

# **Death Penalty and Human Rights: Tanzania Practices**

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## **I. INTRODUCTION**

Human rights means different things to different people<sup>1</sup>. Each person has a different conception of the origin, purpose and function of human rights. Also a state plays a great role in the protection of human rights. The modern state can be a source of both good and evil, that's it can protect its citizen by ensuring their basic needs but also when it represses its people or, misapplies its resources, it can be source of much agony<sup>2</sup>. International human rights law sets forth the core obligations of the governments toward their people, prescribing the basic freedoms that governments must respect and the steps they must take to uphold public welfare<sup>3</sup>. But the application of that law often differs from the enforcement of statutes usually located in the nation's law books.

The right to life is the fundamental human rights. It has been considered the "supreme human right" and the fountain from which all human rights depends and must be protected<sup>4</sup>. "There is no doubt that if there were no right tot life, there would be no point in having any other human rights"<sup>5</sup>. 'Death penalty is one of the most controversial issues in almost all judicial and political systems. There are movements all over the world both for abolition and retention of this form of punishment'<sup>6</sup>. Many states protect the human life in different ways and the International community wants to make sure this right is fully protected by prohibition of the states to have legal right to take a life of human being. So many efforts have been taken to abolish the capital punishment that is death penalty in the statutes of the countries to ensure the right to life is protected. So many countries in the world has now abolished the death penalty. Despite this new trend death penalty is not prohibited under international law, because death penalty is taken as an exception to the right to life.

In this paper, I will look at the general practices of abolition of death penalty as it has emerging in international law. Also I will examine the International treaties and practices for the death penalty and the debate for and against the abolition of the death penalty and lastly I will discuss in details how Tanzania practices in this issue with contradictions of the nation law with the international ones. The debate on death penalty within Tanzania usually based on the violation of human rights as against the protection of majority interest to have peaceful life without criminals. However, the use of death penalty in Tanzania divides international laws also creates challenges in its application in the domestic courts in Tanzania.

## **II. INTERNATIONAL STANDARDS ON DEATH PENALTY**

Right to life is protected under the article 3 of the Universal Declaration of Human Rights of 1948. The United Nations adopted without dissent the Universal Declaration of Human Rights (UDHR). The Declaration proclaims the right of every individual to protection from deprivation of life. It states that no one shall be subjected to cruel or degrading punishment. Human rights lawyers argue that the death penalty violates this fundamental right which is the right to life.

Similarly, the UN adopted the International Covenant on Civil and Political Rights (ICCPR) Article 6 states that "no one shall be arbitrarily deprived of his life" and that the death penalty shall not be imposed on pregnant women or on those who were under the age of 18 at the time of the crime. What's more Article 7 goes further and states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

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<sup>1</sup> INTERNATIONAL HUMAN RIGHTS LAW, (Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran& David Harris eds., Preface xxvii 2<sup>nd</sup> ed.2014).

<sup>2</sup> *id* at 8,

<sup>3</sup> *ibid*

<sup>4</sup>Report on the UN Special Rapporteur on summary and arbitrary executions, E/CN.4/1983/16(31 January1983) para 22.

<sup>5</sup> See Dinstein Yoram, 'THE RIGHT TO LIFE, PHYSICAL INTEGRITY AND LIBERTY' in HENKIN, Louis (ed), The International Bill of Rights: The Covenant on Civil and Political Rights, New York: Columbia University Press, 1981, pg114.

<sup>6</sup> Peter, Chris Maina, HUMAN RIGHTS IN TANZANIA: Selected Cases and Materials, Rudoger Koppe Verlag Koln, 1997, pg 27

According to article 6 of ICCPR right to life is not absolute and there is an exception in protecting it that is death penalty. Death penalty is legal and allowed except for pregnant women and for those under age of 18. So the death penalty does not violate the fundamental right to life which is protected under article 3 of the Universal Declaration of Human Rights. Apart from that, in 1984 the UN Economic and Social Council (ECOSOC) adopted “Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty”. These Safeguards were endorsed by consensus by the UN General Assembly. The Safeguards state that no one under the age of 18 at the time of the crime shall be put to death and that anyone sentenced to death has the right to appeal and to petition for pardon or commutation of sentence. Since death penalty do not have a place in this modern world, the International community take efforts in abolishing it even though the death penalty has already been secure its place in International law<sup>7</sup> and it has been practices for a while in so many countries. In the efforts to end the death penalty, the UN General Assembly adopted the Second Optional Protocol to the ICCPR in 1989 with the specific goal of the abolition of the death penalty. Then followed by the the Protocol to the American Convention on Human Rights was adopted by the General Assembly of the Organization of American States in 1990. It provides for the total abolition of the death penalty, allowing for its use in wartime only.

In practices the world has witnessed the International Criminal Tribunal for the Former Yugoslavia refused to apply the death penalty and stated that the death penalty is not an option, even for the most heinous crimes known to civilization, including genocide<sup>8</sup>. This was a good move to be initiated in the court practices to abolish the exception of the right to life provided in international instruments. Also article 37(a) of the UN Convention of the Rights of the Child prohibits the death penalty for persons under the age of 18 at the time of the crime<sup>9</sup>. At the same time the UN Commission on Human Rights (UNCHR) passed a resolution calling on all states that still maintain the death penalty to progressively restrict the number of offenses for which it may be imposed with a view to completely abolishing it<sup>10</sup>. Apart from all the attempts made by International communities still there was no legally binding international treaty to abolish death penalty until the Protocol 13 was adopted by the Council of Europe’s Committee of Ministers in 2002. Protocol 13 is the first legally binding international treaty to abolish the death penalty in all circumstances with no exceptions. When it was opened for signature in May 2002, 36 countries signed it<sup>11</sup>.

Also the UNCHR approved Human Rights Resolution 2005/59 on the question of the death penalty, which called for all states that still maintain the death penalty to abolish the death penalty completely and, in the meantime, to establish a moratorium on executions<sup>12</sup>. Last but not least the UN General Assembly adopted resolutions in series in 2007, 2008, 2010, 2012 and 2013<sup>13</sup>. The Resolution 62/149 called for all states that still maintain the death penalty to establish a moratorium on executions with a view to abolishing the death penalty. In all of these resolutions, the General Assembly urged States to respect international standards that protect the rights of those facing death penalty, to progressively restrict its use and reduce the number of offences which are punishable by death.

#### ***A. Is death penalty violating the right to life guaranteed in international human rights instrument?***

Even though the World has turned against the practices of it but still, the death penalty is not prohibited under international human rights law. The language of article 6 of ICCPR already shows the interest of the abolition of death penalty. The interest of abolition of death penalty has been expressly at the international level in the Second Optional Protocol the ICCPR. However, under the ICCPR<sup>14</sup>, the European Convention of Human Rights<sup>15</sup> and

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<sup>7</sup> Article 6(2) of the ICCPR.

<sup>8</sup> Statute of the International Tribunal for the Former Yugoslavia S/RES/827(1993),annex, art 47.

<sup>9</sup> Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990.

<sup>10</sup> General Assembly GA 10678, 8th December, 2007 available at <https://www.un.org/press/en/2007/ga10678.doc.htm>

<sup>11</sup> Council of Europe, *Protocol 13 to the European Convention on Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty in All Circumstances*, 3 May 2002, ETS 187, available at: <http://www.refworld.org/docid/3ddd0e4c4.html>

<sup>12</sup> UNCHR in 2005

<sup>13</sup> see *Death Penalty* available at [www.ohchr.org/EN/Issues/DeathPenalty/Pages/DPIndex.aspx](http://www.ohchr.org/EN/Issues/DeathPenalty/Pages/DPIndex.aspx)

<sup>14</sup> Article 6(2).

<sup>15</sup> Article 2(1).

the African Charter of Human Rights<sup>16</sup> clearly allow the death penalty as an exception to the right to life, and the death penalty has been interpreted as not constituting an arbitrary deprivation of life under the ACHPR<sup>17</sup>. It took some time for many states to associate death penalty as part of human rights. At the beginning death penalty was viewed as a matter of domestic penal policy, now it is seen as a human rights issue. But some states refused to consider the death penalty as the issue of human rights, for example Trinidad and Tobago, in withdrawing from the human rights convention of the Organization for American States insisted that "The death penalty is not a human rights issue"<sup>18</sup>. But some countries had a wider understanding of the human rights and these countries associate the death penalty as the violation of the right to life and dignity. For example "Spain abandoned the last part of its death penalty in 1995, stating that: "the death penalty has no place in the general penal system of advanced, civilized societies . . . What more *degrading or afflictive punishment* can be imagined than to deprive a person of his life . . . ?"<sup>19</sup> Also, Switzerland abolished the death penalty because it constituted "a flagrant violation of the *right to life and dignity*. . . "<sup>20</sup> We can concur with many states that is now 104 countries had completely abolished the death penalty by the end of 2016 that means, death penalty violates the right to life guaranteed in the International human rights instruments, which results into the cruel, inhuman and degrading punishment. According to Amnesty International recorded 3,117 death sentences in 55 countries in 2016, at least 18,848 people were on death row at the end of 2016. And also at least 1,032 people were executed in 23 countries in 2016<sup>21</sup>. Sadly, those big power nations are the one which still practice death penalty like China, United States, Iran, Saudi Arabia and Pakistani<sup>22</sup>.

### III. DEATH PENALTY A TANZANIA PERSPECTIVE

In Africa all the 54 independent states are UN members. Also some states still practice death penalty and some have already abolished it. Out of them 16 (30%) maintain the death penalty in both law and practice, (2%) retains it for crimes committed in exceptional circumstances (such as in time of war). Also 18 (33%) permit its use for ordinary crimes, but have not used it for at least 10 years and are believed to have a policy or established practice of not carrying out executions, or it is under a moratorium. However, 29 (35%) have abolished it.

As we have seen the statistic above, many African countries have carried out no executions for over 10 years, but are not believed to have an abolitionist policy or established practice, Tanzania is one among these countries. However, the actual practices of death penalty in Tanzania was during the colonial period. After independent in 1961 the death penalty sentences were scaled down and none has been carried out in the last decade. The death penalty is carried out in Tanzania by sentencing the offender to suffer death. Its origins date back to colonial legislation which was passed to apply section 302 of the Indian Penal Code to the territory. Such legislation was replaced in 1921 by section 2 of the Punishment for Murder Ordinance 28 of the Tanganyika territory. Now a days in Tanzania, death penalty is imposed for the crime of murder in accordance with section 197 of the Penal Code, stipulates that '*any person convicted of murder shall be sentenced to death*'. The court does not have any other option but to pass the death sentence upon conviction of a person. However, the same section exempts pregnant women from death penalty and instead they are to be sentenced to imprisonment for life if convicted of murder<sup>23</sup>.

Similarly, the death penalty is for the crime of treason pursuant to sections 39 and 40.

39.(1) of Penal Code provides that

*"Any person who, being under allegiance to the United Republic: -*

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<sup>16</sup> Article 4(2).

<sup>17</sup> Moeckli, *Supra* at 319

<sup>18</sup> L. Rohter, "In the Caribbean, Support Growing for the Death Penalty," N.Y. Times, Oct. 4, 1998, at 14.

<sup>19</sup> R. Hood, THE DEATH PENALTY: A WORLD-WIDE PERSPECTIVE (2d edit. 1996) at 14-15.

<sup>20</sup> *id.*

<sup>21</sup> <https://www.amnesty.org/en/latest/news/2017/04/death-penalty-2016-facts-and-figures/> retrieved 11 April 2017, 00:01 UTC.

<sup>22</sup> *id.*

<sup>23</sup> Section 197 of Tanzania Penal Code

(a) in the United Republic or elsewhere, murders or attempts to murder the President; or

(b) in the United Republic, levies war against the United Republic, shall be guilty of treason and shall be liable on conviction to suffer death”<sup>24</sup>.

Apart from that article 40 of the Penal Code continues to provide death penalty for treasonable offence as:

“Any person who, not being under allegiance to the United Republic, in the United Republic or elsewhere, commits any act or combination of acts which, if it were committed by a person who is under allegiance to the United Republic, would amount to the offence of treason under section 39, shall be guilty of a felony and shall be liable on conviction to be sentenced to death”<sup>25</sup>.

Also the death penalty is provided for the military – related offenses<sup>26</sup>. The first Schedule to the National Defense Act No. 24 of 1966 permits imposition of the death penalty for traitorous conducts by Commanders or any service man in the presence of an enemy. The death penalty under this law, however, is not mandatory, as it is in many other cases of murder and treason<sup>27</sup>. In recently development, in May 2016 the Prevention of Terrorism Act (Cap 19) was amended through the Miscellaneous amendment Act No. 2 of 2016 the death penalty was added as a penalty for terrorism where the act causes death<sup>28</sup>. Even though Tanzania still provides death penalty for crimes of treason, murder, terrorism crimes and some military related offences but the last execution was in 1994. In order for the death penalty to be executed, the President must sign a death warrant. Recently statistics indicate an increase in the number of inmates with death sentence. Number of Individuals Currently under Sentence of Death in Tanzania until 2015 there were 472 individuals under sentence of death, 452 men and 20 women. Out of these convicts, 228 are awaiting the execution of their sentence after completion of legal requirements.

#### IV. RELATIONSHIP BETWEEN TANZANIA NATIONAL LAWS AND THE HUMAN RIGHTS INTERNATIONAL LAWS REGARDING DEATH PENALTY

Tanzania is a member of the United Nations, which in 1948 adopted the Universal Declaration of Human Rights. The Declaration guarantees each person's right to protection from deprivation of life, and categorically states that no one shall be subjected to cruel or degrading punishment. Tanzania therefore, being a member of the United Nations has pledged to respect this right in her laws and practices. On 11 September 1976, Tanzania ratified the 1966, International Covenant on Civil and Political Rights which establishes restrictions and provides safeguards on the death penalty ‘in countries which have not abolished it’. However, Tanzania has not yet ratified the 1989 Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty by prohibiting states that are parties from carrying out executions and requiring them to take all necessary measures to abolish the death penalty within their jurisdiction.

Furthermore, Tanzania is not a party to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment. On 18 February 1984, Tanzania ratified the 1981 African Charter on Human and Peoples’ Rights, which provides in Article 4 that: ‘Human beings are inviolable. Every human being shall be entitled to respect for his life and integrity of his person. No one may be arbitrarily deprived of this right’. However, Tanzania follows a dualist system of treaty application, whereby terms of International and Regional human rights standards including those relating to death penalty become applicable in the country after ratifying and incorporating them into domestic laws. Nearly all the above mentioned human rights instruments ratified by Tanzania have not yet been fully domesticated and remain therefore unenforceable in the country.

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<sup>24</sup> Tanzania Penal Code Chapter 16 of the Law Revised (Principle Legislation)

<sup>25</sup> *id*

<sup>26</sup> See National Defense Act, Cap 192 of the R.E 2002 Laws of Tanzania.

<sup>27</sup> Richard Z. Shilamba, APPLICATION OF THE DEATH PENALTY IN TANZANIA - Paper presented at the First International Conference on the Application of the Death Penalty in Commonwealth Africa organized by the British Institute of International & Comparative Law held in Entebbe, Uganda from 10<sup>th</sup> to 11<sup>th</sup> May 2004

<sup>28</sup> see section 55 of the Written Laws Miscellaneous Amended Act, No.2 of 2016.

Similarly, in order to comply with international legal instruments, Tanzania decided to amend its Constitution in 1984 by an eighth constitutional amendment and to introduce a Bill of Rights. Rights mentioned like equality before the law, the right to dignity is provided under articles 9 (a), (f) and 13(6)(d) of the Tanzanian Constitution. The right to dignity is mainly of dignity in the execution of the sentence. Also the right to dignity expanded up to the right against cruel, inhuman and degrading punishment as provided under article 13(6)(e) of the Tanzanian Constitution. Also article 14 of the aforesaid constitution provide the right to life as follows: “Every person has a right to live and subject to law, to protection of his life by the society”. Not only Tanzania includes the bill of rights in its constitution for the first time but also had the first serious scrutiny of the death penalty in Tanzania in the early 1990s. In 1991, a Commission was formed under the Chairmanship of the late Chief Justice Francis Nyalali to recommend changes to the political system. The Commission, popularly known as the Nyalali Commission as one the things recommended amongst other things, the abolition of capital punishment for being a barbaric form of punishment and morally insupportable<sup>29</sup>. However, there was no follow up of any sort to this recommendation by the government.

#### V. COURTS AND THE DIVERGENT VIEWS ON DEATH PENALTY

Power to interpret the law is constitutionally vested in the Judiciary under Article 107 (A) of the Constitution<sup>30</sup>. No organ of State including Parliament, shall have the final say on matters pertaining to administration of justice<sup>31</sup>. The court will have the power to determine the extent and limitations of the constitutional rights and their relationship with each other. This involve the delicate balance act between the individual’s rights against the rights of the society<sup>32</sup>. The court had a divergent views regarding the death penalty as it is violating the right to life which is guaranteed in the Tanzanian constitution as well as in the international human rights instruments. On the other hand, some argued that it is not contrary to the constitution.

The attempt to question the constitutionality of the death penalty introduced in the famous case of *R. v. Mbushuu and Dominick Mnyaraje and Another*<sup>33</sup>. The accused persons were convicted of murder with statutory sentence is death. The defence council argued that the death sentence was unconstitutional since its violated Article 14 which guarantees the fundamental right to life. That it infringed the dignity of the person in execution of the sentence and it was cruel, inhuman and degrading. On the other hand, the Republic argued that the death penalty did not infringe any fundamental rights and that it was valid under Article 30(2) as being a provision which was in the public interest<sup>34</sup>. Here the Court recognised that there are divergent views on the death penalty. On one hand there are those who are opposed to the death penalty because it is a cruel and inhuman form of punishment. On the other side, there are those who champion the death penalty as a society’s effective safeguard against violent crime<sup>35</sup>.

In this case Justice Mwalusanya in the High Court held that the death penalty was inherently cruel, inhuman and degrading and the mode or manner of execution of the punishment was inhuman, cruel and degrading. Further that the imposition of the death sentence was not saved by Article 30 (2) of the Constitution as it was not a provision which was lawful and in the public interest, the latter finding being based on factors such as (i) the possibility of erroneous convictions, including the fact that most poor defendants did not receive adequate legal representation; (ii) sentences of life imprisonment provided protection against violent crime no less effective than the death sentence and (iii) the mode of execution, the inhumane conditions on death row and delays in executing

<sup>29</sup> See final report on Designated Legislation in the Nyalali Commission Report, April 2014 Dar Es Salaam.

<sup>30</sup> Tanzanian constitution of 1977

<sup>31</sup> Article 4 of United Republic of Tanzania Constitution of 1977

<sup>32</sup> Law and Justice in Tanzania Quarter a century of the Court of Appeal, edt Chris, Maina Peter and Helen Kijo- Bisimba pg .164 -167

<sup>33</sup> 1995 TANZANIA LAW REPORT 97.

<sup>34</sup> Article 30 (2) of the United Republic of Tanzania constitution.

<sup>35</sup> In this case the court looked at the American case of *Furham V. Georgia* (1972) 408 US 238 in this case the Court found out that death penalty indeed is the cruel, inhuman and degrading punishment but the court disregarding this cause it has the duty to protect the society and for the court it has to be very careful to follow the decision of other jurisdictions. It argued that in America the decision may not be due to protect their society but in Tanzania people go to the extent of sacrificing their sleep to join vigilant groups popularly know as sungusungu, in order to protect life and property, the death penalty may still be reasonable necessary.

the sentence. Therefore, although he convicted the accused persons of murder he imposed a sentence of life imprisonment for both. When this case reached the Court of Appeal, while it agreed with the trial judge that the right to life under the Constitution was not absolute, and that the death penalty is inherently inhuman cruel and degrading, and further that it is also so in its execution, and thus offends the right to dignity provided in the Constitution; it nevertheless held that the imposition of the death penalty under the law was lawful, not arbitrary and hence constitutional. The Court of Appeal further ruled that the sentence was saved by Article 30(2), as it was not an arbitrary sentence since decisions as to guilt or innocence were taken by the judges, and that there was no proof one way or the other as to whether or not the death sentence was a more effective punishment than a period of imprisonment; and in any event it was for society and not for the courts to decide whether the death sentence was a necessary punishment<sup>36</sup>.

Also a wider diverging views on the validity of death penalty shown again in another case of *Chrizant John v. R*<sup>37</sup>, in this case two Justices reached a decision on supporting of death penalty as part of national law, it neither violate the constitution nor the international human rights. While Justice Kileo give a dissenting judgment and proposed a life sentence to meet the justice ends. She said that death penalty was unconstitutional as it is inherent an inhuman and degrading punishment and its execution that defies article 13 of the Constitution of Tanzania of 1977. As we have seen that Tanzania Constitution guaranteed the right to life but on practices the court translates this right in the constitution as not absolute but subject to law which makes the huge different. It seems in one hand the right to life is protected but on the other hand its not so protected it depend on the other laws. Article 14 of the Constitution of the United Republic of Tanzania recognizes the right to life in the same terms as it is recognized under the International Covenant on Civil and Political Rights as well as the African Charter on Human and Peoples' Rights. The right to life is therefore not absolute, but 'subject to law'. For the time being this issue is still debatable as exemplified in the above two cases.

Another diverging views have been seen on the question of age, the law provides that the death penalty should not be given against a person under 18 years of age. There are conflicting decisions as to whether this age limit refers to the time of commission of the offence or during sentencing. In the case of *R.v. Lubasha Maderenya and Tegai Lebash*, the High Court (Lugakingira, J.) did not impose a death penalty on one of the accused because he was below 18 years at the time of commission of the murder. During the hearing of the Appeal, the Court of Appeal reversed this decision<sup>38</sup>.

Arguments for the government and some Tanzanians' justification on the effectiveness of the death penalty. Those who support death penalty argue that; It is permissible under International Human Rights Instruments. For example, Article 6(2) of the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman and Degrading Punishment of 1987 and The UN General Assembly Resolution number 32/61 of 1977 permitting imposition of the death penalty for serious crimes. Also they claim that death penalty has an effective deterrent effect. People supporting application of the death penalty in Tanzania argue that by executing murderers we effectively deter potential killers from committing murders.

Furthermore, they claim that it is permissible by God according to the holy books, namely the Koran and the Bible<sup>39</sup>. And it is cheaper to execute persons on death row rather than incurring expenses to meet their life imprisonment daily basic needs. Lastly, the Death Penalty is still accepted by the majority of Tanzanian people and the Government has received no complaints from the majority condemning it.

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<sup>36</sup> See *R v. Mbushuu and another* (1995) TLR 97.

<sup>37</sup> Criminal Appeal no. 313 of 2015.

<sup>38</sup> High Court of Tanzania at Mwanza, Criminal Sessions Case No. 143 of 1977.

<sup>39</sup> 'An eye for an eye', sets the moral basis for the death penalty in Tanzania. According to LP Shaidi 'The death penalty in Tanzania — Law and practice' (undated). 'This penalty [of capital punishment] has received ideological justification from the main religions, in our case Christianity and Islam. Many believers would not wish to question anything which they consider to have been sanctioned by their religion as taught by their religious leaders. In penological terms, capital punishment is a reflection of retributive justice, embodying the ancient maxim of 'an eye for an eye, a tooth for a tooth.' It is based on vengeance channelling public outrage into a legalised form of punishment. It is argued by its proponents that, in its absence, outraged people may be forced to seek vengeance through mob justice or individualised forms of revenge'; available at [http://www.biicl.org/files/2213\\_shaidi\\_death\\_penalty\\_tanzania.pdf](http://www.biicl.org/files/2213_shaidi_death_penalty_tanzania.pdf) (accessed 16 September 2009).

As we have seen the arguments from the death penalty supporters my views I agree with Judge Kileo, that death penalty is unconstitutional as it violates the article 13 of Tanzania Constitution by providing inhuman and degrading punishment in its execution. The death penalty breaches two essential human rights: the right to life and the right to live free from torture. Both rights are protected under the Universal Declaration of Human Rights Of 1948. Not only that death row inmates face extremely psychological torture, as they remain keen waiting for the President's signature but unfortunately the date never surpass in their entire life. Irreversible and mistakes happen. Execution is the ultimate, irrevocable punishment: the risk of executing an innocent person can never be eliminated. Since 1973, for example, 150 US prisoners sent to death row have later been freed. Does not deter crime, according to LHRC findings that death penalty in Tanzania does not help society because incidents of murder cases and other crimes continue to rise. Also according to R. Hood he concluded his research by stating that "the Conclusion has reached is that his research has failed to provide scientific proof that executions have greater deterrent effect than life imprisonment"<sup>40</sup>

The Public Wants it, for several years now the Government of Tanzania has been reluctant to amend the laws that provide for death penalty on the ground that the society still want it. The government justification on this is invalid. This is because death penalty was never part of penal criminal system in Tanzania as the public was never involved at the time when the country imported such laws in its penal system. LHRC's 2012 survey indicates that 61% of people who were interviewed and gave response to the question on death penalty have positively supported its abolition.

Lastly, the death penalty cannot be acceptable in developing countries like Tanzania where the justice system is weak. This is due to several factors such as corruption, poor investigation machinery and prosecution system, lack of sufficient evidence and fabrication of cases. For example, Lembeli who had been under arrest for stealing coaches at Uyui in Tabora in September 1994, was forcefully linked with suspects who gunned-down a prison officer at Tabora–Relini. By that time Lembeli was to attend sit for his Form Four national examinations. Lembeli who remained behind the bars for 19 years, among other things, succeeded to return to civil life after he managed to convince the Appeals Court to nullify the conviction made by the High Court in Tabora Region. Mr. Lembeli was wrongly convicted to die because of a case fabricated against him. However, the Court of Appeal nullified his conviction due to lack of sufficient evidence. Fabrications of murder cases are very common in Tanzania. Hence maintaining the death sentence in our legal system may always put innocent people at risk.

## **VI. CONCLUSION /RECOMMENDATIONS**

Public awareness of the death penalty is limited. Tanzania government should increase the knowledge about death penalty. Also there is a need of the protection of the right to life needs to be absolute. Any provision in the constitution needs to be absolute, without any drawback clauses. The Parliament should look into steps to safeguard the right to life through current constitutional review process.

Furthermore, it is the time for Tanzania to endorsed Second Optional Protocol to the International Covenant on Civil and Political Rights and also should be a party to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment.

I believe the death sentence should not form part of our penal system, because the country legal and criminal system is unfair and ineffective to prove allegations involving capital offences such as murder beyond reasonable doubt. Tanzania needs to recognize death penalty as a human rights violation.

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<sup>40</sup> See Hood Roger, *the death penalty: A World – Wide Perspective – A Report to the United Nations Committee on crime Prevention and control*, Oxford: Clarendon Press, 1989, pg 167.