



REPUBLIC OF SOUTH AFRICA

**NATIONAL STATEMENT IN INTRODUCTION OF THE SOUTH AFRICAN PERIODIC REPORT
(COMBINED 4-8 PERIODIC REPORTS) TO THE COMMITTEE ON THE ELIMINATION OF RACIAL
DISCRIMINATION (CERD) GENEVA, SWITZERLAND, 09 AUGUST 2016**

Chairperson of the Committee on the Elimination of Racial Discrimination,

Distinguished Members of the Committee,

Secretary of the Committee,

Chairperson of the South African Human Rights Commission,

Dignitaries present,

Ladies and Gentlemen,

Five years before the adoption of the Convention, the General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries in which it condemned colonialism and all practices of segregation and discrimination and committed to bring these practices to a speedy end.

Two years later, in General Resolution XVIII, the decision to speedily eliminate racial discrimination throughout the world was again affirmed.

As we meet to consider South Africa's combined report to the committee, it is fitting for us to recall that this commitment to non-racialism culminated in the adoption of the Convention for the Elimination of Racial Discrimination by the General Assembly.

The Convention affirms the necessity of eliminating racial discrimination throughout the world in all its forms and manifestations.

The ultimate intention of all these efforts are to ensure the respect and dignity of the human person and to promote the observance of human rights for all persons regardless of race, sex, language or religion.

This Convention has special significance for South Africa, given our country's tragic history of injustice, dispossession and inequality.

Under colonialism and apartheid, black people were dispossessed of their land and other means of livelihoods, systematically stripped of their basic human rights and turned into second class citizens in the land of their birth.

Apartheid literally affected each and every part of a person's life – where they were allowed to live, whom they could marry, who they could associate with, which government services, if any, they could access.

I am honoured to lead the South African delegation to this Committee to present South Africa's fourth to eighth periodic report. We are mindful of the fact that our fourth to sixth Periodic Reports were overdue. We have already taken measures to improve our reporting mechanisms and enhance our reporting obligations.

This periodic Report seeks to share with the Committee the extent to which South Africa has implemented the provisions of the ICERD.

The work that must be done to address the inequalities which have resulted from years of apartheid rule is substantial.

Dismantling the edifice of apartheid involves much more than the repeal of apartheid legislation and its replacement with legislation based on equality and the rule of law.

The achievement of substantive equality requires a much more determined effort. It requires not only political will, but also dedicated resources. It requires building new institutions to support constitutional democracy. It requires the progressive realization of socio-economic rights for all our people.

Policy formulation in this environment requires the careful balancing of interests – with the goal of enhancing the dignity of all of our people whose everyday lived experiences still, in many ways, reflect the legacy of apartheid.

As government, all of our work is directed towards redressing the inequalities of the past.

In the past, access to government services was based on race – with the bulk of state resources diverted towards the minority white population. In reality, this meant better schools for whites, better health care for whites, better housing for whites, better basic services and better infrastructure in white areas. This is but one aspect of the legacy of apartheid that needed to be addressed.

Our Constitution forms the basis of our social compact. Through it we seek to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights.

Our national vision, as set out in the Constitution, is to improve the quality of life of all citizens and free the potential of each person. And we are proud of the significant progress that we have made in this regard.

For example, in the sphere of **education** -

- The number of 5 year olds attending early childhood facilities has more than doubled from 39% in 2002 to 87% in 2014.
- In 2014, 84% of adults were literate, up from 73% in 2002.

- We have increased access to education with over 7 million children attending no fee schools (up from 5 million in 2009).
- Student enrolment in universities increased by 12% between 2009 and 2012.
- Enrolment ratios show that primary education is at 98% up from 96% in 2002.
- Gender parity has almost been achieved, however the ratio of males to females is marginally higher in primary school, and that of females to males is marginally higher in high school.
- Significantly, women now outnumber male enrolments in higher education. In 1993, women made up 43% of all students in universities and technikons, by 1997 proportions were almost even. By 2011, women made up 54% of those involved in contact university programmes.

South Africa has continuously taken measures to ensure the economic, social and cultural development of its people. In particular, a comprehensive approach has been adopted to eradicate extreme poverty and hunger.

The anti-poverty approach combines income support (through the grant system) with a social wage package that includes clinic-based free primary health care for all, compulsory education that is free for those who cannot afford to pay for it, for all those aged seven to fifteen years (or the 9th grade, whichever occurs first) and provision of subsidised housing, electricity, water, sanitation, refuse removal, and transportation.

Positive trends include increased life expectancy and decreasing infant and child mortality, improved living standards and increased access of households to basic services.

Households with access to electricity increased and stood at 86% in 2014.

Some 79 % of our people now live in formal dwellings and 89% enjoy access to piped water. South Africa has made great strides in providing **housing** and serviced stands to the poor. Government has provided nearly four-million housing opportunities – 903,543 serviced stands and 2,835,275 houses or social housing units, since 1994.

We are also pleased to be able to appear before the Committee on this day – 9 August. The 9th of August is a special day for South Africa, as we celebrate our national Women's Day.

Women's Day marks the anniversary of the great women's march of 1956, where women marched to the Union Buildings to protest against the carrying of pass books and the legislation aimed at tightening the apartheid government's control over the movement of black women in urban areas.

The majority of South African women, who are black, were the most oppressed section of our people, suffering under a triple yoke of race, gender and class oppression. The liberation of women was, and still remains, central to our people's struggle for freedom.

South African women have come a long way in the struggle for recognition, promotion, protection and realisation of their rights. This struggle was part of the larger struggle against apartheid, the consequences of which are still felt today. Thus, the empowerment of women and the achievement of gender equality in South Africa also involves dealing with the legacy of apartheid and the transformation of society, particularly the transformation of power relations between women, men institutions and laws. It is about addressing gender oppression, patriarchy, sexism, ageism and structural oppression and the creation of an environment that is conducive to women taking control of their lives.

South Africa has passed a number of laws to give effect to its constitutional goals of achieving equality, human dignity and the advancement of human rights and freedoms. During the first 20 years of democracy more than 1200 laws and amendments aimed at dismantling apartheid and eradicating all forms of discrimination were passed.

Yet our country still feels the effects of racism today – more than 20 years after the dawn of democracy.

Two of the pertinent issues raised in the shadow reports and the list of themes are the **National Action Plan** to combat Racism, Racial Discrimination, Xenophobia and Related Intolerance and new proposed **hate crimes legislation**.

We are pleased to inform the Committee of the good progress made in respect of both.

The National Action Plan, in accordance with the Durban Declaration and Programme of Action, provides the basis for the development of a comprehensive policy framework against the scourges of racism, racial discrimination, xenophobia and related intolerance.

Importantly, the development and actual implementation of programmes, measures and activities in respect of the NAP lies with all government departments, institutions supporting constitutional democracy, civil society as well as business, labour, the media and other sectors.

The NAP will provide South Africa with a comprehensive policy framework to address racism, racial discrimination, xenophobia and related intolerance at both a private and public level.

The NAP is not intended to replace existing laws and policies - rather it is complementary to existing Government legislation, policies and programmes which address equality, equity and discrimination.

The overall goal of the NAP is to build a non-racial, non-sexist society based on the values of human dignity, equality and the advancement of human rights and freedom.

Cabinet subsequently approved the draft for public comment during December 2015. The current Draft NAP has furthermore been amended to ensure its alignment with the UN Practical Guide on Developing National Action Plans against Racial Discrimination published by the Office of the High Commissioner for Human Rights. It has furthermore been updated and the content finalised with due regard to developments in the country.

The Draft NAP is currently undergoing an intense public participation process. The closing date for public comments and inputs into the Draft NAP was extended to 31 August 2016. Once all the comments and inputs have been considered a revised National Action Plan will

be finalized and submitted to the South African Cabinet for approval and then deposited to the UN.

With regards to the new proposed ***hate crimes legislation***, there have been increases in the manifestation of hate speech and hate crimes in South Africa of late. The Committee will note that the South African Human Rights Commission has, in its submission to the committee, stated that 68% of equality complaints received by the Commission in the period 1st April 2015 to 29th February 2016 have been on the basis of race.

The new legislation is called the Prevention and Combating of Hate Crimes and Hate Speech Bill. The Bill creates offences of hate crimes and hate speech.

For example, a hate crime is 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.

The base offences most often committed against victims of hate crimes are offences relating to the physical and emotional integrity of the person, as well as offences against the property of the victims, for instance murder, attempted murder, rape, assault in all its various manifestations, robbery, housebreaking, malicious damage to property, *crimen injuria* and arson.

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.

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.

All being well and being realistic, we anticipate introducing the Bill into Parliament before the end of the year.

With regard to the Committee's observation in paragraph 11 of its last report (CERD/C/ZAF/C/3), I wish to reiterate that South Africa's vision is that of a united people, united in our diversity, and not divided along ethnic and tribal groups. We are thus not in a position to provide disaggregated statistical data regarding ethnic groups.

However, where we keep disaggregated information on different race groups – so as to advance previously disadvantaged groups – we will certainly share that with the Committee.

The issue of migrants is an important one.

Foreign nationals enjoy all rights enshrined in our Constitution except for certain specific rights such as political rights. South Africa continues to be a major destination for asylum-seekers, as well as migrants and others seeking better economic and social opportunities. An asylum seeker is a person who has fled his or her country of origin and is seeking recognition and protection as a refugee in the Republic of South Africa, and whose application is still under consideration. A refugee is a person who has been granted asylum status and protection in terms of the Refugee Act, 1998.

Undocumented migrants are kept at Lindela Repatriation Centre. It is used as a transit centre for undocumented migrants awaiting deportation to their countries of origin.

The problem we are facing as South Africa is the large number of foreign nationals who enter South Africa as economic migrants - but claim to be asylum seekers as a basis on which to stay in South Africa. Each application has to be properly considered but approximately 95% of such applications are rejected. However an asylum seeker still has right to appeal this decision and even if the appeal is refused by the Refugee Appeals board or the Standing Committee on Refugees, the applicant can still approach the Courts.

The law allows the detention of undocumented migrants for a period of 30 days (with a possible extension of 90 days with court approval) for purposes of confirmation of

nationality, issuing of travel documents and repatriation. Anyone who has not been appropriately identified within that timeframe must be released.

The South African Human Rights Commission, as well as the Parliamentary Portfolio Committee on Home Affairs has oversight over the Lindela Repatriation Centre. There is a permanent office of the South African Human Rights Commission at the centre and the International Red Cross also regularly inspects it. The centre is administered according to international standards.

Government is also reviewing its migration approach with a comprehensive policy on international migration. A policy on the integration of refugees into South African society is also being developed.

Attacks on internal and external migrants experienced in the past and, recently in 2015, resulted in the loss of lives and damage to property. Government strongly condemned such attacks and our law enforcement agencies moved in to contain such attacks and avoid a spread to other parts of the country.

Attacks on persons based on their migratory status (both international and national) are not as a result of government policy and must therefore be addressed in a different manner.

The work to assist in ensuring that peace and order in our communities is restored and maintained is now coordinated at the highest level. The issues related to violence and discrimination with respect to integration status of people are further addressed through three main Inter-Ministerial Committees. These IMCs are – The Inter-Ministerial Committee (IMC) on Migration, the IMC on Social Cohesion and the IMC on Population Policy.

The Department of Home Affairs co-chairs the UN/SA Protection Working Group, which has developed both short-term and long-term responses to violence against foreigners. Short-term responses have included re-integration packages and negotiations, whilst longer term interventions have focused on developing of trainers and social cohesion workshops and outreach.

The IMC which is coordinated and led by the Minister in the Presidency immediately mobilised the necessary resources and embarked on a programme known as “Operation Fiela” – with a nationwide reach – and which ensured that all people living in South Africa were safe.

The mandate of this IMC was broadened to deal with all the underlying causes of the tensions between communities and the foreign nationals.

Some of the areas addressed include the implementation of our labour policies as they affect the foreign nationals, the implementation of laws that govern business licenses, the country’s border management and generally the country’s migration policies.

In April last year President Zuma convened a meeting of stakeholders in South Africa to discuss the country’s migration policy and discuss how various sectors can work with government to promote orderly migration and good relations between citizens and other nationals. The meeting was attended by business, sports, trade union movements, arts and sports fraternities, religious leaders, community formations, youth formations, children, disabled person and traditional authorities.

The participants were unanimous in condemning and rejecting the attacks against foreign nationals. They further pledged their commitment to work within their constituencies to build social cohesion. They also pledged to support the interventions of government in tackling genuine concerns raised by communities and foreign nationals.

The majority of peace loving South Africans were again unanimous in condemning the acts of criminality perpetrated against the foreign nationals. South Africans took to the social media to launch campaigns that stops attacks on foreign nationals and pledging solidarity with foreign nationals living in South Africa.

The National Prosecuting Authority has given priority to the prosecution of cases related to attacks against foreign nationals. To ensure speedy prosecutions in these cases, the Department of Justice and the National Prosecution Authority set up dedicated courts.

Government actively supported the displaced foreign nationals at shelters.

The Department of Social Development led this intervention by providing food, shelter and other necessities. Psycho-social support in the form of trauma counselling and debriefing services were provided. Pregnant women and people with disabilities were referred to secure shelters. The Department of Health monitored and delivered health and medical services to foreign nationals in any area needed as well as at the temporary shelters established.

In addition to the establishment of the IMC, Parliament established an ***Ad Hoc Joint Committee on Probing Violence against Foreign Nationals*** in May 2015. The mandate of the Committee was to probe into the incidence of violence against foreign nationals and related matters as well as to make recommendations where applicable. Emanating from its engagements, oversight, meetings and public submissions, the Committee made a number of recommendations.

We are unyielding in our commitment to ensure that these shameful attacks against foreign nationals never happen again in our country. We are, therefore, committed to find a lasting solution to the problem.

Through the appointment of an IMC with an all-encompassing focus on issues related to migration, Government has demonstrated its commitment to address the underlying causes.

Regarding ***the rights of indigenous populations/communities***, and we note that today is also International Day of the World's Indigenous Peoples, our Constitution entrenches the principles of "unity" and "diversity". It contains specific features that recognise the right of communities (or indigenous peoples) to engage in cultural, linguistic and religious forms of expression. In order to promote the achievement of equality, Government has taken some bold steps in putting forward measures and policies such as Employment Equity and Black Economic Empowerment, the Restitution of Land Rights Act, 1994, the Transformation of Certain Rural Areas Act, 1998, Provision of Land and Assistance Act, 1993. The Traditional

and Khoi-San Leadership Bill was tabled in Parliament last year to amongst others advance the interests of the Khoi-San people.

The Bill aims to contribute to the National Development Plan's key target of broadening social cohesion and unity while addressing the inequalities of the past by providing for the statutory recognition of the Khoisan communities and leaders.

It proposes the establishment of an Advisory Committee on Khoisan matters which will assist government with the recognition process relating to Khoisan communities and leaders.

In addition to our national efforts to combat all the manifestations of racism, our Government was honoured to be afforded the leadership role in this regard at the international level, and in particular, within the UN Human Rights Council including the Third Committee of the United Nations General Assembly (UNGA).

South Africa has succeeded to spearhead within the United Nations System flagship programmes and resolutions aimed at the Comprehensive Follow-up to the 2001 WCAR and the Effective Implementation of the Durban Declaration and Programme of Action (DDPA). In the above context, South Africa supported by the countries of the Global South registered the following landmark achievements:

- The Proclamation of the International decade for People of African Descent by the UNGA it is Resolution 68/237, including the framework document clearly distilling the Programme of Activities to be achieved during the International Decade,
- The Establishment of the Ad Hoc Committee of the Human Rights Council on the Elaboration of Complementary Standards (in the form of Additional Protocols) to the International Convention on the Elimination of All Forms of Racial Discrimination covering cardinal areas such as (a) xenophobia, (b) Islamophobia, (c) anti-Semitism and (d) Incitement to Hatred,
- The Establishment of the Intergovernmental Working Group on the Effective Implementation of the DDPA and the overall leadership role-played in this regard,

- The Establishment of the Working Group of Experts on People of African Descent and the Effective Guidance provided in terms of the work programmes of the Working Group, and
- The continuing efforts towards the establishment of the Permanent Forum for People of African Descent as a consultative mechanism and the effective framework for the practical realization of the rights of People of African Descent in the Diaspora.

South Africa continues to play a prominent role in the work of the United Nations Permanent Forum on Indigenous Issues (UNPFII), including the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), both of which have the noble ideal of eliminating racial discrimination against the indigenous peoples of the world.

The South African Government issued a blanket approval on 22 October 2002 allowing all the Special Procedures and Mechanisms of the Human Rights Council to visit South Africa and conduct enquiries consistent with their mandates.

In short, Chairperson, every action taken by our Government since 1994 – whether it be new legislation or policies or programmes aimed at economic opportunities, housing, education, health care, access to justice, land reform, in fact policies and programmes across **all** government departments – have been to eradicate the legacy of apartheid and racial discrimination. This is to ensure that, as President Mandela said "*Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another.*"

Chairperson,

It will take time to eradicate the aftermath of more than 300 years of colonialism and apartheid.

There is still much work to be done. For instance at the top management level of South Africa's workforce the White Group is represented at six times more than their proportion

of the economically active population. The opposite is true for African and coloured groups who are underrepresented.

African people make up just 14,3% of top management whilst comprising approximately 79% of the population. In the face of this inequality it is clear that measures taken by the South African government to redress past inequalities continue to be necessary.

At the 20th anniversary celebration of the South African Human Rights Commission, former President Thabo Mbeki posed the question:

...“are we making the requisite progress towards achieving the objective of nation building, as we have just defined it!

If we elected to answer this question in a polite and reassuring manner, we would answer - yes, we are making the requisite progress.

However, I believe that perhaps we should answer this question honestly and deal with the consequences of an honest response, however discomfiting it may be.

Accordingly, our answer to the question whether we are making that requisite progress, towards achieving the objective of nation building, as we defined it, would be - no!

A major component part of the issue of reconciliation and nation building is defined by and derives from the material conditions in our society which have divided our country into two nations, the one black and the other white.

We therefore make bold to say that South Africa is a country of two nations.

One of these nations is white, relatively prosperous, regardless of gender or geographic dispersal. It has ready access to a developed economic, physical, educational, communication and other infrastructure. ...

The second and larger nation of South Africa is black and poor, with the worst affected being women in the rural areas, the black rural population in general and the disabled. This nation lives under conditions of a grossly underdeveloped economic, physical, educational, communication and other infrastructure. ...

This reality of two nations, underwritten by the perpetuation of the racial, gender and spatial disparities born of a very long period of colonial and apartheid white minority domination, constitutes the material base which reinforces the notion that, indeed, we are not one nation, but two nations.

And neither are we becoming one nation.

Consequently, also, the objective of national reconciliation is not being realised.”

Honourable Committee members, we have indeed come a long way.

And yet we still have a long way to go.

I mentioned the Women’s March earlier. On the 9th of August 1956, Lilian Ngoyi – together with Rahima Moosa, Helen Joseph and Sophie Williams - led the women's anti-pass march to the Union Buildings in Pretoria. Holding thousands of petitions in one hand, Ma Ngoyi was the one who knocked on Prime Minister Strijdom’s door to hand over the petitions.

So, on the day that our country celebrates Women’s Day, it is fitting to leave you with the words of Lilian Ngoyi when she said, in 1956:

“I am looking forward to the day when my children will share in the wealth of our lovely South Africa. When I die, I’ll die a happy person because I have seen the rays of our new South Africa rising.”

Our efforts here, today and tomorrow, and going forward with our continued efforts to eradicate racial discrimination will ensure that all our people share in the wealth and prosperity of our country.

I thank you.

