

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Meeting of the 69th session, Geneva 31 July - 18 August 2006

South Africa (initial to 3rd periodic reports)

Information submitted to the Committee

South Africa submitted its first, second and third periodic reports¹ (due in 2000, 2002 and 2004 respectively) along with written responses² to the questions put by members of the Committee on the Elimination of Racial Discrimination (the Committee)³ during the first meeting of the consideration of the report. The report is composed of three parts. The introduction describes the historical background and the legacy of apartheid, providing a relevant context for the rest of the report. The main part of the report provides an article by article breakdown of issues in South Africa relating to each of the seven substantial provisions in the *International Convention on the Elimination of All Forms of Racial Discrimination*⁴ (the Convention). This part of the report is very comprehensive and takes a realistic approach in assessing the achievements and shortcomings in South Africa's compliance with the Convention. This view was reiterated by a number of Committee members commending the delegation on the report. Committee members only had small points of criticism regarding the information provided in the report, such as the lack of distinction between different ethnic groups, and the lack of monitoring mechanisms in place to ensure effective implementation of Article 7⁵ of the Convention.

Alternative reports were submitted to the Committee by the South African Human Rights Commission⁶ and by the South African National Anti-Discrimination Forum-Faze 2⁷ on behalf of South African civil society organisations⁸. The two parallel reports focus on a wide variety of issues, including the *Equality Act*, the concept of fair discrimination; indigenous peoples; asylum seekers; and training of public officials. Furthermore, Committee members were able to ask questions to the representative of the South African Human Rights Commission⁹ during the meeting.

South Africa has made declarations under article 14(1) and article 14(2) of the Convention¹⁰, recognising the competence of the Committee to receive communications through the South African Human Rights Commission.

Themes and issues

During the meeting several Committee members noted that the consideration of the South Africa report was a historic event as this was the first time South Africa appeared before the Committee. The fact that the human rights situation in former apartheid South Africa was one of the events that lead to the drafting of the *International Convention on the Elimination of All Forms of Racial*

¹ CERD/C/461/Add.3 (<http://daccessdds.un.org/doc/UNDOC/GEN/G05/419/06/PDF/G0541906.pdf?OpenElement>).

² Responses to questions put by the CERD Committee members (http://www.ohchr.org/english/bodies/cerd/docs/RESPONSES_TO_LOI.doc).

³ http://www.ohchr.org/english/bodies/cerd/docs/AdvanceVersion/CERD_C_461_Add3.doc.

⁴ <http://www.ohchr.org/english/law/cerd.htm>.

⁵ Article 7 of the Convention obliges State parties to effectively combat prejudice and promote understanding and tolerance between nations and racial or ethnic groups through measures such as education and training.

⁶ http://www.ohchr.org/english/bodies/cerd/docs/south_african_HRC_report_English.doc.

⁷ http://www.ohchr.org/english/bodies/cerd/docs/Alternative_Report_by_SAF_Civil_Society_Org_English.doc.

⁸ The National Consortium for Refugee Affairs (NCRA); the Human Rights Institute of South Africa (HURISA); and Ditshwanelo CAR2AS (DC).

⁹ The South African Human Rights Commission is the South African National Human Rights Institution (NHRI). It has been given accreditation status A by the International Coordinating Committee for National Human Rights Institutions.

¹⁰ Article 14(1) provides an option for State parties to allow the Committee to receive and consider complaints submitted by either individuals or groups. Article 14(2) gives states that have made the declaration under Article 14(1) the option of indicating a national body responsible for receiving these complaints.

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Discrimination, the oldest of the core human rights treaties, also contributed to importance of this particular consideration.

The general attitude of the delegation, and the fact that the state report had already highlighted most of the concerns relating to racial discrimination in South Africa, assisted in creating a very positive atmosphere for the meeting. While directing the delegation's attention to certain areas that were not touched upon in the report, the main focus of the Committee members was on exploring ways of improving the human rights situation in South Africa. This was done through a well managed interactive dialogue with the delegation.

The Committee seemed to be of the opinion that the South African government is generally doing a good job in eradicating the different mechanisms of institutionalised racial discrimination of the apartheid regime. Therefore, the focus of the Committee in this area was on the **legacy of apartheid**, which still influences the judicial system. It also focused on whether there were any remaining discriminatory provisions in domestic legislation, as improvement in these areas did not seem to keep up with the general positive development. The delegation recognised that there was still racism in the judicial system. It submitted that this problem was being dealt with through an investigation of the whole justice department carried out by the South African Human Rights Commission.

Mr. Raghavan Vasudevan Pillai, the Committee's country rapporteur for South Africa, along with other members of the Committee, enquired about the **status of the Convention** in domestic law, and more specifically if it can be directly invoked in domestic courts. Furthermore, the Committee was concerned that the national legislation incorporating the Convention only provided for civil remedies for racial discrimination. The delegation explained that South Africa has a dualistic legal system whereby international obligations cannot be automatically invoked in domestic courts without first being incorporated into domestic law. The delegation explained that while it was true that the national legislation only provides for civil remedies, the government is looking to develop legislation that criminalises racism.

The Committee expressed its interest in what is covered by the term "**fair discrimination**". Several members noted that using special measures or affirmative action is legal under the Convention but they felt uncomfortable with the use of the term "fair discrimination". As a word of advice to the delegation, the Committee noted that any affirmative action should be temporary and proportional in order to ensure that there is no discrimination. The delegation explained that the South African government is monitoring the system of special measures and it was very much aware that it is a temporary system that needs regular scrutiny.

The Committee was worried about the very broad categorisation of the population into 'whites' and 'blacks', instead of recognising the ethnic and cultural differences that exist in South Africa, especially within the 'black' population. A Committee member, Mr. Patrick Thornberry, noted that this lack of recognition had a negative impact upon the **indigenous peoples** of South Africa. Mr. Thornberry expressed specific concern about the access to land rights and the fact that all indigenous languages in South Africa are threatened by extinction. Another Committee member, Mr. Alexei S. Avtomov, expressed his concern that indigenous peoples in South Africa might not have effective access to the judicial system as court proceedings are only conducted in English and

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Afrikaans. He referred the delegation to the Committee's *General Recommendation 31*¹¹ requesting State Parties to the Convention to provide free interpretation if needed. The delegation replied that the use of the very broad categorisation of the population is a counter measure to the former apartheid policy of creating internal conflicts through ethnic differentiation. However, the delegation was aware of the concerns of the indigenous peoples and various measures are being taken to save the indigenous languages and ensure equal rights for indigenous peoples in general.

The Committee addressed a wide range of issues relating to **immigration, asylum seekers and non-citizens**. It expressed a general concern about the rising xenophobia in South Africa manifesting itself in ways such as racially motivated assaults and harassment on African immigrants and discrimination against refugees and migrants by service providers. The delegation agreed that this is an increasing problem and noted that both assaults and harassment are often related to State-sponsored housing. The government have started a 'Roll-Back Xenophobia' campaign in collaboration with non-governmental organisations (NGOs) and the South African Human Rights Commission. Both the delegation and the South African Human Rights Commission assessed that the campaign is working but there is still a lot to be done. The main problem in relation to asylum seekers and refugees was the backlog on processing their applications. The delegation recognised this as a major problem: there is a backlog of more than 100,000 applications at the moment. While noting that one of the main reasons for the backlog is institutional inefficiency, the delegation explained that clandestine immigrants are a huge burden on the system as many of these people seek asylum when they are uncovered by the authorities. However, programs are set in motion to make the system more effective, and immigration officials are given human rights training. The Committee also touched briefly upon issues such as **rights of children of non-citizens** and **corruption** at border crossings.

In its report, the South African government presented the issue of **double discrimination** in South Africa as a combination of race and either gender, disability, age or marital status. One Committee member, Mr. Morten Kjærum, noted that there still appeared to be significant problems in relation to **sexual assaults** on women. He also expressed concern that there was no mention in the state report of the double discrimination suffered by mainly poor black **gay and lesbian** people. He saw this as an important issue and enquired about what is being done in this area. The delegation did not respond to this question.

Conclusions and next steps

In general the discussion between the South African delegation and the Committee was very fruitful and both parties took a very positive approach to the dialogue. Throughout the session the delegation showed a very positive attitude towards the comments and recommendations made by Committee members. Even though being commended on its excellent state report, the delegation promised to work even harder in preparing the next report in order make it even more comprehensive reflecting the comments and questions submitted by the Committee.

As already mentioned, the state report highlighted most of the relevant issues in South Africa today. Therefore, the Committee did not need to spend time pointing out every problem present in the State party. This made the Committee members able to put a more substantial focus on the most important issues such as indigenous issues, affirmative action, double discrimination and non-citizens. In relation to most issues the Committee, in its comments during the interactive dialogue,

¹¹ General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system (http://www.ohchr.org/english/bodies/cerd/docs/GC31Rev_En.pdf).

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identified human rights training and education as an important mechanism for improving the overall situation.

The Concluding Observations from CERD are currently pending and are expected to be made publicly available towards the end of the current Committee session, which ends on 18 August 2006. This “First Impressions” report will be updated when the Concluding Observations have been released.