



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 first part (public)* of the 2724th meeting

Held at the Palais des Nations, Geneva, on Thursday, 2 May 2019, at 10 a.m.

Chair: Mr. Amir

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.2724/Add.1.

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The meeting was called to order at 10.10 a.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; CERD/C/ZMB/Q/17-19 and HRI/CORE/1/Add.22/Rev.1)

1. *At the invitation of the Chair, the delegate of Zambia took her place at the Committee table.*
2. **The Chair** said that, pursuant to the decision adopted at the previous meeting, the Committee would proceed with the review of Zambia's seventeenth to nineteenth reports (CERD/C/ZMB/17-19) in the presence of a delegate from the Permanent Mission. That delegate would not participate in the interactive dialogue. The Country Rapporteur's presentation and the members' questions would be read aloud, then communicated in writing to the Government, which would have 48 hours to provide its responses in writing.
3. **Ms. Kaemba** (Zambia) said that the absence of a full delegation was not an indication of a lack of commitment on the part of her Government to eliminate all forms of discrimination. She regretted the delay in the submission of the seventeenth to nineteenth periodic reports and reaffirmed her Government's commitment to complying with its reporting obligations. A written response to the list of themes would be provided as soon as possible. Zambia remained committed to combating all forms of racial discrimination, including institutional and systemic racism. To that end, the participation of civil society in the implementation of the Convention was encouraged. The Government was establishing a mechanism to monitor the implementation of obligations under international human rights instruments. Zambia would continue to make every effort to protect the rights of all.
4. **Ms. Shepherd** (Country Rapporteur) said that, while she regretted the absence of a full delegation, she appreciated the effort made by Ms. Kaemba to attend the meeting. It was clear that Zambia had endeavoured to eliminate the racial and class inequalities that were common to all post-colonial societies, but challenges remained. Given the significant delay in the submission of the report, she would be keen to hear what challenges and constraints had prevented the Government from meeting its reporting obligations in a timely manner.
5. She said that it was regrettable that the Human Rights Commission of Zambia had not submitted an alternative report and that it would be helpful if the Government updated its common core document with statistics from the 2010 population and housing census. The Committee had previously requested the Government to provide comprehensive and updated statistics on the demographic composition of the population, including on ethnic groups, migrants and asylum seekers.
6. In the absence of information in the report regarding indigenous populations, the Committee would be interested to learn about the number of indigenous people residing in the country, their legal status and their socioeconomic situation. She also asked why the rights of indigenous peoples were not enshrined in the amended Constitution. The Committee would appreciate data on socioeconomic indicators, disaggregated by ethnic group. It would be useful to receive information on the impact of the Citizen Economic Empowerment Act on the economic situation of Zambians. The Zambian Constitution contained some protections against racial discrimination, but the grounds of "descent" and "national or ethnic origin" were not mentioned. The general principles set out in the Constitution should be implemented through the adoption of specific laws on equality and discrimination, which should be fully in line with the Convention; the Government should harmonize its legislation with the Convention. The referendum to amend article 23 (4) of the Constitution to bring it into line with the Convention had been unsuccessful. The Government should inform the Committee what alternative methods it would use to amend that article to ensure a constitutional prohibition of racial discrimination.
7. In response to the Committee's questions about the adoption and effective implementation of comprehensive anti-discrimination legislation, the Government had merely provided information on immigration and had insisted that the issue was addressed

by the Constitution. The Committee's concerns went beyond the subject of immigration. The Committee would therefore appreciate further information regarding anti-discrimination legislation. It would also welcome information on any recent court cases involving discrimination against workers, especially those working on large commercial agricultural farms and in mines owned by non-nationals. Why had so few cases been reported? Who bore the burden of proof in such cases? Noting that since 2007, only one case of racial discrimination had been brought before the Zambian Human Rights Commission, she asked about the outcome of that case. The Committee had seen anecdotal reports of racial discrimination perpetrated by expatriate farmers and foreign mining companies against Zambians, but it would prefer to receive information on such incidents from the State party itself.

8. The Committee and the Global Alliance of National Human Rights Institutions' Sub-Committee on Accreditation had expressed concerns regarding the funding of the Human Rights Commission and its legal status in the country. The Government should provide a response to those concerns. Further data on the number of people who had benefited from free legal aid to bring cases of racial discrimination before the courts would be of interest to the Committee. The Committee would also welcome information regarding the extent of human trafficking in the country and measures to facilitate the filing of complaints and to protect victims against reprisals when they came forward. The Government should provide an update on the impact of the laws, policies and strategies, including the Anti-Human Trafficking Act, that aimed to prevent human trafficking and to punish those involved. The Committee would like to know the impact of the public education and awareness-raising measures undertaken to combat prejudices and promote understanding and tolerance, specifically the measures implemented under the human rights awareness programmes mentioned in the report. She asked how the National Gender Policy had addressed obstacles faced by women in economic life, in particular as they tried to gain access to high-paid jobs. The Employment Act had been amended in 2015 to include provisions prohibiting certain grounds for dismissal. The Committee would appreciate any information on cases of unfair dismissal that had been carried out on those grounds. It would also like to know how effective the legal provisions covering the rights under article 5 of the Convention had been in protecting those rights.

9. In light of the recommendations of the Office of the United Nations High Commissioner for Refugees regarding the country's reservations to the Convention relating to the Status of Refugees, it would be useful to know whether the Government planned to withdraw those reservations. The Government had not ratified the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. Were the statistics on voluntary repatriation of refugees and work permits issued to refugees up to date?

10. She asked whether the discriminatory ground for committing criminal acts was defined as an aggravating circumstance in the Penal Code. She also wished to know how the section of the Penal Code criminalizing discrimination and other relevant legislation were applied. The Committee would appreciate updated information on investigations, prosecutions and convictions for hate speech and hate crimes and on the sanctions imposed on perpetrators and redress for the victims.

11. The Committee requested the State party to consider making the optional declaration under article 14 of the Convention and ratifying the amendment to article 8 (6). It would appreciate information about measures to increase access to education for vulnerable groups, such as people living in poverty in rural areas. According to a Human Rights Watch report, some commercial farmers in Serenje district of the Central Province had acquired thousands of hectares of land. They had subsequently ignored laws preventing forced evictions and ensuring that rural residents were compensated if their land was taken. The Committee would welcome information on how the State party dealt with cases in which peasants and persons claiming customary use of land and prior possession were evicted.

12. The Committee would be grateful for information on whether practices in Chinese-run copper mines complied with domestic and international labour and human rights standards and whether they were comparable to practices in other copper-mining companies. It wished to know how the State party dealt with complaints of racial

discrimination from Zambians working in the mines. The Committee had received reports of appalling treatment of persons living with albinism. While it commended the State party's efforts to protect such persons, it would appreciate information on further measures that the State could take to ensure their protection.

13. **Mr. Kut** (Follow-up Coordinator) said that the Committee had, on issuing its previous concluding observations (CERD/C/ZMB/CO/16) in 2007, requested the State party to submit a report within one year on its implementation of three recommendations. The Committee attached great importance to the timely submission of such interim reports, yet no report had been received. The first recommendation concerned the State party's appeal against the High Court judgment in the case of *Roy Clarke v. the Attorney General*. He welcomed the fact that, according to the State party's report, the appeal had been quashed by the Supreme Court. In the second recommendation, the Committee had encouraged the State party to review its refugee policy with a view to enhancing prospects for local integration of long-term refugees and had recommended that it review the Refugee Control Act and withdraw its reservations to the 1951 Convention relating to the Status of Refugees. In its third recommendation, the Committee had requested the State party to step up its efforts to raise people's awareness of their rights, to inform victims of available remedies, to facilitate their access to justice and to train judges, lawyers and law enforcement personnel accordingly. Other Committee members would doubtless draw conclusions on the State party's compliance with the recommendation from the relevant paragraphs in the report.

14. **Mr. Avtonomov** commended the State party's expansion of the list of prohibited grounds for discrimination under Constitution Amendment Act No. 2 of 2016 and the amendment to the Employment Act adopted in 2015. However, he pointed out that discrimination on grounds of national origin and descent had not yet been included in the list. He noted with interest that the Citizen Economic Empowerment Act of 2006 sought to empower marginalized or disadvantaged citizens whose access to economic resources and development capacity had been impeded by factors such as race, ethnicity, tribe, educational background and disability. He would be interested to hear about the empowerment services delivered by the body established under the Act. The Constitution Amendment Act provided for the establishment of local offices of the Human Rights Commission in the provinces and districts. He would welcome information on progress made in that regard. The 2015 Gender Equity and Equality Act had established a Commission to receive complaints concerning alleged contraventions of the Act by individuals or by public or private bodies. The Commission could conduct investigations, issue orders for remedies or compensation and refer cases to the competent authorities. He wondered whether measures had been taken to raise awareness of its existence and of similar procedures at the local level. He would appreciate information concerning cases of discrimination addressed by labour inspectors, the Human Rights Commission, the Gender Equity and Equality Commission, the courts or any other competent authorities and on any sanctions imposed and remedies granted. The Committee would appreciate it if the State party clarified its position regarding the amendment to article 8 (6) of the Convention and the optional declaration under article 14. Lastly, he wished to hear whether there had been any cases involving aggression against persons living with albinism and, if so, what action had been taken to protect and rehabilitate victims and to prevent the recurrence of such acts.

15. **Ms. Izsák-Ndiaye** said she had noted with surprise that there were at least 73 indigenous ethno-linguistic groups in the State party, belonging to seven major ethnic categories. Although there was no dominant ethno-linguistic group, some groups reportedly held key positions in the Government and in trade. The Committee would be interested to hear whether power relations among ethnic groups gave rise to concern in the State party. She noted that no complaints of racial discrimination had been heard by the courts and that just one case had been filed with the Human Rights Commission. The Commission had, however, received other complaints concerning discrimination based on ethnic origin. She wished to know more about those complaints and the definition of ethnic discrimination. Noting that all six complaints filed with the Ministry responsible for labour and social security had been directed against expatriates, she asked how that phenomenon should be interpreted. It would be useful to the Committee if the Government would provide additional information on the incidents of intolerance mentioned in paragraph 49 of the

report and on the manner in which they had been handled by law enforcement officers. She would also welcome information concerning progress made by the Immigration Department established under the Immigration and Deportation Act to investigate complaints. Had the workshops held to raise its officers' awareness of issues related to racial discrimination proved successful? The Committee would appreciate it if updated information on legislative and judicial measures to eliminate racial discrimination could be provided. She asked why the State party placed such a focus on immigration when addressing administrative measures to tackle racial discrimination. She would be interested to hear about the activities undertaken to promote the cultural identity of various tribal groups. Did school curricula present the State party's diverse cultural and ethno-linguistic groups and their contribution to the country's cultural heritage?

16. **Mr. Murillo Martínez** said that he would like to know what steps were being taken by the State party to achieve the Sustainable Development Goals, especially Goal No. 3 concerning health and well-being. What progress had been made in implementing the National Health Strategic Plan 2017–2021? It would be useful if the State party updated its core document ([HRI/CORE/1/Add.22/Rev.2](#)), which had been published in 2005.

17. **Mr. Diaby** noted that the Constitution had been amended so that any person who had citizenship by birth or descent could be nominated as a candidate for the presidency. He would be interested to hear about the eligibility of persons who had obtained citizenship after being naturalized or adopted. There had been a wave of xenophobic attacks in the State party in recent years against citizens of neighbouring States, particularly Rwandan refugees, during which people had reportedly been burned alive. Had the perpetrators had been arrested and convicted? In 2018 the head of the Zambia Police Service had issued a circular reminding law enforcement officers that they were prohibited from marrying foreigners. Had the relevant law or regulation been amended? He had heard reports that persons living with albinism were frequently victims of organ trafficking and even witchcraft-related practices. They also reportedly suffered from dermatological problems such as skin cancer and were sometimes excluded from the education system. He wished to know whether the State party had already adopted or was planning to adopt a special programme to support persons with albinism.

18. **Mr. Yeung Sik Yuen** noted that 8,000 Angolan refugees had been awaiting repatriation when the report had been compiled. Had they been repatriated and, if so, had they returned to Angola of their own free will? According to the report, 14,095 Angolans had been issued with residence permits and were awaiting decisions concerning their status as refugees. He would like to know whether there had been any positive developments in their situation during the past two years. Noting that polygamy was permissible in the State party, he asked whether children from polygamous marriages enjoyed the same social protection as other children. Article 23 (4) of the Constitution had not been amended because the requisite referendum had been unsuccessful. The article in question stated that the provisions of article 23 (1), which prohibited discrimination, were not applicable in a number of circumstances, for instance in the case of personal laws governing adoption, marriage, divorce, burial, devolution of property on death or other matters, and customary laws governing members of a particular race or tribe. The Committee was particularly concerned about those provisions. Customary laws were normally upheld by the courts unless they violated the Constitution or statutory law. The Tonga custom of abducting women for the purpose of forced marriage had been considered legitimate in the past, but in 1988 the courts had found the practice to be repugnant and consequently illegal. The courts had also ruled against the custom of allowing parents to arrange marriages for their children in cases where it constituted a forced marriage for one of the parties. Unfortunately, many such cases, especially among members of the Biza ethnic group, reportedly involved marriages of young girls to elderly men, with the payment of a dowry to the bride's parents. Poverty was invoked as a key factor behind such marriages. He would be interested to hear whether steps had been taken by the State party to discourage forced marriages.

19. **Ms. Dah** said that, while she wished to thank the delegate of Zambia for attending the meeting, she regretted the fact that there was no delegation able to engage in an interactive dialogue with the Committee. That situation had an unprecedented impact on the Committee's usual practice. It had halved the amount of meeting time allocated to

consideration of the State party's report. She looked forward to receiving the Zambian Government's written responses to the Committee's questions so that the Committee would be able to draft its concluding observations.

20. **Mr. Albuquerque e Silva** said that he wished to express appreciation for the presence of the delegate of Zambia at the meeting. There were two key elements to the Committee's work with States parties: compliance of the State party with its obligation to submit periodic reports, and the interactive dialogue between the Committee and the State party. That dialogue was fundamental to obtaining a full understanding of the application of the Convention in the State party – a Convention that had been signed and ratified voluntarily. The absence of a full delegation from Zambia would adversely affect the Committee's ability to understand the situation in the State party.

21. **Ms. Mohamed** said that she would like to know which law was applied in cases where a decision handed down under customary law was in contradiction with ordinary law, whether there was a text setting out customary law and whether customary law was integrated in the Constitution and therefore had legal status. Detailed information should be provided on the status of migrants and refugees and on the circumstances in which deprivation of liberty was permitted under the Constitution. She would also welcome an explanation of the conditions for acquiring Zambian nationality.

22. **Mr. Diaby** asked for information on how customary rights were addressed when there were claims on land with valuable natural resources and whether data was available on the working conditions and status of persons from Malawi, Zimbabwe and Mozambique who worked in the metal mines.

23. **Ms. Kaemba** (Zambia) said that the manner in which the meeting had been conducted, the Country Rapporteur's initial presentation and the comments and questions from the Committee members all indicated the Committee's interest in her country. It was regrettable that her Government had been unable to send a delegation to attend the meetings with the Committee in keeping with its obligations under the Convention. She expressed appreciation, therefore, for the dispensation to provide written responses to the Committee's questions, particularly since she was unable to offer the well-researched answers and data required. All questions would receive either an answer or an indication that more time was needed to provide a response. The answers to some of the questions could be provided quickly, whereas others would take time due to the need to consult appropriate ministries and other State bodies. Responses would be submitted to the Committee within 48 hours of receipt of the questions and comments.

24. **Ms. Shepherd** said that the Committee remained a partner of Zambia in the fight to eliminate the scourge of racial discrimination. She emphasized Committee members' recognition of the scale of the task before the State party in view of its history and the difficulties faced by all post-colonial societies.

25. **Mr. Ayissi** (Secretary of the Committee) said that the deadline for receipt by the secretariat of the Zambian Government's responses to the Committee's questions and comments was 1 p.m. on Monday, 6 May 2019.

26. **Ms. Izsák-Ndiaye** said that, while the Committee understood the difficulties facing the State party, it was required to issue the concluding observations on the combined seventeenth to nineteenth periodic reports of Zambia before the end of its present session. In the interests of ensuring that accurate information would form the basis of those concluding observations, and to avoid a sole reliance on written information from other sources, she encouraged the State party to provide its answers to the Committee's questions within the 48-hour deadline.

The public part of the meeting rose at 11.55 a.m.