



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined fourth to eighth periodic reports of South Africa*

1. The Committee considered the combined fourth to eighth periodic reports of South Africa (CERD/C/ZAF/4-8), submitted in one document, at its 2460th and 2461st meetings (see CERD/C/SR.2460 and 2461), held on 9 and 10 August 2016. At its 2476th meeting, held on 19 August 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined fourth to eighth periodic reports of the State party. The Committee notes that the report was overdue. However, it appreciates the fact that the report included developments on the implementation of the Convention and responses to concerns raised by the Committee in its previous concluding observations.

3. The Committee welcomes the open and constructive dialogue with the State party's high-level delegation, and the additional information provided orally and in writing by the delegation in response to the questions and issues raised by the Committee during the dialogue. It appreciates the efforts and struggles of the State party to eliminate the former apartheid structures and its institutionalized racism and to strive towards a society free from racial discrimination.

B. Positive aspects

4. The Committee welcomes the State party's adoption of the following legislative and policy measures:

(a) The enactment of the Prevention and Combating of Trafficking in Persons Act on 29 July 2013, which came into effect in August 2015;

(b) The enactment of the South African Human Rights Commission Act, 2013, Act No. 40, which strengthens the mandate of the Commission to monitor the implementation of and compliance with international and regional human rights instruments;

* Adopted by the Committee at its ninetieth session (2-26 August 2016).



(c) The draft national action plan to combat racism, racial discrimination, xenophobia and related intolerance 2016-2021, which is undergoing public consultations in 2016;

(d) The Green Paper on International Migration in South Africa, dated 21 June 2016, which analyses the State party's migration policy with a view to reform.

5. The Committee also welcomes the State party's ratification of the following international human rights instruments:

(a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 30 November 2007;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 24 September 2009;

(c) The International Covenant on Economic, Social and Cultural Rights, on 12 January 2015.

C. Concerns and recommendations

Statistical data

6. The Committee appreciates the statistics provided by the State party, although it notes with concern that the classifications used to gather statistical data are from the former apartheid era. While noting the State party's concerns about preventing ethnic division through the gathering of statistical data, the Committee emphasizes that it needs a more exhaustive set of demographic statistics disaggregated as specified in article 1 (1) of the Convention, including economic and social indicators. Statistical data is also needed on non-citizens (art. 1).

7. The Committee requests that the State party provide, in its next periodic report, comprehensive statistical data, including economic and social indicators, in line with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1) and its general recommendations No. 4 (1973) on reporting by States parties and No. 8 (1990) on the interpretation and application of article 1 (1) and (4) of the Convention, in order to enable the Committee to obtain an accurate view of the enjoyment in the State party of the rights enshrined in the Convention.

National human rights institution

8. The Committee notes the work of the South African Human Rights Commission, which is accredited with A status by the Global Alliance of National Human Rights Institutions. However, the Committee is concerned that the State party has not implemented some of the recommendations proposed by the Commission, which would strengthen the implementation of the Convention. The Committee is also concerned that the Commission does not have sufficient budgetary resources to effectively carry out its mandate, as expanded by Act No. 40 of 2013 (art. 2).

9. Recalling its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate implementation of the Convention, the Committee recommends that the State party implement the recommendations of the South African Human Rights Commission in order to strengthen the realization of the rights enshrined in the Convention. The Committee also recommends that the State party provide the Commission with adequate financial resources to effectively execute its mandate.

Truth and Reconciliation Commission

10. The Committee notes the information provided by the State party on the work of the Truth and Reconciliation Commission, and commends it for its investigations into human rights violations committed during the apartheid era. However, the Committee emphasizes its concern that the recommendations of the Commission have not been implemented fully, particularly in terms of prosecuting perpetrators and providing adequate reparations to victims (art. 3).

11. The Committee encourages the State party to investigate cases of human rights violations committed during the apartheid era, to prosecute perpetrators and to provide reparations to victims in order to ensure accountability and end impunity.

Hate crime and hate speech legislation

12. The Committee is concerned about the lack of legislation in the State party concerning hate crime and hate speech to effectively prosecute perpetrators and deter further violations. The Committee is also concerned at the rise in hate crime and hate speech in the State party, including physical attacks targeting certain ethnic groups and non-citizens, discriminatory statements by State officials and politicians, and an increase in the use of social media and the Internet to propagate racist hate speech (arts. 2, 4, and 6).

13. The Committee welcomes the Prevention and Combating of Hate Crimes and Hate Speech Bill and encourages the State party to ensure that the bill is in accordance with the Convention and the Committee's general recommendations No. 15 (1993) on article 4 of the Convention and No. 35 (2013) on combating racist hate speech. The Committee recommends that the State party expedite the enactment of the bill, in consultation with the public. The Committee also recommends that the State party ensure that all incidents of hate crime and hate speech are investigated and prosecuted and that the perpetrators are punished, regardless of their official status. The Committee calls on the State party to conduct educational campaigns to address the root causes of prejudices and to promote tolerance and respect for diversity, with a focus on the role and responsibilities of journalists and public officials in that regard.

Special measures

14. The Committee appreciates the particular challenges the State party faces with regard to implementing special measures to redress the inequalities resulting from the former apartheid era. It notes the information provided by the State party on the implementation of special measures, including the Employment Equity Act and the Broad-Based Black Economic Empowerment Act. While welcoming the few statistics provided by the State party on the current distribution of persons belonging to various ethnic groups at management levels and in the judiciary, the Committee is concerned at the lack of comprehensive disaggregated data on the impact of the special measures on affected groups, especially the most disadvantaged and vulnerable among them, in the areas of employment, education and representation in public and political affairs at all levels. The Committee is also concerned at the lack of information on the impact of special measures on indigenous peoples (arts. 2 and 5).

15. Recalling its general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, the Committee requests the State party to provide detailed qualitative and quantitative information in its next periodic report on the impact of the special measures it has taken in employment, education and public and political affairs. The Committee requests further information on specific special measures for indigenous peoples and on the impact they have had.

Harmful cultural or traditional practices

16. The Committee is concerned at the continuation of harmful cultural or traditional practices against women and girls, such as *ukuthwala*, which can be tantamount to forced child marriage. The Committee welcomes the work of the South African Law Reform Commission in investigating the practice, and notes the information provided by the State party on provisions in existing laws, such as the Prevention and Combating of Trafficking in Persons Act, which can be used to prosecute perpetrators of *ukuthwala* for child abduction, forced child marriage and child sexual exploitation. However, it notes with concern that in remote rural areas, the practice is often unreported, leading to impunity for the perpetrators (art. 6).

17. Taking into account its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party take effective measures to protect children, particularly in remote rural areas, from harmful cultural or traditional practices. The Committee recommends that the State party conduct educational campaigns in rural communities and areas where practices such as *ukuthwala* are prevalent in order to end the practice, provide information to victims on access to judicial remedies and encourage reporting of cases. The Committee requests that the State party provide information in its next periodic report on the steps taken to end *ukuthwala* following the investigation by the South African Law Reform Commission, the impact of the measures, and statistical data on the number of cases of *ukuthwala* reported and the prosecutions and convictions of perpetrators.

Education

18. The Committee notes the importance of education in building a post-apartheid society. While noting that the State party reported that 20 per cent of its budget is allocated to education, the Committee is concerned that disparities remain in terms of access to quality education and educational resources by all ethnic groups and that the current educational programmes have not assisted in eliminating racial and xenophobic tensions and barriers (arts. 5 and 7).

19. The Committee recommends that the State party ensure that all ethnic groups have equal access to quality education and educational resources, and that it adopt additional measures to counter racial and xenophobic tensions. It should develop public education programmes that promote tolerance and respect for diversity, deter racism and xenophobia, and promote a positive image of ethnic groups within the State party.

Situation of persons with albinism

20. The Committee is concerned about the discrimination and stigmatization faced by persons with albinism, on the basis of colour. It is also alarmed by reports of cases of abduction, killing and dismembering of persons with albinism, including women and children, as their body parts are allegedly used for witchcraft purposes.

21. The Committee recommends that the State party take effective measures to protect persons with albinism from violence, abductions, discrimination and stigmatization, including through the action plans and other measures taken to implement the Durban Declaration and Programme of Action.

Situation of black and marginalized ethnic women and girls

22. The Committee is concerned about the multiple forms of discrimination faced by black and marginalized ethnic women and girls, who are strongly affected by poverty and

lack of access to basic services, in particular housing, education, health care and equal employment opportunities (art. 5).

23. Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party take particular note of the multiple forms of discrimination against black and marginalized ethnic women and girls, in particular those from the most impoverished groups, and take the measures necessary to prevent such discrimination and increase their equal access to services. The Committee requests that the State party provide it with quantitative and qualitative information on factors affecting those women's and girls' enjoyment of the rights under the Convention, the measures taken to address the shortcomings, and the impact of those measures.

Situation of indigenous peoples

24. The Committee is concerned at the situation of indigenous peoples, who continue to suffer from extreme poverty and marginalization and face discrimination and difficulty with language, education and land redistribution and who lack information on their rights under the Convention. The Committee notes that the Traditional and Khoi-San Leadership Bill was introduced into parliament in 2015. However, it is concerned that the bill may not provide adequate redress, as it may recognize traditional leaders without taking into consideration the particular approach of indigenous peoples to leadership (arts. 2 and 5).

25. In the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party take the measures necessary to address the situation of indigenous peoples and ensure their equal enjoyment of the rights under the Convention. It also recommends that the State party implement the recommendations of the South African Human Rights Commission following its investigative hearings on the rights of indigenous peoples in 2004 and 2016. The Committee recommends that the State party continue to ensure the involvement and consultation of indigenous peoples in the finalization of the Traditional and Khoi-San Leadership Bill and other matters concerning them, taking into consideration the approach to leadership of indigenous peoples.

Situation of non-citizens

26. The Committee is concerned about the situation of non-citizens, including asylum seekers, refugees and migrants, in particular with regard to:

(a) Cases of unlawful prolonged detention in repatriation centres, such as the Lindela Repatriation Center, and conditions of detention in that centre, which are reportedly below standard;

(b) Difficulty in accessing basic services such as health care and justice;

(c) Discrimination, xenophobia and racism against non-citizens, including refugees, asylum seekers and migrants, which has resulted in harassment and numerous violent attacks causing a number of deaths and injuries. Violent attacks, notably in 2008 and 2015, have also led to large-scale displacement of non-citizens and property damage (arts. 5 and 6).

27. Recalling its general recommendations No. 22 (1996) on article 5 of the Convention on refugees and displaced persons, No. 30 (2004) on discrimination against non-citizens and No. 15 (1993) on article 4 of the Convention, the Committee recommends that the State party should:

(a) **End the unlawful detention of asylum seekers and refugees, and use detention for the shortest period of time and for the most urgent cases only; speed up**

the consideration of status determination of refugee and asylum cases; and establish an independent monitoring mechanism through ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to monitor repatriation and detention centres;

(b) Take measures to ensure that non-citizens have access to basic services such as health care and access to justice, without discrimination; provide language interpretation services to eliminate barriers in access to basic services; and conduct training for law enforcement officials and health and social service providers on the rights of non-citizens.

28. The Committee also recommends that the State party should take action to prosecute perpetrators of racial discrimination and xenophobia; provide further information on the prosecution of cases of violence against foreign nationals, in dedicated courts or other courts; provide statistical data on the number of cases reported and the number of perpetrators who have been prosecuted and convicted; establish further dialogue within communities in conflict to address root causes of discrimination and violence; and conduct public education campaigns to end racism and xenophobia. The Committee welcomes the efforts by the State party to reconsider its migration policy and encourages it to utilize core regional instruments, such as the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, which facilitate the implementation of the Convention. The Committee also encourages the State party to facilitate a visit by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, which was requested in 2008 and about which reminders were sent in 2010, 2011 and 2012.

Training for judges and law enforcement officials

29. The Committee is concerned at the lack of information on training on human rights, in particular on the rights enshrined in the Convention, provided to judges, police officers and other law enforcement officials, and the impact of such training on the elimination of racial discrimination. The Committee welcomes the information that Equality Courts have been established to end racial discrimination. However, it is concerned that they are under-utilized owing to the lack of public awareness about their purpose and functions (arts. 2 and 7).

30. The Committee recommends that the State party conduct educational campaigns on human rights and the rights under the Convention for the general public, as well as specialized training for judges, police officers and law enforcement officials. The Committee requests information in its next periodic report on the impact of the training. The Committee recommends that the State party conduct public education campaigns on access to judicial remedies for racial discrimination, particularly on the purpose and functions of the Equality Courts.

D. Other recommendations

Ratification of other treaties

31. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the

International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), of the International Labour Organization.

Follow-up to the Durban Declaration and Programme of Action

32. In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

International Decade for People of African Descent

33. In the light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015-2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies. The Committee requests that the State party include in its next periodic report specific information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

34. The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.

Amendment to article 8 of the Convention

35. The Committee recommends that the State party ratify the amendment to article 8 (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.

Follow-up to the present concluding observations

36. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 9 and 13 above.

Paragraphs of particular importance

37. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 15, 23, 25 and 27 above

and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

Dissemination of information

38. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next periodic report

39. The Committee recommends that the State party submit its combined ninth to eleventh periodic reports, as a single document, by 9 January 2020, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.
