

JOINT STAKEHOLDERS' (CSOs) SUBMISSION TO THE HUMAN RIGHTS COUNCIL

UNIVERSAL PERIODIC REVIEW MECHANISM
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REVIEW OF THE UNITED REPUBLIC OF TANZANIA

SUBMITTED ON BEHALF OF THE FOLLOWING CIVIL SOCIETY ORGANISATIONS:-

- Legal and Human Rights Centre (LHRC)
- Southern Africa Human Rights NGO Network (SAHRINGON) Tanzania Chapter
- National Organization for Legal Assistance (nola)
- Women's Legal Aid Centre (WLAC)
- Peace Education and Conflict Management Organization Trust (PECMOT)
- Widow/Widowers and Orphans Legal Assistance in Tanzania Limited (WOLAT)
- NEFAP – Human Rights Training Consultancy Services
- Tanzania Women Lawyers' Association (TAWLA)
- Tanzania Gender Network Programme (TGNP)
- CA-GBV
- NEDIPHA
- Tanzania Women and Children Welfare Centre (TWCWC)
- KIVULINI Women's Rights Organization
- Women in Law and Development in Africa (WILDAF)
- School of Law - University of Dar es Salaam (SoL-UDSM)
- SHINYANGA FOUNDATION
- THE LEADERSHIP FORUM
- Youth Partnership Countrywide (YPC)
- FAWE-TZ
- SFF
- Centre for Human Rights Promotion (CHRP)
- Under The Same Sun (UTSS)
- Children's Education Society (CHESO)
- Tanzania Media Women Association (TAMWA)
- TAHURIFO
- Zanzibar Legal Service Centre (ZLSC)
- SHIVYAWATA
- PACSO

EXECUTIVE SUMMARY

1. This joint submission has been prepared by a Coalition of 29 CSOs in Tanzania after consultation with several NGOs, Governmental agencies and officials, academia, and members of the Community at the grass-root level by way of conferences, meetings, workshops, seminars and training on UPR. This Report has been validated and endorsed in wholly by a conference of CSOs held at the Dar es Salaam Conference Centre on 9th March 2011.
2. We therefore wish to submit the following report on the situation of ongoing human rights violations in Tanzania to the attention of the OHCHR, for its consideration in the UPR of the United Republic of Tanzania.
3. We partly acknowledge the Government's effort in formulating policies, laws and strategies in relation to human rights in Tanzania. Nonetheless, much need to be done in the area of Child's rights to health and education, women's protection against gender-based violence, property rights especially land ownership, forced evictions, rights of persons with disabilities, rights to security of person and property, right to development, Foreign Direct Investments and social security schemes.

HUMAN RIGHTS ISSUES, CHALLENGES AND RECOMMENDATIONS

Children's Right to Health in Tanzania: neonatal (infant) and maternal mortality rate.

4. Child mortality is going down in Tanzania, but neonatal mortality remains very high, now accounting for 30% of the under-five deaths, and equivalent of 135 babies dying every day. Half of the neonatal deaths occur during the first day of life, mainly due to asphyxia or low birth weight. Maternal mortality did not decline at all in the last decade. Teenage pregnancy is high (24% of women get pregnant before 18 years) and associated with a higher risk of dying¹.

¹Tanzania Joint Annual Health Sector Review; Technical Review September, 2009, HSSP III and CCHP Planning 2010, Desk Study for Technical Review Final Report, 1st September, 2009 by **Dr Jaap Koot, Public Health Consultants**, Amsterdam and Peter Kilima, Public Health Consultant, Dar es Salaam. Concluding Observations of the Committee on the Rights of the Child, Tanzania, U.N. Doc. CRC/C/TZA/CO/2 (2006).

Recommendation:

The government is urged;

5. To reduce neonatal and maternal mortality rate by allocating sufficient resources to the health sector which will facilitate availability of sufficient and qualified human resource, infrastructures, medicines and equipment.
6. To create public awareness on teenage pregnancy and to ensure effective implementation of laws, strategies and policies on a girl child.

Education for Children: Shortage of teachers, classrooms, teaching and learning materials, and School dropout.

7. An Education Sector Performance revealed that the education sector suffered from a serious deficit in teaching staff, this situation has not improved yet. The increase in the Net Enrolment Ratio at Primary Schools has created unprecedented pressure in the number of Students Enrolment Ratio at all levels beyond primary education. There is no doubt that this increase creates demand for more teachers, classrooms, studying materials and laboratories, to name a few².
8. Consistent poor and underperformance in National Examinations: The general performance in National Examination at primary and secondary schools is declining, the main reason being; lack of qualified teachers, untimely changes of learning and teaching curricula, poor motivation of teachers, and inadequate teaching and learning materials³. For instance, the number of candidates who sat for the examination 2010 rose to 458,114 from 351,152 in 2009, an increase of 106,962 or 30%. The total number of students who scored division I up to III was 42014 out of 458114 students who sat for the form IV examinations in 2010. According to the NECTA, only 177021 students out of 458114 (40%) passed the form IV examination. This is a dramatic fall when compared to 2009's

²Ministry of Education and Vocational Training (MoEVT) Report, 2008.

³Concluding Observations of the Committee on the Rights of the Child, Tanzania, U.N. Doc. CRC/C/TZA/CO/2 (2006).

form IV results, where a total of 72% of students passed out of 351152 students who sat for the final examination⁴.

9. The Law of Marriage Act of 1971 (CAP. 29 RE: 2002), permits a girl child to be married at the age of 14 years under Court Order or 15 years under parents or guardians permission. This deprives a girl child of her right to education and affects her health and girls who get pregnancy while in school are expelled.
10. Truancy due to child labour occupation related works contribute to poor performance at schools and early school dropout. For example, more than 20% of children under 17 years old in Tanzania are employed in high risk sectors such as agriculture, fishing and mining⁵.
11. Children with disabilities do have inadequate facilities to access the right to education despite the provisions in The Law of the Child Act (Act No. 21 of 2009) and The Persons with Disabilities Act (Act No. 9 of 2010).

Recommendations:

The government is urged;

12. To reform its laws and policies to prohibit early girl child marriages and expulsion of pregnant girls from schools, and to address the problem of child labour.
13. To allocate sufficient resources to children in general and for children with disabilities in particular.
14. To allocate more resources to the Education Sector including employing qualified and sufficient number of teachers.
15. To improve Teacher-Pupil Ratio, teaching and learning environment for both teachers and pupils/students, and to put in place stable and comprehensive learning and teaching curricula.

⁴Dominic Nkolimwa 'Form IV Exam Passes Drop Sharply', The Guardian (27th January 2011). Joseph Mwendapole, 'Mixed Reaction to Form Four Results', The Guardian (28th January 2011). Other date available at www.moe.go.tz/statistics.html last accessed on 11/03/2011 on 17:29 Hours.

⁵LHRC (2010) *Kigoma, Rukwa and Kagera Opinion Survey*, p. 34. The United Republic of Tanzania, Ministry of Finance and Economic Affairs (2009) *Poverty and Human Development Report*, pp. 86-88.

Violence against women and land rights marginalization

16. Despite the fact that Tanzania is a member state to international and regional women human rights instruments⁶, violence against women is still prevalent in Tanzania⁷. Domestically, there is a National Plan of Action for the Prevention and Eradication of Violence against Women and Children of 2001-2015, there is a little effort undertaken by the government to address this problem.
17. In Tanzania there are discriminatory laws which fuel violence against Women e.g. The Local Customary Law (Declaration) Order [CAP 358, RE 2002]⁸, The Law of Marriage Act (*supra*) allows a girl below 18 years to get married⁹. Besides, harmful practices such as female genital mutilation (FGM) and killing of elderly women are at an alarming rate¹⁰.
18. Article 24 of The Constitution of the United Republic of Tanzania of 1977 allows every person to own property. However, women's right to inherit property is curtailed by The Local Customary Law (Declaration) Order (*supra*)¹¹. Also there are competing legal systems as to administration of deceased's estate *i.e.* statutory law, customary law, Islamic law and Hindu law. Therefore, conflicting laws as well as patriarchal system end up disinheriting women.
19. Besides, *section 8* of The Mortgage Financing (Special Provision) Act No. 17 of 2008 which repeals and replaces *section 114* of The Land Act (CAP. 113, RE: 2002)¹² has waived the need of spousal consent before a disposition of matrimonial property by way of mortgage.

Recommendations:

⁶Tanzania is a member state to CEDAW; Maputo Protocol; and the SADC Gender and Development Protocol.

⁷LHRC's Annual Human Rights Report of 2008 provides that, '50% of women in Tanzania are being beaten on daily basis by their partners'.

⁸The law provides that if a man beats his wife, that is not a cause for divorce, he has to compensate her for 200 Tanzanian Shillings (Equivalent to 0.13 USD) and take her back home.

⁹The Law Reform Commission of Tanzania (LRCT) Report, 1994 on the Law of Marriage Act, 1971.

¹⁰According to LHRC Fact Finding report on FGM conducted on 2010-2011, find out that more than 3000 were mutilated at Mara Tarime.

¹¹The declaration classifies two classes, whereby men are first class and take lion share while women are second class with little or no share, a woman has no right to own clan/tribe land but have right to use it.

¹²The amendment also affects Section 114 of The Land (Amendment) Act, No. 2 of 2004.

The government is urged:

20. To enact a specific law against domestic violence
21. To implement the CEDAW and AU Protocol on Women's Rights etc
22. To implement its plan of action for the prevention and eradication of violence against women and children of 2001-2015
23. To repeal/amend all laws which discriminate and deny women's rights including customary laws.
24. To take stern measures to protect women against harmful practices, including establishing shelters for survivors of gender based violence for psychosocial services.
25. To establish special courts for juveniles and family Courts.
26. To harmonize laws governing succession/inheritance in the country and accord special protection to women.
27. To amend section 8 of the Mortgage Financing (Special Provision) Act to allow spousal consent before mortgaging of matrimonial property.

Rights of persons with disabilities in Tanzania

28. More than 3 million Tanzanians (approximately 7.8%) have disabilities¹³. The government has made some efforts in protecting and promoting rights of people with disabilities by putting in place laws and policy, domesticating the international Convention and protocol on PWDs¹⁴, and sentencing 11 people accused of involvement in the killings of persons with albinism.
29. Despite all these initiatives, the government is yet to implement the ratified human right international instruments, domestic laws and policies. For instance, inaccessible of infrastructural systems e.g. roads and buildings; hence denial of their rights to access education¹⁵, health and other social services¹⁶. Likewise, PWDs are still socially excluded and stigmatized due to witchcraft beliefs, e.g. the killings and atrocities against persons

¹³National Bureau of Statistics, 2009.

¹⁴<<http://www.un.org/disabilities/countries.asp?id=166>> last accessed on 21/01/2011 at 10:23 Hours (The UNCRPD of 2006 and its optional protocol, and The Persons with Disabilities Act (Act No. 9 of 2010).

¹⁵The government survey on PWDs 2008 shows that literacy rate is 47.6% compared to 25.5% of people without.

¹⁶As provided for under *Article 9* of UNCRPD, as well as *Section 34* and *35* of The Persons with Disabilities Act (Act No. 9 of 2010).

with albinism where 59 have been killed, 10 tombs vandalized, 9 brutally attacked and others sustaining heavy injuries¹⁷.

Recommendations:

The government is urged:

30. To implement the UNCRPD and its optional Protocol, and The Persons with Disabilities Act (Act No. 9 of 2010).
31. To ensure that accessible infrastructural systems are in place and ensure that any subsequent construction is friendly to PWDs, be it in rural or urban areas.
32. To conduct advocacy campaigns/programmes to make the public aware of rights and special needs of PWDs.
33. To ensure maximum security to PWDs especially persons with albinism who are killed and parts of their bodies mutilated.
34. To have education system which inclusive and user-friendly to PWDs.

Land Ownership Rights: forced evictions.

35. The Tanzanian laws and policies stipulate the people's right to possess and use of land, and that where citizens land is taken for state's use, the law requires evictees to be compensated accordingly. Nonetheless, the government has failed to adhere to own laws and international accords on land evictions and property rights due to the following factors:-
36. Lack of feasible land use Master plans in urban areas leading to frequent illegal demolition of residential houses and forced evictions of people to lay infrastructure *e.g.* land evictions carried out at Kipawa and Kinyerezi (Dar es Salaam) in 2010, Mwambani eviction in Tanga and demolition of 80 residential houses at Tabata Dampo (Dar es Salaam) in 2008.
37. Enforcement of investment policy and wildlife (Game and Forest reserves) laws at the expense of the indigenous settlements (land): *e.g.* the continuing displacement of Maasai, Barabaig, Akie (Ndorobo), Taturu and Hadzabe at Yaeda plain, Loliondo, ngaiti village,

¹⁷This is contrary to Right to life as depicted under Article 10 of UNCRPD.

longido, kiteto, and vilima-vitatu village. Besides, there is no national policy and law on indigenous people (minority group).

38. Evictions of Pastoralists, Agro-pastoralists, Hunter-gatherers from fertile lands to semi-arid areas: *e.g.* eviction and resettlement of pastoralists from Ihefu and Usangu plain to Kilwa and Lindi Districts.
39. In the above cases, the government has evicted people causing human sufferings. Besides, findings of various Inquiry Commissions formed by the government to probe in forced evictions are usually not implemented nor made public¹⁸.

Recommendations:

We therefore recommend to the Human Rights Council,

40. To send *a special Rapporteur* to look into forced evictions and land conflicts in Tanzania¹⁹.
41. To remind the government on rules set under *Basic Principles and Guidelines on Development-based Evictions and Displacement, CESCR General Comment Nos.4 (1991) &7 (1997)*, and *UN Declaration on the Rights of Indigenous People, 2007*.
42. To urge the government to adopt the ILO Convention (C169) of 1989, and thus enact a law on the minority/indigenous people.
43. To urge the government to find lasting solution to the ongoing conflicts between investors and agro-pastoralists, pastoralists v/s crop-cultivators, intra-family and tribal land conflicts.

Right to Development and Challenges of Foreign Direct Investments (FDI)

44. The right to development is provided for under the provisions of various international and regional human rights instruments²⁰. However, this right is not directly provided in the

¹⁸LHRC Report 2009 (Land conflicts have led to inter-tribal killings in Tarime Districts, and burning of people's homesteads in Loliondo).

¹⁹Also to implement recommendations of James Anaya [Ref: A/HRC/15/37/Add.1, 14/ 09/2010].

²⁰Articles 1, 6, 7, 9, 11, 12, 13 and 15 of the ICESCR, 1966; Article 22 of the African Charter on Human and Peoples' Rights 1981; and the Declaration on the Right to Development, 1986.

Constitution of Tanzania. There are a number of national policies, strategies formulated for the purpose of realizing right to development namely NSGRP²¹ and PBFT²².

45. Despite of strategies on reduction of poverty, majority of Tanzanians still live under extreme poverty²³. Moreover, the gap between the poor and the rich is getting wider, whilst the rate of unemployment is increasing, for instance about 11.7 millions of Tanzanians who have ability to work are unemployed²⁴.
46. Although Tanzania has legislations which govern investment issues, there are a number of problems relating to FDIs, for instance; signing of dubious mining contracts (*i.e.* Buzwagi, Richmond and Dowans, IPTL and etc) between the government and foreign investors²⁵.
47. Health hazards; *e.g.* North Mara Gold Mines' incident in June 2009 where people and animals were seriously affected by toxic chemicals²⁶.
48. Environmental pollution; *e.g.* failure to make land levelling and re-vegetation after mining.

Recommendations:

The government is urged;

49. To increase transparency in contracts with investors including to make contracts with investors open for public scrutiny.
50. To implement its international and regional obligation on the right to development.
51. To address the widening gap between the poor and rich (poverty)
52. To address the problem of unemployment.
53. To ensure investors adhere to environmental conservation standards.
54. To compensate victims of environmental hazards caused by investors.

The Social Security Schemes: care and befits to retirees

²¹National Strategies for Growth and Reduction of Poverty.

²²Property and Business Formalization in Tanzania.

²³The level of poverty remain high at 33.6% and the absolute of the poor has increased by 1.3 million [World Bank, Countries Report, 2010].

²⁴LHRC Annual Human Rights Report 2009, p. 65.

²⁵The Parliament of the United Republic of Tanzania's Hansard of the 44th meeting, 14th August 2007, pp. 24-105.

²⁶LHRC Annual Human Rights Report 2009, pp. 134-135.

55. Tanzania has ratified and domesticated the core Conventions on fundamental employment rights which are incorporated in various laws and policy. However, there are a lot of challenges in this area due to inadequate efforts to implement these laws.
56. The current social security schemes do not favour workers who contribute to it. This is due to the fact that the social security benefits are not realized well by workers when they retire. There is no clear mechanism of the schemes to increase/improve retirees' benefits and care.
57. The informal sector is contributing a lot to the national economy, but it is the sector which is not recognized and workers in the sector are marginalized and have no proper protection.

Recommendations:

The government is urged;

58. To review and harmonize the existing social security schemes to cover workers both in formal and informal sectors.

The Right to Security of Person and Property

59. The right to security of person and property is grounded under the UN charter and other human rights instruments as well as the Tanzanian Constitution.
60. Incidents of state engineered violence against own citizens have increased in 2007-2011, *e.g.* in 2009, eight (8) people were reported to be killed by the police in different parts of the country²⁷, while on 5th January 2011 the police in Arusha used excessive force to stop demonstrators as a result three (3) people were killed by the police.
61. There has been an increase of crime rate in Tanzania. In 2009 incidences of crimes were 506,030 and in 2010 increased to 567,288 which make 12.1% of increase²⁸, increase of road traffic accidents from 17451 in 2008 to 22019 in 2009 equivalent to 26.2%²⁹, understaffed public safety and security services. The ratio of police to population in

²⁷LHRC Annual Human Rights Report, 2009, p. 15

²⁸Budget speech by Hon. Lawrence Kego Masha (MB.), Minister for Home Affairs presenting to the parliament for the year 2010/2011 < http://www.moha.go.tz/index.php?option=com_content&view=article&id=113&Itemid=193 > accessed on 14th February 2011.

²⁹The Tanzania Police Annual Report of 2009, p. 23.

Tanzania is 1:1300 as opposed to recommendable ratio of 1:400-600³⁰. Fire department as well proved failure on incidences of fire due to lack of supportive infrastructure. This situation has caused loss of life and properties.

62. The public have lost confidence with the police because of unethical practices in the force as a result there has been an increase of mob injustice³¹.
63. Road accidents (which results into injuries and deaths) have increased from 3223 in 2009 to 3582 in 2010³².
64. Private Security Industry is another area of concern in Tanzania for purposes of protecting people and their properties. The main problem is that there is no specific legal framework to govern the Private Security Industry.

Recommendations:

The government is urged:

65. To put in place the national policy on safety and security which will explain the mission, and vision of public safety and security.
66. To consolidate laws which govern issues of public safety and security.
67. To address unethical practices corruption and abuse of power that are rampant in the Tanzania Police Force.
68. To enact a law to govern the Tanzania Private Security Industry.
69. To increase resources both human and finance on public safety and security.

³⁰*Budget speech by Hon. Lawrence Kego Masha (MB.), loc.cit.*

³¹LHRC (2010) Lindi, Mtwara and Ruvuma: Opinion Survey. See also, Tanzania Corruption Tracker System (2010) 'Are Citizens fed up with Corruption in the Police Force?' <www.corruptiontracker.or.tz> last accessed on 18th January 2011 at 16:07 Hours.

³²*Ibid.*,