



International Convention on the Elimination of All Forms of Racial Discrimination

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

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on Friday, 4 August 2006, at 3 p.m.

Chairperson: Mr. de GOUTTES

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS, AND INFORMATION SUBMITTED
BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4)
(continued)

Initial-third periodic reports of South Africa (CERD/C/461/Add.3,
HRI/CORE/1/Add.92)

1. *At the invitation of the Chairperson, the members of the delegation of South Africa took their places at the Committee table.*
2. The CHAIRPERSON welcomed the South African delegation and emphasized that it was being led by the Minister of Justice.
3. Ms. MABANDLA (South Africa) was honoured to present to the Committee the initial report, as well as a supplement for the periods 1999-2001 and 2002-2005, in which the first 12 years of democracy in South Africa were considered, with particular emphasis on efforts made and obstacles encountered on the road towards creating a prosperous society free of racism and gender prejudices. There could be no doubt but that one of the basic obstacles on this path was the difficult legacy left by apartheid for its successors. One response to this problem was the adoption of “positive discrimination” measures for the benefit of groups that earlier had been in disadvantageous conditions. The policy and programmes of “positive discrimination” resulted in the construction of housing, the building of water supply and sewage infrastructure, the repair of the electrical supply system, and the opening of schools, clinics, and hospitals.
4. The struggle for democracy and a law-based State would inevitably take many decades, but South Africa was continuing to benefit from the solidarity of peoples around the world. Indeed, the fighters for democracy and other activists for the defence of human rights, who were organized in democratic organizations that fought against apartheid within the country, received support then from their comrades at home and in exile as well as from the international community, including the United Nations, which acted through the General Assembly and other of its agencies, in particular through the Commission on Human Rights and the Committee. The first democratic elections, which were organized in South Africa in 1994, were immediately followed by the repeal of a whole series of laws from the apartheid era.
5. Now South Africa is a constitutional state. In its Constitution, the foundation of which is the Memorandum of Understanding which was signed in 1990, civil, political, economic, social, and cultural rights were strengthened to the fullest extent, and the Constitutional Court had already showed through its decisions over many years that citizens could enjoy their “second-generation” rights in the courts. Considering the heavy weight of the colonial past and apartheid, the Constitution stipulated that these rights would be activated on a step-by-step basis. The Constitutional Court appropriately recognized that the Government had the right to determine general policy in this regard and to allocate the necessary resources to ensure the realization of these rights. On 1 March 2006, South African citizens participated in local elections and on this occasion demonstrated in massive numbers that they supported the democratic transformation of the country and the step-by-step realization of all human rights in their country.
6. To demonstrate the kinds of efforts that the Government undertook, Ms. Mabandla said that more than 10 million persons from among the neediest were

receiving social security benefits. With the arrival of democracy in 1994, more than 10 million persons were given access to potable water and more than 2 million received housing subsidies. It was planned to extend electricity to at least two thirds of housing units by 2012. The main task became reducing unemployment and improving professional training by promoting economic growth. For this purpose, the State was working together with various social partners (enterprises, unions, non-governmental organizations, universities ...) in the context of such programmes as the "Joint Programme for Promoting Accelerated Growth in South Africa", which aimed at translating political freedom into economic growth. The Government was convinced that the necessary quantity of jobs would be created by 2012.

7. Among the laws adopted for dismantling the system left over from apartheid and for assuring that equality become a reality, Ms. Mabandla mentioned the 1994 Restitution of Land Rights Act, the Public Management Finance Act, the 1995 Labour Relations Act, the 1996 South African Schools Act, the 1997 Housing Act, the 1997 Basic Conditions of Employment Act, the 1998 Employment Equity Act, the 1998 Skills Development Act, and the 2000 Promotion of Equality and Prevention of Unfair Discrimination Act. To expand and strengthen democracy, the State created independent organizations that answered only to Parliament, including the Human Rights Commission, the Commission on Gender Equality, the Office of the Public Defender, the Commission for the Promotion and Protection of the Rights of Cultural, Religious, and Linguistic Communities, and the Independent Election Commission. These "organizations based on title 9 of the Constitution" played an important role in monitoring the necessary protection of individual rights and, due to their effective work, earned the respect of the people over the years.

8. To fight against violence with respect to women and children, the Inter-Ministerial Group for Security and Justice recently reviewed the strategy behind combatting violence with respect to these persons. In addition, 16 days each year were dedicated to raising the awareness in society regarding violence against women.

9. State authorities were also troubled by a certain tendency towards xenophobia, which they were energetically combatting. This became the subject of the National Forum for the Fight against Racism, and on 30 July 2003 a partnership was initiated between the State and civil society for the implementation of the Durban Declaration and Programme of Action, one of whose tasks was to develop a National Action Plan.

10. Finally, in accordance with the principles of a non-racist, democratic society, free of gender prejudices, principles that were reinforced in the 1990 Memorandum of Understanding, the democratic Government of South Africa recognized and stood up for the uniqueness and dignity of all national minorities such as the Khoisan and Nama peoples. The Government promoted the recognition of the Khoisan language, once virtually forgotten but now one of the national symbols of the country. Among the measures taken to aid the Khoisan minority, one could mention programmes for preserving their culture, returning their lands, constructing schools, and setting up a separate radio station. In general, South Africa recognized and defended all minorities and had created a National Group for Minority Affairs for this purpose.

11. Mr. PILLAI (Country Rapporteur) noted that South Africa had spoken quite openly in its report of the many difficulties it faced after the fall of the apartheid regime, particularly in the limits on State budgetary resources and the residual racial inequality in the areas of income and land distribution. Nevertheless, it was important to note that no other country had adopted as many initiatives aimed at combatting inherited, institutionalized discrimination, and that the State party in a very positive

approach had emphasized that the consequences of apartheid should not serve as a pretext for inaction.

12. Speaking of positive aspects, he noted that the Constitution, one of whose basic principles was equality, called for the mandatory creation of laws aimed at promoting equality and combatting discrimination. For this reason, a wide range of laws and institutional mechanisms were created, including the South African Human Rights Commission. The development of a policy that was exclusively in the interests of the victims of discrimination was yet another positive measure adopted in the spirit of paragraph 4, article 1, of the Convention. He noted with satisfaction that the courts, including the Constitutional Court, often upheld measures that were adopted to benefit disadvantaged groups, such as in the case of *City Council of Pretoria v. Walker*.

13. He hoped that the delegation would explain the term “unfair discrimination”, which had served as the basis for the adoption of a policy to be carried out solely in the interests of disadvantaged groups and which could perhaps be applied in other countries. Noting that the data regarding the makeup of the population dated from the 1996 census, he wished to receive more recent and more precise information regarding ethnic and racial groups. To evaluate the progress achieved in the fight against discrimination, the Committee found it quite insufficient to have only one simple classification dividing the population into white, black and Asian, and it required specific indicators with regard to the various groups. The aforementioned classification, which was a legacy from apartheid, did not take into account native peoples, who although not officially recognized were nevertheless present in the country.

14. Regarding article 1 of the Convention, he regretted that article 9 of the Constitution in discussing the motives for racial discrimination made no mention of discrimination on the basis of ancestral or national origin. In addition, he inquired as to the status of the Convention in domestic law, and he wished to know whether it was possible to refer directly to its provisions in the courts.

15. Regarding article 2 of the Convention, he once again expressed his approval for the measures that had been adopted to favour disadvantaged groups. He wished to know which criteria were being used by the authorities to determine which community would be able to profit from special measures, especially in the areas of education, advanced training of workers, and legal protection. He also wished to know whether the Promotion of Equality and Prevention of Unfair Discrimination Act stipulated special measures for disadvantaged communities with respect to social and economic development and participation in political life. In addition, he asked in what way the State party could give assurances that its policy, which was being carried out exclusively in the interest of certain groups, would not promote inequality among the various communities.

16. Speaking about article 4 of the Convention, he noted with satisfaction that paragraph 2, article 16, of the Constitution declared that the freedom of expression of belief did not cover incitement to violence and propagandizing racial hatred. Moreover, the Promotion of Equality and Prevention of Unfair Discrimination Act allocated resources for defending the civil rights of victims of racist statements. He nevertheless wished to have detailed information regarding the application of the aforementioned constitutional and legal provisions. He also wished to receive explanations regarding a bill under consideration which would criminalize the propagandizing of hatred, which the Minister of Justice and Constitutional Development was going to submit to Parliament (para. 126 of the report).

Emphasizing the key role played by the system of criminal justice in applying the legal documents in the fight against racism, He referred to a 2002 study conducted by the South African Human Rights Commission regarding questions of racism and racial discrimination in the Ministry of Justice and Constitutional Development, which showed that there were still but few black judges presiding in civil courts, and that inter-racial relations in the court system did not have a sufficiently harmonious character. He suggested that the delegation comment on this question. He also wished to receive more general information on the fight against racism in schools, agricultural enterprises, and the army.

17. With respect to article 5 of the Convention, he applauded the fact that the Legal Aid Act, which mainly covered whites, had been amended and now applied to all persons regardless of race. Since the State party did not have sufficient resources for providing legal aid to all who needed it, he proposed that the authorities consider the possibility of letting the competent organizations in civil society provide assistance in this area.

18. He referred to the many national studies, which showed that native peoples had limited access to education and lived in marginal conditions. In this regard, he wished to know what the State party was doing to satisfy the fundamental needs of native peoples and to provide them with an equal opportunity to take part in social life. The State party always spoke extremely openly regarding the many initiatives undertaken by it to resolve the problem of xenophobia, but the Committee wanted more detailed information on the conduct of the “Roll Back Xenophobia” campaign and on the Immigration and Asylum Procedures Act.

19. According to data of the World Bank, income inequality between whites and the rest of the population in the State party remained a source of concern — when 13 per cent of the population lived in conditions resembling those in developed countries, and about 22 million persons lived in conditions as were found in third world countries. Only one quarter of poor households had electricity and access to drinking water, and more than a third of the children from poor families suffered from malnutrition. In this context, He wished to obtain information regarding the realization of economic, social, and cultural rights in the State party, and he noted with alarm that the courts had begun to question the possibility of reviewing social and economic rights within the judicial system (para. 180 of the report).

20. With regard to article 6 of the Convention, he applauded the provisions of article 38 of the Constitution, which made it possible for persons in disadvantaged circumstances (for example, the illiterate or the poor) to request that a third party act in their name in court in the event of a violation of their rights, and he wished to know whether these provisions could be used by associations in civil society, groups, or individuals in achieving compensation for damages. He referred to the report of the South African Human Rights Commission, which raised the problem of discrimination according to linguistic origin in petitioning the courts, and he asked that the delegation inform the Committee as to which other languages, in addition to English and Afrikaans, could be used in the courts.

21. In conclusion, he applauded the many initiatives that were presented in the report with regard to implementing article 7 of the Convention, which had significantly contributed to preventing racism and racial discrimination.

22. Mr. THORNBERRY noted that even if South Africa indirectly recognized the definition of native peoples as used in ILO Convention No. 169 regarding native peoples and peoples engaged in a tribal lifestyle, it explicitly did not recognize native

peoples as peoples who were distinct from others by virtue of their social, cultural, and economic conditions and their particular customs and traditions. Even if it was clear from the report that South African authorities were openly demonstrating good will with regard to native peoples, still the fact that they did not have a clear definition in national law could lead to the disappearance of their languages, to cite one example. He suggested that the delegation express its opinion on this question. Finally, he asked for explanations of the concept of “unfair discrimination”, which was contained in the Constitution.

23. Mr. KJAERUM thought that the first periodic report of South Africa had openly and in detail expressed the concrete difficulties with which the Government of South Africa was contending in promoting the elimination of racial discrimination. Noting in paragraph 33 that “practically all the provisions representing de jure discrimination had been excluded from the legal code of South Africa (...)” and that “the main task which it was necessary to resolve in order to implement the provisions of the Convention was the problem of residual discrimination, which in the majority of cases was de facto discrimination and indirect in its nature”, he wished to know whether the laws containing discriminatory provisions would continue to remain in force.

24. With regard to the conditions of foreigners and immigrants, as he understood from the reading of the report, migrant workers were more and more frequently subjected to xenophobia and racial hatred, and public opinion considered them to be responsible for the rise in violence, crime, and unemployment in the country. Also, noting that the police were more and more biased against non-citizens, in comparison to South African citizens, he wished to know whether the South African Government was proposing to see that judges and law enforcement personnel receive training in human rights and particularly in the principles articulated in the Convention.

25. Noting with interest that the campaign “Roll Back Xenophobia”, begun at the end of 1998, had had a positive affect on public opinion and on relations with the mass media (paras. 148 and 149), he asked that the South African delegation indicate whether other measures had been taken to draw the attention of the mass media and of public opinion to the necessity of showing patience with regard to foreigners. He also wished to know whether a composite report existed on the open meetings conducted in November 2005 by the South African Human Rights Commission on xenophobia and human rights.

26. He noted that South Africa, having passed the 1998 Refugees Act, had set up a sound legal framework in this area, but that problems persisted especially in applying this law. According to information from non-governmental organizations, the process of establishing refugee status lasted an average of 12 months, instead of the 6 stipulated by law. Responsible for this failure were the approximately 80,000-115,000 declarations awaiting review. In addition, corruption, prevalent in some centres where asylum applications were reviewed, led to delays in reviewing declarations and, in many cases, to their refusal. He wished to know what the South African authorities were planning to do to overcome the delays and to fight against corruption.

27. Noting that during the period 2004-2005, 55,000 attempted rapes of women had occurred in South Africa and that gays and lesbians had been subjected to violence from non-South-African partners, he wished to know whether the Government was intending to adopt measures to promote tolerance and to ensure the complete observance of the Constitution, which prohibited all forms of discrimination, direct or indirect, that were based on sexual orientation.

28. Mr. AVTONOMOV thought that the report under review had presented in an extremely open and clear manner the basic problems with which the State party was contending in the area of racism and which generally were a legacy of the apartheid regime. He asked for explanations regarding the decision of the court handed down in the case of *Harksen v. Lane NO and Another*, mentioned in paragraph 35 of the report, especially regarding the arguments put forward by this court. At the same time, he also wished to know whether measures were being considered to provide interpreters in judicial institutions for foreigners and migrant workers who spoke neither English nor Afrikaans (para. 64).

29. He also wished to know whether South African law took account of common law traditions in resolving disputes. More precise information was required regarding the right to citizenship, especially on the part of women or children born in mixed marriages.

30. Mr. TANG Chengyuan greeted the South African authorities, who had prepared a very objective report which had adequately brought to light all the problems facing South African society in the area of racial discrimination.

31. Noting the fact that, to judge from the report, various constitutional, legislative, and normative measures had been undertaken to eliminate racial discrimination, he concluded from this that racial discrimination continued to persist in the country, both directly and indirectly. According to paragraph 65 of the periodic report under review, black users of the system of justice complained of the racist relationship to them on the part of service providers, including the police, justices of the peace, judges, and private attorneys, the automatic supposition that black skin is a reason for suspicion, discriminatory practices in arraignments and sentences, and the generally racist views met with in the system of justice. He also drew the conclusion that, even if the law of the country were perfected and strengthened, the residues of the apartheid regime, which gave rise to discriminatory behaviour, would continue in the consciousness of the South African population. Thus, more detailed information was required regarding the measures which the South African Government was planning to take to overcome the legacy of apartheid, especially the psychological one.

32. Mr. EWOMSAN congratulated the South African Government on a high-quality first periodic report and on the openness with which it described the concrete problems of racial discrimination facing South African society today. The apartheid regime represented the clearest example of racial discrimination at its highest degree. This regime had left very serious and deep after-effects, from which of course it was impossible to recover immediately. South Africa earned applause not only for the many constitutional and legislative measures that had been adopted for eliminating racial discrimination but also for the fact that this country had been able to begin a peaceful transition to a democratic society on the basis of reconciliation. Because of the Truth and Reconciliation Commission, it was now known that there is no future without forgiveness. It was also important to remember that South Africa was the only country in the world that could not deny the existence of racial discrimination, and here we were talking about a very difficult legacy.

33. Speaking more concretely, he wished to know which measures had been taken by the Government to assist AIDS victims, who traditionally had come from the most disadvantaged and marginal groups of society.

34. Mr. AMIR recalled that South Africa had been a stagnant and anaemic country when Nelson Mandela, whom he had personally known during the Algerian freedom movement, freed the country from the yoke of apartheid. It was impossible that a

people who had been subjected to racial exclusion for centuries could in the course of a few years resolve the problems deriving from an inhuman system of government.

35. Noting that many members of the Committee had spoken of xenophobia and discrimination whose victims were foreigners in South Africa, he believed that the South African people, who had lived through apartheid and an institutionalized policy of racial discrimination, would not be able in their turn to become xenophobic. In his opinion, the intolerance that foreign migrant workers experienced could generally be explained as a result of poverty and not as a problem of deep-rooted racism.

36. Mr. YUTZIS said that one of the most significant achievements of South Africa was the destruction of the administrative, judicial, legislative, and economic arsenal that was created by the founders of the apartheid regime, which had been uncontrolled for many years. In this connection, the Promotion of Equality Act (para. 71) played an important role in the process of destroying that arsenal. Actually, even if the situation had not sufficiently changed de facto, it had nevertheless changed de jure. With reference to paragraphs 71 and 74 of the report, he wished to know which State employees, whites or blacks, had been brought before the courts for acts of racism, and how many cases of racial discrimination had been filed where the defendant was black. With regard to the problem of illicit deals during arraignment, sentencing, and release on bail, which was the subject of paragraph 76 of the report, he asked the South African delegation to provide more detailed information regarding the persons who benefited from such favourable treatment.

37. With regard to the representation of blacks in the judicial system, which as mentioned in the report remains very small (paragraph 87), he wished to know whether any measures had been taken to achieve a better balance, especially in cases where a vacancy occurred due to retirement. Having read paragraph 156 of the report and having confirmed that the mass media were whipping up prejudice against migrant workers, he wished to know how the State authorities were undertaking to block the spread of such ideas. He also asked whether the activities carried out by the Human Rights Commission against prejudice with regard to migrant workers were yielding hopeful results. Noting that the number of migrant workers wishing to relocate to South Africa would undoubtedly increase in coming years, he wished to know whether the Human Rights Commission was prepared for such an influx, and if so, how it planned to act. He also asked the South African delegation whether there was any law regarding land ownership in South Africa, and asked that statistical data be supplied regarding access of marginal groups in the society to the ownership of land. Finally, he wanted to know the results of the initiative of Nelson Mandela, designed to encourage representatives of business to make financial resources available, interest-free, for the rebuilding of schools and hospitals (para. 104).

38. Mr. LINDGREN ALVES, recalling that the International Convention on the Elimination of All Forms of Racial Discrimination had been developed, specifically, as a response to the institutionalization of apartheid in South Africa, applauded the presence of the South African delegation at the meeting of the Committee, which itself was an excellent example of the path which the State party was travelling down. He also applauded the openness with which the report acknowledged certain difficulties, including the problem of the residues of racism (para. 26) and violence, whose victims were migrant workers (para. 156). Considering the similarity of the present situation in South Africa and the situation in his own country, Brazil, as well as the many points of information that could be derived from the report in question, he thought it expedient to send the report in question to the secretariat which was involved with assisting Brazilian peoples having African roots.

39. Mr. CALI TSAY said that for him it was a great honour to be present at the meeting of the Committee during its consideration of the report of the State party, which had freed itself from one of the most hateful forms of racism. He also confessed his own personal interest in these questions, because his country, Guatemala, was often compared to South Africa, since apartheid, although illegal, was a reality of everyday life there. Thus the report in question had edifying and enlightening value for Guatemalans. He also wished to follow the example of Mr. Lindgren Alves in conveying a copy of the report to the Presidential Commission against Discrimination and Racism against Native Peoples (KODISRA) in his country.

40. He also wanted more detailed information on the decisions that had been taken by the justice system in cases of racial discrimination, and on positive measures being taken at the present time in the educational, political, and social spheres. Finally, he wanted to know whether structures existed in South Africa that provided psychological support to those victims of racist acts who had been psychologically traumatized.

41. Ms. DAH, associating herself with the statements of the previous speakers, spoke about the honour that she was participating in this historic moment of the consideration of the first report from South Africa. Indeed, in African political culture this country was exemplary not only from the point of view of the long struggle waged by black as well as some white citizens against apartheid, but also from the point of view of the fact that this struggle had a peaceful and swift conclusion. Building on a process of national reconciliation, begun in South Africa, many African countries, which did not know apartheid, had also begun to create commissions “to establish truth and reconciliation”.

42. She applauded the high quality and honesty of the report. At the same time, she was surprised by the fact that all the problems, including those of social inequality and immigration, were systematically leading to current and future economic difficulties. Finally, she wished to know whether the current movement for ethnic identity, which was denied in the past, would not bring with it an extremism similar to what had occurred in other African countries, and whether it would not promote racism against the white population.

The meeting rose at 6.05 p.m.