



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination Ninetieth session

Summary record of the 2461st meeting

Held at the Palais Wilson, Geneva, on Wednesday, 10 August 2016, at 10 a.m.

Chair: Ms. Crickley

Contents

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (*continued*)

Combined fourth to eighth periodic reports of South Africa (continued)

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The meeting was called to order at 10.05 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)*

Combined fourth to eighth periodic reports of South Africa (continued)
(CERD/C/ZAF/4-8; CERD/C/ZAF/Q/4-8)

1. *At the invitation of the Chair, the delegation of South Africa took places at the Committee table.*
2. **Mr. Mushwana** (South Africa), while acknowledging the tremendous strides made in redressing the country's apartheid legacy, said that high levels of racism continued to plague South African society and that the South African Human Rights Commission continued to receive an exceptionally high number of complaints, the majority of which pertained to race.
3. The Immigration Act had resulted in an administrative and mechanical-based approach to the country's migration policy and had led to uncontrolled migration and overall poor management of the migration system. That, in turn, had contributed to high levels of xenophobia and hate speech. He stressed the importance of expediting legislative processes to combat racism and related intolerance. Despite the court judgment in favour of the Commission in the case it had brought against the Government concerning the conditions at the Lindela Repatriation Centre, many of the problematic conditions persisted. He hoped that the Committee would encourage the Government to participate in the high-level meeting the Commission planned to host to find a multisectoral solution to the challenges at the Centre.
4. He echoed the Committee's call for the State to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establish a national preventive mechanism, to submit its overdue report to the Committee against Torture, and to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
5. The significant increase in racial tensions in the country had re-ignited the debate about the need to criminalize racism in South Africa. That issue should be approached with great sensitivity and circumspection, as criminalization could have the inadvertent effect of increasing racial tensions. He called on the Committee to provide expert advice and insight on how best to address the matter while being mindful of possible after-effects in the light of the country's apartheid history.
6. The equality courts remained under-utilized. The Equality Review Committee planned to hold a series of community-based sessions to raise awareness of the courts in remote or rural areas. While recognizing the efforts being made in that regard, he recommended introducing a public education and awareness-raising campaign on the role and function of the equality courts.
7. His Commission was in the process of studying the recent court judgment relating to affirmative action measures and would continue to monitor the issue. In July 2016, the Constitutional Court had declared the Restitution of Land Rights Amendment Act of 2014 to be invalid and had ruled that Parliament should re-enact the law within 24 months. He asked the Committee to encourage the Government to adhere to that time frame.
8. Poverty and the lack of access to opportunities and basic services remained largely gendered. He asked the Committee to take into account the compounded marginalization that women faced in the country and to encourage the Government to submit its overdue report to the Committee on the Elimination of Discrimination against Women. Lastly, he noted with concern that the Government had not fully complied with many of the

recommendations contained in his Commission's reports and asked the Committee to underscore the importance of doing so.

9. **Mr. Jeffery** (South Africa) said that his delegation would provide answers to some of the Committee's questions in writing. His Government's failure to comply with some of its reporting obligations was due largely to a lack of capacity in the light of an enormous legislative workload. Despite those constraints, South Africa had ratified the International Covenant on Economic, Social and Cultural Rights. His Government was being careful not to rush into the ratification of international instruments before developing the capacity to comply with those instruments' reporting mechanisms. It was for that reason that it had not yet ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10. The equality clause in the Constitution afforded every person the right to equal protection and benefit of the law. Section 9 (3) of the Constitution introduced the concept of unfair discrimination along with the presumption that discrimination on any of the grounds listed therein should be deemed unfair unless it was established otherwise.

11. While recognizing that the Committee had indicated that the notion of fair discrimination should be avoided, his Government maintained that article 1 (4) of the Convention amounted to an acknowledgement that, in certain circumstances, special measures could be taken to promote the advancement of human rights and freedoms and that those measures should not be deemed to be discriminatory. By introducing not just race but also other grounds for discrimination, the Constitution and the Promotion of Equality and Prevention of Unfair Discrimination Act gave effect to both the letter and spirit of the Convention.

12. The legislative measures undertaken through the Employment Equity Act and the Broad-Based Black Economic Empowerment Act constituted special measures within the meaning of the Convention. The purpose of the Employment Equity Act was to ensure equitable representation of designated groups in all occupational levels in the workforce by promoting equal opportunity and fair treatment in employment and by implementing affirmative action measures to redress disadvantages in employment. It had been enacted to correct the artificial barriers constructed by successive governments in workplaces in South Africa. The Constitutional Court had affirmed the importance of remedial measures to achieve substantive equality.

13. The Employment Equity Act called for the setting of targets, rather than inflexible quotas, with a view to achieving the equitable representation of suitably qualified people from designated groups in each occupational level in the workforce. In cases where decisions or policies had been implemented in an unlawful manner or in contravention of the Constitution, the courts had a right to intervene, and indeed they had done so on occasion. The Constitutional Court had pointed out that beneficiaries of affirmative action must be equal to the task at hand and must be suitably qualified.

14. The application of employment equity and related practices was aimed at redressing the structural inequalities inherited from apartheid and at benefiting groups. As affirmed by the Constitutional Court, the fact that it might create disadvantage in certain exceptional cases while benefiting a legitimate group as a whole did not justify the conclusion that it was prejudicial. The national court's jurisprudence on equality did not allow the exclusion of one group to advance another. The societal transformation that the Employment Equity Act aimed to bring about was an ongoing process, and that process must be carried out in accordance with the Constitution.

15. The notion of "adequate advancement" set out in article 1 (4) of the Convention implied goal-directed programmes that had the direct objective of alleviating and remedying disparities in the enjoyment of human rights. At the top management level, the

country's white population was represented at a level more than six times greater than the white economically active population. Thus, the special measures were a long way away from achieving their purpose. Part of the reason for that was the resistance being displayed by the Solidarity trade union in its numerous court challenges. The renaming of streets, for example, had been strongly opposed by AfriForum, which was a civil rights organization linked to the Solidarity trade union. AfriForum's claim had ultimately been rejected by the Constitutional Court.

16. Pursuant to the Constitution, the State was bound by an international agreement once the agreement had been approved by both houses of Parliament. Any international agreement became law in South Africa when enacted into law by national legislation, but a self-executing provision of an agreement approved by Parliament was automatically law in South Africa, unless it was inconsistent with the Constitution or an Act of Parliament.

17. As of 30 June 2016, there were a total of 227,000 asylum seekers in South Africa. Of those, 171,000 were male while 56,000 were female, and 155,000 were between the ages of 19 and 35 years. The country of origin most strongly represented among asylum seekers was Ethiopia, followed by Zimbabwe, The Democratic Republic of the Congo, Bangladesh and Nigeria. Most of the asylum seekers were effectively unskilled economic migrants. They competed with South Africans in the unskilled labour market, which often led to tensions.

18. The Zimbabwean Special Dispensation Permit was designed to regularize the situation of Zimbabweans residing illegally in South Africa through the issuance of a study, work or business visa to those who qualified. Through that process, more than 245,000 Zimbabweans had been documented. The same dispensation had been made available to Lesotho nationals residing illegally in South Africa and in the future would be extended to nationals of other countries in the Southern African Development Community.

19. A number of key legislative reforms had been carried out to combat violence against women. Sexual offences courts had been established, and 55 Thuthuzela Care Centres had been set up to reduce secondary victimization. The Secretary-General of the United Nations had recognized those centres as a best practice model in the field of gender-based violence management and response. The South African Police Service had established the Family Violence, Child Protection and Sexual Offences Unit to provide victim-friendly services to victims of gender-based violence.

20. A 24-hour Gender-based Violence Command Call Centre had been established. Forty social workers handled some 1,500 calls each day. The Centre had won a number of international awards.

21. The ruling political party had achieved parity in terms of women's representation in Parliament. However, women's overall representation was just 41 per cent due to the lack of parity representation in opposition parties. Women's representation in the Cabinet was 43 per cent.

22. There were different views as to whether the cultural practice of *ukuthwala* permitted the abduction of a girl or young woman without her consent. However, the Constitution did not allow or condone marriage without consent or the forced marriage or rape of children. The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, prohibited customary practices that impaired the dignity of women and undermined the dignity and well-being of girl children. The Act also prohibited sexual harassment.

23. Children's rights were protected by section 28 of the Constitution. They included the right to be protected from ill-treatment, neglect, abuse and degradation, and the right not to be required or permitted to perform work or to provide services that were inappropriate for

a person of the child's age. The Children's Act defined the principle of the child's best interests.

24. It was generally agreed that *ukuthwala* was not marriage but a prelude to marriage. However, the distinction became tenuous where a person was abducted despite bona fide resistance, where *ilobolo* (bridewealth) was paid and where the abducted person was required to perform the chores of an *umakoti* (young bride). In such circumstances, *ukuthwala* was tantamount to a forced marriage and was therefore illegal. If the victim was under 18 years of age, it would amount to a child marriage. Having sex with a child without her consent following kidnapping and abduction (*ukuthwala*) constituted rape under the Sexual Offences Amendment Act.

25. In February 2012, a man had been charged before the Wynberg Regional Court in the Western Cape with rape, human trafficking and assault because of an *ukuthwala* kidnapping. The judgment handed down in early 2014 had recognized that the practice was harmful to women and young girls and had imposed a 22-year prison sentence. The sentence had been confirmed by a full bench of the Cape High Court, sitting as a court of appeal.

26. Section 2.4 of the Prevention and Combating of Trafficking in Persons Act of 2013 stated that any person who concluded a forced marriage with another person within or across the borders of the Republic for the purpose of exploitation of that person was guilty of an offence. The Act prescribed extremely severe penalties for trafficking. The South African Law Reform Commission had published a revised discussion paper on *ukuthwala* for broader consultation and had held workshops on the subject between January and March 2016.

27. Under the apartheid regime people had been racially classified by the State. That system had been replaced by self-classification. People were classified in terms of the language they spoke. There were 11 official languages and no single language was legally deemed to have a higher status.

28. The San communities totalled about 6,100 members and the Khoi communities, comprising the Nama and Griqua peoples, totalled about 310,000. The Khoi and San communities had received 326,414 hectares through the national land restitution process. Community members who preferred financial compensation had been paid 310 million South African rands (R) to date.

29. There were no figures for interracial marriages because they were not regarded as particularly relevant.

30. The right to property was enshrined in section 25 of the Constitution. It prohibited the expropriation of property save where such action was legally prescribed for a public purpose or in the public interest. In such cases the State was required to pay compensation to the former owner. The question of land ownership evoked strong reactions, reflecting the persistent inequality in South African society. As a result of past discriminatory practices, including the 1913 Natives Land Act, most farmland was owned by the minority white population. The Government was therefore implementing a land restitution, redistribution and reform programme. It faced numerous challenges, such as lack of information and documentation, competing claims, landowners' unwillingness to sell, and high land prices.

31. The Ministry of Rural Development and Land Reform had been created in 2009. It was committed to ensuring that South Africans residing in rural areas enjoyed the same benefits and human rights as their urban counterparts. The Comprehensive Rural Development Programme sought to remedy the blight of poverty by creating vibrant, equitable and sustainable rural communities. The Green Paper on Land Reform defined

three principles: deracialization of the rural economy; democratic and equitable allocation and utilization of land across race, class and gender; and sustained production discipline.

32. The land restitution process was governed by a number of statutes. By the end of 2012, 76,229 out of 79,696 claims received since 1994 had been settled. In the financial year 2012/13 a further 376 land claims had been finalized through payment and transfer of land, and 602 claims had been settled through approvals. The Department had focused on acquiring strategically located land and allocating it accordingly. A total of 200 farms had been placed under the Recapitalization and Development Programme and 1,059 jobs had been created in the land reform projects. In addition, training had been provided for 421 farmers. As many farms were in a poor state of repair at the point of acquisition, a recapitalization programme aimed at increasing food production and job creation through the commercialization of small farmers had been adopted in November 2010.

33. According to the Department of Basic Education, South Africa allocated, on average, 20 per cent of its budget to education.

34. The Department of Health was seeking to establish a universal health-care system. The National Health Insurance scheme, which was intended to improve service provision and health-care delivery, had been launched in 2012 and would be gradually expanded over the next 10 years. In 2012-2013 the Government had earmarked R1 billion for pilot projects. More than 1,600 clinics had been built or upgraded since 1994, and free health care for children under 6 years of age and for pregnant or breastfeeding women had been introduced in the mid-1990s.

35. There were roughly 6.59 million people living with HIV in South Africa. Extensive antiretroviral treatment and prevention of mother-to-child transmission programmes had led to declines in mortality rates and an increase in life expectancy from 53 years in 2006 to 61 years in 2012. Adult mortality rates had declined by more than 50 per cent since their peak in 2003 and 2004, and child and infant mortality rates had declined by 25 per cent during the period from 2009 to 2012.

36. Small claims courts were free of charge. There were no lawyers involved, but claimants were assisted by well-trained presiding officers. They could claim up to R15,000.

37. Sheriffs were appointed by the Minister of Justice and Correctional Services as court officials for each magisterial district. An advisory committee in each of the nine provinces interviewed candidates and submitted recommendations to the Ministry. Reforms were required because there were extremely few women or black sheriffs, and because some of the areas covered by sheriffs were not economically viable. The current ratio of women sheriffs was 23 per cent and the target was 50 per cent.

38. **Ms. Dah** (Country Rapporteur) welcomed the information regarding undocumented migrants from Zimbabwe, who could now apply for work permits. She requested information regarding similar action on behalf of migrants from other member States of the Southern African Development Community (SADC). She enquired, in particular, about consultations and joint initiatives.

39. The allocation of 20 per cent of the budget to education was an impressive figure. She therefore wondered what obstacles were impeding the progress of education in the State party. She had reservations concerning the lack of a legal provision criminalizing all forms of racial discrimination.

40. **Mr. Avtonomov** commended the impressive action undertaken by the South African Human Rights Commission. As it had unfortunately been affected by budgetary cuts, he asked whether financial support could be obtained, with State assistance, from voluntary sources. The application of a quota system to address disparities in employment would not be effective in the longer term. He asked whether new policies were contemplated to

redress the apartheid legacy. Quotas might be deemed to constitute special measures under article 1.4 of the Convention, but the Committee's general recommendation No. 32 emphasized that such measures should be temporary. Otherwise they might produce the opposite effect to that intended.

41. **The Chair** said that, according to the delegation, quotas were not applied and the measures in question were temporary.

42. **Ms. Hohoueto**, referring to the statement by the South African Human Rights Commission that the criminalization of racism was a sensitive issue and might have the inadvertent effect of increasing racial tensions, requested further clarification of those fears. She enquired about the racial composition of the Constitutional Court. Some of its judgments seemed to reflect a persistent apartheid mentality.

43. **Ms. Shepherd** reiterated her question regarding the use of education and training to assist in identity formation and ethnic empowerment for black people. Migrants from other parts of Africa were apparently filling existing gaps in skills. Referring to paragraph 33 of the report, she asked why Indian and Chinese citizens of South Africa had been declared in 2008 to be black and whether they self-identified as black. She also enquired about their economic situation, since persons of Indian and Chinese origin tended to face racial discrimination in other parts of Africa because of economic competition. As she had been informed of discrimination in the State party against people with albinism, she asked whether measures were being taken to protect that vulnerable group. She asked how the African Union's recent announcement of the introduction of a single passport to make travel on the continent easier for Africans would affect foreigners of African origin, who were sometimes subjected to violent attacks and hate crimes in South Africa.

44. **Mr. Murillo Martínez** enquired about the State party's response to the statement by the National Human Rights Commission that the criminalization of racism could increase racial tensions. The Commission had also referred to a significant increase in racial tensions in the country. He asked who were the most common victims of such tensions and whether they included migrants. He asked whether the political landscape in the wake of the recent elections in the State party could have an adverse impact on the current peaceful process of racial integration.

The meeting was suspended at 11.30 a.m. and resumed at 11.40 a.m.

45. **Mr. Jeffery** (South Africa) said that history education was a key component of his country's drive towards equality and non-discrimination. He gave a few examples of the way in which history teaching had been used during the apartheid era to perpetuate an image of a white South Africa, in denial of its black heritage. Details on contemporary history education would be submitted in writing.

46. With regard to Mr. Avtonomov's concern, he said that the Government was using targets, not quotas, to ensure equitable participation in employment. Those measures were not intended as a permanent feature, but statistics showed that there were much needed for the time being.

47. The nine-member Constitutional Court was composed of seven African and two white judges; three of the judges were women. Overall, 44 per cent of judges were African, 35 per cent White and the remaining 21 per cent Coloured or Indian, with a clear underrepresentation of women. Under apartheid, there had been a large number of ethnic categories, which had changed over time. Chinese persons, for example, had been classified as "Coloured" and faced severe discrimination. In the 1960s, as the regime had been in the process of developing good relations with Taiwan, Taiwanese had come to be considered "honorary whites". The Employment Equity Act, 1998, accorded preferential status to

persons that had immigrated to South Africa before 1994 on grounds of the disadvantage they had suffered under the apartheid regime.

48. The underrepresentation of African women in senior council positions was largely due to societal attitudes and the persisting perception that women were less qualified. Race quotas in sports were intended to change perceptions, such as the notion that a black African would be less likely to be a good rugby player than a white Afrikaner. He relayed an episode from Nelson Mandela's autobiography *The long walk to freedom* to illustrate that racial stereotyping was common, often unconscious, and difficult to eradicate.

49. In response to a query from Ms. Dah, he said that much of the budget was spent on social grants, health and education. Social grants were means tested and benefited low-income persons over 60, families with children under 18 years of age and persons with disabilities, among others.

50. While there was no special mention of persons with albinism in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, a specific reference would be included in the Prohibition of Hate Speech Bill, thus elevating crimes against albinos to a more serious offence. Although less frequent than elsewhere in the region, killings of persons with albinism did occur. He expressed reservations about the alleged underreporting of such crimes, because they normally drew much media attention. The Deputy Minister of Social Development was a champion of the rights of people with albinism and the Government did make efforts to address the problem.

51. With regard to the rise in racial tension in connection with the planned adoption of hate crime legislation, he said that there had been a negotiated settlement in 1994 that had aimed to be inclusive. The Truth and Reconciliation Commission had not only dealt with victims of apartheid, but also with victims of human rights violations committed by members of the liberation movement in the context of the armed struggle. Reading out the preamble of the South African Constitution, he said that there was a sense of frustration and the concern whether the measures taken had been sufficient, given that most of the racism seen in social media at present targeted black persons. Crimes were not classified in terms of race. Taxation of farmers, for example, was imposed not because most of them were white, but because farmers were better off than the remainder of the poor rural population. Once hate crime legislation was in force, hate speech would become a punishable offence.

52. The so-called xenophobia had mostly targeted economic migrants from other countries in the region. When strikes of poorly paid farm workers in the Western Cape had been undermined by farmers hiring cheap migrant labour from Zimbabwe, for example, local farm workers had responded with anti-Zimbabwean sentiment.

53. **Mr. McKay** (South Africa) said that matters pertaining to the introduction of an African passport in the framework of the Agenda 2063 of the African Union were being discussed at the level of the Southern African Development Community (SADC). One of the sub-committees of the SADC Organ on Politics, Defense and Security was examining Agenda 2063 from a regional perspective. South Africa's position would be in line with that of the region. The free movement of African people across the continent would help facilitate social cohesion and economic migration.

54. Migration flows in Southern Africa had always been directed towards South Africa, whose wealth had been built on skilled and unskilled foreign labour. Management of unskilled labour migration was crucial to defuse tensions arising from unskilled domestic and foreign workers competing for jobs. Existing legislation provided no migration opportunities for unskilled workers. Economic migrants therefore tried the asylum route, causing a backlog in the system to the detriment of persons in true need of international protection. Under the current migration regime, unskilled labour migration could only be regularized through so-called "special dispensation", whereby study, work or business

permits were issued to SADC nationals. Under that framework, 245,000 Zimbabweans had been removed from the asylum regime; the measure would be expanded to other SADC nationals. South Africa's Immigration Act of 2002 was out of touch with reality and had been reviewed. The resulting green paper had been released for public consultation. Based on the outcome of the consultations, an amended or new immigration Act would be prepared for the 2017/18 fiscal year.

55. **Ms. Mohamed** requested additional information about the grade and ethnic distribution of the 23 per cent women sheriffs. She also wished to know whether there was legislation encouraging mixed marriages.

56. **Mr. Bossuyt** requested clarification about the difference between quotas and targets. Although special measures were certainly justified and necessary, it was important to prevent reverse discrimination. Under the Convention, race should never be a ground for distinction, exclusion or preference in matters of rights and freedoms. There were no "good" and "bad" races. Special measures should therefore not be targeted on the basis of skin colour, but on the basis of need.

57. **Mr. Jeffery** (South Africa) said that the concerns regarding women sheriffs were mostly income related. Sheriffs were officers of the court, but were not paid by the State. Instead, they generated their own income. Certain magisterial districts generated more money than others and efforts had been made to broaden opportunities for women sheriffs in wealthier districts.

58. There was no legislation on mixed marriage; people were free to do as they saw fit. There were no data on mixed marriages or same-sex civil unions, as data were not disaggregated according to those categories. A quota implied an obligation to ensure representation of a given number of members of a particular group in employment, which excluded anyone not belonging to that group. A target was simply an aspiration. The Department of Justice, for example, had gender and disability targets, but none for race. He said that there were no racially classified schools, but former "Whites only" schools had been well funded during the apartheid era and were much better equipped than others.

59. **Ms. Mxakato-Diseko** (South Africa) said that the Committee, as a neutral mechanism, was of great value to South Africa's efforts to build a non-racist, non-sexist society. The country was engaged in a controversial debate over the necessity of measures to empower Africans and the Committee's impartial analysis of the different arguments, and recommendations made on that basis were crucial tools.

60. Special measures to ensure equality in employment were underpinned by frameworks to affirm excellence. Positions were filled by way of a standard application process, but recruiters observed certain guidelines to ensure balance and overcome barriers to equal representation. Historically, there had been 13 different education systems in South Africa, designed to inspire a sense of superiority in white pupils, and a sense of inferiority in black pupils, thus perpetuating the apartheid status quo. Centuries of bad social engineering could not be eradicated in a couple of decades. The first step had been to unify the education system and open access to everyone. The current focus was on improving the quality of education and refining the curriculum.

61. **The Chair** said that the Committee wished to be fully informed by a range of views, so that its concluding observations could constructively critique and support the State party's implementation of the Convention.

62. **Mr. Calí Tzay** said that he would be interested to learn how the special measures would be implemented in South Africa, given that groups which had formerly discriminated against others would now feel marginalized owing to the loss of their privileges. There had been instances in which such groups had claimed that the international condemnation of

discriminatory systems amounted to a form of “revenge” against them. However, in most cases special measures did not challenge existing privileges and opportunities, but merely opened them up to the rest of the population. The fight against racism and discrimination was a lengthy process that was not always fully understood, especially where problems had structural roots. However, homegrown solutions were often to hand, and were preferable to importing or copying systems from other countries, which often arose in completely different historical contexts. He said that the head of the delegation was correct in saying that people’s perceptions of others were a fundamental issue at the heart of racism and racial discrimination, and should be addressed on the basis of the Convention.

63. In view of the delegation’s statement that South Africa had 11 official languages, he said that it was unclear whether school students were obliged to learn English and whether they had the opportunity to learn other official languages.

64. Lastly, he said the Committee would welcome additional information on cases of racism and racial discrimination in the criminal courts, in addition to those mentioned by the head of delegation, which he considered were likely to occur in South Africa.

65. **Mr. Kut** said that he was surprised at how freely the term “race” had been used in discussions to mean skin colour, a usage he believed could reinforce the idea of racial categories in people’s minds. Such categories had underpinned the apartheid ideology and were contrary to the Committee’s understanding that there was only one human race. The term’s use by the delegation raised questions over its customary sense in South Africa, and of South Africans’ perceptions of the rest of the world.

66. **Mr. Jeffery** (South Africa) said that his country’s Constitution focused on equality rather than on racial discrimination. The State could not discriminate on grounds such as race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth. Moreover, an equality clause allowed measures to protect or advance persons or categories of persons disadvantaged by unfair discrimination. Those measures were solely designed to bring about equality. While South Africa had made considerable progress, the country had endured 350 years of racial structuring and could not be expected to banish inequality overnight without further efforts. A healthy society could not allow entire categories of people (for example, judges) to belong to one gender, race or religion, since such a composition did not reflect society as a whole.

67. **The Chair**, responding to Mr. Kut’s statement, said that the rejection of the doctrine of racial superiority was underpinned by research conducted after the Second World War, which had found that there was only one human race; however, the language used in that regard differed in various parts of the world, and was the subject of ongoing discussion. The Committee was right to be concerned over the use of the term “race” to imply that there were different races, since the Convention was based on the understanding that there was only one human race, and that any discrimination based on supposed differences was unacceptable.

68. **Mr. Murillo Martínez** said that the steps reported by South Africa in relation to special measures, or affirmative action, including quotas in the public sector, education, employment and housing, had been taken to bridge the gulf created by apartheid and were fully in line with the Convention and with general recommendation No. 32 adopted by the Committee. Not only had the Committee validated such measures, but it had urged the States parties to adopt them with a view to ushering in greater equality. Special measures could lead to “positive discrimination”, which would be advantageous to certain groups. Despite differences in the terms preferred, it was important, for the sake of clarity, to reiterate that the Committee’s position was consistent with that of the State party.

69. He said that the State party should provide additional information on the question of the National House of Traditional Leaders and the link between constitutional and ordinary law in order to facilitate the Committee's understanding of South Africa's legal system.

70. **Mr. Yeung Sik Yuen** said that it would be useful to know whether the Human Rights Commissioner would have further opportunity to give his views in response to the questions of Committee members. He said that he agreed with the earlier comment that "22 years was not enough", since that was a relatively short period in the life of a nation. South Africa had achieved much and should be congratulated, in the knowledge that more would be accomplished over the course of time.

71. **Mr. Jeffery** (South Africa) said that the laws of South Africa provided for a National House of Traditional Leaders, which was a consultative rather than a legislative body. Draft laws affecting traditional leaders or communities had to be sent to the National House for its input, although it did not wield a veto. The same system applied at the provincial and municipal levels. Traditional courts were separate from the traditional houses, and existed in many areas of the country. Legislation was currently being drafted to bring them into line with the Constitution, so that they could provide access to justice under customary law. Much of that law was unwritten and the issue of its compatibility with the Constitution required further development.

72. In response to Mr. Calí Tzay's question on education, he said that all 11 official languages were equal by law, and that although English was becoming the lingua franca, it had no superior legal status. School pupils in the first three grades were taught in the mother tongue, with learning from grade four onwards was either in English or Afrikaans with an additional official language. Efforts were under way to improve the position of African languages, and the raised status they had acquired was a welcome development. For example, students at the University of KwaZulu-Natal were now required to learn isiZulu, which was the predominant language in that province.

73. **Ms. Dah** said that she was grateful for the delegation's responses regarding languages and the situation of albinos. She also said that she appreciated the participation of the South African Human Rights Commissioner, noting that the Committee's procedure did not prevent further dialogue with a view to taking his comments into account in its final observations. In those observations, the Committee as a whole would take account of the measures reported by the State party in its implementation of the Convention, and would note the strengths and weaknesses of those measures. For example, there might be discussion of South Africa's focus on equality rather than on racial discrimination.

74. Lastly, she said that time was precious and should be used to accelerate reforms for the benefit of young people, whose ideals were different from those that had inspired the previous generation. In that sense, South Africa should use its time to accelerate the pace of reforms so that its young people could achieve those ideals. The State party should strive to avoid being confronted with a cultural revolution.

75. **Mr. Jeffery** (South Africa) said that he had received the statistics on the appointment of judges, which showed that quotas had not been applied. Of 12 judges appointed in 2015, 3 were white, while in 2016, 24 judges had been appointed, among whom 9 were white. Those figures were relatively high considering that the white population of South Africa was approximately 10 per cent. The figures provided were indicative of South Africa's efforts to move towards a judiciary that reflected the race and gender composition of its people. He expressed his thanks to the Committee, and said that South Africa would endeavour to meet the Committee's reporting requirements in the future. While South Africa had made some mistakes and still had a long way to travel, its citizens remained deeply engaged in the project of building a non-racial, non-sexist, democratic society.

76. **The Chair** said that she was grateful for the informed and comprehensive approach of the delegation, and for the contributions of NGOs and the national human rights institution. The Committee encouraged South Africa to engage with all treaty bodies, which could help the country to achieve its stated intention of progressively realizing the rights of all South Africans. The discussions had clearly indicated that the Committee believed in the necessity of complementary standards for ensuring the elimination of racial discrimination in South Africa and indeed in every country.

The meeting rose at 1.05 p.m.