

Legal Resources Foundation v. Zambia, Communication No. 211/98 (2001)

1) Reference Details

Jurisdiction: African Commission on Human and Peoples' Rights

Date of Decision: 23 April - 7th May 2001

Case Status: Concluded

Link to full case:

2) Facts

Zambia enacted amendments to its Constitution which included provisions that candidates to the Office of President must be able to prove that both their parents are Zambian by birth or descent, and placed a limit of two five year terms on the Presidency.

3) Law

- African Charter on Human and Peoples' Rights Articles 2, 3, 13, and 19
- Constitutional (Amendment) Act 1996

4) Legal Arguments

The Complainant organisation submitted that the new constitutional provisions violated the human rights of 35% of the population of Zambia. Requiring persons proposing their candidacy for President to prove that both of their parents were Zambian is discriminatory on the basis of birth, social origin and other status under Article 2 of the African Charter in respect of the enjoyment of full and free participation in Government guaranteed by Article 13. Furthermore it is a violation of the equality of all peoples regardless of their place of origin assured by Article 19.

The Government argued that it was the evident desire of the people of Zambia, as understood through a poll conducted, that the office of the President be preserved for persons of traceable Zambian origin. The Government considered the Legal Resource Foundation's complaint as an opinion which the organisation is free to hold but in the prevalent democratic system the majority view must hold sway.

5) Decision

The Commission considered the rules as potentially depriving the country of potential resources and leadership, and from the individual point of view considered the indignity of being able to vote but not to stand for office. The Commission took a broad view of the continent noting that there were increasing numbers of African states where such discrimination has caused violence and social and economic instability.

The Commission considered that there are a considerable number of Zambian citizens whose parents were not born in the Republic of Zambia, as prior to the breakup of the Central African Federation free movement existed between Malawi, Zambia and Zimbabwe. Zambian citizenship was granted to all residents at the time of independence, but the following generation do not have parents who were born in Zambia. The Commission considered that

such a limitation is arbitrary and its retrospective application unjustifiable in the face of the discrimination that it causes.

The free choice of representatives is violated by these restrictions and the statement 'in accordance with law' within Article 13 is to permit the regulation of how that right is exercised not the removal of the right.

In relation to Article 19 of the African Charter the Commission found that the argument that there was a violation was mistaken in that 'peoples' is not relevant unless there is a particular identified group with common ancestry and heritage.

The Commission concluded that the amendments to the Constitution violated articles 2, 3(1) and 13 of the African Charter.