


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
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Forty-Third Ordinary Session

7 - 22 May 2008, in Ezulwini, Kingdom of Swaziland

Consideration of Reports submitted by States Parties under the Terms of Article 62 of the African Charter on Human and Peoples' Rights

Concluding Observations and Recommendations on the Consolidated 2nd to 10th Periodic Report of the United Republic of Tanzania

I - Introduction

1. The United Republic of Tanzania (Tanzania) is a State Party to the African Charter on Human and Peoples' Rights (the African Charter) having ratified the same on 18 February 1984.
2. The 2nd to 10th Consolidated Periodic Report of the United Republic of Tanzania was received at the Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) in 2008 and was considered at the 43rd Ordinary Session of the African Commission on Human and Peoples' Rights (the African Commission) which took place in Ezulwini, Kingdom of Swaziland, from 7 to 22 May 2008.
3. The Report was presented before the African Commission by Honourable Matt Chikawe, Minister for Justice and Constitutional Affairs of the United Republic of Tanzania.
4. The present Concluding Observations give an account of the positive aspects, factors restricting the enjoyment of rights guaranteed under the African Charter and areas of concern identified in the Report. The

comments, remarks and observations during the examination of the Report, enhanced the recommendations formulated after the dialogue.

II - Positive Aspects

The African Commission:

5. Commends the United Republic of Tanzania for ensuring that the Report conforms to the African Commission's Guidelines for the Preparation of State Reports and the fact that the Report identifies legislative and other measures put in place to implement the basic rights and fundamental freedoms enshrined in the constitution of the country and international human rights instruments.
6. Notes in particular that the Report does not only indicate the measures the Government has put in place to ensure the implementation of the African Charter, but also indicates the difficulties Tanzania encounters in the implementation of the African Charter.
7. Appreciates the Government's decision to involve stakeholders such as civil society organisations, government ministries, the Commission on Human Rights and Good Governance, NGOs, political parties and the United Nations Development Programme (UNDP), in the preparation of the Report.
8. Takes note of the fact that the United Republic of Tanzania has ratified most major international human rights instruments, including amongst others, regional human rights instruments such as:
 - the African Charter on Human and Peoples' Rights;
 - the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;
 - The African Charter on the Rights and Welfare of the Child.
9. Welcomes the fact that the United Republic of Tanzania has entrenched the protection of fundamental rights and freedoms in a Bill of Rights in the 1985 Constitution (Articles 12 - 29), and has in addition enacted the 1994 Basic Rights and Duties Enforcement Act of 2002, which provides for, among other things, procedures for seeking remedies when violations occur, thus ensuring the effective enjoyment of these rights.

10. Welcomes the provision of free ARVs to people living with HIV/AIDS including prisoners.

11. Also welcomes the Affirmative Action policy aimed at addressing gender disparity in schools, through among other things, lowering the pass mark for girls. The African Commission would, however, like to urge the Government of Tanzania to ensure that this does not negatively affect the standard of education for the girl child.

12. Appreciates the Government's efforts to ensure the teaching of human rights throughout the country.

13. Appreciates the moratorium on the execution of persons on death row, and the fact that Tanzania has not executed any person on death row for over thirteen years. In this regard, the African Commission welcomes the research being carried out by the Law Reform Commission to determine whether the death penalty should be retained or abolished.

14. Welcomes the establishment of the Commission on Human Rights and Good Governance in accordance with the Paris Principles, and, in particular, the public participation in the selection of members of the Commission.

15. Appreciates the Government's undertaking to make a declaration under Article 34 (6) of the Protocol on the Establishment of the African Court.

16. Welcomes the efforts of the Government of Tanzania to promote the rights of women, and to promote women in political life and decision making positions. The African Commission particularly welcomes the

Government's plan to ensure gender parity in all government services by the year 2010.

17. Congratulates the United Republic of Tanzania for respecting the right to culture, by promoting vernacular languages, including Swahili.
18. Commends the Government for establishing poverty alleviation programs, to improve the livelihoods of its citizens and empower women and youths.
19. Appreciates the establishment of an *ad hoc* Presidential Committee headed by a High Court Judge to look into cases of police misconduct or abuse of power.

III - Areas of Concern

While recognising the efforts of the United Republic of Tanzania to promote and protect human rights and to create awareness on the principles and provisions of the African Charter, the African Commission remains concerned:

20. That the HIV/AIDS pandemic has put at risk many years of development effort.
21. That the United Republic of Tanzania has not made the declaration under Article 34 (6) of the Protocol Establishing the African Court, thereby effectively denying individuals and NGOs access to the Court.
22. That in spite of having ratified most of the international human rights instruments, for more than two decades the country has not taken any steps to domesticate some of these instruments.
23. About the power of preventive detention vested in the President, which he/she utilizes at his/her absolute discretion. The African Commission

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believes that in an open, free and democratic society where there is separation of powers, such measures are not necessary.

24. That there is no permanent independent institution to oversee police misconduct and other malpractices.
25. That the crime of libel still exists on the statute books of Tanzania.
26. That the Education Act still provides for corporal punishment, which the State delegate confirmed, is still being administered in Tanzania.

IV – Recommendations

The African Commission recommends that the Government of the United Republic of Tanzania should:

27. Work closely with NGOs, civil society organisations, and other human rights actors to ensure the enjoyment of the rights and freedoms enshrined in the African Charter.
28. Immediately abolish corporal punishment as it constitutes a violation of Article 5 of the African Charter.
29. Abolish the death penalty.
30. Amend the Newspaper Act to remove criminal libel from its statute books.

31. Provide the Commission on Human Rights and Good Governance adequate resources (financial, human and material).
32. Take urgent steps to domesticate the African Charter and other international human rights instruments that Tanzania has ratified, in order to give Tanzanians the opportunity to enjoy the full range of rights guaranteed in these treaties.
33. Establish a permanent independent police oversight body.
34. Transform the Tanzania Broadcasting Corporation into a public broadcaster to ensure access to the citizens.
35. Amend the Preventive Detention Act to ensure that the power of preventive detention is vested in the appropriate institution.
36. Speed up the review of the Law of Marriage, and formulate laws to penalise domestic violence and marital rape.
37. Formulate a definition of indigenous peoples that accommodates Tanzania's circumstances and is consistent with the provisions and principles of the African Charter.
38. Enact a law to criminalise torture and to speed up the ratification of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

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39. Enact and implement legislation on HIV/AIDS, and establish a National AIDS Control Commission.

40. Implement the Robben Island Guidelines (RIG) to enable compliance with Article 5 of the African Charter(a copy of the RIG is attached to these Concluding Observations).

41. Authorise requests from the African Commission to undertake missions to the country.

42. Inform the African Commission, in its next Periodic Report, of the steps it has taken to address the areas of concern, as well as how it has implemented the recommendations in this Concluding Observations.

**Adopted at the 43rd Ordinary Session of the African Commission on
Human and Peoples' Rights held from 7 to 22 May 2008, Ezulwini,
Kingdom of Swaziland**