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ON CIVIL AND
POLITICAL RIGHTS**

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Held at Headquarters, New York,
on Monday, 6 April 1981, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 10.50 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

United Republic of Tanzania (CCPR/C/1/Add.48)

1. At the invitation of the Chairman, Mrs. Mbapila (United Republic of Tanzania) took a place at the Committee table.
2. Mrs. MBAPILA (United Republic of Tanzania), introducing her country's initial report (CCPR/C/1/Add.48), said that since the time of her country's struggle for independence the goal had been to establish a society based on equality of men, irrespective of colour, sex or religion. When independence had been achieved in 1961, the first important action of the Government had been to draw up a written Constitution which would, inter alia, guarantee the rights of the individual. Succeeding Constitutions had also guaranteed the rights of individuals and the independence of the courts and had strengthened institutional arrangements for the promotion and maintenance of the rights of the individual.
3. In the preamble of the present Constitution, as amended in 1977, it was stipulated that the purpose of the Constitution was to guarantee freedom, justice, brotherhood and peace based on the following beliefs: that all men were equal, that every person deserved respect for the dignity of his person; that everyone had the right to expect from society possibilities for a good life, the right to live as a freeman and the protection of his person and property under the law; that everyone had the right to follow a religion of his choice, freedom to express his views and freedom of association with others, provided he respected the law of the land; that every citizen had the right to use organs of the land to participate effectively in the decision-making processes in the government of his nation; and that everyone had the right to receive a just return for his labour.
4. In the economic field, the Constitution stipulated that socialism and self-reliance were the only way that would enable Tanzania to create a society in which the equality and freedom of men could be guaranteed. At the same time, citizens had the following duties and obligations: to respect and value the dignity and rights of all men, to protect and follow the laws of the land, and to implement governmental decisions in such a manner as to ensure that the resources of the land were utilized, developed and preserved for the benefit of all people of the land without the exploitation of one man by another. Everyone who was able to work must be given a chance to work, the term "wcrk" meaning any legal means to earn a just living. Society should promote and protect human dignity by fully following the provisions of the Universal Declaration of Human Rights and should ensure that the Government and all its organs gave equal opportunities to all citizens without prejudice as to sex, colour, tribe, religion or status. Society should ensure that no one was deprived of his rights or was threatened or discriminated against and that there was no corruption, unfair treatment or favouritism. The resources of the land must be utilized for the

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(Mrs. Mbapila, United
Republic of Tanzania)

common good of all and for the elimination of poverty, ignorance and disease. The Government should control all the major means of economic development, such as minerals, communications, banking and insurance and should be democratic and socialist.

5. The Constitution stated that all human rights could be promoted and guaranteed and the obligations of citizens could be carried out only in a democratic society in which the Government operated under the supervision of an elected Parliament representing the wishes of the people and in which there were courts of law that enjoyed maximum independence and could therefore operate without fear or favouritism. The Government allowed private legal practice but provided free defence services by government lawyers when requested by the accused and had established a parastatal legal unit, the Tanzania Legal Corporation, which provided legal services at very low fees.
6. Written constitutions and an independent judiciary alone could not, of course, guarantee full protection of human rights, and the Government had therefore established the necessary machinery to monitor the protection of human rights and to take action against individuals or organs that were found to hinder or violate the enjoyment of such rights. In that connexion, she drew attention to the Permanent Commission of Enquiry, which served as the ombudsman of the country and whose role was described in the report. An "anti-corruption squad" had been established in the President's Office, and those found to be corrupt were taken to court and/or dismissed from service. There was also the Leadership Code Commission, which set standards of leadership so as to promote justice and fairness and checked on the behaviour of leaders.
7. The Marriage Act of 1970 established minimum ages for marriage, conditions for divorce, remarriage, inheritance of property and ownership of property between wife and husband and other important provisions of relevance to marriage, including the prohibition of forced marriages.
8. The Civil Service Act of 1962 and the Civil Service Regulations (1970) and many other administrative regulations guaranteed, together with the Constitution, equal employment opportunities to all based on job requirements regardless of sex, race, religion or colour.
9. A matter on which there had been some misunderstanding in the past was the presidential power to detain people. That power was provided for by the Preventive Detention Act, which, among other things, laid down procedures for detention in cases of threats to the security of the State. The Act also stipulated conditions for detention and provided for 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 by the President. Up to the present, the President had used those powers sparingly.
10. Mr. PRADO VALLEJO said that, although the Tanzanian report had not been prepared according to the guidelines established by the Committee, it had the merit, not found in many reports, of recognizing that short-comings existed in the country and showed that the Government sought in a spirit of goodwill to overcome them.

(Mr. Prado Vallejo)

11. There was a fundamental question that arose in connexion with the Tanzanian report. The Covenant had not been incorporated in Tanzanian legislation and there was no specific provisions for a separate bill of rights. What then was the relation between the implementation of the Covenant and the laws of the Republic? How could a citizen invoke the provision of the Covenant before competent judges? Specific measures to ensure the implementation of the rights guaranteed under the Covenant seemed to be lacking.

12. Another cause for concern was the fact that Tanzania was a one-party State. Did the laws prohibit the formation of another party? If other parties could be formed, would they have to operate at a certain disadvantage vis-a-vis the existing official party? The whole question suggested the existence of discrimination of a political nature and possible restrictions on the freedom of expression and association. If a citizen disagreed with the political programme of the official party, would his views and rights be respected? Article 5, paragraph 8, of the Constitution of the single political party referred to "lawfully established forums" through which citizens had the right to participate effectively in the national decision-making process. What forums were they, and were they the only means of expression? Did citizens have any internal recourse if they felt that they had been the victims of discrimination affecting their freedom of expression and association?

13. With regard to the Permanent Commission of Enquiry, it appeared that the Commission acted whenever directed by the President and was essentially under his control. How could a citizen bring a matter to the attention of the Commission and obtain some satisfaction from it if the President opposed such action? The arrangement seemed to diminish the degree of protection required for full protection of rights through regular channels.

14. The report referred to the existence of two Constitutions, one of the Republic itself and the other of the single political party. What was the relation between the two Constitutions, and was it possible that contradictions could exist between them? If so, how were they resolved?

15. The report stated that there was felt to be no need to transform the provisions of the Covenant into internal laws or administrative regulations, since the rights were adequately protected by the Constitution. However, no specific machinery or legislation was reported to justify that claim. Other points mentioned in the report were that the party organs could intervene directly to defend any rights under the Covenant owing to the doctrine of supremacy of the party and that the party's competence embraced members and non-members alike. In some situations an arrangement of that kind could be beneficial, but in others such powers could easily lead to arbitrary action affecting the rights of citizens, and in particular freedom of association, expression and opinion. How could citizens act to resist arbitrary actions and defend their rights? The same question arose with regard to measures to deal with corruption, which again were valuable in some contexts but could lead to arbitrary action, especially in a political context. It would be valuable to know what the citizen could do to defend his rights against the arbitrary actions of official organs.

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(Mr. Prado Vallejo)

16. The third paragraph of part II of the report referred to "a historical background of discrimination based on sex"; it would be valuable to hear more about that problem. The fifth paragraph referred to death sentence; was there any possibility that the death penalty might be abolished? Could it be imposed for political offences, such as subversion or political opposition? Were there any restrictions on its imposition? The sixth paragraph referred to arrest and detention and the granting of bail. He asked what conditions applied to the granting of bail.

17. Mr. HANGA welcomed the report, which described the Government's efforts to create a new society in which all civil and political rights would be respected and the problems it was encountering in that enterprise. The foreword to the Constitution set out certain principles, but they did not encompass all the civil and political rights embodied in the Covenant, nor was there any explanation of how the Government effectively guaranteed them or what avenues were open to a citizen to invoke those rights. In view of the fact that the United Republic of Tanzania proclaimed itself to be a democratic socialist State, he wondered what the Government's position was with respect to the new international economic order and its possible impact on the implementation of civil and political rights. The report referred to the involvement of women in productive sectors, but it said nothing about their role in the party and in the country's political life. He wondered, for instance, how many party members were women.

18. Referring to articles 9, 11 and 14 of the Covenant, he asked whether victims of unlawful arrest or detention could claim damages under Tanzanian law, whether the provision of article 11 was fully implemented, whether there were people's courts, and under what circumstances trials were held in camera. He further inquired whether propaganda for war was prohibited by law, in accordance with article 20, and how the trade unions operated, especially with respect to the conclusion of the collective contracts that were a common feature of the socialist system; had Tanzania, for instance, ratified international conventions governing trade union activities?

19. With regard to article 23, he asked what political role was currently being played by family units, and how the family was protected by law. He noted that forced marriages had been prohibited, but he wondered what had been the nature of such marriages in the past. In respect of the rights of children guaranteed under article 24 of the Covenant, he inquired about child-care arrangements for working mothers and about the status of children born out of wedlock, with particular reference to legitimation and the right to inherit property both from the mother and from the natural father.

20. He concluded from paragraph A (v) of the foreword to the Constitution that there was some form of direct democracy, and in that connexion he requested information about public organizations of, for instance, women, young people or members of various professions. Finally, he would like some information on the existence of minority groups. He wondered whether the Covenant had been disseminated among such groups and also whether they were represented in Parliament.

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21. Mr. JANCA^V said that, although the United Republic of Tanzania was a relatively new State, it had made a remarkable name for itself in the international arena as a leading member of the non-aligned movement, a founder member of the Organization of African Unity and a country dedicated to the principles of the United Nations, including the promotion of human rights, as demonstrated by the reference to the Universal Declaration of Human Rights in the foreword to its Constitution. It was therefore regrettable that, in submitting its initial report, it had given insufficient details about the constitutional provisions, internal laws and administrative regulations which existed to enforce the provisions of the Covenant. Such details should have been provided, not only because there was an obligation to do so under article 40 of the Covenant but also because Tanzania's unique approach to the promotion of human rights could be a valuable example to other States parties. The 1977 Constitution was striking in its originality and complexity, and deserved thorough consideration in order to ascertain the extent to which the civil and political rights enumerated in the Covenant were reflected and implemented in Tanzania's legal system. Unfortunately, despite the efforts of the Secretariat, the English translation of the Constitution had been received too late to make such thorough consideration possible. He appreciated the frankness with which the Government had drawn attention to its own short-comings, but felt that it had perhaps been a little modest.

22. As in other States parties with similar legal systems, the Covenant had not automatically been incorporated into internal law upon ratification. It was therefore all the more important to have a detailed description of the internal laws governing the rights set forth in the Covenant. He noted that some of them were mentioned in the appendix to the Constitution, but he would like to see some facts and figures to illustrate both progress and set-backs in promoting the enjoyment of human rights. The questions posed by members of the Committee could certainly provide the guidelines for the submission of such information in a future report.

23. He was surprised to see that, despite its world-wide reputation of firm support for those struggling for self-determination, the Government had made no reference in its report to article 1 of the Covenant. Information was also lacking on article 2, but he noted that there were some discrepancies between the provisions of that article and those of the Tanzanian Constitution which required clarification. It was particularly important to provide fuller information about legal or other remedies available to those who believed that their rights had been violated.

24. With respect to equal rights of men and women under article 3 of the Covenant, many States parties had difficulty in implementing that article fully because of traditional or religious practices, even when equality was guaranteed in the laws or the Constitution. He wondered whether the Tanzanian Government was experiencing any problems in that regard and, if so, what measures it was taking to solve them.

25. He noted that section 42 (5) of the Constitution made some provision for emergency situations but, there again, fuller explanations were required. With regard to the right to life, the Committee interpreted article 6 of the Covenant in a very broad sense, and it would be useful to have some information on the

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measures being taken by the Government, especially in the rural areas, to protect life by improving public health. Other articles on which more information should be provided in the next report were articles 9, 10, 14, 15, 23 and 24.

26. Sir Vincent EVANS said that the United Republic of Tanzania had had the good fortune to be led since independence by one of the most able and dynamic leaders of the new Africa. It had achieved an enviable degree of political stability and, although it was not a rich country, significant advances had been made especially in the provision of social services; moreover, it played a prominent role in world affairs. The 1977 Constitution was unusual in many respects, reflecting the innovative and imaginative approach of President Nyerere. While emphasizing the dignity of the human person and the protection of human rights by reference to the Universal Declaration of Human Rights, the Constitution, like those of other States parties with similar legal systems, neither incorporated the provisions of the Covenant nor provided a detailed catalogue of constitutionally protected rights, and there was no separate written bill of rights. Such States parties undoubtedly had a more difficult task in explaining precisely how the rights and freedoms defined in the Covenant were implemented in domestic law and practice, and one of the weaknesses of the report was that it did not give sufficient information in that regard. He recalled that, under international law, every State party was legally bound to adopt the necessary measures to give effect to the provisions of the Covenant, which was an international treaty. In addition, it was the purpose of the Covenant to ensure the protection of individual rights. That meant that, if any individual considered that his rights were being violated or were likely to be violated by the laws and practice of the country or the decisions of its administrative authorities, it should be possible to raise the matter and seek a legal remedy. In order to do that, the individual must be informed of what his rights were. He therefore inquired whether the Covenant had been published in Tanzania either in English or, in the vernacular and, if so, whether copies were readily available for individuals to study. He further inquired what channels were open to the individual to raise any alleged violation of human rights in public discussion, with the administrative authorities, through the party or before the courts.

27. He would like a clarification of the role of various constitutional organs in protecting human rights, in particular the Permanent Commission of Enquiry, the High Court of the United Republic, the Special Constitutional Court and the party. The Permanent Commission of Enquiry was clearly a potentially important body and an unusual one, and it would be of great interest to the Committee to know more about it. Its duties included protection of the rights of individuals against abuse by those in authority. However, it was not a court of law but more in the nature of an administrative body whose task was to investigate complaints and report its findings to the President. How did it operate in practice, and was it open to any individual who considered that his rights had been violated to appeal to it? Could that be done on the ground that rights defined in the Covenant had been infringed? How active was the Commission? Could the Committee be given some idea of the kind of cases it had investigated and what action had been taken on its reports? With regard to the High Court and the Supreme Constitutional Court, it seemed from sections 68 and 69 and section 71 to 74 of

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(Sir Vincent Evans)

the Constitution that each had jurisdiction to decide certain questions concerning interpretation of the Constitution. But did they have any jurisdiction to ensure that legislation subordinate to the Constitution, or administrative acts, were consistent with the aims set out in the foreword to the Constitution, particularly with regard to human rights? Finally, what was the precise role of the party and its organs in protecting the rights of individuals? The report said that the party could intervene directly, but only when there was no other remedy. How did that work in practice and what other administrative remedies were there? He would like to know whether there was a procedure for individuals to raise complaints through the party, what the procedure was and whether it was available to non-members of the party.

28. With regard to the continued existence of the death penalty in Tanzania, the report stated that the death sentence was rarely passed and in most cases was commuted. But for what crimes, and how often, had it been carried out? Although article 6 of the Covenant only limited and regulated the death penalty, it looked to its eventual abolition. He wondered whether abolition had been considered and whether Tanzania might give a lead to other African countries in that respect. He would also like to know what laws and regulations were in force in Tanzania to give effect to articles 7 and 10 of the Covenant. No doubt there were laws which prohibited torture and laid down that prisoners should be properly treated, but the Committee should be told what they were. Even in some countries where such laws existed, prisoners were sometimes maltreated. It was important that there should be impartial procedures to inquire into such complaints and take disciplinary action against guilty parties. What was the procedure in Tanzania? It was also important, with regard to articles 9 and 14 of the Covenant, that the Committee should know whether any Tanzanians were detained for purely political reasons and, if so, how many and on what justification.

29. The freedoms of expression and information, assembly and association guaranteed by articles 19, 21 and 22 were among the most important rights protected by the Covenant, which therefore permitted only such restrictions of those rights as were provided by law and were necessary to protect the rights of others. He wondered what restrictions there were in Tanzania and how they were justified; how free was the press, and how free was the individual to comment on the conduct of public affairs or to canvass ideas for change. Could an individual associate with others for that purpose?

30. Mr. ERMACORA said he would like to know how human rights had been guaranteed in Tanzania in the period between the entry into force of the Covenant for the United Republic in September 1976 and the adoption of the Constitution in 1977. Secondly, how legally binding were the aims and objects set out in the foreword to the Constitution, the only place where human rights were mentioned? Were they applied by the courts, and how far did they cover articles 9 and 10 of the Covenant? Another important question was the extent to which the one-party system was compatible with freedom of expression and with article 25 of the Covenant. He knew and admired Tanzania but felt obliged to mention that, among all the letters to the press, he had never found any stating an opinion on government policy or practice. He therefore wondered how freedom of expression was guaranteed.

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31. Another question was whether the Government of Zanzibar was bound by the aims and objects of the Constitution and how far it complied with the Covenant. Was it true that Adam Magobi had died in detention on 1 June 1980 and, if so, had the Permanent Commission of Enquiry looked into the case? Had the Commission dealt with any other human rights problem? Evidence was needed of the protection of human rights in Tanzania, including Zanzibar, especially with regard to the length of detention on remand. He would also like to know how many death sentences had been commuted and how many carried out since the Covenant had entered into force.

32. With regard to the status of article 4 of the Covenant in the Tanzanian constitutional order, he wondered how far the Government was actually bound to respect its provisions concerning derogation when the Covenant was not a part of Tanzania's internal law. He would also like to know whether the provisions against discrimination in article 26 of the Covenant were respected in the case of Tanzanians of Asian origin, notably in the civil service, and what was the position of refugees from the war in Uganda under articles 12 and 13. Finally, he wondered why the United Republic of Tanzania had not yet ratified the 1948 ILO Convention on so important a matter as freedom of association and protection of the right to organize. Did that mean that the Government did not accept a plurality of trade unions, or were they not wanted?

33. Mr. TARNOPOLSKY said that he had been very impressed by the Faculty of Law at Dar-es-Salaam, many of whose graduates could have prepared the kind of detailed report which would have answered the Committee's questions and complied with its published guidelines. The one submitted was commendably frank and prompt but not detailed enough for a real dialogue. The first problem was that of assessing the constitutional situation in a one-party State. The Covenant was neutral on the question of one or many parties, but articles 19, 21, 22 and 25 suggested at least the possibility of competing parties. What was the situation in Tanzania, since there was nothing in the Constitution to guarantee the rights provided for by the Covenant without distinction of any kind, including political opinion, as laid down in article 2, paragraph 1? Where the freedoms covered by articles 19, 21, 22 and 25 were concerned, much more information was needed to show how Tanzania met the Covenant's provisions.

34. There was no reference to race or national origin in the list of grounds on which discrimination was prohibited in the foreword to the Constitution. What protection was there in fact for the Asian and other non-African populations, including people in Zanzibar? Information was needed about Zanzibar, since its administration appeared to be quite separate; that did not mean that two separate reports should be submitted, but reference should be made in the main paper to any differences from the mainland.

35. With regard to article 4 of the Covenant, he wanted to know what limitations there were on the actions of the executive or of Parliament in an emergency, under a written Constitution which lacked specific protection for human rights and freedoms. While the Covenant recognized limitations on certain freedoms in ordinary times, it permitted restrictions on other legal rights only in an emergency. Even then, no derogations were permitted from articles 6, 7 and 15.

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(Mr. Tarnopolsky)

He would like details of how such questions had been treated in Tanzania and especially what emergency situations there had been since 1976, including any in Zanzibar.

36. Articles 7 and 10 of the Covenant banned torture and provided that detainees should be treated with humanity. In view of the provisions of article 23 concerning protection of the family, he would like to know how frequently detainees could receive visits from members of their family, and also, whether they could communicate with doctors or lawyers directly or by mail.

37. The International Labour Organisation had expressed concern at a number of Tanzanian orders and acts, including the Local Government Ordinance, the Employment Ordinance and the Ward Development Committees Act, all of which required forms of unpaid labour for public purposes. However, article 8 of the Covenant did not appear to cover that kind of labour. There was a possibility that the Preventive Detention Act, the Refugee Control Act, the Deportation Ordinance and the Resettlement of Offenders Act might allow infringements of articles 8, 9 and 12 of the Covenant.

38. The question of legal assistance to those accused of crimes, as provided for in article 14, paragraph 3 (d), of the Covenant, also needed to be clarified, especially with reference to Zanzibar. The report lacked any information relevant to articles 15 and 17. With regard to articles 18, 19, 21 and 22, since the most important description of the scope and reality of those freedoms was provided by the limitations to which they could be subjected under the law, a complete list of such limitations would be desirable to enable the Committee to appreciate the reality in Tanzania. That was especially important in view of the fact that the foreword to the Constitution made no reference to freedom of association.

The meeting rose at 1 p.m.