

UNITED REPUBLIC OF TANZANIA

CCPR A/36/40 (1981)

202. The Committee considered the initial report (CCPR/C/1/Add.48) submitted by the Government of the United Republic of Tanzania at its 281st, 282nd and 288th meetings held on 7 and 9 April 1981 (CCPR/C/SR.281, 282 and 288).

203. The report was introduced by the representative of the State party who stressed her country's commitment, since independence, to establish a society based on respect for human rights and referred to various provisions of the Constitution to that effect. Contending that written constitutions and an independent judiciary alone could not guarantee the full protection of human rights, her Government had established a Permanent Commission of Enquiry as indicated in the report and had set up an "anti-corruption squad" in the President's office. Those found to be corrupt were taken to court and/or dismissed from service. There was also a Leadership Code Commission which set standards of leadership so as to promote just administration and to act as a check on the conduct of leaders. She also referred to the Marriage Act of 1970, the Civil Service Act of 1962 and the Civil Service Regulations all of which contained provisions designed to ensure the full enjoyment of a number of rights under the Covenant.

204. The representative explained the nature and extent of presidential powers under the Preventive Detention Act on which, she indicated there had been some misunderstanding in the past. This Act laid down procedures for detention in cases of threats to the security of the State including the conditions under which detention could be effected and established a National Committee whose function was to review each case periodically to determine whether there existed grounds for the continued detention of the individual or whether he should be released. She stressed that, up to now the President had used such powers sparingly.

205. Members of the Committee paid tribute to the role of Tanzania in the international arena as a member of the non-aligned movement, a founding member of the Organization of African Unity and a country dedicated to the principles of the United Nations, including the promotion of human rights. Although the report had the merit of recognizing the existence of shortcomings in the realization of all human rights in the country, it did not, they noted, explain the extent and nature of these shortcomings nor did it appear to do justice to all the measures Tanzania might have taken to give effect to the Covenant. It was also suggested that the report should have included information on changes which had taken place in the course of transition from colonial rule to independence, on the impact of those changes on the protection of human rights and on the degree of self-reliance achieved by the people, as well as about Zanzibar whose administration appeared to be quite separate from that of the mainland. In this respect, members observed that the committee had a broader mandate than other international bodies to enquire fully into all aspects of human rights under the Covenant and that an important feature of the Committee's work was to bring the experience of individual States to the knowledge of other States, hence the need for the submission of comprehensive reports as required by article 40 of the Covenant and the guidelines drawn up by the Committee to that effect.

206. Members also wished to know whether the Covenant had been published in the different national languages and whether copies were readily available to individuals; what attitude Tanzania had adopted towards the efforts underway to create an African regional system for the promotion and protection of human rights and what measures of supervision or control it would be prepared to accept under such a system; and whether the Government would be prepared to reply to requests for information from non-governmental organizations concerning the protection of human rights and to investigate any allegations made.

207. Commenting on article 1 of the Covenant, members referred to the record of Tanzania in supporting the struggle for self-determination both inside and outside Africa, but noted the absence in the report of any information about this article. In this connection, information was requested regarding Tanzania's position vis-à-vis Uganda as well as the new economic order and its impact on the implementation of civil and political rights.

208. As regards article 2 of the Covenant, it was noted that no reference was made in the Constitution to race or national origin in the list of grounds on which discrimination was prohibited, and that the provisions of the Covenant were not directly incorporated either in the Constitution or in other legislation and that there was no separate bill of rights. Precise information was therefore required on how the rights and freedoms defined in the Covenant were implemented in domestic law and practice; on the legislative, administrative and other measures adopted to give effect to the provisions of the Covenant; on the status of the Covenant in relation to the laws of the Republic and on whether the Covenant itself could be invoked before a court. Members also noted the absence in the report of a detailed account of the effective remedies available to those who believed that their rights had been violated. Clarification was requested of the role of the Permanent Commission of Enquiry with particular reference to how it operated in practice, whether it was an autonomous or decentralized body with limited jurisdiction, whether it was composed of independent members appointed by the President or another body or only of senior civil servants; how active it was whether it was necessary to obtain the President's authorization before initiating an investigation into an alleged violation of human rights or an abuse of public office, the kind of cases the Commission had investigated and the action that had been taken on its reports. In this connection questions were also asked on whether laws enacted by the legislature could be declared unconstitutional and consequently invalidated and whether inconsistency with the preamble to the Constitution might be regarded as grounds for such invalidity and, if so, by whom. Noting that there existed in the country two Constitutions, one for the Republic itself and the other for the single political party, that the party organs could intervene directly to defend any rights under the Covenant owing to the doctrine of the supremacy of the party and that the party's competence embraced members and non-members, members asked whether conflicts could exist between the two Constitutions and, if so, how were they resolved; how intervention by the party occurred and by what mechanism; whether there was a procedure for individuals to raise complaints through the party and, if so, what the procedure was and whether it was available to non-members of the party; and what the citizen could do to defend his rights against arbitrary action by official organs.

209. With reference to article 3 of the Covenant, information was sought on the extent to which women were, in practice, enjoying civil and political rights on equal terms with men particularly on their percentage in schools, in the administration and in the party, on whether Tanzanian women were permitted to marry foreigners and, if so, whether their husbands could acquire Tanzanian

nationality. Clarification was requested concerning the reference in the report to “a historical background of discrimination based on sex” and it was asked whether the Government was experiencing any problems in that regard and, if so, what measures it was taking to solve them.

210. With respect to article 4 of the Covenant, attention was drawn to the fact that, under this article, it was possible to derogate from the relevant obligations only when the life of the nation was at stake and only to the extent strictly necessitated by the exigencies of the situation and it was asked whether, under the Tanzanian legal system, there was any difference between normal circumstances and officially proclaimed states of emergency; what limitations there were on the actions of the executive or of Parliament in an emergency; what laws could be suspended and what provisions of the Covenant could be affected by the proclamation of a state of emergency; and whether a public emergency had been proclaimed in Tanzania.

211. Commenting on article 6 of the Covenant, members sought information on the measures being taken, especially in the rural areas, to protect life by improving public health; on the crimes for which the death penalty could be imposed and on whether they included political offences; on the minimum age under Tanzanian law for the imposition of the death penalty; on the number of death sentences that had been commuted and on the number that had been carried out since the Covenant had entered into force. It was also asked whether abolition of the death penalty had been considered.

212. In connection with articles 7 and 10 of the Covenant, it was asked what guarantees existed to prevent persons from being subjected to torture or to cruel, inhuman or degrading treatment or punishment, particularly those who had been deprived of their freedom; whether such guarantees included impartial procedures applying to enquiries into complaints and the taking of disciplinary action against guilty parties; what recourse was available to persons subjected to such treatment; how frequently detainees could receive visits from members of their family; and whether they could communicate with doctors or lawyers directly or by mail.

213. As regards article 9 of the Covenant, it was asked what guarantees existed to protect people from arbitrary arrest or detention; under what conditions they could be subjected to preventive detention; how the system of habeas corpus functioned; whether any Tanzanians were detained for purely political reasons and, if so, how many; whether, under the Preventive Detention Act, a person could be detained indefinitely without being formally charged or brought to trial; whether an order under that Act could be questioned in a court of law; whether, if persons were detained, their families were informed of the fact and of the places of detention; what consequences such detention had on the enjoyment of other rights when they were released, for example on the rights set forth in articles 12 (2) and 25 (c) of the Covenant; in what circumstances arrested persons could be freed on bail; and whether victims of unlawful arrest or detention could claim damages under Tanzanian law.

214. Commenting on article 12 of the Covenant, members inquired about the reasons justifying the temporary restrictions on foreign travel referred to in the report and about their duration; whether there were legal requirements for obtaining a passport and an exit visa; and what legal remedies were available in respect of all those restrictions. It was also asked whether refugees from Uganda enjoyed the rights guaranteed under articles 12 and 13 of the Covenant.

215. In connection with article 14 of the Covenant, it was observed that one way of protecting human rights was to ensure the independence of the Judiciary from the Executive, from the legislature and from any outside pressure, and it was asked how that independence was ensured in Tanzania, how judges were appointed, whether they could be removed from office, and, if so, under what circumstances, whether there was any remedy against unjustified removal, whether judges have any control over police actions and whether they were entitled to determine that methods used by the police in their investigation were not consistent with the law or with the rights of the individual concerned. Questions were also asked as to whether there were special courts, including peoples courts, for certain types of crimes and what the appeal process was in such courts; whether there existed any offences of an economic nature and how such offences were legally defined; under what circumstances trials were held in camera; whether legal representation was guaranteed in Zanzibar in accordance with the Covenant and whether there were differences between penal proceedings in Zanzibar and the mainland.

216. With respect to the rights and freedoms provided for in articles 19, 21, 22 and 25 of the Covenant, it was observed that, although the Covenant did not contain any requirements concerning either a one-party or a multi-party system, the position of a one-party State vis-à-vis the requirements set forth in the above articles of the Covenant was of legitimate interest to the Committee. It was therefore asked to what extent the one-party system in the United Republic of Tanzania was compatible with the rights and freedoms provided for in those articles as read in conjunction with articles 2, paragraph 1, and 26 of the Covenant; whether given the political leadership enjoyed by the party in accordance with the Constitution a citizen who disagreed with the political programme of the party, could express his views publicly; whether the “lawfully established forums” mentioned in the Constitution were the only means available to citizens to express their opinions; and whether there was any possibility of recourse against discrimination in respect of freedom of expression and association. Information was requested on the implementation of those articles in the conditions which existed in Tanzania and on all the limitations to which those articles could be subjected; on the legal status of the press and on how free the press was to criticize the Government; on how trade unions operated and on the reasons for the non-ratification by the United Republic of Tanzania of the 1948 ILO Convention on Freedom of Association and Protection of the Right to Organize; on the form of direct democracy mentioned in the preamble to the Constitution, on the eligibility of candidates to Parliament and, in particular, on whether they must be approved by some executive body such as the Party and, if so, what criteria were applied; and on the percentage of the members of Parliament whose candidature was proposed by the Unions. The question was also asked whether Tanzania proposed to adopt a pluralistic approach in political representation now that its independence had been firmly established.

217. With reference to articles 23 and 24 of the Constitution, information was requested on the implementation in the United Republic of Tanzania of the provisions of these articles and, particularly, on the minimum legal age for marriage; on the law governing parental authority, child-care arrangements for working mothers, the status of children born out of wedlock, custody of children and property rights in case of divorce.

218. As regards article 27 of the Covenant, members sought precise information on the various ethnic, religious or linguistic minorities that may exist in the country, with particular reference to Zanzibar, and on the protection accorded to Tanzanians of Asian or other non-African origin; on the

measures taken to enable the different minorities to develop their language, culture, traditions and representation in Parliament; and on whether the Covenant had been disseminated among them in their own language.

219. Replying to questions raised by members of the Committee, the representative of the State party stated that the United Republic of Tanzania was a young country and that its institutional arrangements were still in the making; that since 1964, the year when Zanzibar joined the Union, serious attempts had been made to reconcile areas of contradiction. Hence the adoption in 1977 of the Union Constitution. She explained that the Covenant was an area that came under the jurisdiction of the Union Government.

220. In connection with questions raised under article 2 of the Covenant, the representative stated that members of the Permanent Commission of Enquiry were appointed by the President and were required to resign from any other posts held before appointment; that the Commission investigated cases as it saw fit, that everybody in the country had access to it, that complaints could refer to the actions of a private individual, the Party, Government leaders or any State organ and that only the President and the Vice-President were exempt from the Commission's investigations. She also stated that when complaints were received, the Commission initiated an investigation, that complaints could be submitted either verbally or in writing; that, after an investigation had been completed, the Commission tried to reconcile the parties concerned; that when an investigation revealed complaints of a criminal nature, the Commission took the parties to the Police for prosecution and that complaints of an administrative nature were referred to the relevant administrative organs for immediate redress. Reports of all investigations were submitted to the President periodically and were made public. In case of proven serious misconduct by public servants, the President had on a number of occasions dismissed the offenders. She informed the Committee that, in the course of its duties, the Commission travelled to villages to make its existence known to the villagers and to hear their complaints. However, all Commission hearings were conducted in camera so as to enable the complainants to speak freely, without fear or embarrassment. Replying to other questions raised under this article, she pointed out that her country had a carefully worked out system of co-ordination between the party and the Government; that the party's role was to lay down the broad policy guidelines under which the Government operated; that the guidelines included respect for the rights of the individual in accordance with the objectives of the Constitution; that the party's role also included ensuring that the Government and individuals functioned within accepted principles and norms.

221. With respect to article 3 of the Covenant, she informed the Committee that all girls had equal access to education which was free for everyone; that a guaranteed number of places in secondary schools were set aside for girls; that career openings were the same for men and women, as were salaries and working conditions; that, politically, women were just as active as men at the national, regional and local levels and within the Party; that the special organizations for women's rights, UNT, a party affiliate recognized in the Constitution, had branches all over the country and that it was open to all Tanzanian women. She also stated that a Tanzanian woman was free to marry anyone, and that citizenship could be granted to foreigners married to Tanzanian women on the basis of certain necessary requirements.

222. Replying to questions raised under article 7 of the Covenant, the representative admitted that

certain cases of torture had occurred in her country but that they were investigated as soon as they had been reported to the authorities. She cited certain cases where disciplinary and penal measures and sentences were imposed on all those held responsible.

223. Replying to a question raised under article 14 of the Covenant, she stated that, in her country, an independent judiciary existed and was still patterned on the British system; that there were primary courts, district courts, resident magistrate courts, a high court and the Court of Appeal; that judges were appointed by the president and could only be removed for misconduct on the recommendation of a commission specially established for the purpose.

224. Referring to questions raised about the position of a one-party state vis-à-vis the requirements set forth in articles 19, 21, 22, and 25 of the Covenant, the representative stated that human rights were not a prerogative of any particular ideology, system of government or of law, but rather an attitude of a people and their leadership. She stressed that anyone who violates human rights in her country was referred to the relevant branches of the Government for sanctions and that democracy in the one-party state in her country was in full operation.

225. In connection with questions raised under articles 23 and 24, she stated that working mothers, whether or not they were married, had the same maternity leave entitlements; that, in case of divorce, all children below the age of seven were placed in their mother's custody unless she was unable to care for them; that the father was ordered by the court to pay for their upkeep if he was working; that property acquired during the marriage was divided between the two spouses or compensation was given to the wife; that women had equal inheritance rights with men; and that children born out of wedlock enjoyed the same inheritance rights to their mother's property as her other children and to their father's property provided he acknowledged paternity. As regards questions raised under article 27, she stated that by an accident of history, Asians had held privileged positions in Tanganyika before independence; that Tanzania was trying to create a socialist and classless society in which no one would be allowed to exploit others; that although the majority of the population was black, Tanzanians, regardless of colour, participated in all sectors of national life; that whites and Asians had been elected to Parliament by constituencies that were predominantly black; and that the individual's position in the country depended on his contribution to national development.

226. The representative of the State party stated that she had followed the Committee's deliberations with interest and assured the Committee that all relevant issues would be referred to her Government for study and for such action as might be necessary.

CCPR A/48/40 (1993)

146. The Committee considered the second periodic report of the United Republic of Tanzania (CCPR/C/42/Add.12) at its 1189th to 1191st meetings, held on 27 and 28 October 1992 (CCPR/C/SR.1189-1191). (For the composition of the delegation, see annex XI.)

147. The report was introduced by the representative of the State party, who stated that the United Republic of Tanzania had "democratically chosen a single party" during its 30 years of independence. However, in view of the winds of democratization sweeping across the world, and in Africa in particular, the United Republic of Tanzania had established a Special Commission in 1991 to determine whether the single-party system should be maintained or a multi-party system adopted. Despite the fact that 80 per cent of the population interviewed had been in favor of continuing the single-party system, the Government decided to opt for a multi-party system. As a result, the Constitution had been amended in April 1992 and political parties had already obtained their provisional registration. A new Political Parties Act had been introduced and the parties had been given three years to prepare for the first multi-party presidential election in 1995.

Constitutional and legal framework, self-determination, state of emergency and right to participate in the conduct of public affairs

148. With regard to those issues, the Committee wished to know whether the provisions of the Covenant, in particular those not reflected in the Bill of Rights, could be directly invoked before the courts under the amended Constitution and, if so, had there been any cases where this has been done; whether domestic legislation had been reviewed for its compatibility with the amended Constitution; whether any laws, decrees or administrative acts had been challenged as unconstitutional on the ground that they infringed a right guaranteed under the amended Constitution; how court practice had been brought into line pursuant to the Criminal Procedure Act as amended, with the standards set out in the Covenant; whether the functions of the Permanent Commission of Enquiry had changed as a result of the amendments to the Constitution and the Criminal Procedure Act; how the United Republic of Tanzania guaranteed the application of articles 1 and 25 of the Covenant within its political system; and how the rights to life and to the inviolability of personal freedom in a state of emergency were ensured. Further information was requested on the activities of the Permanent Commission of Enquiry as to its effectiveness and the extent of public knowledge of its existence and role.

149. Members of the Committee also wished to know what was the relationship between the Constitution of the Chama Cha Mapinduzi Party, the Constitution of the United Republic of Tanzania and the Constitution of Zanzibar and which of them prevailed in case of conflict; when and on what grounds was it possible to derogate from the provisions of sections 14 and 15 of the Constitution in respect of individuals believed to be conducting themselves in a manner that endangered or compromised national security (CCPR/C/42/Add.12, para. 65); how the functions of the ruling party in respect to the protection of human rights would be transferred to the Government under the new multi-party system; how "the public interest" was defined in relation to its mention in section 30 (2) of the Constitution and whether that section would be amended in view of the new multi-party system; whether there were any plans to hold parliamentary elections under the new

system; whether prior permission for campaign meetings to be held within the framework of the planned multi-party elections had to be obtained from the District Commissioner; whether there was any political persecution such as the holding of prisoners of conscience, particularly in Zanzibar; and who was responsible for determining whether or not a news item was false thereby prohibiting its publication under the Newspaper Act and, in the event, whether there were any recourse procedures.

150. Further information was requested concerning the enjoyment of the rights set forth in article 25 of the Covenant; on amendments to section 38 (2) of the Constitution; on restrictions on freedom of movement and residence, as referred to in paragraph 20 of the report; on the role of the Special Constitutional Court with respect to implementation or interpretation of the Constitution between the Government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar; on the strength and political characteristics of the newly registered political parties, including their relationship with the ruling party; on the application of article 25 of the Covenant and the apparent incompatibility of the one-party system with that article; on the controls exercised in the party registration process; and on the scope and application of the policy of Ujamaa.

151. Replying to the questions, the representative of the State party declared that nearly all of the provisions of human rights instruments were reflected in the Constitution and had not been affected by the recent amendments. Lawyers and judges invoked those rights in connection with various cases before the courts. However, as the amended Constitution had entered into force only in July 1992, it was too soon to determine whether some of the provisions of the Covenant had been directly invoked before the courts under the amended Constitution. In regard to the process of legislative review, the task had only just begun. With respect to the Permanent Commission of Enquiry, its activities had come to a halt with the amendment of the Constitution. In a multi-party system, the functions of the Commission would have to change or it would have to be abolished altogether. The public had been informed of the role of the Commission through circulars and through the press and radio broadcasts. The procedures for the declaration of a state of emergency had been changed to reflect the new multi-party system. The representative added that no state of emergency had been declared since independence.

152. With regard to equality between men and women, customary law in the United Republic of Tanzania tended to favor men. As a result, women did not have the right to own goods or to inherit them. However, a number of women's organizations had pressured for change and the Commission for the Reform of the Law was expected to modify some of the legislation in question. Until such time, women would continue to be at a disadvantage in the courts. With respect to court assessors, their function was only to advise the court with regard to customary law. The court was not obliged to follow that advice.

153. A number of questions had been raised concerning the new Constitution and its effect on Zanzibar. The change to a multi-party system and all other changes brought about by the new Constitution applied to Zanzibar as well as the mainland. Under the new provisions for the registration of political parties, prospective political parties had to show that their membership was voluntary and open to all citizens of the United Republic of Tanzania without discrimination. In addition, the party could not be based upon religious belief or tribal or regional identification nor could it espouse the dissolution of the Union. It had to have at least 200 members who were eligible

to vote in legislative elections. Its membership had to come from at least 10 regions of the United Republic of Tanzania and had to include members from the islands of Zanzibar and Pemba. During the present transitional period to a multi-party system, the statutes of the Chama Cha Mapinduzi Party, which had been heretofore the only party recognized under the Constitution, had been modified. Whereas before the Chama Cha Mapinduzi Party had been financed in part by the State, the party now had to return assets. For example, one of the buildings which was constructed for the party will become instead a building for Parliament. Since funding for the party could only come from voluntary contributions, it had been forced to reduce its activities.

154. The representative pointed out that the new Constitution did not specify whether domestic law or international law prevailed in situations of conflict between the Constitution and one of the international human rights instruments. In actual practice, the international human rights treaties were not self-executing but required implementing legislation. This would mean that, in case of a conflict, the Constitution would prevail. With respect to the interpretative decisions issuing from the Constitutional Court, those decisions were definitive and carried the force of law. The Constitution provided that those decisions did not have to be reviewed by Parliament.

Right to life, treatment of prisoners and other detainees, liberty and security of person and right to a fair trial

155. With respect to those issues, the Committee wished to know the figures for death sentences which had been imposed and carried out over the last 10 years; what were the reasons for differences in policy between the mainland and Zanzibar as suggested in paragraph 72 of the report; with reference to paragraph 67 of the report, how the right of persons sentenced to death to seek pardon or commutation, pursuant to article 6, paragraph 4 of the Covenant, was ensured; what were the rules and regulations governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so, whether such allegations had been investigated, those responsible punished, and measures taken to prevent their recurrence; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and how these provisions had been made known to the concerned police, armed forces, and prison personnel as well as, in general, to all persons responsible for holding interrogations; in view of its role in securing the rights under the Covenant, what the position of the legal profession was in law and practice and whether it had been influenced by recent amendments to the Constitution and statutes; and whether there was any free legal aid and advisory scheme and, if so, how it operated or, if not, how compliance with article 14, paragraph (3) (d), of the Covenant was ensured. Further information was requested with reference to paragraph 75 of the report, on measures taken by the Government in the field of health care, particularly with a view to reducing infant mortality.

156. In addition, members of the Committee wished to know for how long after his arrest a detainee could be kept from contacting legal counsel; whether section 148 (4) of the Criminal Procedure Act of 1985 concerning the powers of the court to grant bail had been declared unconstitutional and subsequently abrogated; whether it was foreseen to modify section 44 (1) of the Civil Procedure Act, providing that a debtor could be arrested and detained, which is contrary to the Covenant; what kinds of cases could be brought before a Primary Court; whether the decision to impose imprisonment on a juvenile offender, rather than rehabilitative alternatives to incarceration, was made at the discretion of the sentencing judge; what measures had been taken towards the prevention

of torture and other inhuman treatment, and whether instances of its use were rapidly and severely suppressed; whether the subjection of a person to medical or scientific experiments, without his or her free consent, was expressly prohibited under Tanzanian legislation; what type of corporal punishment was imposed on offenders convicted of rape or other violent crime; on what grounds had 14 members of a Burundi opposition group been taken into custody by authorities in Tanzania; whether the President was still able to order the arrest and detention without bail of any person he considered dangerous to the public order or national security; and whether there had been executions carried out in secret and, if so, why they had been carried out in this manner. Members also requested further information concerning the system of residence zones employed with respect to the issuance of residence permits to immigrants; on the amendment passed in 1985 to bring the Preventive Detention Act of 1962 into conformity with the Covenant; on resort to corporal punishment in sentencing and in the schools; and on the factors and difficulties encountered in the application of article 14 of the Covenant.

157. In response, the representative of the reporting State noted that only a very small number of death sentences had been carried out. Only the High Court and the Court of Appeal could hand down a death sentence and such a sentence had to be approved by the President himself. The considerable time lapse between the verdict and the execution allowed ample opportunity for a presidential pardon. In regard to the differences in policy between the mainland and the island, Zanzibar maintained its own Constitution in addition to the Union Constitution that covered both. As far as differences in legislation was concerned, if there was no specific statement that a particular law applied to Zanzibar as well as to the mainland, Zanzibar was assumed to have its own separate legislation. The judiciary was separate, one Attorney-General serving for the mainland and another for Zanzibar.

158. In cases where there had been a misuse of firearms by police and security forces, action was always taken against the security officers involved. The Standard Minimum Rules for the Treatment of Prisoners were being complied with, though problems sometimes occurred. Efforts were consistently made to educate police officers in this regard through national seminars organized by the Minister of Home Affairs and through the provision of fellowships for officers to attend seminars abroad. Medical services were available to prisoners in their places of detention. When necessary, prisoners were transported under security to hospitals for treatment.

159. Section 54 (1) of the Criminal Procedure Act stipulated that, when arresting an individual, a police officer must inform that person of his rights in a language he understood. One of those rights was to contact a friend, a relative or a lawyer. The lawyer could either be chosen by the individual or one assigned by the Government. All persons who were arrested had to be brought before a judge within 24 hours, except in situations where the arrest had taken place on a Friday, in which case arraignment before a judge would take place on the Monday. In rural areas where there were no judges and there may be transport problems, villages had a court composed of police for the preliminary examination of cases before they were sent to district courts. The justice of the peace who presides over such a court is not a professional judge but may, none the less be familiar with minor infractions.

160. In regard to how confessions induced by force might be used, section 29 of the Evidence Act stipulated that no confessions could be used as evidence if the court was of the opinion that they had

been induced in circumstances that were likely to cause an untrue admission of guilt to be made. Section 27 (3) of the same Act defined a confession as involuntary if the court believed that it had been induced by a threat or promise on the part of police officers or other authorities.

161. There was a large number of lawyers in the country. The Government was endeavoring to ensure that legal services were available to the entire population, not only the fortunate few who could afford the cost of private legal services. Presently, the Legal Aid Committee of the University of Dar-es-Salaam and the Tanganyika Law Society assisted individuals who had legal problems but could not afford to engage a lawyer. Additionally, the Tanzania Women Lawyers' Association had recently been established for the purpose of assisting women who could not afford private legal services.

162. With regard to the imprisonment of children, the Child and Young Persons Act governed court decisions on offences committed by persons under the age of 16. It provided for the handling of such cases in a Juvenile Court, which was essentially a district court whose proceedings were closed to the public. Among many other provisions, the Act indicated that police officers must immediately contact a young person's parent or guardian to enable them to post bail as soon as possible after he or she was arrested. It stipulated that no child should be sentenced to imprisonment and that young people, if so sentenced, must not be allowed to associate with adult prisoners. It was made clear that young people should not be imprisoned except for the commission of serious offences.

Freedom of expression, assembly and movement

163. Regarding those issues, the Committee wished to know whether a citizen who disagreed with the political programme of the Government was free to express his views publicly; what the "established forums" mentioned in the Constitution and paragraph 15 of the report were; with reference to paragraph 181 of the report, what the term "major qualification" for the formation of political parties meant; and how the right to form trade unions was ensured in practice. Members of the Committee also wished to know how control was exercised by the State over radio and television and whether that would change with the emergence of a multi-party system; whether persons considered as a threat to public order (ordre public) could be expelled from the United Republic of Tanzania or exiled to another part of the country; whether censorship existed with regard to the press; and whether newspapers and other publications in the country experienced problems in securing sufficient supplies of paper. Members requested further information on the restrictions in force concerning the exercise of freedom of expression.

164. In her reply, the representative of the State party stated that JUWATA, which previously had been the only union in the country, had recently been dissolved and replaced by the Organization of Tanzanian Trade Unions (OTTU). There were now a number of unions, including a union for students, and there were many professional organizations as well. It was expected that as the multi-party system developed, there would be many more unions than there were at present.

Equality of the sexes, non-discrimination and rights of persons belonging to minorities

165. With regard to those issues, the Committee wished to know whether any additional measures were being contemplated to guarantee equality of the sexes; in what respects the rights of aliens

differed from those of the citizens; and what ethnic, religious or linguistic minorities existed in the United Republic of Tanzania.

166. Replying to the questions, the representative of the State party pointed out that the country's 127 tribes coexisted in peace and constituted a single nation. Although Swahili was the language common to all, each region also had its own language. Freedom of religion was guaranteed to all and, in this regard, there were a number of different faiths practised in the country. With respect to foreigners, they had the same rights as citizens. There were some restrictions, however, which chiefly concerned the right to vote and the right to work. The rights of the nearly 300,000 refugees living in the United Republic of Tanzania were also guaranteed.

167. Referring to the question of the equality of women, the Government had taken many steps to enhance the status of women. In 1978, for example, a system had been introduced to enable more women to attend universities. In Parliament, a specific number of seats were reserved for women. Additionally, there were women who were senior government officials, ambassadors, etc.

Concluding observations by individual members

168. The members of the Committee commended the frankness and sincerity of the Tanzanian delegation which had contributed to ensuring a fruitful dialogue. The report represented enormous progress compared to the rather brief previous report the State party had submitted.

169. Members of the Committee noted that a number of important developments were under way, most notably amendments to the Constitution and the restructuring of the political framework to achieve greater democracy through a multi-party system. Members expressed the hope that the transition to a new political system would take place in a spirit of openness, and that different parties would be allowed to establish themselves with equal access to the media. In that regard, it would also be helpful to dispense with the requirement of prior authorization for political meetings.

170. The State party had acknowledged in its report that there were some gaps and deficiencies in its legal system which indicated that it was not in full compliance with the articles of the Covenant. Various legal - and especially penal - provisions needed to be reviewed, particularly those relating to torture, family law and freedom of movement and residence. It was also noted that section 30 of the Constitution provided for very general restrictions on certain rights, in particular those set forth in articles 6 and 8 of the Covenant. Furthermore, section 25 of the Constitution raised problems in regard to the issue of forced labour, an area where there was clearly a need to ensure conformity with standards of the International Labour Organization.

171. Members of the Committee expressed concern over the constitutional provisions allowing derogations from the right to life, which were not compatible with article 4 of the Covenant. In this regard, changes were clearly necessary. The President's authority to order arrests also seemed excessive and not in conformity with article 9 of the Covenant. It was unfortunate that no figures could be made available on death sentences carried out in the previous 10 years. In this regard, it was pointed out that information on death sentences needed to be monitored carefully by any State and did not require a large statistical database.

172. Concern was expressed over the lack of clarity in the situation in Zanzibar. The Committee had been informed that there were no political prisoners in Zanzibar, yet numerous cases of political detention had been reported.

173. The view was expressed that it was degrading treatment to apply corporal punishment in schools and other institutions. Children should be treated with respect for their integrity and teachers should be able to maintain authority without resorting to such primitive measures. The use of flogging and similar punishments in sentencing was not compatible with the Covenant.

174. Although there had been some progress towards equality between men and women, there still appeared to be a lack of equality, especially with respect to property, inheritance and parental authority, and it was hoped that those forms of discrimination would be prohibited in the future.

175. Another matter that deserved high priority was the dissemination of information on the provisions of the Covenant in schools and universities and among members of the legal profession.

176. The representative of the State party stated that the delegation would transmit the results of the dialogue to its Government, placing particular emphasis on aspects of the legal system which needed to be modified in order to ensure conformity with the Covenant. Under the multi-party system there would be more transparency and political freedom and, it was hoped, a considerable improvement in those human rights areas which showed deficiency.

177. The Chairman of the Committee expressed his appreciation for the expertise of the delegation. The Committee had recognized that the report was an excellent and informative one and was helpful in demonstrating the difficulties encountered by the State party in meeting its obligations under the Covenant. Since the State party was passing through a transition period accompanied by a revision of existing laws and regulations, the Committee had viewed the dialogue with the delegation as an opportunity to assist the authorities in their efforts. The dialogue had been a useful one and he hoped that the delegation would convey to the Government all the comments made by members of the Committee.

Comments of the Committee

178. At its 1203rd meeting (forty-sixth session), held on 5 November 1992, the Committee adopted the following comments.

Introduction

179. The Committee compliments the State party on the high quality of its report. In addition to giving the relevant laws and regulations, the report contains detailed information on actual practice and the factors and difficulties affecting the implementation of the Covenant. The Committee notes with satisfaction that the report includes a candid appraisal of existing legislative deficiencies in the light of the relevant general comments adopted by the Committee. The Committee, however, regrets that the report was submitted after a delay of some five years and expects that, given the reporting experience which the State party has now acquired, similar delays will not occur in the future.

180. The Committee observes that answers provided by the delegation to the numerous questions raised by members of the Committee greatly contributed in the consideration of the report and in establishing a constructive dialogue.

Positive aspects

181. The Committee welcomes the measures undertaken by the State party and the substantive progress recently achieved towards democratization, which should provide a more effective legal framework for the effective application of the Covenant. The Committee also notes with satisfaction that a bill of rights has been incorporated into the Constitution; that political parties are now being registered under a multi-party system and that the first multi-party elections to the National Assembly and to the Presidency have been scheduled; and that a more important role is foreseen for the judiciary in the protection of human rights.

Factors and difficulties impeding the application of the Covenant

182. The Committee notes that some aspects of democratic reform may have been adversely affected by structural adjustment policies tending to decrease the resources available for implementing those reforms. At the same time, the Committee underlines that this does not exempt the State party from the full and effective application of the Covenant.

Principal subjects of concern

183. While welcoming the wide-ranging political and legal reforms in progress, the Committee recognizes that the transition to true democracy is far from complete. A number of gaps still need to be addressed regarding present legislation and the guarantees provided for under the Covenant. The Committee emphasizes that, in undertaking any review of existing national law and in formulating new legislation and administrative rules, a primary consideration should be compatibility with the provisions of the Covenant.

184. The Committee is concerned over the unclear position of the Covenant in national law, particularly in cases where conflicts could arise between the Covenant and the Constitution. In this regard, article 32 of the Constitution regarding emergencies is clearly not in conformity with the international obligations of the State party under article 4 of the Covenant. Under that provision no derogation is permissible from certain fundamental rights, among which is the right to life. The Committee is concerned that the grounds for declaring a state of emergency are too broad and that the extraordinary powers of the President in an emergency are too sweeping. Other concerns of the Committee in regard to specific provisions of the Constitution which are incompatible with the Covenant include article 30 (1) which provides a wide scope for limitations of rights and freedoms and article 25 which provides for the possibility of forced labour.

185. Other areas of concern include the unavailability of statistics concerning the application of the death penalty; the extraordinary powers accorded to the President with regard to preventative detention; the extent of delays with regard to the scheduling of criminal proceedings; the restriction of the right to peaceful assembly by the requirement of pre-permission by local authorities; insufficient publicity given to the Covenant with the result that the general public may not be

informed of the protections afforded under it; continuing inequality with regard to the status of women; and the continued use of corporal punishment, the application of which the Committee considers to be degrading and inhuman treatment.

186. Additionally, the Committee is concerned that some aspects of customary law which are still being applied in many of the lower courts may not be in compliance with the provisions of the Covenant.

Suggestions and recommendations

187. The Committee recommends that the State party should provide a clear legal basis for giving full effect to the provisions of the Covenant. The Committee further suggests the enactment of legislation to provide that customary law, which is incompatible with the provisions of the Covenant, is null and void.

188. The Committee recommends the amendment of those provisions of the Constitution and other national law which are not in conformity with the Covenant. In particular, the Committee suggests that a thorough review be undertaken of provisions relating to states of emergency with a view to ensuring their full compatibility with article 4 of the Covenant in all respects. The Committee affirms the vital role played by the responsible exercise of the freedom of expression in the transition to democracy and recommends that the State party ensure that the exercise of this right be fully respected. Steps should also be taken to guarantee freedom of assembly without the requirement for pre-permission or such other restrictions as may jeopardize the freedom in question without necessarily being a threat to public order. Ongoing and active monitoring should be undertaken to ensure that democratic guarantees which have recently been established in law are observed in practice. To this end, the Committee considers that an active and independent judiciary is indispensable and recommends that measures be taken in this regard to further strengthen it.

189. The Committee considers that active measures should be taken to ensure that the provisions of the Covenant are made widely known to the general public and, in particular, to members of the judiciary and the legal and other professions most directly concerned with its application. Both Covenants should be translated into the national language, Swahili, and integrated into educational curricula at all levels. Although welcoming the improvements made with respect to ensuring equal opportunity for women, the Committee notes that the situation still warrants further progress, particularly in relation to property and inheritance rights and questions concerning parental authority.

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385. The Committee considered the third periodic report of the United Republic of Tanzania (CCPR/C/83/Add.2) at its 1689th and 1690th meetings, on 24 July 1998, and at its 1697th meeting, on 30 July 1998, adopted the following observations.

A. Introduction

386. The Committee welcomes the third periodic report submitted by the Government of the United Republic of Tanzania and notes that certain further information was provided by the delegation; it regrets, however, that the report did not fully comply with the Committee's guidelines and that the delegation addressed only in part the Committee's list of issues and was not in a position to answer fully members' oral questions.

B. Factors and difficulties affecting the implementation of the Covenant

387. Since the consideration of the last periodic report there has occurred an enormous influx of refugees into the United Republic of Tanzania from neighboring countries and from Somalia. The volume has been such that individual assessment has been impossible except in a few cases; all the rest of these persons have consequently either been confined to camps where the conditions are primitive and which the State party has insufficient resources properly to police, or otherwise left to fend for themselves among the local villagers.

C. Positive factors

388. The restoration of political pluralism, by means of amending the Constitution, has enabled the whole population to participate in all aspects of public affairs (art. 25).

389. The courts have demonstrated a willingness to examine the actions of the Government and its agencies for compliance with the Constitution, as exemplified in the interim injunction suspending the deregistration of Baraza la Wanawake wa Tanzania (BAWATA), an important women's organization.

390. Many limitations on freedom of expression have been eased on the Tanzanian mainland for the press, radio and television (art. 19).

391. The Committee notes with approval that a large reduction has been achieved in the employment of children in the gemstone industry, but makes a recommendation in that regard (see para. 409 below).

392. The Committee commends the proposal to establish a Constitutional Court to oversee, among other things, full respect for human rights.

D. Subjects of concern and the Committee's recommendations

393. The Nyalali Commission submitted a report in 1992. Although its major constitutional

proposals have been implemented, there remain in force numerous acts and ordinances which it recommended for repeal or amendment. The Commission recommended the repeal of: the Emergency Powers Act 1986 (art. 4); certain aspects of the Human Resources Deployment Act 1983 which led to forced labour on communal projects (art. 8); powers of the President to detain persons (incommunicado for a period) without trial, under the Preventive Detention Act 1962 (art. 9); punishment under the Witchcraft Ordinance 1928 (arts. 7 and 10). The Commission further recommended that registration of societies under the Societies Ordinance 1954 be amended to provide for a separate Registrar and for appeal from his decisions (arts. 18 and 22). The Committee regrets that none of these proposals has been implemented and expresses the view that the Commission has accurately identified all these provisions as infringing human rights which are also protected by the Covenant; its proposals reinforce a number of the Committee's recommendations made on the examination of the second periodic report and reflect many of the Committee's current concerns. The Committee therefore recommends that priority be given to implementing the proposed reforms.

394. While the Committee is encouraged to hear that the courts are beginning to refer to the Covenant in judgements, it recommends that the Covenant be given formal recognition and applicability in domestic law (art. 2).

395. The Committee appreciates recent changes in the law so as to criminalize rape between separated spouses and the practice of female genital mutilation, as well as the power of a court to hear sexual abuse cases in private; however, it is concerned that traditional customs inhibit complaints on these matters, and that marital rape as such is not recognized as a criminal offence. The Committee recommends that information be promulgated about these remedies and that the State party take action to support women who are entitled to take advantage of them (arts. 3 and 26).

396. The Committee is concerned at the application of personal laws which discriminate against women with respect, *inter alia*, to marriage, divorce, land and inheritance. The Committee is also concerned that customary attitudes discourage women from pursuing their full educational rights and that, as a result, they tend to lack the qualifications needed to reach higher levels of achievement in all aspects of activity, such as the senior judiciary, and are under-represented in political spheres. The Committee recommends that the State party put an end to these discriminatory laws and practices; that action be taken to increase the number of girls' schools; that persuasion be exerted on society to insist on girls' attendance at school; and that support be given to young women who wish to pursue higher education (arts. 3, 25 and 26).

397. The Committee is concerned that:

(a) The Law of Marriage Act discriminates against women with regard to the minimum age for marriage;

(b) Section 138 (6) of the Penal Code allows any person of African or Asian descent to marry, or permit the marriage of a girl under the age of 12, provided that there is no intention to consummate the marriage until she attains that age. It recommends that these discriminatory features be eliminated from the law (arts. 3 and 26).

398. The Committee urges the State party to publish details on sentences to the death penalty, on the mainland and in Zanzibar; such sentences have not been carried out recently in either part of the country, and the Committee recommends that this penalty be abolished (art. 6).

399. The Committee deplores the law in force in Zanzibar which allows for the imprisonment of both mother and father in the event of an unmarried woman becoming pregnant. In the Committee's view, this carries risks to the right to life (art. 6) (through resort to illegal abortion) and to the rights of the child (arts. 23 and 24) if born in such circumstances. It recommends the abolition of this law in Zanzibar and, noting in this connection that illegal abortion is a major cause of maternal mortality, that a national review be carried out on the restrictions on abortions (arts. 3, 6 and 26).

400. The Committee notes with approval the Nyalali Commission's recommendation to abolish corporal punishment as a judicial sentence; such penalty should also be precluded for offences against prison regulations and children should no longer be subjected to corporal punishment in schools (art. 7).

401. Despite the problems concerning the volumes of refugees entering and remaining in the country, the Committee urges that no refugee be returned to another State unless it is certain that, once there, he or she shall not be executed or subjected to torture or other form of inhuman treatment (arts. 6, 7 and 13).

402. The Committee regrets the absence of training for the police in human rights and in the proper use of riot equipment, such as "rubber bullets". It takes note of actions by the police resulting in homicide, and is generally concerned that investigation of complaints against the police is carried out by the police themselves. It recommends that thorough training for the police be provided and that an independent mechanism be set up for investigating complaints (arts. 7 and 9).

403. The Committee is concerned about reports of armed groups ("sungu-sungu") which act as vigilantes and may commit abuses of human rights. It notes with approval the Nyalali Commission's recommendation that no militia be allowed to operate without specific legislative approval and recommends that, in any event, any such militia be properly trained and that their activities be subject to full supervision by the courts (arts. 7 and 9).

404. The Committee notes that it is accepted that prison conditions have deteriorated; there is reported overcrowding, rape and other sexual abuse of female prisoners, and a failure to comply with minimum standards. It recommends that resources be made available to remedy this situation and that training in human rights be given to prison officers, a sufficient number of female officers be recruited to ensure that only such officers are in charge of female prisoners. It also urges that alternatives to a sentence of imprisonment be made more widely available to the courts and that the judiciary be encouraged to use these alternatives, in appropriate cases, when passing sentence (art. 10).

405. The Committee urges the abolition of imprisonment for inability to pay a debt and that a study be carried out of alternative means of enforcing judgement debts, such as are currently in operation in other countries (art. 11).

406. The Committee regrets that the large number of election petitions currently before the High Court has so clogged the system that other proceedings, including trials for homicide, have been inordinately delayed. It is concerned that some two and a half years after an election, adjudication on the right of a person to sit in Parliament is still awaited. It is also concerned that case conferences (to expedite proceedings) convened by the courts themselves have offered no solution. The Committee recommends that suitable measures be adopted to extinguish the backlog of pending cases, and that a more expeditious procedure be adopted to determine electoral disputes (arts. 14 and 25).

407. The Committee calls on the State party to protect the freedom of an adult individual's sexual conduct and to bring its laws into conformity with article 17 of the Covenant.

408. The Committee notes with concern the high level of domestic violence. It recommends that specific revisions be introduced in legislation to provide civil and criminal remedies for such actions against the person responsible (art. 23).

409. The Committee remains concerned about the employment of children in industrial and agricultural activities. It urges the State party to take further steps to counter this continuing violation of children's rights (art. 24).

410. The Committee recommends the establishment of an independent body to oversee respect for and to disseminate knowledge of human rights, whether by an expansion of the powers of the existing Permanent Mission of Enquiry or by the creation of another mechanism.

411. There remain unanswered several concerns of the Committee, which were noted by the delegation, and it is anticipated that full, up-to-date answers will be provided in the fourth periodic report.

412. The Committee recommends that the Government of the United Republic of Tanzania submit its fourth periodic report by June 2002. It requests the Government to ensure the widespread dissemination of these concluding observations throughout the population, in Swahili as well as in other languages. It further recommends that publicity be given to the right of individuals to make use of the Optional Protocol and the means of so doing.