



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

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Sixty-ninth session
31 July-18 August 2006

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

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

SOUTH AFRICA

1. The Committee considered the initial to third periodic reports of South Africa, submitted in one document (CERD/C/461/Add.3), at its 1766th and 1767th meetings (CERD/C/SR.1766 and 1767), held on 4 and 7 August 2006. At its 1782nd meeting (CERD/C/SR.1782), held on 16 August 2006, it adopted the following concluding observations.

A. Introduction

2. The Committee notes and wishes to record the profound significance, in fact the emotional overtones, of commencing this constructive dialogue with South Africa, in terms of the convention whose genesis was strongly influenced by the cruel, inhuman and degrading effects of apartheid in that country.

3. The Committee welcomes the report submitted by the State party and appreciates the presence of a high ranking delegation which provided additional written and oral information and enabled a frank dialogue with the delegation.

4. Noting that the initial report was presented after an approximate 5 year delay, the Committee invites the State party to respect the deadline set for the submission of its next report to the Committee.

B. Factors and difficulties impeding the implementation of the Convention

5. The Committee recognizes that the heritage of a system of governance built by the apartheid regime, in terms of its economic, social and cultural consequences, present obstacles hindering the State party's efforts to fully implement the Convention. Beyond the dismantling of the former apartheid structures, the Committee acknowledges that the establishment of a complete non-racist State represents a challenge for the South African society and requires human and financial resources on a scale adequate to meet the many challenges.

C. Positive aspects

6. The Committee expresses its satisfaction over the peaceful transition from apartheid, as well as for the adoption of the Constitution of 1996 with its Bill of Rights, enshrining, *inter alia*, the values of "human dignity, equality and non-racism".

7. The Committee acknowledges with appreciation the numerous legislative measures designed to build a democratic and multicultural society and to combat segregation and racial discrimination, such as the Film and Publication Act of 1996, the South African Schools Act of 1996, the Culture Promotion Amendment Act of 1998, the National Empowerment Fund Act of 1998, the Refugees Act of 1998, the Employment Equity Act of 1999 and the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000.

8. The Committee welcomes the establishment of the South African Human Rights Commission (SAHRC) with, *inter alia*, competence to promote respect for human rights, monitor and investigate their observance and seek effective redress for human rights violations, and notes its very active role in eliminating the residual effects of racial discrimination and appreciates its contribution during the dialogue with the State party.

9. The Committee acknowledges the establishment of "Equality Courts", with the purpose of enforcing the Promotion of Equality Act, which has the elimination of racism and discrimination as its primary objective.

10. The Committee also welcomes the adoption of special measures, in the context of the Durban Declaration and Programme of Action, which are in accordance with paragraphs 4 and 2, respectively, of articles 1 and 2 of the Convention, with the purpose of securing adequate advancement of discriminated racial or ethnic groups. It draws the attention of the State party, however, to the fact that such "affirmative action" may not lead to the maintenance of unequal or separate rights for those groups after the objectives for which they were taken have been achieved.

D. Concerns and recommendations

11. While acknowledging the historic reasons submitted by the State party not to gather disaggregated data on the ethnic groups that constitute its population, the Committee notes that, in the absence of disaggregated information on the composition of the population, an adequate vision of the diversity of the South African society cannot be obtained, nor an accurate perception of the effective enjoyment of the rights provided in the Convention by different ethnic groups (article 1).

The Committee recommends that the State party endeavour to include, in its next periodic report, a qualitative description of the ethnic composition of its population, in particular on indigenous peoples and non-citizens, and, in this connection, draws the attention of the State party to paragraph 8 of its General Guidelines (2000).

12. The Committee notes the lack of information on how the Traditional Leadership and Governance Framework Act of 2003 addresses the status of customary law and traditional leadership, vis-à-vis both national and provincial legislation (article 2 (c)), in relation to the elimination of racial discrimination.

The Committee recommends that the State party include detailed information in its next periodic report on the role of traditional leadership and on the status of customary law, including on the measures adopted to ensure that the application of such laws does not have the effect of creating or perpetuating racial discrimination.

13. The Committee remains concerned by the *de facto* segregation that persists as a legacy of apartheid in spite of the measures the State party has adopted to put an end to this situation, especially regarding ownership of property, access to finance, and social services such as health, education and housing (article 3).

In the light of General Recommendation 19 (1995) on racial segregation and apartheid, the Committee recommends that the State party include detailed information in its next periodic report on the specific measures adopted to address the situation of *de facto* segregation that persist in the State party, and that it provide information on the impact of these measures.

14. While acknowledging the provisions of section 16 (2) of the Constitution, sections 7 of the Promotion of Equality Act, 8 of the Regulation of Gatherings Act, and 29 of the Films and Publication Act, as well as the ongoing discussions started in 2000 on a bill on the prohibition of hate speech, the Committee is concerned about the frequency of hate crimes and hate speech in the State party and the inefficiency of the measures to prevent such acts (article 4).

In the light of its General Recommendation 15 (1993) on organized violence based on ethnic origin, the Committee recommends that the State party ensure the full and adequate implementation of article 4 of the

Convention, and that it adopt legislation and other effective measures in order to prevent, combat and punish hate crimes and speech.

15. While taking note of the various existing poverty reduction programmes in the State party, the Committee remains concerned about the extreme poverty of part of its population and its impact on the equal enjoyment of the human rights by the most vulnerable ethnic groups (article 5).

The Committee recommends that the State party include information in its periodic report on the socio-economic situation, in particular regarding disadvantaged ethnic groups, that it adopt all necessary measures to reduce poverty and stimulate economic growth, and provide detailed information on the results of those measures.

16. The Committee is concerned about acts of violence against women, especially reports of rapes and domestic violence, considering that victims are most often women from disadvantaged and poor ethnic groups (article 5 (b) and (e)).

In the light of General Recommendation 25 (1995) on gender related dimensions of racial discrimination, the Committee recommends that the State party adopt all necessary measures to address those phenomena of double discrimination, in particular regarding women and children from the most disadvantaged and poor ethnic groups.

17. The Committee notes the absence of specific national legislation criminalizing human trafficking, bearing in mind that victims are often women and children from the most disadvantaged ethnic groups (article 5 (b) and (e)).

The Committee recommends that the State party adopt legislation, and other effective measures, in order to adequately prevent, combat and punish human trafficking.

18. While noting the promulgation of the Restitution of Land Rights Amendment Act of 2004 and the post-settlement support programmes, the Committee is concerned about the extent of restitution, the sustainable development of re-settled communities and the enjoyment of their rights under the Convention, in particular their right to housing, health, access to water and education (article 5 (e)).

The Committee encourages the State party to strengthen its policy of land restitution and post-settlement support in order to ensure to those re-settled ethnic communities an improvement in the enjoyment of their economic, social and cultural rights under the Convention.

19. The Committee is concerned with the situation of indigenous peoples, *inter alia* the Khoi, San, Nama, Griqua communities, and, in particular, hunter-gatherer, pastoralist and nomadic groups, and notes the absence of information on the specific measures adopted by the State party to ensure the enjoyment of all rights by those indigenous communities (article 5 (e)).

In the light of General Recommendation 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party provide detailed information in its next periodic report on the situation of the indigenous peoples and on any special measures, pursuant to articles 1 paragraph 4 and 2 paragraph 2 of the Convention, taken with a view to ensuring the enjoyment of their rights under the Convention, including their freedom of movement, and their right to participate in decisions affecting them.

20. While acknowledging the State party's programmes for the prevention and treatment of HIV/AIDS, the Committee is concerned at the high rate of HIV/AIDS amongst persons belonging to the most vulnerable ethnic groups (article 5 (e)).

The Committee recommends that the State party strengthen its programmes in the field of health, with particular attention to minorities, bearing in mind their disadvantaged situation resulting from poverty and lack of access to education, and encourages the State party to take further measures to combat HIV/AIDS.

21. While noting the recent Refugee Backlog Project, the Committee is concerned about the substantial backlog of asylum seekers' applications (article 5 (d) and (e)).

In the light of General Recommendation 30 (2004) on discrimination against non-citizens, the Committee encourages the State party to accelerate its measures to reduce the backlog of applications for asylum.

22. While noting the constitutional rights to receive education in the language of one's own choice, the Committee wishes to point out the lack of information on the implementation of these rights as well as on the measures taken with regard to the promotion of constitutionally recognized languages, *inter alia*, the Khoi, San, Nama and sign languages. The Committee also notes the absence of information on the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (article 5 (e)).

The Committee recommends that the State party provide information on all languages recognized in the Constitution, especially their use in education, and on the measures to promote indigenous languages, as well as on the status, activities and resources of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

23. The Committee is concerned about allegations of ill-treatment and extortion of documented and undocumented non-citizens by law enforcement officials, *inter alia* in the Lindela Repatriation Center and at the border, and about the lack of investigation of those cases (articles 6 and 7).

The Committee recommends that the State party take appropriate measures to eradicate all forms of ill-treatment and extortion of non-citizens by law enforcement officials, ensure prompt, thorough, independent and impartial investigation of all those allegations, and

prosecute and punish those responsible for those acts. It further recommends that the State party provide non-citizens with adequate information about their rights and the legal remedies available against their violation. The Committee also recommends that the State party provide detailed information in its next report on any specific training programmes and courses for law enforcement officials on human rights and on the provisions of the Convention and their application.

24. While noting the existence of legal aid mechanisms, the Committee is concerned about the difficulties of access to justice, especially for members of the most disadvantaged and poor ethnic groups, including indigenous people, especially on account of unfamiliarity with English and Afrikaans (articles 5 (a) and 6).

The Committee recommends that the State party take necessary measures to ensure access to justice, including through the use of official languages other than English and Afrikaans, and to establish mechanisms to strengthen provisions of legal aid for all members of disadvantaged and poor ethnic groups.

25. The Committee notes the absence of information on court cases on racial discrimination in the State party (article 6).

The Committee requests that the State party include in its next periodic report statistical information on prosecutions launched, and penalties imposed, in cases of offences which relate to racial discrimination, and where the relevant provisions of the existing domestic legislation have been applied. The Committee reminds the State party that the mere absence of complaints and legal action by victims of racial discrimination may be mainly an indication of the absence of relevant specific legislation, or of a lack of awareness of the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute. The Committee requests the State party to ensure that appropriate provisions are available in national legislation, and to inform the public about all legal remedies in the field of racial discrimination.

26. While noting the existence of various training programmes for officials of the administration of justice, the Committee is concerned by the findings of the South African Human Rights Commission (SAHRC) on the deficiencies in the administration of justice (articles 6 and 7).

In the light of its General Recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party strengthen its measures to reform the justice system, and raise the sensitivity of its members on the provisions of the Convention and their application. Special consideration may be given to specific issues related to indigenous communities. It further recommends the State party to provide detailed information on training courses for members of the justice system, including proficiency in languages, and on promotion in their career.

27. While acknowledging the “Roll Back Xenophobia” campaign, the Committee remains concerned with the persistence of xenophobic attitudes in the State party and with negative stereotyping of non-citizens, including by law enforcement officials and in the media, as well as with reports of racist behaviour and prejudices, in particular in schools and farms, and with the inefficiency of the measures to prevent and combat such phenomena (article 7).

The Committee recommends that the State party strengthen its existing measures to prevent and combat xenophobia and prejudices which lead to racial discrimination, and provide information on the measures adopted with regard to promoting tolerance, in particular in the field of education and through awareness-raising campaigns, including in the media.

28. While acknowledging the adoption “South African Millennium Statement on Racism and Programme of Action”, the Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention, in particular in respect of articles 2 to 7 of the Convention. It further recommends that it include in its next periodic report information on measures taken to implement the Durban Declaration and Programme of Action at the national level.

29. The Committee requests that the State party’s report and the present concluding observations be widely disseminated throughout the State party, in the appropriate languages.

30. The Committee recommends that the State party consults with organizations of civil society, as well as with the South African Human Rights Commission (SAHRC), working in the area of combating racial discrimination, in connection with the preparation of the next periodic report.

31. The Committee wishes to encourage the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families as well as the Convention concerning Indigenous and Tribal Peoples in Independent Countries (International Labour Organization Convention n° 169).

32. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111, concerning the funding of its meetings by the United Nations regular budget. In this connection, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

33. The State party should, within one year, provide information on the way it has followed up on the Committee’s recommendations contained in paragraphs 14, 16, 21 and 27, pursuant to paragraph 1 of rule 65 of the rules of procedure.

34. The Committee recommends that the State party submit its fourth periodic report jointly with its fifth and sixth periodic reports in a single report on 9 January 2010, and that it address all points raised in the present concluding observations.
