



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Ninety-sixth session

#### Summary record of the 2628th meeting

Held at the Palais Wilson, Geneva, on Monday, 13 July 2009, at 3 p.m.

*Chairperson:* Mr. Iwasawa

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*Fourth periodic report of the United Republic of Tanzania*

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*The meeting was called to order at 3 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**

*Fourth periodic report of the United Republic of Tanzania (CCPR/C/TZA/4; CCPR/C/TZA/Q/4 and Add.1)*

1. *At the invitation of the Chairperson, the delegation of the United Republic of Tanzania took places at the Committee table.*
2. **Mr. Chikawe** (United Republic of Tanzania) said that the Tanzanian Government attached great importance to the dialogue with the Committee and would carefully consider the recommendations made by the Committee following the consideration of the fourth periodic report. Since the third periodic report (CCPR/C/83/Add.2) had been submitted almost 11 years previously, the country had seen major political, economic, social and cultural changes that had affected the application of the International Covenant on Civil and Political Rights, as the current report testified. A specific Department of Constitutional Affairs and Human Rights had been established within the Ministry of Constitutional Affairs and Justice and was currently examining the situation with regard to international human rights instruments that the United Republic of Tanzania had not ratified, with a view to recommending their ratification and incorporation into domestic law.
3. The Government had taken constitutional and legislative measures to implement the Covenant. In 1984, the Constitution of the United Republic of Tanzania and the Constitution of Zanzibar had been extensively amended to incorporate the Bill of Rights, and a number of relevant laws enacted to guarantee the application of those rights. Since the Bill of Rights to a large extent replicated the Covenant, the Government was of the view that, as legislation stood, the Covenant was duly reflected in domestic law. The Bill of Rights had been invoked and used as a reference on several occasions by the Tanzanian courts.
4. The Commission for Human Rights and Good Governance, established in 2001 as a replacement for the Permanent Commission of Inquiry, was fully in accordance with the Paris Principles and had obtained “A” status. As of June 2009, it had handled over 2,440 complaints from detainees about police- and prison-custody matters and other problems relating to the administration of justice. The Commission had advisory powers, among others, and could also apply to the courts for enforcement of its recommendations and decisions, as in the Nyamuma village case, currently sub judice. It could also amicably resolve complaints brought before it, but if it opted to bring the case before the courts, the court’s decision became enforceable. The Commission’s services were now widely accessible nationwide, through two offices in mainland Tanzania and a permanent office in Zanzibar. Plans were under way to make them accessible electronically via Internet.
5. The Government had implemented most of the recommendations of the Nyalali Commission. The Commission’s main aim had been to reintroduce multiparty democracy to the country, and that was why it had recommended the repeal or amendment of some 40 laws. Over the years, consultations conducted by the Law Reform Commission had demonstrated the need to repeal, amend or retain some of those laws.
6. The laws on marriage, inheritance and succession had been the subject of lengthy debate, not only because they raised gender-equality and women’s rights issues, but also because they were linked to deep-rooted religious beliefs and cultural traditions. Legislation was currently being reviewed to ensure it covered the rights of all individuals, which involved a delicate balancing act between freedom of worship and conscience and the rights of certain sections of society, in particular women and children, which were sometimes conflicting. The Government would soon finalize a white paper that would be submitted to the people to poll their views before a final decision on the laws was taken.

7. There would be a debate on the rules that governed the acquisition and transmission of nationality; the proscription of dual nationality threw up a number of problems, obliging children born abroad to Tanzanian parents to choose between the nationality of their country of birth and Tanzanian nationality when they reached the age of majority. Problems were also caused by the fact that the same rights were not accorded to foreign men as to foreign women who married Tanzanian nationals. The law on unmarried pregnant women which had been in force in Zanzibar had been repealed in 2005, meaning those women no longer risked imprisonment. Current legislation also guaranteed their right to continue their studies.

8. Since the previous periodic report, women's access to education had been significantly improved as a result of policies and legislation on compulsory primary education, secondary education, access to education for those who had not received formal education and programmes specifically for girls' education. Moreover, the Tanzanian Government recognized the need for women in decision-making bodies. The fourteenth constitutional amendment stated that women must occupy at least 30 per cent of the seats in Parliament and the House of Representatives. The Government had taken legal and administrative measures to curb violence against women. It had also resolved to conduct a nationwide study, in collaboration with the United Nations Children's Fund (UNICEF), to determine the extent of violence against not only women, but also other disadvantaged groups such as albinos, children and elderly persons, and was fully implementing the national plan of action on gender-based violence. There were currently no official data on trafficking in women, as it was a clandestine practice which was often disguised by regular rural-urban migration. The Government was nevertheless endeavouring to curb trafficking, for example, using advocacy and awareness campaigns; with the help of the International Organization for Migration, it had set up a project to enhance institutional capacity for eliminating trafficking and to improve training of concerned NGOs, law enforcers, prosecutors, judges and those providing victim support. Currently, there was no national plan of action to combat trafficking, but the new 2008 Anti-Trafficking in Persons Act criminalized all forms of trafficking in persons, including in women and children. The issue of marital rape was set against a backdrop of competing needs to protect the institution of marriage and to condemn rape in all its forms. Since its amendment in 1998, the Penal Code had criminalized sexual violence in almost all its forms; however, marital rape was a criminal offence only in the case of legally separated couples and when committed against girls under the age of 18. As marital rape was an alien concept in the country, the issue of its criminalization required more in-depth debate. Female genital mutilation was a criminal offence, but the practice was rooted in ancestral customs and traditions and still had its supporters, as demonstrated by the few cases mentioned in the written replies. The Government had introduced a national plan of action providing for mainstreaming of the issue of female genital mutilation in school curricula, information campaigns and programmes, seminars, workshops, drama, literature and leaflets. In conducting that awareness-raising work, the Government was collaborating with NGOs, which had done a commendable job.

9. The Constitution of the United Republic of Tanzania empowered the President to declare a state of emergency, with the consent of the National Assembly, while the Emergency Powers Act gave effect to the relevant provisions of the Constitution. The President could never exercise those powers to overrule court decisions. The Emergency Powers Act had not been invoked at any time during the reporting period.

10. The death penalty was a challenge because public opinion was divided on the issue and there were exigencies for its retention. Moreover, a decision was awaited on a case pending before the High Court that challenged the constitutionality of the death penalty. The Government nevertheless continued to enforce a de facto moratorium on executions. Corporal punishment was still provided for in law and remained applicable for certain

offences. Caning was not classified as corporal punishment, but as a corrective measure used in educational establishments for students committing acts of gross indiscipline. The Government was working with UNICEF on a pilot project to draft guidelines on how best to abolish caning in schools, on the basis of best practice.

11. Tanzanians had a history of living in harmony and friendship, without discrimination. The persecution of albinos, a recent phenomenon, was the work of individuals who persisted in believing in archaic superstitions and witchcraft. To date, some 43 albino killings had been reported. The measures taken by the Government to end such violence were described in the written replies to the list of issues.

12. Since the colonial period, the United Republic of Tanzania had always hosted refugees from neighbouring countries and numerous other countries of the world, and the Tanzanian authorities had never sent back or turned away any refugee. The example referred to by the Committee was an isolated case involving repatriated immigrants who had been apprehended outside a refugee camp without documents identifying them as refugees. They had been readmitted once their refugee status had been verified and had been protected throughout the procedure.

13. Dilapidated prison facilities, an increased crime rate, the growing number of custodial sentences and the resultant prison overcrowding had an impact on the treatment of prisoners. The Government had introduced a national prisons policy and was working to improve conditions of detention, including by trying to decongest prisons. In that connection, new prison compounds would be built to cope with growing demand, while legislation had been overhauled to provide for non-custodial measures, such as community service, extramural labour and parole. The criminal courts were encouraged to employ alternatives to custodial sentences and measures had been taken to improve the flow of cases to avoid congestion in remand facilities. NGOs, like individuals, had access to detention facilities, provided that they followed the relevant procedures. During the reporting period, the Tanganyika Law Society, in collaboration with other NGOs, had conducted research in prison facilities into how inmates could best access the services of a lawyer – a commendable initiative. Bail was a constitutional right, except in the case of a few particularly heinous offences, such as murder, treason, armed robbery and offences related to dangerous drugs. Legal aid was granted to indigent persons both in civil and criminal cases. In civil cases, the Chief Justice could, where appropriate, dispense individuals without sufficient funds from the costs of proceedings. The Tanganyika Law Society, in collaboration with other NGOs, had established a network of lawyers who provided pro bono services to those in need. In criminal cases, persons accused of capital offences were provided with legal aid from a court-appointed lawyer, unless they chose to engage another lawyer.

14. The Tanzanian Government enjoyed a good and cooperative working relationship with NGOs. The freedom to form NGOs was guaranteed by the 2002 Non-Governmental Organizations Act. Currently, 3,704 NGOs were registered in the country, a number of which had formed coalitions or associations in which the Government enjoyed observer status. An NGO website launched recently would help strengthen the relationship between NGOs and the authorities.

15. In September 2008, the United Republic of Tanzania had submitted its reports on the Convention on the Rights of the Child and its two Optional Protocols. It had resolved to give effect to article 24 of that Convention by pursuing measures to eliminate the worst forms of child labour by 2010. Under the auspices of the International Labour Organization's International Programme on the Elimination of Child Labour, it had set up a programme to rehabilitate, counsel and educate children who had escaped from commercial sexual exploitation. A draft law unifying the laws on children was currently before the

National Assembly in first reading. As a result of the law, Tanzanian children would enjoy protection fully in line with international conventions.

16. Significant efforts had been made to improve the conduct of public affairs in Zanzibar following the unfortunate post-election incidents of January 2001. The efforts had led to a peace agreement (the “Muafaka” agreement) between the two major political parties, and the 2005 general elections had passed off without incident. Measures had been taken to guarantee that the forthcoming 2010 general elections went smoothly. The Political Parties Act had been amended, a code of conduct for political parties had been adopted and a civic education programme for political parties had been set up with the support of the United Nations Development Programme. The National Electoral Commission had drawn up a civic education programme for voters, while electoral rolls had been established.

17. With regard to the Hadzabe and respect for their traditional way of life, the decision to grant hunting permits had been taken following a close and thorough needs assessment, carried out in consultation with representatives of the Hadzabe community. The project had originally been designed so that, in order to be able to hunt on that community’s territory, the licence-holder would be obliged to give the Hadzabe meat from the hunted game and help establish education and health facilities and other social amenities for the community, but it had raised such strong complaints from stakeholders that it had eventually been dropped.

18. Information relating to the Covenant was disseminated in various ways. The subject of human rights had been introduced into secondary school curricula, while higher-learning institutions also gave courses on human rights. The Commission for Human Rights and Good Governance was mandated to raise awareness of international human rights instruments through public events, such as workshops and seminars, and through the media. The Committee’s concluding observations were disseminated to the various stakeholders.

19. The Tanzanian Government remained committed to human rights and would continue its efforts to realize the rights of all Tanzanians, with the valuable assistance of its development partners, the United Nations agencies and the Office of the High Commissioner for Human Rights.

20. **Mr. Mwaimu** (United Republic of Tanzania) said that the constitutional and legal framework for the implementation of the Covenant was formed by the Bill of Rights in the Constitution and an array of laws adopted to realize the rights explicitly protected under the Covenant. Every citizen was able to enforce those rights in the courts, and the examples of case law given in paragraph 4 of the written replies to the list of issues demonstrated that the Tanzanian courts were taking the Covenant into account.

21. As a result of measures taken to promote education for girls, the total number of children attending primary and secondary schools had almost trebled between 2004 and 2008, from 438,901 to 1,222,403 students, 47 per cent of whom were girls. Despite those encouraging results, a relatively large number of girls found themselves obliged to quit school because of early pregnancy and the AIDS pandemic.

22. **Mr. Ndunguru** (United Republic of Tanzania) said that the head of the delegation had responded to most of the Committee’s concerns, but that he would give some explanations on items 7–13 of the list of issues. Female genital mutilation was a criminal offence, but it was very difficult to apply the law because the issue sparked opposition from society. The 2002 Anti-Terrorism Act had provided for a range of measures to combat terrorism, including special anti-terrorist units within the various security forces, but did not contain a definition of terrorism. To date, the Act had not been invoked in the courts. Capital punishment was carried out only after a complex procedure. Once a death sentence had been handed down by the High Court and confirmed by the Court of Appeal, the President had to consult the board of pardons before authorizing the execution. The board

re-examined the prosecuting evidence, the judges' findings and various other elements, such as the social situation of the convicted person. The application of corporal punishment was also strictly monitored to avoid any arbitrary use and such punishment could not be imposed on men or women over the age of 50. In order to combat torture and ill-treatment in detention or custody, the Commission for Human Rights and Good Governance had introduced a more effective monitoring and complaints mechanism. Lastly, with regard to albino killings, the Government was firmly resolved to expedite investigations into the practice and bring the perpetrators before the courts swiftly. All the authorities were united in their efforts, and nine individuals had been arrested and charged to date; the trials of five had begun in the High Court in June 2009.

23. **The Chairperson** thanked the Tanzanian delegation and invited Committee members who so wished to ask any further questions.

24. **Mr. Amor** said that the United Republic of Tanzania, through its moderation and the role it played in the international organizations, was a commendable model. It was therefore all the more surprising to note certain inconsistencies between its legislation and the Covenant, for example, with regard to corporal punishment, the right to inherit or female genital mutilation. The Covenant allowed States parties to choose between a dualist or a monist system, as long as the obligations undertaken were met, but, prior to ratifying an international instrument, a State party must review and amend those provisions of its legislation that were incompatible with that instrument. The United Republic of Tanzania did not appear to have taken that step or, at least, not systematically. Furthermore, article 63 of the Constitution, while relatively difficult to interpret, appeared to state that domestic legislation prevailed over international instruments where a conflict arose. Under international law, the reverse was the rule. Moreover, the Tanzanian courts had often applied the Covenant in preference to domestic legislation. Detailed data on such cases would thus be interesting, as would information on whether the Government was planning to carry out a systematic review to establish whether its laws were compatible with the Covenant.

25. It had been said that the Commission for Human Rights and Good Governance complied with the Paris Principles, but further information on the extent of its independence would be welcome. For example, the presence of one of its members in the delegation could raise concerns, even though the Committee welcomed the opportunity thus presented to put questions to an expert from the Commission. It would also be interesting to know precisely how far the Commission's powers to investigate extended. Could it, for example, demand information from the Government? Was it obliged to refer a case to the courts when it had been unable to resolve it amicably and, if so, did it follow the proceedings right until the sentencing stage? Again, detailed data would be helpful.

26. The Committee welcomed the positive steps taken to help women, but noted that much remained to be done before women, including young girls, could fully exercise their rights in general and their right to education in particular; exercise of those rights was still hindered by traditional attitudes. Every culture had its particularities, but some evolved, while others became ossified. The State should not follow society but, on the contrary, should be proactive in changing attitudes. Furthermore, laws or administrative regulations could also impede the exercise of those rights. For example, if education was compulsory, but not free of charge, as appeared to be the case in the United Republic of Tanzania, grants should be provided. Similarly, the legal age for marriage, 14 years, could lead to girls being taken out of school.

27. Despite the moratorium on the execution of the death penalty, 292 individuals sentenced to death continued to endure difficult psychological, and perhaps material, conditions. After a certain period of time — usually estimated at five years — such a situation became a form of torture and the sentence should then be commuted. Furthermore,

the adoption of a moratorium, besides requiring the regime of prisoners condemned to death to be restructured, was merely a step in the direction of abolition. Once again, the Government had blamed opposition in public opinion, but it was the Government's responsibility to change the situation; the abolition of the death penalty was always done in the face of public opinion.

28. Lastly, with regard to the albino killings he asked whether, in addition to criminal measures and educational campaigns, other measures had been taken to protect albinos, for example, placing them in a safe house with the consent of their family. Albino killings also occurred in neighbouring countries, but the United Republic of Tanzania, which had managed to develop smoothly, should be able to eradicate the practice.

29. **Mr. Rivas Posada** noted the legislative measures that had been adopted to give effect to the recommendations of the Nyalali Commission and asked for further information on the state of emergency. It had apparently been decided that emergency powers would be restricted to the President alone, but it was unclear whether those powers were compatible with article 4 of the Covenant, which prohibited derogation from certain rights even in a state of emergency. The State party had indicated that it had not been necessary to declare a state of emergency since the submission of its previous periodic report, but the fact remained that, if the law existed, it could be applied at any time. Moreover, it would be helpful to know what remedies were available for irregularities occurring during the state of emergency.

30. Another of the Nyalali Commission's recommendations concerned the Witchcraft Act. Undoubtedly, there were issues involved that related to cultural values and customs and would not be changed by the adoption of new legislation alone. The delegation itself had acknowledged that the problem was primarily one of education, but it had not mentioned what measures were being taken in that regard or their impact. Nor had it been indicated whether persons accused of witchcraft were subject to administrative sanctions only (exclusion from the community) or whether they were brought before the courts.

31. Further information would also be appreciated on anti-terrorism legislation and, most importantly, practice. The delegation had indicated that special units had been established to investigate and combat terrorist acts, but the Committee was not solely interested in how society was protected from terrorism; the protection of persons accused of terrorism, or at least their rights, was also important to the Committee and it had, for that reason, been making particular efforts to ascertain how terrorism was defined in State party legislation for a number of years. Anti-terrorism efforts were in reality a new and ill-defined field and could give rise to serious human rights violations.

32. Lastly, he expressed his continuing concern about corporal punishment, which was not only legal, but was also accepted by society. The issue had long been a matter of public debate, but the practice was still very real and its persistence in the long term could have serious consequences on the development of society as a whole.

33. **Mr. Salvioli** noted with satisfaction that certain recommendations made by the Committee in its previous concluding observations had been put into effect, but said that a number of others had not. He hoped that during the consideration of the next periodic report, the Tanzanian delegation would be able to announce to the Committee that its country had acceded to the Optional Protocol to the Covenant.

34. A number of concerns had been expressed in the Committee's previous concluding observations on the law relating to marriage, nationality, succession and inheritance, which discriminated against women. The written replies indicated the efforts made by the State party's authorities to carry out the Committee's recommendations, but it would be useful to know how long the Tanzanian authorities expected to take to complete the legislative reform undertaken in the areas mentioned.

35. The Tanzanian Government had acknowledged that domestic violence was a serious and common phenomenon, which it was endeavouring to eradicate. It would be helpful to know whether the authorities had statistics on complaints, prosecutions and possible penalties in cases of domestic violence. Gender-based violence must be brought to an end: rape, in particular, whether occurring within or outside marriage, was one of the most serious acts that could be committed against a woman and would not be tolerated. It was also especially important to protect women from genital mutilation, which was a breach of the non-derogable right to inviolability of the person. It was also important that protection from genital mutilation should extend to all women, whether or not they had reached the age of majority: the State party should pursue its efforts to end such practices. He noted that the written replies mentioned the *R. v. Mbwasa Madaru* case, in which proceedings against the father of a girl subjected to genital mutilation had been dropped because of a lack of evidence, as the witnesses had not wanted to testify against the father. In another case (*R. v. Fatma Iddi and others*), the case had been withdrawn in response to pressure from the victim's family and other persons around them. He asked whether the State party intended to take measures to prevent such situations occurring. Moreover, while persons found guilty of female genital mutilation could seemingly be punished with a fine, the Tanzanian authorities should nevertheless avoid giving the impression that the practice was tolerated upon the mere payment of a fine.

36. **Mr. Lallah** noted that 12 years had passed since the State party's previous periodic report had been prepared, without the Tanzanian authorities providing any explanation for the delay. He expressed the hope that the administrative measures taken by the State party would prevent a repetition of such a situation in future.

37. He noted the particular importance of article 2, paragraph 3 (a), of the Covenant, whereby States parties to the Covenant undertook to ensure that any person whose rights or freedoms as recognized therein were violated would have an effective remedy, notwithstanding that the violation had been committed by persons acting in an official capacity. While Tanzanian law did not appear to allow impunity for violations of article 7 of the Covenant committed by police or prison officers against persons placed under their absolute control, a mechanism that allowed inquiries to be instituted and proceedings initiated into complaints of such violations was even more important as, according to the Committee's information, the prison overcrowding rate in the United Republic of Tanzania exceeded 44 per cent. The situation was thus certainly more serious than the State party's report suggested, and the Tanzanian delegation's written and oral replies to item 12 of the list of issues did not give sufficient explanation. In particular, he asked who appointed the person responsible for following up complaints mentioned in paragraph 38 of the written replies and what results had been obtained using the mechanism. He would also like to know what sanctions had been taken when an offence had been found to have been committed. It was further stated in paragraph 38 that the Commission for Human Rights and Good Governance was empowered to investigate acts of torture. It was important to know, however, what the practical results of the Commission's activities had been, as that was the only way that the State party's work to protect the rights of persons in custody or detention could be truly gauged. Paragraph 38 further stated that, in some instances, individuals could report acts of torture directly to police stations. He wondered how that was possible, given that those persons were already in detention.

38. In conclusion, he noted that many States parties to the Covenant had deemed it useful to accede to the Optional Protocol, as it allowed them to benefit from the Committee's help in settling cases when proceedings before the domestic courts dragged on. He therefore suggested that the Tanzanian authorities should seriously consider acceding to the Optional Protocol, which would enable them, at the very least, to show their people that they were committed to protecting their rights and punishing those guilty of violating the Covenant.



39. **Mr. Fathalla** enquired about the relationship between the Covenant and domestic legislation. He noted that Tanzanian laws had precedence over the international instruments to which the country was a party where a conflict arose, and asked the Tanzanian delegation to comment on that unusual situation. He asked for an explanation of the statement in paragraph 26 of the report, that, though the State party followed the dualistic system, the provisions of the Covenant were “almost self-executing”. He recalled, in that connection, the importance of incorporating the Covenant into State party domestic law. The head of the Tanzanian delegation had also indicated that the Constitution had been extensively reworked in 1984 to incorporate the Bill of Rights, which to a great extent had given effect to the Covenant’s provisions, and had gone on to state that the Bill of Rights replicated the Covenant. It would be helpful if the Tanzanian delegation could explain the exact status of the Covenant in domestic law.

40. With regard to the measures applicable in a state of emergency, it had been said that a state of emergency had never been declared during the reporting period. Concerns nevertheless remained about compliance with article 6 of the Covenant in the light of the statement in paragraph 47 of the report that, under article 31 of the Constitution, derogation from the right to life protected by article 6 of the Covenant was permitted once a state of emergency was decreed. As the right to life was a fundamental right which could not be derogated from in any circumstances, that constitutional provision was a source of grave concern.

41. **Mr. Bouzid** said that, according to some sources, the Commission for Human Rights and Good Governance did not have the necessary resources to allow it to fulfil its mandate and its recommendations were not put into effect. He asked the Tanzanian delegation to comment on that point.

42. **Mr. Pérez Sánchez-Cerro**, referring back to the issue of the death penalty, noted that the Law Reform Commission had carried out a study and recommended that the death penalty should be abolished, but that the Government, largely on the basis of opinion polls, seemed reluctant to follow that recommendation. The abolition of the death penalty was nevertheless the responsibility of the State, and the Tanzanian authorities could not shirk that responsibility by invoking pressure from public opinion.

43. The legislative provisions criminalizing sexual relations between consenting adults of the same sex had not been repealed and penalties had even been considerably increased. Under the 1954 Penal Code, the punishment had been seven years’ imprisonment, the 1978 legislative reform had increased it to 20 years in prison and the 2002 amendment to the Penal Code had provided for an even harsher penalty. The amendments made in 2004 to Zanzibar legislation provided that sexual relations between consenting adults of the same sex were punishable with the same penalty as murder. He would like the Tanzanian delegation to comment on the issue.

44. **Ms. Keller** questioned the application of articles 2 and 26 of the Covenant and, in particular, the reasoning behind keeping legal provisions criminalizing sexual relations between consenting adults of the same sex. She asked why the Tanzanian authorities had refused to decriminalize such relations and had even increased the penalties. Lastly, she asked what measures the country was planning to take to combat discrimination on grounds of sexual orientation or gender identity, whether real or supposed.

45. **Mr. Bhagwati** asked about the composition of the Commission for Human Rights and Good Governance and the duration of its members’ mandates. He also wished to know how the Commission’s independence was guaranteed.

46. With regard to the death penalty, he associated himself with the questions put by Mr. Amor, and asked when the moratorium on executions had come into force. He requested confirmation of reports that some 250 persons were nevertheless still detained on death

row. If true, he noted that holding persons on death row for an indefinite period was particularly cruel treatment which might constitute a violation of article 7 of the Covenant. He urged the Tanzanian authorities to abolish the death penalty officially.

47. Legal aid was apparently provided for only two offences, which meant that there were a great number of instances where it was not granted. He therefore enquired what happened to persons without the means to engage defence counsel, how many persons were brought before the courts each year without being assisted by counsel of their choosing, and how many persons in that situation were convicted by the courts.

48. **Mr. Thelin**, referring to the issue of violence against women, noted that in the written replies, marital rape was mentioned as an alien concept in Tanzanian society, which the head of the delegation had confirmed. It should be pointed out that marital rape could not be considered as a matter of culture, and that it constituted a violation of articles 3 and 7 of the Covenant. He therefore encouraged the Tanzanian authorities to prohibit marital rape and include the issue in the national plan of action on gender-based violence. He expressed the hope that the delegation would confirm that as the intention of the Tanzanian authorities.

49. **Ms. Chanet** noted with satisfaction that, contrary to the situation during the consideration of the third periodic report of the United Republic of Tanzania, the Tanzanian authorities had sent a large delegation of fully competent representatives to answer the Committee's questions. Another positive point was the adoption in 2005 of a law which had led to improvements for single mothers in Zanzibar.

50. The other members of the Committee had already asked a number of questions that she had intended to raise, and she would simply remind the Tanzanian delegation that the Committee took into consideration only laws already in force when considering a State party's implementation of the Covenant. Thus, the State party could not invoke draft legislation, national debates, customs or traditions to justify delaying the Covenant's application. As a result, the information given by the Tanzanian delegation on possible changes to the situation regarding forced marriage, female genital mutilation, corporal punishment and the death penalty could not be taken into account during the consideration of the Covenant's implementation.

51. With regard to the criminalization of homosexuality in the United Republic of Tanzania, other Committee members had asked questions on the issue, and she would simply recall that, while it was understandable that vestiges of legislation dating from the colonial period remained, it was nevertheless surprising that the penalties for homosexuality had been increased, as that was a very rare occurrence. She wished to know what factors had led the Tanzanian authorities to increase the punishment for homosexuality and recalled that the Committee, in its jurisprudence, considered the punishment of homosexual relations to be discrimination and an invasion of privacy, i.e., a violation of articles 17 and 26 of the Covenant.

52. One NGO had reported on the case of a transsexual who had allegedly been the victim of a violation of article 3 of the Covenant: obliged to go to hospital for medical reasons, she had reportedly been paraded as a monster and subjected to various humiliations. She asked how that case had been followed up, including whether it had given rise to criminal proceedings.

53. **Mr. Ayat** said that he associated himself with the remarks made on the death penalty. The abolition of the death penalty would be a step forward in the promotion of human rights, and the application of a moratorium was a good sign. It must nevertheless be ensured that the uncertainty in which those sentenced to death were left over their execution did not become a cause of suffering to them. The argument put forward in the report that the death penalty "is a general deterrent measure and the only form of retribution for

particularly serious crimes such as murder” was questionable. Rwanda, perhaps the country with the most reason to retain the death penalty, had nevertheless abolished it. Greater thought should be given to the issue. He furthermore noted that the information given in the report was not entirely up to date, as some of the statistics dated from 2004.

54. The report stated that the Tanzanian Government had embarked upon the process of ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with a view to prohibiting and criminalizing torture. Given that article 13, paragraph 6, of the Tanzanian Constitution already prohibited torture and other cruel, inhuman or degrading treatment or punishment, there should be nothing to prevent the United Republic of Tanzania ratifying the Convention as soon as possible.

55. The report stated that the right to be tried within a reasonable period of time by an impartial court was guaranteed and that the law stipulated that anyone arrested should be brought before a judge within 24 hours or as soon as practicable, which was positive; however, it was unclear whether, after having appeared before a judge and been charged, the party concerned was tried within a reasonable period of time.

56. In all countries where abortion was illegal, exceptions were possible, including to allow a pregnancy to be terminated for medical reasons. He asked whether Tanzanian law provided for such exceptions, as the report did not mention the point.

57. **The Chairperson** suggested that the meeting should be suspended for a few minutes to allow the delegation to prepare its answers to the questions asked.

*The meeting was suspended at 5.10 p.m. and resumed at 5.30 p.m.*

58. **Mr. Chikawe** (United Republic of Tanzania) thanked the Committee for its helpful comments. With regard to the emergency powers, the President could exercise them only with Parliament’s consent. Furthermore, the exercise of those powers was limited by article 30 and article 31, paragraph 3, of the Constitution, which guaranteed the right to life, even during a state of emergency.

59. The United Republic of Tanzania was not yet ready to abolish the death penalty, the retention of which helped, inter alia, the fight against crime, which was particularly high in some of the country’s regions. Nevertheless, a de facto moratorium on executions was applied. Under the Tanzanian system, once the Court of Appeal — the supreme court — had confirmed the death sentence, the case was referred to the President who decided, after an advisory body had expressed an opinion, whether to authorize the execution or not. The body concerned had always recommended that the death sentence should not be executed and every President had followed that recommendation without fail. Therefore, a de facto moratorium was in place, even if the President retained the power to order a convicted person’s execution. The United Republic of Tanzania was a democratic country and the Government was obliged to abide by public opinion; numerous opinion polls demonstrated that the public was in favour of retaining the death penalty. The Government was nevertheless endeavouring to move, however slowly, towards the abolition of the death penalty. While it was true that Rwanda had abolished the death penalty, that praiseworthy measure was set against a particularly painful backdrop; it had been necessary to help the country to heal and avoid fresh massacres, and had been indispensable at the time. Currently, 292 persons were living under sentence of death, but the appeal proceedings of the majority had not been concluded; they had appealed to the High Court, but were still to appeal to the Court of Appeal. In 2008, the President had commuted all death sentences passed; the 292 cases were therefore new cases. The delegation could not give assurances that none of those convicted would be executed, as only the President was empowered to make that decision.

60. There was no law on marital rape, since that concept was alien in Tanzanian society. The country was nevertheless willing to enter into a debate on that new concept, which was beginning to be talked of in certain quarters.

61. Tanzanian society did not condone homosexuality, which was considered as unnatural. Homosexual relations were an offence. Nevertheless, while the penalties for sexual offences had been increased, essentially to protect women and children, the penalties for relations between persons of the same sex were unchanged. The same was true in Zanzibar, which had amended its legislation in 2008, but where homosexual relations were still punishable only by three to seven years' imprisonment. Contrary to what had been said, homosexuality did not carry the death penalty in Zanzibar.

62. One Committee member had noted that a representative of the Commission for Human Rights and Good Governance appeared on the list of members of the delegation; that was a mistake owing to the list originally being submitted for all visa requests for Switzerland, grouped together.

63. The Commission for Human Rights and Good Governance had a president, who must have the same qualifications as those required for appointment as a High Court or Appeal Court judge, and a vice-president; if the president came from the mainland, the vice-president must be from Zanzibar, and vice versa. The Commission was made up of, at most, five commissioners who must have experience in human rights, the law, politics or social affairs, and show great commitment. The commissioners, assisted by deputy commissioners, were elected for a term of three years, which could be renewed once for another three years, meaning that their maximum term of office was six years. Their salary was set by the president and paid from a trust fund. The resources allocated to the Commission were perhaps insufficient, but the lack of funds was unfortunately a general problem that affected other bodies, too. The Government applied the Commission's decisions and recommendations directly. It was nevertheless possible to apply to the courts to enforce them, but that was not generally necessary.

64. With regard to public participation, the United Republic of Tanzania, while still a fledgling democracy, endeavoured to involve the public in all important decisions.

65. With regard to the situation in detention facilities, he confirmed that the overall capacity of the prison system was 20,000 detainees, but that 38,000 individuals were currently being detained in the country. Nevertheless, as a result of a new programme launched in 2008, that figure should have fallen to 33,000 by December 2009. While the police had previously been responsible for making arrests, investigating and prosecuting, prosecution was now handled by the Public Prosecutor. That system had already led to improvements, as the number of detainees had been reduced from 44,000 to 38,000 individuals. Physical abuse of detainees was investigated first by the prison administration and then by the police and was handled like any other offence. Furthermore, the Commission for Human Rights and Good Governance was free to conduct its own investigation. All prison staff guilty of offences against detainees were duly prosecuted, in the same way as any other offender.

66. The reason for the delay in the submission of the report was that — as the Ministry of the Interior had not been in a position to draft it — it had been necessary to set up a body to prepare reports for submission to the treaty bodies. Now that that had been done, subsequent reports should be submitted on time.

67. With regard to discrimination, the United Republic of Tanzania was grateful to the Committee for having highlighted the apparent conflict between customary law, the Constitution and court decisions and would endeavour to resolve the problem.

68. Any person arrested must be brought before a judge within 24 hours; if there were grounds for prosecution, however, an immediate start to the proceedings could not be guaranteed. There was a fast-track procedure for cases of great public interest, such as the albino killings. Certain cases could therefore be tried on a priority basis, but in most instances, the proceedings had to be left to take their course.

69. Legal aid was guaranteed in all cases where the parties were not represented by counsel and were appearing before a district court, a magistrate's court, the High Court or the Court of Appeal, where legal representation was a right. If the case was judged in a primary court, there was no lawyer and only the magistrate was present. Those magistrates did not have the necessary qualifications to deal with lawyers and efforts must be made to train them. As soon as the magistrates were sufficiently trained, the assistance of a lawyer in primary courts would also be guaranteed.

70. Genital mutilation had originally been a rite of passage in certain societies, to which the woman had to submit to be respectable and able to marry. The practice was so profoundly rooted in society that even now girls fled from their parents to go and have the operation voluntarily. The best way to eradicate the practice was to educate the population and uproot the beliefs upon which it was based. Much remained to be done in that area and the work of NGOs was very valuable. Former practitioners of excision were now educating the population. Legislative measures had also been taken, and genital mutilation was an offence punishable by 15–30 years' imprisonment. Nevertheless, the main difficulty in such cases was that it was impossible to find persons willing to testify. The legal framework had been set up, but attitudes still needed to be changed.

71. While abortion was prohibited, exceptions could be made when the health of the mother was at risk.

72. As it was not possible to respond to all the questions put by the Committee, the Tanzanian delegation undertook to answer them at a later date in writing.

73. **The Chairperson** thanked the delegation and invited it to continue the dialogue with the Committee at the following meeting.

*The meeting rose at 6 p.m.*