Commonwealth Human Rights Initiative

working for the *practical* realisation of human rights in the countries of the Commonwealth

TANZANIA UNDER REVIEW BY UNITED NATIONS UNIVERSAL PERIODIC REVIEW:

RECOMMENDATIONS REGARDING JUSTICE MATTERS

Introduction to this document

The purpose of this document is to explain the United Nations Universal Periodic Review process, and set out the **recommendations** made to Tanzania regarding **criminal justice related matters**. By this, we mean recommendations regarding the judiciary, police, prison service, access to legal services and the criminal justice system as a whole. This includes accountability for acts such as torture, disappearances and extrajudicial executions. We have also included recommendations regarding freedom of assembly, expression and the media, as these recommendations often relate to criminal justice related matters. The document refers **only** to recommendations regarding these areas and does not refer to recommendations on other human rights areas.

CHRI hopes that this document will assist in advocacy regarding criminal justice related matters in Tanzania. Organisations can lobby the government to implement the recommendations.

What is the Universal Periodic Review?

The United Nations Universal Periodic Review ("UPR") is a process in which each member nation of the UN has its human rights record examined by other UN member states to assess compliance with human rights obligations and commitments. Each country is reviewed every four and a half years.

The UPR is a new mechanism that began in 2008. Tanzania was reviewed for the first time in **October 2011**.

There are three stages in the UPR process:

1. Before the review

Reports are provided to the UN Human Rights Council before the actual review, explaining the status of human rights in the country. Three reports are provided: one from the government; one prepared by the UN Office of the High Commissioner for Human Rights (OHCHR) summarising submissions from civil society organisations; and one which is a compilation of UN information, observations and recommendations on the country.[1]

What role can civil society play in this stage of the process?

Governments are encouraged to hold broad consultations with all stakeholders including civil society when preparing their report. Civil society can lobby the government to hold consultations involving all stakeholders. Civil society can also hold its own consultation and choose to invite the government – for the entire consultation or parts of it. It's often better to work in consultation with other civil society groups at this stage and involve the National Human Rights Institution.

[1] Reports are available at http://www.ohchr.org/EN/HRBodies/UPR/PAGES/TZSession12.aspx

The government of the country appears at the United Nations to discuss its own human rights situation and its adherence with international human rights obligations. During this process, other UN member states can raise concerns about human rights matters within the country – and make recommendations for improvement.

With each recommendation made by another country, the government of the country can either:

- **Accept** the recommendation: this means that the government agrees to implement or address the recommendation.
- **Reject** the recommendation: this means that the government rejects the recommendation, and will not implement it.
- **Make general responses** on the recommendation: this is often used by states as a way to neither accept nor reject recommendations. In such cases a government may for example say that a recommendation is irrelevant or that it has already been implemented.

At the time of the review, the government can take some time to **consider** whether they will adopt or reject recommendations. The government is expected to report back on whether they have decided to adopt or reject the recommendation at or before the next sitting of the UN Human Rights Council after its UPR review, where it is adopted. This is recorded in an addendum.

What role can civil society play in this stage of the process?

Civil society does not have a formal role to play during the actual review. Civil society groups can observe the review but cannot take the floor or make statements at the Council. However it is important for civil society to engage with diplomatic missions of other countries either in Dodoma or in Geneva and encourage them to ask questions about key human rights matters. Civil society can make statements at the Human Right Council after the final recommendations are adopted.

3. After the Review

The government has an obligation to implement recommendations accepted before they appear before the UPR again. When the country does get reviewed again, the government is expected to report back on the progress made on implementing the recommendations. Countries are also encouraged to make voluntary midterm updates on the progress of implementation.

What role can civil society play in this stage of the process?

Civil society can:

- ✓ Lobby the government to implement the recommendations – this could include advocating for an Action Plan to outline how the recommendations will be implemented
- ✓ Work with other civil society organisations, journalists, parliamentarians, NHRIs and in some cases even the judiciary to advocate for implementation of recommendations
- ✓ Partner with the government to implement recommendations
- ✓ Monitor and report on the implementation of the recommendations – this can include reporting to donor governments who fund government projects related to UPR recommendations
- ✓ Lobby the government to hold consultations to report on the implementation of recommendations
- ✓ Give an update on the implementation of recommendations at Human Rights Council sessions in Geneva
- ✓ Prepare and submit a submission before the next UPR review

Recommendations accepted by Tanzania

The following recommendations regarding criminal justice related matters were supported by Tanzania and must be implemented by the government[2] (the government has an obligation to implement them):

Police: training, accountability and oversight

- Take adequate measures to integrate human rights education into school curricula and design human rights training programmes for civil servants and security officers (recommendation by Morocco)
- Human rights training for security forces (recommendation by USA)
- Vigorous prosecution of security force personnel who violate the law (USA)

[2] See UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review; United Republic of Tanzania,* A/HRC/19/4, 8 December 2011, under "Outcome of the Review" at http://www.ohchr.org/EN/HRBodies/UPR/PAGES/TZSession12.aspx

- Appropriate prosecution and punishment of police officers who have committed actions of torture or ill-treatment (Belgium)
- Ensure all security forces are subject to strict control of civilian authorities (USA)
- Establish an independent body for investigating complaints about the actions of law enforcement officials (UK)
- Take adequate measure to protect its population from violence committed by the security forces and establish an independent mechanism for the investigation of complaints regarding abuses carried out by law enforcement officials (Denmark)

Prisons

- Enhance the juvenile system and ensure separation of juveniles from adults in detention (Djibouti)
- Improve conditions in Tanzania's prisons, including in relation to overcrowding and inadequate health care (Australia)
- Improve conditions in prisons centres, including alternative mechanisms to deprivation of liberty such as community services (Spain)

Torture

- Consider acceding to the Convention against Torture (Brazil)

General judiciary and education

- Assign resources to the Judicial Power that facilitates access to justice, particularly in rural areas (Spain)
- Improve the efficiency of the justice system by streamlining and simplifying judicial procedures including introducing a case management system that tracks individual cases from filing to disposition and limits the amount of time each case can be held at each stage (Canada)
- Continue institutionalizing the achievements in human rights and work to strengthen national human rights mechanisms and democratic institutions (Nepal)

Human Rights Defenders, freedom of assembly, freedom of media

- Guaranteeing the freedom of expression, association and assembly by allowing human rights defenders, political opponents and journalists to express freely their views in line with international human rights law (Netherlands)
- Work with the media and other stakeholders to ensure that all organs of the State understand and appreciate the constitutional guarantees of freedoms of press and assembly (USA)
- Adopt a new media law enshrining freedom of the press (Canada)

- Adopt new legislation that guarantees the freedom of the media as well as the right to information (Norway)
- Respect the right to assembly throughout the process of reviewing the Constitution (Norway)

Recommendations enjoying Tanzania's support in part

The government of Tanzania supports only part of the resolution below[3]:

- Ratify the Convention against **Torture** and Other Cruel, Inhuman or Degrading Treatment or Punishment (Australia, Denmark, Democratic Republic of Congo, Benin, Cape Verde, France, Japan, Poland, Spain, Uruguay) and incorporate its provisions into domestic law (Poland, Australia) (**The government says that although it does not agree to ratify the Convention now, the Cabinet is currently considering ratifying it*)
- Work to abolish laws that restricts **freedom of expression**, information and **freedom of media**, and establish laws that will guarantee these rights in line with international human rights standards (Sweden) (**The government says that it will review its laws governing freedom of the press and the right to information. Previously it rejected to abolish laws restricting freedom of expression, stating that the Constitution provides for freedom of expression exercised in accordance with the law*).

Recommendations rejected by Tanzania

The following recommendations regarding criminal justice related matters were rejected by Tanzania[4]:

Death penalty

- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty (Australia, Cape Verde, UK, Belgium, Sweden), and take the necessary steps to remove the death penalty from Tanzania's justice system (Australia)
- Consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (Brazil, Romania)
- Abolish the death penalty (UK, Belgium, Uruguay, Romania, Spain)
- Abolish the death penalty within the projected constitutional reform and to ratify the Second Optional Protocol to the international Covenant on Civil and Political Rights and, if it is not the case, consider declaring an official moratorium on the death penalty (Germany)

[3] "Report of the Working Group on the Universal Periodic Review; United Republic of Tanzania", UN Human Rights Council, A/HRC/19/4, 8 December 2011, and the "Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review", A/HRC/19/4/Add.1, 12 March 2012. Accessed under "Outcome of the Review" and "Addendum" http://www.ohchr.org/EN/HRBodies/UPR/PAGES/TZSession12.aspx

[4] Ibid

- Amend the Constitution to abolish any constitutional provisions that provide for death penalty, provide civic education at all levels of the society on the need of abolishing the death penalty and commute the death sentences of current prisoners awaiting execution (Sweden)
- Establish a moratorium on use of the death penalty as a step towards its abolition (Hungary, France, Slovenia, Denmark)
- Consider abolishing the death penalty (Turkey, Brazil)
- Carry out efforts to repeal the application of the death penalty (Argentina)

Regarding the death penalty, Tanzania states:

> "The establishment of a de jure moratorium is closely linked with the application of death penalty in Tanzania. It is our considered view that internal consultations and public opinion should be given highest consideration before any policy measure is undertaken. Furthermore, death penalty, being one of the burning issues, will be deliberated in the forthcoming constitutional review process."[5]
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> "Tanzania wishes to reiterate its position expressed in the National UPR Report, the Minister's Statement delivered in October during the review as well as the position expressed during the consideration of our Fourth ICCPR Report in July 1999. In the meantime the government continues to educate the public on the general world`s trend on the death penalty."[6]

Human Rights Defenders, freedom of expression, freedom of media

- Put an end to direct and indirect restrictions on freedom of expression and adopt appropriate measures, including legislative measures, to prevent intimidation of journalists (Poland)

Next steps

The government of Tanzania has a duty to implement the recommendations it accepted before it is reviewed again, in **May 2016**.

Civil society should work to make sure the recommendations are implemented – as outlined in the text box above (page 3).

[5] "Report of the Working Group on the Universal Periodic Review; United Republic of Tanzania: Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review", UN Human Rights Council, A/HRC/19/4/Add.1, 12 March 2012. Response to recommendation 86.21, accessed under heading "Outcome of the Review" and "Addendum"
http://www.ohchr.org/EN/HRBodies/UPR/PAGES/TZSession12.aspx

[6] Ibid - response to recommendation 86.25

Need more information?

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