SITUATION OF DEATH PENALTY IN TANZANIA

PARLIAMENTARY ROUND TABLE AND CONSULTATIONS ON THE ABOLITION OF DEATH PENALTY
PROTEA COURT YARD HOTEL – DAR ES SALAAM

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BY **Richard Shilamba**
Executive Director
Children Education Society (CHESO)
P.O.Box 7013, Dar Es Salaam, Tanzania
O: + 255 732 992 164, M: +255 754 296 812
E: chesociety@yahoo.com

THE CHILDREN EDUCATION SOCIETY(CHESO)

CHESO is a local, private, voluntary, non-partisan, not for profit sharing, non-governmental organization empowering communities to protect children, promote their rights and reinforce their right to education.

One of the CHESO's Key Result Areas is on Access to Justice for Juveniles, their family and community members.

Among the expected outcomes in this areas is that Parliamentarians in Tanzania will, progressively, amend Tanzania Laws to, ultimately, abolish Death Penalty and Impose alternative humane sanctions.

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- To ensure achievement of this outcome, in 2014, with support from the Foundation for Human Rights Initiative(FHRI) of Uganda and its Partners: The Penal Reform International(PRI) and the European Union(EU), CHESO has established and is nurturing a Tanzania Civil Society Coalition Against Death Penalty, initially, comprised of 5 members (i)CHESO itself as a Coordinator (ii) The Centre for Widows and Children Assistance (CWCA) (iii) ENVIROCARE (iv) Inmates Rehabilitation and Welfare Services Tanzania (IRaWS-T) and the (v) Kisarawe Paralegals Organization (KPO) to collectively campaign for Progressive abolition of Death Penalty in Tanzania and imposition of humane alternative sanctions.

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- OUR ANALYSIS ON THE SITUATION OF DEATH PENALTY IN TANZANIA.
- Brief Background: Before arrival of colonialists in Tanzania, the country had no Death Penalty. Credit to our Ancestors.
- Death Penalty was, for the first time, introduced and applied in Tanzania by Germans Colonialists under section 2 of the Germany Decree of the Chancellor of State with respect to the exercise of criminal jurisdiction and disciplinary powers **over natives** dated 22nd April 1896. Under this law, Convicts were hanged in Public! Germans were defeated during the first world war(1914-1918). Whereby, Tanzania mainland was put under British Administration who used and applied the Penal Code of India which had mandatory death penalty.

OUR ANALYSIS ON THE SITUATION OF DEATH PENALTY IN TANZANIA.

The Penal Code if India was adopted by the Tanzania government after independence in 1961 and continues being updated from time to time but maintaining mandatory death penalty for Murder in it. There are also other offences under the Tanzania Penal Code and the National Defense Act No. 24, 1966(Cap. 47) which attract the death penalty (though not mandatory) including treason and other military related offences.

- What has been the Impact of Death Penalty in Tanzania ?
- **Persons who have been Hanged or kept on death row for indefinite time have neither deterred nor reduced incidences of human being killings in the country.**

S/N	Region	Persons on Death Row in Tanzania Mainland Prisons		Total	Juveniles Serving Sentences and Remandees		Juveniles Total
		Males	Females		Males	Females	
1	Arusha	15	1	**16**	2	0	2
2	Dar Es Salaam	57	0	**57**	1	2	3
3	Dodoma	101	8	**109**	6	8	14
4	Iringa	0	0	**0**	24	0	24
5	Kagera	11	1	**12**	18	0	18
6	Kigoma	0	0	**0**	30	4	34
7	Kilimanjaro	0	0	**0**	8	0	8
8	Lindi	7	0	**7**	3	0	3
9	Manyara	3	0	**3**	9	0	9
10	Mara	0	0	**0**	31	0	31

11	**Mbeya**	**28**	**3**	**31**	**18**	**1**	**19**
12	Morogoro	0	0	**0**	70	1	71
13	Mtwara	9	0	**9**	7	0	7
14	Mwanza	45	4	**49**	90	11	101
15	Pwani	0	0	**0**	4	0	4
16	Ruvuma	0	0	**0**	3	0	3
17	Rukwa	0	0	**0**	5	1	6
18	Singida	0	0	**0**	2	0	2
19	Shinyanga	0	0	**0**	23	3	26
20	Tabora	33	0	**33**	2	0	2
21	Tanga	69	0	**69**	8	0	8
	TOTAL	**378**	**17**	**395**	**364**	**31**	**395**

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As per the table above, as of 01.03. 2014,Tanzania had 395 persons (378 males and 17 females) on death row. Source: Speech by Hon. Mathias Meinrad Chikawe, The Tanzania Minister for Home Affairs presented during Parliamentary Budget Session for the year 2014/2015, Dodoma, May 2014 at page 65.

People kept on Death Row for indefinite period of time. See table below:

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S/N	Period on Death Row	Male	Female	Total
1	Less than 6 Months	0	0	0
2	6 Months-1 Year	8	1	9
3	1-3 Years	28	3	31
4	3-5 Years	118	8	126
5	5-10 Years	219	11	230
6	10-15 Years	63	9	72
7	15-20 years	52	0	52
8	20-30 Years	25	2	27
9	More than 30 years	2	0	2
	TOTAL	515	34	549

INCIDENCIES OF MURDER/KILLINGS IN TANZANIA vs THE ABOVE PERSONS ON DEATH ROW/HANGED

YEAR	INCIDENCIES OF MURDER/KILLINGS		TOTAL	DATA SOURCE
	Male	Females		
2011			4,023.	National Bureau of Statistics, Tanzania in Figures, 2013, Dar Es Salaam, June 2014 at page 77
2012			3,928.	-do-
2013			3,929.	-do-
Total			**11,880**	

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- As per the table above by 2004, 2 people had stayed on death row for more that 30 years. Data Source: Hon. Omar Ramadhan Mapuli (MP), Minister of Home affairs Speech to the Parliament during the Parliament Budget Session of 2003/2004 at page 51.
- 238 death row inmates (232 males and 6 Females) have, reportedly, been hanged in Tanzania since independence (1961) to date. Data Source: Prisons Department Head Quarters, Ref. HQC.68/XIX/22 of 6th June 2007 quoted by The Law Reform Commission of Tanzania in its Discussion Paper on the Review of Capital punishment, Corporal Punishment and Long Term Sentences in Tanzania presented during Stakeholders Workshop held on the 27th March 2008 in Dar Es Salaam.

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- 238 death row inmates (232 males and 6 Females) have, reportedly, been hanged in Tanzania since independence, 395 persons (378 males and 17 females) are on death row but still, just from January 2011 to December 2013, Tanzania had 11,880 reported killings of human beings.
- This means that Death Penalty has not deterred commission of murder in Tanzania. In fact, Other humane alternative sanctions would have brought more effective deterrence effect than death penalty. In Canada, for example, the homicide rate per 100,000 population fell from a peak of 3.09 in 1975, the year before the abolition of the death penalty for murder, to 2.41 in 1980, and since then it has declined further. In 2003, 27 years after abolition, the homicide rate was 1.73 per 100,000 population, 44 per cent lower than in 1975 and the lowest rate in three decades.

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- Source of the Canada Data is: Roger Hood, *The Death Penalty: A World-wide Perspective*, Oxford, Clarendon Press, third edition, 2002, p. 214
- Research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 2002, concludes that: "*. . .it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment.*"

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B. Death Penalty is reported to being used as a weapon by some people in power (the Police) to intimidate, revenge, demand bribes and/or prosecute for Murder some innocent people in the country.

- Nipashe of 10th May 2013, in its article titled "Polisi Wakamatwa na kichwa cha Mtu" reported that 3 Police Officers and 1 citizen were arrested and detained at Dumila Police Station, Morogoro Region having been, reported, found with a human skull which they were alleged to had been using to demand bribes. They, in May 2013 reportedly, put it secretly in a business man car and threatened to charge him for murder unless he gave them a bribe of Tsh. 25 Million (US$ 19,000). N.B. Death Penalty is irreversible!

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- JUVELINES PUSHED BY LAW TO BE TRIED BY THE HIGH COURT FOR MURDER THAN JUVELINE COURTS
- Because, it is believed by law enforcement system and some citizens that Perpetrators of Murder can not be rehabilitated and so should be hanged, The Law of the Child Act No. 21 of 2009 and the Penal Code (Cap 16 R.E.2002) transfer all Juveniles accused of Murder aged between 12 and 18 years from Juveniles Courts which can not impose death penalty to be tried by the High Court of Tanzania with mandate to impose death penalty. Consequently,

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Persons are Sentenced to death and executed after attaining the age of majority (18 years and above) at a time of sentencing for murder committed while they were Juveniles (under 18 years). Tanzania has 395 Juveniles (364 Males and 31 Females) in Tanzania mainland Prisons serving sentences and Remandees). See the Slide above on the number of persons on death row.

- In the case of *R.v. Lubasha Maderenya and Tegai Lebasha*, for example, the High Court of Tanzania (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 but on Appeal, the Court of Appeal of Tanzania reversed this decision and sentenced the accused to death for having attained the age of majority (18 or above) for murder committed while he was under 18 years old. See High Court (Mwanza) Criminal Sessions Case No. 143 of 1977, Appeal No. 32 of 1979. Quoted also by Prof. Chris Maina Peter, *Human Rights in Tanzania* (Rudiger Koppe Verlag Koln 1997) at page 30.

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- This undermines the purpose of Tanzania criminal laws prohibiting imposition of death penalty to Juvenile offenders. Section 26(2) of the Tanzania Penal Code (Cap 16 R.E.2002) states that "*The sentence, of death shall not be pronounced on or recorded against any person who at the time of the commission of the offence was under 18 years of age, but in lieu of the sentence of death, the court shall sentence that person to be detained during the president pleasure…*".
- In 2012, the UN General Assembly adopted the United Nations moratorium on the death penalty resolution (Resolution A/RES/67/176), with 111 votes in its favour. It calls upon all States "to progressively restrict the use of the death penalty and not to impose capital punishment for offences committed by persons below eighteen years of age".
- The UN Convention on the Rights of the Child (CRC) ratified by Tanzania in 1991 also prohibits the use of the death penalty for offences committed by a person less than 18 years of age.
- The ICCPR ratified by Tanzania prohibit death penalty to persons under the age of 18.

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- Victims of Murder Denied Compensation by Law
- Offenders of crimes punishable by death in Tanzania are exempted by law from making compensation to victims of crimes in consequence of murder committed. See Sections 348(1) of the Criminal procedure (Cap. 20 R.E. 2002
- Thus, a person sentenced to death in Tanzania, before being executed, nor his/her heirs can not be sued by a victim nor be ordered by Court to pay compensation to an injured person in an act of murder. As a result, injured persons incur hospital expenses and other costs from their own pockets.
- Keeping persons convicted of murder alive accounting for their actions in prisons and confiscating their properties to compensate victims would be an effective way of deterring murder in the country, especially in this era of Albino killings in Tanzania.

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Subjecting People to Imprisonment for Life(Natural Death in Prisons)

- Pregnant Women Convicted of Murder exempted death penalty by Law and Persons on Death Row whose death sentences have been commuted are, as an alternative to death penalty, imprisoned for Life.(ie. Until they experience what is referred to as "Natural Death" in Prisons. This Natural Death Alternative is supported by some government, Political Leaders and Civil Society Organizations in Tanzania.
- Parliamentarians in Tanzania, For Example, put and maintain a proviso to section 26 of the of the Tanzania Penal Code (Cap 16, R.E 2002) stating that *"If a woman convicted of an offense punishable with death is alleged to be pregnant, the sentence to be passed on her shall be a sentence of* ***imprisonment for life*** *instead of a sentence of death."*
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On October 10, 2008 the Legal and Human Rights Centre (LHRC) in collaboration with the SAHRINGON Tanzania Chapter and the Tanganyika Law Society(TLS), reportedly, filed a case at the High Court of Tanzania calling upon the government to scrap out the capital punishment in the country books. Alternatively, they Pray that those convicted of Murder should be sentenced to **imprisonment for life** to enable them reform.

See the Guardian of 20th January 2014 "Little hope for anti-death penalty in new Constitution"

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- For members of the Tanzania Civil Society Coalition Against Death penalty coordinated by CHESO, our Position is different. We consider imprisonment for life to be inhumane and against the rights of detained persons. We advocate for imposition of humane alternative sanctions by calling Tanzania parliamentarians and other stakeholders to limit imprisonment for life to a certain number of years, let say up to 35 years, before or after which the prisoner should be release. Tanzania can learn from Brazil, Colombia, Croatia, El Salvado, Nicaragua, Norway, Portugal and Venezuela where they have no imprisonment for life. Instead, they impose prison sentences up to 30 years, after which the prisoner is released. The Uganda Prisons Act defines 'life' as 20 years imprisonment. In Norway for example, a life sentence is limited to 21 years with possibilities of early release.

WHAT THE TANZANIA CIVIL SOCIETY COALITION AGAINST DEATH PENALTY WANT

- **We demand for Progressive Abolition of Death Penalty and Imposition of alternative humane sanctions, We call the Government to:**
- **1.** Amend Tanzania Constitution and laws to create enabling provisions for step-by-step (Progressive) abolition of Death Penalty in Tanzania including:
- **2.**Amend the Tanzania laws to expressly prohibit sentencing to death a person who attains the age of majority at a time of sentencing for murder committed while he/she was a Juvenile
- 3. Amend Tanzania legislation to limit imprisonment for life to a certain number of years, let say of up to 35 years, before or after which the prisoner who exhibits good behavioral change be released.

4. Expunge the word “death penalty” under section 348(1) of the Criminal procedure (Cap. 20 R.E. 2002) to enable persons convicted of murder in Tanzania to be ordered or to be sued in civil case to make restitution and compensation to victims of murder while accounting for their behavior in prisons.
5. Maintain the Tanzania de facto abolition of death penalty
6. Increase the practice of commuting persons on death row to imprisonment for life and establish possibilities of releasing prisoners imprisoned for life after a certain period of time

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5. Amend the Law of the Child Act No. 21 of 2009 and the Penal Code (Cap 16 R.E.2002) to set 18 years and above as the minimum age for Juveniles criminal responsibility for murder under the Penal Code. Thus, Juveniles under 18 years, accused of murder, be tried in Juveniles Courts established under the Law of the Child Act No. 21 of 2009.
6. Abolish death penalty under Tanzania legislation for all crimes
7. Impose and implement alternative human sanctions after abolition of the Death Penalty in Tanzania.

THE END