

UNITED REPUBLIC OF TANZANIA

In its report to the United Nations Human Rights Committee, the Government of Tanzania notes that the Constitution of the United Republic of Tanzania ensures that men and women have equal rights in the enjoyment of civil and political rights as set forth in the Covenant. The Government cites section 9(9) of the Constitution, which provides that "all State authorities and institutions are required in undertaking their activities to ensure that they provide equal opportunity to all citizens, both men and women." Additionally, section 13 of the Constitution provides that "all people are equal before the law and are entitled, without discrimination, to equal opportunity before the law and equal protection by the law" and prohibits legislative authorities in Tanzania "from making any provision in law that is discriminatory on its face or in its effects." Equality Now has consulted with the Legal Aid Committee of the Faculty of Law of the University of Dar es Salaam, the Tanzania Media Women's Association (TAMWA) and the Family Planning Association of Tanzania (UMATI), and detailed information from these groups is annexed (Annex A and Annex B, respectively). Based on this information, Equality Now has prepared the following summary of concerns regarding the continued existence of discriminatory laws which remain in force with regard to employment, marriage, and inheritance; inadequacies in legislation and law enforcement efforts to protect women from domestic violence, the criminalization of abortion in Tanzania, and the apparent lack of equal opportunity for women in education, employment and political participation.

Discriminatory Laws

Chapter 366 of the Employment Ordinance of Tanzania restricts the employment of women, providing in Section 83(1) that "no woman shall be employed between the hours of 10 p.m. and 6 a.m. in any industrial undertaking" and in section 86(1) that women are prohibited entirely from underground work in mines. Additionally, section 95(1) provides that the President, "after considering the advice of the Labour Advisory Board may from time to time make regulations for better carrying out the purpose of this Part, and without prejudices to the generality of the foregoing, for any of the following purposes: a) the registration and identification of women, children and young persons; b) further restriction of the employment of women, children and young persons in specified occupations; c) prescribing further conditions upon which women, children and young persons may be engaged or employed...; f) prohibiting, restricting, controlling, or regulating the employment of women, children and young persons in commercial undertaking." Presumably, these laws are intended to benefit women. However, they are discriminatory in nature and serve to exclude women from gainful employment opportunities. Although mining and other industrial professions are often characterized by rigorous and difficult conditions, such work environments should be regulated to ensure the safety, equal opportunity, and equal protection of both men and women.

While the Government of Tanzania asserts in Paragraph 30 of its report that the Law of Marriage Act of 1971 (LMA) is very clear on the question of equal rights, the report does not mention that under Section 13(1) of the LMA, the minimum age of marriage for women is 15, while for men it is 18. Under Section 13(2) of the LMA a court may grant leave for a marriage to take place where the parties are below the minimum age of marriage, so long as they are over 14 years of age. The Penal Code, Cap. 16, Section 138(6) states that "any person of African or Asiatic

descent" may "marry or permit the marriage of a girl under the age of twelve years old in accordance with the custom of the tribe or religion, so long as it is not intended that the marriage be consummated before the girl is 12 years old." (Annex D, p. 126). Although Section 16 of the LMA provides that both parties to a marriage must freely and expressly give their consent, Equality Now submits that a child cannot fully consent to marriage. Section 10 of the LMA also provides that a marriage may be designated as monogamous, polygamous or "potentially polygamous". In accordance with its obligations under Articles 3, 23(3), 24(1) and 26 of the Covenant, the Government of Tanzania should prohibit polygamy, raise the minimum legal age for marriage of girls and make it the same age for men and women.

The LMA specifically provides in Section 114 that for the division of matrimonial property, and in making orders for maintenance, the court is required to take into consideration the customs of the community to which the parties belong, and this same provision is found in other sections of the LMA (Annex E, p. 3). In personal law areas not covered by the LMA, including the law of succession and inheritance, the courts may apply Islamic law, Hindu law or customary law (Annex D, p. 124). In this way, legislation in Tanzania recognizes laws and practices that are based on patrilineal ownership and inheritance of property, and deprive women of land ownership and equal inheritance rights.

The Law Reform Commission of Tanzania issued a report in April 1994 reviewing and suggesting various reforms of the Law of Marriage Act, 1971 with the objective of rectifying discriminatory provisions such as division of family property, custody and maintenance of children, and minimum age for marriage. The Law Reform Commission also issued a report in March 1995, reviewing the Law of Succession/Inheritance with the objective of rectifying discriminatory laws by giving recognition to, and protecting, women's rights to acquire, manage and dispose of their property by way of inheritance. Equality Now is unable to determine the current status of either of the Law Reform Commission's reports and the reform recommendations made in them. Equality Now welcomes these law reform initiatives, and hopes the Committee will urge the Government of Tanzania to accelerate these efforts to remedy discriminatory laws.

Under the Citizenship Act of 1965, an alien women married to a Tanzanian man was entitled to registration as a citizen. This right was not accorded to an alien man married to a Tanzanian woman. A woman therefore did not have the right to pass on her nationality to her spouse; this was a right accorded to men only. The Citizenship Act of 1965 has been repealed and replaced by the Citizenship Act of 1995. Equality Now has been unable to ascertain, however, whether these discriminatory provision on the acquisition of citizenship through marriage have been amended to conform with the equality provisions of the Covenant.

Equality Now is concerned about a draft Land Bill, which according to a recent newspaper article (Annex F), is ready for presentation in the June parliamentary session. This bill, as reported, would legalize religious and indigenous customary practices that deny women and children the right to own land. Equality Now urges the Committee to question the delegation with regard to this bill.

Violence Against Women

Equality Now welcomes the adoption by Parliament of the Sexual Offences Special Provisions Act of 1998, which adds to and amends Penal Code provisions on gang rape, sexual offences towards children, sexual harassment, trafficking in women, procurement for prostitution, compensation for sexual offences and tougher penalties for sexual offences. Section 18 of the new law prohibits female genital mutilation (FGM), a practice which continues in a number of regions of the country, as an offence of "cruelty to children," punishable by imprisonment of five to fifteen years or a fine of 300,000 shillings and compensation to the victim. Equality Now notes however, under the new law, the definition of "rape" continues to exclude marital rape, and there is no specific provision for domestic violence. Although Section 66 of the LMA provides that "[n]otwithstanding any custom to the contrary, no person has the right to inflict corporal punishment on his or her spouse," there is no corresponding provision in the Penal Code. As a result, legal redress is less readily available to women who are subjected to domestic violence. According to a 1990 survey, 90% of women in Tanzania are battered or have experienced violence in some form (Tanzania's Report for the Fourth World Conference on Women, p. 10).

In Paragraph 78 of the report, the government of Tanzania states that the Witchcraft Ordinance of 1928, Cap. 28 operates contrary to Article 12(1) of the Covenant by curtailing the freedom and movement of residence. As explained in Paragraph 78 of the report, under the Witchcraft Ordinance, which dates back to the colonial period, the executive authorities can arrest and detain a suspected witch or person practicing witchcraft, or restrict such a person to residence in a particular district or region. Equality Now supports TAMWA's suggestion (Annex A) that this Ordinance be immediately repealed as recommended by that the Nyalali Commission (according to Paragraph 80 of Tanzania's report).

Equality Now considers the failure of the Tanzanian government to prohibit marital rape in its law, the inadequacy of its efforts to protect women from domestic violence, and the continued existence of the Witchcraft Ordinance as violations of Article 26 of the Covenant, which guarantees all women equal protection of the law.

Criminalization of Abortion

Section 150 of the Penal Code permits abortion only when the mother's life is threatened. A study conducted by the Family Planning Association of Tanzania (UMATI) found that unsafe illegal abortion was the leading cause of maternal mortality and morbidity in the country (Annex B, p. 1). The maternal mortality rate is estimated at 200-400 per 100,000 births (Annex D, p. 114). In 1997, the World Health Organization and the World Bank calculated the "Lifetime Risk of Maternal Mortality," the risk of a woman dying from pregnancy or childbirth during her lifetime. A lifetime risk of 1 in 3000 women represents a low risk of dying from pregnancy and childbirth, while 1 in 100 is a high risk. In Tanzania, the lifetime risk of maternal death is 1 in 18 women (Annex C). Equality Now submits that women should have access to safe and legal abortions. Denial of this access through criminalization of abortion constitutes a threat to the right to life, which is protected under Article 6 of the Covenant. Equality Now also submits that forced maternity, particularly in cases where pregnancy results from rape, is a violation of Article 7 of the Covenant.

Political Participation

In its report, the Government of Tanzania acknowledges that the ratio of women participants in the political arena is still significantly small compared with that of men and that representation of women has not improved significantly since its last periodic report, despite a law passed in 1992 requiring that women constitute at least 15% of the members of Parliament and at least 25% of the local government seats. Data in Tanzania's Second and Third Periodic Report to CEDAW (1996) indicated that 16% of the Members of Parliament were women and only 3 out of 23 Ministers were women. As of 1994, only 2 of the 28 High Court Judges were women and out of the 8 Justices of Appeals, none were women. The CEDAW report indicated that in 1996 only 15.7% of the total posts constituting the various bodies of the judiciary nation-wide were held by women. There is no discussion in the Government's report of plans or efforts underway to increase the participation of women in public life. Equality Now notes from the country report submitted by Tanzania to the Fourth World Conference on Women that the Law Reform Commission, which is charged with reviewing and rectifying discriminatory laws, has only 1 woman among its 7 commissioners and that only 21% of its legal officers were women.

In paragraph 25 of its report, the Government of Tanzania praises the work of BAWATA, an inter-party women's organization, as "a big boost to the activities of those bodies established by the Government to undertake review of legislation and different practices affecting the enjoyment of rights by women." The Government anticipated that BAWATA would "exert pressure so that the review is done promptly and efficiently." In light of this acknowledgement of the importance of BAWATA's activities, Equality Now was extremely concerned to learn from TAMWA that BAWATA was deregistered in July 1997 (Annex A, para.25).

Equality Now considers that the under-representation of women in government to be a violation of Articles 3 and 25 of the Covenant. Equality Now is also concerned that the deregistration of BAWATA violates the right to freedom of association as guaranteed by Article 22 of the Covenant.

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- A. Prepared by the Legal Aid Committee of the Faculty of Law, University of Dar es Salaam and the Tanzania Media Women's Association (TAMWA). Commentary on the report submitted by the United Republic of Tanzania to the UN Human Rights Commission, Geneva, June 1998, by Tanzanian NGO's.
- B. The Family Planning Association of Tanzania (UMATI). UMATI Involvement in Advocacy and Promotion of Sexual and Reproductive Rights as Human Rights. 1998.
- C. World Health Organization and the World Bank. Maternal Health Around the World. 1997.
- D. Center for Reproductive Law and Policy. Women of the World: Anglophone Africa, Tanzania. 1995.

E. International Women's Rights Action Watch (IWRAW). Legal Status of Women: Tanzania. 1995.

F. Kayoka Charles and Mwanahawa Mhando. The Express. "Critics cry hoarse over the socio-economic fall-out of the proposed drastic changes in Land Bill." 5/12/98.

G. Minja, Flora. Vocational Education and Training Authority (VERTA). Vocational Training and Lifelong Learning of Women - The Case of Tanzania. Prepared for Expert Group Meeting on Vocational Training and Lifelong Learning of Women. International Training Center of the ILO. Turin, Italy. 2-6 December 1996.

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