

AFRICAN UNION		UNION AFRICAINE
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**REPORT OF THE PROMOTION MISSION TO
THE UNITED REPUBLIC OF TANZANIA**

6-10 OCTOBER 2008

ACKNOWLEDGEMENT

The African Commission on Human and Peoples' Rights (ACHPR or the African Commission) would like to express its profound gratitude to the government of the United Republic of Tanzania for inviting it to undertake a promotion mission to the country, and for putting at the disposal of its delegation all the necessary facilities and personnel to ensure the success of the mission.

The African Commission is grateful to the authorities for their hospitality and support during the mission. The Delegation would like to express its appreciation to Commissioner Bahame Tom Nyanduga, member of the African Commission on Human and Peoples' Rights for facilitating the mission. A special note of appreciation is also extended to the Ministry of Foreign Affairs and its staffs who accompanied the delegation and the efforts made to ensure that all the appointments were respected.

The African Commission also expresses thanks to all the civil society organisations for taking time off their busy schedules to meet with the delegation.

LIST OF ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
CCM	Chama Cha Mapinduzi
OVC	Orphans and Vulnerable Children
NGOs	Non Governmental Organisations
LLM	Masters in Law
LLB	Bachelors of Law
TGNP	Tanganyika Gender Network Programme
MP	Member of Parliament
FGM	Female Genital Mutilation

I. INTRODUCTION

1. The African Charter on Human and Peoples Rights (the African Charter) provides for the establishment of the African Commission on Human and Peoples' Rights (the African Commission or ACHPR). The African Charter came into force on 21 October 1986 upon the ratification by the requisite number of States Parties. The first members of the African Commission were elected at the 23rd OAU Assembly of Heads of State and Government in July 1987 and the inaugural session of the African Commission took place in November 1987.
2. Under the African Charter, the African Commission is mandated to promote the observance of the African Charter, monitor its implementation, and ensure the protection of the rights and freedoms set out in the Charter, interpret the African Charter and advise on its implementation.
3. Article 45 of the Charter for example, implores the African Commission to promote human and peoples' rights through among other things, research, studies and undertaking visits to States Parties to gather information on human and peoples' rights and formulating rules and regulations that could be used by States Parties in their policies and legislation.
4. The promotion mission to the United Republic of Tanzania was undertaken within the context of the promotion mandate of the African Commission under Article 45 of the African Charter.

Brief history and Political Background

5. Arab traders were the first to settle in the area now called Tanzania. They were followed by Portuguese explorers who reached the coastal regions in 1500 and held some control of the area until the 17th century, when the sultan of Oman took power. With what is now Burundi and Rwanda, Tanganyika became the colony of German East Africa in 1885. After World War I, it was administered by Britain under a League of Nations mandate and later as a UN trust territory.
6. Tanganyika became independent on 9 December 1961 and Zanzibar on 10 December 1963. On 26 April 1964, the two nations merged into the United Republic of Tanganyika and Zanzibar. The name was changed to Tanzania six months later.

7. In Nov. 1985, Nyerere stepped down as president. Ali Hassan Mwinyi, his vice president, succeeded him. Running unopposed, Mwinyi was elected president in October of which shortly thereafter plans were announced to study the benefits of instituting a multiparty democracy and in October 1995 the country's first multiparty elections since independence took place.
8. President Benjamin William Mkapa sought to increase economic productivity while dealing with serious pollution problems and deforestation. In 2005 presidential elections, Foreign Minister Jakaya Kikwete of the Chama Cha Mapinduzi (CCM) Party won with 80% of the vote.¹

Geography

9. Tanzania is in East Africa. To the north are Uganda and Kenya; to the west, Burundi, Rwanda, and Congo; and to the south, Mozambique, Zambia, and Malawi...Tanzania contains three of Africa's best-known lakes—Victoria in the north, Tanganyika in the west, and Nyasa in the south. Mount Kilimanjaro in the north, 19,340 ft (5,895 m), is the highest point on the continent. The island of Zanzibar is separated from the mainland by a 22-mile channel.²

¹ <http://www.infoplease.com/ipa/A0108028.html>

² <http://www.infoplease.com/ce6/world/A0861437.html>

MAP



Land and People

10. Mainland Tanzania falls into three major geographical zones—a narrow lowland coastal strip along the Indian Ocean; a vast interior plateau; and a number of scattered mountainous regions. The coastal zone receives considerable rainfall and has much fertile soil. The plateau extends over most of the interior and is cut in two places by branches of the Great Rift Valley. The western branch contains Lake Tanganyika and the eastern branch runs through central Tanzania. The two branches merge just north of Lake Nyasa. The plateau receives little rainfall, but in most parts there is enough to support agriculture.

11. The Serengeti National Park, one of the country's several wildlife reserves, is east of Lake Victoria, and Lake Rukwa is in the southwest. The mountainous regions include Mt. Meru and Mt. Kilimanjaro in the northeast; the Usambara, Nguru, and Uluguru. In the east; the Livingstone Mts. and the Kipengere Range near Lake Nyasa in the south; and the Ufipi Highlands in the southwest. Tanzania's few rivers include the Pangani, the Rufiji, and the Ruvuma (which forms part of the border with Mozambique), all of which flow into the Indian Ocean, and the Malagarasi River, which flows into Lake Tanganyika. In addition to Dar-es-Salaam and Dodoma, other important towns on the mainland include Arusha, Iringa, Kigoma, Morogoro, Mbeya, Moshi, Mtwara, Mwanza, Tabora, and Tanga.³
12. The total population of Tanzania is about 40,213,162. Virtually all of Tanzania's inhabitants speak Bantu languages. There are approximately 130 ethnic groups. Inhabitants of Indian and Arab descent constitute approximately 1% of the population and are concentrated in Zanzibar. The Bantu-speaking peoples include the Sukuma (the republic's largest ethnic group), Bena, Chagga, Gogo, Ha, Haya, Hehe, Luguru, Makonde, Makua, Ngoni, Nyakyusa, Nyamwezi, and Nyaturu. In addition, the Masai speak a Nilotic language; the Sandawe speak a language akin to Khoikhoi; and the Iraqw speak a Cushitic language. Swahili and English are the Republic's official languages; Arabic is also spoken in Zanzibar. About 45% of the mainland population is Christian, while 35% is Muslim, and about 20% follow traditional religious beliefs.

Economy

13. The economy of Tanzania is overwhelmingly agricultural. Plantations grow cash crops, including coffee, tea, pyrethrum, sisal, rice, peanuts, tobacco, sugarcane, cotton, copra, cashews, and cloves (cultivated in Zanzibar and Pemba). Most of the population, however, is engaged in subsistence farming, growing corn, wheat, millet, sorghum, vegetables, bananas, and cassava. In addition, large numbers of cattle, sheep, and goats are raised. Timber is important and includes mahogany, teak, ebony, camphor wood, and mangrove. Manufactures are largely limited to processed agricultural goods, beverages, paper, and basic consumer items.
14. Refined petroleum, fertilizer, aluminium goods, and construction materials are also produced. Diamonds, tanzanite, and other gemstones are mined. Other minerals extracted in significant quantities include gold, salt, gypsum, phosphates, and kaolin. There are also tin mines in NW Tanzania and coal and iron ore deposits near Lake Nyasa. Natural gas from deposits

³ <http://www.infoplease.com/ce6/world/A0861437.htm>

around Songo Songo Island, off the central coast, are used to produce electricity.

15. Tanzania has limited road and rail networks. The main rail lines run from Dar-es-Salaam to Kigoma (on Lake Tanganyika) and to Tanga, Moshi, and Arusha in the north-east. The Great Uhuru (Tanzam or Tazara) railroad, built in the 1970s by the Chinese, connects Dar-es-Salaam with central Zambia, affording landlocked Zambia an alternative route to the sea. Tanzania has a growing trade deficit, exacerbated by nationalization efforts. The exports are made up of agricultural goods and diamonds and other gemstones. The principal imports are consumer goods, machinery, transportation equipment, foodstuffs, refined petroleum, and chemicals. The leading trade partners are the European Union countries, Japan, Kenya, India, and the United States. Tanzania is a member of the Southern African Development Community.⁴

Legal System

16. The legal system is based on English common law and judicial reviews of legislative acts are limited to matters of interpretation. The Constitution of the United Republic of Tanzania 1977 provides in its preamble that Tanzania aims at building a democratic society founded on the principles of freedom, justice, fraternity and concord, in which the Executive is accountable to a legislature, composed of elected members and representatives of the people and also a judiciary which is independent and dispenses justice without fear of favour, thereby ensuring that all human rights are preserved and protected.
17. Article 4 of the Constitution provides for three organs of the Government; Parliament, the Executive and the Judiciary.. The Constitution provides for legislative supremacy of Parliament and independence of the Judiciary. It also embraces the principles of the rule of law, separation of powers and pluralistic political system.⁵

⁴ <http://www.infoplease.com/ce6/world/A0861435.html>

⁵ <http://www.tanzania.go.tz/administration.html>

International and Regional Human Rights Instruments Ratified by the United Republic of Tanzania:-

18. The United Republic of Tanzania is a party to numerous regional and international human rights instruments including the following:-

- African Charter on Human and Peoples' Rights;
- African Charter on the Rights and Welfare of the Child;
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;
- Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa;
- African Convention on Preventing and Combating Corruption;
- International Covenant on the Elimination of All Forms of Racial Discrimination;
- International Convention on Economic Social and Cultural Rights;
- International Covenant on Civil and Political Rights;
- Convention on the Elimination of All Forms of Discrimination Against Women;
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women;
- Convention on the Rights of the Child;
- Convention on the Rights of Persons with Disabilities.

THE PREPARATION OF THE MISSION

19. The mission was undertaken by Commissioner Mumba Malila, member of the African Commission responsible for the promotion and protection of human rights in the United Republic of Tanzania, and the African Commission's Special Rapporteur on Prisons and Conditions of Detention in Africa. He was accompanied by Mrs Aminata Jawara-Manga, Legal Officer at the Secretariat of the African Commission.
20. The promotion mission to the United Republic of Tanzania took place from 6 – 10 October 2008.

II. TERMS OF REFERENCE OF THE MISSION

21. The terms of reference of the mission are:-
 - To promote the African Charter on Human and Peoples' Rights and the activities of the African Commission on Human and Peoples' Rights;
 - To engage the Government of the United Republic of Tanzania on the measures it has or is taking to implement its international human rights obligations in general and its obligations under the African Charter in particular;
 - To exchange views with the government of the United Republic of Tanzania on the challenges it may be facing in fulfilling its international and regional human rights obligations and the extent to which the African Commission can assist;
 - To exchange views with other human rights stakeholders in the United Republic of Tanzania on ways and means of promoting and protecting human rights in the country;
 - To encourage closer collaboration between the African Commission and the State on the one hand, and between the African Commission and civil society organisations on the other; and
 - To encourage the government of the United Republic of Tanzania to participate regularly in the activities of the Commission including attending sessions of the Commission.

III. MEETINGS HELD DURING THE MISSION

DAR ES SALAAM

Meeting with the Minister of Foreign Affairs and International Cooperation

22. The delegation had a meeting with Honourable Bernard Membe, Minister of Foreign Affairs and International Cooperation.
23. Commissioner Mumba Malila thanked the Minister for taking time off his busy schedule to meet the delegation. He informed the Minister that the ACHPR was in Tanzania on a promotional mission, to meet and hold discussions with relevant human rights stakeholders'. He informed the Minister that after the mission, the delegation will prepare a report which will be presented to the ACHPR for adoption. He added that after adoption, the report will be sent to the State for the latter's comments, if any, before being published.
24. The Minister for Foreign Affairs on his part, expressed gratitude to the Commissioner for coming to Tanzania for a promotional mission. He explained that the Government of the United Republic of Tanzania attaches a lot of importance to human rights, adding that it was good for the delegation to see for itself the achievements Tanzania has made in the area of human rights.
25. He emphasized that the government changed almost 70% of the prisons from colonial to modern prisons including building new toilets, the provision of mattresses and blankets, a healthy balanced diet instead of just beans and porridge and last year, the government introduced education for prisoners, including law degrees. He indicated that prisoners can now register in the Open University and come out of prison educated.
26. Hon. Membe further informed the delegation that two weeks prior to the Commission's visit, he signed two United Nations Protocol, namely, the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities and International Convention for the Protection of All Persons from Enforced Disappearance. He noted that the signature signified that disabled people need to be given access to all types of advantages enjoyed by human beings and that the government is discouraged against the forceful abduction and disappearance of people.

27. He concluded by saying that the government of the United Republic of Tanzania is making good strides in the area of human rights. He urged the delegation to talk to the people and added that he was looking forward to the final report on the mission.

Meeting with the Chief Justice of the United Republic of Tanzania

28. The delegation met with the Chief Justice of the United Republic of Tanzania, His Lordship Augustino S. L. Ramadhani. After briefing the Chief Justice about the establishment, composition and mandate of the ACHPR, Commissioner Malila explained the purpose of the mission.
29. He informed the Chief Justice that the delegation was in the country on a promotion mission to meet and hold discussions with various stakeholders to exchange ideas on the human rights situation in the country.
30. He indicated that with respect to the visit to the Chief Justice, the delegation would like to learn more about the independence of the judiciary in Tanzania, the problems in the delay in delivering of judgements, female representation in the judiciary, whether there are cases of corruption within the judiciary, the number of prisoners awaiting trial and the issue of the death penalty, among other things.
31. In his response, his Lordship Ramadhani indicated that the judiciary enjoys a considerable amount of independence in Tanzania. He said he was appointed Chief Justice of the United Republic of Tanzania in 2008 and before that, he had been Chief Justice of Zanzibar from 1980-1989 and a judge of the Court of Appeal since 1989. He said that he has handled a lot of government cases especially administrative cases and has never had any interference from government on how his decisions should be made.
32. On the problem of delays of judgements, the Chief Justice said that there was lack of personnel, and the number of judges Tanzania has was not sufficient. He indicated that in the Court of Appeal there were only five judges' until 1989, when three others joined making it eight. This number has increased to sixteen (16) but might be reduced to thirteen (13) because one of the judges passed away and two (2) others are due for retirement. He stated that 16 judges for a population of about 40 million people, is not sufficient.
33. He indicated that the High Court had fifty-two (52) judges which are insufficient given the size of the population. He said there were thirteen (13) High Court divisions and there use to be only one (1) judge per sector but now there are at least two (2) judges per sector. He said there was also the problem of lack of Magistrates in the Magistrate's Court.

34. He said there was also the problem of insufficient court rooms. He said Judges tend to hear open court cases in chambers due to lack of court room space. He explained that at the Court of Appeal there should be five (5) panels but because of lack of space, only two (2) panels can sit simultaneously. The Chief Justice also informed the delegation that there was also the problem of insufficient support personnel and that to date proceedings and judgements are still handwritten.
35. He explained that there are only a few judges who can use computers and are mostly the judges from outside of the court system. He said in the Court of Appeal there are about four judges that can use computers including himself. He noted that some judges would be going to Arusha to be trained on how to use computers. He said the idea is that after the training, judges will be given computers to write their judgements. He noted that using computers to write judgements is more efficient and will reduce the problem of delays in cases.
36. On the representation of females in the judiciary, the Chief Justice indicated that, in the Court of Appeal, out of sixteen (16) judges there were four (4) females, and in the High Court, out of fifty-two (52) judges there were nineteen (19) females.
37. Regarding the issue of corruption in the judiciary, the Chief Justice said that there was corruption but whether there are corrupt judges, he was not sure. He indicated that in the Magistrate's Court there were corrupt magistrates, however in the Court of Appeal he was sure that there were no corrupt judges because not only is the process of appointing Court of Appeal judges a thorough one, but also that three (3) judges sit at a time and it will be difficult to corrupt all of them at the same time. He noted that in the High Court he would need to be convinced that there were no corrupt judges.
38. He further explained that when he joined the Court of Appeal in 1980 he knew of a couple of judges that were said to be corrupt but all those judges have now retired. Recently there was a complaint of one corrupt judge but has been cleared by the Ethics Committee.
39. When asked whether he thinks that being well paid will reduce the corruption in the system, the Chief Justice said that both Court of Appeal and High Court judges are well paid with benefits and other incentives. He indicated that the Chief Justice gets full salary at retirement and High Court judges get about 80% of their salary at retirement.
40. Regarding the use of international jurisprudence when considering human rights cases, the Chief Justice said judges do take into account

international decisions, including those of the ACHPR and national decisions when considering human rights cases.

41. On prisons, he explained that there were many prisoners awaiting trial. At the time of the visit, there were prisoners who had been on hunger strike for one week and their conditions were serious. He said the prisoners were saying that they have been waiting for their trials for too long and their cases need to be expedited. He indicated that in May, he went to three (3) regions and all the prisons he visited, he found out that the number of prisoners in remand awaiting trial was much more than the convicted prisoners. This he said was due to the delays in finalising decisions. He indicated that when he hears a case, he gives himself one week to make a decision.
42. On the issue of the death penalty, the Chief Justice said that the death penalty still exists in the statute books. He informed the delegation that he does not support the death penalty. He indicated that it was made clear in one of his judgements that people need to be sensitized on the abolition of the death penalty.
43. When asked whether there were appeals in customary law cases and whether there was conflict between customary and statutory law, the Chief Justice said that most customary law cases come from land tenure, inheritance etc. and the courts do not normally receive many appeals from them. On whether there was conflict between the two laws, he said that there are but statutory law prevails over customary law. He indicated that there were four laws in Tanzania that is Islamic law, customary law; statutory law and case law. He said there were debates as to whether Sharia Courts should continue to exist.

Meeting at the Ministry of Home Affairs

44. At the Ministry of Home Affairs the delegation met with the Deputy Commissioner for Prisons, Mr Minja, Assistant Commissioner of Police, Mr Nyanbabe and State Attorney of the Ministry, Mrs Flora Mrope.
45. Commissioner Malila explained the establishment and mandate of the ACHPR. After explaining the purpose of the mission, he indicated that the delegation was interested in understanding the challenges faced by the country as far as prisons were concerned including questions of prison congestion, facilities, food, remand prisoners etc.
46. The Deputy Commissioner of Prisons on his part explained that the Prison Department was one of the departments under the Ministry of Home Affairs responsible to manage prison services. He said the prison service was

headed by the Principal Commissioner of Prisons, assisted by the Deputy Commissioner and there are about twenty-three (23) Senior Assistant Commissioners and about 20 Assistant Commissioners.

47. He informed the delegation that the main problems facing prisons in the country were, overcrowding and long sentences. He said the authorised capacity of prisons is twenty-two thousand seven hundred and sixty-three (22,763) prisoners, but at times there were about forty-five thousand (45,000) prisoners in the prisons, the majority of whom were remand prisoners awaiting trial. Some stay for between five (5) and ten (10) years but most remand prisoners stay up to three (3) and five (5) years. He said this affects the prison facilities as it tends to be shared by double the capacity. He further said that there were a large number of prisoners with long sentences for sexual offences.
48. The Deputy Commissioner for Prisons indicated that there was a Plan Service Charter which provides for the rights of prisoners, including the rights of the prisoner's relatives, the public, lawyers etc. He indicated that there was also a Code of Conduct for Prison Officers.
49. Regarding prisons and detention facilities, the Deputy Commissioner of Prisons informed the delegation that the uniforms of inmates have been changed, noting that previously prisoners use to wear shorts but now they wear long pairs of trousers which they sew themselves. He said sleeping space was the major problem and previously prisoners used to sleep on mats but recently; the government has supplied all prisons with mattresses.
50. The Assistant Commissioner of Police informed the delegation that arrested individuals were kept in cells for twenty-four (24) hours before being taken to court. When an arrested person is detained for longer than twenty-four (24) hours, an application is made in court to extend the time limit. He said that the government provides food to suspects in police cells and some of the relatives of the detainees bring food to them. He said there were special sanitation facilities provided for female inmates by the state, including sanitary towels.
51. In terms of the administration of prisons, he explained that the female wings were headed by female officers and provides for pregnant women and women with babies but the relatives of these prisoners are also encouraged to take care of the babies. However the nursing prisoners themselves usually refuse to this type of arrangement because they use their babies as a shield for government to grant them amnesty as it is one of the first requirements used for granting amnesty by the president.
52. On the issue of juveniles, the Commissioner of Police explained that there was a special desk and facilities at every police station for juveniles. He

said that in the old prisons, there were no special cells for female juveniles, however in the new prisons, special cells for female and male juveniles have been provided.

53. On the challenges facing the police service, the Commissioner of Police explained that there was space and resources to have expansions for juvenile cells. He said the police had a problem of inadequate escorts to transport the prisoners from the prisons to the courts, but the situation has improved.
54. He said that there was hardly any violence in the prisons because when a prisoner gets violent they are punished. The Commissioner of Police further indicated that they have never heard of the Robben Island Guidelines, however the use of force and torture against prisoners is prohibited and any officer found guilty of maltreating a prisoner is punished. He said that the police have a book called the Police Bible which has provisions for the prohibition of torture. He informed the delegation that the prohibition of torture is also taught in police training schools and in workshops.
55. He said that there was also a police oversight body called the Complaints Division which serves as a monitoring and evaluation system. He said with this new system, the public can use the Complaints Division to complain against the police as well as the police against each other. He informed the delegation that police officers are not brutal to the opposition parties.
56. On the death penalty, the Assistant Commissioner of Police explained that personally he thinks the death penalty is inhumane and a degrading treatment but the government is trying to review its laws on the death penalty. He finally noted that generally the crime rate in Tanzania was not high acknowledging that it was relatively high in some areas.
57. On the issue of same sex relationships in the prisons, he said that there maybe isolated cases or no cases because this is strictly prohibited. Any inmate caught engaged in such vices is punished severely.

Meeting at the Commission for Human Rights and Good Governance

58. At the Commission for Human Rights and Good Governance the delegation met with the Executive Secretary and Director of Legal Services: Mrs Mary Massay, and Mr Francis Luziga, Head of Political & Civil Section.
59. The Executive Secretary welcomed the delegation and apologised for the absence of the Chairperson.

60. Commissioner Malila thanked the Executive Secretary and explained the mandate of the ACHPR and the purpose of the promotional mission.
61. The Executive Secretary informed the delegation that the Commission deals with human rights issues, good governance and Ombudsman issues, including receiving complaints on human rights and good governance. She said about 90% of the complaints received are on good governance.
62. She said the Commission has three branches and seven Commissioners working full time. One branch is in the southern part of Tanzania, one in the Lake region and the other in Zanzibar. The plan is to have at least five (5) to six (6) branches but due to financial constraints it has not been possible.
63. The Commission also assesses issues of human rights in Tanzania by inspecting prisons and places of detention and visits villages all over Tanzania mainland and ten (10) districts in Zanzibar. Through these visits the Commission gets complaints on various issues such as police brutality, delays of cases, pension schemes, labour issues and inheritance. The Commission does mediation and annually it resolves about 50-60% of complaints. She indicated that the Commission conducts public education on human rights and good governance in schools, colleges, villages, public meetings and trade fairs.
64. She said the Commission has a mandate to conduct research and public enquiry and to this end conducted a research on child abuse, and a report was issued with recommendations for the enactment of a Children's Act. A research and public enquiry was also carried out on police brutality and on other law enforcement institutions. Reports on these studies are yet to be published.
65. The delegation was informed that the Commission also collaborated with other international institutions in Kenya, Uganda, Burundi, and coordinated with other ministries for the preparation of human rights reports.
66. On the main challenges facing the Commission, she said the Commission faces the following challenges:
 - Financial constraints resulting in the Commission failing to operationalise in full all its five to six branches intended to be established;
 - Lack of sufficient staff as most of the staff are newly recruited from school and therefore lack experience;
 - Lack of continuity as most of the Commissioners have to leave after their terms come to an end;

- Lack of capacity training that is needed to train the newly recruited staff.
67. When asked whether the Commission collaborates with the Ministry of Justice in the preparation of State Reports and whether the Commission took part in writing the State Report of Tanzania to the African Commission on Human and Peoples Rights, the Executive Secretary said the Commission does participate in the report preparation process when requested by the Ministry.
 68. On the implementation rate of its decisions, the Executive Secretary said most of its decisions and recommendations have been implemented, except for one case which is now at the Court of Appeal.
 69. When asked whether the Commission is satisfied with the power it has, the Executive Secretary said the only problem is that the procedure for implementation of the Commission's decisions is very lengthy. She said when a decision of the Commission is taken to court, the court orders for the cases to start afresh. She further said that the Commission has also requested that its power be extended so that its recommendations can be enforced.
 70. Regarding the level of human rights violations by law enforcement officers, she indicated that from interviewing complainants and through research the Commission found that there were a lot of human rights violations from the police force, but the Commission has not done any independent research on the matter.
 71. On the situation of prisons in Tanzania, she said apart from the overcrowding in prisons there have been general improvements. She indicated that the government has improved the welfare of prisoners significantly, noting that prisoners are provided with uniforms, TV, radios, medical facilities, transportation facilities and improved ablution and sanitary facilities. She further said that delays of cases was a problem but the government appointed twenty-one (21) judges in 2008, eleven (11) more were appointed in 2009 and in the new budget of 2009, it is stated that one hundred and three (103) magistrates will be appointed. She said the Commission has recommended to the government to mandate the Magistrates to hear some High Court matters to help in solving the issues of delays in the court system.
 72. With regard to whether the Commission is consulted when a new legislation is passed, the Executive Secretary said that when the Commission feels that, existing laws are not up to standard it advises the government to make some amendments. She explained that the

Commission recently advised the government to make amendments to the Terrorism Act but there has been no response.

73. On the death penalty, the Executive Secretary said that the Commission has not advised the government on what to do, however the Commissioners need to meet and discuss their position. She said in her opinion the death penalty should be abolished.
74. On gay rights, the Executive Secretary indicated that it has not been discussed and such a problem does not exist in Tanzania. She said she does not think it is a human rights issue.
75. Regarding the issue of whether the Constitution recognises economic, social and cultural rights, the Executive Secretary indicated that the Constitution only recognises a few but it concentrates more on civil and political rights. She concluded by saying that there was the political will for the respect of human rights in Tanzania.

Meeting at the Ministry of Health and Social Welfare

76. At the Ministry of Health and Social Welfare the delegation met with the Hon. Minister of Health and Social Welfare, Prof David H. Mwakuyusa (MP), Permanent Secretary Mr Wilson Mukama and the Director of Policy and Planning.
77. After explaining the establishment and mandate of the ACHPR, Commissioner Malila, informed the Hon. Minister and his team of the purpose of the promotional mission to Tanzania.
78. The Hon. Minister explained that human rights are an important concept and the enjoyment of good health is a requirement for the enjoyment of human rights. He said every government should ensure that this requirement is sustained. He said that Tanzania is a large country with about forty (40) million people, 80% of whom live in the rural areas.
79. The Hon. Minister informed the delegation that the Health Ministry was one of the sectors where corruption was rampant. He indicated that there were a lot of complaints that health workers receive payments for services that are free. He indicated that efforts were being made by the Ministry to combat these problems, including making corruption a permanent agenda at meetings where clients deposit any complaint, making mobile phones for officers public for ease of contacting them and having a Clients' Charter which spells out the rights and obligation of the clients, available at health facilities and public offices.

80. He said that as a member of the United Nations and African Union, Tanzania has developed a number of policies, programmes and laws geared towards the promotion of human rights. He indicated that in 2007, the government revised the National Health Policy which had been in place since 1990. The policy outlines major areas such as:
- Provision of primary health care and public education in health care services to make, health care affordable and available;
 - Provision of Community Health Fund Scheme for the informal sector in rural areas as well as exemption mechanisms for indigent groups of the society;
 - Provision of free medical treatment to pregnant women, the under fives and citizens aged sixty (60) years and above;
 - Provision of medical service to public servants through a health insurance scheme under the National Health Insurance Fund;
 - Recognition of traditional and alternative healing systems;
 - Working with partners in the fight against Malaria.
81. In the Social Welfare Department, he said a number of policies and programmes were in place towards protecting the rights of the elderly, people with disabilities and vulnerable groups with regards to their physical or medical needs.
82. He further said a number of laws had been revised and new ones enacted in order to accommodate a number of human rights issues. The HIV and AIDS Prevention and Control Act was passed in February 2008 aimed at protecting the rights of orphans and widows and to protect the society against the spread of the disease. The Mental Health Bill was also put forward in Parliament to take account of human rights issues and protect the dignity of mentally disordered persons. A draft bill on People with Disabilities has been developed to look into issues of the right to accessibility by disabled persons to public buildings, information, services and education.
83. He said generally the government, through the Ministry of Health and Social Welfare had a number of policies, programmes and laws which were geared towards human rights protection.
84. When asked whether there were any social welfare programmes for disabled persons who did not have relatives to take care of them, the Hon.

Minister said that there were only seventeen (17) homes for elderly people and many orphanages. He said government wants to revert to the traditional values whereby if you are born in a village you belong to that village. In some villages, houses are built where these orphan's are housed and a carer is paid to take care of them. He said in a few years time, the government wants the same to apply to the elderly people as well. With regards to the vulnerable children, he said there is a National Steering Committee charged with looking into how best to deal with vulnerable children.

85. On whether there are special facilities for prisoners infected with HIV/AIDS, the Hon. Minister said not much has been done. He said the issue of giving condoms to prisoners was initiated but it did not materialise.
86. Regarding street children, the Hon Minister said that they are part of the Orphans and Vulnerable Children (OVCs)' and there are about 1.5 million, 60% of whom come from HIV affected homes. He said, however, the government is trying to make conducive homes for them so that they will not go back to the streets.

Meeting at the Legal and Human Rights Centre

87. At the Legal and Human Rights Centre the delegation met with the Director, Mr Francis K Kiwanga and the Public Engagement Coordinator, Mr Harold Sungusia.
88. After Commissioner Malila explained the mandate of the ACHPR and the purpose of the mission, the Director informed the delegation that the Legal and Human Rights Centre was established in 1995 and had three offices, two in Dar es Salaam and one in Arusha. The main purpose of the Centre is to provide legal services to the poor. He said the Centre works under a strategic plan.
89. He said the Centre has trained more than one hundred and twenty- three (123) monitors in each district to monitor the human rights situations in each of those districts and report back to the Centre. The Centre then sends a fact finding team to investigate the findings of the monitors.
90. The Director further said that the Centre has three watch panels that watch the activities of Parliament, Government and the Judiciary. The panellists are independent persons ranging from civil society to pensioners. They meet four times a year and make recommendations on how best to solve the problems they envisage and these recommendations are forwarded to the stakeholders, for example, the Judiciary for consideration. He said the

Centre also provides Legal Aid for the poor and attends to four to five (4-5000) thousand people a year.

91. He indicated that the Centre trains paralegals from the grassroots level in seven regions of Tanzania to assist villagers on human rights issues. The paralegals are trained in administration, land issues, inheritance, etc.
92. The Centre also organises television and radio programmes to sensitize the public on human rights and legal services.
93. He further said that the Centre produces an annual human rights report on Tanzania and is planning to have a documentation centre where human rights materials and publications can be accessed.
94. Commissioner Malila was interested to know whether the volunteers for human rights monitoring, the paralegals and the watch panel members are paid, what their incentives are and where the Centre gets its funding. He also wanted to know whether the Centre has any programmes with government and what the Centre was doing with regards to prisons.
95. The Director explained that the volunteers and paralegals are not paid, but the Centre provides them with mobile phones and computers to help facilitate their work. The members of the watch panel are given transport allowance. He further explained that the incentives for these volunteers are mainly that they want to promote a good cause and the paralegals benefit from the training.
96. On funding, the Director explained that the Centre gets its funding mainly from donors, consultancies, and publications, adding that the Centre had six (6) donors and the members also make little contributions.
97. On its relationship with the government, he said that in the past the Centre had problems whereby some of its staff members were imprisoned in various regions and the human rights monitors were maliciously prosecuted. He said things have changed and the Centre had a good working relationship with government and trains government officials on human rights issues.
98. He indicated that the Centre is one of the only two NGOs in Tanzania that has observer status with the ACHPR.
99. With respect to prisons, he informed the delegation that the law restricts the Centre from working on prisons. However, the Centre organised training sessions with prison officers with approval from the Commissioner of Prisons. He said it is the understanding of the Centre that the prison

conditions were poor and not much was being done to reduce the human rights violations in the prisons.

100. He said there was a problem regarding delays in disposing court cases and the Judiciary makes it difficult for suspects to get bail by imposing onerous bail conditions which makes it very difficult to get bail. The Centre has received a lot of reports of human rights violations in prisons and was in the process of currently publishing a book entitled "Prisons from the Inside" written by an ex. prisoner.
101. Regarding legal aid clinics organised by the Centre, the Director said each clinic had two lawyers and there was a criteria used to identify those to benefit from legal aid. He explained that for some individuals, the lawyers at the clinic draft the documents and guide them on how to represent themselves in court because the Centre cannot afford to assist everyone that comes to the clinic. The legal aid clinic also suggests reforms to the legal aid system whereby the Centres representatives take part in the reform programme.
102. In so doing, the representatives challenge some of the legal aid reforms in court and also engage directly with the public informing them of the need for reforms. Representatives from the Centre also attend the public sessions of Parliament and make inputs to Bills passed by Parliament by critiquing as well as making recommendations, to ensure the Bills adhere to human rights standards and norms. The Director indicated that many sections in the HIV/AIDS (Prevention and Control Act 2008) reflect the recommendations proposed by the Centre.

Meeting at the Faculty of Law, University of Dar es Salaam

103. At the University of Dar es Salaam, Faculty of Law, the delegation met with the Dean of the Faculty of Law, Prof S.E. Mchome, the Head of the International Law Department, Prof Kabudi and Prof Chris Maina Peters, Lecturers in the International Law Department.
104. Commissioner Malila informed the Dean and his team of the purpose of the mission. He wanted to know amongst other things, how the University of Dar es Salaam was contributing towards the promotion and protection of human rights in Tanzania, whether the Law Faculty works together with the government in enhancing human rights in Tanzania and the general view of members of the University on the human rights situation in Tanzania.
105. In his response, the Dean explained that the Law Faculty trains lawyers but the main problem is securing jobs for them. He said that as a faculty, they are almost ninety percent (90%) involved in human rights matters, both

from the point of view of teaching and in practice. The faculty has a Human Rights Department where some aspects of human rights are taught as core subjects including Child Law, Refugee Law etc. At the practice level, he said the University had a Legal Aid Department.

106. He said that lately, there were regular consultation with the government on matters of governance, reforms and human rights issues. He explained that the government makes a lot of consultation with the University before laws are passed in Parliament and the experts from the University attend a lot of the stakeholders meetings. He indicated that the University recently had a meeting with the Law Reform Commission on access to justice, and that some of the Bills are drafted by lecturers from the University. He said that this was a good initiative because in the past, there were no consultations between the government and the University.
107. On consultations with other bodies, the Dean explained that the University has been a part of the reform process and, with respect to the Commission on Human Rights and Good Governance, contributes to the selection process of the Commissioners as one of the lecturers is on the panel. He said there was a by law which provides for civil society and the Faculty of Law to short list the members of the Commission.
108. Regarding Prisons and the Police, the Dean indicated that the University contributes in the reform process and a lot of work had been done on legal sector reform. Recently he helped in the writing of the new Police General Orders and the new Prison Standing Orders. He said he introduced a system of consultation between the police and the political parties which has worked quite well as evident in the past election. He also worked on a guide/manual for the police, in the electoral process.
109. He further explained that the University helps in training the police on human rights noting that human rights are a compulsory component in all police training and this was a significant breakthrough in the police reform process. He indicated that one of the areas that have been a problem was the issue of HIV/AIDS. He said the Faculty prepared a Bill on the matter which was passed into law.
110. Commissioner Malila enquired about what role if any the Faculty played in prison conditions, access to justice, death penalty, the issue of Albinos and their general human rights in Tanzania.
111. The delegation was informed that the issue of Albinos was a serious one and one of the most challenging areas relating to witch craft because it is rooted in people's beliefs and these are questions which cannot be treated by law. The problem is that the people and the government of Tanzania have not invested a lot in terms of measures to stop this problem. The law

enforcement agencies can do better by investing in intelligence gathering to the point of identifying and apprehending the perpetrators.

112. On prison conditions the delegation was informed that congestion was the most serious problem in prisons. The prisons lack good facilities and inmates use buckets as toilets and convicts are mixed together with remand prisoners in the same cells. They indicated that the government provided some money for a long term plan for prisons and there has been some improvements including good clothing, transportation facilities, and community service as an option to imprisonment, introduction of the parole system, provision of water and sanitation and introduction of mattresses/beds. The delegation was informed that a prisoner who was imprisoned for thirty (30) years recently graduated with a law degree but the prison officials declined to give him permission to attend the graduation ceremony and the University had to go to the prison to award him his degree certificate. He is now pursuing an LLM degree.
113. On access to justice, the delegation was informed that politicised cases are tried much faster than other cases. They said if one is charged with murder, they could stay in remand for a minimum of five (5) years. They also indicated that many cases were conducted in primary courts where representation by legal counsel was prohibited. The government recently introduced a law whereby law graduates can be appointed as primary court magistrates and government is going to implement a system whereby paralegals will be allowed to represent prisoners in primary courts.
114. On the issue of the death penalty, the delegation was informed that the University is trying to campaign for its abolition.

Meeting at the Tanzania Gender Networking Programme (TGNP)

115. At the Tanzania Gender Networking Programme, the delegation met with the Executive Director Ms. Usu Mallya and the Head of Programming, Finance and Administration, Ms. Anna Kikwa.
116. Commissioner Malila introduced the delegation and explained the purpose of the mission. He wanted to know about the work of TGNP, its relation with Parliament, the problem faced with regards to the representation of women in Parliament, whether there were any programmes for children's rights and the challenges and efforts made in carrying out its mandate.
117. The Head of Programming informed the delegation that the NGO was established in 1993 in preparation for the Beijing Conference. It was set up by a few activists who were concerned with the plight of women. She said it

is a limited membership organisation which believes in networking and coalition, based in Dar es Salaam but works all over Tanzania.

118. She informed the delegation that other organisations assist TGNP in certain areas of their work, for example, land issues, sexual violence, maternal mortality and health. The main functions of TGNP are advocacy, activists, training and capacity building at grass root level, documentation and information centre/library, publication on gender issues and, it plans to devise degree courses in future.
119. With regards to the representation of women in Parliament, she indicated that the organisation has been working with various committees in Parliament to carry out capacity building. The organisation also works with the women's caucus in Parliament to put forward women issues as well as getting involved in the initial stages of the budget cycle. TGNP also conducts empowerment programmes to support the election of women as parliamentarians.
120. On children's rights, she informed the delegation that TGNP believes in children's rights but does not have a specific programme for child rights, but is working with other stakeholders to support children's rights.
121. She indicated that TGNP does not have observer status with the ACHPR but would like to apply for such status. She said the organisation works with various international organisations in the East African region and outside the region.

Meeting at the Ministry of Constitutional Affairs and Justice

122. At the Ministry of Constitutional Affairs and Justice, the delegation met with the Hon. Minister of Constitutional Affairs and Justice Mr. Mathias M. Chikawe (MP) and his team.
123. After explaining the establishment and mandate of the ACHPR, Commissioner Malila, informed the Hon. Minister and his team of the purpose of the promotional mission to Tanzania. He indicated that he wanted to know what the Ministry's views were on the issue of the ritual killing of Albinos, the death penalty, the conditions of prisons, education, cost sharing in the health sector and the general human rights concerns in Tanzania.
124. On the issue of Albinos being captured, killed and sold, the Hon. Minister said that it was a strange phenomenon and was serious now that the body parts of the Albinos were being imported and exported. He said that some people believe that old women with red eyes are witches and they must be

killed and the same applies to the Albinos as well. Some believe that if you get the body part of an Albino, you can obtain a lot of fish or minerals from the ground. He said it has been a year since the killing of Albinos started and government was trying to protect Albinos by introducing a strategy whereby Albinos all over Tanzania are counted and their whereabouts are known.

125. On the death penalty, he said that the death penalty was in the penal code but executions have not been carried out since 1997. The Law Reform Commission has been mandated to talk to the people of Tanzania about the death penalty and the report is being compiled and was due in June 2009. He said the people of Tanzania still want to maintain the death penalty but the government wants to abolish it. Therefore a lot of sensitization is being carried out on the death penalty because government does not want to abolish it against the wishes of the people of Tanzania.
126. On prisons, the Hon. Minister indicated that Dar es Salam is a big city with a large crime rate. He said the jails were full and overcrowded; noting that last year there were between forty-five thousand (45, 000) and forty-seven thousand (47,000) people in prison, but this has now dropped to thirty-nine thousand (39,000). He indicated that there have been improvements in the prison conditions. Prisoners now sleep on mattresses, they have proper uniforms, a balance diet, radios and TV, and they take part in sports and related activities. He noted that there are still some jails that do not have appropriate ablution facilities and inmates use buckets but the government was working hard to phase out the practice. He said there was violence in the prisons but only amongst inmates. He reiterated that prison conditions have significantly improved from what they use to be and government is continuing to work to improve them further.
127. On education, the Hon. Minister informed the delegation that there is the National Education Act, Cap 353 R.E 2002 which makes it compulsory to have every child go to school. The Act provides for the prosecution of parents who fail to take their children to school. He said for every child from seven (7) years old, primary education up to grade seven (7) is compulsory and there is now the notion that everyone has access to secondary school education. He noted that some secondary schools have fewer pupils than they are designed to accommodate because the number of secondary schools has increased. He indicated that at secondary school level, everyone has to pay a fee of about twenty dollars (\$20) per year. For those who cannot afford it, the District Council pays for them. The plan, he said, was to make education up to form four (4) compulsory.
128. On health, he said that beginning 2009, government will make sure that every village has a health centre or clinic with a qualified doctor. The idea

he said, is that no one should walk for more than five (5) km to reach a Health Centre.

129. Regarding female genital mutilation (FGM) the Hon. Minister said that there are some tribes that believe in FGM, especially in the north. In these tribes if a girl is not circumcised, she does not belong to a peer group. Therefore, it is a matter of pride to be circumcised and some girls run away from home to be circumcised. He informed the delegation that the penalty prescribed by the law for engaging in FGM is thirty (30) years imprisonment. He noted that only a few women practice FGM. He said there are many NGOs working in this area and they have rescued a lot of uncircumcised girls and have helped those circumcised as well as the mutilators become advocates of FGM. He said government also supports these NGOs who work in this area.
130. On access to justice and the independence of the judiciary, the Hon. Minister said that at the primary court level, the magistrates hold a diploma or certificate in law. They are not lawyers but have legal training. The government is going to have a policy whereby LLB graduates would become magistrates of the primary courts. He indicated that government is getting a consultant to work on this because there are a lot of law graduates and if the plan is implemented, then State Attorneys will be going to primary courts.
131. As far as the Law Society is concerned, he said that they work closely together. They have a mechanism whereby they check for corrupt lawyers and the Attorney General's Office has a mechanism to deal with the same.

ZANZIBAR

Meeting at the Office of the Attorney General of Zanzibar

132. At the Office of the Attorney General of Zanzibar, the delegation met with State Attorneys Hassan Ali and Ali Hassan.
133. Commissioner Malila explained the purpose of the mission and indicated that he wanted to know the challenges and issues faced with regard to the justice system in Zanzibar, including the independence of the judiciary, legal aid issues, the death penalty, gay rights, economic social and cultural rights, prison conditions and the general human rights situation in Zanzibar.
134. State Attorney Hassan Ali explained the work of the Office of the Attorney General of Zanzibar. He said the system of prosecution in Zanzibar was

different from mainland Tanzania. Issues concerning criminal cases were under the jurisdiction of the Director of Public Prosecution's Office. The Attorney General deals with civil cases and advises government.

135. Regarding the drafting of laws, the Attorney General's Office of Zanzibar does not collaborate with the Attorney General's Office in Tanzania mainland. The Attorney General's Office in Zanzibar drafts its laws and Parliament considers it. He indicated that the jurisdiction of the House of Representatives in Zanzibar was limited to Zanzibar only, but the Attorney General's Office of Zanzibar seeks advice from the AG's office in Tanzania mainland. He also explained that the Director of Prosecutions Office and the Attorney General's Office in Zanzibar were all part of the Ministry of Justice of Zanzibar.
136. He said that Zanzibar is part of Tanzania in the Union Constitution but Zanzibar has its own Constitution and Bill of Right, although the Union Constitution covers Zanzibar. He explained that in Zanzibar there is the Primary Court, the District Court, and the High Court, there is the Cadi Court which deals with inheritance matters and not criminal matters. He said if an individual was not satisfied with the decision of the Cadi Court, he/she could appeal to the Appellate Cadi Court and if the individual was still not satisfied he/she then goes to the High Court which is the highest court for Islamic cases, where the judge sits with four Muslim Sheikhs and majority decision prevail.
137. He said there are three legal aid services in Zanzibar namely, the Zanzibar Legal Aid Centre, the Zanzibar Law Society which provides legal aid services to everyone, and the Zanzibar Female Lawyers Association, which deals with cases relating to women and children. He indicated that most of the laws in Zanzibar are the same as the laws in mainland Tanzania, except that some of the procedures are different.
138. He said that there is a Legal Aid Programme under the Ministry of Good Governance and in the Ministry of Justice; there is a file for complaints of violations of human rights against public officers etc. He added that the High Court has power to grant legal aid to people who cannot afford to pay legal costs under civil procedure.
139. On the status of international legal instruments such as the African Charter on Human and People's rights, he said once the government of the United Republic of Tanzania has ratified an international instrument, it has to be domesticated. He noted that, the rights enshrined in the Charter were not fully domesticated in the Constitution.
140. On the death penalty he said the death penalty in Zanzibar is not applicable under Islamic law, but under common law. He noted that for

twenty-nine (29) years, several people have been convicted to death but none have been executed, and for that reason he suggests that the death penalty should be abolished.

141. He further noted that the right to life is a basic human right in the Constitution just like most Economic Social and Cultural rights such as the right to health and right to education. He said the exceptions to the death penalty were that pregnant women and children cannot be sentenced to death.
142. He indicated that Zanzibar was thinking of having a law for marital rape, sexual violence and domestic violence. The problem is that there is no minimum age for marriage. Previously, one could not have sexual intercourse with a girl until she reaches puberty, but in 2004, that law was repealed.
143. In Zanzibar there is the Education Act of 1982 which states that every child from the age of seven (7) to eighteen (18) years must register in school and during that period he/she should not get married and if a girl gets pregnant while attending school, she will be expelled. However in 2005, that law was repealed and now when a girl gets pregnant while attending school, she is suspended for two (2) years and then allowed to come back to school to continue her education.
144. He informed the delegation that it is a crime for a girl between the ages of eighteen to twenty-one (18-21), who is not married to get pregnant, and if a man had sexual intercourse with a girl who is below the age of eighteen (18) years with or without her consent, he was guilty of rape.
145. He indicated that there was no legal definition of a child in the laws of Zanzibar, but for the purposes of rape, a child is anyone below the age of eighteen (18) years. The law was also silent on the age of marriage.
146. On corporal punishment he said that, it is prohibited because it is inhumane and degrading.
147. On gay rights, he said that it is prohibited in the laws of Zanzibar but no one has been prosecuted so far.

Meeting at the Ministry of Democracy and Good Governance of Zanzibar

148. At the office of the Minister of Democracy and Good Governance of Zanzibar, the delegation met with the Hon. Minister and his team.
149. The Hon Minister informed the delegation that an amendment was made for the strengthening of human rights and separation of powers in Zanzibar. He said the functions of the Ministry includes the following;
- The establishment of the Service Committee of the House of Representatives;
 - The establishment of the Independent Officer of the Controller;
 - Strengthening of the Electoral Committee;
 - Training the media to provide fair election coverage;
 - Encouraging political social and religious tolerance;
 - Improvement of the legal sector;
 - Support the independent office of the Director of Public Prosecution;
 - Improvement of the criminal code to encompass human rights;
 - A juvenile law to be brought to Parliament;
 - Partnership with civil society for poverty reduction;
 - Establishment of human rights guidelines to educate citizens on human rights issues in simple language.
150. He said the challenges faced by the Ministry include poor staffing at levels; poor facilities; highly politically charged during elections since the establishment of the multi party system and the slow pace of civil service and local service reforms.
151. He explained that elections in Zanzibar are held at the same time as elections in mainland Tanzania and the Electoral Commission is totally independent.

152. He said that the Judicial Service Commission was established in 2000, and that there were two (2) sets of laws in Zanzibar: Islamic Law and Civil Law.
153. On police brutality, he explained that the Police Department was under the Union, and police brutality was mainly common during the election period.
154. On the rights of women and children in Zanzibar, he said that under Islamic law, once a girl reaches puberty, she can get married but under civil law, girls can get married from the age of eighteen.
155. On marital rape, the Honourable Minister explained that marital rape does not exist in Zanzibar. The law does not recognise marital rape as an offence. He said that where there is marriage, conjugal rights are assumed so there is no issue of consent unless the person wants to use unnatural ways of sexual intercourse.
156. He informed the delegation that civil society organisations are allowed to carry out their mandates in Tanzania and they have a good working relationship with government.

Meeting at the Zanzibar Legal and Human Rights Centre

157. At the Zanzibar Legal and Human Rights Centre, the delegation met with the Chairperson, Ms. Safia, Commissioner for Human Rights and Good Governance, Professor Maina Peters, Professor of Human Rights at the University of Dar es Salaam and Trustee of the Centre, and Mr Emmanuel P. Chacha, Administrative and Finance Officer.
158. The Chairperson gave an introduction of the Centre and its work. He said that the Centre was established in 1992 to provide legal aid services only in Zanzibar and it is the only legal aid clinic in Zanzibar. The Centre provides counselling, training, human rights advocacy, research, radio and TV programmes, publications, documentation and public seminars. The Centre also collaborates with other NGOs on various aspects of human rights promotion.
159. The Centre has seven full time lawyers and five supporting staff. It is run by a board of trustees not exceeding five, but there were only four trustees at the time of the visit. He explained that the purpose of the Centre included to:
 - Help organisations with training on human rights;
 - Work with Trade Unions, House of Representatives and the Judiciary;

- Train Paralegals to provide legal services;
 - Monitor violations of women and children's rights;
 - Collaborate or work with government if they request;
 - Publish books and documents on human rights.
160. He indicated that the Centre depends entirely on foreign funding. Previously the Centre received funding on project basis but lately on an annually basis. However he indicated that recently the Centre received a four year funding which was used mainly for salaries and project management.
161. Commissioner Malila wanted to know the incentives for the trained paralegals and the kind of legal aid the Centre provides, the relationship with the Legal and Human Rights Centre in Dar es Salaam, what prison programmes the Centre conducts, if any and, the Centre's involvement in elections.
162. The Chairperson explained that paralegals should have a minimum of form four level of education and must be employed. They must be resident in Zanzibar and usually receive a retention fee.
163. He said that the Centre provides legal aid by providing information and knowledge of how to proceed in court as well as prepare court documents for applicants. He explained that the Centre avoids going to court and therefore tries mediation as an alternative to going to court. The Centre avoids criminal cases and deals mostly with civil, matrimonial and human rights cases. He indicated that there were cases where the Centre asked private lawyers to take up for free. He noted that most of the cases were on land, labour and a few on family and inheritance disputes.
164. On the Centre's relationship with the Legal and Human Rights Centre in Dar es Salaam, the Chairperson said that collaboration was not institutionalised but they do have a working relationship. The two organisations produce the annual human rights reports together and are members of the Abolition of the Death Penalty Committee as well as members of Salaam Legal Assistance. He said they were also thinking of developing the Code of Ethics for Paralegals together.
165. On Prison Programmes, the Chairperson said that the Centre has no prison programmes but has had several trainings on human rights issues for prison officers. He explained that the Centre has an agreement with the

Ministry responsible to conduct training for all law enforcement officers, especially Coastal Guards.

166. Regarding the Centre's involvement in the electoral process, he indicated that during the 2005 elections, the Centre had one hundred and fifty (150) monitors who were monitoring the elections locally.
167. He concluded by stating that the human rights situation in the country is generally good.

DAR es SALAAM

Meeting at the Parliament Sub-Office of the National Assembly

168. At the Parliament Sub-Office of the National Assembly, the delegation met with Nevelwa Mwihambi, Legal Officer, Zainab Issa, Research Officer, Charles Mlokoa, Assistant Director Department of Parliamentary Legal Affairs Committee and Emmanuel Mpawa, Senior Research Officer.
169. Commissioner Malila was interested in knowing how Parliament was dealing with issues of human rights, whether there were any human rights concerns at National Assembly level, whether freedom of expression and association were observed as far as Parliament is concerned, the relationship with Zanzibar Parliament, the female representation in Parliament and what needs to be done to improve it, whether the Parliament Sub-Office have a Select Committee that deals with human rights.
170. Ms. Nevelwa Mwihambi explained that the Constitution of Tanzania gives Parliament the mandate to make government accountable for its actions. She said in 2001 the Human Rights Commission was established to receive complaints and make enquiries and recommendations on human rights issues. She said that Parliament has established a Select Committee to deal with actions of public officers against the citizens. One member complained that in Talimi, people were killed during the election period. She said the Committee conducted an enquiry into the alleged killing of people in Talimi during the elections and reported to Parliament.
171. On Freedom of Expression, she said that they have experienced quite a change from being a single party to a multi party Parliament. She explained that Freedom of Expression was exercised in caucus and not in Parliament but now it is expressed openly. She said in the single party system, members were punished for criticizing the ruling party openly, but since 2005 things have changed.

172. On separation of powers, she explained that the Executive, Judiciary and Parliament exercise their mandate and do not interfere with one and other. She noted that this position is well stated in the Constitution. She explained that the different organs do cooperate but there are checks and balances.
173. On female representation in Parliament, she indicated that there was a thirty percent (30%) representation of women in Parliament, but it is hoped that this number will increase to fifty percent (50%). She indicated that many of the women constituting the thirty percent (30%) were not elected by their Constituency, because of the cost implications as the majority of them are poor and cannot afford the high cost of campaigns. She said by 2010, it is hoped that there will be a 50:50 representation of men and women in Parliament.
174. By doing so government plans to come up with an Act to allow both men and women to stand in the elections. She however noted that she is not sure if that would work. She indicated that she believes women can do a good job and thinks that government should train women to believe in themselves.
175. Mr Emmanuel Mpawa noted that from a male point of view, it was natural to get worried that women were trying to have a 50:50 representation in Parliament. He noted that there might be an over emphasis on women and gender issues. He suggested that there should be a gradual process instead of adopting the European approach.
176. On collaboration with the Zanzibar Parliament, he said that there were five (5) members of the Zanzibar House of Representatives who sit in the Union Parliament, but there was no representation from Tanganyika in the Zanzibar Parliament, and this raised a lot of questions.
177. On the domestication process international instruments, he said Parliament cannot act *suo motu*, unless the government initiates the process of bringing Bills before Parliament.

Meeting at the Office of the Opposition Leader

178. At the office of the Opposition Leader, the delegation met with the MP of Pembe, Hon. Salim Hemed Khamis, the MP from Konde Constituency Hon. Dr Ali Tarab Ali, Mr Mohammed, Media Officer for Human Rights and Public Relations, and Mr Khelef Ghasani, the Coordinator of the Opposition Leaders Office.
179. The delegation was informed that there are three opposition parties, namely, the Civic United Front with thirty-two (32) Members of Parliament,

SHADAMA with eleven (11) Members of Parliament and UDP with one (1) Member of Parliament, making a total of forty-four (44) Members of Parliament out of three hundred and seventeen (317) Members of Parliament in total. The Honourable Member of Parliament from Pembe, said that there was some degree of separation of powers in government but the majority of Members of Parliament belong to the ruling party. He said the Constitution provides for separation of powers but the implementation was a problem. He noted that in reality there was only one power in Parliament, and that is the ruling party.

180. On freedom of expression, he said that, the Constitution provides for the right to freedom of expression. However, because the opposition was in the minority, it cannot influence freely and express itself especially on issues that threaten government interest. He indicated that even if they put forward very strong arguments in Parliament, since everything is under the vote, it is difficult to get their points accepted.
181. Hon. Khamis further explained that there was freedom of speech but the members of the ruling party cannot go against their government, they support the ideas of the government. He explained that anything put forward by government, be it positive or negative should be supported by the Members of Parliament of the ruling party.
182. On the electoral process, Hon. Khamis said there was not a fair electoral process. He noted that there needs to be a change of the Constitution because it is essentially the same Constitution that was used in the one party era. He said there needs to be an Independent Electoral Commission because the current one is not independent. He explained that the government would do anything possible to stay in power including violating human rights.
183. He said during the election period and sometimes six (6) months before the elections, several troops are sent to Zanzibar and these troops do not only threaten the people, but also make sure that the government stays in power by any means necessary. He added that in 2001 there was the shooting of innocent people, raping of women by the military personnel, brutal beating of members of Parliament and burning down of houses and businesses.
184. He said in mainland Tanzania, votes went missing and many people were not allowed to vote, even if they had a voter's card, their name were missing from the register. In some places there was double and sometimes triple voting for some and no votes for others.
185. When asked whether he believes that the problems associated with elections would end, if the Electoral Commission included Commissioners

from the opposition party, Hon. Khamis said that in 2001 the idea to have members of the opposition party in the Commission came up, but in Zanzibar two (2) members out of seven (7) were from the opposition party but they did not have any voice or power. He noted that the only way to improve the electoral system is to state in the Constitution the number of members of the opposition in the Commission. He said in 2005, in Zanzibar, after the elections, the Chamachamapinduzi members were the ones who counted the votes and the two (2) opposition members who were present at the time, were locked up in an office while the other members counted the votes in their absence.

186. When asked why there were representatives from Zanzibar Parliament in the Union Parliament while in Zanzibar Parliament there are no representatives from the Union Parliament, Hon. Khamis said that it is because some of the issues decided on in the House of Representatives in Zanzibar, are approved in the Union Parliament. The reality he said is that the Union Parliament is mandated by the Constitution which states that there should be a separate Government in Zanzibar.

Meeting at the Tanganyika Law Society

187. At the Tanganyika Law Society, the delegation met with the Secretary/ Chief Executive Officer Ms Cheggy C. Mziray, Assistant Litigation Officer Fulgence T. Massawe Esq.
188. Commissioner Malila introduced the delegation and explained the purpose of the visit. He indicated that he wanted to know the society's views on various human rights issues including extra judicial killings on the part of the police, the death penalty, conditions of prisons, human rights awareness, and legal aid in Tanzania.
189. The Secretary of the Tanganyika Law Society explained that according to the law, in any human rights case, there must be three judges presiding over a case but the problem in Tanzania is that, there are not many judges and it is very difficult to have three (3) judges sitting at the same time.
190. On the death penalty, she said it still exists in Tanzania. She explained that in commemoration of the Day of the Death Penalty, the Tanganyika Law Society filed a petition challenging the death penalty. She explained that the petition is about the constitutionality of the death penalty. She noted that most of the time the petitions from the Tanganyika Law Society are not about decisions and results but mostly to express its discomfort that it does not agree with the death penalty. She said the procedure from sentencing to execution is a violation of human rights. She explained that, an inmate in

prison can wait for the hearing of a murder case for many years and this leads to various administrative problems.

191. On prisons, she indicated that the conditions were bad, noting that there is a lot of disease in the prisons. She said the Tanganyika Law Society provides legal aid to prisoners who are found to be in need of assistance. The Society also has legal aid programmes where they provide legal advice and pro-bono services. Legal Aid Day is celebrated each year all over Tanzania and three hundred (300) cases have been taken to court by the Society, with no fees attached.

Visit to the Segerea Remand Prison

192. The delegation visited the Segerea Remand Prison on the final day of the mission. Prior to the visit, the delegation met with the Commissioner of Prisons, the Deputy Commissioner of Prisons and the Heads of Departments of the Sagerea Prison.
193. After explaining the mandate and establishment of the ACHPR, Commissioner Malila informed the authorities of Sagerea Prison that he was also the Special Rapporteur on Prisons and Conditions of Detention in Africa. He said that the problems of prisons in Africa are basically the same and solutions should be found. He emphasized about the lack of facilities and overcrowding in prisons in Africa.
194. The Commissioner of Prisons thanked Commissioner Malila and his delegation for visiting the Segerea Prisons. He indicated that there was a combination of challenges, including the lack of resources and capacity. He said that the authorities work with other countries to come up with norms and standards that would help the prisons. He noted that the visit was a morale booster for the prison staff and should be done more often.
195. One of the prison authorities, ASP. Rweye gave a brief introduction on behalf of the entire staff of Dar es Salaam region and Segerea Remand Prison. He explained that there are three central prisons and one medium security prison. The three central prisons are, Ukonga, Keko and Segerea which accommodate different types of remand and convicted prisoners, while the medium security prison at Wazo Hill accommodates only short-term convicted prisoners.
196. He said the Regional Prison Administration is supported by a total number of one hundred and thirty-two (132) officers, one thousand two hundred and fifty-eight (1258) disciplinary staff and twenty-two (22) civilian staff and is headed by the Assistant Commissioner of Prisons who is the Regional Prisons Officer.

197. He indicated that the prison was built in 1992. He said that the juvenile and women's wings were separated. Most of the remandees were charged with armed robbery and murder and the convictions range from three (3) months for stealing, six (6) months for theft to thirty (30) years for rape. He said the convicted prisoners were in uniform and the remand prisoners were not in uniform. He explained that the total number of prisoners in the Segerea Prison was two thousand (2000) and the daily food was porridge, beans, soup and fruits. He indicated that there was inadequate water supply.
198. In the remand wing, there were one thousand five hundred (1500) remandees. Each cell accommodated one hundred and seventy-five (175) prisoners instead of the recommended capacity of fifty-seven (57) prisoners per cell. All the prisoners slept on mattresses and were provided with blankets. Water was a major problem and had to be fetched from outside. The recommended water supply needed for the prison is seventy-two thousand (72,000) litres a day, but inmate's only about forty thousand (40,000) litres of water a day. Although the toilets looked relatively clean, there was no running water in the toilets. All the cells had buckets of water for toilet and general use.
199. The prison kitchen was clean and because of lack of facilities, the food was cooked on firewood. The kitchen lacked proper utensils, and the prisoners used a huge piece of wood as a cooking spoon. The prisoners were served two meals a day, porridge for breakfast, and beans, soup and fruits as the combined meal for lunch and dinner. The food was cooked by the prisoners themselves. There was a room which served as a mini hospital ward where prisoners were taken when they were ill. There were also few sick prisoners at the time of the visit. The delegation was informed that once the prisoners get seriously sick they are transferred to the public hospitals for proper treatment.
200. In the female wing, there were one hundred and four (104) remandees and twenty-eight (28) convicts. All the convicts wore uniforms and the prisoners in remand wore normal clothes. There were five (5) children in the wing, three (3) of whom were born in the prison. Most of the prisoners were charged with murder, robbery and drug trafficking. The female prisoners were provided with beds and blankets. The female wing was generally cleaner than the Remand and Juvenile Wings.
201. In the juvenile wing, there were one hundred and sixty-four (164) juvenile prisoners, twenty-six (26) of whom were convicted. Most of the juveniles' were charged with rape, stealing and murder. The juvenile section was clean and they were provided with mattresses and blankets. The youngest

juvenile prisoner was thirteen (13) years and was charged with murder, although he was not yet convicted at the time of the visit.

202. The prison had some buses which transports the prisoners to and from the courts. There was also an ambulance to transport the sick to public hospitals in case of an emergency. All the prison officers were well dressed in clean uniforms and the prison environment seemed very calm and clean. However there were no recreational facilities in the Segerea Prison.

Press Conference

203. Commissioner Malila held a Press Conference attended by the local press, in particular Citizen Newspaper, Guardian Newspaper and the national television crew, where he read a press statement to enlighten the media about the mission in the United Republic of Tanzania. Questions were asked by the journalist present regarding the mission and Commissioner Malila provided answers to them.

IV. CONCLUSION AND RECOMMENDATIONS

OBSERVATIONS AND ANALYSIS

204. The mission of the ACHPR lasted for five (5) days and the delegation was able to meet a cross section of relevant actors working in the field of human rights in the country. The ACHPR is therefore satisfied that the meetings held with the individuals and institutions have given a general idea of the human rights situation in the United Republic of Tanzania.
205. This section of the report will analyse the human rights situation in the country and make observations based on the meetings and discussions held with the different stakeholders. The positive factors are identified and ones of concern pointed out.
206. The Commission commends the United Republic of Tanzania for ratifying major international and regional human rights instruments and for the efforts it is making in domesticating some of these instruments. The Commission is however concerned that Tanzania has not ratified some of the key instruments such as the African Charter on Democracy, Elections and Governance, the Convention Against Torture, Cruel, Inhuman and Degrading Treatment or Punishment, the Second Optional Protocol on Civil and Political Rights and has not made the Declaration under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court.
207. The Commission commends the United Republic of Tanzania for the efforts it is making in addressing the problems confronting the prison service in the country. In particular the Commission acknowledges the provision of mattresses and blankets to prisoners and for facilitating prisoner's educational advancement. Overcrowding and delays in prosecuting remandees, however continue to be a source of concern for the Commission.
208. The Commission welcomes the efforts of the government of Tanzania through the legal sector reform which have resulted in the devising and revision of the Code of Conduct for Tanzania Prison Officers, the Police General Orders, Prisons Standing Orders, Guidelines for the Police on the Election Process etc.

209. The Commission welcomes the 2007 revision of the National Health Policy which has facilitated access to health care by less privileged sections of the Tanzanian society.
210. The Commission welcomes the steps taken in the area of legislation to:
- I. better enhance the rights of orphans,
 - II. protect society against the spread of HIV/AIDS,
 - III. protect the dignity of mentally disordered persons,
 - IV. uphold the welfare of persons with disabilities.
211. The Commission notes with appreciation that Tanzania has since 1977 not carried out any execution of condemned prisoners and has thus lived within the spirit of the Commissions resolution on the moratorium on the death penalty taken in Kigali in 1999. The existence of the death penalty on the statute books of Tanzania, however, remains a matter of concern to the Commission.
212. The Commission takes note of the existence of various laws in Tanzania intended to protect the rights of women and children and which criminalise exploitation, sexual violence, discrimination and harmful traditional practices against women and children. The Commission however remains concerned that despite the existence of these laws, the rights of women and children, especially the girl child, continue to be violated. The widespread practice of FGM, forced marriages, and non recognition of marital rape in Zanzibar, among others, continue to undermine the rights of women and children.
213. The growing phenomenon of using Albino parts allegedly to improve business fortunes in the mining and fishing industries in Tanzania, are a source of grave human rights concern. While welcoming Government efforts to address the situation, the Commission believes more could be done to halt the practice.
214. The Commission commends the government of the United Republic of Tanzania for the efforts it is making to combat corruption at the Ministry of Health;
215. The Commission commends the government of the United Republic of Tanzania for the good number of female adjudicators and is encouraged to continue to do more in that regard;

RECOMMENDATIONS

216. The various meetings held by the delegation during the mission with various stakeholders in the United Republic of Tanzania provided a useful basis for the assessment of the human rights situation in the country and the recommendation that follow for the better observance and protection of human rights in the country.
217. Tanzania has made tremendous progress in the promotion and protection of human rights since its reversion to multiparty democracy. There is however considerable room for improvement in various spheres of human rights promotion and protection.
218. There also seems to be a gap in the promotion and protection of human rights between Tanzania mainland and Zanzibar due to the different traditional practices, norms, beliefs and laws governing the respective regions.
219. The Commission makes the following recommendations to the Government:
 - i. To ratify outstanding key human rights instruments including;
 - ii. To continue to undertake sensitization programmes aimed at galvanizing public opinion in favour of the eventual abolition of the death penalty;
 - iii. To intensify the efforts aimed at enhancing the betterment of prisons conditions, in particular to address the issue of overcrowding in detention facilities including construction of new prisons, implementing alternative sentencing policies etc;
 - iv. To ensure the availability of adequate water supply in the prisons;
 - v. To provide educational programmes in the prisons, particularly for juveniles’;
 - vi. To undertake deliberate policies aimed at addressing the problems confronting the judiciary in Tanzania, in particular the delays in the dispensation of justice;
 - vii. To appoint more judges to deal with the heavy work load in the courts;
 - viii. To step up efforts aimed at eradicating harmful traditional practices such as those responsible for the perpetuation of FGM in spite of the existence of legal provisions proscribing such practices;

- ix. To adopt efficient measures to deal with the growing phenomenon of using Albino body parts allegedly to enhance business fortunes. The Commission recommends the use of specific intelligence officers to investigate perpetrators and gather information;
- x. To afford the Commission for Human Rights and Good Governance sufficient resources and facilities to effectively undertake their mandate of investigating human rights violations and recommending measures to redress the same;
- xi. To collaborate closely with the Commission for Human Rights and Good Governance in sensitization programmes on human rights, in the state reporting process, and in devising new legislation or amending legislation with human rights implications;
- xii. To domesticate the provisions of the Protocol on the Rights of Women in Africa, particularly with regard to violence against women, minimum age for marriage and marital rape;
- xiii. To consider repelling laws which criminalize unmarried pregnant girls and ensure girls are maintained in schools;
- xiv. To take measures to improve the electoral process to ensure free and fair elections, free from harassment and brutality, especially in Zanzibar;
- xv. To expedite the enactment of the Mental Health Bill.

220. The Commission recommends to Civil Society:

- i. To intensify their efforts of advocacy and sensitization of the public on such issues as women's rights and the death penalty;
- ii. To coordinate effectively in synergizing their efforts in the provision of legal aid and to the indigent in society;
- iii. To apply for observer status with the African Commission and to participate in the work of the Commission.