



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined seventeenth to nineteenth periodic reports of Zambia*

1. The Committee considered the combined seventeenth to nineteenth periodic reports of Zambia (CERD/C/ZMB/17-19), submitted in one document, at its 2724th meeting (see CERD/C/SR.2724), held on 2 May 2019. At its 2734th meeting, held on 9 May 2019, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined seventeenth to nineteenth periodic reports of the State party. It notes, however, that the report was about nine years overdue when submitted, and it invites the State party to respect the deadlines set for the submission of future reports.

3. The Committee regrets that the State party was unable to send a delegation to present its report and engage in an interactive dialogue at the first meeting with the Committee on 1 May 2019, but appreciates the efforts made to have a representative from the Permanent Mission in Geneva attend the following day. However, the representative was not in a position to respond to the questions posed, and the answers sent to the Committee, due 48 hours after the 2 May 2019 meeting but received 72 hours after, have not adequately addressed the Committee's concerns. The Committee wishes to remind the State party that dialogue is a key component of the consideration of the report and provides a unique opportunity for the Committee and the State party to hold constructive, in-depth discussions, which, together with the report submitted by the State party and other information received, allow the Committee to assess the progress made and to indicate to the State party the areas where further efforts are needed. The Committee urges the State party to be present and ready to engage in a constructive dialogue with the Committee during the consideration of its next periodic report.

B. Positive aspects

4. The Committee welcomes the following legislative, institutional and policy measures taken by the State party:

(a) The adoption of the Employment (Amendment) Act No. 15, in 2015, and the Industrial and Labour Relations (Amendment) Act No. 8, in 2008, which stipulate that race, colour, ethnicity and tribal affiliation of an employee cannot constitute a valid reason for termination of employment;

* Adopted by the Committee at its ninety-eighth session (23 April–10 May 2019).



(b) The adoption of the Gender Equity and Equality Act No. 22, in 2015, and the revised National Gender Equality Policy, in 2014.

(c) The establishment of the Immigration Integrity Committee, in 2010, which is tasked with preventing and investigating any instances of racial discrimination and xenophobia by a person employed in the Immigration Department.

5. The Committee also welcomes the State party's ratification of, or accession to, the following international human rights instruments:

(a) The Convention on the Rights of Persons with Disabilities, in 2010;

(b) The International Convention for the Protection of All Persons from Enforced Disappearance, in 2011.

6. The Committee notes with satisfaction that the State party has extended an open, standing invitation for special procedure mandate holders of the Human Rights Council to visit the country. In that connection, the Committee welcomes the fact that the State party has received a significant number of visits by mandate holders.

C. Concerns and recommendations

Data collection

7. The Committee notes the provision of some statistics on ethnic groups and refugees in the common core document and the State party report. It notes with concern, however, that the data stem mainly from the 2000 census and the Census of Population National Analytical Report 2003 and regrets the lack of updated disaggregated data necessary to properly evaluate the situation of various groups, in particular, ethnic minorities (including Asians and Europeans), migrants, refugees and asylum seekers, limiting the Committee's ability to properly assess the situation of such groups, including their socioeconomic status and any progress achieved by implementing targeted policies and programmes (art. 1).

8. In line with paragraphs 10 to 12 of its reporting guidelines (CERD/C/2007/1) and its general recommendations No. 4 (1973) concerning reporting by States parties under article 1 of the Convention and No. 8 (1990) concerning the interpretation and application of article 1 (1) and (4) of the Convention, the Committee recommends that the State party collect and provide, in its next periodic report, updated and comprehensive statistics on the demographic composition of the population, as well as disaggregated data on the socioeconomic situation of ethnic minorities, including Asians and Europeans, migrants, refugees and asylum seekers, in order to provide the Committee with an empirical basis to evaluate the enjoyment in the State party of the rights enshrined in the Convention.

Application of the Convention in domestic legislation

9. The Committee regrets the lack of information on the steps taken to fully incorporate the Convention into domestic law. It also regrets the lack of information on court cases in which the Convention's provisions were invoked before or applied by domestic courts (art. 2).

10. The Committee reiterates its previous invitation (CERD/C/ZMB/CO/16, para. 10) to the State party to proceed with the full incorporation of the provisions of the Convention into its domestic law, and requests that detailed information on actual measures taken to that end be provided in the next periodic report. Furthermore, the Committee recommends that the State party take appropriate measures, including through training, to ensure that judges, prosecutors, lawyers and law enforcement officials have sufficient knowledge of the provisions of the Convention to enable them to invoke or apply the provisions in relevant cases. It requests the State party to include in its next periodic report specific examples of the application of the Convention by domestic courts.

Definition of racial discrimination

11. The Committee notes that the constitutional referendum, which was conducted in August 2016 to amend the State party's Bill of Rights, was unsuccessful and, as a result, articles 11 and 23 of the Constitution could not be amended, as recommended by the Committee in its previous concluding observations (CERD/C/ZMB/CO/16, paras. 9 and 11). The Committee remains concerned that:

(a) While it includes "race", "tribe", "place of origin" and "colour" as prohibited grounds of discrimination, the definition of racial discrimination in articles 11 and 23 of the Constitution is still not fully in line with article 1 of the Convention, as it still excludes "descent" and "national or ethnic origin";

(b) Article 23 (4) of the Constitution still allows for extended restrictions to the prohibition of discrimination with respect to non-citizens and matters of personal and customary law;

(c) Under article 11 of the Constitution, the right of everyone not to be discriminated against is only applicable to a limited list of mainly civil and political rights;

(d) There is a lack of a comprehensive anti-discrimination legislation in line with article 1 of the Convention;

(e) Discriminatory provisions still exist in some laws, including the customary laws of certain ethnic groups (arts. 1–2).

12. The Committee recommends that the State party:

(a) **Explore alternative avenues to amend articles 11 and 23 of the Constitution to bring them into line with the Convention, by including "descent" and "national or ethnic origin" as prohibited grounds of discrimination, ensuring the full implementation of the prohibition of racial discrimination without any restrictions, and guaranteeing the right of everyone not to be discriminated against in the enjoyment of civil, political, economic, social and cultural rights;**

(b) **Adopt comprehensive anti-discrimination legislation, which includes a definition of racial discrimination in line with article 1 of the Convention;**

(c) **Review legislation, including customary laws, that may allow for direct or indirect forms of discrimination and introduce revised legislation where necessary, in line with the Convention.**

National human rights institution

13. The Committee welcomes the information that the Zambian Human Rights Commission has again been granted A status by the Global Alliance of National Human Rights Institutions. It is, however, concerned about the lack of a formal selection and appointment process for members of the Commission, the inadequate budgetary resources allocated to the Commission for it to effectively carry out its mandate, the real or perceived conflicts of interest of certain members involved in political activities and the insufficient implementation of the recommendations proposed by the Commission, which would strengthen the implementation of the Convention.

14. **Recalling its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends that the State party establish and implement a formal selection and appointment process for the members of the Commission, provide the Commission with adequate financial resources to effectively execute its mandate, ensure that members serve on a full-time basis to avoid any real or perceived conflicts of interest and implement the recommendations of the Commission in order to strengthen the realization of the rights enshrined in the Convention.**

Complaints of racial discrimination and remedies

15. The Committee takes note of the alleged cases of racial discrimination against Zambian workers, in particular those working on large commercial farms and in mines

owned by expatriates. However, the Committee notes with concern that no complaints of racial discrimination were brought before domestic courts between 2007 and 2017, while only one complaint was reported to the Zambian Human Rights Commission and six complaints were lodged with the Ministry of Labour and Social Security. The Committee is further concerned about the lack of information on investigations, prosecutions, convictions and sanctions imposed, and on the reparations provided to victims of racial discrimination (art. 2).

16. The Committee recalls that, in line with its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, a lack of complaints, prosecutions and convictions relating to acts of racial discrimination does not mean there is an absence of racial discrimination in a State party. The absence of complaints may instead signify the victims' lack of familiarity with the judicial recourse available to them, a lack of trust in the legal system or a fear of reprisals. The Committee recommends that the State party intensify its efforts to inform the general public about racial discrimination and the legal and judicial recourse available. It requests the State party to include in its next periodic report information on the steps taken in this regard, including statistics on complaints filed with all competent authorities and their outcomes.

Hate crime and hate speech

17. The Committee notes that racial discrimination and incitement to racial hatred are criminalized under section 70 of the Penal Code. It is, however, concerned that:

(a) “Descent” and “national or ethnic origin” as grounds for inciting hatred and prejudice are missing from this definition;

(b) The provisions of article 4 (b) of the Convention have not yet been fully incorporated into domestic law;

(c) Racist motives do not constitute an aggravating circumstance for acts criminalized in the Penal Code;

(d) Reported cases of incitement to hatred, discrimination and violence targeting certain ethnic groups, as well as reported acts of xenophobia, violence and intimidation against non-citizens, including physical attacks and the looting of businesses during the 2016 elections, are not addressed in the State party's periodic report (arts. 2, 4 and 6).

18. Recalling its general recommendations No. 15 (1993) on article 4 of the Convention and No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:

(a) **Ensure that the definition of hate speech enshrined in the Penal Code is fully in line with article 4 of the Convention and that it includes all grounds of discrimination recognized in article 1 of the Convention;**

(b) **Explicitly prohibit organizations that promote and incite racial discrimination and recognize participation in such organizations as a punishable offence;**

(c) **Recognize racist motives as an aggravating circumstance for all acts criminalized under the Penal Code;**

(d) **Ensure that all incidents of hate crime and hate speech are investigated and prosecuted and that the perpetrators are punished.**

Access to legal aid

19. While welcoming the legislative and administrative measures taken to improve access to legal aid, including the creation of Legal Aid Board offices in all the provinces of the State party and the establishment of legal services units in subordinate courts, the Committee is concerned about the lack of information on the number of persons who have

benefited from the free legal aid provided by these services to bring claims of racial discrimination, as well as on the eligibility criteria to access such services.

20. **The Committee encourages the State party to continue implementing its legal aid policies to ensure equal access to justice for victims of racial discrimination, including those belonging to minority groups. The Committee also recommends that the State party provide information on the number of persons who have benefited from free legal aid to bring claims of racial discrimination, as well as on the eligibility criteria to access such services.**

Special measures to address inequalities

21. The Committee notes the special measures taken by the State party, including the Citizen Economic Empowerment Act No. 9 (2006) and the Zambia Development Agency Act No. 11 (2006), to advance the rights of “previously disadvantaged or marginalized people”. The Committee is, however, concerned that these special measures are limited to certain areas, and underlines the absence of information on legislation and policy measures that address discrimination in the context of efforts to realize other economic, social and cultural rights. It is also concerned about the lack of comprehensive disaggregated data on the impact of current special measures on affected groups (arts. 2 and 5).

22. **In accordance with articles 1 (4) and 2 (2) of the Convention and its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee encourages the State party to consult affected communities to obtain information on the effectiveness of current special measures. It recommends that, on the basis of those findings, the State party extend its implementation of special measures to address additional priority areas, with the active participation of affected communities.**

Harmful practices

23. The Committee is concerned at the continuation of harmful customary practices against women and girls, such as the payment of *lobola* (dowry) to the bride’s parents, which can be tantamount to child and/or forced marriage (art. 6).

24. **Taking into account its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party take effective measures to protect children, particularly in remote rural areas, from harmful customary practices. The Committee recommends that the State party conduct educational campaigns in rural communities and areas where practices such as *lobola* are prevalent in order to end the practice, provide information to victims on access to judicial remedies and encourage reporting of cases. The Committee requests that the State party provide information in its next periodic report on the steps taken to end *lobola*, the impact of the measures and statistics on the number of cases of *lobola* reported and the prosecutions and convictions of perpetrators.**

Situation of the San and Khoe peoples

25. The Committee takes note of the fact that the State party does not recognize the existence of indigenous peoples in the country, which negates the rights of the San and Khoe peoples, the earliest inhabitants of Zambia, who suffer from high rates of poverty in a challenging economic and social environment. The Committee is also concerned at reports that the San and Khoe peoples do not have access to their ancestral lands, education, housing, employment, health care and political participation and representation (arts. 2, 5 and 6).

26. **The Committee recommends that the State party recognize the full right of the San and Khoe peoples to access and use their ancestral lands. It also requests the State party to provide information in its next periodic report on specific measures taken to address the challenges faced by the San and Khoe peoples in accessing education, housing, employment, health care and political participation and representation, and to update the Committee on the effectiveness of those measures.**

Education

27. The Committee notes the adoption of the Education Act No. 23, in 2011, which guarantees the right to free basic education for all children without discrimination. It is, however, concerned that disparities remain in terms of access to quality education and educational resources by children residing in rural areas, informal settlements, on communal farms and in refugee settlements (art. 5).

28. **The Committee recommends that the State party guarantee access to all levels of education and educational resources to all children, without discrimination. In particular, it requests that the State party provide information on educational outreach programmes targeted at ethnic minorities with the purpose of increasing their educational enrolment and matriculation, and that it allocate the resources necessary to ensure a quality education for all children.**

Situation of persons with albinism

29. The Committee is aware of the efforts made by the State party to protect people living with albinism. However, the Committee remains concerned about reports of discrimination and stigmatization faced by persons living with albinism on the basis of colour, in particular with regard to the enjoyment of their rights to education, employment and health. It is also alarmed by information in the 2010 census that 46 per cent of people living with albinism are self-employed because of a lack of other employment opportunities and that about 25 per cent of children living with albinism are not attending school. The Committee is further concerned at reports of cases of abduction, murder and dismemberment of persons with albinism, including women and children, for ritual practices (arts. 6 and 7).

30. **The Committee recommends that the State party guarantee, as a priority, the right to life of persons with albinism. It urges the State party to adopt more effective measures to protect persons with albinism from violence, abductions, discrimination and stigmatization. The Committee also recommends that the State party step up its efforts to ensure that persons with albinism have equal access to education, health and employment.**

Trafficking in persons

31. The Committee welcomes the measures taken to combat trafficking in persons, in particular migrant workers, including the adoption of the Anti-Human Trafficking Act No. 11, in 2008. It remains concerned, however, at:

(a) The absence of studies, analyses and disaggregated data that would be of use in evaluating the scale of trafficking to, through and from the State party;

(b) The delay in the adoption of a new plan of action to combat trafficking in persons and the lack of information on the human, technical and financial resources allocated to the interministerial committee on human trafficking;

(c) The lack of information on the number of prosecutions and convictions of perpetrators of human trafficking and the sanctions imposed;

(d) The lack of information on the development and implementation of standardized early identification mechanisms and a referral system for victims of trafficking, in particular migrant workers;

(e) The lack of information on the human, technical and financial resources allocated for the protection of victims of trafficking, including shelters and legal, medical and psychological services.

32. **The Committee recommends that the State party:**

(a) **Systematically compile data, disaggregated by sex, age and origin, with a view to combating human trafficking and smuggling more effectively;**

(b) **Expedite the adoption of a new national plan of action to combat trafficking in persons and allocate adequate human, technical and financial resources to the interministerial committee on human trafficking for its implementation;**

(c) **Enforce anti-trafficking legislation by conducting gender- and age-sensitive investigations, ensuring the prosecution and conviction of perpetrators and their punishment with appropriate penalties;**

(d) **Provide information on measures taken to develop standards for the early identification and referral of trafficking victims to appropriate services for their assistance and rehabilitation;**

(e) **Allocate adequate resources for the creation of easily accessible shelters in all provinces of the State party and for the provision of adequate legal, medical and psychosocial assistance in these shelters.**

Refugees and asylum seekers

33. While noting the adoption of the Refugee Act No. 1, in 2017, the Committee is concerned about:

(a) The restrictions placed on the freedom of movement of refugees and asylum seekers living in settlements and the fact that they are not automatically granted the right to work;

(b) The lack of updated information on the ability of refugees and asylum seekers to access basic services, including health care and education, and on existing protection measures against refoulement;

(c) The difficulties faced by refugees in obtaining residence permits and in becoming locally integrated and the lack of alternative resettlement options;

(d) The substandard conditions for refugees and asylum seekers living in the camps (arts. 2, 5 and 6).

34. **In light of general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party:**

(a) **Amend the Refugee Act No. 1 (2017) to ensure that refugees and asylum seekers have the right to access employment, health care and education, and enjoy freedom of movement, and that effective protection is provided to them against refoulement;**

(b) **Develop and effectively implement a long-term strategy that provides a durable solution for the local integration of refugees, especially with regard to education and access to decent livelihoods, as living in camps does not represent a durable solution;**

(c) **Improve the material conditions of refugee camps and ensure that refugees and asylum seekers staying in such camps enjoy an adequate standard of living and access to basic social services;**

(d) **Consider lifting its reservations to articles 17, 22, 26 and 28 of the Convention relating to the Status of Refugees.**

D. Other recommendations

Ratification of other treaties

35. **Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the International**

Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the Domestic Workers Convention, 2011 (No. 189), and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization. The Committee also encourages the State party to accede to the Convention on the Reduction of Statelessness.

Follow-up to the Durban Declaration and Programme of Action

36. In light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the Convention into its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

International Decade for People of African Descent

37. In light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015–2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the Decade, the Committee requests that the State party include in its next periodic report precise information on the concrete measures adopted in that framework, taking into account the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

38. The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.

Declaration under article 14 of the Convention

39. The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention with a view to recognizing the Committee's competence to receive and consider individual communications.

Amendment to article 8 of the Convention

40. The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

Common core document

41. The Committee encourages the State party to update its common core document, which dates to 2005, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.6, chap. I). In light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for such documents.

Follow-up to the present concluding observations

42. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 30 (situation of persons with albinism) and 32 (b) (trafficking in persons) above.

Paragraphs of particular importance

43. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 8 (data collection), 12 (definition of racial discrimination), 16 (complaints of racial discrimination and remedies) and 34 (refugees and asylum seekers) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

Dissemination of information

44. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next periodic report

45. The Committee recommends that the State party submit its combined twentieth to twenty-sixth periodic reports, as a single document, by 5 March 2023, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.