



SOLIDARITEIT
SOLIDARITY

May 2026
COMPLAINT



NOMENCLATURE

For ease of reference and easier reading, the following abbreviations are used in this report:

- The Constitution of the Republic of South Africa Act, 1996, is referred to as the "Constitution".
- The Employment Equity Act, No. 55 of 1998, is referred to as the "EEA".
- The Broad-Based Black Economic Empowerment Act, No. 53 of 2003, is referred to as the "B-BBEE Act".
- The South African Human Rights Commission is referred to as the "SAHRC".
- The International Convention on the Elimination of All Forms of Racial Discrimination is referred to as "ICERD".
- The Committee on the Elimination of Racial Discrimination is referred to as "CERD" or "the Committee".
- The SAHRC's Equality Report 2017/18, with the subtitle "Achieving substantive economic equality through rights-based socio-economic transformation in South Africa", is referred to as the "Equality Report".
- Persons who receive preferential treatment in terms of the EEA are referred to as the "designated group".
- The Economically Active Population of South Africa is referred to as "the EAP".
- The National Human Rights Institution is referred to as the "NHRI".

ARTICLE 24 COMPLAINT

BY SOLIDARITY TRADE UNION TO
THE COMMITTEE OF EXPERTS ON
SOUTH AFRICA'S APPLICATION OF
CONVENTION 111

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EXECUTIVE SUMMARY

South Africa committed to non-racialism during the 1994 transition. Unfortunately, this has not been realised as 30 years later South Africa is still one of the most race-regulated countries in the world. The ANC has implemented three pieces of legislation that use race classification to try and redress the effects of apartheid - affirmative action, preferential procurement and black economic empowerment. In practice, these policies' only benchmark is never-ending statistical representativity and have led to ever-increasing racialisation of every aspect of South African life. These policies have had no impact on reducing inequality, poverty or unemployment - but succeeded in creating a new type of racial rent-seeking through tenderpreneurs and cadre deployment.

At grassroots level, these policies have manifested in absurdities like sports teams "losing" games because they were not demographically representative enough or the government implementing relief funds during COVID-19 that only black business owners can apply for. Ultimately the racial requirements put up as part of these policies deter foreign investment and inhibit growth - leading to higher unemployment and poverty amongst South African citizens.

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BACKGROUND

1. To properly contextualise these observations, it is necessary to give a thorough background of the circumstances that led hereto.
2. Solidarity lodged a petition to the South African Human Rights Commission (hereinafter the "SAHRC") in May 2017. Essentially, what Solidarity sought from the SAHRC was to compel the South African government to review legislation such as the Employment Equity Act, No. 55 of 1998, and the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, and determine whether the said legislation complies with international conventions.
3. The SAHRC subsequently submitted a report (titled the "Equality Report") in which the SAHRC confirmed that the "special measures" and/or affirmative action measures adopted by the South African government go beyond what is sanctioned by the Constitution of South Africa.
4. To the extent that Solidarity sought to compel the South African government to comply with the findings of the SAHRC, as provided in the report, Solidarity has not been successful in our courts, as is evident from a judgment of the Constitutional Court. Thus, notwithstanding the fact that the petition was submitted several years ago, the SAHRC has failed to deal with the petition submitted and our courts have been reluctant to enforce the findings of the SAHRC.
5. As appears from the executive summary, the Equality Report evaluates government's programme of radical socio-economic transformation from a rights-based perspective. It explores government's programme of radical socio-economic transformation and establishes its roots in the Freedom Charter. It further shows that radical socio-economic transformation should aim to achieve substantive socio-economic equality. Whereas most of the equality-related research focuses on horizontal status equality between groups sharing characteristics that render them prone to unfair discrimination, this report responds to international calls to address gross economic inequality.
6. The executive summary records the following as one of the key findings: *"The implementation of special measures in the employment equity sphere is currently misaligned to the constitutional objective of achieving substantive equality, to the extent that implementation may amount to*

rigid quotas and absolute barriers as opposed to flexible targets. This practice may inadvertently set the foundation for new patterns of future inequality and economic exclusion within and amongst vulnerable population groups.”

7. Solidarity supports the aforementioned findings of the SAHRC and the recommendations made in the Equality Report. However, as pointed out above, the South African government has failed to comply with and implement the findings of the SAHRC and our courts have declined to make the aforementioned binding on the South African government, which led to our article 24 representations to the Committee of Experts on South Africa’s application of the Discrimination (Employment and Occupation) Convention, 1958 (hereafter “Convention 111”), as submitted on 06 October 2021.

8. It was made clear in our representations to the Committee of Experts that the two fundamental principles of Convention 111 that were not complied with by the South African government are:
 - 8.1 Affirmative action should be aimed at correcting the position of the target group (remedial). We submitted that the application of remedial action in the employment sphere was neither context-sensitive nor need-sensitive, and resulted in a quota system which places an absolute barrier on persons that form part of the non-target (non-designated) group; and

 - 8.2 Affirmative action should be temporary in nature. We submitted that the application of affirmative action was not temporary, and resulted in new patterns of discrimination emerging where separate rights are reserved for separate groups.

9. Subsequent to the filing of our article 24 complaint, the following process ensued:
 - 9.1 On 15 November 2021 it was confirmed by the Director of the International Labour Standards Department that the representation will be submitted to the Officers of the Governing Body of the ILO, who will report to the Governing Body on its receivability at its 344th Session.

 - 9.2 On 30 March 2022 it was confirmed that at its 344th Session (March 2022) the Governing Body of the ILO declared our representation receivable in accordance with article 2 of the



Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution.

- 9.3 Solidarity was informed on 06 October 2022 that the South African government, in answer to our request, indicated that they were willing to partake in a voluntary conciliation process. The initiation of such conciliation procedure entailed a temporary suspension of the examination of the merits of the representation for a maximum period of six months.
 - 9.4 Solidarity was informed on 24 October 2022 that, by letter of 17 October 2022, the Minister of Employment and Labour suggested that the ILO work with the South African Commission for Conciliation, Mediation and Arbitration (CCMA) to serve as facilitators in the conciliation procedure.
 - 9.5 Several conciliation meetings under the facilitation auspices of the CCMA were held between 24 October 2022 and 28 June 2023.
10. On 28 June 2023 a historical settlement agreement was reached between Solidarity and the Republic of South Africa, which concluded the complaint and conciliation proceedings under the auspices of the ILO.

11. The terms of this settlement agreement are as follows:

Following the Applicant's article 24 representation to the ILO, and the conciliation process as facilitated by the CCMA, the parties are desirous to settle the above mentioned dispute as follows:

- a) Affirmative action is a coherent packet of measures, of a temporary nature in line with the Constitution, aimed specifically at correcting the position of members of a target group as defined in the Employment Equity Act in the workplace, in order to obtain effective equality.
- b) Affirmative action shall be applied in a nuanced way, as embodied in this agreement, and the economically active population statistics will only be one of many factors that will be taken into account in the compliance analysis of affirmative action in any workplace.
- c) No absolute barrier may be placed upon any employment practices affecting any persons from any group.

- d) For the purpose of preparing and implementing an employment equity plan and reporting and compliance analysis of affirmative action in any workplace, the following criteria must be taken into account:
- Inherent requirements of the job
 - The pool of suitably qualified persons
 - The qualification, skills, experience and the capacity to acquire, within a reasonable timeframe, the ability to do the job
 - The rate of turn-over and natural attrition within a workplace
 - Recruitment and promotional trends within a workplace.
- e) In the compliance analysis of affirmative action in any workplace justifiable/reasonable grounds for not complying with the targets as set by the employer and/or any other targets set by any other party, may include:
- Insufficient recruitment opportunities
 - Insufficient promotion opportunities
 - Insufficient target individuals from the designated groups with the relevant qualification, skills and experience
 - CCMA awards/Court Order
 - Transfer of business
 - Mergers/Acquisitions
 - Impact on Business Economic circumstances.
- f) No penalties or any form of disadvantage will be incurred by the employer if in the compliance analysis of affirmative action in any workplace, there are justifiable/reasonable grounds for not complying with the targets.
- g) No employment termination of any kind may be effected as a consequence of affirmative action.

The parties agree that the aforementioned agreement will be gazetted as part of the 2023 Employment Equity regulations, and will be deemed a settlement under case number J661/23 where it will be made an order of a Court.

12. This settlement agreement was made an order of Court on 31 October 2023 , and the ILOarticle 24 process was accordingly concluded.

ARTICLE 24 COMPLAINT

13. Whilst we remain steadfast in concurrence with the principles as enunciated in the settlement agreement and are of the view that the agreement is a major step forward in making South Africa a more equal society, there are still some blatant shortcomings by the South African government in its compliance with international conventions and the agreement. In the assessment of whether the South African government's application of restitution measures brings itself within the legitimate scope of international conventions, as well as the country's statutes, it is critical to first set out the statutory principles that must guide its conduct. Thereafter we will elaborate on why we are of the view that the South African government is in non compliance with these principles, especially those espoused in Convention 111, whereafter we will make some recommendations to the Committee in order to ensure compliance.

GUIDING PRINCIPLES

GUIDING PRINCIPLES EMANATING FROM CONVENTION 111

14. Article 1 of the Convention states that the term discrimination includes –
(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
15. The following are quotes from an ILO Report released during 2003¹:
197. The expression "affirmative action" refers to: "a coherent packet of measures, of a temporary character, aimed specifically at correcting the position of members of a target group in one or more aspects of their social life, in order to obtain effective equality. (Emphasis added)

199. A common feature of affirmative action measures is their temporary nature. This presupposes a regular and objective evaluation of affirmative action programmes aimed at ascertaining their effectiveness, redefining regularly their scope and content and determining when to bring them to an end. In some countries, however, they may be discontinued or their

¹ Time for equality at work. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 91st session 2003, pp 63-64.

*effectiveness reduced as a result of cuts in social spending, economic downturns or economic restructuring. In other countries, such as **India**, they have acquired a permanent or semi-permanent character.*

16. These quotes underline at least two important principles laid down by the ILO:

16.1 Affirmative action should be aimed at correcting the position of the target group (remedial); and

16.2 Affirmative action should be temporary in nature.

GUIDING PRINCIPLES EMANATING FROM ICERD

17. Solidarity submitted that the following sections of ICERD are critical in guiding the State Party's conduct in the enactment and implementation of the EEA:

17.1 Article 1, paragraphs 1 and 4, read with General Recommendation 32 of 2009, which provides that:

17.1.1 "Special measures" may not, as a consequence, lead to the maintenance of separate rights for different racial groups and they shall not be continued after the objectives for which they were taken have been achieved;

17.1.2 "Special measures" should be distinguished from unjustifiable preferences;

17.1.3 Differential treatment will "constitute" discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim;

17.1.4 Appraisals of the need for special measures should be carried out on the basis of accurate data, disaggregated by race, colour, descent and ethnic or national origin and incorporating a gender perspective, on the socio-economic and cultural status and conditions of the various groups in the population and their participation in the social and economic development of the country; and

- 17.1.5 States Parties should ensure that special measures are designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities.
- 17.2 Article 2, paragraph 2, read with General Recommendation 32 of 2009, which provides that States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.
- 17.3 Article 5(e)(i), read with General Recommendation 20 of 1996, which provides that:
- 17.3.1 In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:
- (e) Economic, social and cultural rights, in particular:
- (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favorable remuneration.
- 17.3.2 States are obliged to prohibit and eliminate racial discrimination in the enjoyment of such human rights.

GUIDING PRINCIPLES EMANATING FROM THE EEA

18. The EEA, whilst setting out to "*redress the effects of discrimination*", provides that this aim is coupled with an intention to "*eliminate unfair discrimination in employment*" and to "*promote*

economic development and efficiency in the workforce".² The statute seeks to balance considerations of fairness in employment practices, efficiency and the need for redress.

19. The need for balance between fairness in employment practices, efficiency and the need for redress is evident from the substantive provisions of the EEA:

19.1 The EEA commences with an outright prohibition of unfair discrimination,³ but also provides for affirmative action measures that are consistent with equal opportunity, fair treatment and the achievement of equitable representation of designated groups in the workforce.⁴

19.2 The EEA discourages the notion that these objects are to be attained by the mechanical use of race and gender demographics. Section 20(2)(c) emphasises that equitable representation must include an assessment of the availability of "suitably qualified" people from designated groups⁵ for appointment at particular levels and within particular categories in an organisation.

19.3 This conclusion is consistent with the meaning assigned to "*affirmative action measures*" in section 15(1) of the EEA:

*Affirmative action measures are measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer.*⁶

19.4 Section 15(2) provides for progress in representivity to be made through various strategies, such as the identification and elimination of employment barriers which adversely affect persons from designated groups, and "*making reasonable accommodation for people from designated groups*".⁷

² Preamble EEA

³ EEA s 6(1)

⁴ EEA s 6(2)

⁵ EEA s 20(2)(c)

⁶ Emphasis supplied

⁷ Emphasis supplied

- 19.5 Section 15(3) expressly states that provision for preferential treatment of designated groups and the setting of targets may not amount to quotas.⁸
- 19.6 Section 15(4) provides that the provisions on affirmative action are not to be construed as placing an obligation on an employer to place an absolute barrier upon the prospective or continued employment or advancement of people who are not from designated groups.⁹
- 19.7 Section 42 contemplates monitoring of compliance with the EEA by reference to a variety of factors:
- 19.7.1 the factors in section 15 of the EEA;¹⁰
 - 19.7.2 the extent to which suitably qualified people from and amongst the different designated groups are equitably represented within each occupational level in that employer's workforce in relation to the demographic profile of the national and regional economically active population;¹¹
 - 19.7.3 reasonable steps taken by a designated employer to train suitably qualified people from the designated groups;¹²
 - 19.7.4 reasonable steps taken by a designated employer to implement its employment equity plan;¹³
 - 19.7.5 the extent to which the designated employer has made progress in eliminating employment barriers that adversely affect people from designated groups;¹⁴
 - 19.7.6 reasonable steps taken by an employer to appoint and promote suitably qualified people from the designated groups;¹⁵ and

⁸ EEA s 15(3)

⁹ EEA s 15(4)

¹⁰ EEA s 42(1)

¹¹ EEA s 42(1)(a)

¹² EEA s 42(1)(b)

¹³ EEA s 42(1)(c)

¹⁴ EEA s 42(1)(d)

¹⁵ EEA s 42(1)(dA)

19.7.7 any other prescribed factor.¹⁶

GUIDING PRINCIPLES EMANATING FROM THE CONSTITUTION

20. Section 195(1) of the Constitution sets out the principles that must govern public administration.
21. The principle that public administration must be “*broadly representative of the South African people*”¹⁷ is but a subset of one of the nine principles enunciated. Within section 195(1)(i), the need to “*redress the imbalances of the past to achieve broad representation*” is coupled with, and therefore subject to, balancing against the notion that “*employment and personnel management practices*” ought to be “*based on ability, objectivity [and] fairness*”.¹⁸
22. In addition to the internal balancing required for the proper understanding and implementation of the principle enshrined in section 195(1)(i), there is the need to take into account, and balance against the aim of broad representivity, at least the following:
- 22.1 Public administration “*must be governed by the democratic values and principles enshrined in the Constitution*”,¹⁹ which must include human dignity, equality, the advancement of human rights, non-racialism and non-sexism,²⁰ as well as the right to just administrative action.²¹
- 22.2 The “*efficient, economic and effective use of resources must be promoted*”,²² and where the resources available to a state organ are human resources in the form of persons with particular skills, training or other attributes, such resources must accordingly be properly deployed.
- 22.3 “*Good human-resource management and career-development practices, to maximise human potential, must be cultivated*”²³ and therefore it is improper to refuse to appoint or promote applicants purely based on imperatives contained in an employment equity

¹⁶ EEA s 42(1)(e)

¹⁷ Constitution s 195(1)(i)

¹⁸ Constitution s 195(1)(i)

¹⁹ Constitution s 195(1)

²⁰ Constitution s 1, read with s 3(2), s 9, s 10

²¹ Constitution s 33

²² Constitution s 195(1)(b)

²³ Constitution s 195(1)(h)

plan or a collective agreement to promote representivity, and to overlook constitutional imperatives such as efficiency.

NON-COMPLIANCE OBSERVATIONS

23. South Africa has more than 140 laws that still reference race in one form or another. The self-stated aim of several pieces of this legislation is to undo the economic exclusion of black people by the apartheid government. When looking at the results rather than the intentions, clearly these policies have not achieved their aims at all.
24. Although the intentions behind Affirmative Action and Black Economic Empowerment seemed noble the outcomes have been vastly different from the stated intentions. In the ANC policy document outlining the need for Affirmative Action, it is expressly stated that South Africa should not *"become a nation of groups all walking around with calculators doing head counts and demanding special programmes for this group or that"*.²⁴ However, practically this is exactly what has happened regarding these pieces of legislation - with South Africa in 2026 having whole departments in government and private sector companies devoted to constantly calculating headcounts.
25. Whilst a raft of examples can be provided, we only give one of the most recent. After the settlement was concluded and made an order of Court, regulations on affirmative action sectoral numerical targets (hereinafter referred to as the "regulations") was published by the Minister of Employment and Labour in April 2025.
26. It is evident by the reading of the regulations that the affirmative action appointment and promotion measures put in place are only benchmarked against South Africa's ever-changing economic active population ("EAP") statistics. They are therefore not temporary and "goals posts" will be continually shifted. The regulations are clearly in contravention with South Africa's obligation to international law as well as the settlement agreement concluded between Solidarity and the Government, in relation to the obligation that special measures are temporary of nature.

²⁴ The ANC's "Policy Document on Affirmative Action and the New Constitution". 15 April 1994.

27. We emphasise and incorporate the following submissions as contained in our “Non-Racial by 2030”²⁵ report: *“the Employment Equity Act was framed as a remedial law to eliminate unfair discrimination and promote affirmative action without creating quotas or absolute barriers. Over time, it has become more prescriptive. The 2025 regulations represent the most aggressive phase of this evolution, imposing sectoral numerical targets across 18 sectors and several occupational levels. The economy cannot realistically grow into these targets. To meet them through growth alone would require average growth of 38% across sectors over five years, despite weak formal employment growth. The practical result is replacement pressure: approximately 69 796 white males and 111 568 women of all races would have to be replaced across job levels to meet the minister’s targets.”*
28. Simply put, the way affirmative action is enforced and reported on by our government on a day-to-day practical level signifies that South Africa’s transformation actions are in contravention of Convention 111, as well as the settlement agreement that was reached between the parties under the auspices of the ILO mediation process. We make such a submission based on the following:

INDEFINITE PURSUIT OF STATISTICAL REPRESENTATIVITY

29. It is evident that the ILO underlines that affirmative action should be temporary in nature. That employment equity measures in South Africa must be of a temporary nature was also expressly reflected in the settlement agreement.
30. In contradiction to the above principles, the regulations the Minister set out “5-year” numerical targets. In terms of the regulations the 5-year sectoral numerical targets are minimum targets and are key milestones towards achieving the equitable representation of the different designated groups within each occupation level in that employer’s workforce in relation to the demographics of their applicable EAP.
31. It is evident by the reading of the clause that the measures put in place are not temporary in nature. It is apparent that the “goal posts” will be continually shifted.

²⁵ As compiled by Solidarity’s Research Institute in May 2026. We attach the report hereto and incorporate the contents thereof herein.

32. Furthermore, it is the intention of the regulations to ensure that where a designated employer has exceeded the set numerical target of a particular racial/gender group at an occupational level, such an employer may not regress in that racial/gender group but should set targets towards the EAP.
33. Even if the employer has exceeded the set numerical target of a particular racial/gender group, that employer is still bound to continue and then set targets towards the EAP of that racial/gender group.
34. We submit, respectfully, that whilst proportional representation of every population group at every level and in every conceivable field is emphasised and enforced in South Africa as the only purpose of employment equity, it is not necessarily "equitable representation" as envisaged in the EEA. The determination of what is "equitable" is not a simple exercise of considering the make-up of the economically active population. The State, through the EEA, measures compliance and target-setting against the EAP. Thus, the EAP is used in isolation; no factor other than the percentage of race is utilised. This unlawfully and unfairly makes affirmative action in South Africa an indefinite pursuit of statistical "representivity", which is clearly an affront to the principle that restitutionary measures should be temporary.
35. Hence, Solidarity contends that South Africa's race obsession, as is evident through the regulations, are in contravention to the Republic of South Africa's obligations under Convention 111. They appear designed to remain in place perpetually and allow for the continued restructuring of what the state deems acceptable.
36. This is also an affront to the global view of affirmative action, which emphasises that affirmative action must be temporary and have an identified end term. In this regard, the landmark 2023 US Supreme Court decision in the matter of *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* confirms its previous view in *Grutter* by deciding as follows: "*For the reasons provided above, the Harvard and UNC admissions programs cannot be reconciled with the guarantees of the Equal Protection Clause. Both programs lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points. We have never permitted admissions programs to work in that way, and we will not do so today.*"

NEED-BASED AFFIRMATIVE ACTION

37. The South African Human Rights Commission Act (No. 40 of 2013) (Human Rights Commission Act) specifically mandates the South African Human Rights Commission (SAHRC) to monitor the implementation of, and compliance with, international and regional human rights instruments.
38. Solidarity adopts the reasoning of the SAHRC in support of its Equality Report finding that section 42 of the EEA, as read with the definition of “designated groups”, is not constitutionally compliant and is in contravention of ICERD. Solidarity further adopts and emphasises the following conclusion of the SAHRC in relation to socio-economic need as a proxy for receiving affirmative action benefits: “... *special measures are currently misaligned to constitutional objectives. Where special measures are not instituted on the basis of need, and taking into consideration socio-economic factors, they are incapable of achieving substantive equality.*”
39. The racial sectoral targets (as opposed to socio economic need targets) as set out in the government’s Employment Equity Regulations are required to be met. They are not mere “numerical goals”. They are not simply programme objectives translated into numbers which provide a target to strive for and a vehicle for measuring progress. Failure to adhere to the “targets” results in non-compliant status and a penalty, whether in the form of an actual fine or in the form of forfeiting the opportunity of doing business with the state.
40. The sectoral targets have as their purpose to produce immediate end results for the benefitting groups – without addressing the causes of “under-representation”, which would be one example of a nuanced or rational approach.
41. The sectoral targets set by the labour Minister moves even further away from a concern with “need” and relevant socio-economic factors. The sectoral target system does not allow for appropriate consideration in the employment sphere of varying degrees of disadvantage, and the possible intersectionality of multiple forms of discrimination. Such an approach would also serve to be more nuanced and representative of the settlement.
42. The sectoral targets are essentially an unjustifiable quota system out of proportion to what Convention 111 allows, that will cause substantial and undue harm to non designated groups and would not be constitutionally compliant.

43. Rigidity in affirmative action measures in employment frustrates the life chances of non beneficiaries, "causing race or gender-based contests" that are not in line with a "nuanced and inclusive notion of substantive equality".

INTERVENTION SOUGHT

44. It is requested that the Committee consider the following possible observations or interventions:

44.1 That the government should provide information on how its current affirmative action programme and its application thereof will be temporary, with the purpose to terminate it at a specific time.

44.2 That the government should provide information on how its current application of affirmative action is instituted on the basis of need, as opposed to numerical representivity as benchmarked against the EAP.

44.3 That the government should provide information on how its current application of affirmative action takes into account the national as well as the regional EAP.

44.4 That the government should provide information on how it enforces the terms of the settlement agreement in its current application of affirmative action.

44.5 That the government should provide information on the transformation statistics at lower levels of employment.

44.6 That the government should provide information on what steps are/were taken in order to ensure that employees of the designated group are suitably qualified to ensure representation at top management, senior management and professionally qualified/middle management levels.

45.7 Recommend the State to implement the following measures:

45.7.1 Necessity and proportionality tests: Where race is used as a factor (not in isolation) determinant for access to opportunities or benefits, require transparent demonstration that the measure is necessary to achieve a remedial purpose, proportionate in its effects, and not achievable through less restrictive means.

- 45.7.2 Socio-economic rights impact assessment: Prior to adoption and during implementation, require assessment and publication of expected and actual impacts on access to work and livelihoods, income security, and poverty/inequality outcomes, including adverse impacts on any group and intersectional impacts.
- 45.7.3 Safeguards for freedom of association and collective bargaining: Ensure measures do not incentivise discrimination, retaliation, or exclusion in workplaces or professional settings; strengthen requirements for meaningful consultation with representative worker organisations; and provide clear, accessible complaint mechanisms for affected workers and unions.
- 45.7.4 Sunset clauses and periodic review: Encourage time-bound design, periodic independent review, and clear criteria for amendment or repeal to prevent indefinite racial classification becoming embedded in regulation.
- 45.7.5 Disaggregated evidence and monitoring: Publish the sector-specific data as well as socio economic data and methodology used to set targets which are not race based and track outcomes, including monitoring for adverse or exclusionary impacts (including labour-rights impacts and socio-economic outcomes).
- 45.7.6 Safeguards for occupational choice and professional participation: Ensure that measures do not functionally restrict the right to choose a trade, occupation, or profession, and that any limitations are narrowly tailored, clearly authorised by law, and justified.
- 45.7.7 Meaningful participation and transparency: Strengthen consultation standards, conflict-of-interest management, and public availability of decision-making records and reasons, especially where measures allocate opportunity by race. Include participation of persons who are affected.
- 45.7.8 Accountability and remedies: Maintain accessible avenues for review and complaint (administrative and judicial), and ensure effective remedies where race-based measures are unlawful, arbitrary, or produce unfair discrimination.
- 45.7.9 Application of alternative targeting: Complement nuanced affirmative action measures with socio-economic, geographic, or vulnerability-based criteria to reach disadvantaged communities while reducing rigid racial gatekeeping and stigma.



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