

THE COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE



THE IMPORTANCE OF TAKING HUMAN RIGHTS BASED APPROACH TO DELIVERING PUBLIC SERVICES

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1.0 INTRODUCTION

1.1 What is “Human Rights Based Approach”?

The human rights based approach involves a consideration of both *what should be done* and *how should be done* basing on a consideration of the human rights of the targeted communities and their capacity, as well as government’s human rights obligations to them. Once the government has established what it will do, it can then consider how it will implement its priorities in a way that promotes human rights. To ensure human rights based approach is meaningfully embedded in the government’s operation, all priority-setting, decisions and actions should be approached in a way that critically analyses the human rights legitimacy of *what* is done and *how* it is done.

2.0 HUMAN RIGHTS IN TANZANIA

The chief source of fundamental human rights in Tanzania is the *Constitution of the United Republic of Tanzania* of 1977 (“the Constitution”), particularly Articles 12 to 29.

There are also other local legislations which provide for specific human rights, like the *Law of the Child Act*, No. 21/2009, the *Persons with Disabilities Act* No. 9/2010, the *Prevention and Control of HIV/AIDS Act* No. 28/2008, and the *Employment and Labour Relations Act* No. 6/2004.

On the international level, Tanzania is a signatory to various regional and international human rights instruments, like the *International Covenant on Civil and Political Rights*, *International Covenant on Economic, Social and Cultural Rights*, the *African Charter on Human and Peoples’ Rights*, and many other instruments.

3.0 PUBLIC RESOURCES, QUALITY DELIVERY OF PUBLIC SERVICES AND REALIZATION OF HUMAN RIGHTS

Quality delivery of public services depends on many factors. One of the factors is the management of public resources. Public resources here include, but not limited to, land, finances, minerals and other natural resources. When there is ethical, effective and efficient management and

use of public resources, quality delivery of public services is guaranteed. Quality delivery of public services leads to realization of rights.

In contrast, when there is poor management and use of public resources – often due to lack of integrity and inefficiency – the results are poor delivery of public services and violation of rights. So, there is undeniable relationship between management of public resources, delivery of public resources and realization of human rights.

3.1 Realization of Human Rights through Financial Resources

Realization of human rights can be achieved using government budget as one of the important public resources. But this can be achieved through effective participation of all members of the society, in particular from grass root level. In this aspect citizens will be able to identify and prioritize their needs based on the challenges they face. In the end process, the Government budget will reflect the needs of the society.

3.2 Realization of Human Right through Proper Distribution of Land

Currently, there are a large number of land conflicts in the country as a result of lack of participatory land allocation and land use planning. In practice, at the district level, land allocation remains the responsibility of the district land officers. Citizens are normally not involved in this regard. In order to realize human rights through land there is a need for a wide participation of all members of the society. Further more the government should strengthen the “land bank” so as to create the available land for investment. This land bank can be used as a share by the government in implementation of land related projects by the investors.

4.0 THE IMPORTANCE OF TAKING “HUMAN RIGHTS BASED APPROACH” IN DELIVERING PUBLIC SERVICES

There are ten rationales for why is important to take a human rights approach to services delivery:

I. It is International Legal Obligation: International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under

international law to respect, to protect and to fulfill human rights. Tanzania, like other states, is obliged by the international legal instruments to which she is a signatory to respect, protect and fulfill (ensure the progressive realization of) human rights for everyone. This is the primary strength of a human rights approach as government has already voluntarily signed up to these obligations, providing a firm foundation for advocacy and policy formulation.

II. It is a Constitutional Obligation: In our country delivering public service through human rights based approach is a constitutional obligation. For instance Article 9 (a), (c), (f), (g) and (i) of the Constitution provides the following:

"The object of this Constitution is to facilitate the building of the United Republic as a nation of equal and free individuals enjoying freedom, justice, fraternity and concord ... Therefore, the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring -

a) That human dignity and other human rights are respected and cherished;

b).....

c) That the activities of the government are conducted in such a way as to ensure that the national wealth and heritage are harnessed, preserved and applied for the common good and also to prevent the exploitation of one person by another;

d).....

e).....

f) That human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights;

g).....

h).....

i) That the use of national wealth places emphasis on the development of people and in particular is geared towards the eradication of poverty, ignorance and diseases."

Also, Article 8 (1) (b) of the Constitution provides:

*"...the primary objective of the Government shall be the **welfare of the people.**"*

To sum it all up, Article 29 (1) of the Constitution puts it in the following words:

"Every person in the United Republic has the right to enjoy fundamental human rights and to enjoy the benefits accruing from the fulfillment by every person of his duty to the society....."

III. Effective use of public resources for the benefits of the community: When plans and decisions to use resource are made with reference to basic human rights, effective use of resource for the common good of the society is guaranteed. Effective use of public resources often leads to better service provision.

IV. Equitable distribution of resources: Plans and decisions taken within human rights framework are likely to ensure fair and reasonable distribution of resources to all members of the society. Politicians and officials will be able to carefully balance individual rights against those of a wider community when making decisions.

V. Improving quality of service delivery: Much evidence from overseas points to the positive impact that human rights based approach can have on the quality of service delivery in a range of areas. The UK Audit Commission Report on Public Service Delivery (2003), for example, found that a human rights based approach had resulted in improvements in service delivery standards in mental health, general healthcare, criminal justice, disability and care services, housing, and emergency services.

VI. Improves access to service delivery to all members of the community: It is not enough to have quality of service delivery. It is important that the provision of services be accessed by all members of the society, particularly the marginalized. Taking human rights based approach ensures access to public services by all members of the society. For instance, when service providers are working within human rights framework they will modify public buildings – like schools, hospitals, offices, etc – to

make sure that people with disabilities are able to access those buildings. With regard to the right to education, human rights approach will ensure that schools have proper equipments to enable people with disabilities to have access to education.

VII. Avoidance of conflicts in the society: There is a crucial link between non observance of human rights and conflicts. For example, today our country is facing a lot of land conflicts between the citizens and investors because investment policies and decisions were not made with human rights in mind. Therefore, delivering public services with human rights in mind may help to avoid unnecessary conflicts in the society and thus promote peace and stability in the society.

VIII. Promotes Sustainable Development: Human rights are essential to achieving sustainable development. The Millennium Development Goals, adopted by all the world's leaders in 2000 recognizes the link between human rights, good governance and development. In this regard, the former UN Secretary General Kofi Annan once said:

"Humanity will not enjoy security without development, it will not enjoy development without security, and it will not enjoy either without respect for human rights."

So, human rights and human development are one and the same.

IX. To avoid costs and reputation damage to public bodies because of human rights litigations: Public authorities must ensure that their decision making processes and service delivery take into account human rights. Failure to do so may result into human rights litigations which are always expensive and have the effect of damaging the reputation of the office. In **Ntiyahela Boneka vs Kijiji cha Ujamaa Mutala** [1988] TLR 156, the appellant was ordered by the respondents to vacate from his lawful peace of land because they had "nationalize" the land. When the appellant asked the respondents to compensate him for his labour, they refused and told him to remove his crops from the shamba. The High Court of Tanzania held in favor of the appellant and ordered the respondents to pay costs of the case at the High Court and courts below.

X. Moral Argument: There is an overarching moral imperative binding every individual and organization to respect the human rights of others. Empowering people to enjoy their human rights is the correct thing to do. The former UN Secretary General, Mr. Kofi Annan once said this:

"Human rights are what reason requires and conscience demands. They are us and we are them. Human rights are rights that any person has as a human being. We are all human beings; we are all deserving of human rights. One cannot be true without the other."

5.0 WAY FORWARD

In delivering public services, the governments are advised to adhere to PANEL Principles. Here PANEL stands for **Participation, Accountability, Non-discrimination, Empowerment** and **Linkage**.

- **Participation:** Governments must ensure that service users are given the right to participate in decisions that directly affect their lives. In Tanzania, the constitution guarantees the right to citizens' participation in government affairs and issues that affects their lives [Articles 8(1) (d) and 21 of the Constitution]. Governments must also promote dialogue and collaboration between human rights practitioners and other development practitioners.
- **Accountability:** Governments must ensure that there is proper accountability for meeting their goals. Accountability requires effective monitoring of human rights standards as well as effective remedies for human rights breaches. There should be legal framework to enable citizens to hold their leaders accountable when public resources are misused. In Tanzania, the government is accountable to its citizens [Article 8(1) (c) of the Constitution].
- **Non-discrimination:** A human rights based approach means that all forms of discrimination must be prohibited, prevented and eliminated [Articles 9(g), (h), 12 and 13 of the Constitution]. It also requires the

prioritization of those in the most marginalized situations who face the biggest barriers to realizing their rights.

- **Empowerment:** Governments must ensure that rights holders and duty-bearers share a common understanding of human rights goals; and must also ensure that systems are in place to educate and raise awareness of all relevant stakeholders. In particular:
 - (i) In order to fulfill their obligations, duty bearers need necessary resources and authority to perform their functions, and data to plan and monitor the realization of rights.
 - (ii) In order to realize their rights, rights holders need capacity to access information, organize, advocate for policy changes, demand rights-based services and obtain redress.
- **Linkage:** This means ensuring that in planning, policy and service delivery there is an analysis of which human rights are relevant, who the rights holders are, and who is responsible for ensuring that those rights are protected, promoted and fulfilled. Governments must therefore develop policy guidance on how to integrate human rights more consistently into practice.

Sample case study on empowerment of citizens

Example 1: Kilolo, Ilula: The water situation was very difficult and the community only had access to public water once a week for a few hours. The most reliable water supply was provided by private business actors: a retired colonel sold water to water boys using bicycles to transport and sell water all over the Ilula ward. After doing Public Expenditure Tracking Survey (PETS) on the water sector, the PETS committee found that the local government water officer was the same retired colonel that sold water as a private business. The expenditure tracking found that money had come from the district to develop the water systems, and that the colonel had hijacked the public water sources and sold the water for private gain. They wrote a report and shared with the village assembly and the

district commissioner (DC). The committee asked the village government to call a meeting and they asked questions to the water officer: Who owns this water? Why isn't the community getting water? What is the problem?? The village chairman was together with the water officer (retired colonel). This created a lot of tension and conflict. The retired colonel did not want to answer and replied "when did u ever see a rat chasing a cat?" Some of the key PETS activists were imprisoned and others experienced that their shop was closed. The PETS committee shared the report with the Member of Parliament (MP) for this constituency. They also contacted the District Commissioners (DC) office and asked for concrete follow-up. After some initial fabrications of allegations against the PETS people, the case was dropped, the water officer replaced and the water released to the community. Today the village assembly is much more responsible and more attentive to the issues raised by the people of Ilula.

6.0 CONCLUSION

In recent decades there has been a tremendous growth in how we think about and apply human rights ideas. This has had many positive results. Knowledge about human rights can empower individuals and offer solutions for specific problems. Values of tolerance, equality and respect can help reduce friction within society. Putting human rights ideas into practice can help us create the kind of society we want to live in. Human rights are an important part of how people interact with others at all levels in society - in the family, the community, schools, the workplace, in politics and in international relations. It is vital therefore that people everywhere should strive to understand what human rights are. When people understand better human rights, it will be easier for them to promote justice and the well-being of society.