



## **HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT IN TANZANIA: A MYTH OR REALISABLE PROSPECT?**

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### **ABSTRACT**

This article through a documentary review delves into the practical aspects impeding the realisation of a human rights-based approach to development in Tanzania and the prospects of realising the same. The article contends that Tanzania fails to convincingly implement a human rights-based approach to development due to the unenforceability of the provisions of the fundamental objectives and directive principles of state policy, limitations of the international human rights framework, the underperformance of its legal machinery, lack of awareness of human rights among development institutions, workers, and citizens, as well as a limited and incompetent international human rights framework to guarantee the realisation of a human rights-based approach to development. Against this backdrop, we recommend that the Tanzanian state align its legislations with both the letter and spirit of human rights regimes, bolstering the capacity of the judiciary to discharge its adjudication function effectively and fostering awareness of human rights among development practitioners and citizens. We posit that ongoing legal system reforms, the expansion of legal studies opportunities, and the active participation of civil society in Tanzania hold the promise of advancing a human rights-based approach to development. Yet, we underscore the pivotal role of a resolute political will in ensuring the success of these endeavours and their effect on Tanzania's aspiration to achieve a developmental paradigm firmly rooted in human rights principles.

**Keywords:** Human Rights-based Approach to development, development, human rights, Tanzania

### **INTRODUCTION AND BACKGROUND**

The adoption of a human rights-based approach to development (HRBAD) has gained currency among development experts and practitioners (Robinson & Astle, 2005). The said approach zeros on issues of promoting legal rights and capacity building in poverty reduction processes as well as applying power and freedom (individual and group) in developmental processes (Broberg & Sano, 2018). Many developing countries, particularly in Africa, have experienced violations of human rights and have not satisfactorily implemented HRBAD (Jonas & Malipula, 2009). The essence of such a situation is attributed to colonialism which is by whatever standard undemocratic, exploitative, divisive, and disrespectful of human dignity. Since most African states inherited colonial dos and don'ts and committed little to reverse such inhumane tendencies, dependency scholars associate disrespect to human rights ethos in Africa with their colonial experience (Malipula, 2024). As if the colonial experience was not bad enough, the

independent African states during the heydays of developmentalism- 1960s-1980s considered democracy a luxury or even an anti-developmental paradigm. At the material time, human rights were also played down until the 1980s and early 1990s when the Cold War subsided, and donors felt free to condition aid on respect of human rights and democratisation (Malipula, 2016).

The colonial and developmentalist legacy that informed the post-independence political leadership's negative view on human rights in developing countries had implications for the interface between development and human rights. For instance, such orientation made the Tanzanian state view human rights as lavish and a stumbling block to development (Bisimba & Peter, 2009). This position made the country take 23 years of independence to let the Bill of Rights find its way into its constitution, as it was blatantly argued that the inclusion of the Bill would reduce the pace of development that was severely needed. Such a scenario implies that human rights and development cannot complement each other. Corollary to that, the fundamental debate on the two aspects is centred on the question: what should come first between human rights and development? HRBAD endeavours to provide a departure from the either/or, what should come first approach - human rights or development – to a human rights-based development framework aiming at promoting "human-centred development" (Broberg & Sano, 2018; Mcinerney-Lankford, 2009). The departure from the either/or debate is eloquently diffused by Malone et al., (2016), when they argued that development cannot be enjoyed without security and security cannot be enjoyed without development; and more importantly, neither development nor security can be enjoyed without respect for human rights.

The views of Malone et al., (2016) and the detailed conceptualisation to be made below linking development and human rights explain why Tanzania, as most other states, has gotten on board this dignified approach. This is done through the enactment of various national legislations and instituting structures, processes, and systems to pursue the approach, as well as by being party to varied regional and international human rights instruments. However, the realisation of HRBAD is not an automatic outcome of the commitment to instruments, presence of structures, and pro-declarations of bureaucrats and politicians to HRBAD. It is against this backdrop that this article endeavours to uncover the challenges and prospects of executing the HRBAD in Tanzania and recommend measures that can meaningfully address the challenges unveiled.

## **CONCEPTUAL AND CONTEXTUAL ISSUES**

### **The Human Rights – Development Interface**

Human rights are moral principles or norms meant to protect every person from severe political, legal, and social abuses of their inalienable rights. Such rights are regularly considered inalienable fundamental rights to which all human beings are inherently ordained or certified at birth regardless of skin colour, sex, religion, kin, ethnic orientation, nationality, or any other status (Msuya, 2017). Human rights are considered universal and therefore deemed applicable in an egalitarian manner all over the world. Domestic and international laws are often promulgated to guide and defend human rights' universal and egalitarian application. The standards of human behaviour set by these laws ensue from the conviction that human rights promotion requires a legal framework imposing an obligation on persons to respect the human rights of others. And which ensures that no one shall be deprived of such rights except as a result of due process.

Current development discourses suggest a link between human rights and development as Jonas & Malipula (2009) argue that human rights and development are not distinctive or separate spheres. In this regard, identifying development and human rights points of intersection, either actual or potential, is irrelevant. Jonas & Malipula (2009) position is predicated on the second principle of UNDP's Social and Environmental Standards (SES), pinpointing that the promotion of human development and fulfilment of human rights share a common vision, and their attainment depends on each other. As such, the standards imply that development endeavours should blend human rights principles in human development initiatives to realise both development and rights, as neither can be realised single-handedly.

The association between development and human rights established above entails that development endeavours shall be governed by established and accepted human rights standards. These include among others, the duty to respect, protect, promote, and achieve human rights as a mutual framework for evaluating and guiding sustainable development (Seymour & Pincus, 2008). This approach is thus, mindful of the full collection of rights outlined under international human rights conventions and treaties as well as those guaranteed in national legislations and constitutions (Mcinerney-Lankford, 2009). In this context, duties to respect, protect, promote, and fulfil human rights are a way of achieving development. The whole process of attaching development within a system of rights and consistent obligations set by international law helps to empower people especially the most sidelined to participate in the formulation of public policies and hold responsible public officials who are duty-bound to act. This echoes a development bedrock for sectors reflecting internationally guaranteed rights that disallow "trade-off" between development and rights.

Informed by this relationship, key international and domestic development initiatives furthered inculcated human rights ethos and standards in their policy objectives. The Millennium Development Goals (MDGs) and the Sustainable Development Goals (SDGs) present significant achievements in establishing the nexus betwixt human rights and development. Through the aforementioned development goals, global leaders committed themselves to several time-framed and measurable goals and targets for battling poverty, illiteracy, hunger, diseases, discrimination against women, and environmental degradation in their countries. Critically looked at, these goals aim at achieving progress in fields considered essential for human development but at the same time further enjoyment of human rights such as rights to education, health services and water, just to mention a few. In this regard, the development goals increased the emphasis on human rights-sensitive approaches to development and poverty reduction, which in this article is referred to as HRBAD.

### **HRBAD Conceptualised**

At its core, HRBAD requires that policies and institutions dealing with development and poverty reduction base their endeavours on the obligations that emanate from international human rights conventions like; The International Covenant on Civil and Political Rights (ICCPR), The International Covenant on Economic; Social and Cultural Rights (ICESCR); The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); The Convention against Torture (CAT); The Convention on the Rights of the Child (CRC); and The Convention on the Rights of Persons with Disabilities (CRPD). As presented above, human rights are inalienable, and their realisation has to be informed by a set legal

standard, and a legal framework that ensures human rights are universal, egalitarian, and transparently enjoyed in the course of realising development and combating poverty. The singled-out human rights conventions and others not mentioned, provide a framework for practical action at the international and national levels efforts towards reducing poverty.

HRBAD has been approved and adopted by the World Bank, the UN, and its agencies, numerous bilateral development agencies, and Non-Governmental Organisations (Oestreich, 2007). HRBAD owes its foundation to least developed countries which upon joining the UN recognised that human rights principles would improve the socio-economic conditions of their people. Based on such recognition, these countries spearheaded the adoption of the 1986 UN Declaration on the Rights to Development which paved the way for the current thinking on HRBAD (Cornwall & Nyamu-Musembi, 2004). HRBAD, as is the case for other concepts, lacks a single definition and it is not our intention to suggest one, instead to delineate the common issues it entails to depict. Robinson (2001), as quoted by Jonas & Malipula (2009:10) well, serves such purpose:

“There is an unmistakable message coming through across the globe. Health, education, fair justice, and free political participation are not matters of charity but rather matters of rights.... This is what is meant by the ‘rights-based approach’: a participatory, empowering, accountable, and non-discriminatory development paradigm based on universal, inalienable human rights and freedoms”.

Robinson's view is collaborated by Noh (2022) who conceptualises HRBAD as a framework for human development that infuses international human rights standards set to promote and protect human rights in development processes. This framework is informed by five fundamental principles, namely: universality and indivisibility of human rights, equality, participation and inclusion, accountability, and the rule of law (Broberg & Sano, 2018). The Principle of Universality and Indivisibility of Human Rights presupposes that every human being shall enjoy human rights by being human and accentuate that enjoyment of one right is indivisibly interrelated to the enjoyment of other rights (Cornwall & Nyamu-Musembi, 2004). In this regard, all human rights - civil, cultural, economic, political, and social, should be treated with the same priority, and development policies and programs emanating from them should aim at furthering those rights in the course of attaining their objectives.

The Principle of Equality entails that all persons within a society enjoy equal access to the available goods and services that are necessary to fulfil basic human needs (Broberg & Sano, 2018). It also calls for equality before the law. This prohibits discrimination in law or practice in any field regulated and protected by public authorities (Heynes, 2004). The Principle of Participation and Inclusion advocates that every person is entitled to participate in, contribute to, and enjoy civil, economic, social, cultural, and political development in which all human rights and fundamental freedoms can be fully realised. In the development domain, it entails people’s active involvement in planning, implementing, monitoring, and evaluating development initiatives (Astle, 2005).

The principle of accountability contends that development endeavours shall be carried out in a manner that human rights are enjoyed by all people and explanations on the implementation/non-implementation of human rights standards in the development arena are publicly known (Jonas & Malipula, 2009). The principle of the rule of law considers all persons equal before the law and therefore

they are entitled to equal protection. The protection to be equally shared includes, but is not limited to access to justice and redress for abuse of human rights, just distribution of public resources, resolution of competing claims, and the just distribution of benefits and burdens of policies. This principle is grounded on definite and pre-existing laws recognised and openly asserted (Perelman, 2005).

In sum, the principles are meant to guarantee the active application of human rights standards in development endeavours and equality and fairness to all parties involved in development processes. This affords the most noticeable value addition attributed to HRBAD compared to traditional human rights insensitive development programming (Perelman, 2005). From the afore-presented views, HRBAD can be conceived as an approach predicated on the conviction that human development and human rights are inseparable from any meaningful developmental endeavour. At its core, human development locates people at the hub of development while human rights are regarded both as the means and end of development attainment. Human rights, according to HRBAD are accorded primacy over other claims and are set as the determinants to judge the worthiness and legality of relevant laws, policies, and administrative acts (Perelman, 2005). In unsophisticated terms, HRBAD links human rights and development.

### **Potential advantages of HRBAD**

The dominant literature on HRBAD regularly identifies several areas where the approach produces good results. However, we will put forth four that are deemed relevant for this paper. Firstly, the HRBAD is deemed suitable for guaranteeing the less privileged citizens access to essential social services such as water, health care, and education. This position is anchored on the human rights anti-discrimination perspective that obligates states to indiscriminately ensure access to social services to its citizens (Oberoi, 2009). Secondly, HRBAD is considered suitable for consolidating the concept of citizenship. Such advantage is predicated on the fact that HRBAD plays a critical role in ensuring citizens' enjoyment of public goods from the state by delivering knowledge on the social services and other rights that people (particularly the poor) are entitled to and demand for the firming up of the channels through which they can assert those rights (Islam & Parvez, 2013). Thirdly, is considered suitable for ensuring that individuals or groups are accorded legal means to assist them in improving their well-being (Young, 2012). The catch here is that HRBAD provides focus on the use of legal mechanisms in development endeavours, thus making people aware of their rights and the legal ways through which they can be enforced. Fourthly, HRBAD enhances compliance with international human rights obligations not to commit wanton breaches of human rights and contributes to the promulgation of legislation aimed at benefiting less privileged people (Broberg & Sano, 2018).

### **The Basis of HRBAD in Tanzania**

HRBAD underpinning in various states is anchored on international and regional instruments guiding the role of human rights in development endeavours and beyond (Heyns, 2004). Tanzania is no exception as it is a signatory to the International human rights instruments that address civil rights and liberties. The most notable ones are the International Convention on Civil and Political Rights and the International Convention on Economic, Social, and Cultural Rights. The regional foundation for HRBAD in Africa is

attributable to Africa's recognition in 1981 of the right to development as a basic human right in the African Charter on Human and Peoples' Rights (ACHPR). The Charter, in addition to recognising the right to development, equally accords a high priority to economic, social, and cultural rights. For implementation purposes, it instituted the African Commission on Human and Peoples' Rights, charged with a wide range of functions, including encouraging the establishment of national human rights institutions under Article 26. To further strengthen the execution of the objectives of the ACHPR in 1998, the African Court on Human and Peoples' Rights was established in Arusha Tanzania, with jurisdiction to enforce all ACHPR rights. This regional effort informed the 1986 international UN Declaration on the Right to Development. The two initiatives motivated the current thinking about an HRBAD that contributes to fulfilling universal human rights and dignity.

A further development in this connection has been the New Partnership for Africa's Development (NEPAD). NEPAD is a regional-level initiative embarking on a HRBAD. This view is supported by the fact that in 2001 NEPAD was adopted as the road map for development in Africa. NEPAD includes pledges by African leaders to consolidate and accelerate gains in the protection of human rights and people-centred development. This is a long-term vision of an African-owned and African-led development programme (Jonas & Malipula, 2009).

Based on the above developments and dedication towards furthering human rights and dignity, Tanzania has decided to put in place varied initiatives to instil an HRBAD. As pointed out earlier the MDGs and SDGs have set the important base for human rights-sensitive development endeavours, it is imperative to note that Tanzania is part of the goals and has been domesticating the letter and spirit of the goals in its development planning. The country's development plans and strategies for poverty reductions as well as sectoral policies all refer to the MDGs and SDGs and are essentially informed by their contents. A human rights-based approach to addressing HIV and AIDS and the associated impacts thereof provides a vivid example (Broberg & Sano, 2018) Also, Tanzania is a signatory to and has ratified several human rights conventions that provide the base for exercising human rights. Furthermore, Tanzania has a judicial system to adjudicate human rights abuses, a commission responsible for human rights and several NGOs dealing with human rights issues, a Prevention and Combating of Corruption Bureau, a police force, and other instruments of coercion to enforce human rights if and when necessary.

## **METHODS**

This article emanates from a qualitative study aimed at delving into the challenges and prospects associated with the realisation of a Human Rights-Based Approach to Development (HRBAD) in Tanzania. To achieve the objectives of this study, we adopted a systematic desk review approach, conducting an extensive exploration of relevant documents related to the topic under investigation. The documentary reviews encompassed a comprehensive examination of library materials, internet sources, books, journals, and other documentary materials pertinent to the subject matter. Given the qualitative nature of the data collected, our research employed qualitative methods of analysis, focusing on illuminating, understanding, and extrapolating the specific context under study rather than aiming for generalizability. The analysis of qualitative data followed an inductive thematic approach, involving the identification and categorisation of themes and key issues emerging from the data. The data gathered through documentary reviews, underwent analysis using structural content analysis. This technique

involves the systematic codification of data into pre-defined categories to reveal patterns in the presentation and reporting of information. Our analytical approach adhered to standard content analysis methods, with findings primarily presented in the form of quotations and analysed by descriptive narratives embedded in the relevant theoretical and conceptual underpinnings relevant understanding HRBAD that grounded this study as delineated above.

## **CHALLENGES OF EXECUTING HRBAD IN TANZANIA**

### **Unenforceability of the Provisions of the Fundamental Objectives and Directive Principles of State Policy**

As indicated earlier Tanzania encapsulated The Bill of Rights in the Constitution of the United Republic of Tanzania of 1977 in 1984. The said bill is enshrined under chapter one of the constitution and divided into two parts- the first part covers the fundamental objectives and directive principles of the state policy and the second encompasses the basic rights and duties which are under part I and II of the chapter respectively. The first part of the Bill which includes principles of social justice and democracy is regarded by the Constitution of Tanzania as a potent part for which its non-compliance by the state authorities cannot be subjected to courts' scrutiny. Such a position is anchored on the fact that the provisions of Article 7(2) of the Constitution bar jurisdiction to courts of law to enforce the entire part II of Chapter One of the Constitution. Only violations of rights falling under the second part of the Bill contained under Articles 12 to 29 of the Constitution can be petitioned in the High Court as well as enshrined in the Basic Rights and Duties Enforcement Act. The fact that the Tanzanian Legislature enacted the Act in respect of the enforcement of the basic rights and duties alone leaves a lot to be desired in terms of enforcing social justice, democracy, and people's involvement in development matters. Why critical provisions were left from being included in the Basic Rights and Duties Enforcement Act is a matter that calls for an investigation.

The current article cannot exhaustively reason as to why the first part of the Bill of Rights in Tanzania answer unenforceable, but we can say without fear of sound criticism that the provisions of Article 7 (2) and Basic Rights and Duties Enforcement Act clog realisation of HRBAD. Such a position is predicated on the fact that principles of social justice and democracy that are essential in warranting people's freedom and power to effectively participate in development endeavours are left outside the legally enforceable aspects constitutionally. Such a situation stands in the way of the human rights of people as government authorities cannot be booked for denying rights falling under the fundamental objectives and directive principles of state policy. This said realisation of HRBAD stems from the states' adherence to HRBAD principles without a chance of redressing violation of the same through judicial means (Juma, 2020). Governments cannot even be questioned on the way they implement and comply with the fundamental objectives and directive principles of state policy which are critical in practising HRBAD.

### **Limitations of the International Human Rights Framework**

The challenges posed by limitations in the international human rights framework present obstacles to the establishment of an HRBAD in Tanzania. This arises from the fact that, despite Tanzania ratifying all

major human rights treaties, these international agreements have not been codified into the domestic legal framework. Consequently, there is a lack of specific laws within the domestic legal system that could address potential breaches of human rights principles as outlined in these treaties. Furthermore, even when there is an apparent alignment between municipal law and international human rights law, the policies and practices within a state may deviate from the internationally recognised human rights principles and standards. This discrepancy undermines the universality and egalitarian ideals that human rights aim to achieve. The failure to integrate international human rights obligations into domestic legislation not only hinders the effectiveness of an HRBAD but also creates a gap where human rights may be neglected or violated due to the absence of enforceable legal mechanisms (Kamuli, 2019).

Dissimilar to civil law-abiding states that directly consider ratified international treaties as part of their domestic laws, Tanzania is a common law state that requires the incorporation of international treaties into its municipal domestic laws through legislation as dictated by the dualism principle. It is clear from Tanzania jurisprudence under Article 63(3) and (d) of the Constitution of the United Republic of Tanzania that a treaty remains unenforceable under domestic law unless it has been enacted by Parliament. In this regard, International human rights instruments, which are ratified by common law countries are yet to be incorporated into their domestic legislation and are only used as a reference for interpreting their constitutions. (Msuya, 2017) Therefore, courts, in common law countries are supposed to use international treaties, as interpretative tools for establishing their congruence with their Constitution and merit for application by such authorities (Killender, 2010). It is undeniable that, when a state willingly adheres to international law, it commits itself to complying with the relevant laws. Consequently, the process of incorporating and legalising a particular agreement imposes a distinct obligation beyond that established by non-legal agreements. This special obligation is commonly encapsulated by the principle of *pacta sunt servanda*<sup>1</sup> (Msuya, 2017). Conventional international law theory contends that legalisation augments compliance by enhancing the normative strong point of an agreement and, therefore, the party's sense of obligation.

It is worth noting that most of the extant municipal legislations operating in Tanzania were enacted by the British colonial authority to endure its colonial system and its corresponding interests in exploiting colonial subjects. No wonder most legislations ignored human rights or welfare in general and those of vulnerable and/or marginalised groups, as discussed in the preceding sections. Another important aspect to note is that most of these human rights insensitive laws were enacted before the promulgation of the principle of human rights expressed and cherished by UDHR. Indeed, Tanzania is encountered with a mammoth task of changing some British colonial legislation and incorporating the principle of human rights in its legislation. However, deliberate efforts to guarantee that the enactment of new laws reflects the principle of human rights have been made (Msuya, 2017).

Tanzania is a party to 36 International Human Rights Treaties and 3 Africa Regional Human Rights Conventions. Irrespective of the said status, the Universal Declaration on Human Rights, 1948 has been incorporated into the Constitution of Tanzania and some of the contents of International Human Rights instruments are mirrored in Tanzania's municipal legislation. Tanzania recognised the Universal



Declaration of Human Rights prior to the introduction of the Bill of Rights under Articles 9(a) and (f) of its Constitution.

The Tanzanian Bill of Rights establishes the High Court of Tanzania as the chief means through which human rights abuses may legally be vindicated by the victims (Article 30(3)). Case law shows that sometimes the judiciary fails to grant those rights that the affected individuals end up using those international instruments as persuasive materials. For example, in the case of Elizabeth Steven and Another V. Attorney General (Miscellaneous Civil Cause No. 82 of 2005), the petitioner filed a petition under Article 30(3) of the Constitution of the United Republic of Tanzania, 1977 for an order declaring unconstitutional paragraph 1 to 51 of the second schedule of the Local Customary Law which denied women the right to inherit land and gave men preference over women. The petitioners referred the court to a litany of international treaties ratified by Tanzania, such as ACHPR of 1981, CEDAW of 1979, ICESCR of 1966, and CRC of 1989, which provide, inter alia, for the abolition of discrimination against women. The plea notwithstanding, the Court decided that it could not be guided by the referred international instruments, claiming that the court of law should not be an avenue for abolishing customary laws and that customary law should be left to wither away with time. This High Court decision disregarded the Court of Appeal precedent obtainable in *Transport Equipments Ltd and Reginald John Noland V. Devran P. Valambhia* (Civil Application no. 19 of 1993) case where International Law was interpreted and applied. The issue in Valambhia's case was the detention of a judgment debtor in civil prison. The matter attracted a conflict between the ICCPR of 1966, to which Tanzania is a party in terms of signature and ratification, and the Constitution of the United Republic of Tanzania of 1977. Looking at the two instruments, Ramadhani J. A. observed:

"Our Constitutional Protection falls short of that which is provided by the International Covenant on Civil and Political Rights. But since we are a party to that Covenant, then it is my conviction that we have at least to interpret and apply our derogation law extremely strictly. This shows that some bold judges interpret International Laws strictly while others ignore them as, according to our system, they are not self-executing."

From the above-cited cases, and complaints from various studies related to this area, it is evident that the government's tendency to be reluctant and slow in incorporating and implementing human rights treaties has to be addressed adequately to make execution smooth. Speaking on the same subject, the LHRC contends that Tanzania has not shown seriousness regarding Human Rights International Treaties by bringing them into force in the country (Msuya, 2017).

However, judges in Tanzania believe that it is within the appropriate nature of the judicial process and that it is a deep-rooted judicial function for national courts to regard the international and regional Conventions that Tanzania has ratified. This happens to be the case regardless of whether the conventions have been incorporated into municipal law or not. Such a position is meant to eliminate ambiguity or uncertainty from national, constitutional, or common law. Indeed, sufficient scope exists for judges to turn to international norms for deciding cases where municipal law is uncertain or incomplete. Such a position was avowed by the former Chief Justice of Tanzania, Hon. Francis L. Nyalali, in one of his writings on the question of the Bill of Rights:

"It can be said that the failure by any person or state organ to observe any of the Universal Declaration of Human Rights provisions will not attract legal censure or invalidation by the Courts. I have no doubt that the Courts are required to be guided by it in applying and interpreting the enforceable provisions of the Constitution and all other laws."

Tanzania Courts' Motto is partly informed by deliberations of the Harare Declaration on Human Rights, proclaimed by a top-level judicial colloquium on the domestic application of international human rights norms. The said colloquium endorsed the Bangalore principles of 1988, which among other things, urged national courts to turn to international norms in deciding cases when and if, municipal law (constitutional, statutory, or common law) is uncertain or incomplete. Such a position was put to use by Tanzania's Ex-Chief Justice Francis L. Nyalali when consulted the provisions of UDHR to interpret the constitutional right to property in the case of *John Byombalirwa v Regional Commissioner, Kagera and Regional Police Commander, Bukoba and Another* (1986). In particular, Hon. Francis L. Nyalali stated:

"If there is any doubt as to the obligation of the law enforcement agencies and other members of the executive branch of the Government in returning the seized goods to the suspects who have been cleared by the courts, I wish to point to Article 17(2) of the Universal Declaration of Human Rights of 1948, which provides that no one shall be arbitrarily deprived of his property."

The decision on *John Byombalirwa's* case was made before the Bill of Rights coming into force in 1988. In the particular case, the judge overtly required relevant authorities to perform their duties by the provisions of the UDHR, which inter alia, provide the duty not to arbitrarily deprive someone of his property. The spirit of the *John Byombalirwa* case that recognised the role of international human rights instruments in making domestic decisions where domestic laws are uncertain or incomplete was well discussed by the Court of Appeal in 1993 in one of the interesting human rights cases of the *Director of Public Prosecutions v Daudi Pete*. In this case, the Court of Appeal, in its interpretation of the constitutional right to bail, unequivocally held the position that the interpretation of the Bill of Rights had to regard the provisions of the African Charter:

"This view is supported by the principles underlying the African Charter on Human and People's Rights, which was adopted by the Organisation of African Unity in 1981 and came into force on October 21, 1986 after the necessary ratifications. Tanzania signed the Charter on 31<sup>st</sup> May 1982, and ratified it on February 18 1984. Since our Bill of Rights and Duties was introduced into the Constitution under the Fifth Amendment in February 1985, that is, slightly over three years after Tanzania signed the Charter, and about a year after ratification, account must be taken of that Charter in interpreting our Bill of Rights and Duties."

The Court, in this case, ruled that the denial of bail under section 148(5) (e) of the Criminal Procedure Act was unconstitutional and erased it from the country's statute book. Furthermore. Judges, in the current case, considered the Preamble to the African Charter and penned down the following:

“It seems evident in our view that the Bill of Rights and Duties embodied in our Constitution is consistent with the concepts underlying the African Charter on Human and People’s Rights as stated in the Preamble to the Charter.”

In the case of *Paschal Makombanya Rufutu v The Director of Public Prosecutions* (Miscellaneous Civil Case No. 3 of 1990), the High Court made the following observation, which concurs with the approach in numerous common law countries:

"If there is any ambiguity or uncertainty in our law, then the courts can look at the international instruments as an aid to clear up the ambiguity and uncertainty, always seeking to bring it into harmony with the international conventions."

It can be posited that the Tanzania High Court's favourable stance towards the protection of human rights might have incurred displeasure from government authorities. This apparent disapproval is reflected in the subsequent enactment of the Basic Rights and Duties Enforcement Act in 1994 and its provisions that discourage the fast pace of the positive enforcement of the Bill of Rights provisions in the High Court of Tanzania (Wambali, 2009). Such a fact made Wambali declare that the said Act is counterproductive to the smooth operation of the Bill of Rights and the general promotion of human rights in Tanzania, therefore, it should be discouraged and halted. The timing and nature of this legislative move raise questions about whether it was influenced by a desire to assert control or reshape the legal landscape in response to the court's affirming attitude towards human rights protection.

The aforementioned cases illustrate a recurrent trend within the Tanzanian judiciary of frequently invoking international human rights instruments and case laws, even when these references may not be determinative of the case outcome. This practice reflects a commendable spirit of interpreting the law in alignment with international standards. However, it is essential to note that not all judges embrace this approach, signalling a diversity in perspectives and methodologies within the judiciary when it comes to incorporating international instruments into their decision-making processes. Several strands of thought exist with regard to reference of international human rights in domestic legal systems. Divergent strands of thought prevail regarding the incorporation of international human rights into domestic legal systems. Some judges adhere to the notion that when a country ratifies a treaty, the courts should recognise it and consider it persuasive but not legally binding. On the other hand, another perspective posits that if a country willingly commits to a particular treaty, the courts must interpret and apply the relevant laws strictly (Msuya, 2017). These differing viewpoints among judges introduce complexity to the common law tradition of judicial precedence, especially in cases on women's rights, as explored in the subsequent paragraph.

As demonstrated above, the judiciary in Tanzania faces numerous challenges. Those challenges, coupled with the country's legal system under development in the human rights domain, make the execution of HRBAD an uphill task. We assert our position based on the continuous violation of citizens' rights in Tanzania by the governing regimes, marked by impunity. This pattern is attributed to the inadequacies in legal apparatuses, inconsistencies between law and practice, and a limited understanding of human rights among both state actors and citizens (Jonas & Malipula, 2009). This is also informed by

the prevalence of laws restricting human rights like The Media Service Act which media stakeholders view to be unfriendly to freedom of information and expression. As such, the Media Council of Tanzania (MCT), Legal and Human Rights Centre (LHRC), and Human Rights Defenders Coalition (HRDC), on 11<sup>th</sup> January 2017, lodged a petition at the East Africa Court of Justice to challenge the newly passed media law (The Citizen, 11/01/, 2017; The Citizen, 12/01/, 2017). At its core, the petition challenges sections of the Act that are deemed to be a threat to press freedom and freedom of expression. The threats represent a breach of Tanzania's commitments under the East African Treaty to safeguard and defend human and people's rights, including the freedom of information.

### **The underperformance of the State Legal Machinery**

The judiciary is very critical in interpreting and ensuring human rights and dealing with human rights cases. Such criticality requires it to perform its duties swiftly and diligently. To meet the specified standards the judiciary has to be well equipped in terms of human resources, conducive working conditions, and supported by competent prosecutors. This seems to be the case as one characteristic feature of the Tanzanian legal system is protracted trials. This situation is mainly attributed to limited Magistrates and Judges to adjudicate cases and prosecutors' slow pace in investigations for evidence required for litigations to be dealt with. The two problems feature in almost all Law Day speeches given by legal practitioners themselves and other stakeholders in Tanzania, and their negative implications like delayed justice, long stay in remand cells, and financial costs on the part of the accused are obvious (Msuya, 2019). Indeed, the limited number of Magistrates and Judges hinders swift attendance of litigations, but matters are made worse when cases are unremittingly adjourned and the accused is kept in custody because of lengthy investigations (Msuya, 2019). One may ask why someone is taken to court without sufficient evidence, and several plaintiffs are kept in remand cells for years at the expense of the public.

The judiciary's working environment is not well equipped regarding the required human resource establishment, and its workers, mainly supporting staff, are not paid handsomely. Most importantly, incidences of non-payment of Assessors are not uncommon at all. The technology used in courts, particularly in rural areas, is not by any standard of the current ICT era (Msuya, 2017). Magistrates today are not even ensured decent public accommodation and security after privatising public houses. The delays in the administration of justice associated with limited staff, poor working conditions, and slow pace of gathering evidence for prosecuting offenders all leave a lot to be desired in endeavours geared at ensuring the judiciary's adjudication function in general and promoting HRBAD in particular (Msuya, 2019).

### **Limited Knowledge of Human Rights Issues and Poverty**

Apart from the underperformance of the judiciary, the realisation of HRBAD in Tanzania is also affected by citizens' unawareness of their rights and responsibilities. This standpoint is based on the understanding that the gullibility of human rights renders it nearly impossible for individuals to assert rights they are unaware of, fulfil their duties, and engage actively in democratic processes (Jones & Malipula, 2009). Such deficiency constitutes a severe flaw as the history of human rights suggests that the attainment of human rights is a product of struggles (Peter, 1997). That means human rights are never given but are won. With limited knowledge of rights and responsibilities, it is an unquestionable fact that people cannot fight for their rights and/ or hold their governors accountable when they deny them their right(s) to

development. Matters are even worse when the cadre of development workers also have limited human rights knowledge. In Tanzania, similar to other African countries, there exists insufficient awareness of human rights regimes (Kamuli, 2019). Such limited knowledge, coupled with a lack of experience and insufficient practical guidance available for applying rights-based approaches, constitute a hurdle as they are supposed to demand and/or actively participate in the execution of HRBAD in Tanzania

The negative impacts of limited knowledge of HRBAD in Tanzania are associated with and made worse by poverty. It is crucial to highlight Tanzania's economic status, as indicated by the Human Development Index (HDI) of 2019, where it stands as one of the world's poorest countries with a value of 0.538, placing it in the low human development category. Despite achieving an average annual resilient growth rate of 7% since 2001, approximately one-third of its population is considered poor (UNDP, 2019). Notably, Basic Needs Poverty data shows a decline from 34.4% in 2007 to 26.8% in 2016 (IMF, 2019). Despite this improvement, Tanzania continues to grapple with poverty, reinforcing its status as a persistently impoverished nation. The data on Tanzania's economic performance and poverty reduction suggest that there is an urgent urge to chart out how to reduce the high levels of poverty that befall the Tanzanian masses through both formal and informal means. Poverty compels both women and men into precarious economic and social circumstances, heightening their vulnerability to diseases such as HIV/AIDS, malaria, and tuberculosis, just to mention a few. Such a state of affairs poses a challenge for human rights activists and development practitioners to face the hurdle of converting the economic and social rights outlined in their country's constitutions into instruments of empowerment and mobilisation for the benefit of the impoverished (Jonas & Malipula, 2009). The state also has a part in explaining the limited number of Judges and Magistrates, as well, as the judiciary's facilities and facilitation all need budgetary increments, which could hardly be realised without enhancing growth and development. More importantly, the rampant poverty in Tanzania often deters people from approaching the judiciary because of the exorbitant costs of engaging lawyers and corrupt tendencies, as will be delineated below.

### **Corruption**

Corruption refers to the private wealth-seeking behaviour of public officials or their misuse of public goods for private ends (Warren, 2015). It further entails, on the one hand, public goods being afforded by those able to pay allocators of public goods in money or kind and neo-patrimonial clientelist distribution of public goods on the other (Masebo, 2014). Neo-patrimonial clientelism denotes a regime type that disregards legal-rational institutions of governance in favour of patron-client structures whereby political elites (patrons) maintain authority by providing personal patronage to their clients in exchange for political and material support leading to a pyramid of social differentiation and dependence. The dominant literature on corruption suggests that it is a worldwide phenomenon but is obstinately deep-rooted in developing countries like Tanzania (Madaha, 2013). For instance, the Corruption Perception Index (CPI) of 2018 ranked Tanzania 99<sup>th</sup> out of 180 countries worldwide. This is the case despite the formulation of numerous commissions to deal with the vice in its broad sense, like the famous Warioba Commission on corruption and those formed for specific corrupt incidences; and the establishment of institutions meant to fight it like the Prevention and Combating of Corruption Bureau, the Commission for Human Rights and Good Governance and other law enforcement organs. In the recent past, Tanzania has witnessed numerous grand corruption scandals, including Richmond, Escrow, and EPA, which siphoned off billions

of taxpayers' money, diverting it from national coffers to meet the developmental needs of the Tanzanian people into the pockets of selfish politicians and bureaucrats (Ramadhani, 2015).

The diversion of public funds into politicians, bureaucrats, and businessmen's pockets through the delineated scandals, while most poor Tanzanians starve of public goods, entails the loss of respect for and confidence in legal-rationally authorities meant to further public interests, including HRBAD. Furthermore, corruption promotes social differences and economic exclusion, which diverge from the letter and spirit of HRBAD through its neo-patrimonial distribution of public goods as well as its tendency to accord such goods to those able to pay for them.

Kanywanyi (2009) points out that the Tanzanian judiciary, the private bar, and the police force are not entirely free from corruption as there are unethical individuals in the said organs engaging in corrupt tendencies. Such a situation connotes a practice of selling rights and justice to the highest bidders at the expense of the poor, who cannot afford such bidding economically or morally. Matters are made sour when private practitioners, according to Kanywanyi (2009) overcharge their clients, which deprives the moneyless in society of access to justice. This is chiefly because they cannot afford to pay for public practitioners' exorbitant costs for their services. They cannot pay for such services even when they are judiciously charged. For the judiciary and the police force, such a state of affairs affects the image and legitimacy of law enforcement organs in general, the doctrine of the rule of law and fair trial, and as a result, people resort to street justice that they can afford but which does not necessarily guarantee respect to human rights.

## **PROSPECTS OF HRBAD EXECUTION IN TANZANIA**

### **Mushrooming of Legal or Law/Human Rights Training Institutions**

Tanzania today has more Universities and tertiary institutions teaching law and human rights-related courses than at any time in its history. It is imperative to note that Tanzania, for decades, survived with a single faculty of law at the University of Dar es Salaam. Currently, there are law faculties at Mzumbe University, University of Dodoma, Saint Augustine University of Tanzania, Tumaini University, Open University of Tanzania and even Moshi Cooperative University whose niche as its name connotes is cooperative issues. There are also tertiary institutions like the Institute of Legal Administration, and the Institute of Adult Education, and staff colleges like the Police College and Prisons College, just to mention a few. Furthermore, the founding of the Law School of Tanzania in 2006 to impart graduate lawyers with the required practical skills is a plus to the trained lawyers. These institutions seem to provide hope to the judiciary and para-judiciary chances of addressing the acute shortage of staff. This can also help development practitioners to get human rights knowledge. However, this does not entirely answer all challenges as the legal training does not provide a substantive HRBAD to its trainees. Importantly, even if they do, it will be enjoyed by those trainees while HRBAD idea has to be infused into all students through an all-learning subject like development studies. A look into the syllabuses of Civics in Secondary schools and development studies at the University of Dar es Salaam and Mzumbe University, for instance, does not mention HRBAD even bypassing. We think this is the same for other Universities.

### **Pluralistic Political Dispensation**

Tanzania, as is the case for many poor countries of the south, has liberalised its polity and economy after embracing monolithic political setups and closed economic systems (Malipula, 2016). The development accounts for the proliferation of NGOs. The data provided by The Tanzania Association of NGO-TANGO points out that there are over 6500 NGOs in Tanzania (TANGO, 2006). These NGOs aggregate and articulate people's views and rights, educate them and support the poor. In the course of their functioning, some directly address human rights issues and link them with development. Apart from the NGOs, there are political parties that, among other things, hold the incumbent government under scrutiny and check its power to balance it.

The two (political parties and NGOs), if well-utilised, can actively play a role in aggregating and articulating people's interests, educating people, and checking the violations of human rights committed by the state and its agents through formal and informal channels. The potential notwithstanding, currently, the role of political parties is quite limited as they are not free to engage the masses directly through public rallies to aggregate their views and educate them on human rights issues. Such a role can be done by elected Parliamentarians and Councillors. The problem here is that only 3 parties have representatives in the National Assembly and over 15 do not. As such, their political role is shuttered, waiting for the coming elections. A similar situation can be said about NGOs and other interest groups like trade unions, as the state is currently championing state-based development initiatives which see free competitive socio-political endeavours as a clog to development. Such a situation, in a way, replicates the low value placed on human rights delineated above. In this regard, the promotion of HRBAD is reliant on the state's goodwill and lacks agency from the people and organs meant to aggregate and articulate their interests and demands.

### **Old is Gold Strategy**

The judiciary does make use of retired judges by providing them employment through short-term contracts to active and healthy judges. These retired judges and some who are still in service also teach law in varied academic and tertiary institutions. The involvement of ex and sitting judges in adjudicating and teaching law does present an opportunity for young Magistrates/Judges and law students to get first-hand information, knowledge, and experience from the people who served long in the judiciary and have vast experience in adjudication function and challenges thereof. The experience of these retirees does not end in adjudicating and formally teaching law. Through their association with retired judges and magistrates, they provide advice and education to citizens and the judiciary. This is a positive move towards strengthening the judiciary and people's legal competence required, among other things, to ensure HRBAD is upheld. The major problem that they encounter is the capacity of these retirees to effectively reach the masses due to resource shortage.

### **Availability of ICT**

As it is widely known, the modern world is run by ICT. Information flow, expert knowledge, and business are all made possible by it. Such a state of affairs provides room for the judiciary and legal practitioners to access knowledge and experience. The same can also reduce delays by enhancing efficiency. The use of the internet in the Attorney General's Chamber and the use of computers and electronic evidence all can contribute towards reversing the rudimental ways of executing/administrating justice in the provision

of legal services. The ICT equipment slowly substitutes the archaic practices in most of the courts where magistrates scribble their judgment, and their recorders use typewriters to record proceedings. A point that merits a mention is the fact that this opportunity can only be enjoyed in the urban areas where there is electricity and comparatively learned personnel. Indeed, drastic efforts in distributing electricity through the countries' Rural Electrification Authority (REA) have been made but indubitably budgetary requirements to capacitate workers and users of the services in rural areas are not an easy go. It could unintendedly alienate those who cannot afford to go with the electronic revolution, given the economic and knowledge issues confronting the rural poor.

### **Concluding Remarks**

HRBAD is both a means and an end as it attempts to guarantee that development efforts take into account issues of material resources shortage, poverty and poverty reduction; power and freedom. Besides, it affords the deprived an internationally recognised legal foundation for open, vigorous, and significant involvement in the development process. It is against this milieu that the rationale for resolute efforts geared towards furthering the prospects of HRBAD and getting rid of the challenges that confront its execution in Tanzania, discussed above, is deemed imperative. In this connection, efforts geared towards realising HRBAD need to assume advocacy and provide technical assistance to ensure that Tanzanian legislations conform to the letter and spirit of human rights regimes. It is also crucial to build the capacity of the justice and law sector; in terms of human resources, facilities, remuneration, and other related working incentives; and raise awareness of human rights among development practitioners and citizens. Equally, deliberate efforts towards stamping corruption and related unethical issues and their social differentiation and alienation implications. In the same vein, serious efforts towards reducing poverty need to be given due attention as the capacity building suggested entails an enhanced budget for the legal sector. Poverty reduction is also imperative so that poor citizens can afford decent legal services whenever needed. Given that HRBAD is still in its ground-breaking phase in Tanzania, there is a pressing need to develop detailed practical implementation guidelines. These guidelines should be informed by successful practices implemented in other countries to assist in the effective implementation of HRBAD in Tanzania. Learning from the experiences and successes of other nations will provide valuable insights and serve as a blueprint for navigating the complexities associated with establishing and enforcing HRBAD in Tanzania. Creating such practical guidelines is crucial for ensuring a smooth and well-informed implementation process. These guidelines can encompass various aspects, including legal, institutional, and procedural considerations, as well as mechanisms for monitoring and evaluating the effectiveness of HRBAD. Moreover, incorporating lessons learned from other countries will contribute to the development of a robust and contextually relevant framework tailored to Tanzania's specific needs and challenges. This approach aligns with the principles of shared global responsibility in advancing human rights and facilitates the adaptation of best practices to the local context. These suggestions give impetus to making HRBAD in Tanzania a reality in terms of giving citizens the right to enjoy fundamental human rights and development as opposed to an intangible Eurocentric nuisance. Failure to effect these recommendations intending to uphold the centrality of coupling human rights and development processes is fatal as such a trajectory does not lead us to human development.



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