

THE COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE



SHADOW REPORT RELATING TO THE 7th AND 8th TANZANIA REPORT ON THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) PRESENTED BY THE TANZANIA NATIONAL HUMAN RIGHTS INSTITUTION

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The present submission by the Commission for Human Rights and Good Governance (CHRAGG), the National Human Rights Institution (NHRI), which also performs the functions of the Office of the Ombudsman in Tanzania provides highlights on the Commission's assessment of the situation of the rights of women in Tanzania, to be discussed during the presentation of the seventh and eighth country report on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

1.0 Constitutional, Legislative, Institutional Framework and Access to Justice

1.1 Article 13 (5) of the Constitution of the United Republic of Tanzania, 1977 prohibits discrimination on various grounds, including gender. However, there are provision of other laws which are discriminatory in nature, notwithstanding the constitutional prohibition, such as the Customary Law of Inheritance (The Local Customary Law (Declaration) (no. 4) Order of 1963), which does not recognize the right of women to own or inherit land held under customary law, and hence violates the equal right to property. The Law of Marriage Act of 1971, contains outdated provisions which allow the possibility of marriage of young girls at the age of 14 or under the age of 15, under the consent of the Court or parent. Unfortunately because of the existence of these provisions in the statute books, under age marriages are rampant in certain communities in Tanzania.

1.2 To ensure the protection of the dignity of women and girls CHRAGG has conducted dialogue with various stakeholders and has called on the Government to amend all laws which discriminate against women and girls. The Constitutional reform process, which was initiated in 2011 but stalled in 2015, is expected to lead to amendment of all laws that violate the rights of women under the convention, when it is eventually resumed.

1.3 Access to justice for all persons, but more so for women is not a reality in Tanzania. The Legal Aid law is not in place. The Government has established a Legal Aid Secretariat (LAS) under Ministry of Constitutional and Legal Affairs (MOCLA) in the context of the Legal Sector Reform Programme to administer legal aid in order to enhance access to justice, by all including women and children, coordinate legal aid providers and ensure equitable, sustainable and accessible justice

to marginalized group.

1.4 Since the legal Aid Bill has yet to be adopted, CHRAGG has taken measures to promote women's access to justice in accordance with General Recommendation No. 33 on Women's Access to Justice through monitoring implementation of the National Human Rights Action Plan (NHRAP 2013-2017) under the support of UNDP which is in compliance with Vienna Declaration of 1993.¹ The NHRAP has articulated the rights of women and girls, as a special category of human rights which need particular attention in order to strengthen the promotion and protection of women and girls rights in a comprehensive manner, by engaging all relevant state and non-state stakeholders.

1.5 Through the NHRAP, a training of trainers on human rights education was conducted for 60 education personnel including teachers from secondary school, school inspectors and tutors from teacher training colleges and officials from the Ministry of Education. Human rights education on Children rights was provided in 10 secondary schools (Government and private) in Temeke district. As a result of the dissemination of the NHRAP **127** Human rights school clubs have been established in Tanzania Mainland. Moreover, **104** Resident magistrates, **50** Legal Officers from the Ministry of Constitutional and Legal Affairs and **4** police officers from Police Headquarters were trained on how to deal with women and children cases.

1.6 To ensure equal justice by women, legal aid has been provided to women and girls complainants who visit the Commission to lodge their complaints. CHRAGG also represents women complainants before the Courts of Law. During the Commemoration of International Human Rights Day, International Women's Day and the Day of African Child, CHRAGG joins other women in the world to commemorate these days by delivering strong message to highlight their rights and condemn violations of the rights of women and young girls.

1.7 CHRAGG will continue advising and encouraging the government to promote women access to justice by adopting the Legal Aid law, since this law is likely to provide

¹ United Republic of Tanzania (2013), Ministry of Constitutional and Legal Affairs, National Human Rights Action Plan (2013-2017).

greater access by women and to protect the rights of the women and girls.

2.0 Temporary Special Measures: Education

2.1 To ensure equal and full participation of women in Education, Article 11, of the Constitution of the United Republic of Tanzania affirms that “education is a fundamental right for every citizen.” The Law of the Child Act, 2009 promotes and protects girls’ rights to education, health and the right to non-discrimination. The Education and Training Policy of 2014 states clearly that, effort will be made to ensure that all school age children are enrolled, attend and finish the level of education they have been enrolled.

Furthermore, The Government implemented the Primary Education Development Programme (PEDP I (2002 - 2006), PEDP II (2007- 2011) and PEDP III (2012-2016) and Secondary Education Development Programme phases two (SEDP II 2010-2015) to raise competencies, increase participation and prepare children for life in a multicultural society. These programmes were implementing the Millennium Development Vision 2015 and the Tanzania Development Vision 2025.

2.2 The achievements recorded during the implementation of PEDP I and II are impressive, through the program the pre-primary enrolment has been increasing although the targets set were not realized during the implementation of PEDP II. Pre-primary enrolment in 2011 was 1,069,208 pupils, which is only 52% of the PEDP II target of 2,043,983 pupils. In 2012 the enrolment was 1,034,729 pupils (530,425 were boys and 504,304 girls)².

2.3 The Government introduced Circular Number 5 of 2015 on free education to all Tanzanian children from primary to secondary level which is now under implementation to ensure a total transformation of the education sector into an efficient, effective and output-based. The Tanzanian fifth phase government(elected into office on 25th October 2015) has prohibited various school contributions which hindered access to education particularly for girls effective January, 2016. This has resulted into a massive registration of primary school going age children which will highly benefit the girl child throughout the country.

² MOEVT (2012) Education Sector Development Committee

2.4 Apart from strong provisions which protect girl children to continue with their education, yet, drop out and poor attendance of students in primary and secondary schools in Tanzania is still a problem. The causes of such drop outs are mainly early pregnancies and early marriage which prevent girls from completing their studies.

Other factors include, long distance from home to school and non-provision of school meals to non boarding school students. Most of the ward secondary schools were built in the country as part of the PEDP I and II are very far from residential areas due to the nature of village settlements, where households are scattered, hence it is very risky and difficult for girls and young students to walk to and from schools every day.

CHRAGG advises the government to adopt measures which will enable girls to complete their education programs by building dormitories for girls boarding schools.

3.0 Measures to Prevent Stereotypes and Harmful Practices against women.

3.1 Persons with albinism experiences stereotypes and harmful practices including attacks and physical violence which have resulted to their loss of right to life. From 2009 to date CHRAGG has been taken various initiatives in protecting the rights of persons with albinism, many of whom include women and girls. In 2009 CHRAGG conducted public enquiry on killings of persons with albinism and older women throughout Tanzania.

The report identified causes of the killings of Persons with Albinism which include poverty, illiteracy, and superstitious beliefs. Even though these attacks occur in different parts of the country, the area around the Lake Victoria regions are the most affected by this problem. This report created awareness and motivated the government to undertake legal measures including prosecutions of perpetrators of the brutal attacks. The government set up two institutions to offer protection to the children who were vulnerable to such attacks as a temporary measure to provide secure schooling.

3.2 In 2015 CHRAGG together with other human rights stakeholders adopted a report and recommendations, which were submitted to the President's Office to mobilize high level political will to combat the problem. The President's Office issued a

directive to all relevant Ministries, Departments Agencies (MDAs) and Local Departments Authorities (LDAs) on the implementation of the said recommendations. CHRAGG has taken the role of coordinating the promotion and protection of the rights of persons with albinism.

Killing of Person with Old Age

3.3 There has been an increase in the violation of the right to life through killings and torture which are caused by illiteracy and superstitions beliefs by the perpetrators who also grab the land and properties of the old women.

Civil Society Organization such as Help Age International and Legal and Human Rights Centre (LHRC) have researched and recorded an increase in the violation of the right to life of old women due to attacks and killing due to witchcraft-related beliefs. It is estimated that during the year 2013, witchcraft related killings claimed the lives of 765 people. Of those killed, women were 505 and men were 260³. The prevalent rate was higher in Geita, Mbeya, Shinyanga, Iringa, Tabora and Mwanza regions (The Lake zone regions).

3.4 CHRAGG has continuously called on the government to take measures through legislation and administrative measures to prohibit stereotyping and harmful practices, and to adopt measures including comprehensive educational measures and awareness-raising campaigns about human rights, targeting the community where the killing of older women allegedly accused of witchcraft, ritual killings and attacks on persons with albinism occur. CHRAGG urges the government to ensure that the recommendations adopted by CHRAGG and the stakeholders aimed at the eradication of the killing of older women and Persons with albinism are implemented by all MDAs and LGAs.

Women Health Rights

3.5 In improving women's health, the government put in place many strategies such as the National Road Map Strategic Plan to Accelerate the Reduction of Maternal and Newborn Mortality (2006-2010), a draft of Maternal and Peri-natal Death Audit Guidelines, The National Road Map Strategic Plan to Accelerate Reduction of

³ LHRC (2013), Annual Report

Maternal, Newborn and Child Health in Tanzania 2008-2015 (One Plan), the Health Sector Strategic Plan III (HSSP III), July 2009 – June 2015, Primary Health Services Development Program (PHSDP 2007- 2017) which provide an overview directions across the sector on the need to reduce infant and maternal morbidity and mortality by providing quality health care, ensure basic health services and accessible for preventing and controlling communicable and non communicable diseases⁴.

Through those strategies, remarkable progress has been made in reducing childhood mortality levels in the country. These gains in child survival have largely been achieved through increased use of insecticide-treated mosquito nets, improved treatment of malaria, immunization and expanded coverage of Vitamin A supplementation (which boosts children's immune systems).

According to 2010 Tanzania and Demographic Health Survey (TDHS), Tanzania has recorded a decline of under-five mortality rates from 112 deaths per 1,000 live births in 2005 to 81 in 2010⁵.

Child birth remains to be a major health risk to women in Tanzania. Statistics indicate that in Tanzania, the trend of Maternal Mortality Rate (MMR) has declined over the past ten years from 578 per 100,000 in 2004/05 TDHS to 454 per 100,000 live births in 2010⁶. Report shows that the main causes for maternal deaths are obstetric haemorrhage, obstructed labour, pregnancy-induced hypertension, sepsis and unsafe street abortion complication, Malaria, HIV/AIDS, hepatitis, diabetes mellitus, heart diseases and lack of access to health facilities..

3.6 However, notable challenges still exist in human resource for health management particularly in the reproduction and skills distribution; health financing; monitoring and evaluation of the sector and the use of the information gathered; Lack of medicines and health technologies due to underfunding, inadequacies in the procurement and distribution system as well as capacity to manage especially at the

⁴ Ministry of Health and Social Welfare (2007), Primary Health Services Development Programme (PHSDP-2007-2017).

⁵ TDHS (2010)

⁶ MoHSW (2014), The National Road Map Strategic Plan To Accelerate Reduction of Maternal Newborn and Child Death in Tanzania 2008-2015

district and facility levels; and poor quality of service delivery.

3.7 CHRAGG recommends to the Government to increase the budget allocation in the health sector; provide Reproductive Health education to adolescent girls as well as boys to enable them to access information on early pregnancy, HIV prevention and family planning, and raise awareness on human rights campaign and national health policies.

4 Women Condition in Prison Facilities

44.1 Under section 6(1) (h) of Commission's enabling legislation, Act No.7 of 2001, the Commission is mandated to visit prisons and other places of detention.⁷ The 2011 CHRAGG Prison inspection report reveals that there is an improvement of prison conditions. However, challenges

remain especially regarding women accompanying their children in prison. Section 25(2) of the Prison Act, 1967 allows the admission of an infant child with the mother in the prison. Section 144 of the Law of the Child Act, 2009 and Section 63(3) of the Prison Act provides that the prison authorities shall ensure that children staying with their mothers while in prison shall receive the necessary child care, which includes an adequate diet, nutrition, access to education and health care, including immunisation, but in most cases the services provided to children are inadequate.

4.2. CHRAGG recommends to the Government to allocate and provide adequate budgetary resources to the Prison Department to solve all the challenges facing women and children in prison. Also recommends the adoption of non – custodian sentences to convicted mothers with infants for the purpose of protection of the rights of the child.

2 Disadvantaged Group of Women: Indigenous Women

4.3 The Commission has the role of promoting and protecting the human rights of indigenous peoples. The indigenous people in Tanzania suffer marginalization and vulnerability. The indigenous women in IP communities which include Maasai, Barbaig, Hadzabe and Akiye are experiencing multiple inequalities in terms of

⁷ URT, Act No.7 of 2001.

enjoyment of their human rights, *inter alia*, access to their ancestral lands, right to ownership of the properties, participation in decision making and access to social services. They are exposed to this situation due to lack of proper recognition, vulnerability and marginalization caused by patriarchal traditions and culture, culturally bases, socio-economic activities such as wood and water collection, remoteness and harsh environment, gender based violence, poverty and low level of education, and lack of legal recognition of their rights.

4.4 CHRAGG has been taking steps to promote the recognition of indigenous people's rights in Tanzania, including creating awareness through the pilot survey to study and understand the challenges facing their life. On the basis of the survey report CHRAGG has adopted recommendations for implementation which shall be shared with government with other stakeholders.

4.5 These recommendations include the need for government to recognise the right of indigenous peoples in Tanzania to identify themselves as such, and to provide them with the relevant basic social services. There is also the need to raise awareness among the indigenous women on equal access to land ownership and tenure, education, health care and employment together with improving the health services through extension of health care from the district, to the ward and villages levels.

5. Women Participation in Political

5.1 The Constitution of the United Republic of Tanzania 1977, Art. 66(1) (b) requires that women constitute at least 30% of all elected Members of Parliament (MPs) in the National Assembly (Parliament). Since 2005 there has been a significant increase in the number of women in decision making bodies in the government and in public institutions. However, still there are social and cultural barriers that hinder women from participating in governance. That notwithstanding, during the last ten years the number of women parliamentarians has been increasing from 30.3% in the 2005 elections to 35% in 2010, and 40% in 2015.

5.2. In 2005, out of 323 MPs seats 97 were held by women, of whom 17 were elected from constituencies. 77 were elected to the special seats category (elected through a preferential system based on ratio of the vote won by a political party out of the total

number of national votes garnered) and 3 women were appointed by the President(out of ten special seats the President can appoint to Parliament).

5.3. In 2010 out of 339 MPs, 125 were women, one of whom was a person with albinism who was appointed by the President and 20 were elected from constituencies⁸. In the current parliament, following the 25 October 2015 elections, out of 377 MPs, 140 are women MPs elected from constituencies. There is an increasing awareness among women, even at the grass root level about the need to fight for their rights but the patriarchal society is very much still entrenched.

6. CONCLUSION

There are very many challenges including the absence of a legal framework that recognizes, without exception, notwithstanding the political goodwill of government, the rights of women as prescribed in the Convention. It is hoped that the Constitutional reform process will contribute to the elimination of inequality, and discrimination, which are institutionalized, through the lack of a proper legal framework, hence the systemic injustice and inequality against women.

Secondly, human and financial resources are a major obstacle to efforts, including by CHRAGG, aimed at reaching the grass roots where the majority of women experience and suffer inequality on a daily basis.

CHRAGG encourages women to take leadership roles within the government and political position for them to participate in decision making. This has already started to happen since there are now many women at the local government council level, where resource allocation is crucial to ensure women rights, such as access to education, health services, and good water and sanitation, are guaranteed. CHRAGG recommends that sensitization campaign should be strengthened to break down cultural and social barriers.

Dar es Salaam. February 2016.

⁸ www.mcdgc.go.tz.