regular session of the Human Rights Council when the outcome of the State reviews are considered. OHCHR has released "[Technical guidelines for the submission of stakeholders](#)".
- **What human rights obligations are addressed?**
- The UPR will assess the extent to which States respect their human rights obligations set out in: (1) the [UN Charter](#); (2) the [Universal Declaration of Human Rights](#); (3) human rights instruments to which the State is party (human rights treaties ratified by the State concerned); (4) voluntary pledges and commitments made by the State (e.g. national human rights policies and/or programmes implemented); and, (5) applicable international humanitarian law.

❖ <u>TOPIC 2: ENFORCEMENT OF HUMAN RIGHTS AT INTERNATIONAL LEVEL</u>

- The Rights under the Universal Declaration of Human Rights has been translated and explained under international and regional human right treaties as well as in the national constitution of states.
- To ensure their protection human rights at the international level are protected through **treaty based procedure, charter based procedure and the International criminal court.** The point being that both state parties to various international human right treaties and also those countries which are not member to such treaties to be subject to international human rights
- Further; state parties to the United Nations have incorporated the bill of rights in their national constitutions and/or ordinary law to ensure their protection at a state level as it will be seen later.
- Under the treaty based procedure the treaties have provided for the specific human rights and the enforcement mechanisms for such specified rights. At the International level

there are Nine (9), human right treaties which have treaty monitoring bodies known as Committees and these Committees monitor respect for the rights guaranteed under the respective treaties, they are also known as the treaty bodies.

- Treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. These treaty bodies with exception of Committee on Economic, Social and Cultural rights are established under the respective human right conventions.
- The international human right treaties provide three enforcement procedures namely; **periodic state reporting procedure, inter-state reporting procedure and the individual complaint procedure.**

❖ **A. PERIODIC STATE REPORTING PROCEDURES**

- In each of the human right convention the state parties are required to submit report periodically on the measures they have taken to implement human rights protected under that particular convention.
- The committee established under particular convention receive the report and make judicial assessment to consider whether and how that state has implemented human rights under the treaty and later on give recommendations to the state to improve the rights which they have not implemented as required by the convention.
- This makes a state to become more responsible to improve the protection of human rights guaranteed by a particular convention.

❖ **B. INTER-STATE COMPLAINT PROCEDURES**

- Under this procedure, one party to a convention complain to the committee that another country who is party to the convention is not fulfilling the obligations under the treaty.

- This is not famous in international human rights due to diplomatic relations between states. It is found only in four treaties and it has never been applied by any state.

❖ C. THE INDIVIDUAL COMPLAINT PROCEDURES

- This is the most effective and highly used human rights enforcement mechanism. Most of the international human rights convention provide for the opportunity for an individual who feels that his/her right under the convention have been violated to take a complaint before a treaty body under that convention to actually accuse his/her state for having violated his/her right. The idea is to hold that state responsible for violation of human rights.
- The detailed procedure on individual complaint procedure mechanism is found under the convention which established individual complaint procedure and their protocols. For example the First optional protocol to the International Covenant on Civil and Political Rights, 1966 provide for details of individual complaint procedure.
- However for an individual to access the treaty body he/she must have exhausted the available domestic remedies and have not been satisfied.
- Under charter based procedure the United Nations Human Rights Council, examines the human rights complain under two procedures; the **1235 procedure and the 1503 procedure**.
- **The 1235 procedure** is a public procedure under which the United Nations Human rights council publicly discusses and examines information relating to consistent patterns of human rights violations in the world.
- **The 1503 procedure** is a confidential procedure where by the council meets in confidential sessions trying to investigate on human rights violation in a particular country.

❖ **ENFORCEMENT HUMAN RIGHTS THROUGH INTERNATIONAL CRIMINAL COURT**

- The International Criminal Court herein after referred to as the ICC is the permanent, treaty based international court to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole namely, the crime of genocide, crime against humanity and war crimes.
- It is the complimentary court to the national criminal jurisdictions¹⁶, which comes into play when the state is either unable or unwilling to prosecute the individuals accused of committing the most serious crimes of concern to the international community; the aim being to end impunity for the perpetrators of such crimes.
- Through the prosecution of perpetrators of gross human rights violations; the rights of individuals are protected due to the fact that the prosecutions deter other individuals to violate or support the violations of human rights.
- For example the Tanzanian parliament ratified the Rome Statute on ICC on 2nd August, 2002. Hence by ratifying the Rome Statute the rights of Tanzanians are protected by the court in a way that individuals who will champion for the gross violations of human rights under the jurisdiction of the court will be personally liable for such crimes.
- The court started functioning in 2002 after the entrance into force of the Rome Statute which establishes the court and provides for how it should function. The seat of the court is in The Hague- Netherlands.

¹⁶The United Nations Human Rights Council replaced The United Nations Commission on Human Rights in 2006 but inherited the functions of the Commission. The Commission was established in 1964 by the United Nations Economic and Social Council under Article 68 of the United Nations Charter, 1945.

❖ **2). ENFORCEMENT OF HUMAN RIGHTS AT REGIONAL LEVEL**

- At the regional level there is regional human rights system for the enforcement of human rights in different continents which supplements the United Nations human rights system. With the exception of Asia the rest continents has particular system for the protection of human rights.
- These include the **Council of Europe, The Inter-American Human Rights System and the African Human Rights System;**
- **The African Human Rights system for protection of human rights** is composed of the African Human Rights treaties together with their enforcement mechanisms.
- The African Human Rights Treaties Includes; The African Charter on Human and Peoples' Rights, 1981., The African Charter on the Rights and Welfare of the Child, 1990., Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa., The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969., The Draft African Union Convention on the Protection and Assistance for Internally Displaced Persons in Africa, 2009., The AU Convention on Preventing and Combating Corruption, 2003.
- The African regional human rights enforcement system had for a long time depended on the African Commission on Human and Peoples' Rights which created a mandatory state reporting procedure¹⁷.
- It also provides for inter-state complaint procedure and individual complaint procedure¹⁸. The Commission performs two functions namely promotional activities and protectorial activities.

¹⁷ Article 62 of the African Charter on Human and Peoples' Rights, 1981

¹⁸ Ibid. Article 47

- However the ultimate enforcement of decisions of the Commission lies with the Assembly of Heads of States and Governments which is a political organ of the African Union.
- In 1998 the Protocol to the African Charter on the establishment of the African Court on Human and Peoples' Rights was adopted. The court complements the protective mandate of the Commission. Unlike the Commission the court has the mandate and competence to make final and binding decisions on the violation of human rights on any member country to the African Union.
- The court consists of 11 judges elected by secret ballot by the heads of states of African Union. It has both adjudicative and advisory jurisdiction. It also has jurisdiction in all cases submitted to it on all violations emanating from the African Charter on Human and Peoples' Rights and its protocols plus all international human rights instruments to which the state concerned is a party.
- The seat of the court is in Arusha Tanzania. The mechanisms of enforcing human rights in African regional human rights system enables protection of individuals' rights whose states are members to the African Union including Tanzania.

❖ THE AFRICAN COMMISSION ON HUMAN & PEOPLE'S RIGHTS

- The African Commission on Human and Peoples' Rights (ACHPR) is a quasi-judicial body tasked with promoting and protecting human rights and collective (peoples') rights throughout the African continent as well as interpreting the African Charter on Human and Peoples' Rights and considering individual complaints of violations of the Charter.
- The Commission came into existence with the coming into force, on 21 October 1986, of the African Charter (adopted by the OAU on 27 June 1981). Although its authority rests on its own treaty, the African Charter, the Commission reports

to the Assembly of Heads of State and Government of the African Union (formerly the Organization of African Unity).

- Its first members were elected by the OAU's 23rd Assembly of Heads of State and Government in June 1987 and the Commission was formally installed for the first time on 2 November of that year. For the first two years of its existence, the Commission was based at the OAU Secretariat in Addis Ababa, Ethiopia, but in November 1989 it relocated to Banjul, Gambia. (NB: The ACHPR should be distinguished from the African Union Commission, as the OAU Secretariat has been renamed since the creation of the African Union.)
- The Commission meets twice a year: usually in March or April and in October or November. One of these meetings is usually in Banjul, where the Commission's secretariat is located; the other may be in any African state.
- The ACHPR is made up of eleven members, elected by secret ballot at the OAU Assembly of Heads of State and Government (subsequently, by the AU's Assembly). These members, who serve six-year renewable terms, are "chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights" (Charter, Article 31) and, in selecting these personalities, particular consideration is given "to persons having legal experience".
- The members are to enjoy full independence in discharging their duties and serve on a personal basis (i.e., not representing their home states); however, no member state may have more than one of its nationals on the Commission at any given time. The members choose, from among their own number, a chairperson and a Vice Chairperson, who each serve two-year renewable terms.

❖ **THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS**

- ACHPR was adopted in 1981 also known as the ***Banjul Charter***. However, it is clear that the drafters of the Charter have been inspired by a number of international treaties including the ICCPR and the ICESCR, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the European Convention on Human Rights.

- In addition to the ACHPR, the OAU and thereafter the AU has adopted many other treaties dealing with human rights. Many of these have been adopted as regional responses to treaties adopted at the UN.
- Some treaties such as the recently adopted African Youth Charter and the African Charter on Democracy, Elections and Governance have no equivalent at the global level.
- The prohibition of discrimination in Article 2 ACHPR differs from the UDHR and the two covenants in that it includes ‘ethnic group’, and refers to ‘fortune’ rather than ‘property’ as an explicit prohibited ground of discrimination.
- Article 4 ACHPR protects not only the right to life, but also the integrity of the ‘inviolable’ human being. This right can be seen to clash with certain traditional practices. That culture cannot interfere with this important right has been further elaborated on in Article 5 of the Protocol on the Rights of Women and in Article 21 of the African Children’s Charter.
- Article 5 ACHPR sets out a number of rights treated separately in other international human rights instruments: the right to dignity, recognition of legal status, prohibition of exploitation and degradation in particular slavery an inhuman or degrading punishment and treatment.
- Article 29(2) ACHPR provides that everyone should ‘serve his national community by placing his physical and intellectual abilities at its service’.
- The prohibition of arbitrary arrest and detention in Article 6 ACHPR corresponds to Article 9 (1) ICCPR. However, the Charter does not explicitly recognize the procedural safeguards recognized in Article 9(2) to 9 (5) ICCPR such as the right to be promptly informed about the reason for arrest, the right to be brought promptly before a judge, the right to habeas corpus and the right to compensation for unlawful detention.
- In addition to the fair trial rights set out in Article 7 ACHPR, Article 26 ACHPR provides for the independence of the judiciary. Article 7 ACHPR provides for access to courts: ‘the right to have his cause heard’ and safeguards with regard to criminal trials. These provisions are less elaborate than in the ICCPR but have been extended by the Commission in its resolutions and case law.

- The Commission has found violations of the right to freedom of conscience in Article 8 ACHPR in a complaint of **Free Legal Assistance Group and Others v Zaire (2000) AHRLR 74 (ACHPR 1995) [45]**, on harassment of Jehovah's Witnesses, and in a complaint against Sudan on persecution of Christians (**Amnesty International and Others v Sudan (2000) AHRLR 297 (ACHPR 1999) [76]**).
- In a case against South Africa (**Prince v South Africa (2004) AHRLR 105 (ACHPR 2004) [40]–[43]**), the Commission found that the prohibition of the use of cannabis for sacramental use by Rastafarians was justified by the limitation clause in Article 27(2) ACHPR.
- The Commission has developed the content of Article 9 in its Declaration of Principles on Freedom of Expression in Africa. The right to 'receive information' in Article 9 (1) ACHPR is interpreted in the Declaration to include a right to 'access information held by public bodies' and information 'held by private bodies which is necessary for the exercise or protection of any right'.
- Article 12(3) ACHPR uniquely among international human rights treaties recognises the right to 'seek and obtain asylum'. This provision should be read together with Article 2(3) of the 1969 Convention Governing the Specific Aspects of Refugees Problems in Africa.
- Article 18 (3) ACHPR is unique in that it provides that the state 'shall ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.'
- **See the following cases: 1) Legal Resources Foundation v Zambia (2001) AHRLR 84 (ACHPR 2001).**
- **(2) Katangese Peoples' Congress v Zaire (2000) AHRLR 72 (ACHPR 1995)**
- **The Inter-American System for the protection of human rights** is one of the world's three regional human rights systems, and is responsible for monitoring and ensuring implementation of human rights guarantees in the 35 independent countries of the Americas that are members of the Organization of American States (OAS).
- The Inter-American System is composed of two entities: a Commission and a Court. Both bodies can decide individual complaints concerning alleged human rights violations

and may issue emergency protective measures when an individual or the subject of a complaint is in immediate risk of irreparable harm.

- The Commission also engages in a range of human rights monitoring and promotion activities, while the Court may issue advisory opinions on issues pertaining to the interpretation of the Inter-American instruments at the request of an OAS organ or Member State.

❖ UNITED NATIONS PROTECTION & PROMOTION OF HUMAN RIGHTS

❖ The League of Nations (LN)

- Documented as being the first attempt in history of the World to furnish the International Society (community) or nations with a permanent & organic system of international political institution.
- Termed as “A Child of War” it was influenced by certain movements which started before the WW1. (1914 – 1919). Such as The Hague Conference of 1899 & 1907, The Treaty of Versailles, 1919, The American 14-Point programme for establishment of the LN of 1918 and The British Contributions in 1918. Final establishment of the LN on 10 January, 1920. The principal organs of LN were, The Assembly, The Secretariat and The Council.

❖ Functions of LN

- 1. The Reduction of National Armaments to the lowest point consistent with national safety – Art. 8. (2.) To preserve as against external aggression, the territorial integrity and existing political independence of all members of the League. Art. 10. (3) Settle international disputes peacefully – Art. 12 & 16. (4). Bring about peaceful change in international relations. 5. Maintain international peace and security.

❖ Weaknesses of LN

- 1. **The Unanimity Principle,** All decisions of the LN were taken unanimously. The nations were divided into Groups. This principle proved to be detrimental and obstructed its day to day functions. (2) The LN did not completely prohibit WAR. It permitted member states to resort to war under certain circumstances. (3.) The U.S. American Senate NEVER Ratified it for that country to become a member; as per their Constitution. (4.) A number of States ceased to be members of the LN by virtue of the provision within its Constitution that if any amendment of the Covenant was not

acceptable to any state, that members ceased to be one. (5.) It provided for withdrawal of members. From the initial 62 in the course of time were reduced to 32.(6.) The Council of the LN did not have the capacity to settle international disputes peacefully. (7.) Incapable of preventing great powers from attacking and exploiting small states. (8.) The LN could not be termed as a Universal International organisation. (9.) It was based on Policy of Discrimination between great powers and small states. (10.) Great powerful members of the LN always considered their selfish interests over and above all things.

- **Dissolution factors:** 1) **1923** - Italy attacked Greece's Corfu Island. LN supported/favored Italy.. (2) **1931** – Japan attacked Manchuria. LN did not take any action. 3) No tangible success came of the LN. 4) **1935** – Italy attacked Ethiopia. No action vs Italy was taken. 5) **1939** – Russia invaded Finland. LN was a spectator. Took no action.
- The League of Nations was abandoned by those who failed to abide by their solemn obligations. **April, 1946:** LN was dissolved by a resolution of its Assembly.

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- **The United Nations (UN)** is an intergovernmental organisation established on 24 October 1945 to promote international cooperation and its a replacement for the ineffective League of Nations, created following World War II to prevent another such conflict. The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945.¹⁹
- Promoting respect for human rights is a core purpose of the United Nations and defines its identity as an organization for people around the world. Member States have mandated the Secretary-General and the UN System to help them achieve the standards set out in the UN Charter and the Universal Declaration of Human Rights.
- To do so, the UN System uses all the resources at its disposal, including its moral authority, diplomatic creativity and operational reach. Member States, however, have the primary responsibility for protecting human rights of their populations.

¹⁹ Charter of the United Nations <http://www.un.org/en/documents/charter/intro.shtml>

- The main organs of UN According the UN Charter, includes The General Assembly, Cap 4. , The Security Council, Cap 5., The Economic and Social Council, Cap 10., The Trusteeship Council, Cap 13., The International Court of Justice, Cap 14. And The Secretariat, Cap 15. UN has specialised agencies such as WHO, ILO, etc.

❖ HRs PROTECTION & PROMOTION

- By Human Rights protection and promotion, refer to efforts put in place by the UN to ensure that Human rights are not violated by any actors on civil, political, economic, social and cultural, and development grounds but also ensuring that the victims of human rights violations are offered Justice by putting the perpetrators to justice.
- HRs promotion and protection has much to do with; analyzing the underlying power relations and the root causes of discrimination; ensuring that both the process and the concrete poverty reduction targets are consistent with international human rights standards; ensuring close links between macroeconomic design, sectorial initiatives, and ‘governance’ components and principles such as transparency and accountability; ensuring a basic standard of civil and political rights guarantees for active, free and meaningful participation, including freedom of information and freedom of association; identifying indicators and setting benchmarks so that the progressive realization of economic and social rights can clearly be monitored.
- United Nations Universal Declaration of Human Rights (UDHR)“...On 10 December 1948, the Universal Declaration of Human Rights was proclaimed and adopted by the General Assembly.
- The extraordinary vision and determination of the drafters produced a document that for the first time set out universal human rights for all people in an individual context. Now available in more than 360 languages, the Declaration is the most translated document in the world.
- The Universal Declaration of Human rights was passed based on the United Nation’s commitment to “...upholding, promoting and protecting the human rights of every individual. This commitment stems from the United Nations Charter, which reaffirms the faith of the peoples of the world in fundamental human rights and in the dignity and worth of the human person.

- Based on this brief background therefore, there is no doubt that the UN has tried to put in place measures in terms to laws to ensure that individual human rights are protected though not withstanding the possible challenges that come along and jeopardize the implementation of such laws. After its' enactment, the UDHR did not save the world from traumatic wars such as that in Vietnam, and it did not prevent countries emerging from colonial rule from falling into the trap of domestic conflicts that caused the death of millions among many other like fascist rule in Greece, Portugal and Spain after the end of fascism in Germany and Italy.

❖ **COMMISSION OF HUMAN RIGHTS**

- The Commission on Human Rights is a subsidiary body of the Economic and Social Council which was established under Article 68 of the Charter of the United Nations to promote Human Rights.
- "...The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.
- In 1946 in its first meeting, the Economic and Social Council established two functional commissions, one on human rights and the other on the status of women. It was decided that these commissions would be composed of State representatives and the Commission on Human Rights is now composed of 53 States elected by the Economic and Social Council.
- Office of the High Commissioner for Human Rights (OHCHR) fulfils the principal United Nations office mandated to promote and protect human rights for all. OHCHR leads global human rights efforts speaks out objectively in the face of human rights violations worldwide. The office also provides a forum for identifying, highlighting and developing responses to today's human rights challenges, and act as the principal focal point of human rights research, education, public information, and advocacy activities in the United Nations system.
- The High Commissioner for Human Rights (OHCHR) also provides assistance to Governments, such as expertise and technical trainings in the areas of administration of justice, legislative reform, and electoral process, to help implement international human

rights standards on the ground. The office also assists other entities with responsibility to protect human rights to fulfil their obligations and individuals to realize their rights.

- Before the above however, more important is also that; the Human Rights Council was created with the aim of ensuring effective enjoyment by all of all human rights, civil, political, economic, social and cultural rights, including the right to development, and that the Council is responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.

- **Roles of the UN in HR promotion and protection.**

- The United Nations through responsible commissions and or offices and with guidance of certain resolutions and conventions as identified above has a number of roles it plays in an effort to promote and protect Human Rights across the globe.
- However, for purposes of this paper, I will dwell more on UN roles and achievements mostly in Africa though I may pick some examples from other continents.
- In this section, I will try to identify the mandates on a wide range of issues relating to civil, cultural, economic, political and social rights and responsibilities of the United Nations as per the resolutions and Conventions passed in HR promotion and protection.
- The United Nations has three major important roles which are a hinge to all its roles and achievements in an effort to promote human rights across the globe.
- The United Nations through OHCHR has tried to build and strengthen partnerships at country grass root levels in an effort to promote Human Rights.
- The OHCHR works with Governments, civil society, national human rights institutions and other United Nations entities and international organizations, such as the International Labor Organization, the Office of the High Commissioner for Refugees, the United Nations Children's Fund, United Nations Educational, Scientific and Cultural Organization, the International Criminal Court, specialized criminal tribunals, such as the ones for former Yugoslavia and for Rwanda, established by the Security Council, and the World Bank in their efforts to promote and protect human rights.
- Such partnerships have culminated into a number of enormous achievements in its efforts to promote Human Rights mainly in war affected areas like Somalia, Northern Uganda and Democratic Republic of Congo among others. In such partnerships, the OHCHR

offers funding and at times grants to certain Civil Society organizations whose objectives are to promote human rights and or offer Humanitarian services. It is also important to acknowledge the fact that the UN OHCHR does Implementation on the ground in matter to do with HR promotion.

- The Office works to ensure the implementation of international human rights standards on the ground through greater country engagement and its field presences. Over the years, OHCHR has also increased its presence in the field, reaching out to the people who need it the most.
- Field offices and presences play an essential role in identifying, highlighting, and developing responses to human rights challenges, in close collaboration with governments, the United Nations system, non-governmental organizations, and members of civil society.
- Among these responses are monitoring human rights situations on the ground and implementing projects, such as technical trainings and support in the areas of administration of justice, legislative reform, human rights treaty ratification, and human rights education, designed in cooperation with member States.“...The UN OHCHR also sets standards and monitors aspects to do with HRs violations. Their method of work focuses on three major dimensions: standard-setting, monitoring, and implementation on the ground.
- OHCHR works to offer the best expertise, and substantive and secretariat support to the different United Nations human rights bodies as they discharge their standard-setting and monitoring duties. OHCHR, for example, serves as the Secretariat of the Human Rights Council. The Council, consisting of State representatives, is the key United Nations intergovernmental body responsible for human rights.
- The United Nations has repeatedly emphasized the need to integrate human rights into the broad range of its activities. It is essential to recognize the potential of almost all UN human rights mechanisms and procedures for contributing to the protection and promotion of children’s rights.
 - **Human rights treaties**
- The creation of a body of international human rights law is one of the United Nations’ great achievements. The United Nations has helped negotiate more than 70 human rights

treaties and declarations many focused on the rights of vulnerable groups such as women, children, persons with disabilities, minorities and indigenous peoples.

- Together, these treaties and declarations have helped create a ‘culture of human rights’ throughout the world, providing a powerful tool to protect and promote all rights. In accordance with the treaties, States parties have set up treaty body committees that may call upon States to respond to allegations, adopt decisions and publish them along with criticisms or recommendations. For the full text of the core human rights treaties, see the links at right.

- **World Conferences and Summits**

- The standards articulated in the international covenants and conventions have been reinforced through declarations and plans of action that have emerged from a series of World Conferences organized by the United Nations.
- These conferences have gained importance as real forums for deciding on national and international policy regarding such global issues as the environment, human rights and economic development.
- They focus world attention on these issues and place them squarely on the global agenda. UNICEF's work in the area of child rights is informed by the World Summit for Children (1990), as well as by the World Conference on Education for All (1990), the World Conference on Human Rights (1993), the World Summit for Social Development (1995), the Fourth World Conference on Women (1995), the Millennium Summit (2000), and the World Summit and Special Session on Children (2005). The 1993 World Conference on Human Rights, in particular, recognized that the human rights of children constitute a priority for action within the United Nations system. At the 2005 Special Session on Children, Member States committed themselves to improving the situation of children.

- **Other mechanisms for protecting human rights**

- The United Nations promotes respect for the law and protection of human rights in many other ways, including:
- Monitoring the human rights records of nations: The treaty body committees receive technical, logistical and financial support from the United Nations. The United Nations also has an Office of the High Commissioner for Human Rights, which is mandated to promote and protect the enjoyment and full realization by all people of human rights.

- Appointing ‘special procedures’ to address specific country situations or broader issues: The United Nations may also appoint experts (sometimes titled special rapporteurs, representatives or independent experts), to address a specific human rights issue or particular country. These experts may conduct studies, visit specific countries, interview victims, make specific appeals and submit reports and recommendations.
- These procedures include a number of child-specific procedures and many broader procedures which increasingly make reference to children's rights. Child specific procedures include the Special Rapporteur on the sale of children, child prostitution and child pornography; and the Special Representative of the Secretary-General on the impact of armed conflict on children.
- Many broader procedures increasingly include references to children's rights in the context of their particular mandates. Such procedures include the Special Rapporteurs on the right to education; on torture; on extrajudicial, summary or arbitrary executions; on violence against women; on freedom of religion or belief; and on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and also an Independent Expert on human rights and extreme poverty.
- Country-specific Special Rapporteurs who focus on the human rights situations in particular countries and regions and can receive individual complaints and the Representative of the Secretary-General on Internally Displaced Persons have also singled out violations of children's rights. Some other relevant mechanisms include Working Groups on Enforced or Involuntary Disappearances and on Arbitrary Detention.

<p>❖ <u>TOPIC 3: PROTECTION & PROMOTION OF HUMAN RIGHTS IN TANZANIA</u></p>
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❖ **THE PERMANENT COMMISSION OF INQUIRY (PCE)**

- The permanent commission of Enquiry was first national human rights institution in Africa to be introduced by then and was also one of the earliest commonwealth ombudsman office, predating the creation of parliamentary commissioner for administration in united kingdom.
- The PCE was set up in 1966 on the recommendation of presidential commission on establishment of democratic one-party state, the Permanent Commission of Enquiry

(PCE) was established through the *Interim Constitution of Tanzania*, 1965 and an Act of No. 25 of 1966²⁰ this was an attempt to establish a mechanism of accountability as an alternative to the west minister style in which Tanzania had inherited from Britain.

- This institution was made during the period of Arusha declaration and the policy of socialism and self-reliance²¹ one among of its resolution was to instill in the administrators an ethic of public service and general policy of restraining officials' income (salaried and other wise) to prevent the emergence of a *bureaucratic bourgeoisie*.²²
- In this period the primary function of the Permanent Commission of Enquiry (PCE) under the Act was to investigate cases on mal-administration of government officials, therefore the commission had power to call witness and document and search premises. The commissioners are immune from prosecution and may not give evidence in court on proceeding of PCE or evidence which it has gathered and also PCE cannot be challenged in court except on ground of lack of jurisdiction.²³ The commission had jurisdiction in both Tanzania mainland and Zanzibar but until 1984 it jurisdiction was exercised only in Tanzania mainland.
- Following the failure of (PCE) in performing the duty of which it was established, lead to the demands for the establishment of Human Rights Commission in the Country. Further progress was made, following the 13th amendment of *the Constitution of the United Republic of Tanzania* 1977 in the year 2000 under Articles 129 to 131, the PCE was abolished; instead the Commission for Human Rights and Good Governance was established with the role to oversee the protection and promotion the principles of human rights and principles of good governance²⁴.

²⁰The permanent commission of enquiry Act of 1966 come into operation in 6th march of the same year.

²¹Patrick M. Norton (1973). *The Tanzanian Ombudsman*. International and Comparative Law Quarterly, 22, pp 603-631.

²² http://journals.cambridge.org/article_S0020589300030839

²³Leonard F.M(2000) *Human rights commissions and ombudsman offices; national experience throughout the world* ,Kluwer law international publishing programs, The Hague, Netherlands pg 745.

²⁴Constitutional changes were reinforced with the enactment of the Commission for Human Rights and Good Governance Act, 2001, [Cap 391 R.E 2002].

❖ **WEAKNESS OF PCE WHICH LED TO FORMATION OF CHRGG**

- The Permanent Commission of Enquiry was facing a number of criticisms which weakened its position such its weaknesses are:-
- It was a purely advisory body since it could not enforce its own recommendations. Its functions depended on the President since the latter had powers to intervene in most of the activities vested on the Commission.
- It was part of the Executive and therefore very difficult to control its counter-parts.
- It started at the time when the Bill of Rights was not enshrined in our Constitution and therefore most of the violations could not have been enforced in courts.
- Since it lacked power to disclose the identity of the persons inquired to the National Assembly, then it was not easy to get much assistance from the National Assembly to challenge actions of the Government.
- Since most of its investigations and recommendations were confidential, then there was no room for members of the public to know clearly the way the Commission conducted its duties and the end results.

- **Constitutional and statutory Restrictions imposed on the Commission**

- The PCE had no limitless powers. There were some restrictions imposed by the laws establishing it and these were;
- It had no power to make any inquiry against the Union President or the President of Zanzibar
- Had no power to inquire on any decision passed by any judge, magistrate or any judicial officer in the exercise of his judicial functions
- The President had power to stop it from entering in any premises if he is of the opinion that such entry would prejudice national security or international relations
- The President had power to stop production of any evidence to the PCE on reasons similar to the one above
- The President had power to stop any process inquiry if it is against public interests.

❖ ESTABLISHMENT OF CHRGG

- The 13th Constitutional Amendments of 2000²⁵ introduced and established the Commission for Human Rights and Good Governance repealing the former Permanent Commission of Enquiry. Such amendments were to the effect of repealing Part I of Chapter 6 of the 1977 Constitution and replaced it with a new Part I which now carter for the Commission for Human Rights and Good Governance [hereinafter to be referred to as CHRGG]. Article 129 [1] of the Constitution of United Republic of Tanzania, 1977 as amended from time to time establishes CHRGG. It is therefore the constitutional creature.
- Article 129 [2] of the Constitution provides for the composition of CHRGG. The Commission is composed of;
 - a) A Chairman, who should be a person qualified for appointment as Judge of the High Court or Court of Appeal
 - b) A Vice-Chairman appointed depending on which part of the Union the Chairman comes from
 - c) Not more than Five Commissioners appointed from amongst persons who have knowledge, experience and a considerable degree of involvement in matters relating to human rights, law, government, politics or social affairs
 - d) Assistant Commissioners
 - As per Article 129 [3] of the Constitution, all Commissioners and Assistant Commissioners shall be appointed by the President after consultation with the appointment committee established under Article 129 [4] of the Constitution. Although there is no express provision in the Constitution and in the Act as to who appoints the Chairman and the Vice-Chairman, yet in light of Regulation 9 of G.N No. 89 of 2001 the process for the appointment of commissioners applies also on the Chairman and Vice-Chairman.
- The laws regulating matters of the CHRGG are the Constitution of the United Republic of Tanzania 1977, as amended from time to time; the Commission for Human Rights and

²⁵Vide Act No. 3 of 2000

Good Governance Act, 2001; and the Commission for Human Rights and Good Governance [Appointments Procedure for Commissioners] Regulations, 2001²⁶.

- The commission plays the dual role of an ombudsman and a human rights commission. Although this legislation authorized it to operate in both the mainland and Zanzibar, Zanzibar authorities prevented it from doing so until a parliamentary amendment was enacted. In May 2006, Union government authorities and Zanzibar officials agreed that the quasi-governmental (CHRGG) would be permitted to operate in Zanzibar.

❖ FUNCTIONS AND POWERS OF CHRGG

- The functions of the Commission for Human Rights and Good Governance are provided under Article 130 (1) of *the Constitution of the united Republic of Tanzania* of 1977²⁷ and section 6 (1) of *the Commission for Human Rights and Good Governance Act*²⁸.
- The powers of the Commission for Human Rights and Good Governance are provided in section 13 (1) of the Act²⁹, the office of the Commission and any office established under the Commission is the public office in the service of the United Republic of Tanzania. Also the Commission is an independent department and the Commissioners should not, in the performance of their functions, be subject to the direction or control of any person or authority³⁰.
- The Commission under section 15 (1) of the Act, it has been given power to investigate any human rights abuses/maladministration. And the commission can do so, on its own initiative or on receipt of a complaint or allegation by either, an aggrieved person acting in such person's own interest, association acting in the interests of its members, or a person acting in the interest of a group or class of persons.
- Furthermore, after conducting an investigation, the Commission has been given power to where appropriate, promote negotiation and compromise between the parties concerned; or cause the complaint and the findings of the Commission to be reported to the appropriate authority or person having control over the person in respect of whose act or conduct an investigation has been carried out by the Commissioner; or recommend to the

²⁶G.N No. 89 of 2001

²⁷[CAP 2 R.E 2002] as amended from time to time

²⁸[CAP 391 R.E 2002]

²⁹CAPP 391 R.E 2002]

³⁰Section 14 (1) of the Act and Article 130 (2) of the Constitution

relevant person or authority such measures, or requiring that authority to take such measures, as will provide an effective settlement, remedy or redress³¹.

- However, under the Act, Section 15 (3) of the Act³² empowers the Commission to institute proceedings in Court and seek appropriate remedy which may be available from the court.

❖ WEAKNESS OF CHRGG

- The Commission for Human Rights Good Governance replaced the Permanent Commission of Enquiry which had a number of weaknesses.
- But still the Commission for Human Rights Good Governance still leaves a room where public officials can temper with its power:-
- Under section 7(2) of *the Commission for Human Rights Good Governance Act*³³ gives power to the President to appoint commissioners and Assistant-Commissioners.
- The Act provides that The President shall, acting upon recommendations of the Appointments Committee, appoint the Commissioners and Assistant Commissioners. Just like from its predecessor the Permanent Commission for Enquiry under Article 68 (l) The Permanent Commission shall comprise a chairman and two other members who shall be appointed by the President³⁴.
- This gives room for the President who is a public officer to appoint persons who will represent his interest and not the interest and will of the majority. So *the Commission for Human Rights Good Governance Act*³⁵ just like its predecessor gives room for public officials to temper with its power. Also the president is not bound to follow the recommendations of the Appointments Committee and there is no provision which binds the president to follow the recommendations of the Appointment Committee.
- The President is also given powers to remove from office a commissioner as per Section 10 of *the Commission for Human Rights Good Governance Act*³⁶. A Commissioner may be removed from office only for inability to perform the functions of his office, due to

³¹Section 15(2) of the Act

³²[CAP 391 R.E 2002]

³³[CAP 391 R.E 2002]

³⁴The Interim Constitution of Tanzania of 1965

³⁵[CAP 391 R.E 2002]

³⁶[CAP 391 R.E 2002]

illness or to any other reason, or for misbehavior inconsistent with the ethics of office or any law concerning ethics of public leaders.

- Also under Article 68 (5) of *the Interim Constitution of Tanzania*³⁷, 1965 provides that, a member of the Permanent Commission may be removed from office by the President only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehavior.
- This gives a room for the President to remove a member of the Commission who will not stand for the interests of his office. Also the procedures as stipulated under section 10(2) of *the Commission for Human Rights Good Governance Act*³⁸ still favour the President since the tribunal for investigation is appointed by him.
- The President can bar any investigation to a certain person also the President of Zanzibar is exempted from any investigation by the Commission and the Commission is also required to submit some reports to him. This is according to section 16 (1) of *the Commission for Human Rights Good Governance Act*³⁹. Also just like the former Commission under section 14(1) of *the Permanent Commission of Enquiry Act*⁴⁰ provides that the President may stop the Commission to investigate things which would be injurious to the public interests national security or International relations.
- This gives room for the both President that is President of United Republic and Revolutionary Government to not to be investigated in the actions which will involve mal-administration in their offices. Also it gives power to the President to stop investigation. This also gives room for the President to stop the investigations of the Commission, so the President temper with its power.
- The Commission has no ability to make an order of command. It can make only recommendations in pursuance to Section 17 (1) of *the Commission for Human Rights Good Governance Act*⁴¹. The Commission proceedings has the status of a recommendation to the appropriate authority or person having control over the person in respect of whose act or conduct- an investigation has been carried out. Also Permanent

³⁷ Act No. 45 of 1965

³⁸ Ibid

³⁹ Ibid

⁴⁰ Act No. 25 OF 1966

⁴¹ [CAP 391 R.E 2002]

Commission of Enquiry lacked any power or authority of its own and it can only recommend to the President, whom it has no power to investigate.

- The recommendation of the Commission has no legal binding and can be neglected by the public officials. This gives a room for the public officials to temper with the power which the Commission has been given to protect and preserve the human rights and investigations of violation of the human rights.
- The Act does not give the recommendation of the Commission a status of a court order nor does the Act pronounce legal enforceability of the recommendations of the Commission by the court, silence of *the Commission for Human Rights and Good Governance Act*⁴² has led to human rights violations tycoons-the government to refuse to compensate the eviction victims. In which in the court's decision in **Ibrahim Korosso & 134 Others Together With LHRC v AG & Others**⁴³. The enforcement of the decision of the Commission was seen to lack legal binding and therefore not enforceable in law.
- Also The CHRGG delivered its decision in December 2004 in favour of the complainants, ordering the government to pay a total amount of Tshs.890, 523,950 /= to the villagers as compensation for the foregoing ordeal. The CHRGG also ordered for reinstatement of villagers back to **Nyamuma** village, However the Government through a letter from the Attorney General refused to comply with the foregoing CHRGG recommendations.
- The special report of the Commission should be taken to the President but surprisingly, in financial matters, the Commission is responsible to the parliament as provided under section 30(1) of *the Commission for Human Rights and Good Governance Act*⁴⁴. Reports of the Commission are sent to the National Assembly through the Minister and this may influence the content which is to be tabled before the National Assembly. Also its predecessor under section 16 of *the Permanent Commission for Enquiry Act*⁴⁵ which provides that save as may be directed by the President, the Commission shall not disclose the contents of any report made to the President.

⁴²[CAP 391 R.E 2002]

⁴³(2005)(HC),Unreported

⁴⁴Act No. 7 of 2001

⁴⁵Act No. 25 OF 1966

- This gives room for the President as public officer either to disclose or not to disclose the report submitted to him by the Commission. If the President chooses not to disclose the report submitted by the Commission to the public. The president will be tempering with its power given to adjudicate all matter which relates with human rights and good governance in Tanzania which is provided under the Constitution of United Republic of Tanzania.

❖ SUCCESS OF CHRGG

- **Commission for Human Rights and Good Governance has some success compared to the little success of the Permanent Commission of Enquiry.**
- The Commission for Human Rights and Good Governance has power to institute proceedings in court and seek appropriate remedy unlike the Permanent Commission of Enquiry.
- The Commission for Human Rights and Good Governance recommendations though are not binding but it is given a room to bring the complaints to the High Court and later to the Court of Appeal. The PCE had no power to institute a case before a court of law. It was just an advisory body which only makes recommendations.
- Also the Commission is not involved in the current activism of condemnation of death penalty, there is no doubt that the Commission promotes and protects economic and social rights for example, where the manner through which the social evictions was carried out was alleged to be violation of several economic and social rights, including the right to housing, the right to food the right to property and the express denial of the alternative settlement to the victims of the eviction. But the Permanent Commission of Enquiry has not involved itself in various activisms.
- Also raises awareness on the public on the functions and powers vested and how can a citizens enjoy its services, in ensuring the good administration to the people, the Commission creates awareness to them about general public functions and powers vested to the agents or offices in their administrative machinery. Therefore, ombudsman enables people to be aware on the maladministration
- Therefore, the commission succeeds in investigating some of the complaints of the citizens and recommending on necessary measures to be undertaken. Through investigation, it enables them to come up with good conclusion. A good example here is

the investigation in the famous **Nyamuma Village Case** where, the commission concluded that there were violations of human rights and principles of good governance.

- The commission has resolved the disputes on its jurisdiction in Zanzibar and now it has opened its offices in that part of Tanzania. The Commission expands its functions so as to solve dispute within its jurisdiction, hence succeeds to that effect.
- Raising awareness on the general public. The public is now aware of various mal-administration practices which are done by the public officials. The Commission has employed various means of communication such as Televisions, Radios, Newspapers and moot courts. Unlike the PCE the Commission was not popular to the public. The public was not aware of its function.

❖ **DIFFERENCES BETWEEN PCE and CHRGG**

- The former had no power to institute proceedings in court and seek appropriate remedy while the latter has that power
- Appointment procedures in the former were entirely relying on the powers of the President but in the latter the President has to make consultation with the appointment committee
- The latter was formed at the eve where there was no Bill of Rights in the Constitution and the state was under single party system which hindered effective operation of it while the latter is operating in circumstances where by information can be derived from various political sources and humanitarian activists.
- **QN: The Human Rights Commission is a toothless backing dog and in any way cannot serve as a place where a victim of Human Rights abuse can run to. Critically discuss.**

❖ **ENFORCEMENT OF HUMAN RIGHTS IN TANZANIA**

- Grievances concerning with violations of Human Rights may be either taken to The Commission for Human Rights and Good Governance [CHRAGG] through The Commission for Human Rights and Good Governance Act⁴⁶ or direct to the High Court

⁴⁶ CAP 391 R.E 2002

of Tanzania[vide the Basic Rights and Duties Enforcement Act⁴⁷. Both organs have jurisdiction to deal with Human Rights matters.

▪ **Enforcement of the Bill of Rights as contained in the Constitution of the United Republic of Tanzania, 1977.**

- Under the provision of section 3 of the Basic Rights and Duties Enforcement Act⁴⁸, all petitions made to the High Court of Tanzania vide this Act shall only be the one which have the purposes of enforcing the provisions of the basic rights and duties set out in Part III of Chapter One of the Constitution of United Republic of Tanzania, 1977. Hence the first requirement is to ensure that the claim lies on the enforcement of Article 12 to 29 of the Constitution of United Republic of Tanzania, 1977.

▪ **Application to be made by way of a petition**

- Furthermore, the claimant of the infringement of Human Rights to the High Court vide the Basic Rights and Duties Enforcement Act⁴⁹, must make the application by the way of petition which is to be filed in the appropriate registry of the High Court by originating summons, this has been provided for under section 5 of The Act⁵⁰.
- In *Registrar of Societies and 2 others V. Baraza la Wanawake Tanzania*⁵¹, the Court of Appeal was of the view that petition and originating summons are both originating processes. Complainants of breaches or violations of fundamental or Basic Rights and freedoms should be given unimpeded access to the court to seek redress.

▪ **The particulars/contents of a petition**

- Another requirement is that of writing the petition of the claim in conformity with the requirements needed under section 6 of the Basic Rights and Duties Enforcement Act⁵², which set out a petition to include the name and the address of petitioner, the name and address of each person against whom the redress is sought, the grounds upon which the redress is sought, the specific sections in Part III of Chapter One of Constitution of United Republic of Tanzania, 1977 which are the basis of the petition, the particulars of

⁴⁷ No 33 of 1994

⁴⁸ Cap 3 R.E 2002

⁴⁹ Act No 33 OF 1994

⁵⁰ ibid

⁵¹ Civil Appeal No.82 of 1999

⁵² Act No 33 of 1994

the facts ,but not the evidence to prove such facts, relied on and the nature of the redress sought.

- A good example of a petition to the High Court of Tanzania was that of ***Christopher Mtikila (petitioner) v. the Attorney General (respondent)***⁵³. In 1993 he filed a petition to the High Court at Dodoma, to seek among other reliefs, a declaration that the citizens of this country have a right to contest for the posts of president, Member of Parliament and Local government councilor without being forced to join any political party.
- **Service of a petition**
- Also there is a requirement of serving the petition by or on behalf of the petitioner on each person against whom the redress is sought. This is provided under section 7 of the Act.⁵⁴ If the redress is sought against the Government, then the copy of the petition shall be served by or on behalf of the petitioners on the Attorney General or his duly authorized representative .
 - **Limitations on filing a Human Rights petition to the High Court of Tanzania**
- Like any other thing, also filing a Human Rights petition to the High Court of Tanzania vide the Basic Rights and Duties Enforcement Act⁵⁵, has got its obstacles or limitations which render availability of justice to be narrowed . The limitations are analyzed hereinafter as follows.
- **The need of Three-Judges**
- Article 10 of this Act,⁵⁶provides (1) For the purposes of hearing and determining any Court petition made under this Act including references made to it under section 9, the High Court shall be composed of **three Judges** of the High Court, save that the determination whether an application is frivolous, vexatious or otherwise fit for hearing may be made by a single judge of the High Court. Hence may act as a limitation because it is very difficult sometimes to get three judges at once.

⁵³ Misc. civil cause No. 10 of 2005

⁵⁴ The Basic Rights and Duties Enforcement Act No 33 of 1994

⁵⁵ No 33 of 1994

⁵⁶ ibid

- For example, in *Christopher Mtikila (petitioner) v. the Attorney General (respondent)*⁵⁷ whereby the case was presided by three judges. These are (Manento J.K, Massati J, and Mihayo J.)
- **Application of the Act**
- Section 3 of the Basic Rights and Duties Enforcement Act, provides that, “This Act shall apply only for the purposes of enforcing the provisions of the basic rights and duties set out in Part III of Chapter One of the Constitution” This is another limitation because no any other matter will be enforced under this Act.
- **Fee Requirement**
- When instituting a petition through the High Court of Tanzania, there is also the obstacle of fee requirement. In the case of *Julius Ndyababo v Attorney General*⁵⁸, It was argued by the plaintiff inter alia that, “ the expenses incurred in the petitions to the High Court, can be the basis of inequality since it bars the poor people who cannot afford to pay such amount.”
- **Benefits acquired by filing a human rights petition to the High Court of Tanzania vide The Basic Rights and Duties Enforcement Act.**
- Furthermore, there are some advantages that can be acquired by a person when filing the petition of Human Rights grievance through the High Court of Tanzania. These will be analyzed hereinafter as follows.
- **Powers to grant prerogative orders.**
- One of the benefits is that, the High Court of Tanzania has got powers to grant orders of remedy where it reaches an agreement that the claimant has been contravened of his fundamental right, this has been provided for under section 13 of the Basic Rights and Duties Enforcement Act⁵⁹, also in *Registrar of Societies and 2 others V. Baraza la Wanawake Tanzania*⁶⁰, the learned Justices said that the High Court of Tanzania has wide powers under section 13(1) and (2) of the Basic Rights and Duties Enforcement Act to grant an appropriate remedy.

⁵⁷ Misc. civil cause No. 10 of 2005

⁵⁸[2004] TLR 14

⁵⁹ Act No 33 of 1994

⁶⁰ Civil Appeal No.82 of 1999

- **A room for Appeal**

- **Furthermore**, there is a room for appeal to the party which thinks that there has been errors in delivering justice, under section 14 of the Basic Rights and Duties Enforcement Act⁶¹ it is provided that “any person aggrieved by any decision of the High Court on an application basing on Human Rights may appeal to the Court of Appeal.”

- **Insurance of justice due to Independence of the Judiciary**

- Also another benefit is that, the High Court of Tanzania is an independent body to the Executive compared to the Commission for Human Rights and Good Governance (CHRAG), this ensure non-interference from the executive when executing its duty of dispensing justice as it has been provided for under Article 107B of the Constitution of United Republic of Tanzania of 1977, where it is provided that “In exercising the powers of dispensing justice, all courts shall have freedom and shall be required only to observe the provisions of the Constitution and those of the laws of the land.”

- **The Binding and Authoritative nature of the decision of the High Court.**

- Nevertheless, another benefit is that, decision of the High Court is binding and it has the authoritative nature in dispensation of justice, under Article 107A (1) of the Constitution of United Republic of Tanzania of 1977, it is provided that, “The judiciary shall be the authority with final decision in dispensation of justice in the United Republic of Tanzania.”
- In the case of *Kahama Gold Mines V. Minister for Energy*⁶², Justice Mapigano, as he then was, tried to show the strength of the judiciary by pointing out that the High Court has original and independent jurisdiction to issue interlocutory orders to prevent what it considers continuing or intended injury to a party where it appears to the court to be just as well as convenient.

❖ **HOW THE PROVISION OF THE BASIC RIGHT AND DUTIES
ENFORCEMENT ACT DO NOT ADVANCE HUMAN RIGHTS PROTECTION
IN TANZANIA**

- The Basic Right and Duties Enforcement Act Cap 3 R.E 2002 as the name suggest was enacted purposely for the enforcement of the Human Rights in

⁶¹ Op cit

⁶² Miscellaneous Civil Cause No. 127 of 1989, High Court of Tanzania at Dar-es-Salaam (unreported)

Tanzania, among the other things the Act is said to direct the institution of Human Rights cases in Tanzania. However the Act has a number of weaknesses which shall be discussed in this paper.

- The Basic Right and Duties Enforcement Act (BRADEA)⁶³, have the cumbersome procedures for the enforcement of the guaranteed rights of the individual's person in Tanzania. This has been perceived as the weakness of the Act to create road block for the protection of the individual rights in favour of the violation of the individual rights by the states as well as state authority. Does this can be interpreted under the notion of the limitation on the enforcement of human rights?,
- In the case of Julius **Ishengoma Francis Ndyabo vs The Attorney General**⁶⁴, it was stated that "Fundamental rights are not illimitable. To treat them as being absolute is to invite anarchy in society. Those rights can be limited, but the limitation must not be arbitrary, unreasonable and disproportionate to any claim of state interest."
- So whether the restriction of the enforcement of the human right in Tanzania through the Act is reasonable.
- The following are the argument that the Basic Right and Duties Enforcement Act does not advance the protection of human right in Tanzania It excludes the enforcement of other fundamental right that is statutory right example right to education, right to live in safe environment.
- The provision of section 3 of the Act⁶⁵, provides inter alia that the Act shall apply for the purposes of enforcing the basic rights set out in Part III of the Constitution of United Republic of Tanzania of 1977.
- This indeed intended to limit the protection of Human Rights in Tanzania due to the fact that no person shall enforce any other right apart from those available in the prescribed part of the constitution.
- The Right to Education is enshrined under Article 11 of the Constitution of United Republic of Tanzania which cater that every citizen of the United Republic

⁶³ No 33 of 1994, [Cap3 R.E 2002]

⁶⁴ Court of Appeal of Tanzania, Civil Appeal No 64 of 2001 (unreported).

⁶⁵ The Basic Rights and Duties Enforcement Act No 33 of 1994, [Cap3 R.E 2002]

of Tanzania has the right to education in the field of his choice from the primary up to the highest level and the government has the duty to ensure all person get the equal and necessary opportunity to pursue education.

- Under Part II of the constitution of United Republic of Tanzania which no person within the United republic of Tanzania may bring a case before a court of law to enforce any of the right which are found under this part of the Constitution, the article stipulate further to ouster the jurisdiction of any court within the Tanzania jurisdiction as provided under Article 7 (2).
- It is a wonder why Tanzania incorporated this right under the Fundamental Objectives and Directive Principles of State Policy. The right to education is found in various international documents which includes the Universal Declaration of Human Rights of 1948 under Article 26⁶⁶, also the International Covenant on Economic and Social Right of 1966, under Article 13(2) provides the right to education⁶⁷.
- Other social and political as well as cultural rights such as marriage rights as well as economics rights. Since Tanzania is a Dualist country, it should be well understood that Dualist theory provides that international law and domestic law are separate legal systems. If international law is not transformed into national law through legislation, national courts cannot apply it. But up to this moment those document have been ratified by Tanzania government and domesticated within the country for the purpose of enforcing those rights.
- Existence of cumbersome procedure for hearing Under the Basic Rights and Duties Enforcement Act⁶⁸, provides for the ungainly procedure on the litigating the Rights provided for in the Chapter III of the constitution, which in instigate the decay of the determination of the very promoted and protected human rights in judicial level, when it comes to the procedure of a single judge to determine a prima facie case and later the healing by the full bench.

⁶⁶ The document under Article 26 provides that all person has the right to education which shall be focused to the full development of the human personality. Tanzania is signatory since 1964

⁶⁷ All the member state which includes Tanzania (signed the covenant in 1976) to establish means for full realization of the right to education from the primary level, secondary as well as higher education.

⁶⁸ Act No33 of 1994, [Cap 3 R.E 2002]

- In the case of the Judge in Charge High Court of Arusha and Attorney General v. N.I.N Munuo Ng'uni⁶⁹, was contended that the procedure and requirement for the human rights cases to be referred to the High Court as the court of first instance can lead to the elapse of time in the course of litigation and the adjournment may lead to the loss of the right by individuals.
- Presence of restriction imposed to the high court. It is quite interesting point that after the entrenchment of the Bill of Rights in the Constitution of United Republic of Tanzania the High Court through the very Article 64 (5) of the Constitution were vested with power to declare any law as unconstitutional and void.
- Therefore this rendered the court of law to declare various laws as well as provisions to be unconstitutional as it were against with the Bill of Rights.
- However the government were not happy with such power entrusted by the High Court later on through the Constitution Amendments took away those power by incorporation of the Article 30 (5) which is parimateria with the wording of Section 13 (2) of the BRADEA which states that where the High Court is satisfied with allegation that any law or action taken by the state Authority that abridges the basic rights, freedom or duties imposed by Article 12-29 of the Constitution, and such a court is satisfied that law to be unconstitutional or void, the court is duty bound to direct the parliament or any other legislative authority or the government as the case may be to rectify such a law within the specific time and such a law shall be valid until such defect is corrected by such authority or government organ.
- However the court of law being aware with the defect of the Act toward protection of Human Rights have been reluctant to be bound by such limitation through various cases, example in the case of Judge in Charge High Court of Arusha and Attorney General v. N.I.N Munuo Ng'uni, where the court concurred with the word postulated in the case of **Smith v. East Elloe Rural District Council**⁷⁰, that the court will not tolerate with any act which will oust their jurisdiction, though they have to give effect to plain words.

⁶⁹In the Court of Appeal of Tanzania at Arusha, Civil Appeal No. 45 of 1998 (unreported).

⁷⁰[1956] AC 736 at 750

- However those word have been strengthened by the Provision of Article 107A(1) and (2) (a) of the constitution (Constitution Amendment No.3 of February 2000) the judiciary in dispensation of justice in matters of civil and criminal, shall done so without being tied up with technicalities that may lead the barricade/cordon of justice.
- The court of law has to do nothing but to dispense justice, in the case of Judge in Charge High Court of Arusha and Attorney General v. N.I.N Munuo Ng'uni, the court concurred with the decision of the court in the case of **A. G. v. Rev. Christopher Mtikila**⁷¹, where it asserted that; “we have no doubt in our minds that the provision seek to circumscribe the powers of the High Court in dealing with the issues of the fundamental rights.....but with respect, the courts have generally, and particularly in that case demonstrated maturity in judiciary restraint.
- So we endorse what our brothers said about principles of harmonization and that of construing fundamental rights provisions so as to make them meaningful and effect” Therefore the court in this case departed with section 13(2) of the BRADEA.
- Therefore this shows how the BRADEA intended to limit the protection of the human right in Tanzania. The court went further to give the meaning of the word underlines under section 13 (2) that it requires the High Court to refrain short of pronouncing the law or action of government is invalid or unconstitutional and call the court of law to refer the matter to Parliament or to a relevant authority to rectify the law or such an action. In the real sense it will be meaningless for the court of law to stop declare any provision of the law which barricade the enjoyment of the human right to be void or unconstitutional.
- In Munuo’s case, the court of law was of the view that complying with section 13(2) would prompt the delay in rendering justice and thus it is inconsistence with the Article 170A (2) (b) of the Constitution. Therefore it is undisputed that the word of Section 13(2) of BRADEA does not advance protection of human right in Tanzania

⁷¹ [1995] TLR 3

- Number of the high court with their proximity. It is quite clear that in Tanzania there are few High Courts in number. The High Court are situated in Arusha, Bukoba, Dar Es Salaam, Dodoma, Iringa, Mbeya, Moshi, Mtwara, Mwanza, Songea, Sumbawanga, Tabora, and Tanga. This is quite clear that the BRADEA does not intend to protect human right in Tanzania by directing those case to be instituted in a very few temple of justice in Tanzania. Tanzania has 30 regions but for the entire country within those regions there are only 13 High court registries. How does the justice met to those who are found in the region where there is no High Court?. Under whose expenses they file a case in the high court which requires them to travel from one region to another. Is this way of delivering justice to the people whose rights are likely to be violated by the state?.
- This leaves lists of question in the mind of people whether the acceptable means of protection of human right in the Tanzania is The power of the court to strike out the application, as prescribed under Section 8(3) of the Act
- The section propound that the court may strikeout any case if it satisfy that the application is brought under Article 12-29 of the constitution are likely to contravene with the bill proposed at the date of the application.
- People's right have been violated for such a particular period of time then the law prevent the proceeding of case for it will contradict with the proposal of the bill. This is cannot be termed as advance of justice rather the grabbing of the rights which are guaranteed to the individual persons. This has been one of the criticism in most of the African countries that they entrench the bill of rights in the constitution on one hand and those rights are taken on the other hand, that is are subjected to the provision of law.
- Number of Judges for determination of the Human Right case This has been the weakness of the judicial system which is guaranteed by the BRADEA in the protection of human right in Tanzania. In the section 10(3) stipulate clear the number of judges in the determination of Human Right case shall be three judges of the High Court.

- It is disputed that in most of the High Court Registry there are few number of judges who does not meet the requirement prescribed under the BRADEA for determination of Human right cases. Therefore this attracts the adjournment of the case and sometimes failure of dispensation of justice to the Tanzanian to the victim of human rights violation.
- Therefore in most of High Court in Tanzania lack of qualified human resource is one of the challenges which face many High Court registries. Hearing of the Human Rights cases.
- The Act under Section 11(1) propound that the hearing of the case shall be set by the court “as soon as may be convenient”. This may bring the problem and as it is the leading factor for delaying of the determination for many human rights cases.
- It limits the jurisdiction of other court over the Human Rights cases Section 9 (1). The Act in the open words oust the jurisdiction of human rights case in lower court which in the greater extent lead to the impugn of the justice in Tanzania.
- This inability of the lower court to determine the human right cases has led to the delay of many human rights cases in the High Court due to the backlog of cases as well as the availability of the judges for the determination of cases. This has prompted the erode of the general public confidence to bring the human right claims in the court of law due to the general undermine of the existence of the court within the country.
- Procedure to reach the decision of the right determined by the High Court. The decision of the High court in the determination of the matter is subjected to the opinion of the majority of the judges hearing the petition. Section 10 (2). This may lead to impossibility to reach the justice if two of the judges are corrupt judges.
- Lord Denning once stated that “there is another kind of judges who sees his task as maintain the authority of state, interpreting Acts of parliament narrowly, supporting the words of the law in preference to the justice of the case, and affirming that it is for the parliament to change the law and turn out to be unjust or absurd and not for the judges to achieve that the result through statutory interpretation.”

❖ THE BILL OF RIGHTS IN TANZANIA

- A bill of right is a formal declaration of the legal and civil rights of the citizens of any state, country, or a federation.
- A bill of rights, sometimes called a declaration of rights or a charter of rights, is a list of the most important rights to the citizens of a country. The purpose is to protect those rights against infringement from public officials and private citizens.
- The Bill of rights in Tanzania is provided for under Chapter one, part three from Articles 12 to 32 of the Union Constitution of the United Republic of Tanzania, 1977 as amended from time to time.
- The Bill became visible into the constitution through the Fifth Amendment of the Union constitution in 1984 and became effective in 1988.
- These articles provide for duties and right of citizens of the United Republic and thus when these rights are violated by an Act of parliament any individual, group or organisation can challenge the Act or provisions of an Act at the Human Rights Court.
- Such a person can do so by following the procedures laid down under the Basic Rights and Duties Enforcement Act, No.33 of 1994.
- **The catalogue of rights in the Bill and their limitation found therein may be listed as follows;**
- It is clear that rights are not absolute as society would not be able to function. For example, if the right to freedom of movement were absolute, society would not be able to imprison convicted criminals.
- Similarly, if the right to freedom of expression were absolute, the state would not be able to protect its citizens from hate speech or false defamatory statements made with reckless disregard for the truth.
- Clearly, governments require the ability to limit rights in order to serve important societal interests; however, owing to the supremacy of the constitution this can only be done in accordance with the constitution.
- The Constitution of Tanzania makes provision for three types of legal limitations on the exercise and protection of rights contained in Part III of Chapter One, 'Basic rights and duties', namely, **state of emergency limitations, general limitations and internal limitations.**

▪ **State of emergency limitations**

- Article 32 of the Tanzania Constitution, read with article 31, makes it clear that the basic rights set out in Part III of Chapter One of the Constitution may be limited by a presidential proclamation of a state of emergency. Note that these even include the right to life (article 14), although this is limited to deaths resulting from acts of war– article 31(3).

▪ **General limitations**

- The second type of limitation is a general limitations provision. General limitations provisions apply to the provisions of a bill of rights or other statement setting out fundamental rights. These types of clauses allow a government to pass laws limiting rights, generally provided this is done in accordance with the constitution.
- One can find the general limitations clause applicable to Part III of Chapter One, ‘Basic rights and duties’, in article 30 of the Tanzania Constitution, headed ‘Limitations upon, and enforcement and preservation of basic rights, freedoms and duties’.
- Article 30(2) is drafted in a very legalistic fashion, but essentially it provides that rights can be limited by legislation that has one or more of the following extremely broad purposes:
 - To ensure that the rights of others are not prejudiced.
 - To ensure the defense, public safety, public peace, public morality, public health, rural and urban development planning, the exploitation and utilization of minerals, property development or any other interests for enhancing the public benefit.
 - To ensure the execution of a court order.
 - To protect the reputation, rights and freedom of others, privacy of persons in
- Further, article 30 (1) specifically states that human rights ‘shall not be exercised by a person in a manner that causes interference with or curtailment of the rights and freedoms of other persons or of the public interest’.
- The general limitations clause is extremely problematic because of the very wide grounds upon which rights can be limited and, more problematically, because there are no requirements such as proportionality, justifiability, reasonableness or least restrictive means.

- This means that once a ground of justification has been provided and these are extremely wide and include grounds such as furthering the national interest or supervising the activities of private organizations basic rights can be limited.
- The effect of this is that, in many instances, rights will be able to be limited very easily. All too often legislation will, in effect, trump basic rights, despite the provisions of the supremacy clause of the Constitution.

- **Internal limitations**

- The Tanzania Constitution also has a number of so-called ‘internal limitations’; these are limitations to specific rights. These are dealt with below in relation to the specific rights to which they apply.
- **The right to equality;** this is provided for under Article 12 and 13 of the Constitution. Article 12 states that all men are born free and are equal while Article 13 stipulated that all persons are equal before the law and are entitled without any discrimination, to protection and equality before the law.
- Equality before the law entails inter alia a fair hearing before courts of law or other tribunals coupled with the right of appeal, the presumption of innocence until a person is proved guilty, a person shall not suffer punishment except for the due process of law and that no person should be subject to torture or to inhuman or degrading treatment.
- **ITS LIMITATION:-** The debating question that arises here is whether corporeal punishment reintroduced in 1989 is an inhuman or degrading punishment. (Source: C.M. Peter. Human Rights in Africa: A comparative study of the African Human and People’s Rights Charter and the New Tanzanian Bill of Rights, Greenwood press 1990.).
- **The right to life;** this is provided for under Article 14 of the Constitution stating that every person has a right to live and to the protection of his life by the society. The government of Tanzania has done much effort to protect this right however **ITS LIMITATION:-** retained the death penalty in its penal law (source: The Penal Code of Tanzania Cap. 16 R.E 2002]
- Though for many years death penalty has not been practiced in Tanzania. This category of rights is composed with other rights as explained below;
- **Article 15 provides for the right to personal freedom by protecting a person from arbitrary arrest, restriction, detention, exile or deprivation of his or her liberty. ITS**

LIMITATION:- However there are Acts of Parliament which violates this right such as the Preventive Detention Act, 1962, the Deportation Act Cap 38 and the frequent denial of bail to criminal suspects on flimsy grounds are but few instances of erosion of this right. (source: F.D.A.M.Luoga, “The Tanzanian Bill of Rights” in C.M.Peter and I.H.Juma, Fundamental Rights and Freedoms in Tanzania, Mkuki na Nyota Publishers, Dar es Salaam 1998.

- **The rights to privacy and personal security** as well as the right to freedom of movement are listed in Articles 16 and 17 respectively. The right to freedom of movement has been widely protected in the country since the citizens of the United Republic are free to move and live in any part of the United Republic which they deem favorable to them.
- **ITS LIMITATION:-**The right to privacy has been violated much by the press especially the newspapers reporting private information of the famous people in the country such as politicians and artists hence such group of persons has been so insecure in whatever they do with their personal life because they are afraid of the press and this has resulted to enmity of politicians and artists towards the newspaper reporters.(source: I.G.Shivji, Debating Constitutional Amendments in Tanzania, Haki Elimu, Dar es Salaam 2006, 1. 100 Hatchard, et al, supra, note 18, 44-45.).
- **The right to Freedom of Conscience;** this category of right is composed of the right to Freedom of Expression, Right to Freedom of Religion, Right to Freedom of Association and the Right to Participate in Public Affairs. This category of rights has been highly restricted and in fact violated by the state.
- **ITS LIMITATION:-**The media laws such as the Newspapers Act, the Broadcasting Act has been made so strict and hard for the press to conduct their duties also there have been enacted so many other laws such as the National Security Act to restrict freedom of expression. Also on the freedom of association the laws has made it mandatory in some instances to associate in a certain association for example an advocate must be a member of the Tanganyika Law Society and any employee must be a member of a trade union.
- **The Right to Work;** within this broader category are the right to just remuneration and the right to own property.

- **The right to property** is by far the most securely protected right. It categorically prohibits arbitrary acquisition of someone's property without adequate compensation.
- **ITS LIMITATION:-** Previously there were laws which violated this right; for example the Regulation of Land Tenure (Established Villages) Act 1992. The Act extinguished all customary rights in respect of village lands acquired by villages during the villagization programme of 1973-1976 and at the same time took away the right of compensation in respect of the acquired lands.
- Articles 25 to 28 provides for the duties to society the duties includes to participate in lawful and productive work; to abide by the laws of the country; to safeguard public property; and the duty to defend and protect the independence, sovereignty and the territorial integrity of the nation.
- The Tanzanian government deserve to be appraised to include the fundamental rights of the people in the constitution after a long journey of such rights being neglected since independence. However the bill is deficiency in that the rights in the Bill are so hedged about with provision and qualifications that what appears to be given by the right hand is taken away by the left hand. (See. Articles 30 and 31 of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time).
- **Thomas Mjengi and another vs. Republic⁷²**, In this case the two appellants were convicted of the offence of robbery with violence and were each sentenced to 30 years imprisonment. On appeal to the High Court, they were granted legal aid under section 3 of the Legal Aid (Criminal Proceedings) Act, 1969.
- The advocate filed an amended memorandum of appeal in which he raised matters involving the of the Constitution of the United Republic of 115 Article 30(4) empowers the High Court to handle cases relating to the Bill of Rights. It is in this provision that the judges of the High Court found the basis of dealing with violations of fundamental rights and freedoms in the country.
 - **Constitutional movement before Incorporation of the Bill of Right in Tanzania**
- The adoption of the UDHR which encompasses what is called the fundamental right in Tanzania was not a straight forward activity. Tanzania signed the UDHR in 1964 soon

⁷²[1992] TLR 157

after the Union between Tanganyika and Zanzibar, however the implementation of what had been signed was still the problem.

- It had been conceded through various stages. The idea of the inclusion of the bill of right in the constitution as the one of the ways to guarantee the fundamental rights and freedom of the individual were proposed as the means of the establishment of the Democratic one-party state. However the idea was rejected by the government¹, therefore the Commission came up with two proposals on how to deal with guarantees of fundamental right and freedoms in a loose form in the preamble to the constitution and the establishment of an ombudsman to protect the people against the over-zealous politicians and bureaucrats².
- The proposal was accepted by the government and as a result, the preamble to the Interim Constitution of 1965 contained constitutional guarantee which were usually found in a normal Bill of Rights.
- Further the government established the **Permanent Commission of Inquiry** through the Commission of Inquiry Act of 1966, which provides the jurisdiction, power and functions of the Commission.
- However the movement of the government to approve the proposal of the commission of inquiry was useless and since the inclusion of the Bill of Right in the preamble of the Constitution and regarding the legal system of Tanzania that is common law legal system whereby the part of preamble is not part of the constitution and is not enforceable and the same was emphasized in various cases.
- In the case of **Attorney General v. Lesinoi Ndenai & Joseph Selayo Laizer and Two Others**⁷³ Hon. Justice Kisanga in the separate judgment contended that:
 - *“Preamble“ is a declaration of our belief in these rights. It is no more than just that. The rights themselves do not become enacted thereby such that they could be enforced under the Constitution. In other words, one cannot bring a complaint under the Constitution in respect of violation of any of these rights enumerated in the preamble.”*
 - **Hatimali Adamji vs. East African Posts and Telecommunication Corporation**⁷⁴, Biron J, asserted the same. Therefore this derives to the conclusion that the preamble did not offer any protection to the citizen in the situation of violation of their right and freedom

⁷³[1980] TLR 21

- Further the Commission of Inquiry had various limitation includes, it was not independent as all of its investigations was based on the office of the president since it was and still it was the president who decided whether or not to deal with the matter.
- The president had the power to stop any investigation which the commission has undertaken at any point in a time. The president could also bar the commission to procure any information.
- Also in the interim Constitution of 1965 the Bill of right were included in its schedule which are similar with those which was in the preamble and in the most of the document contain Bill of Right.
- However the schedule unlike preamble forms part of the statute and is enforceable before the court of law as was in the case of *Thabit Ngaka v. Regional Fisheries Officer*⁷⁵ whereby in this case the right which was emphasized was the right of worker to his wages.
- However all the constitution movement in Tanzania didn't have the full enforceable Bill of Right until the constitution of 1965 which incorporated the Bill of Right in its schedule. Furthermore the matters were settled by the constitution of the United Republic of Tanzania of 1977.
- There were various factors led to the adoption of the Bill of Right, **firstly** there were pressure from Zanzibar which is the part of the Tanzania, Zanzibar in its independence contained the bill of right, **secondly** people started to air their views through the radio, newspaper and other form of communication demanding the basic right incorporated in the Constitution.
- **Thirdly**, the pressure from the development that was taking place in Africa in area concerned the human right during that time, example in 1981 the Organisation of Africa Unity (OAU) had adopted the charter of the Human and people's rights in Nairobi.
- This document were ratified by various countries and Tanzania being one of them which had ratified the charter on 31st May, 1982, whereby the Charter came into force on 21st October, 1986.

⁷⁴[1973] LRT No 6

⁷⁵[1973] No. 24

- Therefore the absence of the Bill of Right in its constitution brought questions on the sincerity in its human right campaigns in the continent. He above factors necessitated the adoption of the Bill of Right in Tanzania in 1984, which were incorporated in the constitution vide the Constitution (Fifth) (Amendment) Act, 1984, which come into operation in March, 1985.

- **The entrenchment of the Bill of Rights in 1984**

- The Bill of Right were incorporated into the constitution of United Republic of Tanzania of 1977 following the Fifth Amendment, however the basic right and freedom in the court were suspended for a period of three years through the Constitution (Consequential, Transitional and Temporary Provision) Act of 1984, section 5 which contends that:
- “Notwithstanding the amendment of the constitution and, in particular, the justifiability of the provisions relating to basic rights, freedoms and duties, no existing law or any other provisions in any existing law may, until after three years from the date of the commencement of the Act, be construed by any court in the United Republic as being unconstitutional or otherwise inconsistent with any provision of the constitution”

- ❖ **JUDICIARY PROTECTION OF HUMAN RIGHT IN TANZANIA**

- **Before the entrenchment of the bill of right in the Constitution**

- Before the incorporation of the bill of rights in the Tanzania Court of law undertook various efforts in the protection of the human right. This includes the protection of the rights of the Children, labor, ownership of the property as well as the right to compensation.
- Furthermore it should be noted that most of these rights were the statutory right that is they were provided under different statutes or Ordinance. Through various judgement the court of law took the stand to prohibit the various undertaken activity which prevented one from enjoyment the basic rights, therefore court done so for the sake of the vulnerable groups.

- ❖ **THE STRENGTH OF THE PROTECTION OF HUMAN RIGHT IN TANZANIA**

- Judiciary as one of the arm of the states has been gained the confidence of individual citizens in the protection of human rights in Tanzania.
- However this confidence was soon after the incorporation of the Bill of Rights in the Constitution of the United Republic of Tanzania, as was discussed above the movement

toward the incorporation of Bill of Right in the constitution, though even before the entrenchment of the bill of rights the court tried to protect the individual rights however faced few challenges in the due course of protection.

▪ **Protection of the right of the Children**

- Prior the incorporation of Bill of Right in the Constitution of the United Republic of Tanzania, though the right of the child were not provided in the Bill, the court of law prior such incorporation in their judgment stressed effort to protect the best interest of the child that is they were considered as the paramount.
- This however was done so due to the competence of the judicial members who had the free mind in the interpreting law as well as support the word of law in the preference of justice.
- In the case of *Mahfudh vs. Salehe*⁷⁶, the fact of this case was the appellant who was the husband of the respondent who was at the time divorced by his husband (appellant) in 1968 they had five children below the age of majority. After the divorce they were living with the appellant who then wanted to take them to Arabia, due to this respondent objected and initiated the movement to court(District Court) which refused to allow the appellant to take the children, and the court went further to grant the custody of children to the respondent (their mother). The applicant being dissatisfied with the decision then appealed to High Court.
- whereby Makame J in its jurisprudence contended that; “I think that the more reasonable course would be to order, and I so order, that in the interests of the five children they should not be taken out of Tanzania before they are sixteen. The evidence on record suggests that they have never been out of Tanzania before and if they went to Arabia they would feel lost in what may be strange surroundings to them. In the meantime the appellant, that is the father, should have the custody of all the children and the mother should have reasonable access to them.”
- In this quotation the Honorable judge in the protecting the interest of the Child that is their right to access to both parent prohibited their transfer to Arab. Further the court in the process of protecting the right of the child contended that the children may be taken to

⁷⁶ (1971)HCD no. 18

Arab after their attainment of sixteen years of age, and when until that time they may not be taken out of the country out of their personal wishes.

- Further in the case of ***Makende s/o Kisunte***⁷⁷, the fact of the case was the respondent was married to the appellant many years ago in north Mara and they were blessed with four children, then after the respondent abandoned the appellant and went to live with another man with four children. Their marriage with appellant were dissolved while she was a pregnant, therefore the appellant claims the custody of the fifth child who had been born to the other man.
- Saud J as he then was contended clear that “as it is well known and upheld by the court, the welfare of the children whose custody is disputed is the first to be taken into consideration”.
- Further the court contended that to move the children in the home to which they are not accustomed during their most impressionable year would upsetting them and lead to a serious psychological consequence. Moreover it postulated that in protecting the right of the child to be maintained by their parents stipulated clear that the father has the duty to maintain them.
- Furthermore in the case of ***Waryoba d/o Katara v. Kirimi s/o Wangari***⁷⁸, it was postulated that to take into the account the welfare of the child the child will be secured if it remains in its mother’s custody than its father’s custody.
 - **The protection of the women’s right as well as the right to equality.**
- The women discrimination as the globe problem has the long history back in the world. In Tanzania before the entrenchment of the bill of rights in Tanzania which accentuate in the equality of all person, women were discriminated in all aspect such as social were regarded as inferior, economical as well as political. This was due to the presence of the draconian law for instance the Local Customary Law Declaration Order No 4/1963²⁶. However with the absence of the bill of rights the court of law initiated endeavor in the abolition of the decay culture beliefs and promotion of the women’s rights such as right to own property.

⁷⁷ (1969) HCD No.5

⁷⁸(1969) HCD No. 6

- In the case of *Ndewawoisia d/o Ndeamtzo vs Immanuel Malasia*⁷⁹, Saudi J was of the view that "It is quite clear that this traditional custom has outlived its usefulness. The age of discrimination based on sex is long gone and the world is now in the stage of full equality of all human beings irrespective of their sex, creed, race or colour.
- On grounds of natural justice and equity daughters like sons in every part of Tanzania should be allowed to inherit the property of their deceased fathers whatever its kind or origin, on the basis of equality".

▪ **Protection of the accused rights.**

- The basic rights were protected even during colonial era. Tanzania(Tanganyika by then) the same were respected by the court of law though the regime at the time were colonial power which had been used arbitrary forces, unfair trial as well as illegal detention to individual citizens.
- However prior incorporation of the bill of rights judiciary tried their level best to secure the accused person enjoy some of the rights. Though there were no any set of law in the country which guaranteed such a right but judiciary in some of the cases invoked their inherent power.
- In the case of *Abdullah Nassor v. Rex*⁸⁰, the court was of the opinion that the test should be whether the granting of the application for bail will be detrimental to the interests of justice and good order. But such detrimental must be satisfactorily substantiated by solid reason and not based on the vague fears or apprehensions or suspicious. Therefore bail should not be lightly refused.
- The idea were adopted in the decision of the case of *Tito Douglas Lyimo v. Republic*⁸¹, the court were of the view that bail is a right and not a privilege to accused, unless such a court is convinced by the set of the evidence originating from the prosecution side that grant of bail would arise to failure of justice.
- Furthermore the same word were cemented in the case of *Patel v. R*⁸², Justice Biron asserted that a man whilst awaiting trial is as of the right entitled to bail, as there is a

⁷⁹(1968) H.C.D. 127

⁸⁰ [1945]

⁸¹[1978] LRT No. 55

⁸²[1971] H.C.D No. 391

presumption of innocence until contrary is proved. Where in the case the court granted bail to the accused person.

- **Recognition and protection of the women's rights**
- In *Ndewawoisia d/o Ndeamtzo vs Immanuel Malasia*. Saudi J, as he then was, with approval the decision of the case of *Bi-Mwana Amina Mukubali v. Severini Shumbusho, Saidina d/o Angovi v. Saiboko Mlemba*, made a progressive decision in the following terms that: "It is quite clear that this traditional custom has outlasted its usefulness in most of the society. The age of discrimination based on sex is long gone and the world is now in the stage of full equality of all human beings irrespective of their sex, creed, race or color.
- On grounds of natural justice and equity daughters like sons in every part of Tanzania should be allowed to inherit the property of their deceased fathers whatever its kind or origin, on the basis of equality"... This decision of the Court, however, does not appear to have had much support.
- **Weakness of the judicial protection of Human rights before entrenchment of the bill of rights.**
- It has been observed even prior such entrenchment, the idea of protection of human rights were in the fingertips of judges of the day. Most of them tried their level best to establish and maintain justice in the community, to advocate and protect the human rights. However they were not buttressed by their fellow judiciary officer. Therefore the following are the weakness.
- **Lack of support within the judiciary system.** Lack of the judiciary support is witnessed by the case of *Clementina Tikengwa and Another vs Traseas Kabogi*. The dispute involved again on the right of women to inherit clan land. The learned Judge Lugakingira, applied Rule 20 to deny the daughter and widow of the deceased full inheritance of a portion of clan land held by the deceased. This shows how the judges differ, there were those who were activist and those who were conservative. Scenario like this confused the lower court as to which side of the coin they should base in the delivering justice in the society.

▪ **AFTER THE INCORPORATION OF THE BILL OF RIGHTS**

▪ **The strength of judiciary protection of human right**

- Judicial was vested with a power to declare any law to be unconstitutional as provided under Article 64 (5) of the constitution.
- Soon after the incorporation of the Bill of Right in the constitution of the United Republic of Tanzania the court of law in Tanzania was empowered by the constitution provision to declare some of the Laws to be Unconstitutional and void for being inconsistent with the Constitution, at this time judiciary were independent in dispensation of justice without any fear and favour in the process of ensuring the human rights are preserved and protected.
- This includes in 1988 Justice Mwalusanya as he then was struck down the Deportation Ordinance which was adopted by the Tanzania soon after the independence.
- During the period large number of the Tanzania who were perceived as disturbing the government mission or deteriorate peace were deported into different places and further were proscribed to move to any places.
- However after the entrenchment of the bill of right the act was perceived by the court of law as violate the right of the individual person guaranteed under the constitution, therefore unconstitutional.
- In the case of *Chumchua s/o Marwa v. Officer In charge Musoma Prison and Another*⁸³, where the Court held that the Deportation Ordinance of 1921 was unconstitutional and void and of no effect as it affronted the Bill of Rights entrenched in the Constitution of the United Republic of Tanzania of 1977.
- This was as the beginning of the Judiciary power to declare any law or part of it thereto which was against the Bill of Rights to be Unconstitutional and void.
- Further in the case of *Mbushuu @ Dominic Mnyaroje and Kalai Sangula vs. Republic*⁸⁴, where in the High Court it was contended that the death penalty to be unconstitutional, however the Court of Appeal rejected the unconstitutionality of the death penalty and held it to be a lawful law and is reasonably necessary.

⁸³High Court of Tanzania at Mwanza, Miscellaneous Criminal Cause No.2 of 1988(unreported)

⁸⁴ High Court of Tanzania at Dodoma, Original Jurisdiction, Criminal Sessions Case No. 44 of 1991. Reported in [1994]

- Further in the case of ***Bernado Ephrahim vs. Holaria Pastory and Gervazi Kazirege***⁸⁵ Mwalusanya J. as he then was, declared the Rule 20 of Local Customary Law Declaration Order No 4/1963 as being discriminatory and unconstitutional and void for being inconsistent with Article 13(4) of the Constitution of United Republic of Tanzania which bars discrimination based on sex.
- In the case of ***A.A. Sisy and 35 Others vs. Principal Secretary, Ministry of Finance and Another***⁸⁶, relying with the holding of the Court of Appeal in the case of ***Daudi s/o Pete vs. DPP***⁵⁰ the court was of the view that the Motor Vehicle Surtax Act, 1994 was Discriminatory for it give different treatment to a group of people based on their status of life, therefore Unconstitutional and Void for it Contravene with the wording of Article 13 of the Constitution.
- Furthermore in the case of ***A.A. Sisy and 35 Others vs. Principal Secretary, Ministry of Finance and Another***⁸⁷, relying with the holding of the Court of Appeal in the case of ***Daudi s/o Pete vs. DPP***, the court was of the view that the Motor Vehicle Surtax Act, 1994 was Discriminatory for it give different treatment to a group of people based on their status of life, therefore Unconstitutional and Void for it Contravene with the wording of Article 13 of the Constitution.

➤ **ADDITIONAL NOTES**

❖ **THE MARGIN OF APPRECIATION**

- **The margin of appreciation** (or margin of state discretion) is a doctrine with a wide scope in international human rights law. It was developed by the European Court of Human Rights, to judge whether a state party to the European Convention on Human Rights should be sanctioned for derogations.
- The doctrine allows the Court to reconcile practical differences in implementing the articles of the Convention. Such differences create a limited right, for Contracting Parties, "to derogate from the obligations laid down in the Convention".
- The doctrine also reinforces the role of the European Convention, as a supervisory framework for human rights. In applying this discretion, European Court judges must

⁸⁵_____

⁸⁶ (PCC) Civil Appeal No.70 of 1989 (unreported)

⁸⁷High Court of Tanzania at Dodoma, Civil Case No. 5 of 1994 (Unreported)

take into account differences between domestic laws of the Contracting States as they relate to substance and procedure.

- The margin of appreciation doctrine contains concepts that are analogous to the principle of subsidiarity, which occurs in the unrelated field of European Union law. The purpose of the margin of appreciation is to balance individual rights with national interests, as well as resolve any potential conflicts. It has been suggested that the European Court should generally refer back to the State's decision, as they are an international court instead of a bill of rights.

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❖ **MONISM VERSUS DUALISM**

- The relationship between national law and international law is dominated by the dichotomy between monism and dualism. In a pure monist state, domestic law and international law form part of the same legal order, international law being directly applicable by domestic courts. Dualism, however, postulates that national law constitutes a separate legal order from that of international law, requiring the transformation of international law into domestic law.
- **Monism** is one of the theories advanced to explain the relationship between international and domestic law. Exponents of this theory are referred to as monists.
- Monists hold that International Law and State Law share a common origin-namely law. Thus, the duo is the two branches of unified knowledge of law which are applicable to human community in some way or the other.
- The broad thrust of the theory of monism is that both international law and municipal law are facets of same phenomenon.
- Again, monists view international and national law as part of a single legal order. Thus, International Law is directly applicable in the national legal order. There is no need for any domestic implementing legislation; international law is immediately applicable within national legal systems. Indeed, to monists, international law is superior to national law.
- **Dualism**, This is another theory advanced to explain the relationship between International Law and Domestic Law. At the heart of the theory of dualism lies the premise that international law and municipal law are two separate and distinct orders, in

their objects and spheres of operation, such that the norms of one would not operate within the realm of the other without a positive act of reception or transformation, as the case may be.

- It is only after such transformation that individuals within the same may benefit from or rely on the international (now national) law. To the dualist, international law could not claim supremacy within the domestic legal system although it was supreme in the international law legal system.
- Tanzania falls under this category and the international laws will not be applied directly without being ratified to become part of our laws as per Article 63 (3) (e) of the URT Constitution as amended time to time.

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❖ **EAST AFRICAN COURT OF JUSTICE (EACJ)**

- The EACJ is an international court with a task of resolving disputes between the EAC member states. The EACJ is established under Article 9(c)⁸⁸ of EAC Treaty and is charged with interpreting and enforcing the adherence to treaty provisions.
- The EACJ does not have competence to hear individual complaint of alleged violations of human rights. However the EACJ jurisdiction is provided under Article 27 of the treaty. But under 27(2) of the treaty provides for the court that shall have such other original, appellate, human rights and other jurisdiction as will be determined by the Council at a suitable subsequent date⁸⁹.
- To this end the Partner states shall conclude a Protocol to enable such extended jurisdiction operates. By this provision the treaty left a room for extending the Court's jurisdiction in future time to cover human rights issues.
- Despite the EACJ lack of explicit jurisdiction to hear and determine the matter related to human rights violations, it has addressed cases involving individual human rights. One of

⁸⁸ Article 9(c) of The Treaty for Establishment of East African Community

⁸⁹ Article 27(2), Ibid

the case references is the case of *Katabazi vs Secretary General of EAC*⁹⁰, where the court was petitioned to determine the lawfulness of the detention of Ugandan Prisoners. The court conceded that it has no jurisdiction with respect to human rights cases until the Council makes a determination and conclusion of a Protocol to that effect.

- However the Court determined that it will not abdicate from exercising its jurisdiction of interpretation under Article 27 (1) merely because the reference includes allegations of human rights violations. While the court did not evaluate the claims within a human rights framework, they found that the respondent had violated the principle of rule of law and consequently contravened the treaty.

*****END*****

“INJUSTICE ANYWHERE IS A THREAT TO JUSTICE EVERYWHERE.”

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⁹⁰Ref. No. 1/2007, EACJ 2007