

**LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION  
OF HUMAN RIGHTS IN TANZANIA**

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REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS (LL. M)**

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**CERTIFICATION**

The undersigned certifies that he has read and here by recommends for acceptance by The Open University of Tanzania a dissertation entitled; **“Legal and Institutional Framework for the Protection of Human Rights in Tanzania”** in partial fulfilment of the requirements for the award of Degree of Master of Laws by Coursework and Dissertation (LL. M) of the Open University of Tanzania.

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Date

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## **DEDICATION**

I dedicate this dissertation to my beloved wife Anthonia Joseph Kalomba and our wonderful children, Grory, Dorcas, Michael, Upendo, Herieth, Gabriel and Daniel for their unwavering support, understanding, and encouragement have been the pillars of strength that carried me through the challenges and triumphs of this academic endeavor. May this dedication serve as a token of my deepest appreciation and a testament to the love, strength, and unity of our family. Without you, this journey would not have been as meaningful or fulfilling. Thank you for being my rock, my inspiration, and my source of happiness.

With all my love,

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While I take full responsibility for any shortcomings in this study, I am deeply grateful for the collective effort and support that made this research possible. Thank you all once again for your invaluable contributions and assistance.

## ABSTRACT

This dissertation aims to critically assess the legal and institutional framework for the protection of human rights issues in Tanzania. The study investigates the effectiveness of existing laws, policies, and institutions in safeguarding and promoting human rights within the country. The research findings reveal several strengths and weaknesses in the legal and institutional framework for human rights protection in Tanzania. The analysis of the legal framework indicates that Tanzania has ratified international human rights conventions and has domesticated them through legislation, such as the Constitution of the United Republic of Tanzania and the Bill of Rights. However, implementation gaps and inconsistencies in the enforcement of these laws present significant challenges. The study identifies institutional mechanisms responsible for the protection and promotion of human rights. While these institutions play a crucial role, their effectiveness is hindered by limited resources, insufficient capacity, and a lack of coordination and collaboration among them. The research highlights specific human rights issues prevalent in Tanzania, such as freedom of expression, access to justice, women's rights, and the rights of marginalized groups. It explores the extent to which the legal and institutional framework addresses these issues and provides recommendations for strengthening human rights protections. The findings of this study contribute to the existing body of knowledge on human rights in Tanzania and provide insights for policymakers, governmental bodies, civil society organizations, and other stakeholders involved in human rights advocacy. The recommendations derived from this research aim to improve the protection of human rights in Tanzania.

**Keywords:** *Legal and Institutional, Framework, Human Rights, Tanzania.*



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## **LIST OF LEGAL INSTRUMENTS**

### **I] International Legal Instrument**

The African Charter for Human and People's Rights, 1981

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment  
or Punishment (CAT), 1984

The Convention on the Elimination of All Forms of Discrimination against Women,  
1979

The Convention on the Elimination of All Forms of Racial Discrimination (CERD),  
1965

The Convention on the Rights of Persons with Disabilities (CRPD), 2006

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

The Covenant on Civil and Political Rights, 1966

The Declaration on the Rights of Indigenous Peoples (DRIP), 2007

The General Assembly resolution 2542 (XXIV), 1969

The International Convention on the Protection of the Rights of All Migrant Workers  
and Members of Their Families (ICRMW), 1990

The International Covenant on Economic, Social, and Cultural Rights, 1966

The International Labour Organization, 1919

The Universal Declaration of Human Rights, (UDHR) 1948

### **II] Domestic Legal Instruments**

The Anti-Trafficking in Persons Act No. 6 of 2008

The Commission for Human Rights and Good Governance Act no. 7 of 2001

The Constitution of the United Republic of Tanzania, 1977



The Eleventh Constitutional Amendment Act No 34 of 1994

The Environmental Management Act No. 20 of 2004

The Fifth Constitutional Amendment Act No. 15 of 1984.

The Interim Constitution of 1965

The Protection of Human Rights under the Legal Aid Act, 2017

**LIST OF ABRIVIATIONS**

ACHPR	The African Charter for Human and People's Rights
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCPR	Covenant on Civil and Political Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CHRAGG	Commission of Human Rights and Good Governance
CRC	Convention on the Rights of the Child (CRC)
CRPD	Convention on the Rights of Persons with Disabilities
DRIP	Declaration on the Rights of Indigenous Peoples
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ILO	International Labour Organization
THRC	Tanzania Human Rights Commission
UDHR	Universal Declaration of Human Rights
URTC	United Republic of Tanzania Constitution

## CHAPTER ONE

### INTRODUCTION AND BACKGROUND OF THE STUDY

#### 1.1 Introduction

Human rights are fundamental entitlements that are universally recognized and protected. They encompass a wide range of civil, political, economic, social, and cultural rights that are inherent to every individual, regardless of their nationality, ethnicity, gender, religion, or any other characteristic. Human rights are enshrined in various international, regional, and national legal instruments, including treaties, conventions, and constitutions, and are considered essential for the well-being and dignity of every human being.

Like many other countries, Tanzania has ratified several international human rights treaties, such as the Universal Declaration of Human Rights,<sup>1</sup> the International Covenant on Civil and Political Rights,<sup>2</sup> the International Covenant on Economic, Social, and Cultural Rights,<sup>3</sup> and the Convention on the Elimination of All Forms of Discrimination Against Women,<sup>4</sup> The African Charter for Human and People's Rights,<sup>5</sup> among others. These ratifications reflect Tanzania's commitment to upholding human rights principles and norms at the international level.

At the national level, Tanzania has also enacted laws and established institutions to protect human rights. The Constitution of the United Republic of Tanzania,<sup>6</sup> guarantees various human rights, including the right to life, liberty, and security of

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<sup>1</sup> The Universal Declaration of Human Rights, (UDHR) 1948

<sup>2</sup> The Covenant on Civil and Political Rights, 1966

<sup>3</sup> The International Covenant on Economic, Social, and Cultural Rights, 1966

<sup>4</sup> The Convention on the Elimination of All Forms of Discrimination Against Women, 1979

<sup>5</sup> The African Charter for Human and People's Rights, 1981

<sup>6</sup> The Constitution of the United Republic of Tanzania, 1977

person, the right to equality and non-discrimination, the right to work and enjoy just and favorable conditions of work, the right to education, and the right to health, among others. Additionally, Tanzania has established institutions such as the Commission for Human Rights and Good Governance (CHRAGG), the Tanzania Police Force, and the Judiciary, which play crucial roles in safeguarding human rights and ensuring accountability.

CHRAGG is an independent government department vested with broad mandate to promote and protect human rights in Tanzania. The CHRAGG covers a wide range of functions with the core functions of promoting and protecting human right. Other functions include receiving and investigating complaints, conducting research, monitoring and enquiring into matters involving the violations of human rights and contravention of the principles of administrative justice, institute proceedings in court.<sup>7</sup>

Despite these legal and institutional frameworks, human rights issues persist in Tanzania. Reports of violations, including arbitrary arrests and detentions, restrictions on freedom of expression and assembly, discrimination against marginalized groups, violence against women and children, and violations of economic, social, and cultural rights, have been documented. Therefore, there is a need for an assessment of the legal and institutional framework for the protection of human rights issues in Tanzania to identify gaps, challenges, and areas for improvement. This study examines the legal and Institutional Framework Governing protection of Human Rights in Tanzania.

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<sup>7</sup> Article 130(1), *ibid*

## 1.2 Background of the Study

The historical development of protection of human rights in Tanzania can be traced back to various historical periods, including the pre-colonial, colonial era, independence, and post-independence periods. In most of pre-colonial African societies, including Tanzania, recognized, respected and enforced human rights. However, in contrast to modern conception of human rights which stresses individual protection, pre-colonial African society's emphasized collective expression.<sup>8</sup>

It may be noted that the Basic rights and duties were protected and accepted in the framework of family, clan or kinship. On top of that, protection of human rights was based on ascribed status such as person's place of birth, tribe or social unit. Human rights were protected by custom rather than by codes, but often involved well defined procedures. These procedures had the character of conciliation, arbitration and mediation. The human rights concept was embodied in culture and religion in the society.<sup>9</sup>

Additionally, Culture and religion formed a sort of a legal system and a shared moral code that respected human rights without any formal acknowledgement of the concept. For instance, pre-colonial African societies respected and protected the rights to equality and non-discrimination. Pre-colonial African societies believed that all members of the society were born equal and were supposed to be treated as such

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<sup>8</sup> Welch, C.E. Jr., "Human Rights as a Problem in Contemporary Africa" in Human Rights and Development in Africa, State University of New York Press, 1984, p. 11.

<sup>9</sup> *ibid* Article 130(1), *ibid*

regardless of age or sex.<sup>10</sup>

During the colonial era, Tanzania was under German (1890 – 1918) and later British rule (1919 – 1960). Colonialism itself is a violation of human rights as it purely infringes the right to self-determination of the colonized people.<sup>11</sup> Since colonialism itself is a violation of human rights, development of a human rights culture undermines the purpose of colonialism. Therefore, it is a priority of every colonizer to suppress human rights in a colonial territory. The colonial authorities largely focused on economic exploitation and control, resulting in widespread discrimination, oppression, and violation of the rights of the indigenous populations.

Tanzania gained independence from Britain in 1961, and human rights became a key issue during the formation of the new nation. During negotiation for power handover, the British colonialist suggested to include the Bill of Rights in the Independence constitution. This was rejected by the leadership of the Tanganyika African National Union (TANU), the party that struggled for independence. The rejection was premised on the idea that human rights would frustrate developmental measures.<sup>12</sup>

The concept of human rights was considered a luxury and an attraction of conflicts whereby the inclusion of the Bill of Rights in the Independence Constitution would undermine developmental strategies.<sup>13</sup> Surprisingly, even though the Independence

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<sup>10</sup> *ibid*

<sup>11</sup> This contrary to the Bill of Rights which Tanzania guarantees to her people

<sup>12</sup> Shivji, I. (1996) *New Constitutional Order: The State of the Debate in Tanzania*, p.6: Paper presented at the Symposium on the Constitution and Electoral Laws, the British Council, 1996

<sup>13</sup> Shivji, I. *Supra*

Constitution did not contain a Bill of Rights, fundamental freedoms were acknowledged in the Preamble. On top of this, the Constitution conferred upon the Legislature the power to make laws for the peace, order and good governance.<sup>14</sup>

The Republican Constitution and the Interim Constitution did not include the Bill Rights provisions but they did recognize people's fundamental freedoms in their preambles. The Preamble of the Interim Constitution provided, among others, that whereas freedom, justice, fraternity and concord are founded upon the recognition of the equality of all men and of their inherent dignity, and upon the recognition of the rights of all men to protection of life, liberty and property, to freedom of conscience, freedom of expression and freedom of association, to participate in their own government, and to receive a just return for their labours.<sup>15</sup>

However, in 1984, the Bill of Rights was finally included in the Constitution of Tanzania<sup>16</sup> whereby the justifiability of the Bill of Rights commenced in 1988 after elimination of all laws that contravened the Bill of Rights. The Constitution conferred original jurisdiction upon the High Court over any complaint alleging that any provision in the Bill of Rights has been violated, is being violated, or is likely to be violated.<sup>17</sup> Furthermore, in 1994 the Parliament enacted the Basic Rights and Duties Enforcement Act (BRADEA) to regulate justiciability of the Bill of Rights.

Despite the Tanzania ratification of the above international treaties and the existence of constitutional and legal frameworks for human rights protection in Tanzania, there

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<sup>14</sup> In the Independence Constitution of 1961, the Legislature was composed of the Queen of England and the National Assembly

<sup>15</sup> Article 3(1) of the Interim Constitution of 1965

<sup>16</sup> Through the Fifth Constitutional Amendment Act No. 15 of 1984

<sup>17</sup> Article 30(3) of the Constitution, *supra*

have been challenges and concerns. The challenges remain in their implementation, including lack of effective domestication of treaty provisions into national laws, limited awareness and understanding of international human rights standards, and inadequate capacity for monitoring and reporting on treaty compliance.

These include limited access to justice, restrictions on freedom of expression, association, and assembly, discrimination and violence against marginalized groups, limitations on the independence of the judiciary and other oversight institutions, and shrinking space for civil society organizations and human rights defenders. There have been reports of harassment, arbitrary arrests, and intimidation of activists, journalists, and opposition members, as well as restrictions on social media, protests, and public gatherings.<sup>18</sup>

The protection and promotion of human rights in Tanzania is an ongoing process, and progress continues to be made alongside persistent challenges.

### **1.3 Statement of the Problem**

Tanzania has ratified various international human rights treaties and has also enshrined human rights in its constitution. However, despite these efforts, there are concerns about the effectiveness of the legal and institutional framework for the protection of human rights issues in Tanzania. The problem lies in the inadequate implementation and enforcement of the legal and institutional framework for the protection of human rights issues in Tanzania.

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<sup>18</sup> Legal and Human Rights Centre Annual Reports, 2021 and 2022



Some of the legal issues related to the promotion and protection of human rights includes the Constitutional amendment<sup>19</sup> which introduced Article 30(5) which provides that, where the High Court finds violation of the Bill of Rights, instead of declaring the violating conduct or law null and void, it may give time to the particular authority or person to rectify the law or conduct. This provision has been subject of criticisms including that: (a) it transfers the court's power to determine appropriate remedy to administrative organs; (b) it endorses wrongs by allowing an offending law or conduct to continue operating; and (c) it defeats the doctrine of separation of powers.

The competence to promote and protect human rights in Tanzania faces certain degree of limitation whereby the president of Tanzania has powers to prohibit the Commission from investigating any matter.<sup>20</sup> When the government is implementing various economic policies and economic development, sometimes it involves violation of basic human rights. For example, the most recent evacuation of Maasai People from the Ngorongoro Conservation Area by the government violated a number of basic human rights.<sup>21</sup> Thus, the Commission has no power generally to investigate on human rights violations which are done by the order of the president. This undermines the competence of the Commission to function as promoter and protector of human rights in Tanzania as provided under the above-mentioned Paris Principles.

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<sup>19</sup> The Eleventh Constitutional Amendment Act No 34 of 1994

<sup>20</sup> Article 130(4), *ibid*, and Section 16(2)(d) of the Commission for Human Rights and Good Governance Act no. 7 of 2001

<sup>21</sup> UN, Statement by the Chairperson of the Permanent Forum on the eviction of Maasai people from the Ngorongoro Conservation Area in Tanzania, 2022 retrieved from <https://www.un.org/development/desa/indigenouspeoples/news/2022/06/statement-by-the-chairperson-of-the-un-permanent-forum-on-indigenous-issues-with-reference-on-the-eviction-of-maasai-people-from-the-ngorongoro-conservation-area-in-tanzania/> visited on 30/11/2022

Another limitation of CHRAGG powers to execute protection of human rights and good governance is that which CHRAGG is barred when discharging its functions from inquiring into any other matter mentioned in the law.<sup>22</sup> This is another handcuff to the commission to perform its functions properly as there might be possibility of some laws to be enacted while acting as key sources of violation of human rights or bad governance.

Some of the other key institutions that play a role in protecting human rights in Tanzania includes: the Tanzanian Constitution which contains a Bill of Rights that outlines the fundamental human rights and freedoms that are guaranteed to all citizens; The judiciary which is responsible for interpreting and enforcing the laws of the country; The Tanzanian Police Force which is responsible for maintaining law and order in the country.

Other institutions include the Tanzania Human Rights Defenders Coalition (THRDC) which is a coalition of civil society organizations that work together to protect and promote human rights in Tanzania; the National Gender Policy which provides a framework that aims to promote gender equality in Tanzania, and the National Anti-Corruption Strategy which is a framework that aims to promote accountability and transparency in government institutions. Corruption is a violation of human rights and undermines the rule of law, and the strategy seeks to address these issues.

The above-mentioned institutional framework for the protection of human rights issues in Tanzania are not free form challenges. Those challenges limit their ability

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<sup>22</sup> Article 130(2) of the URT Constitution, *supra*

to effectively advocate for human rights issues and hold other related institutions accountable. Therefore, it is imperative to address these challenges in this foregoing study for the purposes of strengthening the legal and institutional framework for the protection of human rights issues in Tanzania.

#### **1.4 Literature Review**

For the purpose of establishing a research gap the researcher has analysed several literatures both local and foreign regarding literatures related to Powers of the CHRAGG as a National Human Rights Institution for promoting and protecting human rights in Tanzania. The below literatures cited in this study have been analysed as they are relevant to determine the potential legal gaps that form the scope of the present study. The review of some international literatures is important due to the fact that the standards for competence of National Human Rights Institutions are prescribed under the General Assembly Resolution setting standards for National Human rights Institutions. The existing knowledge human rights protection is also included in this review.

The United States Department of State through its Bureau of Democracy, Human Rights and Labour in 2020 released a report which adds a significant contribution to the literatures on the Powers of the Commission for Human Rights and Good Governance in Tanzania (CHRAGG)<sup>23</sup>. According to the report, although Tanzania has signed several international legal instruments on protections of human rights, and despite of the presence of the National Commission for protection of Human Rights,

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<sup>23</sup> United States Department of State, Bureau of Democracy, Human Rights and Labour, Country Reports on Human Rights Practices for 2020, copied from <https://www.state.gov/wp-content/uploads/2021/03/TANZANIA-2020-HUMAN-RIGHTS-REPORT.pdf> on 20/11/2022

significant human rights issues are still present in Tanzania. There issues of unlawful or arbitrary killings, including extrajudicial killings by the government or on behalf of the government; forced disappearance by the government or on behalf of the government; torture and cases of cruel, inhuman, or degrading treatment or punishment by the government or on behalf of the government; harsh and life-threatening prison conditions; arbitrary arrest or detention; political prisoners or detainees.<sup>24</sup>

The report further reveals the presence of serious problems with the independence of the judiciary; arbitrary or unlawful interference with privacy; serious restrictions on free expression, the press, and the internet, including violence, threats of violence, or unjustified arrests or prosecutions against journalists, censorship, site blocking, the existence of criminal libel laws even if not enforced; overly restrictive nongovernmental organization laws; substantial interference with the rights of peaceful assembly and freedom of association; refoulement of refugees to a country where they would face a threat to their life or freedom or other mistreatment of refugees that would constitute a human rights abuse; inability of citizens to change their government peacefully through free and fair elections; restrictions on political participation where elections have not been found to be genuine, free, or fair; serious acts of corruption and use of forced or compulsory child labour.

The author has identified a number of human rights violations in Tanzania despite of the presence of the human rights Commission as a National Human Rights Institute mandated for promotion and protection of Human Rights. The author did not

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<sup>24</sup> *ibid*

examine whether the Commission has enough powers to execute protection of human rights mandate. This study serves the purpose.

The EISA,<sup>25</sup> Is another author who has contributed to the literatures related to CHRAGG. According to the author, CHRAGG has a very broad mandate of promoting awareness of human rights and investigating violations. Since its creation, the commission has been active in a number of protective functions. First, it receives and investigates complaints and/or allegations of human rights violations and contravention of principles of administrative justice. It also conducts public hearings on the same and proposes compensations where appropriate. Second, it initiates proceedings on its own. Third, it handles individual complaints concerning the violation of human rights generally, with vested rights to investigate, conduct hearings and settle disputes. However, the then Chairman of the Commission Justice Kisanga has once in 2005 noted that the lack of institutional cooperation and good faith by the government impeded investigations as public servants either delayed in answering the Commission's letters of inquiry or refused out right to do so.

The author did not state the constitutional limitations facing the Commission to execute its functions in line with the Paris Principles. This study does. This study also identifies some existing knowledge on protection of human rights by examining some common international legal instruments that provide a framework for protecting human rights. One such instrument is the Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations General

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<sup>25</sup> Electoral Institute for Sustainable Democracy in Africa (ELISA), Tanzania: Commission for Human Rights and Good Governance, 2009, retrieved from <https://www.eisa.org/wep/tanagency.htm> visited on 25/11/2022

Assembly in 1948. The UDHR outlines a broad range of rights and freedoms that should be guaranteed to all individuals, including the right to life, liberty, and security of person, freedom of expression and association, and the right to a fair trial.

Jensen, et al.,<sup>26</sup> contributes to the foregoing literatures by stating that, the trend towards ‘domestic institutionalization’ has inspired renewed attention to the importance of national-level institutions within the international human rights regime, including revisiting the roles of state actors. These developments represent a response to bridging the implementation gap between human rights commitments and reality. The international community is witnessing converging trends towards a domestic institutionalization of human rights. These trends are emerging at a complex time when contestations over the legitimacy of human rights and its international regime for promotion and protection have become increasingly widespread. The primacy of domestic human rights implementation has always been at the core of human rights protection and promotion, the new dynamics of ‘domestic institutionalization’ of human rights have been under way and represent a response to bridging the implementation gap between commitments and reality. This new form of response has implications on a worldwide scale and deserves critical exploration.

The authors add up to the existing knowledge on protection of human rights at international level by identifying other legal instruments. The important international treaties include the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR),

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<sup>26</sup> Jensen, S. et al., *The Domestic Institutionalization of Human Rights: An Introduction*, Norwegian Centre for Human Rights, 2019

which were both adopted in 1966. The ICCPR focuses on civil and political rights such as freedom of speech, religion, and assembly, while the ICESCR focuses on economic, social, and cultural rights such as the right to work, education, and healthcare. This literature is very useful to the foregoing study.

Mertus,<sup>27</sup> has also contributed to the literatures on protection of human rights at domestic level. Mertus states that, among human rights advocates, dominant wisdom holds that the promotion and protection of human rights relies not on international efforts, but on domestic action. International institutions may capture news headlines, but it is national groups that effectively shape local expectations and ultimately make human rights matter. The author further states that, National institutions are incredibly difficult to design and operate, and they are only as good as the domestic political and economic factors will allow. It is too frequently seen that countries most supportive of human rights on the world stage may prove to be highly disappointing back home. The author has demonstrated that good functioning of a National human rights institution depends on the support they get from the government. This study demonstrates how CHRAGG functioning depends on the financial support from the government. It demonstrates further that the Commission shall function well if it is not interfered by the president especially on human rights violations made by the government.

Meyer,<sup>28</sup> has also contributed to the literature on National Human Rights Institution as he states that protecting and promoting human rights has been a historical give and

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<sup>27</sup> Mertus, J.A. *Human rights matters: Local politics and national human rights institutions*, Stanford University Press, 2009

<sup>28</sup> Meyer, D. *13-National Human Rights Institutions, Opportunities and Activism*, Cambridge University Press, 2012

take. Activists at the grass roots have worked courageously to expose violations of human rights, attempting to enlist more powerful authorities to pressure or punish violators. They have used the tools of social movements, including protests and demonstrations, in attempts to mobilize an audience into action. A wide range of institutions, including national institutions, as well as supranational bodies and transnational organizations, have articulated universalistic standards of human rights and publicized the work of activists, calling for states to protect human rights.

The author further provides that, it is difficult to get states to create institutions that are independent enough and sufficiently powerful to provide meaningful redress, particularly when the national bodies that create human rights institutions are often also culpable in the violation of human rights. Even institutions that comply with ideal organizational structures (in theory) suffer from political interference, inadequate funding, and leadership failures. Indeed, the intense attention to the need for exceptional leadership undermines the notion that establishing NHRIs can, in itself, address ongoing concerns about human rights. This study demonstrates that, promotion and protection of human rights is not a duty of CHRAGG alone but a duty of other human rights stakeholders who are powerful actors in the country.

Yusuf and Ouguergouz<sup>29</sup> have also contributed to the literature on human rights protection. They argue that although the AU came into being in 2001, so far there is no comprehensive work which addresses the institution, its organs and structures, the scope of its operations, its legal framework and the normative standards

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<sup>29</sup> Yusuf, A. and Ouguergouz, F. *The African Union: Legal and Institutional Framework; A Manual on the Pan-African Organization*, BRILL, 2012



underpinning its objectives and functions or those underlying the conventions, charters and protocols it has enacted or inherited from its predecessor, the OAU.

The author contributes that human rights are protected on region which are known as Regional human rights instruments such as the European Convention on Human Rights, the African Charter on Human and Peoples' Rights, and the American Convention on Human Rights. The authors also acknowledge that the enforce these instruments, many countries have established national human rights institutions (NHRIs) that monitor and report on human rights violations, provide education and training on human rights issues, and facilitate access to justice for victims of human rights abuses. Some countries have also established specialized courts or tribunals to handle human rights cases.

The authors have provided a general existing knowledge on promotion and protection of human rights in regional and national arrangement. The foregoing study focuses on Tanzanian legal and institutional framework on protection of human rights. This study has demonstrated to the end that the legal and institutional framework for protecting human rights is complex and multifaceted, but it is essential for ensuring that individuals are able to enjoy their fundamental rights and freedoms.

## **1.5 Objectives of the Research**

### **1.5.1 General Research Objective**

The objective of this study is to examine the legal framework governing protection of human right in Tanzania with a view of disclosing the existing gaps and bridging

them.

### **1.5.2 Specific Objectives**

- a) To assess the existing legal gaps in the laws regulating human rights in Tanzania
- b) To evaluate the institutional framework governing Human right protection in Tanzania
- c) To learn the experience of International and regional legal instruments on human right protection
- d) To conduct a survey of other jurisdictions to learn their institutional and legislative development

### **1.6 Research Questions**

This study intends to answer the following research questions:

- a) What are the existing legal gaps in the laws regulating human rights in Tanzania?
- b) What is the institutional framework governing Human right protection in Tanzania?
- c) What is the experience of International and regional legal instruments on human right protection?
- d) What is the experience of other jurisdictions to learn their institutional and legislative development

### **1.7 Research Methodology**

#### **1.7.1 Research Methods**

The researcher has applied a Doctrinal legal research Method and a Comparative

research method to gain a deeper understanding of complexities and legal issues related to the legal and institutional framework protecting human rights. Combining both the doctrinal and comparative research methods, a researcher has gained a comprehensive understanding of the legal framework for protecting human rights in Tanzania, as well as insights into how this framework compares to those in other countries. This has helped to identify gaps in the legal framework for protecting human rights in Tanzania and potential avenues for legal reform, as well as highlight areas where Tanzania is excelling in its efforts to protect human rights.

### **1.7.2 The Doctrinal Legal Research Method**

Doctrinal legal research, also known as black-letter law research, is a method of legal research that focuses primarily on analyzing and interpreting existing legal sources, such as statutes, regulations, case law, and legal principles. It involves studying and synthesizing these primary legal materials to gain an understanding of legal doctrines, principles, and rules. Doctrinal legal research is commonly used in legal academia, legal writing, and the analysis of legal issues within the framework of established legal systems. It provides a foundation for legal analysis, interpretation, and argumentation, forming the basis for legal practice and the development of legal theories.<sup>30</sup>

Doctrinal legal research involves analyzing and synthesizing legal materials to derive legal principles and rules. Researchers examine the language, structure, and context of legal sources to understand their meaning and application. They identify

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<sup>30</sup> Kilcommins, S. Doctrinal Legal Method: Assumptions, Commitments and Shortcomings, 1973, visited from <https://core.ac.uk/download/pdf/84112166.pdf> on 23/06/2023

legal doctrines, rules, and standards that have emerged from judicial interpretations and precedents. Doctrinal legal research relies heavily on primary legal sources, which include statutes (laws enacted by legislative bodies), regulations (rules created by administrative agencies), case law (court decisions), and legal principles derived from these sources. Researchers analyze and interpret these sources to identify legal rules, doctrines, and precedents.

A doctrinal legal research method is suitable for researching the legal and institutional framework for the protection of human rights issues in Tanzania for several reasons. The research topic involves examining the legal and institutional framework, which requires a thorough analysis of legal sources such as statutes, regulations, and case law. Doctrinal legal research is well-suited for analyzing and interpreting these legal materials to understand the existing legal framework for human rights protection in Tanzania. By utilizing a doctrinal legal research approach a researcher can identify the legal principles, doctrines, and rules that govern human rights protection in Tanzania. This method enables a researcher to examine how human rights are defined and protected within the legal system, including the constitutional provisions, legislation, and judicial interpretations relevant to human rights issues.

### **1.7.3 Data Analysis**

Since this study is a legal research data analysis has been done using the canon of statutory interpretation as a relevant for interpreting other legal sources, such as constitutional provisions or regulations. Canon of statutory interpretation is a set of principles and rules used by courts and legal scholars to interpret and understand the

meaning and scope of statutory provisions. Applying the canon of statutory interpretation in data analysis helps to elucidate the legal framework for human rights protection in Tanzania. By examining the language, context, intent, and interplay of relevant legal provisions, the researcher has gained insights into the interpretation and application of human rights laws and identifies any gaps, ambiguities, or potential areas for improvement within the legal and institutional framework.

#### **1.7.4 Comparative Legal Research Method**

Comparative research on assessment of the legal and institutional framework for the protection of human rights in Tanzania involves analyzing the legal frameworks for protecting human rights in other countries, particularly in other African countries with similar legal systems and cultural contexts. The researcher has compared and contrasted the legal frameworks for protecting human rights in Mauritius and Namibia, South Africa and, Botswana looking at the strengths and weaknesses of different approaches. Comparative research has helped to identify best practices in protecting human rights that could be applied in Tanzania, as well as potential areas for legal reform.

##### **1.7.4.1 Reason for the Choice of Countries**

South Africa has a strong constitutional framework that protects the rights of all its citizens, including socio-economic rights such as access to education, housing and healthcare. The country also has a progressive legal system, an independent judiciary, and a strong civil society that advocates for human rights. Namibia has a constitution that protects the rights of its citizens, including the right to freedom of

expression and association. The country has also established institutions such as the Office of the Ombudsman and the National Human Rights Commission to promote and protect human rights. Ghana has a relatively strong legal and institutional framework for the protection of human rights, including an independent judiciary, a national human rights commission, and a constitutional provision that protects fundamental human rights.

#### **1.7.4.2 Analysis of Data under Comparative Study**

The doctrinal method relies on the analysis of existing legal and policy documents, so the next step was to gather relevant documents from each of the selected countries. These documents have included constitutions, laws, regulations, court decisions, and policy statements. After the documents have been gathered, they were analyzed to identify similarities and differences in the legal and policy frameworks for protecting human rights in each of the selected countries. The analysis focused on key areas such as the scope of human rights protection, the role of government institutions in protecting human rights, and the effectiveness of legal remedies for human rights violations.

Finally, the researcher has drawn a conclusion based on the analysis of the documents. These conclusions include identifying best practices for protecting human rights, highlighting areas where improvements are needed, and making recommendations for legal and policy reforms.

#### **1.8 Significance of the Study**

This study has been conducted with the intention of achieving the following importance to the general public, decision makers and future researchers. Advancing

human rights: The study provides insights into the legal and institutional framework in Tanzania that governs the protection of human rights. By identifying gaps and shortcomings in the framework, the study can help to inform policy and legal reform to advance human rights protections in the country.

**Holding government accountable:** The study can also serve as a tool for holding the government accountable for its obligations under international human rights law. By highlighting areas where the government is failing to uphold its human rights obligations, civil society organizations, human rights advocates, and other stakeholders can use the study to advocate for change and push for the implementation of necessary reforms.

**Promoting good governance:** An effective legal and institutional framework for the protection of human rights is a key component of good governance. By assessing the existing framework in Tanzania, the study can contribute to efforts to strengthen democratic institutions and improve governance in the country.

**Informing international human rights monitoring:** The study's findings can also inform the work of international human rights bodies, such as the United Nations Human Rights Council. By providing a detailed analysis of the legal and institutional framework for the protection of human rights in Tanzania, the study can help these bodies better understand the human rights situation in the country and develop more effective recommendations for improvement.

### **1.9 Scope of the Study**

The scope of the study on the assessment of the legal and institutional framework for the protection of human rights issues in Tanzania have typically involved an in-depth

analysis of the various laws, policies, and institutions that are in place to protect human rights in Tanzania. This has included a review of the relevant provisions of the Constitution of Tanzania, as well as the various international human rights instruments that Tanzania has ratified.

The study has also involved an examination of the institutional framework for the protection of human rights in Tanzania, including the roles and responsibilities of government agencies, civil society organizations, and other stakeholders. This has included an assessment of the effectiveness of these institutions in protecting and promoting human rights in Tanzania, as well as an analysis of the challenges and opportunities that exist in this area.

Overall, the scope of the study would be broad and comprehensive, and would aim to provide a detailed analysis of the legal and institutional framework for the protection of human rights issues in Tanzania.



## **CHAPTER TWO**

### **CONCEPTUAL AND THEORETICAL FRAMEWORK GOVERNING HUMAN RIGHT PROTECTION**

#### **2.1 Introduction**

The conceptual and theoretical framework governing human rights protection is based on the idea that every human being is entitled to certain fundamental rights and freedoms, regardless of their race, nationality, gender, religion, or any other characteristic. The said concept and theories are based on the idea of inherent and inalienable human rights that should be protected by law, and the role of international organizations in monitoring and enforcing human rights standards. This chapter discusses the concepts and theories governing human rights protection.

#### **2.2 Conceptual Framework Governing Human Rights Protection**

Human rights protection refers to the actions taken by individuals, governments, and international organizations to safeguard and promote the rights and freedoms of all individuals. These concepts serve as the foundation for human rights protection and are reflected in international human rights treaties, national laws, and policies, and the work of human rights advocates and organizations around the world.<sup>31</sup>

##### **2.2.1 The Concept of Inherent Rights on Human Rights Protection**

The concept of inherent rights is a fundamental concept of human rights that holds that every human being is entitled to certain basic rights and freedoms simply by virtue of being human. Inherent rights are considered to be universal, inalienable,

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<sup>31</sup> Pais, M.S., A Human Rights Conceptual Framework For UNICEF, UNICEF International Child Development Centre, 1999

and indivisible, meaning that they apply to all individuals regardless of their nationality, race, gender, or any other characteristic.<sup>32</sup> Inherent rights are often referred to as "natural rights" or "human rights" and are seen as fundamental to the existence and dignity of every human being. These rights are not granted by governments or societies, but are believed to exist independently of any human-made laws or institutions. They are considered to be inherent to human nature and essential to the well-being and flourishing of individuals and communities.<sup>33</sup>

Some examples of inherent rights include the right to life, liberty, and security of person; the right to freedom of thought, conscience, and religion; the right to freedom of expression and opinion; the right to education, health care, and a standard of living adequate for the health and well-being of oneself and one's family; and the right to equal treatment and non-discrimination. The concept of inherent rights has been enshrined in many international human rights instruments, including the Universal Declaration of Human Rights of 1948 the International Covenant on Civil and Political Rights.<sup>34</sup> These instruments recognize the importance of inherent rights in protecting the dignity and worth of every human being, and call on governments to respect, protect, and fulfill these rights for all individuals within their jurisdiction.

Inalienability does not mean that rights are absolute or can never be overridden by other considerations. Rather it means that its holder cannot lose it temporarily or permanently by bad conduct or by voluntarily giving it up. It is doubtful that all

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<sup>32</sup> Ashford, E., *A Moral Inconsistency Argument for a Basic Human Right to Subsistence*, Oxford: Oxford University Press, 2015

<sup>33</sup> Ashford, (2015), *ibid*

<sup>34</sup> 1966

human rights are inalienable in this sense. One who endorses both human rights and imprisonment as punishment for serious crimes must hold that people's rights to freedom of movement can be forfeited temporarily or permanently by just convictions of serious crimes. Perhaps it is sufficient to say that human rights are very hard to lose.<sup>35</sup>

Overall, the concept of inherent rights is a cornerstone of human rights protections, emphasizing the importance of human dignity and the need for all individuals to be treated with respect, equality, and justice.

### **2.2.2 The Concept of Universalism under Human Rights Protection**

Universalism is a fundamental concept of human rights protection that holds that human rights are applicable to all individuals, regardless of their nationality, race, ethnicity, gender, religion, or any other characteristic. This principle is grounded in the belief that all human beings have inherent dignity and worth, and that this dignity and worth should be protected and respected by all. Universalism emphasizes the idea that human rights are not culturally relative or subject to interpretation based on local customs or practices. Rather, it maintains that human rights are universal and apply equally to all individuals, regardless of where they live or what their cultural background may be.<sup>36</sup>

The principle of universalism is reflected in many international human rights instruments, including the Universal Declaration of Human Rights and the

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<sup>35</sup> Ashford, E., Ibid

<sup>36</sup> James, N., "Human Rights", *The Stanford Encyclopedia of Philosophy*, 2021, copied from <https://plato.stanford.edu/archives/fall2021/entries/rights-human/> on 11/03/2023

International Covenant on Civil and Political Rights. These instruments recognize the importance of universal human rights protections and call on governments to respect, protect, and fulfill these rights for all individuals within their jurisdiction.<sup>37</sup>

Universalism is essential to human rights protection because it recognizes the inherent value of all individuals and ensures that no one is excluded from the benefits of human rights protections. It allows for a shared understanding of what human rights are and provides a framework for promoting and enforcing these rights around the world. However, it is important to recognize that while the principle of universalism is central to human rights protection, cultural and contextual factors may influence the ways in which human rights are understood and implemented in different societies. As such, efforts to promote universal human rights protections must consider the unique needs and circumstances of individuals and communities in different parts of the world.

All living humans or perhaps all living persons have human rights. One does not have to be a particular kind of person or a member of some specific nation or religion to have human rights. Included in the idea of universality is some conception of independent existence. People have human rights independently of whether they are found in the practices, morality, or law of their country or culture.<sup>38</sup>

This idea of universality needs several qualifications, however. First, some rights, such as the right to vote, are held only by adult citizens or residents and apply only to voting in one's own country. Second, the human right to freedom of movement may be taken away temporarily from a person who is convicted of committing a

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<sup>37</sup> Morsink, J., 1999, *Universal Declaration of Human Rights: Origins, Drafting, and Intent*, Philadelphia: University of Pennsylvania Press, 1999

<sup>38</sup> James, N., "Human Rights, 2021

serious crime. And third, some human rights treaties focus on the rights of vulnerable groups such as minorities, women, indigenous peoples, and children.<sup>39</sup>

### **2.2.3 The Concept of Interdependence and Indivisibility under Human Rights**

#### **Protection**

Interdependence and indivisibility are key concepts in the protection of human rights. Interdependence refers to the idea that all human rights are interconnected and that the realization of one right is dependent on the realization of others. For example, the right to education is linked to the right to health and the right to work, as access to education can improve health outcomes and increase employment opportunities.<sup>40</sup> Indivisibility refers to the idea that all human rights are equal in importance and cannot be prioritized or traded off against each other. This means that civil and political rights, such as freedom of expression and the right to a fair trial, are just as important as economic, social, and cultural rights, such as the right to education and health care.

The concept of interdependence and indivisibility is reflected in many international human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. These instruments recognize that the protection of human rights requires a holistic approach that considers the interdependent and indivisible nature of all human rights.<sup>41</sup>

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<sup>39</sup> *ibid*

<sup>40</sup> Winston, M. *On the Indivisibility and Interdependence of Human Rights*, The College of New Jersey, The Philosophy of Human Rights, Wadsworth Publishing Co., 1989

<sup>41</sup> *Ibid*

The concept of interdependence and indivisibility is important in human rights protection because it recognizes that the fulfillment of one human right can contribute to the fulfillment of other rights, and that the failure to protect one right can undermine the protection of others. For example, the denial of the right to education can have long-term negative effects on a person's health, economic opportunities, and ability to participate in society.

Representatives of the human rights movement claim that the contemporary canon of human rights forms a indivisible and interdependent system of norms so that it is improper for governments to pick and choose among human rights those which they will honor while interpreting other human rights as optional, dispensable, non-obligatory, or even as "unreal." But the notion of the indivisibility of human rights has come under attack in recent years by some Asian governments which have claimed that the contemporary canon of human rights represents "Western values" which are in many respects inconsistent with "Asian values."<sup>42</sup>

The contemporary canon of human rights refers to the entire set of internationally recognized human rights declarations and conventions, beginning with the Universal Declaration of Human Rights and including all of the subsequently drafted and enacted international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination Against Women, the Declaration on the Right to Development, the UN Convention on the Rights of the Child and several dozens of other international documents which identify and codify human rights

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<sup>42</sup> Winston, M. (1989)

norms.<sup>43</sup>

The notion that all human rights are indivisible and interdependent originated in UN circles in the 1950s. Since the 1950s the indivisibility and interdependence of human rights has been the topic of various authors. Conferences on Human Rights, Declarations, and disputes among academics, activists, and legal scholars.' The idea has some conceptual grounding in the works of scholars who argue that all human rights, or some specific subset of human rights, are necessary to assure the dignity of the person.<sup>44</sup>

Opponents of the notion of dismiss it either implicitly or explicitly. Additionally, individuals espousing "Asian values" and the "right to development" often dismiss, or at least ascribe an inferior status to, civil and political rights. The concept of the indivisibility and interdependence of all human rights has gained widespread acceptance among advocates and scholars alike. First, this article empirically looks at the degree to which two fundamental basic rights, subsistence and security, are simultaneously respected in developing countries.<sup>45</sup>

Overall, the concepts of interdependence and indivisibility emphasize the importance of a comprehensive and integrated approach to human rights protection, recognizing that all human rights are interconnected and equally important for the well-being and dignity of every individual.

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<sup>43</sup> Minkler, L. & Sweeney, S. On the Indivisibility and Interdependence of Basic Rights in Developing Countries, *Human Rights Quarterly*, vol. 33, 2011

<sup>44</sup> *Op. city*, pg. 28

<sup>45</sup> *Op. city*, pg. 28

#### **2.2.4 The Concept of Non-discrimination under Human Rights**

Non-discrimination is a fundamental concept of human rights protection that holds that all individuals are entitled to equal treatment and protection under the law, without discrimination based on any personal characteristics or circumstances, such as race, ethnicity, gender, religion, age, disability, or sexual orientation.<sup>46</sup> The principle of non-discrimination is enshrined in many international human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. These instruments recognize the importance of non-discrimination in protecting the inherent dignity and worth of every human being, and call on governments to respect, protect, and fulfill the right to non-discrimination for all individuals within their jurisdiction.

Non-discrimination is essential to human rights protection because it ensures that everyone is treated with equal respect and dignity, regardless of their personal characteristics or circumstances. It recognizes the inherent value of every individual and ensures that no one is excluded from the benefits of human rights protections. Non-discrimination is also crucial in addressing systemic inequalities and promoting social justice. Discrimination based on personal characteristics or circumstances can lead to unequal access to education, employment, housing, health care, and other basic necessities of life, perpetuating poverty, exclusion, and marginalization. The right to equal treatment requires that all persons be treated equally before the law, without discrimination. The principle of equality and non-discrimination guarantees

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<sup>46</sup> This protection is guaranteed in several international and domestic legal instrument for protection of human rights.



that those in equal circumstances are dealt with equally in law and practice.<sup>47</sup>

Efforts to promote non-discrimination can take many forms, including legal measures to prohibit discrimination, public awareness campaigns to challenge stereotypes and prejudices, and programs to promote diversity and inclusion in all areas of society. By promoting non-discrimination, we can create a more just and equitable society, where all individuals can fully enjoy their human rights and reach their full potential.

The principle of non-discrimination and equal treatment is also contained in regional instruments.<sup>48</sup> Despite the fact that the principle of non-discrimination is contained in all human rights instruments, only a few instruments expressly provide a definition of non-discrimination. Human rights instruments prohibit discrimination on several grounds. The UDHR prohibits discrimination on the following 10 grounds: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth and other status.<sup>49</sup>

The same prohibited grounds are included in ICESCR and ICCPR whereas it is important to note that the grounds enumerated in these provisions are merely illustrative and not exhaustive. The term ‘other status’ has an open-ended meaning; some grounds not explicitly mentioned, such as age, gender, disability, nationality and sexual orientation could also be considered prohibited grounds.<sup>50</sup> Some human rights instruments, such as CERD and CEDAW, are aimed specifically at

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<sup>47</sup> Article 1(1) of the International Labour Organization, 1919

<sup>48</sup> Such as Article 2 American Declaration, Article 24 ACHR and Articles 2 and 3 ACHPR

<sup>49</sup> Article 2 of UDHR, *supra*

<sup>50</sup> Article 2 ICESCR and Article 2 ICCPR, *supra*

eliminating discrimination on specific grounds. In both cases, it is possible to submit individual complaints in case of violations of the rights enshrined therein. In the case of CEDAW, such a procedure was established by the Optional Protocol.<sup>51</sup> These two instruments expressly require states to take action to prevent and combat discrimination committed by third persons.

### **2.2.5 The Concept of Participation and Empowerment under Human Rights**

Participation and empowerment are key concepts in the protection of human rights. Participation refers to the right of individuals and groups to participate in the decision-making processes that affect their lives, while empowerment refers to the process of enabling individuals and communities to exercise their rights and take control of their lives. The concept of participation and empowerment is reflected in many international human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. These instruments recognize the importance of meaningful participation and empowerment in promoting human rights and democracy, and call on governments to respect, protect, and fulfill these rights for all individuals within their jurisdiction.<sup>52</sup>

Participation and empowerment are important in human rights protection because they recognize the importance of individuals and communities in shaping the policies and decisions that affect their lives. By allowing for meaningful participation and empowering individuals and communities, we can promote social

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<sup>51</sup> The Optional Protocol adopted in 1999

<sup>52</sup> <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-equality-and-non-discrimination> visited 12/03/2023

inclusion, reduce inequalities, and create a more just and democratic society.<sup>53</sup>

Efforts to promote participation and empowerment can take many forms, including promoting access to information, providing opportunities for participation in decision-making processes, and supporting capacity-building programs that enable individuals and communities to exercise their rights and take control of their lives. Some international legal instruments such as the European Union Council Directives address discrimination and guarantees equal opportunity for everyone to be promoted in his/her employment.<sup>54</sup>

Empowerment has been defined in terms of participation, of all individuals and groups in a society.<sup>55</sup> Participation is observable and measurable and, for that reason, antedated empowerment as a concept. Taking that into account, for the purposes of this analysis we can say that empowerment is a state in which people participate effectively in their societies.<sup>56</sup> Participation as a human right is declared in the Universal Declaration on Human Rights in its articles 19-21 that have carried over into the International Covenants and other facultative conventions, including the Convention on the Elimination of All Forms of Discrimination against Women.

The Declaration of Social Progress and Development states as its first principle, that, a principle Social progress and development require the full utilization of human resources, including in particular: “(c) The active participation of all elements of

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<sup>53</sup> Article 20 of the UDHR, *supra*

<sup>54</sup> The European Union Council Directives address discrimination, *inter alia*, 2000/78/EC

<sup>55</sup> the General Assembly adopted the outcome document of the United Nations Conference on Sustainable Development, Rio+20

<sup>56</sup> <https://www.un.org/esa/socdev/egms/docs/2012/JohnMathiason.pdf> visited 12/4/2023

society, individually or through associations, in defining and in achieving the common goals of development with full respect for the fundamental freedoms embodied in the Universal Declaration states.<sup>57</sup>

As a basic means and method for achieving social progress and development, attention must be given to: " (a) The adoption of measures to ensure the effective participation, as appropriate, of all the elements of society in the preparation and execution of national plans and programmed of economic and social development, "(b) The adoption of measures for an increasing rate of popular participation in the economic, social, cultural and political life of countries through national governmental bodies, non- governmental organizations, co-operatives, rural associations, workers ' and employers' organizations and women's and youth organizations, by such methods as national and regional plans for social and economic progress and community development, with a view to achieving a fully integrated national society, accelerating the process of social mobility and consolidating the democratic system."<sup>58</sup>

Overall, the concepts of participation and empowerment recognize the importance of human agency and the active engagement of individuals and communities in promoting and protecting human rights. They are essential in promoting democratic governance, social inclusion, and sustainable development, and are critical to building a more just and equitable society for all.

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<sup>57</sup> Article 5 of the General Assembly resolution 2542 (XXIV) of 11 December 1969

<sup>58</sup> Article 15, *ibid*

### **2.2.6 The Concept of Accountability under Human Rights Protection**

Accountability is a fundamental concept of human rights protection that holds individuals and institutions responsible for respecting, protecting, and fulfilling human rights. It refers to the obligation of governments, organizations, and individuals to take responsibility for their actions and to be held accountable when they violate human rights or fail to fulfill their obligations.

The principle of accountability is enshrined in many international human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. These instruments recognize the importance of accountability in ensuring the protection of human rights and call on governments to establish effective mechanisms for ensuring accountability and redress for human rights violations.

Accountability is essential to human rights protection because it promotes transparency, integrity, and the rule of law. It ensures that those who violate human rights are held responsible for their actions and that victims of human rights abuses receive justice and redress. It also helps to prevent future violations by deterring individuals and institutions from engaging in abusive behavior. Efforts to promote accountability can take many forms, including strengthening judicial systems, establishing independent human rights commissions, creating effective oversight mechanisms, and supporting civil society organizations that promote human rights and monitor government actions.<sup>59</sup>

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<sup>59</sup> UNESCO, *Accountability from a Human Rights Perspective: The Incorporation and Enforcement*

Human rights are fundamental and universal rights that inform the normative standards to which all societies should adhere. They have two facets: the normative content owed to rights-holders and the corresponding obligations of duty-bearers. Human rights accountability is therefore concerned with rights-holders' ability to hold duty-bearers to account according to their obligations and should be understood as continuously underpinning this relationship. Duty-bearers must act *ex ante* to mitigate possible negative human rights impacts; duty-bearers must ensure that decision-making on matters affecting rights-holders complies with human rights principles, such as transparency and participation; and rights-holders must have the opportunity to have violations and grievances addressed and remedied *ex post facto*.<sup>60</sup>

According to the Office of the High Commission for Human Rights and the Center for Economic and Social Rights, accountability from a public policy perspective as applied to the 2030 Agenda requires that those in authority have defined responsibilities, are answerable for actions regarding those responsibilities, and must be subject to forms of enforceable sanctions or remedial action for failures to carry out those responsibilities.<sup>61</sup>

Overall, the concept of accountability is critical to the protection of human rights. It promotes transparency, integrity, and the rule of law, and ensures that individuals and institutions are held responsible for their actions. By promoting accountability,

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of the Rights to Education in the Domestic Legal Order, 8 Global Education Monitoring Report, 2017

<sup>60</sup> *ibid*

<sup>61</sup> United Nations Office of the High Commission for Human Rights (OHCHR) and Center for Economic and Social Rights (CESR). 2013. *Who Will Be Accountable—Human Rights and the post-2015 Development Agenda*. New York and Geneva, p. 15. (Doc. HR/PUB/13/1.)

we can create a more just and equitable society where human rights are respected, protected, and fulfilled for all.

### **2.2.7 The Concept of Human Dignity under Human Rights Protection**

Human dignity is a foundational concept of human rights protection that recognizes the inherent value and worth of every human being, simply by virtue of their existence. It is the idea that every person has a fundamental right to be treated with respect, fairness, and equality, regardless of their personal characteristics or circumstances. Human rights are intimately related to the notion of human dignity. Both notions are connected in such a way that one cannot be understood without the other. The importance of human rights and the requirement to respect everyone's rights is based on the notion of human dignity. In that sense, human dignity is considered to be the foundation of human rights. Advocates of human rights and different social movements resort to human dignity in order to justify their claims and their actions. The attack against global poverty, the fight against discrimination, torture and inhumane treatments, and the condemnation of injustice, are all grounded in the notion of human dignity.<sup>62</sup>

The principle of human dignity is enshrined in many international human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. These instruments recognize the importance of human dignity in protecting human rights and call on governments to respect, protect, and fulfill the right to human dignity for all individuals within their jurisdiction.

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<sup>62</sup> Mubelo-Moka, W. Human Rights and Human Dignity, Springer Link, Vol.3, 2016

Human dignity is essential to human rights protection because it recognizes that every person has inherent value and worth, regardless of their social status, economic situation, or any other personal characteristic. It promotes respect for diversity, equality, and non-discrimination, and ensures that all individuals are entitled to the same basic rights and freedoms, without discrimination or prejudice.<sup>63</sup>

Efforts to promote human dignity can take many forms, including promoting respect for diversity and cultural differences, advocating for equality and non-discrimination, and supporting policies and programs that promote social inclusion and the full realization of human rights for all individuals.<sup>64</sup>

Overall, the concept of human dignity is critical to the protection of human rights. It recognizes the inherent value and worth of every individual, promotes respect for diversity and non-discrimination, and ensures that every person is entitled to the same basic rights and freedoms, regardless of their personal characteristics or circumstances. By promoting human dignity, we can create a more just and equitable society where human rights are respected, protected, and fulfilled for all.

### **2.2.8 The Concept of Rule of Law under Human Rights Protection**

The rule of law is a fundamental concept of human rights protection that refers to the principle that every person and institution is subject to the law, and that no one is above the law. It is the idea that the law is the foundation for a just and democratic society, and that it provides the framework for the protection and promotion of human rights. The principle of the rule of law is enshrined in many international

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<sup>63</sup> *ibid*

<sup>64</sup> United Nations Human Rights Office of the High Commissioner for Human Rights, International Covenant on Civil and Political Rights, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> Accessed on 15/04/2023



human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. These instruments recognize the importance of the rule of law in protecting human rights and call on governments to establish and maintain legal frameworks that are consistent with human rights principles.

The rule of law is essential to human rights protection because it promotes transparency, predictability, and accountability in governance. It ensures that individuals and institutions are held accountable for their actions, and that human rights are respected and protected by the legal system.<sup>65</sup> The rule of law requires that legal processes, institutions and substantive norms are consistent with human rights, including the core principles of equality under the law, accountability before the law and fairness in the protection and vindication of rights. Efforts to promote the rule of law can take many forms, including strengthening judicial systems, promoting legal and constitutional reform, and supporting the development of independent human rights institutions. It is also essential to ensure that laws are applied fairly and consistently, and that individuals have access to effective remedies when their rights are violated.<sup>66</sup>

Overall, the concept of the rule of law is critical to the protection of human rights. It promotes transparency, accountability, and respect for the law, and ensures that individuals and institutions are held accountable for their actions. By promoting the rule of law, we can create a more just and equitable society where human rights are

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<sup>65</sup> Secretary – General, S/2004/616, para. 6

<sup>66</sup> [https://www.un.org/ruleoflaw/rule-of-law-and-human-rights/#:~:text=As%20defined%20by%20the%20Secretary,6\).](https://www.un.org/ruleoflaw/rule-of-law-and-human-rights/#:~:text=As%20defined%20by%20the%20Secretary,6).) Accessed 15/04/2023

respected, protected, and fulfilled for all.

### **2.3 Theoretical Framework for Protection of Human Rights**

The theoretical framework of human rights protection is based on several theories, including natural law theory, social contract theory, and moral relativism. Natural law theory asserts that certain rights and values are inherent in human nature and should be protected by law. Social contract theory suggests that individuals give up some of their natural rights in exchange for protection and security provided by the state. Moral relativism holds that the moral principles that govern human rights are not absolute but vary across different cultures and societies.

#### **2.3.1 The Natural Law Theory on Human Rights Protection**

Natural law theory is a moral and legal philosophy that proposes that certain fundamental rights are inherent to human nature and exist independently of any human-made laws or institutions. It is based on the belief that these natural rights are discoverable through reason, and that they provide a foundation for human rights protection.

According to natural law theory, these natural rights are universal and apply to all individuals, regardless of their race, ethnicity, gender, or social status. They include rights such as the right to life, liberty, and property, and the right to freedom of thought, speech, and religion. Natural law theory argues that governments have a responsibility to protect these natural rights, and that any laws or policies that violate these rights are illegitimate and should be disregarded. It is also believed that individuals have a duty to uphold these natural rights and to resist any attempts to

violate them.<sup>67</sup> While natural law theory has been influential in the development of human rights law and philosophy, it has also been criticized for being too abstract and difficult to apply in practice. Some critics argue that the concept of natural law is too vague and subjective, and that it can be difficult to agree on what specific rights are inherent to human nature.<sup>68</sup>

Despite these criticisms, natural law theory has had a significant impact on the development of human rights protection, and continues to be an important theoretical framework for understanding the nature and scope of human rights.

### **2.3.2 The Social Contract Theory on Human Rights Protection**

Social contract theory is a political philosophy that proposes that individuals voluntarily surrender some of their individual rights and freedoms in exchange for the protection and security provided by a government or state. It is based on the idea that individuals enter into a social contract with each other and with their government to establish a system of governance that protects their rights and promotes their well-being.

According to social contract theory, individuals have certain inherent rights, including the right to life, liberty, and property that must be protected by the government. In exchange for this protection, individuals agree to give up some of their individual rights and freedoms and to abide by the laws and rules established by the government.<sup>69</sup> Social Contract Theory, at its most basic level, states that human

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<sup>67</sup> Lisska, A. J., 'Human Rights and Natural Law', *Aquinas's Theory of Natural Law: An Analytic Reconstruction* (Oxford, 1997; online edn, Oxford Academic, 3 Oct. 2011), <https://doi.org/10.1093/acprof:oso/9780198269670.003.0009>, accessed 20 Apr. 2023.

<sup>68</sup> Lisska, A. J. (2011), *supra*

<sup>69</sup> Weber, T. Examining Social Contract Theory, PRAXIS—Alumni for International Human Rights Law Peer Review

beings give up certain rights they have in a state of nature in order to obtain the securities and rights provided by civilization.

The social contract theory is a key theoretical framework for understanding the relationship between individuals and the state, and has been influential in the development of modern democratic societies. It is the basis for the idea that governments have a responsibility to protect and promote the human rights of their citizens, and those individuals have a duty to participate in the democratic process and to hold their government accountable for its actions.

It has been stated that, the rights afforded to human beings in the state of nature can largely be summed up as bodily autonomy, or self-determination, rights. Essentially, this means that each human being in the state of nature is, or should theoretically be, the sovereign of his or her body. In this article, the word “sovereign” is being used to demarcate an entity’s ability to control its own course and does not include the idea of final or absolute power. Therefore, in a state of nature, the extent of control of the individual, without aggression or force, would be their body.<sup>70</sup>

This suggests that, the signing of the social contract necessitates that certain rights be given up by the individual. The forfeiting of these rights by the sovereign individual to the state creates the sovereign state. Criminal laws are the easiest example to point to of rights that have been given up by individuals. Each individual in the state of nature could, for example, murder another human being without fear that a leviathan

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Journal, Accessed from  
<https://scholarworks.iupui.edu/bitstream/handle/1805/5538/Timothy%20Weber.pdf?sequence=4#:~:text=Social%20Contract%20Theory%2C%20at%20its,and%20rights%20provided%20by%20civilization.> On 16/4/2023  
<sup>70</sup> Weber, T., *ibid*

would impose a penalty for the murder. Once the social contract is signed, an individual could still commit murder, but would then be subjected to the punishment prescribed for the act by the civilization.<sup>71</sup> However, social contract theory has also been criticized for its focus on the collective good at the expense of individual rights and freedoms. Some critics argue that it can be used to justify authoritarian regimes and that it does not adequately protect the rights of marginalized or minority groups. Overall, social contract theory is an important theoretical framework for understanding the relationship between individuals and the state, and for understanding the role of government in protecting and promoting human rights. However, it is important to recognize the potential limitations of this theory and to ensure that human rights are protected and promoted in a way that is consistent with the principles of democracy and individual liberty.

### **2.3.3 Utilitarianism Theory under Human Rights Protection**

Utilitarianism is a moral and political philosophy that emphasizes the greatest happiness for the greatest number of people. It is based on the idea that actions should be evaluated based on their ability to produce the most overall happiness or pleasure, and minimize suffering or pain. As a theory of human rights protection, utilitarianism argues that human rights should be protected because they contribute to the overall happiness and well-being of society.

According to utilitarianism, protecting human rights is important because it promotes the happiness and well-being of individuals, which in turn contributes to the happiness and well-being of society as a whole. This means that laws and policies

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<sup>71</sup> Jean Jacques Rousseau, *The Social Contract*, Book IV (1762), available at <http://www.constitution.org/jjr/socon.htm>

should be designed to maximize the overall happiness and well-being of the greatest number of people, even if this means sacrificing the individual rights or freedoms of some individuals.<sup>72</sup>

Utilitarianism has been influential in the development of human rights protection, particularly in the development of policies and laws that promote social welfare and equality. It has been used to justify government intervention in the economy to promote social welfare, and to promote policies that protect marginalized and disadvantaged groups. However, utilitarianism has also been criticized for its focus on the collective good at the expense of individual rights and freedoms. Critics argue that utilitarianism can be used to justify policies that violate individual rights and freedoms, particularly if these policies are believed to promote the overall happiness of society.<sup>73</sup>

The most basic utilitarian critique of human rights lies in the assertion that resources are scarce in any society, and especially limited in some. This scarcity inevitably leads to utilitarian calculations to allocate those resources in a way that will maximize the greatest good. In the end, it is argued, all the benefits listed as human rights, even life itself, are subject to the promotion of the greatest good within a society.<sup>74</sup>

The utilitarian critique raises the question whether human rights are either absolute or inalienable. By inalienable, I mean that individuals cannot surrender control over

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<sup>72</sup> Gibbard, A., "Utilitarianism and Human Rights, Human Rights, Oxford: Basil Blackwell, 1984, pp.92-102

<sup>73</sup> Heard, A., Human Rights in Sheep's Clothing? The Challenges of Utilitarianism and Relativism, copied from <https://www.sfu.ca/~aheard/417/util.html#:~:text=The%20most%20basic%20utilitarian%20critique,will%20maximize%20the%20greatest%20good.> On 15/04/2023

<sup>74</sup> Ibid

their right to another's discretionary authority. The ultimate authority to make the most important choices with respect to exercising that right cannot rest with someone else - either the state, another individual, or some entity - but must be able to be reclaimed and exercised by the individual whose right is at stake. By absolute, I mean that the right in question cannot be totally denied.<sup>75</sup>

Overall, utilitarianism provides a useful framework for understanding the importance of human rights protection in promoting the overall happiness and well-being of society. However, it is important to recognize the potential limitations of this theory and to ensure that human rights are protected and promoted in a way that is consistent with the principles of democracy, individual liberty, and social justice.

#### **2.3.4 Critical Race Theory under Human Rights Protection**

Critical race theory is a framework that examines the ways in which race and racism intersect with other social factors such as gender, class, and sexuality to create systems of oppression and inequality. As a theory of human rights protection, critical race theory argues that the protection of human rights requires an understanding of the ways in which race and racism shape social institutions and systems.

Critical Race Theory recognizes that race strongly affects power and privilege. It also acknowledges that our socio-legal systems are built on histories of profound racial discrimination and prejudice that continue to disadvantage racial minorities<sup>76</sup>.

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<sup>75</sup> Ibid

<sup>76</sup> Irish Centre for Human Rights School of Law, 2023, from <https://www.universityofgalway.ie/media/irishcentreforhumanrights/2022-2023/CRT-and-HR-Subject-Outline->

The theory arose in the USA; however, it is relevant for socio-legal structures around the world because they have all been impacted by colonialism and other forms of racial discrimination and prejudice. Human Rights Law is the most powerful international tool for regulating social justice issues such as discrimination and prejudice. However, there has been relatively little discussion of Critical Race Theory in human rights scholarship and jurisprudence.<sup>77</sup>

According to critical race theory, human rights protection requires an understanding of how race and racism intersect with other forms of social inequality, and how these intersections create systems of oppression that violate the human rights of marginalized and disadvantaged groups. It also recognizes the importance of centering the experiences and perspectives of those who are most impacted by these systems of oppression.

Critical race theory has been influential in the development of human rights protection, particularly in the recognition of the ways in which systemic racism and other forms of oppression violate human rights. It has been used to challenge policies and practices that perpetuate inequality and discrimination, and to promote policies that address the root causes of social inequality and injustice. However, critical race theory has also been criticized by some who argue that it is divisive and promotes a victim mentality. Critics also argue that it is too focused on race and ignores other factors that contribute to social inequality.<sup>78</sup>

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and-Reading-Guide-v-21-July-2022.pdf, on 18/3/2023

<sup>77</sup> *ibid*

<sup>78</sup> George, J. A Lesson on Critical Race Theory, 2021 from [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/civil-rights-](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-)



Overall, critical race theory provides an important framework for understanding the ways in which race and racism intersect with other forms of social inequality to create systems of oppression and inequality. It is an important tool for promoting human rights protection and for challenging the root causes of social injustice and inequality.

### **2.3.5 Feminism as a Theory of Human Rights Protection**

Feminism is a social, political, and cultural movement that advocates for gender equality and the dismantling of patriarchal systems that perpetuate gender-based discrimination and oppression. As a theory of human rights protection, feminism argues that protecting the human rights of women is necessary for achieving true equality and social justice.<sup>79</sup> Feminism recognizes that gender-based discrimination and oppression affect not only women but also members of other marginalized groups who face discrimination based on their gender identity or expression. Feminist theories of human rights protection argue that achieving gender equality requires a focus on the intersectional experiences of individuals who face multiple forms of discrimination and oppression.

Feminism has been influential in the development of human rights protection, particularly in promoting women's rights and gender equality. It has been used to challenge gender-based discrimination and violence, to promote reproductive rights, and to ensure that women have access to education, healthcare, and other

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reimagining-policing/a-lesson-on-critical-race-theory/ on 18/3/2023  
<sup>79</sup> Zwingel, S. & Hernandez, B. Feminism and Human Rights, 2022 from <https://www.oxfordbibliographies.com/display/document/obo-9780199743292/obo-9780199743292-0314.xml#:~:text=Feminism%20is%20about%20striking%20down,for%20social%20transformation%20and%20justice.> On 20/3/2023

resources.<sup>80</sup> However, feminism has also been criticized by some who argue that it is divisive and promotes a "women-first" mentality. Critics also argue that feminism ignores the needs and experiences of men, and that it is too focused on gender and ignores other forms of social inequality.<sup>81</sup> They tease out achievements and challenges, including broader political and economic dynamics that undermine the global level consensus on supporting gender equality.

Overall, feminism provides an important framework for understanding the ways in which gender-based discrimination and oppression perpetuate systems of inequality and injustice. It is an important tool for promoting human rights protection and for challenging the root causes of gender-based discrimination and oppression.

## **2.4 Conclusion**

This chapter has discussed on the existing concepts and theories for protection of human rights. The discussion on this chapter notes that, the conceptual and theoretical framework governing human rights protection is complex and multifaceted, drawing on a range of philosophical, legal, and social perspectives. This framework emphasizes the inherent and universal nature of human rights, the interdependence and indivisibility of rights, and the importance of non-discrimination, participation, and empowerment. The emphasizes the importance of a holistic and intersectional approach to promoting and protecting human rights, recognizing that the protection of these rights requires a deep understanding of the ways in which different forms of oppression intersect and interact to create systems

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<sup>80</sup> *Ibdi*

<sup>81</sup> Antrobus, Peggy. *The Global Women's Movement: Origins, Issues and Strategies*. London: Zed Books, 2004

of inequality and injustice. By working to address these underlying structures of oppression, we can move closer to achieving true equality, justice, and human dignity for all.

**CHAPTER THREE**  
**INTERNATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK**  
**GOVERNING PROTECTION OF HUMAN RIGHTS**

**3.1 Introduction**

The international legal and institutional framework aims to protect and promote human rights globally, hold states and individuals accountable for human rights abuses, and provide mechanisms for victims of human rights violations to seek redress and justice. The international legal and institutional framework governing the protection of human rights consists of a set of international instruments, institutions, and mechanisms that aim to promote and safeguard the rights and freedoms of individuals worldwide. This chapter discusses on the international legal and Institutional framework governing protection of human rights.

**3.2 International Legal Framework for Protection of Human Rights**

These are just some of the major international human right's legal instruments, and there are many other regional and specialized human rights instruments as well. Each of these instruments may have additional protocols, optional protocols, or other supplementary documents that further elaborate on specific human rights issues.

**3.2.1 The Universal Declaration of Human Rights of 1948**

UDHR is a landmark document adopted by the United Nations General Assembly on December 10, 1948. It is a foundational text that sets out the fundamental rights and freedoms that are inherent to all human beings, regardless of race, color, religion, sex, language, political or other opinion, national or social origin, property, birth, or other status. The UDHR consists of 30 articles that cover a wide range of human

rights, including those related to protection and safeguarding of human rights. Here are some key articles from the UDHR that highlight the protection of human rights:

On the Right to Life, Liberty, and Security of Person the document states guarantee everyone with the right to life, liberty, and security of person. No one shall be subjected to torture, cruel, inhuman, or degrading treatment or punishment. Freedom from Arbitrary Arrest, Detention, or Exile - No one shall be subjected to arbitrary arrest, detention, or exile. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of their rights and obligations and of any criminal charge against them.<sup>82</sup>

Regarding the Right to Privacy the declaration declares that, No one shall be subjected to arbitrary interference with their privacy, family, home, or correspondence, nor to attacks upon their honor and reputation. On the Right to Property, everyone has the right to own property alone as well as in association with others, and no one shall be arbitrarily deprived of their property. Regarding the Freedom of Thought, Conscience, and Religion, everyone has the right to freedom of thought, conscience, and religion, including the freedom to manifest their religion or belief in teaching, practice, worship, and observance.<sup>83</sup>

On the Freedom of Expression, everyone has the right to freedom of thought, expression, and information, including the freedom to hold opinions without interference and to seek, receives, and imparts information and ideas through any media and regardless of frontiers. While on the Right to Peaceful Assembly and

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82 Article 3,5, 7, & 10 of the Universal Declaration of Human Rights, 1948

83 Article 12, 17 & 18, Ibid

Association, everyone has the right to freedom of peaceful assembly and association.<sup>84</sup>

Freedom from State or Personal Interference in the Exercise of Rights, declared that Nothing in the UDHR shall be interpreted as implying for any State, group, or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth in the UDHR.<sup>85</sup> These articles in the UDHR emphasize the importance of protecting human rights and ensuring that all individuals are treated with dignity, equality, and fairness, irrespective of their background or status. The UDHR has served as a foundation for subsequent international human rights instruments and has been widely recognized as a global standard for the protection of human rights.

### **3.2.2 The International Covenant on Civil and Political Rights, 1966**

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly in 1966. It is one of the two main international human rights treaties, along with the International Covenant on Economic, Social, and Cultural Rights (ICESCR), that together with the Universal Declaration of Human Rights (UDHR) form the International Bill of Human Rights. The ICCPR focuses on the protection of civil and political rights, and it obligates States Parties to respect and ensure the human rights and fundamental freedoms of individuals within their jurisdiction. Here are some key provisions of the ICCPR that relate to the protection of human rights:

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84 Article 19 & 20, Ibid

85 Article 30, Ibid

Every human being has the inherent right to life. This right shall be protected by law, and no one shall be arbitrarily deprived of their life. While No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. This right is absolute and non-derogable, meaning it cannot be suspended under any circumstances.<sup>86</sup> Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention, and anyone who is arrested or detained must be brought promptly before a judge or other judicial authority and be entitled to a fair and impartial hearing. Likewise, everyone charged with a criminal offense has the right to a fair and public hearing by a competent, independent, and impartial tribunal. This includes the right to be presumed innocent until proven guilty, the right to be informed of the charges against them, the right to adequate time and facilities for the preparation of their defense, and the right to be present at their trial.<sup>87</sup>

Freedom of Thought, Conscience, and Religion whereby everyone has the right to freedom of thought, conscience, and religion, including the freedom to manifest their religion or belief in worship, observance, practice, and teaching. This right is subject only to such limitations as are prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.<sup>88</sup>

Freedom of Expression is protected where by everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers. This right includes freedom of the press and

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<sup>86</sup> Article 6 & 7 of the International Covenant on Civil and Political Rights (ICCPR), *supra*

<sup>87</sup> Article 9 & 14 of ICCPR, *supra*

<sup>88</sup> Article 18, *Ibid*

other media, and any restrictions on this right must be provided by law and necessary for the respect of the rights or reputations of others, or for the protection of national security, public order, or public health or morals.<sup>89</sup>

Right to Peaceful Assembly is also being protected<sup>90</sup> while Right to Participate in Public Affairs and to Vote is also protected whereby every citizen has the right to take part in the conduct of public affairs, to vote, and to be elected to public office. This right includes the right to have access to public service on general terms of equality and without discrimination.<sup>91</sup>

### **3.2.3 The International Covenant on Economic, Social and Cultural Rights, 1966**

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is one of the two main international human rights treaties, along with the International Covenant on Civil and Political Rights (ICCPR) that together with the Universal Declaration of Human Rights (UDHR) form the International Bill of Human Rights. The ICESCR focuses on the protection of economic, social, and cultural rights, and it obligates States Parties to respect, protect, and fulfill the human rights related to these areas. Here are some key provisions of the ICESCR that relate to the protection of human rights:

Everyone has the right to work, which includes the right to freely choose or accept work, just and favorable conditions of work, and protection against unemployment.

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89 Article 19, Ibid

90 Article 21, Ibid

91 Article 25, Ibid



States Parties are obligated to take steps to achieve the full realization of this right. Everyone has the right to just and favorable conditions of work, which includes fair wages, safe and healthy working conditions, and rest, leisure, and reasonable limitation of working hours. States Parties are obligated to take steps to ensure the protection of this right.<sup>92</sup>

Everyone has the right to social security, including social insurance, social assistance, and social services. States Parties are obligated to take steps to achieve the full realization of this right. Everyone has the right to an adequate standard of living for themselves and their family, including adequate food, clothing, and housing, and the continuous improvement of living conditions. States Parties are obligated to take steps to ensure the realization of this right.<sup>93</sup>

Right to Health, the Right to Education and the Right to Culture are all guaranteed under the ICESCR.<sup>94</sup> The ICESCR establishes the obligations of States Parties to respect, protect, and fulfill the economic, social, and cultural rights of individuals within their jurisdiction. It emphasizes the importance of ensuring an adequate standard of living, including access to work, education, health, and social security. The ICESCR has been widely ratified by many countries around the world and serves as an important international instrument for the protection of human rights in the areas of economic, social, and cultural rights.

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92 Article 6 & 7, of The International Covenant on Economic, Social and Cultural Rights (ICESCR),  
supra

93 Article 9 & 11, Ibid

94 Article 12, 15 and 18 of the ICESCR, 1966

### **3.2.4 Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965**

The Convention on the Elimination of All Forms of Racial Discrimination (CERD) as one of the core international human rights treaties that aims to combat racial discrimination and promote equality and non-discrimination on the basis of race, color, descent, or national or ethnic origin. The CERD sets out the obligations of States Parties to prevent, prohibit, and eradicate racial discrimination in all its forms. Here are some key provisions of the CERD that relate to the protection of human rights:

States Parties are obligated to condemn and prohibit racial discrimination in all its forms and to pursue policies to eliminate racial discrimination in their territories. This includes the obligation to prevent and combat racist ideologies, practices, and acts, and to ensure that public authorities and institutions do not engage in racial discrimination.<sup>95</sup> States Parties are obligated to guarantee the right to equality before the law and the enjoyment of human rights without discrimination based on race, color, descent, or national or ethnic origin. States Parties are also obligated to ensure effective remedies for victims of racial discrimination.<sup>96</sup>

States Parties are obligated to prohibit and eliminate racial segregation and apartheid, which are considered as forms of racial discrimination. States Parties are also obligated to prevent and remedy any practices that may lead to racial segregation or apartheid. States Parties are obligated to ensure the right of everyone,

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<sup>95</sup> Article 2 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965

<sup>96</sup> Article 5, Ibid

without distinction as to race, color, or national or ethnic origin, to participate in the conduct of public affairs, including the right to vote and be elected to public office. States Parties are also obligated to ensure equal access to public services and facilities.<sup>97</sup>

States Parties are obligated to promote education, information, and understanding among different racial groups to combat racial prejudice and promote tolerance, understanding, and friendship among racial and ethnic groups. States Parties are also obligated to eliminate any propaganda or organizations that promote racial discrimination. States Parties are obligated to submit periodic reports on measures they have taken to implement the provisions of the CERD to the Committee on the Elimination of Racial Discrimination, which monitors the implementation of the Convention and provides guidance and recommendations to States Parties.<sup>98</sup>

### **3.2.5 Convention on the Elimination of All Forms of Discrimination against Women, 1979**

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is a multilateral treaty adopted by the United Nations General Assembly in 1979. It is often referred to as the international bill of rights for women and is one of the most comprehensive international instruments that addresses discrimination against women and promotes gender equality. CEDAW sets out the obligations of States Parties to eliminate discrimination against women in all areas of life and ensure the full enjoyment of human rights by women. Here are some key provisions

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97 *ibid*

98 Article 7 & 9, *Ibid*

of CEDAW that relate to the protection of human rights:

States Parties are obligated to eliminate discrimination against women in all its forms and to ensure that women enjoy their human rights and fundamental freedoms on an equal basis with men. This includes the obligation to take measures to modify or abolish existing laws, regulations, customs, and practices that perpetuate discrimination against women. States Parties are obligated to ensure the full development and advancement of women, to ensure their equal rights with men in political, economic, social, cultural, and civil spheres, and to take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise.<sup>99</sup>

States Parties are obligated to take measures to suppress all forms of trafficking, exploitation, and prostitution of women, and to take effective action to prevent and eliminate discrimination against women in marriage and family relations. States Parties are also obligated to take measures to protect women from all forms of gender-based violence, including domestic violence, and to provide support services to victims. States Parties are obligated to ensure equal access to education, including vocational and technical education, health care, and employment opportunities for women, and to take measures to eliminate discrimination against women in these areas. States Parties are also obligated to ensure maternity protection for women in the workplace.<sup>100</sup>

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99 Article 2 & 3 of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979

100 Article 6, 10 & 11, Ibid

States Parties are obligated to ensure women's participation in the political and public life of their countries, including the right to vote and participate in elections, the right to hold public office, and the right to participate in the formulation and implementation of government policies and programs. States Parties are obligated to submit periodic reports on measures they have taken to implement the provisions of CEDAW to the Committee on the Elimination of Discrimination Against Women, which monitors the implementation of the Convention and provides guidance and recommendations to States Parties.<sup>101</sup>

### **3.2.6 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984**

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is an international treaty adopted by the United Nations General Assembly in 1984. CAT is one of the main international instruments that addresses the prohibition and prevention of torture and other cruel, inhuman, or degrading treatment or punishment. Here are some key provisions of CAT that relate to the protection of human rights:

States Parties are obligated to take effective legislative, administrative, judicial, and other measures to prevent acts of torture in any territory under their jurisdiction. Torture is defined as the intentional infliction of severe pain or suffering, physical or mental, by a public official or a person acting in an official capacity, for purposes such as obtaining information, punishing, intimidating, or discriminating against an

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101 Article 7 & 18, Ibid

individual. States Parties are obligated not to expel, return, or extradite a person to another State where there are substantial grounds to believe that the person would be at risk of being subjected to torture. This principle of non-refoulement applies regardless of whether the torture would occur in the State's territory or in another territory under its jurisdiction.<sup>102</sup>

States Parties are obligated to ensure that acts of torture are considered as criminal offenses under their domestic laws and those perpetrators are brought to justice. States Parties are also obligated to ensure that torture is not justified by exceptional circumstances such as a state of war, threat of war, political instability, or any other public emergency. States Parties are obligated to ensure that all persons who are deprived of their liberty are treated with humanity and with respect for the inherent dignity of the human person. States Parties are also obligated to take effective measures to prevent acts of torture and to ensure that all allegations of torture are promptly and impartially investigated.<sup>103</sup> States Parties are obligated to provide victims of torture with appropriate and effective remedies, including compensation, rehabilitation, and measures of satisfaction, as well as guarantees of non-repetition. States Parties are also obligated to ensure that victims of torture have the right to complain to competent authorities and to have their complaints promptly and impartially investigated.<sup>104</sup>

CAT recognizes the absolute prohibition of torture and other cruel, inhuman, or degrading treatment or punishment and sets out the obligations of States Parties to

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102 Article 2 & 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984

103 Article 4 & 10 of the CAT, *supra*

104 Article 14, *Ibid*

prevent, investigate, prosecute, and provide redress for acts of torture. It emphasizes the importance of accountability, prevention, and rehabilitation for victims of torture, and includes provisions on non-refoulement and monitoring. CAT has been widely ratified by many countries around the world and serves as a key international instrument for the protection of human rights and the prevention of torture.

### **3.2.7 Convention on the Rights of the Child, 1989**

The Convention on the Rights of the Child (CRC) is an international treaty adopted by the United Nations General Assembly in 1989. It is a comprehensive human rights instrument that specifically focuses on the protection of the rights of children. The CRC recognizes the inherent dignity and human rights of all children and sets out the rights and obligations of states parties to ensure the well-being and development of children. Here are some key provisions of the CRC that relate to the protection of human rights:

States Parties are obligated to make the best interests of the child a primary consideration in all actions concerning children. This principle requires that decisions and actions that affect children should prioritize their well-being, safety, and development. States Parties recognize that every child has the inherent right to life and to survive and develop to the fullest extent possible. States Parties are obligated to ensure the right to life, provide necessary support for child survival and development, and take measures to prevent child mortality and malnutrition.<sup>105</sup>

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105 Article 3 & 6 of the Convention on the Rights of the Child (CRC), 1989

States Parties are obligated to take measures to protect children from all forms of physical or mental violence, abuse, neglect, exploitation, or harm. This includes protection from trafficking, sexual exploitation, child labor, and harmful traditional practices.<sup>106</sup> States Parties are obligated to ensure that every child has the right to education and the highest attainable standard of health. This includes access to quality education, health care, nutrition, and clean water.<sup>107</sup>

States Parties are obligated to ensure that every child has the right to know and be cared for by their parents, and to preserve their identity, including their name, nationality, and family relations. States Parties are also obligated to protect children from arbitrary or unlawful interference with their family life. States Parties are obligated to respect and promote the right of the child to express their views freely, to be heard in matters affecting them, and to participate in decisions that affect their lives. This includes the right to freedom of thought, conscience, and expression, and the right to access information from diverse sources.<sup>108</sup>

The CRC recognizes that children are entitled to enjoy the full range of human rights, and sets out the rights and obligations of states parties to protect and promote the well-being and development of children. It emphasizes the importance of the best interests of the child, participation, and protection from violence, abuse, and exploitation. The CRC has been widely ratified by most countries in the world and serves as a fundamental international instrument for the protection of the rights of children.

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106 Articles 19, 32, 34, Ibid

107 Article 28, 29, Ibid

108 Articles 12, 13, 17 of the CRC, supra



### **3.2.8 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families**

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) is an international treaty adopted by the United Nations General Assembly in 1990. It is the principal international instrument that specifically addresses the human rights of migrant workers and their families. The ICRMW seeks to protect the rights of migrant workers and their families, regardless of their immigration status, and sets out the rights and obligations of states parties to ensure their protection. Here are some key provisions of the ICRMW that relate to the protection of human rights:

States Parties are obligated to ensure that migrant workers and their families are not subjected to discrimination based on their race, color, sex, religion, or other status, and are entitled to enjoy the same rights and freedoms as nationals of the receiving state. States Parties are obligated to ensure that migrant workers and their families enjoy the right to life and security of person, and are protected from torture, cruel, inhuman, or degrading treatment or punishment.<sup>109</sup>

States Parties are obligated to ensure that migrant workers and their families enjoy labor rights, including the right to just and favorable conditions of work, fair wages, safe and healthy working conditions, and freedom of association and collective bargaining. States Parties are obligated to ensure that migrant workers and their families have the right to family life, and are protected from arbitrary or unlawful

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<sup>109</sup> Article 7 & 9 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 1990

interference with their family life. This includes the right to marry, found a family, and maintain contact with family members.<sup>110</sup>

States Parties are obligated to ensure that migrant children have the right to education and health care, and are not subjected to discriminatory treatment in access to education and health services. Parties are obligated to ensure that migrant workers and their families have access to effective remedies for violations of their rights, including the right to seek justice and obtain redress for any harm suffered.<sup>111</sup>

The ICRMW recognizes the rights and dignity of migrant workers and their families, and sets out the rights and obligations of states parties to protect and promote their human rights, regardless of their immigration status. It emphasizes the principles of non-discrimination, equal treatment, and access to justice and remedy. The ICRMW has been ratified by a number of countries and serves as an important international instrument for the protection of the rights of migrant workers and their families.

### **3.2.9 Convention on the Rights of Persons with Disabilities**

The Convention on the Rights of Persons with Disabilities (CRPD) is an international treaty adopted by the United Nations General Assembly in 2006. It is a comprehensive human rights treaty that specifically focuses on the rights and dignity of persons with disabilities. The CRPD seeks to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities. Here are some key provisions of the CRPD that relate to the protection of human rights:

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<sup>110</sup> Articles 16-19, 10, 11, Ibid

<sup>111</sup> Articles 25, 30-31, Ibid

States Parties are obligated to prohibit discrimination on the basis of disability and ensure that persons with disabilities enjoy equal recognition before the law, including equal legal capacity, and the right to own and inherit property, and have access to justice. States Parties are obligated to ensure that persons with disabilities have access to the physical environment, transportation, information and communications, and other facilities and services, on an equal basis with others, and to promote universal design.<sup>112</sup>

States Parties are obligated to ensure that persons with disabilities enjoy the right to life on an equal basis with others, and take measures to prevent discriminatory denial of life-saving medical treatment or care on the basis of disability. States Parties are obligated to ensure that persons with disabilities are protected from torture, cruel, inhuman or degrading treatment or punishment, including measures to prevent and address violence, exploitation, and abuse.<sup>113</sup>

States Parties are obligated to ensure that persons with disabilities have the right to inclusive education, without discrimination, and on an equal basis with others, and to provide reasonable accommodations to facilitate their effective participation in education. States Parties are obligated to ensure that persons with disabilities have the right to work and employment, including in the open labor market, on an equal basis with others, and to provide reasonable accommodations and promote employment opportunities.<sup>114</sup>

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112 Article 5 & 9 of the Convention on the Rights of Persons with Disabilities (CRPD), 2006

113 Article 10 & 15, Ibid

114 Article 24, Ibid

The CRPD emphasizes the principles of non-discrimination, equal recognition before the law, accessibility, and inclusion, and seeks to promote and protect the human rights of persons with disabilities in all aspects of life. The CRPD has been ratified by a significant number of countries and serves as an important international instrument for the protection of the rights of persons with disabilities.

### **3.2.10 Declaration on the Rights of Indigenous Peoples**

The Declaration on the Rights of Indigenous Peoples (DRIP) is an international instrument adopted by the United Nations General Assembly in 2007. It sets out the collective and individual rights of indigenous peoples, and provides guidance to states and other actors on the minimum standards for the protection, respect, and promotion of the rights of indigenous peoples. The DRIP recognizes the unique rights and needs of indigenous peoples, and seeks to address historical injustices and protect their human rights. Here are some key provisions of the DRIP that relate to the protection of human rights:

Indigenous peoples have the right to self-determination, which includes the right to freely determine their political status, pursue their economic, social and cultural development, and maintain and strengthen their distinct identities, cultures, and traditions. Indigenous peoples have the right to own, use, develop, and control their lands, territories, and resources, and to protect their cultural, spiritual, and environmental values associated with those lands, territories, and resources.<sup>115</sup>

Indigenous peoples have the right to participate in decision-making processes that affect their rights and interests, and to be consulted and give their free, prior and

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<sup>115</sup> Article 3 of the Declaration on the Rights of Indigenous Peoples (DRIP), 2007

informed consent before adopting or implementing measures that may affect them. Indigenous peoples have the right to practice, revitalize, and transmit their cultures, religions, and languages, and to maintain and develop their own educational, cultural, and media institutions.<sup>116</sup>

Indigenous peoples have the right to be free from discrimination and to enjoy the same rights and opportunities as others, without discrimination based on their indigenous status. Indigenous peoples have the right to enjoy the highest attainable standard of physical and mental health, adequate housing, and social security, without discrimination. Indigenous peoples have the right to give their free, prior and informed consent to any decision that affects their rights or interests, including in relation to development, extraction of natural resources, or other projects on their lands, territories, or resources.<sup>117</sup>

Article 40 provides for Indigenous peoples have the right to access effective remedies and redress for any violations of their rights, and to have their traditional ways of resolving conflicts and disputes respected and recognized. The DRIP reaffirms the rights of indigenous peoples to their lands, territories, cultures, and self-determination, and emphasizes the principles of non-discrimination, participation, and consent. It provides an important framework for the protection and promotion of the human rights of indigenous peoples, and calls for the recognition and respect of their rights, cultures, and contributions to society. The DRIP has been endorsed by a significant number of countries, and serves as a key international

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116 Article 18, 19 of the Declaration on the Rights of Indigenous Peoples (DRIP)

117 Article 2, Ibid

instrument for the protection of the rights of indigenous peoples.

### **3.3 International Institutional Framework for Protection of Human Rights**

The protection of human rights is a fundamental aspect of international law, and there are several international institutional frameworks that have been established to promote and protect human rights at the global level. Some of the key international institutional frameworks for the protection of human rights include:

#### **3.3.1 The United Nations**

The United Nations was founded in the aftermath of the Second World War primarily as a guardian of peace and security in the world. From the very outset, the founders were aware of the close connection between peace and human rights: only under conditions of peace can human beings achieve full enjoyment of their rights. Never again should people be haunted by atrocities; never again should they become the victims of such genocidal policies as had devastated societies throughout Europe.<sup>118</sup>

The United Nations (UN) is a global intergovernmental organization founded in 1945 with the primary goal of promoting international peace, security, and cooperation among its member states. The UN is comprised of multiple organs and specialized agencies that work together to address various global challenges, including the protection of human rights. Some key aspects of the UN's role in the

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118 [https://www.un.org/en/chronicle/article/protection-human-rights-under-universal-international-law#:~:text=Article%20\(3\)%20specifies%20that,%2C%20language%2C%20or%20religion%E2%80%9D](https://www.un.org/en/chronicle/article/protection-human-rights-under-universal-international-law#:~:text=Article%20(3)%20specifies%20that,%2C%20language%2C%20or%20religion%E2%80%9D) accessed 5/4/2023

protection of human rights include:<sup>119</sup>

### **3.3.1.1 The UN Charter**

Taking into consideration of the important connection between peace and human rights as stated above, the recognition of protection and promotion of the respect of human rights by all states of the world was so important. The Charter of the United Nations, in its Preamble, sets out as one of the aims of the world organization “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”. Further provisos were included in the text of the Charter itself.<sup>120</sup>

The UN Charter, the organization's founding document, sets forth the principles of the UN, including the promotion of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. The Charter commits member states to respect and promote human rights and provides a framework for addressing human rights issues through peaceful means.<sup>121</sup> The UN Charter set a system that do compel states to respect, promote and protect human rights within and outside their jurisdiction.

The UN Charter emphasizes the importance of maintaining international peace and security, which are essential for the enjoyment of human rights. It authorizes the UN Security Council to take measures to prevent threats to peace, including human

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<sup>119</sup> United Nations, copied from <https://www.un.org/en/global-issues/human-rights#:~:text=Human%20rights%20include%20the%20right,to%20these%20rights%2C%20witho%20ut%20discrimination>. On 05/4/2023

<sup>120</sup> Preamble of the UN Charter, 1945

<sup>121</sup> Article 1(3), Ibid

rights violations that may lead to conflicts. The UN Charter upholds the importance of international law, including human rights treaties and conventions, as the foundation for promoting and protecting human rights worldwide. It encourages member states to respect and uphold their human rights obligations under international law.<sup>122</sup>

The UN Charter promotes universal membership, which means that all states, regardless of their size or wealth, have equal rights and responsibilities within the United Nations. This fosters inclusiveness and encourages cooperation among states to protect and promote human rights globally. Peaceful Dispute Resolution: The UN Charter emphasizes peaceful means for the resolution of international disputes, including human rights issues, through negotiation, mediation, arbitration, and other peaceful methods, in order to prevent conflicts that may result in human rights violations.

While the UN Charter does not provide an exhaustive list of human rights, it sets the stage for the UN's subsequent efforts in promoting and protecting human rights through various mechanisms such as the Universal Declaration of Human Rights (UDHR), international human rights conventions, specialized agencies, and the UN Human Rights Council. The UN Charter serves as a guiding document that underscores the importance of human rights in the work of the United Nations and its member states.

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<sup>122</sup> United Nations, Ibid



### 3.3.1.2 The UN General Assembly

The UN General Assembly is the main deliberative body of the UN, composed of all 193-member states. It serves as a forum for member states to discuss and coordinate on international issues, including human rights. The General Assembly adopts resolutions and declarations on human rights issues, and its decisions and recommendations can carry moral and political weight, though they are not legally binding.

The General Assembly adopts resolutions and declarations that establish global human rights standards. For example, the Universal Declaration of Human Rights (UDHR), adopted by the General Assembly in 1948, is a landmark document that sets out fundamental human rights and freedoms that should be universally protected. The General Assembly regularly addresses human rights issues through its agenda items and debates, providing a platform for member states to discuss and raise awareness about human rights violations and challenges. It also facilitates dialogues and discussions on human rights in various forums, such as the High-Level Political Forum on Sustainable Development and thematic debates on human rights.<sup>123</sup>

The General Assembly establishes and provides mandates to several human rights bodies, such as the Office of the High Commissioner for Human Rights (OHCHR), which plays a central role in promoting and protecting human rights globally. The General Assembly also creates special procedures, such as special rapporteurs and

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123 Article 11 of the UN Charter, *supra*

working groups, to address specific human rights issues and violations.<sup>124</sup>

The General Assembly reviews and discusses human rights reports, including reports submitted by the UN Human Rights Council, specialized agencies, and member states. These reports provide information on the human rights situation in different countries and contribute to raising awareness, promoting accountability, and fostering dialogue on human rights.<sup>125</sup> The General Assembly adopts resolutions on human rights issues, expressing its collective stance and making recommendations to member states on specific human rights concerns. These resolutions can address a wide range of human rights issues, including civil, political, economic, social, and cultural rights, and help shape global discourse and action on human rights.<sup>126</sup>

Promoting Human Rights Education: The General Assembly emphasizes the importance of human rights education and encourages member states to incorporate human rights principles into their educational systems. It has adopted resolutions and initiatives to promote human rights education, awareness, and capacity-building at local, national, and international levels.

General Assembly can convene special sessions to address urgent human rights emergencies, such as armed conflicts, mass atrocities, and humanitarian crises. It can adopt resolutions and take actions to address these situations, including calling for ceasefires, humanitarian access, and accountability for human rights violations.<sup>127</sup>

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124 Article 22, Ibid

125 UN General Assembly, from

<https://www.un.org/en/ga/about/background.shtml#:~:text=The%20Assembly%20makes%20recommendations%20to,humanitarian%2C%20social%20and%20legal%20matters>. On 5/4/2023

126 Article 14, Ibid

127 UN General Assembly, Ibid

### 3.3.1.3 UN Security Council

The UN Security Council is responsible for maintaining international peace and security. It has the authority to take measures, including imposing sanctions and authorizing the use of force, to address threats to peace and human rights violations that constitute a threat to international peace and security. The Security Council can also establish international tribunals to prosecute individuals responsible for genocide, war crimes, and crimes against humanity, as well as impose targeted sanctions against individuals and entities involved in human rights abuses.<sup>128</sup> The primary mandate of the United Nations Security Council is the maintenance of international peace and security, rather than the protection of human rights. However, human rights issues can sometimes be addressed by the Security Council, particularly when they are deemed to pose a threat to international peace and security. Here are some key points regarding the role of the Security Council in the protection of human rights:<sup>129</sup>

The Security Council, under Chapter VII of the UN Charter, has the authority to take measures to address threats to international peace and security. In certain situations, the Security Council may adopt resolutions that address human rights issues, such as gross violations of human rights, genocide, ethnic cleansing, or crimes against humanity, which are considered threats to international peace and security.<sup>130</sup> The Security Council has the power to impose sanctions, including economic and military measures, on states or entities that are found to be engaged in actions that

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128 United Nations Security Council, from [https://www.un.org/securitycouncil/about\\_test1](https://www.un.org/securitycouncil/about_test1) on 5/4/2023

129 United Nations Security Council, *Ibid*

130 Chapter VII of the UN Charter, *supra*

threaten or undermine international peace and security, including human rights violations. Sanctions can be used as a tool to pressure states or entities to comply with human rights norms and standards.<sup>131</sup>

The Security Council may authorize peacekeeping missions to help restore and maintain peace and security in conflict-affected areas. Peacekeeping missions may have a mandate to protect civilians, including by monitoring and reporting on human rights violations, and supporting efforts to promote human rights and the rule of law.

The UN Human Rights Council is a subsidiary body of the General Assembly and is responsible for promoting and protecting human rights worldwide. It is composed of 47 member states elected by the General Assembly and meets regularly to address human rights issues, including country-specific situations, thematic human rights concerns, and the universal periodic review of the human rights records of all UN member states. The Human Rights Council also appoints special procedures, such as special rapporteurs and working groups, to monitor and report on specific human rights issues.<sup>132</sup>

#### **3.3.1.4 UN Treaty Bodies**

The UN has established several treaty bodies composed of independent experts that monitor the implementation of human rights treaties ratified by member states. These treaty bodies receive periodic reports from member states on their compliance with treaty obligations, issue recommendations, and provide guidance on interpreting and implementing human rights standards contained in the respective treaties.

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131 Article 40, Ibid

132 [https://www.un.org/securitycouncil/about\\_test1](https://www.un.org/securitycouncil/about_test1)

Examples of UN treaty bodies include the Human Rights Committee, which monitors the ICCPR, and the Committee on Economic, Social and Cultural Rights, which monitors the ICESCR. These bodies are well presented previously in this chapter.

### **3.3.1.5 UN Specialized Agencies**

The UN has several specialized agencies, such as UNESCO, WHO, and the International Labour Organization (ILO), that work on specific areas related to human rights, such as education, health, and labor rights. These agencies develop policies, standards, and programs to promote and protect human rights in their respective areas of expertise and work in coordination with other UN organs and member states.<sup>133</sup>

There are several United Nations (UN) specialized agencies that are involved in the protection of human rights. These agencies have been established to address various aspects of human rights and work towards ensuring that human rights are respected, protected, and promoted worldwide. UN specialized agencies that are involved in the protection of human rights. Each agency has its own mandate and focus, but collectively they work towards promoting and protecting human rights in various areas, including civil, political, economic, social, and cultural rights.

The UN deploys peacekeeping missions to conflict-affected areas to help maintain peace and security, protect civilians, and promote respect for human rights. Peacekeepers may engage in various activities to support human rights, such as

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<sup>133</sup> UN Specialized Agencies, from <https://www.un.org/en/about-us/un-system> on 5/4/2023

monitoring human rights situations, providing protection to vulnerable groups, supporting national efforts to uphold human rights, and contributing to post-conflict justice and reconciliation processes.<sup>134</sup>

The UN plays a crucial role in promoting and protecting human rights globally, although its effectiveness and limitations can be subject to debate and criticism. Nevertheless, the UN remains a central international institutional framework for addressing human rights issues and advancing the global human rights agenda.

### **3.3.2 The Universal Declaration of Human Rights**

The Universal Declaration of Human Rights (UDHR) is a landmark document adopted by the United Nations General Assembly on December 10, 1948. It is a non-binding declaration that sets out a comprehensive and universal framework of human rights that are inherent to all human beings, regardless of their nationality, race, religion, sex, or any other status. The UDHR is considered a foundational document of international human rights law and has served as a source of inspiration for subsequent human rights instruments and treaties.<sup>135</sup>

The UDHR has been widely recognized as a milestone in the history of human rights and has been translated into over 500 languages. It has influenced the development of international human rights law, including the subsequent adoption of binding human rights treaties, regional human rights instruments, and national laws and policies. The UDHR continues to be a reference point for human rights advocacy

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134 MUNUSCO, from <https://peacekeeping.un.org/en/mission/monusco> on 5/4/2023

135 UN Universal Declaration of Human Rights, from <https://www.un.org/en/about-us/universal-declaration-of-human-rights> 6/4/2023

and serves as a guiding document for promoting and protecting human rights worldwide.<sup>136</sup> The rights protected under this institution are previously discussed.

### **3.3.2 International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights**

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are two international human rights treaties that were adopted by the United Nations General Assembly in 1966 and came into force in 1976. Together with the Universal Declaration of Human Rights (UDHR), they form the International Bill of Human Rights, which sets out a comprehensive framework for the protection and promotion of human rights at the international level.

These international legal institutions have been discussed previously in this chapter.

### **3.3.3 The International Criminal Court**

The International Criminal Court (ICC) is a permanent international tribunal that has jurisdiction to prosecute individuals for the most serious crimes of international concern, namely genocide, crimes against humanity, war crimes, and the crime of aggression. The ICC was established by the Rome Statute<sup>137</sup> with its headquartered in The Hague, Netherlands. The ICC is the first permanent international criminal court with global jurisdiction and is designed to complement national criminal justice systems. Its mandate is to investigate, prosecute, and try individuals responsible for the commission of these grave crimes when national authorities are

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<sup>136</sup> Ibid

<sup>137</sup> was adopted on July 17, 1998, and entered into force on July 1, 2002

unable or unwilling to do so, or when the crimes are of such magnitude that they affect the international community as a whole. The ICC is an independent and impartial institution and operates based on the principles of complementarity, which means that it only intervenes when states are unable or unwilling to prosecute, and the principle of the rule of law.<sup>138</sup>

The ICC has jurisdiction over individuals, not states, and can only prosecute individuals who are alleged to have committed crimes within the jurisdiction of the Court after its establishment in 2002. The ICC's jurisdiction is based on the principle of complementarity, meaning that it can only intervene when states are unable or unwilling to prosecute the crimes within their national jurisdiction. The ICC can also exercise jurisdiction over crimes committed on the territory of states parties to the Rome Statute, as well as crimes committed by nationals of states parties or by individuals whose crimes have been referred to the ICC by the United Nations Security Council.<sup>139</sup>

The ICC plays a significant role in holding individuals accountable for the most serious crimes of international concern and promoting accountability and justice for victims of such crimes. However, it has faced challenges and criticisms, including issues related to jurisdiction, cooperation with states, and the politicization of its work. Nevertheless, the ICC continues to be an important institution in the international legal framework for the protection of human rights and the prevention of impunity for grave international crimes.

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138 Article 1 of the Rome Statute, 1998

139 Article 25, Ibid



### **3.4 Regional Legal Instruments for Protection of Human Rights**

Apart from the international legal instruments discussed earlier, there are also regional instruments that contribute to the protection of human rights. These regional instruments are developed and adopted by regional organizations or groups of countries to address human rights issues that are specific to their respective regions. Here are some examples of regional legal instruments for the protection of human rights:

#### **3.4.1 European Court of Human Rights**

European Court of Human Rights (ECtHR): The ECHR established the ECtHR as the principal judicial organ responsible for interpreting and applying the convention. Individuals who believe their rights under the ECHR have been violated can bring their cases before the ECtHR after exhausting domestic remedies. The ECtHR issues binding judgments on cases brought before it and plays a crucial role in ensuring the implementation and enforcement of the ECHR.<sup>140</sup>

The ECtHR has the authority to issue interim measures, also known as "interim injunctions" or "provisional measures," to prevent irreparable harm or further violations of rights pending the examination of cases. The ECtHR can also provide advisory opinions on legal questions referred to it by member states or other international organizations, which contributes to the development of human rights jurisprudence in Europe.<sup>141</sup> The ECHR allows individuals, non-governmental organizations (NGOs), and groups of individuals to submit complaints, also known

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<sup>140</sup> European Court of Human Rights (ECtHR) copied from <https://echr.coe.int/Pages/home.aspx?p=home> on 7/4/2023

<sup>141</sup> <https://echr.coe.int/Pages/home.aspx?p=home>, supra

as "applications," to the ECtHR alleging violations of their rights protected under the convention. The ECHR also allows for collective complaints to be lodged by certain organizations representing groups of individuals, such as trade unions or associations of victims of human rights violations.<sup>142</sup>

The ECHR establishes a monitoring mechanism to ensure compliance by member states. The Committee of Ministers of the Council of Europe is responsible for supervising the execution of judgments of the ECtHR and monitoring the implementation of the convention by member states. The Council of Europe also has various monitoring bodies, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which conducts visits to places of detention in member states to prevent torture and ill-treatment.<sup>143</sup>

The ECHR has been supplemented by a number of protocols that have expanded the scope of protection under the convention. For example, Protocol No. 1 extends the right to free elections, Protocol No. 6 abolishes the death penalty, Protocol No. 12 prohibits discrimination, and Protocol No. 13 provides for the abolition of the death penalty in all circumstances.<sup>144</sup>

The ECHR has played a significant role in promoting and protecting human rights in Europe and has contributed to the development of a robust body of human rights jurisprudence. It has served as a crucial mechanism for individuals to seek redress for violations of their human rights and has contributed to the advancement of

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142 Ibid

143 Council of Europe Court of Human Rights, copied from  
<https://www.coe.int/en/web/tbilisi/europeancourtofhumanrights> on 10/04/2023

144 Protocol 1, 12 & 13, Ibid

human rights standards in the Council of Europe member states.

### **3.4.2 The Inter-American Court of Human Rights**

The Inter-American Court of Human Rights (IACHR) is a supranational court established by the American Convention on Human Rights, also known as the Pact of San Jose, which is an international treaty signed by most countries in the Americas.<sup>145</sup> The IACHR is one of two principal organs of the Inter-American System for the promotion and protection of human rights, the other being the Inter-American Commission on Human Rights (IACHR).

The IACHR is headquartered in San Jose, Costa Rica, and its primary mandate is to interpret and apply the provisions of the American Convention on Human Rights and other human rights instruments of the Inter-American System. The Court has jurisdiction to hear cases submitted by states, individuals, and non-governmental organizations (NGOs) alleging violations of human rights protected under the American Convention and other relevant treaties.<sup>146</sup> The IACHR plays a vital role in promoting and protecting human rights in the Americas through its adjudicatory function, which involves hearing and deciding cases, as well as its advisory function, which involves issuing advisory opinions on matters of legal interpretation or application of human rights standards.<sup>147</sup> The Court's decisions are binding on the states that are parties to the American Convention, and its judgments can have significant implications for human rights protection in the Americas.

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145 the "Pact of San Jose, Costa Rica," is a regional human rights treaty adopted in 1969

146 Article 1 of the Inter-American Court of Human Rights, adopted by the General Assembly of the OAS at its Ninth Regular Session, held in La Paz Bolivia, October 1979 (Resolution No.448)

147 Article 63 of the American Convention on Human Rights, 1969

The IACHR has contributed to the development of human rights jurisprudence in the Americas and has dealt with a wide range of human rights issues, including but not limited to, freedom of expression, the rights of indigenous peoples, the rights of women, the right to a fair trial, and the prohibition of torture and cruel, inhuman, or degrading treatment or punishment.<sup>148</sup> It is important to note that the IACHR is distinct from the International Criminal Court (ICC), which is a separate international tribunal that deals with cases involving genocide, war crimes, crimes against humanity, and aggression. The IACHR focuses specifically on human rights issues in the Americas and does not have jurisdiction over criminal matters. The court has served as an important mechanism for individuals and NGOs to seek redress for violations of their human rights and has contributed to the advancement of human rights standards in the member states of the OAS.

### **3.4.3 African Commission on Human and Peoples' Rights**

The African Commission on Human and Peoples' Rights (ACHPR) is a regional intergovernmental organization established by the African Charter on Human and Peoples' Rights, also known as the Banjul Charter. The ACHPR is one of the main organs of the African Union (AU) tasked with promoting and protecting human rights in Africa.<sup>149</sup> The ACHPR is headquartered in Banjul, The Gambia, and its primary mandate is to monitor the implementation of the African Charter by African Union member states. The African Charter is a regional human rights instrument that sets out the civil, political, economic, social, and cultural rights and freedoms of individuals and peoples in Africa. The ACHPR is responsible for receiving and

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148 Article 1, *Ibid*

149 Article 45 of the Charter, *supra*

considering complaints of human rights violations, conducting country visits, issuing reports, and providing general promotion and protection of human rights in Africa.

The ACHPR is composed of 11 Commissioners who are elected by the Assembly of Heads of State and Government of the African Union. The Commissioners serve in their personal capacity and are independent and impartial in the performance of their duties. The ACHPR works closely with state parties, civil society organizations, and other stakeholders to promote human rights, including through public hearings, fact-finding missions, and engagement with state authorities.<sup>150</sup> The ACHPR has addressed a wide range of human rights issues in Africa, including but not limited to, freedom of expression, right to life, rights of women and children, rights of indigenous peoples, rights of refugees and internally displaced persons, and rights of persons with disabilities. The ACHPR also collaborates with other regional and international human rights bodies, such as the United Nations (UN) human rights system, to promote human rights in Africa.<sup>151</sup>

It is important to note that the ACHPR is distinct from the International Criminal Court (ICC), which is a separate international tribunal that deals with cases involving genocide, war crimes, crimes against humanity, and aggression. The ACHPR focuses specifically on human rights issues in Africa and does not have jurisdiction over criminal matters.

#### **3.4.4 ASEAN Intergovernmental Commission on Human Rights**

The ASEAN Intergovernmental Commission on Human Rights (AICHR) is a

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<sup>150</sup> Article 31(1), *ibid*

<sup>151</sup> Article 45, *ibid*

regional intergovernmental body established by the Association of Southeast Asian Nations (ASEAN) to promote and protect human rights in Southeast Asia. ASEAN is a regional organization comprising 10-member states in Southeast Asia, including Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.<sup>152</sup> The AICHR was established in 2009 with the adoption of the ASEAN Charter, and it serves as the human rights focal point of ASEAN. The AICHR is composed of representatives from each ASEAN member state who are appointed by their respective governments. The AICHR operates on the principles of consensus, non-interference in the internal affairs of member states, and respect for the diversity of ASEAN member states.<sup>153</sup>

The AICHR's mandate includes promoting and protecting human rights and fundamental freedoms in ASEAN, as well as enhancing regional cooperation and capacity-building on human rights. The AICHR's main functions include conducting research, promoting dialogue and consultation, providing advice and recommendations to ASEAN bodies and member states on human rights issues, and cooperating with regional and international human rights organizations.<sup>154</sup>

The AICHR has addressed various human rights issues in Southeast Asia, including but not limited to, civil and political rights, economic, social, and cultural rights, rights of women, rights of children, rights of persons with disabilities, and rights of migrant workers. The AICHR also engages in dialogues and consultations with civil society organizations and other stakeholders in the region to promote human rights

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152 The ASEAN Human Rights Declaration (AHRD), from <https://aichr.org/> on 10/4/2023

153 Article 14 of the ASEAN Charter, 2008

154 AICHR, Structure, Work and History, from <https://aichr.org/about-aichr-2/> on 10/4/2023

awareness and participation.<sup>155</sup>

It is important to note that the AICHR operates within the framework of ASEAN and its principles, which emphasize the principle of non-interference and consensus-based decision-making. As such, the AICHR's activities are generally focused on promotion, dialogue, and consultation, rather than enforcement or adjudication of human rights.

#### **3.4.5 The Arab Human Rights Committee**

The Arab Human Rights Committee, also known as the Committee on Human Rights in the Arab World, is a regional intergovernmental body established by the Arab League to promote and protect human rights in the Arab world. The Arab League is a regional organization comprising 22-member states in the Middle East and North Africa region, including Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen.

The Arab Human Rights Committee was established in 1968 as a specialized committee of the Arab League, and it operates under the authority of the Arab League Council. The Committee's mandate includes promoting and protecting human rights and fundamental freedoms in the Arab world, as well as monitoring the implementation of human rights obligations by Arab League member states. The Committee consist of nationals of the States parties to the present Charter, who must be highly experienced and competent in the Committee's field of work. The

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155 Contents of the ASEAN Human Rights Declaration, 2012

members of the Committee serve in their personal capacity and shall be fully independent and impartial.<sup>156</sup>

The Arab Human Rights Committee's main functions include conducting research, preparing reports, making recommendations, and providing technical assistance to Arab League member states on human rights issues. The Committee also engages in dialogues, consultations, and cooperation with regional and international human rights organizations, as well as civil society organizations and other stakeholders in the Arab world.<sup>157</sup>

The Arab Human Rights Committee has addressed various human rights issues in the Arab world, including but not limited to, civil and political rights, economic, social, and cultural rights, rights of women, rights of children, rights of refugees and internally displaced persons, and rights of persons with disabilities. The Committee also monitors and addresses human rights situations and violations in the Arab world, and it may investigate complaints or allegations of human rights violations in member states.<sup>158</sup>

It is important to note that the Arab Human Rights Committee operates within the framework of the Arab League and its principles, which may vary from other regional or international human rights standards. The Committee's activities are generally focused on promotion, monitoring, and technical assistance, and its decisions are non-binding.

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156 Article 45 of the Arab Charter on Human Rights, 2004

157 The Arab Human Rights Committee, from

<https://unimelb.libguides.com/c.php?g=928011&p=6704321> accessed 10/4/2023

158 Ibid



### **3.5 Critical Appraisal of the International Legal and Institutional Framework Governing Protection of Human Rights in Tanzania**

The international legal and institutional framework governing the protection of human rights in Tanzania have played a significant role in the protection of human rights in the country. Tanzania is a party to various international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). By ratifying these treaties, Tanzania has made commitments to uphold and protect the rights enshrined in them. Tanzania being a dualist state requires any international treaties to be transformed into domestic legislation before they can have direct effect within a state. Tanzania has incorporated several human rights standards from various international legal instruments, into domestic law, thereby assisting in protection of international human rights standards in Tanzania. For example, the right to life protected under International Covenant on Civil and Political Rights (ICCPR)<sup>159</sup> has also been guaranteed under the Constitution<sup>160</sup> of Tanzania.

However, there are several impediments hindering the promotion and protection of human rights in Tanzania through the above stated international framework. Despite Tanzania's commitments under international human rights treaties, there have been concerns about the effective implementation of these obligations at the national level. Inconsistent enforcement and gaps in translating international standards into domestic laws and policies hinder the full realization of human rights in practice. Reports from international human rights organizations have highlighted human

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159 Article 1 of the International Covenant on Civil and Political Rights (ICCPR), *supra*

160 Article 14 of the Union Constitution, *supra*

rights violations in Tanzania. These include restrictions on freedom of expression, media freedom, and civil society activities. Concerns have been raised regarding the shrinking space for dissent, targeting of human rights defenders, and limitations on political rights. For example, some human rights defenders have been reported to be captured some imprisoned in 2019 – 2020 based on what they have reported in cause of their employment.<sup>161</sup>

Additionally, Tanzania has received recommendations from international mechanisms, such as the UPR and treaty bodies, to improve its human rights situation. However, there have been instances where the implementation of these recommendations has been limited or delayed; raising questions about the government's commitment to addressing human rights concerns. Similarly, concerns have been raised about the limited accountability and transparency regarding alleged human rights abuses, including instances of impunity for security forces implicated in human rights violations. For example, the United Nations Permanent Forum on Indigenous Issues expresses its profound concern over ongoing efforts to evict over 70,000 Maasai people of Loliondo division of the Ngorongoro district of Tanzania from the 1,500 square kilometers, which are legally registered village lands.<sup>162</sup> Tanzanian police using force, including indiscriminate use of firearms, forcibly evicted the Maasai from their homelands, injuring dozens of people and causing thousands to flee into the forest.

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161 Adebayo, B. Anger as Investigative Journalist is Arrested in Tanzania, July 30, 2019, accessed from <https://edition.cnn.com/2019/07/30/africa/erick-kabendera-arrest-tanzania-intl/index.html> on 21/6/2023

162 UN, Department of Economic and Social Affairs Indigenous Peoples: Statement by the Chairperson of the Permanent Forum on the eviction of Maasai people from the Ngorongoro Conservation Area in Tanzania, 2022 from <https://www.un.org/development/desa/indigenouspeoples/news/2022/06/statement-by-the-chairperson-of-the-un-permanent-forum-on-indigenous-issues-with-reference-on-the-eviction-of-maasai-people-from-the-ngorongoro-conservation-area-in-tanzania/> on 22/6/2023

### **3.6 Conclusion**

This chapter concludes by noting that the international legal and institutional framework on the protection of human rights has made significant progress in advancing the recognition, promotion, and protection of human rights globally. Despite these achievements, challenges remain in the effective implementation and enforcement of human rights at the international level. Some states continue to violate human rights, and there are gaps in implementation and compliance with human rights standards. Moreover, issues such as discrimination, inequality, violence against marginalized groups, and emerging human rights challenges related to technology, environment, and migration require ongoing attention and action.

**CHAPTER FOUR**  
**SURVEY OF SELECTED JURISDICTIONS ON HUMAN RIGHTS**  
**PROTECTION**

**4.1 Introduction**

This chapter discusses the selected jurisdictions on human rights protection which can be taken as a best model for Tanzania to cope. Measuring effectiveness of human rights protection of a particular jurisdiction may be a difficult undertaking. The researcher has decided to take countries with most effective judicial system in Africa as criteria for good protection of human rights. These countries have their foundations in different colonial heritages and have been shaped by a great variety of customary and religious norms, which affects the design of each country's judicial system. Mauritius scored an index of 81.7 and ranked the country with the best Judicial System in Africa. Botswana scored an index score of 70.1 putting the country as the third country on the list. Namibia is fourth on the list scoring an index of 67.6. South Africa was seventh on the list scoring an index of 61.3.<sup>163</sup>

**4.2 The Legal and Institutional Framework on Protection of Human Rights in**

**Mauritius**

With its colonial French and English heritage, Mauritius inherited a hybrid system from its colonial masters with various sources of law including England and France. Mauritius, a small island nation in the Indian Ocean, has established a legal and institutional framework to protect human rights. The Constitution of Mauritius, adopted in 1968 and subsequently amended, provides for the protection of

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<sup>163</sup> Heritage - Mustard Insights, African Countries with the Most Effective Judicial System, 2022, from <https://blog.mustardinsights.com/rankings/ranking-african-countries-with-the-most-effective-judicial-system-2022-XZyMS> on 12.4.2023

fundamental rights and freedoms. It enshrines principles such as equality, non-discrimination, and the right to life, liberty, and security of person.<sup>164</sup> The Constitution also establishes the separation of powers among the executive, legislative, and judicial branches of government, which helps ensure accountability and checks and balances.<sup>165</sup>

The Human Rights Act was enacted in 1998 and serves as a key legislation for the promotion and protection of human rights in Mauritius. It incorporates the provisions of various international human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, into domestic law. The Act establishes the Human Rights Commission, an independent body tasked with promoting and protecting human rights in Mauritius.<sup>166</sup> The Human Rights Commission of Mauritius is an independent statutory body established under the Human Rights Act. It is mandated to promote and protect human rights, investigate complaints of human rights violations, and provide remedies and redress to victims. The Commission has the authority to conduct inquiries, issue recommendations, and make reports on human rights matters.<sup>167</sup>

Mauritius has enacted various laws to protect specific human rights, such as the Gender Equality Act, the Protection from Domestic Violence Act, and the Employment Rights Act. These laws aim to address issues related to gender equality, violence against women, labor rights, and other specific areas of human rights protection. Mauritius has a well-established and independent judiciary that plays a

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<sup>164</sup> Chapter II of the Mauritius Constitution, 1968

<sup>165</sup> Chapter V, VI and VII, *ibid*

<sup>166</sup> Section 3 of the Human Rights Act, 1998

<sup>167</sup> Section 6, *Ibid*

crucial role in protecting human rights. The judiciary has the authority to interpret the Constitution and other laws, and it serves as a safeguard against human rights abuses. Individuals can seek redress through the courts if their human rights have been violated.<sup>168</sup>

Mauritius has ratified various international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child, among others. These international obligations further contribute to the legal and institutional framework for the protection of human rights in Mauritius.

It's important to note that while Mauritius has established a legal and institutional framework for human rights protection, challenges and gaps may still exist in the practical implementation and enforcement of these measures. Continuous efforts are needed to ensure effective protection of human rights for all individuals in Mauritius.

### **4.3 The Legal and Institutional Framework on Protection of Human Rights in Botswana**

Botswana has a dual legal system, which comprises of the Roman–Dutch Law and its Customary Law., Botswana had both foreign inhabitants living side by side with the indigenous people of the country, hence the reason for the adaptation of this system.<sup>169</sup> Certainly! Botswana, a landlocked country in Southern Africa, has

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<sup>168</sup> Chapter VII, of the Constitution, *ibid*

<sup>169</sup> Heritage - Mustard Insights, African Countries with the Most Effective Judicial System, *supra*

established a legal and institutional framework to protect human rights. Here are some key components of the framework:

The Constitution of Botswana, adopted in 1966 and subsequently amended, provides for the protection of fundamental rights and freedoms. It enshrines principles such as equality, non-discrimination, and the right to life, liberty, and security of person. The Constitution also establishes the separation of powers among the executive, legislative, and judicial branches of government, which helps ensure accountability and checks and balances.<sup>170</sup> Botswana does not have a specific Human Rights Act, but its Constitution serves as the supreme law of the land and includes a Bill of Rights that sets out various fundamental rights and freedoms. These rights include, among others, the right to freedom of expression, the right to fair trial, the right to privacy, and the right to education.<sup>171</sup>

Directorate on Corruption and Economic Crime (DCEC) is an independent institution established under the Corruption and Economic Crime Act, which is responsible for investigating and preventing corruption in Botswana. It has the authority to investigate and prosecute cases of corruption, abuse of office, and economic crime, which helps protect the right to a corruption-free society.<sup>172</sup> The Office of the Ombudsman is an independent institution established under the Ombudsman Act, which is tasked with investigating complaints of maladministration and human rights violations by public officials and public

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<sup>170</sup> Chapter II of the Botswana Constitution, 1966

<sup>171</sup> Ibid

<sup>172</sup> Directorate of Corruption and Economic Crimes, from <https://www.gov.bw/taxonomy/term/88> on 12/04/2023

institutions. The Ombudsman has the authority to conduct investigations, make recommendations, and issue reports, which contribute to protecting human rights and ensuring government accountability. The Ombudsman is an official who is appointed by the President in consultation with the Leader of the Opposition in Parliament.<sup>173</sup>

Apart from the Ombudsman office, Botswana has enacted various laws to protect specific human rights, such as the Domestic Violence Act, the Children's Act, and the Employment Act. These laws aim to address issues related to domestic violence, child protection, labor rights, and other specific areas of human rights protection. Botswana has a separate and independent judiciary that plays a crucial role in protecting human rights. The judiciary has the authority to interpret the Constitution and other laws, and it serves as a safeguard against human rights abuses. Individuals can seek redress through the courts if their human rights have been violated.<sup>174</sup>

International human rights obligations: Botswana has ratified various international human rights instruments, including the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the African Charter on Human and Peoples' Rights, among others. These international obligations further contribute to the legal and institutional framework for the protection of human rights in Botswana.

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<sup>173</sup> Section 2 of the Ombudsman Act (Cap 02:12) (Act No. 5 of 1995)

<sup>174</sup> Chapter VI of the Constitution of Botswana, *supra*



It's important to note that while Botswana has established a legal and institutional framework for human rights protection, challenges and gaps may still exist in the practical implementation and enforcement of these measures. Continuous efforts are needed to ensure effective protection of human rights for all individuals in Botswana.

#### **4.4 The Legal and Institutional Framework on Protection of Human Rights in Namibia**

Prior to the attainment of its independence, the courts of Namibia were an extension of the judicial system of South Africa. Its Constitution was adopted on February 9 1990. Namibia is fourth on the most effective judicial systems in Africa.<sup>175</sup> Namibia, a country located in Southern Africa, has established a legal and institutional framework to protect human rights. The Constitution of Namibia, adopted in 1990, provides for the protection of fundamental rights and freedoms. It enshrines principles such as equality, non-discrimination, and the right to life, liberty, and security of person. The Constitution also establishes the separation of powers among the executive, legislative, and judicial branches of government, which helps ensure accountability and checks and balances.<sup>176</sup>

The Namibian Human Rights Act was enacted in 1992 and serves as a key legislation for the promotion and protection of human rights in Namibia. It incorporates the provisions of various international human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on

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<sup>175</sup> Heritage - Mustard Insights, African Countries with the Most Effective Judicial System, *supra*

<sup>176</sup> Chapter III of the Namibian Constitution, 1990

Civil and Political Rights, into domestic law. The Act establishes the Office of the Ombudsman, an independent institution tasked with promoting and protecting human rights in Namibia.<sup>177</sup>

The Office of the Ombudsman is an independent institution established under the Namibian Human Rights Act, which is mandated to investigate complaints of human rights violations, provide remedies and redress to victims, and promote human rights education and awareness. The Ombudsman has the authority to conduct investigations, make recommendations, and issue reports, which contribute to protecting human rights and ensuring government accountability.<sup>178</sup>

Namibia has established two national human rights institutions, namely the Namibian Equal Opportunity Commission (NEOC) and the Law Reform and Development Commission (LRDC). The NEOC is responsible for promoting equality and non-discrimination and addressing issues related to discrimination and unfair treatment, while the LRDC is tasked with conducting research and making recommendations on law reform and development to promote human rights in Namibia.<sup>179</sup> Namibia has enacted various laws to protect specific human rights, such as the Combating of Domestic Violence Act, the Labour Act, and the Child Care and Protection Act. These laws aim to address issues related to domestic violence, labor rights, child protection, and other specific areas of human rights protection.<sup>180</sup> Namibia has a separate and independent judiciary that plays a crucial role in

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<sup>177</sup> Bosl, A. and Horn, N., *Human Rights and the Rule of Law in Namibia*, Macmillan Namibia, Windhoek, 2009, p.141

<sup>178</sup> Article 3(1) of the Ombudsman Act, 1990

<sup>179</sup> Bosl, A. and Horn, N., (2009), *supra*

<sup>180</sup> *Ibid*

protecting human rights. The judiciary has the authority to interpret the Constitution and other laws, and it serves as a safeguard against human rights abuses. Individuals can seek redress through the courts if their human rights have been violated.<sup>181</sup>

Namibia has ratified various international human rights instruments, including the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the African Charter on Human and Peoples' Rights, among others. These international obligations further contribute to the legal and institutional framework for the protection of human rights in Namibia.<sup>182</sup>

It's important to note that while Namibia has established a legal and institutional framework for human rights protection, challenges and gaps may still exist in the practical implementation and enforcement of these measures. Continuous efforts are needed to ensure effective protection of human rights for all individuals in Namibia.

#### **4.5 The Legal and Institutional Framework on Protection of Human Rights in South Africa**

South Africa, a country located in Southern Africa, has established a comprehensive legal and institutional framework to protect human rights. The Constitution of South Africa, adopted in 1996, is widely recognized as one of the most progressive constitutions in the world, and it provides for the protection of fundamental rights and freedoms. It enshrines principles such as equality, non-discrimination, and the

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<sup>181</sup> Chapter 9 of the Constitution of Namibia, *supra*

<sup>182</sup> Bosl, A. and Horn, N., *supra*

right to life, dignity, and freedom, among others.<sup>183</sup> The Constitution also establishes the separation of powers among the executive, legislative, and judicial branches of government, which helps ensure accountability and checks and balances.<sup>184</sup>

The Bill of Rights is an integral part of the South African Constitution and sets out the fundamental rights and freedoms of individuals in South Africa. It includes civil, political, economic, social, and cultural rights, such as the right to equality, freedom of expression, access to healthcare, education, and housing, and the right to a fair trial. The Bill of Rights is justiciable, which means that individuals can seek redress through the courts if their rights have been violated.<sup>185</sup>

South African Human Rights Commission (SAHRC) is a constitutional institution established under the Constitution of South Africa, tasked with promoting, protecting, and monitoring human rights in the country. It has the authority to investigate complaints of human rights violations, conduct research and public education, and make recommendations to government and other stakeholders on human rights issues.<sup>186</sup> The SAHRC was established in 1995, and is a chapter 9 institution. Chapter 9 institutions are mandated by South Africa's constitution and are mandated to guard constitutional democracy.

Equality Courts are specialized courts established under the Promotion of Equality and Prevention of Unfair Discrimination Act.<sup>187</sup> These courts are designed to handle cases related to discrimination and unfair treatment, including matters related to race,

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<sup>183</sup> Chapter 2 of the Constitution of the Republic of South Africa, 1996

<sup>184</sup> Chapter 4 – 8, *ibid*

<sup>185</sup> Chapter 2 of the Republic of South African Constitution, *supra*

<sup>186</sup> Chapter 9, *ibid*

<sup>187</sup> The Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) of 2000

gender, sexual orientation, disability, and other grounds of discrimination. They provide a forum for individuals to seek redress for violations of their rights to equality and non-discrimination.<sup>188</sup>

South Africa has enacted various laws to protect specific human rights, such as the Promotion of Access to Information Act, the Promotion of Administrative Justice Act,<sup>189</sup> the Child Justice Act,<sup>190</sup> and the Domestic Violence Act,<sup>191</sup> among others. These laws aim to address issues related to access to information, administrative justice, child rights, and domestic violence, among others. South Africa has a separate and independent judiciary that plays a crucial role in protecting human rights. The judiciary has the authority to interpret the Constitution and other laws, and it serves as a safeguard against human rights abuses. Individuals can seek redress through the courts if their human rights have been violated, and the judiciary has the power of judicial review to ensure that laws and actions of the government are in line with the Constitution and human rights standards.<sup>192</sup>

South Africa has ratified various international human rights instruments, including the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, and the African Charter on Human and Peoples' Rights, among others. These international obligations further contribute to the legal and institutional

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<sup>188</sup> Ibid

<sup>189</sup> Cap. 3 of 2000

<sup>190</sup> Cap. 75 of 2008

<sup>191</sup> Cap. 116 of 1998

<sup>192</sup> Section 165 of the Republic of South African Constitution, *supra*

framework for the protection of human rights in South Africa.<sup>193</sup>

It's important to note that while South Africa has established a strong legal and institutional framework for human rights protection, challenges and gaps may still exist in the practical implementation and enforcement of these measures. Continuous efforts are needed to ensure effective protection of human rights for all individuals in South Africa.

#### **4.6 Conclusion**

This chapter has discussed the legal and institutional framework of human rights protection from four selected jurisdictions. The selection of these countries as stated in the introduction was guided by the strength of their Judiciary list in Africa with the meaning that the best the judiciary the good protection of human rights. The selection also targeted African countries which may make it close to the Tanzania systems. It should be noted that South Africa has the best legal and institutional framework governing protection of Human Rights among the four discussed countries.

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<sup>193</sup> Tsafack, F. Overview of Africa's treaty obligations and the role of the Parliament in promoting implementation, Regional Office for South Africa, from [https://www.parliament.gov.za/storage/app/media/Pages/2021/november/17-11-2021\\_parliament\\_unicef\\_webinar/presentations/2.Final\\_Jean\\_Fokwa\\_OHCHR\\_presentation\\_to\\_Parliament.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2021/november/17-11-2021_parliament_unicef_webinar/presentations/2.Final_Jean_Fokwa_OHCHR_presentation_to_Parliament.pdf) on 14/04/2023

**CHAPTER FIVE**

**DOMESTIC LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING  
HUMAN RIGHT PROTECTION IN TANZANIA**

**5.1 Introduction**

The Domestic legal and institutional framework governing the protection of human rights in Tanzania is made of laws and policies ranging from the Constitution, the Bill of Rights, to specific laws that protect the rights of vulnerable groups such as children, persons with disabilities, and victims of sexual offenses. Tanzania has also established several institutions to protect and promote human rights at both the national and regional levels. However, there are concerns about the enforcement of these legal and institutional framework especially the issue related to government's commitment to upholding human rights in practice at domestic level. This chapter discusses the domestic legal and institutional framework governing protection of human rights in Tanzania.

**5.2 Domestic Legal Framework Governing Protection of Human Rights in Tanzania**

Tanzania has several laws and policies aimed at protecting human rights at domestic level. Here are some of the key laws governing human rights in Tanzania.

**5.2.1 The Constitution of the United Republic of Tanzania**

At the domestic level, Tanzania's Constitution provides for the protection of human rights, including the right to life, liberty, and security of person; the right to a fair trial; the right to freedom of expression and assembly; and the right to education and healthcare. Protection of human rights under the Tanzania Constitution is made

whereby there are provisions which recognizes and protects various human rights.

Some of these rights include:

**Right to life:** The Constitution provides for the right to life, and no one shall be deprived of their life except in accordance with the law.<sup>194</sup> Under this provision, everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which the penalty is provided by law.

This means that nobody, including the Government, can try to end your life. It also means the Government should take appropriate measures to safeguard life by making laws to protect you and, in some circumstances, by taking steps to protect you if your life is at risk. Public authorities should also consider your right to life when making decisions that might put you in danger or that affect your life expectancy. If a member of your family dies in circumstances that involve the state, you may have the right to an investigation. The state is also required to investigate suspicious deaths and deaths in custody.

The Right to equality in the Constitution of Tanzania is protected in two aspect. Firstly, it provides that all human beings are born free, and are all equal. Every person is entitled to recognition and respect for his dignity and every person is entitled to equal protection of the law and is entitled to the equal protection and benefit of the law without discrimination.<sup>195</sup>

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<sup>194</sup> Article 14 of the URT Constitution, 1977

<sup>195</sup> Article 12, *ibid*



The object of the Constitution is to facilitate the building of the United Republic as a nation of equal and free individuals enjoying freedom, justice, fraternity and concord, through the pursuit of the policy of Socialism and Self Reliance which emphasizes the application of socialist principles while considering the conditions prevailing in the United Republic. Therefore, the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring.<sup>196</sup>

Right to freedom from torture: No person shall be subjected to torture, or to inhuman or degrading treatment or punishment. Tanzania's constitution prohibits torture, but no such prohibition appears in the penal code, making it difficult to hold abusers criminally accountable. At its last Universal Periodic Review at the UN Human Rights Council in 2011, Tanzania accepted member states' recommendations to ratify the Convention against Torture. But it has not yet done so.

Right to freedom of speech: Every person has the right to freedom of opinion and expression, and the right to seek, receive and impart information and ideas through any media. In Tanzania, freedom of expression is a right of every citizen as enshrined in the constitution.<sup>197</sup> This inalienable right has, however, been undermined by the continuous passing and enacting of a series of repressive regulations over the years.

The right to express oneself is a fundamental human right outlined in International Law. However, most societies would agree there are types of expression that are not acceptable and which conflict with other human rights, such as promoting hate

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<sup>196</sup> Article 9 of the Constitution, *supra*

<sup>197</sup> Article 18, *ibid*

speech. For this reason, Governments use laws to limit freedom of expression if it conflicts with other human rights, such as the protection of the rights or reputations of others, national security, public order, public health and morals.<sup>198</sup>

Right to privacy: Every person has the right to privacy of person, home, and property, and their privacy shall not be infringed except in accordance with the law.<sup>199</sup> Right to education: Every person has the right to education, and the government has an obligation to provide free and compulsory basic education. Privacy is a fundamental human right which is central to the protection of human dignity and forms the basis of any democratic society. It also supports and reinforces other rights, such as freedom of expression, information and association. Activities that restrict the right to privacy, such as surveillance and censorship, can only be justified when they are prescribed by law, necessary to achieve a legitimate aim, and proportionate to the aim pursued.

Right to work: Every person has the right to work and to engage in any lawful occupation or business of their choice in Tanzania.<sup>200</sup> The right to work is a foundation for the realization of other human rights and for life with dignity. It includes the opportunity to earn a livelihood by work freely chosen or accepted. In progressively understanding this right, States are obliged to ensure the availability of technical and vocational guidance, and take appropriate measures to develop an enabling environment for productive employment opportunities.

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<sup>198</sup> Freedom of Expression, from <https://tanzania.misa.org/issues-we-address/free-expression-the-law/> on 25/3/2023

<sup>199</sup> Article 16 of the Constitution, *supra*

<sup>200</sup> Article 24, *ibid*

Closely connected with the right to work are the right to just and favourable conditions of work, and trade union-related rights. States are obliged to ensure fair wages, equal pay for equal work, and equal remuneration for work of equal value. Workers should be guaranteed a minimum wage that allows for a decent living for themselves and their families. Working conditions must be safe, healthy, and not demeaning to human dignity. Employees must be provided with reasonable work hours, adequate rest and leisure time, as well as periodic, paid holidays.

The Right to a fair trial is also guaranteed in the Constitution of Tanzania whereby every person is entitled to a fair and public hearing before an independent and impartial court or tribunal.<sup>201</sup> When a person is charged with a crime, or involved in some other legal dispute, they have the right to a fair trial. This means a fair and public hearing, within a reasonable time, by an independent and impartial court.

The Constitution of Tanzania protects also the Right to freedom of religion: Every person has the right to freedom of thought, conscience, and religion.<sup>202</sup> The constitution and other laws and policies protect religious freedom and, in practice, the government generally enforced these protections. The government generally respected religious freedom in law and in practice. There was no change in the status of respect for religious freedom by the government during the reporting period.

There were a few reports of societal abuses or discrimination based on religious affiliation, belief, or practice. Without prejudice to the relevant laws of the United

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<sup>201</sup> Article 13 of the Constitution, *supra*

<sup>202</sup> Article 19, *ibid*

Republic the profession of religion, worship and propagation of religion shall be free and a private affair of an individual; and the affairs and management of religious bodies shall not be part of the activities of the state authority.

Right to assembly and association is also protected under the Constitution whereby every person has the right to freedom of peaceful assembly and association.<sup>203</sup> The right to peaceful assembly protects the right of individuals and groups to meet and to engage in peaceful protest. The right to freedom of association protects the right to form and join associations to pursue common goals. These are just a few examples of the human rights protected under the Tanzania Constitution. It is essential to note that while the Constitution provides for these rights, there have been concerns about the actual implementation and protection of these rights in practice.

### **5.2.2 Protection of Human Rights under the Human Rights and Good Governance Act, 2001**

The Human Rights and Good Governance Act<sup>204</sup> of Tanzania was enacted in 2001, with the aim of providing for the promotion, protection, and enforcement of human rights and good governance in the country. The Act establishes the Human Rights Commission of Tanzania, which is tasked with promoting and protecting human rights and good governance.

CHRAGG initially operated in Tanzania mainland but its mandate was extended to Zanzibar through The Commission for Human Rights and Good Governance Act.<sup>205</sup>

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<sup>203</sup> Article 18, *supra*

<sup>204</sup> The Human Rights and Good Governance Act, Cap. 391 of 2001

<sup>205</sup> Commission for Human Rights and Good Governance (Extension Act) No 12 of 2003.

Its core functions are to promote, protect and preserve human rights and principles of good governance in the country. Under the HRGGA, various human rights are protected, including: Right to life whereby every person has the right to life, and no one shall be deprived of their life except in accordance with the law.

These rights are protected through the functions of the Commission which involves: to Promote within the country the protection and the preservation of human rights and of duties to the society in accordance with the Constitution and the laws of the land; to receive allegations, and complaints in the violation of human rights generally; to Conduct enquiries into matters involving the violation of human rights and the contravention of the principles of administrative justice; to conduct research into human rights, administrative justice and good governance issues and to educate the public about such issues;<sup>206</sup>

To institute proceedings in Court designed to terminate activities involving the violation of human rights or redress the right or rights so violated, or the contravention of the principles of administrative justice; to investigate the conduct of any person to whom or any institution to which the provisions of this section apply in the ordinary course of the exercise of the functions of his office or discharge of functions in excess of authority; to investigate or inquire into complaints concerning practices or actions by persons holding office in the service of the government, public authorities or other public bodies.<sup>207</sup>

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<sup>206</sup> Section 6 of the HRGGA, *supra*

<sup>207</sup> *Ibid*

The HRGGA also establishes mechanisms for the investigation and enforcement of human rights violations, including the establishment of a Human Rights Fund to provide financial assistance to victims of human rights violations. However, as with any legal document, the actual implementation and protection of these rights in practice have been subject to some concerns and criticisms.

### **5.2.3 Protection of Human Rights under the Legal Aid Act, 2017**

The Legal Aid Act of Tanzania was enacted in 2017 with the aim of providing legal aid to indigent and vulnerable persons, including women, children, persons with disabilities, and other marginalized groups. The Act recognizes that access to justice is a fundamental human right and provides for the provision of legal aid services to those who cannot afford them. Under the Legal Aid Act, various human rights are protected, including: Every person has the right to a fair trial, and the Act provides for the provision of legal aid to ensure that every person is able to access justice regardless of their economic status. Every person has the right to legal representation, and the Act provides for the provision of legal aid services to ensure that every person has access to legal representation.

Every person has the right to access to justice, and the Act provides for the provision of legal aid services to ensure that every person is able to access justice. Every person is equal before and under the law and is entitled to the equal protection and equal benefit of the law. Every person has the right to the protection of the law, and the Act provides for the provision of legal aid services to ensure that every person is able to access legal protection.

The Legal Aid Act obliges Judiciary to take steps to ensure peoples' representation. It specifically requires a judge to take steps to protect the interest of a person who appears before the court unrepresented but whom for the interest of justice requires such representation, the Judge may certify that person as needing legal aid and upon such certification the registrar will assign such person an advocate to represent him or her. The wording in the provision of this Act makes certification discretionary and limits such representation in criminal matters. The past practice indicated that, only people charged with capital offences (murder and treason which attracts death penalty) are accorded with this assistance.<sup>208</sup>

The Legal Aid Act is an important legal framework for the protection of human rights in Tanzania, particularly for those who cannot afford legal representation. However, the actual implementation and protection of these rights in practice have been subject to some concerns and criticisms, including the limited availability of legal aid services and resources.

#### **5.2.4 Protection of Human rights under the Police Force Act of Tanzania**

The Police Force Act of Tanzania provides for the establishment and regulation of the police force in Tanzania. While the Act does not specifically focus on the protection of human rights, it does establish guidelines and procedures for the police force to ensure that they respect and uphold the human rights of all persons.<sup>209</sup>

Under the Police Force Act, the police force is required to carry out their duties in accordance with the law and with respect for the dignity and human rights of all

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<sup>208</sup> Section 6 of the Protection of Human Rights under the Legal Aid Act, 2017

<sup>209</sup> General Objective of the Force Act, supra

persons. The Act also establishes guidelines for the use of force, which must be reasonable and proportionate to the situation.<sup>210</sup> Furthermore, the Act provides for the establishment of the Police Complaints Authority, which is responsible for investigating complaints against police officers, including allegations of human rights violations. The Authority has the power to recommend disciplinary action against police officers who are found to have violated the rights of individuals.<sup>211</sup>

#### **5.2.5 Protection of Human Rights under the Anti-Trafficking in Persons Act, 2008**

The Anti-Trafficking in Persons Act was enacted in Tanzania in 2008 to criminalize the act of trafficking in persons and to provide for measures to prevent and combat trafficking. The Act recognizes that trafficking in persons is a violation of human rights and a form of exploitation, and it seeks to protect the rights of victims of trafficking.<sup>212</sup> Under the Anti-Trafficking in Persons Act, trafficking in persons is defined as the recruitment, transportation, transfer, harboring, or receipt of persons by means of threat, use of force, or other forms of coercion, for the purpose of exploitation. The Act prohibits all forms of trafficking, including for purposes of sexual exploitation, forced labor, slavery, or the removal of organs.<sup>213</sup>

The Act also provides for the protection and assistance of victims of trafficking, including their physical, psychological, and social recovery and rehabilitation. Victims of trafficking are entitled to receive medical, legal, and other assistance, and

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<sup>210</sup> The Police General Order (PGO)

<sup>211</sup> Ibid

<sup>212</sup> Part III of the Anti-Trafficking in Persons Act No. 6 of 2008.

<sup>213</sup> Section 4, *ibid*



they are protected from deportation or forced repatriation.<sup>214</sup>

In addition to criminalizing trafficking in persons, the Act also provides for the establishment of a National Coordinating Committee on Anti-Trafficking in Persons, which is responsible for coordinating efforts to prevent and combat trafficking in persons. The Act also establishes penalties for individuals or entities found guilty of trafficking in persons, including fines and imprisonment.

#### **5.2.6 Protection of Human Rights under the Environmental Management Act, 2004**

The Environmental Management Act (EMA) is a piece of legislation that provides a legal framework for the management, conservation, and protection of the environment in a country. The Act is designed to promote sustainable development and ensure that environmental considerations are considered in all aspects of decision-making.<sup>215</sup> Under the EMA, the protection of human rights is a key consideration. The act recognizes that human beings have the right to a clean and healthy environment, and it seeks to ensure that this right is protected. The EMA provides for the establishment of a National Environment Council, which is responsible for developing policies and guidelines for environmental management, as well as ensuring that the rights of individuals and communities are protected.<sup>216</sup>

The EMA also provides for public participation in environmental decision-making processes. This means that individuals and communities have the right to be

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<sup>214</sup> *ibid*

<sup>215</sup> Section 1 of the Environmental Management Act, 2004

<sup>216</sup> Section 5, *Ibid*

consulted and to have their views considered when decisions are being made that could affect the environment or their quality of life. The EMA also provides for the establishment of National Environmental Management Council with power to investigate and prosecute individuals or organizations that are found to be in violation of the act, and it can impose penalties and fines for non-compliance.<sup>217</sup>

### **5.3 Domestic Institutional Framework Governing Protection of Human Rights in Tanzania**

Tanzania has a strong domestic institutional framework for the protection of human rights. However, there are still challenges in the implementation of these provisions and institutions, and there have been reports of human rights violations in the country.

#### **5.3.1 The Commission for Human Rights and Good Governance**

The Commission for Human Rights and Good Governance (CHRAGG) is an independent government department vested with broad mandate to promote and protect human rights in Tanzania. The CHRAGG covers a wide range of functions with the core functions of promoting and protecting human right. Other functions include receiving and investigating complaints, conducting research, monitoring and enquiring into matters involving the violations of human rights and contravention of the principles of administrative justice, institute proceedings in court.<sup>218</sup>

In carrying out its mandate, the Commission is guided by the vision of “a society in which human rights and principles of good governance are promoted and protected”.

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<sup>217</sup> Section 16, *ibid*

<sup>218</sup> Article 130(1), *ibid*

To achieve this vision, the Commission has the mission “to promote and protect human rights and good governance in collaboration with stakeholders”. The values core to its work are independent decision-making, integrity, teamwork, transparency, accountability, respect for human rights, impartiality, equality, and a results-orientation.<sup>219</sup>

The has a very broad mandate of promoting awareness of human rights and investigating violations. The institution is modelled along the Ghana Commission on Human Rights and Administrative Justice.<sup>220</sup> Since its creation, the commission has been active in a number of protective functions. First, it receives and investigates complaints and/or allegations of human rights violations and contravention of principles of administrative justice. It also conducts public hearings on the same and proposes compensations where appropriate. Second, it initiates proceedings on its own.<sup>221</sup>

Thirdly, it handles individual complaints concerning the violation of human rights generally, with vested rights to investigate, conduct hearings and settle disputes. It also has the right to decide not to proceed with a complaint. Fourthly, it promotes and advises by educating the public on human rights and good governance issues, carrying out research on human rights and good governance, and monitoring compliance with human rights standards and good governance principles. Fifthly, it advises the government and other public organs and private sector institutions on

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<sup>219</sup> IWGIA, The Commission for Human Right and Good Governance, retrieved from <https://www.iwgia.org/en/iwgia-partners/78-commission-for-human-rights-and-good-governance-tanzania.html> visited on 29<sup>th</sup> October, 2022

<sup>220</sup> REIF, L., *The Ombudsman, Good Governance and the International Human Rights System* Martinus Nijhoff Publishers, 2004

<sup>221</sup> Ibid

specific issues relating to human rights and administrative justice. Sixthly, it offers mediation and conciliation through alternative conflict resolution.<sup>222</sup>

The commission is led by a judge and composed of nine other commissioners, not all of whom are lawyers. The commission has employed lawyers, economists, political scientists and sociologists. The commission employed more than 160 individuals and operated with a budget of approximately \$2.4 million (3.1 billion shillings), an increase from its 2005 budget of approximately \$2.1 million (2.7 billion shillings) both from national budgets and donors. However, it remained underfunded, understaffed and overburdened by a caseload of unresolved complaints.<sup>223</sup>

The commissioners can arrest and prosecute, but they tend to prefer arbitration and conflict resolution out of court. The commission received additional complaints as a result of awareness campaigns conducted through the media. By mid-2006, the commission had received 14,487 complaints from organizations and individuals, and made recommendations to the government regarding 8,627. The commission categorized 1.8% of the complaints as human rights violations and most of the rest as related to maladministration by the government. It dealt with cases involving abuse of power, violence against women and promotion of women's involvement, among others.<sup>224</sup>

In 2006 the commission published a report on prison conditions and outlined recommendations for improvement by the government. At year's end the

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<sup>222</sup> TRANSPARENCY INTERNATIONAL 'National Integrity Systems Country Study Report-Tanzania, 2003

<sup>223</sup> BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *Country Reports on Human Rights Practices 2006: Tanzania, 2007*

<sup>224</sup> Ibid

commission was in the process of introducing a computerized case management system to improve the standards.<sup>225</sup>

### **5.3.2 The Judiciary as an Institution for Human Rights Protection in Tanzania**

The judiciary of Tanzania plays an important role in protecting human rights in the country. As an independent branch of government, the judiciary is responsible for interpreting and applying the law, and for ensuring that the rights of all individuals are protected. The Judiciary plays a crucial role in protecting human rights by providing legal remedies to victims of human rights violations. The courts in Tanzania have the power to review and declare any act of the government or its officials that violate human rights as null and void.<sup>226</sup>

The judiciary in Tanzania is responsible for ensuring that human rights are respected and protected. The judiciary has the power to hear and determine cases involving human rights violations and to provide remedies to victims of such violations. The Constitution guarantees a number of fundamental human rights, including the right to life, the right to freedom of speech and expression, the right to freedom of religion, the right to a fair trial, and the right to freedom from torture and cruel, inhuman or degrading treatment.<sup>227</sup>

The judiciary is responsible for upholding these rights and ensuring that they are not violated by any other branch of government or by individuals. For example, the judiciary has the power to review the actions of the executive and legislative

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<sup>225</sup> Ibid

<sup>226</sup> Article 26 & 30(2) of the URT Constitution, *supra*

<sup>227</sup> Article 12 – 30, *ibid*

branches of government to ensure that they are in compliance with the Constitution and other laws.

In addition to enforcing the law, the judiciary also has the power to make decisions that can impact human rights in Tanzania. For example, the judiciary has made decisions on issues such as gender equality, freedom of the press, and the rights of marginalized groups. The court recent judgment on the age of child marriage was declared by the Court in the Gyumi case ordered the government to amend the law within one year by correcting the discrimination in sections 13 and 17 and establishing 18 years as the eligible age for marriage in respect of boys and girls.<sup>228</sup>

Although, there have been some concerns about the independence and effectiveness of the judiciary in Tanzania, it remains an important protector of human rights in the country.

### **5.3.3 Police Force as a Human Rights Protector in Tanzania**

The police force in Tanzania has an important role to play in protecting human rights in the country. The police are responsible for maintaining law and order, preventing crime, and protecting the safety and security of all individuals. The police force in Tanzania is responsible for ensuring that human rights are respected and protected. The police force has the power to investigate cases of human rights violations and to bring perpetrators to justice.<sup>229</sup> However, there have been some concerns about human rights violations by the police in Tanzania. There have been reports of police brutality, extrajudicial killings, and other abuses of power. These actions violate the

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<sup>228</sup> Rebeca Gyumi v Attorney General Miscellaneous Civil Case No.5 of 2016

<sup>229</sup> The CPA, The Penal Code, PGO

fundamental human rights of individuals, including the right to life, the right to freedom from torture and cruel, inhuman or degrading treatment, and the right to a fair trial.<sup>230</sup>

The Tanzanian government has recently taken steps to address these issues and improve the human rights record of the police force. For example, in 2019, the government established the Police Force Professional Standards Bureau, which is responsible for investigating allegations of police misconduct and ensuring that officers are held accountable for their actions. Additionally, the government has also provided training and support to police officers to help them understand and respect human rights. This includes training on issues such as gender-based violence, child protection, and human trafficking. While there have been some challenges in ensuring that the police force upholds human rights in Tanzania, there are efforts underway to improve the situation and protect the rights of all individuals.<sup>231</sup>

#### **5.3.4 Civil Society Organizations for Protection of Human Rights in Tanzania**

In addition to the judiciary and the police force, there are several other institutions in Tanzania that play an important role in protecting human rights. Civil society organizations (CSOs) play a vital role in promoting and protecting human rights in Tanzania. These organizations include a wide range of groups, such as non-governmental organizations (NGOs), community-based organizations (CBOs), and human rights advocacy groups.

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<sup>230</sup> Legal and Human Rights Annual Report, 2021

<sup>231</sup> Samia Suluhu Call on Reform on the Criminal Justice in Tanzania, February, 2023, copied from <https://www.thecitizen.co.tz/tanzania/news/national/-samia-s-directives-on-timely-delivery-of-justice-4108764> on 28/3/2023

#### **5.3.4.1 The Legal and Human Rights Centre**

The Legal and Human Rights Centre (LHRC) is a leading human rights organization in Tanzania that works to promote and protect human rights through research, advocacy, and litigation. The LHRC focuses on a range of issues, including access to justice, human rights education, and the protection of the rights of marginalized groups. Legal and Human Rights Centre is a nongovernmental human rights organization based in Dar es Salaam as its Head Quarters and having a sub-office in Arusha. It was founded and registered in 1995 under the Companies Ordinance of the laws of Tanzania as a company without shares limited by guarantee.<sup>232</sup> Before its registration in September, 1995 the Centre was a human rights project of the Tanzania Legal Education Trust (TANLET). Its main purpose is to strive to empower the public, promote, reinforce and safeguard human rights and good governance in Tanzania.

It has a mission of empowering the people of Tanzania, so as to promote, reinforce and safeguard human rights and good governance in the country. The broad objective is to create legal and human rights awareness among the public and in particular the underprivileged section of society through legal and civic education, advocacy linked with legal aid provision, research and human rights monitoring.<sup>233</sup> For the LHRC to be able to forge its way in the realization of its mission, it has a broad objective of creating legal and human rights awareness and empowerment among the general public and, in particular, the underprivileged sections of the

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<sup>232</sup> the Companies Ordinance, Chapter 212

<sup>233</sup> Legal and Human Rights Centre (Tanzania), from <https://namati.org/network/organization/legal-and-human-rights-centre-tanzania/> on 30/3/2023



society through legal and civic education, advocacy, research, follow up of human rights abuses and provision of legal aid.<sup>234</sup>

The LHRC programmes and services are wider in scope to benefit the general public including the right holders, duty bearers, vulnerable groups, and victims of human rights violation, law makers, civil society organizations and the general public. Through direct program interventions such as paralegal trainings, Village legal Workers Trainings and Human Rights monitors, LHRC has good link with communities at the grassroots level which ensures that its work have an impact at the national level and society level.

#### **5.3.4.2 The Tanzania Women Lawyers Association**

The Tanzania Women Lawyers Association TAWLA is an NGO that focuses on promoting women's rights and gender equality in Tanzania. The organization provides legal aid services, advocates for legal reform, and works to raise awareness of women's rights issues. TAWLA provides legal aid services to women and children who are victims of human rights violations. This includes providing legal representation, counseling, and support to victims of domestic violence, sexual assault, and other forms of gender-based violence.<sup>235</sup>

TAWLA engages in advocacy and lobbying activities to promote legal and policy reforms that protect and promote women's rights. The organization works to influence laws, policies, and practices that affect women's access to justice, education, health care, and economic opportunities. Women's leadership and

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<sup>234</sup> Legal and Human Rights Centre (Tanzania), *supra*

<sup>235</sup> <https://www.tawla.or.tz/>

empowerment: TAWLA works to empower women to participate in leadership and decision-making processes. The organization provides training and support to women in leadership positions, and advocates for policies that promote women's participation in public life.<sup>236</sup>

TAWLA conducts research on issues related to women's rights and gender equality in Tanzania. The organization also produces publications and other materials to raise awareness of women's rights issues and to influence policy and practice. TAWLA plays an important role in promoting and protecting women's rights in Tanzania. The organization's work is crucial in ensuring that women are able to live with dignity and respect for their rights, and in promoting gender equality and empowerment.

#### **5.3.4.3 The Tanzania Centre for Democracy and Development on Human Rights Protection**

The Tanzania Centre for Democracy and Development (TCDD) is a non-profit organization that works to promote democracy, good governance, and human rights in Tanzania. The organization was established in 1994 and has since been actively engaged in advocacy and research initiatives aimed at strengthening Tanzania's democratic institutions and promoting the respect of human rights. Some of the major programs and initiatives undertaken by TCDD include:

Democracy and good governance: TCDD works to promote democracy and good governance by advocating for electoral reform, conducting research on governance issues, and providing civic education to the public.

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<sup>236</sup> Ibid

Human rights promotion and protection: TCDD focuses on promoting and protecting human rights by conducting research on human rights issues, providing legal aid and support to victims of human rights abuses, and advocating for the protection of the rights of marginalized groups.<sup>237</sup>

Conflict resolution: TCDD works to promote conflict resolution and peace building in Tanzania by conducting research on conflict issues, providing mediation and dispute resolution services, and advocating for peaceful resolution of conflicts.

Capacity building: TCDD works to build the capacity of civil society organizations, government institutions, and other stakeholders to promote democracy, good governance, and human rights in Tanzania.<sup>238</sup>

Through its various programs and initiatives, TCDD plays an important role in promoting accountability, transparency, and respect for human rights in Tanzania. The organization's work is crucial in ensuring that individuals and communities are able to live with dignity and respect for their rights, and in promoting a more inclusive and democratic society.<sup>239</sup>

#### **5.3.4.4 The Tanzania Media Women's Association for Human Rights Protection**

The Tanzania Media Women's Association (TAMWA) is a non-governmental organization (NGO) that was established in 1987. Its mission is to promote gender equality and women's rights in Tanzania through media and communication.

TAMWA works to achieve these goals through advocacy, research, and capacity-

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<sup>237</sup> <https://fingo.fi/wp-content/uploads/2020/10/are-ngos-harbingers.pdf> visited 2/4/2023

<sup>238</sup> Ibid

<sup>239</sup> Ibid

building. Tanzania Media Women's Association (TAMWA) is a non-profit, non-partisan, non-governmental and human rights organization founded and registered under the Societies Ordinance.<sup>240</sup> In 2004, the association complied with the 2002, NGO Act of the United Republic of Tanzania. In 2007, TAMWA was also registered in Zanzibar as TAMWA Zanzibar.<sup>241</sup>

Some of the major programs and initiatives undertaken by TAMWA include:<sup>242</sup>

Gender-sensitive media coverage: TAMWA works to promote gender-sensitive media coverage by advocating for balanced and fair reporting of gender issues in the media. The organization provides training and support to journalists, media houses, and other stakeholders to promote gender-sensitive reporting. Women's access to information: TAMWA works to promote women's access to information by advocating for policies and practices that ensure women's right to access information. The organization provides training and support to women on their rights to access information, and advocates for policies that promote women's access to information.<sup>243</sup>

Advocacy and lobbying: TAMWA engages in advocacy and lobbying activities to promote gender equality and women's rights in Tanzania. The organization works to influence policies and practices that affect women's access to education, health care, economic opportunities, and political participation. Research and documentation: TAMWA conducts research on gender issues and produces publications and other materials to raise awareness of women's rights issues and to influence policy and

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<sup>240</sup> under the Societies Ordinance Cap 337 of 1954 with registration number (SO 6763)

<sup>241</sup> under Society Act No. 6 of 1995

<sup>242</sup> TAMWA Tanzania, from <https://tamwa.org/a/index.php/about-us.html>, on 2/4/2023

<sup>243</sup> Ibid

practice.<sup>244</sup> TAMWA plays an important role in promoting and protecting women's rights in Tanzania through media and communication. The organization's work is crucial in ensuring that women's voices are heard in the media, that they have access to information, and that policies and practices promote gender equality and women's empowerment.

There are several civil society organizations in Tanzania that work to promote and protect human rights. These organizations include human rights advocacy groups, legal aid providers, and community-based organizations that work on issues such as gender equality, children's rights, and the rights of marginalized groups.

#### **5.4 Critical Appraisal of the Framework Governing Protection of Human Rights in Tanzania**

The domestic legal and institutional framework governing the protection of human rights in Tanzania plays a crucial role in promoting and safeguarding human rights in the country. The Constitution of Tanzania, particularly its Bill of Rights,<sup>245</sup> serves as the foundation for the protection of human rights in the country. It guarantees various civil, political, economic, social, and cultural rights to individuals, including the right to life, equality, freedom of expression, freedom of assembly, and the prohibition of torture. Tanzania has enacted several laws that specifically address human rights issues. For instance, the Human Rights and Good Governance Act establishes the Commission for Human Rights and Good Governance (CHRAGG), an independent body responsible for promoting and protecting human rights.

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<sup>244</sup> Ibid

<sup>245</sup> Article 12 – 30 of the Constitution of the United Republic of Tanzania, *supra*

Tanzania has a functioning judicial system that plays a critical role in protecting human rights. Courts can hear cases involving violations of human rights, and individuals can seek redress for rights violations through legal channels. The judiciary acts as a check on the executive and legislative branches, ensuring that laws and policies align with human rights standards. For example; in the recent case of *Attorney General vs Rebeca Z. Gyumi*,<sup>246</sup> Rebeca won a landmark case on child marriages, through the petition she filed at the High Court of Tanzania to challenge the Tanzania Marriage Act, 1971 which allowed girls as young as 14 to get married. The decision which raised the minimum age of marriage to 18 for both boys and girls.

Tanzania has established institutions dedicated to promoting and protecting human rights. Apart from CHRAGG, the country has the Zanzibar Commission for Human Rights and Good Governance (ZCHRAGG) and the Police Complaints Authority (PCA). These institutions are responsible for investigating complaints, educating the public about human rights, and monitoring the government's compliance with human rights standards. It is obvious that by having a strong legal and institutional framework, Tanzania has been able to address human rights violations, protect vulnerable groups, and provide avenues for redress.

However, the above legal and institutional framework faces a number of challenges in order to ensure there is effective protection of human rights in Tanzania. There is a lack of political will and resources dedicated to ensuring human rights protection, leading to a gap between the legal framework and its practical application. For

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<sup>246</sup> *Attorney General vs Rebeca Z. Gyumi* (Civil Appeal No. 204 of 2017) [2019] TZCA 348

example, the functioning of CHRAGG depends on the availability of funds from the government which are hardly been issued.<sup>247</sup> The president is empowered by the Constitution to prohibit CHRAGG to conduct an inquiry of any matter.<sup>248</sup> As a result CHRAGG cannot inquire into a violation of human rights that has been done under the president's order.

Despite constitutional guarantees, Tanzania has seen the introduction of legislation that poses threats to human rights, such as the Cybercrimes Act and the Media Services Act. These laws have been criticized for stifling freedom of expression and press freedom, limiting citizens' ability to exercise their rights fully. Furthermore, the independence of the judiciary is crucial for protecting human rights. However, concerns have been raised regarding the level of judicial independence in Tanzania. There have been instances of judges facing interference or pressure from the executive branch, affecting their ability to impartially adjudicate human rights cases.<sup>249</sup>

Additionally, human rights defenders and civil society organizations play a vital role in promoting and protecting human rights. However, in Tanzania, there have been instances of harassment, intimidation, and restrictions on the activities of these

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<sup>247</sup> Mhilu, A. Challenges Facing the Commission for Human Rights and Good Governance in Promoting and Protecting Human Rights in Tanzania, A Dissertation Submitted in Partial Fulfillment of the Requirements for the Degree of Master of Public Administration (MPA) of Mzumbe University, 202, p.55

<sup>248</sup> Article 130(3) of the URT Constitution, *ibid*

<sup>249</sup> Raisi Samia Amtaka Jaji Mkuu Kumulika Mahakama za Chini, Mwananchi Online Newspaper, Jumanne, Mei 23, 2023, accessed from

<https://www.mwananchi.co.tz/mw/habari/kitaifa/rais-samia-amtaka-jaji-mkuu-kumulika-mahakama-za-chini-4244322> on 21/6/2023: The president state that ...”

“Tumesikia kesi ya Lindi kwamba wafugaji wamefanya makosa ya wazi wazi, Jaji akasema anaenda kutazama ili ajiridhishe, aliporudi akasema hawana makossa, sasa utajiuliza kuna nini hapo,” amehoji Rais Samia.

groups, hindering their ability to effectively advocate for human rights.<sup>250</sup> Ensuring government accountability is crucial for protecting human rights. However, there have been concerns about limited transparency, accountability, and oversight mechanisms in Tanzania, which can undermine human rights protection and hinder effective remedies for violations.

### **5.5 Conclusion**

The legal and institutional framework governing human rights protection in Tanzania is complex and multi-faceted. While Tanzania has made significant strides in protecting and promoting human rights, there is still much work to be done to ensure that the legal and institutional frameworks governing human rights are effective and that human rights are protected in practice. It is important for the government of Tanzania to continue to work towards ensuring the full realization of human rights for all its citizen. The presence of domestic human rights institutions play an important role in protecting human rights in Tanzania. While there are challenges in ensuring that human rights are respected and protected in the country, the work of these institutions is crucial in promoting accountability and ensuring that individuals are able to live with dignity and respect for their rights.

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<sup>250</sup> “As Long as I am Quiet, I am Safe” Threats to Independent Media and Civil Society in Tanzania, October 28, 2019, <https://www.hrw.org/report/2019/10/28/long-i-am-quiet-i-am-safe/threats-independent-media-and-civil-society-tanzania> visited on 21/6/2023



**CHAPTER SIX**  
**SUMMARY OF RESEARCH FINDINGS, CONCLUSION AND**  
**RECOMMENDATIONS**

**6.1 Research Findings**

Based on the research Objectives presented in chapter one, this study has found the following:

**6.1.1 Existing Legal Gaps in the Laws Regulating Human Rights in Tanzania**

Tanzania has a comprehensive legal framework for human rights protection, including the Constitution of the United Republic of Tanzania, 1977, and various domestic laws and regulations that recognize and protect human rights. However, there may be gaps in the implementation and enforcement of these laws, leading to challenges in effectively protecting human rights in Tanzania. Some potential legal gaps may include inconsistencies or lack of clarity in laws, limited access to justice, weak enforcement mechanisms, and inadequate remedies for human rights violations.

**6.1.2 Institutional Framework Governing Human Rights Protection in Tanzania**

Tanzania has established various institutions at the national and regional levels to oversee and promote human rights, such as the Commission for Human Rights and Good Governance (CHRAGG), some selected Civil Societies, and some governmental department which deals with protection of human rights, among others. However, there may be challenges in terms of the capacity, independence,

and effectiveness of these institutions in protecting human rights.

The coordination and cooperation among these institutions, as well as their relationship with other branches of government, may also impact the institutional framework for human rights protection in Tanzania.

### **6.1.3 Experience of International and Regional Legal Instruments on Human Rights Protection**

Tanzania has ratified various international and regional human rights instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights, and others. These international and regional legal instruments provide standards and principles for human rights protection, and Tanzania's compliance and implementation of these instruments may impact the overall human rights situation in the country.

### **6.1.4 Experience of Other Jurisdictions in Institutional and Legislative Development**

Comparative analysis of other jurisdictions' experiences in institutional and legislative development for human rights protection may provide valuable insights for Tanzania. Studying the approaches, successes, and challenges of other countries in developing effective legal and institutional frameworks for human rights protection may inform potential strategies for Tanzania's own context.

## **6.2 Conclusion**

The study on the assessment of the legal and institutional framework for the protection of human rights issues in Tanzania has shed light on various aspects of the

country's human rights landscape. The findings reveal both strengths and weaknesses in the existing legal and institutional framework, highlighting areas that need improvement to better protect and promote human rights in Tanzania. On the positive side, the study identifies the existence of legal and policy frameworks that recognize and uphold human rights principles, including the Constitution of Tanzania and international human rights instruments to which Tanzania is a party. Additionally, the presence of institutions such as the Tanzania Human Rights Commission and the judiciary play a crucial role in safeguarding human rights in the country.

However, the study also reveals several challenges that need to be addressed. These include issues such as inadequate implementation and enforcement of human rights laws, limited awareness and understanding of human rights among the general population, and lack of effective remedies and access to justice for victims of human rights violations. Furthermore, issues related to discrimination, gender-based violence, freedom of expression and assembly, and the rights of vulnerable groups require further attention and action.

In light of these findings, it is imperative for Tanzania to strengthen its legal and institutional framework for human rights protection. This may involve revising and aligning laws and policies with international human rights standards, improving the capacity and independence of human rights institutions, enhancing human rights education and awareness, and promoting inclusivity and non-discrimination in all aspects of society.

Efforts should also be made to ensure that victims of human rights violations have access to effective remedies and justice, and that the voices of marginalized and vulnerable groups are heard and included in decision-making processes. Collaboration and cooperation among government, civil society organizations, and other stakeholders are crucial in achieving meaningful progress in the protection of human rights in Tanzania. Conclusively, addressing the gaps and challenges identified in this study and upholding human rights principles are fundamental for Tanzania to build a just, inclusive, and rights-respecting society. It requires sustained commitment, political will, and collective efforts from all stakeholders to ensure that human rights are respected, protected, and fulfilled for all individuals in Tanzania.

### **6.3 Recommendations**

Based on the assessment of the legal and institutional framework for the protection of human rights issues in Tanzania, the following recommendations have been framed by the researcher of this work:

#### **6.3.1 Strengthening Implementation and Enforcement Mechanisms**

Ensure that existing laws and regulations related to human rights are effectively implemented and enforced at all levels, including through adequate funding, capacity building, and monitoring mechanisms. This may involve enhancing the capacity and independence of relevant institutions, such as CHRAGG, NHREC, and ZCHRAGG, to effectively investigate, address, and remedy human rights violations.

#### **6.3.2 Enhancing Access to Justice**

Take measures to improve access to justice for all individuals, especially

marginalized and vulnerable groups, by addressing barriers such as affordability, availability, and awareness of legal remedies. This may involve promoting legal aid services, establishing specialized human rights courts or tribunals, and ensuring that victims of human rights violations have access to fair, transparent, and impartial judicial processes.

### **6.3.2 Clarifying and Harmonizing Legal Provisions**

Review and clarify existing laws and regulations related to human rights to ensure consistency, coherence, and conformity with international and regional human rights standards. This may involve addressing any ambiguities, contradictions, or gaps in the legal framework and ensuring that it provides clear and effective protection for all human rights, including civil, political, economic, social, and cultural rights.

### **6.3.3 Enhancing Institutional Capacity and Independence**

Strengthen the capacity, independence, and effectiveness of human rights institutions, such as CHRAGG, and all other institutions, to effectively carry out their mandates. This may involve providing adequate resources, training, and support to these institutions, ensuring their autonomy from political interference, and promoting meaningful engagement with civil society organizations and other stakeholders in the promotion and protection of human rights.

### **6.3.4 Aligning with International and Regional Human Rights Standards**

Continue to comply with and implement international and regional human rights instruments ratified by Tanzania, and ensure that domestic laws and regulations are in line with these standards. This may involve regular reporting and monitoring of

Tanzania's human rights obligations, engaging in constructive dialogues with international and regional human rights bodies, and incorporating international and regional human rights standards into domestic laws and policies.

### **6.3.5 Learning from Other Jurisdictions**

Conduct further comparative analysis of other jurisdictions' experiences in institutional and legislative development for human rights protection to learn from best practices, successes, and challenges. This may involve studying examples from other countries with robust human rights frameworks and institutions to inform potential strategies for Tanzania's own context.

### **6.3.6 Proposed Amendment or Enactment of New Law on Protection of Human Rights in Tanzania**

Based on the research findings and analysis of the existing legal and institutional framework for human rights protection in Tanzania, it may be possible to propose amendments to existing laws or enactment of new laws to address identified gaps and challenges. Such proposals could focus on strengthening enforcement mechanisms, improving access to justice, clarifying and harmonizing legal provisions, enhancing the capacity and independence of human rights institutions, and aligning domestic laws with international and regional human rights standards.

### **6.3.7 Stakeholder Engagement and Collaboration**

Foster multi-stakeholder engagement and collaboration among government, civil society, academia, and international partners in the promotion and protection of human rights in Tanzania. This may involve creating platforms for dialogue,

consultation, and coordination among stakeholders, including regular engagement with human rights organizations, advocacy groups, and other relevant actors to promote a participatory and inclusive approach to human rights protection.

Lastly, it is important to note that these recommendations may need to be tailored to the specific context of Tanzania, and further research, consultation, and collaboration with relevant stakeholders may be necessary for their effective implementation. Additionally, regular monitoring and evaluation of progress, along with periodic reviews of the legal and institutional framework for human rights protection, may be important to ensure that the recommendations are effectively implemented and sustained over time.

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