

Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE:
AL TZA 1/2018

22 February 2018

Excellency,

We have the honour to address you in our capacities as Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 15/23, 26/17, 34/18, 33/9 and 32/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **governmental decisions expelling and excluding pregnant girls and adolescent mothers from attending schools and barring the dissemination of materials relevant to this issue.**

The subject of the expulsion and exclusion of pregnant girls and teen mothers from schools was the topic of a previous letter sent to Your Excellency's Government on 14 August 2017 by 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. We regret that the reply received from Your Excellency's Government on 16 August 2017 did not address the substance of the communication.

According to the information received:

It is reported that in Tanzania more than 69,000 girls left or were forced to leave school before completing their education in 2015, and approximately 6,000 pregnant students are expelled from schools each year in Tanzania.

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.

Pregnancy testing occurs immediately prior to school admission 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, in public, 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.

Expulsion and exclusion of pregnant students and teen mothers is considered mandatory regardless of the circumstances of their pregnancy, including for those students who have become pregnant as a result of sexual and gender-based violence or coercion. Girls who are expelled or excluded on grounds of pregnancy are not provided reproductive health care services during pregnancy, compounding the risks to life and health inherent in pregnancy at a young age.

On 4 August 2017, the High Court of Tanzania issued a judgment upholding the Government's application of Regulation 7(b) of the Education (Expulsion and Exclusion of the Pupils from Schools) Regulations, 2002, GN No. 295 of 2002, which the Government interprets and applies to exclude pregnant girls from schools. In its ruling the High Court refused to find a discriminatory impact of the Government's targeting of pregnant girls through its interpretation of the rule permitting exclusion of a child if the "health" of a pupil makes it "undesirable" for the pupil to remain in school. The Court also held that there was insufficient evidence of a discriminatory impact of coercive and mandatory pregnancy tests and the exclusion or expulsion of girls on grounds of pregnancy.

During the week of 25 September 2017, the Tanzania Communications Regulatory Authority contacted television and radio outlets that had been broadcasting a media spot that aimed at raising public awareness of the barriers to girls' education, including the risks of sexual and gender-based violence experienced by girls traveling to and from school, and the impact of pregnancy on the right to education. The letters demanded that the media stations cease to show the media spots, as they were considered to infringe on Tanzanian editorial policies and show Tanzanian society in a bad light.

Without prejudging the accuracy of these allegations, we wish to reiterate our serious concern regarding any exclusion or expulsion of pregnant girls and young women from attending school or taking exams, which constitutes discrimination and is based on stigmatising attitudes, beliefs and stereotypes, as well as the discriminatory practices implemented by the Ministry of Education and Vocational Training and the schools, 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 and reproductive self-determination, as well as the rights to privacy, and to physical and psychological integrity, autonomy and

dignity, and the right to be free from cruel, inhuman, and degrading treatment. The practice of non-consensual and compulsory “testing” amounts to humiliating and degrading treatment.

We also wish to express deep concern at the suppression of a media spot which seeks to promote the human right to education for all, without discrimination as well as to denounce and combat gender-based violence. This form of censorship deprives Tanzanians from educational material conveying human rights values and represents a severe restriction on the right to freedom of expression, as it impedes the free exchange of information on matters of interest to the general public.

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.

As 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 and to health.
3. 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.
4. Please provide information regarding any measures taken to ensure the protection of school girls from sexual and gender-based violence and to facilitate a conducive school environment for girls.
5. Please provide information on the legal basis of the orders banning the broadcast of the media spot advocating for girls' education, and explain how they are compatible with article 19 of the International Covenant of Civil and Political Rights and article 9 of the African Charter on Human and Peoples' Rights
6. Please provide information about the measures taken by your Government to ensure non-discriminatory access to a full range of reproductive

healthcare services, especially for girls and adolescents, including information and counselling relating to contraception, pregnancy and childbirth.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

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

Alda Facio

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

Koumbou Boly Barry

Special Rapporteur on the right to education

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Dainius Puras

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

Dubravka Šimonovic

Special Rapporteur on violence against women, its causes and consequences

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), the right to one's privacy and family (art.17), and the right to life (art. 6), which may be implicated when girls and adolescents seek out risky abortions or carry high-risk pregnancies as a result of these policies. The African Charter on Human and Peoples' Rights (ACHPR), ratified by Tanzania on 18 February 1984, guarantees the right to be free from any form of discrimination, including based on sex (art. 2). More specifically, ACHPR calls upon the State to 'ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions' (art.18).

The abovementioned alleged facts also indicate a violation of the right to the highest attainable standard of physical and mental 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. In this connection, the right to health, as defined in article 12.1 of the ICESCR is an inclusive right which extends not only to timely and appropriate healthcare but also to the access to health-related education and information, including on sexual and reproductive health (General Comment 14 of the Committee on Economic, Social and Cultural Rights, GC 14, para.11). Under ICESCR article 12, States have the obligation to respect the right to health by, inter alia, abstaining from imposing discriminatory practices relating to women's health status and needs; refraining from limiting access to contraceptives and other means of maintaining sexual and reproductive health (GC 14, para. 34). States are also under the obligation to promote health education and information campaigns, in particular with respect to sexual and reproductive health, traditional practices. (GC 14, para.36). Under ICESCR article 12, States should seek to eliminate discrimination against women, by promoting women's right to health throughout their life span, including through interventions and policies providing for sexual and reproductive services (GC 14, para. 21). For the realization of the right to health of adolescents, States should develop youth-friendly healthcare, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services. (GC 14, para.23). Finally, the prevention, treatment and control of diseases requires preventing and educational programmes for behaviour-related health concerns such as those adversely affecting sexual and reproductive health, and the promotion of social determinants of good health, such as gender equity. (GC 14, para.16).

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). Further, the Protocol to the African Charter on the Rights of Women in Africa (the Maputo Protocol), ratified by Tanzania on 03 March 2007, calls for the elimination of all forms of discrimination against women (art. 2), guarantees equal opportunity and access to education for girls, and further requires the adoption of special positive measures to promote the retention of girls in schools (art.14) and requires that women's reproductive health rights are respected and promoted by taking all appropriate measures including the provision of health services, information, education and communication programmes (art.15).

In this regard we would also like to call Your Excellency's Government's attention to Committee on the Elimination of all forms of Discrimination against Women's (the CEDAW Committee) general recommendation No. 36 on the right of girls and women to education, which emphasizes the danger that gender stereotyping and gender-based violence can interfere with the basic human right to education (para. 4), emphasizes the obligation of States to protect girls and women from any form of discrimination that denies them access to all levels of education (para. 6), and specifically calls on States to review and/or abolish laws and policies that allow the expulsion of pregnant girls and teachers and ensure that there are no restrictions on their return following childbirth (para. 24(g)). We would also like to recall to Your Excellency's Government target 5 of Sustainable Development Goal 4, ensure inclusive and equitable quality education and promote lifelong learning opportunities for all, which calls for the elimination of gender disparities in education, and particularly emphasizes the need to provide equal educational access to children in vulnerable situations.

With particular regard to the risk that girls who become pregnant as a result of sexual or gender-based violence are then deprived of their right to education, we would like to also recall the CEDAW Committee's general recommendation No. 35 on gender-based violence, updating general recommendation No. 19, which calls on States to ensure access to services, including access to financial assistance, gratis or low-cost, high-quality legal aid, medical, psychosocial and counselling services, *education*, affordable housing, land, childcare, training and employment opportunities for women who are victims/survivors and their family members (para. 31(a)(iii), emphasis added).

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 (GR 22, para. 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 (GR 22, para. 48). In its General Comment No. 2 on Article 14 (1) (a), (b), (c) and (f) and

Article 14 (2) (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the African Commission on Human and Peoples' Rights affirms in paragraphs 51-52 the particular importance of ensuring that adolescent girls and youth have access to comprehensive information and education regarding sexual and reproductive rights.

Similarly, 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), and 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, para. 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, para. 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), and to the African Charter on the Rights and Welfare of the Child (ACRWC) ratified by Tanzania on 16 March 2003, which provides for the right to freedom from discrimination based on sex or gender and the enjoyment of all rights irrespective of any status (art. 3), and guarantees the right to education without discrimination, further requiring the adoption of special measures in respect of girls to ensure their equal access to education (art. 11). Above all, we would like to call attention to the cardinal principle enshrined under the CRC (art.3) and the ACRWC (art. 4) that the 'best interest of the child' shall be the primary consideration in all actions undertaken by authorities concerning children.

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" (para56).

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 ACRWC. 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. Such searches are also a violation of the right to dignity found in article 5 of the ACHPR and article 3 of the Maputo Protocol.

We would like to recall the joint statement, issued 24 September 2015, of a number of international and regional human rights experts, including with the Special Rapporteurs on the Rights of Women and Human Rights Defenders of the African Commission on Human and Peoples’ Rights regarding implementation of SDGs and sexual and reproductive rights (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16490&LangID=E>), 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. We would also like to recall the Joint Letter of Appeal of the African Commission Special Rapporteur on the Rights of Women and the Chairperson of the African Committee of Experts on the Rights of the Child, transmitted on 03 August 2017 expressing concern that the President’s statement of 22 June 2017 banning pregnant girls and teen mothers from school undermines the right to education and the right to equality of girls.

We would further like to recall that several human rights Treaty Bodies have, in their concluding observations regarding Tanzania, expressed grave concern at the human rights violations inherent in the exclusion and expulsion of pregnant or married girls from school, including the CEDAW Committee (CEDAW/C/TZA/CO/7-8, para. 30), the Committee on the Rights of the Child (CRC/C/TZA/CO/3-5, paras. 25, 42, 58-59), and the Committee on Economic, Social and Cultural Rights (E/C.12/TZA/CO/1-3, para. 27).

Finally, we would like to note that the suppression of the media spot advocating for girls’ education appears to be in contravention of the right to freedom of opinion and expression, guaranteed by article 19 of the ICCPR, and the right to receive information and express or disseminate opinion, guaranteed by article 9 of the ACHPR.

In this vein, we wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to recognize the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 4 and 19 (3) of the ICCPR and 29 (2) of the Universal Declaration on Human Rights. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and

proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We also wish to recall to Your Excellency's Government's attention the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which affirms in Article 6 the rights of everyone, individually and in association with others, to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.