

**TANZANIA LIFE AND FAMILY STAKEHOLDERS' COALITION FOR THE
UNIVERSAL PERIODIC REVIEW**

39TH SESSION

(THIRD CYCLE OCTOBER-NOVEMBER 2021) HUMAN RIGHTS COUNCIL

Organizations submitting the report

This joint submission by the Tanzania Life and Family stakeholders' coalition on the UPR. The participating institutions include; Life Runners Organization, Human Life International- Anglophone Africa, Prolife Tanzania, *UimarishajiWaFamilia* Tanzania (UFATA) and Lawyers Environmental Action Team (LEAT).

i. Executive Summary

Tanzania is due for review in the third cycle of the UPR in 2021. The Tanzania life and family

ii. Methodology

This report has been prepared by the Tanzania Life and Family Stakeholder's coalition for the Universal Periodic Review comprising six institutions and organizations working at the grassroots on issues that affect human rights and development. The coalition was convened by the office of Life Runners Organization. The Coalition members approached the issues from the 'See-Judge-Action' (SJA) perspective. Using the methodology of focus group discussion, ideas were consolidated as the basis for this submission.

The Coalition *first* examined those recommendations which did not enjoy the support of the United Republic of Tanzania (URT) in the outcome report of the second cycle of May 2016. The priority was placed on issues related with the protection of life, children, women and the family. *Secondly*, the Coalition examined the midterm review to establish how the said issues have been implemented, and the extent to which URT has already worked on them or not until today. *Thirdly* the Coalition identified the missing links in the implementation of the said rights and made recommendations.

1. THREATS TO THE RIGHT TO LIFE

a. Death penalty

All of the Recommendations regarding the abolition of the death penalty or declaring an official moratorium did not enjoy the support of the United Republic of Tanzania in the second cycle of the UPR¹. Part of the explanations provided by the state is that, the death penalty is a lawful sanction. It follows therefore, that the threat to the right to life is embedded in the law.

¹ A/HRC/33/12 at p22

The current constitution provides that “Every person has the right to live and to the protection of his life by the society in accordance with the law”², *while the proposed constitution provides*, “Every person has the right to live and the right to protection of his life by the Government and society in accordance with the laws of the land”³. These provisions lay ground for limitation of basic rights in Article 30(2)(e) of the current constitution including the rights to life where abortion and death penalty provide an excuse could infringe the right to life. The right to life is an exception when, “ensuring the execution of a judgment or order of a court given or made in any civil or criminal matter”⁴. I view of this the **penal code provides that “A person convicted of murder shall be sentenced to death”⁵**.

b. Enforced Disappearances

All the recommendations relating to ratification on the convention on the enforced disappearance in the second cycle did not enjoy the support of Tanzania. In about 24 months from the review period about 380 people went missing and unreported. The government promise to investigate and publish the same remains unfulfilled to date. Thus, no one has been held to account and the said infringements are without redress.⁶

c. Threat to the life of pre born-persons

The provisions of the constitution provisions first above mentioned allow other forms legislation to override the right to life under the constitution including the right to life of the pre-born persons. The penal code provides under s. 150 and s. 151 for the punishment for the attempt to procure abortion and supply of implements on the same respectively. However section 204 of the penal code denies the personal-hood of the pre-born persons and would allow for their killing without criminal responsibility. Section 219(3) of the penal code further increases justification for the attack on the right to life of the pre-born persons by exonerating from criminal liability the procuring of abortion under 28 weeks of gestation.

² Article 14 of the 1977 constitution of the united republic of Tanzania as revised from time to time

³ Art. 32 of the Proposed constitution of the united republic of Tanzania of 2014

⁴ Article 30(2)(e) of the 1977 constitution of the united republic of Tanzania as revised from time to time

⁵ Section 197 of the Penal Code Cap 16 RE 2019 of the laws of Tanzania

⁶ <https://www.theeastafrican.co.ke/> Saturday May 05 2018

Further attacks to the rights to life are justified by sections 230 of the penal code where it provides that, “A person is not criminally responsible for performing, in good faith and with reasonable care and skill, a surgical operation upon any person for their benefit, or upon an unborn child for the preservation of the mother’s life if the performance of the operation is reasonable, having regard to the patient’s state at the time and to all the circumstances of the case⁷”

These three provisions of, s. 204, s. 219(3) and s. 230 of the penal code render the s. 150 and s. 151 redundant and incapable of protecting the right to life.

Recommendations

- i) Commute death/capital sentences to life imprisonment.**
- ii) Amend the Constitution to make the non-derogable right to life inviolable from the moment of conception to natural death.**
- iii) Enforce sections 150, 151, 152, 219 and 230 of the Penal Code in a manner consistent with protection of human life all through gestation.**
- iv) Establish effective mechanisms for collection of data on abortion-related cases/deaths.**
- v) Work with faith based organizations to establish crisis pregnancy centers for transitional shelter and rehabilitation of teen mothers.**
- vi) Publish the Government report on the investigation on at least 380 people who disappeared or were abducted in 2017 and 2018.**

2. Child abuse and exploitation in health care

a. Child exposure to contraceptives

The presidential pronouncement that “school girls who become pregnant while at school are mothers and our education system is not built to cater for mothers⁸” exposed the teen mothers. There has been an increase in the distribution of contraception in schools under the direction of government.⁹ While there is limited scientific knowledge about the harmful effects of the use of the contraception, it has come to the knowledge of fertility awareness instructors that substantial numbers of women are seeking services for the reversal of the contraceptive damage¹⁰. This deficiency of knowledge in the face of these risks would be an exposure of minors to harmful

⁷ Ibid section 230

⁸ <https://www.bbc.com/news/live/world-africa>

⁹ Kerina Tull (2019), Evidence on family planning use in young people of Tanzania [578 Family Planning in Young People of Tanzania.pdf \(publishing.service.gov.uk\)](#)

¹⁰ Vithibiti Mimba; Ahadihewakapu la machozina *Pro Life Tanzania*

substances. Further, the exposure of children to the contraception is done without parental consent and undermines parental rights to guide their children.

With regard to contraceptive pills, failure rates range between 5% and 8% with typical youths and for adolescent, it may reach 15% to 26% because of non compliance¹¹. It is also the case that, long acting reversible contraceptives (LARC) such as intrauterine devices and implants place the users at greater risk of STDs and pelvic inflammatory diseases which can lead to infertility and ectopic pregnancies¹².

b. Controversial comprehensive sexuality education

The government of Tanzania has been active in the provision of the sexuality education for adolescents.¹³The exposure of children to comprehensive sexuality education without parental consent borders on grooming. In 2013, the government of Tanzania joined the Ministerial Eastern and Southern Africa on Comprehensive Sexuality education that would increase the number of schools and teachers' training schools that provide this controversial Sexuality education in the following five years.¹⁴

It is however the case that, Comprehensive Sexuality Education (CSE) is one of the greatest assaults on the health and innocence of children. CSE programs have an obsessive focus on training children how to obtain sexual pressure without pointing out the emotional, psychological and physical health risk of deviant and promiscuous sexual activities. It should also be noted that the global agencies promoting CSE consider parental consent as a barrier to access to these incidental services by the youth. The human rights provisions are increasingly interpreted in ways that clearly violate parental rights: "adolescents are deemed mature enough to receive counseling without the presence of a parent or other persons, are entitled to privacy and may request confidential services, including treatment."¹⁵Comprehensive sexuality education is known to have harmful elements such as sexualization of children and normalization of anal and oral sex, promote sexual pressure as a right, promote contraceptives/abortion to children, undermine traditional values and believe, undermines parents and parental rights.

¹¹Contraception and adolescent. (2007). American academy of pediatrics.120(5).

¹²Stiner, R.J., et al, (2016). Long acting reversible contraception and condom use among the female US high school students: implications for sexually transmitted infections and prevention.*JAMA pediatrics*, 170(5), 482-434.[doi.10.1001/jamapediatrics.2016.0007](https://doi.org/10.1001/jamapediatrics.2016.0007)

¹³[Dance4LifeReport.pdf \(share-netinternational.org\)](#)

¹⁴[ESA Commitment - Young People Today](#)

¹⁵World Health Organization. (2015). *Sexual Health, Human Rights, and the Law*. Retrieved from http://apps.who.int/iris/bitstream/handle/10665/175556/9789241564984_eng.pdf?sequence=1

Recommendations

- i. Adopt an approach to sex education which is culturally and religiously appropriate.**
- ii. Promote curricula rooted in human dignity and sexual risk avoidance**
- iii. Promote Education on fertility awareness methods as valid alternatives scientific to contraception.**
- iv. Work with faith based organizations to establish crisis pregnancy centers for transitional shelter and rehabilitation of teen mothers.**

3. Absence of a Family policy

It is commendable that during the second cycle, a recommendation by Bangladesh to take specific measures to protect children deprived of families and to encourage custody by biological relatives to reduce institutionalization (134.106) enjoyed the support of URT. However, a recommendation to adopt specific legislation to ensure equality of women in the family and in social, economic and political spheres (137.34- Spain) did not enjoy the support of URT. The accepted recommendation affirms the role of family in securing good outcomes for children and the society.

The protection of the family is nonetheless at stake in the absence of a substantive family policy. The Law of Marriage Act Cap 29 of 1971(as amended) is the closest to policy protection that there is for the family but is not well aligned to integral protection of family life. The other proximate policy document is the National Family Planning Implementation plan 2019-2023 which is more concerned with birth control and prescribes approaches that would undermine the essential role of the Family in integral human development.

This state of affairs is a failure to recognize the role of the family in attaining integral human development¹⁶. Strategic research that uses families as the units of analysis can go a long way in informing the design, implementation, monitoring and evaluation of family policies¹⁷ which are indispensable for the integral human development in the communities.

Recommendations

- i. Formulate and adopt a Family policy that is consistent with the cultural and religious aspirations of the people of Tanzania**
- ii. Promote and finance the scientific natural fertility based approaches to the regulation of birth.**
- iii. Report regularly to the Controller and Auditor-General about expenditures relating to implementing the family policy in the country.**

¹⁶<https://www.unicef-irc.org/article/1815-could-families-be-the-key-to-achieving-the-sdgs.html>

¹⁷<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/636/06/pdf/N1463606.pdf?OpenElement>

- iv. **Carry out the policy and legislative audit to establish consistence of the said instruments to family protection**

4. Threats to Land Justice for Families

The chapter findings mainly focus on the question of the right to land. The right to land includes the right to own, use, lease and dispose land in accordance with due process of law. The right to land is a family issues as it is on the land that family have their home, engage in production activities and take part in other social and/or cultural rites.

Land as Human Rights

Land is a cross-cutting issue that impacts directly on the enjoyment of a number of human rights. To many, land is a source of livelihood and is at the integral part of their economy, it is linked with people's identities as it is tied with their social and cultural rights.¹⁸

Tanzania's legal framework in relation to land comprises of the Land Policy, 1995 the Land Act, No. 4 of 1999, the Village Land Act, No. 5 of 1999 and Land Use Planning Act, No. 6 of 2007. Despite the legal framework; incidents relating to land ownership, land use and access to land have been reported in different parts of the country.

The right to land

In the year 2009 Tanzania enacted the Wildlife Conservation Act, 2009. The Act establishes Game Controlled Areas; it further provides that, save for the permission of the director of wildlife, a person shall not graze any livestock in the Game Controlled Area.¹⁹

Such provisions threaten livelihoods of many families (mostly in the indigenous communities) as their family life depends on cattle grazing and most Game Controlled Areas were established within recognized villages; the family owned land of the indigenous communities.²⁰

Forceful Evictions

Tanzania has forcefully evicted a number of communities from their family land without complying with the due process of law; the Loliondo eviction of the Maasai is a good example.

Restrictions to engage in crop cultivation

¹⁸ Land and Human Rights, United Nations Human Rights, available at: www.ohchr.org/EN/Issues/.LandAndHR/Pages/.LandandHumanRightsIndex.aspx (retrieved on November 7, 2020)

¹⁹Section 16 of the Wildlife Conservation Act, No. 5 of 2009.

²⁰ Section 22 of the Local Governments (Districts Authorities) Act, No. 7 Of 1982.

In the year 2020, the government issued letters to Ward Executive Officers to inform the people in the Ngorongoro Conservation Area of its intent to stop providing relief food and that they will have to hire farms outside the Ngorongoro Conservation Area at their own costs.

The restriction goes down to the right to land because the communities in the Conservation Area are barred from engaging in crop cultivation in their ancestral land. Generally, such directives have negatively impacted lives of many families in the Ngorongoro Conservation Area since their substance is at question.

In the previous cycle, under recommendation No. 137.70 and 137.71 it was recommended that Tanzania should develop her legal framework to protect the indigenous rights to land and land tenure. Tanzania noted the recommendation; however no step has been taken so far.

Extractive Industry and the question of land

Tanzania's extractive industry has witnessed a milestone development of petroleum activities in the recent years. The country is on the final stages of completing a Host Government Agreement (HGA) for the East African Crude Oil Pipeline (EACOP); a 1445 Km electrically heated pipeline from Hoima, Uganda to Chongoleani in Tanga, Tanzania.

It is reported that more than 400 villages will be affected by the pipeline and 14,000 families will be deprived their land; land acquisition will further threat destruction of sites of spiritual values thus denying communities their right to freedom of religion ([Mongabay](#), 2021).

Depriving people their land is violation of the right to property guaranteed under the Constitutional and International Conventions.²¹

Recommendations on the question of land

- (i) Take concrete measures to amend land laws so as to accommodate the indigenous people in matters such as security of tenure in line with their traditional ways of life thus to guarantee their right to property, heritage and livelihood.**
- (ii) Adopt and amend laws to recognize hunting and gathering as livelihoods systems; the legal framework will protect most families living under that life system.**
- (iii) Ensure Tanzania's Wildlife Authority declares all Game Controlled Areas so as to minimize conflicts with indigenous communities on land boundaries.**
- (iv) Allow families to engage in small scale agriculture in the Ngorongoro Conservation Area.**

²¹Article 24 of the Tanzania's Constitution and Article 17(2) of the Universal Declaration of Human Rights, 1948.

- (v) **Ensure communities/individuals land tenure is respected and free, prior and informed consent is obtained before land acquisition**

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