



REPUBLIC OF ZAMBIA

REPORT OF THE COMMITTEE ON NATIONAL SECURITY AND FOREIGN

AFFAIRS

ON THE

**CONSIDERATION OF THE NATIONAL ASSEMBLY SCRUTINY OF THE
PROPOSAL TO RATIFY THE CONVENTION ON THE PREVENTION AND
PUNISHMENT OF THE CRIME OF GENOCIDE**

FOR THE

FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

Printed by the National Assembly of Zambia

REPORT OF THE COMMITTEE ON NATIONAL SECURITY AND FOREIGN

AFFAIRS

ON THE

**CONSIDERATION OF THE NATIONAL ASSEMBLY SCRUTINY OF THE
PROPOSAL TO RATIFY THE CONVENTION ON THE PREVENTION AND
PUNISHMENT OF THE CRIME OF GENOCIDE**

FOR THE

FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

TABLE OF CONTENTS

Item	Page No
1.0 Membership of the Committee	1
2.0 Functions of the Committee	1
3.0 Meetings of the Committee	1
4.0 Procedure Adopted by the Committee	1
5.0 Background to the Protocol	2
6.0 Objective of the Convention	2
7.0 Salient Provisions of the Convention	3
8.0 Summary of Submissions from Stakeholders	4
9.0 Committee's Observations and Recommendations	6
10.0 Conclusion	7
Appendix I: - List of Witnesses	9
Appendix II: - List of National Assembly Officials	11

REPORT OF THE COMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS ON THE CONSIDERATION OF THE NATIONAL ASSEMBLY SCRUTINY OF THE PROPOSAL TO RATIFY THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE, FOR THE FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 Membership

The Committee consisted of: Dr M Malama, MP, (Chairperson); Ms A M Chisangano, MP (Vice Chairperson); Mr E J Muchima, MP; Brig Gen M Sitwala, (Rtd) MP; Mr A K Mbangweta, MP; Mr L Nyirenda, MP; Ms M Miti, MP; Dr F N'gambi, MP; Mr A B Malama, MP; and Ms M Lubezhi, MP

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

The Committee has the honour to present its Report on the consideration of the National Assembly scrutiny of the proposal to ratify the Convention on the Prevention and Punishment of the Crime of Genocide, for the Fourth Session of the Twelfth National Assembly.

2.0 Functions of the Committee

Pursuant to Article 63 of the *Constitution of Zambia, Chapter 1 of the Laws of Zambia as Amended by Act, No. 2 of 2016* and Section 5 of the *Ratification of International Agreements Act, No. 34 of 2016*, the National Assembly is reposed with the power to oversee the performance of Executive functions by, among other things, approving international agreements and treaties before they are acceded to or ratified. The Committee was mandated to consider and make recommendations to the House on the National Assembly approval of the proposal to the ratify the Convention on the Prevention and Punishment of the Crime of Genocide.

3.0 Meetings of the Committee

The Committee held nine meetings to consider the National Assembly scrutiny of the proposal to ratify the Convention on the Prevention and Punishment of the Crime of Genocide.

4.0 Procedure adopted by the Committee

In order to acquaint itself with the provisions of the Convention and the ramifications of the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide, the Committee sought both written and oral submissions from stakeholders as listed at Appendix II.

5.0 Background to the Protocol

The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly on 9th December, 1948 as General Assembly Resolution No. 260. The Convention entered into force on 12th January, 1951. The Convention on Genocide was among the first United Nations conventions addressing humanitarian issues.

The jurisprudence of the International Court of Justice (ICJ) considers the prohibition of genocide as peremptory norms of international law. Moreover, the ICJ recognises that the principles underlying the Convention are principles which are recognised by civilised nations binding on states even without any obligation.

The Convention provides for a precise definition of the crime of genocide, in particular in terms of the required intent and the prohibited acts (Article II). It also specifies that the crime of genocide may be committed in time of peace or in time of war. Article II of the Convention defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. These acts include:

- a) killing members of the group;
- b) causing serious bodily or mental harm to members of the group;
- c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) imposing measures intended to prevent births within the group; and
- e) forcibly transferring children of the group to another group.

Article III defines the crimes that can be punished under the convention as:

- a) genocide;
- b) conspiracy to commit genocide; and
- c) direct and public incitement to commit genocide;
- d) attempt to commit genocide; and
- e) complicity in genocide.

The Convention had since then been widely accepted by the international community and ratified by the overwhelming majority of states. As of June, 2020, 149 states had ratified or acceded to the Genocide Convention. Of the ninety-three UN Member States, forty-five had not ratified the Convention, including Zambia. The International Court of Justice (ICJ) had repeatedly stated that the Convention embodied principles that were part of general customary international law. This meant that whether or not states had ratified the Genocide Convention, they were all bound as a matter of law by the principle that genocide was a crime prohibited under international law. Zambia had not yet ratified the Convention on the Prevention and Punishment of the Crime of Genocide.

6.0 Objectives of the Convention

The objective of the Convention was to provide for the prevention and punishment of perpetrators of genocide whether committed in time of peace or in time of war. The rationale for

the Convention was to have an international instrument that would ensure the culpability of individuals as well as states for the crime of genocide.

7.0 Salient Provisions of the Convention

Article 1: Declaration of Genocide

Article 1 of the Convention declared genocide to be a crime under international law which State Parties would prevent and punish. This Article also provided that it was a crime that could take place in time of war as well as in time of peace.

Article 2: Definition of Genocide

Article 2 defined genocide by listing acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.

Article 3: Crimes

Article 3 of the Convention listed the following four crimes related to genocide:

- i. conspiracy to commit genocide;
- ii. direct and public incitement to commit suicide;
- iii. attempt to commit genocide; and
- iv. complicity in genocide.

Article 4: Punishment of Persons Committing Genocide

Article 4 provided that any person, regardless of their status, shall be punished for committing genocide. Article 4 provided also that persons, rather than states, shall be punished for committing genocide. Further, Article 9 of the Convention provided that disputes between State Parties relating to the interpretation, application or fulfilment, including those relating to the responsibility of a state for genocide, shall be submitted to the International Court of Justice (ICJ), at the request of any of the parties to the dispute.

Articles 5: Obligations on State Parties to the Convention

Article 5 imposed obligations on State Parties to the Convention to enact legislation that would domesticate the provisions of the Convention. It particularly provided for effective penalties for persons found guilty of genocide or any of the other acts provided for under Article 3.

Article 6: Trial of Persons Charged with Genocide

Article 6 provided that persons charged with genocide should be tried by a competent tribunal of the state in the territory where the act was committed or by an international penal tribunal. The International Criminal Court (ICC), now a permanent institution currently based in the Hague, is mandated to investigate and prosecute the perpetrators of genocide and other international crimes, when the national systems failed to act.

Article 7: Genocide not Exempt from Extradition

Article 7 provided that genocide was not to be considered as a political crime that was exempt from the application of extradition laws. In this regard, State Parties should extradite the perpetrators of genocide in accordance with existing laws and treaties.

Articles 8 and 9: Mechanisms for State Parties to the Convention to Call upon Organs of the UN

Article 8 and 9 provided mechanisms for State Parties to the Convention to call upon organs of the UN to take action to prevent and suppress genocide and to refer disputes concerning the interpretation, application or fulfilment of the Convention to the ICJ.

Articles 10 – 19: Miscellaneous Provisions

The provisions of the Convention under Articles 10 to 19 were essentially procedural and provided for a plethora of issues such as the authentic language versions of the Convention, application to non-self-governing territories, and entry into force, revision and denunciation.

8.0 Summary of Views from Stakeholders

The *Ratification of International Agreements Act No.34 of 2016* provided guidance on the parameters to look out for before an international agreement was ratified or acceded to by Zambia. The Act provided that the international agreement should be in the best interests of the state.

Specifically, Section 3(2) of the Act provided that the considerations listed below should be borne in mind when examining what would constitute ‘best interest of the state’.

“(2) The Minister referred to in subsection (1) shall, in determining whether it is in the best interests of the state to ratify an international agreement, consider:—

- (a) the object of the international agreement;*
- (b) whether existing legislation adequately addresses the object of the international agreement;*
- (c) the impact of implementing any measure specified in the international agreement; and*
- (d) any legislative measures that may be required to give effect to the international agreement.”*

In this regard, the Committee considered the views of the stakeholders on the proposal to ratify the Convention on the Prevention and Punishment of the Crime of Genocide in light of these parameters.

i. The Object/ Rationale of the International Agreement

Stakeholders informed the Committee that the objective of the Convention was to define genocide and to provide for the prevention and punishment of the crime of genocide, whether committed in time of peace or in time of war. The rationale for the Convention was to have an international instrument that would ensure the culpability of individuals as well as states for the crime of genocide.

The Committee learnt, further, that although the crime of genocide was adequately covered in the International Criminal Court Statute, also referred to as the Rome Statute, to which Zambia was

Party, and was also a peremptory norm under international customary law, its provision in the Convention on the Prevention and Punishment of the Crime of Genocide was equally important.

Stakeholders reasoned that it was an international requirement and obligation for Zambia to ratify this Convention so as to be compliant with international best practice in the fight against genocide. This was particularly so because international cooperation in the prevention and punishment of genocide was of great importance as genocide was a potential menace to the peace and security of the country and the world at large. The stakeholders went further to state that the memories of the 1994 Genocide in Rwanda, for instance, were still sufficiently fresh to induce Zambia to accept a maximum amount of international cooperation for the prevention and punishment of the crime.

Stakeholders, therefore, recommended that Zambia should consider ratifying the Genocide Convention seeing that genocide was a crime that should be prevented and perpetrators punished by all participating countries.

ii. Existing Legislation Addressing the Object of the International Agreement

Stakeholders informed the Committee that there was no law in Zambia which adequately addressed the prevention of and the punishment of the crime of genocide. Stakeholders were of the view that *the Refugees Act, No. 1 of 1917* in Section 2 referred only to conduct which incited genocide without providing for appropriate punishment for perpetrators of genocide. The domestic law also did not adequately provide for preventive measures to the occurrence of genocide in Zambia.

Stakeholders were, however, cognisant of the fact that the Zambian laws, including the Constitution and the *Extradition Act, Chapter 94 of the Laws of Zambia*, embodied the spirit of preventing and punishing perpetrators of heinous crimes like genocide but this had not been expressly provided for.

iii. The Impact of Implementing any Measure Specified in the International Agreement

The Committee was informed that the ratification of the Convention would enhance the protection of human rights by invoking the process of putting in place domestic measures to punish perpetrators of the crime of genocide. The accession of the Convention would also place Zambia in good standing on the international scene and allow the country to share experiences and best practices with other states on the prevention of genocide and on prosecuting and punishing perpetrators of genocide.

iv. Legislative Measures and/or Reforms Necessary to Give Effect to the International Agreement

Stakeholders noted that legislative measures that may be required to give effect to the Convention would be amendments to the *Penal Code, Chapter 87 of the Laws of Zambia* and the *Criminal Procedure Cod, Chapter 88 of the Laws of Zambia* to allow for the punishment of the crime of genocide and all other acts which were punishable under Article 2 and 3 of the Convention. Stakeholders were of the view that the Convention was for all intents and purposes consistent with the Constitution of Zambia as it was an instrument aimed at the protection of the right to life. However, stakeholders recommended that the legislative reforms cited above which were necessary to accommodate the Convention should be undertaken.

In this regard, stakeholders were satisfied that the Convention on the Prevention and Punishment of the Crime of Genocide had met the criteria set out in the *Ratification of International Agreements Act, No.34 of 2016* for determining whether or not the international agreement being presented for ratification was in the best interests of the nation.

The stakeholders, therefore, recommended that the National Assembly should approve the proposal to ratify the Convention.

9.0 Committee's Observations and Recommendations

Having considered submissions from the stakeholders, the Committee makes observations and recommendations as set out below.

i. The Object/ Rationale of the International Agreement

The Committee notes that the objective of the Convention is to define genocide and to provide for the prevention and punishment of the crime of genocide whether committed in time of peace or in time of war. The Committee, further notes that the rationale for the Convention is to have an international instrument that will ensure the culpability of individuals as well as states for the crime of genocide.

The Committee also notes that Zambia is party to the International Criminal Court Statute, also referred to as the Rome Statute, which provided for the crime of genocide. In this regard, it is an international requirement and obligation for Zambia to ratify this Convention so as to be compliant with international best practice in the fight against genocide. This is particularly vital because international cooperation in the prevention and punishment of genocide is of great necessity.

The Committee, therefore, recommends that the national Assembly should consider approving the proposal to ratify the Convention.

ii. Existing Legislation Addressing the Object of the International Agreement

The Committee observes that there is currently no law in Zambia which specifically and adequately addresses the prevention of and punishment of the crime of genocide. The Committee notes that the *Refugees Act, No. 1 of 1917* in Section 2 refers only to conduct which incites genocide without providing for appropriate punishment for perpetrators of the crime. In this regard the current provisions of the law do not adequately provide for preventive measures against the occurrence of genocide in Zambia.

The Committee is also cognisant of the fact that the Zambian laws, including the Constitution, and the *Extradition Act, Chapter 94 of the Laws of Zambia*, embody the spirit of preventing and punishing perpetrators of heinous crimes like genocide but this has not been expressly provided for.

The Committee, therefore, observes that the current legal framework providing for the crime of genocide is inadequate and recommends that legal reform be undertaken to accommodate the Convention on the Prevention and Punishment of the Crime of Genocide.

iii. *The Impact of Implementing any Measure Specified in the International Agreement*

The Committee notes that the ratification of the Convention will enhance the protection of human rights by invoking the process of putting in place domestic measures to punish perpetrators of the crime of genocide. The accession to the Convention will also place Zambia in good standing on the international scene and allow the country to share experiences and best practice with other states on the prevention of genocide and on prosecuting and punishing perpetrators of genocide.

iv. *Legislative Measures and/or Reforms Necessary to Give Effect to the International Agreement*

The Committee observes that the current statutes, namely the *Penal Code, Chapter 87 of the Laws of Zambia* and the *Criminal Procedure Code Chapter 88 of the Laws of Zambia* do not provide for the punishment of the crime of genocide and all other acts which are punishable under Articles 2 and 3 of the Convention.

In this regard, the Committee recommends that the two pieces of legislation be amended to accommodate the Convention and that, where necessary, new legislation should be introduced.

The Committee is satisfied that the ratification of Convention on the Prevention and Punishment of the Crime of Genocide is in the best interest of the nation and that it meets the criteria set out in the *Ratification of International Agreements Act, No.34 of 2016*.

In light of the foregoing, the Committee recommends that the National Assembly approves the proposal to ratify the Convention without reservations. Further, the legal reforms required to give effect to the Convention should be undertaken without undue delay.

10.0 Conclusion

The Committee notes that whereas Zambia is a signatory to several international agreements, many have not been ratified. The Committee is cognisant of the fact the responsibility to initiate the process of ratifying an international agreement lies with the line ministry. However, there is no overarching institution tasked with the responsibility of coordinating this process across the various ministries. In this regard, the Committee recommends that the Secretary to Cabinet should create a coordinating Committee to superintend over the ratification of international agreements

The Committee wishes to express its gratitude to all stakeholders who appeared before it and tendered both oral and written submissions. The Committee wishes to thank you Mr Speaker, for affording it an opportunity to scrutinise the National Assembly proposal to approve the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide. The Committee also appreciates the services rendered by the Office of the Clerk of the National Assembly.

We have the Honour to be, Sir, the Committee on National Security and Foreign Affairs, tasked to consider the National Assembly approval of the proposal to ratify the International Convention *on the Prevention and Punishment of the Crime of Genocide* for the Fourth Session of the Twelfth National Assembly.

Dr M Malama, MP,
(Chairperson)

Ms A M Chisangano, MP
(Vice Chairperson)

Mr E J Muchima, MP;
(Member)

Brig Gen M Sitwala, (Rtd) MP;
(Member)

Mr K Mbangweta, MP;
(Member)

Mr L Nyirenda, MP;
(Member)

Ms M Miti, MP;
(Member)

Dr F N'gambi, MP; and
(Member)

Mr A B Malama, MP.
(Member)

Ms M Lubezhi, MP
(Member)

June, 2020
LUSAKA

Dr M Malama, MP
CHAIRPERSON

Appendix I
List of Witnesses

Ministry of Justice

Mrs F M Bwalya, Chief Parliamentary Counsel
Mr L Banda, Parliamentary Counsel

Ministry of Home Affairs

Dr C L Mulenga, Permanent Secretary
Mr G Sinyenga, Director-Human Resource Development
Mr A Mukisi, Parliamentary Liaison Officer
Mr P Choolwe, Assistant Director Research and Planning
Mr C Simwanza, Director National Anti-Terrorism Centre
Mr S M Kunda, Deputy Director, National Anti-Terrorism Centre
Mr G Malunga, Deputy Director, Zambia Police Service, Marine

National Airports Corporation

Mr F Mondoloka, Managing Director
Mr A Bvulani, Director- Airport Services
Mr F M Mulenga, Airport Manager

Ministry of Transport and Communications

Mr M Lungu, Permanent Secretary
Mr G Lesa, Director General, Civil Aviation Authority
Mr S Mbewe, Director Planning
Mr Z Phiri, Director
Mr D Kafuli, Acting Director Transport
Mr S Kunda, Legal Counsel

National Anti-Terrorism Centre

Mr C Simwanza, Director
Mr A Mukisi, Parliamentary Liaison Officer
LT Col J Kajila, Chief of Operations
Mr K Lisuli, Anti-Terrorism Officer

Law Association of Zambia

Ms W Siwale, Council Member

Mahogany Air

Mr J Belemu, Chief Executive Officer

Ministry of Defence

Mr E L Zimba, Acting Permanent Secretary
Ms M Namwawa, Legal Officer
Mr F Mwansa, Principal Research and Public Relations Officer
Mr J C Makanta, Air Secretary

Maj G N Miyutu, Legal Officer

Zambia Air Service Training Institute

Mr B Shingalili, Principal

Mr B Mubita, Head of Training

Mr E Mwanza Quality Manager

Ministry of Foreign Affairs

Amb. C Lombe, Permanent Secretary

Mrs L Matapo, Legal Counsel

Mr S Mandanda, Director - Development and International Organisation

Mr H Banda, National Coordinator -International Conference of Great Lakes

Mr M B Milambo, Planning Officer.

Chartered Institute of Logistics and Transport

Mr P Chiyuwe, Chief Executive Officer

Mr K Simukanga, Honorary Secretary

Mr E Mwale inspector

Mr K Mwamba, Inspector

Ministry of Housing and Infrastructure Development

Eng. C Mushota, Permanent Secretary

Dr R Banda, Director-Planning

Mr A Banda, Director-Human Resource

Eng. D Mufuna, Director- Public Infrastructure

Appendix II
List of National Assembly Officials

Ms C Musonda, Principal Clerk of Committees
Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)
Mr S Chiwota, Senior Committee Clerk (SC)
Mr C Chishimba, Committee Clerk
Mrs G Chikwenya, Typist
Mr M Kantumoya, Parliamentary Messenger