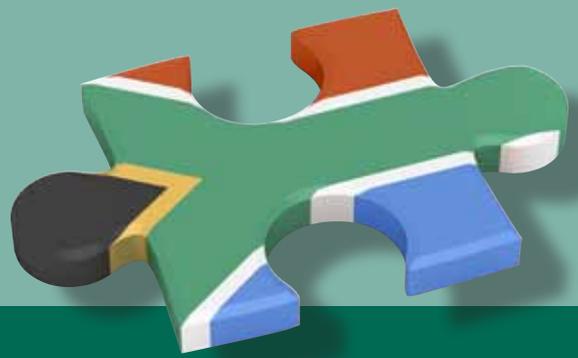


IMPLEMENTING THE APRM

IEWS FROM CIVIL SOCIETY



SOUTH AFRICA REPORT

JUNE 2011



AfriMAP
Africa Governance Monitoring and Advocacy Project



Implementing the APRM

Views from Civil Society

South Africa Report

June 2011

The APRM Monitoring Project is jointly run by

- South African Institute of International Affairs
- Centre for Policy Studies*
- Africa Governance Monitoring and Advocacy Project

The project team was Yarik Turianskyi, Steven Gruzd, Tšoeu Petlane, Nicole Beardsworth, Robin Richards, Ogochukwu Nzewi, Jeggan Grey-Johnson and Ozias Tungwarara

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The South African Institute of International Affairs
Jan Smuts House
East Campus, University of the Witwatersrand
Johannesburg

PO Box 31596
Braamfontein, 2017
South Africa

Tel +27 (0)11 339 2021
Fax +27 (0)11 339 2154

email: info@saiia.org.za
www.saiia.org.za

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ABBREVIATIONS & ACRONYMS

AA	affirmative action
AfriMAP	Africa Governance Monitoring and Advocacy Project
Aids	acquired immune deficiency syndrome
AMAT	APRM Monitoring and Advocacy Template
AMP	APRM Monitoring Project
AMP-SA	South African APRM Monitoring Project
ANA	annual national assessment
ANC	African National Congress
ANCYL	African National Congress Youth League
APRM	African Peer Review Mechanism
BBBEE	broad-based black economic empowerment
BEE	black economic empowerment
CCI	Cross-Cutting Issue
CDW	community development worker
CEE	Commission for Employment Equity
CG	Corporate Governance
CIRPÉE	Inter-University Centre on Risk, Economic Policies, and Employment
CJS	criminal justice system
CO ₂	carbon dioxide
COGTA	Department of Cooperative Governance and Traditional Affairs
CoRMSA	Consortium for Refugees and Migrants in South Africa
COSATU	Congress of South African Trade Unions
CPI	corruption perceptions index
CPP	Centre for Public Participation
CPS	Centre for Policy Studies
CRDP	Comprehensive Rural Development Programme
CRISE	Centre for Research on Inequality, Human Security and Ethnicity
CRR	Country Review Report
CSAR	Country Self-Assessment Report
CSO	civil society organisation
CSVr	Centre for the Study of Violence and Reconciliation
DA	Democratic Alliance
DBE	Department of Basic Education
DGRU	Democratic Governance and Rights Unit
DHA	Department of Home Affairs
DLA	Department of Land Affairs
DPG	Democracy and Political Governance
DPSA	Department of Public Service and Administration

dti	Department of Trade and Industry
EE	employment equity
EG	Economic Governance
EGM	Economic Governance and Management
Eskom	Electricity Supply Commission
FIFA	Federation of International Football Associations
FIVIMS	Food Insecurity and Vulnerability Information and Mapping System
FSC	Financial Services Charter
GCB	global corruption barometer
GDP	gross domestic product
HIV	human immunodeficiency virus
HSRC	Human Sciences Research Council
ICD	Independent Complaints Directorate
Idasa	Institute for Democracy in South Africa
IEC	Independent Electoral Commission
IFP	Inkatha Freedom Party
IJR	Institute for Justice and Reconciliation
IOL	Independent Online
ISS	Institute for Security Studies
JSC	Judicial Service Commission
M&E	monitoring and evaluation
MDG	millennium development goal
MP	Member of Parliament
MRC	Medical Research Council
NACH	National Anti-Corruption Hotline
NCOP	National Council of Provinces
NDPP	National Director of Public Prosecutions
Nedlac	National Economic Development and Labour Council
NGC	National Governing Council
NHI	National Health Insurance
NPA	National Prosecuting Authority
NPoA	National Programme of Action
NQF	National Qualifications Framework
NSDS	National Skills Development Strategy
NYDA	National Youth Development Agency
ODAC	Open Democracy Advice Centre
OSISA	Open Society Initiative for Southern Africa
PAIA	Promotion of Access to Information Act

PDA	Protected Disclosures Act
POWA	People Opposing Women Abuse
PR	proportional representation
PSC	Public Service Commission
SA	South Africa or South African
SABC	South African Broadcasting Corporation
SAHRC	South African Human Rights Commission
SAIIA	South African Institute of International Affairs
SAIR I	First South African APRM Implementation Report (January 2009)
SAIR II	Second South African APRM Implementation Report (January 2011)
SAIRR	South African Institute of Race Relations
SANEF	South African National Editors' Forum
Sapa	South African Press Association
SAPS	South African Police Service
SAQ	Self-Assessment Questionnaire
SARB	South African Reconciliation Barometer
SED	Socio-Economic Development
SETA	Sector Education and Training Authority
SOER	State of Environment Reporting
Stats SA	Statistics South Africa
TB	tuberculosis
TI	Transparency International
TRI	Technical Research Institute
UKZN	University of KwaZulu-Natal
WFDY	World Federation of Democratic Youth

EXECUTIVE SUMMARY

This report reflects the views of a group of civil society researchers and activists – convened by the APRM Monitoring Project (AMP) – on the implementation of the APRM in South Africa. It takes as supplementary reference points South Africa’s Implementation Reports (SAIRs). The report intends to complement the two SAIRs by providing evidence-based feedback on how the issues in the Country Review Report (CRR) have been addressed since 2007.

Interviews were conducted about the progress of the APRM in South Africa. Many felt that after the official review process, the APRM lost momentum, but that it has been revived under the current Focal Point, Minister Richard Baloyi. Yet it is unclear how the APRM informs policy, and awareness of the APRM in wider society is relatively low.

Critical governance issues were tagged back to the APRM Questionnaire and National Programme of Action (NPOA), and graded using a colour-coded rating: green for substantial progress; orange for some; red for little. Most received orange ratings for some degree of progress, but poor linkages were apparent between the issues and the NPOA. Recommendations frequently appeal for better implementation of existing legislation, acknowledge the need for participatory governance, and many call on civil society to accept its share of responsibility.

The **justice system, crime and violence** theme interrogates concerns about upholding the law. The **rule of law** is buttressed by constitutional and institutional systems, but failings occur in its execution. Greater vulnerability to political influence appears to exist in the prosecution service than on the bench. There are also tensions between ensuring greater diversity on the bench, and the demands of skill and experience.

Law enforcement, crime and policing notes that property-related crime has increased since 2005/06, whereas violent interpersonal crime has decreased. Fear of crime, however, remains widespread. Reintroduction of a militaristic culture into the police, coupled with politicians’ rhetoric of being ‘at war’, have raised concerns about respect for human rights.

The **justice system and the judiciary** are subject to occasional ethical lapses. Legislation designed to promote accountability by judges is forthcoming, but its effect remains to be seen. The considerable transformation that is proceeding needs a mindset geared to the country’s constitutional values, not simple demographic change. Proposals to make the Constitutional Court an ‘Apex Court’ are controversial, as its judges may lack the expertise to rule effectively in non-constitutional matters.

Recent legislative developments, including the drafting of the Independent Police Investigative Directorate Bill and the Civilian Secretariat for Police Bill, could lay foundations for better oversight of the police.

Violence against women and children is taken seriously by the authorities, but enforcement of legislation is concerning. The protection afforded by the Domestic Violence Act, for example, is largely dependent on whether the South African Police Service (SAPS) is implementing the Act correctly.

The CRR made several recommendations regarding combating **corruption**. South Africa has a robust institutional framework, but problems arise in implementation. The exposure of corruption does not always produce commensurate action. There has been limited progress in implementing whistle-blowing legislation, and virtually no action has been taken on regulating party funding.

Although neither the CRR nor the SAIRs mention **party–state relations**, this is an important dynamic. Despite constitutional requirements for the state to function in a non-partisan fashion, evidence of confusion between party and state is reflected in comments by government and ruling party officials, as well as in the operations of some state agencies, notably the National Youth Development Agency (NYDA).

‘Cadre deployment’ involves placing ruling party activists in prominent positions who often serve party goals. This undermines institutions, violates the Constitution and compromises governance. It is a particular problem in local government.

Party funding can influence electoral performance and the integrity of government leaders

and institutions. This issue was not dealt with in the implementation reports: no regulations exist for private donations. Most political parties have been resistant to scrutiny of their funding sources.

The **access to information and protection of the media** theme examines issues not covered in the official reports. **Media legislation and regulation** in South Africa relies on constitutional and legal provisions supporting the free flow of information. Recently a number of measures have arisen that could severely undermine media freedom. These include the Protection of Information Bill, which proposes a system of information classification backed by harsh penalties.

Opposition political parties and civil society frequently criticise the **role of the public broadcaster**, particularly for a perceived bias towards the ruling party and government. Civil society has also heavily criticised the broadcaster's board members for failing to exercise effective oversight, and government's failure to modernise broadcasting policy.

On the **treatment of journalists**, there appears to have been an increase in harassment by police. The South African National Editors' Forum (SANEF) presented a dossier of 13 complaints to the police in 2009 and is currently collating incidents from 2010.

Access to information is guaranteed in the Constitution, and important for realising other rights. 'Mute refusals' – requests for information receiving no response – remain problematic. There have, however, been some good performers, such as Limpopo Province, where good plans and processes have fostered information access.

The **representation** theme looks at citizens' involvement in governance. **Parliament** is seen as insufficiently assertive towards the executive. Since parliament is meant to exercise oversight, it needs to assert its distinct institutional identity.

For a relatively new democracy, South Africa has successfully embedded **elections and the electoral system** into its culture. Electoral management by the Independent Electoral Commission (IEC) has been of a high standard.

Elections are conducted according to a closed-list proportional representation system, criticised for entrenching loyalty by members of parliament to political parties rather than to voters. Despite calls to re-examine this, and to institute some constituency representation, little has occurred.

Public participation in South Africa is a constitutional imperative. Although people appear aware of its importance, the effectiveness of participation initiatives is doubtful. For example, at local government level, so-called *izimbizo* are the preferred format. These tend to be fanfare occasions with material enticements for participants. Other participatory platforms, such as ward committees, are compromised by political tensions.

The **nation building** theme encompasses matters relating to overcoming social divides. Regarding **managing diversity**, South Africa's Constitution recognises cultural, linguistic and political pluralism. There are 11 official languages, although in practice South Africa is arguably moving towards unilingualism.

Political allegiances correlate significantly with race. Race solidarity is sometimes used as a political tactic, with negative implications for nation building.

The official reports give selected coverage of **race and racism**. It is unclear to what extent racism is prevalent. Survey evidence points to ongoing social distance between South Africans of different races, albeit with some moderately positive trends. This must be seen alongside problems of low levels of general social trust.

The issue of **xenophobia** was raised in the CRR, but was disputed by government, and not addressed in the NPoA. The second SAIR highlights several anti-xenophobia initiatives that remain works in progress.

The APRM Forum requested South Africa to report on **black economic empowerment (BEE) and affirmative action (AA)**. Conceptual issues exist about BEE, where it appears a few people with political connections benefit disproportionately.

AA is progressing more rapidly in the public than in the private sector. There are concerns that skills shortages are retarding successful AA implementation, and could be partly caused by it. Government rejects this claim. A new set of labour bills, produced in late 2010, seeks to address AA shortcomings. These have sparked heated discussions over their exclusionary implications for minorities.

The theme of service delivery in South Africa is an important political question, and a constitutional requirement. In terms of health care, South Africa endures high levels of HIV/Aids, maternal and child mortality, non-communicable diseases and deaths

from violence. Despite extensive spending, health indicators remain poor.

South Africa has a high rate of HIV infection, but the number of HIV/Aids deaths and the rate of new infections have stabilised. It has one of world's largest treatment programmes, although limited data hinders comprehensive progress assessments. Tuberculosis (TB) is another serious problem. HIV and TB infections often coincide, hindering treatment.

The quality of data on health care is suboptimal. In particular, there is a lack of certainty regarding the exact levels of maternal and child mortality.

Debate around a proposed National Health Insurance (NHI) scheme has begun. Proponents argue that it will facilitate universal access to health care, but it is unclear whether it is affordable.

Government regards **basic education** as its 'top priority', and devotes significant resources to it. The net enrolment ratio at primary and secondary school level indicates progress.

However, the unsatisfactory quality of education is highlighted by unemployment and the poor throughput rates of graduates into higher education. To address this, the Department of Basic Education (DBE) has begun administering annual national assessments. Furthermore, policies aimed at adopting national norms to ensure environments conducive to education are being implemented.

Regarding **skills development**, an indicator of a country's skills levels is its ability to absorb and create new technologies to grow the economy. Innovation is determined partly by the availability of skills in engineering and science, which are critical to developing new businesses and economic growth to create further employment opportunities. Among other measures, the second SAIR indicates that a National Certificate at further education and training colleges was introduced to increase the number of graduates with vocational and entrepreneurial skills.

The **poverty, inequality and unemployment** theme is central to South Africa's governance environment. South Africa has among the highest levels of **poverty** globally. Government does not, however, have an official definition of poverty (an

issue raised in the CRR). Various initiatives constitute South Africa's poverty reduction strategy, including social grants, subsidised services, housing and land redistribution. The sustainability of social security assistance is questionable, given the limited tax base and large number of recipients.

The official **unemployment** rate is some 25%, but among younger members of the workforce, unemployment is far more severe. Insufficient economic growth, partly related to structural constraints, is central to the failure to reduce unemployment significantly. An ongoing debate concerns the provision of 'decent work' versus simply creating jobs. A proposed New Growth Path (NGP) is aimed at creating 5 million jobs by 2020 through sector development.

The **environment, land and agrarian reform** theme explores two linked issues. Environmental issues have an influence on health and poverty. South Africa has environmental legislation, and specialised institutions, but legal obligations prove difficult to enforce.

Key **environment** concerns include climate change and energy issues, air quality and pollution, and inadequate environmental information. Water quality, land degradation and the environmental impact of mining are also a growing concern.

South Africa is an energy-intensive economy. Electricity planning commits South Africa to using coal for the next 20 years, although it aims to reduce carbon emissions. Coal-fired power generation could have severe water pollution implications.

Land and agrarian reform aims to address land ownership patterns arising from past discriminatory policies. Some successes are evident, for example, changes in urban land-ownership. South Africa's efforts at rural or agrarian land reform have been less successful. The pace of redistribution and restitution has accelerated in recent years, partly the result of a more active state.

A Comprehensive Rural Development Programme (CRDP) aims to create viable rural economies, and vibrant rural communities. However, concerns exist about the feasibility and sustainability of these initiatives.

WHAT IS THE APRM?

The African Peer Review Mechanism (APRM)¹ was established in 2003 as an innovative instrument aimed at improving governance in Africa. Created and driven by Africans for Africans, the APRM's primary purpose is:²

to foster the adoption of policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental economic integration through sharing of experiences and reinforcement of successful and best practice, including identifying deficiencies and assessing the needs for capacity building.

Through a series of voluntary governance 'peer reviews', member states diagnose deficiencies, propose solutions, share best practices and follow recommendations made by the APRM Panel of Eminent Persons (African Peer Review Panel). As of May 2011, 30 countries on the continent had acceded.

To begin active participation in the APRM, a country's government signs a Memorandum of Understanding with the continental APRM authorities. This indicates its willingness to undergo review and its commitment to the process. The next step involves gathering information and documentation on the performance of the government and other stakeholders in key areas. To help gather this data and manage the process, the country typically forms an APRM National Governing Council (NGC) charged with this responsibility and appoints Technical Research Institutes (TRIs) to carry out the technical aspects of the review.

All parts of society – including civil society groups, religious institutions, labour unions, business groups, as well as the government – should contribute to answering questions on a wide range of issues. The APRM Questionnaire guides the review

process by highlighting the country's performance in four broad areas. These are Democracy and Political Governance (DPG), Economic Governance (EG), Corporate Governance (CG) and Socio-Economic Development (SED). Issues include human rights, health care provision, the state of the economy, the role of the judiciary and the behaviour of corporations.

The results of this review are incorporated into a Country Self-Assessment Report (CSAR), drafted by the NGC and TRIs. The CSAR includes a National Programme of Action (NPOA), which sets out plans to address the problems identified in the review. Once the CSAR is completed, a Country Review Mission visits the country. This is a delegation of respected scholars and experts who conduct an independent study of the country and produce their own report. They are led by a member of the APRM Panel of Eminent Persons, which is a small body of highly respected Africans who are responsible for managing the APRM process across the continent. The Panel and its Secretariat submit a draft Country Review Report (CRR) to the country for comment. Recommendations are put to the participating country, and the country is expected to amend its NPOA accordingly. A final CRR is then produced and presented to the Forum of the Heads of State for discussion and peer review. This body consists of the participating countries' leaders and generally convenes on the margins of African Union summits. Following the Forum's review, the country must agree to address the various problems that have been identified. Other states undertake to assist the country in its efforts, and to take action should the country not attempt to address these issues. Finally, the country must report annually on progress in implementing the NPOA and prepare itself for subsequent reviews.

INTRODUCTION: ABOUT THE APRM MONITORING PROJECT (AMP)

The main intention of the APRM is to encourage and support reform. Each country is expected to carry out commitments to improve governance made in its NPoA. However, one of the greatest challenges for the APRM has been monitoring and reporting on the implementation of the NPoA. There are presently only loose procedures and guidelines for monitoring and evaluation (M&E). Some countries have missed deadlines already for submitting their annual NPoA implementation reports. Where reports have been submitted, they lack sufficient detail to assess accurately the extent to which NPoAs have been implemented and tend not to reflect the voices of civil society. The APRM is aware of these problems. It is currently engaged in a project to revise the questionnaire used by participating countries and to design a more robust M&E framework.

In July 2010 the South African Institute of International Affairs (SAIIA), the Centre for Policy Studies (CPS) and the Africa Governance Monitoring and Advocacy Project (AfriMAP) jointly launched the APRM Monitoring Project (AMP). The objective of the AMP is to empower civil society in Southern African APRM states to track the implementation of the APRM in their countries. Through this project, civil society organisations (CSOs) are assisted to develop independent reviews of APRM implementation through the use of the specially designed APRM Monitoring and Advocacy Template (AMAT). The aim of the project is not to duplicate the work of the relevant national APRM agencies, but to complement and expand upon existing M&E processes.

South Africa and Lesotho were chosen as the countries for a pilot study. South Africa was the fourth APRM country to undergo review, and Lesotho the twelfth. The South Africa Country Review Report (CRR) was published in September 2007. This was followed by two implementation reports, namely the South African Implementation Report I (SAIR I) in January 2009 and the South African Implementation Report II (SAIR II) in January 2011.³ However, both official reports displayed some of the deficiencies mentioned above. In particular, they failed to provide an accurate report on real progress achieved since 2007, and a balanced evaluation of the work done. Furthermore, much of the reporting lacked concrete

data and statistics. It focused instead on describing current policies that were implemented to address the issues. From the Mbeki presidency to the Motlanthe presidency and then to the Zuma presidency, South Africa underwent changes of administration and new policies were formulated during a short space of time. Although this took place under the same ruling party, the African National Congress (ANC), it is still necessary to provide a measured assessment of the current situation, with a description of problems and challenges that remain and how these could be improved.

The AMP Report aims to complement South Africa's first and second implementation reports by providing direct feedback, through the voices of CSOs, on how the issues mentioned in the CRR have been addressed since 2007, in a participatory, evidence-based manner. Issues not originally in the CRR but which have become prominent in recent years, such as discussions surrounding media freedom in the country, will also be included. In many cases, this report may differ from the implementation reports in its interpretation of the issues, the evidence provided and the recommendations made. In adding to the important conversation around governance that the APRM initiates and stimulates, these alternative perspectives will help to strengthen the reform that the APRM seeks to engender.

METHODOLOGY

The APRM Monitoring and Advocacy Template (AMAT) is a template that guides researchers and CSOs through five stages to produce a report that evaluates the status of the APRM and the implementation of the NPoA in a specific country. The project team designed AMAT and its accompanying pilot guide to be used by any given country to track the APRM process. Although meant to provide a common methodology that can be adapted for use across countries, AMAT still allows the results to be comparable.

AMAT guides users through three key elements.

- 1) Monitoring: focusing on describing, analysing and evaluating the progress of the commitments made by the country's APRM NPoA.
- 2) Planning: utilising the collected information from the monitoring phase to identify shortcomings and areas of weakness; and making

recommendations on how to address these.

- 3) Advocacy: using the report findings to support calls for improvements and further reform.

AMAT methodology comprises five stages. These are the preliminary preparations; data collection (involving desktop research and interviews); assessment and analysis of the APRM NPoA progress; identification of key priority areas; and the creation of an action plan with recommendations on how to remedy shortcomings and how the report is going to be shared with stakeholders.⁴

A pilot guide accompanies AMAT to help direct the research process. The pilot guide provides research questions and templates for use during interviews with specific target groups (such as parliamentarians, media, academics and members of civil society).

The APRM process, reporting and NPoA implementation have taken on different forms in different countries, and AMAT was designed with this in mind. AMAT and the pilot guide provide broad guidance and allow researchers room to adapt the methodology to accommodate the peculiarities of each country.

The AMP was designed as a participatory project, led by the project team but with broad ownership by participating CSOs. A 'scoping workshop', opened by South Africa's APRM Focal Point, Minister for Public Service and Administration, Richard Baloyi, was held on 12–13 October 2010 to test and refine the concept. To involve as many South African CSOs as possible, a training workshop entitled 'Empowering Civil Society to Track the African Peer Review Mechanism in South Africa' was held on 25 January 2011. During the workshop, participants were informed about the APRM, the AMP, and the planned AMP-SA Report. Participants were informed of the project's objectives, the participatory methodology was proposed and the tools were refined (AMAT and the pilot guide). Over 40 South African CSOs were represented, including three members of the South African APRM NGC. Workshop participants selected the eight broad governance themes, each with specific sub-themes, discussed in the report.

A decision was made not to include all the APRM CRR issues and NPoA commitments. Instead, the report aims to be concise in covering the main political governance and socio-economic issues

that participating CSOs were working on and felt passionately about. Analysis shows that NPoAs do not address every recommendation in the CRR itself, and the South African NPoA is no exception in this regard. At times the report discusses these important governance issues – such as the media and the relation between the state and political parties – even if they are not prominently discussed or indeed have been omitted from the CRR or NPoA. A consistent effort has been made to relate all issues examined in the report back to the APRM questionnaire and South Africa's CRR, NPoA and implementation reports. A third and final workshop, concerned with validation and evaluation, was held on 10–11 May 2011. A working group consisting of civil society and government representatives were presented with the findings from the AMP-SA Report. They were asked to comment, identify sections requiring improvement, and to evaluate South Africa's progress in implementing its NPoA.

EVALUATION

Evaluating the APRM NPoA implementation can be a difficult task. Often, there is no measurable progress. Progress on the NPoA may be achieved through programmes that have nothing to do with the APRM. Progress may also be achieved indirectly as a result of the APRM, with no clear link to the process. Therefore a simple rating in the form of a green, orange or red light was assigned at the May 2011 workshop.

KEY TO RATINGS



RED LIGHT

No progress has been achieved on addressing the issue; or very little progress has been achieved and the government does not seem to be on track to complete it in the near future.

ORANGE LIGHT

Some progress has been achieved on addressing the issue; or work on the issue has started and the government seems to be on track to finalise it within a reasonable deadline.

GREEN LIGHT

The issue has been addressed and completed; or much progress has been achieved on addressing the issue.

AMP THEMES		RED	ORANGE	GREEN
The justice system, crime and violence				
1.1	The rule of law		x	
1.2	Law enforcement, crime and policing		x	
1.3	The justice system and the judiciary		x	
1.4	Violence against women and children		x	
1.5	Corruption	x		
Party-state relations				
2.1	Party-state separation and relationships	x		
2.2	Cadre deployment and politicisation of institutions	x		
2.3	Regulating private funding to political parties	x		
Access to information and protection of the media*				
3.1	Media legislation and regulation	None	None	None
3.2	The role of the public broadcaster	None	None	None
3.3	The treatment of journalists	None	None	None
3.4	Access to information	None	None	None
Representation				
4.1	Parliament		x	
4.2	Elections and the electoral system			x
4.3	Public participation		x	
Nation building				
5.1	Managing diversity		x	
5.2	Race and racism		x	
5.3	Xenophobia	x		
5.4	Broad-based black economic empowerment (BBBEE) and affirmative action (AA)		x	
Service delivery				
6.1	Health care		x	
6.2	Basic education		x	
6.3	Skills development		x	
Poverty, inequality and unemployment				
7.1	Poverty	x		
7.2	Unemployment	x		
The environment, land and agrarian reform				
8.1	The environment		x	
8.2	Land and agrarian reform		x	
		7	14	1

*The media items in this report are not rated, as the media does not feature in the CRR or the NPoA.

Implementation of the NPoA: Orange
Link to the APRM: Minus
Overall rating: Orange minus

Besides this rating, AMAT’s methodology envisioned assigning a rating for linking progress achieved to the APRM. The idea was to award a ‘plus’ or a ‘minus’. A ‘plus’ meant that ‘the issue has been branded as an APRM initiative, or the issue has been linked to the government department responsible for APRM NPoA implementation.’ A ‘minus’ meant that ‘no link can be established between the issue and the APRM processes in the country, or that the issue is being worked on under the auspices of an organisation which has no clear link to the APRM process.’ However, in the case of South Africa, it soon became clear that no public linkage to the NPoA could be discerned for any of the issues covered in this report. Therefore, a ‘minus’ was awarded in this category. Following the evaluation of all the NPoA items, the ratings were counted and tallied. The ratings that were awarded most frequently formed the final rating.

PARTICIPANTS IN THE SOUTH AFRICAN AMP PROCESS

Participants in the South African AMP process were involved at three main levels, namely agreeing to be interviewed; making research available; and actively writing a section of the AMP–SA Report. Small working groups, co-ordinated by a member of the AMP project team, were developed for each of the three major issue areas. The project team acknowledges and thanks representatives from the following organisations for writing sections of this report:

- AfriForum
- Arid Areas Programme, University of the Free State
- CPS
- Community Law Centre, University of the Western Cape
- Consortium for Refugees and Migrants in South Africa (CoRMSA)
- Democratic Governance and Rights Unit (DGRU), University of Cape Town
- FW de Klerk Foundation
- Institute for Democracy in South Africa (Idasa)
- Institute for Security Studies (ISS)
- Open Democracy Advice Centre (ODAC)
- Public Service Accountability Monitor
- South African National Editors’ Forum (SANEF)
- SAIIA
- Independent researchers

Disclaimer: It is important to note that a participatory project such as the AMP encompasses a wide range of participants with differing views. Although individuals or organisations may have participated in one or more workshops and contributed to the debate around the issues covered in the AMP–SA Report, this does not mean that they necessarily agree with or endorse all the views expressed.



STATUS OF THE APRM IN SOUTH AFRICA

One of the objectives of the AMP was to describe, analyse and evaluate the overall status and prominence of the APRM in South Africa. To achieve this, primary data was drawn from interviews and an online survey. Interview respondents were chosen from institutions of key significance to the APRM in South Africa. These included APRM Focal Point, Minister Richard Baloyi, members of parliament (MPs) and members of the APRM NGC. An online survey was also conducted with 24 responses from South African CSO representatives. Respondents answered questions on the status of the APRM in South Africa across the three themes of institutionalisation, knowledge and awareness, and CSO participation. The results are summarised below.

Institutionalisation of the APRM in South African policy and governance processes

Questions in this section tried to ascertain the extent to which country-specific APRM governance structures have been developed and sustained, the degree to which the APRM process has influenced policy in South Africa, the extent to which the APRM NPoA items are reflected in departmental budgets, and the impact the APRM has had on national planning efforts.

Respondents felt that following the end of the country self-assessment process and the publication of the CRR in September 2007, there was a loss of institutional memory. Former Minister of Public Service and Administration Focal Point, Geraldine Fraser-Moleketi, left government and a number of officials who had worked on the APRM since 2004 left the Department of Public Service and Administration (DPSA). As a result, many respondents felt that the APRM process in South Africa lost momentum. However, most also agreed that there have been signs of revival under the current Focal Point in recent years, with more opportunities for CSO engagement. They cited Minister Baloyi's enthusiasm for the APRM in his hosting of conferences on Cross-Cutting Issues (CCIs), identified by the APRM, in South Africa's provinces and ensuring that a stronger, more participatory SAIR II was presented to the APRM

Forum in January 2011.

According to Minister Baloyi, the APRM is:⁵

a mirror of reflection in terms of how far we are going in respect of dealing with the issues identified. That is what we mean by domestication of the APRM. It is used as a guide to achieve goals and targets for South Africa. It's not just about writing a report. What the APRM said is what South Africa should do.

This view was echoed by NGC members,⁶ who emphasised the minister's strategic intention for the APRM to inform policy and planning in South Africa: 'The Minister took the decision that it must be mainstreamed into country processes and that's why it has been invigorated.'⁷ Currently, there seems to be an effort towards strengthening the APRM governance structures at the national and provincial levels and to include CSOs more meaningfully in the process.⁸

Minister Baloyi claimed close synergy and policy alignment:⁹

It's a question of perfect alignment between government policies and the priorities of the APRM. Simply put, we are compliant with the APRM and this compliance is a function of the fact that we are in alignment with the APRM. There are no government policies on the one hand and APRM on the other.

However, according to the results of the online survey for CSOs, there seems to be a lack of clarity on how the APRM informs governance, policy, budgeting and planning in South Africa for non-state actors.¹⁰ Almost half of the respondents were undecided on this issue, which suggests a lack of clear linkages between the APRM and its role in South Africa, and the need for improved communication. In terms of government planning, an even stronger perception emerged that the APRM does not inform government planning at all.¹¹ This perception is supported by interviews with MPs, who suggested that the APRM has been peripheral in terms of government planning and policy. However, as one MP pointed out, this may not be a conscious, deliberate attempt by the South African government:¹²

The dilemma was that consciously or unconsciously, the similarities between programmes meant that South Africa felt it was implementing policy in line with APRM. In a sense, the South African government's Programme

of Action created a blur, as the concrete issues were already part of government programme. The MDGs are also a part of this example.

In terms of budgeting, the dominant view from the minister, CSOs and MPs was that there is no specific budget for the APRM in South Africa. According to the minister, government's strategic plans also deal with all the APRM plans. Therefore, budgeting for government's priorities includes budgeting for APRM activities. Public perceptions of the APRM highlight the ambiguity underlining the relationship between the APRM NPoA and the Government Programme of Action. This is evident in the dominant view held by CSOs that there is no 'conscious' link between the South African budget process and the APRM.

Knowledge and awareness of the APRM

Survey findings show a consensus that public awareness of the APRM is very low.¹³ However, members of the NGC point to an increased awareness of the APRM in civil society circles, owing to the consultative processes undertaken by government through the NGC structure.¹⁴ Two key concerns were highlighted. These were the low participation of grassroots organisations in the NGC structures and the low awareness of the APRM in key governance institutions, such as parliament. Indeed, one MP said 'ask any new parliamentarian, they will not have heard of it.'¹⁵ Significantly, none of the MPs interviewed made mention of the APRM as a governance planning and monitoring tool until the subject was introduced, despite strong knowledge of other government planning and performance monitoring platforms.¹⁶ The APRM appears to lack the stature and relevance of traditional and newly institutionalised government planning and M&E platforms among MPs.

Furthermore, all MPs interviewed acknowledged that the APRM is not prominent in parliamentary discussions. The only instance cited since 2008 was a committee discussion of SAIR II. According to one MP:¹⁷

In my view it's gone very quiet for a while now. There has not been very much discussion of the second report. If I'm correct, the last debate on the APRM was in June 2008. The APRM was a more prominent issue in Parliament when Speaker [Baleka] Mbete was in office.

CSOs feel that awareness can be enhanced by popularising the APRM through greater public awareness and by increasing the buy-in of CSOs and grassroots organisations. The role of parliament is also vital. Suggestions from interviews to increase awareness include using parliamentary platforms, talk shows, discussion forums at constituency level, and the parliamentary media publication unit.¹⁸ Government has printed APRM materials in different South African languages and there are plans to build awareness through plays and entertainment.¹⁹

Civil society organisation participation in the APRM process

The process of compiling SAIR II was acknowledged as more inclusive and participatory compared with SAIR I. In 2009 and 2010 different CSO sectors, including traditional leadership, attended consultative conferences held at provincial and national levels.²⁰ However, findings from the survey show that the quality and effect of civil society participation was unclear. Often points raised at meetings were not reflected in the final report. Some attendees felt as though their participation had merely served the purpose of 'window dressing'. There are views that these engagements have not been broad based and have been ad hoc and lacking in real input by CSOs.²¹

There are also practical problems in improving CSO participation. A lack of funding is a key challenge, which has serious implications for the types and levels of CSOs that participate. Minister Baloyi has said that 'we had to deal with the difficult question of resources to facilitate engagement, especially in respect of civil society so that they have sufficient resources to sustain their engagement with the APRM.'²²

In conclusion, it seems that the status of the APRM in South Africa was at its peak during the CSAR process in 2005–06 and the publication of the CRR in 2007. After this the process lost momentum, partially due to a loss of institutional memory and a lack of clear integration of the NPoA into governance structures. To some extent there has been recent renewed interest in the APRM. However, research from the AMP report suggests that South Africa needs to do far more to raise awareness of the process, popularise it and to ensure that success stories are linked back to the APRM.



1

THE JUSTICE SYSTEM, CRIME AND VIOLENCE

Issues related to the justice system, crime and violence feature prominently in South Africa's CRR and NPoA. The South African society experiences high levels of violence on a daily basis. As a result the fear of crime is widespread amongst the country's population. High crime levels also give rise to the perception that policing needs to be improved. Although the judiciary enjoys sufficient independence from the executive, as evident from a number of high-level convictions in the recent years, there are fears that the system is prone to abuse.

The section explores the key governance aspects of this CCI through the following sub-themes:

- 1.1 The rule of law
- 1.2 Law enforcement, crime and policing
- 1.3 The justice system and the judiciary
- 1.4 Violence against women and children
- 1.5 Corruption

1.1 THE RULE OF LAW

Related APRM objectives

DPG objective 2: Constitutional Democracy, Including Periodic Political Competition and Opportunity for Choice, the Rule of Law, a Bill of Rights, and the Supremacy of the Constitution are Firmly Established in the Constitution.

DPG objective 3: Promotion and Protection of Economic, Social, Cultural, Civil and Political Rights as Enshrined in the African and International Human Rights Instruments.

DPG objective 4: Uphold the Separation of Powers, Including Protecting the Independence of the Judiciary and Ensuring an Effective Capital Legislature.

DPG objective 5: Ensure Accountable, Efficient, Effective Public Office-Holders and Civil Servants.

EGM objective 4: Fight Corruption and Money Laundering.

Related Cross-Cutting Issues identified in South Africa's CRR

- Corruption

The rule of law posits that all citizens have the same rights, and conduct is judged in relation to an impartial body of rational law. The rule of law is established if the law is applied consistently and equally, irrespective of the social, financial or political status of a person.

The rule of law features prominently, though somewhat incoherently, in the CRR. South Africa's legal provisions are praised;²³ it recognises measures to promote access to justice, but notes that poor people still struggle in this respect;²⁴ it acknowledges the independence of the judiciary, but also calls for the 'transformation' of the judiciary to be expedited.²⁵ SAIR I and SAIR II touch on the rule of law, but offer nothing substantial.

Three themes have been selected to discuss the rule of law in South Africa. These are due process, independence and legitimacy.

Due process means that when the law is applied, especially in criminal cases, it follows procedures set down to ensure fairness and to protect the rights of those involved. This is provided for in the Constitution,²⁶ and is upheld by the judiciary. Difficulties in applying the law relate less to respect for due process than to implementation difficulties, such as delays in bringing the accused to trial.²⁷

One of the more notable cases of abuse of due process involved Chumani Maxwele in 2010. Maxwele was arrested for making a disparaging gesture at the presidential motorcade. It did not

appear that he had broken any law. The minister of police, Nathi Mthethwa, attempted to dismiss the affair by saying that as Maxwele had apologised, 'let us lay this matter to rest.'²⁸ Mthethwa's response downplays entirely the seriousness of the police abuse of due process.

Independence of key institutions from political power and interference – including the judiciary, the prosecution service and the legal profession – is essential for the rule of law. The judiciary in South Africa is constitutionally independent, and is highly regarded abroad. Concerns about threats to its independence arise from time to time, as with the Superior Courts Bill in 2005/06, which intended to transfer the administration of courts to the minister of justice. This was withdrawn, and a new bill in 2010 confirmed judicial independence in this respect.²⁹

The prosecution services are somewhat more politically vulnerable, as the president appoints the National Director of Public Prosecutions (NDPP). The decision to suspend and then dismiss former director, Vusi Pikoli, was seen widely as a political decision stemming from a refusal to bend to the executive's will, particularly in sensitive cases.³⁰

Although the police and correctional services do not operate under assumptions of independence in the same manner as the judiciary or prosecution services, they are enjoined to show no favouritism. Failings in this area can have a considerable impact on the rule of law as a whole and of public views on it. In separate cases, two figures linked to the

ruling party – parliamentarian Tony Yengeni and businessman Schabir Shaik – were convicted of fraud and corruption. Both were released on parole controversially after serving comparatively short stretches of time in prison relative to their sentences.³¹

Legitimacy: The South African Constitution mandates that when appointing justice officials, ‘the need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered’.³² This is also reflected in the CRR, which links diversity to legitimacy (people’s confidence that the courts serve the common interest) and the concurrent need to ensure its independence and technical competence.³³ Although considerable progress has been made with diversity on the bench, more still needs to be done. In 2009/10, 122 (58.6%) of the country’s 208 judges were African, Indian or Coloured, of which 50 (24%) were women.³⁴

Concerns exist, though, that a desire to ‘transform’ has been at the expense of both potential talent and racial goodwill. Judge Azhar Cachalia, for example, has drawn attention to the ‘unacceptable’ legal errors apparent in some judgements.³⁵ Retired Constitutional Court Judge, Johann Kriegler, argued publicly that the hostility being shown to white applicants by the Judicial Service Commission (JSC), the body that recommends judicial appointments, was dissuading them from applying.³⁶ Potentially, the measures used to promote legitimacy could end up undermining it.

The rule of law is reasonably strong in South Africa. However, this strength is distributed unevenly throughout the justice system. Significant challenges exist in terms of skills, capacity and ideology, and should not be ignored.





RATING: ORANGE

Taking into account the progress that has been made, as well as the issues that still exist, the evaluating group decided to award an orange rating.

Recommendations

- Respect due process rigorously in all instances. State officials acting beyond their legal authority need to be censured, if not prosecuted, for so doing.
- High-profile accused and prisoners who attract attention and perceptions about favouritism bring the whole system into question. It is important that information on the grounds for parole, in particular, are made public and that the law is followed scrupulously. Justice should be done and should be seen to be done.
- Handle racial and gender transformation carefully. Hostility to candidates on the basis that their race or gender does not contribute to transformation, or that they may have failed to join particular pressure groups, has no place at the JSC. Similarly, concerns about inexperience or poor legal reasoning need to be voiced and discussed.



1.2 LAW ENFORCEMENT, CRIME AND POLICING

Related APRM objectives

DPG objective 6: Fight Corruption in the Political Sphere.

EGM objective 4: Fight Corruption and Money Laundering.

CG objective 3: To Promote Adoption of Codes of Good Business Ethics in Achieving Objectives of the Corporation.

Related action items from South Africa's NPoA

DPG objective 7: Identify and strengthen anti-crime and violence strategies currently underway in all three spheres of government.

DPG objective 7: Criminal justice review and reform.

DPG objective 7: Support programmes for victims of crime.

DPG objective 7: Develop capacity of police force to handle cases of violence and abuse against vulnerable groups.

Related Cross-Cutting Issues identified in South Africa's CRR

- Crime
- Corruption

As noted in SAIR II, the most recent murder statistics (2009/10) suggest a 50% decline since 1995/96 (16 834, down from 26 877).³⁷ From 1996 to 2010, total reported crime peaked in 2002/03; then declined until 2007/08, following which it increased slightly.³⁸ Although the decline is celebrated in the 2007 CRR, the rise is omitted from the 2011 SAIR II report.

Disaggregated by category, reports of property-related crime have increased since 2005/06, whereas violent interpersonal crime has decreased.³⁹ From 2004 to 2009 there was a 25% decline in total violent interpersonal crime, ranging from murder to common assault.⁴⁰ However, scandals around instances of station-level manipulation of crime statistics have led some to question the reliability of these reductions.⁴¹

There is also a growing concern regarding violent farm attacks, although few official statistics are available. A number of CSOs have called for farm attacks to be declared as a priority crime, whereas others insist that these should be treated as an ordinary crime. Government is yet to take any action on this issue.

Government has allocated a sizeable budget to the South African Police Service (SAPS) in recent years. Ironically, although the SAPS budget and

workforce have grown exponentially, so too have categories of crime that are most susceptible to police intervention. Decline in interpersonal crime is only marginally reliant on police action. The SAPS is bolstering its detective and intelligence divisions, which may lead to greater impact on organised crime. However, a DNA Bill that could help to improve detectives' ability to investigate crime significantly has been before parliament for over two years.⁴² It is due to be considered by the portfolio committee for police only in July 2011.⁴³

The image of the Directorate for Priority Crime Investigations, celebrated in SAIR II, suffered a blow in March 2011 when the Constitutional Court ruled that the unit was vulnerable to political interference.⁴⁴ Concerns have also been raised about the relationships of SAPS crime intelligence with members of crime syndicates.⁴⁵

Despite reductions in crime, South Africans are more fearful than ever before.⁴⁶ In 2007 government commissioned research seeking to understand the unusually violent nature of crime in the country. Although the report makes important contributions to understanding South Africa's 'subculture of violence', and expands numerous causal factors raised in the CRR, the Portfolio Committee on

Police and the national Secretariat for Police largely dismissed its findings.⁴⁷ This response is unfortunate in light of police leadership and SAIR II's claims of wanting to work with civil society to tackle crime.⁴⁸

Politicians appeal to the criminal justice system (CJS) as a solution to crime, through tough, even unconstitutional rhetoric.⁴⁹ In April 2010 this approach contributed to the SAPS reverting to the military rank titles previously used by Apartheid police. Simultaneously, police leadership abandoned reference to a police 'service', readopting instead the word 'force'.

These changes, coupled with the rhetoric of being 'at war' with and having 'no mercy' for criminals,⁵⁰ threaten to undermine the tenuous record of the SAPS on human rights. Some detectives claim torture is necessary to solve cases, and complaints of police abuse are on the rise.⁵¹ Civil society has questioned this apparent remilitarisation and whether it may signify a return to the brutal policing of Apartheid.⁵² The country's largest police union is contesting the rank changes in court.

The conviction of former National Commissioner, Jackie Selebi, on corruption charges significantly damaged the reputation of the SAPS and demonstrated the extent of corruption in the organisation. The extent to which SAPS crime intelligence officers tried to undermine the investigation also raised significant concern.

In August 2010 a newspaper accused the National Police General, Bheki Cele, of interference to secure a tender for a politically connected businessman,

Roux Shabangu. The journalist who broke the story was arrested soon after its publication, but released without charge. An investigation by the public protector and Special Investigations Unit into the allegations found that Cele had approved funding improperly for a property lease without it going to tender, and that police had manipulated the needs analyses to ensure that it fit Shabangu's building.⁵³ Soon after the report's release, SAPS intelligence officials visited the office of the public protector requesting documents pertaining to the report. Their actions were perceived as police intimidation and again raised concerns about the division.

A number of important legislative developments relating to police oversight occurred in 2010. These included the drafting of the Independent Police Investigative Directorate Bill, and the Civilian Secretariat for Police Bill. Both are expected to be passed in 2011 and promise to lay the foundation for robust oversight of the police. However, the 2011/12 budget allocation is inadequate for the Independent Complaints Directorate (ICD) to carry out its expanded mandate effectively, as envisaged in the Bill.



RATING: ORANGE

The evaluating group felt that although some progress has been achieved, much remains to be done.

Recommendations

- Increase the budget and mandate of independent investigative institutions, such as the ICD.
- Develop a national crime reduction strategy that guides national, provincial and local government agencies, including criminal justice and other departments, to work collectively to improve community safety.
- Establish a judicial commission of inquiry to investigate allegations of criminality, corruption, inappropriate political interference, nepotism and maladministration occurring within the SAPS.
- Alternatively, conduct an urgent transparent and independent investigation by experts into the above-mentioned issues.
- Develop a new White Paper on Police, which includes the recommendations of either the judicial commission or the alternative investigation.
- The above recommendations should be followed by a new Police Service Act, which would provide the legal framework for the management and operational deployment of the police in accordance with the principles of democratic policing and the South African Constitution.

- Release crime statistics at national, provincial and precinct levels more regularly (at least quarterly). This will support meaningful community and multi-stakeholder partnerships in developing appropriate crime reduction initiatives and measuring their impact, which is not currently possible. Moreover, government should shift focus away from using crime trends as the primary measure of police performance, and rather use these as a measure of the crime challenge facing society.
- Temper the hard-line, militant rhetoric around crime, and emphasise the importance of the rule of law and the Bill of Rights in the constitution.
- Take appropriate legislative action to expedite legislation to establish a truly independent anti-corruption investigative agency and promulgate the DNA Bill.

1.3 THE JUSTICE SYSTEM AND THE JUDICIARY

Related APRM objectives

DPG objective 3: Promotion and Protection of Economic, Social, Cultural, Civil and Political Rights as Enshrined in the African and International Human Rights Instruments.

DPG objective 4: Uphold the Separation of Powers, Including Protecting the Independence of the Judiciary and Ensuring an Effective Capital Legislature.

DPG objective 5: Ensure Accountable, Efficient, Effective Public Office-Holders and Civil Servants.

DPG objective 6: Fight Corruption in the Political Sphere.

Related Cross-Cutting Issues identified in South Africa's CRR

- Capacity Constraints and Poor Service Delivery
- Corruption
- Crime
- Managing Diversity

Significant developments relating to independence and governance of the South African judiciary and access to justice have taken place since the CRR was published in 2007. Four main areas will be considered. These are judicial independence, judicial transformation, the capacity of state courts and access to justice.

Independence of the judiciary: SAIR II identifies the independence of the judiciary as one of the 'key [tenets]' underpinning South Africa's democracy.⁵⁴ The CRR notes that the South African judiciary is widely seen as independent and free of executive interference.⁵⁵

Nevertheless, the South African judiciary has suffered several ethical scandals in recent years. To strengthen the ethical standards to which the

judiciary is held, the Judicial Service Commission Amendment Act introduces procedures for dealing with complaints against judges, and the registration of judges' interests.⁵⁶ This should strengthen the independence of the judiciary by increasing transparency and public confidence in the impartiality and accountability of judges. However, the Act leaves much of the detail of this regulatory scheme to be defined in regulations and a Code of Judicial Conduct, which is still to be passed by parliament. It therefore remains to be seen how effectively this issue has been addressed.⁵⁷ Nevertheless, the current draft Code has been generally welcomed by the legal community, and is regarded as consistent with international standards. Once the Code is adopted, the extent to which it

will be effectively implemented and the manner in which its concepts will be interpreted will be crucial to reinforce judicial independence.

Judicial transformation: The CRR comments that the judiciary remains contaminated by the legacy of Apartheid.⁵⁸ It describes perceptions that the judiciary continues to be dominated by white males, with some judicial officers exhibiting racial bias in their decision-making.⁵⁹ The CRR suggests that the transformation of the judiciary ought to be fast-tracked.⁶⁰ However, it also acknowledges the limited supply of properly trained professionals.⁶¹

The Constitution requires that the judiciary broadly reflect the racial and gender composition of South African society.⁶² In recommending judicial appointments, the JSC pays particular attention to these criteria.⁶³ Much has been achieved since 1994, when of the 165 judges all but 5 were white males. In 2011, of the 226 judges, 135 are black and 91 are white, and 59 are women.⁶⁴ However, more remains to be done, and transformation should focus on reflecting the racial as well as the gender composition of the judiciary.⁶⁵ Few women choose a career path that will traditionally lead to the bench, and the existing initiatives to improve female representation on the bench should be reinforced.⁶⁶ Furthermore, transformation should not only focus on demographics, but should also lead to the appointment of skilled candidates who have a judicial mindset and philosophy that embraces South African constitutional values.⁶⁷ The language of transformation should not be used to push for the appointment of more 'pro-executive' judges.⁶⁸ This would undermine judicial independence and public confidence in the judiciary.

The CRR demonstrates the challenge of judicial appointments in South Africa. Despite significant progress in transforming the judiciary (at least as far as the superior courts are concerned), the institution as a whole appears to lack full public confidence and legitimacy. That this public perception (and indeed, the CRR's perception) of the pace of transformation may be somewhat unfair is suggested in the CRR itself, which notes that the judiciary has undergone a 'fundamental transformation' in its composition.⁶⁹

Capacity of state courts: Since 1994 the Constitutional Court has been the highest court in constitutional matters, while the Supreme Court of Appeal has remained the court of last instance in non-constitutional matters. The distinction has not

always been easy to maintain. The Constitutional Amendment Draft Bill of 2010 proposes converting the Constitutional Court into an 'Apex Court', making it the highest court in all matters, with jurisdiction over non-constitutional cases where it grants leave to appeal.

The proposal is problematic. Judges have been appointed to the Constitutional Court based on their expertise in constitutional matters, and it is not clear that the Court will have the capacity to deal with a significant increase in its caseload. The benefits of a specialised Constitutional Court in developing the constitutional jurisprudence of South Africa's young democracy would also be lost.⁷⁰

There are also serious issues of high judicial workload and backlogs in South African courts.⁷¹ SAIR II describes efforts to ensure that court cases are resolved quickly,⁷² but the challenge is formidable. The North Gauteng and South Gauteng High Courts are estimated to handle around 100 civil cases a day.⁷³ In 2010 the case backlog in all High Courts stood at 20.7%.⁷⁴

Access to justice: Problems of access to justice are frequently raised in South African legal discourse,⁷⁵ and the issue is closely linked to the challenges in the capacity of the courts. Issues such as distance to the courts, particularly in rural areas, the cost of legal representation and unfamiliarity with the legal process are often cited as examples of obstacles to access to justice facing many South Africans, especially those from poorer communities.⁷⁶ SAIR II notes measures taken by government to bring the courts closer to communities in some provinces, and the realignment of magistrates courts and municipal boundaries to improve access to justice.⁷⁷ Similarly, the Superior Courts Bill of 2010 will ensure that each province will have a High Court.⁷⁸ It remains to be seen how effective these measures will be. Geographical accessibility is undoubtedly a major issue hindering access to justice. However, the measures described do not address other serious obstacles, such as the cost of legal representation and unfamiliarity with the legal process, which the CRR identifies.

Finally, the CRR notes that the creation of specialised courts, including equality courts, should facilitate access to justice.⁷⁹ However, there is a need to re-evaluate the functioning of the equality courts. This is indicated by the low number of cases brought before the equality courts, the lack

of public awareness of these courts, the lack of specialised training of the court personnel, and the possible unconstitutionality of the certain provisions of the Promotion of Equality and Prevention of Unfair Discrimination Act (4 of 2000) creating these courts.⁸⁰



RATING: ORANGE

Given that the South African government is attempting to address these issues, but that many challenges remain, the evaluating group awarded an orange rating.

Recommendations

- Government and the judiciary should ensure there is consensus on the Regulations on Judges' Disclosure of Registrable Interests and the Code of Judicial Conduct.
- Ensure the Code of Judicial Conduct and the Register of Judges' Interests are effectively implemented once they have been adopted by parliament.
- Ensure that the mechanisms put in place by the Judicial Service Commission Amendment Act to file complaints against judges are publicly known, effective and easily accessible.
- Ensure that judges and magistrates are held accountable by effectively tackling corruption and a lack of transparency within the judiciary, especially in rural areas.
- Delay converting the Constitutional Court into an Apex Court, at least until the jurisdiction and appointments to an Apex Court have been fully considered.
- Re-evaluate the Case Backlog Reduction Project and adapt it to speed up the overall case backlog reduction.
- Reinforce accessibility to and awareness of specialised courts.
- Reinforce and develop alternative modes of conflict resolution, such as mediation and retributive justice where appropriate, which should be cost-effective and expeditious.
- The JSC should continue to focus on race and gender when evaluating candidates. It should also focus on the skills and qualities of the candidates, such as independence, impartiality and fairness, integrity, judicial temperament and commitment to constitutional values, and on ensuring a diversity of professional backgrounds in their appointments.⁸¹



1.4 VIOLENCE AGAINST WOMEN AND CHILDREN

Related APRM objectives

DPG objective 7: Promotion and Protection of the Rights of Women.

DPG objective 8: Promotion and Protection of the Rights of Children and Young Persons.

Related action items from South Africa's NPoA

DPG objective 7: Violence and crime, in particular against women and children, and ensuring the active engagement of all communities in the fight against crime and violence (sic).

DPG objective 7: Marginalised and vulnerable groups experience difficulties making use of the institutions of justice.

Related Cross-Cutting Issues identified in South Africa's CRR

- Violence Against Women
- Violence Against Children

The CRR acknowledges the advances made in the adoption of the Domestic Violence Act 116 of 1998 in relation to violence against women.

This legislation provides overall protection to victims of domestic violence, whether it is physical, sexual, emotional or economic in nature.⁸²

SAIR II estimates that the loss of economic output due to violence against women is as high as ZAR 3 billion per year in the country. In response, it states that government has established the Ministry of Women, Children and Persons with Disabilities to strengthen delivery on the rights of these vulnerable groups. Government implemented the first phase of the National Register for Sex Offenders in June 2009 and the Child Justice Act came into effect in April 2010. Government has also embarked on a process of reviewing and updating the Children's Rights Charter to include emerging challenges, such as the use of children as subjects of pornography and their exposure to pornographic material.⁸³

These new measures indicate that the South African government has taken this issue seriously since undergoing the APRM review. Yet several challenges persist, especially in relation to the worst forms of violence, which are domestic and sexual in nature, faced by women and children in South Africa.

According to the 2010 *State of the Union: South Africa Report*, 'women's rights continue to be violated in villages, at the work place, in schools, and at home. They are routinely raped, sexually harassed...and denied their right to education.'⁸⁴ At

the same time, children '...continue to be abused and their rights violated. They are raped, abducted, maimed and murdered.'⁸⁵

Statistics on violence against women are rarely accurate. Fears inhibit the reporting of rape incidents, including the fear of not being believed, physical access to police and fear of the legal process. Even when reported, perpetrators are often able to pay for rape cases to be destroyed.⁸⁶ The official SAPS statistics for reported rape declined from 69 117 in 2004/05 to 68 076 in 2005/06, 65 201 in 2006/07, and 63 818 in 2007/08, before an upsurge to 71 500 in 2008/09.⁸⁷ Girls and young women are the most common victims of sexual violence. Studies show that that 65% of victims are 12–29 years old.⁸⁸ South Africa reportedly suffers from the highest incidences of rape worldwide (of countries that keep statistics on rape).⁸⁹ More than one-third of girls experience sexual violence before they reach the age of 18.⁹⁰ The evidence points to a conclusion that women's right to give or withhold consent to sexual intercourse is one of the most commonly violated of all human rights in South Africa.⁹¹

Taking this into account, the implementation of relevant legislation remains a concern. The protection afforded by the Domestic Violence Act is largely dependent on whether the SAPS are implementing the Act correctly. A study conducted on police training on the Domestic Violence Act in the Western Cape found that most SAPS members have received, and continue to receive, training on

the Act. However, this training has been inadequate in equipping officials to implement the Act correctly.⁹² An example of this relates to the case of Marilyn White, who had a protection order against her husband (whom she was in the process of divorcing), which stipulated that he was not allowed to access her place of residence. Upon finding him there, White called the SAPS, who arrived but did not enforce this order. Once the SAPS have left, White was raped by her HIV-positive husband.

Although the Criminal Law (Sexual Offences and Related Matters) Amendment Act (32 of 2007) is in operation, the National Register for Sex Offenders, which has been in operation for almost two years, has not yet been implemented fully. The purpose of this register is to ensure that people who have been convicted or are alleged to have committed sexual offences are not employed to work with children or people with mental disabilities.⁹³

Serious issues relating to sexual violence that need attention are the ‘corrective’ rape of women who are lesbian⁹⁴ and the link between gender-based violence and HIV/Aids.⁹⁵ Both these issues have not been given due consideration, especially in light of the number of lesbian women who have been raped, and HIV/Aids being a cause and consequence of violence that women face.

The country, its agents and institutions are also not doing enough to promote women’s rights. According to a recent People Opposing Women Abuse (POWA) report:

State agents and in particular, the current office of the presidency, [have] not only routinely failed to condemn violence against women, but in some instances [have] invoked African custom and tradition to justify and facilitate conditions exacerbating the violations of women’s rights.⁹⁶

Research by the Southern African Non-Governmental Organisation Network in 2010 found that only 4% of speeches made by government officials mentioned gender-based violence.⁹⁷ Many critics point to the poor moral example set by political leaders in this regard.

Child abuse is also endemic, with the White Ribbon Campaign, an advocacy group against child abuse, estimating that out of South Africa’s 18.5 million children, 9 million have been abused, with sexual abuse being the most prominent form.⁹⁸

This is despite the existence of legislation – such as the Children’s Act (38 of 2005) and Children’s Amendment Act (41 of 2007), as well as article 28 of the 1996 South African Constitution – which provides every child with the right to be protected from maltreatment, neglect, abuse or degradation. Section 111 of the Children’s Act creates a child protection register which is to be kept by the director-general of social development. The register consists of two parts. Part A contains information on allegations of a child who has been abused, even though no one might have been convicted of such abuse. Part B contains information of people who have been convicted of abuse. The register’s purpose is similar to that of the Sex Offenders Register, which is to ensure that no person convicted of child abuse should work with children directly.

It is noteworthy that the CRR only mentions violence against women and children as a CCI. The extent to which violence against men takes place is under-researched and it is important that the protection provided to such men be explored.



RATING: ORANGE

The evaluating group felt that although the necessary legislation has been adopted to protect women and children from violence, its implementation is lacking.

Recommendations

- The parliamentary committee on police should hold the SAPS and the Minister of Police more accountable in implementing the Domestic Violence Act, The Sexual Offences Act and the Children’s Act.
- Increase the roll-out of the victim empowerment projects to provide better services for victims.
- Ensure that investigation and prosecution of perpetrators of corrective rape are dealt with according to correct due process and vigour.
- Provide proper remedies for women and children who are vulnerable to HIV infection, based on the violence that they may face.

1.5 CORRUPTION

Related APRM objectives

DPG objective 5: Ensure Accountable, Efficient, Effective Public Office-Holders and Civil Servants.

DPG objective 6: Fight Corruption in the Political Sphere.

EGM objective 4: Fight Corruption and Money Laundering.

CG objective 3: To Promote Adoption of Codes of Good Business Ethics in Achieving Objectives of the Corporation.

Related action items from South Africa's NPoA

DPG objective 6: Awareness raising with respect to anticorruption legislation, codes of conduct, enforcement and implementation in all sectors and across all spheres, Review Protected Disclosures Act.

DPG objective 6: Strengthened whistleblower protection legislation.

Related Cross-Cutting Issues identified in South Africa's CRR

- Corruption
- Crime

The CRR lists corruption as a CCI. Paragraph 589 states that the South African government needs to take steps to protect whistleblowers effectively. Paragraph 940 lists areas that require intervention. These include private funding of political parties; a lack of legislation to guide transition of public service employees to the private sector, especially where there may be a conflict of interest; improving the co-ordination of anti-corruption bodies; and bribery of foreign public officials by South African business people.⁹⁹ In the NPoA, Objective 6 calls for increased awareness on corruption legislation and a review of the Protected Disclosures Act (PDA) to strengthen legislation to protect whistle-blowers.

Despite visible government efforts towards creating a robust 'zero-tolerance' anti-corruption system,¹⁰⁰ there is evidence of a wide margin between public perceptions of corruption and government activities. The corruption perceptions index (CPI) of Transparency International (TI)¹⁰¹ shows that South Africa dropped from 23rd place in 1996¹⁰² to 54th in 2010.¹⁰³ The global corruption barometer (GCB),¹⁰⁴ which assesses attitudes of the public about corruption, shows that 62% of South Africans believed that corruption had increased in the last three years.¹⁰⁵ This implies that although

government initiatives may have resulted in higher corruption reporting¹⁰⁶ and awareness,¹⁰⁷ this has not been matched by political will to ensure the enforcement of sanctions.

Institutionally, there are shortcomings in the application and implementation of the various anti-corruption programmes and codes. A key concern raised by the CRR is the lack of effective co-ordination of anti-corruption units. SAIR II reports on the establishment of the Financial Management System and Anti-Corruption Task Team set up by government to address the issue of co-ordination.¹⁰⁸ It also lists government initiatives, such as the Multi-Agency Work Group, to investigate procurements. However, SAIR II fails to mention key issues raised in the CRR, such as political party funding and legislation to guide public service or private service transitions. Overall, it deals with corruption in vague terms, listing organisations, policies and programmes without evaluating their effectiveness or delineating specific areas of concern about corruption, such as whistle-blowing and conflict of interests in tenders and procurement processes.

Additionally, feedback from government departments on corruption reporting through the National Anti-Corruption Hotline (NACH) shows that although reporting and exposing incidents of

corruption and financial misconduct have increased, the rates of feedback, sanctions and prosecutions from responsible departments have been low. Of a total of 7 529¹⁰⁹ cases referred to NACH and then on to government departments, direct prosecutions resulting from NACH were just 245.¹¹⁰ Capacity and lack of accountability on the side of departmental managers have been identified as key challenges.¹¹¹ However, the call centre has produced record feedback rates where there has been a centralised co-ordinating unit, as in the Western Cape which experienced a 72% feedback rate.¹¹²

The ODAC review report on the status of whistle-blowing in South Africa shows legislative gaps in the PDA and a lack of progress in implementing whistle-blowing legislation in both public and private sectors.¹¹³

There appears to be a lack of confidence in anti-corruption institutions (agencies and laws) of government. The ODAC report shows that 43.1% of respondents feel the PDA does not adequately protect whistle-blowers.¹¹⁴ Trust in the independence

of government corruption investigation structures – such as the National Prosecuting Authority (NPA) and the Directorate for Priority Crimes Investigations (Hawks), the body that replaced the Directorate of Special Operations (Scorpions) – is low. This has been due to questionable appointments;¹¹⁵ the politicisation of positions in the NDPP;¹¹⁶ and the disbanding of the investigative arm of the NPA (the Scorpions) by government, which was alleged to have been politically motivated and recently deemed unconstitutional by the Constitutional Court.¹¹⁷



RATING: RED

Given the perceptions of corruption in South Africa and that government did not follow through with the APRM’s recommendations on protecting whistle-blowers, the evaluating group felt that a red rating was justified.

Recommendations

- Ensure that the independence and adequate systematisation of government anti-corruption initiatives is the focus of CSO advocacy.
- Award sufficient protection to whistle-blowers to ensure that people are not afraid to come forward with evidence of corruption.
- Enforce sanctions on proven cases of corruption and fraud. This will only be achieved where there is the political will of government actors in particular.
- Improve co-ordination between the provincial and national anti-corruption hotlines.



2 PARTY–STATE RELATIONS

This issue is not explicitly addressed in the CRR. However, it does mention that ‘for democracy to be sustainable, it must also be pluralistic. Among other things, it requires establishing and strengthening the rules that will sustain multiparty systems.’¹¹⁸ It adds: ‘The ANC as the dominant political party has a specific responsibility to adopt an orientation and put in place the necessary machinery for nurturing citizens who are capable of sustaining democracy and political governance through bottom-up decision-making processes.’¹¹⁹

Nevertheless, the relations between party and state represent an important dynamic in South African politics, which is frequently discussed in the media, at conferences and by analysts. The ANC has been the dominant party since the 1994 elections, at times holding just above or just below two-thirds of the seats in the National Assembly. As a result, the distinction between the state and the political party has become blurred.

South Africa’s implementation reports have often lacked voices from civil society and have been seen as insufficiently self-critical. Discussion of the lines between party and state in this report will help to bring balance.

The three sub-themes in this section are:

- 2.1 Party–state separation and relationships
- 2.2 Cadre deployment and politicisation of institutions
- 2.3 Regulating private funding to political parties

2.1 PARTY-STATE SEPARATION AND RELATIONSHIPS

Related APRM objectives

DPG objective 2: Constitutional Democracy, Including Periodic Political Competition and Opportunity for Choice, the Rule of Law, a Bill of Rights, and the Supremacy of the Constitution are Firmly Established in the Constitution.

DPG objective 5: Ensure Accountable, Efficient, Effective Public Office-Holders and Civil Servants.

DPG objective 6: Fight Corruption in the Political Sphere.

Related action items from South Africa's NPoA

DPG objective 6: Awareness raising with respect to anticorruption legislation, codes of conduct, enforcement and implementation in all sectors across all spheres, Review Protected Disclosures Act.

Related Cross-Cutting Issues identified in South Africa's CRR

- Corruption

Although neither the CRR nor the SAIRs discuss political parties as such, their operations are important for understanding the trajectory of politics. South Africa is a dominant-party state. Outside regional enclaves (such as the Western Cape where the Democratic Alliance (DA) controls the provincial legislature and the main city, Cape Town, opposition parties are not perceived as standing a realistic chance of unseating the ruling ANC in the near future. Constitutionally, the various elements of the state should function impartially and without political bias.¹²⁰ However, on occasion, senior ANC figures have made ill-considered comments about the importance of the ruling party in relation to the Constitution and institutions, stressing the party's supremacy. In a statement given on 8 January 2011, President Jacob Zuma quoted former ANC President, Oliver Tambo, as describing the ANC as the 'parliament of all the people of our country'. Zuma added that the ANC was the 'only organisation capable of uniting all the people of South Africa around a common vision'.¹²¹ One journalist pointed out that this may have been a legitimate viewpoint prior to the advent of democratic rule in 1994. However, now all South Africans elect representatives to state bodies. Although the ANC may be supported by the majority, it cannot replace all other institutions.¹²²

Another example concerns the National Youth Development Agency (NYDA), launched in mid-2009. Its objectives are to facilitate youth development,

with a focus on economics. The NYDA Act underlines the need for impartiality and obedience only to 'the Constitution and the law' on the part of its board members.¹²³ The African National Congress Youth League (ANCYL) is well represented in its senior echelons. The NYDA chairman and chief executive officer are ANCYL office bearers (although other parties are also represented on its board). During 2010 two instances strongly suggested an undue alignment of the NYDA with the ANCYL.

In the appointment of provincial advisory boards for the NYDA in October 2010, virtually all the appointees (estimated at 62 of 63) were linked to the ANCYL, and were regarded as supporters of ANCYL leader, Julius Malema.¹²⁴ Indeed, it was alleged that the NYDA had bent the rules for nomination to allow candidates who had missed the nomination deadline to be considered, and had overturned decisions of the selection panel.¹²⁵

South Africa hosted the World Festival of Youth and Students in December 2010, an event organised for the World Federation of Democratic Youth (WFDY). The festival was an ANCYL project from the outset. The ANCYL is a constituent party of the WFDY (most youth formations in South Africa are not), and the ANCYL accepted the 'hosting torch' on a party visit to Venezuela in April 2010.¹²⁶ Malema (a party official, who holds no state position or elected office) delivered an opening address, during which he attacked the main opposition party.¹²⁷ The NYDA played a key role in organising the event. The costs

incurred amounted to some ZAR 100 million, much of which was paid by a National Lottery grant.¹²⁸ It is doubtful whether any general benefits were realised and difficult to describe the NYDA's role in terms other than supporting the agenda of a political party.



RATING: RED

The evaluating group felt that the arguments put forth in this section justified a red rating for the issue.

Recommendations

- Reclaim the constitutional imperative of an impartial civil service. Political parties and state agencies – especially the SA Human Rights Commission (SAHRC), NYDA, Public Service Commission (PSC) and public protector – need to take seriously the distinction between party and state.
- If necessary, refine regulations on party involvement by civil servants. A discussion on this issue should address the terms on which certain ‘political appointments’ might legitimately be made.
- The president should provide particular leadership in making party–state distinctions. Holding office for the entire country, the president needs to guard against the commandeering of state resources for party ends.

2.2 CADRE DEPLOYMENT AND POLITICISATION OF INSTITUTIONS

Related APRM objectives

DPG objective 5: Ensure Accountable, Efficient, Effective Public Office-Holders and Civil Servants.

DPG objective 6: Fight Corruption in the Political Sphere.

Related action items from South Africa’s NPoA

DPG objective 6: Awareness raising with respect to anticorruption legislation, codes of conduct, enforcement and implementation in all sectors and across all spheres, Review Protected Disclosures Act.

Related Cross-Cutting Issues identified in South Africa’s CRR

- Corruption

Cadre deployment is a concept that is much discussed but often misunderstood. It is not dealt with in the APRM CRR or in the SAIRs, but its ramifications are vast. Broadly speaking, cadre deployment is a programme or process by which ruling party activists are ‘deployed’ to prominent positions inside and outside the state, and are expected to use their position to serve party goals. It was codified in the late 1990s as a means to take control of the ‘levers of power’,

including the judiciary, public broadcaster, civil service and the security forces.¹²⁹

Cadre deployment should not be seen merely as appointing people with political affiliations. Rather, it suggests something more fundamental: an attempt to circumvent official processes by effectively assigning certain appointments to party ‘deployment committees’, or to the party leadership. Official processes may be followed, but the outcome is presumably predetermined. The deployee is

then expected to carry out the ANC's wishes in the position. Carl Niehaus, at one time a prominent figure in the ANC, said that there was 'an expectation that the party line and leadership should be followed blindly, and that the judicial and democratic institutions of the state should merely be instruments to carry out ANC policy'.¹³⁰

It is impossible for outsiders to monitor this process, since it is happening within the confines of a private entity – a political party. It is not clear how widespread this practice is. However, cadre deployment is taking place and at no point has the ANC ever repudiated it. The ANC speaks openly of cadre deployment in principle, although it is less forthcoming about specifically identifying deployed 'cadres'.

Cadre deployment is problematic on several levels.

- It undermines institutions. Since it assumes ultimate fealty to the ANC, formal channels of authority and accountability are rendered secondary – at least for some.
- It is counter-constitutional. As cadre deployment posits authority and allegiance running through *party* channels, it violates constitutional provisions, legislation and regulations on civil service appointments. Indeed, the programme was deemed unlawful by implication in a court judgement handed down in 2009.¹³¹
- It compromises efficient governance. There is agreement on this from a wide spectrum, including from many in the ANC. Some commentators link troubled state institutions to this programme.¹³² For its part, the ANC has restated its commitment to 'cadre deployment' but has promised that deployees will be properly qualified.

Over the past two years, two important discussions have highlighted cadre deployment.

- An official report – *The State of Local Government in South Africa, 2009*¹³³ – linked the politicisation of structures and the consequent undermining of accountability to severe problems in local governance. The report observed that 'a culture of patronage and nepotism is now so widespread in many municipalities that the formal municipal accountability system is ineffective and inaccessible to many citizens.'¹³⁴ Although the term cadre deployment was not used, media commentary made the explicit connection. Legislation has been proposed by government to limit political office holders from employment in municipal bureaucracies.¹³⁵
- In early 2010 Janet Love, a high-ranking ANC member, was appointed to the South African Human Rights Commission (SAHRC). The ANC unambiguously referred to her appointment as a 'deployment', suggesting that the party had mediated it.¹³⁶ Love's supporters argued that her record as a human rights activist was impeccable, and that deployment of such candidates was acceptable.¹³⁷ Others argued that irrespective of Love's merits, her background in the ANC might well compromise her when dealing with political issues, and that the *principle* of deployment was the real problem.¹³⁸

In both instances, the risks exist that loyalty to the party can affect judgement; especially in cases in which that party might be implicated. This has been a common complaint against the public protector over the years.



RATING: RED

Owing to the arguments outlined in this section, the evaluating group felt that a red rating was justified.

Recommendations

- All parties and the state should recommit to the principle of a professional, non-partisan state apparatus, and the policy of cadre deployment should be revisited.
- Given South Africa's politicised history, many talented people may have party links. This should not disqualify them, but upon assuming prominent positions they should be required to terminate their political membership and be beholden only to the law and constitution.
- Parliament should discharge its duty to vet candidates properly. Part of the vetting process should be a cross-party consensus on establishing whether candidates are likely to act in favour of any political party.¹³⁹
- Ordinary civil servants may have constitutional rights to personal political affiliations, but this should be subject to absolute professionalism in fulfilling work obligations. The PSC should enforce this. Civil servants may be party activists only after hours.

2.3 REGULATING PRIVATE FUNDING TO POLITICAL PARTIES

Related APRM objectives

DPG objective 2: Constitutional Democracy, Including Periodic Political Competition and Opportunity for Choice, the Rule of Law, a Bill of Rights, and the Supremacy of the Constitution are Firmly Established in the Constitution.

DPG objective 5: Ensure Accountable, Efficient, Effective Public Office-Holders and Civil Servants.

DPG objective 6: Fight Corruption in the Political Sphere.

Related action items from South Africa's NPoA

DPG objective 6: Awareness raising with respect to anticorruption legislation, codes of conduct, enforcement and implementation in all sectors and across all spheres, Review Protected Disclosures Act.

Related Cross-Cutting Issues identified in South Africa's CRR

- Corruption

The manner in which political parties are funded is a critical issue in virtually all multiparty democracies. Access to adequate state and private funding can play a decisive role in elections and can also affect the integrity of government leaders and institutions. This is because of the perceived or actual influence that private and/or foreign funders can have over public decision-making.

Although 'South Africa is among the few African countries that provide public funding for political parties' and that funding is carefully regulated, 'private funding of political parties is almost

wholly unregulated.'¹⁴⁰ In 2010 public funding of political parties in South Africa amounted to ZAR 70 million.¹⁴¹ No official data exists on private funding. However, it is estimated that between ZAR 300 million and ZAR 500 million was spent by political parties in the 2004 election campaign. South Africa's 2007 CRR observed that the threat of 'non-disclosure due to the absence of regulation of private funding of political parties is likely to distort the institutionalisation of constitutional democracy in South Africa, as private interests compete for favours from the dominant political parties.'¹⁴² A recommendation was made 'that South Africa

[should] consider introducing a law on the modalities and disclosure of private funding to political parties.¹⁴³ Nevertheless, SAIR II does not deal with this issue or refer back to the recommendation.

Although there is no law governing campaign funds in South Africa, civil society has ensured that the issue remains in the public spotlight. A noteworthy highlight is the 2005 High Court application by the Institute for Democracy in South Africa (Idasa) to compel South Africa's major political parties to reveal their major private funders. Key to Idasa's argument for disclosure was that the corrupting tendencies of undisclosed funding inhibited the voter's constitutional right to free political choice.¹⁴⁴ Idasa's application was rejected on the ground that access to records of private funders was not needed for exercising and protecting the right of free political choice. However, the court also held that the judgement did not mean that political parties should not, as a matter of principle, be compelled to disclose details of private donations made to their coffers. A few large corporations have since come out voluntarily, mainly during election time, to disclose the amounts of their political contributions. It is also important to note that most South African political parties – including the ANC, DA and Inkatha Freedom Party (IFP) – have been resistant to greater scrutiny of their sources of funding.

The following examples illustrate the current issues regarding the connections between business and political party funding.

- In 2010 allegations were made that the ANC stood to gain millions through its Chancellor House investment vehicle. This was as a result of awarding a major contract to build boilers for the Medupi Power Station to the Hitachi Consortium by the state-owned enterprise Electricity Supply Commission (Eskom). Critics pointed out that Mohammed Valli Moosa, the former Chairman of Eskom, was also a member of the National Executive Committee of the ANC and that the ANC held a 25% stake in the Hitachi Consortium,¹⁴⁵ and stood to make between ZAR 45 million and ZAR 363 million.¹⁴⁶ The controversy led to a complaint to the public

protector, who found that there was a conflict between Moosa's personal interest in the ANC and his duty towards Eskom, and that he had acted improperly but that the contract awarded to the Hitachi Consortium was not affected by this. The public protector recommended that the Minister of Public Enterprises should consider developing legislation to regulate the conducting of business between government entities and political parties.

- Political power can also be abused at a local level. As South Africa prepared for the May 2011 local government elections, Christopher Taute, the executive mayor of the Hessequa municipality, requested in an official letter from his municipal office that a number of companies donate to the ANC's local election campaign, 'since they currently hold contracts with the Municipality'. Despite personal and party apologies, fears remain that this was not an isolated incident, but the only one that was publicised.¹⁴⁷



RATING: RED

The evaluating group decided to award this issue a red rating, since the NPoA recommendations were ignored, despite much controversy around private political party funding.

Recommendations:

- Initiate a full examination of the scope and effect of foreign and private donations to political parties on South Africa's democratic institutions.
- Introduce appropriate legislation to regulate the flow of foreign and private donations to political parties, to ensure full public disclosure of any such donations and to prevent such donations from being used to secure unwarranted influence.

3 ACCESS TO INFORMATION & PROTECTION OF THE MEDIA

South Africa's CRR does discuss media issues. One of the main reasons for this is the APRM's own shortcomings with regard to media. The 88-page Self-Assessment Questionnaire (SAQ) supplied to all participating countries fails to include any substantive questions or indicators relating to the requirement for a free and independent press.¹⁴⁸ Although the media does not feature in the CRR or the NPoA, it was important to include it in this report, since a free and vibrant media is an essential feature of any democracy. Furthermore, access to information and media freedom is currently threatened by plans to establish a media tribunal and to introduce the Freedom of Information Bill, both of which have the potential to stifle press freedom in the country.

The South African NPoA only contains one item with reference to the media: 'National conversation on the role of the media in reporting, discussions and debates based on factual, objective and verifiable sources of information'. Since there are no items relating to the issue covered under this section, the evaluation group decided not to rate these sub-themes.

The sub-themes in this section are:

- 3.1 Media legislation and regulation
- 3.2 The role of the public broadcaster
- 3.3 The treatment of journalists
- 3.4 Access to information

3.1 MEDIA LEGISLATION AND REGULATION

Related APRM objectives

DPG objective 3: Promotion and Protection of Economic, Social, Cultural, Civil and Political Rights as Enshrined in the African and International Human Rights Instruments.

Related action items from South Africa's NPoA

DPG objective 2: National conversation on the role of the media in reporting, discussions and debates based on factual, objective and verifiable sources of information.

South Africa, as with most members of the APRM, is a party to significant international and continental protocols that defend media freedom and promote the rights of individuals to disseminate, seek and receive information. It is also a subscriber to the SADC Protocol on Culture Information and Sport.¹⁴⁹ The country's laws provide for unequivocal support to strengthen media freedom. The South African Constitution, extracted from the Bill of Rights, has a provision dealing with the freedom of expression.¹⁵⁰ However, the same article that makes such strong provisions for freedom of expression, and by extension the media, also sets out the limitation of those rights under section 36 of the Constitution.¹⁵¹ South Africa's stance on freedom of expression stipulates that such freedoms must be balanced with other rights, such as privacy, human dignity and equality, on a case-by-case basis determined by the Constitutional Court.

The South African media is set to face various legal impediments through proposed legislation. The most notorious of these is the Protection of Information Bill, introduced to parliament in March 2008 to replace the draconian act of the same name enacted in 1982 by the former National Party government. The Bill has been strongly criticised for posing an even greater threat to access to information than its predecessor. It could result in journalists and others who disclose state secrets being jailed for up to 25 years. The Bill is non-restrictive, as it applies to all tiers of government and is broadly worded to allow almost any information to be deemed 'protected'. This is designed to intimidate and promote secrecy in an era that demands less of such and more transparency by public officials. Other issues that threaten media freedom in South Africa include pre-publication

gagging. The *Mail & Guardian* newspaper bore the brunt of this when it was bombarded with six interdicts from prominent individuals and authorities between May 2006 and July 2007. These included the NDPP, the Ministry of Transportation and the South African Broadcasting Corporation (SABC) legal head, Mafika Sihlali.¹⁵² This scenario was described by the ODAC: 'There is a tendency among public figures, including politicians, to respond to opportunities to use their right of reply with an interdict to attempt to stop publication.' It warned that such actions go against the Bill of Rights and the Promotion of Access to Information Act (PAIA, 2 of 2000) law, and as such are detrimental to the functioning of a democratic state.

The proposal by the ANC, at its 52nd National Conference, to establish a statutory Media Appeals Tribunal to deal with complaints against the press was another major blow to media freedom. The media is opposed to the tribunal because it can be used to exercise control over the press. It would also disempower the media's council, which already has self-regulatory mechanisms – spearheaded by members of the media fraternity and the public – to guide its operations. The media body and council membership, which expanded its structures in 2007, approves the Press Code and appoints an Ombudsman as well as the Appeal Panel. Although it has functioned well and retains the trust of the public, the ruling party continues to question the idea of self-regulation.

It is noteworthy that in 2010 Freedom House, which monitors press freedom throughout the world, downgraded South Africa to 'partly free', a rating it held prior to 1994.



RATING: None

As outlined above, none of the media issues covered in this report is rated, since South Africa has not made any commitments on them in its NPoA.

Recommendations

- The media, civil society and political parties need to remain vigilant in their efforts to combat the closing of political space through the proposed media bills.
- The media and human rights organisations need to initiate campaigns to increase public awareness on the imperatives of freedom of expression as a critical precursor for the consolidation of democracy and good governance.
- The press needs to review its self-regulatory structures and codes, and consider equipping such structures with powers to impose a fine on those who breach the code of conduct.

3.2 ROLE OF THE PUBLIC BROADCASTER

Related APRM objectives

DPG objective 3: Promotion and Protection of Economic, Social, Cultural, Civil and Political Rights as Enshrined in the African and International Human Rights Instruments.

Related action items from South Africa's NPoA

DPG objective 2: National conversation on the role of the media in reporting, discussions and debates based on factual, objective and verifiable sources of information.

The public broadcaster, the SABC, hardly features in the CRR, apart from references to a greater volume of radio programmes in the indigenous languages.¹⁵³ South Africa is the only country in Africa that can claim to have a public broadcaster as defined by the African Charter on Broadcasting, which states that there should be a three-tier system of broadcasting (public, private and community). The South African Constitution gives credence to this by making provision for an independent regulatory authority to regulate broadcasting in the public interest and to ensure fairness and diversity of views broadly representing South African society.¹⁵⁴

The ruling party seldom criticises the SABC, whereas opposition political parties and civil

society do, particularly for its bias towards the ruling party and government. Civil society has also heavily criticised SABC board members for failing to exercise their oversight mandate in regard to management, finances and the operations of the organisation. Criticism has also been directed to the Minister of Communications for unwarranted or inappropriate interference in the operations of the SABC. The most vocal has been the 'SOS – Support Public Broadcasting' Coalition, which consists of 41 non-governmental institutions and individuals, ranging from the powerful Congress of South African Trade Unions (COSATU) to numerous freedom of expression and artistic production organisations. The Coalition has been particularly critical of government's failure to modernise

outdated broadcasting policy and to formulate new legislation. It believes that many of the crises at the SABC are a direct result of gaps and inconsistencies in the policy and laws, which are now more than a decade out of date.¹⁵⁵

The SABC's credibility has plummeted since 2007. This has been exacerbated by the broadcaster being beset by the challenges of governance, financial mismanagement and funding. Cases of high staff and board turnover have also contributed to instability at the broadcaster. There have been six chairpersons of the SABC board since 1993, as no chairperson of the SABC board has ever stood for a second term. Funding still remains the greatest puzzle in the SABC and should be resolved as a matter of urgency. Most stakeholders have stated that the SABC's over-reliance on commercial funding is problematic. Within a period of two years, the licence fee collection jumped from a total of ZAR 395 million to ZAR 739 million.¹⁵⁶ It is also revealing that funding issues have been at the heart of tussles over the role the public broadcaster

should play in the country since the process of transforming the SABC commenced in 1993.

The public broadcaster has often been accused of favouring the ruling party. There was a complaint that the Head of News at the SABC drew up a 'black list' of political commentators who were critical of the ANC. CSOs have made a strong appeal for the protection of the SABC from political or commercial interference and manipulation. This has been underscored by an emphasis for the total independence of the SABC from government interference.



RATING: None

As outlined above, none of the media issues covered in this report is rated, since South Africa has not made any commitments on them in its NPoA.

Recommendations

- Conduct a review of the legal status of the SABC (including an evaluation of whether a privately held company is the appropriate structure for such a statutory body) and of the division of the Corporation into public and public commercial wings. The aim should be to protect the SABC's independence and to reflect its statutory status.
- In line with this, draft an SABC Act, capturing the decisions in the White Paper. Sections of the current Broadcasting Act (4 of 1999) dealing generally with broadcasting or with the community or commercial sectors should be incorporated into the Electronic Communications Act (36 of 2005), if not already captured.
- Award the SABC, as an important cornerstone of democracy, the same protections in the Act as those awarded to constitutional entities, and list it as a constitutional institution rather than as a public entity. The necessary changes should also be made to the Public Finance Management Act (1 of 1999) and Broadcasting Act.
- Evaluate the appropriate oversight provisions, taking into consideration the need for the SABC to be accountable and independent.

3.3 THE TREATMENT OF JOURNALISTS

Related APRM objectives

DPG objective 3: Promotion and Protection of Economic, Social, Cultural, Civil and Political Rights as Enshrined in the African and International Human Rights Instruments.

Related action items from South Africa's NPoA

DPG objective 2: National conversation on the role of the media in reporting, discussions and debates based on factual, objective and verifiable sources of information.

The CRR and its NPoA contain no references to the issue raised by media representatives during the Country Self-Assessment, apart from a brief note in the NPoA stating the need for a 'national conversation on the role of the media in reporting, discussions and debates based on factual, objective and verifiable sources of information ... led by the media itself.'¹⁵⁸ SAIR II indicates that this project, which was due for implementation in July 2008, was not taken further.

Recently there has been a marked increase in the harassment of journalists and photographers by the police arresting and detaining them while they were carrying out their duties.¹⁵⁹

The SANEF and the police formed a forum for the discussion of problems arising between the media and the police. Complaints of police mistreatment of journalists were raised during these meetings. However, despite promises of action to prevent such occurrences, they have actually increased. SANEF presented a dossier of 13 complaints to the police in 2009 and is currently compiling another dossier to take account of the dozen or so incidents during 2010.

The most consistent criticism from the ruling party is that the media has not 'transformed' sufficiently. What such transformation would mean in practice has not been spelled out.¹⁶⁰ The print media has opposed this concept, pointing out that there is no need for special transformation of media houses, as they have already achieved a large measure of transformation in editorial and other departments through black economic empowerment (BEE) requirements.

An illustration of the conspiratorial attitude towards the media is contained in the reporting and commentary on the sexuality tests conducted on South Africa's athletics champion, Caster Semenya, in 2009. ANCYL President, Julius Malema, was

quoted by a news agency as criticising the press in its reporting of the controversy, stating that 'once again the white-controlled media is wrong ... please stop bothering Caster, she needs time to celebrate.'¹⁶¹ Member of Parliament, Winnie Madikizela-Mandela, speaking on the same issue, told journalists: 'We know your responsibility is to inform us, but do so patriotically without insulting one of our own. Use the freedom of press we gave you properly, because we can take it from you.'

In addition, there is concern that a number of draft laws can restrict reporting and publishing information. A key concern is the Films and Publications Act, which introduces pre-publication censorship on publications other than the mainstream press.¹⁶² Others are the Key Points Act, which places clamps on the disclosure of security measures at designated 'key points'; the Protection from Harassment Bill; the Promotion of Equality and Prevention of Unfair Discrimination Act; the Protection of Personal Information Bill; the Public Service Broadcasting Bill, a Bill to amend the conduct of the Independent Communications Authority of South Africa; and the Protection of Information Bill mentioned in sub-theme 3.1. 'Legal censorship' is being used increasingly. This is the use of injunctions obtained through the High Courts to prevent publication of information before the legal arguments are heard, following which the bar on publication is invariably lifted.



RATING: None

As outlined above, none of the media issues covered in this report is rated, since South Africa has not made any commitments on them in its NPoA.

Recommendations

- Enforce Constitutional clauses 7(2) and 8(1),¹⁶³ which demand the protection and promotion of the freedoms in the Bill of Rights.

3.4 ACCESS TO INFORMATION

Related APRM objectives

DPG objective 3: Promotion and Protection of Economic, Social, Cultural, Civil and Political Rights as Enshrined in the African and International Human Rights Instruments.

Related action items from South Africa's NPoA

DPG objective 2: National conversation on the role of the media in reporting, discussions and debates based on factual, objective and verifiable sources of information.

Section 32 of the South African Constitution states:¹⁶⁴

- (1) Everyone has the right of access to
 - (a) any information held by the state; and
 - (b) any information that is held by another person and that is required for the exercise or protection of any rights.
- (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

Section 32(1) (b) encompasses both state-held and privately held information, where access is required for the exercise or protection of any right.¹⁶⁵ This provision encourages private companies to practise good CG and to be open to public scrutiny. The NPoA does not mention access to information. However, SAIR II acknowledges the right of access to information as a tool that can be used by the public to realise their political, social and economic rights. SAIR II asserts that access to information initiatives, such as the *Know your Service Rights Campaign* (launched in 2007), inform communities about their human rights, government services and about sharing information on rights related to the structures of the CJS.¹⁶⁶

However, these initiatives have been largely unsuccessful, due to a lack of resources, low

public awareness of the rights enshrined in the Constitution, unskilled officials responding to access to information issues and a lack of political will.¹⁶⁷

Under Apartheid, the majority of citizens were intentionally denied access to information through laws such as the Protection of Information Act 84 of 1982.¹⁶⁸ When social and economic rights were included in the 1996 Constitution, together with a clause entrenching the right of access to information, it was as a result of much campaigning by civil society and academics.¹⁶⁹ The introduction of PAIA brought hope that rights of access to information could be used to leverage social and economic rights.¹⁷⁰

However, 'mute refusals' – the monitoring term for requests for information that do not receive a positive or negative response during the appropriate time frame – remain problematic. The 2010 Golden Key Awards Report revealed that out of the 82 institutions sampled, only 26 institutions responded to requests for information. The report illustrated that in 2010 the overall performance regarding institutions' implementation of PAIA was low, at just 31%. This was lower than 2009 and 2008, which had response rates of 40% and 39% respectively from the sampled institutions.¹⁷¹ The 2009 PAIA Civil Society Network Shadow Report asserted that PAIA implementation challenges resulted from poor records management, a lack of knowledge and awareness of PAIA and a lack of political will and resources.¹⁷²

Good and bad practice: The Limpopo Province provides a good example of the implementation of PAIA. In the 2009/10 Access to Information Index provincial departments, such as the Department of Agriculture, Forestry and Fisheries, Department of Public Works and Office of the Premier, received special recognition for their work in PAIA implementation and compliance. Successful implementation of PAIA in the Limpopo Province has been rooted in four approaches:¹⁷³

- (1) The Premier's office has a dedicated PAIA Unit that co-ordinates requests and supports all provincial departments in Limpopo on how to implement and comply with PAIA.
- (2) There is a political champion in the Premier's office, whose responsibility it is to promote and protect access to information rights.
- (3) The Premier's office has carefully thought out plans and related processes that focus on stimulating both the supply and demand sides of access to information.
- (4) There is adequate allocation of resources (financial and human) and budget preparation

for the proper implementation of PAIA. In contrast, the 2010 PSC Report on PAIA in the North West Province found that provincial departments are generally not complying with the Act. Departments scored 9% for the appointment of deputy information officers and 18% for publishing a Manual on Promotion of Access to Information. Only 36% of departments had put procedures in place for managing requests for access to information, and they had not generally submitted Section 32 reports detailing PAIA requests to the SAHRC, as required by the Act. These actions suggest that the North West Province does not take transparency seriously.



RATING: None

As outlined above, none of the media issues covered in this report is rated, since South Africa has not made any commitments on them in its NPoA.

Recommendations

- Strengthen the review mechanism in PAIA to allow for effective and efficient implementation.
- Put in place measures to sustain fully capacitated personnel, including frontline staff and staff at customer care service centres.
- Create a formal committee within the public body to ensure that an access agenda is aggressively pursued and that plans and processes are devised, implemented and monitored.
- Provide adequate budgetary allocations for PAIA activities.
- Ensure reporting and accountability on PAIA delivery.
- Improve processes to administer requests. Monitor and evaluate specific requirements to address impediments to delivery.
- Increase commitment from senior management contextualising PAIA within service delivery priorities and standards.
- Integrate PAIA into the IDP process and community structures within each geographic area.
- The Human Rights Commission should increase its public awareness campaigns through the usage of various media forms and active engagement with communities on the ground level. Campaigns should be ongoing.



4 REPRESENTATION

A key aim of the APRM is to promote domestic accountability – that is, accountability of the state to its citizens rather than to external development partners or funders. A critical component of fostering accountability is giving ‘voice’ to citizens, by allowing them to raise their views, listening to them and developing opportunities for people to participate in policymaking processes and indeed other aspects of social and political life. In South Africa issues of who represents others and how, and the quality and effect of public participation are much discussed. Accordingly, governance aspects are examined in detail in this section.

The sub-themes are:

- 4.1 Parliament
- 4.2 Elections and the electoral system
- 4.3 Public participation

4.1 PARLIAMENT

Related APRM objectives

DPG objective 4: Uphold the Separation of Powers, Including Protecting the Independence of the Judiciary and Ensuring an Effective Capital Legislature.

DPG objective 5: Ensure Accountable, Efficient, Effective Public Office-Holders and Civil Servants.

Related action items from South Africa's NPoA

EGM objective 2: Educating government structures on effective consultative policymaking and monitoring and evaluation.

EGM objective 3: Enhance parliament and legislature oversight over the executive, state-owned enterprises, parastatals and quasi-state-owned enterprises.

Parliaments provide representation in governance systems. They are also intended to check executive power, holding the latter accountable. These functions are intricately spelt out in the South African Constitution.¹⁷⁴ However, in practice parliament has yet to come into its own.¹⁷⁵ The CRR deals with parliament as part of a broader overview of governance.¹⁷⁶ In general it is complementary about the political system, but raises a key concern about the link between voters and representatives in view of the proportional representation (PR) system and floor-crossing¹⁷⁷ (and calls for both to be reviewed). SAIR II only details one change regarding parliament, namely the acquisition of parliamentary power to change money bills.¹⁷⁸ This is a potentially positive development, as it allows voters' representatives (although this is not an unproblematic notion) to make input on allocations.¹⁷⁹ Another positive development has been the scrapping of floor-crossing, a measure which had undermined voter choices. However, although the APRM helped to stimulate debate around this issue, the policy change was never publicly linked to the APRM.

Parliament and the provincial legislatures are made up of members elected by closed-list PR.¹⁸⁰ This extreme form of proportionality allows smaller formations to be represented. Voters vote purely for parties, and accept the parties' choices of representatives and where they rank on party lists. Voters are therefore represented by parties, rather than by individual parliamentarians. There are no official constituencies to provide alternative loci of representatives' loyalties. Some parties allocate

members to particular areas, but it is doubtful whether such initiatives have made parliament any more visible. According to Afrobarometer, 77% of South Africans do not know who their MP is (and another 11% guessed the name incorrectly).¹⁸¹ There is little in the system to ensure accountability to voters.

The CRR notes that as 'the dominant political party', the ANC has a responsibility to nurture citizen involvement in governance.¹⁸² An ongoing issue has been the extent to which parliament is able to assert itself before the executive. Since parliament as an entity is meant to exercise oversight over the executive, it needs to assert its distinct *institutional* interests and identity. However, incentives in the system encourage representatives to look 'upwards' towards party superiors (frequently in the executive) for the advancement of their careers.

The continued large majority of the ruling party in parliament seems to have emboldened greater party influences in the workings of parliament. At times discussions in parliamentary committees have been interfered with by party leaders or structures, such as in relation to the Education Laws Amendment Bill of 2005,¹⁸³ and appointments to the SABC board in 2007.¹⁸⁴

Structurally, parliament is arguably a weaker vehicle now in relation to the executive than it was in the 1990s. An assessment of parliament, published in 2009, noted that some committee chairs felt that they were not taken seriously by their ministers.¹⁸⁵ A recent attempt by the Chairman of the Defence Portfolio Committee, Nyami Boo, to demand documents from the minister seemed to be a rare

instance of a challenge to the executive.¹⁸⁶ Following warnings from the ruling party, this demand was dropped, and Booie was removed as committee chair.¹⁸⁷

There have been instances in which parliamentary committees have acted assertively towards officials, such as at hearings in 2010 concerning defunct mines and their rehabilitation.¹⁸⁸ More assertion of this kind would assist in making parliament a more effective body. However, there are reports that committee chairs have recently been asked to 'go gently' on ministers and senior officials appearing before them.¹⁸⁹



RATING: ORANGE

It should be noted that that the recommendations of the CRR were followed up by an enquiry into the functioning of parliament (the APRM link is explicitly made in the resultant report). However, these recommendations have never been implemented.

Recommendations

- The *Report of the Independent Panel Assessment of Parliament*¹⁹⁰ proposes an excellent roadmap for revitalising parliament. The following draws heavily from these recommendations. Parliament should be more conscientious in evaluating and processing legislation. Among the measures that should be implemented are compiling a report assessing the likely impact of the bill; outlining the envisaged powers delegated to ministers and the criteria for exercising them; and summarising all submissions made in drafting the bill, as well as the relevant department's response. After passing legislation, parliament needs to monitor its operation. As a part of this process, the objectives of the legislation need to be clearly spelled out to enable such monitoring.
- Develop and implement a policy on attendance for members of parliament.
- Improve the quality of reports from parliamentary committees.
- Upgrade the quality of debate, as the institution is an important arena for deliberation about important matters.
- Strengthen interactions between parliament and citizens. In concrete terms, this means making information about the whereabouts and contact details of constituency offices widely available, and investigating current outreach initiatives to ensure that they are providing real opportunities for input and feedback.
- Replace the current PR system, which impedes accountability, with a mixed PR and constituency system.
- Assist parliamentarians to improve their performance by improved research and information management support.
- Attend to ethical shortcomings, with possible amendments to the MPs' code of conduct.
- Parliament should develop a clear institutional identity that cuts across party allegiances. This would depend probably on changes to the broader conduct of politics and political culture. However, as the 'face' of parliament, the Presiding Officer should demonstrate absolute commitment to the institution above all party commitments, and should be required to divest himself or herself of party office.

4.2 ELECTIONS AND THE ELECTORAL SYSTEM

Related APRM objectives

DPG objective 2: Constitutional Democracy, Including Periodic Political Competition and Opportunity for Choice, the Rule of Law, a Bill of Rights and the Supremacy of the Constitution are Firmly Established in the Constitution.

DPG objective 3: Promotion and Protection of Economic, Social, Cultural, Civil and Political Rights as Enshrined in the African and International Human Rights Instruments.

DPG objective 6: Fight Corruption in the Political Sphere.

Related action items from South Africa's NPoA

DPG objective 6: Corruption undermines national integrity systems.

DPG objective 6: Awareness raising with respect to anticorruption legislation, codes of conduct, enforcement and implementation in all sectors across all spheres.

Public representatives, such as members of parliament, members of provincial legislatures and local councils, are selected through democratic elections. The system whereby they are chosen is important. Elections are one of the main ways in which citizens participate in governance processes on a regular basis. SAIR II briefly refers to the holding of national elections in 2009, noting that they were declared by all observers to have been 'free, fair, transparent and credible'.¹⁹¹ For a relatively new democracy, South Africa seems to have successfully embedded electoral rules and processes into its democratic culture.

The Economist Intelligence Unit's 2010 Democracy Index gives South Africa a score of 8.75 out of 10 for 'Electoral Process and Pluralism'.¹⁹² This is a strong endorsement of the country's elections, ranking it just below the major consolidated democracies. It does, however, reflect the existence of continuing challenges. Elections in South Africa are held according to a closed-list PR system (described in Sub-theme 4.1 of this report on parliament). This system, which has been criticised for entrenching fealty by MPs to political parties and not to voters, has been the subject of two official investigations.¹⁹³ The CRR also calls for the recommendation of the Van Zyl Slabbert Commission, which had reported in 2003, to be revisited.¹⁹⁴ At the time of writing this report nothing

had been done to advance this – indeed, it seems there is little official interest in doing so.

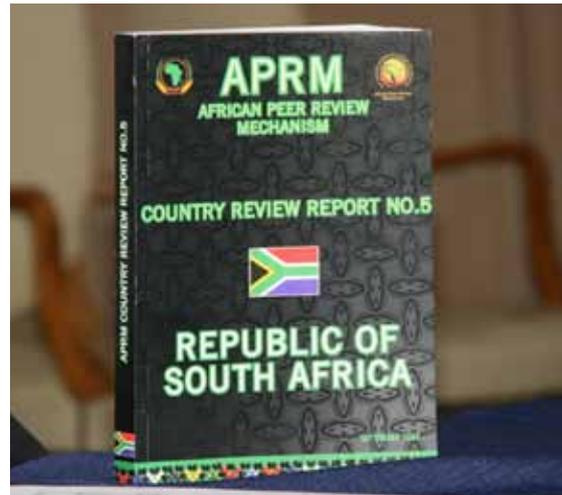
The management of elections by the Independent Electoral Commission (IEC) has been generally of a high standard. However, logistical difficulties did arise in the 2009 elections, due to shortages of ballots in certain areas.¹⁹⁵ There is little evidence of electoral fraud. One official in KwaZulu-Natal was prosecuted for 'ballot stuffing' (adding extra ballots to ballot boxes after the election has officially ended), the first such case since 1994.¹⁹⁶ The IEC has instituted a rule to forbid office bearers in political groups from working as electoral officers.¹⁹⁷ This was a welcomed development, as opposition parties had often been unhappy with the political orientation of temporary electoral officials.

On negative note, the 2009 election produced instances of violence and general intolerance during the campaign period.¹⁹⁸ Although concerning, the South African Institute of Race Relations (SAIRR) pointed out that if seen from the perspective of South Africa's history – and indeed, one might add, the general level of violence in society – it did not 'amount to a crisis'.¹⁹⁹ There were also reports, which were never convincingly refuted, that state benefits and resources had been used to shore up support for the ruling party. This included distributing food parcels to potential voters and denying them to those who publicly supported opposition groups.²⁰⁰



RATING: GREEN

The evaluating group felt that this is an area in which South Africa is and has been strong since its transition to democratic rule in 1994. This view was further supported by the way the country has handled the 18 May 2011 municipal elections. Noting the success of all the recent elections and that they were all declared as 'free and fair', a green rating was awarded.



Recommendations

- Revise the electoral model – in line with previous commission recommendations – to introduce an element of constituency representation to address the accountability deficit.
- Combat the abuse of state resources for party ends. This needs to be spelt out clearly in codes of conduct; and state and party officials guilty of such conduct should face stiff personal consequences.
- Parties need to encourage tolerance, particularly in respect of losing elections. Unless there are clear and specific grievances about the conduct of an election, which should be dealt with in the appropriate forums, party leaders need to ensure that their parties and followers accept electoral outcomes and the legitimacy of elected governments. No party has a *right* to rule, save on sufferance of voters.
- Focus on civic educations.
- CSOs should engage with the United Nations Development Programme on the basket fund for the allocation of funds earmarked for outreach, and on monitoring the code of conduct by political parties.
- Extend voter education beyond explaining the technical processes. Mamphela Ramphele has argued that the IEC should deepen people's understanding of the power of their vote with respect to holding those in office accountable.



4.3 PUBLIC PARTICIPATION

Related APRM objectives

DPG objective 2: Constitutional Democracy, Including Periodic Political Competition and Opportunity for Choice, the Rule of Law, a Bill of Rights and the Supremacy of the Constitution are Firmly Established in the Constitution.

EGM objective 2: Implement Sound, Transparent and Predictable Government Economic Policies.

SED objective 6: Encourage Broad-Based Participation in Development by all Stakeholders at all Levels.

Related action items from South Africa's NPoA

DPG objective 2: Civil society structures seek increased opportunity to contribute and participate in the delivery and monitoring of public services.

DPG objective 2: Enhance and improve the effectiveness of government outreach systems and mechanisms.

EGM objective 2: Educating government structures on effective consultative policy making and monitoring and evaluation.

CG objective 1: Accelerate reform of the Companies Act and enhance public participation in the process to empower vulnerable groups.

Public participation in South Africa is both a constitutional and institutional imperative.²⁰¹ Indications from reports show that government-mandated public participation processes have created a strong awareness of participation as a governance imperative.²⁰² However, the effectiveness of these processes, especially in local government, has been questioned.

The National Economic Development and Labour Council (Nedlac) has been instrumental in ensuring the democratisation of the South African policymaking process.²⁰³ Despite the NPoA commitment to improve the quality and quantity of agreements reached in the Nedlac forum,²⁰⁴ the 2008–2009 Nedlac report shows that it has had to manage its own internal problems of building consensus around diverse voices. The report admits to a poor public image due to a perception of Nedlac's role in governance and a government tendency to undermine its processes.²⁰⁵ Recent government public participation (2008) and citizen satisfaction (2010) surveys show a level of satisfaction at the national and provincial levels of government services. However, two issues stand out. Firstly there is less satisfaction with accessibility levels to government departments. Secondly the

studies do not include an assessment of citizens' satisfaction and participatory processes at local government level.

Government²⁰⁶ and independent reports²⁰⁷ show that local government experiences have not lived up to expectations of participatory governance in planning, budgeting and accountability. The 2007 report by the Centre for Public Participation (CPP)²⁰⁸ mostly highlights izimbizo,²⁰⁹ with limited evidence or analysis of other participatory mechanisms. This is corroborated in a PSC report,²¹⁰ which shows that izimbizo have remained a preferred route by government despite the many mechanisms for public participation. The CPP report shows that izimbizo tend to be fanfare occasions in which food, free t-shirts and entertainment entice participants. However, there is a lack of a genuine system of citizen voice and follow-up undertaken by local government.²¹¹ Other participatory platforms, such as ward committees, community development workers (CDWs) and the integrated development plans, are underscored by political tensions. This is due to the acrimonious relationship among ward committees members, CDWs and local council members. This has undermined service delivery, given the potential value these structures represent when effective.²¹²

These challenges persist. The Department of Cooperative Governance and Traditional Affairs reported in 2009 that corruption and nepotism are so entrenched in local government that formal accountability processes are ineffective and inaccessible to citizens.²¹³ Nevertheless, a CPS report shows that where there are participatory processes in place in municipalities, citizens are more trusting of local government officials and seem even more accommodating of service delivery shortcomings.²¹⁴

In 2009 government launched another participatory channel in the Presidential Hotline, described and discussed in SAIR II. However, response to queries has been slow. Out of 13 569 provincial department-related calls and 13 634 concerning national departments, only 17% and 36% respectively had been resolved in the first two months of the hotline's existence.²¹⁵ In its first year

the hotline received 72 299 calls.²¹⁶ SAIR II claimed that 79% of these were complaints, of which 53% were resolved. However, these figures are disputed by the official opposition, which claims that the level of response is very low and often the calls are not even answered.²¹⁷



RATING: ORANGE

The evaluating group noted that initiatives such as izimbizo are insufficient for public participation. However, given government's efforts to increase public participation, an orange rating was justified.

Recommendations

- Strengthen ward committees' capacity.
- Institutionalise public participation in local government, through an established unit with appropriate responsibilities and timeframes.
- Clarify the relationship between district and local municipalities on participatory processes such as izimbizo and ward committees. Clarify the role of CDWs in local municipalities.
- Allocate resources to participatory processes.
- Develop best practices for existing participatory mechanisms, such as izimbizo, and for new participatory processes, such as linking IDP and budgeting as participatory processes as seen in the eThekwinini model.²¹⁸





5 NATION BUILDING

An important factor in any APRM review is reviewing the context, history and political economy of the country. These elements matter, and are vital for explaining some of the dynamics, trajectories and policies in these societies. South Africa's past and present raise critical questions for governance. These include how South Africans see themselves; whether there is a sense of nationhood, shared identity and common destiny for the country being forged and fostered; how the vast diversity of the country is being managed; and how the country can move beyond its history.

This section delves into these issues in the following sub-themes:

- 5.1 Managing diversity
- 5.2 Race and racism
- 5.3 Xenophobia
- 5.4 Black economic empowerment and affirmative action

5.1 MANAGING DIVERSITY

Related APRM objectives

DPG objective 3: Promotion and Protection of Economic, Social, Cultural, Civil and Political Rights as Enshrined in the African and International Human Rights Instruments.

Related action items from South Africa's NPoA

DPG objective 3: Initiate and strengthen the existing social campaigns aimed at combating racism in our communities.

DPG objective 3: Strengthening of Chapter 9 institutions dealing with racism.

DPG objective 3: Monitoring and strengthening of courts dealing with racism cases.

DPG objective 3: Promote traditional leadership and cultural practices.

DPG objective 3: Ensure strategic alignment between traditional leadership system and institutions within broader social system.

DPG objective 3: Strengthen Heritage Council and its projects and Indigenous Knowledge Systems project.

Related Cross-Cutting Issues identified in South Africa's CRR

- Racism and Xenophobia
- Managing Diversity

A theme that has emerged strongly from most of the reviewed countries under the APRM is the challenge of 'managing diversity', although the concept is somewhat ambiguous. Although combating racism is an important element, managing diversity has broader implications. The APRM questionnaire notes that diversity can be defined in terms of region, ethnicity, religion, gender, economic status and 'other'. SAIR II recognises the scope of the concept. It commendably indicates that managing diversity is the responsibility of many parties, and not just government. However, SAIR II is vague on the specifics of its plans and offers virtually no critical analysis of them (with the partial exception of outlining work on heritage issues). For example, it is unclear what is meant by 'personal transformation'.²¹⁹

South Africa's Constitution recognises cultural, linguistic and political pluralism; and the rights to existence of an infinite variety of identities by extensive guarantees for individual choice.²²⁰ Three broad themes give an overview of the country's trajectory.

Culture and heritage: Cultural diversity is largely unrestricted. People may engage in whatever

cultural practices they wish, and to which they have the means, which admittedly imposes a *de facto* restriction. Partial exceptions involve practices with harmful or criminal effects (circumcision routines at 'initiation schools' are a common concern).²²¹

Interventions on heritage have broadened public recognition and commemoration to include areas previously inadequately covered (such as Freedom Park). Some have strong political overtones. How South Africa handles this and whether these initiatives are captured for party political gain will be a measure of the country's maturity. Heritage that is mishandled is a force that divides. Heritage sites of significance to the pre-1994 era generally remain untouched, apart from isolated incidents, such as the destruction of a monument to the Great Trek in 2007.²²²

South Africa's Constitution recognises 11 official languages, although in practice it has been argued convincingly that South Africa is moving towards unilingualism.²²³ Little has been done to advance indigenous African languages. The status of Afrikaans has been downgraded considerably, although it still enjoys an elevated position over other official languages besides English.

Politics: South African political choices correlate significantly (although not absolutely) with race. This is unsurprising and also not unique. In so-called deeply divided societies, identity and group membership operate as key political drivers.²²⁴ This has two implications. The first is the use of race as a political tool. In this case criticism of government, especially from opposition parties, is sometimes reduced to issues of race rather than critical examination of evidence.²²⁵ The second implication concerns management of political and communal tensions. South Africa has no formal mechanisms to involve numerically minority parties in executive-level decision-making. It falls to those in power to be prepared to consult – and to take seriously such consultations – with leaders who represent minority constituencies. President Zuma’s engagement with opposition leaders is a positive development in this regard.

Dealing with prejudice: Prejudice is understood as harbouring hateful feelings towards others on the basis of their characteristics, social position, sexuality or personal choices. South Africa has a mixed record on dealing with this. The constitutional notion of a non-racist, non-sexist, democratic society in South Africa continues to evade universal conceptual and practical articulation. This is because with some government policies (such as those of labour), the requirements for racial classification as a measure to redress past discrimination have unsuccessfully addressed legitimate concerns²²⁶ about the potential of such racial classification policies to perpetuate and retain race as a central principle in a supposed non-racist society. Instances of racism are met with condemnation. The case of the ‘Reitz Four’ students at the University of the Free State, where four white students made a derogatory video of black cleaners who worked in their hostel, was universally condemned by parties and institutions. However, as Professor Hermann Giliomee has argued, South Africans tend to be selective in their outrage.²²⁷ People invariably show more affinity with victims of ‘their own’ than with others.

From social relationships to political forums, the test of racial tolerance in South Africa is persistent. There are concerns about how well government has demonstrated the sensitivity and respectability needed to manage diversity, especially in terms of minorities. There has been recent controversy

over comments from a cabinet spokesman about the ‘overconcentration’ of Coloured people and legislative amendments to the Employment Equity Act,²²⁸ which would have severe consequences for Coloured workers in the Western Cape. This has tested racial tolerance even within the ruling party itself. It has also highlighted the need for a national conversation on the issue of non-racialism in general and minority concerns in particular.

There is a genuine desire to deal with prejudice, and to build a united nation. However, this is compromised by political considerations, and by a lack of clarity of the true nature of the existent problems and what a united nation should ultimately reflect.



RATING: ORANGE

South Africa is a country that is racially, ethnically and culturally diverse. Although much progress has been achieved since 1994, much still needs to be done. The evaluating group felt that the current situation justifies an orange rating.

Recommendations

- South Africa should regularly reaffirm the principle of one country with equal citizenship for all, under the constitution.
- Encourage the principle of debate and exchange around issues of culture and heritage. Emphasise respect for opposing views. The goal is to encourage understanding.
- Political parties need to be cautious about appealing to racial animosities.
- South Africa should recommit itself to the ‘colour-blind ideal’. Although preferential measures have a place, the country should actively strive towards a situation where race is not a consideration.
- Promote all the official languages in education.

5.2 RACE AND RACISM

Related APRM objectives

DPG objective 3: Promotion and Protection of Economic, Social, Cultural, Civil and Political Rights as Enshrined in the African and International Human Rights Instruments.

Related action items from South Africa's NPoA

DPG objective 3: Initiate and strengthen the existing social campaigns aimed at combating racism in our communities.

DPG objective 3: Strengthening of Chapter 9 institutions dealing with racism.

DPG objective 3: Monitoring and strengthening of courts dealing with racism cases.

Related Cross-Cutting Issues identified in South Africa's CRR

- Racism and Xenophobia
- Managing Diversity

Despite the prominence of race issues in South Africa, the CRR and SAIRs give little coverage to the issue. Race relations are described in the CRR as 'brittle and sensitive.'²²⁹ This is apposite. Racism may be declining, but social distance seems to be taking its place.

SAIR II refers to legislative measures against racism, predating the APRM, and to a single case linked to racism – the 'Reitz Four'. SAIR II offers a quote from the preamble of a law as 'corroboration' of ongoing racism. It praises such events as the 2010 Federation of International Football Associations (FIFA) World Cup™ for contributing to better race relations.²³⁰ However, this provides little sense of the state of race relations in South Africa. Although difficult to quantify, race relations are important for governance. It is thus important that this report attempts to present a basic overview of race relations and attitudes towards racism and prejudices.

It is unclear to what extent overt racism is prevalent and whether it motivates violence. Little factual evidence exists on this. Incidents of violence in which a racial motive was established are very rare. Lucy Holborn's extensive study of race in South Africa since 1994, *The Long Shadow of Apartheid*, argues that it is impossible to determine the scale of racial violence, although an attempt to catalogue incidents reported in the media (*believed* to be race-related)²³¹ over this period records no more than a few dozen incidents. She also describes as 'notable' the decline in news reports of racial violence.²³²

Simultaneously, it *is* true that cases of abuse or criminality with a racial dimension have the potential to undo progress on race relations.²³³

Since 2003 the South African Reconciliation Barometer (SARB) survey, conducted by the Institute for Justice and Reconciliation (IJR), has tracked the attitudes of South Africans regarding reconciliation and race relations, as well as the factors influencing them. The results indicate that transracial contact improved somewhat over the period reviewed. In 2003 some 26% of people never talked to people of another race on a typical day; this stood at 21% in 2010. The proportion who never socialised cross-racially stood at 46% in 2003 and at 41% in 2010, although in the intervening years this figure was substantially higher.²³⁴ This suggests a moderately positive trajectory, and a better state of affairs than in 2009, which might indicate – as SAIR II suggests – that the FIFA World Cup™ had a positive effect. Overall, integration appears most advanced among wealthier and better-educated people.²³⁵ The 2010 SARB reports a general rise over time in support of integrated schools (78%), neighbourhoods (68%) and working for an employer of a different race (67%).²³⁶

Socially, certain taboos have been broken down. SARB shows that attitudes to transracial marriages have softened and 53% of people would approve of a relative marrying across the colour line.²³⁷ Adoption across the colour line is increasing, partly owing to a relative shortage of white babies.²³⁸ However, nearly two-thirds of people find the customs of other races

difficult to understand.²³⁹ The World Values Survey shows that levels of social trust, a rough measure of how willing people are to ‘reach out to each other’, are extremely poor. In 1990 only 28.3% of South Africans thought that ‘most people can be trusted’. In 2007 this proportion stood at 18.8%.²⁴⁰ Similarly, low levels of trust are reflected in the Afrobarometer surveys. Taken together, these findings suggest an uneven process of deracialisation. There is no evidence that South Africans seek a segregated existence. Attitudes towards integration are improving. However, there is much uncertainty over how to deal with people of different races. Along with a high level of social mistrust, this makes building a non-racial society difficult.



RATING: ORANGE

The evaluating group noted with concern some of the rhetoric from politicians seemingly aimed at increasing racial divisions that preceded the 18 May 2011 municipal elections. However, given the country’s past, the group also noted that apart from isolated incidences of racism, South Africa needs to be given credit for the way the society has moved on. Nevertheless, although much progress has been achieved, many issues remain, hence an orange rating.

Recommendations

- Encourage formal and informal dialogue between different groups. The notion that any single formation represents a particular race needs to be rejected, and it is crucial that interest-articulating institutions (such as churches and cultural bodies) engage with one another.
- Related to the above, ensure that mutual respect is central to any discussion. Dismissing particular views as somehow wrong, inherently racist or unworthy of consideration will only retard fruitful dialogue.

5.3 XENOPHOBIA

Related APRM objectives

DPG objective 3: Promotion and Protection of Economic, Social, Cultural, Civil and Political Rights as Enshrined in the African and International Human Rights Instruments.

Related action items from South Africa’s NPoA

DPG objective 3: Initiate and strengthen the existing social campaigns aimed at combating racism in our communities.

Related Cross-Cutting Issues identified in South Africa’s CRR

- Racism and Xenophobia
- Managing Diversity

The issue of xenophobia was initially raised in the CRR through the inputs of civil society. The CRR states that ‘South Africa shares

the view that more needs to be done to fight xenophobia.’²⁴¹ However, it also quotes former President Mbeki during the Peer Review to the

Heads of State and Government as claiming that ‘the report notes that xenophobic tendencies prevail, which is simply not true.’²⁴² Even though the NPoA is silent on xenophobia, given the outbreak of violence against foreigners in May 2008, it was expected that SAIR I would address the issue. However, its discussion is very limited and states that ‘the government has responded to the xenophobic violence that broke out between citizens and foreign non-national communities in largely impoverished areas by appointing a parliamentary task team to discover the root causes.’²⁴³ According to CoRMSA, a year after the attacks ‘foreigners in South Africa face continued threats of xenophobic violence’ and ‘little has been done by authorities to address the root causes of the violence.’²⁴⁴ Furthermore, in November 2009, a year and a half after the original attacks, xenophobia was once again on the rise in South Africa’s Western Cape Province. Local workers in the town of De Doorns drove 3 000 foreigners from their shacks, accusing them of stealing their jobs by accepting lower wages.²⁴⁵

It is noteworthy that SAIR II devotes a whole section to xenophobia, which introduces further responses from government to xenophobia and acknowledges the role of civil society in taking a lead on the issue. However, it is poorly written with inadvertent repetition and was clearly assembled in a hurry.

Furthermore, the absence of xenophobia from the NPoA means that there is no clarity on the budget to undertake the measures presented in the two implementation reports. These reports reflect an assemblage of actions culled from various other governmental programmes, parliamentary processes and civil society advocacy. SAIR II mentions several government anti-xenophobia initiatives, which are discussed below.

One of these is the Immigration Amendment Bill, which is currently under parliamentary review. This legislation has still not been finalised, so it is not possible to determine whether the new or amended provisions will help foreign nationals to feel welcome in the country. SAIR II also mentions a ‘unit’ dealing, *inter alia*, with a new system of immigration control to prevent and counter xenophobia within government and civil society (arising from the Immigration Act 13 of 2002). Yet it is unclear which unit is being referred to. Should it be the Counter-Xenophobia Unit within the Department of Home

Affairs (DHA), this appears to have lost momentum after a bright start.

Another initiative listed is a ‘communications strategy to encourage mutual respect between foreign nationals and citizens’. However, it is unclear what this refers to, given the various initiatives on different levels and by different departments aimed at promoting social cohesion.

SAIR II also mentions the pilot project in Gauteng secondary schools to promote understanding of co-existence and the need for unity and cohesion; as well as a strategy for local integration of refugees and asylum seekers, including multi-stakeholder partnerships. The former was started by the DHA’s Counter-Xenophobia Unit, but unfortunately the programmes have not been sustained and it is not known if they were rolled out to other provinces. The latter does not seem to be finalised yet.

Finally, SAIR II states that CoRMSA requested an SAHRC investigation following the xenophobic attacks. However, it is unclear what projects and programmes government has embarked upon in response to the recommendations in the SAHRC report.

It is important to emphasise that the APRM review process exerted pressure for xenophobia to remain on the political agenda of the South African government. However, that the NPoA did not address xenophobia indicates the ambivalence of government in recognising and dealing with the issue as a priority and in a systematic way. The disastrous consequences of May 2008 and subsequent outbreaks of violence are further testimony of this. This also creates difficulties in systematically monitoring actions and progress on initiatives to fight xenophobia.



RATING: RED

The evaluating group felt that the South African government is not doing enough to address the issue of xenophobia and pointed out that there is even an element of denialism on behalf of some officials. The group noted that this issue was raised in the CRR, but was subsequently ignored by government.

Recommendations

- Civil society needs to continue to monitor the actions outlined in SAIR II towards the 2013 third implementation report, including making concrete recommendations for further action.
- Consolidate the number of disparate actions and activities against xenophobia that have been undertaken by different levels of various government departments.
- Civil society should lobby for actions aimed at combating xenophobia to be included in the NPoA of South Africa's upcoming second review. This would enable comprehensive programmes to be developed, resourced and monitored.

5.4 BLACK ECONOMIC EMPOWERMENT AND AFFIRMATIVE ACTION

Related APRM objectives

EGM objective 1: Promote Macroeconomic Policies to Support Sustainable Development.

CG objective 2: To Ensure that Corporations Act as Good Corporate Citizens with Regard to Human Rights, Social responsibility and Environmental Sustainability.

Related action items from South Africa's NPoA

EGM objective 2: Ensuring wage equity and representation of priority groups.

The South African government was asked by the APRM Forum to specifically report on BBBEE²⁴⁶ and AA²⁴⁷ in SAIR II (discussed in January 2011), as they are of great interest to other African states. Therefore, SAIR II reports on both under the CCIs section,²⁴⁸ even though they were not listed as such in the original CRR. However, it does not address critical questions raised in the CRR, such as progress with sector charters on BBBEE and the capacity of the Department of Labour to enforce compliance.²⁴⁹ Although progress has been made on BBBEE areas, such as procurement and skills development,²⁵⁰ the issue of ownership still remains litigious. The Financial Services Charter (FSC) dealing with BEE, seen as good practice by the CRR, has reached a stalemate on the issue of direct black ownership,²⁵¹ although a compromise new draft, the FSC, was issued on 13 December 2010 by the Department of Trade and Industry (dti).

There still seems to be a lingering conception about the lack of a broad-based nature to black economic empowerment (BEE), where it seems

that only the politically connected few benefit disproportionately. For instance, black wealth in the mining sector is concentrated on three firms. Exxaro, African Rainbow Minerals and Impala Platinum have a combined share of 69% of the ZAR 98 billion in this sector (about ZAR 66.8 billion).²⁵² Although the view exists that the seven elements of BBBEE²⁵³ extend benefits to a broader black market,²⁵⁴ ownership remains the preserve of an elite group with political connections and opportunities. On sector charters, 2009 was seen by BBBEE analysts as the best year for the initiative, owing to the record number of gazetted charter codes in the sectors.²⁵⁵ This is despite the low BEE scores and non-compliance in 2009, although medium-sized businesses showed the best progress in BBBEE. However, capacity problems still plague BBBEE verification agencies.²⁵⁶

The section in SAIR II dealing with AA provides more information. It states that although the proportion of women in the public service has steadily increased to 36% in March 2010, the

numbers of people with disabilities in the public sector have remained the same. It also notes the slow progress made on transformation, that the target for employment of people with disabilities has not been met and that the employment equity (EE) pillar of BBBEE is not performing optimally and needs to be revised.²⁵⁷

Reports from government show an improvement in EE reporting in the private sector.²⁵⁸ In general, AA is progressing faster in the public than in the private sector. Nevertheless, on closer inspection there are some concerning developments in implementation. Despite government's reluctance to acknowledge the same, there is growing concern that the issue of skills shortages in South Africa could be partly linked to AA.²⁵⁹ The CRR highlights this possible link, but the South African government has rejected the claim, although it has acknowledged a skills shortage problem.²⁶⁰

Inter-University Centre on Risk, Economic Policies, and Employment (CIRPÉE) and Centre for Research on Inequality, Human Security and Ethnicity (CRISE) independent research reports on AA illustrate that these may be legitimate concerns.²⁶¹ Findings show that although AA outcomes have been encouraging in terms of unemployment and poverty reduction,²⁶² an assessment of the trends in racial and gender discrimination in labour market outcomes show continued wage disparities between black and white populations.²⁶³ Also, the competitive private sector places higher value on skills, which some labour market reports suggest are scarcer among the black population. These findings have important implications for assessing AA. AA has not been able to bridging the wage gap or expand the hitherto small, highly skilled set of AA-designated groups in the private sector. There is consensus on the low impact of AA in bridging labour inequalities, but different reasons have been given by government and the private sector. Suggestions of a lack of skills in the black population have been a bone of contention in the AA debate.²⁶⁴ Even more contentious is the suggestion that AA is directly responsible for government capacity and service

delivery failures. Indeed, government interprets the private sector's low AA targets and its allusions to black skills shortages as resistance to change.²⁶⁵

Thus in 2010 government introduced a new set of labour bills, including the Employment Equity Amendment Draft Bill, aimed at tackling AA shortcomings, such as wage gaps and skills shortages.²⁶⁶ Section 42I, which proposes the removal of national and regional demographic qualifications for the economically active population,²⁶⁷ has sparked heated discussions over its exclusionary insinuations for minorities.²⁶⁸ Despite government's rejection of this interpretation,²⁶⁹ giving final deference on demographic qualification to national government questions the very notion of equity.



RATING: ORANGE

This was a contentious issue, with polarised opinions across the evaluating group. Although some strong opinions were voiced towards green and red ratings, a consensus was reached on awarding it an orange rating.

Recommendations

- Shift emphasis towards input based (ie training), instead of output based (ie demographics) criteria. Instead of measuring success based on colour, base it on training that people received.
- Focus on primary and secondary education.
- In line with a recommendation from CRISE research, explore policies aimed at redressing the 'pre-labour market'²⁷⁰ discrimination, such as skills training and development, to have a sizeable impact on government's EE targets.

6 SERVICE DELIVERY

The provision of health and education are two critical areas of service provision that feature strongly in SAIR I and SAIR II. Education and health are two key sub-indices that are used to measure human development in society (see for example, the United Nations Human Development Index ratings). The development of skills beyond basic education is key for a successful, growing economy to achieve sustainable development in an increasingly technologically driven world in which the knowledge economy is central to development. The AMP chose to focus on progress with skills development in South Africa because of its importance to the development of the South African economy and its people. Service delivery is currently a major issue in the South African society, with media reporting almost daily on service delivery protests in impoverished communities. It has also been the most prominent theme underlying South Africa's 18 May 2011 municipal elections.

The sub-themes in this section are:

- 6.1 Health care**
- 6.2 Basic education**
- 6.3 Skills development**

6.1 HEALTH CARE

Related APRM objectives

SED objective 3: To strengthen policies, delivery mechanisms and outcomes in key social development areas, including education for all, combating of HIV and AIDS and other communicable diseases.

Related action items from South Africa's NPoA

SED objective 3: An integrated and holistic approach to combating HIV and AIDS.

SED objective 3: Local, provincial and national consultative conferences on public health, HIV and AIDS strategies, with an emphasis on implementation.

SED objective 3: Establishment of an effective monitoring, evaluation and learning system for public health and HIV and AIDS programmes.

SED objective 3: Establishment of an effective monitoring, evaluation and learning system for public health and TB, malaria and communicable diseases programmes.

Related Cross-Cutting Issues identified in South Africa's CRR

- Service Delivery
- Poverty and Inequality
- HIV and AIDS Pandemic

Section 27(1) of the South African Constitution (1996) indicates that everyone has the right to health care services, including reproductive health care.

The SED Chapter of the CRR notes that quality health care remains out of reach for the majority of the population, but that measures have been put in place to transform the health care system. The CRR states that between 4.5 and 6.3 million South Africans have been infected with HIV, which would in turn result in an increase in the incidence of TB. The NPoA, under SED objective 3, lists a number of sub-objectives dealing with strategies to strengthen children's health and an integrated approach to combating HIV/Aids, TB, malaria and other communicable diseases.

South Africa faces the combined effects of high levels of HIV/Aids, high rates of maternal and child mortality, as well as non-communicable diseases and injuries and deaths resulting from violence and crime.²⁷¹ The country spends a high proportion of its gross domestic product or GDP on health (8.7%), which is more than any other African country. Despite this, its health indicators remain poor. In addition, the focus on health care

is on more costly curative care, rather than on primary care, despite a decision to implement a Primary Health Care approach in 1994. South Africa continues to suffer from deep imbalances in the provision of health services with the majority of the population relying on a public health system that is under-resourced in finances and human resource capacity.²⁷²

The South African health care system should be producing better results because it has access to more resources in comparison with other African countries. South Africa has better health care than most of its neighbours, with over 80% of the population having access to clean water and sanitation. However, its population continues to be threatened by high rates of communicable and non-communicable diseases. The average life expectancy is low at 53.4 years,²⁷³ which is attributed mainly to the HIV/Aids pandemic. TB and cardiovascular disease are prevalent and contribute to mortality. The country has well-developed health policies and a National Health Act (61 of 2003) to guide health care provision. However, the quality of data on health care is not optimal²⁷⁴ and gaps in data lead to flawed indicators. In particular there

is a lack of certainty regarding the exact levels of maternal and child mortality.

The Countdown to 2015 Initiative²⁷⁵ found that South Africa was one of 68 priority countries suffering from high maternal and child mortality, and one of ten countries showing the least progress towards the millennium development goals (MDGs). Despite the majority of women having access to antenatal care,²⁷⁶ maternal mortality is estimated at 150/100 000 live births. The current official child mortality rate, adopted by the National Department of Health in 2009, is 69/1,000.²⁷⁷ The majority of South African children rely on the public health care system and just over 90% live within 30 minutes of a primary healthcare clinic.

In 2009 the United Nations Programme on HIV/Aids estimated that there were 5.7 million²⁷⁸ HIV-positive people in South Africa, which is the highest worldwide. South Africa accounted for approximately 17% of the global burden of HIV infection, with a 17.8% prevalence for adults aged 17–49 years.²⁷⁹ Women in the 25–29 age bracket are most affected by the pandemic. According to a Department of Health study in 2009, 29.4% of all pregnant women aged 15–49 years were HIV-positive.²⁸⁰ However, the number of HIV/Aids deaths and the rate of new infections have been stable since 2006. This could be attributed to a range of factors including condom use (which has increased to 62%), the introduction of Preventing Mother-to-Child Transmission, HIV treatment and information campaigns. In addition, the US President's Emergency Plan for AIDS Relief (PEPFAR) initiative to combat the HIV/Aids epidemic currently supports more than 3.2 million people on anti-retroviral therapy around the globe, and 28% are South African recipients of this funding. South Africa has one of the largest treatment programmes in the world due to the increased availability of resources. On World Aids Day in December 2009, South African President Jacob Zuma announced invigorated policies to address the pandemic, which included a massive expansion in treatment. There are currently approximately one million people on antiretroviral drugs. There are also prevention programmes in place, which focus on building awareness, offering counselling and promoting condom use. It is believed that the goals of the National Strategic Plan, which include a 50% reduction in the HIV-incidence rate and 80% treatment coverage, will

be met despite constraints in human resources, infrastructure and drug supply, which impede more widespread availability of treatment.²⁸¹ However, limited data hinders comprehensive progress assessments.

South Africa has the fifth-highest TB infection rate in the world. In addition it is estimated that just over half of all TB patients also have HIV/Aids. However, it should be noted that statistics on the incidence of TB vary because of weaknesses in the country's health system, especially in the surveillance TB/HIV co-infection in the population. Treatment success of TB is around 70%, which is below the national target of 85%.²⁸² The country has met the MDG for detection rates, with a rate of 78%. However, South Africa is struggling to meet the MDG for reducing TB deaths. This is owing to the high cost of treatment, treatment interruptions, late detection, poor awareness at community level, drug-resistant TB and HIV/Aids co-infection.

Although the Constitution states that every person has the right to health care, there were large discrepancies in service provision for different population groups under Apartheid. Health policy since 1994 has thus striven to achieve equity.²⁸³ Currently, South Africa is a tiered system in which members of private health insurance schemes (around 16% of the population)²⁸⁴ enjoy better access to health services than those who rely on public health care. Policy analysts note the corollary to this and highlight the inequality in the distribution of health resources in the private sector's consumption of 55–60% of health care resources.²⁸⁵ The 2007 ANC Conference in Polokwane adopted a resolution to implement a National Health Insurance (NHI) scheme. Proponents argue that it is the most viable option for achieving universal access to health care. It entails contributions based on the ability to pay, with benefits distributed according to need. Much of the debate on NHI focuses on its cost and whether it is affordable for a developing country like South Africa. Critics argue that the system will be expensive (as estimates are based on rates used in the public sector) and may increase the health sector's share of GDP.²⁸⁶ Such high levels of spending are unprecedented among other middle-income countries, such as Taiwan, South Korea, Thailand, Colombia and Mexico. Thus far there has been a lack of clarity on the exact proposals for funding the NHI. However, it is anticipated that

funding will be drawn from general taxation as well as a special tax levied on formal sector employees and their employers.



RATING: ORANGE

The evaluating group acknowledged South African government's commendable change in HIV/Aids policy, and some argued for a green rating. However, others felt that this rating could not be justified, given the extent of the pandemic in the country. The compromise was thus an orange rating. Some members of the evaluating group also had reservations about the proposed NHI, but the consensus was that it is too early to judge a policy that has not come into practice yet.

Recommendations

- Further strengthen primary healthcare to assist with the early diagnosis of preventable diseases and to provide better treatment and care to the poor and those living in rural parts of the country.
- Increase equity in the health care system between the rural and urban sectors of the population and between public and private healthcare.
- Create a broader, transparent debate on NHI, which includes an in-depth examination of human resource requirements and other implementation issues.
- Link the system health outcomes so that performance can be monitored and expenditure justified.
- The Department of Health should determine priorities from legislation and policy initiatives and concentrate its efforts on implementing the priority areas. Such implementation should be measurable so that progress can be tracked.

6.2 BASIC EDUCATION

Related APRM objectives

SED objective 3: To strengthen policies, delivery mechanisms and outcomes in key social development areas, including education for all, combating of HIV and AIDS and other communicable diseases.

SED objective 5: To Make Progress Towards Gender Equality in All Critical Areas of Concern, Including Equal Access to Education for All Girls at All Levels.

Related action items from South Africa's NPoA

SED objective 3: Quality, access and outcomes of educational system at all levels needs to be improved.

SED objective 3: Strategies for ensuring children's health and development need improving.

Related Cross-Cutting Issues identified in South Africa's CRR

- Capacity Constraints and Poor Service Delivery
- Poverty and Inequality

The Constitution of the Republic of South Africa, section 29(1), says that everyone has the right to basic education and to further education, to which the state has the responsibility to progressively broaden access.

The South African Education Act of 1996 is crafted from the provisions on education in the Constitution and emphasises the requirement for equal access to quality education for all. It notes that the education policy should 'contribute to the full personal development of each student, and to the moral, social, cultural, political and economic development of the nation at large.'²⁸⁷

Government has stated that 'basic education²⁸⁸ is the top priority of this administration,²⁸⁹ and has noted that 'it is widely recognised that the country's schooling system performs well below its potential and that improving basic education outcomes is a prerequisite for the country's long-term development goals.'²⁹⁰

Various indicators illustrate the weaknesses in South Africa's basic education system. High unemployment and the poor throughput rates of graduates to qualify for entry into higher education highlight the mediocre quality of basic education. A high percentage (just under one-third or 1 402 000 out of 4 310 000) of people who completed their secondary schooling in 2010 are unemployed. In 2009, 550 227 learners wrote the final matriculation exams. Of these, 334 716 (61%) passed, but only 109 697 (20%) passed well enough to be granted admission to university.²⁹¹ The low participation rates in tertiary education can be attributed to weaknesses in basic education. Tests by the Southern Africa Consortium for Monitoring Educational Quality indicate that most South African learners do not gain the literacy and numeracy skills that would allow them to be successful at tertiary level.²⁹²

The net enrolment ratio at primary and secondary school level is a further indicator of progress in basic education. At the primary school level, this is 87% for males and 88% for females; and 70% for males and 74% for females at the secondary school level.²⁹³ South Africa has made considerable progress in achieving gender equity in male and female primary school completion rates. However, there has been little progress in the net enrolment ratio in primary education and it is unlikely that South Africa will meet the 2015 MDG target of universal access to primary education.²⁹⁴

South Africa's NPoA SED objective 3 stresses the need to improve the quality of education at all levels. SAIR II notes that a 'substantive number of mechanisms to improve the effectiveness and efficiency of education have been implemented',²⁹⁵ and there have indeed been improvements in many aspects of the country's post-Apartheid education system. Yet it remains difficult to prioritise indicators of improvements in basic education since, as government notes, 'in education there cannot be a neat hierarchy of cause and effect, because causality occurs in many directions simultaneously.'²⁹⁶

Indicators in two key areas – the exceptionally low levels of literacy and numeracy and the continuing inadequacies of the physical educational environment – will suggest the success (or otherwise) of attempts to improve the performance of basic education.

A number of comparative studies have confirmed that 'our education system fails to teach students to read, write and count to the required standard.'²⁹⁷ In 2006 a Progress in International Reading Literacy Study compared the performance in literacy of Grade 4 and 5 learners in 45 participating countries. South Africa obtained the lowest scores, and the majority of learners did not even reach 'the lowest international benchmark.'²⁹⁸ The Trends in International Mathematics and Science Study also placed the country consistently last, which prompted withdrawal from future rounds of the study.

In 2011 the Department of Basic Education (DBE) administered the annual national assessments (ANAs) across the country to more than 6 million learners from Grade 2 to 10 for the first time. The DBE has stated that it aims to improve numeracy and literacy attainment levels of Grade 3 and 6 learners from the current rates of 27–38% to 60% by 2014. It believes that the ANA 'is one of the key strategies that the department has in place to improve learner achievement.'²⁹⁹

The budget for improving school infrastructure has soared from ZAR 352 million (0.06% of GDP) in 1995/96 to ZAR 4.95 billion (0.24% of GDP) in 2008/09.³⁰⁰ However, the DBE has acknowledged that the 'average school in South Africa does not provide a physical environment that facilitates effective teaching and learning ... or promote[s] adequate learner health and safety.'³⁰¹ The DBE remains concerned about the negative impact of an inadequate physical environment on teaching and

learning effectiveness in South Africa.³⁰² It should also be noted that physical environment varies significantly across the nine provinces of South Africa and even across provincial districts.³⁰³

In June 2010 Minister for Basic Education, Angie Motshekga, gazetted the 'National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment' in terms of section 3(4) of the National Education Policy Act of 1996. Although the policy itself does not set standards for the physical teaching and learning environment, it states that national norms and standards will be fully adopted by the end of the 2010/11 financial year. These norms and standards

will span a continuum from 'basic safety', through to 'minimum functionality', 'optimum functionality' and 'enrichment'.



RATING: ORANGE

The evaluating group felt that although some progress has been achieved in education in recent years, much more work needs to be done by the South African government to achieve a higher rating.

Recommendations

- Civil society should monitor the progress of ANAs and that the resulting support and policy interventions improve learner literacy and numeracy.
- Civil society should monitor progress in improving the physical education environment against the standards set following the finalisation of the National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment.
- Consider initiatives to empower civil society to monitor and undertake advocacy around these important aspects of basic education development in South Africa.
- The private education schooling sector should form part of the solution to improving the quality of basic education. This can be done through, for example, introducing competition between the public and private school sectors; and looking at the role that low-fee private sector schools currently play in servicing the poor in South Africa and the potential for the expansion of this sector providing quality basic education.³⁰⁴
- Improve information management and feed information into strategic management and planning.



6.3 SKILLS DEVELOPMENT

Related APRM objectives

SED objective 3: To Strengthen Policies, Delivery Mechanisms and Outcomes in Key Social Development Areas, including Education for All, Combating of HIV and AIDS and other Communicable Diseases.

SED objective 5: To Make Progress Towards Gender Equality in All Critical Areas of Concern, Including Equal Access to Education for All Girls at All Levels.

CG objective 2: To Ensure that Corporations Act as Good Corporate Citizens with Regard to Human Rights, Social Responsibility and Environmental Sustainability.

Related action items from South Africa's NPoA

CG objective 4: Increasing worker's capacity to utilise maximally opportunities brought by democracy, especially in SETAs, pension fund boards, NEDLAC, workers' forums etc.

SED objective 3: Strategies for ensuring children's health and development need improving.

In South Africa's CRR, under SED objective 3, the NPoA calls for 'strengthen[ing] policies, delivery mechanisms and outcomes in key social development areas.'³⁰⁵ The NPoA also calls for an increase in the throughput rate of graduates in the higher education sector generally, and specifically for those with scarce entrepreneurial skills.³⁰⁶

SAIR II indicates that a National Certificate at further education and training colleges was introduced to increase the number of graduates with vocational and entrepreneurial skills. Since its inception in 2008 this course has produced 133 171 graduates. In addition, government extended the National Skills Development Strategy (NSDS) II by one year, until March 2011, to assess SETAs within the framework of the NSDS. It has also released the framework for the NSDS 2011/02 to 2015/06 to guide the development of Sectoral Skills Plans.

An indicator of a country's skills levels is its ability to absorb and create new technologies to grow the economy. South Africa appears to be slipping on the Global Competitive Index rankings with respect to innovation, from 36th in 2008/09 to 44th in 2010/11. Innovation is determined in part by the availability of scientists and engineers in a country. South Africa does not fare well in this regard and lags behind other Southern African states such as Botswana, Mauritius and Tanzania. Overall, the country is placed 116th out of 139 ranked countries.³⁰⁷

In terms of the composite measure of global competitiveness,³⁰⁸ South Africa's position has

remained relatively constant. In 2009/10 it was in 45th position and in 2010/11 it was 54th out of the 139 ranked countries. This has been attributed less to South Africa's slippage and more to the rise in the rankings of other countries.³⁰⁹ Nevertheless, South Africa needs to achieve a 7% growth rate to absorb the unemployed workforce and create five million new jobs in ten years. The availability of skills in engineering and science fields are critical to creating new businesses and growing the economy to create further employment opportunities.

One of the challenges of matching skills needs in the economy with the skills supply is the lack of an institutional mechanism that provides reliable information on the supply and demand for skills in South Africa, currently scattered across 12 departments in a number of separate databases. This inhibits the development of a coherent and co-ordinated skills strategy. Demand-side information is also inadequate, with the National Scarce Skills list not considered an accurate source. In line with the need to establish a credible institutional mechanism for skills planning, government has identified this as a key activity to be achieved by 2014.³¹⁰ This problem has been aggravated by the non-alignment of the work done by different departments. The Department of Education has focused on learners on the supply side, whereas the Department of Labour has focused on the needs of the labour market on the demand side. This has resulted in many graduates from the

education system being unable to find jobs, because they have been unable to fulfil the economy's requirement of particular skills critical for economic growth.



RATING: ORANGE

The evaluating group agreed that although the necessary initiatives are in place, much needs to be done to solve the problem of skills development, hence an orange rating.

Recommendations

- Improve the quality and relevance of basic education to address the skills deficits in the economy.
- SETAs need to develop training programmes that target the unemployed to equip them with the skills necessary to enable them to find employment.
- Upskill the low and semi-skilled workforce already in employment and link training programmes to the National Qualifications Framework to facilitate the transferability of skills between occupations.
- Increase the range of vocational training options in the public sector for early school leavers and people with only a matric-level qualification.
- Solve the ongoing and Apartheid-inherited problem of critical skills shortages that is holding back the development of the economy. Accordingly, revise restrictions on skilled foreign immigrants working in South Africa.
- Include information on the expected loss of productivity as a result of having specific occupational skills shortages in work-placed skilled plans developed by firms. This would enable SETAs to focus on facilitating the development of these skills to improve productivity in companies.
- Place greater emphasis on entrepreneurial skills training.



7 POVERTY, INEQUALITY AND UNEMPLOYMENT

South Africa is one of the most unequal societies in the world. A Gini score of 57.8³¹¹ indicates an unacceptably high social inequality in a country with the largest economy in Africa.³¹² Accordingly, poverty and inequality were identified as important issues on which to report progress in the AMP. Income inequality is one of the main causes of inequality. This is particularly so for the bottom 10% of households in South Africa, of which 80% have no one earning a wage.³¹³ Poverty and unemployment are therefore two interrelated phenomena. Joblessness contributes to individual and household poverty. Similarly, it is the poor and marginalised in society who do not have access to education and training opportunities that would improve their chances of formal employment and obtaining work in skilled occupations with higher wages.

The sub-themes in this section are:

7.1 Poverty

7.2 Unemployment

7.1 POVERTY

Related APRM objectives

SED objective 2: To Accelerate Socio-Economic Development to Achieve Sustainable Development and Poverty Eradication.

SED objective 3: To Strengthen Policies, Delivery Mechanisms and Outcomes in Key Social Development Areas, including Education for All, Combating of HIV and AIDS and other Communicable Diseases.

SED objective 4: To Ensure Affordable Access to Water, Sanitation, Energy, Finance (Including Microfinance), Markets, ICT, Shelter and Land to All Citizens, Especially the Rural Poor.

Related action items from South Africa's NPoA

SED objective 2: Local, provincial and national consultative conferences on poverty definition and measurement.

SED objective 2: Development of the poverty barometer.

Related Cross-Cutting Issues identified in South Africa's CRR

- Poverty and Inequality

Of those countries that keep statistics on this issue, South Africa has the highest levels of poverty and inequality in the world. The 2007 CRR and NPoA underscores this as follows: 'Despite the status of a middle-income country, poverty and inequality are still widespread in South Africa and manifest themselves in high rates of unemployment, extreme land hunger and lack of access to basic human needs.'³¹⁴ This section defines poverty as '... the denial of opportunities and choices most basic to human development to lead a long, healthy, creative life and to enjoy a decent standard of living, freedom, dignity, self-esteem and respect for others.'³¹⁵ The CRR complemented this definition with factors perceived by poor people in South Africa to contribute towards poverty. These are alienation from the community, food insecurity, crowded homes, the use of unsafe and inefficient forms of energy, the lack of jobs that are adequately paid and/or secure, and fragmentation of the family.³¹⁶

Poverty in South Africa manifests itself in various ways. These include income poverty (lack of income), human capital poverty (lack of education and skills), service poverty (lack of access to services and amenities), and asset poverty (lack of ownership of housing and land).³¹⁷ Unlike many other African countries, South Africa does not have

a single, unified poverty reduction strategy – such as a formal Poverty Reduction Strategic Paper, which is often externally imposed. Rather, there are various initiatives and policy interventions that collectively make up South Africa's poverty reduction strategy, including social grants (such as child support and disability grants), subsidised water and electricity, housing, and land redistribution.³¹⁸

A recent report by the Studies in Poverty and Inequality Institute found that 40% of South Africa's population lives on \$1 per day.³¹⁹ A recent online poll placed South Africa 14th out of 257 countries, in terms of the highest population living below the poverty line.³²⁰ However, the South African government does not have an official definition of poverty – an issue that was raised in the CRR. Although SAIR I claimed that progress has been made through a national consultative process, SAIR II does not provide a further update.

In the 2007 CRR and NPoA, many recommendations were made to promote SED and to address poverty and inequality. One such important recommendation is related to South Africa's ratification of the International Covenant on Economic, Social and Cultural Rights. This Covenant deals with rights that are crucial in the fight against poverty. South Africa places high importance on the development and protection of socio-economic

rights, as enshrined in its Bill of Rights. However, it has not demonstrated its principles by signing this Convention, even though the country committed itself to ratifying the convention 16 years ago.

Poverty in the country manifests along racial and gender lines. Studies show that the majority of those in poverty are black South Africans and women. This is despite policy and legislative provisions that in place to ensure corrective action among previously disadvantaged groups.³²¹ According to the PSC, there are 40 programmes and almost 30 000 projects that deal with poverty reduction in the country.³²² According to the SAHRC, the country 'could do with a comprehensive national anti-poverty strategy, as opposed to relying on disparate sets of policy programmes and initiatives to address the problems and challenges.'³²³

Social security assistance, which is listed as a response to poverty in SAIR II, has been shown to mitigate the worst effects of poverty. In particular, government highlighted the extension of the Child Support Grant to children between 15 and 18 years of age.³²⁴ This grant has been proven to have a significant health and educational impact on the lives of children.³²⁵ Prior to October 2009 this grant could not be accessed by children within these age groups. The old age grant plays a vital role in alleviating poverty among the elderly, but the sustainability of this and the child grant is questionable. Given that there are only about 5 million individual taxpayers and approximately 15 million grant recipients, the current welfare system cannot expand indefinitely.³²⁶



RATING: RED

Given the poverty situation in South Africa and the lack of follow-through on the APRM's recommendations, such as creating an official definition of poverty, the evaluating group reached a consensus that the rating should be red.

Recommendations

- Further investigate the sustainability of social security assistance.
- Encourage CSOs to become more involved in the process of poverty alleviation and inequality. Collaboration with government departments could serve as an effective medium in alleviating poverty and inequality.
- Government should sign the International Covenant on Economic, Social and Cultural Rights, and should give a clear indication of when this Covenant will be ratified.³²⁷



7.2 UNEMPLOYMENT

Related APRM objectives

EGM objective 1: Promote Macroeconomic Policies to Support Sustainable Development.

SED objective 2: To Accelerate Socio-Economic Development to Achieve Sustainable Development and Poverty Eradication.

Related action items from South Africa's NPoA

EGM objective 1: Dealing with unemployment.

EGM objective 1: Implement ASGI(SA) and the Industrial Policy Framework which is being finalised.

EGM objective 1: Address the commitments made at the Growth and Development Summit and challenge to increase Gross Fixed Capital Formation, especially in industries with high levels of labour absorption.

EGM objective 1: Review existing labour legislation.

Related Cross-Cutting Issues identified in South Africa's CRR

- Unemployment

Unemployment is high on the priority list of government concerns and features as one of the 12 outcomes that formed the basis of the ANC's 2009 election manifesto.³²⁸ In addition, 2011 has been signalled as the year of employment creation by government in the president's State of the Nation address. High unemployment in South Africa is one of the major causes of poverty and income inequality. The economy also faces structural constraints, including a skills deficit that affects its ability to generate growth and create employment.³²⁹

The NPoA lists unemployment as one of the major problems to be addressed and targets halving unemployment by 2014. SAIR II, however, highlights the continuing challenges facing South Africa in unemployment and suggests that not much progress has been made to realise this target.³³⁰

The definition of 'being employed' in South Africa is very broad. According to economist Mike Schüssler,³³¹ 'the employed are those aged between 15–64 years who, during the reference week did any work for at least one hour; or had a job or business but were not at work.'³³² Unemployment rates are high and the situation in the country has been described as a 'ticking time bomb'.³³³ The high rate of youth unemployment is of particular concern. The SAIRR 2009/10 Survey indicates that 51% of the South African population aged 15–24 are

unemployed. This age cohort is significant because it represents a large share (almost one-quarter) of South Africa's working population (defined as aged between 15 and 64 years) and is almost double the official national unemployment rate of 25%.³³⁴ The global economic recession since 2008 has aggravated the unemployment situation in South Africa, with 1 million jobs being shed during this period and the number of unemployed in South Africa rising to 4.4 million people in September 2010.³³⁵ From 1991 to 2008 South Africa performed poorly in creating decent work opportunities for its citizens. In 1991, 39.4% of the population between 15 and 64 years were in employment and in 2008 this had increased only slightly to 41.1%.³³⁶ In the fourth quarter of 2010, the Quarterly Labour Force Survey³³⁷ indicated that 40.8% were employed and that unemployment³³⁸ was at 24%. This suggests that efforts to increase employment over the past five years have not been successful. Insufficient economic growth is one of the main reasons for the failure to reduce unemployment significantly and to increase the percentage of South Africans in formal employment. To address this concern, government launched Phase II of the Expanded Public Works Programme.³³⁹ The goal of this programme is to create 4.5 million work opportunities.

One of the ongoing debates on employment

creation concerns the issue of providing ‘decent work’ versus the goal of creating more jobs. Clouding the issue is the lack of a clear definition of what decent work constitutes. Labour Minister, Mildred Oliphant, has said decent work includes ‘security of employment in acceptable working conditions,’³⁴⁰ but this definition remains vague.

The New Growth Path (NGP), a policy released for discussion late in 2010, is aimed at creating 5 million jobs by 2020 through sector development. The plan has already been criticised by both business and labour. Business believes that the emphasis of the plan is wrong and that for newly created jobs to be sustainable, they need to add value to economic growth and should ‘generate a return on capital’.³⁴¹ On the other hand, COSATU is of the opinion that this plan needs to be overhauled, since it does not go far enough in dealing with the ‘triple challenge of extraordinarily high levels of unemployment, poverty and deepening inequality.’³⁴²

Finally, it is important to mention the new Labour Services Bill, which aims to create a policy framework to promote decent work and establish a public employment services agency that will enable government to maintain a database of job seekers and job opportunities. There are also proposed amendments to other legislation, such as the Employment Equity Act and the Basic Conditions of Employment Act, which are intended to tighten the enforcement mechanisms to reduce inequality and discrimination in the labour market. Some of this newly proposed legislation has been criticised because it is believed that it would hamper job creation and centralise control, instead of promoting entrepreneurship and business, because of further measures to protect labour.³⁴³



RATING: RED

The evaluating group reached a consensus on a red rating, since not enough is being done to address the issue of unemployment, which is estimated at 25%. Furthermore, many of the existing initiatives are aimed at providing short-term job opportunities, rather than long-term work.

Recommendations

- Focus job creation efforts on reducing the high percentage of unemployed youth in South Africa.
- Government needs to implement a suite of incentives to business and industry to create work opportunities for young and unemployed South Africans.
- Prioritise training and skills development for school leavers who do not enter the tertiary education sector.





8 THE ENVIRONMENT, LAND AND AGRARIAN REFORM

The environment and land issues are interrelated. Land, including agrarian reform, cannot be separated from the environment. Sustainable human development in South Africa depends on protecting the natural environment – including the land and water reserves, among other natural assets. Despite a lack of attention to this in the CRR, the AMP team decided address these issues in light of the emphasis placed on economic and social development, and the negative impacts this is likely to have on the environment. Emerging issues, such as ground-water pollution from acid mine drainage, make this a crucial issue in light of government policies of social upliftment for the rural and urban poor.

The sub-themes in this section are:

- 8.1 The environment
- 8.2 Land and agrarian reform

8.1 THE ENVIRONMENT

Related APRM objectives:

CG objective 2: To Ensure that Corporations Act as Good Corporate Citizens with Regard to Human Rights, Social responsibility and Environmental Sustainability.

Related action items from South Africa's NPoA:

CG objective 3: Build Community-Based Organisations capacity to monitor environmental concerns through education and awareness.

CG objective 3: Develop programmes to protect the environment in light of the mining sector and high rural poverty.

Environmental issues have a strong bearing on health and poverty (see the Box insert below on Food security in South Africa), yet neither the CRR nor the SAIR II deals with environmental issues in any depth. Although the CRR lists 'water, sanitation, energy, finance, markets, shelter and land' as important services, it is necessary to understand that these are linked to environmental assets. Environmental assets need to be balanced against the demands of the country to achieve their sustainable use. However, the NPoA does not contain any action items aimed at protecting the environment.

Food Security

Food security for the poor is becoming a global crisis, linked to escalating food prices. South Africa is food secure as a nation, but poverty and unemployment are creating a crisis in which poor households cannot afford enough good quality food. The impact is largest on growing children, with long-term consequences for their mental and physical health, and for people living with HIV/Aids. Statistics kept on nutrition within the South African population in 2008 show, for example, that 11.5% of children go hungry each day in Gauteng, with 25.2% in the North West province (the highest). Along with poverty and unemployment, hunger is more prevalent among African children. In 2008 some 3.1 million African children lived in households that reported child hunger.³⁴⁴

South Africa has both a National Integrated Food Security Strategy and linked provincial strategies. However, government deals with food security issues in a fragmented manner and there is no single 'State of National Food Security' report to assess the situation in a holistic way. South Africa is part of the global UN Food Insecurity and Vulnerability Information and Mapping System (FIVIMS). FIVIMS aims to identify the vulnerable and their located, and to assist governments in meeting their reporting requirements for the Millennium Development Project. More needs to be done to use this information to inform government food security projects in South Africa and, in particular, to assess their effectiveness in combating food insecurity.

The National Department of the Environment State of Environment Report (2009) lists emerging environmental issues³⁴⁵ as climate change and energy issues, air quality and pollution, and environmental information. As well as these, water quality, land degradation and the environmental impacts of the mining sector are of growing concern. Any further deterioration in environmental quality in these areas would impact on the health and well-being of South Africans, and increase poverty.

Climate change and energy issues pose a challenge to South Africa. Its estimates of carbon dioxide (CO₂) emissions per person are 10.0 tonnes per year, which are high and need to be addressed. In comparison, Zimbabwe emits 0.8 tonnes per person,³⁴⁶ while the US emits 24 tonnes per person

and China 3.9 tonnes per person. The energy sector is the largest contributor of total CO₂ emissions. South Africa is an energy-intensive economy and depends on large-scale primary extraction and processing, particularly in the mining and minerals beneficiation industries.³⁴⁷ The Integrated Electricity Plan (IRP 2010) commits South Africa to using coal as part of its energy balance for at least the next 20 years,³⁴⁸ but with an aim to reduce carbon emissions during this time.

South Africa also has a number of air quality 'hot spots' located in the industrialised areas of the country, where the quality of air is very poor. These areas are in Gauteng and the western parts of Mpumalanga, where the air quality suffers from the coal industry, manufacturing industry, vehicle emissions and coal burning for household use.³⁴⁹ Other hotspots include parts of KwaZulu-Natal, South Durban Basin, as well as parts of Port Elizabeth and Cape Town, particularly where oil refineries are located. Human health impacts can be severe from air pollution.

Similarly, there are concerns over the quality of water. Due to the impact of extractive industries and the environmental degradation they cause, South Africa's commitment to a future of coal and coal-fired power generation is expected to have severe water pollution implications for rural provinces (Limpopo and Mpumalanga in particular). This is likely to either pollute or divert water from downstream rural users. Over time rural dwellers using these degrading sources of water may be forced to leave the land and migrate to cities to be part of the urban poor.

One way to deal with air and water quality concerns is through the National Environmental Management Act (107 of 1998). The Act is intended to integrate environmental management countrywide with a number of related environmental laws, which protect water, air and biodiversity and establish protected areas. Without this legislation, it would be difficult to ensure water and air quality in South Africa. Compliance and enforcement is an important element of managing the environment in a sustainable manner to benefit all people. Apart from that, the National Environmental Laws Amendment Act (14 of 2009) is a piece of new legislation that aims to build on existing laws. In terms of this Act, penalties for polluting the environment will be substantially increased in line with international

standards.³⁵⁰ South African environmental law is premised on the 'polluter pays' principle to make sure that polluting industries understand that there are penalties. However, this is often difficult to enforce. The National Environmental Inspectorate ('Green Scorpions') was established to deal with environmental issues, such as pollution and illegal development, and more recently a specialised National Wildlife Crime Investigation Unit was established to deal with poaching and illegal trade in wildlife.³⁵¹

The National State of Environment Report states that there are serious gaps in environmental data collection and analysis. Accurate information, collected on an ongoing basis, is needed to inform policy decisions. South Africa also need systems for detecting trends in data collected, to be used for modifying policy when necessary.³⁵² Critical indicators for which South Africa has no adequate data include current land cover, fine-scale spatial information on habitat degradation, as well as aspects of water and air quality, and carbon emissions. South Africa also does not have reliable data on genetically modified organisms, human vulnerability, or groundwater use and recharge, and the South African government acknowledges that they have limited knowledge of some aspects of biodiversity.³⁵³

Finally, South Africa's work to prevent land degradation is tracked by the State of Environment Reporting (SOER) of the Department of Environmental Affairs. The department's goal is to halt land degradation, but the current state of affairs is uncertain owing to inherent difficulties with satellite monitoring systems.³⁵⁴ According to SOER, 4.99% of South Africa's land can be considered as degraded, while 80% remains in its natural condition.



RATING: ORANGE

The evaluating group felt that although initiatives to improve environmental issues exist, often not enough is done in practice, hence an orange rating.

Recommendations

- Civil society and government should include environmental issues in their own project planning, and mitigate any environmental impacts through adopting a low environmental footprint stance.
- Civil society and government should also include carbon planning in their projects, and mitigate carbon costs where possible.
- Civil society should build up evidence and then report environmental issues that impact on their members to the Environmental Inspectorate (also known as the Green Scorpions), and insist that the matters are addressed. Environmental courts should be reinstated to deal with specialised issues like poaching.
- Civil society should consider using the media, including the social media (the Internet, Facebook, Twitter) to draw attention to environmental issues.
- Civil Society and government should monitor mining environmental issues, such as new mining companies, new mining issues ('fracking'),³⁵⁵ coal mining, mine closure and rehabilitation of used mines, mining impact on water and on rural communities, and compliance with legislation.
- Civil Society should be stronger in its championing of water issues.
- Intensify investment in energy efficiency and renewable energy to replace coal in the energy mix over time.
- Include environmental skills (legal, management and monitoring) in the National Scarce Skills register.

8.2 LAND AND AGRARIAN REFORM

Related APRM objectives

SED objective 4: To Ensure Affordable Access to Water, Sanitation, Energy, Finance (Including Microfinance), Markets, ICT, Shelter and Land to All Citizens, Especially the Rural Poor.

Related action items from South Africa's NPoA

SED objective 2: Rapid implementation of land redistribution and tenure reform projects.

In 1991 approximately 80% of the South African population were still prohibited from owning or leasing land in over 80% of the country. Whites (14% of the population at the time) owned 83% of the land (including the 16% owned by the whites-only government and its agencies). When the ANC came to power in 1994, 50 000 white farmers owned 85% of all agricultural land. This skewed distribution made South Africa one of the most unequal societies in the world (ever).³⁵⁶

Although often criticised, government has made strides and achieved some successes in land and agrarian reform. One such success has

been the changes evident in urban land-ownership and settlement as a result of the repeal of racist legislation and economic and political stability. Another success has been the comparatively peaceful implementation of land reform, compared with other African, Latin American and Asian examples of land reform, where the only 'successes' were accompanied, preceded or followed by widespread and protracted violence.³⁵⁷

South African efforts at rural/agrarian land reform have, however, been less successful. Although policies and legislation were often well constructed, these have been impeded by

ineffectual implementation. The South African CRR report asserts³⁵⁸ that:³⁵⁹

access to land remains a major problem as restitution and redistribution of land have been slow in taking off and have thus far minimally contributed to building the assets or capabilities of the poor, especially in rural areas, where effective land use could contribute to sustainable livelihoods.

The CRR argues that successful land reform can play a major role in addressing issues of unemployment and poverty, and that successful land reform is the 'single most important factor' in social, political and economic empowerment.³⁶⁰

The CRR states that the 'slow pace'³⁶¹ of land reform in South Africa is the result of:

- the state not playing a more proactive role in land redistribution;
- uncertainty about the likelihood of the willing-seller, willing-buyer principle resulting in adequate land reform;
- stagnation in South African land reform after the 2005 Land Summit; and
- the requirement to balance the need for land reform with the continuity of agricultural production and the health of the sector with its important backward and forward linkages in the South African economy.

The current South African land reform programme has three components. These are redistribution (increasing black ownership of land); restitution (restoring land to those who were disposed after 1913 as a result of racist legislation); and tenure reform. Tenure reform arguably affects the largest number of previously and currently dispossessed individuals and perhaps has the greatest potential to alter the distribution of land ownership.³⁶² Tenure reform can further be divided into tenure reform in the former 'Bantustans' (land-rights/ownership) and tenure reform on farms (farm workers and labour tenants).³⁶³ The results and initiatives described below show that the recommendations of the CRR correlate with current South African policy trajectory.

With regard to redistribution (2008–09), the then Department of Land Affairs (DLA) spent almost

100% of its allocated budget on acquisition, and redistributed 443 600.4886 hectares, finalised 501 projects and reached 14 457 beneficiaries. By early 2009, 95% of the restitution claims had been settled, with 4 296 highly complex (and potentially volatile) claims outstanding. These require extensive investigation, as well as mediation initiatives. Cumulatively, the approved hectares of land transferred through restitution (this is in addition to redistribution) was 2.47 million hectares in early 2009.³⁶⁴ Strategic partnerships and targeted interventions were embarked upon to improve post-settlement support to emerging farmers.

These statistics show an increase in the pace of redistribution and restitution in the latter years of 2000–09 (particularly 2008–09). Some of the increased pace is the result of a more aggressive role of the state in land reform. This has included initiatives put into place to fast track the settlement of restitution claims, and the acquisition of land at a scale in accordance with the Proactive Land Acquisition Strategy.

One aspect around which debate continues, despite a review of this process in 2010, is the willing-seller, willing-buyer approach to land reform and the consequent arguably high cost of land acquisition. However, this should be understood against the need to maintain agricultural productivity and economic continuity, as well as the Constitution's allowance for land expropriation and guidelines for land valuations that are not solely market-related.³⁶⁵

Nevertheless, and taking account some of the achievements above, government reported in SAIR I (January 2009) that the total of 5.2 million hectares that had been distributed accounted for less than 6% of agricultural land.³⁶⁶ The Minister of Rural Development and Land Reform has since admitted that the majority of redistribution and restitution projects have been commercial failures. Some studies have estimated the failure rate as high as 90%.³⁶⁷

Since then, and as pointed out in SAIR II, the main progress in land reform implementation has been the creation of the Department of Land Reform and Rural Development. The department's purpose is to drive the process of land redistribution and restitution, and arguably the completion of the draft of the Tenure Reform Act, which is currently undergoing a Regulatory Impact Assessment. In addition, the Expropriation Bill, initially drafted in 2008, and the Communal Land Rights Act (11 of

2004) were shelved because of claims or findings of unconstitutionality.

The key development has been the creation and piloting of the Comprehensive Rural Development Programme (CRDP). This aims to address poverty and food insecurity by maximising the use and management of natural resources to create vibrant, equitable and sustainable rural communities. The CRDP seeks to rectify past injustices and improve standards of living and welfare through rights-based interventions that address skewed patterns of distribution and ownership of wealth and assets.

The objective of the CRDP is therefore to facilitate integrated development and social cohesion through participatory approaches in partnership with all sectors of society, with the following outcomes.

- Contributing to the redistribution of 30% of the country's agricultural land.
- Improving food security for the rural poor.
- Creating business opportunities.
- De-congesting and rehabilitating over-crowded former homeland areas.
- Expanding opportunities for women, youth, people with disabilities and older people who live in rural areas.

These outcomes are to be achieved through the co-ordination of a three-pronged strategy based on agrarian transformation, rural development and land reform.

Conceptually, comprehensive rural development goes beyond the traditional narrow focus on land reform and agriculture. It aims for a sustainable, integrated and co-ordinated rural development approach. There is a strong focus on food security; rural infrastructure and service delivery; the identification and exploitation of other non-farm economic opportunities including light industry; cultural development and tourism; skills development; and institutional capacity development.³⁶⁸

Although commendable in intent, the CRDP pilots revealed the high implementation and sustainability costs of the programme, and confusion around the extent, responsibility structures and beneficiary selection.³⁶⁹ This raises key questions. These include how, given current budget and capacity constraints, an even more

extensive programme can be afforded; the reasons why agriculture has become a separate ministry; and what will become of the existing land reform programme while implementers wait for the Department of Rural Development and Land Reform to undergo another policy development process.



RATING: ORANGE

This was a very contentious issue. Although much progress has been achieved, completion is still far away. The experts on land reform in the evaluating team felt that given the overall status of the issue, a red rating should be awarded. However, other participants argued that a green rating should be awarded, based on the progress achieved. Therefore, an orange rating was awarded as a compromise.

Recommendations

- It would seem that the CRDP approach responds to both the NPOA and to developments in the APRM reporting on land reform. Whether this is the appropriate route (ie whether this attempts to accelerate reform to meet established targets) is less clear. Perhaps the answer lies rather in setting realistic targets and developing similarly prudent views on the likelihood of land reform actually contributing to employment creation and poverty elimination. The focus should shift to employment creation generally and to improved infrastructure and service delivery in rural areas.
- CSOs that want to contribute to accelerated land reform should focus on social mobilisation. Empirical evidence shows that accelerated land redistribution in most cases is preceded by (or takes place in conjunction with) extensive social mobilisation and/or direct action.³⁷⁰

PHOTO CREDITS

- Page 4: (bottom) AMP evaluating group during a session of the AMP Validation & Evaluation Workshop, 10-11 May 2011, SAIIA
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- Page 18: (top) Afeikhena Jerome, formerly of the APRM Secretariat, speaks during the AMP Scoping Workshop, 12-13 October 2010, SAIIA (bottom) Participants during a session of the AMP Scoping Workshop
- Page 21: (bottom left) Dugan Fraser, workshop facilitator (bottom right) Minister Richard Baloyi, DPSA, and Elizabeth Sidiropoulos, SAIIA
- Page 26: (bottom) left to right Steven Gruzd, SAIIA, Minister Richard Baloyi, DPSA, Elizabeth Sidiropoulos, SAIIA, and Robin Richards, formerly of CPS, during the Minister's Keynote Address at the AMP Scoping Workshop
- Page 30: (bottom left) Ntchafiso Sello, Lesotho delegate (bottom right) Lorenzo Wakefield, Community Law Centre of the University of Western Cape
- Page 44: (top) Tšoeu Petlane, formerly SAIIA, AMP Scoping Workshop (bottom left) Laura Kanyago, APRM NGC (bottom right) Jacob Molapisi, APRM NGC
- Page 49: (top right) South Africa's APRM CRR (bottom left) Lilian Tamale Muyomba, Uganda Governance Monitoring Platform (bottom right) Anne-Friederike Röder, formerly of GIZ
- Page 51: (bottom left) Percy Tshabane, DPSA (bottom right) Robin Richards, formerly of CPS
- Page 52: (top) Group picture of participants during the AMP Validation & Evaluation Workshop (bottom) left to right Ogochukwu Nzewi, formerly of CPS, Yarik Turianskyi, SAIIA, Steven Gruzd, SAIIA, Nicole Beardsworth, SAIIA, Terence Corrigan, Gauteng legislature
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- Page 74: (top left) Andrew Faull, ISS (top right) Yarik Turianskyi, SAIIA (bottom) Steven Gruzd, SAIIA, discussing lessons learned compiling the South African AMP Report

Photos taken by: Ronald Govender and Dion Cuyler

ENDNOTES

- 1 This section was adapted from Corrigan T, 'Mastering the APRM: Creating your Submission: A guide to writing a submission to influence policy', Johannesburg: SAIIA, 2007, p. 1.
- 2 Assembly of Heads of State and Government, 'The New Partnership for Africa's Development, The African Peer Review Mechanism (APRM)', Thirty-eighth Ordinary Session of the Organisation of African Unity, Durban, South Africa, 8 July 2002, AHG/235 (XXXVIII), Annex II, paragraph 3, p. 1. Emphasis added.
- 3 Although this report was launched in January 2011, it was published in November 2010, which is how it will be referenced from now on.
- 4 For more detail on AMAT see SAIIA, 'African Peer Review Monitoring Project (AMP)', <http://tinyurl.com/6xbnj4>.
- 5 Personal interview, Minister Richard Baloyi, Minister for Public Service and Administration, Batho Pele House, Pretoria, 6 April 2011.
- 6 Personal interview, Nomonde Mqhayi, Youth Sector NGC member; and Jacob Molapisi, NGO Sector NGC member, Batho Pele House, Pretoria, 14 April 2011.
- 7 Jacob Molapisi, NGO sector NGC member, 14 April 2011.
- 8 Interview, Nomonde Mqhayi and Jacob Molapisi, *op. cit.*
- 9 Interview, Minister Richard Baloyi, *op. cit.*
- 10 48% are undecided and 20% disagree on the APRM informing policy.
- 11 35% are undecided, 35% disagree.
- 12 Telephonic interview, Lance William Greyling, MP, former member of Ad Hoc Committee of the APRM, 11 April 2011; Telephonic interview, Sisa Njikelana, ANC MP, 12 April 2011; Telephonic interview, Sandy Kalyan, MP, former member of Adhoc Committee on the APRM, 13 April 2011; Telephonic interview, Cheryllyn Dudley, ACDP MP, 12 April 2011.
- 13 60% of respondents disagree that the general public is aware of the APRM, while 30% strongly disagree. 90% of respondents are of the opinion that the general public is NOT aware of the APRM.
- 14 Interview, Nomonde Mqhayi and Jacob Molapisi, *op. cit.*
- 15 Interview, Sandy Kalyan, *op. cit.*
- 16 MPs, for instance, mentioned oversight institutions such as the Auditor-General and the Human Rights Commission, and newly created government departments like the M&E (monitoring and evaluation) and Planning departments.
- 17 Interview, Cheryllyn Dudley, *op. cit.*
- 18 Interview, Sisa Njikelana, *op. cit.*
- 19 Interview, Nomonde Mqhayi, *op. cit.*
- 20 *Ibid.*
- 21 Online AMP Implementation and Status in South Africa Survey, using www.surveymonkey.com in April and May 2011.
- 22 Interview, Minister Richard Baloyi, *op. cit.*
- 23 South African Government, *African Peer Review Mechanism: Country Review Report of South Africa*. Pretoria: Government Printer, September 2007, p. 86, paragraph 140, http://saiia.org.za/aprmtoolkit/docs/Country_Reports_and_Exper/atkt_south_africa_arpm_country_review_report_2007_en.pdf. Hereafter referred to as SA Government, SA CRR, 2007.
- 24 *Ibid.*, pp. 92–93, paragraphs 161–164.
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- 356 Margo T, 'The South African Land Question', *New Nation*, 7 February 1991. A by no means scientific estimate, based on the same logic, would suggest that the ratio of white and black owned land is now closer to 50/50. For example, 83% minus the 14% of land transferred to democratic government and its state agencies equals 69%; minus an estimated 7% of redistributed farm land equals 62%; minus an unknown (to the author) amount of urban land ownership change and tenure reform activities etc. suggest more progress in the overall landscape than is generally perceived when focusing exclusively on rural redistribution and the restitution programme.
- 357 Weideman M, 'Land Reform, equity and growth in South Africa: A comparative Analysis', PhD thesis, Johannesburg: University of the Witwatersrand, 2004.
- 358 'Asserts' because (1) the statements are probably only true for rural and agricultural areas; (2) the restitution programme has since been almost completed and has never aimed to alleviate poverty or create sustainable livelihoods per se, but was rather about justice; and (3) debates exist pertaining to whether land reform can in fact contribute to sustainable livelihoods, at what costs, and whether this should be the aim of redistribution projects. Empirical evidence suggests it may entrench poverty rather than alleviate it. See Weideman M, *ibid.* for discussion and references in this regard.
- 359 SA Government, SA CRR, 2007, *op. cit.*, http://saiaa.org.za/aprmtoolkit/docs/Country_Reports_and_Exper/atkt_south_africa_arpm_country_review_report_2007_en.pdf.
- 360 *Ibid.*
- 361 At the time of the report, only 4% of the 30% redistribution target has reportedly been achieved.
- 362 South Africa, DLA (Department of Land Affairs), National Land Tenure Conference, Finding Solutions, Securing Rights, June 2004.
- 363 Relevant legislation that has had some successes includes the Labour Tenants Act 3 of 1996 and the Extension of Security of Tenure Act 62 of 1997. A Tenure Security Bill developed to address the shortcomings of the above-mentioned acts has been presented to parliament and is due to undergo a second regulatory impact assessment. Other relevant legislation includes the Interim Protection of Informal Land Rights Act 31 of 1996.
- 364 South Africa, DLA, *Annual Report*, April 2008–March 2009. Pretoria: Government Printer, 2009.
- 365 SA Government, SAIR II, 2010, *op. cit.*
- 366 Bernstein A, 'Centre for Enterprise Development', *Sunday Times*, 1 March 2009.
- 367 Diako B *et al.*, *Assessment of the Status Quo of 190 Settled Land Restitution Claims with a Developmental Component Nationally*. Researched for the M&E Directorate, Department of Land Affairs, February 2006.
- 368 Del Grande L *et al.*, *National Assessment of the Comprehensive Rural Development Programme Pilot*. Pretoria, 2009. Submitted to the Department of Rural Development and Land Reform by Umhlaba Rural Services, funded by the Austrian Development Agency.
- 369 *Ibid.*
- 370 Weideman M, *op. cit.*

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South African Institute of International Affairs
+27 (o)11 339 2021 • info@saiia.org.za • www.saiia.org.za

The Africa Governance, Monitoring and Advocacy Project
+27 (o)11 587 5000 • info@afriamap.org • www.afriamap.org