



**Tanzania
UPR Submission
September 2015**

This submission highlights concerns about Tanzania's compliance with its international human rights obligations since its last Universal Periodic Review (UPR) in 2011. It focuses on children's rights and the rights of vulnerable groups, in particular sexual and gender minorities, sex workers, and people who use drugs. It is based on field research conducted by Human Rights Watch. The submission also offers a recommendation to advance Tanzania's commitment to justice for serious crimes in violation of international law as a state party to the International Criminal Court.

Child labor

Child labor remains a critical issue for Tanzania. Poverty drives many children into child labor. Children work in various sectors, including agriculture, domestic work, and fishing. Child labor in artisanal and small-scale gold mining is particularly dangerous.

Children as young as 8-years-old risk their lives working in licensed and unlicensed small mines. Children in the Geita, Kahama and Chunya districts dig and drill in deep unstable pits. Sometimes there are pit collapses, causing injury and death. Children also transport bags of gold ore of up to 60 kilograms, then crush the ore into powder. Human Rights Watch documented numerous cases where these mining activities cause children to suffer from back pain. Child miners have suffered injuries from pit collapses or accidents with tools. They also face long-term health problems such as respiratory disease and musculoskeletal problems from carrying heavy weights.

Some child laborers work with mercury, a toxic metal that is particularly harmful to children. It attacks the central nervous system and can cause irreversible developmental and neurological problems. Laws and regulations on mercury are poorly implemented; mining inspectors often give priority to collecting revenue. The Tanzanian healthcare system is ill-equipped to prevent, treat, and diagnose mercury intoxication.

Girls on and around mining sites, particularly those working in small restaurants, are sometimes sexually harassed, pressured into having sex, and commercially sexually exploited. Sexual exploitation and abuse also puts girls at heightened risk of infection with HIV or other sexually transmitted diseases, unplanned pregnancy, and attendant consequences for their education.

Child labor occurs despite a strong law and policy framework. Tanzania's Law of the Child Act and Employment and Labor Regulations Act prohibit hazardous child labor under the age of 18, and mining regulations specify that mining work is prohibited for anyone under 18. Despite accepting the recommendations made at the 2011 UPR to fully apply the Law of the Child Act and "address child labor as a matter of urgency," child labor laws remain largely unenforced. And while the Tanzanian government has launched an ambitious National Action Plan on Elimination of Child Labor in 2009, this plan has not been implemented, and labor inspectors rarely inspect small-scale mines for child labor.

Various socio-economic causes underlie child labor. For instance, many child laborers are orphans who lack financial and other support from their guardians. Their lack of basic care leaves them at increased risk of exploitation and abuse.

Recommendations:

- Ensure that labor and mining officials regularly inspect licensed and unlicensed mines, withdraw children from mining work, and impose penalties on those who employ child labor.
- Ensure that labor officers, social welfare officers, and social workers identify and protect girls who work in mining from sexual abuse.

- Address the threat of mercury by:
 - Urging an immediate end to mercury use by anyone under age 18 as part of broader efforts to raise awareness and to promote mercury-free alternatives;
 - Developing a health response to address mercury exposure and poisoning in artisanal mining communities, with a focus on child health.
- Strengthen and intensify efforts to formalize the artisanal and small-scale gold mining sector without engaging in a mass clampdown on unlicensed mining activity.
- Support orphans and other vulnerable children through the National Costed Action Plan on the Most Vulnerable Children and the Tanzania Social Action Fund, which provides conditional cash transfers to vulnerable populations.

Child marriage

Women and girls in Tanzania face discrimination in law and practice, and high levels of sexual and domestic violence. The 2010 Tanzania Demographic and Health Survey found that one in two married women ages 15–49 reported having experienced emotional, physical, and sexual violence at the hands of their current or former husbands. Although rates of child marriage have decreased, the number of girls marrying remains high. Four out of 10 girls are married before their 18th birthday. Some girls are as young as 7 when they are married.

Existing Tanzanian laws do not adequately protect women and girls against violence, including child marriage, and are also poorly implemented. During Tanzania’s 2011 UPR review, the country accepted to end practices that are discriminatory and lead to violence against women and girls. Yet, many of Tanzania’s laws regulating marriage and divorce are inconsistent. Tanzania’s Marriage Act of 1971 permits child marriage for girls; it sets the minimum marriage age for girls at 15 with parental consent and at 18 for boys. It also permits the marriage of 14-year-old children when a court is satisfied that special circumstances exist. The laws fail to consistently define who is a child, to require free and full consent to marriage, and to criminalize marital rape. The government has frequently announced its intention to amend existing discriminatory laws, but no reforms have been announced or introduced. During its previous UPR, Tanzania rejected a recommendation to “amend marriage law in order that the minimum age for marriage for both girls and boys is set at 18.” In October 2014, the Tanzanian Constituent Assembly adopted the final draft of the proposed new constitution that includes a provision defining a child as every person below the age of 18. The final draft, however, fails to explicitly set a uniform minimum marriage age of 18 for both boys and girls.

Victims of child marriage in Tanzania are often reluctant to seek help from authorities. They lack confidence that the justice system will protect them, often due to bribery. Victims often do not know their rights and they are subject to threats of retaliation from the perpetrator and family, and to community pressure to solve conflicts internally. Those who do seek justice face many hurdles, including barriers to access the formal justice system and pressure to have matters adjudicated through problematic customary processes. These problems are perpetuated by discriminatory customary and Islamic laws and practices on marriage, lack of shelters for survivors of gender-based violence, and poor birth and marriage registration.

Tanzanian schools routinely conduct mandatory pregnancy tests and expel pregnant and married girls (see below).

Recommendations:

- Create a comprehensive national strategy to combat child marriage, with input from women’s and children’s rights groups, health professionals, and other service providers; coordinate efforts among all relevant ministries; and ensure sufficient resources to implement the plan;
- Review the Marriage Act to include a uniform, internationally recognized minimum marriage of 18 for both boys and girls;
- Take the necessary steps to enact a comprehensive domestic violence law. The law should criminalize sexual violence in marriage.

Right to Education

While Tanzania has made some important progress in realizing the right to education, a number of barriers remain in place, including the cost of school, child labor, and child marriage.

Under Tanzanian law, primary education is free and compulsory, and Tanzania is required to protect children from work that interferes with their education. Tanzania has also accepted the 2011 UPR recommendation to put in place a strategy to ensure equal access to education for all and give special attention to secondary school attendance. Yet, some primary schools request financial contributions in violation of domestic and international law, prompting students whose parents are unable to pay these expenses to either seek additional income or to drop out of school. Furthermore, secondary schools officially charge fees that many families are unable to pay.

The right to education is also affected by child labor. For example, child labor in mining has caused children to skip classes or drop out of school entirely in Geita, Kahama and Chunya districts. Some children attend school but worked in the mines after school or during the weekend. Combining school and mining affects their education as it limits time to study and rest.

Furthermore, child marriage impacts access to education as girls who are married as children are usually unable to continue with their schooling. Human Rights Watch documented cases where girls were withdrawn from school to marry, and found it difficult to return to school after marriage. Girls who became pregnant or married were frequently expelled. Tanzanian government policy allows schools to expel or exclude students who enter marriage or commit an offense “against morality,” which is often understood to mean pre-marital sex or pregnancy. Tanzanian schools routinely conduct mandatory pregnancy tests of girls; a serious infringement of their rights to privacy, equality, and autonomy. In June 2014 the cabinet passed the Education and Training Policy, which explicitly allows the admission of girls to school after they have given birth. However, the policy does not address the position of married girls explicitly.

Recommendations:

- Improve access to education in mining areas by:
 - Instructing district officers to investigate and eliminate illegal primary school fees;
 - Increasing access to secondary education by allowing children to retake the Primary School Leaving Examination;
- Increase opportunities for vocational training;
- End pregnancy testing in schools and ensure that teachers and school administration officials are aware that the practice is prohibited.
- Take the necessary legislative and administrative steps to end the exclusion of married and pregnant girls from school and revise the Education and Training Policy to include a provision that allows both married and pregnant students to continue with their education.

Vulnerable groups suffering police abuse and denial of health care

The Tanzanian government has identified sex workers, people who inject drugs, and men who have sex with men (MSM) as “key populations” in the HIV epidemic – populations that are particularly at risk of being infected with or transmitting the HIV virus, and who should receive particular attention in HIV prevention and treatment efforts. Unfortunately, all three groups also face violence and discrimination from state agents—treatment that drives them further underground and away from health services.

Tanzanian law criminalizes sex work and personal use of any narcotic drug or psychotropic substance. It also criminalizes consensual sexual conduct between adult males in mainland Tanzania, and male homosexual conduct and lesbianism in Zanzibar. Prosecutions for same-sex sexual conduct have not taken place in recent years, but the law – and the abusive way the police behaves towards lesbian, gay, bisexual, transgender, and intersex (LGBTI) people, using the law as a pretext – marginalizes this group. It also increases their vulnerability to police blackmail and extortion.

Human Rights Watch documented numerous cases of grave rights violations against vulnerable groups by the police in Dar es Salaam, Zanzibar, Tanga, Arusha, Mwanza, Mbeya, and Chunya, including torture, rape, assault, arbitrary arrest, extortion, and a refusal to accept complaints by victims of crime. Police have also sexually, physically, and emotionally abused girls who were victims of commercial sexual exploitation.

Semi-official security forces, mostly from the Sungu Sungu vigilante group, are implicated in violence against at-risk populations. These violations are causing members of at-risk groups to become

increasingly marginalized and distrustful of the state. They are often afraid to report violence and other crimes, including those committed by the state agents, because they themselves are considered criminals under the law.

Members of marginalized populations also face challenges in realizing their right to the highest attainable standard of health. The Ministry of Health is making increased efforts to train and sensitize health workers so that they are better prepared to work with sex workers, sexual and gender minorities, and people who inject drugs. However, members of these at-risk groups continue to face human rights violations in the health sector, including denial of services, verbal harassment and abuse, and violations of confidentiality and the right to information, in violation of international human rights law and, often, Tanzanian law. Onerous requirements in the health sector, while not intended to be discriminatory, form barriers to access to health care for at-risk groups, such as the requirement to have a form from the police in the event of rape in order to receive treatment. Water-based lubricants, which are listed as an essential HIV prevention tool in Tanzania's Third National Multi-sectoral Strategic Framework on HIV and Aids, are virtually unavailable in Tanzania. Organizations that have attempted to import water-based lubricants have not received authorization to do so. In 2014, the government shut down one organization that provided health services to men who have sex with men, claiming that the group was "promoting homosexuality." This decision constituted a violation of the freedom of association and also interrupted essential HIV prevention and outreach.

Recommendations:

- Publicly call for an end to police abuse, discrimination in the healthcare sector, and other forms of discrimination against sex workers, people who use drugs, and LGBTI people.
- Issue orders to all police that no crime victim should be denied assistance, arrested, or harassed on the basis of their sexual orientation or gender identity, or their status as a sex worker or drug user.
- Ensure that members of at-risk populations can report crimes without facing the risk of arrest, and establish police liaisons to these communities.
- Establish an independent civilian policing oversight authority mandated to receive complaints regarding police misconduct, carry out investigations, and refer such complaints to prosecutors.
- Issue orders to health workers that discrimination against members of marginalized groups will not be tolerated, and conduct trainings and inspections to ensure this order is followed.
- Decriminalize all consensual sexual activity between adults, including consensual adult sex work.
- Decriminalize personal drug consumption and possession.
- Ensure that organizations representing marginalized groups, including LGBTI people and sex workers, are able to register and maintain their registration in accordance with Tanzanian law.
- Ensure that condoms and water-based lubricants are made available and affordable for at-risk populations, both through direct provision by the Ministry for Health and by facilitating the work of NGOs that supply them.
- Train police officers responsible for "Gender Desks" at police stations on sexual orientation, gender identity, and the human rights of sex workers and children engaged in sex work, and mandate the Gender Desks to address crimes committed against LGBTI people and sex workers.
- Take all necessary measures to end police abuse against sex workers including prosecution of those responsible;
- Ensure that anyone who uses, offers, obtains, procures, or provides a child for the purposes of commercial sexual exploitation is appropriately prosecuted, including when the perpetrator is a police officer or other state agent. Ensure that children who are commercially sexually exploited or engaged in sex work are not prosecuted or penalized.

Recommendation on the International Criminal Court:

- Implement the Rome Statute of the International Criminal Court (ICC) in national legislation, including by incorporating provisions to cooperate promptly and fully with the ICC and to investigate and prosecute genocide, crimes against humanity and war crimes before its national courts in accordance with international law.