



Universal Periodic Review (UPR) for Tanzania

12th Session (October 2011)

**Joint NGO Submission by
Franciscans International – FI- (General Consultative Status with UN ECOSOC),
Foundation for Marist Solidarity International (FMSI)**

in collaboration with the Franciscan Family in Tanzania

Submitted in Geneva, March 2011

I. Executive summary

1. This stakeholder's report is a joint submission of the above-mentioned organizations. The Human Rights concerns in this submission relate to the following areas: *justice system and conditions in prisons, human trafficking, indigenous peoples rights, and right to education*. Each section conveys recommendations to the Tanzanian Government.
2. The data and information obtained for this submission came from various sources and includes information gathered during FI's regional training on the Universal Periodic Review (UPR) in Tanzania, followed by national consultations held between July and October 2010 by members of the Franciscan Family and other civil society organizations in Tanzania.

II. Justice System and Conditions in Prison

3. Police corruption, violation of legal procedures, impunity, and judiciary corruption and harsh prison conditions are the main issues of concerns of the Franciscans working at grassroots in Tanzania. Human rights abuses in prisons have become a frequent practice even though the Constitution prohibits such acts providing that "*human dignity shall be protected in all activities pertaining to criminal investigations and in the execution of a sentence.*"¹
4. Overcrowding in the Tanzanian prison system remains a challenge: this is especially due to the large number of inmates in pre-trial detention. Overcrowding in prison jeopardizes decent living conditions for prisoners, and this frequently amounts to cruel, inhuman or degrading treatment. Furthermore, police and prison officers are accused of torturing and threatening suspected criminals and using excessive force against inmates and suspects.
5. In some prisons, detainees complain about being taken as slave labourers for the private sector. Prisoners are used to accomplish work on projects outside prisons and this often results in forced labour for private actors and companies.²
6. Despite the fact that the law makes provision for a Juvenile justice system, in reality such 'Juvenile' protection is not provided. In particular, young offenders are often dealt with in the normal court system and consequently cannot enjoy the specific protection envisaged for children. Of particular concern is the detention of children in common holding facilities with adults which further exposes them to sexual abuses.

¹ Article 13 (6) (d) of the Constitution of the United Republic of Tanzania.

² International Confederation Of Free Trade Unions (ICFTU) Report For The WTO General Council Review Of The Trade Policies Of Tanzania, Geneva, 25 and 27 October, 2006.

FI calls on the Government of Tanzania to:

- 7. Take immediate action to address overcrowding in prisons, including the issue of pre-trial detention which is one of the main causes for congestion;**
- 8. Ensure that children are held in separate detention centres;**
- 9. Ensure that prisoners are not subjected to torture or ill-treatment by being beaten and kept in overcrowded conditions;**
- 10. Conduct a prompt, independent and impartial investigation into all allegations of torture and ill-treatment;**
- 11. Ensure at least minimum standards of decent detention conditions for those being held, as provided by the UN Standard Minimum Rules for the Treatment of Prisoners;**
- 12. Ensure that children are separated from the adults by creating separate prisons for juveniles or creating separate sections for juveniles in the same prison;**
- 13. Provide children who are sexually abused with proper counseling and psychological treatment;**
- 14. Prevent prisoners from being used as labourers for the private sector.**

III. Human Trafficking

15. The United Republic of Tanzania is listed as a source, transit and destination country for human trafficking for the purposes of forced labor and sexual exploitation³. Trends of both internal and transnational trafficking are prevalent in the country. The incidence of internal trafficking is higher and victims are generally children from rural areas who are trafficked for forced labor in farms, mines, fishing industry or for domestic servitude and sexual exploitation in urban areas. While on the international level, there are mainly women who are trafficked for domestic work.⁴

16. Despite the magnitude of the phenomenon, the United Republic of Tanzania is not fully complying with its international obligations to combat this form of modern-day slavery⁵. The Anti-trafficking in Persons Act was enacted only in 2008, providing for the prohibition of all forms of trafficking, including for the purposes of slavery, sexual exploitation, forced labour, debt bondage, and pornography. The law sets out

³ U.S. State Dept Trafficking in Persons Report, June 2010.

⁴ International Organization for Migration (IOM), *Tanzania* (2009), available at: <http://www.iom.int/jahia/Jahia/activities/africa-and-middle-east/east-africa/tanzania/cache/offonce>.

⁵ U.S. State Dept Trafficking in Persons Report, op.cit.

punishments of both fine and imprisonment, prescribing a maximum fine of 150 million shillings and a maximum prison sentence of 20 years and includes provisions for the prevention and protection of victims⁶. Notwithstanding, the government has not made significant progress in terms of implementation of the anti-trafficking law, especially with regard to the prosecution of perpetrators and the protection of victims⁷.

FI calls on the Government of Tanzania to:

- 17. Carry out an in-depth research to identify the extent of human trafficking and its main causes in order to take appropriate measures to tackle it effectively;**
- 18. Consider the adoption of a National Action Plan against human trafficking defining comprehensive policies and programmes for the prevention, prosecution of the perpetrators and protection of victims;**
- 19. Promote awareness raising campaigns targeting the persons at risk of being trafficked;**
- 20. Increase efforts to identify, investigate and prosecute those responsible for such acts;**
- 21. Reinforce measures for the protection of victims, including their identification through provision of identity documents, and their rehabilitation and reintegration into society.**

IV. Indigenous Peoples' Rights

4.1. Lack of Legal Recognition and Non- Identification

22. Despite its support for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁸, the Government of Tanzania has not formally accepted or acknowledged the legal existence of Indigenous Peoples in its territory. Government records, data, and statistics including national censuses do not reflect the existence of the various ethnic groups in the country, including indigenous peoples. As a result, the country does not have any specific national policy or legislation on indigenous peoples that target their specific situation or circumstances.

23. However, despite lack of national data or statistics on the exact number of indigenous peoples in Tanzania, it is estimated that 10% of Tanzania' national population is

⁶ Anti-Trafficking in Persons Act, 2008.

⁷ U.S. State Dept Trafficking in Persons Report, op.cit.

⁸ The UN General Assembly adopted UNDRIP with an overwhelming support in September 13, 2007. See Tanzania's vote at:

<http://unbisnet.un.org:8080/ipac20/ipac.jsp?profile=voting&index=.VM&term=ares61295#focus>

comprised of Pastoralist and Hunter-Gatherers who have been organizing themselves as indigenous peoples. These peoples have been involved in the global indigenous movement at the international level, specifically at the UN Permanent Forum on Indigenous Issues (UNPFII) and UN Expert Mechanism on the Rights of Indigenous Peoples (UN EMRIP) where they regularly denounced alleged human rights violations committed by their government to their communities.

24. The 119 pages Poverty Reduction Strategy Paper submitted by the Government of Tanzania to the International Monetary Fund in 2006 for funding, claims that a broad consultation with various stakeholders and development partners took place in the country during the preparation of the report. However, there is no reference with respect to the “indigenous peoples” of the country. The report only mentions “Pastoralists” three times, and no mention is made of “Hunter-Gatherers” at all, despite the fact that these two communities are known to be demographically well represented. They are also amongst the most marginalized and excluded section of Tanzanian society.

4.2. Discriminatory National Policies and Programmes

25. The lack of legal recognition and “invisibility” of indigenous peoples in the country – wide national censuses in Tanzania has resulted in a number of existing national land and natural resources policies⁹ that are discriminatory to indigenous peoples. In the name of national development, the government of Tanzania has favored Foreign Direct Investment in the agricultural, mining and commercial tourism sectors over securing the rights and fundamental freedoms of its indigenous communities.

26. The National Land Policy of the Republic of Tanzania explicitly mentions that “*shifting cultivation and nomadism will be prohibited.*”¹⁰

27. Such a blatant discriminatory policy reinforces structural inequities and inequalities between the mainstream population vis a vis the already marginalized Pastoralists and Hunters–Gatherers in the country which further undermines and ignored their customary land tenure system and laws. Moreover, it has limited indigenous peoples’ access to grazing land and natural resources and threatens their main source of livelihood which contributes to their situation of chronic poverty. This is clearly contrary to the UNDRIP’s provisions which recognize the individual and collective rights of the Pastoralists and Hunter-Gatherers in Tanzania, taking into account their specific economic, social, and cultural circumstances.

⁹ See Policy Statement of the *National Land Policy* of the Republic of Tanzania, 2nd edition 1997. See more on <http://www.tzonline.org/pdf/nationallandpolicy.pdf>. In addition, the *Village Land Act of 1992* which was meant to grant security of tenure to communities like the pastoralist, hunters and gatherers has favored investment in the agricultural, tourism and mining sectors while the *Wildlife Law of 2008* grants powers the Minister in Charge of Wildlife to declare any land, including village lands, a wildlife protection area.

¹⁰ See Ibid.

4.3. Displacement and Loss of Land and Natural Resources

28. Events in July 2009 in Ngorongoro District in northern Tanzania show the total disregard towards indigenous peoples' property rights when officials of the Ngorongoro District and the Otello Business Cooperation (OBC) perpetrated harassment and violent evictions,¹¹ and burned down an estimated 200 homes of Maasai pastoralists.¹² It was reported that: *“more than two hundred homes have been destroyed; property worth millions of Tanzanian shillings have been damaged; a large number of people have suffered gross bodily harm; at least eight women have been beaten and raped; several women have suffered miscarriages; families have been split because of the chaos; hundreds of calves and cows have died; crop fields have been burnt; other foodstuffs and grains have been destroyed; an unknown number of people are left homeless.”*¹³

29. Most importantly, the decision to evict the communities was taken without Free, Prior and Informed Consent (FPIC) from the affected communities, thus resulting in their losing control of their lands and their livelihoods.

30. The case was brought to the attention of the UN Special Rapporteur on Indigenous Issues and was addressed through his communication¹⁴ dated 23 September 2009 to the Government of Tanzania. Although he called on the Government to respond to these allegations and take the necessary actions in line with international standards, the case is still to be resolved and the voices of the victims are yet to be heard.

4.4. Lack of Political Representation in Parliament

31. The lack of political clout and representation in parliament exacerbates the current socio-economic and political marginalization and exclusion of indigenous peoples in Tanzania. Of the 300 members of the Tanzanian Parliament, only 6 represent the over 2,000,000 Pastoralist and Hunter-Gatherer communities in the country.¹⁵

32. Important decisions and policies that affect the lives of indigenous peoples in Tanzania are conceived and debated in the national parliament. Such limited representation for indigenous peoples in parliament results in a lack of participation and in turn creates a domino effect of exclusion in the social, political, economic and cultural life of the nation. Without full participation in the law-making process, the full enjoyment

¹¹ See more at <http://www.afrol.com/articles/25675>.

¹² OBC is a United Arab Emirates company believed to be owned by a member of the UAE's Royal Family.

¹³ See more at <http://www.reliefweb.int/rw/rwb.nsf/db900sid/NSPR-7V5CT4?OpenDocument>.

¹⁴ See more at <http://unsr.jamesanaya.org/cases-2010/32-united-republic-of-tanzania-alleged-forced-removal-of-pastoralists>.

¹⁵ Statement provided by PINGOS, a forum of Pastoralist and Indigenous Non Government Organization during the Session of the UN Forum on Minorities. See at: <http://www2.ohchr.org/english/bodies/hrcouncil/minority/docs/Item%20IV%20Conditions%20required%20for%20effective%20political%20participation/Participants/PINGOS--Tanzania.pdf>.

of human rights and fundamental freedoms of indigenous peoples in Tanzania remains seriously undermined.

FI calls on the Government of Tanzania to:

33. To initiate dialogues at the local and national levels with Pastoralists and Hunter-Gatherers' representatives to address their legal and formal recognition as distinct peoples with individual and collective rights under international human rights standards and norms;

34. Review existing national legal frameworks especially on lands, territories and resources, (e.g. 1997 National Land Policy and 2008 Wild Life Law) with a view to aligning them with the provisions of the UN Declaration on the Rights of Indigenous Peoples and consider repealing/ revising these laws and policies that discriminate against the individual and collective rights of Pastoralists and Hunter-Gatherers of Tanzania;

35. Comply with the provisions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) on Free, Prior and Informed Consent for any future legislative and administrative measures that would affect the lives of Pastoralists and Hunter-Gatherers in Tanzania;

36. Establish a National Compensation Tribunal to provide compensation to Pastoralists and Hunter-Gatherers who were negatively affected by the forced eviction that took place in Ngorongoro District in northern Tanzania in July 2009;

37. Establish effective mechanisms at the local and national level (e.g. quota system) for the full and effective participation of Pastoralists and Hunter-Gatherers in decision-making and governance, especially in the National Parliament.

V. The Right to Education

38. Compulsory but not free education - Education is compulsory for all children up to the end of primary school (children aged 7-13). Primary school tuition fees were eliminated in 2002, leading to a huge increase in the number of children attending primary school and a rapid expansion of the number of schools in Tanzania. However, many schools remain under-resourced. There are not enough classrooms, they are poorly equipped and there are not enough qualified teachers. Families are still required to pay for uniforms, schools supplies, and in some cases, testing fees.

39. Secondary school is not free and apart from a tuition fee, other charges include testing fees, watchman contribution, furniture contribution, and other administrative charges. The government needs to further increase its education budget to address these deficiencies.

40. Equal access and equal opportunity - In rural areas, many children have to walk long distances to reach their closest school. They arrive tired which makes learning more difficult for them. As well, many of these schools are overcrowded and lack basic equipment and do not have enough classrooms. This is the case for a number of regions in Tanzania.

41. Another concern is that many children do not pass their English test at the end of Primary school, and are therefore disadvantaged when they move to Secondary school where English is the medium of instruction. In 2009 only 35.44% of students sitting for the National Standard 7 Exam passed their English test.¹⁶

42. Quality education - Not all teachers are qualified and many are poorly trained. Statistics from the Ministry of Education and Vocational Training data centre for 2010 show that there is still a serious shortage of qualified teachers in some regions of both primary and secondary schools¹⁷.

43. The teacher/pupil ratio varies considerably across regions. For primary schools, in some regions, such as the Tabora, the ratio is as high as 1:72.¹⁸ However, parents of children in some villages have reported that classrooms in their village school have well over 100 children under the supervision of one teacher – a severe deterrent to quality teaching and learning. For secondary schools, the average Pupil/Qualified Teacher Ratio (PQTR) is 1:51, going up as high as 1:82 in some regions - the national target being 1:40¹⁹, the same as for primary schools.

44. Corporal punishment - Many teachers are in breach of Articles 28 and 37 of the Convention on the Rights of the Child. We have received many reports of abuse by teachers who administer physical punishment to children for little or no reason at all and even publicly humiliate them with the type of punishment they give. All children have the right to be protected from torture and degrading treatment. The government's "Law of the Child Act 2009"²⁰ for Mainland Tanzania sets out to protect the rights of children. However, corporal punishment is still a major problem in schools and in the home. The government needs to establish clear and well-publicized guidelines and actions to stop these abuses.

¹⁶Education and Vocational Training Minister, Prof. Jumanne Maghembe quote from The Guardian Newspaper, 11 December 2009 (sourced from Education in Tanzania – Wikipedia)

¹⁷ MoEVT Basic Education Statistics in Tanzania (BEST), Table 2.16 and associated footnote, p. 30.

¹⁸ Ibid., Table 2.16, p 30

¹⁹ Ibid., table 4.19, p 69

²⁰ Act No. 21/09: An Act to provide for reform and consolidation of laws relating to children, to stipulate rights of the child and to promote, protect and maintain the welfare of a child with a view to giving effect to international and regional conventions on the rights of the child.

FI calls on the Government of Tanzania to:

- 45. Provide bridging classes for teaching English to those students who do not pass the English exam at the end of Primary and who have graduated to Secondary school;**
- 46. Make Primary education free for all, including necessities such as text books, school supplies, school uniform, and other administrative costs;**
- 47. Ensure all teachers are fully qualified and are provided with opportunities for teacher in-service upgrading;**
- 48. Lower the pupil: qualified teacher (PQTR) ratio in all schools to attain the government's goal of 1:40 in every class;**
- 49. Introduce Human Rights education in the community so that parents know their responsibility of sending their children to school;**
- 50. Take urgent measures to prevent indiscriminate and unlawful corporal punishment in the home and in the schools.**