

African Peer Review Mechanism

Technical Report:

“Democracy & Good Political
Governance”

idasa

Table of Contents

Abstract	p.6
Note on submissions and sources of information used in the report	p.11
List of acronyms	p.12

1. OBJECTIVE ONE: Prevention and reduction of intra- and inter-state conflicts

1.1. Question One: What are the recent or on-going conflicts in your country and the sources of these?

p. 15

1.2. Question Two: What mechanism exist for preventing, reducing and managing conflict in your country or region, and how effective are these mechanisms?

p. 17

1.3. Question Three: To what extent have regional and sub-regional organisations been involved in intra- and inter-state conflict resolution affecting your country?

p. 20

2. OBJECTIVE TWO: Constitutional democracy, including periodic political competition and opportunity for choice, the rule of law, citizen rights and supremacy of the Constitution

2.1. Question One: In your judgment, does the political system as practiced in your country allow for free competition for power and the promotion of democratic governance?

p. 22

2.2. Question Two: What weight do provisions establishing the rule of law and the supremacy of the Constitution carry in practice?

p. 27

2.3. Question Three: How and to what extent is decentralisation effected in your country?

p. 29

2.4. Question Four: How has decentralisation contributed to the quality of governance?

p. 31

2.5. Question Five: Are the security services subject to the rule of law and the oversight of civil authorities?

p. 32

3. OBJECTIVE THREE: Promotion and protection of economic, social and cultural rights, civil and political rights as enshrined in African and international human rights instruments.

3.1. Question One: What measures have been put in place to promote and protect economic, social, cultural and political rights?

p. 35

3.2. Question Two: What steps have been taken to facilitate equal access to justice for all?

p. 39

4. OBJECTIVE FOUR: Uphold the separation of powers including the protection of the independence of the judiciary and of an effective

4.1. Question One: What are the constitutional and legislative provisions establishing the separation and balance of powers among the executive, the legislature and the judicial branches of government.

p. 43

4.2. Question Two: To what extent is the judiciary independent?

p. 45

4.3. Question Three: How would you rate the independence of the legislative body in your country?

p. 48

5. OBJECTIVE FIVE: Ensure accountable, efficient and effective public office holders and civil servants

5.1. Question One: What measures have been taken in the country to strengthen institutions for an efficient and effective public service?

p. 51

5.2. Question Two: To what extent does the country have a transparent system of recruitment, training, promotion, management and evaluation of civil servants?

p. 56

6. OBJECTIVE SIX: Fighting corruption in the political sphere

6.1. Question One: What is the state of corruption in the country?

p. 62

6.2. Question Two: What measures and actions have been taken to combat corruption in the political sphere and with what results?

p. 63

7. OBJECTIVE SEVEN: Promotion and protection of the rights of women

7.1. Question One: What measures have been taken to promote and protect the rights of women in the country?

p. 73

7.2. Question Two: What measures have been put in place to enhance participation of women in society?

p. 86

8. OBJECTIVE EIGHT: Promotion and Protection of the rights of children and young persons

8.1. Question One: What concrete measures have been taken to promote and protect the rights of the child and young persons?

p. 94

9. OBJECTIVE NINE: Promotion and protection of the rights of vulnerable groups including internally displaced persons and refugees

9.1. Question One: What measures has the country taken to promote and protect the rights of vulnerable groups, including refugees, internally displaced persons and disabled persons?

p. 100

10. Appendix

List of information received

p. 117

ABSTRACT

Objective One:

Stakeholders generally agree that South Africa's international and regional relations since 1994 have been peaceful. South Africa's foreign policy is characterised by a concerted effort made to resolve and prevent regional conflicts. Levels of internal conflict are regarded as low although stakeholders noted recent local protests over service delivery, crime and issues surrounding illegal immigration as concerns. Submissions were limited in their engagement with the objective.

Objective Two:

There is a general agreement that the political system as practiced in South Africa allows for free competition for power and the promotion of democratic governance. Despite this, stakeholders have identified concerns relating to the realisation of certain rights, citizen participation in government processes and certain electoral provisions.

South Africa is a unitary state with features of both centralisation and decentralisation. Government in South Africa is divided into three spheres: national, provincial and local, each with its own responsibilities and powers. Stakeholders appear to agree that this arrangement has served to promote responsive government. However extensive challenges remain relating capacity and accountability in decentralised institutions.

South Africa has developed various legislative measures and institutional mechanisms to ensure the security services remain accountable to civilian authorities. Despite these interventions, the effectiveness of overseeing security apparatus is uneven across services and the institutions of government.

Objective Three:

The constitutional, legislative and institutional framework for the protection and promotion of political, economic, social and cultural rights is generally regarded as comprehensive. Despite these provisions, and the reported progress in the realisation of certain rights, stakeholders have noted considerable constraints and challenges. With respect to the judicial process, equal access to justice is protected and promoted by the Constitution and a range of specialised services and instruments. Not many submissions addressed the effectiveness of the access to justice provisions in detail.

Objective Four:

There is consensus that the development and general application of the post-apartheid constitutional and legislative infrastructure has been in keeping with the principle of the separation of powers. Parliament is credited with overturning the apartheid statute books and introducing over 900 laws in the past 10 years. The judiciary has gained international recognition with landmark judgments in a number of human rights matters. However, stakeholders have expressed concern that weaknesses in parliamentary oversight (especially in certain controversial matters), and the re-organisation and transformation of the court system in particular, have presented or may present threats to democracy. Lack of capacity and resources are also identified as inhibiting the operation of the legislative and judicial branches.

Objective Five:

Stakeholders agree that, since 1994, considerable progress has been made in aligning the public service with the requirements of the constitutional dispensation. Guided by the Constitution, the government has undertaken a wide range of policy, legislative and administrative reforms designed to integrate and improve the efficiency of the public service, including specific measures to enhance policy co-ordination, public participation and human resources management. Despite such initiatives, weaknesses in

implementation and service delivery, especially at provincial and local levels, have been identified. These weaknesses are generally attributed to a lack of resources, capacity and skills.

Objective Six:

Public sector corruption appears to be a serious concern in South Africa although levels and perceptions of corruption vary depending on the sphere and division of the administration. In combating corruption, the South African government has, in collaboration with other stakeholders, developed what is generally considered a comprehensive institutional and regulatory framework. Despite the development and impact of anti-corruption measures, however, stakeholders have pointed to various shortcomings both in implementation and in the framework itself. In addition, capacity problems, a lack of co-ordination and, in some instances, perceived interference has negatively affected institutions tasked with monitoring, investigating and prosecuting impropriety.

Objective Seven:

South Africa has acceded to a wide range of international and regional instruments, and has adopted domestic legislation, policies and programmes to promote and protect the rights of women. Implementation has been supported through the establishment of a comprehensive National Gender Machinery and National Gender Policy Framework, and the Commission on Gender Equality works towards promoting and monitoring gender equality. These measures have resulted in significant improvements for women in the realm of access to employment and leadership positions in government, services to combat crime and awareness of women's rights. However, significant problems remain, including: under-representation in certain senior positions and categories of employment, inadequate awareness of women's rights, entrenched discrimination, an inadequate capacity to mainstream gender equality, limited access to basic amenities and services, an inequality in economic and employment opportunities, and a vulnerability to crime and

other abuses. Further, the Office for the Status of Women, which monitors progress on the National Gender Policy Framework, also faces capacity constraints.

Objective Eight:

A number of constitutional and legislative provisions, measures and policies protect and promote the rights of children, and stakeholders noted an overall improvement in the status of, and provision of services to, children and young persons in South Africa in the past five years. Despite these improvements, many challenges remain for legislators and implementing bodies in this area. These challenges are generally attributed to disparities in educational quality, obstacles caused by poverty and unemployment, and tensions between youth and elders over the respect accorded to certain children's rights. The number of children held in detention, street children, the increase in child-headed households, child trafficking and the high number of crimes against children are significant areas of concern.

Objective Nine:

South Africa has acceded to a number of international instruments to protect and promote the rights of vulnerable groups, including refugees, people with disabilities and older people, and supported these through national legislation. The government has taken some measures to sustain progress, including programmes to expedite backlogs for refugee determinations and promoting public awareness of the rights of asylum-seekers and refugees. However, refugees and asylum-seekers continue to face abuse, discrimination and xenophobia, and lack of access to services. People with disabilities also face discrimination, are under-represented in the government and the workplace, and often have limited access to public services and facilities. Many older people still live in informal housing with few basic services. Farm workers in South Africa are vulnerable to rights abuses and unfair working conditions, and lesbian, gay, bisexual, transgendered, and intersexed people are not always treated equally before the law. Providing adequate housing and care for the homeless and street children remains a major challenge. Little

research has been conducted to assess the effectiveness of the existing legislative framework in protecting vulnerable groups, and institutions charged with preventing crime against vulnerable groups face resource and capacity constraints. Violations of rights guaranteed by the Constitution have been found in a number of court cases.

NOTE ON SUBMISSIONS AND SOURCES OF INFORMATION USED IN THE REPORT:

This report is based on submissions made by various stake holders represented in society. This includes various government departments, civil society organisations, research institutes, and different sectors such as disability and older persons groups. The report also draws on responses to questionnaires conducted by Community Development Workers (CDWs), who visited communities across the country. Additional sources of information have been used to strengthen the report. A comprehensive list of information and submissions is attached to the end of the report (Appendix).

LIST OF ACRONYMS

ACC	Anti-Corruption Command.
AG	Auditor-General
AICC	African Institute of Corporate Citizenship
ANC	African National Congress
ARV	Anti-Retroviral
ASF	African Standby Force
AU	African Union
BPFA	Beijing Platform for Action
CCAR	Country Corruption Assessment Report
CCMA	Commission for Conciliation, Mediation and Arbitration
CDW	Community Development Worker
CEWS	Continental Early Warning System
CME	Commission for Employment Equity
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CGE	Commission on Gender Equality
COSATU	Congress of South African Trade Unions
CSSDCA	Conference on Security, Stability, Development and Cooperation in Africa
DA	Democratic Alliance
DCS	Department of Correctional Services
DEAT	Department of Environmental Affairs and Tourism
DFA	Department of Foreign Affairs
DHA	Department of Home Affairs
DJCD	Department of Justice and Constitutional Development
DLA	Department of Land Affairs
DPSA	Department of Public Services and Administration
DRC	Democratic Republic of Congo
DSO	Directorate of Special Operations
DTI	Department of Trade and Industry

GEAR	Growth, Employment and Redistribution
HRC	Human Rights Commission
HSRC	Human Sciences Research Council
ICD	Independent Complaints Directorate
ICPD	International Conference on Population and Development
IDASA	Institute for Democracy in South Africa
IDP	Integrated Development Plan
IEC	Independent Electoral Commission
IERI	Institute for Economic Research on Innovation
ISD	Institutions Supporting Democracy (Chapter 9 Institutions)
ISS	Institute for Security Studies
JIT	Joint Investigations Team
JSC	Judicial Services Commission
LGBTI	Lesbian, Gay, Bisexual, Transgendered and Intersex
LRAD	Land Redistribution for Agricultural Development
MDGs	Millennium Development Goals
MISA	Media Institute of Southern Africa
NA	National Assembly
NCOP	National Council of Provinces
NEDLAC	National Economic Development and Labour Council
NEPAD	New Partnership for African Development
NHTL	National House of Traditional Leaders
NPA	National Prosecuting Authority
NSDP	National Spatial Development Perspective
ODAC	Open Democracy Advice Centre
ORC	Office of the Rights of the Child
OSDP	Office of the Status of Disabled Persons
OSW	Office on the Status of Women
PGDS	Provincial Growth and Development Strategies
PMDS	Performance Management Development System
PMG	Parliamentary Monitoring Group

PP	Public Protector
PR	Proportional Representation
PSAM	Public Service Accountability Monitor
PSC	Public Service Commission
RDP	Reconstruction and Development Programme
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SAICA	South African Institute of Chartered Accountants
SAIIA	South African Institute of International Affairs
SALGA	South African Local Government Association
SANCO	South African National Civic Organisation
SANEF	South African National Editors Forum
SANGOCO	South African National NGO Coalition
SAPS	South African Police Services
SARPPCO	Southern African Regional Police Chiefs Cooperation Organisation
SCOPA	Standing Committee on Public Accounts
SETA	Sector Education and Training Authorities
TAC	Treatment Action Campaign

A note on referencing:

A number of reports received from the Secretariat did not include page numbers. Referencing of these submissions does not include page numbers. Other references where page numbers are omitted refer to the submissions as a whole.

OBJECTIVE ONE: PREVENTION AND REDUCTION OF INTRA- AND INTER-STATE CONFLICTS.

Question One: What are the recent or on-going conflicts in your country and the sources of these?

Most of the submissions received on Objective One were from government departments, such as the Department of Foreign Affairs, and provincial self assessment reports, indexed to provincial reports. The issue of intra- and inter-state conflict is touched upon briefly in some non-government community and sectoral submissions. Therefore, there are clearly limited submissions, and limited views, on the area. However, various submissions from non-government organisations, and information from provincial self assessment seminars, raise interesting comments on the objective.

There are different perceptions on what constitutes conflict within the country. The majority of the submissions share the message that there is not much potential for internal conflicts in South Africa. However, conflict that arises between illegal immigrants and “locals” is mentioned. There is also potential conflict between mayors and city managers and between traditional leaders and councillors, which are areas of concern.¹ The possibility of conflict arising from cross-boundary municipalities is also highlighted. One report warned that South Africa is “experiencing some small pockets of violence caused by political intolerance in some provinces”². Yet the issue does not emerge in other submissions. In relation to this, it is recommended that South Africa’s legislative framework needs to be clear on areas of competence so that different stakeholders know where they should operate. CDW reports mention violence against women and children as a matter of concern.

¹ Eastern Cape Provincial Consultative Report, p.18, CDW reports

² Religious Sector Workshops Report.

It is also stated that “organized crime and inequality and wealth distribution (poverty)” are potential sources of conflict in South Africa.³ Organized crime is recognized as a potential threat to new democracies. In 1999, the South African Police Services (SAPS) estimated the presence of 500 organized crime groups of syndicates operating in South Africa.⁴ With its modern infrastructure and financial services, South Africa runs the risk of becoming a regional hub for illicit and dangerous activities.⁵ This further escalates transnational crime including trafficking of vehicles where approximately 50% of stolen vehicles are smuggled out of the country. Transnational crime is quite prevalent in South Africa and threatens stability and regional harmony.

On the potential conflict between South Africa and its neighbours, submissions concur that there is little conflict of this kind and point to declining conflict among South Africa’s neighbours themselves. It is pointed out that internal conflicts within some countries, for example Zimbabwe, place a strain on South Africa. In addition, the “constitutional crisis” in Swaziland is believed to impact upon South Africa’s relationship with Swaziland.

From the submissions received, the concerns with inter-state conflict are raised within the context of cross- border exchanges, i.e. human trafficking, drug trafficking and the illicit arms trade. Some of these problems are believed to be exacerbated by the flow of “undocumented migrants”⁶ and illegal immigrants into the country. The North West provincial report views such movements as creating opportunities for internal conflict.

Molo Songololo’s submission⁷ points out that women, men and children are being trafficked into “exploitative situations”. Molo Songololo’s report states that human trafficking for sexual exploitation is a particularly lucrative type of organised crime.⁸ The report states that human trafficking cannot be separated from the broader phenomenon of

³ Parliament’s APRM response, p 17.

⁴ International Organisation for Migration (2)

⁵ UNODC,i

⁶ SAPS p.23

⁷ Molo Songololo Submission to Parliament, p.1.

⁸2000 Molo Songololo Report

migration, which is driven by armed conflicts, ethnic and racial conflict, development-induced displacement, among other factors. Very little is known about human trafficking in Southern Africa, states Molo Songololo, and much needs to be done to understand and address this problem. There also needs to be more monitoring and evaluation.

Intra-state conflict in Zimbabwe and the Democratic Republic of Congo (DRC) are believed to have the potential to cause tension in South Africa and could have a “socio economic” impact. Also mentioned is “agrarian land reform” which, according to the North West provincial report, may also cause conflict within South Africa. Further, it is stated that South Africa’s role as an advocate of the right to freedom of sexual orientation may create tensions between the country and its neighbours. However, the general perception is that there are only a few areas of potential inter-state conflict.

South Africa’s participation in conflict prevention and resolution within the continent, particularly in the Southern African Development Community (SADC) region, is acknowledged.

Question Two: What mechanisms exist for preventing, reducing and managing conflict in your country or region, and how effective are these mechanisms?

The following institutional apparatus is identified as the legal mechanisms to manage diversity in South Africa:

- The Constitution of the Republic of South Africa;
- Chapter 9 institutions;
- The Independent Complaints Directorate (ICD);
- The Commission on the Promotion and Protection of Cultural and Religious Rights and Linguistic Rights;
- The Southern African Regional Police Chiefs Cooperation Organisation (SARPPCO);

- The White Paper on South African Participation in International Peace Missions (1999);
- The South African Foreign Military Assistance Act (1998);
- The SADC Standby Brigade, the SADC Civpol and the SADC Peacekeeping Centre in Harare, Zimbabwe.

South Africa has made efforts in the form of diplomatic interventions in countries such as Zimbabwe (although some say this is insufficient)⁹; the DRC and the Seychelles. Further diplomatic intervention has been seen in Burundi, Sudan and around the Arab-Israeli conflict in the Middle East.

South Africa has also created an instrument to foster the objectives of an African Renaissance, through the African Renaissance and Cooperation Fund. The SARPCCO has been able to address issues such as effective border mechanisms and the proliferation of small arms and light weapons in the sub-region.

There are areas that require closer attention in terms of South Africa's peace keeping initiatives and arms trade policy. It is stated that "transformation of the arms control regime in South Africa is incomplete".¹⁰ The Human Rights Watch Report suggests South Africa's arms export decisions have not consistently reflected its ethical principles and policies proclaimed. The indication for this is controversy over arms sales to countries with a questionable human rights record. Recently the Directorate of Conventional Arms Control, which must by law report annually to Parliament on South Africa's arms export, has classified as 'secret' its report for sales in 2003/2004. The need to enhance the government's capacity to assess human rights consequences of arms transfer and to increase transparency is highlighted.¹¹

⁹ North West Provincial Consultative Report, p 10

¹⁰ Human Rights Watch Report, October 1, 2000

¹¹ Human Rights Watch Report, October 1, 2000

CDW reports noted however that South Africa has attempted to resolve inter- and intra-state conflict, and has worked to develop healthy relationships with neighbouring countries that promote trade and investment.

In relation to early warning system and other intervention mechanisms in intra- and inter-state conflict, the following structures were identified:

- The African Union (AU) Continental Early Warning System (CEWS);
- The SADC Programme of Action;
- Interstate Security Co-operation;
- South African Non Offensive Defence;
- The African Human Rights Protocol, etc¹².

The list of early warning systems is limited to inter-state conflicts and does not mention early warning system relating to conflict within the country.

Conflict and post-conflict management measures undertaken by South Africa have been largely successful. Conflict resolution in Lesotho, for example, has resulted in the strengthening of “civil-military” relations in the country; conflict resolution in the DRC has led to peace agreement and disarmament; and conflict resolution in Burundi has led to a ceasefire and elections. In order to increase the effectiveness of these peace building measures, [South Africa] “would need to develop a better understanding of the problems and sensibilities of the continent”¹³. Missions in future will have to guard against perceptions of a ‘big brother’ agenda.

¹² North West Provincial Consultative Report, p 12

¹³ Southall, Roger, “South Africa, an African peacemaker?” [<http://www.hsrc.ac.za>]

Question Three: To what extent have regional and sub-regional organisations been involved in intra- and inter-state conflict resolution affecting your country?

Various regional bodies have been involved in South Africa's conflict resolution efforts, although South Africa itself has not required conflict resolution from the regional bodies.

In its efforts to resolve and manage conflict affecting its neighbouring countries; South Africa has intervened through the following sub-regional institutions:

- The SADC Organ on Politics, Defence and Security, in Lesotho and the DRC;
- The National Economic Development and Labour Council (NEPAD) and the AU, used in the Ivory Coast and Sierra Leone;
- The African Standby Force (ASF), which has completed its first phase of establishment;¹⁴
- SARPCCO plays a major role in intra- and inter-state conflict.¹⁵

Interventions through these regional bodies and others have been able to set the agenda for a move towards stability in affected countries although there are challenges that still need to be addressed even after relative calm has been restored. For instance, while Burundi may be relatively stable following conflict resolution efforts through sub-regional structures, President Nkurunziza faces many challenges in restructuring his state.¹⁶

Regarding Cote d' Ivoire, President Mbeki invited the warring parties to South Africa where they signed the Pretoria Agreement on April 6, 2005, formally ending the war.¹⁷

In relation to Sudan, South Africa responded, in the context of support for the AU, by sending 10 high-ranking military officers as part of the AU Observer Mission in Darfur.

¹⁴ Government submission

¹⁵ SAPS, p 12

¹⁶ Government submission

¹⁷ Government submission

South Africa's efforts in conflict resolution in the DRC culminated in the signing in Pretoria of the Global All-Inclusive Agreement between belligerents on 6 December, 2002 and the final endorsement of the Inter-Congolese Dialogue at Sun City in April 2003.

“The above efforts by the UN, the AU and the SADC are a clear indication of the effective efforts to ensure that the African continent is finally rid of the stigma of a continent riddled by conflict.”¹⁸

SARPCCO has been able to combat drug trafficking between South Africa and Brazil.¹⁹

Different challenges impact on the effectiveness of regional and sub-regional conflict resolution bodies. Among these are:

- Blurred organisational structures;
- Blurred and incompatible approaches to conflict resolution, for example military intervention versus preventative diplomacy;
- Inadequate financial and human resources.²⁰

In addition to these, economic instability in conflict-ridden countries remains a problem. Hence one of the key tasks of the AU's socio-economic development programme, NEPAD, is to rebuild African economies.²¹

¹⁸ Government submission

¹⁹ SAPS

²⁰ North West Provincial Consultative Report

²¹ Government submission

OBJECTIVE TWO: CONSTITUTIONAL DEMOCRACY, INCLUDING PERIODIC POLITICAL COMPETITION AND OPPORTUNITY FOR CHOICE, THE RULE OF LAW, CITIZEN RIGHTS AND SUPREMACY OF THE CONSTITUTION.

Question One: In your judgment, does the political system as practiced in your country allow for free competition for power and the promotion of democratic governance?

There is a general consensus that the political system as practiced in South Africa allows for free competition for power and the promotion of democratic governance. CDW reports indicate that the political system in South Africa is generally fair. The view is that South Africa has the necessary institutional mechanisms to ensure political participation.²² One submission states, for example, that the Constitution of South Africa enshrines rights such as “freedom of association; the right to demonstrate, assemble, picket and present petitions; the right to form a political party; the right to dignity and respect, equality before the law and equal protection and benefit; protection against discrimination; freedom of religion, belief and opinion; and the right to language and culture”.²³

In addition to these rights it was pointed out that the Independent Electoral Commission ensures special voting days to enable the disabled, elderly people and women to vote.²⁴ According to another submission, “section 9 (3) of the South African Constitution offers equality on the basis of sexual orientation; this has resulted in the courts at various levels overturning discriminatory laws.”²⁵ Thus, there is little disagreement on the availability of institutional mechanisms to ensure free competition of political power.

²² Parliament’s APRM response, p 22

²³ North West Provincial Consultative Report, p 13-14

²⁴ Disability Sector in South Africa, p 4

²⁵ LGBTI submission

According to a briefing by the National House of Traditional Leaders (NHTL), “...everybody, not only women, are free to belong to any political organisation of his or her choice. Women have seized the opportunity and are members of Parliament; they occupy very high positions within and outside Government”.²⁶ The report concludes that “this is the kind of freedom that everybody is enjoying”.

Submissions also mentioned that South Africa has adopted supporting institutions to ensure that the rights stated in the Constitution regarding free political association and free competition for power are effectively protected and properly governed. Among these institutions are:

- The Independent Electoral Commission Act 51 of 1996;
- The Public Funding of Represented Political Parties Act 103 of 1997;
- Schedule 6A of the Constitution (Floor Crossing Act 2 of 2003);²⁷
- The Electoral Act 73 of 1998.

There are mixed feelings about the institutions mentioned above, but across the submissions they were generally acknowledged as effective. One report states that these institutions have succeeded in “creating an environment of pluralism; simplifying and establishing the political process; representing varying political choices and voices; maintaining independent political outlooks...”²⁸ Another points to successes such as the practice of universal adult franchise enjoyed by all South Africans over the age of 18 and the “high degree” of political literacy enjoyed by South Africans.²⁹ Further, it is stated that the effectiveness of these institutions is indicated by the fact that elections in South Africa are becoming less contentious; most disputes are around “technical” issues and are often resolved amicably, according to the Joint Submission by the Southern African Institute of International Affairs (SAIIA), the Institute for Security Studies (ISS) and the African Institute of Corporate Citizenship (AICC).

²⁶ NHTL submission, p 4-5

²⁷ North West Provincial Consultative Report

²⁸ North West Provincial Consultative Report

²⁹ SAIIA, ISS, and AICC, p 22

Nevertheless, there is concern about the effectiveness of these institutions in ensuring meaningful participation of vulnerable groups. “There are no official government institutions/bodies to monitor and to promote (Lesbian, Gay, Bisexual and Transgendered) LGBTI equality,” although the submission states that it is possible to pursue LGBTI issues within the existing structures such as the Commission for Gender Equality (CGE).³⁰

This reservation is corroborated by a submission that states: “None of these institutions have disability-specific policies that guide their day-to-day work. There are insufficient resources (both human and financial) to enable voters to participate equitably. If one is disabled, it is still difficult to get a fair vote in any political party due to stereotypes, attitude, inaccessible environments and limited resources.”³¹

There are therefore limited government measures to specifically protect and ensure effective political participation of vulnerable groups. Perhaps the concern also has to do with what constitutes a vulnerable group.³²

South Africa’s electoral system is defined as a “multiparty proportional electoral system with a secret ballot system, allowing everyone over the age of 18 to vote, providing ample time for individual parties to register and campaign”.³³

A more comprehensive definition of South Africa’s electoral system is provided in the Joint Submission by SAIIA, ISS and AICC, which states that the “Electoral system provides for a party list proportional system in which the electorate votes for a registered party on the ballot paper and the party is then allocated seats in the National Assembly (NA) in direct proportion to the votes gained. Candidates for election are placed on a party list through a series of local, provincial and nomination electoral colleges and

³⁰ LGBTI submission

³¹ Disability Sector in South Africa, p 4

³² LGBTI submission

³³ North West Provincial Consultative Report, p 15, Parliament’s APRM response, p 25

processes, the form of which is determined by each political party. Parties draft three lists of candidates. Assuming a party wishes to nominate 400 candidates for Parliament, 200 of these will be on a national list of representatives and 200 will be on a list nominated by the provinces. A second ballot paper is used for parties standing for provincial assembly elections and a corresponding list of candidates is nominated by party structures to stand for elections to the provincial legislature. The proportional representation (PR) is simple and has served its designed purpose of ensuring that minority groups and parties have some representation.”³⁴

The capacity of the electoral system (the PR system as practised in South Africa) to deliver the results that are judged broadly free and fair is an area of contention. The Joint Submission by SAIIA, ISS and AICC states that the “party lists system reduces accountability to voters”.³⁵ According to the submission, “MPs are in the first and last instance currently beholden to the party and its hierarchy, rather than to constituents (and more accurately the electorates)”.³⁶ It further states that “floor-crossing erodes MPs tenuous links with voters. Section 47 of the Constitution held that if an MP resigned from the party under whose list s/he had been elected, the MP would lose his or her seat in Parliament, and the party would nominate and elect a replacement. In other words, it prevented MPs from ‘crossing the floor’ of the NA. Floor crossing *per se* is not necessarily undemocratic in a system where an individual is chosen by direct vote. It allows for conscience voting or an expression of dissatisfaction with the policies of a party.”³⁷

Another report also states that “floor crossing legislation is a major concern, which has lead to political criticism and potential corruption of our political system”.³⁸

The Department of Justice and Constitutional Development’s (DJCD’s) submission also points to the same challenge regarding floor crossing legislation: “A controversial part of

³⁴ SAIIA, ISS, and AICC, p 24

³⁵ SAIIA, ISS, and AICC, p 25

³⁶ SAIIA, ISS, and AICC, p 25

³⁷ SAIIA, ISS, and AICC, p 26

³⁸ Eastern Cape Provincial Consultative Report, p 19

this lobbying is the legal provision for floor crossing of members to either existing rival political parties or to new ones without offering themselves for fresh elections. This has not only caused vigorous public debate but has also been the subject of litigation.”³⁹

While noting that “South Africa’s system of democratic representative governance is a credible and legitimate system premised on one citizen, one vote” the Institute for Democracy in South Africa (IDASA) states, however, that “the system of floor-crossing...in the context of electoral systems...undermines the spirit of open, accountable, transparent and participatory democracy as prescribed by the Constitution of the Republic of South Africa”.⁴⁰ IDASA submits that since the South African electoral system is “a purely proportional one” except in local government, “...permitting representatives to change parties would disturb the electoral balance chosen by the electorate”.⁴¹ While floor crossing was initially thought to allow for “fluid politics”, it has threatened the stability of smaller political parties and has ultimately unfairly benefited bigger parties.

Therefore, following IDASA’s submission, floor-crossing is a “distortion” of the electoral system adopted in South Africa: “When an individual MP crosses the floor it distorts the balance of representation as determined by the citizens through the ballot box.”⁴²

While other submissions argue for discussions of floor crossing legislation, some point to the need for a discussion of the entire electoral system along the lines of the suggestions of the Van Zyl Slabbert commission of inquiry (2003) i.e. a move from closed to open ballots.

At the first consultative conference several participants expressed the view that private donations to political parties should be the subject of regulation. At present, while South Africa has a sound anti-corruption apparatus, the lack of regulation of private donations

³⁹ Department of Justice, p 22

⁴⁰ IDASA’s submission, p 2

⁴¹ IDASA’s submission, p 3

⁴² IDASA’s submission, p 13

to political parties represents a gap in the legislative framework. A number of written submissions also dealt with this issue. In these submissions⁴³ it was recognised that democracy needs money and political parties need money to operate. The public funding received by political parties in terms of s236 of the Constitution as expressed in the Public Funding of Represented Parties Act⁴⁴ is however insufficient for the operation of political parties. The submissions point out that legislation requiring transparency and accountability with regard to the additional money raised by political parties would reduce the opportunity for corruption in the political process and promote fair electoral competition.

Separately, there have been instances of litigation regarding electoral processes in the past. According to the submissions, these have been heard in different courts, including the Electoral Court, and are often resolved amicably, which is a measure of the “maturity” of South Africa’s democracy.⁴⁵

Question Two: What weight do provisions establishing the rule of law and the supremacy of the Constitution carry in practice?

According to the majority of the submissions, the Constitution provides the bedrock for the rule of law. Section 2 provides for the supremacy of the Constitution over all other laws.⁴⁶ The report further states that “the Constitutional Court makes final decisions on matters that violate the Constitution; Section 1 of the Constitution provides for the supremacy of the Constitution and the rule of law.”⁴⁷ The submission by the Public Service Commission (PSC) states that the Constitution creates an enabling environment for the exercise of individual choice, the rule of law and citizen rights. The DJCD submission also emphasises this point: “Chapter 9 of the Constitution has a significant role in safeguarding of the rule of law and the promotion and the protection of

⁴³ Institute for Democracy in South Africa, ISS, SAIIA submissions

⁴⁴ The Public Funding of Represented Parties Act 103 of 1997

⁴⁵ Department of Justice, p 22

⁴⁶ North West Provincial Consultative Report, p 16

⁴⁷ North West Provincial Consultative Report, p 16

constitutional democratic values.”⁴⁸ Also, sections 83 and 84 of the Constitution provide that the President has the role of upholding the rule of law and the supremacy of the Constitution.⁴⁹

Section 74 of the Constitution provides that the Constitution may be amended only through a vote of two-thirds of the NA and six votes of the National Council of Provinces (NCOP).⁵⁰

Submissions pointed out that Chapter 9 of the Constitution has also created a number of institutions that promote democratic values and principles in South Africa. Those are commonly referred to as the Chapter 9 institutions:

- The Public Protector (PP);
- The Human Rights Commission (HRC);
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
- The CGE;
- The Auditor-General (AG);
- The Electoral Commission.

There are additional institutions, such as the Convention on the Rights of the Child.⁵¹ Also crucial for ensuring the protection of constitutional principles such as the rule of law and constitutional democracy are individual non-government organisations.⁵² These are impartial and independent institutions to bolster constitutional democracy in South Africa, but the submissions did not assess their effectiveness.

⁴⁸ Department of Justice, p 7

⁴⁹ North West Provincial Consultative Report, p 7

⁵⁰ North West Provincial Consultative Report, p 16

⁵¹ Disability Sector in South Africa , p 6

⁵² North West Provincial Consultative Report, p 17

Question Three: How and to what extent is decentralisation effected in your country?

There is different legislation aimed at effecting decentralisation in South Africa. Sections 40, 49, 104, 126, 151 and 238 of the Constitution provide for national, provincial and local spheres of government.⁵³ Within this framework, provinces and local governments may take decisions and make laws on their respective areas of competence. Different legislation was passed pursuant to the constitutional provision for decentralisation:

- The Municipal Structures Act 117 of 1998 and The Municipal Systems Act 32 of 2000;
- The Public Finance Management Act 1 of 1999;
- The Health Act 61 of 2003, which provides for the co-ordination of health service;
- The North West Health, Developmental Social Welfare Act 2 of 1997, which creates structures for health in the province;
- The White Paper on Human Resource Management in the Public Service (1997). It noted the need for “increased delegation of managerial responsibility and authority to national departments and provincial administrations, and, within departments, the delegation of day-to-day management decisions to line managers”;
- The Inter-Governmental Relations Framework Act 13 of 2005.⁵⁴

This legislation is aimed at effecting proper delegation of power and areas of competence from national government to local government in order to ensure service delivery and broader participation.

⁵³ North West Provincial Consultative Report, p 17

⁵⁴ The Presidency, p 2

Decentralisation is a challenging initiative with mixed results. While there are successes in terms of service delivery due to decentralisation, there are also shortfalls due to poor co-ordination among different departments and levels of government.

In terms of successes, decentralisation has provided for:

- Public participation in various spheres of government;
- Easy and rapid decision-making;
- An environment of accountability and transparency;
- Equitable distribution of public funds.⁵⁵

The submission from the Presidency notes that decentralisation creates challenges, most of them acute in the local government sphere. The report states: “Many municipalities are finding it extremely difficult to meet their developmental mandate due to an inadequate economic base and/or high levels of poverty and unemployment.”⁵⁶ Small towns, particularly in rural areas, also often lack the financial, administrative or service delivery potential and capacity to provide adequate services and governance.⁵⁷

The disability sector states that the autonomy that provinces have is a “threat to delivery” as provinces are sometimes not even aware of policies passed at national level that they have to implement at provincial level. It is further noted that although provincial government capacity has improved in recent times and the rate of delivery and expenditure is encouraging, under-expenditure in a number of important social services is a concern.⁵⁸

The government has put in place various measures to bolster the capacity of local government to ensure the effective functioning of institutions that fall under local government. Among those is Project Consolidate, which aims to “assist struggling

⁵⁵ North West Provincial Consultative Report, p 17

⁵⁶ The Presidency, p 2

⁵⁷ The Presidency, p 2

⁵⁸ The Presidency, p 3

municipalities to better perform their functions”.⁵⁹ As an indication of the measures taken to ensure a well functioning local government sphere, equitable share transfers to local government grew from R6.3 billion in 2003/04 to R10.6 billion in 2005/06. This figure will increase to R14.6 billion by the end of the 2008/09 medium-term expenditure framework. Conditional grants for infrastructure increased from R6.1 billion in 2005/06 to R9.5 billion in 2008/09.⁶⁰

Question Four: How has decentralisation contributed to the quality of governance?

It is stated in the South African National Civic Organisation (SANCO’s) submission that: “In the last few years, at local level we have witnessed the establishment of consultative structures with even greater authority and scope.”⁶¹ The following institutions were erected to ensure broader participation:

- Locally elected ward committees where the local councillors are charged with directly consulting citizens on all government activities within the localities or wards;
- The establishment of the Integrated Development Plans (IDPs) which compel local governments to consult, brief and, in a manner, gain permission from communities on overall development priorities and budgets for the localities.

There are reservations as to the extent of decentralization proximity of decision makers to citizens. Many CDW reports note that important decisions are predominantly made at central level, as opposed to being made closer to those who are concerned.

According to the submission by the Presidency, ward committees, established under the Municipal Structures Act, provide a structured channel of communication between communities and their political representatives. At the end of 2001, about 70% of ward committees were established. By the end of 2004/05, this figure rose to about 95%. The

⁵⁹ The Presidency, p 3

⁶⁰ The Presidency, p 3

⁶¹ SANCO, p 8

Presidency's report mentions the success of decentralisation as indicated in 2005 IDP hearings held in different provinces.

There is not consensus regarding accountability of decentralised entities, and shortfalls are acknowledged. The PSC found that the development of these agencies substantially improved service delivery for both stakeholders and the public at large. However, , accountability and transparency were found to be weakest in them – in fact specific comments have been made to the effect that the agencies seldom become involved in professional industry forums, and that in the isolated instances where this does occur, the interaction is inadequate.⁶²

Instead of providing evidence of improved accountability of decentralised entities, most of the submissions concentrate on listing available frameworks aimed at improving accountability, such as the Auditor General, the Public Protector, etc. Clearly the framework for accountability is available, but the effectiveness of the framework in enforcing accountability of decentralised entities is an area that is not properly addressed in most of the submissions. There might be instances of accountability, but record-keeping in this area is not seen clearly in the submissions.⁶³

Question Five: Are the security services subject to the rule of law and the oversight of civil authorities?

South Africa has in place institutional mechanism to ensure that its security services are accountable to democratic institutions of government, particularly the legislature and the judiciary. The Constitution provides for the establishment of the following institutions and legislation which oversee the accountability of the security services:⁶⁴

- The Independent Complaints Directorate (ICD) and the Secretariat for the Police Services (Sections 206 (6) and 208);

⁶² PSC

⁶⁴ North West Provincial Consultative Report, SAPS

- The Inspectorate for Intelligence (Section 210);
- The Judicial Inspectorate for Correctional Services;
- The Promotion of Access to Information Act 2 of 2000 and
- The Public Protector

These institutions have authority to investigate “complaints of brutality, criminality and misconduct against members of the SAPS and Municipal Police Services,” among other things.⁶⁵

The operational functionality of the security services in South Africa is subjected to intensive public scrutiny based on legal prescripts which regulate their existence.⁶⁶ The White Paper on Defence states that: “Defence policy and military activities shall be sufficiently transparent to ensure meaningful parliamentary and public scrutiny and debates.”

The number of complaints received by the ICD during 2004/2005 does show a substantial increase. Complaints increased by 19% from the 1999/2000 financial year, with 5 225 new complaints received during the 2000/2001 financial year.⁶⁷

The ICD has been able to measure its impact in its monitoring of the implementation of the Domestic Violence Act. There has been a change in attitudes by the police who in the past were reluctant to enforce this legislation as they claimed it was difficult to police domestic violence.⁶⁸

The ICD has limitations and challenges. In the first place it cannot deal with “complaints of incidents which occurred before its establishment (April 1997) and those which took place more than a year before they were reported to the ICD, unless there are exceptional

⁶⁵ SAPS, p 13

⁶⁶ North West Provincial Consultative Report, p 19

⁶⁷ SAPS, p 14

⁶⁸ ICD Presentation to Parliament to Parliament

circumstances”.⁶⁹ Further, the ICD cannot deal with “complaints against Correctional Services staff, court officials, and members of the South African National Defence Force”.⁷⁰ These are structural constraints that the ICD is confronted with.

According to the presentation by the ICD, it “has limited material resources and staffing levels”.⁷¹ Further, “little feedback occurs between the investigative arms of policing oversight and the authorities ultimately responsible for prosecuting cases of police abuse. The result is that there is little scope to evaluate the impact of the work of many of these bodies and little opportunity to build confidence in communities, (and the) IDC can only recommend disciplinary action, not compel it”.⁷²

It is also mentioned that the ICD “experiences some resistance at senior management level, this being at policy-decision making level”.⁷³ The experience of the ICD is that, there is better co-operation at operational level, which it considers to be the most important.

The effectiveness of civilian oversight of policing is also brought to light. A submission holds that “centralisation of policing in South Africa is one reason why civilian oversight of the police is not as effective as it could and should be”.⁷⁴ The report states that the almost exclusive focus on improving police effectiveness in the fight against crime has meant less attention has been paid to ensuring that the police themselves are accountable. At the end, according to the submission, effective oversight of policing is difficult to achieve in a context of an “apparent down-grading of the importance attached to oversight by government”.⁷⁵

⁶⁹ SAPS, p 13

⁷⁰ SAPS, p 13

⁷¹ ICD Presentation to Parliament, p 5

⁷² ICD Presentation to Parliament, p 5

⁷³ ICD Presentation to Parliament, p 5

⁷⁴ SAIIA, ISS, and AICC, p 36

⁷⁵ SAIIA, ISS, and AICC, p 36

OBJECTIVE THREE: PROMOTION AND PROTECTION OF ECONOMIC, SOCIAL, CULTURAL, CIVIL AND POLITICAL RIGHTS AS ENSHRINED IN AFRICAN AND INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

Question One: What measures have been put in place to promote and protect economic, social, cultural and political rights?

“The Constitution provides the context for the development of a vibrant human rights culture by entrenching the Bill of Rights (chapter 2) as a cornerstone of democracy in South Africa.”⁷⁶ The Bill of Rights affirms and protects the democratic values of human dignity, equality and freedom. In so doing, it guarantees every citizen the right to freedom and security (section 12); freedom of religion, belief and opinion (section 15); freedom of expression (section 16); freedom of association (section 18); and freedom to make political choices (section 19). One of the features of the Bill of Rights is the inclusion of socio-economic rights such as:⁷⁷ the right to adequate housing (section 26); health care, food, water and social security (section 27); and education (section 29). The state must take reasonable and other legislative measures, within its available resources, to achieve the progressive realisation of socio-economic rights. The responsibility for enforcing the rights lies not only with the courts but with Parliament, the Executive, provincial legislatures and executives, local government and all organs of state.⁷⁸

To ensure the realisation and advancement of the Bill of Rights, the Constitution provides for three separate branches of government; the legislature (chapter 4), the executive (chapter 5) and the judiciary (chapter 8), each with its own responsibilities and powers. The Bill of Rights is justiciable and can be enforced by the courts. The Court held in *Certification of the Constitution of South Africa, 1996 (10) BCLR 1253(CC)*⁷⁹ that although the enforcement of Socio Economic Rights may result in orders with budgetary implications, the enforcement of civil and political rights may also result in orders that

⁷⁶ Government submission p 28

⁷⁷ SANGOCO pp 11-13

⁷⁸ Judge Kate O’ Regan; Introducing Socio – Economic Rights

⁷⁹ All the Socio – Economic Rights in the Bill of Rights were brought by the chairperson of the constitutional assembly before the constitutional court for certification.

affect the budget. The courts may act in a more proactive and inquisitorial manner and intrude further into the legislature and the executive to develop remedies where the Bill of Rights imposes positive duty on the part of the state. Therefore, many of the rights entrenched in the constitution can be readily translated into statutory rights e.g. right to land restitution or the right to social pension. Once the constitutional rights are translated into statutory rights many of the difficult legal problems about enforceability fall away, as the statute invariably deals with the detailed content of the right, the means of enforcement, and with the ambit of any justiciable limitations to the rights.⁸⁰ The Bill of Rights is therefore a “living document”.

Chapter 9 of the Constitution further creates a number of independent institutions, (known as the Chapter 9 institutions) mandated to protect and promote human rights. These include:⁸¹

- **SAHRC:** Established in terms of sections 181 and 184, the SAHRC is mandated to promote a culture of respect for human rights and to monitor and assess the observance of such rights.
- **CGE:** Established by sections 181 and 187 of the Constitution as well as the Commission on Gender Equality Act (1996), the CGE is mandated to promote respect for and the protection, development and attainment of gender equality. The CGE has been involved in a number of Constitutional Court cases which involved gender equality issues.
- **Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities:** Established in terms of sections 181 and 185, the Commission is mandated to promote respect for the rights of cultural,

⁸⁰ Geoff Budlender; Socio – Economic Rights In the New Millennium: The challenges of Implementation in SA

⁸¹ Parliament’s APRM response p 29; Gauteng Provincial Consultative Report; Religious Sector Workshops Report p 2

religious and linguistic communities and promote and develop peace, friendship, humanity, tolerance and national unity.

- **The Public Protector:** Established by sections 181 and 182 of the Constitution as well as the Public Protector Act (1994), the PP is empowered to investigate any conduct in state affairs that is alleged or suspected to be improper and to take remedial action.

The above-mentioned institutions are currently under review by the Parliament. These institutions have experienced varying levels of success and their roles and functions are not always universally appreciated or even respected. The public is often unclear as to the precise nature and purpose of these institutions: nevertheless, effective and necessary work has been done by them to support constitutional democracy as is their brief.

In fulfilling their respective functions and giving effect to the Bill of Rights, the various branches and institutions of state have developed what is generally regarded as a comprehensive array of policies, laws and programmes.⁸² The legislative measures adopted since 1994 in advancing the right of access to employment and to basic education (see APRM Questionnaire) are examples. These include: the Labour Relations Act (1995); the Basic Conditions of Employment Act (1997); the Employment Equity Act (1998); the Public Service Laws Amendment Act (1997) and the Skills Development Act (1998); the South African Schools Act (1996); and the Adult Basic Education and Training Act (2000).

Post-apartheid South Africa has also subscribed to a range of international and regional human rights conventions and protocols, including The African Charter on Human and Peoples' Rights; The African Charter on the Rights of the Child; The Protocol on the African Human Rights Court; and the Protocol on the Rights of Women. In addition, South Africa has ratified the following: the Convention on the Elimination of Discrimination against Women; the Convention on the Rights of the Child; the

⁸² Parliament's APRM response p 29

Convention on the Elimination of all Forms of Racial Discrimination; the Convention against Torture, Inhuman or Degrading Treatment or Punishment; as well as the International Convention on Civil and Political Rights.⁸³

Despite these undertakings and reported progress in the realisation of certain rights,⁸⁴ stakeholders have noted considerable concerns, constraints and challenges. They have also pointed to specific weaknesses in the legislative and regulatory human rights framework.⁸⁵ As regards compliance with international standards and instruments, Parliament noted that South Africa has yet to ratify the International Covenant on Economic, Social and Cultural Rights and has neither signed, ratified or acceded to the Covenant of the Protection of Migrant Workers.⁸⁶

Generally, an absence of resources, capacity and co-ordination have been identified as restricting the ability of the constitutional institutions (see also responses to Objectives Four and Five)⁸⁷ to overcome the reported challenges of poverty, unemployment, crime, education, poor health, as well as continued inequality and forms of discrimination.⁸⁸ (Theme Four of the APRM on Socio-Economic Governance addresses these challenges in detail.)

The opinions contained in the Community Development Worker (CDW) Reports were broadly divided between those who felt human, socio-economic and cultural rights were being protected and promoted, and those who did not. Amongst those who felt rights were well protected in South Africa, many cited the Constitution, the Bill of Rights, Chapter 9 institutions and judicial measures such as the provision of attorneys without cost to individuals unable to afford representation. Other CDW submissions felt human,

⁸³ Government submission p 28; see also Parliament's APRM response p 7 and the Joint Ad Hoc Committee on Democracy and Good Political Governance Audit Report: International Instruments and Standards relating to Democracy and Good Political Governance

⁸⁴ Free State Provincial Consultative Report; Western Cape; see also SAHRC Surveys

⁸⁵ LGBTI p 3

⁸⁶ Parliament's APRM response p 16

⁸⁷ Parliament's APRM response p 30; Western Cape Provincial Consultative Report

⁸⁸ Parliament's APRM response p 39; TAC p 1; HSRC Submission, SANGOCO pp 19-20; COSATU; Older Persons' Forum pp 5-6; IERI ; Black Sash p 4-6

socio-economic and cultural rights were not adequately promoted and protected in South Africa, as demonstrated for example by lack of housing, unemployment and poverty.

CDWs from communities that live on farms (De HOEK Farm, Ward 17) stated that their rights were generally not protected. The consensus in these Reports was that most people were being oppressed by farmers.

According to some CDW Reports, the law only protects those who are educated and know their rights.

A number of cases alleging that government violated a right protected in the Bill of Rights have been successfully prosecuted through the courts. These include: *The National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others* 2000 (2) SA 1 (CC); 2000 (1) BCLR 39 (CC); *The Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC); 2001 (1) SA 46 (CC); *Alix Jean Carmichele v The Minister of Safety and Security and the Minister of Justice and Constitutional Development* 2001 (10) BCLR 995 (CC); 2001 (4) SA 938 (CC).; *The Minister of Health and others v The Treatment Action Campaign and others*; *The Minister of Home affairs v NICRO and others*; *The National Coalition for Gay and Lesbian Equality and Another v The Minister of Justice and Others*.⁸⁹

Question Two: What steps have been taken to facilitate equal access to justice for all?

“Given South Africa’s history and our vision for the future, a Constitution was written with equality at its centre. Equality is our Constitution’s focus and its organizing principle.”⁹⁰

⁸⁹ Department of Justice

⁹⁰ Government p 29

Sections 9, 34 and 35 of the Constitutional (chapter 2: the Bill of Rights) as well as provisions relating to the establishment, functions and administration of the courts (chapter 8) and institutions such as the PP, the HRC and the CGE (chapter 9) guarantee citizens equal status before and access to the law.⁹¹ Section 34 specially asserts that: “Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.”

The government, and the DJCD in particular, is responsible for “rendering accessible, fair, speedy and cost-effective administration of justice...It does this by promoting constitutional democracy, providing appropriate legal services, the sound management of the courts as well as alternate dispute resolution mechanisms.”⁹²

In terms of rendering equal access to judicial processes, the government has initiated and supported a range of specialised services and instruments.⁹³ These include, amongst others:

- **Costs of Judicial Services:** The Rules Board, established in terms of the Rules Board for Courts of Law Act (1985), “reviews the judicial rules of procedure to ensure affordability, simplicity, swiftness and fairness. Part of this review includes fees and costs.”⁹⁴
- **Legal Aid:** The Legal Aid Board, an independent statutory institution established in terms of the Legal Aid Act (1996), oversees legal aid at state expense with the objective of making such aid available to indigent persons. The Board’s work covers both civil and criminal matters. In its civil work, the Board places special emphasis on providing legal advice and protecting the rights of women, children and the landless. The Board has nine provincial offices, 58 justice centres, 27

⁹¹ Parliament APRM response, Government p 29-31; Department of Justice

⁹² Parliament’s APRM response p 28

⁹³ Government submission p 29

⁹⁴ Government submission p 29

satellite offices and 13 high court units. Despite the reported increase in financial support to the Board (to enable it to establish justice centres),⁹⁵ observers have suggested that the Board's budget has, in real terms, remained stationary.⁹⁶

- **Legal Education:** Over the past 10 years the state has advocated the standardisation of legal education for potential practitioners. “Although still a two-tier profession, both branches of the legal profession have equal right of audience in all courts except for the High Court and Constitutional Court; attorneys wishing to appear in the High Court and Constitutional Court are required to apply for a right of appearance to the Registrar of a provincial division of the High Court.”⁹⁷ The Justice College of South Africa has also developed training programmes for both judicial and administrative officers.
- **Proximity of Courts:** Together with the establishment of special courts (Labour Courts; Equality Courts and Tax Courts are examples) and justice centres, the Minister of the DJCD has been empowered “to create districts and define their limits. Where main district courts are inaccessible to members of a particular community because of distance, periodical courts are established to ensure ease of access.”⁹⁸ In addition, one of the reported aims of the proposed restructuring of the Superior Courts is to reconfigure the apartheid designation of courts and thereby to increase access to justice.⁹⁹

While there has been much progress as regards the over-hauling of the criminal justice system challenges regarding access to justice remain.

⁹⁵ Government submission p 29

⁹⁶ SAIIA, ISS and AICC p 38

⁹⁷ Government submission p 30

⁹⁸ Government submission p 29

⁹⁹ Government submission p 31

Regarding dispute resolution mechanisms, the government has established and supported various institutions and practices.¹⁰⁰ The Commission for Conciliation, Mediation and Arbitration (CCMA), which attempts to resolve labour disputes, is an example.

With the assistance of the Justice, Crime Prevention and Security Cluster, the Department of Justice has recently initiated a comprehensive review of the criminal justice system, the first to be undertaken.¹⁰¹ According to the government, the review “will audit and review systems and practices and remove backlogs across the criminal justice system. A civil justice review process will follow.”¹⁰²

¹⁰⁰ Government submission p 30

¹⁰¹ Government submission p 30

¹⁰² Government submission p 30

OBJECTIVE FOUR: UPHOLD THE SEPARATION OF POWERS INCLUDING THE PROTECTION OF THE INDEPENDENCE OF THE JUDICIARY AND OF AN EFFECTIVE LEGISLATURE.

Question One: What are the constitutional and legislative provisions establishing the separation and balance of powers among the executive, the legislature and the judicial branches of government.

The separation of powers between the legislature, executive and judicial branches of government is firmly established, albeit not explicitly, in the Constitution which sets out the different roles and functions of each.

Chapter 5 (section 83-101) provides for the office, functions and powers of the President and national executive, whereas Chapter 6 (section 125-145) establishes the offices, functions and powers of the provincial authorities. Chapter 4 (sections 42-82) establishes the mandate, composition and powers of the two Houses of Parliament: the National Assembly and National Council of Provinces (NCOP) and Chapter 6 (Sections 104-124) provides for the provincial legislatures. The independence of Parliament is further advanced through legislation such as the Powers, Privileges and Immunities of Parliament and the Provincial Legislatures Act (Act 4 of 2004) (and the proposed Financial Administration of Parliament Bill).¹⁰³

Chapter 8 (sections 165-180) provides for the functions, administration and independence of the judiciary. These provisions include protection from arbitrary removal, security of tenure and a guarantee against the reduction of salaries. These are further elaborated on in legislation such as the Judges' Remuneration and Conditions of Employment Act (Act 47 of 2001).¹⁰⁴

¹⁰³ Government submission p 31-32

¹⁰⁴ Government submission p 31-32

According to Section 164 (4) of the Constitution, the Constitutional Court may “decide disputes between organs and braches of state in the national or provincial sphere concerning the constitutional status, powers or functions or any of those organs...” There are also various constitutional provisions (such as sections 41 (3) and 125 (4)) and legislative measures aimed at resolving intergovernmental disputes.

In terms of international precedent, South Africa was “part of the group that finalized the text of the Commonwealth Principles on Accountability and the Relationship between the Three Branches of Government, which was endorsed by the Commonwealth Heads of Government in December 2003 in Abuja, Nigeria”.¹⁰⁵

Generally, there is consensus amongst stakeholders that the post-apartheid constitutional and legislative infrastructure is in keeping with the principle of the separation of powers.¹⁰⁶

Despite this, however, stakeholders have pointed out that the respective branches are still in the process of transformation and reform and this has, on occasion, led to concerns over the application of the separation of powers. As an indication of this, Parliament has expressed its intention to hold a debate on the separation of powers with particular reference to the relationship between Parliament and the executive.¹⁰⁷

¹⁰⁵ Government submission p 32

¹⁰⁶ Parliament APRM response; Department of Justice; SAIIA, ISS, and AICC p 54-63

¹⁰⁷ Parliament APRM response

Question Two: To what extent is the judiciary independent¹⁰⁸?

The independence of the courts is firmly established in section 165 of the Constitution. Section 165(2) stipulates that “the courts are independent and subject only to the Constitution and the law, which they must apply impartially without any fear, favour or prejudice”. Section 165(3) expressly states that “no person or organ of state may interfere with the functioning of the courts”. These principles are expanded through a number of other constitutional and legal provisions which set out procedures for the appointment of judicial officers, security of tenure and a guarantee against the reduction of salaries.

The procedure for the appointment of judges, including judges of the Constitutional Court, the Chief Justice and the Deputy Chief Justice, are set out in section 174 of the Constitution. The Judicial Services Commission (JSC), established in terms of section 178 (1) together with the Judicial Service Commission Act of 1995, interviews and nominates candidates. The President then appoints based on the advice of the JSC. In the case of the Chief and Deputy Chief Justice, the Constitution specifically requires the President to consult political parties in the National Assembly. Chaired by the Chief Justice, the JSC consists of 23-25 persons including 3 senior judges, 5 lawyers or law professors, 1 representative of the executive and 10 Parliamentarians. The remaining 4 are the chosen by the President in consultation with other politicians. Magistrates are appointed by the Minister of Justice after consultation with the Magistrates Commission, established in terms of the Magistrates Act of 1993.

Judges are guaranteed security of tenure by virtue of section 176 of the Constitution. Judges of the Constitutional Court hold office for a non-renewable term of 12 years, but

¹⁰⁸ There was disagreement on which factors are relevant when assessing judicial independence. For example, is the transformation of the bench and judicial accountability an aspect of judicial independence? Some stakeholders suggest that a broad interpretation of judicial independence should be followed. Much of COSATU’s submission, for instance, argues for civil society representation in the JSC and other processes – and links these arguments with “judicial independence”. In addition, some arguments on possible threats to independence cited by stakeholders rely on legislation that is still in draft form and have not yet come into law. Lastly, some stakeholders raised concerns about scarce resources, high workloads and poor accounting practices, yet these could be better suited to the Objective 3 which assesses the accessibility of the courts.

must retire at the age of 70.¹⁰⁹ Other judges hold office until they are discharged from active service on attaining the age of 70. Security of tenure for magistrates is guaranteed by section 13 of the Magistrates Act which provides that magistrates hold office until the age of 65.

Removal from office is addressed in section 177 of the Constitution. A judge may be removed from office by the President only if a two-thirds majority of the NA pass a resolution to this effect. The JSC must find that the judge suffers from incapacity, is grossly incompetent or is guilty of gross misconduct before the NA can vote to remove a judge. There is no legislation in place to deal with misconduct by judges which does not amount to impeachable conduct but which constitutes serious misconduct. A Magistrate may only be removed from office on the recommendation of the Magistrates Commission and a two-thirds majority of the NA on grounds of misconduct, ill health or incapacity to carry out his or her duties efficiently.

The resources of the judiciary are provided through the vote of the Department of Justice. The National Treasury is tasked with preparing the Budget which should cater for all the needs of the Judiciary¹¹⁰. The judiciary provides input into the budget process and the court budget is ring-fenced from the National Treasury.¹¹¹ Salaries and allowances for judicial officers are paid directly from a ring-fenced fund from the National Treasury. Recommendations regarding the salary, allowances and benefits of public office bearers, including judges and magistrates, are made in terms of Section 2 of the Independent Commission for the Remuneration of Public Officers Act, 1997.

Apart from these specific provisions and safeguards, stakeholders have noted that judicial independence is further promoted through the existence of appeal and review procedures as well as fact that courts operate transparently, with both courts and court judgements open to public scrutiny.¹¹²

¹⁰⁹ Department of Justice p 25; SAIIA, ISS and AICC p 46

¹¹⁰ Government submission p 33-34

¹¹¹ Department of Justice p 24

¹¹² CJ Langa to Parliament pp 12-13

As mentioned, South African courts are widely regarded as independent from the executive¹¹³ and have gained international recognition with their landmark decisions in a number of human rights matters.¹¹⁴ It has also been acknowledged that South Africa is fully compliant with the Latimer House Guidelines concerning the independence of the judiciary¹¹⁵.

Stakeholders emphasised that the processes of judicial transformation and the rationalization of the court system are still underway with a range of draft legislation¹¹⁶, aimed at aligning the courts and judiciary with the Constitution, currently before Parliament. These processes are specifically provided for in Schedule 6, Section 6 (a), which stipulates: “as soon as is practical after the new Constitution took effect, all courts, including their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalized with a view to establishing a judicial system suited to the requirements of the new Constitution”.

Aspects of the draft legislation, however, have generated considerable public debate with some stakeholders expressing concerns that certain of the provisions contemplated would give greater control to the executive and/or threaten the principle of separation of powers¹¹⁷. These concerns have led to the process of consultation being extended. Some stakeholders also noted that the manner in which fulfils the imperative to transform the bench may or has on some occasions posed a threat to judicial independence¹¹⁸. It has also been suggested that a general lack of accountability, including the limited involvement of civil society in certain judicial processes, is an impediment to the attainment of judicial independence.

¹¹³ MISA p 3; SAIIA, ISS and AICC p11

¹¹⁴ MISA pp 3-4; SAIIA, ISS, AND AICC45-46; Department of Justice; Parliament APRM response;

¹¹⁵ Government submission p 33

¹¹⁶ These include the Judicial Conduct Tribunals Bill, the South Africa National Justice College Draft Bill, the Superior Courts Bill and the Constitutional Fourteenth Amendment Bill.

¹¹⁷ SAIIA, ISS and AICC p11, DA to Parliament p 1-2; The Judicial Institution in Southern Africa: A Comparative Study of Common Law Jurisdictions: University of Cape Town 2006 p125

¹¹⁸ SAIIA, ISS and AICC p11, DA to Parliament p 1-2; The Judicial Institution in Southern Africa: A Comparative Study of Common Law Jurisdictions: University of Cape Town 2006 p122

Question Three: How would you rate the independence of the legislative body in your country?

The independent mandate and powers of the national legislature, consisting of the NA and the NCOP, is firmly established in chapter IV, sections 42-52 of the Constitution. The mandate and powers of the provincial legislatures are established in chapter VI, Section 104-124.

Concerning the national legislature, Sections 55 (1)(b) and 68 (b) allow individual members and committees to initiate legislation (except finance bills) although Parliament's involvement in the legislative process has typically been limited to a review of draft legislation as introduced by the executive in terms of Section 85 (d). The Constitution, however, also asserts that Parliament may, upon receiving a bill, "consider, pass, amend or reject (the) legislation". This power is exercised often and, not uncommonly, involves substantive amendments.¹¹⁹

Regarding amendments to the budget, section 77 of the Constitution states that Parliament can amend finance bills but only by way of a process provided for in national legislation. Although such legislation is yet to be enacted, resulting in concerns that Parliament's ability to exert its independence has been compromised,¹²⁰ this matter is receiving attention.

The Constitution also requires Parliament to establish mechanisms to ensure oversight over executive action, including policy implementation. Apart from the oversight exercised during plenary debates and direct questions to the executive (during plenary or by written request), Parliament has, to allow for more detailed scrutiny of the executive, established a range of committees. These committees are granted extensive powers including the ability to summon any person or institution to report to it.¹²¹

¹¹⁹ Government p 35; Records of the Parliamentary Monitoring Group (PMG)

¹²⁰ SANGOCO p 16: Report of the Joint Ad Hoc Committee on Oversight and Accountability 2001

¹²¹ Government submission p 35; Department of Justice

Concerning its financial independence, section 31 of the Powers and Privileges Act (1963) stipulates that Parliament can determine its own budget. The draft Financial Management of Parliament Bill, currently under discussion, seeks to reaffirm and expand on this arrangement.

Despite the independent mandate and powers of Parliament as contemplated in the Constitution and examples of proficient oversight,¹²² there have been concerns that Parliament has not exercised its functions consistently and has, on certain controversial issues (examples noted were the arms deal and HIV/AIDS),¹²³ been hesitant or unable to criticise the executive. There are a number of issues identified in this regard.

Various stakeholders have pointed out that South Africa's PR electoral system may negatively impacted on Parliament's oversight capabilities and independence.¹²⁴ The argument is essentially that, since individual legislators are only indirectly accountable to the public; their first allegiance lies with the party that nominated them, this system implicitly enhances the power of the executive over the elected representatives. This issue has lead some to call for electoral reform and the imposition of a mixed PR/constituency based system. It has been suggested that South Africa's parliamentary system of government – where the executive (with the exception of the President) is drawn from the legislature and the majority of legislators are affiliated to the ruling party – obscures the separation of powers and reduces Parliament's autonomy.¹²⁵ Other factors noted for seemingly weakening Parliament's independence include the “ideology and ethos of the majority party (which) encourages solidarity rather than critical engagement or public debate”¹²⁶ and the centralisation of executive authority in the Presidency.¹²⁷

¹²² Government submission p 35; Parliament's APRM response; Records of the Parliamentary Monitoring Group (PMG)

¹²³ SAIIA, ISS and AICC p88, and TAC p 7

¹²⁴ SAIIA, ISS and AICC p54-63; MISA p 2 (s6)

¹²⁵ SAIIA, ISS and AICC p54-63

¹²⁶ SAIIA, ISS and AICC p54-63

¹²⁷ SAIIA, ISS and AICC p54-63; MISA p 2 (s6)

Generally, resource and capacity constraints have been noted as inhibiting the oversight capabilities of the various legislative structures. It has also been recognised that, following the transition to democracy, the focus of the legislatures was on drafting new laws, overturning the apartheid statute books and developing the constitutional and legislative framework. In the case on the national legislature, for example, stakeholders emphasized that approximately 90 pieces of legislation were passed per annum between 1994 and 2003. As a result, oversight in the first 5 years played a secondary role and working conventions to guide executive oversight practice were not fully developed.

After 1999, when the emphasis of the legislatures and the national legislature in particular, shifted to oversight over policy implementation, the national legislature initiated a review of its oversight function which included, amongst other things, an evaluation of executive reporting practices, committee operations and public engagement as well as the legislature's involvement in the budget¹²⁸. The evaluation was completed in 2002 and a multi-party task team was appointed to carry the process forward. The task team is expected to conclude its work by the end of 2006.

¹²⁸ Report of the Joint Ad Hoc Committee on Oversight and Accountability 2001

OBJECTIVE FIVE: ENSURE AN ACCOUNTABLE, EFFICIENT AND EFFECTIVE PUBLIC OFFICE HOLDERS AND CIVIL SERVANTS.

Question One: What measures have been taken in the country to strengthen institutions for an efficient and effective public service?

“The introduction of democracy in 1994 heralded comprehensive and fundamental transformation challenges to the South African public service and, in particular, to service delivery institutions.”¹²⁹ Generally, as noted, considerable “progress has been made in transforming the state machinery to make it more responsive to the needs of its citizens.”¹³⁰

The Constitution sets out specific practices and structures to govern the public service. Section 197 provides for a single public service “which must function and be structured in terms of national legislation and which must loyally execute the lawful policies of the government of the day.” In addition, section 195 prescribes basic values for the administration. These include:

- A high standard of professional ethics must be promoted and maintained;
- Efficient, economic and effective use of resources must be promoted;
- Public administration must be development orientated;
- Services must be provided impartially, fairly, equitably and without bias;
- People’s needs must be responded to, and the public must be encouraged to participate in policy-making;
- Transparency must be fostered by providing the public with timely, accessible and accurate information;
- Good human resources management and career development must be cultivated to maximise human potential; and

¹²⁹ Parliament APRM response; Summary of Public Hearings p 50-56 and SAIIA, ISS and AICC p106

¹³⁰ Government submission p 36

- The public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation.

The Constitution also establishes a range of institutions tasked with monitoring and evaluating the public service. Of these Parliament and the provincial legislatures are regarded as paramount. These institutions, as part of their oversight responsibilities, are obligated by the Constitution (sections 59 (NA), 72 (NCOP) and 118 (provincial legislatures)) to engage with the public on a regular basis, thereby enhancing their ability to review policy development and implementation, hold government accountable and ultimately, ensure that standards of delivery are adhered to and improved. According to Section 152, local councils must also “encourage the involvement of communities and community organizations in the matters of local government”.

The Constitution further provides for a number of independent institutions tasked with monitoring and promoting effective service delivery. Section 196 provides for the Public Service Commission (PSC) whose mandate is *inter alia* to promote excellence in governance and in the delivery of affordable and sustainable services. The PSC, as part of its annual work, produces a report on the state of the public service¹³¹. These reports review the administration according to the constitutional principles set out in section 195.

Section 188 provides for the Office of the Auditor-General (AG) whose mandate is to audit and report on the accounts and financial management of all spheres of government and public-funded bodies. Apart from the PSC and the AG, other Constitutional institutions such as the South African Human Rights Commission (SAHRC) also engage with and oversee aspects of service delivery.

Since 1994, the South African government and the Department of Public Services and Administration (DPSA) in particular, have undertaken a range of policy and legislative initiatives to give effect to the constitutional principles. These include, amongst others:

¹³¹ PSC State of the Public Service Report's 2004, 2005, 2006

the White Papers on the Transformation of the Public Service (1995 and 1997); the Public Service Act (1994) and associated regulations (1999 and 2001); the Employment Equity Act (1998) and the Skills Development Act (1998). In terms of resource allocation and financial accountability, the adoption and implementation of the Public Finance Management Act (1999) (PFMA) and Municipal Finance Management Act (2003) (MFMA) as well as the shift to a medium-term budgeting cycle, have been credited with establishing a modern planning, budgeting and management framework for the administration.¹³²

Together with these legal and regulatory measures, stakeholders have highlighted specific initiatives and reforms taken to improve the operational efficiency and responsiveness of the administration. By all accounts, the *Batho Pele* (or people first) Service Delivery Project is a fundamental aspect of government's drive to enhance the quality and accessibility of services. *Batho Pele* requires that all service delivery institutions and officials adhere to set standards and practices when engaging with the public and conduct their work in a professional, courteous and transparent manner.

Stakeholders have also identified the use of Public Private Partnerships (PPPs) as a strategy to enhance delivery. As noted by National Treasury: "Government alone cannot meet South Africa's development challenge. To generate economic growth, provide infrastructure and deliver services, government and the private sector must combine their different strengths."¹³³ Stakeholders expressed concern however about privatisation and the often diluting effect it has on the levels of accountability by the state to ordinary citizens.

Apart from these initiatives, stakeholders have pointed to projects such as the Multi-Purpose Community Centres (MPCCs), Shared Services and One-Stop Shops as well as the deployment of Community Development Workers (CDWs) as facilitating access to services. Project Consolidate, as an effort to assist service delivery in ailing

¹³² PSC p 6-9; North West Provincial Consultative Report p 25

¹³³ A Strategic Framework for Delivering Public Services through PPPs: Department of Finance 2000

municipalities through the provision of technical “hands-on” support by national and provincial government, is a further example.

Concerning policy development and public participation, stakeholders noted the introduction of government planning frameworks including: the National Spatial Development Perspective (NSDP); the Provincial Growth and Development Strategies (PGDS) and, at a local level, the Integrated Development Plans (IDP’s), as enabling mechanisms. The presidency and other ministries have also been credited with organizing regular *imbizos* (or community meetings) during which the public have been able to engage directly with senior members of government.

The legislative structures and institutions supporting democracy have also undertaken initiatives aimed facilitating public participation. The PSC, in collaboration with the Portfolio Committee on Public Services and Administration, has developed the concept of Citizen’s Forums in which independent institutions participate jointly with citizens in proposing measures to improve delivery¹³⁴. The PSC has also conceptualized and begun implementing a transversal monitoring and evaluation system for the public service. This system assesses departments according to a limited number of performance indicators drawn from the principles of the Constitution.¹³⁵

As pointed out, reviewing delivery and facilitating public involvement in decision-making has not been solely the domain of government; civil society and the media also have an important role in improving democratic participation¹³⁶. Government, for example, has noted that “where civil society organizations participate more fully, service-delivery gaps are better identified.¹³⁷”

¹³⁴ PSC Submission to Parliament

¹³⁵ PSC p 6-9

¹³⁶ Gauteng Provincial Consultative Report p 13; MISA p 4 (s16)

¹³⁷ Government’s Ten Year Review 2003

Despite these regulatory and administrative measures, generally regarded as strong¹³⁸, serious weaknesses in implementation and delivery have been documented.

Concerning the implementation of *Batho Pele*, various stakeholders noted consistently that officials were not always responsive to peoples' needs and weren't aware of government programmes and procedures. A report produced by the DPSA itself noted that *Batho Pele* was "poorly understood and has not successfully addressed the underlying reasons for inadequate performance. The report generally identifies inconsistent and disparate implementation of the policy with monitoring a definite area of weakness"¹³⁹.

Stakeholders have further expressed concerns regarding financial management and accountability in the administration, particularly with respect to the ability of departments and public institutions to translate budget allocations into improvements in service delivery. Issues such as inadequate performance reporting¹⁴⁰, oversight of service agreements, possible "fiscal dumping" and the relationship between performance and remuneration in the public sector, have generated particular concern.

Generally, whilst there is consensus that public participation in decision-making processes is fundamental for effective service delivery, stakeholders have emphasized that such participation has not been optimal¹⁴¹. The PSC found "that in many instances public participation is managed on an ad hoc basis although there are some genuine efforts to ensure genuine participation".¹⁴² This led the PSC to recommend that a clear national policy on public participation in policy-making should be developed and that such a policy "should indicate exactly what levels of participation are required and should offer practical and realistic strategies that can be applied in diverse settings".¹⁴³

¹³⁸ PSAM Submission to Parliament; Parliament APRM response

¹³⁹ PSC State of the Public Service Report 2004 p-22 also the DPSA "Batho Pele" Implementation Report 2003

¹⁴⁰ PSC State of the Public Service Report 2006 p-42

¹⁴¹ PSC State of the Public Service Report 2006 p-37; PSC Submission to Parliament; SANCO p 9; COSATU p 38

¹⁴² PSC Submission to Parliament

¹⁴³ PSC Submission to Parliament

Question Two: To what extent does the country have a transparent system of recruitment, training, promotion, management and evaluation of civil servants?

It is widely recognized that the ability of South Africa to achieve its developmental goals depends crucially on human resource management practices in the public service. The PSC in its oral and written input raised some key points in this regard. The PSC, in its 2006 State of the Public Service Report, emphasizes that: “key among the capacity challenges facing our public service is the need to strengthen human resource management and development to ensure that there is a skilled, professional, motivated and productive workforce that drives government programmes, particularly those aimed at redressing the legacy of Apartheid and consolidating our democracy.¹⁴⁴”

Concerning the principles underlying the recruitment and management of public officials, section 195 of the Constitution stipulates that: “Good human resources management and career development must be cultivated to maximise human potential; and Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation.”

Government, and the Department of Public Services and Administration (DPSA) in particular, has developed these principles through various policy documents including, amongst others: the White Paper on the Transformation of the Public Service (1995 and 1997); the White Paper on Service Training and Education (1997); the White Paper on Human Resource Management (1997); the draft White Paper on Employment Policy (1997); the Public Service Act (1994) and the Regulations (1999 and 2001) and; the Skills Development Act (1998).

The Public Service Act (1994) and the Regulations (1999 and 2001) and the Skills Development Act (1998) in particular provide for the recruitment, training, promotion, management and evaluation of civil servants.

¹⁴⁴ PSC State of the Public Service Report 2006

Regarding recruitment and selection, Chapter IV of the Public Service Act stipulates that: “In the making of appointments and the filling of posts in the public service due regard shall be given to equality and the other democratic values and principles enshrined in the Constitution”. In addition, the Act states: “In the making of any appointment or the filling of any post – all persons who qualify for the appointment, transfer and promotion concerned shall be considered; and the evaluation of persons shall be based on training, skills, competence, knowledge and the need to redress the imbalances of the past to achieve a public service broadly representative of the South African people....” The Public Service Regulations expand on these principles through setting out guidelines for the determination and advertising of posts as well as the selection of candidates and the management and evaluation of staff. The various departments and executive authorities are, however, required to develop specific human resource management practices including appropriate performance assessment systems within the stipulated guidelines.

The recruitment and management of the Senior Management Service (SMS) are determined separately in Chapter IV of the Regulations as well as the Handbook for Senior Managers, issued in terms of the Regulations. Importantly, senior managers are subject to performance contracts which include incentives and bonuses.

Concerning the training and career development of officials, the Regulations stipulate that: “Employees should have ongoing and equitable access to training geared towards achieving an efficient, non-partisan and representative public service. Training should support work performance and career development. It should become increasingly driven by needs and link strategically to broader human resource management practices....” A variety institutional arrangements and mechanisms, both departmental and external, have been put in place to assist in the provision of training. Prominent amongst these are the South African Management and Development Institute (SAMDI) and Training Fund, established in terms of the Public Service Act and the establishment of a National Skills Authority together with 25 sector-specific Education and Training Authorities (SETAs), as provided for the Skills Development Act. According to the Skills Development Act,

the responsibilities and functions of a SETA include the development and implementation of sector skills plans within the framework of the national skills development strategy as promulgated by the Minister of Labour in collaboration with the a National Skills Authority.

Despite the steady development of the legislative and regulatory framework governing public sector human resource management, stakeholders noted considerable shortcomings in areas such as recruitment and selection, performance management and discipline. HIV/AIDS together with decentralization have also been highlighted as ongoing challenges¹⁴⁵. Generally, stakeholders pointed to the lack of public sector skills and capacity as a massive challenge for the administration, especially in the provincial and local spheres and recommended that a comprehensive retention strategy be developed and greater efforts made at promoting the public sector as the employee of choice.

Regarding the recruitment and selection of officials, investigations conducted by the PSC¹⁴⁶ have revealed a general lack “of detailed departmental policies and procedures to inform the objective, fair, equitable and responsible application of selection practices. Departments also fail to thoroughly consider what skills, competencies, training and traits are required from candidates who compete for vacant posts before advertising these.” In response to these findings the PSC developed a Toolkit for Managers on Recruitment and Selection. Regarding racial representation, stakeholders have pointed out that although considerable progress has been made in terms of achieving racial representation, challenges remain in the case of women and vulnerable groups.¹⁴⁷ Governments Ten Year Review suggested: “Although Africans now make up 72% of the Public Service at all levels, government still needs to focus on increasing the number of women in senior positions as well as more generally increase the number of disabled persons

¹⁴⁵ DPSA Submission on Decentralisation and Human Resource Management; PSC State of the Public Service 2005; 2006

¹⁴⁶ PSC Submission to Parliament

¹⁴⁷ Government p 36; PSC Submission to Parliament

employed....¹⁴⁸ At present, only 0.16% of the targeted 2% of public servants are disabled¹⁴⁹. Related to these matters, stakeholders further stressed that, despite the various links between higher education institutions and government, there is still not enough strategic interaction between government and higher education over the supply of skilled personnel.¹⁵⁰

Stakeholders also noted concerns with public sector performance management and training. An investigation conducted by the PSC during 2003 into the implementation of performance management systems a found that, whereas “all responding national and provincial departments have put processes in place to effect the transition from the old appraisal system... in many instances this compliance was not translating into effective transformation of departments towards a culture of improved performance”.¹⁵¹

As an indication of the levels of misconduct and the management of discipline in the public service, an evaluation conducted by the PSC in 2003¹⁵² revealed 985 individual cases of misconduct at national level and 2566 provincial cases over 2000-2001 – with the majority related to fraud, embezzlement and theft. The PSC emphasized, however, that such findings should be treated with caution due to the validity and reliability of information received. Of the case registered, 91 % at national level and 82 % in the provinces were investigated by the respective departments. Of these, 46 % nationally and 41 % provincially, resulted in dismissals. Problems with the management of discipline included lack of adequate record-keeping, training and funding¹⁵³.

Problems with training have also been raised. As noted in a 2005 report on the state of skills in South Africa, issued by the Department of Labour: “data for the 1999/2000 and

¹⁴⁸ Government’s Ten Year Review 2003

¹⁴⁹ PSC State of the Public Service 2006 (Source: Vulindlela Statistics at the end of December 2005)

¹⁵⁰ PSC State of the Public Service 2005 p-40

¹⁵¹ PSC Submission to Parliament

¹⁵² PSC An Evaluation of Discipline in the Public Service 2004; the PSC Report to the Portfolio Committee on Public Services and Administration, Report by the Parliamentary Monitoring Group (PMG) 2004.

¹⁵³ PSC An Evaluation of Discipline in the Public Service 2004; the PSC Report to the Portfolio Committee on Public Services and Administration, Report by the Parliamentary Monitoring Group (PMG) 2004

2001/02 suggests training rates for government were 16.5% in national departments and 24.3% in provincial departments and ranged from 12% to 28 % at local government level. Training rates varied significantly across departments and across time. while such variances prevent definitive comment, the general impression is that overall training rates can be improved in the public sector....”¹⁵⁴ The report also noted that, in relation to departments and the functioning of SETA’ s: “ While the SETA system showed signs of successful mobilization of skills development in the private sector ...its achievements in government departments are mixed.”¹⁵⁵ The problems between departments and the SETA structures led the President, in his 2004 State of the Nation address to assert that government “will ensure the proper functioning of the public sector SETA to address the challenges of building a Public Sector that has the requisite skills and motivation to meet the developmental challenges of our democratic state.”¹⁵⁶

Apart from concerns over recruitment and performance management, stakeholders have also raised the issues of the decentralization and HIV/AIDS and their impact on public sector human resource management. Concerning decentralization, the PSC reported: “Increased decentralization and delegation of authority relating to human resource management to lower levels have in many instances overloaded managers. In instances where performance suggests it is necessary, consideration should be given to revoking these delegations until capacity to manage them.”¹⁵⁷ in this regard the PSC goes on to recommend that: “an accreditation system should also be introduced in which powers are only delegated once public service institutions prove they can use them effectively.”¹⁵⁸

In terms of HIV/AIDS, a report produced by the Department of Social Development and the University of Pretoria estimated that just over 10 % of the public service may be infected with HIV. It also speculates that by 2012 up to 25% of public officials may die from the syndrome. As noted, these types of figures “raise concerns and pose clear challenges in terms of the need for effective succession planning and Employee

¹⁵⁴ Department of Labour: State of Skills in South Africa, 2005 p-51-55

¹⁵⁵ Department of Labour: State of Skills in South Africa, 2005 p55-55

¹⁵⁶ President Mbeki as cited in Department of Labour: State of Skills in South Africa, 2005

¹⁵⁷ PSC State of the Public Service 2005 p-53

¹⁵⁸ PSC State of the Public Service 2005 p-39

Assistance Programmes.¹⁵⁹” In this regard the PSC recommended a “more proactive approach in implementing the HIV/AIDS framework and ensuring that effective HIV/AIDS related health and counselling infrastructure are in place.¹⁶⁰”

¹⁵⁹ PSC State of the Public Service 2005;2006

¹⁶⁰ PSC State of the Public Service Report 2006 p-55; PSC Report on the Evaluation of the Policy Framework on Managing HIV and AIDS in the Public Service 2006

OBJECTIVE SIX: FIGHTING CORRUPTION IN THE POLITICAL SPHERE

Question One: What is the state of corruption in the country?

Though it was been recognized by stakeholders that accurately measuring the extent and impact of corruption in South Africa was extremely difficult, stakeholders agreed that corruption was a serious challenge in the country¹⁶¹.

The 2003 Country Corruption Assessment Report (CCAR) study¹⁶² - which included three surveys on perceptions and experiences of corruption: a household survey, a business survey and a survey of the public service – noted that 41 % of respondents indicated that there was a lot of corruption and that it was one of the most pressing problems which should be addressed. In addition, 39 % contended that there was a lot of corruption and that it was a common occurrence.

Despite the seemingly widespread perceptions of corruption, research also suggests that certain perceptions “exaggerate the true state of affairs with regard to corruption prevailing in the country”.¹⁶³ The 2003 CCAR noted “Citizens, businesses and public officials overall actual experiences of corruption is much lower than one might expect....For example, the 1998 National Victim Survey found that only 2% of individuals experienced corruption while the 2001 household survey revealed that some 11% of entire families/ households had a direct experience with corruption...”¹⁶⁴

A further issue concerning perceptions of corruption, as noted in the Transparency International Country Study Report 2005, is that “one of the key findings is that

¹⁶¹ Western Cape Provincial Consultative Report p 45; Northern Cape Provincial Consultative Report p 5; Free State Provincial Consultative Report, SANCO p 11; SAIIA, ISS and AICC p67; SANGOCO p 11

¹⁶² 2003 Country Corruption Assessment Report (CCAR): United Nations Office on Drugs and Crime (UNODC)

¹⁶³ Government p 37; Parliament APRM response

¹⁶⁴ 2003 Country Corruption Assessment Report (CCAR)

respondents often have a particular bias depending on their political affiliation and race....¹⁶⁵

Concerning public sector-corruption specifically, research indicates that perceptions vary depending on the branch and office of government. According to the aforementioned CCAR study:¹⁶⁶ “South African citizens appear to view the most common areas of corruption in relation to seeking employment and the provision of utilities such as water, electricity and housing. Public service managers also identified nepotism in job seeking, promotions and in the provision on entitlements...The public servants most associated with corruption both for the citizens and the businesses appear to be the police. All surveys indicate that police officers are the most vulnerable to corruption, followed by customs, local government, home affairs and court officials.” Various Afrobarometer surveys have exposed similar trends, with police viewed as the most corrupt, followed by Members of Parliament, local councillors and officials, and national government officials.¹⁶⁷

Question Two: What measures and actions have been taken to combat corruption in the political sphere and with what results?

Post-apartheid South Africa has initiated a variety of anti-corruption measures culminating in the adoption of a comprehensive Public Service Anti-Corruption Strategy in 2002. This strategy has served as a blueprint for consolidating and reinforcing the anti-corruption legislative and regulatory framework as well as strengthening the institutions mandated to monitor, investigate and prosecute corruption. During 2005 the government established a sub-programme on anti-corruption monitoring and evaluation in the Department of Public Services and Administration (DPSA). The main products of this programme are a compliance audit with the Strategy in the 2005/06 financial year and a

¹⁶⁵ Transparency International Country Study Report 2005

¹⁶⁶ 2003 Country Corruption Assessment Report (CCAR), as noted in SAIIA, ISS and AICC p69

¹⁶⁷ Afrobarometer: Perceptions of Government Corruption in South Africa; Briefing Paper 10, 2005.

comprehensive impact assessment of the national anti-corruption framework during 2006/07.¹⁶⁸

A cornerstone of South Africa's anti-corruption efforts (emphasised by the Public Service Anti-Corruption Strategy) has been the development of partnerships between the government, civil society and the private sector, including the organisation of two National Anti-Corruption Summits (1999 and 2005) and the launch of a tripartite National Anti-Corruption Forum in 2001.¹⁶⁹

Co-operation has also extended to regional and international stakeholders through the ratification of a range of international conventions including the AU Maputo Convention on Preventing and Combating Corruption (2003); the UN Convention on Corruption; the AU Durban Declaration on Democracy, Political and Economic and Corporate Governance (2002); and the Solemn Declaration and Memorandum of Understanding of the Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA). Parliament has, however, suggested that there is a need to improve co-operation with neighbouring countries.¹⁷⁰

Anti-Corruption Legislative and Regulatory Framework

Listed below are some of the principal legislative and regulatory measures adopted since 1994.¹⁷¹ These measures are generally regarded as comprehensive and in keeping with international standards.

- The Parliamentary Code of Ethics (1997) protects legislators from conflicts of interest through a system of financial disclosure. The Parliamentary Code – since

¹⁶⁸ Parliament APRM response

¹⁶⁹ Government submission p 38

¹⁷⁰ Parliament APRM response

¹⁷¹ Parliament APRM response; DPSA Submission to Parliament; PSC p12-17; SAIIA; ISS, AICC p 74; IDASA Submission of Ethics and Post-Employment Restrictions; North West Provincial Consultative Report p 7; SAPS p 14-38

replicated in the provincial legislatures – is currently under review with a view to incorporating ethical standards and principles;

- The Executive Members Ethics Act (1998) and Code of Ethics (2000) prescribe standards and practices for the executive, including a system of financial disclosure;
- The Public Finance Management Act (1999) establishes strict procedures and reporting practices for the use of public finances at all levels of government. The Municipal Finance Management Act (2003) sets out additional controls for the local sphere. These measures include reforms pertaining to supply chain management;
- The Promotion of Access to Information Act (2000) promotes transparency and allows access to information held by both government and private bodies;
- The Protected Disclosures Act (2000) protects whistleblowers in both the private and public sectors. This Act is currently under revision;
- The Public Service Code of Conduct (as amended in 2001) prescribes standards and practices for the civil service, including a system of financial disclosure for senior (designated) officials. The Code also requires non-designated employees to seek approval for remunerative work undertaken outside the service;
- The Financial Intelligence Centre Act (2001) combats money laundering;
- The Prevention and Combating of Corrupt Activities Act (2004) improves the legal instruments to combat corruption and provides for, amongst other things, the prohibition of corrupt individuals and businesses. This Act replaced the Corruption Act of 1992.

Despite the development and impact of the anti-corruption legislative framework, challenges and shortcomings seemingly remain both with implementation and the framework itself.

Specific concerns over implementation include the apparent lack of compliance with the disclosure regulations especially at provincial and local level.¹⁷² A 2006 investigation by the Auditor-General on “Declarations of Interest by Ministers, Deputy Ministers and Government Employees” found that, in the case of government employees in 142 departments, 1678 designated employees had not disclosed all their interests. In addition, a total of 50 223 non-designated officials were identified as having interests in private enterprises. According to the Auditor-General, the investigations were unable to conclude whether the non-designated had the required approval for these activities. This was “due to the fact the insufficient departmental responses were received in the majority of cases.” Various stakeholders suggested that, to improve compliance, stronger disciplinary action should be taken against to public office bearers who fail to disclosure.

Concerns with the implementation of the Promotion of Access to Information Act have also been noted¹⁷³ A 2004 study undertaken by the South African Open Democracy Advice Centre (ODAC), found that, of 140 requests for information made in terms of the Promotion of Access to Information Act, only 13% resulted in the information being provided within the required timeframes¹⁷⁴.

Further concern has been raised in relation to the implementation of the in the Protected Disclosures Act¹⁷⁵. The 2003 CCAR noted: “Most government departments do not have policies and procedures in place to comply with the Protected Disclosures Act. Few Departments have a hotline, and even fewer have effective procedures to operate it effectively, and yet, this is the only whistle-blowing mechanism that departments rely on.

¹⁷² SAIIA, ISS and AICC p76

¹⁷³ MISA p 8 (s37); SAIIA, ISS and AICC p105

¹⁷⁴ South Africa Summary Country Report: Open Society Institute Justice Initiative 2004 Monitoring Study: South African Open Democracy Advice Centre (ODAC); PSC State of the Public Service Report 2006

¹⁷⁵ SAIIA, ISS and AICC p80; see also ODAC Submission to Parliament

Installation of hotlines is often not supported by investigation capacity, policies and evaluation.” In relation to the scope of the legislation, stakeholders have also emphasized that whistle-blowers are not adequately protected from physical harm. These types of shortcomings have meant that, “in practice it is rarely safe to blow the whistle without suffering negative consequences”¹⁷⁶.

Deficiencies in government procurement and tendering processes, as set out in the Finance Management Acts, have also generated concern. Government’s 2001 Joint Comprehensive Procurement Assessment Report identified several existing issues including: insufficient planning and linking of entities to budgets; the lack of uniform procedures, conflict of interest concerns (due to the composition of tender bodies) and; insufficient training of staff.¹⁷⁷ In this regard the 2003 CCAR noted: “The public sector has started to blacklist suppliers that take part in corrupt practices....Further work is required to ensure that procurement systems are effectively controlled, especially within the area of preferential procurement, where opportunities exist for the discretionary award of contracts”¹⁷⁸.

In terms of the framework itself, it has been argued that the lack of regulations around party-funding, as prescribed by the AU Convention on Combating Corruption, is a “serious lacuna”. Civil society organizations and others have asserted that since political parties are not required to disclose their sources of funding, it is impossible to determine whether party policies and government actions are improperly influenced by private donations.¹⁷⁹ A further apparent weakness is the lack of restrictions on public office-bearers moving through the “revolving door” and entering the private sector.¹⁸⁰

¹⁷⁶ Integrity Assessment: South Africa Report for Global Integrity 2003; 2003 Country Corruption Assessment Report (CCAR).

¹⁷⁷ Government’s 2001 Joint Comprehensive Procurement Assessment Report

¹⁷⁸ 2003 Country Corruption Assessment Report (CCAR)

¹⁷⁹ IDASA Submission on the Regulation of Party-Funding; SAIIA, ISS, AICC; SANGOCO p 15

¹⁸⁰ IDASA Submission of Ethics and Post-Employment Restrictions; see also recommendations of the Second National Anti-Corruption Forum and those of the Joint Investigations Team (JIT) into the Strategic Defence Procurement Package.

Generally, stakeholders have suggested that, whilst there have been considerable efforts devoted to improving the legal infrastructure, relatively less effort has been given to the prevention of corrupt activities and the development of an ethics-based culture. The CCAR noted that: “While much work in South Africa has been carried out in the area of strategic considerations...the same cannot be said about the prevention of corruption and public education...This constitutes one of the major weaknesses of the present South Africa approach to corruption. Adequate organizational and budgetary arrangements need urgently to be put in place in order to implement far more structured anti-corruption prevention and public education programmes.”¹⁸¹

Anti-Corruption Agencies and Institutions

Aside from the court system, South Africa has established and developed a range of specialised anti-corruption agencies. Listed below are some of the central agencies:¹⁸²

The Office of the Public Service Commission (PSC) is an independent institution, established in terms of section 196 of the Constitution, to investigate, monitor and evaluate the organisation and administration of the public service. The PSC plays a leading role in many anti-corruption initiatives, including promoting professional ethics, administering the financial disclosure framework for public officials and the management of the National Anti-Corruption Hotline for whistleblowers. Since the launch of the Hotline in 2004, 1 108 cases have been registered by the Commission.

The National Prosecuting Authority (NPA) is mandated to institute criminal proceedings on behalf of the state. The President appoints the head of the NPA (the National Director) for a non-renewable period of 10 years. The Director reports to Parliament although he/she is accountable to the Minister of Justice. The Directorate of Special Operations (DSO), commonly referred to as “The Scorpions”, is a division of the NPA, established by the President in 1999 when the National Prosecution Authority Amendment Act was

¹⁸¹ 2003 Country Corruption Assessment Report (CCAR)

¹⁸² Parliament APRM response; DPSA Submission to Parliament; PSC p12-17; SAIIA; ISS, AICC p 74; North West Provincial Consultative Report p 28

passed, to combat organised crime, corruption, racketeering and money laundering. The DSO is widely regarded as the state's most successful anti-corruption agency with an average of 90% of prosecuted cases resulting in convictions.¹⁸³ Despite this success, however, various stakeholders have pointed out that the DSO has faced several challenges, especially with regards to the perceived overlap of mandates with the South African Police Services.¹⁸⁴ The Special Investigations Unit (SIU) is a further division of the NPA, which investigates corruption, serious maladministration and unlawful expenditure of public money and deals with civil recovery of assets and monies owed to state institutions.

The South African Police Services (SAPS) have a number of units which deal with corruption, specifically the Commercial Crime Unit, the Organised Crime Unit and the Detective Branch. Concerning the Commercial Crime Unit in particular, stakeholders have noted that resource constraints, a severe case load and tensions with the DSO have hampered conviction rates.¹⁸⁵

The Independent Complaints Directorate (ICD) is an independent institution established in terms of section 206 (6) of the Constitution and mandated by chapter 10 of the Police Service Act (1995) to, amongst other things, investigate any complaint about or misconduct by a member of the police, as well as deaths in custody or as a result of police action. Due to the increased number of corruption complaints received, the ICD established an Anti-Corruption Command (ACC) during 2003/04.¹⁸⁶

The Auditor General (AG) is an independent institution mandated by section 188 of the Constitution and the Public Audit Act of 2004 (which repealed the previous Auditor-General Act of 1995 and the Audit Arrangements of 1992) to audit and report on the accounts and financial management of all spheres of government and other public-funded bodies. The AG is appointed by the NA and must submit audit reports (including matters

¹⁸³ SAIIA, ISS and AICC p84

¹⁸⁴ SAIIA, ISS and AICC p85

¹⁸⁵ SAIIA, ISS and AICC p84

¹⁸⁶ ICD Submission to Parliament

of accountability) to the relevant national or provincial legislatures. The AG has experienced difficulties in executing aspects of its mandate, due partially to capacity problems in various departments and government structures. Observers have also questioned the impartiality of the AG, specifically in relation to the investigation by the Joint Investigations Team (JIT) (comprising the AG, the PP and the National Director of Public Prosecutions) into the Strategic Defence Procurement Package (or arms deal).¹⁸⁷

The various parliamentary committees, and particularly those dealing with ethics and public accounts, are also regarded as playing an important role in anti-corruption efforts. The public accounts committees, for example, are responsible for reviewing and monitoring government expenditure. They do this mostly through scrutinising the A-G's reports and questioning government action. Public confidence in the Standing Committee on Public Accounts (SCOPA) has reportedly been compromised due to suspected political interference.¹⁸⁸

The office of the Public Protector (PP) is an independent institution established and mandated by section 182 of the Constitution and the Public Protector Act of 1994, "to investigate any conduct in state affairs or in the public administration in any sphere of government that is alleged or suspected to be improper or to result in any impropriety or prejudice; report on that conduct; and take appropriate remedial action". The PP is appointed by the President, on the basis of a recommendation by Parliament, for a non-renewable period of seven years and may only be removed by a two-thirds majority of the NA. The PP has received a high number and variety of complaints with 48 017 processed from 1995 to 2001 but capacity constraints have led to a substantial backlog.¹⁸⁹ The PP has been criticised by various groups for, on occasion, appearing to act in favour of the ruling party.¹⁹⁰

¹⁸⁷ SAIIA, ISS and AICC p97

¹⁸⁸ SAIIA, ISS and AICC p88, see case study on SCOPA and the Arms Deal)

¹⁸⁹ SAIIA, ISS and AICC p95

¹⁹⁰ SAIIA, ISS and AICC p95; MISA p 3 (s7)

Lastly, as noted by various stakeholders, civil society and the media also play an important role in combating corruption.¹⁹¹ Research conducted for the SAIIA, ISS and the AICC suggests that: “within the South African context, official government processes uncover about 60% of corruption in state structures, civil society uncovers about 18% and investigative journalism is responsible for bringing to light about 8% of state corruption. While journalism’s contribution may seem small, the media often unearth politically sensitive cases otherwise left untouched.”¹⁹²

Generally, stakeholders have suggested that the capacity (and in some cases the accountability) of the anti-corruption institutions have not been sufficient. The PSC notes that anti-corruption agencies have variable levels of capacity and are often seriously under resourced. In addition, concerns over departmental anti-corruption infrastructure and capacity – with only 67% meeting the requirements set out in the National Anti-Corruption Strategy – are also well documented. Stakeholders have further commented that coordination between the anti-corruption agencies requires attention¹⁹³: the alignment the National Anti-Corruption Strategy with departmental strategies and the establishment of a single anti-corruption were two specific recommendations in this regard¹⁹⁴. Lastly, internal monitoring and checks within these agencies has generated concern.

Major cases of alleged corruption over the past five years¹⁹⁵:

“Travelgate”: In 2002 allegations surfaced of widespread abuse by Members of Parliament and various travel agencies of Parliament’s travel voucher system. To date,

¹⁹¹ SAIIA, ISS and AICC p102; MISA; SANCO p 12

¹⁹² Transparency International 2005 as cited by SAIIA, ISS, and AICCp102

¹⁹³ Parliament APRM response

¹⁹⁴ SAIIA, ISS and AICC p73

¹⁹⁵ There was substantial disagreement amongst stakeholders regarding the inclusion of ongoing and alleged corruption trials in the APRM technical and Final Reports, particularly with regard to the upcoming trial of former deputy President Zacob Zuma who was removed from office following a court finding of a “generally corrupt relationship” between Zuma and his financial advisor. The Questionnaire (Objective Six; Question Two, Indicator (ii)) asks for “details of the major cases of alleged corruption prosecuted and disciplinary action taken over the past five years”. Due to this disagreement only examples of major trials that have been finalized have been included.

five Members have resigned after admitting fraud and entering into plea-agreements with the state, with a further 21 (some former Members) having appeared in court. The cost of the abuse is estimated at around R24 million.

Tony Yengeni: In 2003 Tony Yengeni, former Chief Whip for the African National Congress, was found guilty of defrauding Parliament and sentenced to four year imprisonment. The charge related to his failure to disclose a considerable discount on a luxury motor-vehicle purchased in 1998. In a written plea explanation handed up to Pretoria's Commercial Crimes Court, Yengeni admitted he acted in breach of his public duties and with the intent to defraud Parliament.

OBJECTIVE SEVEN: THE PROMOTION AND PROTECTION OF THE RIGHTS OF WOMEN

Question One: What measures have been taken to promote and protect the rights of women in the country?

The South African government has acceded to a number of international instruments that protect and promote the rights of women. At the international level, these include:

- Beijing Platform for Action (BPFA), adopted at the 4th World Conference on Women in Beijing (September, 1995);
- Beijing Plus Five, New York (June, 2000);
- Declaration on the Elimination of Violence Against Women (1993);
- International Conference on Population and Development (ICPD), Cairo (1994);
- ICPD Plus Five, New York (1999);
- UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (ratified without reservation 1995/7) and Optional Protocol to CEDAW (signed in 2005);
- UN Declaration on the Elimination of Violence Against Women (1994);
- UN Millennium Declaration, Millennium Summit, New York (September, 2000);
- UN Security Council Resolution 1325 on Women, Peace and Security (October, 2000);
- Vienna Declaration on Women's Human Rights (June, 1993);
- World Social Summit for Social Development, Copenhagen (March, 1995);
- World Social Summit Plus Five (2000).¹⁹⁶

Additional instruments at the sub-regional and regional levels include:

¹⁹⁶ The Presidency pp 19-20

- African Charter on the Rights and Welfare of the Child by the Organisation for African Unity, Addis Ababa (1990);
- African Union Head of States' Solemn Declaration on Gender Equality in Africa (July, 2004);
- Dakar Declaration, adopted by the African Platform for Action at the 5th Regional Conference on Women in Dakar (1994);
- Declaration by Heads of State of Government of the SADC on Gender and Development, and its Addendum on the Prevention and Eradication of Violence Against Women and Children (1997);
- NEPAD (October, 2001);
- Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (signed in 2004);
- Regional Plan of Action adopted at the 6th Regional Conference on Women in Addis Ababa (1999);¹⁹⁷
- SADC Heads of State Declaration on Gender and Development (2005).¹⁹⁸

At the national level, the South African government has established a comprehensive National Gender Machinery, which comprises “an integrated package” of structures within state, civil society and statutory bodies that promote gender equality. These include, according to institution/sector:

- **National Executive:** Office on the Status of Women (OSW); Gender Focal Points;
- **Legislative:** Joint Monitoring Committee on the Improvement to the Quality of Life and Status of Women;
- **Statutory bodies:** CGE;
- **Civil society:** Non-governmental and community-based organisations.¹⁹⁹

¹⁹⁷ The Presidency pp 19-20

¹⁹⁸ The Presidency pp 19-20

¹⁹⁹ Parliament: OSW Briefing pp 10-11; COSATU Gender p 35

At the provincial level, OSW structures are located within the Premiers' offices in eight of the nine provinces, and these parallel national structures and co-ordinate with provincial Gender Focal Points, the provincial CGE, the provincial legislature and civil society organisations. At the local level, the National Policy Framework for Women's Empowerment and Gender Equality also recommends the establishment of gender units in offices of the mayor or chief executive officer, as well as a council gender committee or task team.²⁰⁰

The OSW operates programmes in policy, gender mainstreaming, planning and co-ordination, advocacy, capacity-building and international liaison/networking. With regard to policy, priority is given to poverty eradication, economic participation, ending violence against women and children, capacity-building and skills development, and health. The OSW has contributed to drafting a training manual for public sector managers on gender mainstreaming.²⁰¹

Coordination for the National Gender Machinery is effected through the National Gender Policy Framework, which is founded on the following goals:

- Achieving equality for women as participants, decision-makers and beneficiaries in the political, social, economic and cultural spheres of life;
- Prioritising the needs of women who benefited least from the system of apartheid; and
- Transforming all national, provincial and local institutions by mainstreaming and integrating issues of women's empowerment and gender equality into their work. These include institutions of government, such as national departments, provincial administrators, local structures, parastatals and public entities, as well as independent statutory organisations, the private sector, the labour movement and civil society.

²⁰⁰ Parliament: OSW Briefing p 17

²⁰¹ Parliament: OSW Briefing pp 25-27

The National Gender Policy Framework aims to achieve equality of opportunity in terms of access to, and share of, employment opportunities, services and resources, as well as in treatment by employers and service providers.²⁰² Cabinet is mandated through the National Gender Policy Framework to meet at least once a year to define national gender programmes, and the National Gender Machinery meets approximately once every two months.²⁰³

The National Gender Policy Framework is supported by a number of legal provisions articulating and guaranteeing the rights of women in the country, foremost of which is the Constitution (1996)²⁰⁴ through the Bill of Rights (chapter 2). The state institutions supporting constitutional democracy established in chapter 9 of the Constitution include the CGE, which was effected through an Act of the same name (Act 39 of 1996). The promotion and empowerment of women in the workplace is guided by the White Paper on Affirmative Action of 1998 and the Employment Equity Act (Act 55 of 1998), which outlines measures required for effective affirmative action (section 15).²⁰⁵ In the public service in particular, the White Paper on the Transformation of the Public Service (1995) includes targets for percentages of women in political and decision-making positions in accordance with the SADC Heads of State Declaration on Gender and Development.²⁰⁶ Discrimination on the basis of gender is also prohibited by the Promotion of Equality and the Prevention of Unfair Discrimination Act (Act 4 of 2000). In addition, some customary laws have been amended to entrench women's rights.²⁰⁷

Other national legislation and programmes impacting on women in South Africa include:

- Basic Conditions of Employment Act (75 of 1997);²⁰⁸
- Black Economic Empowerment Act (53 of 2003);²⁰⁹

²⁰² The Presidency pp 16-17; Parliament: OSW Briefing pp 10-11

²⁰³ Parliament: OSW Briefing p 27

²⁰⁴ PSC pp 17-18

²⁰⁵ PSC pp 17-18; COSATU Gender pp 31-32

²⁰⁶ Parliament's APRM response p. 38

²⁰⁷ North West Provincial Consultative Report p 29.

²⁰⁸ Western Cape Provincial Consultative Report p 96.

- A Cabinet memorandum to establish the OSW in the presidency, and Gender Focal Points in national departments (No 3 of 1996, dated 27, June);
- Choice of Termination of Pregnancy Act (92 of 1996);
- Domestic Violence Act (116 of 1998);²¹⁰
- Domestic Worker Sectoral Determination;²¹¹
- Labour Relations Act (66 of 1995);
- Maintenance Act (99 of 1998);²¹²
- National Gender Policy Framework on Gender Equality and Women's Empowerment, adopted by Cabinet in December 2000;²¹³
- National Programme of Action on Women's Empowerment and Gender Equality 2005-2015 (Draft);²¹⁴
- Recognition of Customary Marriages Act (120 of 1998);
- Skills Development Act (97 of 1998);
- South African Citizenship Act (88 of 1995);
- Unemployment Insurance Contributions Act (4 of 2000).

South Africa is also in the process of legislative reform in the area of violence against women and Parliament is deliberating on both the Compulsory HIV Testing of Alleged Sexual Offenders Bill (B10 of 2003) and the Criminal Law (Sexual Offences) Amendment Bill (B50 of 2003).²¹⁵

Additional policy and programming exists within each of the nine provinces. For example, the Gauteng provincial government has developed a Gender Policy Framework and a Strategy to Prevent Violence Against Women and Children.²¹⁶

²⁰⁹ Western Cape Provincial Consultative Report p 55.

²¹⁰ SAPS p 19-21

²¹¹ COSATU pp 19-20

²¹² North West Provincial Consultative Report p 29.

²¹³ Parliament: OSW briefing, p 15.

²¹⁴ Parliament: OSW briefing, p 28

²¹⁵ Parliament's APRM response p. 37

²¹⁶ Gauteng Provincial Consultative Report, p. 26.

In terms of mechanisms enforcing the rights of women, the Justice, Crime Prevention and Security Cluster Departments have prioritised addressing crimes against women and children, including rape, domestic violence, assault and child abuse.²¹⁷ The SAPS has specifically developed the Crimes Against Women and Children Strategy that aims to reduce crimes against women and children and ensure proper investigation of sexual offences through the following initiatives: the Anti-Rape Strategy; training and implementation of the Domestic Violence Act (1998) in line with the interdepartmental Domestic Violence Programme; a community-based Victim Empowerment Programme; the Youth Crime Prevention Capacity-Building Programme; the Prevention of Violence Programme; reactive measures taken by investigating officers in sexual offences cases; and the Conversations with Women Initiative coinciding with the national 16 Days of Activism on Violence Against Women and Children campaign.²¹⁸ Sexual Offences Courts, as well as Family Court Centres dealing with cases on maintenance, children and domestic violence, have also been established, as well as a Sexual Offences and Community Affairs Unit within the NPA.²¹⁹ A number of centres offering trauma, victim, and medico-legal support have also been established, and anti-retroviral (ARV) therapy is now available to rape survivors.²²⁰

Extensive services for women's health care, and reproductive and sexual health care in particular, have been introduced, including programmes to prevent teenage pregnancy and HIV/AIDS transmission, and to support and care for people infected and affected by HIV/AIDS.²²¹

Educational programmes have been developed to support female learners in reaching their full potential, with particular focus on mathematics, science and technology, as well as human rights education, life skills and HIV/AIDS awareness. The government aims to develop women managers, teachers and education officials, and bursary schemes exist to

²¹⁷ SAPS pp 19-21

²¹⁸ SAPS pp 19-21

²¹⁹ Parliament's APRM response p. 38

²²⁰ Gauteng Provincial Consultative Report, p 17; 29

²²¹ Gauteng Provincial Consultative Report, p 28

support students from disadvantaged communities, in particular women, in pursuing tertiary education.²²²

In terms of economic empowerment, women have been targeted in programmes to develop and maintain infrastructure, and also head many of the households benefiting from government housing subsidies. Programmes are also in place to support women in business and enterprise, in both the informal and formal sectors.²²³ The National Economic Development and Labour Council (NEDLAC) has implemented a Code of Good Practice in Sexual Harassment, which addresses cases of sexual harassment and violence in the workplace. COSATU has also conducted research and training on sexual harassment in the workplace and developed a policy of good practice.²²⁴

The Department of Land Affairs has also prioritised women in policies, programming and legislation on access to land. The Land Reform Gender Policy Framework makes provision for the participation of women in the planning and implementation of land reform projects and gender sensitive indicators are being developed to monitor progress in delivery.²²⁵ The Land Redistribution for Agricultural Development (LRAD) programme allows for individual applicants, meaning that women are able to apply for land with people other than members of their own households. LRAD specifies that not less than one-third of land transferred should accrue to women, and to date 34.7% of projects are driven by women.²²⁶ The Communal Land Rights Act (11 of 2004) also ensures the right to gender equity in the allocation, ownership and use of land in communal areas, and legislates tenure rights irrespective of gender. The Act also prescribes a minimum percentage of women members in land administration structures.

General improvements to the rights of women that reflect effective gender equality and mainstreaming include increases in the numbers of women in key positions and management; access to opportunities; economic empowerment; affirmative action and

²²² Gauteng Provincial Consultative Report, p 28

²²³ Gauteng Provincial Consultative Report, p 29-30

²²⁴ COSATU Gender pp 34-35

²²⁵ Department of Land Affairs pp 3-4

²²⁶ Department of Land Affairs p 4

preferential procurement; awareness of women's rights and sexual rights; measures to end gender violence; and service delivery.²²⁷ Many South Africans also feel that the Employment Equity Act has "levelled the playing field" in terms of equal access to jobs²²⁸ and women feel that adequate supports are in place to ensure that they can participate fully in South African society.²²⁹ These advances are supported through a number of awareness campaigns, for example, National Women's Day (August 9), the national 16 Days of Activism on Violence Against Women and Children campaign, Pan-African Women's Day and Rural Women's Day.

With regard to combating violence against women, 33 693 members of the SAPS have been trained in victim empowerment.²³⁰ Forensic nurses and other role-players have also received training.²³¹ The Victim Empowerment Programme is operational at 307 police stations, with a total of 3 300 volunteers participating. Also, victim-friendly facilities have been established at high-crime stations.²³²

However, South Africa still faces the challenges of inadequate capacity to mainstream gender equality, combat entrenched gender inequality and discrimination, and increase awareness.²³³ Effective gender mainstreaming requires budgeting initiatives and expenditure analyses, institutionalising gender issues in government and engendering human resource policies.²³⁴

Shortfalls in the promotion and protection of the rights of women include, in the broadest terms, a continued lack of awareness and the lack of a drive to address societal perceptions. At the institutional level, women remain under-represented in key positions in both the public and private sectors. Further, women still have limited access to some

²²⁷ North West Provincial Consultative Report p 29; Western Cape Provincial Consultative Report p 56, 98

²²⁸ Free State Provincial Consultative Report p 32

²²⁹ Free State Provincial Consultative Report p. 19

²³⁰ SAPS pp 19-21

²³¹ Gauteng Provincial Consultative Report, p. 17

²³² SAPS pp 19-21

²³³ North West Provincial Consultative Report p 31; Parliament's APRM response p 40; Gauteng Provincial Consultative Report, p 27; Northern Cape Provincial Consultative Report p 6; COSATU Gender p 35, HSRC Report p12.

²³⁴ Gauteng Provincial Consultative Report, p 27; COSATU Gender p 36

basic services, educational and employment opportunities, assets such as land, as well as to sexual and reproductive health care.²³⁵ This is particularly pronounced in rural and former “homeland” areas.²³⁶ HIV/AIDS prevalence is high across South Africa, and women also bear a disproportionate burden for people with HIV/AIDS.²³⁷ Improvements to the lives of people in rural communities, and women in particular, also require more effective municipalities.²³⁸

A key challenge is ensuring that women effectively participate in the mainstream economy.²³⁹ In spite of legislation protecting women in the workplace,²⁴⁰ many still face higher unemployment, lower income from work, limited opportunities for training and promotions, and higher concentrations in poorly paying occupations such as domestic work.²⁴¹ For example, in 2003 African women constituted 42% of the labour force, but only 30% of the employed and 51% of the unemployed. In the same year, two-thirds of black women earned less than R1 000 per month compared to only 3% of white men. Five percent of black women were employed as managers and senior professionals, compared to 33% of white men.²⁴² Many women work in the informal or “second economy” but limited support is available for small and micro enterprises in this sector.²⁴³ Women are also less likely to work in unionised sectors, making them more vulnerable to labour law violations.²⁴⁴ Government policy enforcing labour market flexibility, such as the Growth, Employment and Redistribution (GEAR) programme, may also perpetuate poor working conditions for vulnerable women.²⁴⁵

²³⁵ North West Provincial Consultative Report p 29-31; The Presidency p 20-21 Parliament’s APRM response p 40; Gauteng Provincial Consultative Report pp 27-28; Free State Provincial Consultative Report p 32; Western Cape Provincial Consultative Report p 98; COSATU Gender p 4, 19

²³⁶ Northern Cape Provincial Consultative Report p 6 and addendum A; COSATU Gender p 4, 17

²³⁷ North West Provincial Consultative Report pp 29-31; The Presidency p 20-21; Parliament’s APRM response p 40; Gauteng Provincial Consultative Report pp 27-28; COSATU Gender p 26

²³⁸ Parliament: NHTL, p 6

²³⁹ Western Cape Provincial Consultative Report p 56

²⁴⁰ COSATU Gender pp 2-3, pp 30-34

²⁴¹ COSATU Gender pp 2-3; COSATU pp 19-20.

²⁴² COSATU Gender pp 5-6

²⁴³ COSATU Gender pp 16, 20

²⁴⁴ COSATU Gender pp 24-25

²⁴⁵ COSATU Gender pp 5-12, 30-31

Interventions to overcome these challenges to equal economic participation may include: greater government support for light industries and services; job creation; increased enforcement of labour legislation in non-unionised sectors; reviews of the effectiveness of the Employment Equity, Skills Development and Broad-Based Black Economic Empowerment Acts; and policies for the advancement of women in the economy that increase access to productive assets, skills and education, housing and infrastructure.²⁴⁶ A number of weaknesses in current legislation also need to be addressed, including the negative impacts of casualisation and retrenchments, non-compliance with legislation, low wages (including the minimum wage), promoting and increasing access to employment benefits, and ensuring that employment equity does not reinforce existing inequalities.²⁴⁷

The Poverty Relief Programme previously operated by the Department of Social Development, which prioritised women, has been replaced by the Extended Public Works Programme and there is concern over beneficiaries of projects supported by this programme.²⁴⁸ The government should also undertake a review of the effectiveness of anti-poverty measures at the household level.²⁴⁹

Women and girls are still victims of human trafficking as well as domestic violence and abuse, which also impacts on the quality of family and community life.²⁵⁰ One recommended strategy would be a review of existing programmes and policies to determine appropriateness, levels of access and capacity.²⁵¹ Some government services, such as one-stop centres, have minimal impact on crime against women and children in some cases. Additional interventions should include educating parents to take greater responsibility for their children, providing more comprehensive sex education in schools, broadening the 16 Days of Activism on Violence Against Women and Children

²⁴⁶ COSATU Gender pp 27-30

²⁴⁷ COSATU Gender pp 28-34

²⁴⁸ South African Older Person's Forum pp 7-8

²⁴⁹ COSATU Gender p 27

²⁵⁰ Parliament's APRM response p 40; SANGOCO p 20; Parliament: SANGOCO p 3; SAHRC p 16; Free State Provincial Consultative Report p 15; Northern Cape Provincial Consultative Report Addendum A p 3; Northern Cape Provincial Consultative Report p 6

²⁵¹ Parliament's APRM response p 40; SANGOCO p 20; Parliament: SANGOCO p 3; SAHRC p 16

campaign, and raising the profile of gender desks.²⁵² Communicating with the lowest income groups and promoting the rights of women in these groups should also take high priority.²⁵³

In keeping with the Millennium Development Goals (MDGs), women and girls should be prioritised in education policy and programming in order to achieve gender equity.²⁵⁴

Other possible improvements may include strengthening the integrated approach for promoting the rights of women, as well as human rights awareness measures within the state and civil society. Agenda-setting and prioritisation on women's rights need to include stakeholders such as experts and researchers, and policy implementation and monitoring should be strengthened, particularly through improved capacity amongst officials and data disaggregated by gender. Further, women's rights should be enshrined in all sector policies and legislation and equality laws, codes of practice and administrative policies should be accessible to all, including the visually impaired and people who are unable to read.²⁵⁵

Chapter 9 institutions should form partnerships to promote women's rights at the grassroots level and the CGE and the OSW in particular should co-ordinate departmental mechanisms to combat gender inequality and violence and intensify programming in rural areas.²⁵⁶ Chapter 9 institutions would also be strengthened by prosecutorial powers.²⁵⁷

Citizens canvassed through the CDW process noted measures and programmes put in place to enable women in to participate fully in society, including provisions for equity in the workplace, quotas for the representation of women in political office, protections from abuse and violence, and policies and programmes for victim support. Some CDW

²⁵² Gauteng Provincial Consultative Report p 17

²⁵³ Gauteng Provincial Consultative Report p 18

²⁵⁴ SANGOCO p. 20; COSATU Gender p 5

²⁵⁵ The Presidency p 20-21

²⁵⁶ Parliament's APRM response p. 40

²⁵⁷ Gauteng Provincial Consultative Report, p 25

reports also cited positively the presence of women in senior government positions, including the Deputy President, Ministers and Premiers. Citizens also pointed out, however, that domestic violence and the abuse of women's rights are ongoing challenges, and more measures should be done to promote equality and overcome traditional gender roles.

In contrast, some South Africans feel too much has already been done to promote and protect the rights of women.²⁵⁸

South Africa has established a number of independent, state-funded constitutional institutions, statutory bodies and administrative mechanisms to monitor the promotion and protection of human rights, including the rights of women. These are the CGE; the SAHRC; the PP and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.²⁵⁹

With regard to labour practice, South Africa has also established the Commission for Employment Equity (CEE) and the Commission for Conciliation, Mediation and Arbitration (CCMA).²⁶⁰ Affirmative action and preferential procurement measures are ongoing to increase women's representation in the public and private sectors.²⁶¹

In terms of justice and policing, the NPA has led measures to implement an Anti-Rape Strategy Framework within the Departments of Justice, Correctional Services, Social Development, Health, Education, and Safety and Security that focuses on prevention and support to victims. The Department of Correctional Services has developed an internal Gender Policy and Implementation Plan and a dedicated programme exists to ensure that gender issues are taken into account in all policies and programmes. A new programme for training men on gender mainstreaming is underway within the Department.²⁶²

²⁵⁸ Northern Cape Provincial Consultative Report p 6

²⁵⁹ The Presidency p 19

²⁶⁰ The Presidency p 19

²⁶¹ North West Provincial Consultative Report p 30

²⁶² Department of Correctional Services p 9

Crime prevention programmes are informed by crime analysis and input from stakeholders and address the links between alcohol and violent crime, as well as risk, causal and contributing factors. Sexual Offences Courts with specialised prosecutors have been established, which are linked with the Thutuzela Care Centres for victims of rape and sexual offences, as well as 62 Family Violence, Child Protection and Sexual Offences Investigative Units within the SAPS. Efforts to empower victims of sexual offences include an implementation plan for the Service Charter for Victims (2004) led by the Department of Justice; and a national Victim Empowerment Policy finalised by the Department of Social Development. Through the SAPS Victim Empowerment Programme, 14 police stations were helped to improve facilities for victims and 217 police officers received training. An additional 501 police officers have been trained through the new Domestic Violence Learning Programme.²⁶³

In the agricultural sector, the Western Cape has budgeted for training programmes for farm workers in the province, including women and their children, as well as for projects on the prevention of Foetal Alcohol Syndrome. Agricultural policies incorporate supports to empower women.²⁶⁴

More broadly, public awareness campaigns and drives continue to promote awareness of women's rights, particularly during the 16 Days of Activism on Violence Against Women and Children, Women's Month (August) and Women's Day (August 9).²⁶⁵ South African Women in Dialogue, which operates at local and provincial levels, provides a forum to ensure that women's voices are heard.²⁶⁶

Within the traditionally male-dominated Department of Correctional Services representation of women in senior management is 23%, and is being increased rapidly at lower levels.²⁶⁷

²⁶³ SAPS pp 28-29; North West Provincial Consultative Report p 30

²⁶⁴ Western Cape Provincial Consultative Report p 91-92

²⁶⁵ North West Provincial Consultative Report p 30; SAPS pp 28-29

²⁶⁶ North West Provincial Consultative Report p 30; Gauteng Provincial Consultative Report, p 12

²⁶⁷ Department of Correctional Services p 9

Within the public service, across all provinces, only 25% of staff in senior management positions are women, falling short of the 30% target. However, numbers vary according to province. Further, the majority of women who hold senior positions are black. Across all national departments, 28.7% of senior management staff are women, as of April 2005. The PSC is conducting research on gender mainstreaming initiatives across government, which assesses employment policies, practices and the working environment, and will identify barriers contributing to inequality in the public service. This is in keeping with the BPFA (1995), to which South Africa is a signatory.²⁶⁸

Question Two: What measures have been put in place to enhance participation of women in society?

A number of legal and policy measures have been implemented to enhance the participation of women in South African society, including clear targets in political and decision-making positions. The White Paper on the Transformation of the Public Service (1995) and the White Paper on Affirmative Action in the Public Service (1998) specify a minimum of 30% women in management in the public service. South Africa also signed the SADC Heads of State Declaration on Gender and Development in 1997, which also set a target of 30% women in political and decision-making positions by 2005. In 2005, this target was raised to 50%, and as a result the Ministry for Public Services and Administration is undertaking a review of the 30% quotas and is developing a Gender and Governance Programme with a 50% target for women in management.²⁶⁹

The Employment Equity Act of 1998 also requires employers to ensure that appointments reflect the demography of the country and commit to human resource plans with targets and timeframes, particularly within management.²⁷⁰ Other measures include broad-based economic empowerment initiatives and preferential procurement policies and

²⁶⁸ PSC pp 18-20

²⁶⁹ Parliament: OSW briefing p 18

²⁷⁰ Parliament: OSW briefing p 18

programmes. National reports have been issued on the status of women and policy has aimed to follow on the BPPA.²⁷¹

Representation of women in the South African government has increased and in 2005 Phumzile Mlambo-Ngcuka was appointed as the first woman deputy head of state. At the national level, women ministers and deputy ministers have increased from 12 (31.57%) in 1997 to 22 (44.89%) currently, with 12 women appointed as ministers and 10 as deputy ministers since April 2004. Nearly one-third (32.75%) of all Members of Parliament are women, including the Speaker and Deputy Speaker (representing 40% of office bearers). In 2003 the Speaker and Deputy Speaker were also women. Representation of women in Parliament has increased from 111 Members in 1997 (27.8%) to 125 Members in 2002/03 (31.3%) and 131 in 2004 (32.75%).²⁷² The representation of women in the national legislature has increased by 18% since 1997.²⁷³

There are currently 19 women (35.18%) who are Permanent Members of the NCOP, an increase from 33.3% in 2002 (18 Members) but a decrease from 37.9% (20 Members) in 2003.²⁷⁴ After the 2004 elections, four out of the nine provincial premiers were women (44.44%), which represent a 302.7% increase since 1994, indicative of the commitment of the executive to the advancement of women in decision-making positions. Also at the provincial level, women represent 32.3% of members of provincial parliaments, with seven of the nine provinces meeting the 30% quota (KwaZulu-Natal and the Western Cape both had 28.57%).²⁷⁵

As an example of participation at the provincial level, 50% of Gauteng's members of the provincial executives (five of 10) are women. Within the province, women make up 71% of the provincial public service and 57% of black employees. Women also make up 30% of heads of departments, 30% of local government councillors and 26% of municipal

²⁷¹ North West Provincial Consultative Report p 30

²⁷² The Presidency pp 22-28

²⁷³ The Presidency pp 22-28; Parliament: OSW briefing, p 19

²⁷⁴ The Presidency pp 22-28

²⁷⁵ The Presidency pp 22-28

employees in Gauteng overall. The province has also committed itself to reaching a target of 50% women in senior management by 2009.²⁷⁶

Within local government, the Local Government Municipal Systems Act (No 32 of 2000) promotes participatory government and requires municipalities to take the circumstances of women, as well as youth and people with disabilities, into account during planning, while the Local Government Municipal Structures Act (No 117 of 1998) makes provision for the equal representation of women in party lists and ward committees. The South African Local Government Association (SALGA) also formed a Gender Working Group in 1996 to ensure the presence of gender issues in local government. Further, local government departments within provinces such as the Western Cape have developed individual gender strategies.²⁷⁷ In 2003, 28% of local government councillors were women, an increase from 16.9% the previous year.²⁷⁸

Within the judiciary, 28 of 207 (13.52%) of the country's judges are women, one of whom is a deputy judge president. This represents an increase since prior to 1994 when all judges except two white women and one black male were white males. In 2004, the South African Chapter of the International Association of Women Judges was established. It will place women's issues on the agenda of transforming the judiciary. South African woman judge Navi Pillay has also been appointed to the International Criminal Court. Women occupy 632 magistrate positions (35%), which include 413 ordinary magistrates (31%), 31 senior positions (20%), 50 regional positions (18%) and six (25%) chief magistrates. An additional four out of 10 regional court presidents are women.²⁷⁹

Increases in the representation of women in other government departments and sectors include:

²⁷⁶ Gauteng Provincial Consultative Report, pp 12; 22; 30

²⁷⁷ Western Cape Provincial Consultative Report p 97

²⁷⁸ The Presidency pp 22-28p; Parliament: OSW briefing, p 21

²⁷⁹ The Presidency pp 22-28; Parliament: OSW briefing, pp 23-24

- **Foreign missions:** 229 (40.25%) of members of staff are women, including 23 (24.2%) ambassadors and high commissioners. This represents an increase from eight women heads of missions (17.4%) in 2001;²⁸⁰
- **Public Service:** Across all levels in 2003, 52.5% of public servants were women.²⁸¹ The percentage of women managers has increased from 8% in 1995 to 27% in 2004, just short of the 30% target set in the White Paper on the Transformation of the Public Service (1995).²⁸² Women also constituted 22.1% of senior management;
- **State-owned Enterprises:** Women constitute 23.5% of board members and 25% of senior management;²⁸³
- **Armed Forces:** 12% of colonels were women in 2003, an increase from 4.06% in 2002, and two major generals and eight brigadier generals are women;
- **Police Services:** Women make up one out of five deputy national commissioners, four out of 29 deputy provincial commissioners (13.8%), three out of 11 divisional commissioners (27.3%), 20 of 120 assistant commissioners (16.7%) and 76 of 450 directors (16.9%);
- **Independent Electoral Commission (IEC):** 62% of staff is women, including the chairperson and the chief electoral officer.²⁸⁴

In addition, of the 10 main political parties in South Africa, seven had achieved at least 30% of women on party lists by 2004. The African National Congress (ANC) has initiated a quota of 30% representation of women within the party.²⁸⁵

The Traditional Leadership and Governance Framework Act (41 of 2003) requires that women constitute at least 30% of the NHTL, and provincial legislation provides mechanisms to allow a sufficient number of women to be represented in the provincial

²⁸⁰ The Presidency pp 22-28; Parliament: OSW briefing, p. 21

²⁸¹ Western Cape Provincial Consultative Report p 47

²⁸² The Presidency pp 22-28

²⁸³ Western Cape Provincial Consultative Report p 47

²⁸⁴ The Presidency pp 22-28; Parliament: OSW briefing, p 24

²⁸⁵ The Presidency pp 22-28; Parliament: OSW briefing, p 24

house and to be elected to the national house. The Act also requires that the number of women elected should be representative of the traditional leaders within a district or municipality.²⁸⁶ Two women have been elected as chairpersons of the NHTL and provincial houses have been encouraged to organise capacity-building conferences and elect women. Traditional leaders have also been encouraged to appoint women in traditional courts and to include higher proportions of women than the one-third required in traditional councils.²⁸⁷

The South African Women in Corporate Leadership Census of 2004 showed that women are under-represented in corporate leadership, holding only 7.1% of board directorships and 3% of board chairs.²⁸⁸ While 11.8% of boards have two or more women directors, 60% have none at all. Women constitute only 1.9% of chief executive officers and 14.7% of executive managers. A 2005 survey on business and leadership found that women constituted 10.7% of corporate directors and 19.8% of executive managers.²⁸⁹ Amongst companies listed on the Johannesburg Stock Exchange, 5.9% of directors are women compared to 26.8% in state-owned enterprises. Amongst JSE-listed companies, only 5.8% had one quarter or more women occupying director positions, compared to 52.9% amongst state-owned enterprises.²⁹⁰

Women also participate extensively in civil society organisations and initiatives, including school governing bodies, community policing forums, and HIV/AIDS awareness and home-based care groups.²⁹¹

Within the public service in particular, an affirmative action report has confirmed overall representation of women at 33% nationally and 63.3% at provincial level, exceeding the 30% target set in the White Paper on the Transformation of the Public Service. However, greater representation of women is required at middle and senior management level.

²⁸⁶ The Presidency pp 22-28

²⁸⁷ Parliament's APRM response p 39; Parliament: NHTL, pp 6-7

²⁸⁸ The Presidency pp 22-28; Parliament: OSW briefing, p 24

²⁸⁹ Western Cape Provincial Consultative Report p 79

²⁹⁰ The Presidency pp 22-28; Parliament: OSW briefing, p 24

²⁹¹ Gauteng Provincial Consultative Report, p 30

Further, existing policies and legislation promoting the rights of women should be evaluated in terms of impact and effectiveness, with particular reference to supporting women to overcome social constraints and balance dual responsibilities in the workplace and at home.²⁹²

Representation of women in the private sector and in the government remains inadequate, and some feel that the target of 50% women in Parliament is not enough.²⁹³ Particular challenges include under-representation in provincial and local government.²⁹⁴ Representation of women across public sector management also remains uneven.²⁹⁵

The White Paper on the Transformation of the Public Service will be revised in accordance with the SADC Heads of State Declaration on Gender and Development, which increased the minimum target of 30% women in political and decision-making positions to 50% in 2005.²⁹⁶

In 1998, the OSW conducted an audit of systems in national departments to facilitate effective gender mainstreaming, the results of which formed the basis for the National Gender Policy Framework on Gender Equality and Women's Empowerment, adopted by Cabinet in December 2000. Ongoing audits revealed that, of 29 departments that responded, nine (31.03%) had Gender Focal Points appointed at the level mandated by the Gender Policy Framework in 2003, indicating compliance amongst fewer than one-third of departments. For 16 departments the Gender Focal Points referred to an individual, and for the remaining 13 to a unit. Nine departments reported that they had Gender Focal Points at the deputy-director level and six at the assistant director level. Fifteen departments had formally appointed Gender Focal Points, or individuals whose contract referred to their function as that of a Gender Focal Point, and 11 departments assess Gender Focal Points for their gender management work. Six departments had three or fewer people in Gender Focal Point units and two had more than five people. Sixteen

²⁹² PSC p 18

²⁹³ Eastern Cape Provincial Consultative Report pp19; 115

²⁹⁴ HSRC pp 5-6

²⁹⁵ The Presidency p 28

²⁹⁶ Parliament's APRM response p 38

departments indicated that Gender Focal Points report to a supervisor with gender as a key performance area. In most departments (14), Gender Focal Points carry out four or more functions beyond their gender tasks.²⁹⁷

However, while audits assess compliance with the policy framework, as well as with the BPFA, they do not assess skills amongst gender managers or resource allocation within departments. An assessment of the human resource needs required to drive the gender machinery should be undertaken to ensure effective gender mainstreaming. Also, accountability for gender mainstreaming does not formally reside anywhere in government administration, but rather amongst all officials, and as such is not considered a key output in performance agreements for government officers.²⁹⁸

Constraints on the OSW prevent it from inputting into all departmental/sector strategies and policies. Although the OSW is tasked to work with the Justice, Crime Prevention and Security Department Cluster, this is constrained by a lack of human resources and input is limited to reviews of sector reports. Non-compliance by government departments in appointing Gender Focal Points means inadequate capacity to review policies and programmes from a gender perspective, which in turn impacts on national reporting and priority-setting.²⁹⁹

Given that the burden of accountability for mainstreaming is not located formally within the public sector, there is often limited administrative authority for gender mainstreaming. The OSW, as well as Gender Focal Points, are not involved in key strategic government processes, such as reviewing the MDGs. While there has been no gendered analysis of the Government Plan of Action at the national level, the OSW and Gender Focal Points have analysed the Plan of Action 2005-06, and this analysis has

²⁹⁷ Parliament: OSW briefing, pp 16-17

²⁹⁸ Parliament: OSW briefing, p. 17

²⁹⁹ Parliament: OSW briefing pp 25-26

contributed to the National Programme of Action on Women's Empowerment and Gender Equality 2005-2015.³⁰⁰

Meetings of the Cabinet to assess the national gender framework, as well as meetings of the National Gender Machinery, often do not interface with broader governmental planning programmes and Cabinet does not participate in the National Gender Machinery, which creates a gap.³⁰¹

Further, women's dialogue, multi-party caucuses and local ward committees need to be strengthened and, more generally, so do opportunities for women to work on issues affecting them, irrespective of their political affiliations. Overall, the government should make more resources available to fund women's movements.³⁰²

³⁰⁰ Parliament: OSW briefing pp 25-26

³⁰¹ Parliament: OSW briefing p 27

³⁰² Gauteng Provincial Consultative Report, p 12

OBJECTIVE EIGHT: PROMOTION AND PROTECTION OF THE RIGHTS OF CHILDREN AND YOUNG PERSONS

Question One: What concrete measures have been taken to promote and protect the rights of the child and young persons?

The point of departure for the promotion and protection of the rights of children and young persons is section 28 of the Constitution which defines a child as any person under the age of 18 years and guarantees rights specific to the child. These rights include basic health care and nutrition, social services, shelter, a family environment or appropriate alternative care, protection from neglect, abuse and exploitation for commercial purposes, and the right not to be detained except as a measure of last resort. Importantly, the Constitution dictates that “the child’s best interests are of paramount importance in every matter concerning the child”, in accordance with the leading international children’s rights instruments. The list below indicates other legal provisions, measures and policies that protect and promote children’s rights:

The following international instruments have been acceded to by South Africa:

- The UN Convention on the Rights of the Child
 - Optional Protocol on Children in Armed Conflict
 - Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography;
- The Convention on the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;
- The African Charter on Human and People’s Rights;
- The African Charter on the Rights and Welfare of the Child;
- The ILO Convention on the Elimination of Child Labour;
- The ILO Convention on the Worst Forms of Child Labour.

National legal provisions are listed below:

- The Constitution of South Africa
 - Section 28 guarantees rights specific to the child
 - Section 212 guarantees an enabling environment for children's rights in communities ruled by traditional leaders;
- The Child Care Act (74 of 1983);
- The Births and Deaths Registration Act (51 of 1992);
- The Guardianship Act (192 of 1993);
- The National Youth Commission Act (19 of 1996);
- The National Education Policy Act (27 of 1996);
- The Films and Publications Act (65 of 1996);
- The South African Schools Act (84 of 1996);
- The Identification Act (68 of 1997);
- The Basic Conditions of Employment Act (75 of 1997);
- The Employment Equity Act (55 of 1998);
- The Maintenance Act (99 of 1998);
- The Correctional Services Act (111 of 1998);
- The Refugees Act (130 of 1998);
- The Promotion of Access to Information Act (2 of 2000);
- The Social Assistance Act (13 of 2004);
- The Children's Bill (2003);
- The Child Justice Bill (2003);

South Africa also has in place the following national and provincial measures and policies:

- The National Policy Framework for the Advancement and Coordination of Children's Rights Delivery in South Africa (developing);
- The National Children's Rights Programme;

- Internal policies to protect children in departmental service delivery: Health, Social Development, Home Affairs, Education, the SAPS, Correctional Services, Land Affairs, Labour;
- Promotion of integrated children's rights policy implementation
 - Section 41 of the Constitution dictates co-operative government;
 - Clause 5 of the Children's Bill promotes inter-sectoral implementation of children's rights
 - Intergovernmental Relations Framework Bill (2005);
- Gauteng Programme of Action for Children.

A number of specialised protection facilities entities, and governmental bodies exist:

- ORCs;
- Social Security Grants provided to children aged one to 14;
- Department of Correctional Services Secure Care Centres for Juveniles;
- Children's Courts and Legal Aid Family Advocates;
- Trauma Centres for Child Victims of Violence;
- The SAPS Child Protection Programmes
 - Family Violence, Sexual Offences and Child Protection Units
 - Rehabilitation Programmes for Detained Children
 - Youth and School Crime Prevention Programmes.

Observers noted multiple indicators of overall improvement to the status of children and young persons in South Africa over the past five years. The government has markedly enhanced child participation in national, regional and international children's rights processes through organised youth development programmes.³⁰³ National improvements in the provision of universal access to basic services, such as water, electricity, housing, and social security grants, have helped to alleviate poverty.³⁰⁴ Additionally, improvements in the status of children and young persons can be seen in the areas of

³⁰³ The Presidency; Gauteng Provincial Consultative Report

³⁰⁴ The Presidency; Gauteng Provincial Consultative Report

protection, recognition of rights, access to education³⁰⁵ and rehabilitation programmes.³⁰⁶ More children have received foster care placements and grants or other appropriate residential care than ever before and access to early childhood development programmes has similarly increased.³⁰⁷

Despite these improvements with regard to children's rights, many challenges remain for legislators and implementing bodies in this area. Poverty and unemployment still present significant obstacles to parents in providing for their children's basic needs.³⁰⁸ Though the government has enacted legislation guaranteeing equal access to basic education and equality of opportunity for all children, disparities still exist in educational quality and performance between rich and poor communities and between urban and rural areas.³⁰⁹ High absenteeism rates among learners in rural areas³¹⁰ contribute to these disparities.

In addition, tensions between youth and elders point to the fact that respect for children's rights, especially with regard to females, is still lacking.³¹¹ The fundamental rights of disabled youth are often neglected in practice, as it remains unclear whether the Office of the Status of Disabled Persons (OSDP) or the Youth Commission is responsible for the protection of this vulnerable group of children.³¹² The number of children held in detention continues to rise despite efforts to find alternative placements for children convicted of crimes.³¹³ South Africa also has an estimated 10 000-12 000 street children. Though shelters exist to house such children temporarily, there is a growing need for an integrated government policy to address the needs of children living on the street.³¹⁴ The increasing occurrence of child-headed households in South Africa is also distinctly

³⁰⁵ Eastern Cape Provincial Consultative Report, p. 116

³⁰⁶ Submission to Parliament from the Department of Correctional Services

³⁰⁷ Gauteng Provincial Consultative Report, p 31

³⁰⁸ Submission to Parliament from the Office of the Rights of the Child: The Presidency

³⁰⁹ Parliament's APRM response pp 41-42

³¹⁰ Eastern Cape Provincial Consultative Report p 85

³¹¹ Eastern Cape Provincial Consultative Report p 116

³¹² Disability Sector in South Africa p 13

³¹³ Parliament's APRM response pp 41-42

³¹⁴ Parliament APRM response

troubling, but the government has not yet formulated an aligned strategy of intervention for this vulnerable group.³¹⁵

Observers also noted that too many cases of crimes against children, such as child abuse and exploitation for commercial purposes, still arise daily. Although there is little statistical data available with regard to child trafficking, its occurrence is increasing at a rapid rate.³¹⁶ Currently, child trafficking is not criminalised in South Africa, although the Children's Bill will enact criminal sanctions against traffickers when it becomes law. Additionally, there is a problematic level of general immorality in South African society, to which children are continuously exposed.³¹⁷

An ORC operates within the presidency and each premiership and similar bodies will be implemented in each mayoral office, with the aim of ensuring a child-centred approach to governance in all sectors of the government through co-ordination and advocacy activities. The ORCs have developed Children's Rights Focal Points to guide the policy process at all governmental levels.³¹⁸ Additionally, the government continues to focus on strengthening relationships with implementing partners in civil society in order to enhance service delivery to children. Children's Rights Parliamentary Portfolio Committees vigilantly monitor operations in this area, so as to ensure fulfilment of the constitutional mandate laid out in section 28.³¹⁹

In Gauteng province, a Provincial Youth Commission will be established in 2006 to co-ordinate, facilitate, advise and monitor the mainstreaming of youth development in the policies and programmes of the provincial government, as well as to build relations on youth issues with other youth organisations and non-governmental organisations in the province.

³¹⁵ Parliament APRM response.

³¹⁶ Molo Songololo submission to Parliament

³¹⁷ Submission from the South African Youth Council p 8

³¹⁸ The Presidency

³¹⁹ Parliament's APRM response pp 41-42

While the relevant submissions provide a useful overview of achievements and challenges with regard to children's rights, it remains necessary to address more specifically the effectiveness of particular pieces of legislation. How can the legislative framework be improved to reduce the gap between children's rights in policy and children's rights in practice? Are there statistical evaluations available that document the progress made and measures taken to sustain progress in the area of children's rights?

OBJECTIVE NINE: PROMOTION AND PROTECTION OF THE RIGHTS OF VULNERABLE GROUPS INCLUDING INTERNALLY DISPLACED PERSONS AND REFUGEES

Question One: What measures has the country taken to promote and protect the rights of vulnerable groups, including refugees, internally displaced persons and disabled persons?

South Africa has implemented a number of mechanisms to promote and protect the rights of vulnerable groups, including refugees, displaced persons and disabled persons. At the international level, these broadly include:

- The African Charter on Human and People’s Rights, (1981) (ratified 1996);
- The International Covenant on Civil and Political Rights (signed in 1994);
- The International Covenant on Economic, Social and Cultural Rights (1994);
- The International Convention on the Elimination of All Forms of Racial Discrimination (1994);
- The Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (signed in 1993);
- The World Conference Against Racism NGO Declaration (2001).

In domestic legislation, the Bill of Rights in the South African Constitution (chapter 2) prohibits discrimination against vulnerable groups on the basis of gender, age or disability, or of race, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, religion, conscience, belief, culture, language and birth.³²⁰ Further, South Africa has adopted the Promotion of Equality and Prevention of Unfair Discrimination Act 2000, which states that neither the state nor any person may unfairly discriminate

³²⁰ South African Older Person’s Forum, p. 4

against on the basis of disability. In addition to this, Employment Equity Act outlaws discrimination on the basis of disability with regard to hiring persons in the work place.

South Africa has also acceded to the following international instruments pertaining specifically to refugees:

- The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969);
- The UN Convention Relating to the Status of Refugees (1951);
- The UN Protocol Relating to the Status of Refugees (1967)³²¹

At the national level the rights of refugees are primarily legislated in the Refugees Act (130 of 1998), which includes the rights set out in the Bill of Rights. These include the right to basic health care, education and an identity document.³²² These are in the form of Section 22 Asylum-Seekers Permits and Section 24 (3)(a) Refugee Permits, but Refugee Smart Cards and Refugee Child Certificates were introduced in 2005 to improve access to services.³²³ Pertaining to refugee children, in terms of education, section 5(1) of the Schools Act (84 of 1996) prohibits schools from unfairly discriminating against learners, and the Child Care Act (74 of 1983) does not distinguish between citizens and non-citizens. The Refugee Act also specifies that children in need of care can be brought before the Children's Court and assisted in applying for asylum.³²⁴

The Department of Home Affairs continues to grant refugees asylum in South Africa, and has established a National Immigration Branch, which includes a Refugee Affairs Section. The Department has also developed a draft Counter Xenophobia Strategy and established Counter Xenophobia and Counter Corruption Units that work to prevent

³²¹ Department of Foreign Affairs pp 2-3

³²² Parliament's APRM response pp 43-44

³²³ Department of Home Affairs p. 5

³²⁴ Parliament's APRM response pp 43-44

abuse of refugees and asylum-seekers and engage with stakeholders in the sector.³²⁵ The Department has also named the successful integration of refugees into South African society as one of its objectives in the Strategic Plan Relating to Refugee Affairs in 2005/2006, and departmental communications have aimed at educating the public on human rights.³²⁶

At the international level, displaced persons are categorised in terms of Conflict-Induced, including those who migrate due to violence, war or persecution; Development-Induced, including persons compelled to move due to development-related projects such as infrastructure, mining or deforestation, or conservation parks and reserves; and Disaster-Induced, including migrants displaced by natural disasters, environmental change or human-made disasters.³²⁷

The rights of persons with disabilities are also protected by a number of international instruments that South Africa has adopted, including the Convention on the Rights and Dignity of Persons with Disabilities and the Declaration on the Rights of Disabled Persons.³²⁸ In domestic legislation, these rights are also embodied in the White Paper on an Integrated National Disability Strategy (1997) and discrimination on the grounds of disability is prohibited by the Bill of Rights and the Employment Equity Act (1998). The White Paper on the Transformation of the Public Service (1995) specifies that people with disabilities should comprise 2% of public service personnel by 2005.³²⁹ Other mechanisms protecting and promoting the rights of disabled persons include:

- Disability Day, 1st December;
- Disability grants;
- Offices of Disabled Persons in the presidency and premier's offices;

³²⁵ Department of Home Affairs p 8; 10-12

³²⁶ Department of Home Affairs p 1

³²⁷ Parliament's APRM response pp 43-44

³²⁸ Department of Foreign Affairs pp 15-16

³²⁹ PSC p 21

- Subsidised housing through the Reconstruction and Development Programme (RDP) (1994);³³⁰
- Voting days for the disabled, as well as elderly persons and pregnant women.³³¹

The IEC has also conducted public education on voters with special needs, provided written voting instructions for persons with hearing impediments, and allows visually impaired persons to bring guide dogs to polling stations and request a station official for assistance in casting a vote.³³²

Government programming for persons with disabilities focuses on prevention, early detection and intervention, as well as empowering the disabled and promoting their rights, making public services accessible, and providing assistive devices such as wheelchairs, hearing aids and spectacles. Persons with disabilities, as well as those caring for children with disabilities, are eligible for social grants, and sheltered employment and homes exist for the severely disabled. In Gauteng province alone, 69 517 individuals received disability grants as well as 4 937 parents with disabled children, as of December 2002. Many health care facilities and other public buildings are accessible to persons with disabilities.³³³

While older persons are often omitted from lists of vulnerable groups, more than 60% of older persons are women, and many disabled persons are also elderly.³³⁴ The specific rights of elderly and ageing persons are also protected through a number of international and sub-regional instruments, including:

- The African Union Decade on Disability Programme;³³⁵

³³⁰ North West Provincial Consultative Report p 32

³³¹ The Disability Sector in South Africa p 4; Northern Cape Provincial Consultative Report Addendum B p 8

³³² Gauteng Provincial Consultative Report p 10

³³³ Gauteng Provincial Consultative Report pp 36-37

³³⁴ South African Older Person's Forum pp 6-8

³³⁵ Northern Cape Provincial Consultative Report Addendum B p 16

- The African Union and Help Age International draft Policy Framework and Plan of Action on Ageing (2000) approved by South Africa in 2002;
- The Madrid Declaration and International Plan of Action on Ageing, Second World Assembly on Ageing (2002) (signed by South Africa);
- Plans of action on ageing to be developed by 2007;
- The UN Declaration on the Rights of the Elderly (Resolution 46 of 1991);
- UN Global Targets on Ageing (1996);
- The Vienna World Plan of Action on Ageing (adopted by the World Assembly on Ageing, 1982).

Government responsibility for promoting and protecting the rights of older persons lies primarily within the Department of Social Development, through the provision of old age grants and some subsidisation of housing and community services. To a lesser extent, responsibility for care falls under the Department of Health, and the Patients' Rights Charter includes provisions for special care required by older persons.³³⁶ Domestic legislation impacting on elderly persons includes:

- Adult Basic Training and Education Act (52 of 2000);
- Aged Persons Act (81 of 1967);
- Aged Persons Amendment Act (100 of 1998);
- *Batho Pele* programme;
- Criminal Law (Sexual Offences) Amendment Bill;
- Domestic Violence Act (116 of 1998);
- Housing Act (107 of 1997);
- National Plan of Action on Ageing (currently being drafted);
- Maintenance Act (99 of 1998);
- Older Persons Bill (presently before Parliament) (68 of 2003);
- Social Assistance Act (13 of 2004);

³³⁶ South African Older Persons' Forum p 5

- Social Security Agency Act (9 of 2004);³³⁷
- Social Security Agency Bill (510 of 2003).

Within the government, the Department of Correctional Services has an equity policy aimed at promoting rights and opportunities for designated groups including women and persons with disabilities.³³⁸ The SAPS also prioritises the prevention of social crime directed at women, children and other vulnerable groups, such as the elderly and disabled.³³⁹

Awareness on the rights of vulnerable persons continues to grow through public education. At the same time, some South Africans feel not enough has been done to promote and protect the rights of vulnerable persons such as refugees and persons with disabilities, as well groups including the homeless and incarcerated prisoners.³⁴⁰ A key challenge is also ensuring that vulnerable groups, including women, youth, disabled persons and rural communities participate effectively in the mainstream economy and have equal access to services, information and resources.³⁴¹ However, there is a need to ensure that policy implementation and initiatives in relation to securing the prerogatives of vulnerable groups remain even across governmental departments.

Refugees seeking asylum continue to have access to South Africa and are protected under international conventions along with displaced persons. However, xenophobia directed at foreigners remains prevalent³⁴² and many face discrimination from citizens and employers and exclusion from critical services.³⁴³ Non-citizens from other African countries in particular often face xenophobia, and may have more limited access to employment and residence permits than non-citizens from other regions.³⁴⁴ There

³³⁷ South African Older Persons' Forum pp 4-7

³³⁸ Department of Correctional Services p 10

³³⁹ SAPS p 27

³⁴⁰ Free State Provincial Consultative Report pp 20-21

³⁴¹ Western Cape Provincial Consultative Report p 56; 85'; Northern Cape Provincial Consultative Report Addendum A p 7

³⁴² Eastern Cape Provincial Consultative Report pp 17-19; Northern Cape Provincial Consultative Report Content Report p 7

³⁴³ Forced Migration Studies Programme, Wits p 10

³⁴⁴ Northern Cape Provincial Consultative Report Addendum A p1

remains a dearth of accurate information on the actual numbers of international migrants within South Africa, and as such there are often gross exaggerations of these figures.³⁴⁵

Many refugees, asylum-seekers and other non-nationals are subjected to systematic abuse by the SAPS and the Metro Police, as shown in broadcast footage of Booyens police station in Johannesburg by the SABC's Special Assignment programme on the 3rd and 6th of September, 2003.³⁴⁶ At South Africa's international borders, migrants may be discouraged from lodging claims for asylum by immigration officers demanding money or documentation; research has shown that migrants also fear detention and deportation by immigration and police officers before they are able to lodge an asylum claim and therefore may choose to cross borders through irregular means. Asylum-seekers reporting to Refugee Reception Offices also frequently experience low administrative capacity, discrimination, exploitation and abuse at the hands of private security guards, translators, and Department of Home Affairs officials.³⁴⁷

The human rights and dignity of refugees, asylum-seekers and other non-nationals are also under threat when they are detained at the privately operated Lindela Repatriation Centre where they often experience inhumane living conditions, extortion, physical abuse and detention for longer periods than legally permitted. They may also be denied access to visitors, legal representation, health care and Refugee Reception Offices where they could lay an asylum claim.³⁴⁸

The Department of Home Affairs has initiated a number of internal measures to improve service delivery, including the Turnaround Strategy (2004). However, lengthy delays in adjudicating asylum claims have meant that many non-nationals who are unlikely to qualify for refugee status apply for asylum as a means of staying in the country and may

³⁴⁵ Forced Migration Studies Programme, Wits pp 4-5

³⁴⁶ Forced Migration Studies Programme, Wits p 9

³⁴⁷ Forced Migration Studies Programme, Wits p 9

³⁴⁸ Forced Migration Studies Programme, Wits p 10; Northern Cape Provincial Consultative Report Addendum A p 4

re-apply at multiple offices when rejected, leading to further inefficiencies. There is currently a backlog of more than 100 000 asylum cases that have not been processed.³⁴⁹

Some South African citizens have questioned whether or not the country is adequately prepared to accept refugees. Others have felt that refugees and other non-citizens are treated well to the detriment of South Africans and have better access to business opportunities than citizens.³⁵⁰

Although constituting approximately 5% of the national population according to the 2001 Census, persons with disabilities also continue to face intolerance and discrimination.³⁵¹ They remain under-represented in the workplace and account for only 0.25% of public service employees overall, with only 0.08% in senior management.³⁵² Representation of persons with disabilities in national departments is only 0.47% and 0.16% in provincial administrations. Further, 26% of national departments and 45% of provincial administrators have developed and used employment equity plans to guide disability equity in the workplace, but others indicated that these were still being developed.

Recruitment policies in the public service do not focus on attracting people with disabilities and more than 65% of departments use generic recruitment methods. Only six departments contact disability-specific organisations to distribute vacancy lists. Also in the workplace, people with disabilities are discriminated against due to past educational policies and employment practices, and training opportunities are limited.³⁵³ Employment and business opportunities open to persons with disabilities are also limited, and many participate in the “second economy” rather than the first.³⁵⁴ Efforts to increase the representation of persons with disabilities should be accompanied by a commitment to genuine empowerment and to overcoming intolerance and implementing effective laws

³⁴⁹ Forced Migration Studies Programme, Wits p 10

³⁵⁰ Northern Cape Provincial Consultative Report Addendum A p 4, Content Report p 7

³⁵¹ SANGOCO p 33; Eastern Cape Provincial Consultative Report pp 17-19; Northern Cape Provincial Consultative Report Addendum A p 7, Addendum B p 14, Content Report p 7

³⁵² HSRC p 6; See also Disability Sector in South Africa p 12

³⁵³ PSC pp 21-22; SANGOCO pp 33-34

³⁵⁴ Northern Cape Provincial Consultative Report Addendum B p 11; 13

and policies.³⁵⁵ The Employment Equity Act must also be used more effectively to promote representation of persons with disabilities and more should be done within the private sector to reach disability equity targets. This could be enforced by requiring reporting on disability in annual employment equity reports submitted to the Department of Labour.³⁵⁶

Persons with disabilities are also effectively excluded from electoral participation in some cases, often due to inaccessible stations and limited resources, alongside patients in hospital and the elderly.³⁵⁷ Special voting days for the disabled are also not included in the Municipal Elections Act.³⁵⁸ Voting ballots should be made available in Braille and advertisements should include sign language as well as indigenous languages. The IEC should also employ more persons with disabilities, and monitor the voting process for persons with disabilities, who are sometimes subject to strong voting pressures from family.³⁵⁹ More generally, people with disabilities need to be included more effectively in government decision-making processes and legislation.³⁶⁰

Many persons with disabilities also have limited access to public services and facilities, including health care, police services, recreational facilities, transportation and housing.³⁶¹ In terms of health services in particular, the function of Disability Assessments has been relocated to the Department of Health, and a shortage of doctors to undertake this has caused a backlog in assessments, although the government is currently addressing this issue.³⁶²

³⁵⁵ PSC pp 21-22; SANGOCO pp 33-34; Northern Cape Provincial Consultative Report Addendum B p 11

³⁵⁶ Northern Cape Provincial Consultative Report Addendum A p 3, Addendum B pp 14-15

³⁵⁷ Gauteng Provincial Consultative Report pp 9-10; Northern Cape Provincial Consultative Report Addendum B p 8

³⁵⁸ Northern Cape Provincial Consultative Report Addendum B p 8

³⁵⁹ Gauteng Provincial Consultative Report pp 9-10; Northern Cape Provincial Consultative Report Addendum B p 8

³⁶⁰ Northern Cape Provincial Consultative Report Addendum B p 8

³⁶¹ SANGOCO p 33; Western Cape Provincial Consultative Report p 90; Northern Cape Provincial Consultative Report, Addendum B p 3, 16, Addendum A p 3, Content Report p 7

³⁶² Eastern Cape Provincial Consultative Report p 83; Western Cape Provincial Consultative Report p 85

Refugees with disabilities are often excluded from service delivery without penalty to service providers, and persons with disabilities who are incarcerated often have limited access to facilities and receive unequal treatment.³⁶³ Many public services are inaccessible to persons with disabilities and the capacity of public servants should be developed to improve communication skills and understanding.³⁶⁴ The government should also consider grants for the disabled beyond cash-only payments, such as bursaries, medical aid and transportation allowances. The government also needs to standardise departmental budgeting and expenditure to ensure that the needs of persons with disabilities are adequately met.³⁶⁵

With regard to legal protection and police services, the SAPS needs more resources to work effectively with disabled persons, including sign language proficiency, Braille facilities and accessible offices. Cases involving people with disabilities should be prioritised and there should be ongoing engagement between the SAPS and the disability sector to ensure that the rights and dignity of disabled persons are protected and monitoring mechanisms for officers failing to perform their duties are in place.³⁶⁶

Although disabled women and children are protected by South African legislation, they do not benefit equally from these protections, and there are still significant challenges to implementing the existing legislative framework. Only limited support mechanisms exist to ensure the full participation of disabled children in society. Disabled children and their parents need to be better empowered to use legislation to their own benefit. Greater resources should be allocated to changing public perceptions of disability, promoting the rights of disabled children and enabling equal participation.³⁶⁷

In terms of services for older persons, 90% of women over 60 and men over 65 receive old age grants, which contribute to poverty alleviation. However, since many older

³⁶³ Disability Sector in South Africa pp 13-14; Northern Cape Provincial Consultative Report Addendum B p 11

³⁶⁴ Northern Cape Provincial Consultative Report Addendum B p 3, 9

³⁶⁵ Northern Cape Provincial Consultative Report Addendum B p 12

³⁶⁶ Gauteng Provincial Consultative Report, p 17

³⁶⁷ Northern Cape Provincial Consultative Report Addendum B p 3; 6-7, 10

persons live in multi-generational households and may care for grandchildren, they may get little personal benefit from pensions or grants.³⁶⁸ Budgets for the care of older persons have also declined over the past seven years and 78% of existing expenditure is used towards housing subsidies.³⁶⁹ At the same time, more than 25% of older persons live in informal housing, 20% have no access to piped water, 14% have no toilets and 50% have no electricity for cooking. Housing subsidies through the Housing Act (107 of 1997) are also unavailable to single older persons without dependents. More than 60% of older persons are women, who are more likely to be widowed and less likely to have private pensions than men.³⁷⁰

Surveys have shown that 18% of South African households are headed by older persons who are also increasingly care-givers: a sample of older persons in Mpumalanga in 2004 found that 9% were caring for an adult, 46% for a child over six and 20% for a child under six, on a full-time basis amongst more than 80% of respondents.³⁷¹ Of those sampled, 96% received no payment for care and 66% reported having moderate or severe difficulties.³⁷²

While older persons make up 7.5% of the South African population, they are often amongst the least educated and located in rural areas. The 2001 Census showed that 42% of persons over 60 had no education. The survey in Mpumalanga in 2004 found that 79% could not read basic print and 70% could not write their names.³⁷³ Older persons are therefore often overlooked and sidelined in educational and employment opportunities and in job recruitment. Employment policies also continue to favour retirement at the age of 60 for women and 65 for men.³⁷⁴

With regard to care and health services in particular, shortages of doctors and nurses, as well as over-crowding in hospitals, impact on older persons. Community nursing services

³⁶⁸ South African Older Person's Forum pp 4-5

³⁶⁹ South African Older Person's Forum p 6

³⁷⁰ South African Older Person's Forum pp 6-7

³⁷¹ South African Older Person's Forum p 6, HSRC

³⁷² South African Older Person's Forum pp 7-8

³⁷³ South African Older Person's Forum p 6, HSRC

³⁷⁴ South African Older Person's Forum pp 4-6

have been withdrawn since 1994 and the Department of Social Development introduced a policy to phase out subsidies for fit and semi-fit persons admitted to homes for the aged by 2002. A policy to promote community centres and services was announced but not implemented. Abuse of older persons continues, as documented in the 2001 report “Mothers and Fathers of the Nation: The Forgotten People”, by the Ministerial Committee on Abuse, Neglect and Ill-Treatment of Older Persons. Also, many disabled persons in South Africa are also elderly.³⁷⁵

In terms of crime, capacity-building and limited financial resources remain major constraints for institutions charged with protecting women and children, and domestic violence is rampant.³⁷⁶ The limited legal definition of rape includes only vaginal penetration, while other forms of rape are classified as “indecent assault” and carry lesser penalties for perpetrators.³⁷⁷ Legislation on the standards of treatment for child/juvenile offenders has been delayed and children within the criminal justice system are not afforded all the protections their vulnerable status requires.³⁷⁸ Further, few programmes are in place to assist juvenile offenders reintegrate into their communities.³⁷⁹ Older women are also victims of domestic violence and rape, but statistics on crimes committed against older persons are limited. Court procedures do not allow for elderly witnesses to give evidence in camera and there is ongoing concern that complaints made by older persons are not taken seriously by the police.³⁸⁰

Limited funding and capacity exists for developing legislation or policy involving women and children, or for assessing the impact of legislation such as the Domestic Violence Act and the Maintenance Act (99 of 1998). The impact of existing legislation on vulnerable groups, including the women, children and the elderly, should be assessed.³⁸¹

³⁷⁵ SANGOCO p 33

³⁷⁶ Eastern Cape Provincial Consultative Report pp 17-19; SANGOCO p 17

³⁷⁷ SANGOCO p 20

³⁷⁸ South African Institute of International Affairs pp 38-39

³⁷⁹ Northern Cape Provincial Consultative Report Addendum B p 4

³⁸⁰ South African Older Person’s Forum p 6-7

³⁸¹ South African Older Person’s Forum p 6-7; SANGOCO p 17

Farm workers also do not always know their rights, and therefore remain vulnerable to rights violations, particularly in terms of labour law.³⁸² Many farm workers and their families also have limited access to basic services and entitlements, such as education and training, health care, housing and transportation.³⁸³ Sectoral Determination 13 of 2002 provides for minimum working conditions for farm workers, including wage levels, leave arrangements and working hours, but also discriminates against workers in rural areas.³⁸⁴

Providing adequate shelter and care for the homeless, and street children in particular, remains a major challenge.³⁸⁵

Lesbian, Gay, Bisexual, Transgendered and Intersex (LGTBI) persons in South Africa are not always treated equally before the law and before family law in particular. For example, the age for sexual consent is 16 in heterosexual relationships and 19 in same-sex relationships. LGTBI persons, and gay men in particular, are also often excluded from trauma and victim support services when they have been assaulted or raped by other men.³⁸⁶ The Constitutional Court has, however, ruled that legislation pertaining to marriage should be revised to include same-sex couples.³⁸⁷

The following are cases affecting vulnerable groups in which a violation of the Constitution was found:

Section 9 of the Constitution (1996) – right to equality:

- The National Coalition for Gay and Lesbian Equality and Another v The Minister of Justice and Others;
- The National Coalition for Gay and Lesbian Equality and Another v The Minister of Home Affairs and Others;

³⁸² Parliament's APRM response p 44; Northern Cape Provincial Consultative Report Addendum A p 2; COSATU p 17

³⁸³ Northern Cape Provincial Consultative Report Addendum A p 3; COSATU p 17

³⁸⁴ COSATU pp 18-19

³⁸⁵ Northern Cape Provincial Consultative Report p 7

³⁸⁶ Gauteng Provincial Consultative Report, p. 29

³⁸⁷ SANGOCO p. 20

- Hoffman v South African Airways;
- Du Toit and Another v The Minister of Welfare and Population Development and Others.

Section 10 of the Constitution (1996) – right to dignity:

- The National Coalition for Gay and Lesbian Equality and Another v The Minister of Justice and Others;
- Dawood and Another; Shalabi and Another; Thomas and Another v The Minister of Home Affairs and Others;
- Booysen and Others v The Minister of Home Affairs and Another (right to family life);
- Du Toit and Another v The Minister of Welfare and Population Development and Others.

Section 14 of the Constitution (1996) – right to privacy:

- The National Coalition for Gay and Lesbian Equality and Another v The Minister of Justice and Others.

Section 25 of the Constitution (1996) – right to property:

- President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd.

Section 26 of the Constitution (1996) – right of access to housing:

- The Government of the Republic of South Africa and Others v Grootboom and Others;
- Port Elizabeth Municipality v Various Occupiers (26 (3) protection from eviction);
- President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd.

Section 27 of the Constitution (1996) – right of access to health care:

- The Minister of Health and Others v Treatment Action Campaign and Others (2).

Section 28 of the Constitution (1996) – children’s rights:

- The Minister of Welfare and Population Development v Fitzpatrick and Others;
- The Government of the Republic of South Africa and Others v Grootboom and Others;
- Du Toit and Another v The Minister of Welfare and Population Development and Others (28 (2) child’s best interest).

Section 34 of the Constitution (1996) – right of access to courts:

- President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd.³⁸⁸

The government should assess the following:

- The impact of HIV/AIDS on older persons, and in particular on those caring for grandchildren orphaned by HIV/AIDS;
- The extent to which the Adult Basic Training and Education Act (52 of 2000) has reduced adult illiteracy.

South Africa has drafted legislation and developed institutions and mechanisms aimed at promoting and protecting the rights of vulnerable groups, which include:

- Sector Education and Training Authorities (SETAs);
- Employment equity legislation; and
- Chapter 9 institutions.³⁸⁹

³⁸⁸ Department of Justice pp 72-84

³⁸⁹ North West Provincial Consultative Report p 33

The government has also attempted to assist displaced people by including them in a number of housing development projects.³⁹⁰

The Department of Home Affairs has prioritised addressing outstanding asylum applications and fast-tracking the refugee determination process through the Backlog Project, and has appointed “cadres” to deal with refugee problems. Through the Backlog Project, the Department aims to identify barriers to good customer relations and effective service delivery, as well as to substantially reduce the existing backlog of applications.³⁹¹ However, the Department also faces a lack of capacity and ineffective implementation of the Refugees Act (1998). Inter-departmental co-operation on services for refugees should be improved, taking into account the Promotion of Administrative Justice Act and the Refugee Act. The Department of Home Affairs should also develop accurate systems for reporting on migration and review the Refugees Act.³⁹² The government should also continue to educate citizens on the rights of non-nationals and effectively police and prosecute perpetrators of xenophobic crimes.³⁹³

South Africa also actively promotes regional integration through foreign direct investment and efforts to attract highly skilled labour, but little has been done to protect the rights of unskilled migrants who constitute most of those crossing regional borders. Non-nationals with temporary work contracts, without contracts or with refugee or asylum-seeker status experience difficulties in being granted permanent residence or naturalisation. Also, the difficulty of the work permit application process may push employers to hire undocumented labour. Local and provincial government structures are largely excluded from the national immigration and asylum regimes. Overall, in spite of regional efforts towards migration policy harmonisation and freer movement through the

³⁹⁰ Parliament’s APRM response p 44

³⁹¹ Department of Home Affairs, p 8; 13-16

³⁹² Parliament’s APRM response p 44

³⁹³ SANGOCO p.34

SADC Protocol on the Free Movement of Goods and People, South African immigration policy remains predominantly control-oriented.³⁹⁴

Migration to South Africa is likely to continue to increase in future, and non-nationals must be integrated into the country's social, economic and political processes. Refugees, asylum-seekers and other non-nationals in South Africa also need greater access to services, including education and health care. Further, improved mechanisms for tracking migration and asylum trends are required so that more accurate data can better inform policy. The effectiveness of government agencies and departments charged with migration management should be reviewed, as well as citizenship and residency laws. Finally, mechanisms must be developed to ensure that laws protecting migrants are effectively enforced.³⁹⁵

Levels of awareness of the care and health needs of older persons remain low and monitoring as well as treatment and control of chronic conditions are inadequate. Only 13% of persons over 65 years of age have access to medical aid.³⁹⁶

Farm workers remain vulnerable to abuse by their employers, and this should be investigated by the ICD and prioritised through the oversight and accountability mechanisms in Parliament.³⁹⁷

³⁹⁴ Forced Migration Studies Programme, Wits p 11

³⁹⁵ Forced Migration Studies Programme, Wits pp 14-15

³⁹⁶ South African Older Person's Forum p 5

³⁹⁷ Parliament's APRM response p 44

**APPENDIX:
LIST OF INFORMATION RECEIVED**

APRM: THEME ONE: DEMOCRACY AND GOOD POLITICAL GOVERNANCE

LIST OF SUBMISSIONS

Organization/ Submission	Received	Topic	Sector
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PARLIAMENT

Parliament of the Republic of South Africa: Parliamentary response to the APRM	ATC -	All APRM Themes	Parliament
Annexure A: Ad Hoc Committee on Democracy: Summary of Written Submissions	2006/24/02	Various Submissions on Governance and Democracy (Objective 1/ 2/ 3/ 4/ 6)	
Annexure B: Ad Hoc Committee on Democracy : Hearings Report	2006/24/02		
Annexure C: Ad Hoc Committee on Democracy: Written Submissions	2006/24/02 (Listed Below)		
Partners Interfaith Mission South Africa		Governance and Social Development. (Objective 3)	Civil Society
South African NGO Coalition (SANGOCO)		Governance and Equality (Objective 3)	Civil Society
Sibongile Nkomo MPL IFP		Governance (Objective 2)	Other groups/ Organizations
SA Human Rights Commission (SAHRC)		Governance and Rights (Objective 3)	Institutions Supporting Democracy (ISD) and other institutions

Democratic Alliance (DA)	Governance and the Judiciary (Objective 4)	Other groups/ Organizations
Office on the Status of Women (OSW)	Governance and Gender (Objective 7)	Government
National House of Traditional Leaders (NHTL)	Governance and Traditional Communities (Objective 3/ 7)	ISDs and other institutions
Justice Pius Langa (Chief Justice)	Governance and the Judiciary (Objective 4)	Judiciary
Public Service Accountability Monitor (PSAM)	Governance and Public Administration (Objective 5/ 6)	Civil Society
Presentation by the Public Service Commission (PSC)	Governance and Public Administration (Objective 5/ 6)	ISDs and other institutions
Presentation by South African Local Government Association (SALGA)	Governance, Decentralization and Delivery (Objective 2/ 5)	Government
Presentation by the Independent Complaints Directorate (ICD)	Governance, Security and Corruption (Objective 2/ 6)	ISDs and other institutions
Dept. of Public Service and Administration (DPSA)	Governance and Public Administration (Objective 5/ 6)	Government
Briefing by the Office on the Rights of the Child (ORC)	Governance and Rights (Objective 8)	Government

Presentation by Dept. of Correctional Services (DCS)		Governance, Security and Rights (Objective 3)	Government
MOLO Songololo Presentation		Governance and Rights (Objective 3/ 8)	Civil Society
WITS: Migration Trends and Management		Governance, Rights and Migration (Objective 1/ 9)	ISDs and other institutions
Departmental and Others		Various Submissions on Governance, Social Development, Crime & Corruption, Refugees (Objective 1/ 3/ 6/ 9)	Government

CIVIL SOCIETY

South African Institute of International Affairs (SAIIA)

Institute for Security Studies (ISS)

African Institute of Corporate Citizenship (AICC)

Joint APRM Response	2006/16/02	Political, Corporate and Economic Governance (Theme 1: Objective 2/ 3/ 4/ 6)	Civil Society
Media Institute of South Africa (MISA)	2006/16/02	Democracy (Objective 3/ 4/ 6)	Civil Society
Lesbian/Gay/Bisexual/Transgender/Intersex Sector (LGBTI) -Joint Working Group	2006/16/02	Democracy (Objective 3/ 9)	Civil Society
Disability Sector in South Africa	2006/17/02	Democracy, Political Governance and Equal Rights (Objective 3/ 9)	Civil Society
The South African National Editor's Forum (SANEF)	2006/17/02	Democracy and the Media (Objective 3)	Civil Society

South African Civic Organisation (SANCO)	2006/16/02	Governance and Ethics (Theme 1: Objective 2/ 6)	Civil Society
Institute for Democracy in South Africa (IDASA)		Political Governance and Corruption	Civil Society
Party Funding;	2006/16/02	(Objective 6)	
Floor Crossing;	2006/16/02	(Objective 2)	
Post-Employment Restrictions.	2006/16/02	(Objective 6)	
South African Institute of Chartered Accountants (SAICA)	2006/17/02	Corporate Governance	Civil Society
Treatment Action Campaign (TAC)	2006/16/02	Governance and the HIV/AIDS Crisis (Objective 3/ 4)	Civil Society
Youth Sector	2006/27/02	All APRM themes; focus on youth issues (Objective 8)	Civil Society
South African Older Persons' Forum	2006/03/03	Governance (Objective 3/ 7/ 9)	Civil Society
Black Sash	2006/28/02	Governance, Social Development and the Right to Justice (Objective 3)	Civil Society
Public Service Accountability Monitor (PSAM)		Governance and Public Administration (Objective 5/ 6)	Civil Society
South African NGO Coalition (SANGOCO)	2006/03/08	Governance (addresses various Objectives)	Civil Society
Congress of South Africa Trade Unions (COSATU)	2006/17/03	Socio-Economic Governance and Gender	Civil Society

Report by Religious Sector Workshops	2006/22/03 Late	All APRM Themes (and Objectives)	Civil Society
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GOVERNMENT

Provincial Consultative Report: North West Province	2006/17/02	All APRM Themes (and Objectives)	Government
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Provincial Consultative Report: Eastern Cape Province	2006/17/02	All APRM Themes (Theme 1: Objective 3/ 4/ 5/ 6)	Government
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Provincial Consultative Report: Western Cape Province	2006/13/03	All APRM Themes (and Objectives)	Government
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Provincial Consultative Report: Gauteng	2006/13/03	All APRM Themes (and Objectives)	Government
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Provincial Consultative Report: Free State	2006/15/03	All APRM Themes (and Objectives)	Government
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Provincial Consultative Report: Northern Cape Province	2006/17/03	All APRM Themes (and Objectives)	Government
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The Presidency	2006/21/02	Decentralization, Socio-Economic Governance and Equality (Theme 1: Objective 3/ 7)	Government
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Dept. of Public Services and Admin (DPSA)	2006/21/02	Decentralization and the Public Service (Objective 3/ 5)	Government
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Department of Home Affairs (DHA)	2006/21/02	Refugees and Displaced Groups (Objective 9)	Government
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Dept. of Correctional Services (DCS)	2006/21/02	All APRM Themes (and Objectives)	Government
Dept. of Environmental Affairs and Tourism (DEAT)	2006/21/02	Corporate Governance	Government
Chief State Law Advisor	2006/21/02	Treaties and Conventions in SADC (Accords and Treaties)	Government
Dept. of Justice and Constitutional Development (DJCD)	2006/21/02	Democracy and Constitutional Development: (Objective 2/ 3/ 4)	Government
Dept. of Foreign Affairs (DFA)	2006/21/02	Foreign relations in the SADC region including treaties and conventions (Accords and Treaties)	Government
	2006/21/02	Document on regionalization and monetary policies (Economic Development)	Government
South Africa Police Services (SAPS)		Governance and Security Issues (Objective 3)	Government
Department of Land Affairs	2006/03/08	Governance, Rights (Objective 2/ 3/ 7)	Government
Department of Trade and Industry (DTI)	2006/03/09	Theme 2: Economic Governance	Government
Government APRM Submission (Draft Three)	2006/22/03 Late	All APRM Themes (and Objectives)	Government

CDW³⁹⁸

Community Development Workers Reports	2006/03/10	All APRM themes (and objectives)	Community Inputs
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OTHER

Human Research Science Council (HSRC)	2006/16/02	Political and Socio-Economic Governance (Theme 1: Objective 3)	ISDs and other institutions
Institute for Economic Research on Innovation (IERI)	2006/28/02	Socio-Economic Development	ISDs and other institutions
Public Service Commission (PSC)	2006/21/02	Constitutional Democracy and the Public Service (Objective 5/ 6)	ISDs and other institutions
Office of the Auditor-General (AG)	2006/17/02	Corporate Governance	ISDs and other institutions

³⁹⁸ Approximately 2705 Community Development Worker (CDW) reports were received from the Secretariat two weeks before submission of the Technical Report. CDW Reports were received in all of South Africa's vernacular languages. Synopses of CDW reporting were also received in some Provincial submissions. Time constraints and linguistic capabilities have meant that not all CDW reports were captured during the writing of the Technical Report. It was also noted by researchers that the CDW reporting, in cases, displayed duplication suggesting that some field workers did not accurately capture citizen responses.