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HUMAN RIGHTS COMMITTEE

Ninetieth session

SUMMARY RECORD OF THE 2455th MEETING

Held at the Palais Wilson, Geneva,  
on Tuesday, 10 July 2007, at 10 a.m.

Chairperson: Mr. RIVAS POSADA

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS UNDER ARTICLE 40 OF THE COVENANT  
(agenda item 6) (continued)

Third periodic report of Zambia (continued) (CCPR/C/ZMB/3; CCPR/C/ZMB/Q/3)

1. At the invitation of the Chairperson, the members of the delegation of Zambia resumed their places at the Committee table.
2. Ms. KAWIMBE (Zambia) said that the correct figure for the current maternal mortality rate was 729 deaths per 100,000 live births. Abortion was illegal, but if women suffered complications during pregnancy that put their lives or those of their unborn children at risk, terminations could be carried out. There were adequate facilities for such interventions, each requiring three doctors, in all nine of the country's provinces.
3. Mr. CHILUNDIKA (Zambia) said that there were currently 297 prisoners on death row. The President had announced in May 2007 that he intended to sign a statute reducing the penalty for some crimes from death to life imprisonment. The prison authorities had submitted a report detailing the effect such a statute would have, to which the President had not yet responded. No study had been conducted on the effect of the moratorium on the death penalty.
4. Ms. IMBWAE (Zambia) said that, while the bill on gender-based violence had been drafted with the help of civil society, her Government had decided that wider consultation was required. The Gender In Development Division would conduct nationwide consultations and an audit of existing legislation to determine shortcomings in relation to such violence.
5. Mr. LYEMPE (Zambia) said that female refugees enjoyed the same rights as all other persons in Zambia, given that the Constitution prohibited all forms of discrimination. There were currently some 2,160 female refugees. The number had decreased as a result of ongoing repatriation programmes with several counties that had recently attained peace. Foreign nationals could be deported only when the Ministry of Home Affairs issued a warrant for their deportation on the grounds that they had either been convicted of a criminal offence or had engaged in activities that endangered peace or security. Immigration officers could deport foreign nationals only after such a warrant had been issued. Foreign nationals had the right to challenge deportation warrants before the High Court, as demonstrated by the case of Roy Clarke v. the Attorney General (CCPR/C/ZMB/3, para. 259).
6. Ms. KAWIMBE (Zambia) said that lawyers could not appear in local courts since they were trained in statutory law, not customary law. The local courts relied on the presiding justices and the customs that prevailed in the area concerned. All persons, including single and married women, had the right to change their place of residence or occupation at any time.
7. In order to enforce the views of United Nations treaty bodies, those views were presented to the appropriate authorities, including the Minister of Justice and the Secretary to Cabinet. The relevant institutions were then charged with implementing the treaty bodies' recommendations and the Inter-Ministerial Human Rights Reporting Committee appointed representatives to monitor their implementation.

8. Ms. IMBWAE (Zambia) added that the Government had enhanced its capacity to respond to United Nations treaty bodies' recommendations by setting up the Inter-Ministerial Human Rights Reporting Committee and had allocated an annual budget for implementation of the provisions of the international instruments to which Zambia was a party.

9. Mr. ZULU (Zambia) said that corporal punishment was prohibited under several domestic enactments. Any person found guilty of inflicting such punishment on a child in an education or childcare institution was guilty of committing an offence. Measures had been taken to raise awareness among school authorities and caregivers in childcare institutions about children's rights and quality of care, including the right not to suffer corporal punishment. Other campaigns had been conducted in the print and broadcast media to raise awareness among the public, including children themselves.

10. Ms. KAWIMBE (Zambia) said that further details on measures taken to empower women and improve their status would be available in Zambia's forthcoming report to the United Nations Committee on the Elimination of Discrimination against Women.

11. Ms. IMBWAE (Zambia) said that, in order to incorporate international instruments into domestic legislation once they had been signed, detailed consultations took place between ministries, government departments and stakeholders. The resulting decisions were then translated into domestic legislation.

12. Mr. O'FLAHERTY said that it would be useful to have more information on the de facto situation with regard to the enjoyment of rights under the Covenant, regardless of the constitutional and legal framework, particularly given the prevalence of customary law in many parts of Zambia. He asked what steps had been taken to ensure that women's opinions were taken into account in the process of reforming and codifying customary law, particularly in the light of the many problems women reportedly encountered under that system of law. It would also be useful to know how the State party would guarantee that in the reform process customary law was revised in conformity with international human rights law.

13. He requested further information on steps the Government was currently taking to discourage what it had recognized as bad practices, such as bride price, polygamy, sexual cleansing and property-grabbing. He requested clarification on whether customary-court officials received training on gender issues relevant to their responsibilities. It would be useful to learn whether tackling sexual offences was a high priority for the Government. He asked how the State party ensured that police officers received in-service training on gender issues and issues of sexual violence. Given that corporal punishment still appeared to be widespread, he requested further details on what community-based information and training campaigns were in place or under consideration.

14. Ms. WEDGWOOD requested clarification on how defendants could appeal against decisions handed down in customary courts if lawyers were not permitted to appear in such courts; that implied that their proceedings were not recorded. Given that there was a constitutional exception for customary law, it appeared that women whose fathers or husbands had control over their movements did not in fact enjoy freedom of movement. She would

welcome the delegation's response to that assertion, and to reports suggesting that bride price was still seen as the purchase of the services of the wife, highlighting the notion of women as men's property.

15. Mr. LALLAH asked whether any study had been undertaken to ascertain what impact customary law had on each right under the Covenant. If not, he urged the delegation to invite the President to instruct customary law officials to study the Covenant and examine the extent to which customary law complied with its provisions.

16. Sir Nigel RODLEY requested updated information on the status of the Lubuto case (list of issues, question 3). He would appreciate written details on cases that had been brought before the Police Public Complaints Authority, including information on the number of complaints per year, and the disposal and nature of the complaints. He invited the delegation to comment on the reported case in which, on 18 June 2007, suspected bandits had been taken to hospital after being shot by law enforcement officials. Two doctors who had complained about the state of the victims' bodies had been arrested, raising issues of police use of force and restraints thereon, and police tolerance of questioning of their use of force. He failed to understand why the reports of the Human Rights Commission were published only after a delay of several years. While the main reason for the delay was allegedly lack of resources, it would in fact cost very little to make the reports public, and electronic media could be used. Moreover, it was odd that the Commission's reports had not been brought before the Committee. He asked whether the State party would accept foreign sources of funding in order to publish those reports in a timely fashion.

17. Ms. IMBWAE (Zambia), referring to the comments on the reports of the Human Rights Commission, recalled that the Commission relied on funding from the Treasury, and had autonomy to determine the way in which it operated. It organized its own plan of work in accordance with its budget, and while annual reports were prepared and published, their frequency and the way in which that was done - including whether or not reports were placed on the Internet - were the sole responsibility of the Commission.

18. Ms. CHANDA (Zambia), on the issue of customary law, said that local court judges were adequately trained in the procedures to be followed, so that when adjudicating on civil matters involving customary law, they would follow the same procedure as the Subordinate Court or High Court, where each party had an equal right to be heard without discrimination.

19. She drew attention to the fact that customary court sittings were based on the Local Court Act; the customary court was not a court of record. It followed a fast-track procedure, and parties that were not satisfied with its decision had the right to appeal to the Subordinate Court. Subsequently, the proceedings would start again, at which stage parties were guaranteed the right to legal representation.

20. Ms. NHEKAIRO (Zambia) said that a broad consultation process had been undertaken in all nine provinces in the context of the review of customary law. Special attention had been given to the views of women and non-governmental organizations (NGOs) concerned with women's rights, which had been reflected in the report and would be duly taken into consideration in the harmonization and codification of customary law.

21. Ms. IMBWAE (Zambia) said that while the process of reviewing domestic legislation took into account the various international treaties and obligations entered into by her country, it could not, however, override the wishes of the Zambian people. Her Government was therefore endeavouring to raise awareness among Zambians and convince them of the need to support the process.

22. Mr. KAONGA (Zambia) said that many of the issues raised by the Committee in connection with traditional practices considered harmful were being addressed. Politicians were raising public awareness of the implications of “sexual cleansing” rituals and their relationship to HIV/AIDS, and a vibrant national campaign had led to the establishment of the Ministry of Gender and Development.

23. The payment of a bride price, known as “lobola”, was a common practice in some ethnic groups, providing the family of the bride with the guarantee that her husband would take care of her. Considering it essential to view such practices from a cultural - rather than intellectual - standpoint, he suggested conducting a study that would involve traditional rulers, with a view to developing a strategy integrating cultural sensitivities in the review process.

24. Ms. IMBWAE (Zambia) regretted that “lobola” was being portrayed in such a negative light, stressing that it was a tradition appreciated by many brides, who had no sense of having been bought either as individuals or for their services.

25. Mr. KAONGA (Zambia) pointed out that Zambia, Zimbabwe and Malawi shared similar cultures which differed from those of countries in which practices such as genital mutilation occurred.

26. Mr. ZULU (Zambia) said that after the abolition of corporal punishment in his country, circulars had been sent by the Ministry of Education to all schools informing them of that measure. All education boards and parent-teacher associations had also been informed. The various aspects of abolition continued to be discussed in many educational forums, and children in schools and other childcare institutions were actively involved in the promotion of their rights.

27. There was a growing number of institutions outside the formal education system, and in order to ensure that national minimum standards of care were adhered to, government officials provided teachers in those institutions with training on the need to comply with those standards and on aspects of child abuse. Public awareness was raised through television and radio programmes in over 72 local languages, addressing children’s rights and the violation of those rights. In addition, official texts pertaining to the promotion of children’s rights had been adapted for a general readership and translated into all local languages. Lastly, capacities were being developed in government inspectorates responsible for monitoring the situation in institutions with reported continuing cases of corporal punishment.

28. Mr. DAKA (Zambia) said that all new police officers received training in gender issues, while refresher programmes for serving officers included a course on gender issues, usually in conjunction with other courses. Zambia received significant sponsorship for gender and human rights training of police officers from NGOs such as UNICEF and Care International.

29. As to the alleged arrest of two doctors who had expressed indignation at the treatment of four criminals by the police, the criminals had been shot by police officers and taken to hospital to be certified as dead and thereafter to the mortuary. Having expressed their indignation publicly, thus drawing considerable attention, the doctors had been requested to accompany the police officers to the police station but had not been arrested. In fact, one of them had subsequently reported to the press the “fruitful discussions” held with the police, who explained that they often had no choice but to exchange fire with armed criminals.

30. Mr. CHILUNDIKA (Zambia) said he regretted to inform the Committee that Mr. Lubuto (list of issues, question 3) had died in prison of natural causes. The Committee would be provided with the details concerning his demise. In any event, a presidential decision on qualification for commutation of his death sentence to life or other lengthy imprisonment would have been pending.

31. Ms. KAWIMBE (Zambia) said she wished to correct the impression that no priority was given to sexual offences. The Penal Code had been amended by Act No. 15 of 2005, introducing penalties against sexual offences, including rape, abduction and infecting a child with a disease. As to the bill on gender-based violence, it was broad in scope, addressing both genders, and was undergoing a process of consultation to determine its final content.

32. Ms. IMBWAE (Zambia), in response to question 13 of the list of issues, said that her Government acknowledged the need to improve the poor conditions in places of detention by, inter alia, reducing overcrowding, and improving sanitation and access to clean water, food, clothing and medical care. That would be achieved through a number of programmes and strategies developed in her country’s Fifth National Development Plan.

33. Turning to question 14, she said that all chiefs of police stations had been mandated to take immediate disciplinary action against any police officers who arrested persons for civil matters.

34. Regarding the case of three journalists found to be in gross contempt of the National Assembly (question 15), the Committee was invited to note that the matter had been resolved by the High Court in the case of Fred M’membe and others. The High Court had ruled that the National Assembly had no power to sentence anyone to imprisonment as that was contrary to the principle of the democratic separation of powers. It had gone on to state that the role of parliament was to enact laws, while interpreting the law and passing sentence was the preserve of the judiciary.

35. Judges enjoyed constitutional security of tenure (question 16). Normally they vacated their office at the retirement age of 65. A judge might only be relieved of his duties by the President in accordance with article 98 of the Constitution and subject to the findings of a tribunal.

36. In the 2001 presidential and parliamentary elections, political parties had not been restricted to public State-owned media but had also had access to community radio stations in providing information about candidates and manifestos (question 17).

37. In connection with question 18, her Government wished to inform the Committee that consideration of the presidential election petition had been concluded and that the Supreme Court had delivered a judgement on the matter in 2005. It had ruled that the election of the current President had been valid.

38. Despite the stipulation in the Penal Code that an 8-year-old child might be held criminally responsible for his actions under certain circumstances, the current Juveniles Act contained sufficient provisions to safeguard the integrity and development of children aged between 8 and 12 (question 19). Furthermore, considerable reform of the juvenile justice system was currently under way.

39. The preparation of the periodic report had involved extensive consultation among stakeholders, with the participation of civil society organizations, government institutions and constitutional bodies such as the Human Rights Commission (question 20). Her Government had held workshops in all nine provinces in order to produce and validate a draft report. The promotion and protection of human rights was a priority for the Government, as evidenced by the fact that it was one of the components of the Fifth National Development Plan.

40. Mr. SHEARER acknowledged the self-critical comments made by the State party in response to question 13, recognizing the need to improve poor conditions in places of detention and outlining its proposals under the Fifth National Development Plan to remedy the situation, including the building of the new Mwembeshi prison. Although it was not the usual practice of the Committee to encourage the building of prisons, in the current case it was unavoidable, in the light of information provided by an NGO that prison cells in the existing prisons, designed to hold 30 prisoners, currently held up to 100 - a totally unacceptable degree of overcrowding. He asked the delegation to state whether that information was correct. He wished to know whether the Government was also considering alternatives to imprisonment. It was stated in paragraph 235 of the report that parole was being introduced under the Prisons Amendment Bill. He sought clarification of the definition of parole in Zambia, and wondered to what extent existing law or proposed new laws allowed such alternatives to imprisonment as suspended sentences, which would have the desirable effect of reducing prison overcrowding.

41. He noted with appreciation the various programmes under consideration relating to judicial delays and the lack of mechanisms facilitating access to justice for the poor and vulnerable. While a State party was not usually congratulated for its proposals, he considered it appropriate to acknowledge and encourage further the good intentions of the Government in those areas.

42. Turning to question 20, he wondered to what extent there was a possibility of publishing such information on the government website. He would welcome details of the contents of the website and invited the delegation to comment on the possibility of using it to inform the general public of Zambia's observance of, and progress in, the implementation of its obligations under the various human rights instruments.

43. Mr. KHALIL said that conditions in police cells in Zambia had reputedly been awful and, according to information at the Committee's disposal, the cells had often been illegally used to detain persons who failed to fulfil their contractual obligations until they paid their debts. He

hoped that the situation had improved since the creation of the post of police cell supervisor or custody officer. He asked whether the custody officers reported to the Ministry of Justice or the Ministry of Home Affairs.

44. There had been numerous reports of police harassment and intimidation of journalists. Mr. M'membe, the editor-in-chief of Zambia's only independent daily newspaper, had reportedly been arrested for criticizing the President. Mr. Mukwita, a journalist at an independent radio station, had apparently been forced to resign after conducting an interview in which the President had allegedly been insulted. The fact that defamation of the President was a criminal offence contravened article 19 of the Covenant. Draft legislation introduced in 2002 had apparently included provisions on freedom of expression which would have brought the law exactly into line with the Covenant. He asked why that legislation had not been adopted and whether it was likely to be in the future.

45. He asked whether any judges had been dismissed. According to reports, many magistrates had resigned because of poor conditions and several had gone on strike or failed to report for work in protest at their low salaries and inadequate service provision. He hoped the Government was considering ways of resolving the problem.

46. He welcomed the recent legislation setting a time limit for bringing disputes relating to election results before the courts.

47. Mr. O'FLAHERTY asked the delegation to comment on reports that opposition parties had been refused permission to hold rallies in January 2004. He also asked for its comments on reports that Michael Sata, a leading member of the opposition, had been arrested in 2005 on charges of sedition and spying, but had not been tried. In 2006, the President of Zambia had allegedly ordered the police to prevent Mr. Sata from holding a rally, but had been overruled by the Solicitor-General, who had subsequently been forced to resign. In the same year, Mr. Sata had reportedly been charged with making a false declaration of his assets when he had stood in the presidential elections. He wished to know if those reports were correct.

48. Under the 2006 Electoral Act it was unlawful to publicize unofficial opinion polls and election results. He wondered whether that was compatible with the freedom of expression.

49. He wished to know whether the Zambian Government was actively considering measures to raise the age of criminal responsibility, which currently stood at 8 years. The Committee on the Rights of the Child had called on Zambia to raise the age of criminal responsibility to at least 12. He asked for confirmation of a report that in 2003 a 6-year-old boy had been arrested and incarcerated on murder charges. If it was true, had any disciplinary action been taken against those responsible for his unlawful arrest?

50. Turning to a subject that had regrettably been omitted from the list of issues, he asked whether the Zambian Government intended to repeal the provisions of the Penal Code that criminalized homosexual acts, regardless of Zambian mores. Information provided by NGOs suggested that homosexuals were subjected to discrimination, abuse, violence and blackmail by many elements of society, including civil-society institutions, senior officials and the police. He asked how the Zambian Government protected or planned to protect homosexuals, a vulnerable group, from discrimination and ill-treatment.



51. Mr. BHAGWATI asked what steps the Government had taken to remedy the lack of magistrates and courtroom facilities, which was hampering the administration of justice. He asked whether any disciplinary action had ever been taken against judicial officers.
52. He wished to know how the members of the Judicial Complaints Authority were appointed, over which courts it had jurisdiction and why, in the words of the written replies, it did not deal with criminal processes. He asked why most of the Authority's recommendations had not been implemented and who decided whether its recommendations were valid.
53. Ms. CHANET said that pretrial detention was a de facto rule in Zambia, not only because bail was beyond many people's financial means but also because many offences, including the relatively minor offence of car theft, were not bailable. Such a situation was incompatible with article 9 of the Covenant and she requested an explanation.
54. Turning to freedom of expression, like Mr. Khalil she wished to know more about the alleged harassment of journalists. In particular, she asked whether the judicial investigation into the case of Mr. Mukuka, who had allegedly been beaten while in police custody in 2005, had been completed and what its findings were. While it was acceptable to sanction defamation of the President, she agreed with Mr. Khalil that the handing-down of prison sentences in such cases was a violation of article 9 of the Covenant. She invited the delegation to comment.
55. Mr. AMOR asked what was being done to improve the situation that denied Zambians their right to be tried without undue delay. He asked for an estimate of the average time taken for criminal and civil cases to reach the courts, the ratio of judges to cases, and the number of lawyers. What human rights training did lawyers and judges receive?
56. Ms. MAJODINA wished to know how the authorities addressed the sexual coercion and gender-based violence to which female prisoners were subjected. She asked what measures were taken to assist prisoners who gave birth while in prison or had young children to look after.
57. In view of the severe understaffing at psychiatric institutions and the lack of financial resources in the health-care system, she asked what measures had been taken to ensure that mental patients received humane treatment.

The meeting was suspended at 11.55 a.m. and resumed at 12.15 p.m.

58. Mr. CHILUNDIKA (Zambia) said that the prison population had grown fivefold since independence and many prisons were in a very poor state. That had made it necessary to build new prisons and refurbish existing ones. Measures had been taken to reduce overcrowding and it was no longer the case, for example, that up to 100 prisoners were occupying cells intended for 30. The number of prisoners at Lusaka central prison, for example, had been cut from 1,000 to 400. A pilot project would be launched by the end of 2007 to test community service as an alternative to imprisonment.

59. Female prisoners were not subjected to sexual coercion or gender-based violence since the law stipulated that they should come into contact only with female officers. Pregnant prisoners were provided with antenatal care but most prisons were not designed for children and were undesirable places in which to bring them up. Nevertheless, mothers were authorized to look after their children until they reached the age of 4, after which they were normally entrusted to foster homes or relatives.

60. Ms. CHANDA (Zambia) said that there had been no cases of dismissal of judges. In response to strikes by magistrates calling for better conditions of service in 2004 and 2005, the Government had taken a series of measures to improve the situation. Professional magistrates had been put on a par with State counsel; lay magistrates ranked slightly higher than ordinary civil servants. As a result, there had been no further strikes on the grounds of poor conditions of service.

61. In order to address the shortage of courtrooms, which was partly responsible for processing delays, a new complex for magistrates comprising 12 courtrooms had been built in Lusaka, the country's largest province. The construction of an additional 12 courtrooms was under way. The 2007 budget further provided for the construction of four new courtrooms in other provinces.

62. Michael Sata had been brought before the Subordinate Court on charges of espionage. Shortly after commencement of the proceedings, Mr. Sata had decided to take his case before the High Court in order to clarify some specific issues. Once the High Court had handed down its decision, proceedings before the Subordinate Court would resume. The Subordinate Court had dismissed a case against Mr. Sata involving false declaration; to date, the Attorney-General had not appealed that decision.

63. The Judicial Complaints Authority had no jurisdiction over higher-bench judges, who were appointed by the President. Disciplinary action procedures were set forth in the Constitution. The Judicial Complaints Authority was responsible for hearing cases of abuse of authority by magistrates, but was not competent to scrutinize judgements delivered by them. The High Court was the only authority with general supervisory jurisdiction over magistrates.

64. In the past, persons charged with motor vehicle theft had not been eligible for bail. The new provision had been introduced to address the high prevalence of such offences. In the light of the subsequent reduction in the number of offences, the Penal Code had been amended to make motor vehicle theft bailable. If the financial circumstances of accused persons prevented them from enjoying the benefit of bail provisions, the court had discretion to release them from any payment obligations.

65. Concerted efforts had been made to address transport problems preventing the timely transfer of accused persons to court. In Lusaka, the problems had been overcome, because the newly built magistrates' complex was located directly opposite the main prison. The police in the other provinces had secured sufficient transport to guarantee the transfer of suspects.

66. The maximum period for processing election petitions was 90 days; there was no time limit for other civil or criminal civil matters. A meeting had been held in June 2007 to discuss time limits. Magistrates were now required to submit monthly statistics on individual

performance, which had reduced the number of detainees awaiting trial in Lusaka prison from over 1,000 to 700. However, responsibility for delays in the processing of cases did not lie with the judiciary alone; action taken by counsel and case-specific circumstances must also be taken into account.

67. Zambia had 20 High Court judges, 9 Supreme Court judges, 24 professional magistrates and 230 lay magistrates. In early July 2007, 34 new magistrates had been sworn in, with the aim of increasing the number of magistrates in outlying areas.

68. Ms. IMBWAE (Zambia) said that the University of Zambia had been running daytime and evening law degree courses since 2000, with some 100 students graduating each year. The Zambia Institute of Advanced Legal Education accepted approximately 100 lawyers annually.

69. Ms. KAWIMBE (Zambia) said that Zambia's third periodic report and the Committee's concluding observations would be published on the government website, which was currently being set up.

70. Section B of the report contained examples of conduct that qualified as civil or criminal defamation. Defamation of the President was a criminal offence. The case of Fred M'membe, in particular, exemplified conduct amounting to defamation. Public interest must be balanced against the interest of the individual. Journalists in Zambia enjoyed freedom of expression, especially in the context of their professional activity, and legislation did not seek to curtail that right. The Government sought to foster an environment conducive to the enjoyment of the constitutional right to freedom of expression, including by the media.

71. The Freedom of Information Bill had been withdrawn from parliament in 2002 in order to delete certain contentious provisions. The delay in enacting the Bill had provided an opportunity to gain insight into its implications for the structure of public service. Its enactment would require a complete overhaul of record management and retrieval structures in public institutions. Journalists were the main champions of the Bill, but it was equally important to raise other stakeholders' awareness of its nature. In the context of the fight against terrorism, the Government had ordered certain institutions to release sensitive information. It had also established a statutory complaints commission.

72. Mr. KAONGA (Zambia) said that homosexuality was not tolerated in Zambia, for both religious and cultural reasons. Bringing about attitudinal changes that would facilitate broad acceptance of homosexuality would be a long and difficult process.

73. Mr. DAKA (Zambia) said that each police station had a custody officer responsible for ensuring the lawfulness of arrests and monitoring conditions of detention. The officer reported to the chief of the police station. Additional statistics pertaining to the work of the Police Public Complaints Authority would be submitted in writing.

74. Specific information on rallies planned by the Zambia Republic Party and the United Party for National Development, and the reasons for their banning, would be provided in due course. Following a Supreme Court judgement in 2005, the police had introduced a new system for implementation of the Public Order Act, and no complaints relating to implementation of the Act had been received since.

75. His Government deeply regretted the detention of a 6-year-old boy for murder and appreciated the swift intervention by national NGOs that had drawn attention to the case. The boy had been released, but he was unaware of any disciplinary action taken against the officers concerned.

76. Ms. IMBWAE (Zambia) said that all lawyers were trained in human rights. The Judicial Complaints Authority was composed of eminent lawyers and judges with decades of experience.

77. Her delegation was unable to provide specific information on the situation in mental hospitals. However, the health sector in general was seriously understaffed and the crisis affected all health facilities, including mental hospitals.

78. Ms. WEDGWOOD said that the Committee would appreciate the presence of the Zambian Human Rights Commission at its next meeting with the State party. The inability of that Commission to publish its annual report owing to lack of funds directly implicated the Government, which was responsible for its funding.

79. She enquired whether the State party had considered the possibility of introducing a so-called “right of removal” that would enable persons who did not wish to appear before a customary court to bring their case directly before a magistrates’ court.

80. The long delays in the processing of cases were cause for grave concern and incompatible with the Covenant. Although the measures taken to encourage magistrates to expedite proceedings were commendable, there should be provision for dismissal of a case on expiry of a specific time limit.

81. Sir Nigel RODLEY asked whether the only impediment to the publication of the annual report of the Human Rights Commission was the non-availability of funding. If not, he wished to learn of any other problems.

82. While he appreciated that changing public perception of homosexuality was not an easy task, religious and customary beliefs must not be used as justification for discrimination.

83. Mr. BHAGWATI asked whether it was true that all but one of the recommendations on freedom of speech made by the Constitutional Review Commission appointed in 1993 had been rejected. If so, he wished to learn of the reasons. Another review commission established in 1999 had come to similar conclusions and he wished to know what action, if any, had been taken in response to its recommendations.

84. Ms. NHEKAIRO (Zambia) said that, according to Zambian legislation, jurisdiction over customary law matters fell to local courts. However, any court ruling, including those handed down by customary courts, could be appealed before the respective higher court. It was thus unnecessary to amend legislation in order to provide for the possibility of bypassing local courts.

85. Ms. KAWIMBE (Zambia) said that there was no deliberate State policy of discrimination against persons on the basis of their sexual orientation.

86. Ms. IMBWAE (Zambia) said that she was unaware of the reasons why the Human Rights Commission had failed to publish its annual report. To her knowledge, the Commission received financial support from non-governmental sources. The Commission would be invited to take part in any future meetings with the Committee.

87. The CHAIRPERSON, summarizing the debate, said that the Committee remained concerned about certain provisions contained in customary law and their inconsistency with rights guaranteed in the Covenant. While it was not the Committee's intention to cast doubt on the validity of customary law, it was mandated to ensure the protection of Covenant rights and monitor States parties' efforts to bring their local laws into line with the Covenant. He strongly encouraged the State party to amend customary law provisions that were incompatible with the Covenant. The State party should continue its efforts to raise awareness of the Covenant, incorporate its provisions in domestic legislation and monitor implementation.

88. The Zambian Constitution made no reference to Covenant rights that were non-derogable in the event of a state of emergency, in violation of article 4 of the Covenant. The State party itself had acknowledged that inconsistency in paragraph 92 of its report and should take remedial measures. He strongly encouraged the State party to submit its next report without undue delay, so as to facilitate its ongoing dialogue with the Committee.

The meeting rose at 1.05 p.m.