



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

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 9 OF THE CONVENTION**

**Sixteenth periodic reports of States parties due in 2003**

**Addendum**

**ZAMBIA\* \*\***

[13 July 2004]

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\* This document contains the twelfth to sixteenth periodic reports of Zambia, due on 29 October 1995, 1997, 1999, 2001 and 2003 respectively, submitted in one document. For the seventh to the eleventh periodic reports, submitted in one document, and the summary records of the meetings at which the Committee considered those reports, see document CERD/C/239/Add.2 and CERD/C/SR.988.

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## I. INFORMATION ON SPECIFIC ARTICLES OF THE CONVENTION

### Article 2

States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

1. The State party condemns and prohibits racial discrimination and to this end has taken appropriate legislative, judicial and administrative measures aimed at eliminating racial discrimination; and promoting integrationist approaches in the social, economic and cultural environment.

#### **A. Legislative measures**

2. The State party wishes to report that it has put in place constitutional and other legislative provisions that prohibit racial discrimination.

#### **The Constitution**

3. Article 11 of the Constitution of the Republic of Zambia, Chapter 1 of the Laws of Zambia, recognises and declares that every person in Zambia, is entitled to all fundamental rights and freedoms. Article 11 reads in part:

It is recognised and declared that every person in Zambia has been and shall continue to be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the limitations contained in this part, to each and all of the following, namely:

- (a) Life, liberty, security of the person and the protection of the law;
- (b) Freedom of conscience, expression, assembly movement and association;
- (c) Protection of young persons from exploitation;
- (d) Protection for the privacy of his home and other property and from deprivation of property without compensation;

and the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in this part, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

4. Further, Article 23 (1) prohibits the enactment of a law that makes any provision that is discriminatory either of itself or in its effect. Article 23 (2) prohibits any person acting by virtue of any written law or in performance of the functions of any public office or any authority, from treating any person in a discriminatory manner.

5. In Article 23 (3), the Constitution defines the term “discriminatory” to mean:

...affording different treatment to different persons attributable, wholly or mainly to their respective description by race, trade, sex, place of origin, marital status, political opinions, colour or creed whereby persons of one such description are subjected to

disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

6. Article 23 (4) provides instances in which Article 23 (1) shall not apply. Article 23 (4) provides:

Clause (1) shall not apply to any law so far as that law makes provision:

- (a) For the appropriation of the general revenues of the Republic;
- (b) With respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
- (c) For the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or
- (d) Whereby persons of any such description as is mentioned in clause (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description is reasonably justified in a democratic society.

### **Other legislation**

#### **The Penal Code**

7. Section 70 of the Penal Code, Chapter 87 of the Laws of Zambia, explicitly criminalises certain acts of racial discrimination. It states:

Any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin or colour is guilty of an offence and is liable on conviction for a period not exceeding two years.

8. Section 46 of the Penal Code also prohibits any person from promoting tribal wars. Any person involved in such activity is guilty of a felony and is liable to imprisonment for life.

#### **The Public Order Act**

9. Section 13 of the Public Order Act, Chapter 113 of the Laws of Zambia, criminalises the uttering of any words or doing any acts or thing with intent to excite enmity between one or more sections of the community on the one hand, and any other section or section of the community on the other hand, or with intent to encourage any person or persons to do any act or acts or to omit to do any act or acts so as to defeat the purpose of intention of any law in force in Zambia or any part thereof.

### **The Societies Act**

10. Section 8 of the Societies Act, Chapter 119 of the Laws of Zambia, empowers the Registrar of Societies to refuse to register any society where it appears that such society had among its objects or is likely to pursue or to be used for any unlawful purpose or for any purpose prejudicial to or incompatible with the peace, welfare or good order in Zambia or that the interests of the peace, welfare or good order in Zambia would otherwise be likely to suffer prejudice by reason of the registration, or exemption from registration of such society. Section 13 of the same Act, empowers the Minister of Home Affairs “to deregister any society that has among its objects or is in his opinion likely to pursue or to be used for any unlawful purpose.” By implication, this section can be invoked to prohibit practices of racial discrimination by ant groups of persons or societies.

### **The Industrial and Labour Relations Act**

11. Section 108 of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia, prohibits an employer from terminating the services of an employee on the ground of race. It further prohibits an employer from imposing other penalties or disadvantages on an employee on account of race. The provision reads:

No employer shall terminate the services of an employee or impose any other penalty or disadvantage on any employee, on grounds of race, sex, marital status, religion, political opinion or affiliation, tribal extraction or social status of the employee.

12. The Industrial and Labour Relations Act further prescribes remedies for people who have been discriminated against. Section 108 (2) states:

Any employee who has reasonable cause to believe that the employees services have been terminated or that the employee has suffered any other penalty or disadvantage, or any prospective employee who has reasonable cause to believe that the employee has been discriminated against, on any of the grounds set out in subsection (1) may, within thirty days of the occurrence which gives rise to such belief, lay a complaint before the court.

Provided that the court may extend the thirty-day period for a further three months after the date on which the complaint has exhausted the administrative channels available to him.

13. Section 108 (3) states that, the Court shall, if it finds in favour of the complainant:

(a) Grant to the complainant damages or compensation for loss of employment; or

(b) Make an order for re-employment or reinstatement in accordance with the gravity of the circumstances of each case.

14. It is worth noting that this provision applies to all aspects of labour relations.

### **The Education Act**

15. Section 16 (1) (b) of the Education Act, Chapter 134 of the Laws of Zambia, empowers the Minister to cancel registration of any private school that conducts itself in a manner that is detrimental to the interests of peace, order or to the physical, mental or moral welfare of the persons receiving instruction thereat.

### **The Zambia National Broadcasting Corporation Act**

16. Section 31 of the Zambia National Broadcasting Corporation Act, Chapter 154 of the Laws of Zambia, empowers the Minister to cancel at any time or refuse to issue a licence or to renew a licence issued to a broadcaster or operator of a diffusion service in terms of the Act, if he is satisfied, after inquiry, that the cancellation or the refusal to issue or renew the licence is justified in the public interest.

17. Section 27 of the same Act, read together with Section 60 (1) (f), (g) and (i) of the Penal Code, empowers the Minister to prohibit the broadcasting of seditious programmes.

### **The Independent Broadcasting Act**

18. Section 4 of the Independent Broadcasting Authority, Act No. 17 of 2002 establishes the Independent Broadcasting Authority, which is mandated, inter alia, to receive, investigate and decide on complaints concerning broadcasting services, including public broadcasting services. However, this Act has not yet come into operation.

## **B. Judicial measures**

19. Article 28 of the Constitution gives the right to anyone whose rights have been or are likely to be violated, to petition the High Court for a remedy. Article 28 (1) reads in part:

..., if any person alleges that any of the provisions of Articles 11 to 26 inclusive has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply for redress to the High Court which shall:

(a) Hear and determine any such application;

(b) Determine any question arising in the case of any person which is referred to it in pursuance of clause (2);

and which may, make such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of Articles 11 to 26 inclusive.

20. Further, Article 28 (2) (a) states that:

If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of Articles 11 to 26 inclusive, the person presiding in that court

may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion the raising of the question is merely frivolous or vexatious.

21. The Committee is referred to the State party's report on Article 6 which provides details of civil remedies.

### **C. Administrative measures**

#### **The Human Rights Commission**

22. Article 125 of the Constitution establishes a Human Rights Commission which is mandated to promote and protect human rights. Further details of the Human Rights Commission are provided under Article 6 of the State party's report.

#### **The Commission for Investigations**

23. As earlier mentioned, the Commission for Investigations is established under Article 90 of the Constitution and the Commission for Investigations Act, Chapter 39 of the Laws of Zambia. Further detail on the Commission for Investigations is provide under Article 6 of the State party's report.

#### **Law enforcement agencies**

24. The State party wishes to inform the Committee of its other law enforcement agencies, which include the Zambia Police Service and the Anti-Corruption Commission, which deal with cases of racial discrimination bordering on criminality and/or nepotism.

### **D. Other measures**

25. The State party has employed other measures in order to implement the undertaking not to engage in any act or practice of racial discrimination. These measures include:

(a) The formulation of the National Policy on Education, which, inter alia, promotes equality of education and endeavours to develop for all, an education system that promotes equality of access, participation and benefit, in accordance with an individual's needs and abilities;

(b) National Health Policy, whose vision is to enable the State party achieve its commitment to the development of a health care system which will provide Zambians with effective and quality health care and equity in access to health care as close to the family as possible.

#### **Sponsoring, defending or supporting racial discrimination by any persons or organisations**

26. On the requirement for measures taken to give effect to the undertaking not to sponsor, defend or support racial discrimination by any persons or organisations, the State party reports in the first instance that it has no policy of sponsoring, defending or supporting racial discrimination.

27. However, the constitution and other legislative provisions referred to in the preceding paragraphs, in particular Articles 11 and 23 of the Constitution and Section 70 of the Penal Code, are adequate to deal with any person or organisation that would engage in sponsoring, defending or supporting racial discrimination.

28. Further, the State party encourages national unity across ethnic lines through the “One Zambia One Nation” through its Armorial Ensigns in the schedule to the National Flag and Armorial Ensigns Act, Chapter 6 of the Laws of Zambia.

### **Review of national, governmental and local policies and amendment, or nullification of laws**

29. With regard to the review of policy or amendment of laws, Section 2 (1) of the Inquiries Act, Chapter 41 of the Laws of Zambia, provides that the President may appoint one or more Commissioners to inquire into any matter in which an inquiry would, in the opinion of the President, be for the public welfare.

30. Using the provisions of the Act, the President in August 2003 appointed the Constitution Review Commission, which is mandated to receive submissions from the public on the review of the current Constitution. It is the State party’s view that such Commission acts as a platform and opportunity of reviewing policy and legislation.

31. Further, the State party wishes to report that Section 3 of the Zambia Law Development Commission Act, Chapter 32 of the Laws of Zambia, establishes the Zambia Law Development Commission, which, inter alia, has the mandate to revise Zambia legislation and review and consider proposals for law reform referred to the Commission by the Minister of Justice or members of the public.

32. It is worth before revisions or reforms in policy and legislation are made, the State party undertakes adequate consultation from within its circles and civil society at large.

### **Encouragement of integrationist multiracial organisations**

33. The State party encourages integrationist multiracial organisations and movements through constitutional, other legislative, judicial and administrative measures cited above. It is the State party’s view that any actions that might lead to racial discrimination are eliminated.

### **E. Factors and difficulties**

34. Zambia is currently going through economic difficulties. In this regard, most institutions involved in the implementation of Article 2 of the Convention are constrained by inadequate human, financial and material resources, which makes it difficult for them to fully to discharge their mandates.

35. While the civil remedy provided for in Article 28 of the Constitution is available to an individual as per Article 23 of the Constitution, the State party is mindful of the challenge that remains with regard to acts of racial discrimination committed by non-state actors.

36. A challenge equally lies for the State party with regard to Article 23 of the Constitution, that allows discrimination in adoption, marriage, divorce and devolution of property laws.

#### **F. Special measures**

37. The State party wishes to report that Article 23 (4) (e) of the Constitution provides for special measures aimed at correcting any disadvantages of a group in the enjoyment of basic rights and freedoms. Article 23 (4) (e) provides that Article 23 (1) shall not apply to a law which makes provision for a situation where persons subjected to any disability or restriction may be accorded some privilege or advantage.

38. It is worth noting that the State party has not taken any special and concrete measures to ensure the adequate development and protection of certain racial groups as Zambia is a multi-racial and multi-ethnic society. Since independence there has been no single dominant or repressed ethnic or racial group within Zambian territory since all groups enjoy equal status in the social, political, economic, cultural and governance life of the country.

#### **Article 3**

39. The State party wishes to state that it condemns all forms of racial segregation and apartheid in the strongest manner. Accordingly, no form of racial segregation or apartheid has ever been, or can be, practiced in Zambia. As earlier stated, the State party prohibits racial discrimination, segregation or apartheid, through Articles 11 and 23 of the Constitution. The State party strongly believes that there should be no artificial barriers on grounds of racism anywhere in the world.

40. It has always been the practice of the State party to taking a hard-line approach with countries that practiced racial segregation and apartheid. When the Republic of South Africa practiced apartheid, the State party openly condemned the practice and imposed sanctions against apartheid government of South Africa.

41. Additionally, it is a well-known fact that the State party was once President of the frontline States of Southern African countries that pioneered independence for Apartheid South Africa, Namibia, Mozambique, Angola and Zimbabwe. Additionally, the State party offered victims of apartheid refuge in its territory; hosted liberation struggle movements; and, provided scholarships for education to those victims.

#### **Article 4**

42. The State party is committed to the prohibition of all propaganda and all organisations which are based on ideas and theories of racial superiority.

43. In this regard, the State party wishes to report that it has taken the following measures which address Article 4:

### **A. Legislative measures**

44. In terms of general legislative measures, the State party refers the Committee to Article 2.

45. More specifically:

(a) The Constitution prohibits discrimination of all forms, including that which is based on race, tribe, creed, ethnic or national origin (Articles 11 and 23);

(b) The Penal Code in Section 70 makes it an offence punishable by imprisonment for any person to express or show hatred, ridicule or contempt for persons because of race, tribe, place of origin or colour. In addition Section 46 also prohibits any person from promoting tribal wars. Any person involved in such activity is guilty of a felony and liable to imprisonment for life;

(c) The Public Order Act, Section 13 criminalises the uttering of any words or the doing of any act or thing with intent to excite enmity between one or more sections of the community;

(d) Under the Societies Act, the Registrar has power to refuse the registration of organisations whose objectives appear to pursue unlawful purposes (including, in this regard, promotion of racial propaganda and ideas or theories of racial superiority) or purposes inimical to the peace, welfare or good order of Zambia;

(e) The Education Act, Zambia National Broadcasting Act and Independent Broadcasting Act as outlined in Article 2 are also relevant to Article 4 of the Convention.

### **B. Judicial measures**

46. Hitherto, no person, group or organisation has been prosecuted for racial propaganda, promotion of ideas or theories based on racial superiority.

### **C. Administrative measures**

47. The State party wishes to report that its Human Rights Commission has a wide mandate, including educating and informing the public of their human rights. Through sensitisation programmes, the Commission emphasises the principle of non-discrimination as fundamental to the promotion and protection of human rights.

### **D. Factors and difficulties**

48. Generally most people living in Zambia are not aware of their rights and thus find it difficult to seek redress if their rights were violated.

## **Article 5**

49. The State party wishes to report that Article 11 of the Constitution, as referred to above is the legal basis upon which every person in Zambia is entitled to the fundamental rights and freedoms whatever his race, place of origin, political opinions, colour, creed, sex or marital status, but subject to the necessary limitations.

### **1. The right to equal treatment before tribunals**

#### **A. Legislative measures**

50. Article 18 of the Constitution provides that any person charged with a criminal offence shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. Among other things, a person charged with a criminal charge should be informed as soon as reasonably practicable, in a language that he understands, including on the nature of the offence. At the commencement of proceedings in court, the court will ask the defendant the language that he or she understands. Under Article 18 (2) (f), the court has a duty to provide the defendant, without payment, the assistance of an interpreter if he or she cannot understand the language used at the trial.

51. In addition, the State party wishes to report that, taking account of Article 23 (1) any law, establishing any law establishing tribunals and all other organs administering justice need to conform to the Article. This is augmented by Article 1 (3) of the Constitution which provides that the Constitution is the supreme law of Zambia and if any other law is inconsistent with the Constitution that other law shall, to the extent of the inconsistency, be void.

52. Further, Article 23 (2) of the Constitution, as already stated, prohibits the treatment of any person in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

#### **B. Judicial measures**

53. There have been no court cases where a person has alleged that he or she was not afforded equal treatment before a tribunal or other organ administering justice. However, the State party wishes to report that by virtue of Articles 23 (1) and 23 (2) of the Constitution the courts would be obliged to decide in the favour of the complainant if unequal treatment is proved.

54. As stated above, Article 28 of the Constitution expressly provides for a judicial remedy for the violation of any of the rights and freedoms guaranteed in the Constitution.

#### **C. Administrative measures**

55. As stated earlier, the State party established the Human Rights Commission. The State party refers the Committee to its report on Article 6 for detail on the Human Rights Commission.

## **2. The right to security of person and protection against violence or bodily harm**

### **A. Legislative measures**

56. The State party wishes to report that Article 13(1) of the Constitution prohibits the deprivation of a person's personal liberty except in the following circumstances:

- (a) In execution of a sentence or order of a court, whether established for Zambia or some other country, in respect of a criminal offence of which he has been convicted;
- (b) In execution of an order of a court of record punishing him for contempt of that obligation imposed on him inferior to it;
- (c) In execution of an order of a court made to secure the fulfilment of any obligation imposed on him by law;
- (d) For the purpose of bringing him before a court in execution of an order of a court;
- (e) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Zambia;
- (f) Under an order of a court or with the consent of his parents or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (g) For the purpose of preventing the spread of an infectious or contagious disease;
- (h) In the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (i) For the purpose of preventing the unlawful entry of that person into Zambia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person while he is being conveyed through Zambia in the course of his extradition or removal as a convicted as a convicted prisoner from one country to another; or
- (j) To such an extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Zambia or prohibiting him from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Zambia in which, in consequence of any such an order, his presence would otherwise be unlawful.

57. Article 15 of the Constitution prohibits the subjection of a person to torture or inhuman or degrading punishment or other like treatment. This prohibition is without exception under any circumstances.

58. It is worth noting that, the rights to liberty; security of person; and protection against bodily harm, are guaranteed to everyone in Zambia without distinction (Articles 11 and 23 of the Constitution).

### **Other legislation**

59. The Penal Code prohibits commission of bodily harm in the following provisions:

(a) Section 229: Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for seven years;

(b) Section 230: any person who unlawfully, and with intent to do any harm to another, puts any explosive substance in any place whatever, is guilty of a felony and is liable to imprisonment for fourteen years;

(c) Section 231: Any person who unlawfully, and with intent to injure or annoy another, causes any poison or other noxious thing to be administered to, or taken by, any person, and thereby endangers his life, or does him some grievous harm, is guilty of a felony and is liable to imprisonment for fourteen years;

(d) Section 247: Any person who unlawfully assaults another is guilty of a misdemeanour and, if the assault is not committed in circumstances for which a greater punishment is provided in this Code, is liable to imprisonment for one year;

(e) Section 248: any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable for imprisonment for five years.

### **B. Judicial measures**

60. The right to liberty of person is guaranteed, as stated, in Article 13 (1) of the Constitution. Article 28 provides access to a judicial remedy in the event of a violation of this right.

61. The Criminal Procedure Code (CPC), Chapter 88 of the Laws of Zambia, expressly provides for a judicial remedy when an offence stipulated under the Penal Code has been committed. Section 4 of the CPC provides that any offence under the Penal Code may be tried by the High Court.

62. In the case of *John Banda v. The People, HPA/6/1998*, the Appellant pleaded guilty to and was convicted of malicious damage to property. In addition to one month simple imprisonment suspended for twelve months, the Appellant was ordered to receive ten strokes of the cane in accordance with Section 24 (c) and 27 of the Penal Code, which provided for corporal punishment. In holding Sections 24 (c) and 27 of the Penal Code as unconstitutional, Justice E. E. Chulu stated:

Upon consideration of the law before me, I hasten to point out that the Republican Constitution, which is a written Constitution of Zambia, is the Supreme law of the land, and consequently, all other laws derive their force of law from it, and are therefore subordinated to it. This being the legal position, it cannot therefore be doubted that unless the Constitution is specifically amended, any provisions of an Act of Parliament that contravenes provisions of the Constitution is null and void.

Article 15 of the Constitution is couched in very clear and unambiguous language, that no person shall be subjected to torture or to inhuman or degrading punishment or other like treatment. On the contrary, it cannot be doubted that the provisions of Section 14 (c) and 27 of the Penal Code which permit the infliction or imposition of corporal punishment of offenders are in total contravention, and conflict with the above provisions of Article 15 of the Constitution.

63. Judge Chulu further stated that due to the unconstitutionality of Sections 24 (c) and 27 of the Penal Code, the provisions should be severed from the Penal Code.

64. In recent amendments, the State party has outlawed corporal punishment following the enactment of the Criminal Procedure Code (Amendment) Act No. 9 of 2003, the Penal Code (Amendment) Act No. 10 of 2003, and the Education Act No. 11 of 2003. All three Acts now outlaw corporal punishment.

### **C. Administrative measures**

#### **The Human Rights Commission**

65. The Human Rights Commission has the mandate to investigate all human rights violations, including violations of the right to security of person and protection from bodily harm such as torture. Through its complaints mechanism, the Commission has received and considered some 515 complaints involving breach of the right to security of person and freedom from bodily harm such as torture. At least 13 cases of torture were proved and were referred to the Attorney General for action.

#### **The Police Public Complaints Authority**

66. In its Initial State Report to the Committee against Torture, the State party reported that following numerous complaints by members of the public against the conduct of some police officers, the State amended the Zambia Police Act Chapter 107 of the Laws of Zambia to provide for the establishment of a Police Public Complaints Authority (PPCA). At the time the State party reported to the Committee against Torture, the Authority was yet operational. The State party now reports that the Police Public Complaints Authority has since been constituted and is fully operational. The Authority was officially launched on 7 May 2003. Further details on the PPCA are given under Article 6 of this report.

### **Political rights**

67. The Committee is invited to note that State party's Constitution in Part III provides for the exercise and enjoyment of human rights and fundamental freedoms.

### **3. The right to vote and to stand for elections**

#### **A. Legislative measures**

68. Article 75 provides:

(1) Every citizen of Zambia who has attained the age of eighteen years shall, unless he is disqualified by Parliament from registration as a voter for the purposes of elections to the National Assembly, be entitled to be registered as such a voter under a law in that behalf, and no other person may be so registered.

(2) Every person who is registered in any constituency as a voter for the purpose of elections to the National Assembly shall, unless he is disqualified by Parliament from voting in such elections on grounds of his having been convicted of an offence in connection with elections or, on the grounds of his having been reported guilty of such an offence by the court trying an election petition or, on the grounds of his being in lawful custody at the date of the election, be entitled so to vote in that constituency in accordance with the provisions made by or under an Act of Parliament, and no other person may so vote.

69. In Addition Article 113 of the Constitution makes it a duty for every citizen to vote in national and local government elections.

70. As earlier stated, Article 34 (1) and (3) provide for the election and qualification for the Office of the President.

71. Article 64 (2) stipulates the qualifications required to stand for election to the National Assembly. Under that provision, a person shall be qualified to be elected as a member of the National Assembly if that person:

- (a) Is a citizen of Zambia;
- (b) Has attained the age of 21 years; and
- (c) Is literate and conversant with the official language of Zambia.

72. At local government level, the Constitution of Zambia provides in Article 109 (2) that the system of local government shall be based on democratically elected councils on the basis of universal adult suffrage.

#### **B. Judicial measures**

73. The State party wishes to report that the remedy described in Article 28 (1) of the Constitution would apply in resolving disputes in terms of political rights.

### **C. Administrative measures**

#### **Electoral Commission of Zambia**

74. The State party established an autonomous Electoral Commission under Article 76 of the Constitution. Article 76 provides that the functions of the Commission shall be to supervise the registration of voters, to conduct Presidential and Parliamentary elections and to review the boundaries of the constituencies into which Zambia is divided for the purposes of elections to the National Assembly.

75. In addition, the Electoral Commission has established conflict resolution committees at national and district levels. These committees comprise of non-governmental organisations, political parties and other stakeholders, who are mandated to resolve disputes that arise during the election period. It is worth noting that the committee members have been trained by the Electoral Commission on conflict resolution mechanisms.

#### **Electoral Reform Technical Committee**

76. The State party wishes to report that it constituted an Electoral Reform Technical Committee to examine the country's electoral system. The Committee was mandated, inter alia, to analyse and make recommendations regarding the legal framework of the electoral process in the country; examine legislation that impacts on the electoral process such as the Public Order Act and media laws in relation to elections; and examine the Electoral Code of Conduct in order to recommend necessary modifications that will establish suitable and efficacious electoral rules.

77. At the time of reporting the Committee had conducted a number of public sittings to receive submissions from the general public. The Committee's report is due in July 2004.

#### **Other measures**

78. The Committee may wish to note that there are various non-governmental organisations operating within the State party that advocate for human rights, including political rights.

### **Other civil rights (article 5 (d) (i) to (ix))**

#### **A. Legislative measures**

79. Civil rights in Zambia are guaranteed under Part III of the Constitution, which is the National Bill of Rights. Of the rights and freedoms enumerated in Article 5 (d) of the Convention, the following are expressly guaranteed under the Constitution:

- (a) Right to freedom of movement, residence in any part of Zambia and to leave the country and to return [Article 22 (1)];
- (b) Right to property [Article 16 (1)];
- (c) Right to freedom of thought, conscience and religion [Article 19 (1)];

- (d) Right to freedom of opinion and expression [Article 20 (1)];
- (e) Right to freedom of peaceful assembly and association [Article 21 (1)].

80. All the rights guaranteed under the Constitution are subject to the necessary limitations, except for protection from inhuman treatment in Article 15 and the prohibition of slavery in Article 14 (1).

#### **4. Freedom of movement**

81. The Constitution of Zambia prohibits deprivation of a person's freedom of movement. Under Article 22 (1), all persons have the right to move freely throughout Zambia, to reside in any part of Zambia and to leave and to return to Zambia.

82. The enjoyment of freedom of movement is subject to a number of restrictions. These include restrictions on a person's freedom of movement that relate to his lawful detention, as well as restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or public health or the imposition of restrictions on the acquisition or use by any person of land or other property in Zambia. The restrictions must be reasonably justifiable in a democratic society.

83. Article 22 (3) (b) and (c) of the Constitution provide for restrictions on the freedom of movement of any person who is not a citizen of Zambia or is a public officer. The other exception to the right to freedom of movement has to do with the removal of a person from Zambia to be fined outside Zambia for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

#### **5. The right to property**

84. The right to property is provided for under Article 16 (1) of the Constitution of Zambia. Under Article 16, property of any description shall not be compulsorily taken possession of and interest in or right over property of any description shall not be compulsorily acquired unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired.

85. The right to property is, however, subject to numerous exceptions. These are stipulated under Article 16 (2) as follows:

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that such law provides for the taking possession or acquisition or any property or interest therein or right thereover:

- (a) In satisfaction of any tax, rate or due;
- (b) By way of penalty for breach of any law, whether under civil process or after conviction of an offence;

- (c) In execution of judgements or orders of courts;
- (d) Upon the attempted removal of the property in question out of or into Zambia in contravention of any law;
- (e) As an incident of contract including a lease, tenancy, mortgage, charge, pledge or bill of sale or of a title deed to land;
- (f) For the purpose of its administration, care or custody on behalf of and for the benefit of the person entitled to the beneficial interest therein;
- (g) By way of the vesting of enemy property or for the purpose of the administration of such property;
- (h) For the purpose of:
  - (i) The administration of the property of a deceased person, a person of unsound mind or a person who has not attained the age of eighteen years, for the benefit of the persons entitled to the beneficial interest therein;
  - (ii) The administration of the property of a person adjudged bankrupt or a body corporate in liquidation, for the benefit of the creditors of such bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;
  - (iii) The administration of the property of a person who has entered into a deed of arrangement for the benefit of his creditors; or
  - (iv) Vesting any property subject to a trust in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust;
- (i) In consequence of any law relating to the limitation of actions;
- (j) In terms of any law relating to abandoned, unoccupied unutilised of undeveloped land, as defined in such law;
- (k) In terms of any law relating to absent or non-resident owners, as defined in such law, of any property;
- (l) In terms of any law relating to trusts or settlements;
- (m) By reason of a dangerous state or prejudicial to the health or safety of human beings, animals or plants;
- (n) As a condition in connection with the granting of permission for the utilization of that or other property in any particular manner;

- (o) For the purpose of or in connection with the prospecting for, or exploitation of, minerals belonging to the Republic on terms which provide for the respective interests of the persons affected;
- (p) In pursuance of a provision for the marketing of property of that description in the common interests of the various persons otherwise entitled to dispose of that property;
- (q) By way of the taking of a sample for the purposes of any law;
- (r) By way of the acquisition of the shares, or a class of shares, in a body corporate on terms agreed to by the holders of not less than nine-tenths in value of those shares or that class of shares;
- (s) Where the property consists of an animal, upon its being found trespassing or straying;
- (t) For so long as may be necessary for the purpose of any examination, investigation, trial or inquiry or, in the case of land, the carry out thereon;
- (u) Of work for the purpose of the conservation of natural resources of any description; or
- (v) Of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and law excuse refused or failed, to carry out;
- (w) Where the property consists of any licence or permit;
- (x) Where the property consists of wild animals existing in their natural habitat or the carcasses of wild animals;
- (y) Where the property, is held by a body corporate established by law for public purposes and in which no moneys have been invested other than moneys provided by Parliament;
- (z) Where the property is any mineral, mineral oil or natural gases or any rights accruing by virtue of any title or licence for the purpose of searching for or mining any mineral, mineral oil or natural gases:
  - (i) Upon failure to comply with any provision of such law relating to the title or licence or to the exercise of the rights accruing or to the development or exploitation or any mineral, mineral oil and natural gases; or
  - (ii) Terms of any law vesting any such property or rights in the President;

(aa) For the purpose of the administration or disposition of such property or interest or right by the President in implementation of a comprehensive land policy or a policy designed to ensure that the statute law, the Common Law and the doctrines of equity relating to or affecting the interest in or rights over land, or any other interests or rights enjoyed by Chiefs and persons claiming through or under them, shall apply with substantial uniformity throughout Zambia;

(bb) In terms of any law providing for the conversion of titles to land from freehold to leasehold and the imposition of any restriction on subdivision, assignment or sub-letting;

(cc) In terms of any law relating to:

(i) The forfeiture or confiscation of the property of a person who has left Zambia for the purpose or apparent purpose, of defeating the ends of justice;

(ii) Imposition of a fine on, and the forfeiture or confiscation of the property of, a person who admits a contravention of any law relating to the imposition and collection of any duty or tax or to the prohibition or control of dealing or transactions in gold, currencies or securities.

86. The predominant religion in Zambia is Christianity, with the majority of people associating themselves with the two major groups- Catholics and Protestants. The rest of the population comprises Muslims, Hindus, Buddhists, Jews and Atheists (see Table 8). There is freedom of religious practice in the country with a general pattern of association exhibited in all nine provinces, except for varying proportions (Table 9).

## **6. The right to freedom of thought, conscience and religion**

87. The right to freedom of thought, conscience and religion is protected under Article 19(1) of the Constitution. A person has the right not to be hindered in the enjoyment of his freedom of conscience which includes freedom of thought and religion, freedom to change his religion or belief and freedom either alone or in community with others and both in public and in private to manifest and propagate his religion or belief in worship, teaching, practice and observance.

88. In Zambia the dominant religion is Christianity. Although Zambia was declared a Christian nation the State party tolerates the practice of other major religions such as Islam, Hinduism, Buddhism and the Bahai Faith. These religions exercise freedom of worship and throughout the country they have established their own places of worship. All these religions exist side by side in harmony with each other. The State party has never experienced religious intolerance.

89. Apart from establishing places of worship, the different religious groups existing within the State party are also free to establish educational institutions such as schools and colleges. Article 19 (3) of the Constitution provides that a religious community or denomination shall not

be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination or from establishing and maintaining institutions to provide social services for such persons.

90. In Zambia people are free to attend educational institutions of their choice, including those not belonging to their faith. The Constitution, however, provides in Article 19(2) that a person attending any place of education shall not be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

91. In judicial or other such proceedings, a person cannot be compelled to take an oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion.

92. The right to protection of freedom of conscience, thought and religion is subject to some restrictions. Nothing in or done under any law will be regarded as inconsistent with Article 19 if it can be shown that the law in question makes provision which is reasonably required:

(a) In the interest of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the unsolicited intervention of members of any other religion.

93. The Penal Code in Chapter XIV creates “Offences Relating to Religion” as follows:

Section 128: Any person who destroys, damages or defiles any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, is guilty of a misdemeanour.

Section 129: Any person who voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremony, is guilty of a misdemeanour.

Section 130: Every person who, with the intention of wounding the feelings of any person or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the purpose of funeral ceremonies, is guilty of a misdemeanour.

Section 131: Any person who, with the deliberate intention of wounding the religious feelings of any person, utters any word, or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, is guilty of a misdemeanour and is liable to imprisonment for one year.

## **7. Right to freedom of expression**

94. The right to freedom of expression is guaranteed in Article 20 (1) of the Constitution. Freedom of expression includes:

- (a) Freedom to hold opinions without interference;
- (b) Freedom to receive ideas and information without interference;
- (c) Freedom to impart and communicate ideas and information without interference whether the communication be to the public generally or to any person or class of persons; and,
- (d) Freedom from interference with the person's correspondence.

95. The exercise of freedom of expression is subject to the usual restrictions based on the interest of defence, public safety, public order, public morality or public health. Freedom of expression is also limited by:

- (a) The requirement to protect the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings;
- (b) Preventing the disclosure of information received in confidence;
- (c) Maintaining the authority and independence of the courts; and,
- (d) Regulating educational institutions in the interest of persons receiving instructions therein or the registration of, or regulating the technical administration or the technical operation of, newspapers and other publications, telephony, telegraphy, posts, wireless broadcasting or television.

96. Further the right to freedom of expression, which in the view of the State party includes freedom of the press, is guaranteed in Article 20(2) of the Constitution which provides that no law shall make any provision that derogates from freedom of the press.

## **8. Freedom of assembly and association**

97. Article 21 (1) of the Constitution guarantees freedom of assembly and association. All persons have the right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of their interests. In this regard, people that are resident within the State party, citizens and non-citizens, freely associate in different forms. Other than political parties and trade unions, forms of assembly and associations range from religious gatherings of different faiths, social clubs and associations, forums advocating particular issues of public interests, cooperatives to student unions.

98. The exercise of freedom of assembly and association in the State party is subject to the usual limitations of interest of defence, public safety, public order, public morality or public health. It is also limited by the requirement to protect the rights and freedoms of other persons.

99. Apart from the Constitution, other pieces of legislation regulate the exercise of the right to freedom of assembly and association. As earlier stated, the Societies Act regulates the registration of political parties, non-governmental organisations, clubs and other forms of associations.

100. In addition Section 74 of the Penal Code provides that where three or more persons assemble with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly. The provision further states that it is immaterial that the original assembling was lawful if, being assembled, they conduct themselves with a common purpose in such a manner as stated above.

101. The Public Order Act, as amended by the Public Order (Amendment) Act No. 1 of 1996, regulates the conduct of assemblies, rallies and processions. Under Section 5 (4) and (5):

- (4) Any person intending to assemble or to convene a public meeting, procession or demonstration shall notify the police in writing of such intent fourteen days before the meeting.
- (5) The notice required under subsection (4) shall be in the prescribed form and shall contain an undertaking by the persons intending to assemble or convene a public meeting, procession or demonstration that order and peace shall be maintained through the observance of the following conditions:
  - (a) That they have been informed by the police that the site for the meeting has not already been granted to another convener for the holding of a public meeting, procession or demonstration;
  - (b) That the route and the width of the route is suitable for the holding of processions in accordance with the width and route specifications for such purposes as specified by the Minister by statutory order;
  - (c) Marshals of a number sufficient to monitor the public meeting, procession or demonstration are available and shall co-operate with the police to ensure peace and order;
  - (d) That the commencement, duration and destination of the public meeting, procession or demonstration shall be notified to the police;
  - (e) That the public meeting, procession or demonstration shall not create a risk to security or public safety, a breach of the peace or disaffection amongst the inhabitants of that neighbourhood; and
  - (f) That the conveners of the public meeting, procession or demonstration have been assured by the police that at the time the proposed activity shall be held it will be possible for it to be adequately policed.

102. The Act requires the police to inform those intending to have a public meeting or procession as to whether it is possible for the intended activity to go on. Section 5 (6) reads:

- (6) Where it is not possible for the Police to adequately police any particular public meeting, procession or demonstration, the regulating officer of the area shall, at least five days before the date of the public meeting, procession or demonstration, inform the conveners of the public meeting, procession or demonstration writing the reasons for the inability of the police to police the public meeting, procession or demonstration and shall propose an alternative date and time for the holding of such public meeting, procession or demonstration.
- (7) Where the police notify the conveners of a public meeting, procession or demonstration that it is not possible for the police to adequately police any proposed public meeting, procession or demonstration, such public meeting, procession or demonstration shall not be held.

103. The State party wishes to report that the conveners of an assembly can, under Section 5 (8), appeal to the Minister responsible if they are unsatisfied with the reason given by the regulating officer. There is, under Section 5 (9), a further appeal to the High Court within thirty days, if the conveners are aggrieved by the Minister's decision.

104. In *Christine Mulundika and 7 Others v. The People*, the applicant and seven others, including the former Republican President, Dr. Kenneth Kaunda, were charged in a Magistrate's court with unlawful Assembly contrary to section 5 of the Public Order Act. Section 5 required anyone who wished to hold a public meeting, procession or demonstration to apply to the police for a permit. The police were entitled to reject the application, or if they decided to allow the said event, they would impose conditions. Among these conditions persons needed to be vetted before addressing a public meeting and the matters to be discussed equally needed to be identified. Section 7 made it an offence to contravene Section 5, which was punishable by imprisonment of up to six months or a fine not exceeding one thousand five hundred penalty units, or to both.

105. The applicants argued that Sections 5 and 7 of the Public Order Act were unconstitutional as they infringed the guarantees of freedom of expression and assembly in the Constitution. The Magistrate's Court stayed the criminal proceedings until the constitutional issue was dealt with by the High Court. The High Court declined to declare the two sections unconstitutional.

106. The Supreme Court struck down Sections 5 and 7 of the Public Order Act for being unconstitutional as they infringed the freedoms of expression and assembly guaranteed by Articles 20 and 21 of the Constitution, respectively.

107. The Court held that Section 5 (4) was not reasonably justifiable in a democratic society.

## **9. The right to nationality**

108. Article 4 of the Constitution provides:

- (1) Every person who immediately before the commencement of this Constitution was a citizen of Zambia shall continue to be a citizen of Zambia after the commencement of this Constitution.

- (2) A person who was entitled to citizenship of Zambia before the commencement of this Constitution subject to the performance of any conditions following the happening of a future event, shall become a citizen upon the performance of such conditions.

109. Article 5 provides:

A person born in or outside Zambia after the commencement of this Constitution shall become a citizen of Zambia at the date of his birth if on that date at least one of his parents is a citizen of Zambia.

110. Article 6 provides:

(1) Any person who:

- (a) Has attained the age of twenty-one years; or
- (b) Has been ordinarily resident in Zambia for a continuous period of not less than ten years immediately preceding that person's application for registration;

shall be entitled to apply to the Citizenship Board, in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia.

111. Article 9 provides:

(1) A person shall cease to be a citizen of Zambia if that person:

- (a) Acquires the citizenship of a country other than Zambia by a voluntary act, other than marriage; or
- (b) Does any act indicating that person's intention to adopt or make use of any other citizenship.

(2) A person who:

- (a) Becomes a citizen of Zambia by registration; and
- (b) Immediately after becoming a citizen of Zambia, is also a citizen of some other country;

shall, subject to clause (4), cease to be a citizen of Zambia at the expiration of three months after such person becomes a citizen of Zambia unless such person has renounced the citizenship of that other country, taken the oath of allegiance and made and registered such declaration of their intention concerning residence as may be prescribed by or under an Act of Parliament.

112. The Committee may wish to take note of the Citizenship Act Chapter 124 of the Laws of Zambia, which regulates the registration for application of citizenship. Some of the procedural requirements are that the person must be ordinarily resident in Zambia for a continuous period of ten years, should be of good character and must have adequate knowledge of the English language, and must not poises other citizenship.

#### **10. The right to marriage and choice of spouse**

113. The Constitution of Zambia does not provide for an express right to marry or choice of spouse. However, in Zambia, people are generally free to marry a person of their choice. Inter-tribal and inter-racial marriages are a common feature.

114. Marriages in Zambia are either regulated by statutory and customary law. The statutory law of marriage is contained in the Marriage Act, Chapter 50 of the Laws of Zambia, where two consenting individuals, male and female, above the age of 16 years, can contract a marriage.

115. Section 34 of the Marriage Act prohibits a person who is married under the Act to marry under African customary law, if that marriage is still subsisting (bigamy).

116. Under customary law, polygamy is allowed and marriages under customary law equally have to follow norms, traditions, customs and practices that exist for the institution of customary marriages.

#### **11. The right to inherit**

117. The Wills and Administration of Testate Estate Act, Chapter 60 of the Laws of Zambia, provides for the administration of estates of persons, who made a valid will before dying. The Act also provides for adequate financial and other provisions to be made to dependants in a will. The Act permits the Court to vary provisions of a will if it determines that the estate is unreasonably distributed and would result in detriment to children of the deceased.

118. The Intestate Succession Act, Chapter 59 of the Laws of Zambia, provides a uniform intestate succession law that is applicable throughout the country, to cover a situation where a person dies without having made a will. It makes adequate financial and other provisions for the surviving spouse, children, dependants and other relatives of an intestate. The essence of this Act is to protect children against property-grabbing and, therefore, preserve sufficient resources for their survival.

119. The courts in Zambia, when deciding on cases relating to a person's right to inherit rely on the provisions of the Intestate Succession Act or the Wills and Administration of Testate Estate Act depending on the circumstances of the case. In the case of *Re Wills and Administration of Testate Estates Act Between Isaac Tantameni Chali (Executor of the Will of the Late Mwalla Mwalla) v. Liseli Mwalla (SCZ Judgement No. 6 of 1997)*, the executor appealed against an order of the High Court varying the terms of the deceased's will. The testator had made no provision for the respondent and her brother. The trial judge relied on the provisions of Section 20 (1) of the Wills and Administration of Testate Estates Act which states that if, upon application made by or on behalf of a dependant of the testator, the court was of the opinion that the testator had not made reasonable provision, whether during his lifetime or by his

will, for the maintenance of the dependant, and that hardship would thereby be caused, the court may, notwithstanding the provisions of the will order that such reasonable provision as the court thinks fit shall be made out of the testator's estate for the maintenance of that dependant. The Supreme Court held that the respondent was in law not covered by the definitions of 'dependant' or 'child'. Section 3 defines dependant to mean a wife, husband, child or parent, and although the term 'child' is not defined in the Act, the age of a minor is given as a person who has not attained the age of 18 years.

### **Administrative measures on the implementation of article 5 (a), (b), (c) and (d)**

#### **(i) The Human Rights Commission**

120. The State party wishes to report that the Human Rights Commission, as at June 2004, recorded 6,205 complaints. The Commission's National Plan of Action (1999-2009), which was adopted following two conferences hosted by the Commission with the participation of a variety of key stakeholders ranging from government, civil society, academia, faith based organisations to traditional rulers, prioritised, among others, the promotion and protection of civil and political rights. These are:

- Enhancement of knowledge and awareness of civil and political rights by judicial personnel, law enforcement officers, politicians, non-governmental organisations and others.
- Promote a culture of inclusiveness and dialogue in the political sphere and seeking consensus on all matters of national importance.

#### **(ii) Comprehensive review of Constitution**

121. As earlier stated, in August 2003, the State party embarked on the process of reviewing the Constitution through a Constitutional Review Commission (CRC). The CRC has, inter alia, terms of reference that deal with the Bill of Rights, in particular recommending appropriate ways and means of entrenching and protecting human rights.

#### **(iii) Human rights awareness**

122. The State party refers the Committee to its report on Article 7.

### **Economic, social and cultural rights**

123. The State party wishes to inform the Committee that it recently submitted its initial State Report, in line with the new reporting guidelines, under the International Covenant on Economic, Social and Cultural Rights. The report is very detailed, with recent and accurate data on the economic, social and cultural plight of the country. The State party is aware of the need to cross-refer the Committee to reports that it has already prepared and submitted within the system of the United Nations. Because of the requirement for streamlined, targeted analysed data on economic, social and cultural rights for the Committee's consideration, the Committee is referred to the report, which is hereto attached. In addition the State party takes the opportunity to avail to the Committee its report on the Convention on the Rights of the Child for a deeper understanding of Zambia's economic, social and cultural rights vis-à-vis children.

## **12. Right of access to public places and services**

124. The State party wishes to report that there is no express right of access to public places and services. However, as stated earlier, Articles 11 and 23 of the Constitution of Zambia, which prohibit the practice of discrimination on any of the prescribed grounds, including race, place of origin, political opinion, colour, creed, sex or marital status, are demonstrative of this right.

125. The right of access to public places and services may also be exercised indirectly through the right to freedom of movement as stipulated in Article 22 (1) of the Constitution. Freedom of movement under this provision means, among other things, the right to move freely throughout Zambia but subject to necessary limitations.

### **Article 6**

126. The State party wishes to state that it has established a number of tribunals and institutions that ensure the effective protection and remedies of individuals who suffer or are likely to suffer acts of racial discrimination. In this regard, the Committee may wish to note the existence of a number of tribunals and institutions that the State party that deal with issues of human rights depending on their mandates and competencies, including racial discrimination.

#### **A. Legislative measures**

127. The State party wishes to reports that the Constitution and other pieces of legislation establish a number of institutions that are relevant to combating racial discrimination.

#### **The Constitution**

128. The Constitution of the Republic of Zambia establishes the Judicature in Part VI. Other institutions established by the Constitution are:

- (a) Zambia Police Service (Article 103);
- (b) Human Rights Commission (Part XII); and
- (c) Office of the Commission for Investigations (Article 90).

#### **Other legislation**

129. The Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia, creates the Industrial Relations Court under Part XI. The Industrial Relations Court, through Section 108 of the Act, deals, inter alia, cases involving dismissal, penalising or disadvantaging of any employee by an employer on account of race, tribal extraction or social status. Section 108 (3) empowers the court to grant relief in form of damages, compensation or an order for reinstatement to any person who has been discriminated against. However, in cases that have come before the Court, complainants have failed to prove racial discrimination.

130. Section 20 of the Lands Act, Chapter 184 of the Laws of Zambia, creates a Lands Tribunal, whose mandate is to determine disputes relating to land under the Lands Act. Further detail on the Lands Tribunal is provided below.

### **B. Judicial measures**

131. Article 28 of the Constitution, as stated earlier, vests jurisdiction in the High Court to hear matters relating to the violation of, inter alia, Article 23.

132. In the recent case of *Roy Clarke v. The Attorney-General No. 200/HP003*, the brief facts were that on 5 January 2004 the Minister of Home Affairs in his address to the Movement for Multi-Party Democracy (MMD) cadres, indicated that one Roy Clarke would not remain in the country for more than 24 hours. This followed an article entitled “*Mfuwe*” which Roy Clarke had submitted to and published by the Post News Paper on 1 January 2004. This article was followed by a publication in the Zambia Daily Mail and the Post Newspaper of a statement by the Home Affairs Permanent Secretary that he had recommended the deportation of Roy Clarke to the Minister of Home Affairs. Mr. Roy Clarke is a British citizen who has lived in Zambia for more than forty years as an established resident. He is married to a Zambian woman with whom he has children and grandchildren. Mr. Clarke applied to the High Court for Judicial Review.

133. The Court quashed the deportation order for being unconstitutional, unprocedural and unreasonable and made the following observations:

In case of Mr. Clarke, Mr. Mmembe the Managing Editor of the Post Newspapers adopted the satire article and published it because it is not unlawful such (sic) publication did not trigger coercive powers. Mr. Clarke’s activities are lawful and if he were a Zambian he would have not been punished. Our constitution does not create one set of offences for aliens, and other offences for Zambians. Equality is the symbol of liberty. It would not be powerfully appealing to this court for the government to deport aliens for reasons forbidden by the Constitution i.e.; constriction of freedom of expression and discriminating the alien because of his origin and race.

134. The Committee may wish to note that the State party has since appealed the judgment.

135. The State party wishes to report that, whereas the subordinate courts have no jurisdiction over constitutional matters, they have jurisdiction over matters brought under sections 46 and 70 of the Penal Code. These provisions are referred to above.

136. The Supreme Court has jurisdiction to hear matters of racial discrimination that may come to it on appeal from the High Court, the Industrial Relations Court and the Lands Tribunal.

### **C. Administrative measures**

#### **The Human Rights Commission**

137. The functions and powers of the Human Rights Commission are outlined in Sections 9 and 10 of the Human Rights Commission Act No. 39 of 1996.

138. The functions of the Commission as provided in Section 9 are:

- (a) To investigate human rights violations;
- (b) To investigate any mal-administration of justice;
- (c) To propose effective measures to prevent human rights abuses;
- (d) To visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the persons held in such places and make recommendations to redress existing problems;
- (e) To establish a continuing programme of research, education, information and rehabilitation of victims of human rights abuse in order to enhance the respect for and protection of human rights;
- (f) To do all such things as are incidental or conducive to the attainment of the functions of the Commission.

139. The powers of the Commission under Section 10 are to investigate any human rights abuses either on its own volition or on receipt of a complaint or allegation by:

- (i) An aggrieved person acting in such person's own interest;
- (ii) An association acting in the interest of its members;
- (iii) A person acting on behalf of an aggrieved person; or,
- (iv) A person acting on behalf of and in the interest of a group or class of persons.

140. Through this mandate, the Commission has the power to receive and investigate complaints involving abuse of any human rights, including racial discrimination. For example in 1998/99, the *Likumbi Lya Mize Cultural Association* of the Luvale people alleged that the Luvale and associated tribes were being discriminated against in the use of the Zambezi Township for the purposes of promoting their culture. The Commission investigated and intervened in this tribal conflict. This intervention helped to scale down the tension between the Lunda and Luvale tribes.

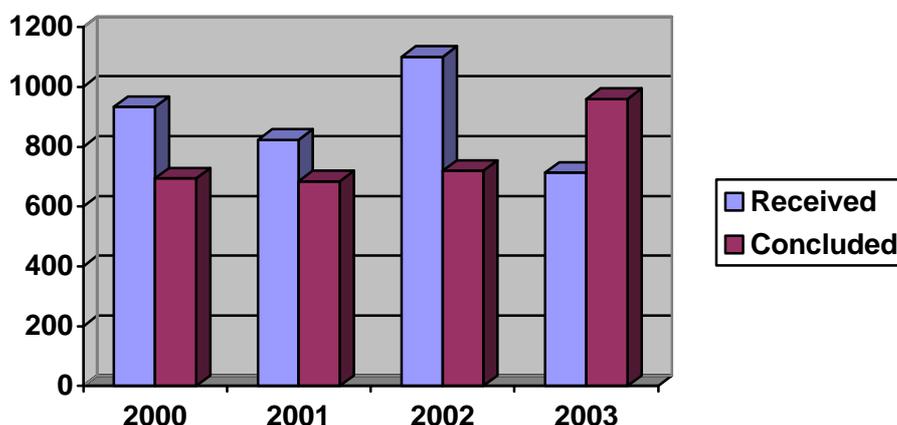
141. Although the Commission's mandate is quite wide, the receipt and investigation of individual complaints of human rights violations is by far the main day-to-day preoccupation. As at June 2004, the Commission had received 6,205 complaints since inception. In 2002 alone, the Commission recorded 1,100 complaints, compared to 815 received in the previous year. The Commission attributed the increase in numbers of complaints to people's growing awareness of their human rights following a series of radio programmes on human rights in English and the seven major languages over a 13 week period early in 2002.

142. Table 1 below indicates cases received in the years 1998 to 2002.

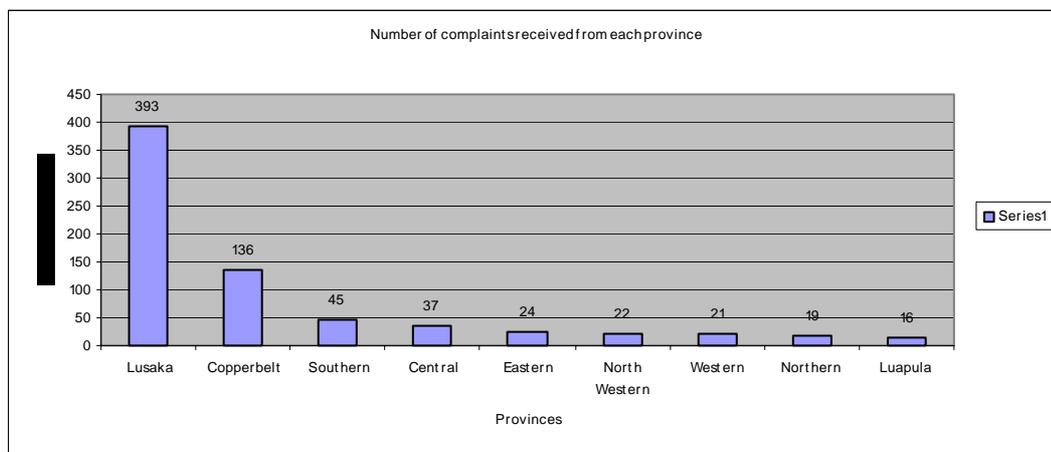
**Table 1**  
**Complaints received in the period 1998-2002**

Year	Received complaints	Pending complaints	Concluded complaints
1998	972	627	345
1999	986	674	312
2000	933	239	694
2001	823	139	684
2002	1 100	380	720
Total	4 814	2 059	2 755

143. Figure 1 below shows a graphical representation of complaints received and complaints concluded over the years 2000-2003.



144. Figure 2 below indicates the complaints recorded by the Commission from each of the nine provinces during the year 2003.



145. The high numbers of complaints from the major urban provinces of Lusaka and Copperbelt are due to easier accessibility by complainants from these areas. In particular, the Commission is only beginning to decentralise and has been hitherto physically present in the Capital Lusaka.

### **Factors and difficulties**

146. The Human Rights Commission is constrained by a number of problems that impact on its operations. Most of the constraints emanate from the poor financial situation the Commission finds itself in. The Human Rights Commission, like other public or government funded institutions, is not adequately funded due to the general poor economic situation. The lack of a strong financial and material base has resulted in:

(a) Inadequate staffing levels. The Commission is not able to attract qualified personnel such as lawyers, investigators and researchers. The lack of adequate and qualified staff impacts negatively on the Commission's programmes.

(b) Inadequate transport. The Commission is not able to purchase the required fleet of vehicles needed for its operations, especially investigations, research and sensitisation. The Commission finds it difficult to attend to human rights problems that arise in far off places like rural areas.

(c) Centralisation. The Commission has been hitherto only situated in Lusaka. However, through assistance from the Norwegian Embassy in Lusaka, the decentralisation programme began in 2002. One regional office is now operational in Ndola on the Copperbelt Province. Two other offices will soon open in Mongu in Western Province and Kasama, Northern Province.

(d) Powers of enforcement. The Commission, by law, can only make recommendations to appropriate authorities following its findings in an investigation. This fact results in slow response to the Commission's requests for action. Although the Human Rights Commission Act makes it an offence for failure to act on the Commission's recommendations within 30 days, in practice this provision has been difficult to enforce. However, the Commission and the Office of the Director of Public Prosecutions have been involved in discussions to see the best way forward on the problem.

### **Police Public Complaints Authority**

147. The State party reported earlier that it established the Police Public Complaints Authority following amendments to the Zambia Police Act, Chapter 107 of the Laws of Zambia. The Authority is tasked to perform the following functions:

(a) To receive all complaints against police actions;

(b) To investigate all complaints against police actions which result in serious injury or death of a person;

- (c) To submit its findings, recommendations and directions to:
  - (i) The Director of Public Prosecutions for consideration of possible criminal prosecution;
  - (ii) The Inspector General of Police for disciplinary action or other administrative action; or
  - (iii) The Anti-Corruption Commission or any other relevant body or authority.

148. The Police Public Complaints Authority has the power to investigate all complaints referred to it by:

- (a) An aggrieved person directly affected by police action;
- (b) An association acting in the interests of its members; and
- (c) A person acting on behalf of an aggrieved person, body or organization.

149. According to Section 57C of the Zambia Police (Amendment) Act cited above, the Authority consists of five part-time members appointed by the Minister responsible. The Chairperson is a person who has held or is qualified to hold the office of judge of the High Court. The members hold office for a period of three years and may be reappointed for a further term.

150. Although the Police Public Complaints Authority is relatively new, it had by June 2004 recorded 510 complaints from the public. The State party reports that none of the complaints so far dealt with have raised issues related to racial discrimination in relation to the operations of the police.

### **Factors and difficulties**

151. The State party wishes to report that although the Authority is fully operational, it has a number of constraints affecting its operations. These include lack of adequate office accommodation; non-finalisation of regulations to guide the Authority; and, insufficient funding to carry out activities such as publicising its existence, especially in rural areas.

### **The Commission for Investigations**

152. The State party established the Commission for Investigations in 1973 by Article 117(3) of the then new Second Republic Constitution of Zambia. Currently the Commission derives its legal status from Article 90 of the Constitution and the Commission for Investigations Act No. 20 of 1991.

153. The State party in response to the comments of the Committee in the last report wishes to report that the functions of the Commission for Investigation are to receive and investigate complaints from the public against acts of injustice or mal-administration perpetrated by senior Government officials, heads of parastatal institutions and local authorities. It recommends corrective and appropriate remedies to the respondents and reports the same to the President and

Parliament. The Commission ensures that there is fairness and it promotes social justice in the administration of public institutions in order to facilitate the efficient and effective delivery of services to the people. Its ultimate goal is to ensure compliance to laid down administrative procedures, practices and ethics and to initiate corrective action in public institutions in order to enhance effective administration. This is done by suggesting appropriate amendments to rules, regulations or statutes under which a complaint was made.

154. The Commission for Investigations does not perform any judicial functions but rather is an investigative body that submits findings of its investigations to the President.

155. The State party, further, wishes to state that the enforcement mechanisms of the Commission's reports is laid down in Section 21(i) of the Commission for Investigations Act which, provides that:

21 (i) The President may, on receipt of the report of the commission or any investigation conducted by it, or during the continuance of any such investigation, take such decision in respect of the matter investigated or being investigated into by the commission as he thinks fit.

156. The Investigator General, who is the Chairperson of the Commission for Investigations, is also known as the Ombudsman of Zambia. The Investigator-General is a person who qualifies to hold office of High Court Judge. He/she does not perform any such judicial function. The Investigator General has powers to receive complaints from the members of the public and investigate these complaints provided that they fall within his or her competence. In the process of investigating, the Ombudsman may have general access to any public documents relevant to investigations. The Ombudsman may also commence investigations on his or her own initiative.

157. The State party wishes to report that the type of cases that the Commission for Investigations deals with, among others, relate to appointments, transfers, promotions of government staff and awarding of contracts. It is the view of the State party that the complaints of racial discrimination may take the form of nepotism in appointments and promotions favouring tribesmen.

158. The Commission for Investigations deals with an average of 1,130 complaints annually. The Commission, however, receives very few cases of racial discrimination on the basis of nepotism. These range between 7 and 10 each year while the bulk of the complaints are based on industrial matters involving non-payment of terminal benefits.

**Table 2**  
**Complaints received between 2000 and 2003**

Year	Complaints
2000	1 324
2001	960
2002	1 510
2003	859
Total	4 653

159. The efficacy of the Commission for Investigations is seen in the high number of disputes that are resolved even before recommendations are sent to the President. A total of 3,058 cases have been resolved in the last four years: 936 in 2000; 764 in 2001; 662 in 2002; and, 696 in 2003. No fees are charged for bringing complaints to the Commission for Investigations. The Commission for Investigations further facilitates travelling and meal allowances for complainants from out of town if they do not have means of meeting these costs.

### **Factors and difficulties**

160. The State party wishes to report that the budget allocation given to the Investigator General's office is inadequate due to its poor economic situation.

161. Currently the Commission has only two investigation officers, while the establishment provides for nine. In addition, there is only one lawyer while the establishment provides for three. There is also an acute shortage of transport. These problems inhibit effective and efficient operations of the Commission.

162. The Commission for Investigations is centralised and as such there are limitations in the number of complaints it receives. However, positive steps are now being made to open provincial offices in all regions.

### **The Lands Tribunal**

163. The State party has an independent Lands Tribunal that inquires into and makes awards and decisions in any land disputes. The Lands Tribunal is established pursuant to Section 20 of the Lands Act. It is composed of a Chairman, Deputy Chairman, an advocate from the Attorney General's Chambers, a registered town planner, registered surveyor, registered valuation surveyor and not more than three persons from the public and private Sectors. The Chairman and Deputy Chairman must be persons who qualify to be appointed as High Court Judge. The appointments are made after consultation with the Judicial Service Commission.

164. The functions of the Lands Tribunal include:

(a) Inquiring into and making awards and decisions in any disputes relating to land;

(b) Inquiring into and making awards and decisions relating to any dispute of compensation to be paid;

(c) Inquiring generally and adjudicating upon matters affecting the land rights and obligations of any person or the Government; and,

(d) Performing such acts and carrying out such duties as may be prescribed under the Lands Act or any other written law.

165. Parties who are aggrieved by the awards or decisions of the Lands Tribunal can appeal directly to the Supreme Court.

166. Since its inception in 1995, the Lands Tribunal at the end of 2003 had disposed of more than five hundred (500) land disputes with very few appeals to the Supreme Court.

167. Although the Lands Tribunal has not dealt with any complaints relating to racial discrimination, it is clear that any decisions or actions made by the President, Minister, Registrar or Commissioner of Lands in matters of land that are tainted with racial discrimination and resulting in the violations of the land rights fall within the jurisdiction of the tribunal.

### **Factors and difficulties**

168. The Lands Tribunal functions as a circuit court and is limited in its operations due to financial constraints. It is thus unable to reach out to many people especially the poor, women and other vulnerable people. The Tribunal is also unable to carry out sensitisation campaigns of its existence and has no permanent premises for its secretariat.

### **D. Other measures**

169. The State party wishes to report that through the Societies Act, members of the public are allowed to form any organizations that promote and protect human rights. As such several organizations have been incorporated to among other things teach members of the public human rights issues and also offer legal assistance to the indigent. The notable organizations that are involved in the promotion and protection of human rights include the Legal Resource Foundation, the Legal Aid Clinic for Women, the Catholic Commission for Justice, Development and Peace (CCJDP), the Institute of Human Rights, Intellectual Property and Development Trust (HURID) and Women for Change.

### **Article 7**

170. The State party recognizes the importance of having effective measures in the fields of teaching and education, culture, and information that seek to combat prejudices, which may lead to racial discrimination, and measures that promote understanding, tolerance and friendship among nations and racial or ethnic groups. The State party equally recognizes the importance of propagating the purposes and principles of the Charter of the United Nations, the Declaration on the Elimination of All Forms of Racial Discrimination and the Convention of the Elimination of All Forms of Racial Discrimination.

171. In combating prejudices that may lead to racial discrimination and promoting understanding, tolerance and friendship among racial or ethnic groups, Articles 11 and 23(1) of the Constitution of Zambia are instructive. These constitutional provisions are fundamental to the State party when considering any actions with regard to Article 7 of the Convention.

172. In accordance with General Recommendation V of the Committee on ICERD, the reporting on Article 7 is broken down into three general categories namely:

- (i) Education and teaching;
- (ii) Culture; and
- (iii) Information.

## **1. Education and teaching**

173. Currently, Zambia's formal education system has a 7-5-4 structure, with seven years of basic education (four years of lower and three years of upper basic), five years of secondary (two years of junior and three years of senior secondary), two to three years of tertiary and four years of university education to first degree level.

174. The goal of the education system in Zambia is that every child should have access to nine years of good quality education. The fundamental units around which the Zambia school system will be organised are:

(a) Basic Education; this will cover a nine year period, running from Grade one to nine with the following structures:

- Grade one to four education will be referred to as lower basic
- Grade five to seven education will be referred to as middle basic
- Grade eight to nine education will be referred to as upper basic

As the basic education becomes more universal, the Grade seven composite examination will become less important and eventually will be abolished.

(b) High School Education; this will cover a three year period and will run from Grade ten to twelve.

175. Apart from the University of Zambia and Copperbelt University, there are other tertiary education institutions where students can attend and train in various specialised fields. Examples of these are nursing schools, teacher training colleges, colleges of agriculture and various vocational training institutes (MOE, 2004).

### **A. Legislative measures**

176. The State party wishes to report that there is no legislation that guarantees the right to education in Zambia. However under the Constitution of Zambia, Article 110 (1) as read with Article 112 (e) of the Directive Principles of State Policy, the Executive, the Legislature and the Judiciary in the development and implementation of national policies and the enactment of new laws are required to take into account considerations that will ensure the provision of equal and adequate educational opportunities in all fields at all levels.

### **B. Judicial measures**

177. There are no judicial measures to report under education and teaching.

### **C. Administrative measures**

#### **National policy on education**

178. The State party wishes to report that it has a National Policy on Education. The mission statement in the National Policy on Education of 1996 provides that:

The Ministry of Education is to guide the provision of education for all Zambians so that they are able to pursue knowledge and skills, manifest excellence in performance and moral uprightness, defend democratic ideals and accept and value other persons on the basis of their personal worth and dignity, irrespective of gender, religion, ethnic origin or any other discriminating characteristic.

179. The National Education Policy contains three major principles namely:

(a) That the State party is the custodian of all human rights of an individual including the right to education;

(b) That the demands of national development require paying special attention to the role education plays in human capital formation, particularly in developing the types of knowledge, skills, values and competencies that are necessary for economic development and social welfare; and

(c) That decentralization of education management demands for partnerships and the creation of an enabling environment that establishes rules and regulations that protect the rights of various educational agencies.

180. Further, the National Policy on Education provides for a liberalized education system where private organizations, individuals, religious bodies and local communities can establish and control their own schools and other educational institutions in accordance with their own principles but subject only to stipulated rules and regulations by the Ministry of Education.

181. In so far as equality and equity are concerned, the National Policy on Education endeavours to develop an education system that promotes equality of access, participation and benefit for all persons in accordance with individual needs and abilities.

182. The Human Rights Commission is the main institution that develops and implements programmes designed to educate and teach the people of Zambia about human rights.

#### **The Human Rights Commission**

183. The Commission's human rights education mandate is spelt out in the Human Rights Commission Act Section 9 (e), which provides that the Commission will "establish a continuing programme of research, education, information and rehabilitation of victims of human rights abuse to enhance the respect for and protection of human rights".

184. It is worth noting that the Commission, in conjunction with the Ministry of Education has established the National Committee on Human Rights Education (NACORE).

**National Committee for Human Rights Education (NACORE)**

185. In response to the Declaration of the United Nations Decade for Human Rights Education (1995-2004), the State party, through the Ministry of Education and the Human Rights Commission, established the National Committee for Human Rights Education (NACORE) in November 2000. Membership of NACORE includes key stakeholders such as some Government departments, Zambia Congress of Trade Unions, Law Association of Zambia, educational institutions (University of Zambia and Zambia Institute of Advanced Legal Education) and Civil Society. The general objective of NACORE is to come up with a National Plan of Action for human rights education in Zambia.

186. The Secretariat of NACORE is housed within the Curriculum Development Centre (CDC) of the Ministry of Education. Some of the activities that have been carried out since 2001 include a study on the situation of human rights education in Zambia. The study was made possible by assistance from the United Nations Development Programme (UNDP) in Lusaka. A report has since been drafted and is awaiting deliberation. The outcomes of the deliberations will provide the impetus for implementation. Workshops on human rights have also been conducted for staff at CDC to, inter alia, equip them with the necessary knowledge needed in the development of human rights aspects in civics education for secondary schools. Workshops have also been conducted for representatives of the institutions that are members of NACORE.

**Reforms in civics education**

187. The State party's Curriculum Development Centre (CDC) has, since 2003, embarked on reforms in the Civics syllabus. The reforms include introduction of Civics at Senior Secondary School level. The introduction of Civics education at Secondary School is meant, inter alia, to educate and teach school going children on human rights and thus capture a sizeable section of the population. Civics has hitherto been offered only at Junior Secondary School level. CDC has since selected some schools around the country to implement the pilot project on Senior Secondary School Civics at Grade 10 level. The implementation of the pilot project began with a workshop for Civics teachers in Kabwe, Central Zambia, in April 2004. The teachers were, among other things, imparted with knowledge on human rights. The project is being implemented with the involvement of civil society, notably the Zambia Civic Education Association.

188. The State party wishes to refer the Committee on ICERD to its State reports on the Convention on the Rights of the Child and the Covenant on Economic, Social and Cultural Rights for a deeper understanding of Zambia's education system.

**D. Other measures**

189. The State party wishes to inform the Committee that NGOs are involved in education and teaching of human rights. In this respect, the Zambia Civic Education Association (ZCEA) has a comprehensive school programme with a bias towards all areas of human rights including the ICERD. The ZCEA has influenced the revision of the school civics syllabus to incorporate human rights education since 1993.

190. Other NGO's that have been involved in community human rights education include:
- (1) Women for Change - which is present in three provinces in Zambia and particularly at district level. This NGO has a comprehensive programme for teaching traditional rulers in human rights education and constitutional governance covering the whole country. It also has specific programmes in gender, HIV/AIDS and economic empowerment in Central, Southern and Western Provinces of Zambia;
  - (2) Southern African Centre for Conflict and Dispute Resolution (SACCORD) deals with community human rights education with a bias towards conflict resolution in all forms;
  - (3) Foundation for Democratic Process (FODEP) deals with election monitoring and human rights education at community level;
  - (4) Women's Lobby Group deals with human rights education with a bias towards women empowerment;
  - (5) Catholic Commission for Justice and Peace in conjunction with Pax-Romana (an association of Catholic intellectuals and professionals) have a comprehensive programme on human rights education called post World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban); and,
  - (6) The Young Women's Christian Association (YWCA) which runs a shelter for battered women and abused children. YWCA also conducts counselling for victims of abuse, including victims of property grabbing and marital problems.

191. The State party in recognition of the negative effects of all forms of racial discrimination has instituted measures to combat prejudices, which lead to racial discrimination, and to promote understanding, tolerance and friendship among nations and racial and ethnic groups.

**(a) To combat prejudices which lead to racial discrimination**

192. Under the Education Act, Chapter 134 of the Laws of Zambia, the State party has put in place legislative measures to combat prejudices, which may lead to racial discrimination. The legislative provisions provide as follows:

Section 24: No pupil shall be refused admission to any school or school hostel on the grounds of his race or religion.

193. The State party wishes to state that this provision is complied with in all Government education institutions as well as private institutions.

Section 25: If the parent of a pupil attending any school requests that he be excused from receiving religious instruction or from taking part in or attending any religious ceremony or observance, then, until the request is withdrawn, the pupil shall be excused therefrom accordingly.

194. The State party wishes to state that this provision is complied with in the school curricula as religious education is an optional subject and is not binding on any pupil.

195. In addition, the State party through the Human Rights Commission undertakes a wide variety of programmes aimed at educating the public on their rights and the rights of others, human rights in general and combating prejudices that may lead to racial discrimination.

196. In this regard the Human Rights Commission has developed three strategic objectives in its National Plan of Action (1999-2009) on information, education and communication. These are:

- (i) Information: create awareness and disseminate information on the fundamental rights and freedoms of Zambians at all levels.

197. The Human Rights Commission in conjunction with the Curriculum Development Centre in the Ministry of Education began translating the National Bill of Rights in 2000 into the seven major local languages as understood by the majority of persons living in Zambia. It is worth noting that the Commission has plans to simplify the main international human rights instruments including ICERD into the seven major local languages within the life of the National Plan of Action.

- (ii) Education: work towards the incorporation of human rights education in educational institutions, both formal and informal.

198. The State party wishes to report that human rights education is mainstreamed in the training programme of law enforcement agencies and in particular the Zambia Police Service. In this regard it is worth noting that the Human Rights Commission organized training workshops for all law enforcement agencies starting with Lusaka, Western and Southern Provinces. Participants were drawn from the Zambia Police Service, Zambia Prisons, Drug Enforcement Commission, Anti-Corruption Commission, Commission for Investigations, Immigration Department, Zambia Wildlife Authority and Council Police.

199. A total number of 3,679 officers were trained particularly on the principles of equality and respect of human rights and fundamental freedoms; and on the treatment on foreigners, in which it was emphasized that they should be treated on the basis of equality. In addition, a non-governmental organisation, the Institute of Human Rights and Intellectual Property and Development Trust has since 2003 been undertaking training of trainers workshops for the Zambia Police Service. The Institute has a memorandum of understanding with the Zambia Police Service to run a three year human rights capacity building and training programme from 2003-2006.

200. Through these pragmatic approaches to human rights education in general, it is the State party's view that attitudes, mindsets and approaches towards enhancing human rights has greatly improved.

201. As earlier stated under NACORE, the Human Rights Commission in conjunction with Curriculum Development Centre is in the process of introducing human rights education in the school curriculum. Further, human rights education programmes were conducted by the

Commission on Zambia National Broadcasting Corporation (ZNBC) radio in 2002 for a total of 13 weeks in English and in all the seven major local languages. Moreover ZNBC recently offered the Commission free airtime on radio to enable the Commission carry out programmes on human rights education in English.

202. The Human Rights Commission also undertook educational campaigns on human rights through mediums of drama, poems and plays in 2001 in most compounds in Lusaka. The process was only restricted to Lusaka due to limited resources available for the Commission. The themes of these educational campaigns centred on women and children's rights, viz., the principles of equality and rights that apply to an individual who comes into conflict with the law.

- (iii) Communication: collaborate with stakeholders to improve communication and improve information sharing in human rights.

203. The Commission at its inception undertook a countrywide tour of all the nine provincial centres for a period of ten days per province. The meetings were aimed at meeting local people and authorities in order to discuss human rights issues and problems affecting the communities vis a vis their understanding of human rights.

**(b) To promote understanding, tolerance and friendship among nations and racial and ethnic groups**

204. Firstly, the State party undertook consultative preparations within Government as part of the preparation process of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001.

205. Secondly, in preparation of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the Human Rights Commission hosted three national workshops to sensitise society and in particular the youth on racism. The objective of these workshops was to create awareness on racism and related intolerance. Two of the workshops (Lusaka June 2001 and Ndola August 2001) targeted the youth as future leaders. The third workshop was held in Ndola at about the same time for the business/investor community. The workshops drew participation from the Human Rights Commission, Government departments, NGOs, youths and civil society at large.

206. In addition, the State party wishes to report that before the Durban Conference Pax-Romana organized a regional workshop for all Southern African countries in Zambia in July 2001 to prepare Africa's position and perspective of ICERD. The workshop focused on building understanding among racial groups as opposed to the position of reparation for past injustices against black people. It also focused on issues of unity in diversity of different ethnic groups. Participants were drawn from different NGOs, academia, Members of Parliament, Activists and Faith Based Organisations.

**E. Factors and difficulties**

207. One of the key issues identified by the State party is inadequate basic human rights education both formal and informal (community based education) in the basic training courses of persons and personnel involved in the delivery of various human rights services to the public.

208. Existing high rates of illiteracy in Zambia results in huge numbers of women, men and children not being able to benefit from printed information on what their fundamental rights and freedoms are. This is coupled with lack of universal education and constraints in the implementation of the right to education.

209. Other factors affecting human rights education are abject poverty and continuance of retrogressive cultural, religious and traditional practices that violate individual human rights and fundamental freedoms especially those of women and children.

## **2. Culture**

210. The State party recognizes that culture is one of the fundamental dimensions of development. Cultural development constitutes one of the essential instruments of improvement of the quality of life of people. It is the State party's view that the lack of regard for the social and cultural circumstances of men, women and children tend to cause conflicts among ethnic groups and among nations.

211. In order to attain this view of cultural life, the State party has in the last 7 years put in place legislation, policy, administrative and other measures to ensure that all Zambians regardless of race, colour, sex, national or ethnic origin enjoy their rights to participate fully in the cultural life of the country without distinction.

### **A. Legislative measures**

212. The Constitution of Zambia in Article 112 (g) recognizes the right of a person to participate freely in one's cultural life. Article 112 (g) provides that the State shall take measures to promote the practice, enjoyment and development by any person of that person's culture, tradition, custom or language in so far as these are not inconsistent with the Constitution.

213. Other laws that impact on the enjoyment of cultural rights include:

(a) The National Arts Council Act No. 31 of 1994, in which the Council has, inter alia, responsibility for development, promotion and regulation of performing, literary and visual arts; and organizing competitions to enhance performance and production standards at national level in the arts;

(b) The National Heritage Conservation Commission Act, Chapter 173 which provides for the conservation of ancient, cultural and natural heritage, relics and other objects of aesthetic, historical, prehistorical, archaeological or scientific interest; and

(c) Copyright and Performance Rights Act No. 44 of 1994 which establishes the Zambia Music Copyright Society, which protects all works and products of cultural significance.

### **B. Judicial measures**

214. There are no cases to report under Culture.

### **C. Administrative measures**

215. The State party wishes to state that it has a National Cultural Policy (2003) whose salient features include the following:

- Cultural Identity
- Cultural Heritage
- Artistic, Intellectual Creation and Art Education
- Culture and Development
- International Cultural Cooperation

216. The components of the National Cultural Policy are co-ordinated by the Ministry of Community Development and Social Services through the Department of Culture and an Inter-Ministerial Committee comprising the following key stakeholder line Ministries and Institutions.

#### **1. Government ministries/institutions**

(a) Ministry of Community Development and Social Services - Department of Culture is responsible for fostering the preservation, development and promotion of culture for sustainable development;

(b) Ministry of Information and Broadcasting Services responsible for the dissemination of arts and cultural views and information; and is responsible for copyright law under the Copyright Society of Zambia;

(c) Ministry of Local Government and Housing is responsible for Chiefs Affairs;

(d) Ministry of Tourism Environment and Natural Resources is responsible for ethno and cultural tourism under the following respective departments:

(i) National Museums Department which is responsible for the preservation of Zambia's tangible cultural Heritage; and

(ii) National Heritage Commission which is responsible for cultural and tourism sites;

(e) Ministry of Home Affairs responsible for archiving Zambia's Heritage;

(f) Ministry of Science, Technology and Vocational Training is responsible for the training programme in artistic and arts education both in the formal and informal sector, such as the Evelyn Hone College, School of Art and Music;

(g) Ministry of Justice is responsible for drafting legislation on culture; and

(h) University of Zambia is, inter alia, responsible for teaching cultural subjects such as literature, languages humanities and communication.

## **2. Other institutions**

(a) National Arts Council: responsible for the promotion and regulation of performing literacy arts - visual arts, crafts curios and culinary arts;

(b) Cultural Associations: responsible for organizing cultural events, rituals and cultural expressions amongst Zambians, different ethnic groups which are under the leadership of traditional rulers and structures, e.g. Alangizi Cultural Association whose aim is to teach initiates responsibilities and duties of adult life;

(c) Traditional Health Practitioners of Zambia.

217. In the National Cultural Policy, the State party has developed objectives and strategies of ensuring that all persons participate in their cultural life as a matter of right without distinction based on race, colour, sex, national or ethnic origin.

218. The State party wishes to state that, in order to achieve its vision, objectives, strategies and policy measures all relevant cultural legislation will be reviewed and established in order to provide for a comprehensive legal framework.

### **(a) To combat prejudices which lead to racial discrimination**

219. The State party wishes to report that Section 31 of the 1994 National Arts Council Act provides for the establishment of arts associations, cultural associations and other interest groups to promote participation in artistic and cultural life by all. Under this section an Association for Children and Young People (ASITET) in art and culture was established to ensure the right to cultural life and integrate children and young people from different ethnic backgrounds.

220. The State party held a national indaba (meeting) in October 2003 whose purpose was to enable all stakeholders discuss and make recommendations on the political, economic, social and cultural aspects of the country. It drew diverse participation from all ethnic groupings in Zambia. One of the major outcomes in the cultural segment of the National Indaba was the recognized need to review and amend legislation on culture in order to respond to the National Cultural Policy, which is considered by many to be elaborate and all embracing.

### **(b) To promote understanding, tolerance and friendship among nations and racial and ethnic groups**

221. In an effort to build a culture of friendship and understanding among the people of Zambia, as earlier stated, the State party organized a national indaba (meeting) in October 2003. This was in response to numerous calls in the country for a forum where people of diverse backgrounds, interests and ethnic origin convened to discuss matters of national unity in the political, economic, social and cultural spheres. Participants included Government ministers and officers, the Judiciary, Parliament, traditional rulers, opposition parties, faith-based

organizations, academia, and representatives of all ethnic groups. In all about 800 persons attended. The National indaba also acted, as a major national unifier of all people in Zambia.

222. In addition, the State party promotes understanding and tolerance among local ethnic groups through cultural exchange as follows:

- (a) Traditional ceremonies;
- (b) Local publications;
- (c) Traditional medicines;
- (d) Handicrafts, masks, dances and songs; and
- (e) Establishment of associations based on tribal rivalry (cousinship) such as the Ngoni-Bemba Football club in Northern Province.

223. As regards tolerance and friendship among nations and racial and ethnic groups; the State party engages in friendships such as the Zambia-India Friendship and the Zambia-Cuba Friendship. Further, the State party is a party to a number of bilateral and multilateral cultural exchange agreements such as the Zambia-Malawi, Zambia-China and Zambia-Japan. In these agreements participation by the local community based cultural associations is encouraged.

#### **D. Factors and difficulties**

224. The State party does not have adequate financial and human resources to invest in the promotion of cultural activities especially in the area of combating racial discrimination and promoting understanding and tolerance among remotely based ethnic groups.

225. There are inadequate research activities in local cultural fields.

### **3. Information**

226. The State party wishes to state that it employs all forms of media in its efforts to educate the people of Zambia, of their human rights including the subject of racial discrimination; and to foster a spirit and culture of tolerance.

227. The mainstream media in Zambia is composed of three daily newspapers, Times of Zambia and Zambia Daily Mail owned by the Government, while the third Post Newspaper is privately owned. There is one State television channel and a three-channel State radio station. Other Government owned news media include a news agency and an information service. There is also a joint government - private pay - television station owned by Zambia National Broadcasting Corporation (ZNBC) and Multi-Choice.

228. The liberalization of the media industry since the advent of pluralism in Zambia has enhanced private sector participation in media ownership. Table 3 below shows the various forms of media existing in Zambia today.

**Table 3**  
**Media in Zambia**

Media status	Media	Ownership
Dailies	Times of Zambia	Government
	Zambia Daily Mail	"
	The Post	Private
Weeklies	Sunday Times	Government
	Sunday Mail	"
	Business Mail	"
	National Mirror	Private
	Friday Edition	"
Fortnightly	Southern Guardian	Private
Monthlies	Ichengelo	Church
	Tsopano (Eastern)	Government
	Imbila (Northern, Luapula and Copperbelt)	"
	Ngoma (North Western)	"
	Liseli (Western)	"
	Lukanga (Central)	"
	Intanda (Southern)	"
	Tourism News	
	Legal Resources Foundation Newsletter	Private
	Adviser	"
	Watchdog	"
Financial Mail	"	
Bi-monthly	Police News	Government
Electronic media	Zambia National Broadcasting Corporation (one TV and 3 Radio Channels)	Government
	Christian Voice (Radio Station)	Private
	Multi-Choice TV	"
	Radio Phoenix	"
	Ichengelo Radio	"
	Q FM	"
	Choice FM	"
	Yatsani	"
	Casat	"
	Voice of the Dove Radio	"
Radio 5 FM	"	
News agencies	Zambia News Agency	Government
	Palesa News Agency	Private
	Africa Media Services	"
Information services	Zambia Information Services	Government
	National Agriculture Information Services (NAIS)	"
Magazines	Search	Government
	PSRP Bulletin	"
	Profit	Private
	Speakout	"
	Challenge	"
	Orbit	"
	Trend Setter	"
	Low Down	"
	Pop News	"
	Livingstonian	"

### **A. Legislative measures**

229. In 2002 the State party enacted the Independent Broadcasting Authority Act No. 17 (of 2002). Section 4 establishes the Independent Broadcasting Authority as a body corporate with perpetual succession.

230. The functions of the Independent Broadcasting Authority are spelt out in Section 5(2) which include, inter alia, to promote a pluralistic and diverse broadcasting industry.

### **B. Judicial measures**

231. There are no judicial measures to report on.

### **C. Administrative measures**

232. The State party wishes to report that it has a draft information and media policy, which draws views and aspirations expressed at various conferences and workshops organised through the 1993 Media Reform Committee; as well as individual written submissions. It must be understood that since independence there was no clearly defined and nationally recognized information and media policy. Hence, the task of drafting a national media and information policy became a top priority for the State party. In light of the above the State party is desirous of finalizing the draft policy at the earliest opportunity.

#### **(a) The role of State media in the dissemination of information to combat prejudices which may lead to racial discrimination**

233. The State party wishes to state that the following are the principal institutions that it engages to undertake (a) above:

##### **(1) Zambia Information Services (ZIS)**

234. The role of ZIS is to create a focused awareness of what Government and the people are doing; highlighting Government policies, programmes and measures and evoking full participation of the people in their governance as well as informing Government of people's hopes, anxieties, aspirations and expectations. It is also mandated to carry out civic education campaigns on human rights, citizens duties and responsibilities including education on combating racial discrimination so as to enable all individuals participate fully in the democratic governance of the country.

##### **(2) Zambia News Agency (ZNA)**

235. Zambia News Agency was created to ensure the widest possible coverage of the country in newsgathering and dissemination. The functions of ZNA are to gather and process news from around the country for distribution to local and foreign clients and to receive foreign news for distribution to local subscribers.

(3) **Zambia National Broadcasting Corporation (ZNBC)**

236. The role of ZNBC is to inform, educate and entertain the public through radio and television. Its functions, inter alia, are to broadcast news, current affairs and information to the public.

237. As far as information dissemination is concerned, it is the State party's view that the identified institutions play a pivotal role in promoting local education on human rights; and promoting understanding, tolerance and friendship among the different ethnic groupings in Zambia.

**D. Other measures**

**(b) The role of the mass information media i.e. the press, radio and television in the publicising of human rights and dissemination of information.**

238. It is worth noting that the State party has created an enabling environment for the growth and development of a self-sustaining media. The mass information media thus has played an important role in promoting human rights, publicizing the same and disseminating information on the purposes and principles of various human rights instruments.

239. The State party wishes to state that the Media Institute of Southern Africa (MISA) - Zambia Chapter (formerly known as Zambia Independent Media Association) is the mother body of independent media organizations in Zambia. It incorporates all electronic and print media. MISA spearheads media freedom and access to information through various television and radio programmes such as "Let the People Talk" on Radio Phoenix; and through print media channels such as the Post Newspaper and Challenge Magazine. It is the State party's view that these efforts play a critical role in promoting human rights as a channel for access to information.

240. In addition, all provinces in Zambia have community radio stations that reach out to the local communities on human rights. These radio stations are used as channels for heightening awareness of human rights and publicizing the same. Hitherto, the situation was the existence of only ZNBC, which was not far reaching, and with a centralized dissemination system. This has changed as the community radio stations can now tailor information according to the community needs.

241. Some of these community radio stations are:

1. Radio Chikuni, Sky FM - Monze, Radio Mosi-Oa-Tunya - Livingstone and Mazabuka Community Radio (Southern Province)
2. Radio Phoenix, Choice FM, UNZA radio, 5FM, QFM, Christian Voice, Yastani, Hone Radio station - Lusaka (Lusaka Province)
3. Radio Ichengelo - (Copperbelt Province)
4. Radio Chikaya, Radio Mpangwe, Radio Maria, Breeze FM - Chipata (Eastern Province)

5. Radio Lyambai - Radio Liseli Mongu (Western Province)
6. Radio Mano Kasama - (Northern Province)
7. Radio Yangeni - Mansa (Luapula Province)

#### **E. Factors and difficulties**

242. The media in Zambia is mainly urban-oriented, leaving an information gap, particularly, for the marginalized rural poor. The transmission outreach of radio and television is such that most Zambians living in border areas cannot access it.

243. On the whole, the major factors that have constrained effective media outreach and access to most parts of the country are:

- (a) Illiteracy;
- (b) Poor or lack of communication infrastructure in the country;
- (c) Operational problems such as the high cost of newsprint and poor equipment generally; and
- (d) The high cost of radio and television receivers for listeners and viewers.

### **III. CONCLUSION**

244. Zambia's Twelfth Report has been drafted in the context of the specifications and requirements of Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination.

245. The State party has diligently recognised its obligations under the Convention. The State party also recognises that there are several constraints which impact the promotion and protection of human rights within its territory, which include:

- (a) Economic decline, mainly due to the diminishing mining industry, has contributed to the unsatisfactory resource allocation to institutional mechanisms that support the implementation of the Convention;
- (b) HIV/AIDS pandemic, whose negative effects permeate the human resource, impacts on the general socio-economic performance of the country; and
- (c) Low human rights awareness on the part of the people, especially on the mechanisms available for redress.

246. The State party wishes the Committee to take note of positive developments in the last decade, including:

- (i) Establishment of the Human Rights Commission and the Police Public Complaints Authority;

- (ii) Review/amendment of legal provisions inimical to the protection and promotion of human rights, such as the abolition of corporal punishment as a form of punishment;
- (iii) Emergence of a vibrant civil society, facilitated and supported by the State party's enabling legal and political environment; and
- (iv) Emergence and growth of private print and electronic media, thus contributing to the information and education needs of the people.

247. The State party is committed to fully realising its obligations under the Convention and, in its report, has stressed clearly the legislative, judicial, administrative and other interventions that are in place, or are in the process of being implemented to ensure that all persons within the State party's territory enjoy their human rights without discrimination, including that based on race, colour, creed, tribe or other similar ground.

248. The State party is also committed to the requirement to domesticate international human rights standards it has adopted through ratification and/or accession to United Nations human rights treaties, in particular the International Convention on the Elimination of All Forms of Racial Discrimination.

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