



**Presentation by State under Review**  
**by the Deputy Minister of Justice and Constitutional Development of the**  
**Republic of South Africa, the Hon JH Jeffery, MP**  
**on the occasion of the Republic of South Africa's Review**  
**at the 27<sup>th</sup> session of the Human Rights Council's Universal Periodic Review**  
**(UPR) Working Group, held at Room 20 at the Palais des Nations,**  
**Geneva**

**10 May 2017**

President of the Council, Mr Joaquín Alexander Maza Martelli

The 4 Vice-Presidents of the Council representing the regional groups

Members of the Council

1. On 1 June 1968, on the occasion of the Twentieth Anniversary of the UN Declaration on Human Rights, legendary anti-apartheid struggle leader and then President of the African National Congress, Oliver Tambo, delivered a statement a statement in which he said -

*“For the oppressed people of South Africa the commemoration of the twentieth year of the adoption of the Universal Declaration of Human Rights bears a very poignant meaning. In our country the Declaration of Human Rights is a "treasonable" document - a crying indictment of all the practices, policies and laws of the South African State....*

*South Africa has the distinction of being the only country in the world which boldly and unashamedly acts in contravention of the Universal Declaration of Human Rights as part of its avowed policy.”*

And he went on to say –

*“Tribute must be paid to the tireless work of the United Nations and its agencies which have, in and out of season, drawn attention to the infringements of human rights in South Africa and have urged the regime of white supremacy to change its ways. The Commission of Human Rights, the Trusteeship Committee, the Decolonisation Committee, the Special Committee on Apartheid, have all in their various spheres played an invaluable role.”*

2. Today we are here before the Council to, once again, acknowledge this - the invaluable role - played by the United Nations in the furtherance of human rights.
3. We are proud to present our country report under the Universal Periodic Review. This report aims to highlight the implementation of recommendations and the development of human rights in the period under review, being 2012 – 2017.
4. The South African Constitution enshrines both civil and political rights and as well as economic, social and cultural rights. This comprehensive set of human rights standards forms the bedrock of our constitutional order and places the attainment of human rights for all who live within our country at the centre of all Government policy and legislation.
5. Our final Country Report on the Millennium Development Goals indicates that as far as poverty alleviation is concerned, South Africa has made good progress, in particular in the area of **socio-economic rights**.

6. South Africa has seen visible **improvements in living standards** and has recorded progress in the expansion of its healthcare infrastructure and improved access to healthcare services for all South Africans. We are mindful that many challenges still abound with respect to matters of healthcare and mortality, but we have made significant progress with regard to the reduction of child mortality (MDG4) and the improvement of maternal health (MDG5).
7. Our efforts have succeeded in halting and reversing the spread of HIV (MDG 6). The number of HIV positive persons on anti-retroviral treatment in South Africa was at 2.8 million in 2014, which is a significant portion of the global target of 15 million.
8. When we undertook our Twenty Year Review in 2014, the data showed that between 2002 and 2014 the proportion of households accessing basic services increased from 77% to 86% in the case of electricity, from 80% to 86% for water infrastructure, exceeding RDP standards and from 62% to 80% for sanitation. The proportion of 5-year olds attending early childhood development facilities more than doubled from 39% in 2002 to 87% in 2014.
9. Some 84% of adults in South Africa were literate, up from 73% in 2002. South Africa reflects favourably compared to other developing countries in international comparisons.
10. Despite our successes, we are aware that we still face challenges. Levels of poverty among vulnerable groups such as women and children, which

is higher than the poverty levels for the general population, still remain a challenge.

11. The domestic economy has remained in a low growth trajectory since 2012. Global economic growth remains weak, affecting South Africa's major trading partners. This is reflected by indicators on government debt and the percentage of gross domestic product spent on research and development and competitiveness in the global arena.
12. This means that we have to do more within existing budgetary constraints. It means tightening our financial belts as we embark on our country's developmental path.
13. We have had to cut our coats according to our cloth. The challenge, for us, lies in doing more, with less funding.
14. A myriad of poverty alleviation programmes addressing income, human capital and asset poverty, resulted in more South Africans having access to some form of household income, such as – human settlement opportunities, piped water, sanitation as well as good primary health care.
15. My Government anticipated Agenda 2030 in our National Development Plan, which comprises of the 17 new Sustainable Development Goals (SDGs), which will guide our development policy and funding for the next 15 years.

16. South Africa's position is based on its National Development Plan (NDP) and is driven by a particular focus on the lack of jobs and enduring poverty and inequality in the country. South Africa has indicated that varying stages of development should be taken into consideration in the SDG process by giving Common but Differentiated Responsibilities (CBDR) to countries based on their level of development.
  
17. As we move to the next phase of the global development agenda through the SDGs, we take note of the fact that our National Development Agenda, Vision 2030, as espoused in our National Development Plan, reflects our commitment to improving the lives of the poor and marginalised in society:

*“By 2030, we seek to eliminate poverty and reduce inequality. We seek a country wherein all citizens have the capabilities to grasp the ever-broadening opportunities available. Our plan is to change the life chances of millions of our people, especially the youth; life chances that remain stunted by our apartheid history.”*
  
18. Of the recommendations received during previous Universal Periodic Reviews, we are pleased to advise that we have ratified the **International Covenant on Economic, Social and Cultural Rights** in 2015 and it came into force on 12 April 2015. Our Initial Country Report is complete and was submitted to the UN in April 2017.
  
19. We are also pleased to advise on the passing of the **Prevention and Combating of Torture of Persons Act, 2013** as a milestone in our commitment to the attainment of human rights. The Act gives effect to

South Africa's obligations arising from the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

20. It aims to prevent and combat the torture of persons and to impose a maximum penalty of R100 million and or life imprisonment, in the case of a conviction.
21. With regards to the **Optional Protocol on the Convention against Torture** Government's position is that there must be agreement on the structure and location of the National Preventative Mechanism before consideration of ratification of the Optional Protocol. There are currently discussions between Government and South African Human Rights Commission regarding this issue, including funding.
22. South Africa has also passed the **Prevention and Combating of Trafficking in Persons Act, 2013**. The Act is a comprehensive law dealing with the issue of trafficking, which was previously dealt with in various pieces of legislation, in a fragmented manner.
23. In addition to creating very specific offences criminalising trafficking in persons, the Act also focuses on the plight of victims, by affording victims the right to claim compensation from convicted traffickers for damages, injuries and physical and psychological harm suffered.
24. With regards to the recommendations pertaining to the **criminalization of hate speech and related hate crimes** in line with the provisions of the

International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, Cabinet approved the publication for public comment of the **Prevention and Combating of Hate Crimes and Hate Speech Bill** in October last year.

25. There has been an intense public participation process and considerable debate on the Bill. The Bill does two things: Firstly, it creates a category of hate crimes. According to the bill, a hate crime will be committed if a person commits any recognised offence, that is a common law or statutory offence (referred to as the “base crime or offence”) and the commission of that offence is motivated by unlawful bias, prejudice or intolerance.
26. The prejudice, bias or intolerance towards the victim of the hate crime would be because of one or more of the following characteristics, or perceived characteristics, of the victim or the victim’s next of kin: Race, gender, sex, ethnic or social origin, colour, sexual orientation, religion, belief, culture, language, birth, HIV status, nationality, gender identity, intersex, albinism and occupation or trade.
27. Nationality, gender identity, HIV status, albinism, intersex and occupation or trade are not mentioned in section 9(3) of our Constitution - but it has been argued that they should be included in the Bill because of the hate crimes that have been committed on the basis of these grounds.
28. If crimes are found to be hate crimes it elevates the seriousness of the crime, the way it is dealt with by the criminal justice system and the

penalties imposed. Developing specific legislation on hate crimes will have a number of advantages. It will provide additional tools to investigators and prosecutors to hold the perpetrators of hate crimes accountable and will provide a means to monitor efforts and trends in addressing hate crimes.

29. Secondly, the Bill creates the crime of hate speech. Including hate speech as a crime was a more recent insertion and was added in response to the increase of racist incidents taking place over the past few years.
30. From the public comments received thus far on the new Bill, there seems to be broad support for the inclusion of hate crimes. Hate speech, on the other hand, is somewhat more challenging, with many different views on the matter. Some claim that it will restrict their rights to free speech or their rights to practice their religion. We must remember that hate speech is not free speech. Furthermore, like all other rights, the right to freedom of speech must be balanced, in the same way that all constitutional rights are balanced. No right is unlimited.
31. As the UN High Commissioner for Human Rights, Mr Zeid Ra'ad Al Hussein, remarked on 21 March this year, as the world celebrated International Day for the Elimination of Racial Discrimination:

*“States should adopt legislation expressly prohibiting racist hate speech, including the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, and threats or incitement to violence. It is not an attack on free speech*

*or the silencing of controversial ideas or criticism, but a recognition that the right to freedom of expression carries with it special duties and responsibilities.”*

32. The revised Bill is nearly ready to be tabled again before Cabinet for approval for introduction into Parliament. Parliament will publish the Bill for comment and will also conduct public hearings for those with views on the Bill to make further submissions.
33. With regards to the issues of the **right to privacy in the digital age, including communication surveillance, oversight mechanism, data protection, and proposed legislation**, we have oversight mechanisms to ensure that a person’s right to privacy is not unlawfully infringed.
34. The **Information Regulator** is a new regulator that has been created by the new Protection of Personal Information Act. The Information Regulator has extensive powers in terms of the legislation and will, amongst others, regulate both the Protection of Personal Information Act and the Promotion of Access to Information Act.
35. Technological advances have been extensive. But with great technological advances, come greater risks. Research shows that our country’s comparatively high levels of internet connectivity bring with it a higher risk for cyber-crime. Cybercrime activities are growing fast and evolving at a pace, becoming both more aggressive and technically proficient. The development of new proposed legislation to enhance cybersecurity is thus a necessity.

36. With regards to our new **Cybercrime and Cybersecurity Bill**: There are some misconceptions about the Bill that we would like to address. For example, additional structures which need to be established within the State Security Agency do not give any powers to the State Security Agency to control the Internet in South Africa.
37. The Bill does not increase the state's surveillance powers. It is incorrect to equate search and seizure in the Bill as an extension of "surveillance powers". The seizure of data, thought to be evidence in the commission of a crime, in terms of a search warrant thus **cannot** be regarded as a form of surveillance, which by implication implies the surreptitious monitoring of the communications of a person.
38. The Regulation of Interception of Communications and Provision of Communication-related Information Act, 2008 ("RICA"), when enacted, did not primarily deal with the investigation of cybercrimes but was more concerned with the interception of fixed line and mobile communications. Serious cyber offences have been committed since the enactment of the RICA. Amendments which the Bill aims to effect to the RICA are specifically aimed to address the increase of cybercrimes, there is thus no extension of the "surveillance powers" of the State.
39. It is important to stress that South Africa is a constitutional democracy. All legislative provisions are measured against the Constitution, and if found wanting, will be ruled as unconstitutional. The Cyber Bill does not give the State Security Agency any powers to censor or suppress what can be accessed, published, or viewed on the Internet or to monitor communications without judicial sanctioning.

40. We have also appointed a new **Inspector-General on Intelligence** appointed in terms of the Intelligence Services Oversight Act, 1994. As specified in our Constitution, the Inspector-General is appointed by the President after a process of nomination by the Joint Standing Committee on Intelligence and approval thereof by at least two-thirds of the members of the National Assembly. The concept of civilian oversight implies that the Inspector-General is not a member of the Intelligence Services, is independent and reports on his/her functions to Parliament through the Joint Standing Committee on Intelligence. The designated Intelligence Services includes the State Security Agency, the intelligence division of the South African Police Services and the intelligence division of the South African National Defence Force.
41. South Africa, in adopting this form of oversight of the Intelligence Services, became part of a select group of countries that have introduced similar provisions for intelligence oversight.
42. In the advance questions received one issue that was raised is that of the **Life Esidimeni** matter. This was a very unfortunate incident. Following up on the matter, in September 2016 the Minister of Health requested the Health Ombudsman to investigate the tragic deaths of the 94 mental health patients in the Gauteng Province after the Provincial Health Department transferred the patients into the care of non-governmental organisations (NGOs).
43. All the recommendations of the Health Ombudsman are being implemented rigorously to prevent similar incidents ever occurring

again, and to strengthen implementation of the *South African National Mental Health Policy Framework and Strategic Plan 2013-2020*, which was developed along the lines of the World Health Organization Mental Health Action Plan 2013-2020.

44. In keeping with the recommendation to transfer of mental health patients to appropriate and suitable facilities, we can advise that since the release of the Ombudsman's report, 750 patients have been transferred out of these facilities with the exception of a few patients whose families have refused transfer and have entered into a dispute in this regard. Thus 91% of eligible patients have been relocated to date.
45. Decisive action has been taken towards those who are held accountable. In addition, we have instituted a number of additional interventions including strengthening Provincial Mental Health Oversight Review Boards and working with various stakeholders and civil society organizations who we consider important partners for health service delivery.
46. Our government is of the view that immigrants play a very important role in the South African economy. Hence the Government has taken an open approach towards immigrants, whom we believe have genuine interests to contribute towards the growth and security of South Africa.

47. The resurfacing of attacks on some categories of foreign nationals in certain sectors are in conflict with our philosophy of humanity, within the context of our Constitution, which is about respect for the human rights of all persons.
48. These attacks have necessitated interventions at a policy level, through community engagement, and crime prevention. To ensure non-recurrence, the Provincial Government of KwaZulu -Natal set up, amongst others, a Special Reference Group on Migration and Community Integration headed by the Former UN High Commissioner for Human Rights, Ms Navi Pillay, to assess reported causes and socio-economic impact of attacks on foreign nationals.
49. A key finding of this committee was that the attacks on foreign nationals was a direct result of desperate competition for scarce resources, triggered by a sense of hopelessness aimed at escaping the poverty trap.
50. It is therefore important for the African continent to enhance collaboration to ensure regular and orderly migration. Collaboration should include the countries of origin, transit and destination.
51. Government has also spearheaded the development of a draft **National Action Plan (NAP)** to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance, in collaboration with various other role-players which include civil society. The draft will inform a plan which provides

the basis for the development of a comprehensive public policy against these scourges. The process relating to the development of a NAP for South Africa emanated from the Durban Declaration and Programme of Action (DDPA) adopted at the 3rd World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerances held in 2001. The consultation process on the draft NAP was completed in October 2016 with substantial comments made to be incorporated into the new draft NAP. We are aiming to having the NAP finalized by September 2017. In the interim, however, we are cognizant of the need to take positive steps to combat all forms of intolerances thus various cross cutting measures are in place to address the lived experiences of all within our country.

52. Key law reforms undertaken to address **gender and sexual violence** during the period under review include, amongst others, the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; the Protection from Harassment Act, 2011 and the Prevention and Combating of Trafficking in Persons Act, 2013. We are also rolling out the development of dedicated sexual offences courts which form part of our comprehensive multi-disciplinary approach.
53. A National Task Team (“NTT”) was established to counter the continued discrimination based on **sexual orientation and gender identity** against members of the LGBTI community. The task of the NTT which is comprised of Government and representatives from National Human Rights Institutions and civil society organisations is to develop a National Intervention Strategy to respond to, and prevent, gender and sexual orientation-based violent crimes perpetrated against **LGBTI persons** and

to develop an Inter-sectoral Implementation Plan. The NTT undertook to strengthen government's ability to respond to LGBTI needs and to strengthen the capacity of CSOs to deliver related services.

54. In the attainment of the right to **better health care**, South Africa has adopted a multi-sectoral approach to the challenge of HIV/AIDS. A comprehensive prevention, care and treatment programme is in place. Key components of the programme include Voluntary Counselling and Testing (VCT), prevention of mother to child transmission (PMTCT), antiretroviral therapy, condom distribution, and awareness education.
55. Over the years, South Africa has been expanding its infrastructure for the implementation of the HIV and AIDS response programme. Public health facilities offering Voluntary Counselling and Testing and other HIV treatment and services have been expanded to cover the whole country.
56. South Africa has the largest ARV therapy programme in the world, and an improved procurement process has seen a 50% decrease in the prices of ARV drugs. The cost of ARVs has been halved making it possible for government to treat more people within the same resources. In the area of combating HIV and AIDS including tuberculosis, we have witnessed a stabilisation of the number of people living with HIV in the country. HIV prevalence among the youth aged 15-24 has declined over time from 7,6% in 2002 to 5,6 in 2016. The rate at which the population in South Africa is being infected is **declining** year on year from 1,77% in 2002 to 1,27% in 2016.

57. The impact of South Africa's HIV/AIDS programmes are evident, as the decline in the percentage of AIDS-related deaths from 2007 can be attributed to the increase in the roll-out of ARV over time. The number of AIDS-related deaths declined consistently since 2006 from 325 241 to 150 759 AIDS related deaths in 2016.
58. We have set ourselves a mission to build a united, non-racial, non-sexist, democratic and prosperous South Africa. We are building a South Africa in which nobody is discriminated against because of the colour of their skin, their gender, their sexual orientation, their religion, nor are they discriminated against in the provision of services and opportunities by both the public and private sectors.
59. The UPR assists South Africa in assessing its fulfilment of better lives for all its people.
60. South Africa's commitment to the promotion and protection of human rights for all is unwavering. As we recently celebrated the 20th Anniversary of our Constitution, we realise once again that the struggle was not only the struggle for freedom but the attainment of a better life for all. We shall continue with this struggle - the struggle against poverty and inequality and the struggle for social justice and human right for all.
61. We wish to conclude with the words of Oliver Tambo in 1968:

*“We cannot cease until we have won, as we will in time.”*

I thank you.