



**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

SUMMARY RECORD OF THE 1708th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 5 August 2005, at 10.30 a.m.

Chairman: Mr. YUTZIS

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The meeting was called to order at 10.30 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Twelfth to sixteenth periodic reports of Zambia (continued) (CERD/C/452/Add.6/Rev.1; HRI/CORE/1/Add.22/Rev.2)

1. At the invitation of the Chairman, the members of the delegation of Zambia resumed their places at the Committee table.
2. Mr. MALILA (Zambia) said that the national Human Rights Commission which he chaired had been established in 1996 with a view to investigating human rights violations and proposing effective preventive and compensatory measures. Owing to a number of difficulties, the Commission had not developed a database on human rights violations disaggregated by ethnic group. However, such a database would be developed in the future.
3. The Commission had considered many complaints relating to violations of the right to security and protection from bodily harm, such as torture. However, no such complaints had been received from members of the Asian community.
4. With regard to labour-related complaints, in most cases investigation had revealed that the conflict had been caused not by racial discrimination, but by other human rights abuses or poorly written contracts. He stressed the need to enhance human rights education, inter alia, at workplaces. The ongoing decentralization of the Commission to the provinces was of great importance in that regard.
5. The constitutional amendment according to which a presidential candidate must be a second-generation Zambian had been introduced prior to the Commission's establishment. Once established, the Commission had informed the Constitutional Review Commission that, in its view, the provision was discriminatory and should be removed.
6. Referring to paragraph 132 of the report, he said that the Commission had welcomed the decision reached by the High Court in the Roy Clarke v. The Attorney-General case and regretted that the State party had since appealed the judgement.
7. The Commission for Investigations received and investigated complaints from the public against acts of injustice or maladministration perpetrated by senior government officials, heads of parastatal institutions and local authorities. Some cases, such as promotion on the basis of ethnicity, could be dealt with by both the Commission for Investigations and the Human Rights Commission.
8. Although racial discrimination was prohibited under Zambian legislation, some discriminatory practices were difficult to eliminate. For example, there were clubs which, owing to their prohibitive membership fees, could only be attended by small groups of people, usually belonging to the same race or ethnic group. The same phenomenon occurred in some schools and hospitals. He stressed the need for the Government, the Commission, the media and civil society to consider ways of combating that and other types of discrimination.

9. In conclusion, he regretted that the Commission was only empowered to make recommendations, but said the State party did not routinely ignore them. The new draft constitution contained provisions designed to enhance the Commission's efficiency.

10. Mr. AMIR enquired whether customary law took precedence over common law, or vice versa.

11. Mr. SHAHI said that the country's legislation contained extensive provisions prohibiting racial discrimination, and expressed the hope that the Constitutional Review Commission would eliminate shortcomings in that regard and enhance relevant provisions, taking into account the Committee's observations.

12. According to paragraph 65 of the report, 13 cases of torture had been referred to the Attorney-General for action. He asked whether the Attorney-General had instituted criminal proceedings against those responsible and what follow-up action had been taken.

13. Mr. PILLAI asked whether steps would be taken to ensure that the constitutional review would be carried out in compliance with the Paris Principles, and that the Commission would be given true autonomy and provided with adequate resources. It would be useful to know how much importance the State party attached to the Commission's recommendations. Could the delegation provide examples of recommendations that had been implemented efficiently? Lastly, he asked the delegation to comment on the efforts made to establish a mutually beneficial relationship between the Commission and civil society organizations.

14. Mr. de GOUTTES welcomed the fact that the representative of the Human Rights Commission had been given the floor first. He expressed the hope that other States parties would do the same.

15. Mr. CALI TZAY (Country Rapporteur) requested information on the number of complaints of discrimination received by the Human Rights Commission and on remedial measures taken. Given that racial discrimination was often difficult to prove, and in the light of Zambians' lack of awareness of their rights, he encouraged the Commission to consider establishing complaints mechanisms to enable citizens to seek redress. The representative of the Commission should clarify the meaning of the term "inverted racism" and indicate what measures had been taken or envisaged to combat racism and racial discrimination in everyday life.

16. Mr. MALILA (Zambia) said that the persistence of certain traditional practices that were contrary to international human rights standards gave cause for concern and the Human Rights Commission conducted a series of awareness-raising activities intended to eradicate such practices. Early marriages, for example, continued to be common, and the Commission expended considerable efforts to raise public awareness, particularly in rural areas.

17. The Commission had also encouraged the Government to codify torture as a criminal offence and worked towards ensuring that the Paris Principles were taken into account in the Constitutional Review Commission's efforts to strengthen the role of the Human Rights Commission.

18. The Government generally endeavoured to follow up on the recommendations made by the Human Rights Commission. In 1997, for example, the Commission had investigated allegations of torture of detainees and had made recommendations on victim compensation, most of which had been implemented by the Government. The Commission attached great importance to cooperation with civil society organizations, in particular with regard to human rights education.

19. Members of ethnic minorities in Zambia were generally quite well off and tended to lodge complaints of racial discrimination directly with the courts. The Human Rights Commission had therefore received few complaints of that nature. A number of awareness programmes had been launched to combat acts of racial discrimination in everyday life, since the failure to report such violations had mainly been due to a lack of awareness of rights.

20. Ms. IMBWAE (Zambia) said that her Government was aware of the Constitution's deficiencies with regard to human rights protection. In response, the Constitutional Review Commission had produced an interim report and draft bill to address the identified concerns; the documentation had been circulated to all stakeholders for consideration. Article 11 of the Constitution established the non-discriminatory nature of the directive principles of State policy. In order to address the issue of harmful cultural practices, the Government had mandated the Zambia Law Development Commission to restate and codify existing customary law and practices. Article 23 of the Constitution remained in force, but was currently under review.

21. The Independent Broadcasting Authority had not yet become operational because of failure to comply with the Board's constitution, which was presently under judicial review. Existing legislation failed to establish participation in organizations promoting and inciting racial discrimination as a punishable offence and the Government had undertaken to give that issue due consideration. The victims of acts of racial discrimination rarely reported such incidents to the competent authorities. Racial propaganda did not exist in Zambia and there were thus no examples of cases where such activities had been prosecuted. Zambian legislation prohibited the expulsion of foreigners to a country where they were liable to be tortured or persecuted. The constitutional amendment concerning requirements for standing for presidential elections had been introduced by the previous regime and was currently being reviewed.

22. Restrictions on the movement of non-citizens exclusively applied to refugees; such provisions were considered necessary since asylum-seekers who were ex-combatants might constitute a threat to security. The Immigration and Deportation Act provided for the expulsion of foreign nationals whose conduct was considered a danger to peace and national security, and also those who had committed a criminal offence. The Government's appeal against the decision of the High Court in the Roy Clark v. The Attorney-General case had no racial motivation.

23. Zambia had no immediate plans to withdraw its reservations to the United Nations Convention relating to the Status of Refugees. In the framework of the Zambia Initiative, the Government sought to meet refugees' increasing demand for basic services and to address issues relating to rising xenophobia in areas hosting large refugee populations. All refugees in Zambia were required to reside in designated refugee settlements or camps. Those needing to leave a camp for a short period were issued with gate passes; those whose education, health, security or resettlement required them to live outside the designated areas were issued with electronic cards, subject to approval by the committee on the residence of refugees. While the Government had

no immediate plans to integrate long-term refugees, refugees living in camps and settlements were granted access to land. The acquisition of land by the State required the consent of traditional rulers. The Government had no immediate plans to adopt new laws on enabling refugees to apply for citizenship or permanent residence.

24. Most ethnic groups in Zambia practised polygamy, but her delegation was currently unable to provide data. Wherever a case of nepotism was established, measures were taken to ensure that the perpetrators were dismissed and the victims were promoted or reinstated.
25. The conditions of employment of foreign workers were generally specified in their contracts. Most foreign workers were free to enjoy their earnings and were awarded a lump sum at the end of their contract to meet their social security needs. Those employed under local conditions were eligible to benefit from national pension and social security schemes.
26. The seven major local languages had been incorporated in school curricula and were widely used in the press.
27. The majority of complaints of racial discrimination addressed to the Industrial Relations Court were rejected for lack of evidence. No employer had ever been punished under section 70 of the Penal Code. Legal recourse against misconduct of employers was available under the Industrial and Labour Relations Act.
28. The Police Public Complaints Authority was competent to process complaints of abuse by police officers, but no cases of racial discrimination involving police officers had so far been reported. In order to enhance the efficiency of that institution, the Government had allocated additional financial resources and was currently conducting a campaign to raise public awareness about its existence. In order to raise citizens' general awareness of their rights, the Government intended to prepare a human rights manual for use by government bodies, civil society organizations and the public at large.
29. Civil society organizations had actively participated in the preparation of the report. They had assisted in the dissemination of information on the Convention and the reporting guidelines, had held provincial data collection workshops and had collaborated in the drafting of the report. Their observations had been included in the final text.
30. The Government would give due consideration to the possibility of making the declaration under article 14 of the Convention.
31. Zambia's integrationist approach aimed at creating national unity while respecting and promoting cultural and linguistic diversity. The "Armorial Ensigns" symbolized the ethnic composition of Zambia, hard work and oneness and did not act to discourage ethnic diversity.
32. Policies and legislation were drafted and adopted in consultation with civil society, as illustrated by the procedure established for the consideration of the report of the Constitutional Review Commission.
33. The Government had undertaken to prepare legislation on the rights of persons infected with or affected by HIV/AIDS and had conducted media awareness campaigns on the pandemic.

34. The National Committee on Human Rights Education had formulated a national plan of action on human rights education in Zambia. Human rights education was provided through the teaching of civics in grades 1 to 12 and took into account all the major United Nations human rights treaties. Human rights education had also been incorporated into police training manuals. The language of instruction in Zambian schools was English. The seven major local languages were used in the lower grades to teach reading and mathematics.

35. One of the fundamental responsibilities of the Constitutional Review Commission had been to ensure that the new Constitution promoted respect for the principle of non-discrimination. Individuals claiming that their rights had been violated under constitutional articles 11 and 23, which prohibited discrimination, could seek redress under article 28. Victims of a breach of the freedom of association could seek redress in the High Court. The requirements of the Public Order Act, the Penal Code, the Criminal Procedure Code and the Zambia National Broadcasting Corporation Act were routinely met by the Government, and the authorities were periodically updated concerning their application.

36. Foreigners were free to choose their place of residence in Zambia, and no restrictions were placed on the freedom of movement of those residing lawfully in the country. Foreign nationals were not allowed to own land unless they possessed permanent residence status or were commercial investors.

37. Access to education did not depend upon a child's tribe or social status. The Government had implemented a strategy to improve the level of literacy for children in grades 4 to 9; literacy programmes targeting women, young persons and other groups had also been organized. The Government supported a number of institutions, such as women's associations, that promoted entrepreneurship among women with a view to reducing poverty. Support was also given to increasing agricultural production and other productive activities. No restrictions were placed on the type of occupation in which Zambian women could engage.

38. Zambia's sixteenth periodic report had been distributed to all stakeholders. The Government recognized the need to publicize the report and the Committee's concluding observations through the media. It welcomed the appointment of the Rapporteur on Follow-up and would avail itself of his services.

39. The Ministry of Justice had prepared a Cabinet memorandum seeking approval, in principle, to incorporate the Convention into domestic legislation. Once that had been approved, the drafting of legislation would begin and a bill would be submitted to Parliament for adoption.

40. The Zambia Initiative had been developed to address the problem of long-term refugees, including Angolans. There was an ongoing programme for the repatriation of Angolans and residual Angolan caseloads would be dealt with in accordance with immigration law. Zambian legislation did not provide for dual citizenship. In spite of financial difficulties, the Government continued to provide basic health services to refugees in conjunction with UNHCR. The Refugee Control Act was currently being reviewed with a view to its improvement.

41. The Southern African Centre for Conflict and Dispute Resolution had been de-registered as an NGO in 2004 because the Government had determined that it had overstepped its objectives as submitted to the Registrar of Societies. The misunderstanding had subsequently been resolved, and the Centre had been re-registered. The leader of the Centre continued to speak on national issues through the media.
42. The House of Chiefs had been established in order to debate such issues as inheritance, land rights, rituals, traditional ceremonies and other cultural practices. Those issues were debated in the House by representatives from the nine provinces of Zambia, and their resolutions were submitted to Parliament. The Government had introduced a policy that encouraged positive aspects of tradition and discouraged negative aspects.
43. The Lozi/Lamba incident had stemmed from a misunderstanding over traditional lands that had been resolved with government intervention and had not led to serious tension between the two tribes. An Electoral Code of Conduct had been formulated to address candidates' conduct during elections.
44. In 1974, under the Land Conversion of Titles Act, all freehold title property had been converted to leasehold title property, which meant that Zambians could access land and lease it for a period of 99 years, thereby reversing the historical trend of land ownership. Such conversions affected only 10 per cent of the land; the other 90 per cent was owned by traditional communities. The Government had begun approaching traditional authorities to release traditional land holdings so that they could be converted and leased to individuals.
45. The concept of collective property existed through communal land ownership, which was practised by families and ethnic groups in rural and peri-urban areas. In order to obtain rights to such land, the Government or the interested parties were required to consult with the relevant traditional leaders. The inheritance of such land was dependent on whether an ethnic group practised the matrilineal or patrilineal system of inheritance.
46. Corporal punishment was prohibited by law. No groups of persons in Zambia were subjected to corporal punishment.
47. Many workers in Zambia did not know about the Ombudsman since he had offices only in the capital and in Ndola. However, efforts were being made to extend his operations to other parts of the country.
48. Among the social and cultural activities that contributed to the "One Zambia, One Nation" policy were the preservation, development and promotion by the Government of popular culture, arts and cultural industries. Those were carried out, inter alia, through public investment in artistic activities, debates on cultural matters in the House of Chiefs, the provision of infrastructure and intermarriage.
49. Zambia's core document (HRI/CORE/1/Add.22/Rev. 2) provided an overview of the economic situation and measures that had been taken to address the nation's economic decline and poverty. Further information on that subject could be obtained from Zambia's initial report to the Committee on Economic, Social and Cultural Rights (E/1990/5/Add.60). The current financial constraints had an adverse effect on the implementation of the Convention, primarily in

terms of fully guaranteeing the enjoyment of economic and social rights to Zambian citizens. The structural adjustment programme had had a negative impact on the enjoyment of economic, social and cultural rights by different ethnic groups.

50. Civil society organizations were motivated by a desire to complement the Government's efforts to promote human rights. They were also aware of the need to lobby the Government on issues of national interest. The fact that the Government was tolerant of diverse viewpoints had created an enabling environment for such organizations. The human rights activities engaged in by civil society organizations in Zambia included advocacy, dissemination of information and human rights education.

51. Marriage statistics for members of the various tribes were currently not available. She drew the Committee's attention to a list of the names and tribes of the members of the Zambian delegation in order to illustrate the fact that many tribes were represented and no single tribe predominated, and also the fact that intermarriage between tribes was common.

52. Zambia's definition of racial discrimination included all forms of discrimination based on race, colour and nationality. Customary law and common law existed side by side in Zambia. Customary law governed approximately 70 per cent of the population; however, in cases in which customary law was repugnant to the principles of equality, natural justice and good conscience, common law prevailed.

53. Mr. SHAHI said he hoped that the remaining challenges represented by acts of discrimination by non-State actors and the need to strengthen Zambia's anti-discrimination legislation would be addressed by the Constitutional Review Commission.

54. Mr. LINDGREN ALVES said that, for the purposes of the consideration of Zambia's next periodic report, it would be helpful for the Committee's Rapporteur on Follow-up, or another Committee member, to confer with the Zambian Government concerning the types of replies the Committee expected to receive.

55. Mr. ABOUL-NASR said that he objected to the idea of a visit by one Committee member to States parties whose reports were scheduled for consideration by the Committee.

56. The CHAIRMAN said that the need for assistance from the Committee in the preparation of periodic reports had often been expressed by States parties. The idea was therefore to create a dialogue model that was not limited to the submission of a periodic report. There had never been a question of making visits to States parties. How best to meet States parties' needs for assistance was a matter that would have to be discussed by the Committee in greater detail.

57. Mr. CALI TZAY thanked the delegation for its precise replies to the Committee's questions. He commended the Government for its periodic report, which had provided a clear response to the Committee's previous concluding observations, and useful statistical data on the multi-ethnic composition of the population. The Government had demonstrated its resolve to ensure that the people of Zambia enjoyed their political, cultural, social and economic rights. While the desire to eradicate racial discrimination was evident in domestic legislation, the Government should increase its efforts to tackle such discrimination in practice.

58. Ms. IMBWAE (Zambia) said that measures were currently being taken at government level to incorporate the Convention into domestic legislation. Her delegation had not given a specific reply to the question on corporal punishment, since the situation had been described in full in the periodic report under consideration.
59. Ms. KAWIMBE (Zambia) said that in cases where the Human Rights Commission was unable to offer redress, victims of human rights violations were encouraged to take the matter to court in order to obtain a remedy.
60. Ms. IMBWAE (Zambia) thanked the Committee for its comments and questions.
61. The delegation of Zambia withdrew.

The meeting was suspended at 12.25 p.m. and resumed at 12.35 p.m.

FOLLOW-UP PROCEDURE (agenda item 7)

62. Mr. KJAERUM (Rapporteur on Follow-up) described a number of developments relating to follow-up activities, that had taken place since the previous session. He recalled that the Committee had adopted decision 3 (66) on Suriname in March 2005 concerning the possible contradiction between the revised draft Mining Act and the Committee's recommendation on the rights of indigenous and tribal peoples. The Committee had not received a reply to its invitation to the State party to comment on that decision by 11 April 2005. NGOs had reported that enactment of the revised draft was imminent, and that the Government of Suriname had further disregarded the Committee's recommendations regarding violations of indigenous and tribal peoples' rights. He therefore recommended that the Committee should adopt a decision on that situation under its early warning and urgent action procedure.
63. The Committee had written to the Government of Botswana on 20 August and 23 September 2004 requesting information on its Constitutional Amendment Bill No. 31 of 2003. The Bill was allegedly not in conformity with the Committee's previous concluding observations, which had recommended that the Constitution should ensure recognition and representation of all tribes on an equal basis. A subsequent letter from the Committee, dated 10 March 2005, had welcomed the substantial information provided by the State party on 10 February 2005, and also the Government's efforts to ensure better representation in the House of Chiefs, including its willingness to favour territorial rather than ethnic representation. The letter had, however, stressed that no system of representation should discriminate between groups, or result in some groups not being recognized or having their interests ignored.
64. Detailed information had been requested on the reform of section 2 of the Chieftainship Act and the House of Chiefs Bill, including definitions of several terms and copies of the new bills. The Committee had not received a response to that letter. On 22 March 2005, the State party had submitted its fifteenth and sixteenth periodic reports, in which it had stated that a bill amending legislation perceived as discriminating against certain tribes had been introduced in Parliament. Since that time, the Committee had received a request for urgent action from an

NGO concerned about constitutional amendment that would prejudice the challenge brought before the High Court by the Gana and Gwi bushmen of the Central Kalahari Game Reserve concerning their eviction from that area. According to reports, that amendment had been adopted by Parliament and was awaiting signature by the President.

65. He believed that the constructive dialogue that had previously been pursued with the State party should be maintained. The issue of constitutional reform should be debated during consideration of Botswana's fifteenth and sixteenth periodic reports, which was scheduled for March 2006. He also proposed that he should meet the permanent representative of Botswana in Geneva, in order to recall the Committee's request for detailed information on the reform of section 2 of the Chieftainship Act and the House of Chiefs Bill, including copies of the new draft legislation.

66. The Government of Ireland had expressed its determination to ensure adequate and effective follow-up to the Committee's concluding observations of March 2005 in close cooperation with the Rapporteur on Follow-up. On the basis of his dialogue with that Government, he was considering the development of model guidelines on follow-up to concluding observations.

67. Mr. SHAHI suggested that, in order to save time, Mr. Kjaerum should submit draft recommendations to the Committee.

68. Mr. PILLAI asked at what point the Rapporteur on Follow-up would relinquish his duties and the country rapporteur assume responsibility in cases such as Botswana, which had submitted its periodic report.

69. Ms. JANUARY-BARDILL asked whether it was within the Committee's jurisdiction to move a country situation to the early warning and urgent action procedure.

70. Mr. AVTONOMOV stressed the need to meet with the permanent representative of Botswana in Geneva; it was not enough to wait for the State party to respond to the Committee's request for information.

71. Mr. KJAERUM said that he believed that it was indeed within the Committee's mandate to move a country situation to the early warning and urgent action procedure.

The meeting rose at 1.05 p.m.