

The Status of Social Rights Protection in Tanzania (2001-2012)

Yuda J. Chatama^{1*} Julieth N. Msuya²

1.Mzumbe University Dar es Salaam Campus College, P. O. Box 20266, Dar es Salaam, Tanzania

2.The Open University of Tanzania, P. O. Box 23409, Dar es Salaam, Tanzania

E-mail: chatyu77@yahoo.co.uk

Abstract

Universal Declaration of Human Rights in 1948 facilitated and strengthened a number of developments necessary in internationalization of human rights. As a result, protection of human rights has acquired global status and importance and has grown tremendously both in conception and content over the years. One dimension of human right which has achieved growth is Social rights. Michael, K (2013), asserts that, social rights are human rights which guarantee a social system whereby the state assumes primary responsibility for the welfare of its citizens in matters such as adequate health care, quality education, safe and clean water, enough food, housing and social security. This paper starts by providing an understanding of social rights and how they are being protected in Tanzania. It gives an overview of social rights guaranteed as well as impediments to full realization in promotion and protection of such rights caused by prevailing legal framework. Furthermore, the paper used results from Afro-barometer to analyze trend of protection of social rights in Tanzania over the period of 12 years (2001 – 2012). Findings reveal that, the status of the state in assuming its primary responsibility for the welfare of its citizens is deteriorating. As such the proportion of citizens with access to and who affords adequate food, enough fuel for cooking, safe water, appropriate medical care, and quality education has been declining. The paper argues that although Tanzania is a signatory to major international human rights instruments, which are also involved in promoting and protecting of social rights; large-scale human rights abuses still exist in the country and social rights have become a neglected category of human rights. It also prescribes roles which the government and NGOs must play so as to ensure optimal realization on promotion and protection of social rights within the country.

Keywords: Human Rights, Social Rights Protection, Tanzania.

1. Introduction

Promotion and protection of human rights has engaged the attention of the world community and penetrated the international dialogue to become an active ingredient in interstate relations because it is recognized as not only the foundation of freedom and justice but also an integral and essential element for preservation of peace. To demonstrate their importance, the United Nations not only “affirm faith in fundamental human rights, in the dignity and worth of the human person”, but declares as one of its purposes, the need to promote and encourage universal “respect for human rights and fundamental freedoms for all. To that end, the United Nations has drafted, developed and adopted many international human rights instruments of promotional and programmatic character, to ensure effective promotion and protection of human rights.

Protection of Social rights goes in tandem with promotion and protection of human rights. By definition Social Rights are rights that guarantee a social system whereby the state assumes primary responsibility for the welfare of its citizens in matters such as health care, education, right to safe and clean water, food security, social security and right to housing (LHRC 2003). Just like civil, political and other human rights; social rights has to be enshrined in national as well as international legal instruments and consequently enforced by national legislations. That is to say, all human rights are equal in status and should not be treated differently.

At an international level, there are covenants and declarations which are meant to protect social rights. However such declarations and covenants can hardly be enforced. For example; the International Covenant on Social, Economic and Cultural Rights, 1966 (ICESCR) is a binding international legal instrument, which aims at promoting and protecting social rights do not have binding force. Likewise, the Universal Declaration of Human Rights, 1948 which aim at protecting social rights as a subset of human rights do not have binding force.

There is enough evidence that specific declarations have been made for the purpose of promoting and protecting social rights in Africa. For instance, the Kigali Declaration, 2003 which provides for promotion of social rights in Africa; and the Grand bay (Mauritius) Declaration and Plan of Action, 1999, which recognizes protection of social rights. Social rights are also promoted in thematic protocols to the Charter such as “the African Protocol on the Rights and Welfare of Women, 2003” also known as Maputo Protocol and “the African Protocol on the Rights of the Child”. All these are directive principles which are not complemented by binding force.

Considering available evidences; enshrining social rights in a number of international legal instruments has not been able to protect and promote social rights due to lack of legal enforceability in various jurisdictions at the national level. For instance, the Constitution of the United Republic of Tanzania, 1977 does not provide for legal protection of social rights. A social right like right to education in the Tanzania’s Constitution is just

provided as a directive principle which is in weaker form (LHRC 2003). So there is an obvious contradiction to the notion that all human rights are equal in status because enforceability of social rights in national legislation is not much guaranteed like that of civil and political rights.

Due to national and international legal environment highlighted above, one reserves one question to be pondered. That question being; “what has been the status of social rights protection in Tanzania”. A good proportion of this paper analyses data as to construct trend showing how individual social rights like; right to adequate food, safe water, cash income, cooking fuel, medical services and quality education have been promoted and protected over the years. The paper also highlights what has to be done by the country so as to guarantee a social system whereby the state assumes primary responsibility for the welfare of its citizens.

2. Right to Food

The first World Food Summit in 1974 promised that all hunger would be eradicated within the next ten years. However, action plans to reduce food insecurity in the world did not yield expected impact on hunger and malnutrition of the poor and on operationalization of the right to food. The number of people who go without food kept rising. As a result, 22 years later in 1996 at the World Food Summit convened in Rome, it was agreed to attempt to reduce the number of undernourished people from 800 million in 1996 to 400 million by the year 2015. The Summit requested the right to food to be recognized in the 1948 Universal Declaration of Human Rights and the one enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights be given a more concrete and operational content.

To that end, a number of initiatives were taken as a result; in 1999, the UN Committee on Economic, Social and Cultural Rights, the body of independent experts monitoring States’ compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted General Comment No. 12 on the right to food; in 2000, the mandate of the Special Rapporteur on the right to food was established by the Commission on Human Rights by resolution 2000/10 of 17 April 2000; and in 2003, an Intergovernmental Working Group was established under the auspices of the United Nations Organization for Food and Agriculture (FAO) in order to prepare a set of guidelines on the implementation of the right to food. This process led to the adoption on 23 November 2004, by the 187 Member States of the General Council of the FAO, of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.

Right to food has been defined differently by different authorities, for example; the Committee on Economic, Social and Cultural Rights (Committee on ESCR) in its General Comment 12 define it as "The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement." While the Special Rapporteur, define it as "The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear."

From definition; right to food incorporates three key elements, namely; availability, accessibility and adequacy. Availability requires food to be available from natural resources through agricultural production or should be available for sale in markets and shops. Accessibility requires economic and physical access to food to be guaranteed. Economic accessibility means that food must be affordable. Individuals should be able to afford food for an adequate diet without compromising on any other basic needs, such as school fees, medicines or rent. Physical accessibility means that food should be accessible to all. Adequacy means that food must satisfy dietary needs. For example, if food does not contain necessary nutrients, it is not adequate. Food should also be safe for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes. Adequate food should also be culturally acceptable.

The right to food imposes three levels of obligations on States parties, namely; the obligations to respect, to protect and to fulfill. In turn, the obligation to fulfill incorporates both an obligation to facilitate and an obligation to provide (FAO, 2012). The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfill (facilitate) means the State must proactively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfill (provide) that right directly. This obligation also applies for persons who are victims of natural disasters or whose access to their ancestral lands has been threatened.

The contribution of international community on right to food depends on effectiveness, on the establishment of institutional and legal frameworks at the national level, and on policies which are effectively geared towards the realization of the right to food in the country concerned. To this end, some states have created

provisions within their constitutions. For example; the constitution of South Africa Section 27 is about Health care, food, water and social security. In Section 27 (1) (b) expressly asserts that; “everyone has the right to have access to sufficient food and water” and Section 28 (1) (c) among other things it expressly asserts that; “every child has the right to basic nutrition”.

Another example is the constitution of Uganda in which Article 14 states that, “The State shall endeavor to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that... all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, decent shelter, adequate clothing, food, security and pension and retirements benefits.” Although the constitution of Tanzania does not have such express provisions; being a member of United Nations since 1961 and having ratified a number of international instruments means that, it is within United Nations Human right system which recognizes the right to food. Furthermore, Tanzania has adopted Voluntary Guidelines of FAO General Council (2004), in which 187 Member States agreed to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.

So has the right to food been equitably protected in Tanzania? To answer this question the number of people who have gone without food was compared over the years as shown below.

Table 1: Status of Food access among Tanzanians

Year	People who have gone without food						Status Summary	
	Never	Just once or twice	Several times	Many times	Always	Don't Know	*Have Food*	*Do not Have*
2001	55.40%	12.30%	19.00%	12.20%	0.80%	0.30%	68.00%	32.00%
2005	46.80%	15.40%	21.80%	15.40%	0.40%	0.20%	62.40%	37.60%
2008	45.90%	20.20%	21.00%	12.30%	0.50%	0.20%	66.30%	33.80%
2012	44.70%	19.00%	23.50%	12.40%	0.30%	0.10%	63.80%	36.20%

Source: Afro Barometer (2001 – 2012)

Based on data presented by table 1 above; despite having ratified a good number of international conventions, right to food has never been equitably protected because a number of people going without food are increasing year by year as illustrated by the trend line in figure 1 below.

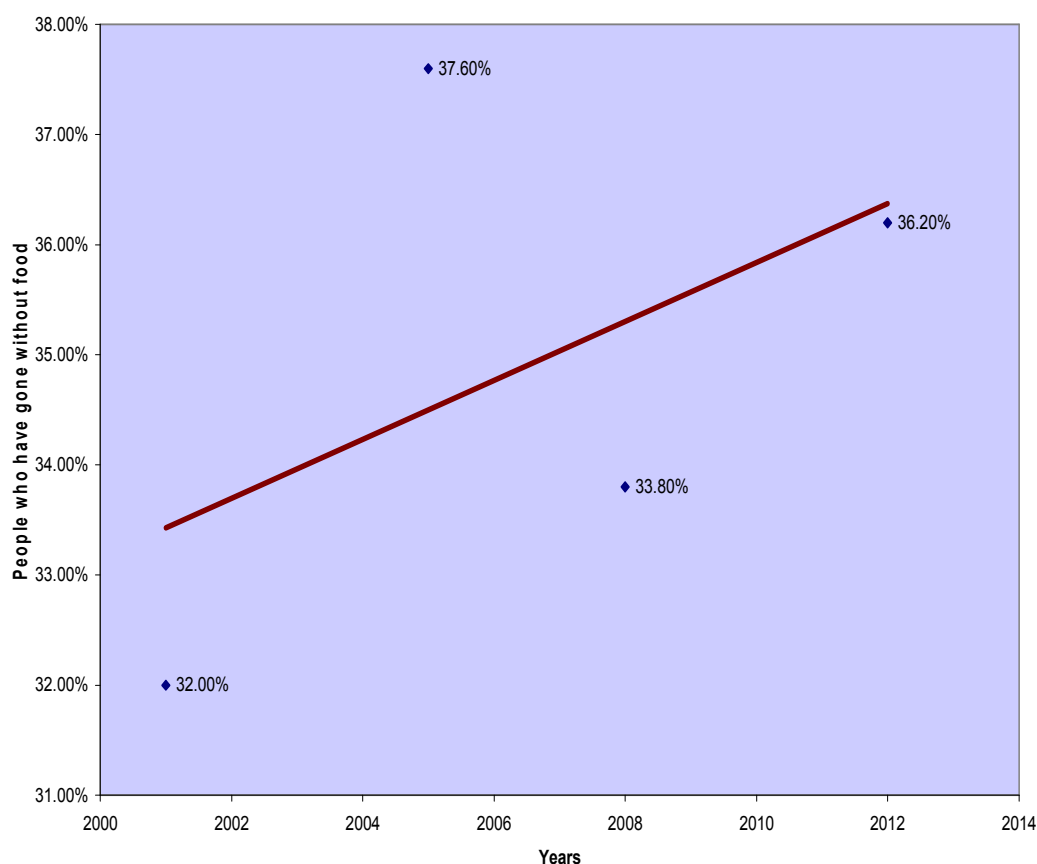


Figure 1: People who have gone without food (2001 – 2012)

3. Right to Education

Tanzania became part of human rights system established by the Universal Declaration of Human Rights and a member of the United Nations in 1961. As a result, it has signed and ratified a number of international UN treaties, including several which speak directly to member states obligations to uphold the right to education. In chronological order with the year in which they were ratified by Tanzania, these are the International Covenant on Economic, Social and Cultural Rights (1976), the Convention Against Discrimination in Education (1979), the Convention on the Elimination of All Forms of Discrimination against Women (1985), the Convention on Rights of the Child (1991), and the Convention on the Rights of Persons with Disabilities (2009). Through ratification Tanzania claimed to have brought into effect the contractual agreements and legal obligations to provide education to all without discrimination of any kind.

To facilitate promotion and protection of right to education, Constitutions of some countries including East African member States provides for the right to education. For example; Constitution of Uganda 1995, provide for the right to education and obligate the government to ensure that its citizens acquire quality education; while that of Kenya 2010, goes further to provide that compulsory education is to be provided free of charge to all children. In such countries there is a clear legal base for citizen to demand the right to quality education from the Government.

However, right to education under the current Constitution of United Republic of Tanzania, 1977 lacks guarantee as a matter of right. The government exonerates itself from providing quality education at all levels. The wording of the Constitution poses an obligation for a citizen to seek quality education up to any level, depending on their financial ability. The role of the government is just to ensure that there is enabling environment for citizen to acquire education. In other words, there is no legal base for citizen to demand the right to education from the government.

That being the case, the right to education depends on the right to enjoy enabling environment created by the state to facilitate protection of such right as embodied in the constitution. In other words, the government claims to have created mechanism for all citizens to engage in rewarding economic activities and acquire financial ability to seek and pay for education. This implies that, Tanzanians are able to seek and have enough cash to pay for quality education. To the contrary Afro barometer data does not support such proposition as shown by table 2 below.

Table 2: Status of cash income possession among Tanzanians

Year	People who have gone without Income						Status Summary	
	Never	Just once or twice	Several times	Many times	Always	Don't Know	*Have Income*	*Do not Have*
2001	24.60%	9.20%	31.50%	31.80%	2.70%	0.20%	34.00%	66.00%
2005	15.70%	13.30%	22.70%	41.50%	6.10%	0.60%	29.60%	70.30%
2008	16.00%	17.70%	26.50%	35.00%	4.60%	0.20%	33.90%	66.10%
2012	11.20%	10.70%	32.20%	40.50%	5.50%	0.00%	21.90%	78.20%

Source: Afro Barometer (2001 – 2012)

As pointed out earlier, the right to education as per constitution in Tanzania has cost implication. The table above regards people who *Have Income* as those who have never gone without cash income plus those who have gone without cash income only once or twice plus those who are not sure if they have ever gone without cash income or not. It also regards people who *Do not have* cash income as those who have gone without cash income several times plus those who have gone without cash income many times plus those who have always gone without cash income. Based on data, the proportions of Tanzanians who have gone without income keep increasing as shown by figure 2 below.

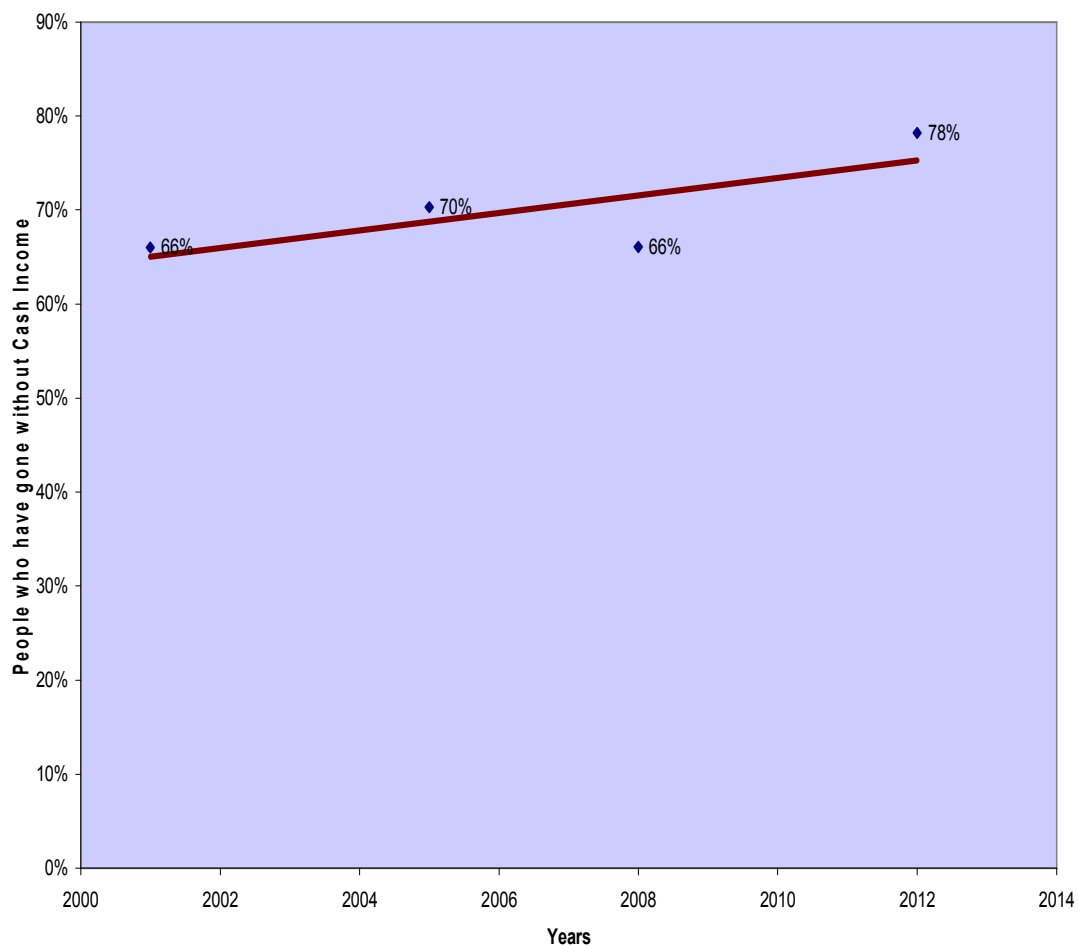


Figure 2: People who have gone without Income /can't pay for Education (2001 – 2012)

It follows therefore that, the right to education has never been equitably protected because the number of people who lack financial capacity to pay for education as required by the constitution is increasing year by year as shown by a trend line in figure 2 above.

4. Right to Water

Water is very essential for life. Safe drinking water and sanitation are indispensable to sustain life and health, and fundamental to the dignity of all. The right to water is the fundamental human right of access to water of a quality and quantity sufficient to satisfy basic human needs: consumption, hygiene and sanitation (e.g. bathing or laundry), cleaning, cooking, and subsistence agriculture. It requires the state to guarantee a minimum quantity of water sufficient for individual human life and health (Heri smets, 2000).

According to Maïke Gorsboth (2005), Right to water is viewed as an important step in the realization of other human rights such as the right to life, the right to food, the right to education, and the right to health. States are responsible for respecting, protecting, and fulfilling all human rights, including the right water Fulfilling the human right to water requires the government to take necessary steps to improve the safety, accessibility, and affordability of water for all (Rebecca Brown, 2010). Respecting the right to water requires that governments refrain from actions that undermine enjoyment of the right, such as limiting access to water, polluting water sources, or engaging in forced evictions that remove people not only from homes and land but also from water sources. Protecting the right to water also requires the government to ensure that third parties such as individuals, corporations, groups, or other entities do not undermine or interfere with the enjoyment of the right to water (John Scanlon, Angela Cassar & Noemi Nemes 2004)

The international community has increasingly recognized that access to safe drinking water and sanitation must be considered within the human rights framework. So at the international level right to water is explicitly referred to in such conventions as; the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities.

Tanzania has signed and ratified the following international human rights instruments related to the right to water without any reservations: the ICESCR (John Hatcher, 1992); the UN Convention on the Rights of the Child (Fortunata Makene, 2006); the African Charter on Human and Peoples Rights; and CEDAW (Michael Kevane, 2004). According to Eugenne Mniwasa, (2003), ratification of these instruments without any reservations indicates Tanzania’s willingness to be bound by all their provisions.

Furthermore, Tanzania has a National Water Policy of 2002 which among other things; recognizes that “access to clean and safe water is a basic need and right for all human beings” and emphasizes that “water for basic human needs in adequate quantity and acceptable quality will receive highest priority.” Additionally, there is Water Resources Management Act of 2009, in which Section 4(1) (b) recognizes that “safe drinking water is a basic human right.” Considering these facts, one can believe that in Tanzania there is full enjoyment of the right to water in terms of quality (safe and acceptable for use); accessibility (within a reasonable distance, affordable, and nondiscriminatory); and availability (sufficient quantity without interruption). To that end, it became rational to assess the extent at which Tanzanians enjoy this right. Related data was drawn from Afro barometer over the years as presented in table 3 below

Table 3: Status of water access among Tanzanians

Year	People who have gone without Water						Status Summary	
	Never	Just once or twice	Several times	Many times	Always	Don't Know	*Have Water*	*Do not have*
2001	51.50%	7.90%	17.50%	17.30%	5.50%	0.20%	59.60%	40.30%
2005	37.80%	9.10%	17.30%	22.30%	13.30%	0.20%	47.10%	52.90%
2008	45.00%	11.10%	19.00%	17.60%	7.20%	0.20%	56.30%	43.80%
2012	38.00%	14.80%	22.50%	20.00%	4.60%	0.00%	52.80%	47.10%

Source: Afro Barometer (2001 – 2012)

Results shows a sharp increase in the number of Tanzanians who have no access to water between 2001 and 2005 as presented by an increase in the sum of people who have gone without water several times plus those who have gone without many times plus those who have always gone without water. And generally the proportion of Tanzanians who have gone without water is increasing year by year as shown by trend line in figure 3 below

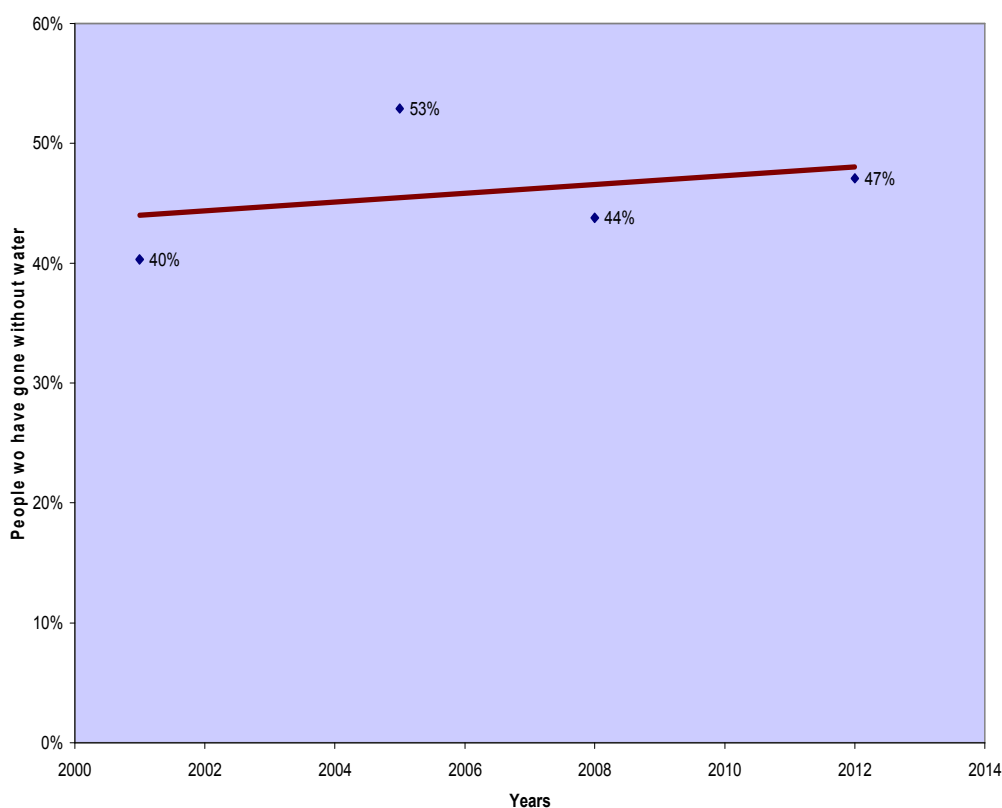


Figure 3: People who have gone without water (2001 – 2012)

Based on Tanzania Human Right report (2013), millions of people in Tanzania do not have access to improved sources of drinking water and sanitation. The situation is even much worse for people living in

informal settlements that usually miss from national statistics. The root of water and sanitation crisis can be traced to poverty, inequality and unequal power relationships, and it is exacerbated by social and environmental challenges: accelerating urbanization, climate change, and increasing pollution and depletion of water resources.

Furthermore, the Second to Tenth Consolidated Periodic Report Submitted by the United Republic of Tanzania under the African Charter on Human and People's Rights (African Commission on Human and Peoples' Rights, 2006) asserts that, Tanzania's legal system is largely based on common law, so international instruments are not directly applicable before they have been implemented in domestic legislation, either by amending or repealing existing legislation, or enacting new legislation. One explanation as to why there is an increasing number of Tanzanians who are going without water might be the lowliness of the government in changing its laws to fully conform to human rights instruments. For example, Tanzania ratified CEDAW in 1981, but has not yet incorporated it into statutory law through an act of Parliament.

It follows therefore that, despite having ratified a good number of international conventions, plus creating of water policy and the like; right to water has never been equitably protected because the number of people who are going without water is increasing year by year as explained above.

5. Right to Health

The World Health Organisation (WHO) provides a broader understanding of a right to health by considering relevant aspects for one to enjoy this right. The aspects of right to health, according to the WHO, include freedoms such as freedom to be free from non-consensus medical treatment, medical research and experiments, forced sterilization or any cruel, inhuman or degrading treatment.

Secondly, the right to health includes entitlements such as access to essential medicine, right to prevention, treatment and control of diseases, right to system of health protection providing highest standard of health care, maternal, child reproductive health, equal and timely access to health services, provision of health education and information, community participation in health-related issues. Thirdly, health services must be provided free from any kind of discrimination. And lastly, the right to health calls for all services, goods and facilities to be available, accessible, acceptable, and of good quality. In other words, country's financial constraint is not an excuse for failure to guarantee this fundamental right.

Right to health is primarily provided for in the ICESCR, Article 12. Within this article the right to health means 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. The article lists some of the steps to be taken by States parties in protecting and promoting this right such as: the reduction of stillbirths and infant mortality; ensuring the healthy development of children; improving environmental and industrial hygiene; the prevention, treatment and control of diseases; and access to medical care for all.

The right to health under international law human rights law is also guaranteed in a number of other international legal documents. In 1978 the Alma Ata Declaration provided that: The Declaration affirms the crucial role of primary health care, which addresses the main health problems in the community, providing preventive, curative and rehabilitative services accordingly (art. VII). It stresses that access to primary health care is the key to attaining a level of health that will permit all individuals to lead a socially and economically productive life (art. V) And to contributing to the realization of the highest attainable standard of health.

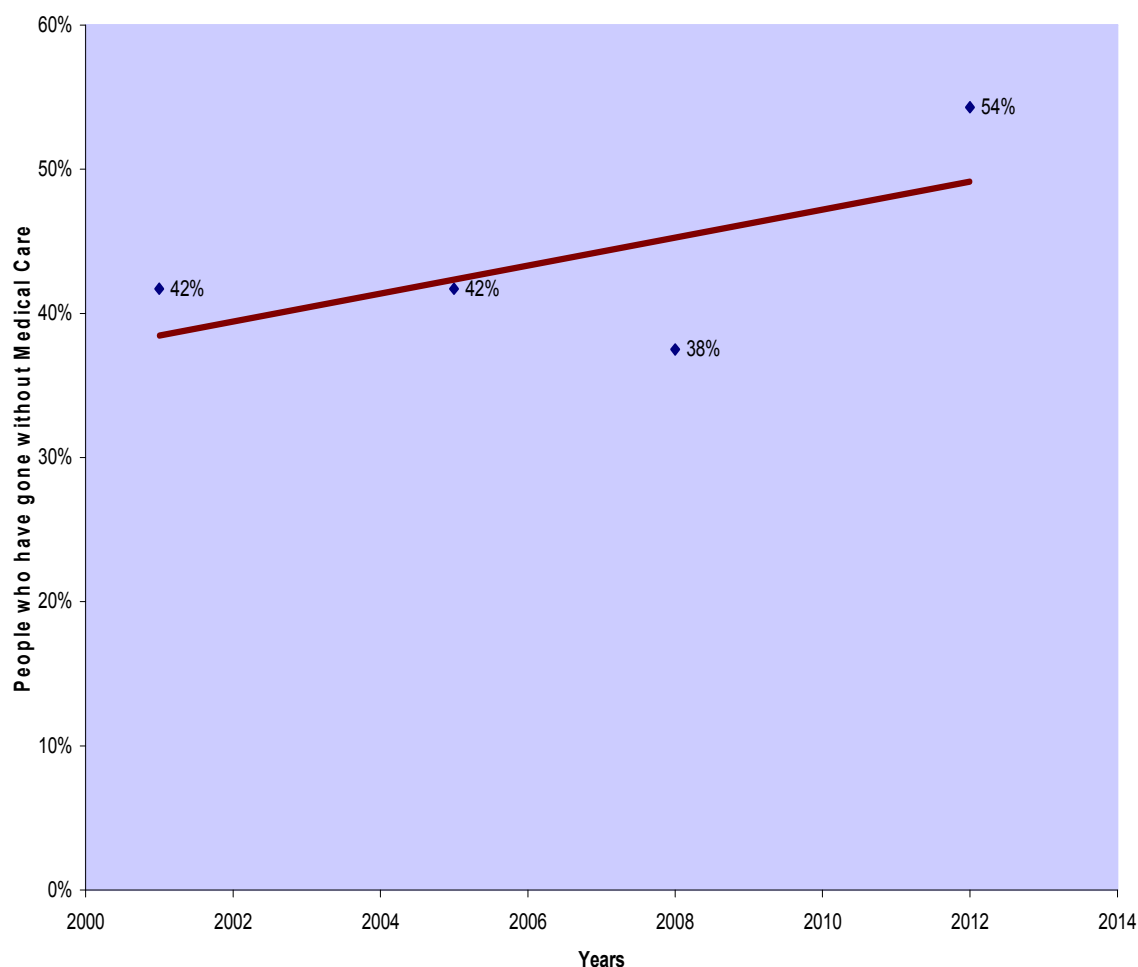
Based on above facts; legal protection of the right to health is highly guaranteed at international and regional levels, through conventions and declarations. However, most African states do not guarantee this right in their constitutions. For instance, the Constitution of United Republic of Tanzania, 1977 does not provide for right to health. The legal framework in provision of health services is the Public Health Act, 2009 and the National Health Policy, 2007. The question remains "is the right equitably protected? To answer this question the number of people who have gone without medical care was drawn from afro barometer and compared over the years as presented by table 4 below

Table 4: Status of access to medical care among Tanzanians

Year	People who have gone without Medical care						Status summary	
	Never	Just once or twice	Several times	Many times	Always	Don't Know	*Have M. Care*	*Do not Have*
2001	46.00%	12.10%	24.40%	15.20%	2.10%	0.20%	58.30%	41.70%
2005	44.00%	13.80%	20.90%	17.50%	3.30%	0.50%	58.30%	41.70%
2008	45.70%	15.60%	23.00%	13.10%	1.40%	1.20%	62.50%	37.50%
2012	28.70%	17.00%	32.50%	19.80%	2.00%	0.10%	45.80%	54.30%

Source: Afro Barometer (2001 – 2012)

Results presented in Table 4 above indicated that, right to Health Care has never been protected because the number of people who have gone without medical care kept rising as illustrated by the trend line in figure 4 below.



6. Conclusion and Recommendations.

International human rights and humanitarian law which recognize and protects social rights and which Tanzania has ratified includes; the 1948 Universal Declaration of Human Rights (Art. 25), the 1966 International Covenant on Economic, Social and Cultural Rights (Art. 11), the Convention on the Rights of the Child (Art. 24(2)(c) and 27(3)), the Convention on the Elimination of All Forms of Discrimination against Women (Art. 12(2)), the Convention on the Rights of Persons with Disabilities (Art. 25(f) and 28(1)), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the Protocol of San Salvador (1988), the African Charter on the Rights and Welfare of the Child (1990) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)

However, by reviewing trend of data drawn from Afro barometer (2001 – 2012), it is evident that Tanzania has not been effective in protecting social rights. One of the reasons for such trend was that, Tanzania has ratified a number of international legal instruments which lack legal enforceability in various jurisdictions at the national level. It should be remembered that, for their effectiveness, efforts by the international community to contribute to protection of social rights depends on the establishment of institutional and legal frameworks at the national level, and on policies which are effectively geared towards the realization of social rights in country.

So in order to effectively promote social rights, Tanzania should consider the following facts; first, protection of social rights at national level has consequences for national constitutions, laws, courts, institutions, policies and programmes. Second; some social rights like the right to food must be prudently implemented at national level, as stated by the General Comment No. 12 on the right to food of the UN Committee on Economic, Social and Cultural Rights and the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security

Furthermore, Tanzania should adopt a national human rights-based strategy for the realization of social rights. Such a national strategy should comprise the establishment of appropriate institutional mechanisms, particularly in order to : (i) identify, at the earliest stage possible, emerging threats to specific right, by adequate monitoring systems ; (ii) improve coordination between the different relevant ministries and between the national and sub-national levels of government ; (iii) improve accountability, with a clear allocation of

responsibilities, and the setting of precise timeframes for the realization of the dimensions of specific social right which require progressive implementation ; (iv) ensure the adequate participation; and (v) pay specific attention to the need to improve the situation of the most vulnerable segments of society, including girls and women whose specific situation must be taken into account, to the principle of non-discrimination, as well as to the explicit inclusion of access to social rights like adequate food, quality education, clean water and quality health services as part of broader poverty reduction strategies.

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