



## LEGAL AND HUMAN RIGHTS CENTRE

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### QUESTIONNAIRE ON DEPRIVATION OF LIBERTY OF WOMEN AND GIRLS – TANZANIA

**Prepared By: Legal and Human Rights Centre, Tanzania**

The Working Group on the issue of discrimination against women in law and in practice will present a thematic report on women deprived of liberty to the 41st session of the Human Rights Council in June 2019. This report will be produced in the context of the Working Group focus on key areas affecting the human rights of women and girls and will aim at reasserting women's right to equality and countering rollbacks in this area,

In this regard, the Working Group would like to seek inputs from States and other stakeholders to inform the preparation of this report in line with its mandate to maintain a constructive approach and dialogue with States and other stakeholders to address discrimination against women in law and practice,

The Working Group intends to take a comprehensive approach to the issue by including various forms of restriction or interference with women's personal liberty or movement by state and non-state actors, including on the basis of their sex and prescribed gender roles. Thus, deprivation of liberty of women and girls can manifest in a variety of settings, ranging from detention in penitentiary institutions to different forms of forced confinement, because of decisions by authorities, families, communities or private groups. The report will examine the causes, nature and extent of the deprivation of liberty of women and girls, with particular attention to the impact of multiple and intersecting forms of discrimination against women and girls. In answering the questions below, please also highlight the following crosscutting issues: a) any good practices you may have identified in addressing the causes and extent of deprivation of liberty of women and girls; b) the main developments in law or practice in the past five years; and c) the main challenges within your country or region in tackling the issue.

#### **I. Justice system**

1. What are the main causes for women coming into conflict with the law and facing the associated deprivation of liberty, including pre-trial detention? Which are the groups of women who are most vulnerable and why? Please list the types of offenses for which women, or any particular group of women, are typically charged with, including administrative offenses.

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- (a) *Main causes for women coming into conflict with the Law and facing the associated deprivation of liberty including pretrial detention in Tanzania.*
- (i) Criminal charges
  - (ii) Civil charges (this is done by the Plaintiff when the woman fails to pay the owed amount or property)
  - (iii) Forced confinement mostly by families and the government or even communities sometimes as a punishment for a wrong doing locally
  - (iv) Imprisonment when one has been convicted or a criminal offence – and where the women has no bail
  - (v) Pretrial detention for unbailable offences
  - (vi) Bail pending appeals
  - (vii) Military punishments
  - (viii) Bad cultural practices like detention by families husbands and local healers because of diseases
  - (ix) Detention because of diseases like fistula, cancer or HIV
  - (x) Failure to pay fine after being convicted
  - (xi) Poverty
  - (xii) Abduction
- (b) *Groups of women who are most vulnerable and why?*
- (i) Poor women
  - (ii) Women in rural areas because they do not know their rights and the laws or where to seek help
  - (iii) Women in the Military due to military punishments or security forces
  - (iv) Young girls because they cannot defend themselves mostly from the people who are controlling them
  - (v) Women in conflict with the law
  - (vi) Women suffering mental illnesses or other diseases
  - (vii) Small scale entrepreneurs
  - (viii) Sex workers
- (c) *Please list the types of offenses for which women, or any particular group of women, are typically charged with, including administrative offenses.*
- (i) Murder
  - (ii) Drug trafficking
  - (iii) Homicide
  - (iv) Drug trafficking
  - (v) Money laundering
  - (vi) Treason

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(vii) Terrorism

2. *Please indicate if there are cases of women facing detention in relation to civil law suits and identify the particular groups of women mostly affected.*

Yes in Tanzania mostly in civil suits the Plaintiff alas pay for a detention of the defendant is the defendant fails or pay. Sometimes women doing small business are detained because they have failed to pay a loan they took in their groups or individually. This is a civil suit but mostly because the loan providers are always powerful and detain them sometimes even add criminal charge to justify their detention but in reality they are civil suits.

Women mostly affected are those in poor backgrounds doing local or small scale entrepreneurs, they always acquire loans in groups or alone and when they fail to pay they are taken to prison which make it even harder for them to finish the loan.

Also failure to pay tax with which mostly one is supposed to pay with a fine but most women are affected as they are taken to prison because they have failed to pay taxes by the Tanzania revenue Authorities.

3. *What are the main challenges for women's access to justice, including, for example, the availability and quality of legal representation, the ability to pay for bail, and the existence of gender stereotyping and bias in judicial proceedings?*

- (i) Legal representation (few lawyers)
- (ii) Poverty
- (iii) Ignorance of law and the Justice systems
- (iv) Bias in the Judicial systems
- (v) Poor justice systems service delivery
- (vi) Labelling especial to sex workers
- (vii) Inferiority as many women think they cannot fight for their rights
- (viii) Fear
- (ix) Patriarchy system
- (x) Trust in the Justice system

4. *What have been the main drivers for the increasing or decreasing of the female prison population in your country in the past decade? To what extent are non- custodial measures used, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)?*

(a) *Main Drivers for decreasing or increasing female Prison population I the past decade.*

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- (i) Availability and unavailability of Legal representations
  - (ii) Increase and decrease of women offenders
  - (iii) Ignorance of law
  - (iv) Prerogative mercy
  - (v) Appeals
  - (vi) Case dismissals
  - (vii) Nolle prosequi
- (b) **To what extent are non- custodial measures used, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)?**

- (i) Rule no 57 is not practiced at all as many female offenders face charges just like men, the only difference is that there women prison that are treated just like men in detentions or prisons. During Trials and sentencing are not gender practiced and the rule is not in the Tanzania Legal System.
- (ii) Rule 58 is not practice too many women are separated from their families and sometimes the family does not even know they are in Prison. The Legal and human Rights Center has been visiting women and other prisons and many women tell these stories. There is a case where two women were even separated from their husband and children and they were imprisoned for 6 years with which the families do not know where they are as when they were arrested they were detained in a remand prison with no information to relatives, tried convicted and sentenced without legal representation, information to families with which they are finalizing their sentence in October, 2018. They left children who depended on them.
- (iii) Rule 59; there are safe houses owned by organizations to protect women and girls who have faced Gender based violence's and sexually violence's. These houses women stay and leave when they want to; they stay there for protections from the offenders, or evidence purposes or that they cannot go back to their hoes and maybe the families do not want them back. However these houses are very few. These are not even in the Tanzania Legal systems
- (iv) Rule 60; resources are not available or not even provided to assist women for counselling to the survivors of GBV and sexual violence's is not provide in most cases and when provided one has to pay,, therapy courses are not o free, treatment for mental disability is given at hospitals but to all people not specifically to women offenders, education and training program are provided in few prisons to teach them life skills only and not otherwise.
- (v) Rule 61; mitigation in Tanzania is not much considered, so issues like criminal records are not considered is the discretion of the Judge to consider ones mitigation factor and when considered its only that a sentence is reduced.
- (vi) Rule 62; there is no post sentencing services to assist women offenders to live freely in communities. Some are traumatized with the treatment they receive in prison or remands but after they are released no any other post services to care for them like counselling

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- and economic support, also the communities perceive women offender as cruel and do not it to live I communities.
- (vii) Rule 63: Parole is given to those who have shown good behavior and have saved at least 1/3 of the sentence. In Tanzania Prezant women are not considered for parole if they have not fulfilled the parole qualifications. This Rule is not used as a pregnant woman or who has dependent children does not make her qualify for pareole, she has to show god behavior and save at least 1/3 of the sentence. This rue is not used and not even in the Tanzania Legal system thus children are born in Prisons and these women are not prioritized for parole.
  - (viii) Rule 64; is not practice as pregnant women and with dependent children are sentenced without considering the seriousness of the crime committed. The best interest of children is not even considered as many women give birth in Prison and children live in prisons even if the Law of child Act provided for their protection.
  - (ix)Rule 65; Female Juvenile offenders are treated like male juvenile offenders and sometimes they are acquitted and charges are dismissed especially with unserious offences and criminal records or if the juvenile person does not know the graveness of the offence. But in most cases they are put in same prisons with female offenders and even cases are not herd in camera as how the law requires.
  - (x) Rule 66; Tanzania has ratified the convention against Transnational Organized Crime and its protocol in 2006.

## *II. Other institutions*

*1. What other institutions outside the justice system exist in your country wherein women and girls are institutionalized on grounds such as care, correction, protection and prevention against potential harms, etc.? Please list the groups of women and girls who are most concerned in each situation.*

- (i) Religious centers
- (ii) Non-government organization
- (iii) Safe houses for survivors of GBV, domestic and sexual violence's
- (d) **Please list the groups of women and girls who are most concerned in each situation**
  - (i) Adolescent Girls and Young Women
  - (ii) Women living with HIV
  - (iii) Women in rural areas
  - (iv) Sex workers
  - (v) Small scale entrepreneurs
  - (vi) Women segregated by communities because of diseases, cultural variations, criminal record or divorce.

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*2. Please explain the decision-making process for the institutionalization of women and girls in each situation, including the role of women and girls themselves in the decision on institutionalization. Please highlight any good practices in terms of enabling women to exercise agency within institutional systems, with due respect to their rights?*

The best practice is to involve women and educate women on issues of their rights and how to access Justice

Ensure women who have been detained or imprisoned are counselled and also have the best life skills so as to live after Prison

Ensure women that have children are visited by their families and those who give birth in prison are not separated from their children but also children are protected.

Create groups of young girls or women in relation to their sameness whereby they will assist each other.

### III. Forced confinement in private contexts

**1. What forms of forced confinement of women and girls exist in a private or social context sanctioned by family, community or group of individuals such as abduction, servitude, guardianship and “honor” practices, trafficking, home detention, “witch camps”, widowhood rites, etc.?**

- (i) forced confinement due to diseases
- (ii) mental disabilities
- (iii) protection from Criminals charges or reporting
- (iv) abduction
- (v) Witch camps or local healers
- (vi) Widow hood and birth rites
- (vii) Marriage rites
- (viii) Trafficking
- (ix) Forced labor
- (x) Forced marriages
- (xi) Servitude
- (xii) Honor practices
- (xiii) Kidnapping
- (xiv) Local punishments

**2. Please identify the groups of women and girls who are most affected by these situations.**

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- (i) Adolescent Girls and Young Women
- (ii) Women living with HIV
- (iii) Women in rural areas
- (iv) Sex workers

**3. What is the role of law and policy (including customary law and authorities) in your country concerning these types of confinement?**

The Customary laws support most of these issues but the laws of the country do not support and it's even a crime to abduct, kidnap, force marriage or human trafficking. The laws provide for punishments for those who are found guilty of the above.

Issue of customary law and practices is always contradicting as most times they don't agree with the law but the people who believe in those customs do follow them whether publicly or in secrecy.

Tanzania is still creating awareness and educating the communities to stop these customary practices and has developed laws and policies to protect women and girls against them.

**IV. Migration and crisis situations**

**1. What are the specific risks of detention and confinement encountered by women on the move in the context of asylum seeking, internal displacement and migratory processes?**

- (i) detention by police
- (ii) Kidnapping
- (iii) Servitude and oppression
- (iv) Forced labour

**2. What is the policy relating to the administrative detention of women migrants including pregnant women and women with children?**

The 1995 Immigration Act provides both administrative and criminal remedies for people charged with violations of the Act. Irregular migrants awaiting deportation can be held in administrative detention. The Act does not specify a limit to the time a person can be held in this form of detention. Non-citizens can also be charged with crimes for irregular entry or stay. Penalties can include a fine not exceeding 100,000 shillings (approx. 50 €) and/or imprisonment for a term not exceeding three years

A suspected "prohibited migrant" may be arrested and brought before a magistrate. Once ruled to be in an irregular situation, he/she can be placed in custody until deportation. Additionally, the Act

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provides for the administrative detention of anyone whose entry or stay in Tanzania was unlawful; whose presence in Tanzania is considered to be “a danger to peace and good order”; or who is “for any other reason undesirable.” When the prohibited migrant is waiting to be brought before a court the period of detention is not to exceed 28 days.

It is unclear to what extent these practices are still applied. According to a 2013 survey conducted by Asylum Access, one issue with Tanzania’s detention policy is the fact that sentences for those convicted of illegal entry vary greatly, resulting in some migrants serving much longer sentences than others. In addition, migrants who are able to pay a fine for illegal entry instead of serving a sentence continue to be detained while awaiting deportation.

Under Tanzanian law, the detention of children is prohibited. But the law and policy is silent on detention of pregnant women and women immigrants.

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