

TREATY BODY MONITOR

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Key facts¹

Ratification	Reservations	Party to Optional Protocols	Other core treaties ratified	Date of previous examination, submission of present report
1976	None	1 st OP (individual communications) – No 2 nd OP (death penalty) – No	CEDAW, CERD, CESCR, CRC + OP AC and SC.	Previously examined June 1998. Present report submitted October 2007.

Opening remarks by the delegation

The Tanzanian delegation was led by Mr Mathias Chikawe, Minister for Justice and Constitutional Affairs. He was supported by an extremely large delegation of 22 members including: Mr Mwaimu, Ministry of Justice and Constitutional Affairs; Mr Salula, Attorney General's Chambers; Mr Minja, Deputy Commissioner of Prisons, Mr Mwabukusi, Ministry of Community Development, Gender and Children; Mr Maridadi, Ministry of Foreign Affairs and International Cooperation; Ms Mrutu, Office of the Registrar of

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at <http://www.ohchr.org/EN/countries/AfricaRegion/Pages/TZIndex.aspx>.

Political Parties; Ms Mkwizu, National Electoral Commission; and Mr Tarimo, Ministry of Natural Resources and Tourism.²

Mr Chikawe introduced the Tanzanian report by stating that major changes had taken place since the last periodic report in 1998. In particular, he said, the State had created a Committee tasked with compiling reports in line with its treaty body obligations and working towards ratifying ‘all human rights treaties’. He highlighted the creation of the recent Bill of Rights, but notably stated that it only covers ‘most’ of the International Covenant on Civil and Political Rights (the ‘Covenant’). He spent a significant amount of time highlighting the implementation of the last report, in particular pointing to the draft law unifying the right of the child to education, but stated that the adoption and amendment of all national legislation was determined by public opinion; thus certain aspects of law and practice relating to gender equality had been retained, despite Committee recommendations to the contrary.

Mr Chikawe initially spoke for approximately 30 minutes and attempted to address a broad range of issues, all of which also appeared in the State report and list of issues responses. He failed to comment further on important themes raised in the list of issues, including the compatibility of the *Prevention of Terrorism Act 2002* with the Convention and the implementation of the new *Anti-Trafficking in Persons Act 2008*, which is undermined by the State’s inability to source data on people trafficking. He also omitted to address new information provided by an NGO consortium on LGBTI rights – an issue which was taken up later by an impressive number of Committee members. He ended his opening statement by stating that Tanzania would ‘take up’ the concluding observations emanating from the following dialogue.

Overview of key issues

The following overview addresses six of the Committee’s concluding observations following the examination on the basis of those themes that the Committee requested follow-up on implementation within one year, or those which the Committee gave particular focus to during the course of the examination. Each is assessed according to how they were addressed in the examination, including the initial views of the State, questions and comments by the Committee, and responses provided.

The Tanzanian Minister and various members of his delegation entered into a reasonably constructive dialogue with the Committee, most notably in relation to domestication of the Convention and repealing national laws imposing imprisonment for the failure to pay a debt, which the State party committed itself to during the course of the examination. This level of progress was however not evidenced in all areas. A particularly trenchant impasse was the debate over abolishing corporal punishment in schools and criminalising marital rape. Despite strong arguments from various Committee members, the delegation maintained throughout that, as an emerging democracy, it could not implement such legislation against the will of its citizens. The concluding observations reflected the immovable position of the Committee on these points, and were marked as particular areas of focus for the State to follow up on.³ The dialogue was permeated by constant reminders that previous recommendations made by the Committee have evidently not been considered or implemented by the State, and this general level of frustration is echoed in the Committee’s first concluding observation, which recommends that ‘the State party should give effect to the recommendations adopted by the Committee in its previous concluding observations’.⁴

More generally, however, Mr Chikawe did indicate that the State party would improve its cooperation with the Committee by confirming that Tanzania will ‘step up its reporting obligations to the treaty bodies’ and ‘not miss a report deadline from now on’. Progress was made in certain substantive areas and it is hoped that this commitment to regular reporting will help to improve implementation of the Covenant.

² The full list of members of Tanzania’s delegation is available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm>.

³ CCPR/C/TZA/CO/4 at para. 7 and 16, available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm>.

⁴ CCPR/C/TZA/CO/4 at para. 6, available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm>.

Domestication of the Convention

7. In light of the Committee's General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties, the State party should ensure that all rights protected under the Covenant are given full effect in domestic law. The State party is also requested to provide the Committee with a detailed account of how each Covenant right is protected by legislative or constitutional provisions in its next periodic report. The State party should also consider ratifying the (first) Optional Protocol to the Covenant.⁵

Fundamental to the implementation of the Covenant is the legal status it holds in a State, and the Committee was keen to determine this throughout the course of the examination to seek still further clarification. The exchange began with general remarks from Committee member Mr Amor, who acknowledged that the State has a dualist system of legal integration, but noted that there are nevertheless some discrepancies between the national law and Covenant. These include in the area of corporal punishment, heritage and succession, female genital mutilation ('FGM') and imprisonment for indebtedness. Despite judgments by the Supreme Court supporting the supremacy of the Covenant, it is nevertheless unclear whether it holds *de facto* supremacy over national laws.

In its replies to the list of issues posed by the Committee, Tanzania had stated that, 'as a general rule, the Constitution prevails over any conflicting domestic legislation and international instruments.'⁶ Following further questioning from Committee members, Mr Chikawe attempted to clarify this statement by saying that domestic law cannot take precedent over the Covenant, except 'where the Covenant is not domesticated'. Further pressing by Mr Amor followed, and he reminded the delegation that Tanzania had ratified the Convention without reservation and therefore had an unconditional duty to comply with the entire Covenant. Furthermore, he emphasised that international obligations take effect over national laws. Mr Chikawe replied that it would take time to implement, but that the Government was in the process of doing so.

In order to assist the Government in doing so, the Committee highlighted a number of legislative anomalies which would appear to contravene Covenant-protected rights. Sir Rodley recognised the existence of discrimination in national customary law and asked how this situation could continue when the Supreme Court had ruled that the Constitution clearly prohibits this. In a very brief but positive response, Mr Chikawe said he had learnt something new in the examination and promised to look at how the situation could be improved. More specifically, Mr Rivas Posada expressed concern at the recent adoption of the *Prevention of Terrorism Act 2002* and the amended *Emergency Powers Act 1986*, asking if they guaranteed the continued compliance with Covenant rights. Mr Chikawe confirmed that whilst there is no special protection for suspects of terrorism, they nevertheless enjoy all of the rights afforded to all other prisoners. He then declared that the *Emergency Powers Act* as it stands complies with the Covenant, and the exchange ended on that note. The dialogue is reflected in concluding observations requiring the State party to 'ensure that its counter-terrorism measures are in full accordance with the Covenant',⁷ and 'ensure that its provisions concerning states of emergency are compatible with article 4 of the Covenant'.⁸

Clear progress was made in relation to national laws imposing imprisonment for inability to pay a debt. The Committee had raised the issue previously, and made a clear effort to affect some change this time around. Following up on a similar recommendation made in the State's previous examination before the Committee in 1998,⁹ Mr Rivas Posada suggested that the law regulating imprisonment for non-payment of debts should be

⁵ CCPR/C/TZA/CO/4 at para. 7, available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm>

⁶ CCPR/C/TZA/Q/4/Add.1, at para. 4, available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm>.

⁷ CCPR/C/TZA/CO/4 at para. 12, available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm>

⁸ CCPR/C/TZA/CO/4 at para. 13, available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm>

⁹ CCPR/C/79/Add.97, para. 21, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G98/176/60/PDF/G9817660.pdf?OpenElement>.

abolished altogether, as it currently contravenes article 11 of the Covenant. Despite some initial protests, Mr Chikawe subsequently ceded that the Government would ‘try and remove the law’.

Violence and discrimination against women

11. The State party should adopt effective and concrete measures to combat female genital mutilation vigorously, in particular in those regions where the practice remains widespread, and ensure that the perpetrators are brought to justice. It should also amend its legislation with a view to criminalizing female genital mutilation regarding women above the age of 18.¹⁰

Of significant importance to the Committee was the issue of FGM, a practice still widespread in certain parts of the country, and one which the Committee has previously attempted to address.¹¹ Mr Chikawe reported in his opening statement that legislation on gender-based violence would soon be implemented and that FGM had been criminalised, with a focus on under-18s as the most vulnerable group. He also stated that these criminal sanctions were being countered by ‘social resistance’. Mr Amor, supported by Mr Salvioli and Ms Chanet, emphasised that it is up to the State to spearhead action, not merely ‘follow society’. In this vein, he called acts of FGM ‘intolerable’ and ‘unacceptable acts of cruelty’. The delegation countered that it is extremely difficult to find witnesses willing to testify in court, and that education was underway to deal with societal prejudices. The dialogue ended there, with no specific questions relating to the existing legislation and its age-limits, but the Committee returned to the topic in its concluding observations, asking for follow up information on the implementation of paragraph 11 within one year.

During the course of the examination, the Committee expressed its surprise at repeated assertions made by the delegation that practices contrary to the Covenant will continue to be permitted – explicitly or implicitly – by the Government of Tanzania because of social and traditional justifications. The Committee reiterated early on in the concluding observations that such justifications are purely political and should not enter into a discourse about the State’s legal obligations to comply with the Covenant.¹² In light of this the Committee also addressed important issues relating to equality, minimum marrying age and marital rape.

Education and employment were identified as areas of discriminatory practice in the submitted NGO reports before the Committee; thus paragraph 9(b) addresses the wider problem of attitudes towards women and paragraph 9(c) asks the State to inform the Committee of measures taken in this area in its next periodic report. Paragraph 9(a) reflects the attention paid by Mr Amor to the topic of under-age marriage. He framed his concerns in the context of equal access to education – something the State party had been keen to emphasise its progress in. He highlighted the need for education and said that where the age of marriage was as low as fourteen, this seriously impeded equal access to education. The State’s response was distinctly evasive, with Mr Chikawe denying that any in depth consideration was needed. He again highlighted that strong religious and cultural beliefs were involved, and that whilst ‘the consensual age of marriage in international law is 18, we must also respect our large Muslim community’. The debate was not taken up again by any of the Committee members.

A more coordinated line of questioning from the Committee members was the widespread reports of marital rape being unpunished in Tanzania. Despite previous recommendations calling upon the State to eradicate the practice,¹³ fundamental difficulties in doing so became apparent when Mr Chikawe reported that it simply

¹⁰ CCPR/C/TZA/CO/4 at para. 11, available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm>

¹¹ *Supra*, n. 9, para. 11.

¹² “The Committee also notes with concern that, in spite of the obligation which the State party has undertaken under article 2 paragraph 2 of the Covenant to take necessary steps to adopt such legislative and other measures as may be required to give effect to the rights recognized in the Covenant, the State party seems to subject this undertaking to the will of the people, traditions, and customs that are prejudicial to the realization of a number of Covenant rights, including those affecting women”, CCPR/C/TZA/CO/4 at para. 7, available at <http://www2.ohchr.org/english/bodies/hrc/hrcs96.htm>

¹³ *Supra*, n. 9, para. 11.

does not exist in the country, as it is an ‘alien concept’. Strong opposition to this comment followed, with Mr Salvioli stating the State has a duty to eliminate this ‘intolerable’ practice, and Mr Thelin arguing that it is not a culturally relative concept, which should therefore be understood by every State. Mr Thelin also asked that marital rape be included in the State’s next action plan against gender-based violence, but no response was forthcoming. Disappointingly, Mr Chikawe’s position showed little development since Tanzania’s last examination, but promisingly he submitted that he would ‘read up on it’, accepting that violence does exist in the family and that this should be dealt with.

Pre-trial detention and prison conditions

19. The State party should intensify its efforts to improve the conditions of persons deprived of liberty before trial and after conviction, so as to bring them in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners. In particular, the overcrowding should be addressed as priority issue. In addition, the State party should promote alternatives to imprisonment. Detailed statistical data showing progress since the adoption of the present recommendations, including on the promotion and implementation of alternative measures to detention, should be submitted to the Committee in the State party’s next periodic report.¹⁴

Concern was raised by various Committee members as to the conditions of detention for both pre-trial and sentenced prisoners. Detention of suspects was discussed at length, particularly by Committee member Mr Lallah, who was interested in cases of police forces holding prisoners without promptly handing them over to judicial authorities, and immunity for police officers committing these same acts. Mr Rivas Posadas asked specifically about the conditions of detention for those accused of terrorism and what protection they enjoy from other prisoners and the police forces. There was no direct answer to this latter question and Mr Chikawe simply asserted that all police officers are prosecuted if they commit an offence. He stated that the police no longer prosecute suspects and this work is carried out solely by the civil service. Mr Mwaimu, Director of Constitutional Affairs and Human Rights at the Ministry of Justice, responded that the right to a fair trial is protected and that in most cases suspects must come before a judge within 24 hours of being charged with an offence. There are, however, exceptions for ‘serious offences’, whereby suspects may be detained for longer periods pre-trial. Mr Minja, the Deputy Commissioner of Prisons, added that the law provides for detention without trial for up to six months, but did not elaborate any further on whether this limit had been tested, and the Committee did not take up the subject in further comments. Mr Chikawe summarised that the State would ‘try’ to place all suspects under judicial control within 24 hours, and this was backed up by a recommendation reinforcing the same principle.¹⁵

On the issue of overcrowding and conditions for sentenced prisoners, some useful suggestions were put forward by Mr Lallah who was critical of the 43% overflow. Mr Chikawe stated that whilst prison numbers are presently at 38,000, he planned to reduce the count to 33,000 by December 2009 with the implementation of a new programme which he did not elaborate on. The Committee had suggestions on how to reduce this number still further, namely by implementing the option of bail for more crimes and creating more alternatives to prison sentences. This elicited a favourable response from the Tanzanian Minister of Justice, who agreed to look into using the bail system for more crimes, although not for more serious crimes such as murder. He also stated that the Government was looking into establishing a system of fines as another alternative to prison sentences. The dialogue thus manifested itself in the recommendation set out above.

Mr Lallah was also interested in finding out about complaint mechanisms for prisoners who suffer ill treatment, either from prison guards or more indirectly through the living conditions. In this respect paragraphs 7 and 18 are instructive; the latter of which explicitly asks that the State reports back in its next periodic report for the systems put in place to hear such complaints. It can perhaps be used in tandem with

¹⁴ CCPR/C/TZA/CO/4 at para. 19, available at <http://www2.ohchr.org/english/bodies/hrc/hr96.htm>

¹⁵ CCPR/C/TZA/CO/4 at para. 21, available at <http://www2.ohchr.org/english/bodies/hrc/hr96.htm>

paragraph 7 which calls upon the State party to sign the First Optional Protocol on hearing individual complaints.

In this context the issue of the death penalty was also raised, with Mr Amor, Sir Rodley, Mr Bhagwati, Mr Perez Sanchez-Cerro and Mr Ayat registering their encouragement for the State to abolish the death penalty entirely. Mr Amor pointed out that lengthy detention on death row could amount to a form of torture and Sir Rodley asked how long there had been a moratorium in place, suggesting that if no death sentences are actually carried out then the State should consider abolishing the penalty altogether. Mr Amor also suggested that, in the meantime, prisoners on death row for over 5 years should have their sentence commuted. The suggestions found a favourable response from Mr Chikawe, who was keen to explore the exigencies for abolition. He asked how it might affect crime rates and stated that the death sentence is never carried out at present. Therefore, he said the State is working towards abolition and could foresee this happening within the next 10 to 15 years. Recommendations following up on this statement add impetus to this development, calling as they do for ratification of the Second Optional Protocol and commutation of all current death sentences.¹⁶

Unlawful interference with private life

22. The State party should decriminalize same sex sexual relations of consenting adults and take all necessary actions to protect them from discrimination and harassment.¹⁷

Following a late-submitted report by a NGO group on LGBTI rights in Tanzania, a number of Committee members picked up the subject in the course of the dialogue, asking in particular about the criminalisation of homosexuality in the country. Ms Keller asked for the State's justification for criminalising same-sex consensual sex and wondered what progress there had been in eliminating discrimination against LGBTI persons. Ms Chanet and Mr Perez Sanchez-Cerro echoed these comments early on, with Ms Chanet observing that if anything, discrimination had increased recently. Mr Chikawe responded that the sentence for homosexual activity had not been increased and was still seven years imprisonment.

Mr O'Flaherty pressed the delegation for more information, referring to the Committee's previous work establishing that homosexual behaviour falls under the protection of articles 2 and 17 of the Covenant.¹⁸ He said it was thus a clear and unambiguous duty of the State to eliminate any such discriminatory practices or laws and questioned Zanzibar's recent increased sentence for same-sex activity to 25 years imprisonment. He lastly asked about how such discriminatory practices impact on the State's ability to deal with HIV/AIDS. Mr Chikawe replied that homosexuality is 'unacceptable in our society', and that the Government could not force people to accept it. At this point Mr Salvioli expeditiously pointed out that the State had gone against public opinion in trying to prevent the killings of people with albinism,¹⁹ and that therefore this could not be accepted as sufficient grounds for inaction. Mr Chikawe continued with his answers, saying that the latest amendment to Zanzibar's law on criminalising homosexuality imposed a sentence of not more than seven years imprisonment and that he would look into the HIV/AIDS problem with a view to providing the Committee with a written response soon.

The rights of the child

¹⁶ CCPR/C/TZA/CO/4 at para. 14, available at <http://www2.ohchr.org/english/bodies/hrc/hracs96.htm>

¹⁷ CCPR/C/TZA/CO/4 at para. 22, available at <http://www2.ohchr.org/english/bodies/hrc/hracs96.htm>

¹⁸ *Toonen v. Australia*, Communication No 488/1992, UN Doc. CCPR/C/50/D/488/1992 (1994), available at <http://www1.umn.edu/humanrts/undocs/html/vws488.htm>.

¹⁹ CCPR/C/TZA/CO/4 at para. 15, available at <http://www2.ohchr.org/english/bodies/hrc/hracs96.htm>

16. The State party should take measures towards the abolition of corporal punishment as a lawful sanction. It should also promote non-violent forms of discipline as alternatives to corporal punishment within the educational system and carry out public information campaigns about its harmful impact.²⁰

The recommendation regarding corporal punishment reflects one of the clearest misinterpretations of the Covenant by Tanzania, whereby it became apparent that the State does not consider it to fall under article 7 of the Covenant. Mr Rivas Posada initially raised the question, asking whether corporal punishment proliferated in schools. The Minister for Justice replied that caning in schools is not corporal punishment but rather constitutes a ‘corrective measure’. Immediately contradicting himself, he then said that the State would retain corporal punishment as an alternative to prison. Taking up this cue, several other Committee members entered the discussion, with Sir Rodley attempting to establish if corporal punishment is permitted in Tanzania, as section 60 of the *Education Act 1978* suggests. The Minister then attempted to qualify his last statement, claiming that whilst caning takes place, it does not constitute corporal punishment, as this only includes any punishment handed down by a court. The misinterpretation of the Covenant is thus dealt with by the above recommendation which clearly establishes caning as a form of punishment prohibited by the Covenant and strongly suggests seeking alternative forms of ‘correction’.

Little positive headway was being made during the examination and so the Committee redirected the debate to discuss the issue of child labour. Referring to an International Labour Organisation report of 2008 which recorded 1.2m child labourers in the country, Ms Majodina wanted to know why the *Employment and Labour Relations Act 2004* was not having any effect in reducing this number. She also asked about the situation of street children, and whether their plight is also being addressed appropriately. Mr Minja replied that under the Act, children under 14 years of age are prohibited from working, and that the ‘worst forms [of child labour] would be eliminated by 2010’, with all other forms being dealt with as expeditiously as possible. Mr Chikawe then mentioned that a poster campaign was helping to reduce the level of child labour, but the answers provided left a lot of room for follow-up, which the Committee has requested in paragraph 25 of the concluding observations.²¹ It calls for the State to ‘intensify its efforts to eliminate child labour’ by improving its public-awareness campaign and unifying child law. These efforts should be reported on in the next periodic report, along with providing more information on street children in accordance with Ms Majodina’s questions.

Other issues not addressed in concluding observations

It was noticeable that the concluding observations did not refer to the exchange which took place over abortion during the course of the meeting. Despite its rather limited nature, an important point of follow up was raised by Mr Ayat, who noted that previous recommendations called for ‘a national review to be carried out the restrictions on abortions’,²² and he requested information in this regard. He received a limited response from Mr Chikawe, who stated that therapeutic abortions take place where the life of the mother is at risk, but that other cases of abortion are still illegal. The dialogue ended here with no discernible outcome or follow up in the concluding observations.

Conclusions and next steps

²⁰ CCPR/C/TZA/CO/4 at para. 16, available at <http://www2.ohchr.org/english/bodies/hrc/hr96.htm>

²¹ CCPR/C/TZA/CO/4 at para. 25, available at <http://www2.ohchr.org/english/bodies/hrc/hr96.htm>

²² CCPR/C/79/Add.97, para. 15, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G98/176/60/PDF/G9817660.pdf?OpenElement>

The examination came to an end with Mr Chikawe thanking the Committee for a ‘very useful’ dialogue and committing to ‘stepping up’ its obligations to report to the treaty bodies.

In terms of **follow up**, the Committee marked several issues in the concluding observations. On paragraphs 11, 16 and 20, dealing with FGM, corporal punishment in schools and imprisonment for the failure to pay a debt respectively, the Committee requested ‘relevant information on their implementation within one year’.²³

Elsewhere, recommendations relating to domestication of the Covenant,²⁴ raising the minimum age of marriage and ensuring equality in education and employment,²⁵ establishing a complaints procedure for prisoners,²⁶ provision of data relating to alternative measures to detention,²⁷ and researching into the problem of street children²⁸ all request further information to be provided in the next periodic report.

The fifth periodic report is due to be submitted by 1 August 2013, wherein the Committee requests up-to-date information on all its recommendations and on the Covenant as a whole. The Committee also requests that civil society and non-governmental organisations be consulted in this process.²⁹

Last revised and updated: 28 August 2009.

²³ CCPR/C/TZA/CO/4 at para. 28, available at <http://www2.ohchr.org/english/bodies/hrc/hracs96.htm>

²⁴ CCPR/C/TZA/CO/4 at para. 7, available at <http://www2.ohchr.org/english/bodies/hrc/hracs96.htm>

²⁵ CCPR/C/TZA/CO/4 at para. 9, available at <http://www2.ohchr.org/english/bodies/hrc/hracs96.htm>

²⁶ CCPR/C/TZA/CO/4 at para. 18(a), available at <http://www2.ohchr.org/english/bodies/hrc/hracs96.htm>

²⁷ CCPR/C/TZA/CO/4 at para. 19, available at <http://www2.ohchr.org/english/bodies/hrc/hracs96.htm>

²⁸ CCPR/C/TZA/CO/4 at para. 25, available at <http://www2.ohchr.org/english/bodies/hrc/hracs96.htm>

²⁹ CCPR/C/TZA/CO/4 at para. 29, available at <http://www2.ohchr.org/english/bodies/hrc/hracs96.htm>

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