



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

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-seventh session

SUMMARY RECORD OF THE 1714th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 10 August 2005, at 10 a.m.

Chairman: Mr. YUTZIS

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

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY
STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Eighth to sixteenth periodic reports of the United Republic of Tanzania (continued)
(CERD/C/452/Add.7)

1. At the invitation of the Chairman, the members of the delegation of the United Republic of Tanzania resumed their places at the Committee table.
2. Mr. MUTALEMWA (United Republic of Tanzania) said that, should the Committee deem it necessary, his Government could prepare an additional report to compensate for the lack of information in the current report. The Government was committed to implementing the provisions of the Convention because not only was racial discrimination anathema to the national philosophy, but Tanzania had played an active role in drafting the Convention and therefore had historical links with it. The Committee should be reassured that any shortcomings in the report were a result of the lack of resources in his country, not insufficient willingness to implement the Convention. He welcomed the Committee's questions and comments, as they would provide guidance in the ongoing task of strengthening the country's legal processes and administrative systems.
3. Mr. WEREMA (United Republic of Tanzania) said that the Convention could not be invoked directly before domestic courts merely by dint of its ratification by Parliament since Tanzania had a common law system. The Convention and other international instruments did, however, form an integral part of Tanzania's body of legislation.
4. His delegation had not wished to imply that the Government would never adopt specific legislation on racial discrimination. Its position was that, since racial discrimination did not currently pose a serious problem, any instances of such discrimination were sufficiently covered by common law. It would, however, give careful consideration to the concerns the Committee had expressed. Legislation on political parties and NGOs already included specific provisions to prevent racial discrimination; other laws could be amended to include such provisions in future.
5. His delegation understood the Committee's concern that the absence of court cases involving racial discrimination could point to one or several systematic problems. However, the explanation could also be that racial discrimination was not widespread in his country. The Permanent Commission of Enquiry, established in 1966, had been the first ombudsman-like institution in Africa, and only the second in the Commonwealth. In the year 2000, it had been replaced by the Commission for Human Rights and Good Governance, which dealt with any complaints of violations of human rights.
6. Article 13 of the Kiswahili text of the Constitution prohibited discrimination on the grounds of, inter alia, a term that included reference to the caste system. The Kiswahili version was the official text, not the English translation, in which that term had been rendered "station in life". The definition of discrimination in the Constitution was, therefore, in line with that contained in article 1 of the Convention.

7. Ms. MTAWALI (United Republic of Tanzania) said that there had been about 600,000 registered refugees in her country at the end of June 2005. Most of them had originated from Burundi, the Democratic Republic of the Congo, Rwanda and Somalia, with smaller numbers from Ethiopia, Uganda and Iran. It was estimated that a further 200,000 refugees were living in spontaneous refugee settlements. A total of 10 asylum-seekers from Uganda, Rwanda, Sudan and Ethiopia were currently living in Tanzania.
8. The Government had taken steps to prevent further acts of violence against female refugees, including policing refugee camps and implementing a number of preventive programmes.
9. While there had been some cases of forcible return of refugees, refoulement was not in line with government policy. Those incidents had taken place as a result of the large number of different actors in the field of refugee protection, which had led at times to inconsistent treatment of refugees. The Government was aware of that problem and was taking steps to remedy it. Refugees who had gone to Tanzania in the 1970s were given the opportunity to obtain Tanzanian nationality, but on a case-by-case basis only.
10. The Government's recent meeting with UNHCR had focused on strengthening protection capacity, identifying protection gaps, prioritizing refugee needs by appropriate means, and taking relevant measures to meet those needs. The Government had held several national consultations to provide follow-up to that meeting.
11. Camp-based refugees were required to obtain permits, issued by camp commanders, in order to leave the camps. A more flexible approach had been introduced recently, allowing refugees to move freely within a radius of 4 kilometres in order to meet their everyday needs.
12. Mr. MUTALEMWA (United Republic of Tanzania) warned the international community against hasty judgements concerning his Government's measures relating to refugees. Measures which might seem restrictive at first glance were the Government's reaction to its citizens' concerns about insecurity, environmental degradation and a range of other problems in refugee areas. The Government's task was a delicate one, namely, to strike a balance between protecting refugees, on the one hand, and ensuring the well-being of its citizens, on the other. It was also important to distinguish deficiencies in the refugee protection system from isolated incidents which inevitably occurred. However, the Government always reacted promptly to such incidents and took steps to address the problems that arose.
13. Mr. WEREMA (United Republic of Tanzania) said that in 1995 attempts by some political parties to come to power on the basis of a particular religion had created tension, particularly in Zanzibar and Dar es Salaam. His Government had asked religious leaders to meet and discuss ways of preventing such tensions from arising in the future. A religious forum had since been set up where leaders of different denominations gathered to discuss religious issues with a view to educating their followers. The Government had also collaborated with civil society in promoting religious tolerance and encouraging people to live in harmony.

14. With regard to the question concerning Zanzibar's secularity, he said that, although the Government funded some religious institutions in Zanzibar, such as the Cadi Courts, Tanzania was a secular State. The concept of secularity was enshrined in the Constitution.

15. Under the domestic legislation, the land of Tanzania belonged to its people, and the President was the people's trustee, who was empowered to acquire land for public use. However, his powers were restricted and, in some cases, the courts had annulled his decision following a complaint by persons who had suffered as a result of land acquisition. Those people whose land had been expropriated received prompt and adequate compensation.

16. Ms. UISO (United Republic of Tanzania) said that her Government had ratified and incorporated into domestic legislation eight ILO Conventions, including Convention No. 138 concerning Minimum Age for Admission to Employment, Convention No. 29 concerning Forced or Compulsory Labour, and Convention No. 111 on Discrimination in Respect of Employment and Occupation. In 2001, the Government had set up a task force to reform labour legislation, which both employers and employees had found to be inadequate. In 2004, the Labour Institutions Act and the Employment and Labour Relations Act had been adopted. The latter Act prohibited all forms of discrimination, including discrimination on grounds of colour, nationality, race, political opinion and religion; made it obligatory for employers to promote equal opportunities and eliminate discrimination; encouraged employers to ensure equal remuneration for work of equal value; and punished individuals and organizations found guilty of discrimination by a maximum fine of 5 million Tanzanian shillings.

17. Mr. WEREMA (United Republic of Tanzania) said that the Commission for Human Rights and Good Governance had been established on 15 March 2002 in accordance with the Constitution and the Paris Principles. In 2004, members of the Commission had visited 15 prisons and 24 police stations in 15 districts. Reports on the visits had been submitted to the Government and the National Assembly. The Commission had visited villages, wards and divisions. He explained that in Tanzania, villages were situated within wards, which in turn made up divisions. The Commission was an advisory body, chaired by a judge and made up of seven commissioners who were elected by a special panel. In addition to dealing with human rights issues, the Commission took steps to prevent abuses of power.

18. Mr. MUTALEMWA (United Republic of Tanzania), referring to the issue of disaggregated data on ethnicity, said that the Government's policy was to avoid measures that fuelled sectarian fragmentation. Therefore, the Government did not publish statistics on ethnicity and religion because such data would prompt people to make comparisons and draw distinctions between various ethnic and religious groups. The Government's reluctance to collect data disaggregated by ethnicity was based on practical experience on the ground. Further dialogue would be required to ensure that fulfilment of that requirement would not work to the detriment of national unity and, consequently, endanger the peace and stability for which Tanzania was known. Moreover, the collection of disaggregated data could only occur in the framework of a national census, which was held once every 10 years. The next census was scheduled for 2012.

19. Mr. SHAHI said that, while the State party report was admittedly rather short, in combination with the extensive information provided by the delegation during its dialogue with the Committee, it provided a clear overview of the situation with regard to the implementation of the Convention. He encouraged the delegation to follow up on its proposal to consider incorporating provisions prohibiting racial discrimination into domestic legislation, a step which was crucial to enhancing the applicability of the Convention at the national level. The Committee was hopeful that the current shortcomings in that regard would be addressed, inter alia in the context of the constitutional review process.
20. Tanzania was a successful example of nation-building through the prevention of sectarian fragmentation. The delegation's comments on the advisability of disaggregated data collection and on its potential impact on the unity of the country thus deserved further consideration.
21. The Commission for Human Rights and Good Governance should be given wider authority to investigate human rights violations.
22. Mr. ABOUL-NASR said that codifying racial discrimination as a punishable offence was crucial to the implementation of the Convention. The prosecution of such offences was not possible without relevant legal provisions.
23. Mr. THORNBERRY said that the State party's pragmatic approach to the conceptualization of indigenous groups was both appropriate, particularly in the African context, and constructive. In that connection, he would welcome further information on the possibility of establishing collective title to indigenous land and on the compatibility of indigenous title with the overall concept of public land. Experience in several countries whose legal systems were also based on common law had shown that indigenous and other forms of land title were not mutually exclusive. Relevant provisions contained in several international instruments confirmed that idea.
24. The idea behind requesting statistical data disaggregated by ethnicity was to assist Governments in identifying particularly vulnerable population groups, thus facilitating the formulation of effective, targeted policies. That objective could be met in a number of ways. The Committee generally took contextual considerations into account and would do so in the case of Tanzania.
25. Mr. MUTALEMWA (United Republic of Tanzania) thanked the members of the Committee for their encouraging comments. The comment made by Mr. Aboul-Nasr would certainly be taken into account, and he appreciated Mr. Thornberry's comments on the reasons for requesting disaggregated data. He assured the Committee that his Government was willing to explore possibilities in that regard, bearing in mind the concerns he had mentioned. His delegation had benefited greatly from its dialogue with the Committee and looked forward to further cooperation.
26. Mr. ABOUL-NASR said that, while the Committee generally requested data disaggregated by ethnicity, he did not support that practice.
27. Mr. LINDGREN ALVES (Country Rapporteur) agreed with that view.

28. He thanked the delegation for its comprehensive replies. The reasons given for the State party's failure to collect disaggregated data were indicative of an advanced understanding of the notion of multiculturalism. In the African context, the State party's approach to the issue was certainly appropriate.

29. The report, while short, contained substantive information. He appreciated the delegation's reasons for the absence of a clear definition of racial discrimination and of corresponding legal provisions prohibiting such acts. However, the adoption of relevant legislation was crucial to the implementation of the Convention; measures should therefore be taken to fill that legal gap.

30. Given the State party's economic difficulties, the fact that it had hosted, and continued to host, a large number of refugees was particularly praiseworthy.

The meeting was suspended at 12.15 p.m. and resumed at 12.25 p.m.

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

Follow-up to the Declaration on the Prevention of Genocide

31. The CHAIRMAN said that the NGO, Minority Rights Group International, had submitted a list of genocide indicators to the Committee.

32. Mr. SHAHI recalled that at its previous session the Committee had adopted a Declaration on the Prevention of Genocide. He drew members' attention to some of the seminal paragraphs of the Declaration, quoting parts of paragraphs 3, 4 and 5, which referred to steps the Committee intended to take. It was expected that the Declaration would receive attention at the forthcoming session of the General Assembly as part of discussions on the reform of the United Nations system, which would include the possible expansion of the Security Council and action to be taken through the Security Council to prevent or suppress genocide. He hoped that there would also be a summit-level discussion about what measures world leaders were prepared to take in that regard.

33. The Committee should set up a small open-ended working group in order to revise its early-warning measures and urgent procedures, and incorporate additional indicators of genocide. The working group should then inform the United Nations High Commissioner for Human Rights and the Special Adviser on the Prevention of Genocide of the actions it had taken.

34. The CHAIRMAN said that the purpose of the participation of Committee members in the discussion on reforms should be to make practical suggestions rather than engage in theoretical discussion.

35. Mr. SICILIANOS said that he supported the idea of establishing a more precise list of indicators for the prevention of genocide. The Committee could base its list on the preliminary list developed by the Special Adviser, the list of indicators prepared by the European Union and that of Minority Rights Group International.

36. The Committee should also work towards developing closer ties with the Office of the Special Adviser. It could, for example, request a copy of the Special Adviser's report following his visit to a State whose periodic report the Committee was due to consider. Likewise, the Committee could inform his Office of its concluding observations concerning a State that he was planning to visit.

37. The CHAIRMAN said that, following the Committee's thematic discussion on the prevention of genocide at the previous session, he had received a note from the Special Adviser expressing his willingness to cooperate with the Committee on the subject of genocide prevention. The Committee needed to develop a practical way of engaging in that cooperation.

38. Mr. KJAERUM said that the list of indicators prepared by Minority Rights Group International was extremely useful in that it raised key issues and constituted an excellent starting point for the development of the Committee's own list. He supported the idea of establishing a small working group that would work closely with the Office of the United Nations High Commissioner for Human Rights (OHCHR), which was also doing important work on the development of indicators. A list of key genocide indicators or grave acts of discrimination compiled by OHCHR would help the Committee to carry out its urgent procedures and serve as a reference for country rapporteurs preparing concluding observations. It would also be useful to have guidelines on how to address such matters in concluding observations and how to follow them up. The Committee should refrain from using the word "genocide" in all cases, as the term carried serious implications.

39. Mr. AMIR said that the Committee should exercise caution in using the term "genocide" since it had not yet defined it. The term had been used in connection with the situation in Darfur, yet there had been no finding of genocide in the report of the International Commission of Inquiry on Darfur to the Secretary-General.

40. Mr. de GOUTTES said that he supported the proposal to identify additional indicators of possible genocide, establish an open-ended working group and coordinate efforts with those who were dealing with the subject, especially the Special Adviser on the Prevention of Genocide. Those efforts mirrored the procedure that the Committee had undertaken in 1993, when it had adopted a working paper on early-warning measures and urgent procedures. The question had arisen at that time as to whether the Committee might have been able to prevent the grave events that had taken place in the former Yugoslavia if it had been able to interpret the warning signs more effectively. Among the indicators developed in 1993, the ones relating to racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other officials, were particularly important. The efforts being undertaken by the Committee today were a refinement and extension of its earlier tradition.

41. The issue of the definition of genocide was a difficult one that the Committee would have to consider carefully. He agreed that a precise definition was needed. The Committee had encountered a similar challenge in attempting to define the term "crime against humanity". In both cases, it was important not to broaden the definition too much as that would risk weakening the terms in question.

42. The CHAIRMAN recalled that the Committee had decided to refrain from discussing the definition of the term “genocide”.

43. Mr. ABOUL-NASR said that, regrettably, he could not take part in a discussion on genocide until the Committee had defined that term.

44. Mr. SHAHI pointed out that the 1948 Convention on the Prevention and Punishment of the Crime of Genocide contained a clear definition of “genocide”. It was futile to embark on finding a new one when an authoritative definition already existed. As to the question of Darfur, it was true that the United States Congress and the European Parliament had called the acts committed in Darfur genocide. However, the International Commission of Inquiry on Darfur had stated that, although the evidence did not lead to a finding of genocide, the crimes against humanity committed by the Government and the war crimes committed by the rebels were no less heinous. The situation in Darfur should be considered separately and had no place in the current discussion.

45. The CHAIRMAN said that the current discussion was about prevention and detecting the symptoms that might reveal that a serious threat was imminent. The Committee had to live with the knowledge that, on several past occasions, it had failed to prevent acts of genocide. That was made worse by the fact that those acts could potentially still lead to reprisals in kind. Once a conflict had broken out, it was difficult for the Committee to have an impact. However, what it could do was to sharpen its powers of observation and attempt to take a reading of a particular situation. Through an analysis based on its indicators, it could then determine whether there was cause for concern. The symptoms it sought were often apparent in periodic reports and States parties’ dialogue with the Committee.

46. Because the task before the Committee was an interdisciplinary one, it was important to seek the assistance of the Special Adviser on the Prevention of Genocide, as well as that of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The Committee would continue to develop its early-warning measures and would take into account the various lists of indicators made available to it in devising its own working paper.

The meeting rose at 1.05 p.m.