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Convenio sobre la discriminación (empleo y ocupación), 1958 (núm. 111)

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Convention (n° 111) concernant la discrimination (emploi et profession), 1958

Written information provided by the Government

The Government has provided the following written information as well as the following documents: 25th Commission for Employment Equity (CEE) annual report 2024–25; Employment Equity Amendment Act, 2022; General Administrative Employment Equity Regulations; Regulations on the 5-year sector numerical employment equity (EE) targets; judgment on Case No. JS1030/17; and the comments from the Congress of South African Trade Unions (COSATU).

The Committee of Experts asked the Government to continue to strengthen its efforts in promoting equality of opportunity and treatment in employment and occupation of all the designated groups and to provide information on:

(i) Results achieved in transforming the labour market towards a more equitable representation of the designated groups

The right to human dignity and the achievement of equality are core values enshrined in the Constitution of the Republic of South Africa (1996), the country's supreme law. To give effect to the right to equality in employment, the Employment Equity Act No. 55 of 1998 (EEA) was enacted. Its purpose is to achieve workplace equity and equality by promoting equal opportunity and fair treatment, eliminating unfair discrimination and implementing affirmative action measures. These measures are designed to redress the historical disadvantages experienced by designated groups, namely black people, women and persons with disabilities, to ensure their equitable representation across all occupational levels.

To demonstrate its commitment to the EEA's objectives, the Government continues to strengthen its compliance assessment and monitoring mechanisms, tracking progress in transforming workplaces and fostering inclusive, discrimination-free environments. Although some progress has been observed, analysis of EE data from the 2024 reporting cycle (submitted by designated employers – those with 50 or more employees, or fewer than 50 but meeting a designated annual turnover threshold) reveals that the South African labour market still exhibits significant racial, gender and disability disparities.

Workforce representation trends indicate a labour market structure that remains hierarchical, first by race, then gender and finally disability. The two uppermost strategic

decision-making levels, top and senior management remain racialized and gendered, with white individuals and men predominating. At the top management level, whites hold 61.1 per cent of positions and men 72.5 per cent, while persons with disabilities hold only 1.9 per cent. At senior management level, whites occupy 47.3 per cent and men 61.7 per cent, with persons with disabilities holding just 1.4 per cent of positions.

Notably, most designated groups, particularly black women and persons with disabilities continue to be concentrated in the lower to middle management levels. For example, at the professionally qualified/middle management level, black women (African, coloured, and Indian) account for 35.6 per cent of positions, while persons with disabilities account for only 1.2 per cent. At the semi-skilled level, black women hold 42.9 per cent of positions, but persons with disabilities hold only 1.0 per cent. Although women's representation in lower to middle management has encouragingly increased, this upward trend has not yet translated into substantial gains at senior and top management levels. For further details, see the 2024–25 EE annual report of the CEE (25th CEE annual report).

(ii) Assessment of affirmative action measures (particularly the five-year sectoral numerical targets for designated employers introduced by EE Amendment Act No. 4 of 2022) to determine whether they remain effective and consistent with the principle of non-discrimination

The commencement date of the Employment Equity Amendment Act, No. 4 of 2022 (EE Amendment Act, 2022) was proclaimed by the President in Government Gazette No. 51684 dated 28 November 2024. The Act took effect on 1 January 2025. Its key objectives are to empower the Minister to regulate sector-specific EE numerical targets to ensure equitable representation of suitably qualified persons from designated groups; to reduce the regulatory burden on small businesses (those employing 1–49 persons); and to promulgate section 53 of the EEA, which makes an EE Compliance Certificate a prerequisite for accessing state contracts and doing business with any organ of the State.

On 15 April 2025, on the advice of the CEE, the Minister published two sets of EE Regulations: General Administrative Regulations (GG No. 52515) and 5-Year Sector Numerical EE Targets Regulations (GG No. 52514). These regulations aim to provide employers and employees with critical guidelines on effectively interpreting and implementing the provisions of the EE Amendment Act, 2022, including the five-year sector-specific EE targets at the workplace level.

The regulations offer flexibility in implementing these targets by requiring designated employers (those with 50 or more employees) to, after consulting with registered trade unions or employee representatives, analyse their current workforces, review their own self-regulated annual EE targets and align their EE Plans with the applicable five-year sector targets. The new EE Plans commenced on 1 September 2025.

All designated employers were therefore required to submit baseline EE reports, including their first-year annual EE targets toward the five-year sector targets, during the 2025 EE reporting period (1 September 2025 to 15 January 2026). Consequently, the first compliance assessment of these first-year annual targets across all 18 economic sectors will be conducted only in the 2026 EE reporting cycle, after designated employers submit their subsequent EE reports (1 September 2026 to 15 January 2027). Once the 2026 EE data analysis is finalized, the CEE will publish the 2026–27 annual EE report on the status of the South African labour market.

(iii) Impact of implementing section 53 of the EEA as amended (measures to evaluate assessment criteria for issuing employment equity compliance certificates, and the number of certificates denied based on this assessment)

The EE General Administrative Regulations prescribe the assessment criteria for issuing EE Compliance Certificates under section 53 of the EE Amendment Act, 2022. These regulations include Regulation 16(4), EE reporting forms EEA2 and EEA15 and two distinct EE Compliance Certificate templates (EEA16A and EEA16B), which set out different compliance criteria for designated and non-designated employers.

For non-designated employers, the criteria include compliance with the National Minimum Wage Act, 2018 and Chapter II of the EEA (Prohibition of Unfair Discrimination) over the previous 12 months. For designated employers, the assessment criteria additionally require submission of the annual EE report, achievement of annual EE targets (with justifiable reasons for any non-compliance) and continued compliance with both the National Minimum Wage Act and Chapter II of the EEA over the same period.

The compliance assessment and certificate issuance process has been fully automated within the Employment Equity System, accessible through the Department of Employment and Labour's online services platform (www.labour.gov.za). Automation enhances data integrity, accessibility, efficiency and user-friendly self-service, while minimizing turnaround times and reducing fraud risk. Manual issuance of EE Compliance Certificates is prohibited.

The first certificates were issued from 1 September 2025. As of 15 January 2026, a total of 25,913 EE Compliance Certificates had been issued: 11,694 to non-designated employers and 14,219 to designated employers. To date, no employer has been denied a certificate. Notably, employers are only required to produce the EE Certificate of Compliance as a prerequisite for access to state contracts and for doing business with any organ of the State. Therefore, it remains too early to assess the full impact of section 53 of the EEA as amended.

(iv) Actions taken within the framework of the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2019–24, including obstacles identified and results achieved

The South African Constitution protects the rights to dignity, equality and fair labour practices under the Bill of Rights. South Africa is committed to eliminating, preventing and managing all forms of direct and indirect discrimination in the workplace, with the aim of creating safe environments free from unfair discrimination.

The EEA governs equity in the workplace. Section 6(1) of the EEA prohibits direct or indirect unfair discrimination against an employee in any employment policy or practice on grounds including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth, or any other arbitrary ground. Section 5 requires all employers to take steps to eliminate unfair discriminatory policies and practices that cause workplace inequalities. Section 54 empowers the Minister of Employment and Labour to issue codes of good practice on the advice of the CEE.

Pursuant to section 54, South Africa issued a Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace (the Harassment Code) on 18 March 2022. This Code addresses the prevention, elimination and management of all forms of harassment, including racial discrimination and harassment that pervade the workplace. South Africa regards all forms of harassment as unfair discrimination, constituting a barrier to workplace

equity and equality. Accordingly, all forms of harassment, sexual harassment, gender-based violence and harassment, bullying and racial, ethnic, or social origin harassment must be eliminated. Harassment may include physical, psychological, emotional and sexual abuse.

The Harassment Code provides protection against racial discrimination and harassment. Section 10 of the EEA empowers the Commission for Conciliation, Mediation and Arbitration (CCMA) and the Labour Courts to provide dispute resolution mechanisms and remedies for workplace racial discrimination. Under section 50(2) of the EEA, both the CCMA and the Labour Court may issue any appropriate, just and equitable order, including:

- (a) payment of compensation and/or damages by the employer to the employee;
- (b) an order directing the employer to take steps to prevent future unfair discrimination or similar practices affecting other employees; and
- (c) an order directing an employer (other than a designated employer) to comply with Chapter 3 as if it were a designated employer, directing the removal of an employer's name from the register referred to in section 41, or ordering publication of the Court's decision.

The Labour Court has already issued remedies for racial discrimination and harassment using the Harassment Code, as demonstrated in the case of *Solidarity obo Oosthuizen v South African Police Service and others* ((JS1030/17) [2023] ZALCJHB 4; [2023] 3 BLLR 258 (LC)). Furthermore, annual EE advocacy campaigns are conducted nationwide to raise awareness and educate labour market stakeholders including employers, employer organizations, employees, trade unions, HR managers and practitioners, academics and civil society on the EEA and all forms of harassment, including racial discrimination.

Discussion by the Committee

Presidenta - Señoras y señores vamos a iniciar con el tercer caso del día que se refiere a la aplicación del Convenio sobre la discriminación (empleo y ocupación), 1958 (núm. 111) por parte de Sudáfrica. Para la discusión sobre este caso contamos con 21 oradores inscritos en la lista de oradores por lo que la Mesa ha decidido reducir el tiempo máximo de intervención de 5 a 3 minutos.

Invito al representante gubernamental de Sudáfrica, Director General Adjunto Interino de Políticas Laborales y Relaciones Laborales a que tome la palabra.

Government representative – Let me begin by expressing an apology from Honourable Nomakosa Zanamet, Minister of Labour from South Africa. She could not make it due to that she was presenting the budget yesterday and the debate today. We take this opportunity and appreciate the opportunity to appear before this Committee regarding the application of Convention No. 111 concerning discrimination in employment and occupation. At the outset, we reaffirm our unwavering commitment to the principles and objectives of the Convention and to promoting equality of opportunity and treatment in employment and occupation.

The elimination of discrimination and the advancement of substantive equality remain central pillars of our constitutional democracy and labour market framework. The Constitution of the Republic of South Africa places human dignity, equality, and freedom at the heart of our democratic order. These constitutional values are given effect through the Employment Equity Act of 1998 which seeks to eliminate unfair discrimination and promote the equitable representation of historically disadvantaged groups through affirmative action measures. South Africa welcomes the Committee of Experts' observations and appreciates the

opportunity to provide an update on developments since the Committee of Experts' previous examination of this case. Allow me to address the four matters raised by the Committee of Experts.

First, with regard to the results achieved in transforming the labour market towards more equitable representation of designated groups. South Africa continues to strengthen its compliance, monitoring, and enforcement mechanism to advance workplace transformation and promote inclusive discrimination-free workplaces. The latest Employment Equity data derived from the 2024 reporting cycle submitted by designated employers – and I want to emphasize *designated* employers – confirms that progress has been made in certain areas. However, they also demonstrate that the labour market continues to reflect deep historical inequalities and structural patterns of exclusion. The data show that workforce representation remains stratified along racial, gender, and disability lines. Race remains the primary determinant of occupational positioning, followed by gender and disability status. Top and senior management positions remain disproportionately occupied by white individuals (comprising 61.1 per cent) and men (comprising 72.5 per cent) while black women and persons with disabilities continue to be concentrated in the lower and middle occupational levels. These patterns demonstrate that significant barriers to equitable representation persist throughout our labour market. While the Government welcomes the increasing participation of women at lower and middle management levels, this progress has not yet translated into equitable representation at senior leadership levels. These findings confirm that the legacy of past discrimination remains deeply embedded in the labour market outcomes and underscores the ongoing need for targeted measures to accelerate workplace transformation.

Frustratingly, these inequalities persist despite significant efforts by the State to strengthen monitoring and enforcement. During the 2025–26 financial year, the Department of Employment and Labour targeted 3,324 Employment Equity inspections, including Director-General Reviews, reassessments, and monitoring interventions. A total of 1,948 employers were DG reviewed. However, only 181 employers were found compliant. So out of 1,948, only 181 were found compliant, representing a compliance rate of 9 per cent; and 1,767 employers were found non-compliant and issued with DG recommendations for corrective action. I want to emphasize that. So, it is not punitive but corrective action. May I also hasten to add that these findings demonstrate both the scale of the transformation challenge that remains before us and the seriousness with which the Government continues to monitor and enforce compliance with Employment Equity obligations.

The second issue raised by the Committee of Experts concerns assessment of affirmative action measures, particularly the implementation of the five-year sector numerical targets introduced through the Employment Equity Amendment Act of 2022. The Government wishes to emphasize that these measures were developed within the framework of the Employment Equity Act and are aimed at advancing substantive equality and equitable representation, consistent with both our Constitution and the Convention. The Employment Equity Amendment Act No. 4 of 2022 came into operation on 1 January 2025, following its proclamation by the President. The Employment Equity Amendment Act pursues three principal objectives. Firstly, it empowers the Minister of Employment and Labour to establish sector-specific Employment Equity numerical targets to accelerate equitable representation of suitably qualified persons from designated groups (women of all racial groups and persons with disabilities irrespective of race and gender). Second, it reduces regulatory burdens on smaller enterprises, those that employ fewer than 50 workers, by exempting these employers from complying with the five-year sector-specific Employment Equity targets. Thirdly, it

operationalizes section 53 of our Employment Equity Act by linking access to State procurement opportunities to compliance with Employment Equity obligations.

On 15 April 2025, following recommendations from the Commission for Employment Equity, the Minister promulgated both the General Administrative Regulations and the Five-Year Sector Numerical Targets Regulations. These Employment Equity Regulations provide practical guidance to employers and workers on implementing the amended legislative framework and establish the five-year sector-specific targets across 18 sectors of our economy. The sectoral Employment Equity targets do not constitute rigid racial quotas, nor do they require the appointment or promotion of unqualified persons. Employers remain obliged to consider qualifications, skills, experience, operational requirements and the availability of suitably qualified candidates.

Importantly, the sectoral Employment Equity targets framework remains flexible and consultative. Designated employers are required to consult with representatives of trade unions and employee representatives, undertake workforce analysis, establish workplace specific targets and align their Employment Equity Plans with the broader five-year sectoral targets. The new Employment Equity Plans commenced on 1 September 2025. During the 2025 reporting cycle, all designated employers submitted baseline Employment Equity reports along with their own self-regulated first year annual targets aligned with the sectoral Employment Equity target framework. Consequently, the first meaningful assessment of progress against these annual targets can only occur following the 2026 reporting cycle when employers submit their next round of reports between September 2026 and January 2027.

For this reason, it is presently premature to draw definitive conclusions regarding the effectiveness of the sector targets. The Commission for Employment Equity will conduct a comprehensive assessment once sufficient information data becomes available and we will publish its findings in the 2026–27 Employment Equity Annual Report.

The third matter concerns the implementation of section 53 of the Employment Equity Act and the issuing of Employment Equity Compliance Certificates. The Government has adopted detailed Employment Equity Regulations prescribing the criteria and procedures for issuing these Employment Equity Compliance Certificates. The compliance assessment criteria differentiates between designated employers – those that employ 50 and more employees – and non-designated employers – those that employ fewer than 50 employees. For non-designated employers, certification requires compliance with the National Minimum Wage Act of 2018 and the anti-discrimination provisions in Chapter II of the Employment Equity Act during the preceding 12-month period. For designated employers, the assessments include additional requirements, namely the submission of annual employment equity reports, the achievement of annual Employment Equity targets or the provision of justifiable reasons where targets have not been met, and the continued compliance with the National Minimum Wage Act and Chapter II of the Employment Equity Act. The certification process is fully automated through the Department of Employment and Labour's Electronic Employment Equity System to enhance data integrity and reduce fraud. The first Employment Equity Compliance Certificates were issued for the first time from 1 September 2025. As of 15 January 2026, a total of 25,913 Employment Equity Compliance Certificates had been issued. Of these, 11,694 certificates were issued to non-designated employers, and 14,219 certificates were issued to designated employers. Let me point out that to date, no employer has been denied an Employment Equity Certificate of Compliance.

The implementation of the amended Employment Equity framework has also generated substantial employer engagement. Since the coming into operation of the Employment Equity

Amendment Act on 1 January 2025, more than 14,000 designated employers have submitted Employment Equity Reports while more than 11,000 non-designated employers have also applied for Employment Equity Compliance Certificates. These figures, in our view, demonstrate that employers across our economy are actively engaging with the new framework and provide an important baseline against which future progress can be assessed. The Government nevertheless notes that section 53 remains in the early stages of implementation. Since certificates become relevant primarily when employers seek access to state procurement opportunities, it remains too early, too, to undertake a comprehensive assessment of the full impact of this provision.

The fourth issue concerns the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance. South Africa remains firmly committed to combating all forms of discrimination, racism, xenophobia and intolerance both within and beyond the workplace. The Constitution guarantees the right to dignity, equality and fair labour practices. These rights are reinforced through the Employment Equity Act and apply to every worker irrespective of origin or status. Consequently, section 6 of the Act prohibits both direct and indirect unfair discrimination on a comprehensive range of grounds including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion and any other arbitrary ground. On the other hand, section 5 of the Act requires all employers to take proactive steps to eliminate discrimination policies and practices that perpetuate workplace inequalities. In furtherance of these objectives, South Africa ratified Convention No. 190 in November 2021, and subsequently adopted the Code of Good Practice on the Prevention of Elimination and Harassment in the Workplace in March 2022. The Code recognizes harassment as a form of unfair discrimination and provides guidance on prevention, management and remediation in the workplace.

The Harassment Code has already been applied by the Labour Court as in *Solidarity obo Oosthuizen v South African Police Service and others* with remedies including compensation of 300,000 South African rand, compliance orders and publication of judgments in favour of the complainant. Importantly, South Africa has established effective mechanisms through the Commission for Conciliation, Mediation and Arbitration and the Labour Court to address discrimination and provide appropriate remedies.

We wish to place on record a broader concern regarding the contemporary global environment within which efforts to advance equality, equity and inclusion are being pursued. Across a number of jurisdictions, including in our own country, we are witnessing increasing resistance to measures aimed at redressing historical disadvantage and promoting substantive equality. In this context, South Africa respectfully submits that the purpose of the Convention is not to discourage or penalize bona fide measures adopted by Member States to advance equality and eliminate discrimination but rather to encourage and support such efforts.

The Convention recognizes that formal equality alone is often insufficient to overcome entrenched patterns of exclusion and that positive measures may be necessary to achieve genuine equality of opportunity and treatment. South Africa regards the ILO supervisory system as a vital mechanism for both accountability and support in implementing international labour standards. The issues presently before this Committee arise in a domestic context where employment equity measures continue to be vigorously debated and contested. Certain aspects of South Africa's employment equity framework are currently the subject of judicial proceedings before our courts. This reflects the strength rather than the weakness of our constitutional order.

Questions relating to the interpretation and implementation of employment equity legislation are being addressed through established judicial processes that enjoy the confidence of all social partners. In 2025, the High Court declined an application by an employers' organization seeking to suspend the implementation of the new framework, holding that judicial review rather than interim relief to suspend the implementation of the five-year sector numerical Employment Equity targets published in April 2025 was the appropriate remedy. Subsequent applications for leave to appeal were dismissed by both the Supreme Court of Appeal and later the Constitutional Court and this happened just a week ago. South Africa remains committed to respecting the outcome of these processes and to ensuring that labour market transformation continues to be pursued within the framework of the rule of law, constitutionalism and social dialogue. South Africa's courts and social dialogue institutions continue to enjoy the confidence of the Government, employers and workers and remain central to labour market stability and dispute-resolution alike.

Against this backdrop, South Africa respectfully appeals to the Committee for its understanding and support. We believe it is important that the supervisory system remains objective, balanced and attentive to national circumstances, particularly where domestic institutions are actively engaged in addressing contested legislative and policy issues. We would be concerned if the supervisory mechanisms of the ILO were inadvertently used in a manner that undermines domestic dispute resolution processes, encourages forum shopping or is weaponized by parties seeking to achieve through international processes outcomes that remain under consideration within national legal systems. Such developments risk weakening confidence in labour market institutions and may ultimately undermine the very social dialogue and institutional stability that the ILO has consistently sought to promote.

We, therefore, respectfully request the Committee to continue supporting Member States that are genuinely striving to advance equality and combat discrimination while giving due regard to national processes, social dialogue institutions and judicial mechanisms that are actively engaged in resolving these complex issues.

Membres travailleurs - La convention n° 111 exige que les États l'ayant ratifiée déclarent et poursuivent une politique nationale visant à promouvoir l'égalité des chances et de traitement en matière d'emploi et de profession, dans le but d'éliminer la discrimination sous toutes ses formes.

La commission d'experts a pris note de plusieurs développements en Afrique du Sud, tout en identifiant les domaines où des progrès et des clarifications supplémentaires sont nécessaires. En particulier, la commission d'experts a demandé au gouvernement de continuer à renforcer ses efforts pour promouvoir l'égalité des chances et de traitement pour tous les groupes désignés sur le marché du travail. Elle a également demandé des informations détaillées sur les résultats obtenus dans la transformation du marché du travail vers une représentation plus équitable ainsi qu'une évaluation de l'efficacité des mesures d'action positive, en particulier les objectifs numériques sectoriels sur cinq ans introduits dans le cadre de la loi n° 4 de 2022 portant modification de la loi sur l'équité en matière d'emploi, et si ces mesures restent conformes au principe de non-discrimination.

De plus, la commission d'experts a réitéré sa demande au gouvernement de fournir des informations sur les actions concrètes entreprises dans le cadre du Plan d'action national contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée (2019-2024). Cela inclut l'identification des obstacles rencontrés ainsi que les résultats obtenus.

De plus, la commission d'experts a demandé des clarifications concernant la mise en œuvre de l'article 53 de la loi sur l'équité en matière d'emploi (tel que modifié). En particulier,

ils ont demandé des informations sur les critères utilisés pour la délivrance des certificats de conformité sur l'équité en matière d'emploi, les mécanismes en place pour évaluer la conformité, ainsi que le nombre de certificats refusés à la suite de ce processus.

Les membres travailleurs souhaitent rappeler que la convention exige que les États poursuivent une politique nationale visant à promouvoir l'égalité des chances et de traitement dans l'emploi et la profession, et à éliminer la discrimination sous toutes ses formes. L'article 5 de la convention prévoit également que les mesures spéciales de protection ou d'assistance ne sont pas considérées comme de la discrimination. De même, la recommandation qui l'accompagne reconnaît la légitimité des mesures conçues pour répondre aux besoins des groupes nécessitant une protection ou une assistance particulière.

Dans le cas de l'Afrique du Sud, nous devons reconnaître le contexte historique qui a façonné des inégalités profondes et persistantes sur le marché du travail. Les schémas d'exclusion selon des lignes raciales et sociales ont eu des effets durables sur l'accès à l'emploi, à l'éducation, à la formation et à l'avancement. À cet égard, les politiques visant à corriger ces déséquilibres sont à la fois légitimes et essentielles.

À ce propos, nous reconnaissons les efforts déployés pour lutter contre les inégalités persistantes sur le marché du travail et améliorer la représentation des groupes visés. De tels efforts sont particulièrement importants lorsque les schémas d'exclusion et de désavantage ont des racines historiques profondes.

À notre avis, des mesures spéciales visant à surmonter les inégalités historiques et structurelles sont légitimes et nécessaires pour véritablement promouvoir l'égalité des chances et du traitement, y compris garantir la capacité de saisir les opportunités ainsi créées.

La question clé est de savoir si de telles mesures contribuent effectivement à atteindre une véritable égalité dans la pratique. Leur succès doit donc être évalué non seulement en fonction des résultats numériques, mais aussi de leur capacité à démanteler les obstacles qui continuent d'affecter les travailleurs appartenant à des groupes défavorisés. Nous notons que le Comité des Nations Unies pour l'élimination de la discrimination raciale (CERD) a exprimé son inquiétude quant au fait que la loi sur l'équité en matière d'emploi ne s'applique désormais qu'aux employeurs de plus de 50 employés, excluant les petits employeurs des obligations clés telles que l'action positive et les plans d'équité.

En même temps, il est important que ces mesures soient soumises à une évaluation régulière. Ces évaluations devraient être fondées sur des preuves et menées en consultation avec les partenaires sociaux, en particulier les syndicats représentant les travailleurs concernés. Cela aidera à garantir que les mesures restent efficaces, proportionnées et réactives aux réalités évolutives du marché du travail.

À ce titre, les membres travailleurs encouragent le gouvernement sud-africain à poursuivre ses efforts pour promouvoir l'égalité des chances et le traitement de l'emploi et de l'occupation pour tous les travailleurs, en plein respect de la convention. Nous exhortons le gouvernement à renforcer sa collecte de données et son rapportage, à veiller à ce que toutes les mesures soient soumises à une évaluation régulière fondée sur des preuves, et à engager de véritables consultations avec les organisations représentatives d'employeurs et de travailleurs. Nous espérons que les informations supplémentaires demandées par la commission d'experts offriront une image plus claire de l'efficacité des mesures adoptées et des progrès réalisés dans l'élimination de la discrimination sur le marché du travail.

Employer members – The Employer members acknowledge that the Government of South Africa has taken steps regarding the application of Articles 1, 2 and 5 of the Convention

and specifically as it relates to affirmative action concerning discrimination based on race, colour and national extraction. The Government of South Africa enacted legislation, the Employment Equity Act, to achieve equity in the workplace following the end of apartheid. The Act seeks to promote equality of opportunity and treatment in employment and occupation for all designated groups through the elimination of unfair discrimination. The Employment Equity Act also contains, among other things, affirmative action measures, a reporting requirement and penalties for non-compliance.

While the Government of South Africa has taken significant action in law, the Committee of Experts have noted that, in practice, there still appears to be a significant gap between the representation of historically disadvantaged groups in managerial positions in comparison to their representation in the economically active population. In response, the Employers note and recognize that the elimination of historical disadvantaged or designated groups as it relates to employment and occupation, especially through affirmative action, takes time. Therefore, the Employer members ask the Government of South Africa to provide additional information to the Committee of Experts on its efforts to promote equality of opportunity and treatment in employment and occupation for designated groups and also on its efforts regarding affirmative action measures. South Africa ratified the Convention in 1997. The Committee of Experts commented on this case five times in 2025, 2022, 2017, 2015 and 2011.

This is the first time that the Committee is dealing with this case. As you all know, the Convention concerning discrimination in employment and occupation is one of the ILO's fundamental Conventions and, as such, must be the subject of special attention and priority monitoring. The Convention requires governments to eliminate discrimination in employment and occupation based on protected characteristics including race, colour and national extraction. Article 5 of the Convention permits governments to adopt special measures – often called affirmative action – to meet the particular needs of designated groups which were historically subject to discrimination provided these measures are aimed at achieving substantive equality and are disbanded once these objectives have been achieved. The Committee of Experts dealt with a single issue in its observation. It noted that, despite the efforts of the Government of South Africa, the white population group remains overly represented in top management positions, senior management positions, professional qualified and middle management positions, as well as in the skilled technical and junior management positions. The Employers note that the data provided by the Government of South Africa is from 2022. No further or more recent data was provided. The Employers note that the Government of South Africa has taken measures to apply the provisions of the Convention. These include: (i) labour inspections to assess the implementation of affirmative action in the labour market; (ii) a complaints adjudication mechanism through the Commission for Conciliation, Mediation and Arbitration or the labour courts; (iii) penalties for non-compliance; (iv) reporting requirements; (v) requiring employment equity compliance certificates as a prerequisite for accessing State contracts; and more recently (vi) setting five-year sectoral numerical targets for designated employers.

With respect to the last piece regarding sectoral targets, we as the Employer members wish to note the importance of setting numerical targets for designated employers that take into account geographic, industrial and other concerns contextual factors. We also emphasize the importance of setting targets that are achievable to ensure that employers are not unfairly penalized or disadvantaged. In order to do so, we recognize the importance of meaningful consultations with the employers concerned to ensure compliance in an economically sustainable manner. As mentioned in our introductory remarks, the elimination of discrimination in employment and occupation takes time. This is especially the case in

countries like South Africa where differentiation based on race, colour and national extraction was institutionalized in the country's legal social and economic structures up until the early 1990s.

Worker member, South Africa – We note that our country has been listed for discussions in this Committee under the Convention. Our Government submitted statistics from the employment equity data from 2022 which shows that white South Africans remain heavily over-represented in senior positions as follows: the white population who constitute 8 per cent of the Economically Active Population (EAP) occupies 62.9 per cent of top management roles; the Indian population: 2.7 per cent of the economically active population occupies 11.2 per cent of top management; the African population, the largest group which constitutes 80 per cent of the economically active population only occupies 16.9 per cent of top management, while the coloured population: 9.3 per cent of economically active persons only occupies 6.1 per cent of the top management.

The data also shows disproportionate representation in other operational levels as follows: Whites hold 50.1 per cent of senior management positions, 30 per cent of professionally qualified and middle management roles, and 16.2 per cent of skilled technical and junior management posts. It is important that we start by clarifying the context and background to this matter, particularly those that hinge on the said Convention. The history of South Africa is a history of apartheid and colonialism. This has shaped the country's labour market economy and society in general. You cannot talk about South Africa today without confronting its persistent structural and racist accumulation and exclusion of the majority of our people, workers and women in particular.

Prior to democracy, labour laws reserved skilled and managerial jobs for white South Africans. Black people, African, coloured and Indian women and persons with disabilities were systematically excluded from positions of authority. The structure of South Africa is defined by class, racial and gender inequalities which formed the basis of the historic and present agency to address them decisively. It is in that context that we wish to draw the attention of the ILO and our global counterparts to the facts about our policies to reverse apartheid injustices in all sectors of our economy, the labour market and society at all levels. Therefore, the interventions are a transition from a systematic apartheid exclusion to aggressive outcome driven demographic transformation.

It is designed to dismantle historical disadvantages in the workplace and ensure equitable representation of black people, women and persons with disabilities across all occupational levels.

Apartheid was a system based on the exclusion of workers, blacks and women in all economic, political and social opportunities. It guaranteed special privileges to male whites in particular, hence the disproportionate inequalities across all sectors of the economy in our country. That is not decent work for all, but a serious social injustice against workers and the majority in our society. It stands against the very essence of the ILO and its core Conventions.

It is the ILO and its' constituent components that stood by the workers and the people of South Africa during our long and protected struggle and years of apartheid against the black majority. The transition of the democratic South Africa in 1994 and the subsequent policies of transformation bear testimony to the work of the ILO and the successes in advancing decent work and global social justice. The vestiges of apartheid privilege and resistance to equity, social change and transformation have become emboldened by the rise of global racism and apartheid not only in South Africa but globally. This is the primary defining context of our case and the determination of the forces against transformation and their desire to keep apartheid

labour market privileges. It is against this background that the social partners were agreed and put in place the employment equity, black economic empowerment and affirmative action policies which are a package of measures to address and reverse years of apartheid injustices at the workplace and in society as a whole.

It cannot be correct that blacks, workers and women are excluded from economic and social opportunities even after apartheid has ended in 1994. It will be a travesty of justice and an indictment on the ILO, tripartism and social justice. The impact of transformation will be measured by the extent to which historically excluded groups have become empowered and included in the new and democratic society. This remains our standard measure of impact and progress. In order to enhance and address the issues raised in the Committee of Experts' report and other issues pertaining to the enforcement, immigration, labour laws, compliance, our President Mr Cyril Ramaphosa in February 2026 announced the appointment of over 10,000 additional permanent labour inspectors to South Africa.

The new inspectors will work alongside the police and the Department of Home Affairs to address compliance, key labour legislations including the basic conditions of Employment Act, Labour Relations At, Employment Equity and Occupational Health and Safety Act. On the issues of xenophobia, I would like to point out that migration is not new. It is as old as humanity. People have always moved to find food, safety and work. South Africa was built on migration.

For more than 100 years, men from Lesotho, Mozambique and Swaziland, Zimbabwe, Malawi and Zambia came to work in our mines. The Immigration Act 13 of 2002 and the Refugees Act 130 of 1998 governs how the countries manage this immigration, asylum and addressing definitions, rights, responsibilities and penalties and recent rulings by South African courts have added clarity to how these laws should be applied, especially regarding detention, deportation and asylum processes. Currently South Africa attracts many immigrants and asylum seekers due to its economic prospects and stability. However, balancing national security and human rights obligations remain a significant challenge. The current socio-economic conditions facing the majority of South Africans have brought to question the capacity of the Government to provide basic services to its citizens amidst the significant influx of immigrants, primarily from neighbouring African countries such as Zimbabwe, Mozambique, Lesotho and Malawi as well as from other regions including India, Pakistan and Europe.

South Africa has introduced a revised white paper on citizenship, immigration and refugee protection consolidating previous acts into a singular law and this new law would provide more clear parameters on the application and protection of migrants and refugees in our country. South Africa is engaging with the African Union and individual African countries to assure them that xenophobic incidents are being addressed and to maintain regional solidarity. The Government has condemned attacks publicly and emphasized that such violence does not reflect the views of the majority of South Africans or Government employees. I would like to state that the racial inequalities as per the statistics are being perpetrated by some employers who have maintained, remained in their apartheid mindset who continue to refuse to comply with the Employment Equity Policies of Government as well as aiding in the violation of Migration Laws. As a result, some opportunistic groups take advantage of that.

In addition, the country's four biggest federations of workers have convened a meeting and resolved to convene a media briefing to condemn the current xenophobic attacks and call on workers and communities to work together in our efforts to bring stability. Lastly, I would like to bring to the Committee's attention that the issues of racism have been in our domestic courts. Our Government and Solidarity Trade Union held a voluntary mediation process and

both parties agreed to the commission for reconciliation, mediation and arbitration to mediate. Agreement was reached on the issues raised on the agreement and that agreement was made in order of the labour court. Based on these developments, the case was closed at the ILO.

I call upon the Committee to allow the national process to finalize any pending matters. Our country has a very strong social dialogue system and institutions that are open to all parties concerned.

Employer member, South Africa – I speak on behalf of Business Unity South Africa (BUSA) which is the apex business organization in South Africa representing over 90 per cent of the employers in all economic sectors that are affected by the Employment Equity Act and its regulations. At the outset, let me state that BUSA does not quarrel with the Government's policy to transform the labour market and improve the representation of previously disadvantaged or designated individuals. In fact, it is a policy that we wholeheartedly embrace. Our issue is with the manner in which the Government seeks to implement the policy.

The Government has published regulations that set granular targets for the employment of designated individuals per occupational level at designated enterprises across various sectors of the economy. The Minister of Employment and Labour, according to this law, is empowered by the amended Employment Equity Act to identify sectors or subsectors of the economy and to set numerical targets for them. However, the setting of the targets must be done after consulting with the relevant sectors.

On the face of it, the Government's information shared here today suggests that it is complying with the requests and observations of the Committee of Experts to improve the representation of previously excluded individuals. However, the numerical targets have been set arbitrarily and with no reference to the realities of the sectors concerned, including any data about the availability of suitably qualified designated individuals in the various sectors. Despite repeated requests to produce the data that informed the regulations and numerical targets, the Government has refused or failed to produce the records. This also prevented any meaningful consultation between the affected businesses or employers and the Government, which could have identified the problems with the targets and explored solutions there too.

To compound the issue, the Government also refused or failed without offering any valid reasons to disaggregate sectors into appropriate subsectors which would have allowed the setting of clearer and more reasonable targets. Instead, the accumulation of sectors means that the same targets have been set for sectors and subsectors that are very different in their makeup and skills requirements. As an example, banks, life insurers, non-life insurers, asset managers and investment firms all have the same targets because they have been grouped under the financial sector despite the significant differences in their skills requirements. This means some firms will have unreasonably high or unachievable targets at some occupational levels.

Regrettably, the Government's refusal or failure to consult meaningfully or at all with the affected business sectors has led to BUSA initiating litigation against the Government over its employment equity regulations and sector targets. In our view, this is really unfortunate and will retard any progress the Government seeks to make to improve the representation of designated individuals in the labour market.

To make matters worse, the regulations provide for hefty penalties where a designated employer fails to meet the targets. The Government's attitude is that employers can escape the penalties if they are able to demonstrate that they had a justifiable reason for not meeting these targets such as the unavailability of skilled individuals to hire. While this may appear

reasonable, the approach places a burden on employers who must justify their failure to meet targets when the Government could easily have prevented that scenario by consulting with the relevant sector employers to set realistic targets.

To reiterate, as I conclude, the employer organization that I represent fully supports the policy to transform the labour market and improve the representation of previously disadvantaged individuals. I submit that the Government's approach with its sector targets is unlikely to improve the representation of designated individuals in the labour market. Rather, it is going to lead to resentment, opposition and litigation. BUSA and its members remain willing and open to engage in meaningful consultations with the Government to set appropriate and reasonable employment targets for designated individuals or groups.

Government member, Malawi, speaking on behalf of the **Southern African Development Community (SADC)** – At the outset, SADC Member States wish to reaffirm the great value they attach to the ILO supervisory system and in particular, the high regard they have for the discussions of this Committee as an important mechanism for supporting continuous improvement in the application of international labour standards. We have therefore followed with keen interest the discussion concerning the application of the Republic of South Africa of the Convention. The SADC especially welcomes the openness with which the Government of South Africa has approached this discussion, including its willingness to provide detailed information of inequalities, measures being implemented and areas where the further progress remains necessary. The SADC recalls that South Africa's labour market is coming from a background rooted in a system that was designed to institutionalize discrimination and exclusion including in economic and social life.

The struggle against this system was not a national effort but one supported by countries across the African continent and by the broader international community. Accordingly, SADC Member States played an active role in supporting the liberation of South Africa and the establishment of a democratic society founded on equality and human dignity. While progress has been achieved to democratize South Africa, the persistence of inequality in employment, occupational advancement and representation demonstrates that the effects of such a system cannot be fully reversed within a single generation.

The persistent disparities in employment outcomes and representation of certain groups at senior levels of management, barriers affecting women and persons with disabilities and broader labour market inequalities identified in the discussion before this Committee must therefore be understood within this broader historical and developmental context. The SADC notes that the Convention is intended not only to prohibit discrimination but also to promote equality of opportunity and treatment in employment and occupation. The Convention thus recognizes the special measures designed to meet the particular requirements of persons or groups requiring protection or assistance shall not be deemed to be discrimination.

In this regard, measures aimed at addressing persistent inequalities and advancing equality may play an important role in giving practical effect to the proposal and objectives of the Convention. It is within this context that Member States have taken note of the legislative policy and institutional measures being implemented by South Africa to advance equitable representation and address long-standing structural disparities in the labour markets. We understand these efforts as part of a broader commitment to achieving equality and ensuring that economic opportunities are accessible to all segments of society in a manner that is consistent with the Convention and the decent work agenda.

As we particularly appreciate the constructive manner in which the Government of South Africa has participated in this process. The willingness to engage openly with the issues raised

and to outline measures being undertaken to address gaps reflects a spirit of cooperation that is fully consistent with the values of the ILO and the objectives of its supervisory system. We humbly submit that this demonstration of good faith, transparency and commitment to continuous improvement should be noted by the Committee in its consideration of this case and in the formulation of its conclusion. Indeed, SADC Member States have over the years institutionalized the dialogue and the experience sharing through the regional tripartite structures. Please be assured that through these mechanisms our Member States will continue to support one another in the implementation of international labour standards including outcomes emanating from this august body.

Interpretation from Russian: **Government member, Russian Federation** – Russia has carefully studied comments from the Government of the Republic of South Africa with reference to the implementation of the Convention. We have also carefully studied the corresponding section in the Report from the Committee of Experts on the application of that Convention. We should note that South Africa's well-known historical inheritance continues to make itself felt in a serious imbalance in the structure of the country's labour market. Overcoming this is a long and complicated process and clearly, we should not expect either easy solutions or quick results. Against that backdrop, the steps undertaken by the Government to counter discrimination are worthy of the highest appreciation.

In particular, we note the innovative concept of the five-year sector-specific Employment Equity targets. This is something that is foreseen within the Employment Equity Amendment Act adopted in 2022. We are sure that this Act will enable the Government to make positive progress in the context of combating discrimination on the labour market. We also note that the aforementioned Act entered into force only on the 1 January this year sorry, last year 2025 and the first report on its implementation will be issued at the end of the assessment cycle, 2026/27. That being so, giving an evaluation of the level of success of the above mentioned innovative steps would be premature.

Nonetheless, it is clear that the legislative framework has been established on the reform process has got off the ground. We cannot fail to note other steps also taken by the Government in accordance with the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace. Discrimination in the workplace is equated to harassment. This document has entered into force and is already being applied in judicial practice. In principle, we would like to draw attention to the pragmatic and constructive approach that has been taken by the Government of South Africa.

The Government acknowledges that there are difficulties and takes consequent legislative and practical measures to overcome them focused on resolving this difficult situation on the labour market in the country. In the light of the above, we call upon the ILO to continue constructive interaction with members of South Africa's tripartite partnership, including providing technical support to all interested parties.

Worker member, Kingdom of the Netherlands – South Africa's transition from apartheid to democracy in the late 80s and early 90s led to significant constitutional and legislative reforms aimed at addressing historical inequalities. A key milestone was the adoption of the 1996 Constitution which promotes equality and authorizes affirmative action measures. This constitutional mandate led to the enactment of the Employment Equity Act, one of the most important transformation laws introduced by the democratic Government. The Employment Equity Act seeks to redress the exclusion and discrimination experienced by the majority of South Africans under apartheid.

To support implementation, Government, workers and employers have invested in skills development, training and human resource development initiatives. Thirty years later, however, transformation remains incomplete. According to employment equity data from the 2022 reporting cycle, disproportionate representation continues across occupational levels, particularly in top and senior management positions. The labour market remains heavily influenced by historical patterns of race and gender inequality, with ownership and control of many businesses still concentrated among white males.

The Government continues to take important steps to promote employment equity and combat discrimination. These include maintaining the Commission for Employment Equity, conducting thousands of employment equity inspections, introducing employment equity amendment legislation with sector specific targets as we could already hear from the Government representative here. These efforts deserve a lot of recognition. However, the pace of transformation remains slow and equitable representation across all occupational levels is still far from being achieved. Furthermore, concerns have been raised regarding the lack of detailed information on the implementation, challenges and outcomes of the National Action Plan.

So, to conclude, to accelerate meaningful transformation, Government, employers, trade unions and civil society must continue to work together to strengthen accountability and implementation. Clear reporting on progress, measurable outcomes, effective skills development and stronger enforcement of employment equity obligations are essential. South Africa has established a strong legislative framework; the challenge now is to ensure that its goals are translated into tangible and real results.

Government member, United Republic of Tanzania – The United Republic of Tanzania aligns itself with the submission made by the Republic of South Africa in its efforts to implement both in law and in practice the provisions of the Convention, as ratified in the year 1977 by the Government. Additionally, we support the statement by the SADC on this matter. We further appreciate the tireless efforts which has always been taken by the Committee, social partners and the ILO in general in ensuring that the provisions of the Convention are well implemented by all Member States in order to bring both decent work and the protection of fundamental rights at work. The United Republic of Tanzania is very confident that the Government of South Africa will continue taking dedicated measures to implement the National Action priority on racism and harassment, articles of its constitution and other relevant laws to recognize the legitimacy of special measures to address historical and the remaining disadvantages and to promote substantive equality as per the requirement of Convention.

Through the employment equity compliance certificate as provided under section 53 of the Employment Equity Amendment Act of the year 2022 in which the Government has automated the certificate system to enhance integrity and reduce the fraud, we encourage the Government of South Africa in its coming reporting cycle to confidently share with the Committee the updated information on the positive results of measures under the labour market to include women, persons with disabilities, young people and the results of specific actions taken by employers to provide skills training to workers. The United Republic of Tanzania recognizes the historical and structural challenges that continue to affect labour markets in many societies, particularly those emerging from institutionalized discrimination and inequality. In this regard, we appreciate South Africa's transparent engagement with the supervisory mechanisms of the ILO and its demonstrated commitment to constitutionalism, social dialogue and the progressive realization of equality in employment and occupation. We note the legislative and policy measures undertaken including the Employment Equity

Amendment Act and the introduction of sectoral employment equity targets as part of broader national efforts to address persistent disparities in the labour market.

The United Republic of Tanzania further acknowledges that the transformation of labour market inequalities is a gradual process that requires time, inclusive dialogue and a sustained institutional commitment. We therefore encourage a constructive and balanced approach within the Committee's deliberations.

Worker member, United Kingdom of Great Britain and Northern Ireland – The AFL-CIO, the most representative workers' organization of the United States, supports this statement. In May 1993, South African President Nelson Mandela visited the United Kingdom to see the parents of Stephen Lawrence, a young man who had been murdered in a racially motivated attack two weeks before. The President's visit sparked much needed reflection in the United Kingdom, resulting in the recommendations of the McPherson report of 1999. The report laid bare the country's institutional racism and fundamentally changed the British approach to discrimination from simply outlawing discriminatory behaviour to actively promoting racial equality.

One outcome was the 2010 Equalities Act, the cornerstone of the United Kingdom's compliance with the Convention, which allowed for positive action to reach out to under-represented groups of potential employees and to provide education and training to help overcome barriers to employment. However, where McPherson recommended strict recruitment targets in some sectors, such as the police, subsequent policy has favoured a voluntary approach. The result, 27 years after McPherson, is one of some improvement but persistent inequality. This is illustrated by a 2021 Guardian story which, while ostensibly celebrating a report showing a 100 per cent increase over four years in the number of black and minority ethnic (BME) workers in the most senior positions in 28 key areas of national importance including politics, the public sector, banking, the media, etc., notes that this still meant that only 6 per cent were from ethnic minorities who otherwise made up 14 per cent of the workforce, and pointing out that numerically speaking, that 6 per cent could fit on a London bus.

In a similar vein our Office of National Statistics reports that while 10 per cent of all white workers are managers, directors or senior officers, only 5 per cent of all black workers are in such roles. Trades Union Congress research shows that black workers are disproportionately likely to face insecurity: one out of 13 BME workers is in insecure work compared with one in 20 white workers. The recent United Kingdom Government commitment to mandatory ethnicity pay gap reporting, with the goal of revealing structural inequalities in employment and promoting action to address them, is a welcome and vital step forward. But it will only have a lasting impact if met with serious company action plans driven by a real will to change. Mandatory pay gap reporting is a recognition that another layer of compulsion will be necessary if we are to address the United Kingdom's persistent inequality and discrimination. And if that still moves the dial too slowly, another layer will be needed, and another and another.

How much more so in South Africa, where the Government is trying to undo the legacy of apartheid, namely structural and institutional racism of staggering intensity. The British experience shows that disparities in employment and advancement can be closed by real commitment – sometimes involving hard work and investment from employers – to remove the barriers faced by black workers and other under-represented groups. But it also shows that ever greater encouragement, including mandatory measures, will be required if we are ever to truly dismantle structural racism and inequality.

Government member, Namibia – Namibia thanks the Committee and acknowledges the Government of South Africa for its open and transparent engagement on the matter at hand. We underline that it is important for our discussions at this forum to remain firmly rooted within the mandate of this Committee which is to examine how Member States uphold and implement international labour standards that they have ratified. South Africa's Employment Equity Act was promulgated to address the deep inequities inflicted by decades of apartheid rule where race, gender and social origin determined access to skilled work and leadership positions. These patterns, these realities have not yet been overcome and cannot be expected to disappear overnight even with the best of efforts. As we speak, they are still present, reflected in the low representation of black South Africans, especially women and persons with disabilities at senior levels in different sectors and industries. The measures introduced under the Act, therefore, respond directly to real, not imagined historical imbalances in that society. They are fully consistent with Article 1(2) of the Convention which allows special measures to advance substantive equality.

Namibia, against the background and in the context of our own historical experiences notes as per the information submitted by South Africa, the slow but steady pace of ongoing transformation in that sister country, such as the recent legislative reforms and the establishment of a digital compliance certificate system. We also note the concrete steps taken by South Africa to prevent and address violence and harassment in the world of work, including the Code of Good Practice on the Prevention and Elimination of Harassment. These practical interventions are already being applied by the courts, thereby providing real remedies for workers facing discrimination, bullying and gender-based violence. Namibia encourages the Committee to assess this case within its established mandate and to recognize the South African Government's sustained and indeed ongoing good faith efforts as evidenced by the early commenced implementation of the recent reforms.

We support a constructive and balanced supervisory process focused on nothing else other than solely the application of labour standards.

Worker member, Botswana – My country is a neighbour to South Africa; hence, we are very much alive to what is happening in South Africa, including its historical challenges. In their report, the Committee of Experts has observed the failure by Government to provide information on the actions taken within the framework of the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia, and Related Intolerance (2019–2024), 2 the obstacles identified and the results achieved.

It is common cause that failure to provide information for purposes of reporting cannot be condoned. However, fundamental to the issues of racism, racial discrimination, xenophobia, and related intolerance in South Africa is a painful history of apathy dating more than 300 years. South Africa attained its independence in 1994, and we are talking about a democracy that is almost 32 years with the scars of apathy still new and in many instances, still bleeding.

It is evident in the Committee of Experts' report that the white population group accounts for 62.9 per cent of top management positions despite representing 8 per cent of the Economically Active Population (EAP) followed by Indians at 11.2 per cent, although representing 2.7 per cent of the EAP and to the contrary, the African group population representing 80 per cent of the EAP occupies only 16.9 per cent of top management position. These are not just numbers. They speak to a historical system that for decades has disadvantaged the African population which forms 80 per cent of the EAP, whom today are being seen as xenophobic and intolerant. These are the scars of apartheid. They are visible and bleeding.

At no point should an impression be made that the Government of South Africa tolerates and/or condones any action that is xenophobic, intolerant and racist in nature. The South African Government has indeed enacted laws that criminalize such actions and has gone public in different media platforms to condemn these criminal acts perpetuated by small groupings around the country and evidently in certain provinces of the country. This is evident in the statement of the Ministry of International Relations and Cooperation on the 8 May 2026 and on the Freedom Day address in April 2026 by His Excellency, the President of South Africa, Cyril Ramaphosa. The ILO Constitution preamble argues lasting peace requires social justice and highlights that poor working conditions such as long hours and low wages cause global unrest. It emphasizes that failure to adopt human labour standards threatens international stability and hinders progress in other nations demanding improvements to issues like worker protection and social security. This is the responsibility that all African nations must shoulder to improve the socioeconomic status of their people.

In conclusion, the South African Government acknowledges that there are these challenges in the country. What they need is support more than condemnation. This is a very sensitive matter which is a direct result of its painful history. Finally, Government is encouraged to continue engaging with social partners in trying to come up with lasting solutions to these issues.

Government member, Malawi – Malawi aligns herself with the statements made by the Southern African Development Community (SADC), South Africa and all other SADC countries that have spoken before. Malawi commends the Government for the constructive engagement with this Committee. It has taken note of the information provided by South Africa regarding the case being discussed on the application of the Convention.

It further commends the efforts being undertaken by the Government to promote equality of opportunity and treatment in employment and occupation including measures aimed at addressing historical disadvantages and improving representation in the labour market. Such efforts are consistent with the principles of the Convention and have an objective of achieving substantive equality and ensuring that all citizens, irrespective of colour or race, have access to decent work opportunities. Malawi also welcomes the open and transparent manner in which South Africa has engaged with this Committee and the demonstrated commitment to addressing remaining challenges through dialogue, consultation and continuous improvements.

Malawi, therefore, encourages the continuation of constructive engagement involving the Government of South Africa and social partners to continuously improve the application of the principles of the Convention and to promote inclusive and equitable labour markets.

Miembro trabajadora, España - Sudáfrica cuenta con uno de los marcos constitucionales y legislativos más progresistas del mundo para combatir la discriminación y promover la igualdad en el empleo. Sin embargo, como muestra el Informe de la Comisión de Expertos, el legado del *apartheid* sigue configurando profundamente el mercado laboral.

A pesar de constituir solo el 8 por ciento de la población económicamente activa, los sudafricanos blancos ocupan casi el 63 por ciento de los puestos de alta dirección, mientras que los africanos, que representan aproximadamente el 80 por ciento de la población económicamente activa, ocupan menos del 17 por ciento de dichos puestos. Estas disparidades reflejan décadas de acceso desigual a la educación, a los activos productivos, al capital, a la propiedad empresarial, a las redes profesionales y a las oportunidades económicas.

Los trabajadores reconocen y apoyan los esfuerzos del Gobierno de Sudáfrica a través de la Ley de Equidad en el Empleo, la Comisión para la Equidad en el Empleo, las inspecciones laborales y la Ley de Enmienda de la Equidad en el Empleo de 2022, que introduce objetivos sectoriales destinados a acelerar la transformación en los lugares de trabajo. Sin embargo, la transformación avanza lentamente, y la propiedad y el control de amplios sectores de la economía siguen concentrados en un número relativamente reducido de empresas históricamente favorecidas.

Esto continúa limitando las oportunidades de muchos sudafricanos negros para acceder a empleos de calidad, puestos de liderazgo y una participación económica significativa.

Las consecuencias de la lenta transformación son cada vez más visibles entre la juventud sudafricana con una creciente frustración entre una generación nacida después del *apartheid* que esperaba que la democracia ampliara progresivamente el acceso a las oportunidades. Cuando gran parte de la juventud permanece excluida del empleo, la educación y la formación, se debilita la cohesión social. La frustración crece y, en ocasiones, se dirige hacia migrantes y otros grupos vulnerables. Por esta razón, el debate debe ir más allá del cumplimiento normativo y la aplicación de la ley. También debe abordar la financiación del desarrollo y la formación de competencias.

Sudáfrica requiere apoyo nacional e internacional sostenido para acelerar la transformación económica inclusiva. La financiación del desarrollo debe apoyar programas de formación de competencias a gran escala que doten a los jóvenes, a las mujeres, a las personas con discapacidad y otros grupos desfavorecidos de las competencias requeridas por los mercados laborales modernos. Por tanto, instamos al Gobierno, a las organizaciones de empleadores, a las de trabajadores y a los socios de desarrollo a trabajar juntos mediante el diálogo social para acelerar la transformación y garantizar que la promesa de igualdad contenida en el Convenio se convierta en una realidad para todo el pueblo sudafricano.

Government member, Mozambique – It is with deep respect that I address this Committee to comment on the case of South Africa. Mozambique thanks the Government of South Africa for its constructive engagement with the Committee and the transparency reflected in its report. We acknowledge South Africa's continued effort to address long-standing inequalities in employment and occupation including through legislative reforms, employment equity measures and strengthened mechanisms to combat discrimination and harassment in the workplace. We note that the challenge identified must be viewed within South Africa's specific historical context and recognize that achieving substantive equality requires sustained efforts over time. We further note that the recently introduced sectoral Employment Equity targets are intended as flexible measures to advance equitable representation and address historical disadvantage.

Mozambique welcomes South Africa's commitment to dialogue with its social partners and its cooperation with the ILO supervisory system. We encourage the Government to continue these efforts and to reaffirm our support for a balanced and constructive consideration of this case in line with the principles and objectives of the Convention.

Interpretation from Arabic: **Government member, Libya** – The State of Libya wishes to express its appreciation to the Delegation of the Republic of South Africa for the transparent and balanced presentation it has delivered regarding the implementation of the Convention. Libya has listened carefully to the data and reforms presented by South Africa, as well as to the genuine commitment it has demonstrated in cooperating with the supervisory mechanisms of the Organization.

Libya considers that the approach adopted by South Africa represents a model for States that engage with their international obligations in good faith, responsibility and clarity. The Government has provided accurate information on the remaining challenges in the labour market, has openly acknowledged the slow pace of transformation and at the same time has presented an advanced legislative and institutional framework that reflects a genuine political will to address the effects of historical discrimination. Libya further affirms that the special measures adopted by South Africa including flexible sectoral targets and affirmative action measures clearly fall within what is permitted under Article 1(2) of the Convention, which recognizes the legitimacy of measures aimed at achieving substantive equality and addressing entrenched disparities. These measures also do not constitute rigid quotas, nor do they undermine the principle of merit. Rather, they represent legitimate regulatory tools to achieve fair and balanced representation.

The State of Libya also notes the significant progress achieved by South Africa in strengthening compliance mechanisms, including the digital system for compliance certificates, as well as the legislative and institutional developments in the field of combating harassment and discrimination, thus reflecting a genuine commitment to providing effective and enforceable remedies.

The State of Libya, fully aware of the sensitivity of these discussions, wishes to emphasize that the objective assessment of States' efforts must be grounded in the text of the Conventions and the standards of the Organization and that it should remain free from any external considerations unrelated to the mandate of the Committee. In this regard, Libya considers that the presentation delivered by South Africa reflects sincere compliance and a constructive spirit worthy of recognition.

Accordingly, the State of Libya expresses its full support for the efforts of the Republic of South Africa and calls upon the Committee to consider the information and reforms presented by the Government within the framework of fairness, objectivity, and the spirit of international cooperation upon which the ILO was founded.

Membre gouvernemental, Niger – Je salue la présentation claire et transparente faite par l'Afrique du Sud concernant la mise en œuvre de la convention. Le Niger prend note, avec appréciation, des informations fournies, notamment les données détaillées et ventilées, qui reflètent l'approche méthodique exemplaire adoptée par l'Afrique du Sud pour combattre la discrimination et assurer l'égalité dans le marché du travail.

L'Afrique du Sud a fourni des informations précises sur les défis qui subsistent sur le marché du travail et a même reconnu la lenteur des transformations du marché du travail. Cette transparence est en soi la preuve de leur engagement sincère. L'Afrique du Sud a clairement expliqué que les objectifs sectoriels quinquennaux ne constituent pas des quotas fixes, mais des repères flexibles. Les employeurs désignés, c'est-à-dire ceux qui emploient 50 salariés ou plus, fixent leurs propres objectifs annuels en concertation avec les syndicats et les harmonisent avec les objectifs sectoriels.

Le Niger estime que les mesures spéciales adoptées relèvent clairement du champ d'application de l'article 1, paragraphe 2, de la convention, qui reconnaît la légitimité des mesures visant à instaurer une égalité réelle et à remédier aux disparités profondément ancrées. Ces mesures ne constituent pas des quotas rigides et ne portent pas atteinte au principe du mérite; elles représentent plutôt des outils réglementaires légitimes pour parvenir à une représentation juste et équilibrée. En outre, le Niger se réjouit des progrès significatifs réalisés par l'Afrique du Sud en matière de renforcement des mécanismes de conformité, notamment le système numérique de certificats de conformité, ainsi que des évolutions

législatives et institutionnelles dans le domaine de la lutte contre le harcèlement et la discrimination, témoignant d'un véritable engagement à fournir des recours effectifs et applicables.

Pour conclure, nous invitons les membres de cette auguste commission à prendre dûment compte des efforts de l'Afrique du Sud pour mettre en place un cadre législatif et institutionnel conforme à la convention; de sa bonne coopération avec les partenaires sociaux et avec le Bureau international du Travail; de sa transparence et de sa bonne foi à travers des rapports à mi-parcours ainsi que de son engagement constructif dans le cadre de la présente procédure. Il y a lieu d'encourager l'Afrique du Sud dans ses efforts et à la soutenir à travers une assistance technique accrue dans la mise en œuvre de ses obligations.

Observer, Building and Woodworkers' International (BWI) – BWI thanks the Committee for the opportunity to contribute to this discussion and the Government of South Africa for its report and welcomes the constructive dialogue taking place regarding the implementation of the Convention. We wish to begin by recognizing the Government's continued commitment to promoting equality, opportunity and treatment in employment and occupation. South Africa faces the unique challenge of addressing the profound and lasting effect of apartheid while continuing to build an inclusive labour market based on dignity, equality and social justice. The Worker members welcome the efforts undertaken through the Employment Equity Act and recent amendment to strengthen its implementation, the work of the Commission for Employment Equity and the inspections conducted to monitor compliance.

These measures demonstrate a clear commitment to addressing historical inequalities and promoting fair representation in the workplace. The Worker members reaffirm that affirmative action measures constitute a legitimate and important component to efforts to promote substantive equality. Consistent with Article 5 of the Convention, special measures designed to address enduring effects of historical discrimination play a vital role in ensuring that equality of opportunity and treatment becomes a reality for all workers. At the same time our focus today is not on the justification for these measures but their effective implementation. The key question before the Committee is how to ensure that legal and policy frameworks translate into tangible improvements in workers' lives.

In this regard, we encourage the Government to continue strengthening enforcement mechanisms and to ensure that inspections are accompanied by practical support for employers and workers in implementing employment equity obligations. Effective implementation requires not only monitoring compliance, but also identifying barriers, sharing good practices and promoting workplace transformation across sectors. The workers' members commend President Ramaphosa's announcement in February 2026 that 10,000 additional permanent labour inspectors will be appointed to strengthen compliance with key labour legislation, including the Employment Equity Act. We look forward to seeing the impact of this significant investment in the years ahead. We further encourage the Government to continue implementing measures to combat racism, racial discrimination, xenophobia and related intolerance.

We would welcome additional information on implementation of the National Action Plan to combat Racism, Racial Discrimination, Xenophobia, and related intolerance and the results achieved in promoting inclusive and discrimination free workplaces. In conclusion, the workers' members acknowledge the significant efforts already undertaken by the Government and encourage continued action to strengthen implementation enforcement, monitoring and social dialogue. We remain confident that through sustained commitment and effective application of the Convention further progress can be made in promoting equality of opportunity and treatment for all workers in South Africa.

Government representative – On behalf of the Government and the people of South Africa, we express our profound gratitude to all the Member States and social partners that offered positive advisory comments in support of our case before the Committee. Your solidarity and principle stance did more than strengthen our legal arguments. They reaffirmed a shared commitment to fairness, justice, and the integrity of the international labour standards. Your constructive observations highlighted with invaluable clarity the importance of adherence to the rule of law and due process.

For your encouragement and for the trust you have placed in our position, we are deeply thankful. We acknowledge that significant challenges remain in overcoming the deeply entrenched inequalities inherited from the past. We are in full agreement with the Employers' group's position that the elimination of labour market discrimination takes time. We shall continue step by step to seek equity in our labour market. We want to re-emphasize that our sectoral Employment Equity targets do not constitute rigid racial quotas nor do they require or force the appointment or promotion of unqualified persons. In fact, employers remain with their power to consider qualifications, skills, experience, operational requirements and availability of suitably qualified candidates.

We must also emphatically point out that our approach is embedded on consultation with all labour market stakeholders, employers and employers' organizations, employees and trade unions, academics, civil society, and the public at large. This for us is key to all legislative and policy making process in South Africa. As such, the five-year sectoral targets are a product of extensive consultation process with all relevant sectoral stakeholders which began in 2018 until 2025 when published. In fact, in the recent Employment Equity-related case on 22 May 2026, the Constitutional Court dismissed the consultation process challenge, ruling that there was sufficient consultation to determine sectoral targets.

We acknowledge active litigation on some elements of our Employment Equity targets. As such, we shall refrain from commenting on this as the matter is sub judice. It is with this in mind that we reiterate our call for the ILO vigilance to avoid the supervisory mechanism being weaponized by parties seeking to achieve through international processes outcome that remain under consideration within national legal systems. The ILO is going through difficult financial challenges. It is our opinion that this case was not necessary.

As we conclude, allow me to leave this Committee with three firm and clear messages. First, our commitment to international labour standards remains unwavering. South Africa continues to embrace the full body of ILO Conventions, the Decent Work Agenda and the fundamental principles and rights at work. We engage with this Committee and the Committee of Experts in good faith and we honour our obligations not out of compulsion but because we believe deeply in the social justice mission of this Organization.

Second, where challenges exist, we address them through law, not retreat. Any gap between domestic law and international standards, if any, is met with transparent constitutionally mandated processes, parliamentary scrutiny, social dialogue, public scrutiny and judicial review. We do not shy away from constructive criticism. We ask only that our efforts be measured against the living reality of our constitutional democracy.

Third and finally, South Africa will never abandon the supremacy of our Constitution and the expansive institutional infrastructure for ensuring the rule of law and resolving disputes, or our solidarity with the international labour rights community. We welcome continued dialogue, technical cooperation and the Committee's guidance as we strive to give full effect to the standards we have voluntarily embraced.

Employer members – The Employer members acknowledge the efforts made by the Government of South Africa in meeting its obligation under the Convention. Notwithstanding these efforts, the information from the Government of South Africa appears to show that there still remain a disproportionate number of white South Africans in managerial positions. Therefore, we call on the Government of South Africa to provide the information requested by the Committee of Experts. In particular:

1. The results achieved in the transformation of the labour markets towards a more equitable representation of the designated groups.
2. The assessment of its affirmative action measures in particular in relation to the five-year sectoral numerical targets for designated Employers.
3. The actions taken within the framework of the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2019-2024, the obstacles identified, and the results achieved.
4. The impact of the implementation of section 53 of the Employment Equity Act, as amended, in relation to the employment equity compliance certificates.

With respect to the second point, the Employer members support the legitimate aim of transforming the labour market to promote the inclusion of disadvantaged people. However, certain measures such as the arbitrary setting of numerical sectoral targets are not appropriate. These sectoral targets should be fixed after having genuine and meaningful consultation with the most representative Employers concerned in order to be sure they are economically sustainable.

Membres travailleurs – Les membres travailleurs remercient le gouvernement sud-africain pour les efforts consentis et les informations mises à notre disposition aujourd'hui. Nous le remercions également pour la manière constructive et positive avec laquelle il a collaboré avec notre comité. Le groupe des travailleurs remercie également tous les intervenants pour leurs contributions à cette discussion.

Nous pensons que l'échange d'aujourd'hui a dépassé un simple examen technique de la législation et du rapport. Il nous a permis d'aborder une question plus profonde et fondamentale: à savoir, comment des pays sortant de systèmes de discrimination enracinés et imposés par l'État peuvent atteindre une véritable égalité de chances et de traitement dans la pratique.

Dans le cas de l'Afrique du Sud, cette question ne peut être abordée sans rappeler l'héritage profond et durable de l'apartheid. Pendant des décennies, la discrimination n'était pas accessoire: elle était institutionnalisée, codifiée et activement appliquée par l'État. Des segments entiers de la population ont été systématiquement exclus de la participation significative à l'économie, privés de l'accès à l'éducation, aux professions qualifiées, aux postes à responsabilité et à la propriété des ressources productives. Le marché du travail lui-même était structuré selon des lignes raciales, garantissant que l'inégalité se reproduise à travers les générations.

Ce contexte historique est essentiel. Il nous rappelle que les inégalités que nous observons aujourd'hui ne sont pas le résultat du hasard, mais le résultat direct et souhaité des politiques publiques passées.

C'est précisément en réponse à cette réalité que la loi sur l'équité en matière d'emploi et les mesures de transformation associées ont été adoptées. Ces mesures ne sont pas conçues pour créer de nouvelles formes de discrimination. Leur but est de démanteler les barrières

structurelles et les effets durables d'un système qui excluait délibérément la majorité des travailleurs. Elles cherchent à rétablir l'équilibre et à créer les conditions dans lesquelles l'égalité peut devenir une réalité vécue.

Du point de vue de la convention, la question pertinente n'est donc pas de savoir si de telles mesures existent, mais de savoir si elles poursuivent un objectif légitime, si elles visent à surmonter un désavantage enraciné et si elles contribuent à atteindre une égalité réelle dans la pratique. À cet égard, les membres travailleurs rappellent que la convention reconnaît explicitement que des mesures spéciales peuvent être nécessaires pour traiter les inégalités structurelles. Ce qui compte, c'est de savoir si ces mesures sont efficaces.

Et cela nous amène à la question centrale devant notre commission: comment mesurer le succès? Le succès ne peut se réduire à l'existence de politiques, ni uniquement à des objectifs numériques. La véritable mesure réside dans les résultats. Cela dépend de la question de savoir si les travailleurs historiquement exclus bénéficient d'un accès réel et significatif à un travail décent. Cela dépend de leur capacité à accéder à une formation, à développer des compétences et à progresser vers des postes à responsabilité et de leadership. Cela dépend de la capacité des femmes, des jeunes et d'autres groupes défavorisés à participer au marché du travail à des conditions réellement égales. En d'autres termes, la question est de savoir si les inégalités structurelles héritées de l'apartheid sont effectivement démantelées et si les opportunités s'élargissent de manière tangible et durable.

Les informations soumises à notre commission indiquent que, malgré les progrès, des disparités substantielles subsistent. Les inégalités économiques continuent de refléter des schémas historiques d'exclusion. D'importants écarts persistent dans l'accès à un emploi de qualité, dans l'avancement de carrière et dans la représentation à des niveaux de responsabilité plus élevés.

Cette réalité souligne la pertinence persistante – et même la nécessité – de mesures visant à promouvoir l'équité en matière d'emploi et l'égalité réelle. Elle souligne également l'importance d'une évaluation régulière fondée sur des preuves afin de garantir que ces mesures produisent des résultats concrets et répondent aux obstacles qui subsistent.

À la lumière de ces considérations, les membres travailleurs félicitent le gouvernement sud-africain pour ses efforts soutenus et l'encouragent à continuer de renforcer ses efforts pour promouvoir l'égalité de chances et de traitement dans l'emploi et la profession pour tous les groupes visés.

Presidenta - Damos por concluida la discusión de este caso. Agradezco la participación del representante gubernamental de Sudáfrica y de todos los oradores que participaron en la discusión.

Conclusions of the Committee

The Committee took note of the written and oral information provided by the Government and the discussion that followed.

The Committee noted the historical context that has shaped deep and persistent inequalities in the labour market in South Africa and the efforts made by the Government to adopt a comprehensive legislative and institutional framework to promote equality in employment and occupation, despite which persistent disparities remain in practice in the labour market.

Taking into account the discussion, the Committee invited the Government, in consultation with the most representative employers and workers organisations, to take measures to:

- **continue strengthening efforts to promote equality of opportunity and treatment in employment and occupation for all designated groups, with particular attention to underrepresented groups, including by providing information on:**
 - **the results achieved in the transformation of the labour market towards a more equitable representation of the designated groups;**
 - **the actions taken within the framework of the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2019–24, the obstacles identified and the results achieved; and**
 - **the impact of the implementation of section 53 of the Employment Equity Act as amended (measures put in place to evaluate the assessment criteria for the issuance of employment equity compliance certificates and the number of certificates denied based on this assessment);**
- **provide updated and disaggregated statistical information on progress made in achieving equity of opportunity and treatment in employment and occupation; and**
- **ensure meaningful consultation with relevant sectors when setting the 5-year sectoral numerical employment equity targets in line with the Employment Equity Amendment Act No. 4 of 2022.**

The Committee called on the Government, in consultation with the most representative workers' and employers' organizations, to submit a detailed report to the Committee of Experts by 1 September 2026.

Government representative – The Government of the Republic of South Africa thanks the Committee for its careful consideration of our submissions and for the constructive discussion that followed. We welcome the Committee's Conclusions issued today, 10 June 2026, which acknowledge both the historical context of deep and persistent inequalities in our labour market and the comprehensive legislative and institutional framework that South Africa has adopted to promote equality in employment and occupation. We further note the Committee's recognition that, despite these efforts, persistent disparities persist in practice. These are challenges we confront daily, and they are precisely why we have strengthened our legislative framework through the Employment Equity Amendment Act, 2022, and its sectoral targets.

The Government accepts the invitations and calls made by the Committee and wishes to respond as follows:

The Government confirms its commitment to providing this information in full to the Committee of Experts by the requested deadline of 1 September 2026. In particular, we note the Committee's interest in the implementation of section 53 of the Employment Equity Act. We will provide detailed data on the measures in place to evaluate the assessment criteria for issuing employment equity compliance certificates, as well as the number of certificates denied on this basis. We will also ensure that our report includes updated and disaggregated statistical information on progress towards equity of opportunity and treatment.

Secondly, our Government takes this call seriously and consequently, we confirm that the process of setting sectoral targets has been, and continues to be, informed by consultation. However, we acknowledge that consultation must be ongoing, iterative and genuinely

responsive to sectoral realities. We undertake to strengthen and deepen these consultative processes before the next round of target-setting, ensuring that the most representative employers' and workers' organizations at the sectoral level are actively engaged.

Thirdly, as you called us to submit the report by 1 September 2026, we will ensure that the deadline is met and that we prepare it in full in consultation with our social partners and in line with our established practices.

In conclusion, we are saying the Conclusions of this Committee rightly focus on the path ahead. We welcome that focus. The Government's commitment to the objectives of the Convention is unwavering. We will continue to pursue the realization of substantive equality in employment and occupation – not only because it is our international obligation, but also because it is our constitutional and moral imperative as a democratic South Africa.

We thank the Committee once again for its engagement and for the opportunity to respond.