



South Africa's Compliance with the International Covenant on Economic, Social and Cultural Rights

Suggested List of Issues Relating to the Rights of Coloured Persons

Submitted by The Advocates for Human Rights,
a non-governmental organization in special consultative status with ECOSOC

and

Camissa Movement for Equality
a non-governmental organization based in South Africa

**for the 61st Pre-Sessional Working Group of the Committee on Economic, Social and Cultural Rights
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REPORTING ORGANIZATIONS

The Advocates for Human Rights (“The Advocates”) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications.

Camissa Movement (“CME”) is a non-profit, non-political organization based in Eldorado Park, South Africa. CME represents the needs of the Coloured, Khoi San, and Mixed-race people of South Africa and promotes social cohesion amongst all South Africans.

I. EXECUTIVE SUMMARY

1. South Africa has ratified the International Convention on Economic, Social and Cultural Rights (ICESCR) and is to be commended for taking steps toward promoting and protecting these rights. This report focuses on the rights guaranteed to the Coloured population of South Africa by the ICESCR.¹ Brief contextual background about the Coloured population in South Africa is provided in the Scope and Background of the Report, paragraphs 4–6 below.
2. South African laws and practices discriminate against the Coloured community, especially with respect to employment, housing, education, and cultural rights. In particular, state-sanctioned practices of affirmative action in the employment sector, some of which are premised on “Black Economic Empowerment” and based on national quotas, have strayed from the constitutional protections guaranteed to South Africa’s citizens and have become discriminatory in practice, both generally and toward Coloured people. Many Coloured people have been waiting years to receive housing from the government and live in overcrowded, multi-generational flats. State media also does not provide any programming aimed at the Coloured population.
3. This report makes recommendations that steps be taken to reduce and/or eliminate such discriminatory treatment of Coloured people in South Africa. Such steps include reform in the use of “target” percentages in employment plans, investigation into discrimination in subsidized housing application, and equal access to state media.

II. SCOPE AND BACKGROUND OF THE REPORT

4. **The origin and definition of Coloured people in South Africa is rooted in the country’s history of colonization.** Coloured people in South Africa are mixed-race individuals who are considered to be a distinct ethnic grouping. Coloured people live throughout South Africa but numerically dominate the population of the Western Cape region.² Coloured people, or Coloureds, are of varied ethnic backgrounds, but many are directly descended from the indigenous KhoiSan people.³ The Coloured population constitutes a sizeable portion of South Africa’s people; it is estimated that roughly nine percent of South Africa’s more than 50 million people identify as Coloured.⁴
5. **The historical treatment of Coloureds before and during Apartheid constituted and created a legacy of racial discrimination that persists today.** Prior to the “legalization” of apartheid, the Coloured people of South Africa and their ancestors endured severe atrocities, including the near extinction of their Coloured/KhoiSan ancestors and 180 years of slavery at the hands of the Dutch colonizers.⁵ During this period, Dutch colonizers practiced a system of segregation. It was not until 1948 that racial segregation was enforced through legislation. The apartheid system rigidly divided the population into four groups: Black, White, Indian, and Coloured.⁶ The government classified individuals based mostly on a system of visual evaluation, for example, wherein borderline cases were judged by the curliness of someone’s hair: if a pencil was stuck into the hair and slid out, the person was counted as white.⁷ In addition, thousands of Coloured families were separated against their will, with children forcibly removed from their parents, siblings, aunts, and uncles; the government based such forced separations on skin color, hair texture, and other crude tests.⁸
6. Legislation passed in 1950 laid the groundwork for discrimination against Coloured people rooted in geographic segregation and forced relocation. Through the Group Areas Act, large

sections of land were restricted to whites only, and up to 150,000 Coloureds were evicted from their homes and forced to relocate to designated urban areas. One well-known removal occurred in District Six of Cape Town, which was designated for whites only, and resulted in as many as 55,000 Coloured, Malay, and Indian people being intentionally scattered into less desirable townships across the Cape Flats.

III. LEGAL FRAMEWORK

A. International Legal Obligations

7. South Africa has ratified several treaties relevant to its obligations to uphold the rights of the Coloured people in South Africa and guarantee their freedom from discrimination.⁹ South Africa ratified the International Covenant on Economic, Social and Cultural Rights in 2015 and has the responsibility to uphold Articles 6, 11, and 15 on the rights to work and to an adequate standard of living, as well as cultural rights. By ratifying the Covenant, it committed to guaranteeing these rights without discrimination based on race or colour.¹⁰
8. The Committee on Economic, Social and Cultural rights recognizes that State parties to the ICESCR may have “an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination.”¹¹ Such affirmative action measures, however, must “represent reasonable, objective and proportional means to redress de facto discrimination.”¹² Differential treatment based on prohibited grounds, such as race or colour, is discriminatory “unless the justification for differentiation is reasonable and objective.”¹³ As the Committee explained in General Comment No. 20, determining whether the justification is “reasonable and objective”

will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.¹⁴

The Committee further clarified that “failure to remove differential treatment on the basis of a lack of available resources is not an objective and reasonable justification unless every effort has been made to use all resources that are at the State party’s disposition in an effort to address and eliminate the discrimination, as a matter of priority.”¹⁵

B. Domestic Legal and Regulatory Framework

1. South African Constitution

9. With the end of apartheid in 1994 came an opportunity for previously marginalized groups, including Coloureds, to be treated equally. The newly elected South African parliament adopted a new Constitution on May 8, 1996 with the support of almost all political parties.¹⁶ The Constitution identified “non-racialism” as a founding value and included an equality clause in its Bill of Rights proclaiming “equality before the law and . . . the equal protection and benefit of the law” for all South Africans.¹⁷

2. Affirmative Action and the New Constitution

10. In parallel with the negotiation of the new Constitution, in 1994, the African National Congress (ANC) released a policy document called “Affirmative Action and the New

Constitution,” which addressed the need for affirmative action in employment, business, and land ownership. According to the ANC, this affirmative action would aim at “correcting past injustice through the application of ‘normal and non-controversial principles of good government.’”¹⁸ With regard to business and capital ownership, the ANC argued that black economic empowerment was needed to remove “all obstacles to the development of black entrepreneurial capacity.”¹⁹ The ANC also supported “an active policy of restoring usurped land rights,” making land available for housing and farming. The ANC stated, generally, that “affirmative action will help bind the nation together and produce benefits for everyone. If badly managed, we will simply redistribute resentment, damage the economy, and destroy social peace.”²⁰ The ANC’s proposed affirmative action policies generated widespread support and led to the enactment of several laws, some of which are explained in more detail below.

3. Employment Equity Act of 1998 (EEA)

11. The Employment Equity Act of 1998 (EEA) entered into force in 1999 and set forth the following purposes: (i) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and (ii) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, to ensure their equitable representation in all occupational categories and levels in the workforce.²¹ “Designated groups” is defined as “black people, women, or people with disabilities.”²² The EEA defined affirmative action measures, broadly, as “measures intended to ensure that suitably qualified employees from designated groups have equal employment opportunity and are equitably represented in all occupational categories and levels of the workforce.”²³ The EEA requires employers beyond a certain size to formulate and carry out “employment equity” plans that use “numerical targets” to eliminate both race and gender under-representation.²⁴ The EEA emphasizes that the “numerical targets” should not amount to quotas, although it does not explain the difference between the two concepts.²⁵ South African courts have since explained that one primary difference between numerical targets and quotas is that while numerical targets are flexible, quotas are not.²⁶
12. Notably, the original EEA, drafted in 1998, included a section called “Assessment of Compliance.” Under this section, employers would be evaluated as to “[t]he extent to which suitably qualified people from and amongst the different designated groups are equitably represented within each occupational category and level in that employer’s workforce.”²⁷ The 1998 version of the EEA included five factors to be considered as relevant to achieving this representation: (i) *demographic profile of the national and regional economically active population*; (ii) pool of suitably qualified people from designated groups which the employer may reasonably be expected to promote or appoint employees; (iii) economic and financial factors relevant to the sector in which the employer operates; (iv) present and anticipated economic and financial circumstances of the employer; and (v) the number of present and planned vacancies that exist in the various categories and levels, and the employer’s labour turnover.²⁸
13. Amendments to the EEA in 2014 prioritized “demographics” to the disadvantage of Coloureds. Among other changes, factors (ii) through (v) above were stricken, leaving only factor (i) *related to the demographic profile of the national and regional population*.²⁹ By its own language, therefore, the EEA now requires employers to pay strict attention to demographic numbers and to potentially prioritize demographic numbers above other factors.

As described below, using the demographic profile of the “national” and “regional” population has operated against the interests of Coloureds, especially in regions where there is a higher concentration of Coloured people.

4. Broad-Based Black Economic Empowerment (B-BBEE)

14. In 2003, separate legislation known as Broad-Based Black Economic Empowerment (B-BBEE) was passed, with the stated goal of “ensur[ing] that the economy is structured and transformed to enable the meaningful participation of the majority of its citizens and to further create capacity within the broader economic landscape at all levels through skills development, employment equity, socio economic development, preferential procurement, enterprise development, especially small and medium enterprises, promoting the entry of black entrepreneurs into the mainstream of economic activity, and the advancement of co-operatives.”³⁰
15. Coloured people were, ostensibly, supposed to benefit from B-BBEE. As observed by South African Institute of Race Relations’ Head of Policy, Anthea Jeffery, the B-BBEE Act “limits the beneficiaries of empowerment to ‘black people.’” The B-BBEE describes “black people” as a “generic term which means Africans, Coloureds and Indians,”³¹ but does not offer more specific definitions of these distinct groups or establish any formal procedure to determine who is entitled to be a beneficiary.³²

5. Codes of Good Practice

16. In 2007, the South African government passed “Codes of Good Practice” for the B-BBEE, which described how to quantitatively measure black empowerment through seven “pillars.”³³ These pillars are essentially target percentages for the representations of blacks at various levels of “empowerment,” for example, a target of 20% for “equity ownership” and 15% for “enterprise development.” These numbers are used to fill out “scorecards” for employers, and although there are no outright penalties for non-compliance, higher-scoring employers are favored for government contracts, creating a strong incentive for compliance.

IV. THE SOUTH AFRICAN GOVERNMENT PROMOTES AND PROTECTS ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN WAYS THAT DISCRIMINATE AGAINST THE COLOURED POPULATION

A. Article 6: The Right to Work

17. In its State Party Report, the Government of South Africa identifies parallels between the right to work as guaranteed by the ICESCR and provisions of the South African Constitution.³⁴ It does not, however, specifically discuss how it complies with the ICESCR’s guarantee of the right to work with respect to the Coloured population.³⁵ The main issue faced by the Coloured population with respect to the right to work is the codification and implementation of state-sanctioned affirmative action policies, and specifically Broad-Based Black Economic Empowerment (B-BBEE). In practice, these well-intentioned policies are actually detrimental to the Coloured population and have hindered Coloured people’s full enjoyment of their right to work.
18. **South Africa’s affirmative action legislation, in practice, discriminates against Coloureds and thus deprives them of their right to work.** Both the EEA and B-BBEE have received significant criticism for turning well-intentioned affirmative action policy into a “numbers game” that is more focused on meeting strict race quotas than actual affirmative

action intended to accelerate equality. There is therefore not a “clear and reasonable relationship of proportionality” between the laws’ aims and their effects. Affirmative action legislation has been construed by employers and implemented in an inconsistent manner that effectively discriminates against Coloured people and thus deprives them, collectively, of the right to work. Frequently, the so-called employment equity plans disadvantage Coloured individuals by setting numerical targets that act to exclude, rather than include, qualified Coloured individuals from employment. The following are examples of discriminatory affirmative action plans that have been knowingly implemented and either alleged or found to be discriminatory against Coloureds.

19. **An example of the disproportionate discriminatory effect of these laws on the Coloured population can be found in Nelson Mandela Bay.** Like municipalities throughout South Africa, the municipality of Nelson Mandela Bay (which comprises, in part, the City of Port Elizabeth in the Eastern Cape province) used specific numerical targets as guidelines in employment. From 2003 (when B-BBEE was enacted) to 2013, Nelson Mandela Bay planned its workforce targets based on the local demographics of the Bay, and its employment target for Coloured staff was accordingly 23%.³⁶ In 2013, the municipality decided to use national and provincial figures instead of local Bay figures as a guideline for employment equity.³⁷ Because the percentage of economically active Coloureds is lower across the national and provincial levels versus the municipality level, this resulted in the municipality lowering its target for Coloured staff to only 13% instead of the local 23%.³⁸ The new employment equity plan was challenged in the Port Elizabeth Labour Court in 2015.³⁹ In 2016, the municipality dropped its opposition to the court challenge and agreed to both apply local demographics in its employment plan and engage with the Department of Labor to “reach a common understanding on the interpretation of the law in question.”⁴⁰ One expert, however, said that it was unlikely that the EEA would be amended to mandate the consideration of local demographics in all scenarios.⁴¹ This example illustrates how the EEA has a disproportionate discriminatory effect on Coloureds by purporting to strive for equal representation among Coloureds but instead allowing municipalities to apply target numbers that do not represent the local Coloured population seeking employment. A court challenge was required to convince officials to apply the EEA in a way that properly takes local demographics into account. Monitoring is still needed to ensure effective implementation of this court decision.
20. In another example, **the South Africa Department of Correctional Services implemented an employment equity plan in 2010 that set numerical targets based on population estimates for the entire country of South Africa.**⁴² The resulting target for Coloureds was 8.8 percent.⁴³ Several Coloured job applicants in the Western Cape (which itself has a much higher percentage of Coloureds than the country as a whole) were denied appointments by the Department of Correctional Services on grounds that their racial group was already overrepresented at the relevant occupational levels. The unsuccessful Coloured applicants sued in Labour Court, alleging unfair discrimination.⁴⁴ On appeal, the South African Constitutional Court held that, while the Department’s plan generally did not constitute an impermissible quota, it nonetheless violated the EEA because it failed to take into account regional demographics (i.e., the demographics of the Western Cape) in setting its numerical targets.⁴⁵ This decision from the Constitutional Court reflects the reality that Coloureds were, again, being discriminated against, and thus deprived of the right to work, through the

application of the rigid and flawed percentage targets. Monitoring will also be needed to ensure that employers comply with and implement the court's decision.

21. **The Government has suggested that Coloureds “spread” to solve the discrimination problem.** The Government of South Africa has made troubling remarks regarding the solution to the problem of Coloureds being discriminated against by virtue of affirmative action plans and where they live. National Spokesperson Jimmy Manyi made the following statement on public television KykNet's Ronson Regstreeks Show in March 2010:

Let me just make some few comments here on the last discussion on Coloured people. I think it's very important for Coloured people in this country to understand that South Africa belongs to them in totality, not just the Western Cape. So this over-concentration of Coloured in the Western Cape is not working for them. *They should spread in the rest of the country. So they must stop this over-concentration situation because they are in over-supply where they are so you must look in the country and see where you can meet the supply.* The Employment Equity Act (EEA) is a very good act in this country.”⁴⁶ [emphasis added]

22. **Recommended Questions Related to the Right to Work:**

- What steps will the State Party undertake to develop an employment data tracking system that includes separate indicators of populations, including black, white, and Coloured populations?
- What commitments will the State Party make to ensure this system tracks, at a minimum, the following types of information in 5- to 10-year increments:
 - The number of Coloured people, compared to other populations, hired into jobs (including both government and private sector);
 - The number of Coloured people, compared to other populations, laid off or retrenched (including both government and private sector);
 - Current unemployment rates of Coloured people, compared to other populations?
- Does the State Party commit to publishing and disseminating this disaggregated data in relevant statistical and other government publications?
- In line with recent court decisions described in paragraphs 19 and 20, what measures will the State Party take to ensure that the definition of the term “regional” (Employment Equity Act 2014, Section 42.1a) fairly represents the population in the general vicinity of the intended employment opportunity location and ensure the effective implementation of these decisions?

B. Article 11: The Right to an Adequate Standard of Living

23. In its State Party report, the Government of South Africa identifies parallels between ICESCR's right to an adequate standard of living and Section 26 the South African Constitution,⁴⁷ but it does not specifically discuss how it protects and promotes the right to an adequate standard of living with respect to the Coloured population.⁴⁸ The Coloured population is disproportionately denied sustainable and/or government-subsidized housing, which ostensibly was to be provided by the ANC's Reconstruction and Development

Programme (RDP). The discussion below explains how the ANC's policies to reduce housing shortages disproportionately disadvantage the Coloured population and deprive Coloured people of the right to an adequate standard of living. **The ANC's policies to address South Africa's housing shortage still fall short of meeting the housing needs of the population.** As part of its rise to political power in 1994, the ANC implemented a socio-economic framework called the Reconstruction and Development Programme (RDP), with the broad goal of addressing and remedying the problems created by apartheid. Two key components of the RDP were the provision of adequate housing and the creation of safe living environments, both of which would contribute to economic growth and job creation among previously disadvantaged populations, including Coloureds.⁴⁹ In 1997, South Africa passed the Housing Act, which had the purpose of "provid[ing] for a sustainable housing development process" and which created the South African Housing Development Board to implement housing policy.⁵⁰ Between 1994 and 2015, the ANC built and gave more than three million basic houses to people from disadvantaged socio-economic backgrounds, free-of-charge, on the basis of a waiting list.⁵¹ The government estimates, however, that another 2.5 million homes are needed to accommodate the 12 million people who still lack adequate housing.⁵²

24. **Coloureds have waited for protracted periods of time to receive government-subsidized housing.** In 2016, Camissa Movement for Equality conducted a survey of more than 2,000 "backyard dwellers" in Eldorado Park, a township adjacent to Soweto in Johannesburg with a predominantly Coloured population.⁵³ "Backyard dwellers" are people who live in informal structures, often shacks or shanties, and often in the backyards of other properties. Of the surveyed participants, 89% identified as Coloured and 10% as black African. Of those surveyed, 47% (or approximately 1,000 persons) had applied for government-subsidized housing. Thirty percent (approximately 300 persons) did so during the Mandela administration between 1994 and 1999, and forty percent (approximately 400 persons) did so during the Mbeki administration between 1999 and 2008.⁵⁴
25. **Local observations suggest that the Coloured population faces inadequate housing conditions.** One South African human rights defender perceives that, in areas with high concentrations of Coloureds such as Eldorado Park, the status of Coloureds lags behind other groups.⁵⁵ For example, he explains, "you find multiple generations of the same family living in the same two- or three-bedroom house or two-bedroom flat. An example of this is in Eldorado Park, [where] we have discovered a family of 24 members of the same family are living in a two bedroom flat."⁵⁶ The human rights defender notes that similar conditions have been observed in Coloured townships across all nine provinces of South Africa.⁵⁷
26. **Recent protests suggest that Coloured people are disproportionately denied the right to an adequate standard of living.** Practices such as forced displacements have long been perpetrated against non-whites. As described above, the 1960 to 1983 removal of Coloured, Malay, and Indian people from District Six of Cape Town, which was designated for whites only, displaced non-white populations into less desirable townships across the Cape Flats. Housing shortages and the disproportionate denial of an adequate standard of living continue to persist for Coloureds today. Frustration with the RDP's lack of progress as to Coloureds peaked in May 2017 following the evictions of some Eldorado Park residents, prompting protests demanding a solution to the housing shortage throughout Eldorado Park and nearby Freedom Park, Ennerdale, and Lenasia.⁵⁸ Consistent with Camissa Movement for Equality's

survey, one resident complained of being on a waiting list for 30 years.⁵⁹ Johannesburg's Minister for Housing, Mzobanzi Ntuli, refused to meet with protest leaders, claiming they were "criminals."⁶⁰

27. Recommended Questions Related to the Right to an Adequate Standard of Living

- Will the State Party commit to developing a data tracking system, as identified above, to track:
 - The number of applications for housing submitted by Coloured people, the length of time on the waiting list, and the number of people placed, as compared to other populations?
- Does the State Party commit to publishing and disseminating this disaggregated data in relevant statistical and other government publications?
- What steps does the State Party undertake to ensure that applications for state-subsidized housing are evaluated without political, racial, or ethnic bias? What measures will the State Party adopt to detect and eliminate any such discrimination?
- What mechanisms will the State Party adopt to facilitate the "opportunity for genuine consultation" in line with General Comment No. 7 (para. 15(a)) with residents and community activists in Eldorado Park and other areas where residents have complained of inadequate access to housing and evictions?
- What steps will the State Party take to ensure that grants of state-subsidized housing are made in a way that is reasonable and proportionate, taking into account the needs of the Coloured community, particularly in areas where that community is concentrated?
- Will the State Party provide legal remedies to victim populations, including Coloureds, for the loss of land or establishments in District Six and other areas where forced evictions and removals have occurred? If so, what form of remedies will be provided and on what timeline? Will the state party commit to providing legal aid as needed for those persons seeking redress in accordance with General Comment No. 7 (para. 15(h))?

C. Article 15: Cultural Rights

28. In its State Party Report, the Government of South Africa identifies parallels between ICESCR's protection of cultural rights and Sections 30 and 31 of the Constitution.⁶¹ One issue faced by the Coloured population with respect to cultural rights is its limited access to State-funded media.

29. **The denial of equal access to State-funded media for Coloured people deprives them of their cultural rights.** The South African Broadcasting Corporation (SABC) is a public service and commercial broadcasting organization owned and operated by the South African government. The SABC does not have a policy addressing the media needs of the Coloured community, and its programming has been found to vastly underrepresent the Coloured community. Other racial and ethnic groups have dedicated, State-funded television programs and media facilities. For example, such programs include: "Eastern Mosaic," a program focused on Indian audiences; "Muvhango," a scripted television series aimed at black audiences; Radio Sonder Grense, a radio program aimed at white Afrikaners; Ukhkhozi FM, a

radio station aimed at Zulu audiences; and Lotus FM, a radio station aimed at Indian audiences.

30. Despite the fact that Coloureds represent 8.9% of the South African population, **SABC does not fund any television or radio programs that are geared toward the Coloured community.** Indeed, Media Monitoring Africa has found that White people are overrepresented by all of SABC's analyzed news content services, "with SABC 2 Afrikaans news having the highest figure." The same findings indicate that Coloured people are underrepresented on all SABC services; for example, Ukhozi FM reportedly does not use Coloured people as sources. The result, according to Media Monitoring Africa, is that "Coloured people's views continue to be underrepresented" and "[i]t is only in issues relating to disasters and accidents where they were accessed in proportion to their population average."⁶²

31. Recommended Questions Related to Cultural Rights

- What measures will the State Party undertake to provide the Coloured population with proportionate access to State media, including the SABC?
- Will the State Party commit to provide funds for SABC to create a long-term programming strategy that is inclusive of and sensitive to Coloured people for both television and radio?
- What measures will the State Party undertake to use the media for public campaigns "to eliminate[e] any form of prejudice against individuals or communities, based on their cultural identity" in line with General Comment No. 21 (para. 53(i))?

¹ UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 1966 ("ICESCR").

² Judge, "Current State of Affairs for Coloured South Africans," 3.

³ Judge, "Current State of Affairs for Coloured South Africans," 3. In the 1600s, Dutch settlers arrived at the southern tip of Africa, and they often married or had children with the indigenous and original inhabitants of South Africa, known as the KhoiSan (and later, enslaved persons brought from Asia and other parts of Africa). Editorial, "Still an Issue," *The Economist*, Feb. 4, 2012, <http://www.economist.com/node/21546062>.

⁴ Eusebius McKaiser, "Not White Enough, Not Black Enough," *The New York Times*, Feb. 15, 2012, http://latitude.blogs.nytimes.com/2012/02/15/in-south-africa-after-apartheid-colored-community-is-the-big-loser/?_r=0.

⁵ Mohamed Adhikari, *Anatomy of a South African Genocide: The Extermination of the Cape San Peoples* (Ohio: Ohio University Press, 2010).

⁶ Baldwin-Ragaven, Laurel; London, Lesley; de Gruchy, Jeanelle, *An ambulance of the wrong colour: health professionals, human rights and ethics in South Africa* (Juta and Company Limited, 1999), 18.

⁷ Editorial, "Still an Issue," *The Economist*, Feb. 4, 2012, <http://www.economist.com/node/21546062>.

⁸ *I'm Not Black, I'm Coloured: Identity Crisis at the Cape of Good Hope*. Dir. Kiersten Chance. Monde World Films, 2009.

⁹ In addition to the International Convention on Economic, Social and Cultural Rights, South Africa has ratified the International Covenant on Civil and Political Rights, 1966; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; Convention on the Elimination of All Forms of Discrimination Against Women, 1979; Convention on the Elimination of Racial Discrimination, 1965; Convention on the Rights of the Child, 1989; Convention on the Rights of Persons with Disabilities, 2006.

¹⁰ ICESCR, Article 2(2).

¹¹ Committee on Economic, Social and Cultural Rights, General Comment No. 20, UN Doc. E/C.12/GC/20, 2 July 2009, ¶ 9.

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- ¹² Committee on Economic, Social and Cultural Rights, General Comment No. 20, UN Doc. E/C.12/GC/20, 2 July 2009, ¶ 9.
- ¹³ Committee on Economic, Social and Cultural Rights, General Comment No. 20, UN Doc. E/C.12/GC/20, 2 July 2009, ¶ 13.
- ¹⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 20, UN Doc. E/C.12/GC/20, 2 July 2009, ¶ 13.
- ¹⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 20, UN Doc. E/C.12/GC/20, 2 July 2009, ¶ 13.
- ¹⁶ Anthea Jeffery, “The Rationale for Racial Laws,” in *BEE: Helping or Hurting?* (Tafelberg, 2014).
- ¹⁷ Anthea Jeffery, “The Rationale for Racial Laws,” in *BEE: Helping or Hurting?* (Tafelberg, 2014).
- ¹⁸ Anthea Jeffery, “The Rationale for Racial Laws,” in *BEE: Helping or Hurting?* (Tafelberg, 2014).
- ¹⁹ Anthea Jeffery, “The Rationale for Racial Laws,” in *BEE: Helping or Hurting?* (Tafelberg, 2014).
- ²⁰ Anthea Jeffery, “The Rationale for Racial Laws,” in *BEE: Helping or Hurting?* (Tafelberg, 2014).
- ²¹ South Africa Department of Labour, “Summary of the Employment Equity Act, 55 of 1998, issued in terms of Section 25(1),” accessed Aug. 20, 2016, <http://www.labourguide.co.za/employment-equity/summary-of-the-employment-equity-act-55-of-1998-issued-in-terms-of-section-25-1>.
- ²² South Africa Department of Labour, “Summary of the Employment Equity Act, 55 of 1998, issued in terms of Section 4(d),” accessed Aug. 20, 2016, <http://www.labourguide.co.za/employment-equity/summary-of-the-employment-equity-act-55-of-1998-issued-in-terms-of-section-25-1>.
- ²³ South Africa Department of Labour, “Summary of the Employment Equity Act, 55 of 1998, issued in terms of Section 25(1),” accessed Aug. 20, 2016, <http://www.labourguide.co.za/employment-equity/summary-of-the-employment-equity-act-55-of-1998-issued-in-terms-of-section-25-1>.
- ²⁴ Solidarity Trade Union’s Centre for Fair Labour Practices, *Constructing a Future Based on Race* (Sept. 2015), 11.
- ²⁵ Solidarity Trade Union’s Centre for Fair Labour Practices, *Constructing a Future Based on Race* (Sept. 2015), 11.
- ²⁶ *Solidarity et al. v. Dept. of Correctional Services et al.*, Case CCT 78/15 at 26 (Jul. 15, 2016).
- ²⁷ Employment Equity Act, No. 55 of 1998 § 42.
- ²⁸ Employment Equity Act, No. 55 of 1998 § 42.
- ²⁹ Employment Equity Amendment Act, No. 47 of 2013 § 16.
- ³⁰ South Africa Department Economic Development Department, “Broad-based Black Economic Empowerment,” accessed Aug. 1, 2017, <http://www.economic.gov.za/about-us/programmes/economic-policy-development/b-bbee>.
- ³¹ Act No. 46 of 2013: Broad-Based Black Economic Empowerment Amendment Act, 2013, Government Gazette, Jan. 27, 2014, Section 1(b).
- ³² Anthea Jeffery, “Evolution of BEE,” in *BEE: Helping or Hurting?* (Tafelberg, 2014), 138.
- ³³ In 2015, amended Codes of Good Practice entered into force and reduced the pillars from seven to five. Amended Codes Series 000: Framework for Measuring Broad-Based Black Economic Empowerment, Government Gazette, Oct. 11, 2013. The five pillars are ownership, management control, skills development, enterprise and supplier development and socio-economic development. *Id.*
- ³⁴ Consideration of reports submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, Initial reports of States parties due in 2017: South Africa, June 7, 2017, U.N. Doc. E/C.12/ZAF/1, at para. 66.
- ³⁵ South Africa
- ³⁶ Rochelle de Kock, “Fight Over Cut in Coloured Job Quota (Eastern Cape Province),” *The Herald (South Africa)*, Jul. 14, 2015, <http://www.heraldive.co.za/news/top-news/2015/07/14/fight-cut-coloured-job-quota/>.
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