



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

Distr.
GENERAL

CERD/C/SR.1826
9 August 2007

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-first session

SUMMARY RECORD OF THE 1826th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 6 August 2007, at 10 a.m.

Chairperson: Mr. de GOUTTES

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The meeting was called to order at 10.15 a.m.

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

Second to twelfth periodic reports of Mozambique (CERD/C/MOZ/12; CERD/C/MOZ/Q/12/CRP.1)

1. At the invitation of the Chairperson, the members of the delegation of Mozambique resumed places at the Committee table.
2. Ms. MACHAVELA (Mozambique) said that Mozambique had maintained peace for 15 years thanks in part to the Government's efforts to integrate the members of all ethnic groups into society. In fact, since independence from Portugal, Mozambique had striven to be a society based on the principle of combating racism. The periodic report contained few references to the criminalization of racial discrimination simply because the equality of all human beings had been enshrined in the Constitution. In any case, the term ethnic minority had little meaning in Mozambique and even the smallest ethnic groups were represented at the highest levels of public life. There was, therefore, no de facto discrimination against what, in other countries, would be called ethnic minorities, and no need for affirmative action to help members of any ethnic group to integrate.
3. Mozambican society was changing, however, owing to globalization. In case large numbers of people arrived from other countries, the Government had already begun to reform the legislation to criminalize racial discrimination; an inter-ministerial committee was responsible for reviewing all legislation. She recalled, moreover, that all international treaties approved and ratified by Mozambique had force in national legislation, in accordance with article 18 of the Constitution. Furthermore, anyone who claimed to be a victim of racial discrimination could appeal to an administrative tribunal.
4. Mr. MACASSAR (Mozambique) said that, in December 2002, Mozambique had ratified the United Nations Convention against Transnational Organized Crime, together with the Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The ratification instrument had been deposited at the United Nations in 2006. Trafficking in human beings had become a sensitive issue following media coverage of an alleged case of trafficking in human organs. The Council of Ministers had recently adopted a draft law on preventing and combating trafficking in persons. As part of a process to involve the judiciary, Government and civil society in achieving a consensus approach, three regional seminars had first been held. The draft law defined trafficking in keeping with the Additional Protocol and addressed coercion and abuse of power, including by parents. It was fully consistent with the Additional Protocol in terms of the prevention and punishment of trafficking; the protection, privacy and identity of victims and assistance for them; the prosecution of offenders; international cooperation to prosecute traffickers; the punishment of the supporters and accomplices of illegal migration; the seizure of traffickers' assets and income; and sharing responsibility between various institutions, including civil society. It set the maximum prison sentence for the offence at 16 years.

5. For the purpose of implementing the law on trafficking, the Government would coordinate actions with a view to the physical, psychological and social rehabilitation of the victims. Victims would be offered safe accommodation, counselling, and medical and psychological care, for which two regional centres would be created in 2008. Information campaigns would be organized to prevent and combat trafficking. Magistrates, along with immigration, criminal investigation, border and customs officials, would be given specialized training.

6. Considerable efforts had been made to eliminate gender inequality in public life, especially in Government and the Assembly of the Republic. Of the 250 Mozambican parliamentarians, 37 per cent were women, compared with 28 per cent in 1997. The percentage was one of the highest in the world and more than satisfied Mozambique's commitment under the Southern African Development Community (SADC) Gender and Development Declaration of 1997, according to which there should be at least 30 per cent of women in political decision-making structures by 2005. The Prime Minister was currently a woman, as were 6 of the 25 cabinet ministers, 4 of the 17 vice-ministers, 6 of the 25 permanent secretaries and 2 of the 11 provincial governors.

7. Education, a fundamental right for all citizens, was seen as a strategic tool for alleviating poverty. The Government was concentrating its efforts on improving equal access to quality education at all levels, while reducing regional disparities and gender inequality. The strategic plan for the development of education was based on increasing access, achieving equality, improving quality and building institutional capacity. Under the plan, gender units had been created at all provincial education directorates and in critical districts; half of all vacancies at teacher training institutes for early and primary education were set aside for women; annual goals were set in all districts where there was gender inequality; alternative or informal education was being promoted in order to increase the number of girls being educated; a gender component, along with the subject of gender and the environment, had been included in the secondary school curricula; counselling cabinets had been created to reduce school dropout by girls; and a new early secondary school curriculum had been adopted that included human rights and civic education.

8. Ms. MACHAVELA (Mozambique) said that the Government had implemented a programme to empower women in the judiciary. Of the 178 judges in Mozambique, 38 were women; 1 of the 7 Supreme Court judges was a woman. There were two female Deputy Attorneys General. Some 38 per cent of all employees in the judicial system were women. Her ministry, the Ministry of Justice, wished to recruit more women in the belief that they were better suited to dealing with gender issues in the courts.

9. Mr. ASSUBUJI (Mozambique) said that in Mozambique not only were local communities entitled to land use and enjoyment but they could also take part in the process of land management. The Land Act stipulated that physical or legal persons and local communities could hold land and enjoy its use; in the case of local communities, land was jointly owned. Under the same Act, the right of land use and its enjoyment was acquired by occupancy by individuals and local communities in accordance with customary norms and practices that did not contradict the Constitution. Moreover, in rural areas, local communities participated in the management of natural resources, the settlement of conflicts and the process of awarding titles. When managing natural resources and settling conflicts, local communities could apply customary norms and practices. Generally, the right of land use and enjoyment was subject to

a 50-year time limit. The time limit did not apply, however, to rights acquired by local communities through occupancy. Moreover, the use and enjoyment of land were free if intended for use by families or for local communities and the individuals belonging to them.

10. Turning to the issue of customary law, he said that Mozambique recognized legal pluralism and that, accordingly, legitimate traditional leaders (régulos) were recognized as community authorities. The régulos cooperated closely with local State bodies with regard to peace, justice and social harmony, land tenure, employment, food security, the environment, public health, education and culture. They were entitled to be consulted on fundamental matters affecting the life, well-being and development of the local communities, and liaised with community courts to settle minor civil offences.

11. Mozambican community courts, operating as part of neighbourhood justice, heard small civil disputes, including those relating to traditional marriages or minor offences for which the sentence did not involve imprisonment. They tended to promote out-of-court settlements. Minor disputes could be referred either to the community courts or to the civil courts. In cases referred to the community courts, appeals could be made to the civil courts. The new Judiciary Organization Act created pretrial mechanisms to promote the peaceful settlement of disputes.

12. The National Human Rights Commission had been designed so as to ensure it was effective and credible. Its members had to represent the country's social and cultural diversity; they were nominated by civil society and formally appointed by the President for a five-year term. They included representatives of human rights non-governmental organizations (NGOs), the bar association and the education sector, together with persons of recognized authority with special skills and experience of human rights protection. They could only be dismissed for ill-conduct or incapacity, if so decided by two thirds of the Commission members. No member could be held liable for any action, finding, opinion or recommendation made or expressed in relation with his or her duties. The Commission submitted an annual report to parliament and could submit special reports on matters of great urgency.

13. The Provedor de Justiça, or Ombudsman, was due to be elected by parliament in October 2007; the election required a two-thirds majority. The budget of the Ombudsman's Office had already been approved. Before the establishment of the office of Ombudsman, the rights of citizens had been guaranteed by a parliamentary committee of petitions.

14. Ms. MACHAVELA (Mozambique) said that religion had played an important part in the achievement and maintenance of peace in Mozambique. All Mozambicans practised a religion and over 700 religions had been required to register officially with the Ministry of Justice. The Government had introduced that requirement with a view to distinguishing between religions and sects. An ecumenical meeting of all Mozambican religious groups would be held in October 2007, in order further to cement national unity.

15. Mr. PANACHANDE (Mozambique) said that his country was party to the 1951 Convention relating to the Status of Refugees and the 1969 African Union Convention Governing the Specific Aspects of Refugee Problems in Africa. Most refugees originated from the Great Lakes region and Somalia. There were no asylum-seekers. The statistics provided by the delegation included both those who had already acquired refugee status and those who had applied for it.

16. Applicants for refugee status were carefully screened to ensure that their applications were genuine, and received identification documents approved by the Office of the United Nations High Commissioner for Refugees (UNHCR). Those who were accorded refugee status were accommodated in the Marretane refugee centre in the north of the country, where education for adults and children, agricultural land and access to employment were provided.
17. Eighty-six people had been voluntarily repatriated in 2006, most of them to the Democratic Republic of the Congo, and 207 people had been repatriated to the same country so far in 2007. The number of people seeking refugee status had fallen from approximately 11,000 in 2004 to approximately 7,000 at present, which perhaps indicated that the security situation in the most common countries of origin had now improved.
18. Mr. MATE (Mozambique), replying to a question put at the previous meeting, said that the category “Mining” in table 19 of the report referred to miners travelling back and forth to South Africa to work, particularly from Gaza and Inhambane provinces.
19. Mr. PANACHANDE (Mozambique) said that citizenship could be acquired from one’s parents (jus sanguinis) or by being born in Mozambique (jus soli), or could be acquired later through marriage, naturalization or adoption. Orphans of Mozambican citizens who did not already have Mozambican citizenship were treated as citizens until the age of 18, and then applied for citizenship in their own right.
20. Foreign citizens living in Mozambique enjoyed the same rights and guarantees and were subject to the same duties as Mozambican citizens. There were, however, exceptions to that rule: for instance, only Mozambican citizens could stand for election to political office or be employed in government posts, the diplomatic service and the armed forces.
21. Referring to table 21 in the report, he said that, in the terminology used in Mozambique, a foreign employee working in Mozambique had to have a valid “work authorization”, while foreign companies operating in the country had to have a “work permit”.
22. In response to members’ questions about discrimination against foreigners on ethnic grounds, he said that the law on migration did not provide for any differential treatment of foreigners on such grounds.
23. Ms. MACHAVELA (Mozambique) said that the report and the delegation had perhaps given an inaccurate picture of the use of Portuguese in Mozambique. The main language of education was Portuguese, and the school population numbered at least 5 million. Some statistics placed the number of Portuguese speakers at about 80 per cent of the population. In her own opinion, it was the most widely spoken language in the country.
24. The population figures quoted in the report (para. 25) reflected the fact that, particularly in areas close to the border with South Africa, many men worked abroad in the mining industry and the female population was therefore disproportionately large. Overall, there were roughly equal numbers of men and women in the country.

25. She thanked the Committee for its helpful comments, which her Government would endeavour to apply to the preparation of its next periodic report. In particular, it would check its statistics carefully and ensure that the data were as specific as possible, for instance citing court cases relating to racial discrimination rather than to defamation.

26. Mr. LINDGREN ALVES commended the Mozambican delegation on its replies, both oral and written, to the Committee's questions. He asked whether older adults could obtain Mozambican citizenship by naturalization. He would also like more information about the role played by religious organizations in the peace process.

27. Ms. JANUARY-BARDILL said that, as she came from a country close to Mozambique and with a similar recent history, she fully understood that Mozambique might not fully appreciate the value of collecting disaggregated data about the various ethnic groups. Contradictory though it might seem, it helped to protect against the possibility of racial discrimination.

28. She asked the delegation to provide more information in the next periodic report about the second Action Plan for the Reduction of Absolute Poverty, 2006-2009 (PARPA II), and about the efforts to strengthen the national entrepreneurial sector referred to in paragraph 66 of the report.

29. Mr. SICILIANOS noted that, in its written replies to the Country Rapporteur's questions, the Mozambican delegation had stated that the international conventions to which Mozambique had acceded were generally "already in conformity with the domestic law". However, it was an accepted principle of international law that a State's domestic legislation must conform to any international instruments to which that State was party - not the other way around. The delegation's written reply to the Country Rapporteur's question about the Association Act (paragraph 109 of the report) likewise implied that it did not fully understand its obligations under article 4 of the Convention. As expressly stated in the Committee's general recommendation I, entitled "States parties' obligations (art. 4)", it was a mandatory requirement for all States parties to supplement their legislation with provisions conforming to the requirements of article 4 (a) and (b) of the Convention. He was happy to have the opportunity to raise the point in the presence of Ms. Machavela, the Minister of Justice.

30. Ms. MACHAVELA (Mozambique) said that 18 years was the minimum age for naturalization: older adults could also be naturalized.

31. Many religious organizations had contributed to the peace process from the beginning, including the Christian Council of Mozambique and the Catholic Church. Since the conclusion of the peace agreement, religious organizations of all denominations, including traditional religions, had worked for reconciliation. Religious groups were not generally associated with a particular ethnic group or a particular geographical area. Even those with a traditional historical constituency, such as Islam or the Baha'i faith, were gaining adherents from all ethnic groups.

32. She thanked Ms. January-Bardill for her kind words. Mozambique was determined that there should be no more segregation and that one group would never again dominate the rest.

33. Members had asked how the Government ensured that the list of election candidates was fully representative of all ethnic groups. It was certainly a problem, particularly since some might consider themselves members of more than one group, for instance if they had married a person from another tribe. More information on that issue would be included in the next report.

34. In reply to Mr. Sicilianos' question, she explained that domestic legislation was indeed enacted or adapted to comply with the provisions of international instruments where necessary, but that, if existing legislation gave effect to those provisions, the courts were not obliged to refer to the international instruments themselves. If difficulties of interpretation arose, the courts could refer directly to international instruments under article 18 of the Constitution.

Constitutional debate was ongoing in Mozambique, particularly with reference to the relation between the Constitution and international instruments. A major revision of the Criminal Code was under way, aimed inter alia at incorporating obligations arising from ratification of international instruments. However, it was expected to take some time, and individual pieces of legislation had been passed on particularly important matters, such as domestic violence and trafficking in minors, in order to avoid delay.

35. Mr. EWOMSAN (Country Rapporteur) expressed appreciation for the delegation's frank responses to the Committee's questions and spirit of openness. The Committee recognized Mozambique's difficult political, economic and social situation, and he welcomed the Government's will to reduce poverty and promote development in order to create conditions favourable to social justice, since ethnic tensions, the North-South divide and the monopolization of power and economic infrastructure led to frustration in many African countries. Discrimination could occur anywhere, and all governments should take measures against hatred, which led to discrimination. The Government's efforts, notably to educate the population and promote equality, were commendable, but more remained to be done, for example in bringing national legislation into conformity with the Convention.

36. Ms. MACHAVELA (Mozambique) expressed her satisfaction that Mozambique had achieved peace and was now able to participate in the work of the Committee and other treaty bodies. Presenting her country's reports had been both a learning experience and a privilege.

37. The delegation of Mozambique withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Dialogue with the Special Rapporteur on freedom of religion or belief

38. The CHAIRPERSON recalled that, at its 1816th meeting, the Committee had decided to hold a dialogue in a public plenary meeting with the Special Rapporteur on freedom of religion or belief, given the importance of the subject for the Committee. The Special Rapporteur had followed the work of the Committee closely. At its spring 2007 session, the Committee had met with the five experts of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action, exchanging views on a variety of issues. The Committee believed that the Convention, supplemented by the practice and doctrine

espoused by the Committee, provided the means to deal with all forms of racial or ethnic discrimination. The broad scope of the Committee's approach and definitions meant that double, or "aggravated", discrimination on racial and religious grounds could also be addressed. Support had been expressed for a possible protocol additional to the Convention in that respect. A protocol dealing with procedural matters had also been suggested to enhance the Committee's efforts towards the elimination of racial discrimination.

39. Ms. JAHANGIR (Special Rapporteur on freedom of religion or belief) said that dialogue with the Committee would not only assist her in carrying out her mandate but would also contribute to the accumulation of jurisprudence in the area of freedom of religion or belief. Having read the concluding observations of the Committee in respect of various countries, she encouraged the Committee to continue to pursue an approach based on the intersectionality of race and religion when aggravated discrimination could be identified.

40. Moving beyond an approach based on aggravated discrimination would pose many challenges. In a joint report on incitement to racial and religious hatred and promotion of tolerance with the Special Rapporteur on contemporary forms of racism, she had cautioned against confusing racist statements with acts of defamation of religion, which contained different elements. National legal and criminal measures to deal with racism might not, therefore, be applicable to defamation of religion. A joint letter from the two Special Rapporteurs had been sent to the Human Rights Committee, reiterating the need for a general recommendation on implementation of article 20 of the International Covenant on Civil and Political Rights.

41. She highlighted the fact that, although there were factors common to both racial and religious discrimination, there were also subtle but important distinctions to be drawn between them. Religion, or lack thereof, was a matter of choice; race was not. Choosing, changing and denying a religion were central to freedom of religion or belief. Doctrines based on the superiority of a particular racial group were condemnable but, although incitement to religious hatred and similar actions could be prohibited, believers were free to promote their religion, and manifestation of religion was integral to religious rights, within permissible limitations. She underlined the problems raised by the current global political climate, such as the use by some State authorities of racial profiling as a proxy for religious profiling and vice versa, and welcomed the opportunity for dialogue with the Committee to enable progress to be made in increasing understanding of human rights by all concerned, including victims and NGOs.

42. Mr. AMIR said that religious discrimination was a significant human rights issue. It was a matter of concern to other treaty bodies as well as the Committee, but was not dealt with comprehensively or specifically in any one document or by any one body. The Committee had consistently tended to consider it only within the strict confines of the Convention and had been reluctant to embark on a topic which it felt lay outside its competence. Since the events of 11 September 2001, Islam and Muslims in general had increasingly been identified by some as being fundamentally terrorist. Religion was being used politically, and seen as a factor of disruption in political, social, cultural and interreligious relations. He recalled the view expressed at the nineteenth meeting of chairpersons of human rights treaty bodies, as reported by the Committee's Chairperson, to the effect that it was unfortunate that religious discrimination was not an essential element of the Committee's discussions.

43. One could not judge others by virtue of being born into a particular race. Similarly, political factors should not be allowed to influence freedom of religion, or indeed fundamental religious concepts. A commonly held view was that religion was antithetical to the modernization of society. But it was essential for any initiatives which aimed to modernize society to accord sufficient importance to religion and to freedom of religion. Dialogue between different civilizations was also essential, especially since “western” and “eastern” civilizations were intrinsically defined in terms of each other. Knowledge was not the property of one civilization but a shared heritage common to all humanity. He hoped that the work of the Special Rapporteur would, in a spirit of humanism, promote both religion in general and objective, constructive dialogue on the underlying concepts so as to give the treaty bodies guidance and enable them to reach the common understanding that would be crucial to their future work.

44. Mr. THORNBERRY said that the term “intersectionality” had arisen from the logical link between racial discrimination as defined in article 1 of the Convention and the reference in article 5 to freedom of thought, conscience and religion. The Committee often commented on the relation between indigenous peoples and religion, and in recent years had considered the spiritual relationship between indigenous peoples and land in Guatemala, Ukraine and Argentina. With respect to indigenous peoples, discrimination in terms of religious practices and sacred sites was often subsumed under the concept of culture in the Committee’s work. In such cases, the term “intersectionality” was not always appropriate, and it would be artificial to make a sharp distinction between culture and ethnicity on one hand, and religion on the other, since that would risk imposing an external structure, which was not in accordance with the conceptions of the indigenous peoples themselves. He wondered, therefore, whether the distance between culture, ethnicity and religion was as great as had previously been thought. The Committee did not deal with the predicaments of self-defining religious communities and, while it addressed issues of discrimination against believers, it did not address religious defamation. Any gaps in the Convention with respect to discrimination on grounds of religion reflected decisions made when the Convention had been drafted. The Committee should, however, draft a general recommendation to States parties, in order to set out clearly its practice on religious discrimination.

45. Mr. KJAERUM said that the issue of the relation between religious discrimination and racial discrimination was particularly problematic for the Committee. Discussions were under way in many European countries on the use of religious symbols, such as the wearing of the veil, and “Muslim” was increasingly becoming a term used to refer to immigrant communities and was developing negative connotations. In a number of the Committee’s concluding observations the term Islamophobia had been used, but he wondered whether Arabophobia might be more accurate. He agreed with Mr. Thornberry on the need to clarify the Committee’s position on religious discrimination in a general recommendation to States parties.

46. Mr. PILLAI said that there was an inextricable link between indigenous religious practices and land. The Committee had considered that link at two levels: first, in respect of countries that had been colonized, where indigenous land had been taken over, where, in the present century, there had been a reassertion of the desire to return to the religious practices of the indigenous people, and where the indigenous communities had difficulties in regaining possession of their

land; and second, in situations where indigenous people occupied vast tracts of land, possession of which had been taken by governments for economic purposes, such as for mining. He wondered to what extent the Special Rapporteur would go beyond the consideration of the intersectionality of religious discrimination and racial discrimination, to consider the link between religion, ethnicity and land.

47. Mr. YUTZIS said that the term “race” was a sociological creation, a precise definition of which could not be decided upon by the international community. Religion was also a construct, the definition of which differed depending on the person who was using the term. People identified themselves as belonging to a certain ethnic group, and as belonging to a certain religion. The link between ethnic groups and cultures led to connections being made between ethnic groups, languages and religions. In the context of power struggles, ethnic or religious conflicts were often used for political purposes. Clashes between political powers were not simply a struggle for material possessions, but also for cultural possessions and religious values. Double discrimination and intersectionality were part of the struggle for power. One example was the Holocaust, which had been intended not only to eliminate certain people, but also to eliminate a religion. When indigenous peoples were dispossessed of their land, they were robbed of their spirituality and of the land that protected them. He wondered whether the Special Rapporteur thought it would be advisable for the Committee to organize a thematic debate on the relationship between religion and racism.

48. Mr. CALI TZAY said that indigenous peoples did not want to be categorized as ethnicities. Indigenous religion was often associated with shamanism, which was a misrepresentation of indigenous spirituality, and constituted a form of stereotyping that was tantamount to discrimination against indigenous peoples. The Committee should go a step further than a thematic debate on racism and religion, and should include indigenous issues in that debate. Land should not be considered as property, but rather as part of nature, which created and sustained human life.

49. Mr. KEMAL asked whether the Special Rapporteur thought that a specific definition of the contemporary problem of combined religious and ethnic discrimination would be useful.

50. Mr. LINDGREN ALVES said that he was generally not in favour of the Committee holding discussions on religious discrimination, since they led to in-depth anthropological discussions. He asked whether criticism of the Burkha or prohibition of the veil in western countries could be considered a sign of Islamophobia, and whether in reality a person born into Islam could choose to leave that religion.

51. Ms. JAHANGIR (Special Rapporteur on freedom of religion or belief) said that, since the Special Rapporteur’s mandate was one that was likely to extend into the future, she was obliged to focus not only on contemporary problems, but also on possible future developments. Her mandate was a human rights mandate, and concerned the rights of people, rather than the rights of religions as a whole. Although she was aware of the situation faced by many Muslims throughout the world, particularly in the aftermath of the events of 11 September 2001, she was also aware of many cases of Christianophobia and hate speech against Christians and Jews.

Discussion and criticism of religion, provided they did not come under the provisions of article 20 of the International Covenant on Civil and Political Rights, did not constitute a violation of human rights and, although incitement to hatred should not be allowed, she did not wish to see an end to all debate on religion. Discussions on the use of the Burkha and the veil were not only taking place in European countries, but also in countries with predominantly Muslim populations. Such discussion was essential, and representative of freedom of religion. Attempts to stop religious debate would only serve to embolden those who wished to use religion as a tool to undermine human rights.

52. Any person who was discriminated against was a victim, irrespective of his or her religion. Most religious discrimination was found in countries with the least respect for human rights and democracy. A balanced approach was required in order to move forward. Religious discrimination, particularly in the aftermath of 11 September 2001, must be addressed constructively and with a balanced outlook, in order to protect individuals and to ensure that religious intolerance was not allowed to spread.

53. Although some attention had been paid to indigenous rights in relation to freedom of religion, that issue would be given more careful consideration in future. She would address the issue of asylum-seekers and immigrants and discrimination against them, particularly in western countries, in her forthcoming report to the United Nations General Assembly.

54. She believed that all people should have the right to adopt or leave a religion or not to adhere to any religion at all. Religious leaders should ensure that all people enjoyed their rights. Attempts to reach an agreed definition of religious discrimination in its contemporary form, with connections to racial discrimination, culture and ethnicity, should be avoided, and all situations should be addressed on a case-by-case basis.

The meeting rose at 1.10 p.m.