

AFRICAN UNION

**African Committee of Experts on the
Rights and Welfare of the Child**

الاتحاد الأفريقي



"An Africa Fit for Children"

UNION AFRICAINE

**Comité Africain d'Experts sur les Droits
et le Bien-être de l'Enfant**

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**CONCLUDING RECOMMENDATIONS BY THE AFRICAN COMMITTEE
OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD
(ACERWC) ON THE REPUBLIC OF TANZANIA REPORT ON THE
STATUTS OF IMPLEMENTATION OF THE AFRICAN CHARTER ON
THE RIGHTS AND WELFARE OF THE CHILD**

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) extends its compliments to the Government of Tanzania and wishes to acknowledge with thanks receipt of the initial Report on the status of implementation of the African Charter on the Rights and Welfare of the Child which was submitted in accordance with the State Parties obligation under Article 43. The ACERWC congratulates the Government of Tanzania for having presented and discussed the contents of the Report at its 14th Session held in Addis Ababa, Ethiopia from 16 to 19 November 2010.

The Committee commends the State Party for its large delegation headed by the Permanent Secretary for Gender Affairs and its high-level inter-ministerial composition.

Following a consideration of this Report and the discussions at the 14th Session, the Committee has the honour to submit to the Government of Tanzania the following observations and recommendations:

Discrimination in the treatment of girls who are pregnant and still in school and marriage.

In the State Report, Zanzibar has enacted a law allowing pregnant schoolgirls to be re-admitted to school afterwards whereas in Tanzania mainland there is no such law, clearly demonstrating that there are coordination problems between the laws of the two places. The State Report mentions that churches are responsible for catering for family legal matters in Zanzibar but the churches are not agents of the State party, neither are they supported by it. There is no mention of the Mainland's position with regards to this issue. Concerning marriage, the Law of Marriage Act vests the responsibility to provide maintenance to the child during and after the dissolution of marriage in the father, regardless of whether or not the child is in his custody. This is contrary to the provisions of Article 18 of the ACRWC, and should be reconciled to reflect the Member State's obligations, hereunder.

The Hague Convention on Adoption, and the requirement for the domestication of other treaties and conventions already ratified.

The Committee noted that the laws governing adoption, according to the State Report, are laid out in the Adoption of Children Act, the Adoption of Children Decree, and the Adoption Rules and Regulations. Tanzanian laws do not yet allow inter-country adoption and Tanzania is not a party to the Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption. There is no indication that there has been any progress in the ratification of this particular international instrument.

Furthermore, the State Report provides information on the governing bodies for the rules of adoption, and includes the recommendation of the Law Reform Committee (LRC) that pre-adoption of residence for non-citizen's be raised from three months to 2 years of residency, to enable a proper check on the backgrounds of prospective adoptive parents. It is hoped that the LRC findings would be implemented in line with international adoption principles as contained under Article 24 of the ACRWC. The Committee also recommend that efforts be made to ensure ratification of the Hague Convention, in line with best practices on adoption matters.

Laws against trafficking in children

According to the State Report, A National Plan of Action for the Prevention and Eradication of Violence Against Women has been developed, along with a community justice facilitation programme which functions as a community-based intervention strategy to address violence against children.

However, The Committee observed that there is a lack of commitment on the part of the State Party to honour its international obligations under the ACRWC on the specific aspect of child trafficking, especially there being a lack of specific laws and/or programmes aimed at combating this menace in a clear and sustained manner. It is observed that the absence of a definite regulatory framework is a significant contributory cause of the growing incidence, and the abuse and exploitation that children suffer as a consequence. The Committee also notes that since the adoption of the Child

Development Policy in 1996 (revised in 2008), no categorical laws have been enacted to ensure that there are enforcement measures against child abuse, child trafficking and exploitation.

The State Report also states that there has been very little research into the actual extent of human trafficking and related abuses. Most of the provisions spelt out in the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (ratified in April 2003) have already been incorporated in the legislation of Tanzania Mainland and Zanzibar. However, research needs to be undertaken, and a continuous process established for curbing the challenges of trafficking in children (including its related abuses) for a proper implementation of the provisions of the ACRWC.

The Committee urges the State Party to undertake its obligations under international children's rights standards to ensure that the legislative and programmatic measures taken are implemented and sustained and that they remain effective to also ensure that the sale and traffic in children is curtailed and eventually eliminated.

Budget indices on Mkuza and Mkukuta

The Committee notes that there is only one table in the State Report that shows the budgetary allocations for education levels from 2003-2005, and there is no mention of budgetary allocations in the Report, beyond this period. The Committee recommends that a more detailed budget be made available for the period 2005 to 2010 for a proper appreciation of the progress made by the State Party in respect of poverty alleviation, as this single incidence has a devastating effect on children.

Definition of a Child and laws on the subject.

According to the State Report, Tanzania is yet to comply with the definition of the child as provided in Article 2 of the ACRWC, with varying laws having their own definitions, depending on the area of consideration.

Under customary, Islamic and Hindu Law, also, the age of majority is considered to be puberty, which is ambiguous.

Furthermore, the State Party has reported that the law allows for recruitment as soldiers of persons under the age of 18 in exceptional circumstances; although it also reported that in practice, there has been no such recruitment. The Committee observes that section 29 (6) of the National Defence Force provides that:

No person under the apparent age of eighteen years shall be enrolled without the consent in writing of one of his parents or guardian or, where the parents are dead or unknown, by the District Commissioner of the District in which that person resides.

The Committee is of the firm view that this provision of the law is contrary to Article 22 (2) of the ACRWC, which obliges State Parties thereto to 'take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain, in particular, from recruiting any child'.

The Committee urges the State Party to repeal the foregoing provisions of the National Defence Act so as to align it along the provisions of Article 22 of the ACRWC.

The State Party has reported that its law provides for a separate criminal justice system for 'juveniles', who have been defined as persons less than 16 years. The Committee also observes that the Children and Young Persons Act sets up the age of criminal responsibility by defining a child as 'any person under the age of 12, and a young person as 'any person who is twelve years of age or upwards and under the age of sixteen years'.

Again, the State Report provides that its current laws are in compliance with the ILO's Minimum Age Convention of 1973. The 2004 Employment and Labour Relations Act states that:

- No person shall employ a child under the age of fourteen years
- A child of fourteen years may only be employed to do light work, which is not likely to be harmful to the child's health and development.
- No person shall employ a person under the age of 18 years in hazardous form of work for example in a mine, factory or a crew on a ship
- It is prohibited to employ children under the age of 18 years to night work.

In Zanzibar, labour laws are slightly different. They state that no child under 12 shall be employed except for light work; no person under the age of 18 years shall be employed in any employment that is injurious to his health, dangerous or immoral; a child under the age of 16 years shall not be employed in a mine. The Zanzibar Constitution has set the age for paid employment at 18 years. The law governing child labour is the Employment of Children, Young Persons and Adolescent (Restriction) Decree and a Labour Act of 1997. Zanzibar has reviewed its labour laws under the auspices of the SLAREA Project being implemented in collaboration with ILO.

The Committee observes that even though Employment and Labour Relations Act, 2004, prohibits children under the age of 18 years in hazardous conditions that are harmful to the child's health and development (like bars, mines, factory or as crew on a ship, or in any other worksite including non-formal settings and agriculture), employment of children (especially girls) as bar maids (waitresses) is rampant in many places in the State Party.

The Committee urge the State Party to adequately protect children from all forms of economic exploitation and from performing any work that is likely to be hazardous to interfere with the child's physical, mental, spiritual, moral, or social development as provided for in Article 15 of the ACRWC.

The Committee observes that all these laws remain contrary to the provisions of Article 2 of the ACRWC, which defines a child as 'every human being below the age of 18'.

Consequently, the Committee urges the State Party to make strident efforts towards reconciling all the ages appearing in the aforementioned diverse areas with Article 2 of the ACRWC, which defines 18 years as the age of majority.

Water supply in both jurisdictions

The State Party has reported that data obtained from the 2004 Tanzania Demographic Health Survey indicates that 62% of both rural communities and urban areas in the Mainland and 71% in Zanzibar have access to safe drinking water. However there is a variation between the rural areas (49%) and urban areas (85%) in Tanzania Mainland; and in Zanzibar, in rural areas (59%) and urban areas (92%).

The Committee observes that there are no effective constitutional, policy or legislative provisions in both parts of the State Party that guarantee, promote and protect the right to water and sanitation as envisaged in Article 14 (2) (c) of the ACRWC. The Committee also observes that many children in rural areas have to walk long distances (over 5kilometres) per day to access water, which from all indication is not safe.

The Committee recommends that in order for the State Party to guarantee the right to water and sanitation in respect of children as envisaged in Article 14 (2) (c) of the ACRWC, the State Party should enact constitutional, policy and legislative provisions to this effect. The Committee also urges the State Party to ensure that the pace at which new water schemes and rehabilitation and/or expansion of existing water schemes and sanitation services is taking place is increased by the State Party since, for instance, only 122 out of 794 water schemes were rehabilitated between 1998 and 2003 which only constitutes 15% of the schemes for a period of five years. In addition, efforts should be made to ensure a balanced supply of water to children in both the Mainland and Zanzibar, to assure non-discrimination in water supply.

Child and Infant Mortality Rates

The State Party has reported that it has undertaken efforts to improve on and combat child mortality rates. As a result of these efforts, the child mortality rate has been reduced in the 2000's as compared to the 1990s. It also reported that around 250,000 children die each year from otherwise preventable diseases, with 80% of the deaths occurring at home; approximately half of all infant deaths occurring in the week after birth with neo-natal deaths accounting for 29% of the under-five mortality rate.

The Committee observes that although data obtained from the Poverty and Human Development Report 2005 suggests that almost 100% of the urban population and close to three quarters of the rural population live within five kilometers of a health centre or dispensary, this fact is, in practical terms, unrealistic. That can only be achieved if health centres and/or dispensaries are established in each and every ward just as it has been the case for secondary schools.

The Committee urges the State Party to ensure that every ward (in both Mainland and Zanzibar) has a medical clinic fully equipped with medication and competent staff that would help in reducing childhood and infant mortality rates, as has been achieved with the provision of schools. Resources for advocacy on the importance of immunization in reducing infant and child mortality should also be made available to the officials in the various wards, for increased awareness.

Female Genital Mutilation & harmful traditional practices.

The State Party has reported that although it has undertaken policy and legislative measures to curb FGM/C, the practice continues and is widespread, even with several strategies and initiatives including the Ministry of Health and Social Welfare's Reproductive Health Strategy and its National Plan of Action for the Prevention of Female Genital Mutilation and other Harmful Traditional Practices (2001-2005). A National Secretariat on the Elimination of Female Genital Mutilation exists, and the Sexual Offences (Special Provisions) Act of 1998 was developed with the aim of protecting the dignity and integrity of women in matters pertaining to rape, defilement,

sodomy, sexual harassment, incest, female genital mutilation, child abuse and trafficking, outlining offences against women in a clearer manner than before and introducing new offences such as sexual harassment, abuse and trafficking, with stiff punishments entrenched.

Nevertheless, the Committee observes that the strategies and the action plan undertaken by the State Party are not widely publicized or known to the majority of its citizens. Consequently, it is urged that Tanzania should, as a matter of urgency, design and implement advocacy measures for publicizing the legislative and policy steps, to curb these harmful traditional practices, in consonance with Article 21 of the ACRWC.

Registration of births

The State Party has reported that there is currently growing awareness of the importance of prompt birth registration. It has further reported that there are key constraints to birth registration in the Mainland, including a lack of public awareness of the importance of birth registration and the process by which births are registered, as well as significant cost implications for services that is ostensibly free. Other factors include the Registrar General's office lack of capacity, equipment and materials necessary to make the system work; and there is lack of policy and legislative mandate to ensure accountability and coordination. In addition there is lack of law enforcement to make the registration compulsory.

The Committee observes that there is lack of the enforcement mechanisms to ensure smooth and effective birth and death registration and also that there is no mechanism to ensure birth and death registration free for those who cannot register and get the respective certificates.

The Committee urges the State Party to take urgent measures to redress this situation by ensuring the availability of all the requisite measures and equipment to facilitate compulsory birth registration, as provided under Article 6 of the ACRWC.

Administration of juvenile justice

The State Party has reported that in Tanzania Mainland a child under 12 years cannot be sentenced to imprisonment and in Zanzibar no child under 14 can be sentenced to imprisonment. The Committee urges the State Party to work on the Concluding Observations made by the UN Committee on the Rights of the Child aimed at improving the state of juvenile justice in its jurisdiction, by particularly enacting comprehensive provisions in the juvenile justice standards; allocating sufficient human and physical resources; and conduct regular training to juvenile justice personnel to ensure that juvenile justice is administered in consonance with best practices and international standards, in accordance with Articles 17 & 30 of the ACRWC.

Refugee children

The State Party has reported that it has adopted the National Refugee Policy in 2003 that covers various aspects of the management of refugee matters and their protection in the State Party. It has further reported that it has undertaken various measures to ensure that all refugee and asylum-seeking children (including unaccompanied ones) are properly registered and documented upon arrival at entry points, before being sent to their designated areas.

The Committee is concerned about the fact that established family-tracing programs are not conducted by the State Party but by the Tanzania Red Cross Society, a non-governmental organization. There is also lack of clear and updated information necessary for reunification of these children with their families.

The Committee urges the State Party to enact a specific legislation and establish appropriate and effective mechanisms to ensure that the National Refugee Policy has legal force as well as to ensure that it is practically implemented.

The Committee also urges the State Party to provide additional information (to supplement the information in its initial Report under review), in accordance with its obligations under Article 23 of the ACRWC, on how the State Party dealt with children's rights when it carried out the repatriation process of all Burundian refugees back home, upon the closure of the refugee camps in Ngara and Kibondo Districts in 2007/2008.

Street Children

The State Party reports that in Zanzibar, children whose parents have died or are found to be mentally unstable, those that are poor or born out of wedlock, are taken care of by the Social Welfare Department at Forodhani Home, Save Our Soul (SOS) Village and Muslim Agencies. The Committee observes that the State Party does not have a mechanism to follow up the welfare of children living away with their parents due to separation, divorce and/or ill treatment.

The Committee also observes that the Social Welfare Departments both in the Tanzania Mainland and in Zanzibar do not have sufficient resources to support and care for the children whose parents have died or have mental illness, are poor or born out of wedlock so it urges the State Party to make adequate resources available to these important Institutions of care, for the proper well being of the children in their custody. This will be in accordance with its obligations under Article 25 of the ACRWC.

Child Participation

The State Party has reported the realization of children's freedom of expression applies only in court proceedings while in customary laws and traditional practices children are not allowed to speak unless they are given permission to do so. It has also reported that child participation is promoted by Civil Society Organizations such as Tanzania Movement for and with Children (TMC) and Junior Council of United Republic of

Tanzania (JCURT); but that children have been participating in various government policies and decision-making processes.

The Committee recommends that the State Party should put in place mechanisms that will ensure children's participation in all matters concerning their welfare and further allocate financial and technical resources to support those mechanisms, which should encourage advocacy in families, communities and traditional settings in this respect.

Primary Education

According to the Poverty and Human Development Report 2005, 'the number of classrooms and desks in primary schools has increased, but more qualified teachers, equipment, facilities and more books are needed to keep pace with increased enrollment.'

The Committee also observes that the State Party has never set a budget for pre-primary education in any financial year. For example, in 2007/2008 fiscal year the State Party allocated Tshs. 544,220 Million for primary education, Tshs. 174,227 Million for secondary education but nothing was indicated for pre-primary education.

The Committee urges the State Party to increase budgetary allocation for education, but most especially for pre-primary education, as well as for the training of teachers teaching equipment and facilities, including books.

The HIV/AIDS pandemic

The State Party has reported that currently it faces challenges related to increasing awareness and translating awareness into behavioural change amongst vulnerable groups such as children/young people. Despite the presence of widespread efforts by the State Party to educate the young people on HIV/AIDS and STIs/STDs, such measures do not cover both Mainland and Zanzibar. It is also suggested that

assistance to children made vulnerable by HIV/AIDS be enhanced because the reach is just within 50 Districts, thereby leaving the rest of the country vulnerable.

The Committee observes that currently there are no efforts put in place by the State Party to ensure that advocacy on the awareness of the adverse effects of HIV/AIDS amongst the young people is incorporated in the primary school curricula as well as for family upbringing.

Consequently, the Committee urges the State Party to increase the allocation for advocacy and support groups for the awareness of HIV/AIDS, especially for the youth, as well as ensuring the introduction of the subject matter in schools.

The African Committee of Experts on the Rights and Welfare of the Child takes this opportunity to renew to the Government of Tanzania, the assurances of its highest consideration.