



## Economic and Social Council

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### Committee on Economic, Social and Cultural Rights

#### Forty-ninth session

#### Summary record of the 31st meeting

Held at the Palais Wilson, Geneva, on Tuesday, 13 November 2012, at 10 a.m.

*Chairperson:* Mr. Pillay

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*Combined initial, second and third periodic reports of the United Republic of Tanzania*

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*The meeting was called to order at 10.05 a.m.*

### **Consideration of reports**

#### **(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant**

*Combined initial, second and third periodic reports of the United Republic of Tanzania (E/C.12/TZA/1-3; E/C.12/TZA/Q/1-3 and Add.1; HRI/CORE/TZA/2012)*

1. *At the invitation of the Chairperson, the delegation of the United Republic of Tanzania took places at the Committee table.*

2. **Ms. Kairuki** (United Republic of Tanzania), introducing the combined report, said that the lengthy delay in its submission had been due to a lack of resources and organizational shortcomings, but that those problems had now been rectified, as a Division of Constitutional Affairs and Human Rights had been established with a mandate to coordinate human rights reporting obligations.

3. Tanzania had submitted its first national report under the universal periodic review mechanism in July 2011, and the outcome of the review had been adopted by the Human Rights Council in March 2012. Work was currently under way to implement the various recommendations made.

4. The preparation of the combined report and the replies to the list of issues had involved the participation of various stakeholders from Government departments and agencies, civil society and international organizations.

5. Given that Tanzania was among the least developed countries, ensuring the enjoyment of economic, social and cultural rights was largely dependent on the eradication of poverty. Through a participatory approach, the Government had developed the Tanzania Development Vision 2025 and Vision 2020 for Zanzibar, and put in place strategies for their implementation. The strategies accorded priority to economic growth and poverty reduction, quality of life and social well-being, together with good governance and accountability. A monitoring system was in place to assess implementation. The first phase of implementation had ended in 2010, and achievements had included improved economic growth, increased per capita income, increased food self-sufficiency, enhanced transparency and accountability in the use of public resources, and improved performance in the education, health and water sectors.

6. The Constitution of the United Republic of Tanzania had been adopted in 1977, and in order to adapt to the changing times and needs of the people, a major constitutional review was now being undertaken. The Constitutional Review Commission had been given 18 months to deliver a new draft.

7. Tanzania's dynamic and independent judiciary played an important role in ensuring the protection of human rights and fundamental freedoms. Protection was also guaranteed through the independent Commission for Human Rights and Good Governance, established in 2001. Having performed well, the Commission had now been awarded "A" status by the International Coordinating Committee of National Human Rights Institutions.

8. The Constitutions of Tanzania and Zanzibar expressly prohibited discrimination on the basis of race, colour, sex, language, religion, political, national or social origin, birth, gender or station in life. The laws on employment and labour relations, HIV/AIDS and land provided for non-discrimination and equality between men and women. There were also a number of equality and anti-discrimination policies related to education, ageing, children, persons with disabilities, and women. In 2003, the Government had introduced

constitutional amendments that increased the number of seats for women in Parliament, who now made up 36.6 per cent of the total membership.

9. With regard to the right to health, a good number of health facilities had been constructed and rehabilitated throughout the country. Initiatives such as the primary health-care service development programme and the reproductive and child health strategic plan 2008–2015 were being implemented as planned. Reproductive and child health services continued to be prioritized, and the 2010 Tanzania Demographic and Health Survey had indicated a continuing decline in infant and maternal mortality. In 2011, the United Nations Foundation had awarded Tanzania the 2011 Social Good Award for promoting social media and technology in addressing development challenges including maternal health care.

10. With regard to HIV/AIDS, the Government had continued with the implementation of the National Aids Control Programme by providing treatment services and care to people living with HIV/AIDS, as well as counselling and voluntary HIV testing. As a result, HIV prevalence among 15–24 year-olds in particular had declined considerably.

11. The national malaria medium-term strategic plan 2008–2012 had also been successful, and the percentage of households that owned at least one bed net had increased significantly. The President of the United Republic of Tanzania had been granted an award for leadership excellence in the campaign to eradicate malaria by the African Leaders Malaria Alliance.

12. There had also been considerable improvements in the area of education. The net primary school enrolment rate had increased from 96.1 per cent in 2005 to 99 per cent in 2010, while the pupil/teacher ratio at primary level had decreased from 56:1 in 2005 to 45:1 in 2010. In 2010 Tanzania had received a United Nations award for meeting the Millennium Development Goal on attaining universal primary education five years ahead of the 2015 deadline. There had also been an 11.7 per cent increase in the number of secondary-school students in 2010 as a result of deliberate Government efforts to ensure that all students who passed primary-school final examinations were enrolled in secondary school.

13. The Government had taken into consideration the special needs of persons with disabilities and was implementing the Strategic Plan of Inclusive Education of 2010. As a result, the percentage of pupils with disabilities enrolled in schools had risen from 24 per cent in 2006 to 34 per cent in 2011. With regard to the traditionally marginalized sections of society, such as pastoralist and hunter-gatherer communities, the Government had constructed 15 boarding primary schools in seven pastoralist communities. School meal programmes had also been introduced with support from the World Food Programme.

14. The Government had adopted a re-entry policy to address the problem of teenage pregnancies, which were one of the challenges faced in the realization of the right to education for girls and young women. Other measures included the introduction of sexual and reproductive health education in primary and secondary schools, the provision of life skills manuals to all girls, the construction of hostels for girls, the introduction of the adult and non-formal education system, and the criminalization of interruption of a child's education.

15. The Government continued to take measures to promote and protect the right to work. Tanzania was a party to the core International Labour Organization (ILO) conventions, most of which had been incorporated into domestic law through the Employment and Labour Relations Act and the Labour Institutions Act. The unemployment rate had declined from 12 per cent in 2005 to 11 per cent in 2010.

16. The Social Security Regulatory Authority had been established in 2008 to regulate social security schemes and ensure they provided better services to their beneficiaries. The

Government was currently working on a social protection scheme which would lead to a universal pension for elderly citizens.

17. A number of measures had been taken to ensure that the rights of women were well promoted and protected. In 2007, Tanzania had ratified the Protocol on the Rights of Women in Africa, which called for the condemnation of all forms of discrimination against women, the eradication of harmful traditional practices, access to justice, equal protection before the law, reproductive health rights, property rights and special protection for women with disabilities.

18. Tanzania had fulfilled its reporting obligations under the Convention on the Rights of the Child and its two Optional Protocols, and in 2009 had domesticated the Convention by enacting the Law of the Child Act, which provided for the reform and consolidation of laws relating to children, and the promotion and protection of the welfare of the child. Tanzania had been the first African country to conduct a national survey on violence against children, the outcome of which had been consolidated into a 2011 report. As a result, a child protection system had been instituted and work was under way to develop a child justice strategy.

19. In compliance with the Vienna Declaration and Programme of Action, a draft National Human Rights Action Plan was currently being discussed by stakeholders and was expected to be finalized shortly. A team comprising representatives of the Government, the Commission for Human Rights and Good Governance and civil society was spearheading those efforts, which were also supported by the United Nations Development Programme (UNDP) under the One United Nations framework.

20. In fulfilment of the right to an adequate standard of living, in 2011, the Government had continued with the implementation of the national economic empowerment policy by extending soft loans through empowerment funds. The Tanzania Social Action Fund established by the Government continued to contribute to the improvement of the livelihood of Tanzanian communities through its funding of development projects.

21. The Government had put in place institutional, policy and legislative mechanisms in the area of food security. The enactment of the legislation that had established the Food Security Department to oversee the strategic grain reserve had been a milestone. Figures for 2011 showed that the country was self-sufficient in terms of food.

22. The *Kilimo Kwanza* (Green Revolution) initiative had been officially launched in 2009, and comprised a holistic set of policy instruments and strategic interventions to address the various sectoral challenges and take advantage of the numerous opportunities to modernize and commercialize agriculture. Zanzibar had a similar programme called Agricultural Transformation 2010–2020.

23. As to the right to culture, Tanzania was a multicultural State with over 120 ethnic groups, all unified with one national language, Kiswahili. The combined report enumerated various legislative, policy and administrative measures that had been implemented for the promotion, protection and enjoyment of that right.

24. As a party to the United Nations Convention against Corruption, Tanzania had resolved to align its national legal framework and institutions so as to streamline efforts to combat corruption. Implementation of the national anti-corruption strategy and action plan had been completed in 2011, and an evaluation revealed that it had had a positive impact in changing the mindset of the public regarding corruption.

25. Despite all the efforts undertaken, much remained to be done to ensure the full realization of the rights enshrined in the Covenant. While the Government believed that it had the primary duty to guarantee fundamental freedoms and human rights, it recognized

the very significant role being played by the development partners, the Commission for Human Rights and Good Governance and non-governmental organizations (NGOs).

26. **The Chairperson** invited the Committee members to ask additional questions.

*Articles 1 to 5*

27. **Mr. Abashidze** (Country Rapporteur) thanked the delegation for the presentation of the report, but noted that it had been overdue since 1990. He stressed that the timely presentation of reports was one of the main commitments entered into by States parties to the Covenant.

28. He invited the delegation to comment on the State party's position with regard to ratification of the Optional Protocol to the Covenant, and to provide details on technical and legal obstacles to ratification.

29. Noting that constitutional amendments had led to human rights treaties becoming part of the Constitution, he wished to know whether, following such incorporation, the provisions of the two instruments coincided, and whether all the rights enshrined in the Covenant were taken into account in the special enabling laws. He asked whether there were any official conclusions from the commission responsible for analysing draft bills to the effect that existing laws fully reflected the provisions of the Covenant. Would the planned revised Constitution include clauses which would allow for full incorporation of the provisions of the relevant international instruments, including the Covenant, in national legislation?

30. Noting that the universal periodic review had found that discrimination on the basis of gender, sexual orientation and HIV/AIDS status and affecting other vulnerable groups was an issue, he asked whether the State party considered that it was time to adopt an act to consolidate separate legal provisions into a single instrument to combat discrimination.

31. It had been mentioned that, on the basis of recent constitutional amendments, limitations to the enjoyment of human rights had been removed. He would be interested to hear which provisions had been deleted and whether there were any limitations still on the books.

32. **Mr. Atangana**, noting that, according to the replies to the list of issues, in the event of a conflict between customary, religious and other laws of the land, the Constitution prevailed, enquired how the compliance of decisions of the Kadhi courts with the Constitution was verified.

33. **Mr. Kerdoun** noted that, while the documentation submitted by the State party stated that Tanzania was a secular State with a legal system based on the common-law approach, customary and Islamic law were also observed, especially in matters of personal status. To better understand the status of Islamic law in the legal system, he wished to know which of the several branches of Islamic law predominated in the country. Also, what percentage of the population was Muslim, and was the status of Islamic law in the country commensurate with that percentage?

34. Regarding the State party's written reply to a question on the eviction of people from their ancestral lands in connection with mining activities, he asked whether such people had documented property rights grounded in positive law or customary law. If the latter, then were the documents recognized in State courts? With regard to mining, he wished to know whether the State party had environmental protection regulations and, if so, to what extent those regulations were applied, in particular by companies involved in mining and related activities. Were there regulations specifically to protect water resources, given that those were reportedly often polluted?

35. Referring to the recent census and the population growth forecast, he asked how population increases would affect the State party's efforts to reduce poverty and achieve the Millennium Development Goals.

36. **Mr. Ribeiro Leão** said that the delegation's opening statement had provided answers to his questions.

37. **Mr. Sadi** asked for information on the status of human rights education in Tanzania, and on measures to implement the Covenant's provisions, including any new instances of relevant case law. Referring to the State party's written replies, he asked the delegation to further clarify the extent of civil society's involvement in the process of preparing the combined report. He also wished to know how awareness-raising concerning human rights issues was conducted in rural areas, where the majority of Tanzanians lived.

38. **Mr. Schrijver** asked whether the State party was considering signing the Optional Protocol to the Covenant. On the issue of land rights, he said that there were NGO reports of forcible evictions of people living on land to be repurposed as conservation parks or leased to foreign investors. He asked the delegation to comment on the matter.

39. **Ms. Shin** requested statistics on the number of recorded violations of economic, social and cultural rights in Tanzania in 2011. She asked that the statistics be disaggregated according to characteristics such as sex, ethnicity and religious affiliation. Such information would help the Committee to determine whether the establishment of the Commission for Human Rights and Good Governance had had a real impact.

40. Acknowledging the progress made by the State party in combating discrimination against women, she asked whether the Government conducted awareness-raising campaigns to reach women living in rural areas, and whether statistics collected were systematically disaggregated by sex.

41. **Mr. Tirado Mejía** asked why the State party had not formally recognized the status of indigenous people and accorded them the corresponding legal rights. According to information available to the Committee, such people had many difficulties, in particular with issues related to land ownership and use. He asked the delegation to clarify whether women were accorded the same rights as men with regard to land inheritance, especially in cases where customary law was applied.

42. Noting that the State party had not replied to the Committee's question about whether the Penal Code would be amended to decriminalize homosexuality, he requested an answer from the delegation.

43. **Mr. Kedzia**, noting the delegation's statement that the report had been prepared through a consultative process involving many stakeholders, said that was an important achievement. He asked whether the State party intended to use a similar approach in following up on the Committee's concluding observations.

44. **Ms. Kairuki** (United Republic of Tanzania) said that her Government regretted the delay in reporting to the Committee and would endeavour to submit future reports on schedule. Her Government's position on the signing of the Optional Protocol remained as expressed during the universal periodic review.

45. While her delegation could not provide a guarantee as to the inclusion of economic, social and cultural rights in the updated Constitution, as the people would determine the final shape of the new document, the Committee would receive the text of the new Constitution once it was final. For the moment Tanzania had no single legal instrument covering all aspects of discrimination, but the Government would consider how to develop one.

46. On the question of mining and land ownership, she said that some indigenous people owned their land on the basis of customary rights. Land titles now existed under customary law that were recognized by State courts. Regarding the environmental impact of mining, she said that the provisions of the Environmental Management Act applied to firms as well as individuals. She emphasized that by no means all of her country's water was polluted, but when the Government uncovered illegal activities resulting in water pollution, steps were taken to correct the situation.

47. The latest census had been conducted in August 2012 and the resulting statistics would be useful in efforts to reduce poverty. While population increases were unavoidable, her Government was promoting reproductive health and family planning. She believed that Tanzania could achieve the Millennium Development Goals by the target date of 2015.

48. Concerning the draft National Human Rights Action Plan, she confirmed that the plan included aspects of economic, social and cultural rights and that a team would be established to monitor the plan's implementation. Several organizations were working to promote human rights in urban and rural areas, and the Commission for Human Rights and Good Governance was also involved in such work. Human rights education was provided to schoolchildren as part of the civics curriculum. Her delegation would supply the Committee with statistics on complaints related to human rights and good governance. She confirmed that statistics were routinely disaggregated by sex.

49. Efforts to increase women's awareness of their rights were conducted through public-private partnerships. In addition, with support from the Government of Denmark, the Government had established legal aid and education facilities in all of the country's districts. Regarding women's rights with respect to inheriting land, she said that the Village Lands Act granted them the same rights as men.

50. Turning to other issues, she said that her Government had not recognized ancestral people as having a special indigenous status because, depending on what criteria were used, nearly all of Tanzania's inhabitants could be considered indigenous. Regarding the treatment of homosexuality as a criminal offence, her Government continued to view same-sex relationships as immoral. Civil society organizations would be invited to participate fully in the follow-up to the Committee's concluding observations.

51. **Ms. Mwaipopo** (United Republic of Tanzania), responding to a question about her Government's dualistic approach to implementing international instruments, said that after the Parliament ratified such an instrument, its provisions could be implemented by enacting new legislation or amending existing laws. The Constitution reflected various rights enumerated in the Covenant, and some rights were enshrined in other laws. The Constitution provided for non-discrimination, and the Government would consider the development of legislation dealing specifically with that issue. While the latest amendments to the Constitution had further expanded Tanzanians' enjoyment of fundamental human rights, no country provided for unlimited enjoyment of such rights. The question was whether existing limitations were appropriate and whether those who felt that their human rights had been violated had avenues for legal recourse, which in Tanzania they did.

52. NGOs played an important role in preparing reports to the human rights treaty bodies. Her Government planned to hold a workshop on the dissemination of the Covenant. Regarding case law relating to the Covenant's application, she said that there was case law concerning some specific rights enshrined in the Covenant, such as the right to education. As to the term "indigenous", there was no universally accepted definition of it at the national or international level. What mattered most was how a Government upheld the rights of all its people.

53. **Mr. Rweyemamu** (United Republic of Tanzania) said that there were two types of eviction: eviction of persons unlawfully occupying an area or building and eviction for

development purposes. Persons found to be unlawfully living in protected areas were removed without compensation. However, the law was clear in the case of evictions for economic development projects or the creation of new protected areas. Under the Land Act and the Village Lands Act, evicted individuals were paid market value for their land and offered an alternative property. When the State sought to establish a protected area, such as national parks or game reserves, it had to consult the populations concerned and obtain their consent, in accordance with the Environmental Management Act and the Constitution. All Tanzanians were considered indigenous, although there was the concept of traditional communities, defined under the Wildlife Conservation Act as groups of people ordinarily residing in areas habitually occupied by wildlife and whose lifestyle was dependent on wildlife. Such groups, often hunter-gatherers, were granted annual hunting quotas and were usually left undisturbed in protected areas because their livelihoods did not threaten wildlife or the environment.

54. **Mr. Makame** (United Republic of Tanzania) said that in Zanzibar, Islamic law governed marriage, divorce and inheritance matters and that, under the Kadhi Court Act, decisions of the Kadhi court were subject to appeal to the ordinary courts. There was no differentiation between Sunni and Shia Muslims nor any data on the number of Muslims, because surveys about faith were not conducted.

55. **Ms. Shin** asked whether an English version of the draft National Human Rights Action Plan was available.

56. **Ms. Kairuki** (United Republic of Tanzania) said that the Action Plan was still in draft form and had to be submitted to the Cabinet before it could be released to the public.

57. **Mr. Abashidze** asked whether the Law Reform Commission had had any real impact on aligning domestic legislation with the Covenant. He requested examples of court rulings in which economic, social or cultural rights had been upheld.

58. **Mr. Kedzia** requested confirmation that the implementation of the concluding observations would be participatory and asked whether there was a fixed plan to include all partners in the process.

59. **Ms. Cong**, referring to paragraph 67 of the replies to the list of issues, said that there was a big difference between owning and accessing land and asked what provisions the Land Act and the Village Lands Act made for land ownership by men and women.

60. **Ms. Kairuki** (United Republic of Tanzania) said that the best example of the concrete results of the Law Reform Commission was the enactment of the Land Act. There was no specific framework for including civil society organizations and NGOs in the follow-up to concluding observations, but it had been, and would continue to be, the practice to do so. The Land Act and the Village Lands Act did not discriminate against women in matters of land ownership, access or use, and several cases of discrimination in such matters had been declared unconstitutional by the courts.

#### *Articles 6 to 9*

61. **Mr. Texier** asked why the State party had not ratified the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). He was disappointed by the paucity of information on articles 6 to 9 in the report and hoped that the next report would be more complete. He requested more detailed information on a range of issues, including the extent of the informal sector, the occurrence of forced labour and any measures to counteract it, the statutory work week, paid leave, the minimum wage, labour inspections, the role of the Commission for Mediation and Arbitration in workplace safety and sanctions against employers who did not meet occupational safety standards. He also asked whether it was true that some mining and construction companies forbade workers to unionize, what role



the Commission played in such circumstances and what the situation regarding collective bargaining and the right to strike was in the public and private sectors.

62. **Mr. Martynov** remarked that the fact that the report often quoted figures from the Economic Survey of 2006 and did not provide more recent data made it very difficult for the Committee to assess the implementation of human rights since then. Accordingly, he asked whether the vocational training colleges mentioned in paragraph 56 were still open and what the latest enrolment figures were. He commended the State party for ratifying the Convention on the Rights of Persons with Disabilities and its Optional Protocol and for adopting the Persons with Disabilities Act, and asked what incentives the State had put in place to promote the employment of persons with disabilities. He also asked what effect rampant inflation was having on the minimum wage. He welcomed the adoption of the National Safety and Health Policy, but raised concerns about its enforcement in light of the lack of resources at the Ministry of Labour and Employment and claims that labour inspectors were denied access to certain businesses. He asked what the current situation of occupational safety was. Based on the scant information at the Committee's disposal, it appeared that a negligible portion of the population was covered by social security and health insurance and that individuals working in the informal sector had no coverage at all. Could the delegation provide figures to dispel those concerns?

63. **Mr. Abdel-Moneim**, referring to the liberalization of the economy mentioned in paragraphs 51 to 54 of the report, asked what was meant by "individual concerns". He welcomed the establishment of MKUKUTA, but wondered to what extent it had succeeded in providing work opportunities for all and said that he found striking the discrepancies in employment between urban and rural areas. Although promoting self-employment as a poverty reduction measure was a good idea, it was unfortunate that it appeared to be on a limited scale.

64. **Mr. Abashidze** asked for information on employment in the private and informal sectors, women in paid work, equal pay for equal work, compliance with and monitoring of ILO standards, prosecutions for workplace deaths, limitations to the right to strike, measures taken when the right to strike or to organize was violated, especially by foreign firms, and the scope of social security.

65. **Ms. Kairuki** (United Republic of Tanzania) said that Tanzania did not deem it necessary to ratify ILO Convention No. 169 because there were no indigenous peoples in the country. Stating that the delegation had taken careful note of the request for more statistical data, she explained that the reason the report relied so heavily on the 2006 Economic Survey was that it was the most recent available source. There was no fixed periodicity for the Economic Survey and, although the Government would like to conduct it more frequently, it lacked the resources to do so. She confirmed that vocational colleges still existed, that at least 3 per cent of the staff of all businesses had to be workers with disabilities, that the Government was striving to offset inflation and its effects on all aspects of economic development and that labour inspectors were routinely given access to businesses.

66. **Mr. Mwita** (United Republic of Tanzania) said that there was no gender pay gap because remuneration was based on qualifications, seniority and merit.

67. **Mr. Muzee** (United Republic of Tanzania) said that employers had the right to declare a lock-out and workers had the right to strike. However, only persons claiming a dispute of interest could call a strike, in other words, when talks between both parties had broken down. The mandate of the Commission for Mediation and Arbitration was to oversee the employer-employee relationship and to curb unfair labour practices such as discrimination, unlawful termination and curtailments of the right to strike. The

Commission also played an educational role, informing social partners about their part in peaceful industrial relations.

*The meeting rose at 1 p.m.*