

**Mandates of the Special Rapporteur on the right to education; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Working Group on the issue of discrimination against women in law and in practice**

REFERENCE:  
AL TZA 3/2017

18 August 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 26/17, 33/9, 15/23.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a governmental decision banning pregnant girls and adolescent mothers from attending schools.**

According to the information received:

On 22 June 2017, during a political rally in Chalinze, Bagamoyo District, President John Magufuli stated that pregnant girls and teenage mothers will not be allowed to attend school.

On 25 June 2017, following civil society groups and citizens' reactions to the President's statement, the Minister of Home Affairs, Mr. Mwigulu Nchemba said he would deregister any nongovernmental organisations which continue to campaign for access to education for girls who are pregnant or who have given birth.

Although the expulsion due to pregnancy and the denial of readmission to government schools for students who have been expelled for pregnancy are not specifically mandated by any law, policy or regulation, these discriminatory practices are said to be commonplace. They persist despite the fact that in October 2015 the Ministry of Education and Vocational Training Ministry approved policy guidelines on re-entry for pregnant school girls into school.

These practices reflect the prevailing perceptions of teachers, school administrations, and local authorities, who tend to consider the pregnancies as "the girl's fault" and girls who have fallen pregnant to be immoral, deserving punishment.

It is reported that approximately 6000 female students are expelled from schools each year in Tanzania due to pregnancy.

Pregnancy testing occurs immediately prior to school admission in an effort to ensure that pregnant adolescent girls are not enrolled in school. In this case, pregnancy testing occurs in a context in which consent is not voluntarily or freely given because pregnancy testing is used as a precondition for admission to school.

School officials also conduct regular compulsory pregnancy tests and routinely subject girls to forced pregnancy testing, as a disciplinary measure with the intention to expel pregnant students from schools. Reportedly, these students are not allowed to re-enrol after their children are born.

Without prejudging the accuracy of these allegations, we wish to express serious concern regarding any ban of pregnant girls and young women from attending school or taking exams, which is based on discriminatory and stigmatising attitudes, beliefs and stereotypes. Deep concern is further expressed at the statements from President Magufuli and other senior Government officials. Similar concern is expressed about these discriminatory practices implemented by the Ministry of Education and Vocational Training, as they perpetuate gender inequality and violate young women and girls' rights to education, economic opportunities, enjoyment of the highest attainable standard of physical and mental health, including reproductive health, privacy, and to physical and psychological integrity and dignity. Finally, we wish to express serious concern at the practice of compulsory "testing" which may amount to humiliating and degrading treatment. This governmental practice is also incompatible with Tanzania's Constitution which states that all persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law and that every person has the right to access education and that every citizen shall be free to pursue education in a field of her/his choice.

Without prejudice to the aforesaid, we also wish to express serious concerns at the alarming numbers of teenage pregnancies in the country, which expose girls to serious risk to health and life. We call on the State to fulfil its international human rights obligations in terms of ensuring that all Tanzanian girls and women can enjoy their rights to the highest standards of health, including sexual and reproductive health.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide information about the current status of these governmental decisions and practices in view of the United Republic of Tanzania's obligations under international law, and its constitutional provisions stating that all persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law and requiring the Government to make appropriate provisions for the realization of a person's right to access to education.
3. Please provide information on ways proposed by the government to ensure the implementation of the policy guidelines on re-entry for pregnant schoolgirls into school approved by the Ministry of Education and Vocational Training in October 2015.
4. Please provide information regarding the provision of comprehensive and scientifically based sex education in schools at the earliest stages possible and all necessary measures to prevent early and teenage pregnancies.
5. Please provide information about the measures taken by your Government to ensure access to health care, including reproductive health care and family planning services, by girls and women at all stages of their life-cycle.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Koumbou Boly Barry  
Special Rapporteur on the right to education

Dainius Puras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

Kamala Chandrakirana  
Chair-Rapporteur of the Working Group on the issue of discrimination against women in  
law and in practice

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR) acceded by Tanzania on 11 June 1976. The ICCPR underlines that the State shall respect and ensure the rights of all individuals, without any distinction of any kind, including of sex (art.2), to be free from inhuman and degrading treatment or punishment (art.7), and the right to one's privacy and family (art.17). The abovementioned alleged facts also indicate a violation of the right to the highest attainable standard of health of young women and girls (art.12), their right to education (art.13) as well as their right to work (art.6) as set forth in the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded by Tanzania also on 11 June 1976.

The ban of pregnant girls from attending schools and sitting exams undermines a number of rights and principles guaranteed under the Convention on the Elimination of all forms of discrimination against women (CEDAW), ratified by Tanzania on 20 August 1985. The Convention condemns all forms of discrimination against women and girls (art.2), requires the modification of social and cultural patterns of conduct in order to eliminate discrimination against women and girls (art.5), guarantees their right to equal access in the field of education, including access to specific educational information needed to ensure women's health and well-being such as information and advice on family planning (art.10), as well as their right to access health care services and goods without discrimination (art.12).

In this respect, we note that the Committee on the Elimination of Discrimination against Women welcomed progress made by Tanzania in the area of girls' education (CEDAW/C/TZA/CO/6, paragraph 33 and CEDAW/C/TZA/CO/7-8, paragraph 30). Nevertheless, we would also like to reiterate concerns expressed and recommendations made by this Committee in relation to the fact that girls falling victims of early pregnancies are expelled from Tanzanian schools; the lack of explicit provisions in the education legislation to prohibit the expulsion of pregnant girls from school, and the continued prevalence of the practice of mandatory pregnancy testing of girls as a precondition for admission to school and their expulsion if found to be pregnant [CEDAW/C/TZA/CO/6 paragraphs 33 and 34 and CEDAW/C/TZA/CO/7-8, paragraphs 30(b), 31(c), 34(c) and 35(d)].

With respect to preventing unintended pregnancies, the CEDAW Committee emphasizes that States are obliged to ensure that adolescents have full access to appropriate information on sexual and reproductive health, including family planning and contraceptives, the dangers of early pregnancy (GC 22, paragraph 44). The Committee urges States to take affirmative measures to eradicate social barriers in terms of norms or beliefs that inhibit individuals of different ages and genders, women, girls and adolescents from autonomously exercising their right to sexual and reproductive health (GC 22, paragraph 48).

In its General Recommendation n°28 on “women and health”, the Committee on the Elimination of all forms of discrimination against women specified that States parties should ensure girl adolescents’ access to sexual and reproductive health education that would also respect their right to privacy and confidentiality.

In its thematic report A/HRC/26/39, the Working Group on discrimination against women in law and in practice recommended States to adopt good practices to combat non-attendance by girls at school by making provision for pregnant girls and school-age mothers (para.116).

In its thematic report on health and safety, the Working Group on discrimination against women in law and in practice stressed that early marriage and adolescent pregnancy have a long-lasting impact on girls’ physical integrity and mental health. Pregnancy and childbirth are together the second leading cause of death among 15- to 19-year-old girls globally, putting them at the highest risk of dying or suffering serious lifelong injuries as a result of pregnancy. For example, up to 65 per cent of women with obstetric fistula, which is a severely disabling condition and often results in social exclusion, develop this condition as adolescents (A/HRC/32/44, paragraph 34).

The Working Group recommended, inter alia, that States take effective measures to prevent child marriage and adolescent pregnancies and provide girls with comprehensive education based on scientific evidence on matters of health, including sexuality and allow pregnant girls and adolescents to terminate unwanted pregnancies, as a measure of equality and health, so that they can complete their school education and protect them from the high risk to life and health, including from obstetric fistula, in continuing to bring a pregnancy to term [A/HRC/32/44, paragraphs 105 (d) (i) and (iii)]. The Working Group also recommended that States provide age-appropriate, comprehensive and inclusive sexuality education based on scientific evidence and human rights, for girls and boys, as part of the mandatory school programmes and stressed that sexuality education should give particular attention, including to preventing early pregnancies [A/HRC/32/44, paragraph 108(i)].

Similarly, in a recent report focusing on the right to health of adolescents, the Special Rapporteur on the right to health stressed that lack of access to safe reproductive health services and information contributes to adolescent girls among the most at risk of dying or suffering from serious or lifelong injuries associated with early pregnancies and childbirth (A/HRC/32/32, paragraph 5). The Special Rapporteur recommended that States should introduce measures to raise adolescents’ awareness of their rights to sexual and reproductive health and to services and goods at the family, school and community levels and insisted that age-appropriate, comprehensive and inclusive sexuality education, based on scientific evidence and human rights, should be part of the mandatory school curriculum, with special attention given, inter alia, to preventing early pregnancy and sexually transmitted infections (A/HRC/32/32, paragraph 91).

We would like also to refer your Excellency’s Government to the Convention on the Rights of the Child (CRC), ratified by Tanzania on 10 June 1991, which guarantees

girls' rights to non-discrimination (art.2), their right to education (art.28), right to be free from inhuman and degrading treatment (art.37(a)), privacy and physical integrity (art.16).

The Committee on the Rights of the Child, in paragraph 31 of its General Comment n°4 (2003) on “Adolescent health and development in the context of the CRC”, has specified that “adolescent girls should have access to information on the harm that [...] early pregnancy can cause”. It also urges States “to develop policies that will allow adolescent mothers to continue their education”. In its General Comment n°15 on “the right of the child to the enjoyment of the highest attainable standard of health”, the Committee stated that “discrimination based on adolescent pregnancy, such as expulsion from schools, should be prohibited, and opportunities for continuous education should be ensured” (para.56).

We note that the Committee on the Rights of the Child acknowledged efforts made by Tanzania to review certain discriminatory legislation to ensure that children's rights are not breached (CRC/C/TZA/CO/2, paragraphs 26). However, we would like to reiterate concerns expressed and recommendations made by this Committee in relation to the persistence of discrimination in legislation as well as in practice against teenage pregnant girls and teenage mothers (CRC/C/TZA/CO/2, paragraph 26 and 27 as well as CRC/C/TZA/CO/3-5, paragraphs 25 and 26).

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in article 16 of the African Charter on the Rights and Welfare of the Child ratified by Tanzania on 16 March 2003. In the context of health-related abuses, the Special Rapporteur on torture has stated that “the focus on the prohibition of torture strengthens the call for accountability and strikes a proper balance between individual freedom and dignity and public health concerns” (A/HRC/22/53 para.83). Degrading physical searches, forced pregnancy testing and expulsion from school falls within the ill treatment rubric, as the intentional punishment of girls for becoming pregnant should be understood as a form of discrimination and causes irreparable harm on the girls' physical, psychological health and well-being.

We would also like to bring to Your Excellency's attention Article 1 of the United Nations Declaration on the Elimination of Violence against Women which provides that the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Finally, we would like to recall the joint statement with African Commission on implementation of SDGs and sexual and reproductive rights of 24 September 2015 which reaffirms that States have an obligation to take concrete measures to address barriers faced by adolescent girls in accessing comprehensive and evidence-based information on sexuality and reproduction, including timely information and education on prevention of early and unwanted pregnancies. The joint statement also emphasizes that adolescents

need services that respond to their specific sexual and reproductive health needs as well as ensure that they continue and complete their education.