



**International Convention
On the Elimination
Of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Sixty-seventh session
2- 19 August 2005

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

ZAMBIA

1. The Committee considered the twelfth to sixteenth periodic reports of Zambia, submitted in one document (CERD/C/452/Add.6/Rev.1), at its 1707th and 1708th meetings (CERD/C/SR.1707 and 1708), held on 4 and 5 August 2005. At its 1721st and 1723rd meetings (CERD/C/SR.1721 and 1723), held on 15 and 16 August 2005, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by the State party, the quality of which demonstrates Zambia's willingness to resume dialogue with the Committee. It notes with satisfaction that the report complies with the reporting guidelines and contains relevant information on the factors and difficulties encountered in the implementation of the Convention.

3. The Committee appreciates the efforts made by the delegation to respond to the numerous questions posed by its members, and encourages the State party to increase its efforts so as to ensure that substantial answers are provided to the Committee in the course of future dialogues.

4. Noting that the report was about nine years overdue when submitted, the Committee invites the State party to respect the deadlines set for the submission of its future reports.

B. Positive aspects

5. The Committee notes with appreciation the establishment of several national institutions, in particular the Zambian Human Rights Commission and the Police Public Complaints Authority.

6. The Committee particularly welcomes the fact that the delegation agreed to the participation of the Zambian Human Rights Commission in the dialogue with the Committee, which further demonstrates the State party's readiness to enter into a frank and constructive dialogue with the Committee. It also appreciates that the Zambian Human Rights Commission as well as civil society participated in the elaboration of the periodic report.

7. The Committee notes with satisfaction the State party's generous approach in hosting and providing protection to more than 271,000 refugees over many years.

8. The Committee welcomes the State party's efforts to enhance the access of refugees to the courts and in particular the establishment of mobile special courts and special police units to serve in refugee camps and settlements.

C. Concerns and recommendations

9. The Committee, while welcoming the establishment of a Constitution Review Commission in 2003, reiterates its concern that article 23 of the Constitution, which allows for extended restrictions to the prohibition of discrimination with respect to non-citizens, matters of personal law and of customary law, is not in compliance with the Convention (art. 1).

The Committee recommends to the State party that it facilitate the constitutional review process and amend article 23 (4) of the Constitution so as to ensure the full implementation of the prohibition of racial discrimination. The Committee draws the attention of the State party to its general recommendation XXX (2004) on non-citizens. It also stresses that respect for customary law and practices should not be ensured through a general exception to the principle of non-discrimination, but should rather be implemented through positive recognition of cultural rights.

10. The Committee, while taking note of the delegation's statement that first steps have been undertaken by the Government to incorporate the Convention into domestic law, reiterates its concern that this has not been fully achieved (art. 2). The Committee invites the State party to proceed with the incorporation of the provisions of the Convention into domestic law, and requests that detailed information on actual plans to this end be provided.

11. The Committee is concerned in particular that, under article 11 of the Constitution, the right of everyone not to be discriminated against is applicable to a limited list of mainly civil and political rights, and that the Directive Principles of State Policy, also included in the Constitution, do not contain any non-discrimination clause with regard to economic, social and cultural rights. It further regrets the lack of precise information regarding legislation prohibiting racial discrimination in the enjoyment of civil, political, economic, social and cultural rights, and its implementation in practice (arts. 1, 2 and 5).

The Committee recommends to the State party that it guarantee the right of everyone not to be discriminated against in the enjoyment of civil, political, economic, social, and cultural rights. More detailed information on the existing legislation and its practical implementation should be provided to the Committee in this regard.

12. The Committee notes the 1996 amendment to the Constitution, which requires that a presidential candidate be a second-generation Zambian.

The Committee recommends to the State party that it review this provision so as to ensure full compliance with article 5 (c) of the Convention.

13. The Committee notes with concern the decision of the State party to appeal the High Court judgement in the case *Roy Clarke v. Attorney-General*, which quashed a deportation order concerning a British long-term resident on the basis that he would not have been punished for his journalistic activities if he were a Zambian citizen (art. 5 (d) (viii)).

The Committee recalls that under the Convention, differential treatment based on citizenship constitutes discrimination if the criteria for such differentiation are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim. It recommends to the State party that it respect the right to freedom of expression without any discrimination based on citizenship, and that it provide the Committee with detailed information on the results of the above-mentioned appeal.

14. The Committee notes the efforts made by the State party to address the demands in the sphere of education, health care and food in regions hosting a large population of refugees, in particular through the Zambia Initiative. It remains concerned, however, about the fate of thousands of long-term refugees who are unable to return to their countries of origin, in particular Angolans, in a context where the 1970 Zambian Refugee Control Act does not encourage their local integration (art. 5).

The Committee encourages the State party to review its current refugee policy with a view to enhancing prospects for local integration of long-term refugees. To this end, the Committee recommends to the State party that it review the Refugee Control Act and consider withdrawing its reservation to the 1951 Convention relating to the Status of Refugees.

15. The Committee notes with concern that de facto racial discrimination by non-State actors poses daily challenges to the State party (arts. 4 and 5).

The Committee urges the State party to develop strategies to tackle this issue, in cooperation with the Zambian Human Rights Commission and other stakeholders.

16. The Committee reiterates its concern that the provisions of article 4 (b) of the Convention have not yet been fully incorporated in domestic law.

The Committee recommends that the State party recognize participation in organizations promoting and inciting racial discrimination as a punishable offence.

17. The Committee regrets the lack of statistical data on cases of racial discrimination lodged before relevant Zambian institutions (arts. 4 and 6).

The State party should include in its next periodic report statistical information on complaints of racial discrimination lodged before national courts and the Zambian Human Rights Commission, as well as on the outcome of these cases. Information on specific cases should also be provided.

18. The Committee notes that complaints of racial discrimination have failed before institutions such as the Zambian Human Rights Commission and the Industrial Relations Court, because of the impossibility of proving racial discrimination (art. 6).

The Committee recommends that complaints of racial discrimination be fully dealt with, including when they are coupled with complaints of violation of other rights, such as labour rights. It also recommends that full attention be paid to the possible existence of indirect discrimination, which is prohibited under the Convention. Further, it encourages the State party to envisage regulating the burden of proof in civil proceedings involving racial discrimination so that once a person has established a prima facie case that he or she has been a victim of such discrimination, it shall be for the respondent to provide evidence of an objective and reasonable justification for the differential treatment.

19. While welcoming the efforts pursued by the State party in the field of human rights education, the Committee remains concerned that most people living in Zambia are not aware of their rights and thus find it difficult to seek redress if their rights are violated. The Committee further recalls that the fact that victims of racial discrimination rarely report on such matters to the appropriate authorities can also be the result of, inter alia, the limited resources available to victims, their lack of confidence in the police and the judicial authorities, or the authorities' lack of attention or sensitivity to cases of racial discrimination (art. 6).

The State party should strengthen its efforts to raise the awareness of people on their rights, inform the victims of all remedies available to them, facilitate their access to justice, and train judges, lawyers, and law enforcement personnel accordingly.

20. The Committee notes with concern the difficulties encountered by the Zambian Human Rights Commission as described in the report, in particular inadequate staffing, inadequate means of transportation, centralization, and slow response from concerned State authorities to the Commission's requests for action. It notes with interest, however, the State party's plan to decentralize the Commission's offices and the information that the new draft Constitution contains provisions enhancing the effectiveness of the Commission (art. 6).

The Committee recommends that the State party increase its efforts to enhance the effectiveness of the Human Rights Commission, in particular through adequate budget allocations. The Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134) should be taken into consideration in the elaboration of the constitutional reform relating to the Human Rights Commission. The Committee wishes to receive detailed information about the follow-up by the State authorities to the Commission's recommendations, as well as on relationships established between the Commission and civil society.

21. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

22. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention, and recommends that it consider the possibility of doing so.

23. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth

Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States

parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

24. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized.

25. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of its implementation of the recommendations contained in paragraphs 401, 402 and 407 above, within one year of the adoption of the present conclusions.

26. The Committee recommends to the State party that it submit its seventeenth, eighteenth and nineteenth periodic reports in a single report, due on 5 March 2009.
