



THE LUTHERAN WORLD FEDERATION

A COMMUNION OF CHURCHES – EINE KIRCHENGEMEINSCHAFT – UNA COMUNIÓN DE IGLESIAS – UNE COMMUNION D'ÉGLISES

LUTHERISCHER WELTBUND – FEDERACIÓN LUTERANA MUNDIAL – FÉDÉRATION LUTHÉRIENNE MONDIALE

Human Rights Committee (CCPR)

96th session

United Republic of Tanzania reviewed on 13-14 July 2009

I. Documents

The following documents are available:

1. States reports and country situations:

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/458/31/PDF/G0745831.pdf?OpenElement>

2. List of Issues & Written replies:

<http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.TZA.Q.4.doc>

3. Concluding Observations:

<http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-TZA-CO-4.doc>

NOTE: *These documents are also available from the LWF Office for International Affairs and Human Rights on request.*

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LWF Summary Report

Consideration by the UN Human Rights Committee of the fourth periodic report of the State Party (Tanzania) at its 96th session (13 to 31 July 2009, Geneva)

On the 13 and 14 July 2009, the UN Human Rights Committee considered the fourth periodic report of the United Republic of Tanzania on the implementation of the International Covenant on Civil and Political Rights.



Issues of Concern

The state as a locomotive

Experts were concerned about a number of traditions and customary attitudes in Tanzania (e.g. early marriage, female genital mutilation, corporal punishment in schools, prohibition of consensual sex between same-sex persons, etc.) that are totally incompatible with the provisions of the Covenant on Civil and Political Rights.

During the meeting, such traditions were often invoked by the delegation in order to explain violations of the Covenant. The Committee reminded the delegation that in this regard, the state should play the role of a locomotive of the society, rather than following it.

- *According to the Committee's Concluding Observations the State party should ensure that all rights protected under the Covenant are given full effect in domestic law.*

Previous recommendations

The Committee noted with concern that many of its recommendations adopted following the consideration of the State party's third periodic report have not been implemented.

- *The State party should give effect to the recommendations adopted by the Committee in its previous concluding observations.*

National Human Rights Commission

Experts welcomed the establishment of the Commission for Human Rights and Good Governance in 2000, and noted the presence of a commission member during the meeting. Nevertheless, the Committee regretted the under-resourcing of the Commission, and the lack of information on the measures taken by the State party to ensure that its recommendations are fully implemented.

- *The State party should strengthen the capacity of the Commission for Human Rights and Good Governance to fulfil its mandate fully and effectively in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), in particular by endowing it with adequate resources. It is also encouraged to enhance the powers of the Commission with a view to ensuring the effective implementation of its recommendations.*

Early Marriage and girl's access to education

The Committee noted with concern that the legal minimum age of girls for marriage is only 14 years. The latter is also connected with girl's access to education: experts expressed concern about the very high drop out rate due to teenage pregnancy (6%).

As to the age of marriage, which should be 18 in order to comply with the Covenant, the delegation referred to Tanzania's big Muslim community and that Muslims would consider a girl to be marriageable as soon as she has attained puberty and that Tanzania wanted to respect those cultural beliefs.

- *The State party should, as a matter of priority, bring its laws governing the family and personal status in line with the Covenant, in particular with regard to the minimum age of marriage for women.*
- *The State party should step up its efforts to raise popular awareness of, and change customary attitudes detrimental to, women's rights. It should also further promote women's participation in public affairs and ensure their access to education and employment.*

Marital Rape

The Committee was concerned about the prevalence of domestic violence. In particular it was concerned that “marital rape”, which constitutes the worst form of domestic violence, is not criminalized under the State party’s domestic law. The Committee urged the delegation to include the abolition of marital rape in National Action Plan on Gender-based Violence.

The delegation responded that the issue of marital rape was an alien concept in their country and that it required a deeper and wider debate.

- ***The State party should take all necessary measures to effectively combat violence against women. In particular, it should define and criminalize domestic violence, including marital rape. The State party should also sensitize society as a whole in this regard, ensure that the perpetrators of such acts are prosecuted and provide assistance and protection to victims. Law enforcement officials should be provided with appropriate training to deal with domestic violence.***

Female Genital Mutilation

The Committee welcomed that female genital mutilation is criminalized under the Penal Code of Tanzania. However, experts were very concerned about the ongoing wide practice of female genital mutilation, namely in the mainland regions and that the law does not protect women above the age of 18.

Furthermore, the Committee raised concern about the very social resistance to enforcing the above mentioned law, which is also illustrated by the example of two reported cases that were brought to court in the State party: both cases (*R versus Mbwasa Madaru and others* and *R versus Mussah Daudi and others*) were withdrawn for lack of evidence, because witnesses were not willing to testify due to pressure from the victim’s family and other people around them.

On behalf of the State party, the delegation condemned female genital mutilation in all its forms but said that a lot of education would be required until people would respect the law. Moreover, the head of the delegation explained that, according to traditions, female genital mutilation was a rite of passage: after having passed through female genital mutilation a woman could get married and would be included in the group of adult women. Otherwise she would be considered as a child all her life. He said that people had to be educated that girls could grow up and become a woman without being mutilated.

- ***The State party should adopt effective and concrete measures to combat female genital mutilation vigorously, in particular in those regions where the practice remains widespread, and ensure that the perpetrators are brought to justice. It should also amend its legislation with a view to criminalizing female genital mutilation regarding women above the age of 18.***

Counter-terrorism

The Committee regretted the lack of information on the compatibility of the State party’s counter-terrorism legislation with the Covenant. In particular, no information had been provided on the extent, if any, to which Covenant rights can be limited under that legislation.

- ***The State party should ensure that its counter-terrorism measures are in full conformity with the Covenant, including the right to presumption of innocence. It should also introduce a definition of terrorist acts in its domestic legislation, bearing in mind the need to define such acts in a precise and narrow manner.***

State of emergency

The Committee regretted the lack of detailed information on the compatibility of the Emergency Powers Act with the Covenant.

- ***The State party should ensure that its provisions concerning states of emergency are compatible with the Covenant. In this regard, the Committee draws the attention of the State party to its General Comment No. 29 (2001) on derogations during a state of emergency.***

Death Penalty

The Committee noted with concern that Tanzania maintains the death penalty for the crimes of murder and in some cases for treason. Moreover, experts welcomed that no executions have been carried out since 1994 but was concerned about the high number of prisoners on death row (292 prisoners as of 2009). Several experts were concerned about the detainees, who, due to the unofficial moratorium, are living with the constant fear of execution. According to the Committee, such very difficult mental circumstances could be considered as a form of inhuman and degrading treatment or even torture

The delegation assured that their government is slowly working towards abolition of the death penalty.

- *The State party should seriously consider abolishing the death penalty and becoming a party to the Second Optional Protocol of the Covenant. It should also consider the early commutation of the death sentences of all persons currently sentenced to death.*

Albinism

The Committee was very much concerned about the new phenomenon of killing and maiming persons with albinism, because of superstitious beliefs or witchcraft. The delegation assured that their government is committed to stop the killing and the trade in human organs of albinos once and for all and that it is already taking several measures to bring the perpetrators to court.

- *The State party should, as a matter of urgency, strengthen its efforts to put a halt to incidents of mutilation and killings of persons with albinism, and to ensure the timely and efficient conduct of investigations and prosecution of the perpetrators. It should also strengthen its public awareness-raising campaign with a view to preventing future attacks.*

Corporal Punishment

The Committee noted with concern, that corporal punishment is still maintained in Tanzania's statute book and that it is applied regularly in courts as a judicial sentence (except for females and persons over 50 years) and in schools as a corrective measure.

- *The State party should take measures towards the abolition of corporal punishment as a lawful sanction. It should also promote non-violent forms of discipline as alternatives to corporal punishment within the educational system and carry out public information campaigns about its harmful impact.*

Anti-trafficking in persons

While welcoming the adoption of the Anti-Trafficking in Persons Act of 2008, the Committee regretted the lack of information on the concrete measures taken concerning human trafficking and sexual exploitation of women and children, and the lack of more detailed information, including statistics, in this regard.

- *The State party should take all necessary measures to combat trafficking in human beings and sexual exploitation of women and children. In particular, it should ensure the effective implementation of its anti-trafficking legislation, inform law enforcement officials as well as the judiciary about this new law, and adopt a national action plan on trafficking. It should also ensure that the human rights of victims of trafficking are given sufficient attention in the State party's response to this phenomenon.*

Ill-treatment of detainees

In light of reports about cases of ill-treatment of detainees by law enforcement officials, the Committee regretted the lack of sufficient information regarding the independence of the mechanisms in place to investigate and prosecute complaints of torture and ill-treatment in police custody and detention facilities, including prisons.

The Committee appreciated that senior police officials, "justices of peace," as well as the National Commission for Human Rights have access to detention facilities.

- *The State party should take firm measures to eradicate all forms of ill-treatment in detention, and in particular establish a special mechanism for the investigation of complaints concerning actions of law enforcement officials, which is completely independent from the police force and other Government bodies.*
- *It should provide the Committee, in its next periodic report, with more detailed information on the system put in place to hear complaints of detainees for acts of violence and with statistics on criminal and disciplinary proceedings initiated for this type of conduct and the results of those proceedings.*
- *The State party should enhance the human rights training of its police force.*

Adverse conditions of detention

While noting the measures taken by the State party to improve the treatment of detainees and prisoners, the Committee remained concerned about the adverse conditions of detention, in particular with regard to the incidence of overcrowding, and the limited application of alternatives to imprisonment by courts.

- *The State party should intensify its efforts to improve the conditions of persons deprived of liberty before trial and after conviction, so as to bring them in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners.*
- *In particular, the overcrowding should be addressed as priority issue. In addition, the State party should promote alternatives to imprisonment. Detailed statistical data showing progress since the adoption of the present recommendations, including on the promotion and implementation of alternative measures to detention, should be submitted to the Committee in the State party's next periodic report.*

Imprisonment for failure to pay a debt

The Committee reiterated its concern at the State party's failure to amend the laws which permit imprisonment for failure to pay a debt.

The delegation explained that their legislation allows imprisonment only for persons who refuse to pay a debt although they could pay.

- *The State party should comply with the Covenant by amending its legislation providing for imprisonment for the failure to pay a debt.*

Fair trial and arbitrary detention

The Committee regretted the lack of information regarding reports according to which the police frequently fail to bring persons suspected of having committed a crime before a magistrate within the legally prescribed 24 hours. According to an expert, the very first hours of detention are often the ones where most terrible things occur to the detainees; therefore it is particularly important for persons caught for serious crimes to get as soon as possible under judicial control. The Committee was also concerned that legal aid is not available at all instances of criminal proceedings. It noted with concern the State party's own statement that the quality of legal representation is unequal and could be improved.

- *The State party should ensure the effective implementation of the right of a suspect to be brought promptly before a magistrate.*
- *The State party should also introduce a comprehensive criminal legal aid system for individuals who do not have sufficient means to pay for legal representation. In this regard, the Committee recalls General Comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.*

Same-Sex relations

Another issue of concern for experts included the prohibition of consensual sex between same-sex persons which is sanctioned in Zanzibar with up to 7 years imprisonment.

The head of the delegation said that Tanzanian society does not accept same-sex activities and that homosexuality is considered to be unnatural. The Committee stated that the dislike of such activities does not justify the non-implementation of obligations under the Covenant, in casu namely the right to privacy and the obligation of non-discrimination.

- *The State party should decriminalize same sex sexual relations of consenting adults and take all necessary actions to protect them from discrimination and harassment.*

Freedom of association and NGOs

The Committee was concerned about reported obstacles to the operation of civil society organizations and their ability to function independently. In particular, it was concerned at the severe penalties for operating an unregistered organisation. Furthermore, the Committee noted with concern the legal provision which permits the dissolution of organizations if they do not strive for “public interest,” a term which is vague under the 2002 law.

- *The State party should take all necessary measures to guarantee in law and in practice the exercise of the right to peaceful association. It should also ensure that any restrictions imposed on the operation of associations and the peaceful pursuit of their activities are compatible with article 22 of the Covenant.*

Freedom of expression and journalists

The Committee was concerned about reports that journalists are subject to harassment, in particular in Zanzibar, and incidents of overly restrictive limitations on freedom of expression.

- *The State party should put an end to direct and indirect restrictions on freedom of expression and ensure that its legislation and practice give full effect to the requirements of the right to freedom of expression enshrined in the Covenant. It should also adopt appropriate measures to prevent any intimidation of journalists.*

Child labour

The Committee raised concern about the huge number of children (1.2 million) that are working and are often involved in hazardous work, such as mining activities. The delegation acknowledged that elimination of child labour remains a challenge, despite the prohibition of employment of children under 14 years, and the prohibition of employment of a child under 18 in mines, factories and on ships.

- *The State party should intensify its efforts to eliminate child labour, and in particular it should ensure the effective implementation of its time-bound program to eliminate the worst forms of child labour by 2010, including by strengthening its public awareness-raising campaign in this regard. It should also speed up the process of adopting the unified law on child matters. It should also include information, in its next periodic report, about the problem of street children and measures that have been taken, if any, to address it.*

Rights of minorities

The Committee was concerned that the State party does not recognize the existence of indigenous peoples and minorities in its territory and regretted the lack of information about certain vulnerable ethnic groups. It also noted with concern reports that the traditional way of life of indigenous communities (such as the Hadzabe) has been negatively affected by the establishment of game reserves for tourism or hunting purposes and other projects.

The delegation stated that the 40 million citizens of Tanzania belong to 126 different tribes. Consequently the concept of minorities, an indigenous group within another group does not apply to their country. In the Hadzabe case, the game reserve within the Hadzabe territory was given up due to high resistance.

- *The State party should, as a matter of urgency, carry out a study regarding minorities and indigenous communities in the State party, and adopt specific legislation and special measures to protect, preserve and promote their cultural heritage and traditional way of life. The State party should also consult indigenous communities before establishing game reserves, granting licenses for hunting, or other projects on “ancestral” or disputed lands.*

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