



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination Ninety-eighth session

Summary record of the 2723rd meeting (closed)

Held at the Palais des Nations, Geneva, on Wednesday, 1 May 2019, at 3 p.m.

Chair: Mr. Amir
later: Ms. McDougall

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The meeting was called to order at 3 p.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined seventeenth to nineteenth periodic reports of Zambia (CERD/C/ZMB/17-19 and CERD/C/ZMB/Q/17-19)

1. **Ms. Izsák-Ndiaye** said that the secretariat had received a note verbale from the Permanent Mission of Zambia explaining that the State party was unable to send a delegation from the capital to participate in the interactive dialogue in respect of its combined seventeenth to nineteenth periodic reports (CERD/C/ZMB/17-19). It was willing, however, to respond to the Committee's questions in writing in time for the Committee's ninety-ninth session. The Mission had offered to send delegates to sit in the room during a meeting at the current session, without participating in the discussion. After discussion, the Officers of the Committee had decided to propose that the Committee should go ahead with the review in the presence of the delegates from the Permanent Mission. The Country Rapporteur's presentation and the members' questions would in that case be read aloud and then submitted in writing to the State party, which would have 48 hours to respond, thus allowing the Committee to adopt its concluding observations at the current session.
2. **Mr. Avtonomov** said that it was unclear how the Committee's questions would be recorded and transmitted. If the Committee agreed to go ahead with the review, the State party should be requested, in the resulting concluding observations, to submit its subsequent periodic report as soon as possible, for example, within two years.
3. **Mr. Calí Tzay** said that it was unclear what the nature of the proposed meeting would be. It would be the first time in his experience that a State party's delegation would attend the Committee's consideration of its State party's report without participating.
4. **Mr. Diaby** asked whether the Officers had considered the possibility of inviting the State party's delegation to participate in the meeting via a video link from the capital.
5. **The Chair** said that he would send a note verbale to the Permanent Mission on behalf of the Committee expressing its regret at the situation and reminding the State party of its obligations under article 9 of the Convention and rule 63 of the rules of procedure.
6. **Mr. Calí Tzay** said that he could not support the Officers' proposal without further clarification of the nature of the proposed meeting. It would also be useful to know why the State party was unable to send a delegation.
7. **Ms. Izsák-Ndiaye** said that the proposed meeting would only differ from a regular interactive dialogue with a State party's delegation in that the delegates from the Permanent Mission would not be experts and would therefore not be in a position to provide immediate responses to the Committee's questions. The secretariat would have to transcribe the members' questions and send them to the State party. She was open to the option of requesting some representatives of the State party to participate via video link, alongside the delegation from the Permanent Mission.
8. **Ms. Dah** said that the situation in the African region was often more complicated than in other parts of the world. For that reason, the Committee should not unduly insist on the State party's failure to send a delegation. She was, however, concerned that the course of action proposed by the Officers would set a dangerous precedent. Considering the State party's combined periodic reports in the presence of representatives who were unable to offer any additional information would be akin to considering the reports in the absence of a delegation. Moreover, conducting the interactive dialogue via video link would be unwise, as such a course of action might pave the way for all meetings to be held via video link because of diminishing resources. The Committee should avoid laying the groundwork for such a situation. The Committee's approach should be consistent. It should not grant postponements to some States parties but not to others. A postponement would of course affect the Committee's schedule, however, the Committee was ultimately in the hands of the States parties, to whom the Convention belonged. With that in mind, she proposed that the Committee should postpone its review of the situation in Zambia until its ninety-ninth session.

9. **Ms. McDougall** said that she felt it was important to know why the State party was unable to send a delegation from the capital. The Committee should make sure to convey that it did not take last-minute cancellations lightly and it should not agree to hold the interactive dialogue if the State party did not send its Permanent Representative.

10. **Ms. Izsák-Ndiaye** said that, in its letter, the Permanent Mission had offered to send representatives to participate in the meeting. The Committee was not compelling it to do so. Of course, if the State party had been in the midst of some form of emergency, the Committee would have been more flexible. However, no justification had been given for the cancellation. Like Ms. Dah, she was concerned about precedents. She believed that the Committee would set a dangerous precedent if it simply allowed the State party to defer to a later session its participation in the interactive dialogue just one day before the dialogue was due to take place, without any justification. It should be made clear to other States parties that such an approach was unacceptable. That was why the Officers were proposing to give the State party 48 hours to respond to the Committee's questions. In any case, the Committee faced new scheduling constraints and in all likelihood would not have the time to conduct the review and adopt concluding observations at its ninety-ninth session.

11. **Ms. Chung** said that, if the Committee agreed to proceed with the dialogue, it should take the opportunity to set conditions for future cancellations. For example, perhaps the secretariat should be informed of a State party's intention to cancel at least one day before the interactive dialogue was scheduled to take place.

12. **Ms. Ko** said that a delegation sent by the State party from its Permanent Mission was still a delegation, even if it was slightly smaller than usual.

13. **Ms. Chung** said that it was unclear whether the Committee would proceed with the review, even if the Permanent Mission did not send a delegation.

14. **Ms. Izsák-Ndiaye** said that it would be useful if the Secretary of the Committee read out the note verbale sent by the Permanent Mission to reassure the Committee members that a delegation would be present at the meeting.

15. **Mr. Ayissi** (Secretary of the Committee) said that the Permanent Mission had written in its note verbale that, since the State party was unable to send a delegation from the capital, the Mission would be grateful if the questions to be asked by the Committee during the dialogue could be forwarded to it for onward transmission to the Government. The Mission would try to send representatives to attend the interactive dialogue, but they would not be familiar with the contents of the report.

16. **Mr. Albuquerque e Silva**, supported by **Ms. Mohamed**, said that it was up to States parties to choose the level of their representation in meetings with treaty bodies – the Convention contained no provisions obliging them to send a high-level delegation. Although the Committee interpreted the presence of a high-level delegation as a gesture of respect, States parties were within their rights to be represented by their permanent missions. From his own experience as a diplomat, he recalled that it was not always possible for States to send delegations to meetings in Geneva or New York. They would often send instructions for the relevant mission to duly represent and defend their position. Although it was disturbing that Zambia, for unknown reasons, had decided not to send a delegation from the capital, the Committee had no right to insist on the attendance of such a delegation. If the State party chose to be represented by diplomatic staff, it would pay a price in terms of the quality of the dialogue, but the Committee should not interpret that choice as a gesture of disrespect.

17. **Mr. Kut** said that he agreed with Mr. Albuquerque e Silva. He added that it would not be the first time that the Committee had interacted with a delegation composed of officials based in Geneva. A more important question was whether there was any point in holding a meeting with a delegation that was present but did not take part in the dialogue. It might be preferable for the Committee to consider the report and hear the Country Rapporteur's analysis in the absence of the delegation before deciding upon its concluding observations.

18. **Ms. Dah** said that States parties certainly had the right to delegate their permanent missions to represent them, which, after all, was their function. What troubled her was that the State party apparently had not understood that by sending a low-level delegation it would

have no possibility of participating in an interactive dialogue. Furthermore, the request for questions to be forwarded was inappropriate, since it was for the delegation, and not the secretariat of the Committee, to take note of the questions. It was not the Committee's role to put questions to a silent delegation. By setting a bad precedent, the Committee might expose itself to similarly chaotic situations in future interactions with States parties. She did not believe that the dialogue should take place, and if it did, she did not see how the Committee could draft concluding observations, even if the State party provided written replies within 48 hours.

19. **Mr. Murillo Martínez** said that the offer by the Permanent Mission of Zambia to attend the meeting showed a willingness and commitment to engage with the Committee, and he pointed out that it would be uncomfortable for any member of a diplomatic service to attend a meeting about his or her country and not be in a position to respond. While it was unfortunate that the delegation had cancelled its participation on the eve of the meeting, it should not be overlooked that Zambia, unlike certain other countries with greater capacity, had prepared and submitted a report. Although he understood Ms. Dah's point of view, he felt that the Committee should show flexibility and reschedule the dialogue for a convenient time in the future.

20. **Mr. Avtonomov** said that he agreed that States parties were entitled to send their permanent missions to represent them before the Committee. In past sessions, the Committee had interacted with delegations – notably those of Belarus and Fiji – that were composed of diplomatic officials who had not been competent to answer its questions. On each of those occasions, on the first day of the review the Committee had posed questions which had then been transmitted to the capital, and although the second day's exchanges had not been satisfactory, at least the dialogue had taken place. He proposed that the Committee should contact the Permanent Mission of Zambia to see whether it was feasible to hold such a dialogue, which offered a reasonable compromise in the absence of a high-level delegation.

21. **Ms. Li** said that, while the proposal put forward by the Officers was not perfect, it was an appropriate compromise that maintained the authority and the prestige of the Committee. It also had the merit of allowing the Committee to proceed with its work by permitting the State party to send representatives who could transmit the Committee's question to their capital. Assuming that the capital responded within 48 hours, the Committee would then be able to draft its concluding observations.

22. **Ms. Mohamed** said that she wished to know how the Committee would proceed if the State party did not accede to the request to provide answers within 48 hours. Many States parties were represented by their Permanent Representatives in interactions with the Committee, and in her opinion, that did not diminish the quality of the dialogue. She asked whether the Committee might consider writing to the Permanent Mission asking whether the Permanent Representative was available to attend the dialogue.

23. **Ms. Ko** said that she too supported the Officers' proposal, which was a compromise that respected the willingness of the State party to appear before the Committee. On the other hand, cancelling the meeting would be a rejection of the State party's gesture.

24. **Ms. Izsák-Ndiaye** said that, although the discussion was an important one, the meeting in question was scheduled for the following morning and therefore, out of courtesy to the State party, it was imperative that the Committee should reach its decision quickly.

25. **The Chair** said that the Committee faced a complex situation, with the members expressing differing views that were equally correct. Although he had initially considered postponing the examination of the report of Zambia, the Rapporteur and the other Officers had found a compromise, which was based on the letter received from the State party. The status of delegation members was less important than the fact that they were representing their State. As Mr. Kut had noted, the problem was the extent to which the delegation would intervene. In his view, it should be invited to give some brief opening remarks, after which Ms. Shepherd, as Country Rapporteur, would deliver her statement. The members would then ask questions, and the delegation would be invited to transmit them to the capital. There would be no interactive dialogue. The Committee would then await written responses from the Government, which it would subsequently take into account in drafting the concluding observations.

26. Noting that the solution that had emerged was essentially that which the State party had itself proposed, he suggested that the Committee should write back to the Permanent Mission, acknowledging its proposal and confirming that the Committee expected a delegation to attend the meeting. He believed that such an approach would be satisfactory to all parties.

27. **Mr. Yeung Sik Yuen** said that it was unclear from the note verbale that the State party was prepared to comply with a request to submit information within 48 hours. Rather, he understood that the State party proposed that the Committee should present its analysis and ask questions in the presence of the State party's local representatives. The State party would then take time to send back the answers, which the Committee would consider at its next session. Therefore, the Committee was discussing a counter-proposal, which would not necessarily be accepted. In particular, he was concerned that the State party would not agree to attend the meeting if it was asked to respond to questions within 48 hours. There was also the possibility that the Permanent Mission would send representatives and subsequently fail to submit replies within the 48 hours, in which case the Committee would not have a clear course of action. The sensible solution would be either to postpone the review, or to consider the report in the absence of a delegation.

28. **The Chair** said that the Officers' proposal was based on the note verbale, in which the State party had formally expressed its willingness to send a delegation to the meeting. If for some reason the delegation did not attend, then the Committee would examine the report in its absence.

29. **Mr. Albuquerque e Silva** said that the Permanent Mission should be immediately notified of the Committee's decision, which should then be formalized in an official letter.

30. **The Chair** said that such a letter would be sent and that it would set out the Committee's proposed course of action for the consideration of the report. He took it that the Committee agreed with the approach that he had outlined.

31. *It was so decided.*

Organizational and other matters

Potential changes to the Committee's meeting schedule

32. **The Chair** said that the Chairs of the human rights treaty bodies had received a letter from the United Nations High Commissioner for Human Rights the previous day informing them that, owing to the financial situation faced by the United Nations and the Office of the United Nations High Commissioner for Human Rights (OHCHR), the third session of all treaty bodies that held three sessions annually might have to be postponed in 2019, and that the schedule of meetings for 2020 might also be affected. The High Commissioner would do her best to prevent any such changes, but no further information would be available before mid-2019. The treaty bodies had been invited to submit proposals, taking into account the 2020 review process. The Committee had planned to meet with the High Commissioner on 7 May 2019.

33. **Ms. Andrijasevic-Boko** (Office of the United Nations High Commissioner for Human Rights) said that, given how difficult it was for the treaty bodies, the States parties and all other stakeholders to plan their work in the present circumstances, the Office's priority was to identify the likely outcome of the situation as soon as possible and to establish a deadline by which a final scheduling decision must be reached.

34. **Mr. Kut** asked whether the changes outlined by the High Commissioner were in line with the treaty body strengthening process.

35. **Mr. Albuquerque e Silva** said that the Committee should establish a strong common position ahead of its meeting with the High Commissioner in order to convey how seriously it would be affected by the situation outlined in her letter. The legitimacy of the treaty bodies was at stake. The member States, rather than the High Commissioner, should be held responsible for the situation, as they had drastically reduced the budget available for human rights in recent years.

36. **The Chair** said that it was important to consider the responsibilities of not only the United Nations, but also the States parties to the Convention. They were under a moral obligation to ratify the amendment to article 8 of the Convention. Some years previously, the Committee had been unable to hold meetings because it had lacked the necessary funds. The secretariat had therefore agreed to cover the Committee's expenses. The States parties should inform their national parliaments of the financial difficulties faced by the Committee and convey to them the importance of ratifying the amendment to article 8. Otherwise the Committee would no longer be able to operate.

37. **Mr. Bossuyt** said that, unlike other human rights treaties, the Convention stipulated that the expenses of the treaty body should be covered by States parties rather than the United Nations. The secretariat had stepped in when the States parties had failed to meet their obligations in that regard. The aim of the amendment to article 8 was therefore to regularize the financial situation of the Committee. He agreed that it was important to establish a strong position ahead of the meeting with the High Commissioner, although the Committee's comments were unlikely to change the situation.

38. *Ms. McDougall (Vice-Chair) took the Chair.*

39. **Mr. Avtonomov** said that, in its comments to the High Commissioner, the Committee should not refer to the amendment to article 8 because that amendment had not yet been ratified. The treaty bodies played a unique role in the protection of human rights and could not perform that role effectively if they were unable to hold meetings. If the Committee was unable to hold a third session in 2019, it would need to review its programme of work and it might be unable to proceed with its consideration of inter-State communications, as that procedure was governed by strict deadlines established in the Convention.

*Draft general recommendation No. 36 on preventing and combating racial profiling
(continued)*

40. **The Chair** invited Mr. Murillo Martínez, Rapporteur for general recommendation No. 36 on preventing and combating racial profiling, to present the draft, a copy of which had been circulated to the members of the Committee.

41. **Mr. Murillo Martínez** (Rapporteur for the general recommendation) said that he had taken note of the remarks made previously by Mr. Bossuyt, Ms. Dah and Mr. Kut, and he would welcome further comments from Committee members on the general structure of the draft. Once the Committee members had expressed their views, he would draw up a road map, in collaboration with the secretariat, for the next stage of the drafting process.

42. **Ms. Shepherd** said that the definition of racial profiling in the draft was too narrow, as it was limited to the context of law enforcement. In its general recommendation, the Committee should acknowledge that racial profiling occurred not only during police stop-and-search encounters, but also in classrooms, supermarkets and many other contexts.

43. **Mr. Albuquerque e Silva** said that it was important to make it clear that racially biased police practices were frequently associated with racial disparities within the criminal judicial system and represented a clear threat to human rights, including the right to due process. He proposed expanding the section on the consequences of racial profiling to include a paragraph stating that racial profiling could have a direct or indirect impact on criminal justice systems, jeopardize the right to access to justice and result in disproportionate incarceration and sentencing. The definition of racial profiling could be improved as well.

44. **The Chair**, noting that the draft referenced several sets of concluding observations in which the Committee had raised the issue of racial profiling, said that the text should also

mention the many instances in which the Committee had in its dialogues with States parties voiced concern about racial profiling without specifically raising such concerns in its concluding observations. It might be useful also to mention some of the approaches States had taken to deal with the issue. The text should emphasize that merely adopting a policy against racial profiling was not sufficient, although of course policies were important.

45. Like Ms. Shepherd, she found the definition of racial profiling and the approach taken in the draft rather narrow. Racial profiling was by no means limited to the realm of law enforcement. It occurred in many settings and areas of life. Moreover, profiling was not based only on race, colour or ethnicity. In some countries, Muslims, for example, were subjected to profiling in all aspects of their lives. While the general recommendation should not specifically list all forms of profiling or all the groups that might be affected, it should acknowledge the pervasiveness of the problem.

46. The recommendations in the draft seemed to be guided by the assumption that law enforcement personnel used racial profiling to prevent crime or to catch criminals. The reality, however, was that racial profiling was used mainly as a tactic for harassment and humiliation. It was not a crime-fighting tactic at all, and everyone involved understood that. Furthermore, the practice victimized not just the individuals targeted by law enforcement officers, but whole communities. All those ideas should be incorporated into the draft.

47. **Ms. Shepherd** said that, even if the Committee elected to focus on the use of racial profiling in law enforcement, it should acknowledge that the issue was broader than that and explain its rationale for zeroing in on the problem as it manifested itself in law enforcement.

48. **Ms. Izsák-Ndiaye**, endorsing the comments made by Mr. Albuquerque e Silva, said that it was important to make it clear that racial profiling was a dangerous phenomenon that led to rights violations in other areas. Regarding the process for finalizing the general recommendation, she had contacts at several academic institutions who had expressed interest in organizing public consultations on the topic of racial profiling and on the general recommendation. Simon Fraser University, for example, had offered to host such a consultation in Vancouver, Canada. In addition to being a means of gathering public input, such events might afford an opportunity to promote the work of the Committee.

49. **Ms. McDougall** said that she had received similar offers from several universities in the United States of America.

50. **Mr. Avtonomov** said that an open-ended working group should perhaps be formed to assist Mr. Murillo-Martínez in compiling all the comments and suggestions put forward by Committee members and in finalizing the draft. The draft could then be discussed paragraph by paragraph in plenary. That had been the Committee's practice with previous draft general recommendations.

51. **Ms. Verdugo Moreno** said that, in keeping with Ms. Shepherd's suggestion, the Committee should focus on the law enforcement aspect of racial profiling but, in the introduction to the general recommendation, should also explain all the ramifications of the practice. It should be pointed out, for example, that racial profiling by the police led to overrepresentation of certain groups in the criminal justice system, which in turn led to bias towards those groups among judicial personnel and society at large. It also undermined trust in the police.

52. The general recommendation should also make it clear that racial profiling was not effective as a crime-fighting technique and should emphasize the need to make law enforcement officials aware of that fact. She had taught many training courses for police officers and had found that they were rarely persuaded by the argument that they should not engage in racial profiling because it was contrary to international law or a violation of individuals' rights. It was far more effective to explain that racial profiling simply did not work as a technique for identifying and apprehending criminals and indeed could be counterproductive. Where racial profiling was practised, criminals were often aware of it. For example, drug traffickers seeking someone to transport their drugs would never choose a dark-skinned man if they knew he was likely to be stopped and searched by the police. Instead, they would choose a white woman, preferably one accompanied by children, whom the police would not suspect of being a drug runner.

53. **Mr. Murillo Martínez** said that he had taken careful note of the comments and suggestions made and would incorporate them into the draft. He had also taken note of earlier comments received from Mr. Bossuyt and Mr. Kut. The latter had made several useful suggestions regarding the recommendations pertaining to the use of artificial intelligence in law enforcement and in justice systems. Mr. Bossuyt had highlighted the need to include an explicit mention of groups who were targeted by racial profiling, such as the Roma, and had suggested, *inter alia*, that attention should be drawn to the relevant paragraphs of the Durban Declaration. Mr. Bossuyt had also noted that the issue had arisen frequently in the Committee's dialogues with States parties. He would be grateful if Committee members could provide him with specific examples in which the Committee had discussed racial profiling with delegations or made recommendations on the matter in its concluding observations.

54. He welcomed the idea of setting up a working group. He also welcomed the proposal to gather public input on the draft general recommendation. In addition, the Committee might wish to seek input from experts in the field of the ethics of artificial intelligence and in other fields. He would endeavour to prepare a new draft by the end of the current session, which could then be made available to the public for comment. In his view, the public comment period should end on 30 June. During the month of July the working group, with support from the secretariat, could compile a revised draft, which could then be discussed and hopefully adopted by the Committee in August, at its ninety-ninth session. If Committee members had further suggestions to make or specific wording to propose, he would be grateful if they would submit their comments in writing.

55. **The Chair** said that she took it that the Committee wished to proceed as proposed by Mr. Murillo Martínez.

56. *It was so decided.*

Consideration of communications under article 11 of the Convention (*continued*)

57. **Ms. Izsák-Ndiaye** said that there had been some confusion as to whether journalists could be present at the hearing scheduled for the following day on the subject of inter-State communications. Given that media coverage of the hearing could place the Committee in a difficult position, she would like to reiterate to the press team, on behalf of the Committee, that the hearing would be a closed meeting, without any media present. Immediately after the hearing, the Committee would need to issue a short press release summarizing its decision.

58. **Mr. Bossuyt** said that the confusion had arisen because Qatar had enquired whether its delegation could include members of the press. The States parties were free to choose the members of their delegation, all of whom would have access to the building. However, the hearing itself would be a closed meeting, attended by one representative of each State party only. In his view, the Committee should issue a one-page press release on the subject at the end of the session rather than immediately after the hearing, because it would need time to discuss the content of the press release. In addition, all Committee members should be advised not to respond to requests for interviews on the matter.

59. **The Chair** pointed out that the Committee could not prevent journalists from interviewing the representatives of the States parties involved.

60. **Ms. Izsák-Ndiaye** said that, once the hearing was over, the States parties involved were likely to give statements to the media, thus presenting their own interpretation of events immediately. For that reason, it would be a good idea for the Committee to issue a brief statement after the hearing, giving its own perspective on the situation. A longer press release could then be issued at the end of the session.

61. **The Chair** said she took it that the Committee wished to entrust Ms. Izsák-Ndiaye, Mr. Bossuyt and the secretariat with the task of dispelling any confusion that had arisen with regard to media coverage of the hearing.

62. *It was so decided.*

The meeting rose at 6 p.m.