



OCCASIONAL PAPER NO 27

Governance and APRM Programme

March 2009

# Democracy and Accountability: Balancing Majority Rule and Minority Rights

Paul Hoffman

**South African Institute of International Affairs**

African perspectives. Global insights.

## ABOUT SAIIA

The South African Institute of International Affairs (SAIIA) has a long and proud record as South Africa's premier research institute on international issues. It is an independent, non-government think-tank whose key strategic objectives are to make effective input into public policy, and to encourage wider and more informed debate on international affairs with particular emphasis on African issues and concerns. It is both a centre for research excellence and a home for stimulating public engagement. SAIIA's occasional papers present topical, incisive analyses, offering a variety of perspectives on key policy issues in Africa and beyond. Core public policy research themes covered by SAIIA include good governance and democracy; economic policy-making; international security and peace; and new global challenges such as food security, global governance reform and the environment. Please consult our website [www.saiia.org.za](http://www.saiia.org.za) for further information about SAIIA's work.

This paper is the outcome of research commissioned by SAIIA's Governance and APRM Programme.

## ABOUT THE GOVERNANCE AND APRM PROGRAMME

Since 2002, SAIIA's Governance and APRM Programme has promoted public debate and scholarship about critical governance and development questions in Africa and beyond. The programme seeks to improve public policymaking by linking governments, citizens and researchers through a variety of publications, training workshops and research fellowships. The project has worked on the African Peer Review Mechanism and governance in almost 20 African Countries. SAIIA welcomes original governance-related manuscripts to consider for publication in this series.

**Series editor:** Steven Gruzd [steven.gruzd@wits.ac.za](mailto:steven.gruzd@wits.ac.za)

The Governance and APRM Programme thanks Alex Potter, Shaun de Waal, Dianna Games, John Gaunt, Rex Gibson, Barbara Ludman, Richard Steyn and Pat Tucker for editorial assistance on these papers.

SAIIA gratefully acknowledges the Royal Netherlands Embassy in South Africa, which has generously supported the Governance and APRM Programme and this series.

This publication is also available in French. French translations by [www.alafrench.com](http://www.alafrench.com).

© SAIIA. March 2009

All rights are reserved. No part of this publication may be reproduced or utilised in any form by any means, electronic or mechanical, including photocopying and recording, or by any information or storage and retrieval system, without permission in writing from the publisher. Opinions expressed are the responsibility of the individual authors and not of SAIIA.

## ABSTRACT

The paper identifies accountability as the essential ingredient required to make the ideals of constitutionalism a reality. A definition is offered in which three tests for constitutionalism are set out. These are, firstly, limitations on the exercise of power; secondly, legitimacy in the eyes of the people; and, thirdly, respect for human and people's rights. These three components of constitutionalism are examined against the political backdrop of post-liberation societies in which people's struggle for freedom becomes subsumed by the infighting that occurs within governing elites or liberation movements. This is to the detriment of the realisation of the values of dignity, equality and freedom that underpin the accepted constitutional dispensations, which are given lip service by politicians, but are not implemented in a manner responsive to the needs of the people.

## ABOUT THE AUTHOR

Advocate Paul Hoffman SC was the first director of the Centre for Constitutional Rights, based in Cape Town, from 2006 to 2008. A veteran of 26 years at the Cape Bar, he has served as an acting judge at the request of three judges president and has a passion for human rights issues. He is currently in the process of setting up a new NGO called the Institute for Accountability in Southern Africa. This paper was originally prepared for SAIIA's 'The State of Governance in Africa' conference, Johannesburg, 18–20 November 2008.

## INTRODUCTION

What makes constitutions work? The short answer to this question, if there is one, is ‘accountability’. A society that has the necessary political will to exact accountability from those in charge is one in which constitutionalism has the chance to flourish. Accountability may, in this context, be defined as the obligation of those with power or authority to explain their performance or justify their decisions. This paper examines some aspects of the notion of democratic constitutionalism that are now in vogue in Africa so as to stimulate dialogue and reflection on what works and what does not.

Democracy in its classical Greek form meant exactly the same as that claimed in the liberation struggles of Africa so many thousands of years later: ‘Power to the people’, or, in local parlance, ‘*Amandla awethu!*’ The Greek words ‘*demos*’ – people – and ‘*kratia*’ – power – are combined into ‘people power’, or what the *Concise Oxford Dictionary* now calls ‘a system of government by the whole population, usually through elected representatives’, or, by way of secondary meaning, ‘a classless and tolerant form of society’.

The problem with the liberation movements of Africa is that what starts out as the people’s struggle for freedom transforms along the way into the politicians’ or ruling elite’s struggle for power. In essence, this is where constitutional theory and practical politics part company. The yearnings for freedom from the yoke of colonialism, racism and ethnic dominance become subjugated to the power plays of factions within the ruling elite, and the ordinary people often find themselves worse off – as in Zimbabwe currently (March 2009) – or not much better off – as seen elsewhere in post-colonial Africa – than they were before receiving the blessing of their liberation. Nevertheless, a national debt of gratitude is felt towards liberation movements by ordinary voters. These movements continue to draw electoral support (both real and contrived) in the most perplexing of circumstances and often well after their sell-by date. Robert Mugabe only just lost a general election in March 2008, 28 years after ‘liberating’ his country. He is not exceptional. Many of the so called ‘big men’ of Africa continue to rule their grateful, but oppressed, followers long after the stated purpose of the liberation struggle has been achieved. The promotion of human dignity, the achievement of equality and the advancement of the various freedoms for which ordinary Africans have struggled are the main casualties of this unfortunate process.

It is, however, universally true that without the establishment of the rule of law and respect for property rights, no country has prospered fairly, consistently and sustainably in the increasingly globalised conditions under which most of the population of the planet is now living. It is through the acceptance and application of the rule of law and respect for property rights that foreign investment is attracted, jobs are created and the wealth of nations is augmented. At the most basic level, prosperity requires a functioning system of commercial law: known rules recognising property rights and the sanctity of contract, fairly enforced by independent tribunals. And make no mistake about it, wealth is the objective of all too many of our liberators. The notion that entry into politics is for the noble purpose of service to the people is almost, but not quite, unknown in Africa. The spectres of careerism and corruption haunt the corridors of power. A culture of impunity abounds and the promotion of human rights and responsibilities is a neglected field of endeavour.

## THE COMPONENTS OF CONSTITUTIONALISM

The cure for all this is perceived to be constitutionalism, i.e. the system of government according to a constitution. There can be little doubt that if the tenets of constitutionalism are universally embraced and accountably applied in Africa, or anywhere else, true democracy or 'people power' would flourish, and with it peace and prosperity.

The notion of constitutionalism is identified according to three interrelated yardsticks:

- Firstly, does the constitution impose limitations on the powers of the government?
- Secondly, does the constitution enjoy domestic legitimacy?
- Thirdly, does it protect, promote and enforce human and people's rights?

It is appropriate to consider each of these in a little more detail, using South Africa as an example.

### Limits on government power

The South African Constitution places limitations on the powers of the government by:

- making the Constitution's supremacy and that of the rule of law founding cornerstones of everything it contains;
- separating power among the three branches of government: the executive, the legislature and the judiciary;
- establishing an independent judiciary whose judgements bind all organs of state and all to whom they apply; and
- establishing independent state institutions supporting multiparty democracy.

The Constitution expressly states that any conduct or legislation inconsistent with it is invalid, and that obligations imposed by the Constitution must be fulfilled. The ruling African National Congress (ANC) has committed itself to 'the fundamental provisions of the basic law of the land', which, it states in its *Strategy and Tactics* document, accords with its own vision of a democratic and just society.<sup>1</sup> However, it stresses that its commitment to the Constitution should be viewed 'within the context of correcting the historical injustices of apartheid'.<sup>2</sup> In other words, the ANC interprets the Constitution within the framework of its own National Democratic Revolution, whose central proposition is the elimination of what it regards as the continuing inequalities arising from apartheid.

The independent judiciary represents the most important limitation on the power of government. The judiciary is answerable only to the law and the Constitution. The requirements of section 2 of the Constitution read: 'This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.'

This in effect means that all conduct by anyone and all legislation emanating from whatsoever source can be scrutinised on the basis of its compatibility or consistency with the standards of the Constitution, and, if found wanting, can be struck down as invalid.<sup>3</sup>

In general, the government accepts and implements the decisions of the courts – even where they conflict with its policies. However, there are numerous examples of the failure of government departments – particularly in less developed provinces – to carry out court

orders. The public service in the Eastern Cape Province in South Africa lacks the capacity to pay social security grants to the aged and infirm timeously. It has been described by the Supreme Court of Appeal as ‘terminally lethargic’ in proceedings aimed at getting it to pay court orders granted against it. In Gauteng Province, the Health Department’s failure to pay a judgement granted in favour of a man who suffered grievous injuries as a consequence of negligent medical treatment led to the striking down of legal provisions that precluded execution against state assets. More recently, the failure of the Transport Department in the national government to pay bus subsidies timeously, despite judgements obtained requiring it to do so, led to frantic litigation on the part of beleaguered bus operators.

There are also some serious concerns regarding moves to ‘transform’ the judiciary. This transformation operates on two levels. One is the constitutionally sanctioned need for the judiciary to reflect broadly the racial and gender composition of the country. This must ‘be considered’ when judicial officers are appointed. The other more menacing level concerns moves to effect executive control of the judiciary. A constitutional amendment and a batch of bills containing amending legislation aimed at making the judiciary ‘more responsive to the aspirations of the people’ (earlier called ‘the masses’) were first gazetted in December 2005. After a huge outcry in which all living chief justices participated, they were withdrawn in July 2006. However, at its Polokwane conference in December 2007, the ANC once again called for the implementation of far-reaching reforms to the judiciary before the end of the present government’s term of office (in or about April 2009). However, these controversial reforms are being held over for the next parliament. The reforms would include:

- the establishment of the Constitutional Court as the single apex court – thus removing the status of the Supreme Court of Appeal as the final arbiter of all non-constitutional issues;
- a warning that the courts should not unduly encroach on areas that are the ‘responsibility of other arms of the state’ – thus limiting their power to require government to take practical steps to assure constitutional rights through, for example, the provision of anti-retroviral drugs and basic housing;
- the transfer to the minister of justice of ultimate responsibility for ‘the administration of courts, including any allocation of resources, financial management and policy matters’; and
- the establishment of ‘a single rule-making mechanism for all courts’, in terms of which rules drawn up by the Rules Board would be subject to the approval of the minister and parliament.<sup>4</sup>

Another limitation on the power of government is the principle of the separation of powers, which entails each of the three branches of government sticking to its constitutionally ordained area of competence without encroaching upon the territory of the others. However, the reality is that the borders dividing the executive and the legislature are becoming increasingly blurred. In South Africa, parliament is firmly under the control of the executive and of the ruling movement and often fails to carry out its oversight duties in the manner envisaged by the Constitution. As Andrew Feinstein, a former ANC parliamentarian, recently pointed out in his book *After the Party*, this was particularly the case with regard to the manner in which it dealt with questions arising from the notorious

arms deal.<sup>5</sup> The seemingly more robust parliament that held the executive to account in the period between December 2007, when Thabo Mbeki lost the presidency of the ANC to Jacob Zuma, and September 2008, when the ANC ‘recalled’ Mbeki, proved to be a Prague Spring, and the cosy relationship of the past has since been resumed, to the detriment of good governance on issues such as the demise of the Scorpions, an independent corruption-busting unit that got too close for comfort to several leading members of the ANC, and the unfortunate disciplinary proceedings against the suspended national director of public prosecutions, who is in the process of being jointly pilloried by the executive and legislature in a manner that is going to have to be resolved by the judiciary. His only misdemeanour would appear to be that he has taken his responsibility to act ‘without fear, favour or prejudice’ too seriously for those who would prefer to have a less independent person in his office.

The South African government is also encroaching into areas of civil society that should be the preserve of the citizens involved. In terms of recent legislation, the minister of health will now appoint the board of the association that represents the medical profession. The members of the association will not have the ability to do so themselves.<sup>6</sup>

The dividing line between the ruling party and the state is becoming increasingly indistinct in South Africa. The Polokwane conference adopted a resolution requiring ‘all senior deployed cadres in various centres of power’ (presumably including the public service and the security forces?) ‘to go through political classes to understand the vision, programme and ethos of the movement’.<sup>7</sup> The incoming National Executive Committee of the ANC – the party’s highest decision-making body – was instructed ‘to give strategic leadership to cadres deployed in the state and to improve capacity to hold cadres deployed accountable’.<sup>8</sup>

In addition to the checks and balances inherent in the separation of powers, Chapter 9 of the South African Constitution creates a phalanx of institutions to uphold constitutional democracy. The most important of these are the South African Human Rights Commission (SAHRC), the public protector (equivalent to an ombudsman in other countries) and the auditor-general. All are enjoined to act impartially and to perform their functions without fear, favour or prejudice. Jointly and severally they constitute a means of limiting the exercise of power by government, of holding it to account and of dealing with improprieties as they arise.

However, some of these institutions are under pressure. Although the SAHRC often plays a constructive and independent role in the protection of fundamental rights through, for example, its rigorous research into the failure to deliver on the right to basic education and its interventions on behalf of the oppressed such as immigrants and farm labourers, the current public protector is perceived to be executive minded and crippled by inefficiency. The scam involving a payment of R11 million to the ANC in the infamous ‘Oilgate’ saga was unforgivably ducked on the flimsiest of pretexts (even though the ANC subsequently repaid the amount in question) and all efforts to get the public protector to view his mandate expansively have failed. The auditor-general has been accused by Feinstein of permitting government interference with regard to the arms scandal.<sup>9</sup> This scandal has been described, accurately, as the ‘poisoned well’ of South African politics. It concerns the payment of illegal ‘commissions’ or bribes to secure the various arms deals, in terms of which a variety of armaments, which are essentially surplus to the country’s defence needs, have been acquired at a cost that was announced as R30.3 billion, but which now exceeds

R50 billion. Proceedings to compel the appointment of a commission of inquiry into the deals were commenced in January 2009 by veteran activist Terry Crawford-Browne.

In addition, the Asmal Commission, established under former minister and member of parliament Kader Asmal to examine the effectiveness and efficiency of these Chapter 9 institutions, in 2007 recommended the abolition of several of the other institutions involved – including the Pan-South African Languages Board and the Commission for the Protection of Cultural, Religious and Linguistic Minorities – and their rationalisation under the aegis of the SAHRC.<sup>10</sup>

A serious erosion of the powers of the independent institutions has, however, centred on the Polokwane resolution to dissolve the National Prosecution Authority's (NPA) Directorate of Special Operations – popularly known as the Scorpions. This independent unit of crime and corruption fighters has been the most successful of its kind, to the great discomfort of many powerful people, including senior politicians and the national commissioner of police, who is suspended from duty pending a criminal trial on charges of corruption and racketeering investigated by the Scorpions in the face of hostility from senior police officials loyal to their chief. It has been argued in the Constitutional Court that the dissolution decision is illegal for want of compliance with the requirements of rationality in all government actions; unconstitutional for its emasculation of the NPA; unreasonable because it would disband a highly successful crime-fighting unit; unfair because the labour rights of individual Scorpions would be violated; and unresponsive to the needs of the people at a time when crime is rampant in the country.<sup>11</sup>

The first round of this litigation ended in a finding that the case had been prematurely launched because the executive and legislature should be given the opportunity of curing the criticisms levelled against the proposed dissolution. The two Acts of parliament necessary to secure the demise of the Scorpions have been assented to by the president and the second round of the litigation, in which the same arguments will feature, is under way. The prematurity argument no longer applies and the government will have to deal with the merits of the attacks on the scheme of the legislation and with the attack on the deficiencies in the debate and public participation process that have been gifted to the litigant, Bob Glenister, a committed crusader for the retention of the Scorpions.

The challenge that the abolition of the Scorpions poses to constitutionalism cannot be over-stressed. The fear is that if the unit is disbanded, the government itself will be left with the final decision as to who should, and who should not be prosecuted for corruption. This would constitute a major restriction of the ability of our constitutional dispensation to limit the power of the government. It has been admitted by the secretary general of the ANC that the Scorpions had to be dissolved because of the amount of unwanted attention they were giving to allegations of corruption in high places within and at the top of his party. This rendered it impossible for the relevant legislation to be dealt with rationally by the executive and the legislature.

This, taken together with burgeoning corruption at all levels of government, the dismissal of the national director of public prosecutions on spurious grounds, public attacks on the integrity of the judiciary and the attempts to gain control of it are all cause for concern.



### **Domestic legitimacy of the Constitution**

Internal features of the Constitution that ensure domestic legitimacy include provision for regular elections; freedom of expression; freedom of political activity; and the rights to assemble, protest and picket.

There can be little doubt that our Constitutional dispensation enjoys domestic legitimacy and acceptance by the people of South Africa. We measure this legitimacy in free and regular elections presided over by an independent electoral commission. We have free and outspoken media with no limitation on the expression of political opinion. A trend toward the pre-publication banning or censoring of articles in more outspoken publications has been arrested by the failure of this type of litigation to secure the result desired by those seeking censorship. There is no limitation on the ability of people to organise, form political parties, assemble or protest publicly.

There are, however, some reasons for concern. The Polokwane conference resolved that the media should 'contribute towards the building of a new society and be accountable for its actions'.<sup>12</sup> It also expressed the belief that the arts and culture should 'serve the purposes of its National Democratic Revolution' and that the media needed to 'take on a specific responsibility in this regard'.<sup>13</sup> The resolution on the media warned that 'the right to freedom of expression should not be elevated above other equally important rights such as the right to privacy and more important rights and values such as human dignity'.<sup>14</sup> It called ominously for an investigation into the establishment of a media appeals tribunal to 'strengthen, complement and support the current self-regulatory institutions'.<sup>15</sup> These assaults on media freedom are replicated elsewhere in Africa. In Botswana, the Media Practitioners Act is now law, while proposed Kenyan legislation to secure greater control of the media is being hotly debated and a similar situation pertains in Tanzania.

It is also disturbing that the ANC does not view itself as a political party 'in the bourgeois sense', but as a revolutionary liberation movement with an uncompleted mandate. It describes itself as a 'hegemonic organisation' that is not just the 'leader of itself, nor just of its supporters'. It believes that '[h]istory has bequeathed on [sic] it the mission to lead South African society as a whole in the quest for a truly non-racial, non-sexist and democratic nation'. In constitutional democracies, however, it is the voters and not history that give parties the mandate to govern.

### **The protection, promotion and enforcement of human and people's rights**

In terms of section 7 (2) of the Constitution, the state is obliged to respect, protect, promote and fulfil the rights contained in the Bill of Rights. On paper, therefore, it can be said that our constitutional dispensation complies with the third test of constitutionalism.

Unfortunately, this has not been the experience of many South Africans. Whether the deficiencies arise from lack of capacity or resources or from inadequate policies and administration is a question for a more political debate. However, there is little doubt that our people do not, in practice, enjoy many of the key rights guaranteed by the Constitution:

- According to the UN Development Programme, we are the 12<sup>th</sup> most unequal society in the world – despite the assurance of our right to equality. And we have been getting more unequal since 1994. This is confirmed by the rise in the country's Gini co-efficient, a measure of inequality.

- Our right to life is seriously threatened by rampant crime and the murders of more than 250 000 people since 1994.<sup>16</sup>
- The right to choose a trade, occupation or profession is undermined by the reality that almost 40% of South Africans are unemployed.<sup>17</sup>
- Our property rights were, until its withdrawal in 2008, under unprecedented threat arising from the Expropriation Bill, which may or may not have been consigned to oblivion.
- Our right to health care has been seriously prejudiced by a failure to provide adequate medical services and by the inadequate and late response to the HIV pandemic.
- The rights of children are abused on a daily basis by violence, rape and exploitation.
- We have failed dismally to ensure the right to education. According to recent estimates, based on the official statistics and the findings of Hough & Horne (who test matriculants for their functional literacy), only 42 000 of the 1.19 million black children who entered the school system in 1996 and who matriculated in 2007 were functionally literate and ready for skilled work or proper university education.<sup>18</sup>
- The constitutional assurance that all languages would enjoy parity of esteem is not being realised – not only for Afrikaans-speaking South Africans, but for speakers of all our other indigenous languages as well.

## CONCLUSION

Throughout Africa, the notion of protecting minority rights by way of group entitlements and privileges has been eschewed in favour of giving each and every individual (not group) equal rights under the constitutions in place, subject to such limitations of general application as may be in place. South Africa, like Rhodesia before it, clung to the privileges of the ruling (white) elite and even suggested a group rights approach in the talks that eventually led to the fairly peaceful handover of political power to the new constitutional order. Finally, in the process of negotiation, the argument was put forward that, if each individual enjoys the protections of constitutionalism and a Bill of Rights guaranteeing human rights, any perceived need for the formulation of group rights is superfluous. In South Africa the religious, language and cultural rights of all are protected in the Bill of Rights. This affords some comfort to minorities who fear being swamped by the majority. This is theoretically effective, but does not stop xenophobia. In a parallel example, a similar 'right' did not prevent the genocide in Rwanda in 1994. That country has made a remarkable recovery and now possibly takes the inculcation of a human rights and responsibilities culture more seriously than anywhere else in Africa, despite the criticism that the post-genocide order is of a repressive nature, Tutsi dominated, and not geared to dealing with unfinished business left over from the genocide properly. It seems, however, that the shock to the nation of the genocide has had some positive consequences. Although it is claimed that since 1994 some 150 Rwandans have died in ongoing genocidal violence, most Rwandans today do not identify themselves as anything other than just that – Rwandans. There are, by law, no longer Tutsi and Hutu divisions. The real contrast between South Africa and Rwanda lies in the ongoing national commitment in Rwanda to acknowledge ethnic chauvinism and combat it vigorously. South Africa has a long way to go to reach a similar embrace of broad

South Africanism, and in the same period, as has already been pointed out, some 250 000 murders have taken place in the country.

If the basic requirement that all conduct and laws have to be consistent with the Constitution is respected by the majority and enforced by the minority, and if accountability and responsiveness to the needs of the people – the foundational values of constitutionalism – are taken seriously and claimed by all the people, then there is no need for group rights, as all individuals in society will be free of oppression and able to enjoy their human rights in dignity, peace and prosperity. This is the way to prevent a ‘winners and losers’ scenario; it requires a vigilant civil society, a willingness to challenge abuse of power and a well-developed capacity to exact accountability whether on behalf of oppressed minorities or forgotten masses. It is in this way that constitutionalism best serves the cause of progress in an ‘era of responsibility’, to use the phrase of the new president of the United States.

South Africa does have an exemplary Constitution, which can be used as a template for measuring any other for its compliance with the tenets of constitutionalism. Any constitution that does not pass the three tests identified, namely proper limitations on the exercise of power, legitimacy and respect for human rights, may be regarded as suspect. The South African Constitution is not perfect: its proportional representation system and the control of party bosses over parliamentary representatives could perhaps be improved upon so as to make public representatives more accountable to the people and less beholden to their parties. It is true that good electoral systems do not create honest and principled politicians who vote according to their consciences. Fostering a culture of accountability is certainly preferable to blindly toeing the party line regardless of the irrationality of the party bosses’ positions. Also, the Judicial Service Commission could be improved, as it has not, thus far, answered the vexed ‘who judges the judges?’ question satisfactorily and is experiencing what has been described as its ‘affirmative action chickens coming home to roost’. This is a reference to the levels of competence of some of the judges appointed more for their potential than their experience, and to the alleged misconduct of a few errant judges. The most notorious of these is Cape Judge President John Hlophe, who has led a charmed life insofar as his chequered disciplinary record is concerned. He currently faces charges of interfering in the deliberations of the Constitutional Court in appeals that, as it turns out, have impeded the political ambitions of Jacob Zuma. The matter is best resolved by persuading him to resign on such terms as are reasonably acceptable; the alternative of disciplinary proceedings is too ghastly to contemplate.

It is apparent that while the structures of the South African Constitution remain in place and theoretically comply with the three tests posited, there is much work to be done before it can be said that the Constitution has taken root and is flourishing in South Africa. While the courts and the press remain free and independent, there is still hope that this can be achieved. A culture of justification, in the sense used in the definition of accountability proffered above, is the best way of addressing all that ails the system at present.

Fortunately, it is not only politicians who determine the fate of nations. Religious and traditional groupings, civil society organisations, the business sector, and the international community all have a role to play in promoting constitutionalism in Africa. While the politicians are at least paying lip service to the values of constitutionalism and the rule of law, it is incumbent upon all people of goodwill to join in promoting constitutionalism as the best means available for achieving a prosperous and peaceful future for all who live

in this vast continent of unfulfilled potential. This is achievable if ordinary people claim their rights, demand responsiveness to their needs and exact accountability from those who rule.

## ENDNOTES

- 1 ANC (African National Congress), *Strategy and Tactics: Building a National Democratic Society*, as adopted by the 52<sup>nd</sup> National Conference, Polokwane, 16–20 December 2007a, <<http://www.anc.org.za>>.
- 2 *Ibid.*
- 3 Section 2 of the Constitution of the Republic of South Africa, available at <<http://www.concourt.org.za>>.
- 4 None of the new bills has been published yet; the wording in quotations is taken from those withdrawn in July 2006.
- 5 See Feinstein A, *After the Party: A Personal and Political Journey inside the ANC*. Johannesburg: Jonathan Ball, 2007.
- 6 South African Government, Health Professions Amendment Act (No. 29 of 2007), signed into law by the president on 17 January 2008.
- 7 ANC (African National Congress), *ANC 52nd National Conference: Resolutions*, as adopted by the 52<sup>nd</sup> National Conference, Polokwane, 16–20 December 2007b, para. 47.
- 8 *Ibid.*
- 9 Feinstein A, *op. cit.* Feinstein also made these remarks in a speech at the launch of *After the Party* at the Book Lounge in Cape Town in August 2008.
- 10 Parliament of the Republic of South Africa, *Report of the Ad Hoc Committee on the Review of Chapter 9 and Associated Institutions*, report to the National Assembly of the Parliament of South Africa, Cape Town, 31 July 2007, <<http://www.info.gov.za/view/DownloadFileAction?id=72517>>.
- 11 *Hugh Glenister v The State President and Others*, unreported judgement available at <<http://www.concourt.org.za>>.
- 12 ANC, 2007b, *op. cit.*, para. 92.
- 13 *Ibid.*, para. 104.
- 14 *Ibid.*, para. 125.
- 15 *Ibid.*, para. 126.
- 16 Aggregate of official police statistics for the period available on the South African government website, <<http://www.gov.za>>.
- 17 This percentage is the expanded definition of unemployment, which includes those who have given up seeking work.
- 18 Personal communication to the author from Theuns Horne of Horne & Hough.

## OTHER PUBLICATIONS

*The African Peer Review Mechanism: Lessons from the Pioneers* is the first in-depth study of the APRM, examining its practical, theoretical and diplomatic challenges. Case studies of Ghana, Kenya, Rwanda, Mauritius and South Africa illustrate difficulties faced by civil society in making their voices heard. It offers 80 recommendations to strengthen the APRM.

The *APRM Toolkit DVD-ROM* is an electronic library of resources for academics, diplomats and activists. In English and French, it includes video interviews, guides to participatory accountability mechanisms and surveys, a complete set of the official APRM documents, governance standards and many papers and conference reports. It is included with the *Pioneers* book.

*APRM Governance Standards: An Indexed Collection* contains all the standards and codes mentioned in the APRM that signatory countries are meant to ratify and implement, in a single 600-page volume. Also available in French.

*Planning an Effective Peer Review: A Guidebook for National Focal Points* outlines the principles for running a robust, credible national APRM process. It provides practical guidance on forming institutions, conducting research, public involvement, budgeting and the media. Also available in French and Portuguese.

*Influencing APRM: A Checklist for Civil Society* gives strategic and tactical advice to civil society groups on how to engage with the various players and institutions in order to have policy impact within their national APRM process. Also available in French and Portuguese.

To order publications, please contact SAIIA publications department at [pubs@saiia.org.za](mailto:pubs@saiia.org.za)

South African Institute of International Affairs  
Jan Smuts House, East Campus, University of the Witwatersrand  
PO Box 31596, Braamfontein 2017, Johannesburg, South Africa  
Tel +27 (0)11 339-2021 · Fax +27 (0)11 339-2154  
[www.saiia.org.za](http://www.saiia.org.za) · [info@saiia.org.za](mailto:info@saiia.org.za)

## SAIIA'S FUNDING PROFILE

SAIIA raises funds from governments, charitable foundations, companies and individual donors. Our work is currently being co-funded by AusAid, the Bradlow Foundation, the Department of International Development (DFID), the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), the European Commission, the Finnish Ministry for Foreign Affairs, the Ford-Foundation, the Friederich Ebert Stiftung (FES), the Graduate Institute of International Studies (GII), the International Development Research Centre (IDRC), the International Institute for Sustainable Development (IISD), INWENT, the Konrad Adenauer Foundation, the Organisation for Economic Co-operation and Development (OECD), the Royal Norwegian Ministry of Foreign Affairs, the Royal Danish Ministry of Foreign Affairs, the Royal Netherlands Ministry of Foreign Affairs, the South Centre, the Swedish International Development Agency (SIDA), the Sustainable Development Policy Institute (SDPI), the United Nations Conference on Trade and Development (UNCTAD), the United Nations International Research & Training Institute for the Advancement of Women (INSTRAW), the South African Department of Foreign Affairs, Trade and Industrial Policy Strategies (TIPS), the Department of Environmental Affairs (DEAT) of South Africa and the South African Revenue Service (SARS).

In addition SAIIA has 49 corporate members which are mainly drawn from the South African private sector and international businesses with an interest in Africa and a further 53 diplomatic and 11 institutional members.

