

**QUESTIONS PUT BY THE RAPPORTEUR**

IN CONNECTION WITH THE CONSIDERATION OF  
THE FIRST TO THIRD REPORTS OF  
**SOUTH AFRICA**  
(CERD/C/461/Add.3)

**Composition and distribution of the population**

1. As ethnic characteristics of the population are of particular importance in understanding the implementation of the Convention, please provide information regarding the composition of the population, including languages spoken, which have a bearing on ethnicity, minorities, indigenous groups, immigrants, asylum seekers and refugees. (§§ 20 to 22 and 33 to 42 of the core document).

**Definition of racial discrimination**

2. Section 9 of the Constitution, which establishes the principle of equality and lists, *inter alia*, grounds of discrimination, does not mention “descent”. Furthermore, it establishes the possibility of “fair” discrimination (§§ 31 to 36 of the report). Please provide information as to whether the state party is considering bringing its definition of racial discrimination in line with that contained in article 1, paragraph 1 of the Convention, and elaborate on the concept of “fair” discrimination and its purpose.

### **Status of the Convention in domestic law**

3. Please clarify the status of the Convention in the domestic legal order of the State party<sup>1</sup>. Can provisions of the Convention be directly invoked before national courts? Please provide examples of such cases, if any. Which non-self-executing provisions of the Convention needed to be incorporated in domestic law? Please specify which ones have yet to be incorporated?
4. Please indicate what status customary law and traditional leadership have in the State party<sup>2</sup>, in particular vis-à-vis national and provincial legislation, and how they do not discriminate against ethnic groups (§§ 72 and 247 of the report).

### **Article 2**

5. Please provide detailed information on the “positive measures” and “affirmative action”<sup>3</sup> taken for the advancement of disadvantaged groups and on the objectives and practical results of those measures (§§ 42 and 43 of the report). Please explain how those measures are consistent with article 2, paragraph 2 of the Convention. Do those measures also apply to indigenous peoples? Are those disadvantaged groups participating in the design, implementation and monitoring of laws, policies and programmes bearing upon their situation?
6. According to the report, black people continue to suffer discrimination, as a legacy of the apartheid regime (§§ 64 to 85). How about other ethnic groups? Please provide more detailed information on policies and measures adopted in order to tackle this phenomenon among different ethnic groups which are victims of racial discrimination as defined in article 1 of the Convention.

### **Article 3**

7. In the light of General Recommendation XIX on article 3 of the Convention, please indicate which specific measures the State party has adopted to abolish the situation of *de facto* segregation that still persists as a legacy of the apartheid

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<sup>1</sup> Sections 231 to 233 of the Constitution.

<sup>2</sup> Sections 15, 211 and 212 of the Constitution.

<sup>3</sup> Fair discrimination, Section 9 of the Constitution.

regime, and provide information on the impact of these measures (§§ 113 to 116 of the report).

#### **Article 4**

8. Please provide further detailed information on the extent to which the State party complies with all the requirements of paragraph (a) of article 4 of the Convention, in particular through the “Promotion of Equality Act” and the “Film and Publication Act” (§§ 119 to 126 of the report)?
9. Please provide further detailed information on the extent to which the State party complies with all the requirements of paragraph (b) of article 4 of the Convention, in particular through the “Promotion of Equality Act” (§§ 124 to 125 of the report).
10. Please provide statistical data on investigations, prosecutions and convictions of perpetrators of acts of racial discrimination (§§ 127 to 131 of the report). Is the criminal legislation of the State party adequate to deal with such acts?
11. According to information before the Committee, hate crimes and hate speech still occur frequently in the State party. Please provide information on the “Prohibition of Hate Speech” Bill before Parliament and on policies and other measures adopted in order to adequately prevent and combat hate crimes.

#### **Article 5**

12. Please provide disaggregated comprehensive data for relevant areas covered by article 5 of the Convention, especially in relation to ethnic and indigenous groups of the population.
13. According to information before the Committee, female genital mutilation is still practiced in the State party by certain ethnic groups. Please provide information on this situation and on the legal measures and policies adopted to eradicate this practice.

14. According to information before the Committee, indigenous women, youth and children are often victims of rape, trafficking, prostitution, HIV/AIDS, drug abuse, domestic violence, alcoholism and other syndromes associated with marginalization and poverty. What specific measures has the State party adopted to prevent those phenomena amongst disadvantaged ethnic groups and with which results? Is there any legislation in the State party punishing trafficking in human beings?
15. Please provide data (disaggregated by ethnic origin) regarding the representation of members of various ethnic groups in different State institutions (e.g. police forces, army) and the Parliament and the extent of their sensitisation to the need to ensure non-discrimination in the conduct of public affairs.
16. According to information before the Committee, after having been dispossessed of their lands, some indigenous groups have been able to successfully claim back their land. Please provide further information on pending claims of land restitution and rejected cases. Allegedly, few measures have been taken to facilitate the sustainable development of those communities as well as to ensure their human rights, including the right to housing, health, access to water and education (§§ 162 to 166 of the report). Please provide further information on the measures taken to assist them.
17. Please provide information on the situation of indigenous people, in particular, on hunter-gatherer, pastoralist and nomadic communities. What measures have been taken and which results achieved to guarantee their rights and protect them against discrimination?
18. According to information before the Committee, certain aspect of family life, e.g. inheritance and marriage, are still ruled by customary law, religious law and traditional leadership<sup>4</sup>. Please indicate what measures have been taken to prevent

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<sup>4</sup> Sections 15, 211 and 212 of the Constitution.

discrimination against women of ethnic groups, especially regarding inheritance rights, land rights and polygamy (§§ 72 and 247 of the report).

19. In the light of General Recommendation XXX on discrimination against non-citizens, please give details of policies that may have been adopted to ensure that non-citizens are able to gain equal access to public services, especially housing, health, education and employment (§§ 37 to 40 of the State report).
20. According to information before the Committee, there is prevalence of discrimination, xenophobia and violence against immigrants and refugees. Please provide further information on the objectives and results of the “Roll back Xenophobia” campaign and other measures adopted to ensure equal protection against violence for citizens and non citizens (§ 155 of the report).
21. According to information before the Committee, illegal immigration is an important phenomenon in the State party and undocumented non-citizens are often discriminated against, in particular regarding education and employment. Please provide information on the measures to prevent this situation as well as on the provisions of the recent “Immigration Bill” (§§ 150 and 151 of the report).
22. According to information before the Committee, there is an important backlog in asylum-seekers applications and few non-citizens are granted permanent residence status. What measures is the State party taking in order to address this situation, what legislation applies to asylum-seekers and what legal guarantees and rights do they have?
23. Considering the constitutional acknowledgement of several official languages and indigenous languages<sup>5</sup> as well as the constitutional right to receive education in the language of one’s choice<sup>6</sup>, please provide further information regarding the

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<sup>5</sup> Section 6 of the Constitution.

<sup>6</sup> Section 29 of the Constitution.

non-obligation of the State to establish schools for every cultural and linguistic group (§ 214 of the report).

24. What measures have been taken with regard to the promotion of all official languages, the Khoi, Nama and San languages and indigenous languages? Please provide statistical data and a working definition of “indigenous languages” as used in the Constitution<sup>7</sup>:
25. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities<sup>8</sup> has still to be established 10 years after being enshrined in the Constitution (§ 220 of the State report). Please provide information on the progress towards the adoption of the Bill for its establishment.

#### **Article 6**

26. The State party’s judicial system reportedly faces the challenge of totally overcoming the legacy of apartheid. The Committee will welcome information on the prevailing ethnic composition of the different wings of the judicial system as well as information on measures taken to address the situation, (e.g. sensitisation, training, access to training, language of training, awards, etc.)
27. Please provide further information on the current situation regarding access to justice for members of vulnerable groups, including members of ethnic minorities and indigenous peoples, and on measures improving access to legal aid for these groups (§ 227 of the report).
28. Please provide statistical data on racial discrimination cases, information on the availability of remedies for victims of racial discrimination, including civil remedies, on the number and outcome of those cases, and on compensation awarded to victims.

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<sup>7</sup> Section 6 of the Constitution.

<sup>8</sup> Section 185 of the Constitution.

29. Please clarify the objectives of the project to transform all courts into “Equality courts” for the purpose of enforcing the “Promotion of Equality Act” (§ 226 of the report).
30. The South African Human Rights Commission has jurisdiction to promote respect for human rights, monitor and investigate the observance of human rights and secure appropriate redress where human rights have been violated<sup>9</sup>. Please provide information on the composition, status, resources and activities of this Commission. Please provide information on the number of complaints received, if any, on investigations conducted, their nature, the outcome of subsequent investigations and redress taken.

#### **Article 7**

31. According to information before the Committee, ill-treatment by law enforcement officials, especially of black citizens, indigenous persons and non-citizens, is common. Reportedly, members of the judiciary are not sufficiently sensitive to concerns of indigenous communities. Please provide detailed information on any specific training programmes and courses for members of the judiciary, law enforcement officials and other public officials on the provisions of the Convention and their application.
32. Please indicate whether measures have been taken to disseminate the Convention among the general population. Please provide further information on the Education Values initiative and also on how the Schools Act and the Promotion of Equalities Act address the need for re-education of teachers and other service providers (§§ 233 to 236 of the report).
33. Please provide information on the measures adopted by the State party with regard to the role of the media in promoting tolerance related to racial discrimination issues.

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<sup>9</sup> Section 184 of the Constitution.