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SUMMARY RECORD OF THE 282nd MEETING

Held at Headquarters, New York,  
on Monday, 6 April 1981, at 3 p.m.

Chairman: Mr. MAVROMMATIS

later: Mr. PRADO VALLEJO

later: Mr. TOMUSCHAT

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The meeting was called to order at 3.30 p.m.

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

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

1. Mr. BOUZIRI said that although the report did not quite follow the Committee's guidelines it was interesting and full of information. It was also modest as demonstrated by the recognition, on page 5, that Tanzania was far from being a truly socialist and democratic State.
2. Concerning the question of equality between men and women he asked what was the percentage of girls as compared with boys in primary and secondary schools and at university. Were there many women in administration? Were there enough women lawyers and doctors? Who was the head of the family? Assuming that the head of the family was the man, could the courts strip him of his parental authority and transfer it to the wife? In the event of a divorce, who was given custody of the children and did the man pay the woman an allowance? If a Tanzanian national married a foreigner, were the rules the same for men and women? Specifically, were Tanzanian women permitted to marry foreigners and, if so, could their husbands acquire Tanzanian nationality? Noting that, in other countries, in the event of a divorce a woman did not normally receive any part of the property acquired during the marriage even if the marriage had lasted some 20 years, he asked whether the same was true in Tanzania. Was there any family planning and was abortion permitted? If so, was it regulated in any manner?
3. With regard to article 27 of the Covenant, he asked whether the Government had taken any legislative steps to enable the different ethnic and religious communities which coexisted peacefully in Tanzania to develop their language, culture and traditions?
4. He associated himself with those who had raised questions at the 281st meeting. Referring to the fact that Tanzania had a one-party system, he asked to what extent that fact could be reconciled with the provisions of articles 18, 19, 20, 22 and 25 of the Covenant. He pointed out that many countries with a social democratic system had started out having only one party but that, once their independence had been firmly established they had adopted a more pluralistic approach. Was Tanzania going to do the same?
5. Mr. Prado Vallejo took the Chair.
6. Mr. SADI said that he was not totally satisfied with the position of the Covenant vis-à-vis domestic laws, particularly since the report stated that it was considered that there was no need to transform the provisions of the Covenant into internal laws. He did not consider that the principles of the Covenant were fully reflected in the Constitution.

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7. The Covenant did not, of course, state how many parties a country should have. The main issue was whether the relevant articles of the Covenant - particularly articles 21 and 22 relating to freedom of assembly and of association - could really be observed under such a system. He would assume that they could not but was ready to stand corrected. It was up to the Government to demonstrate that they could.

8. Section 22 of the Constitution stated that the legislature should consist of two parts - Members of Parliament on the one hand and the President on the other - but failed to see how that could work, especially as section 23 specified who the members of Parliament should be and started by naming the Vice-President. Normally, all members of a legislature were elected. Paragraphs 1 (c) and 1 (d) of that section went on to specify that 15 and 25 National Members of Parliament must be elected in accordance with the provisions of sections 29 and 30 respectively. Section 29 listed the institutions which could recommend the names of persons to be elected to Parliament, and section 30 stated that persons to be elected members of Parliament must be recommended by certain Committees. It therefore seemed that the candidatures were pretty much controlled by groups. If that was indeed the case, then the election process was somewhat less than perfect. Even the candidates for the 106 seats to be occupied by representatives of constituencies had to be approved by the National Executive Committee or the Party, according to section 27. He was disturbed at the amount of control over the nomination and selection of candidates; if the nominations were controlled by the Party, it seemed legitimate to assume that the outcome of the elections were also controlled. If that were true it would aggravate the fact that Tanzania had a one-party system for it would seem to indicate that the relevant articles of the Covenant were being violated.

9. Secondly, in view of article 1 of the Covenant concerning the right of peoples to self-determination, he requested more information regarding Tanzania's position vis-à-vis Uganda. Although Tanzania had always upheld the right of peoples to self-determination it had been involved in Ugandan affairs. Accordingly, he would welcome more information on the subject. Similarly, he wondered whether there were any laws prohibiting propaganda for war, as required under article 20 of the Covenant. The report was silent on that subject.

10. He also asked what was the minimum legal age for marriage.

11. With reference to article 4 of the Covenant, he asked whether a public emergency had ever been proclaimed and whether there were any laws regulating the proclamation of such emergencies.

12. Finally, noting that the inhabitants of Zanzibar belonged to different races, he asked for information concerning any laws designed to protect religious and ethnic minorities.

13. Mr. DIEYE requested more information on the Permanent Commission of Inquiry mentioned in the report. What was its exact nature and position? Was it composed of independent members appointed by the President or another body or were members

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(Mr. Dieye)

of that Commission merely senior civil servants? Similarly, he was not quite clear as to the scope of the recommendations it could make to the President and the practical consequences which might be drawn from such recommendations.

14. He said that he was always somewhat puzzled to hear that a particular organization which was not directly elected by the people, such as the United Party, had supremacy. To what extent could such an organization represent the interests of all the people and to what extent could it protect the rights of individuals? How was such protection ensured in practice? Noting the statement that Party organs could intervene directly to defend any rights under the Covenant, he asked how such intervention occurred and by what mechanism? Was it done, as was the case in some countries through an independent judiciary?

15. Commenting on the statement in the report whereby it was recognized that civil and political rights were not granted to the fullest, he asked whether there were any particular areas in which they were not fully guaranteed.

16. He also asked what was the minimum age under Tanzanian law for the imposition of the death penalty. The report did not contain enough information regarding the courts. One way of ensuring that human rights were protected was by ensuring the independence of the judiciary from the executive, from the legislature and from pressure from other sources. How was that independence ensured in Tanzania? Specifically, how were judges appointed, could they be removed from office, under what circumstances, and did they have any recourse? Were there special courts for certain types of crimes and what was the appeal process in such courts? Noting that a person who was arrested could be freed on bail, he asked in what circumstances bail was granted. Finally, he asked whether the judges had any control over police actions; could they, as was the case in some countries, determine that the methods used by the police in their investigation were not consistent with the law and with the human rights of the individual concerned?

17. Mr. LALLAH agreed with previous comments concerning the exemplary record of Tanzania, especially in connexion with self-determination both inside and outside Africa. However, the report did not do justice to all the measures Tanzania had taken in connexion with the Covenant. The Committee's consideration of the reports submitted by States parties was followed by a large number of people throughout the world. Moreover, an important purpose of the Committee's work was to bring the experience gained by individual States to the knowledge of other States. A number of countries had found the Committee's work very useful and some, for example Senegal, had amended their national legislation on the basis of the comments made in the Committee. Accordingly, with a view to enabling Tanzania to share its experience more fully with other countries, he would comment on the method it had adopted in order to give effect to its treaty obligations.

18. Many of the measures taken, including legislative measures, were not entirely in the spirit of article 2 of the Covenant. For example, States parties were obliged not only to enact legislative measures but also to ensure that effective remedies were available to any person whose rights were violated and, where no such

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remedies existed, to develop them. He noted that there could perhaps be remedies other than judicial ones. While article 40 (2) of the Covenant referred to the difficulties affecting the implementation of the Covenant in general and not only to the legislative measures taken to that end, some articles, for example article 9, seemed to imply that such measures were to be implemented by the courts. Accordingly, he asked to what extent such provisions of the Covenant had been incorporated in Tanzanian legislation and what effect national legislation concerning preventive detention or deportation, for example, had had on the provisions of article 9.

19. He also asked whether, under the preventive detention act, a person could be detained indefinitely without being formally charged or brought to trial and whether failure to submit the relevant order under that act could be questioned in a court of law. If persons were so detained, he asked what consequences that 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.

20. In trying to ascertain under what provisions of the Constitution the Government could derogate from the rights recognized under the Covenant, he had had the perhaps mistaken impression that, under the Tanzanian legal system, emergencies that arose under normal circumstances were treated on the same level as those officially proclaimed to be states of emergency. He drew attention to the fact that, under article 4 of the Covenant, 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.

21. In a country in which political thought and action was institutionalized in a single political party, he asked to what extent it was possible to derogate from freedom of thought and expression in normal times and what impact the one-party system had on the rights set forth in articles 18, 19, 21, 22 and 25 of the Covenant. Article 19 was particularly interesting in that connexion, because it entitled everyone to hold opinions without interference and to express them freely, not just to hold such opinions secretly.

22. He also asked whether, under Tanzanian legislation, there existed any offences of an economic nature, how such offences were legally defined, whether such a definition was used as a policy measure and, if so, how forceful the measure was.

23. In conclusion, he expressed the hope that additional information would be provided on the administrative measures taken by Tanzania in connexion with each article of the Covenant.

24. Mr. Mavrommatis took the Chair.

25. Mr. HERDOCIA ORTEGA praised the essential role played by the United Republic of Tanzania in world affairs. He noted that, after the victory of the Sandinista movement in his country in July 1978, Nicaragua had been visited by several non-governmental organizations, which had asked innumerable questions. However,

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(Mr. Herdocia Ortega)

the purpose of those questions had been merely to ascertain whether or not human rights were being respected and promoted in the new Nicaraguan society.

26. Referring to the report, and in particular to the first paragraph on page 3, he reiterated Mr. Prado Vallejo's question concerning the specific manner in which the matter of the protection of the rights recognized under the Covenant had been addressed.

27. He stressed that it was essential to adapt national legislation to international conventions and to the commitments resulting from them. For example, during the thirty-fifth session of the General Assembly, one country had reported that it had enacted legislation to the effect that any treaty or international convention ratified by it would take precedence over national legislation. It was a rule of international law that no international convention should be ratified, unless the necessary revision of national legislation was made either prior to or immediately after accession to the convention. Although States parties submitted very excellent reports, he suggested that the Committee should provide more detailed information on the way in which such reports might be prepared in order to avoid subjecting representatives to so many questions.

28. Referring to the second sentence of the first paragraph on page 3 of the report, which was particularly important, and to the provisions governing the Permanent Commission of Inquiry described in the fourth paragraph he asked whether it was necessary to obtain the President's authorization before initiating an investigation into an alleged violation of human rights by an individual or an abuse of public office or authority. He also asked whether the Commission was an autonomous, decentralized body or whether it had been created under the Constitution but had very limited jurisdiction. He also asked what constituted the legal framework for the Commission, since its functions seemed quite limited and it seemed to be subject to the orders of the executive power. In that connexion, he drew attention to the fact that the national commissions for the promotion and protection of human rights recommended by the General Assembly were entitled even to draw the executive power's attention to the commission of illegal or arbitrary acts. When no specific provision had been made for the protection of the rights embodied in the Covenant, he asked whether there was any procedure or precedent whereby the courts could deal with matters relating to the Covenant, in other words, whether violations of the provisions of the Covenant could be brought before a special court. He also asked whether the Covenant had been published in the different national languages of Tanzania; if not, he noted that it would be difficult for people to claim the rights to which they were entitled under the Covenant.

29. With regard to article 4 of the Covenant, he asked what laws had been suspended and what provisions of the Covenant had been affected by the proclamation of a state of emergency.

30. Referring to article 6, he noted that the report mentioned the progress made in the commutation of the death penalty and asked whether any consideration had been given to the possibility of abolishing that penalty entirely and of thus adapting national legislation to the specific provisions of the Covenant.

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(Mr. Herdocia Ortega)

31. In connexion with article 7, he 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, and what recourse was available to persons subjected to such treatment.

32. Referring to article 9, he asked what guarantees existed to protect people from arbitrary arrest or detention, under what conditions they could be subjected to preventive detention and how the system of habeas corpus functioned. A very important question in that connexion was whether the family of a person thus detained was informed of that fact and of the place where the detainee was being held.

33. The report referred to the fact that effective remedy was granted to a person who had been the victim of an abuse of power. In that connexion, he asked whether in practice such remedies were economic or administrative, or both, because such provisions were understood differently in different countries.

34. Lastly, he drew attention to the agreements the Committee had concluded with certain specialized agencies, for example ILO and UNESCO. Accordingly, he asked whether Tanzania had acceded to all the ILO conventions, for example, those concerning freedom of association and collective agreements.

35. Mr. Tomuschat took the Chair.

36. Mr. OPSAHL said that the report contained no reference to any difficulties which Tanzania might have encountered in implementing article 40 of the Covenant; it would be of interest to learn whether such difficulties had arisen and their nature. He also inquired what position Tanzania had adopted towards the efforts under way to create an African regional system for the protection of human rights, whether the Government supported such efforts and what measures it would be prepared to accept. He would also appreciate information as to whether the Government accepted as legitimate the concern of non-governmental organizations, including Amnesty International, in regard to the protection of civil and political rights in Tanzania and in particular, whether the Government would be prepared to reply to requests for information from such organizations and to investigate any allegations made.

37. Mr. GRAEFERATH said that the Covenant did not take a specific stand on the question of the constitutions of States; it had tried to formulate the human rights which should be implemented by States but had left the manner of implementing such rights to the States parties themselves. In that connexion, States had adopted many different methods in accordance with their own individual political systems. The reporting requirements under article 40 were aimed at defining the means whereby human rights might be enjoyed by the people within the jurisdiction of a State.

38. Progress from colonial rule to independence represented a most important step in the protection of human rights and he would be interested to receive an explanation in concrete terms of the changes which had taken place in Tanzania in

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(Mr. Graefrath)

the course of the transition. He would also like to know the degree of self-reliance which had been achieved by the people of Tanzania and the extent to which they had succeeded in overcoming the domination of colonial rule and foreign influence.

39. It was necessary to draw a distinction between article 4, which dealt with states of emergency, and articles 19, 21 and 22, which defined specific rights within the framework of respect for public order. He would like to receive information as to how those articles were implemented in the special conditions which existed in Tanzania.

40. Mr. AL DOURI would have welcomed a more detailed report as the paucity of the information provided had made it impossible for him to form a clear idea of how the Covenant was being implemented in Tanzania. The report stated that Tanzania supported all efforts and instruments designed to promote progress on all human rights issues but that it made no pretences in respect of its own shortcomings on that score; such an affirmation indicated that the Government was aware of the importance of the human rights issue. More however was required in terms of the practical details and guidelines applicable in connexion with the implementation of the Covenant at the national level and, in particular, concerning the laws and rules of the Constitution which reflected the provisions of the Covenant.

41. He would like to receive information on how freedom of expression was assured for non-members of the Party or for the opposition or minorities. It would also be of interest to know how the President pronounced on cases brought before him by the Permanent Commission of Inquiry and how the method employed might affect the rights of the individual. The report also stated that there was no need to incorporate the provisions of the Covenant into internal laws or administrative regulations since the rights concerned were adequately protected by the constitutions of the Party and the United Republic; such a position seemed to be inconsistent with article 2 (2) of the Covenant. He would also like to have information regarding the number of members comprising the Permanent Commission of Inquiry and how differences of opinion between them were resolved. The report referred to three main organs, namely, the President, the Party, and the Commission. He would like to know which of those organs had primacy in cases of differences of opinion. There was a reference in the report to temporary restrictions on freedom of travel and immigration; he would like to have information on the reasons which might be regarded as justifying such restrictions and their duration.

42. The Constitution provided for the election of 106 members of Parliament but an equal number of members was apparently appointed by the President or by other organizations. He would like to receive more information regarding the conditions of eligibility of members and in particular, whether they must be approved by some executive body such as the Party and, if so, what criteria were applied. He would also like to know whether recourse to other bodies was permitted. He had noted



(Mr. Al Douri)

that unions had the right to submit candidates but he would like to know what percentage of the members of Parliament came from such unions and whether there was a limit on their number.

43. Mr. Mavrommatis resumed the Chair.

44. Mr. TOMUSCHAT said that the experience of Tanzania had contributed to a greater understanding of the concept of human rights in an African context. The report was, however, too brief. The Committee had a broader mandate than any other body to inquire fully into all aspects of human rights. State reports under article 40 should therefore constitute a citizens' handbook of rights and freedoms which should be published and capable of use by practising lawyers. The reports should therefore be not only international documents but should also be distributed within countries themselves.

45. A number of questions arose in connexion with the report. The Committee should be given information, including references to court decisions, which bore on the legal value of the Preamble to the Constitution in so far as Tanzania had not incorporated human rights into the Constitution itself. He would also like to know whether any checks existed on the legislature when it issued ordinary laws; whether such laws could be declared unconstitutional and consequently invalidated; and whether inconsistency with the Preamble might be regarded as grounds for such invalidity. It was clear from the Constitution that the Party enjoyed political leadership and ran the country but it would be important to know how political equality was ensured. As the Party comprised less than half of those who were eligible, Party membership was clearly a political privilege and many people were therefore excluded from participation in the political life of the country; such a situation was inconsistent with articles 2 (1) and 26 of the Covenant. Political discrimination also seemed to exist under section 26, paragraph 2, of the Constitution which stipulated that certain categories of persons were not eligible for Parliament. Such a situation could not be reconciled easily with the Covenant and, in particular, with articles 2 (1) and 25 and would certainly require considerable justification.

46. He was also concerned that parts of the legislation concerning detention might be incompatible with article 9 of the Covenant under which arrest and detention might be deemed arbitrary if the individual was not informed of the charges against him, if contact with counsel and family members was prohibited and if no measures existed for the review of administrative decisions. The same considerations were relevant in the cases of other procedures under which individuals might be deprived of their freedom.

47. With regard to article 10, he wondered, as did Mr. Tarnopolsky, to what extent family members were free to establish and maintain contact with prison inmates. Families always suffered when one of their members was imprisoned, but a State should make every effort to give them access to relatives in prison. He requested more information on the legal status of prison inmates.

48. In connexion with article 12, the report stated (p. 5) that restrictions were sometimes placed on foreign travel which involved huge sums of foreign currency. He wondered what restrictions applied to less costly travel and whether there was a legal régime for obtaining a passport and an exit visa. Under

(Mr. Tomuschat)

article 12, restrictions could be placed upon travel when they were necessary to protect national security, public order, public health, etc. Were all restrictions on travel in Tanzania in conformity with that article? If a person was denied a visa or passport, what legal remedies were available?

49. The independence of the legal profession was an extremely important element of article 14. Without trained and independent lawyers, no layman could protect his rights. He wondered how access to the legal profession was regulated in Tanzania, whether membership could be terminated by government order, and what legal redress could be sought against such an order. The language of articles 61 and 62 of the Constitution caused concern with respect to the independence of judges. Since there was no life tenure for judges and the length of their appointments was left to the authorities, abuses could result.

50. He also wondered whether there were differences in the régimes for penal proceedings in Tanzania and Zanzibar. He understood that legal defence representation was not permitted in Zanzibar, except when performed by the Attorney General or his chamber. If that was true, it ran counter to the guarantees in article 14 of free choice of counsel by an accused person.

51. With regard to article 19, he wondered what was the legal régime for the press, whether there was a press statute setting out conditions for establishing newspapers, how many newspapers were printed in Tanzania and whether they were government-controlled or government-authorized. A free press was a basic element of a democratic society, especially in a one-party State where there was some restriction on the free discussion of issues. It was essential that criticism and dissent could be voiced through the press. He therefore requested information on how free the press was to criticize the Government; the report should be more explicit on that point.

52. Like other speakers, he would be interested to know what were the ethnic components of Tanzania and whether minorities had the right to speak their own language and have their children educated in that language.

53. Mr. TARNOPOLSKY requested information on the status of the Committee's meetings. Although they were listed as public, many private citizens and representatives of non-governmental and other organizations had been refused admission. The reasons given were that the conference room was not large enough and that security was not strong enough in that part of the building; both of those reasons were unacceptable. It was disappointing that decisions of that nature were being taken somewhere in the Secretariat without prior consultation with the Committee or its Chairman. He strongly urged that a full report should be given on the matter at the next meeting.

54. The CHAIRMAN said that the Secretary of the Committee would look into the matter and report on it at the next meeting.

The meeting rose at 5.50 p.m.