

2010

STATE OF THE UNION SOUTH AFRICA REPORT

Africa map using Gall-Peters projection



State of the Union South Africa Report 2010



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Email the Continental Advisory Research Team at info@stateofunionafrica.net

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ACRONYMS

AC	(AU) African Commission
ACDEG	African Charter on Democracy, Elections and Governance
ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AEC	African Economic Community
AHS	Africa Health Strategy
AHSG	(AU) Assembly of Heads of State and Government
ANC	African National Congress
ANCYL	African National Congress Youth League
ART	Anti Retrovirus Therapy
AU	African Union
APRM	African Peer-Review Mechanism
AYC	African Youth Charter
CAADP	(NEPAD) Comprehensive Africa Agriculture Development Plan
COPE	Congress of the People
COSATU	Congress of South African Trade Unions
CPCC	Convention on Preventing and Combating Corruption
CRM	(APRM) Country Review Mission
CRR	(APRM) Country Review Report
CSAR	(APRM) Country Self-Assessment Report
CSG	Child Support Grant
CSM	(APRM) Country Support Mission
CSO(s)	Civil Society Organisation(s)
DA	Democratic Alliance
DDPECG	(NEPAD) Declaration on Democracy, Political, Economic and Corporate Governance
DP	Democratic Party
ECOSOCC	(AU) Economic, Social, and Cultural Council
EPWP	Extended Public Works Programmes
FAD	(International) Fund for Agricultural Development
FAO	Food and Agriculture Organisation
FARA	Forum for Agricultural Research in Africa
FET	Further Education Training
HIV	Human Immunodeficiency Virus
IFP	Inkhata Freedom Party
MDG(s)	Millennium Development Goal(s)
MPA	Maputo Plan of Action
MP	Member of Parliament
NPOA	National Programme of Action
NSFAS	National Student Financial Aid Scheme
NSNP	National School Nutrition Programmes
NEPAD	New Partnerships for Africa's Development
NGO(s)	Non-Governmental Organisation(s)
NNP	New National Party
NP	National Party
NYDA	National Youth Development Agency
NYP	National Youth Policy
OAU	Organisation of African Unity
PAC	Pan-Africanist Congress
PAP	(AU) Pan-African Parliament
PHC	Primary Health Care
UN	United Nations
RSA	Republic of South Africa
SA	South Africa
SADC	Southern Africa Development Community
SAHRC	South African Human Rights Commission
SAIIA	South African Institute of International Affairs
SRH	Sexual and Reproductive Health
SRHR	Sexual and Reproductive Health and Rights
STI	Sexually Transmissible Infections
TB	Tuberculosis
VEP	Victims Empowerment Programmes
WHO	World Health Organisation

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This report belongs to the people of South Africa who should assess it, consume and pursue their cause relentlessly. However, the responsibility for the accuracy and all the contents rests with the publishers.

FOREWORD

Produced by the State of the Union Project, this 2010 report is one of ten country studies that assess the performance of Member States against key governance, economic, social, civil and political policy standards, and rights instruments. Although, a historical approach has been used, the period under review is 2007-2009. Further detail on the methodology can be found in the appendices.

The State of the Union project tracks and engages governments and the African Union (AU) on their commitments by managing in-country research, community hearings and national consultations. Our activities are intended to inform the implementation of Article 4.1(b) of the Rules of Procedures of the Assembly of Heads of States. Under this Article, the Assembly is required 'to monitor the implementation of policies and decisions of the Union as well as ensure compliance by all Member States'. This Article was re-affirmed by 53 African Heads of States in the June 2009 African Union Summit held in Sirte, Libya. At this Summit, the leaders called on the Pan African Parliament among other AU Organs to support the Assembly in this regard. This civil society project was started three months later.

For government policy-makers and duty-bearers cited in the recommendations, we call on you to act on the recommendations proposed and welcome a dialogue on the findings and the way forward. We hope that you can study the other country reports for best practices and actions that can be replicated in our national context.

For citizens, civil society organizations and other rights-holders whose lives, security, dignity and livelihoods are directly affected by the standards, we urge you to monitor progress, hold government accountable and assist it to deliver on the promise of the AU Policy Standards and Frameworks.

For Africa's civil servants working in the organs of the AU, we encourage you to urgently establish an official monitoring mechanism that holds individual Member States collectively accountable for the delivery of key AU policy frameworks and instruments.

In June 2010, the gap between AU decisions and the practice of most Member States is alarmingly wide to most observers. Unless there is a change in the behaviour of both AU organs and Member States, the many important decisions being taken at continental level risk the danger of not being nationally implemented. This will continue to have devastating consequences for the millions of African citizens denied good governance, fundamental freedoms and basic human rights. It will also further expose our Pan African institutions to an obvious credibility challenge.

Collectively, those of us working in the organs of the AU, Member States and in civil society organizations must rise to the occasion and prevent this.

BACKGROUND

South Africa: A biography

Total area:	1,219,000 Square Kilometres
Population:	52 million
Peoples:	Black African 79%, white 9.6%, coloured 8.9%, Indian/Asian 2.5% (2001 census)
Gender:	0-14 years: 28.6% (male 7,043,566/female 7,007,484) 15-64 years: 65.9% (male 16,340,284/female 16,007,248) 65 years and over: 5.5% (male 1,100,202/female 1,610,323)
Chief earner:	Mineral reserves; gold
GNI Per capita:	(US \$) 5820 (2008)

Source: UNICEF, 2010



The Republic of South Africa (RSA) is located at the southern tip of the African continent. Surrounded by two oceans, the Atlantic Ocean on the west and south and the Indian Ocean on the east, it shares borders with six other African countries. They are: Botswana, Lesotho, Mozambique, Namibia, Swaziland and Zimbabwe.

The Republic of South Africa, which occupies 1,219,090 square kilometres, is famed for its tantalizing music and dance, love for rugby and cricket and its passion for football. It became the first African nation to host the FIFA World Cup in June 2010. It is also famous for its gold and diamond deposits.

However, many know South Africa for its global statesman Nelson Mandela, the country's first black President. Mandela became the symbol of struggle and opposition against Apartheid, a dehumanising political system of racial discrimination and segregation.

Apartheid had condemned Mandela to life imprisonment. However, he walked out of Roben Island prison after serving 27 years to become the country's first democratically elected president.

Administratively, RSA is subdivided into nine autonomous provinces, namely Eastern Cape, Free State, KwaZulu Natal, Gauteng, Limpopo, Mpumalanga, North-West, Northern Cape, and Western Cape. Gauteng and Free State are respectively the most and least populated provinces with (13, 9% and 2, 4 % of the population).¹

Provincial executive authority is vested in the Premier who presides over the Executive Council. The provincial legislature elects the premier and exercises legislative power.

All provinces may enact their own laws which however are subject to the national Constitution. South Africa is not a fully-fledged federal state, but a quasi-federal one.

¹ See <http://www.info.gov.za/aboutsa/landpeople.htm> (accessed on 20 April 2010).



It borrows features from both the federal and the unitary states. With an estimated population of 52 million people,² South African black men and women form 52% and 48% of the population respectively. While Africans, Coloured, and Indian/Asian represent 79.3%, 9.1%, 9%, and 2.6% respectively. One third of the population (31.4%) comprises youth under 15 years old while 7.5% (3.7 million) are over 60 years old. South Africans speak eleven official languages. Almost 80% of the population is Christian.

The “Union of South Africa”, as it was then known, gained independence from Britain on 31st May 1910. The 1910 Constitution, which governed the country, granted citizenship rights to whites only.

Blacks had no political rights. They were meant to be seen and not heard. Apartheid was introduced by the National Party (NP) in 1948. Anti-segregationist movements such as the African National Congress (ANC), the Communist Party, and the Pan-Africanist Congress (PAC) sprung up in 1912, 1921, and 1959 respectively.

Years of bloodshed, street demonstrations, guerrilla wars, local and international pressure made South Africa ungovernable. The monster of apartheid was eventually slain when, on 11th February 1990, Nelson Mandela, the ANC leader, walked to freedom. Negotiations between the ruling NP and the ANC followed into force in 1994.³

The 1993 Constitution formally abolished Apartheid. It was superseded by the 1996 Constitution, whose provisions came into force on 3rd February 1997.

The 1993 Constitution paved way for the 1994 elections won by the ANC. The ANC has since dominated South African politics, with Mandela becoming president on 24th April 1994.

Mr. Thabo Mbeki, ANC’s Deputy-President, replaced Mandela during the 1999 elections. He was re-elected in 2004. In April 2009, Mr. Jacob Zuma, took over from Mbeki.

The South African political system is a democratic one. It guarantees political pluralism and judicial independence. Human rights are enshrined in Chapter 2 of the 1996 Constitution under the Bill of Rights. The system is based on the principle of the separation of powers.

The President is the head of state and leader of the national executive. He appoints a Deputy President and ministers. The National executive is accountable to Parliament, which consists of the National Assembly and the National Council of Provinces.

The legislative authority of the Republic is vested in Parliament while the judicial one rests with the Courts. The Constitutional Court is the highest court of the Republic and the chief guardian of the Constitution. The Constitution also provides for the principle of cooperative government which merges; the national, provincial and local governments.⁴

Being a former British colony, the RSA’s legal system was inspired by the Roman-Dutch law.

South Africa’s national currency is the Rand. The country is the biggest and most sophisticated economy on the African continent.⁵ However, “economic Apartheid” still prevails in RSA. The majority blacks are afflicted by unemployment and poverty. They barely enjoy their social and economic rights.

South Africa, once a “pariah state” due to Apartheid, became an influential and respectable member of the OAU, (now the AU) in 2001.⁶ It hosted the AU inaugural summit held in the coastal Durban city in July 2002. The then President Thabo Mbeki became the first chair of the AU Assembly of Heads of State and Government (AHSG).

² Mid-2009 and UN 2009 estimates.

³ The Constitution of the Republic of South Africa, Act 200 of 1993.

⁴ Chapter 3 of the 1996 Constitution.

⁵ See information provided by Statistics South Africa and South African Reserve Bank. Total GDP: R 1, 560 billion (2005/2006); GDP per capita: R 33,253 (2005/2006); Real GDP Growth: 4.9 % (2005/2006); Inflation CPI: 4% Annual average (2005/2006); Unemployment rate: 26.7% (September 2005); Budget deficit: 0.5% of GDP (2005/2006); External debt: US 53,091 Million (2006); Exchange rate: Rand per US\$ 7.50 (March 2010), 7.51 (October 2006), 6.3593 (2005), 6.4597 (2004).

⁶ The AU Constitutive Act was adopted in Lomé, Togo, in July 2000. It entered into force in May 2001.

South Africa was one of the five AU Member States that launched NEPAD in 2001 and acceded to the APRM in March 2003. It signed and adopted a number of AU instruments, including the NEPAD Declaration of 2001, the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance (DDPECG) of 2002, and the APRM Base Document of 2003.

It followed in the wake of Ghana, Rwanda, and Kenya, by subjecting itself to the APRM. An APRM Country Support Mission (CSM) visited South Africa between November and December 2005 to formally launch the process there. South Africa submitted its Country Self-Assessment Report (CSAR) and draft National Programme of Action (NPOA) to the APRM Secretariat in June 2006.

A 22-member Country Review Mission (CRM) led by Prof Adebayo Adedeji, member of the Panel of Eminent Persons (APR Panel) visited South Africa from 9th to 25th July 2006. The Country Review Report (CRR) was drafted in November 2006⁷ with South Africa responding to it on 2nd May 2007.⁸

South Africa's CRR and response were examined during the 7th summit of Heads of State and Government participating in the APRM (APR Forum) held in Accra, Ghana, on 1st July 2007.⁹ During this summit, South Africa welcomed the critical challenges articulated in the CRR.¹⁰ President Thabo Mbeki recommitted South Africa to the mechanism and pledged to respond to the challenges and report annually to the Forum on the implementation of the NPOA, in line with the APRM Base Document.¹¹

Since their inception in 2001 and in 2003, South Africa hosts the Secretariats of NEPAD and APRM in Midrand, Johannesburg. It also hosts the Pan-African Parliament (PAP) which was inaugurated on 16th September 2004. South Africa has become a prominent AU Member State and the voice of Africa in many international forums. Its international status was enhanced by hosting the FIFA soccer World Cup.

1. Objectives and Scope of the Report

According to Cheruiyot and Wandia, ratification of international instruments, entails obligation to implement. Nevertheless, countries that are fast on signing can be slow on ratification and implementation.¹² When assessing compliance with international instruments or legal standards, it is worth investigating states' actions and practice.¹³

In Africa, there exists a huge gap between law and practice as well as between signing, ratification and implementation of international statutes.¹⁴ In this report, compliance with an international instrument entails its implementation. Irungu Houghton holds that since the formation of the OAU, African governments have agreed to sign and ratify 33 Charters, Treaties, Protocols, and Conventions.¹⁵

South Africa's commitment to AU will be tested by its compliance with these instruments.¹⁶ This report therefore audits South Africa's compliance with twelve (12) selected AU instruments.¹⁷ From an

⁷ APRM, *CRR on the Republic of South Africa*, CRR No 4, November 2006.

⁸ SA's Response to the APRM CRR, 2 May 2007, paras 1-136.

⁹ Report on the Peer-Review of SA by the Committee of Heads of State and Government participating in the APRM (APR Forum) paras 1-41.

¹⁰ RSA's Response to the APRM CRR op cit para 136.

¹¹ Report on the Peer-Review of South Africa by the Committee of Heads of State and Government participating in the APRM op cit paras 19-22, 41.

¹² Cheruiyot, Faith & Mary Wandia, *Study to Monitor and Monitor Implementation of Protocols, Conventions, Declarations and Best Practice Standards by African Union Member States, Methodology Workshop Report*, Addis, September 16 & 17th, 2009, 2.

¹³ Idem.

¹⁴ Idem.

¹⁵ Irungu, Houghton, What can the Pan African Parliament do to accelerate the implementation of African Union Decisions, 2009, 1.

¹⁶ Compliance was defined during the Methodology Workshop as a legal process whereby States sign and ratify international agreements while implementation entails translating them into action through enacting or amending legislation and establishing processes and institutions that deliver under states' international commitments.

¹⁷ These instruments include the ACHPR (1981); The African Charter on Democracy, Elections and Governance (2007); The African Union Convention on Preventing and Combating Corruption (2003); Treaty establishing the African Economic Community (2006); The African Convention on the Conservation of Nature and Natural Resources (2003); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003); African Charter on the Rights and Welfare of



international law perspective, eight (8) of these AU instruments qualify as treaties. They become legally binding on State Parties upon signing and ratification.¹⁸

Although the remaining four instruments¹⁹ namely; the NEPAD CAADP, AHS, Abuja Call for Accelerated Actions Towards Universal Access to HIV and AIDS, Tuberculosis and Malaria in Africa by 2010 and the MPA for Implementing the Continental Sexual and Reproductive Health (SRH) and Rights Policy Framework, are not legally binding, States are politically or morally bound to abide by their commitments.

2. Relevance and Significance of the Report

According to the AU Constitutive Act, the AHSG is the supreme organ of the AU (Article 6.2). PAP is to ensure the full participation of African peoples (Article 17.1). The AC is the AU secretariat (Article 20.1) while ESCC is an advisory organ composed of different social and professional groups of the AU Member States. This study demonstrates the serious commitment African leaders have towards the AU Constitutive Act.

A 2009 AU audit revealed that only 18 of the 35 instruments had come into force with the rest awaiting ratification by Member States.²⁰ The AU admitted to have done little to accelerate the ratification of its key instruments.²¹ Yet, during their meeting in Sirte, Libya, in July 2009, the AU AHSG invited African States “to prioritise and accelerate the signing and ratification or accession to OAU and AU treaties”. It called on AU organs, to “assist with advocacy and sensitization of Member States”.²²

This study should help Africa to closely monitor the progress it has made since the birth of the AU. It will assist AU organs such as the AHSG, AC, ECOSOCC, and PAP to reflect on their performance. It should help assess the extent to which AU Member States responded to the AHSG call and complied with AU instruments, policies and standards.

Article 3 of the Protocol to the Treaty establishing the African Economic Community (AEC) promises to promote the “effective implementation of the policies and objectives of the AU.” Irungu deplored that “To date, besides election monitoring and fact-finding missions, Parliament has preciously few examples of where it has decisively exercised this mandate.”²³

This report may help AU Member States to learn from one another. The success of the AU requires all its Member States to deliver on their commitments and implement its various instruments.²⁴ Compliance with AU instruments will hopefully result in the improvement of the living conditions of African people. Moreover, in a democracy, the government is accountable to the people and rules by their will. The study would also empower the people to audit and monitor compliance with the AU instruments negotiated and signed by governments on their behalf.

South Africa played a key role in the launch of the AU, NEPAD and the APRM. It is important to assess its compliance and implementation levels of the AU instruments. It is also critical to monitor the instruments status under international and domestic law.

Two main theories were expounded on the relationship between international and domestic law; monism and dualism. Monism states that international and domestic laws are two different aspects of the same law. Accordingly, a treaty or an international agreement ratified or accessed to by a state is part of its domestic law. It is automatically incorporated and can be enforced by its municipal courts.

the Child (1999); African Youth Charter (2006); NEPAD Comprehensive Africa Agricultural Development Plan (CAADP) (1-2 July 2003); Africa Health Strategy 2007-2015 (2007); Abuja Call for Accelerated Action Towards Universal Access to HIV and AIDS, Tuberculosis and Malaria Services in Africa by 2010 (2006); and Maputo Plan of Action for Implementing the Continental Sexual and Reproductive Health (SRH) and Rights Policy Framework 2007-2010 (18-22 September 2006).

¹⁸ See the ACHPR, ACDEG, CPCC, Treaty establishing the AEC, the African Convention on the Conservation of Nature and Natural Resources, the Protocol to the ACHPR on the Rights of Women in Africa, the ACRWC, and the AYC.

¹⁹ See NEPAD CAADP, AHS, Abuja Call for Accelerated Action Towards Universal Access to HIV and AIDS, Tuberculosis and Malaria Services in Africa by 2010 and the MPA for Implementing the Continental Sexual and Reproductive Health (SRH) and Rights Policy Framework.

²⁰ Idem.

²¹ Irungu, What can the Pan African Parliament do...? op.cit 3.

²² Idem.

²³ Idem 3.

²⁴ Cheruyiot & Wandia, op cit 2.

Dualism implies that international (treaty) law and domestic law are different laws. For a treaty to become part and parcel of domestic law, Parliament should pass legislation that accords it effect in domestic law. Without such legislation, it would not be binding despite the State Party being bound under international law according to the 1969 Vienna Convention on the Law of Treaties. South Africa adopts a dualist approach to international agreements, except for those of a technical, administrative or executive nature or those that do not require either ratification or accession and are therefore self-executing.²⁵

South Africa respects international law, especially international human rights. The Constitution provides that when interpreting the Bill of Rights, any court, tribunal or Forum, must consider international law.²⁶ This applies to international agreements, whether they have been incorporated into South Africa's domestic law or not.

3. Methodology of the Report

This Report results from a desk top research based on existing literature, official and unofficial reports from relevant state organs, agencies, non-governmental organisations (NGOS) and interviews. Unfortunately, those interviewed declined to be named. The report benefited tremendously from facts, findings, and recommendations in the APRM, CRR on South Africa.

4. Structure of the Report

Some of the selected 12 AU instruments being monitored relate to the nine (9) NEPAD objectives in the area of democracy and good governance.²⁷ Others refer to five (5) out of the eleven (11) issues identified as “cross-cutting” or “overarching” in the APRM CRR on South Africa, namely violence against women, violence against children, HIV and AIDS, corruption, and crime.²⁸ The selected AU instruments overlap and relate to the protection of the three “generations” of human rights; civil and political, social and economic, and group or people's rights. They cover the following areas:

1. Human rights and governance, including democracy, elections and integration;
2. Rights and welfare of women;
3. Rights and welfare of the child and the youth;
4. Agriculture, conservation of nature and natural resources;
5. The right to health.

This report examines all these issues in relation to the RSA. It consists of seven (7) chapters. Chapter 1 is the introductory chapter. Six other chapters cover; human rights and governance, rights and welfare of women, rights and welfare of the child and the youth, agriculture, conservation of nature and natural resources, and health.

²⁵ Section 231 of the 1996 Constitution of the RSA.

²⁶ Section 39 (1) (b).

²⁷ See Questionnaire on Democracy & Good Political Governance at <http://www.aprm.org.za/q1.php> accessed on 14 March 2007.

²⁸ APRM CRR op cit para 879, paras 3109-3125; para 3141; RSA's Response to the APRM CRR op cit paras 97-136; Report on the Peer-Review of South Africa by the Committee of Heads of State and Government participating in the APRM (APR Forum) op cit paras 13-14.

**SOUTH AFRICA'S COMPLIANCE WITH AFRICAN UNION INSTRUMENTS RELATED TO HUMAN RIGHTS AND GOVERNANCE****1.0 The African Charter on Human and Peoples' Rights****1.1 Status under international law**

The ACHPR treaty, adopted by the OAU AHSG in Nairobi, Kenya, in June 1981, entered into force on 21st October 1986.

1.2 South Africa's compliance with the ACHPR

The government of the RSA signed the ACHPR on 9th July 1996. It later ratified and incorporated it into domestic law. The ACHPR protects; individual and collective rights, civil, political, socio-economic and cultural rights, group and peoples' rights.

The South African Parliament has established various legislations to comply with the ACHPR. Most of the rights entrenched in the ACHPR are enshrined in the 1996 Constitution, considered "one of the most progressive Constitutions in the world".²⁹ South Africa also signed, ratified and incorporated the Protocol to the ACHPR establishing the African Court. It also adopted the Grand Bay (Mauritius) Declaration and Plan of Action for the Promotion and Protection of Human Rights (1999).

Under its Bill of Rights, the South African Constitution enshrines the rights of all people, binding all state organs.

The Constitution establishes six institutions supporting constitutional democracy (Chapter 9). Three of them are mandated to promote human rights, namely the South African Human Rights Commission,³⁰ the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities,³¹ and the Commission for Gender Equality.³² These institutions have been instrumental in the promotion and protection of rights entrenched in the Constitution.

1.3 Popularisation of the ACHPR

Despite its ratification and incorporation into domestic law, the ACHPR remains unknown by the overwhelming majority of South Africans. Also ignorant of its existence are immigration officials and the Police.

Lack of awareness of these instruments impacts negatively on citizens' ability to exercise their rights and discharge their responsibilities. Awareness and education programmes are essential.³³

Although 21st March was established as "Human Rights Day", most South Africans ignore the ACHPR. During the 2010 Human Rights Day, little or no reference to the ACHPR was made in public statements. The statements focused on the worst violations of human rights suffered by South Africans under Apartheid.

Since Human Rights Day has both a domestic and an international component, it should be used to promote these rights. "Know your rights awareness campaign"; identified in South Africa's NPO has been hit by insufficient funds.³⁴

Mr Wesley Mabuza, the chairperson of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, told a television show - the *Morning Live* - aired by SABC 2 on 21st March 2010 that few people knew their rights.

²⁹ APRM CRR South Africa op cit 27.

³⁰ Constitution of 1996, Sections 181 (1) (b), 184.

³¹ Idem, Section 181 (1) (c), 185, 186.

³² Idem, Section 181 (1) (d), 187.

³³ APRM CRR op cit par 81.

³⁴ Idem para 83.

Only 31 complaints, he said, had been received by the Commission. Similar sentiments were echoed by the chairs of the Human Rights Commission and the Commission for Gender Equality.

1.4 Factors impeding compliance with the ACHPR

Although the ACHPR was finally transformed into domestic law, the following factors explained the slow pace towards its ratification and implementation:

1. The perception that SA already had a Bill of Rights credited as one of the best in the world and had therefore nothing to learn from the ACHPR;
2. Conservatism in many political and legal quarters, including State Law advisers, who decide on the compliance of any international instrument
3. Lack of awareness by State officials;
4. Failure by Parliament to play a proactive role in monitoring the domestication and compliance of various international and regional instruments and standards³⁵ and,
5. Little popularisation among CSOs, stakeholders and political leaders

1.5 Overall assessment of SA's compliance with the ACHPR

The ACHPR is the founding instrument of the African human rights system. It protects several categories of rights. All other AU human rights instruments, including those whose implementation is audited in this report, were adopted to further protect some of these rights. Despite SA's progress it needs to fully comply with the ACHPR.

ACHPR needs to be popularised to accelerate or improve its implementation. Most ignore the enforcement mechanisms of the ACHPR; namely the African Commission and the African Court on Human and Peoples' Rights.

South Africa has failed to make the declaration under Article 34 (6) of the Protocol establishing the African Court. This would have allowed individuals and NGOs to bring their cases directly before this Court.

Human and peoples' rights in the ACHPR continue to be threatened or infringed upon by individuals, juristic persons, immigration authorities, the military, the police and the security services. Cases of arbitrary arrest and detention without trial, especially involving foreign nationals and refugees, have been reported.

This is confirmed in the SAHRC 2009 Annual Report on unprecedented xenophobic violence that swept South Africa between May and July 2008. The violence "shattered our understanding of tolerance. It tore to pieces past efforts of building a nation based on the constitutionally entrenched values of human dignity, the achievement of equality and the advancement of human rights and freedoms".³⁶

The SAHRC described the xenophobic violence as the greatest disaster it has faced. Most South Africans are ignorant of the legal status of non-nationals and the government's obligations towards them. The ignorance fuels perceptions that all non-nationals are illegal. Many falsely believe that foreigners contribute to criminality, violence and unemployment. These "perceptions are not assisted by high levels of inefficiency in the Department of Home Affairs in processing asylum applications within a reasonable amount of time and free from corrupt activities."³⁷

To combat xenophobia and racism, SAHRC recommended hate crimes legislation, and a national action plan against racism.³⁸ South Africans, especially women, men, and children with or without special needs, also have their individual or collective rights under the ACHPR violated or threatened.

³⁵ *Idem* para 82.

³⁶ SAHRC *Annual Report* 2009, 180.

³⁷ *Idem*.

³⁸ SAHRC *Annual Report* op cit 191.



Progress was made in the promotion and protection of civil and political rights. However, much still needs to be done regarding economic, social and cultural rights which feature prominently in the SAHRC annual reports.³⁹ Many South Africans are unemployed. The Government has to create jobs.

Land in South Africa belongs to a minority. The majority whose land was historically confiscated are yet to be compensated. During the celebrations of Human Rights Day in March 2010, demonstrations were held by people demanding better social services delivery with regard to socio-economic rights.

Thousands of students demanded free education. Many rural and black communities lamented poor quality of education. The demonstrations reached the President's office at Union Building where demonstrators handed over a memorandum to the Minister of Education.

Most South Africans are yet to enjoy their right to education, housing, health care, food, water and social security.⁴⁰ This challenges the Departments of Education, Human Settlement, Health, Agriculture, and Water Affairs.

SA must also comply with its reporting obligations. It has failed to report regularly to the African Commission for Human and Peoples' Rights, which is the ACHPR's enforcing mechanism.

1.6 Actions Required

a. By the Government:

1. Draft legislation that would address racism and crimes of hate
2. Hasten the asylum application process
3. Create employment
4. Compensate communities whose land was confiscated through a series of historical injustices
5. Ensure that all South Africans have access to free education

b. By Civil Society Organisations:

1. Mobilise public education campaigns against xenophobia
2. Initiate the formulation of legislation against racism and hate
3. Agitate for the various economic, social and political rights of South African's

³⁹ See SAHRC 6th Report.

⁴⁰ See Khoza, Sibonile (ed) *Resource Book on Socio-Economic Rights in South Africa*, 2nd edition, Community Law Centre, University of Western Cape, 2007, 163-438; SAHRC 6th *Economic and Social Rights Report*, August 2006, 30-112.

2.0 The African Charter on Democracy

2.1 Status under international law

The ACDEG is a treaty adopted at the 8th ordinary session of the AU AHSG held in Addis Ababa, Ethiopia, on 30th January 2007. It is not yet in force. Several instruments of ratification are not yet deposited.

Despite numerous statements, declarations and resolutions, by AU leaders, they do not seem to be fully committed to the ideals of democracy, rule of law, human rights, good governance, free and fair elections embodied in the ACDEG. Paradoxically, Mauritania where an elected President was deposed by a *coup d'état* was the first AU Member State to ratify the ACDEG on 7th July 2008. Mauritania submitted its instrument of ratification on 28th July 2008. It was followed by Ethiopia and Sierra Leone.⁴¹

2.2 South Africa's compliance with the ACDEG

On 23rd February 2010, Ms Sue van der Merwe, SA's Deputy Minister of International Relations and Cooperation reported that President Zuma had signed the ACDEG. However, parliament had not yet ratified it.⁴²

South Africa has therefore not complied with this key AU instrument three years after its adoption in January 2007. However, the signing of the ACDEG constituted a step in the right direction.

It is recommended that South Africa should hasten to ratify the ACDEG.

Several indicators demonstrate SA's commitment to free and fair elections; participatory democracy, rule of law, human rights, and good political governance. SA is governed by a supreme, entrenched and legitimate constitution.

The SA Bill of Rights protects women, children, people from ethnic, racial or religious minorities, migrants, people with disabilities and other marginalised and vulnerable social groups. The rights to freedom of expression, assembly, and association, freedom of the media, and the right to access to government information are granted.

Public participation in planning and budgetary processes as well as in legislation is also guaranteed. The government consults broadly before making any decisions affecting the people.

The three arms of government strive to work together. The Constitution provides for the separation of powers and collaboration between the executive, the legislative and the judiciary. The judiciary has remained impartial and independent despite pressure from various quarters.

Women participate in national politics, with South Africa having one of the highest numbers of female politicians on the continent. The Independent Electoral Commission is one of the institutions established by the Constitution to support democracy.

Voters' registers are reliable. Free and fair elections are regularly and peacefully conducted under the supervision of the Independent Electoral Commission. The results are generally accepted by all parties as a genuine reflection of popular will.

Nevertheless, many politicians and citizens interviewed expressed concern about the future of democracy and the rule of law. They cited repeated attacks on the integrity of the judiciary, state media's impartiality, corruption, and the danger of an all powerful ruling party.

⁴¹ Ethiopia signed the ACDEG on 28 December 2007, ratified it on 5 December 2008 and submitted its instrument of ratification on 6 January 2009. On the other hand, Sierra Leone signed it on 17 June 2006. It ratified the ACDEG on 17 February 2009 and submitted its instrument of ratification on 8 December 2009.

⁴² Ms Sue van der Merwe's address at the dinner organised by IDASA at Sheraton Hotel in Pretoria on 23 February 2010 (see <http://www.dfa.gov.za/docs/speecehs/2010/merw0223.html> (accessed on 20 April 2010)).



Democracy has taken root in South Africa. The role played by the judiciary, media, CSOs, state and non-state actors make any prospects of authoritarianism very remote.

2.3 Factors impeding compliance with the ACDEG

After the demise of Apartheid, SA has kept a great record in terms of respect for the rule of law, human rights, free and fair elections, and good governance. These are values that South African leaders have been championing on the continent as a prerequisite for an African Renaissance.

This report recommends That South Africa should sign, ratify and enforce the ACDEG. The South African government should exercise leadership in championing rights lest it loses its role as peace-maker and champion of democracy in Africa.

2.4 Popularisation of the ACDEG

Like other AU instruments, the ACDEG is not well-known among South Africans, officials, political leaders, and CSOs.

2.5 Overall assessment of South Africa's compliance with the ACDEG

Free and fair elections, participatory democracy and good governance prevail in South Africa. However, democracy must be continuously defended.

Other AU Member States expect SA to offer leadership and comply with the ACDEG by signing and ratifying this important African instrument.

3.0 The African Union Convention on Preventing and Combating Corruption

3.1 Status under international law

The CPCC is a treaty aimed at preventing and combating corruption in Africa. It was adopted in Maputo, Mozambique, on 11th July 2003, and entered into force on 5th August 2006.

3.2 South Africa's compliance with the CPCC

South Africa signed the CPCC on 16th March 2004 and ratified it on 11th November 2005. It deposited its instrument of ratification on 7th December 2005 and has since then been bound by this treaty. Related to the CPCC are the SADC Protocol against Corruption⁴³ and the UN Convention against Corruption.⁴⁴ SA is also a party to these two instruments.

To fight corruption, South Africa established constitutional and legislative bodies, passed several pieces of legislation and adopted several Codes of Ethics and strategies. Constitutional, legislative bodies and frameworks include the public Protector, the Auditor General and the Director of Public Prosecutions.

Anti-corruption legislation includes the following:

1. The Executive Members Ethics Act (1998);
2. Public Finance Management Act (1999);
3. Protected Disclosure Act (2000);
4. The Promotion of Access to Information Act (2000);
5. The Financial Intelligence Centre Act (2001); and
6. The Prevention and Combating of Corruption Activities Act (2004).

⁴³ Adopted in Malawi, 14 August 2001.

⁴⁴ Adopted by the UN General Assembly on 31 October 2003.

There also exists codes of Ethics and strategies to combat corruption such as the Parliamentary Code of Ethics (1997) that protects legislators from conflicts of interest through the system of financial disclosure; Code of Ethics (2000) requires public officers, including the President,⁴⁵ to declare their assets; Comprehensive Public Service Anti-Corruption Strategy and the launch of a tripartite National Anti-Corruption Forum in 2001.⁴⁶

Some state officials and prominent figures such as the former police commissioner Jackie Selebi and businessman Schabir Shaik were prosecuted. Mr Selebi is on trial for corruption and defeating the ends of justice. Mr Shaik went on trial from 11th October 2004 to 4th May 2005.

In a 165-page verdict delivered on 2nd June 2005, Durban High Court Judge Hilary Squires found Mr Shaik guilty on two counts of corruption and one count of fraud. He sentenced him to 15 years in prison.⁴⁷

Shaik's association with President Zuma - then Deputy President – did not spare him a prison sentence.

The Mo Ibrahim Foundation Index on governance, places SA at number five in Africa in the area of safety and rule of law, which includes the fight against corruption.⁴⁸ However, corruption has proven hard to eradicate.

Corruption remains rampant in the public sector. Many cases of corruption are reported in the Department of Home Affairs, the police and the private sector.

3.3 Popularisation of the CPCC

Measures are in place to intensify in the war against corruption. These include school educational programmes, media sensitisation, and the protection of whistle blowers.

CSOs and the media have actively denounced corruption. Their roles are sometimes hampered by restrictions to gaining information.

Corruption undermines rights, endangers the stability and security of societies, and jeopardises development. It also provides a breeding ground for organised crime. It remains a serious threat to democracy. The government must intensify its war against corruption.

People need to be educated that corruption is an evil against society. The judiciary should also join in the war.

3.4 Factors impeding compliance with the CPCC

Powerful forces impede the war against corruption. Witnesses and whistle blowers are intimidated or threatened into silence. Corrupt officials are at times protected. Tolerance or complicity with those involved in corrupt activities undermines any anticorruption efforts.

3.5 Overall assessment of South Africa's compliance with the CPCC

Corruption is still rampant in South Africa. The aftermath of President Zuma's corruption case showed that independent mechanisms to fight corruption such as the judiciary, the public prosecutor, the auditor general, and the "scorpions" could be politically manipulated.

⁴⁵ President Jacob Zuma declared his assets on 10 March 2010. Public Protector Thuli Madonsela nevertheless found the President in breach of section 5.2 of the Executive Members' Ethics Act, as he did not declare his financial interests, assets and liabilities within 60 days of his election and recommended Parliament to revamp legislation in order to provide sanctions (See Joubert, J-J, "Zuma's guilty", *City Press* of 25 April 201, 1).

⁴⁶ APRM CRR op cit para 233.

⁴⁷ Mr Shaik was released on medical parole on 3 March 2010.

⁴⁸ See <http://www.moibrahimfoundation.org/en/section/the-ibrahim-index/scores-and-rankin> (accessed on 20 April 2010).



The APRM CRM in South Africa found that stakeholders were opposed to corruption and regard it as a negation of democracy.⁴⁹ Lack of legislation regulating private funding of political parties also encouraged corruption by public officials.⁵⁰

Unregulated private funding opens avenues by which the private sector, foreign governments, and organised criminals can influence political processes and public policy.⁵¹ SA should enact legislation in tandem with the Memorandum of Understanding of the AU Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) which compels States Parties to regulate and disclose political party finances.⁵²

Non-disclosure of private funding contravenes the MOU. The CRM recommended that adequate resources be availed to Chapter 9 Institutions. This will enable efficient and effective performance of duties.⁵³ SA has not communicated to the AU Advisory Board on Corruption the progress made in the implementation of the Convention as required by Article 22 (7). The government should comply with this CPCC's requirement.

4.0 Treaty establishing the African Economic Community

4.1 Status under international law

The Treaty establishing the AEC was adopted in Abuja, Nigeria, on 3rd June 1991. It entered into force on 12th May 1994. Its aim is to promote integration in Africa.

4.2. South Africa's compliance with the Treaty

South Africa signed the Treaty establishing the AEC on 10th October 1997 and ratified it on 31st May 2001. In the AEC, member States agree to adopt individually, at bilateral or regional levels, measures to allow for free movement of persons, right of residence and the right to nationality within a Community.

South Africa passed the Immigration Act and the Refugee Act to enhance this treaty. However, there is no programme for its implementation.

Nevertheless, South Africa has failed to fully comply with its obligations under the Treaty establishing the AEC. It retains serious restrictions in granting visas, work permits, asylum, refugee or residence permits.

It is difficult for non residents to own property or access education and health. This is fuelled by media perceptions which aggravate xenophobia. Xenophobia is sometimes condoned by state officials and politicians.

4.3. Popularisation of the Treaty

Recurrent xenophobic attacks are evidence that the Treaty establishing the AEC remains unknown among South Africans. Politicians and officials should provide leadership. They must denounce narratives that blame foreigners for rampant crime, unemployment, and poor service delivery.

The FIFA World Cup provided SA an opportunity to review its legislation and policies in compliance with the Treaty establishing the AEC

⁴⁹ APRM CRR op cit para 105.

⁵⁰ Idem para 137.

⁵¹ Idem para 138.

⁵² Idem para 138.

⁵³ Idem para 151.

4.4 Factors impeding compliance with the Treaty

Lack of political will delayed the ratification of the Treaty which would have hastened the establishment of the AEC and the emergence of a united and integrated Africa with a single currency. It would have granted freedom of movement and trade while tackling xenophobia.

South Africans consider fellow Africans “more foreign” than other foreigners. This is part of the legacy of Apartheid. The government should hasten to change attitudes to demonstrate its commitment to the AEC and African Renaissance.

4.5 Overall assessment of South Africa’s compliance with the Treaty

There is poor compliance with the Treaty establishing the AEC and other regional instruments such as the SADC. This treaty provides for the right to freedom of movement of persons, goods, services, residence and establishment of nationals from EAC Member States.

Efforts have been made to grant some of these rights - and for a limited period - to citizens of landlocked countries such as Lesotho and Swaziland or neighbouring countries such as Botswana, Malawi, Mozambique, and Zimbabwe

4.6 Actions Required:

a. By the Government:

1. Mobilise and educate officials and police on citizens rights
2. Ensure that parliament plays its critical role of proactively monitoring and evaluating the process of democracy and compliance to international instruments
3. Launch educational campaigns against racism and xenophobia

b. By Civil Society Organisations:

1. Mobilise and educate citizens about their rights and obligations
2. Agitate to have the SA government regularly report on its obligations
3. Sensitize citizens on all AU treaties



SOUTH AFRICA'S COMPLIANCE WITH THE PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS (ACHPR) ON THE RIGHTS OF WOMEN IN AFRICA (2003)

1. Status of the Protocol under international law

The Protocol to the ACHPR on the Rights of Women in Africa is a treaty which was adopted in Maputo, Mozambique, on 11th July 2003. It entered into force on 25th November 2005.

2. South Africa's compliance with the Protocol

South Africa signed this Protocol on 16th March 2004 and ratified it on 17th December 2004.

It earlier acceded to the ACHPR, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Political Rights of Women, and adopted the Beijing Platform for Action (1995) to promote respect for women rights.⁵⁴

Section 9 of the Constitution guarantees the right to equality and non-discrimination on the basis of gender, sex, pregnancy, and marital status. It provides for affirmative action in favour of groups that were disadvantaged and discriminated against under the Apartheid legal order.

Section 12 protects the right to make decisions concerning reproduction and the security of a person's body. The following Acts of Parliament contain provisions which protect the rights of women:

1. Basic Conditions of Employment Act (no 75 of 1997)
2. Broad-Based Black Economic Empowerment Act (no 53 of 2003)
3. Domestic Violence Act (no 116 of 1998)
4. Maintenance Act (no 99 of 1998)
5. Recognition of Customary Marriages Act (no 120 of 1998)
6. Choice of Termination of Pregnancy Act (no 92 of 1996)
7. Employment Equity Act (no 55 of 1998)
8. South African Citizenship Act (No 88 of 1995)
9. Labour Relations Act (no 66 of 1995)
10. Promotion of Equality and Prevention of Unfair Discrimination Act (no 4 of 2000).⁵⁵

An Office for the Status of Women was set up within the Presidency. The APRM CRM in South Africa found that although laws prohibiting violence against women such as the Sexual Offences Act existed, they faced implementation challenges.⁵⁶

Women's rights continue to be violated in villages, at the work place, in schools, and at home. Their participation in the private sector remains low. They are routinely raped, sexually harassed, brutalised through female genital mutilation and denied their right to education.

Equality and education are also affected by the absence of gender parity in some sectors. The percentage of women in managerial and decision-making organs remains low.

Women are discriminated against in inheritance matters. Very few have access to medical services, antenatal care, or skilled health personnel during pregnancy. The South African government must enhance the protection of women, in compliance with the Protocol. The CRM recommended systematic and deliberate implementation of policies and laws on women rights.⁵⁷

3. Popularisation of the Protocol

Education programmes, the media, and women rights activists made women more alert to their rights and participation in the public sphere.

⁵⁴ APRM CRR op cit para 243.

⁵⁵ Idem para 244.

⁵⁶ Idem para 109.

⁵⁷ Idem paras 251-253.

4. Factors impeding compliance with the Protocol

Customs and perceptions especially in rural areas hold women inferior to men and confine them to domestic chores and farming. They greatly hamper compliance to the protocol.

5. Overall assessment of South Africa's compliance with the Protocol

Poverty is pervasive among black South Africans, especially women. Women and children bear the brunt of criminal acts against them. Early in 2010, female paramedics were raped while on duty. President Zuma condemned the criminals as "animals".

Violence against women has adversely impacted on their freedom, and the welfare of children. Rape and child abuse cases are high.⁵⁸ The APRM CRM recommended a refocus on the moral and social values.

Nevertheless, despite these teething problems, South Africa has made progress in enforcing women's civil, political, and socio-economic rights.

6. Actions Required by:

a. By the Government:

1. Enhance protection of women and children through enforcement of existing laws
2. Intensify war against retrogressive cultural practices that dehumanise girls and women
3. Ensure women and girls access affordable education and healthcare

b. By Civil Society Organisations

1. Agitate for enforcement of legislation protecting women and girls
2. Launch mass educational campaigns on the rights of women and girls

⁵⁸APRM CRR op cit para 109.



SOUTH AFRICA'S COMPLIANCE WITH AFRICAN UNION'S INSTRUMENTS RELATED TO THE RIGHTS AND WELFARE OF THE CHILD AND THE YOUTH

1.0 The African Charter on the Rights and Welfare of the Child

1.1 Status under international law

The 16th Assembly of Heads of State and Government of the OAU held in Monrovia, Liberia, between 17th and 20th July 1979 adopted the Declaration on the Rights and Welfare of the African Child (AHG/ST 4 Rev.1). However, this Declaration was not binding.

To better protect the African Child, a binding treaty, the ACRWC, was adopted in Addis Ababa, Ethiopia, in July 1990. It became effective on 29th November 1999.

The ACRWC is almost similar to the 1995 UN Convention on the Rights of the Child, defined as a person below 18 years. Related instruments ratified by SA include the ACHPR, the Hague Convention on the Civil Aspects of International Child Abduction, and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2003). The Committee on the Rights and Welfare of the Child is the monitoring body of the ACRWC. It held its first meeting in 2002.⁵⁹

1.2 South Africa's compliance with the ACRWC

South Africa signed the ACRWC on 10th October 1997. It ratified it on 7th January 2000. Sections 18, 28 and 35 of the Constitution protect the rights of children.⁶⁰

A Child Rights office was established within the Presidency. It exists within each of the provincial premier's offices to promote children's rights. The Child Justice Act⁶¹ was passed to ensure that children found in conflict with the law are accorded their rights. It came after the Children' Act⁶², which was enacted to promote the well-being of children in urban and provincial areas. The Department of Justice undertook to reduce the number of children in police cells by 60% during the 2006/07 period by reviewing existing legislation and regulations.⁶³

One-stop centres for women and children victims of abuse, especially domestic violence were also established following an agreement between the Department of Social Development and the UN Office for Drug Control and Crime Prevention as part of VEP (Victim - Empowerment Programme). Shelters for victims of domestic violence were established in rural areas.

Transnet Foundation donated funds to accommodate shelters in Gauteng, the Eastern Cape, Western Cape, and Free State.⁶⁴ The National Directory on Services for Victims of Violence and Crime that was launched during the 16 Days of Activism and No Violence against Women and Children in December 2004 is continuously updated to promote the accessibility of services to victims of crime and violence.

Social grants are no longer allocated on racial basis. The allocations target poor families with children and war veterans.⁶⁵ They constitute more than half of the income of the poorest 20% of households, and doubled in real terms between 2000 and 2005. By May 2006, more than 7 million children received Child Support Grant (CSG) while more than 330,000 children received foster care grants. The target set by Government for extending the CSG to children under 14 years was 3.2 million children by the end of March 2006. This target was exceeded by the end of 2006.

⁵⁹ Heyns C & M Kollander (eds) *Compendium of Key Human Rights Documents of the African Union*, 2006, 56.

⁶⁰ APRM CRR op cit para 255.

⁶¹ Act no. 75 of 2008.

⁶² Act no. 38 of 2005.

⁶³ South Africa Yearbook 2006/2007, 14th edition, 2006, 513

⁶⁴ South Africa Yearbook 2006/2007 op cit 514.

⁶⁵ Idem 55

In the age category 11 to 14 years, there was a registration shortfall of 119,000 children. The target of 1.2 million was expected to be reached by the end of 2006/2007. The National School Nutrition Programme (NSNP) provides school meals for children to enhance active learning capacities and to improve attendance.

In 2006/07, the government planned to provide meals to about 5.5 million learners at 17,000 schools and the grant increased to around R 1.1 billion, a 20.4 % increase over 2005.⁶⁶ In addition to social assistance through the CSG and Foster Care Grant, the Department of Social Development facilitates the provision of services and the youth through the provincial departments of social development and NGOs.⁶⁷

EPWP (Extended Public Work Programmes) were devised to improve services and care to orphans and other vulnerable children. Five thousand home-based care-givers were earmarked for training. A data base for orphans and vulnerable children was established in each province in 2006/2007 to help ensure the provision of sufficient structures for service delivery.⁶⁸ Various programmes were initiated for the protection of children, including the installation of the Child Protection Register in provinces.

Progress was made in finding permanent homes for children. In 2005/06, 251 inter-country adoptions and 2,256 domestic adoptions were registered.⁶⁹ However, children continue to be abused and their rights violated. They are raped, abducted, maimed and murdered. Most children, especially orphans and those from poor families are denied the right to free education.

Although the government established no-fee schools, the percentage of children attending schools remain insignificant.

The government also created institutions for children with special needs or disabilities. These institutions however remain inadequate. Discrimination persists against children born out of wedlock with regard to the benefit of social grants or the enjoyment of the right to education.

Education infrastructure in rural and predominantly black areas remains dismal compared to those in white occupied or in urban areas. Lack of physical amenities such as buildings, libraries or competent teachers enhances this form of "apartheid".

Girls are also discriminated against. Most children are denied their right to life and medical healthcare. The mortality rate is high while the percentage of children who are fully immunised against diseases is still insignificant. Child labour is also rampant.

1.3 Popularisation of the ACRWC

The ACRWC needs to be popularised to enhance the protection of the rights and welfare of the child in Africa.

Since the government is not the only responsible institution and the rights of the child are also infringed upon by individuals and other juristic persons, the ACRWC needs to be popularised among the state officials, the police, the judiciary, CSOs, parents, and the children.

Through the school curriculum, children should be educated on their rights. However, since states are the primary subjects of international law, only they can effectively enforce the protection and promotion of the rights and welfare of the child.

1.4 Factors impeding compliance with the ACRWC

Retrogressive customs and religious beliefs impede the enjoyment of rights and welfare for women and children.

⁶⁶ Idem 56.

⁶⁷ Idem 513.

⁶⁸ Idem.

⁶⁹ Idem.



1.5 Overall assessment of South Africa's compliance with the ACRWC

The ACRWC and related international instruments were signed and ratified. However, the State should do more to provide education, healthcare, and social security.

Since children are the future of the nation, funds should be availed to secure their rights and welfare in line with South Africa's obligations under the ACRWC and related international instruments.

2.0 The African Youth Charter

2.1 Status under international law

The AYC is a treaty adopted by the 17th AHSG of the AU which met in Banjul, the Gambia, on 2nd July 2006. It became effective on 8th August 2009 and aims to protect the right of the youth.

The concept of youth is broader than that of the child which refers to young people aged up to 17 years. As a treaty, the AYC binds every State Party to develop supportive policies and programmes on the youth. It is now in force and binding on State Parties.

2.2 South Africa's compliance with the AYC

South Africa signed the AYC on 7th May 2009 and ratified it on 28th May 2009. The instrument of ratification was deposited to the AU Commission on 8th July 2009.⁷⁰ The implementation of the AYC is left to the National Youth Development Agency (NYDA) within the context of the National Youth Policy (NYP) (2009-2014) and the Youth Desk in partnership with Government, CSOs, and local partners. The implementation of the AYC remains a tremendous challenge.

Indicators of SA's compliance with the AYC are as follows:

1. Existence and enforcement of legislation to control consumption of tobacco, exposure to environmental tobacco smoke and alcohol abuse;
2. Existence and enforcement of anti-narcotics law to minimise supply and trafficking of drugs;
3. Access to treatment for young people infected with HIV and AIDS including prevention of mother-to-child transmission, post-rape prophylaxis and antiretroviral therapy;
4. Availability of voluntary counselling and coincidental testing for HIV and AIDS;
5. Availability of adolescent reproductive health services, including contraceptives, antenatal and post-natal services;
6. Availability of sustainable livelihoods and youth employment accurate data;
7. Institution of 16th June as Youth Day;
8. Establishment of NYDA;
9. Legislation, policy framework and programmes to promote the rights and welfare of the children who are part of the youth; Constitutional protection of civil rights of all South Africans, including the youth;
10. Promotion of youth participation;
11. Education skills development through free and compulsory basic education, scholarships and bursary programmes or grants;
12. Access to education granted to all South Africans;
13. Consolidated investment in the education sector amounted to R 93 billion, an increase of 12.8% over 2005/06 (5.5% of the GDP);

⁷⁰ See <http://www.africa-union.org/root/au/Documents/Treaties/list/Youth%20Charter.pdf> (accessed on 20 April 2010).

2.3 Popularisation of the AYC

The AYC should be popularised into a people's affair with ownership invested in the youth. Popularisation had to be made through the translation of the AYC in local languages, distribution to relevant stakeholders, media, workshops, conferences, meetings, rallies, marches, community gatherings, official and unofficial documents.

Many youth are still not aware of the existence of the AYC, or their rights and duties therein. The media could have played a leading role in educating the youth. Unfortunately they are not always supportive of the values in the AYC.

2.4 Factors impeding compliance with the AYC

SA delayed in the signing and ratifying the AYC. However, the role played by the youth in SA, especially the ANCYL and the awareness of political leaders was instrumental in accelerating the eventual signing and the ratification of the AYC.

2.5 Overall assessment of South Africa's compliance with the AYC

SA has made tremendous efforts to comply by signing and ratifying the AYC, adopting policies, formulating programmes and establishing mechanisms to promote the rights of the youth. The main challenge lies in their implementation.

The biggest challenge remains popularising the AYC, promoting human rights, cultural, social and economic rights of the youth and providing them with the necessary skills.

The government should invest in securing various rights of the youth. It should encourage their participation in politics. It should help mould them into responsible citizens. South Africa's youth are the main victims of crime and violence. Unfortunately, they are also engaged in criminal activities.⁷¹

Actions Required

a. By the Government:

1. Ensure that women, children and the youth enjoy all the rights granted by the constitution,
2. Ensure that retrogressive cultural practices that negatively affect women and girls are defeated,
3. Provide jobs for the youth
4. Protect children from child labour
5. Protect children from rape and sexual violence
6. Ensure that children access free education
7. Cater for children with special needs

b. By Civil Society Organisations:

1. Education and mobilisation of women and children's rights
2. Launch programmes that would positively impact on the youth turn them into responsible citizens

⁷¹ South Africa Yearbook 2006/2007 op cit 65.

**1.0 NEPAD's Comprehensive Africa Agricultural Development Programme (CAADP)****1.1 Status under international law**

The CAADP is the product of a partnership between NEPAD and FAO. It benefited from contributions made by several multilateral institutions such as the International Fund for Agriculture Development (IFAD), the World Food Programme (WFP), the World Bank and the Forum for Agricultural Research in Africa (FARA).⁷²

This is a 2003 NEPAD programme and not a legally binding instrument. Its aim is to help Africa attain the Millennium Development Goal (MDG) of reducing hunger and poverty by half by 2015. The CAADP places a high premium on agriculture. It consists of the following four pillars:

1. Extending the area under land management and reliable water control systems (Pillar 1);
2. Improving rural infrastructure and trade related capacities for market access (Pillar 2);
3. Increasing food supply, reducing hunger and improving responses to food emergency crises (Pillar 3); and
4. Improving agricultural research, technology dissemination and adoption (Pillar 4).

1.2 South Africa's compliance with the CAADP

South Africa is an architect of NEPAD; it participated in drafting the CAADP, and should therefore implement it. Former Nigerian President Olusegun Obasanjo suggested that the NEPAD CAADP should guide Africa's agricultural development initiative. This, he said should be the framework for Africa's development.⁷³

Countries participating in NEPAD are expected to consider the CAADP in their efforts to improve agricultural performance. In South Africa, the implementation of the CAADP lies with the Department of Agriculture.

Although this department is interested in all the four CAADP's pillars, it should work with other departments, directly impacting on any of the pillars. Such other departments are; the Department of Land Affairs (Pillars 1, 3 and 4); the Department of Water and Forestry (Pillars 1 and 4); the Department of Transport (Pillars 2 and 3); the Department of Trade and Industry (Pillars 2 and 3); the Department of Public Works (Pillars 2 and 3); the Department of Science and Technology (Pillar 4); the Department of Education (Pillar 4); the Department of Health (Pillar 3); and the Department of Social Development (Pillars 2 and 3).

SA's compliance may be assessed in the light of national legislation, policies, and strategies adopted after 2003 in relation to the four CAADP's pillars.

The main pieces of legislation related to the CAADP are as follows:

1. Forestry Laws Amendment Act no. 35 of 2005 (Pillar 1);
2. Water Services Amendment Act no. 30 of 2004 (Pillar 1);
3. Restitution of land Amendment Act no.48 of 2004 (Pillar 1); and
4. Genetically Modified Organisms Amendment Act no. 23 of 2006 (Pillar 3).

SA's compliance with the CAADP may also be evaluated with regard to public investments in all sectors affected by the CAADP's four pillars.

Together with legislation, policies and strategies, investments in the sectors such as agriculture, land affairs/rural development and land reform, water and forestry, social development, transport, public

⁷² Obasanjo, O., "Foreword", in NEPAD *Comprehensive Africa Agriculture Development Programme*, July 2003, iii.

⁷³ Idem.

works, trade and industry, education, science and technology, as shown by the tables below, may be considered indicators of South Africa's compliance.

Allocation for Agriculture in the National Budget (TABLE 1)

Financial Year	2004-2005 TOTAL: R 150291025	2005-2006 TOTAL: R 221405750	2006-2007 TOTAL:R 260025660		2008-2009 TOTAL: R 345307566	2009-2010 TOTAL: R 399643150
Total Budget for the Department of Agriculture	1306228	1684738	1957648		2534671	2792759

Source: Appropriation Acts no. 15 of 2004, no. 4 of 2005, no. 07 of 2006, no.9 of 2008 and no. 16 of 2009.

Allocation for Land Affairs/Rural Development and Land Reform in the National Budget (TABLE 2)

Financial Year	2004-2005 TOTAL: R 150291025	2005-2006 TOTAL: R 221405750	2006-2007 TOTAL:R 260025660	2007-2008 TOTAL:	2008-2009 TOTAL: R 345307566	2009-2010 TOTAL: 399643150
Total Budget for the Department of Land Affairs	1788152	3881513	4852190		6659396	6099058

Source: Appropriation Acts no. 15 of 2004, no. 4 of 2005, no. 07 of 2006, no.9 of 2008 and no. 16 of 2009.

Allocation for Water and Forestry in the National Budget (TABLE 3)

Financial Year	2004-2005 TOTAL: R 150291025	2005-2006 TOTAL: R 221405750	2006-2007 TOTAL:R 260025660	2007-2008 TOTAL:	2008-2009 TOTAL: R 345307566	2009-2010 TOTAL: R 399643150
Total Budget for the Department of Water and Forestry	3302144	3557410	4476000		6659396	7893827

Source: Appropriation Acts no. 15 of 2004, no. 4 of 2005, no. 07 of 2006, no.9 of 2008 and no. 16 of 2009.

Allocation for Social Development in the National Budget (TABLE 4)

Financial Year	2004-2005 TOTAL: R 150291025	2005-2006 TOTAL: R 221405750	2006-2007 TOTAL:R 260025660	2007-2008 TOTAL:	2008-2009 TOTAL: R 345307566	2009-2010 TOTAL: 399643150
Total Budget for the Department of Social Development	4548410	5654912	6200546		72007974	86408338

Source: Appropriation Acts no. 15 of 2004, no. 4 of 2005, no. 07 of 2006, no.9 of 2008 and no. 16 of 2009.

South Africa has one of the best transport infrastructures in Africa (highways, railways, airports, and ports). The infrastructure was improved and expanded prior to hosting the 2010 FIFA World Cup. The table below shows an impressive increase in the allocation for transport and public works for 2009-2010. The density of paved roads is one of the highest in Africa. So are the levels of traffic at SA's ports and airports. However, rural infrastructure remains poor.

Allocation for Transport in the National Budget (TABLE 5)

Financial Year	2004-2005 TOTAL: R 150291025	2005-2006 TOTAL: R 221405750	2006-2007 TOTAL:R 260025660	2007-2008 TOTAL:	2008-2009 TOTAL: R 345307566	2009-2010 TOTAL: 399643150
Total Budget for the Department of Transport	6759044	7602150	12870458			23734829

Source: Appropriation Acts no. 15 of 2004, no. 4 of 2005, no. 07 of 2006, no.9 of 2008 and no. 16 of 2009.



Allocation for Public Works in the National Budget (TABLE 6)

Financial Year	2004-2005 TOTAL: R 150291025	2005-2006 TOTAL: R 221405750	2006-2007 TOTAL:R 260025660	2007-2008 TOTAL:	2008-2009 TOTAL: R 345307566	2009-2010 TOTAL: 399643150
Total Budget for the Department of Public Works	4819923	5554051	3080180		4141402	5298000

Source: Appropriation Acts no. 15 of 2004, no. 4 of 2005, no. 07 of 2006, no.9 of 2008 and no. 16 of 2009.

The allocation for trade and industry was tripled between 2004 and 2009.

Allocation for Trade and Industry in the National Budget (TABLE 7)

Financial Year	2004-2005 TOTAL: R 150291025	2005-2006 TOTAL: R 221405750	2006-2007 TOTAL:R 260025660	2007-2008 TOTAL:	2008-2009 TOTAL: R 345307566	2009-2010 TOTAL: 399643150
Total Budget for the Department of Trade & Industry	2848423	3076335	3666910		5102605	6344192

Source: Appropriation Acts no. 15 of 2004, no. 4 of 2005, no. 07 of 2006, no.9 of 2008 and no. 16 of 2009.

South Africa boasts the best research institutions in Africa. The important role played by education, science and technology in the country's development in general and in the development of agriculture in particular explains why the allocation for education almost doubled even as allocations for science and technology tripled between 2004 and 2009 in the national budgets.

Allocation for Education in the National Budget (TABLE 8)

Financial Year	2004-2005 TOTAL: R 150291025	2005-2006 TOTAL: R 221405750	2006-2007 TOTAL:R 260025660	2007- 2008 TOTAL:	2008-2009 TOTAL: R 345307566	2009-2010 TOTAL: 399643150
Total Budget for the Department of Education	11344957	12397060	14129233		18857546	21287171

Source: Appropriation Acts no. 15 of 2004, no. 4 of 2005, no. 07 of 2006, no.9 of 2008 and no. 16 of 2009.

Allocation for Science and Technology in the National Budget (TABLE 9)

Financial Year	2004-2005 TOTAL: R 150291025	2005-2006 TOTAL: R 221405750	2006-2007 TOTAL:R 260025660	2007-2008 TOTAL:	2008-2009 TOTAL: R 345307566	2009-2010 TOTAL: 399643150
Total Budget for the Department of Science & Technology	1276212	1986639	2614093		3703972	4234111

Source: Appropriation Acts no. 15 of 2004, no. 4 of 2005, no. 07 of 2006, no.9 of 2008 and no. 16 of 2009.

All African states subscribed to the global commitment of the World Food Summit in 1996 to halve the number of hungry people by 2015. South Africa has made major strides in this regard but failed to achieve food security for its people. The hungry remain symbolically poor and black. Food prices have been soaring over the past years and the number of undernourished remains high. The economy remains dominated by the white minority. Most successful farmers are white.

1.3 Popularisation of the CAADP

The CAADP and efforts made by the State to implement it should be popularised among all the stakeholders who should share the ownership of the programme to succeed.

1.4 Factors impeding compliance with the CAADP

The main factors impeding compliance with the NEPAD CAADP relate to economic underdevelopment and mismanagement. It is difficult for a poor country with a small budget to invest in agriculture, infrastructure development, and research. This hampers efforts to alleviate poverty and enter the world market.

SA needs a hand from development partners such as the World Bank, FAO, and FARA. The political will demonstrated in the adoption of the CAADP constitutes a good start.

1.5 Overall assessment of South Africa's compliance with the CAADP

South Africa performed relatively well in its compliance with the CAADP. Since the end of apartheid, the area under sustainable land management and reliable water control systems was annually extended, rural infrastructure and trade-related capacities for market access improved.

SA improved its food supply and responses to food emergency crises. It has massively invested in agricultural research and technology dissemination. The proportion of the national budget devoted to areas related to the four CAADP's pillars is annually on the increase. However, the government should do more to help halve poverty and hunger by 2015.

2.0 The African Convention on the Conservation of Nature and Natural Resources

2.1 Status under international law

The Convention on the Conservation of Nature and Natural Resources was adopted during an OAU meeting held in Algiers, Algeria, on 15th September 1968. The AU AHSG adopted an amended version of this Convention in Maputo, Mozambique, on 11th July 2003. Its Article 3(1) echoes Article 24 of the ACHPR dealing with environmental rights. The Convention establishes the framework for the protection of the environment and the sustainable use of natural resources. Unfortunately, this Convention has not as yet obtained the 15 ratifications⁷⁴ to come into force and become binding on State Parties.

2.2 South Africa's compliance with the Convention

South Africa has not signed and ratified this Convention as yet. Therefore, the country cannot legally be blamed for non-compliance. However, SA has already done a lot in terms of legislation, policies and programmes to protect nature and natural resources.

Measures were taken towards the conservation and improvement of the soil to combat its erosion, misuse and deterioration of its physical, chemical, biological or economic properties. Measures too were taken to enhance soil conservation, sustainable farming and forestry.

Mitigation and rehabilitation measures were taken to protect areas affected by land degradation. Key governmental ministries concerned by and involved in the conservation of nature and natural resources are; Agriculture, Environmental Affairs and Tourism, Science and Technology, Land Affairs, Education, Water and Forestry.

The following are some of the most important pieces of legislation enacted since 2004 with regard to the subject-matter of the Convention on the Conservation of Nature and Natural Resources:

1. Environment Conservation Amendment Act of 2003;
2. National Environmental Management Amendment of 2003;
3. National Environment Management: Air Quality Act of 2004;
4. National Environment Act: Protected Areas Amendment Act of 2004;

⁷⁴ Heyns & Killander op cit 74.



5. National Environmental Management: Biodiversity Act no. 10 of 2004;
6. National Environmental Management Act of 2008;
7. National Environmental Management: Protected Areas Amendment Act 2009;
8. National Environmental Laws Amendment Act of 2009;
9. Forestry Laws Amendment Act of 2005 (amending National Forests Act of 1998); and
10. Astronomy Geographic Advantage Act of 2007.

Commitment to conservation of nature and natural resources is reflected in the national budgetary allocations for Agriculture, Water and Forestry, Environmental Affairs and Tourism. See the national budgets between 2004 and 2010 in the Table below.

2.3 Allocation for Environmental Affairs and Tourism in the National Budget (TABLE 10)

Financial Year	2004-2005 TOTAL: R 150291025	2005-2006 TOTAL: R 221405750	2006-2007 TOTAL:R 260025660	2007-2008 TOTAL: 345307566	2008-2009 TOTAL: R 399643150	2009-2010 TOTAL: 3480783
Total Budget for the Department of Environmental Affairs and Tourism	1623407	1723111	2018053		3061686	

Source: Appropriation Acts no. 15 of 2004, no. 4 of 2005, no. 07 of 2006, no.9 of 2008 and no. 16 of 2009.

2.4 Popularisation of the Convention

Over the past years, matters related to the conservation of nature and natural resources have gained global prominence. In the aftermath of the 2009 Copenhagen Summit on climate change and its impact on the survival of humanity, they are no longer a preserve of politicians.

2.5 Factors impeding compliance with the Convention

No reason was given by the Department of Environmental Affairs and Tourism on why SA failed to sign the Convention despite passing several pieces of legislation and adopting a number of protective measures at the domestic level.

With the twin reality of climate change and globalisation, the future of humanity is inextricably linked to the state of the environment. The South African government should show leadership in this critical area of conservation of nature by signing and ratifying the Convention.

2.6 Overall assessment of South Africa's compliance with the Convention

With regard to legislation passed and policies adopted, SA broadly complies with the Convention. The SA government in general and the Department of Environmental Affairs and Tourism in particular remain focussed on and alert to issues related to the conservation of nature and natural resources.

Actions Required

a. By Government:

1. Ratify all protocols related to agriculture and environment
2. Ensure equal distribution of resources to improve infrastructure in both urban and rural areas
3. Reduce poverty among blacks and all the marginalised groups

b. By Civil Society Organisations

1. Agitate for equal distribution of resources among all races and communities
2. Mobilise citizens on environmental rights

CHAPTER 6 SOUTH AFRICA'S COMPLIANCE WITH AFRICAN UNION'S INSTRUMENTS RELATED TO HEALTH

This section of the report relates to SA's compliance with three related instruments adopted by the AU to promote health of all people on the continent. Although they do not qualify as treaties, African states are expected to strive to comply with them if their leaders' commitments to good health of their people were to be taken seriously.

1.0 Africa Health Strategy 2007-2015

1.1 Objectives

The AHS was adopted by African Health Ministers meeting in Johannesburg, South Africa, from 10th to 13th April 2007, in the Third Session of the AU Conference of Ministers of Health under the theme "Strengthening of Health Systems for Equity and Development in Africa."⁷⁵

The AHS mission is "to build an effective African driven response to reduce the burden of disease and disability, through strengthened health systems, scaled-up health interventions, inter-sectoral action and empowered communities."⁷⁶

The first principle of the AHS is the recognition of health as a human right. Its goal is to "contribute to Africa's socio-economic development by improving the health of its people and by ensuring access to essential health care for all Africans, especially the poorest and most marginalised, by 2015".⁷⁷

1.2 South Africa's compliance with the AHS

The AHS embodies the commitments of AU Member States through their Ministers of Health to the strengthening of their national health systems which should be functionally effective, decentralised, well managed, financed and resourced to meet the health demands of their people.

AU Member States were urged to update or strengthen their national health strategies, and increase their budget allocation for health to at least 15% of the total national budget. They were also asked to; prioritise primary health care, improve human resource training and deployment, offer clinical growth and career incentives, especially for those working in disadvantaged areas.

African Health Ministers committed their States to advancing logistics and supply systems and ensuring continuous availability of commodities at health facilities.

They pledged to support the Pharmaceutical Manufacturing Plan for Africa aimed at realising the economic production of quality generic medicines. They pledged to integrate African traditional medicine into their health systems, while enhancing community participation; and to allocate at least 2% of national health expenditure and 5% of project and programme aid for research.⁷⁸

SA initiated health legislation, and adopted policies and programmes consistent with the needs and demands of its people. Legislation includes the National Health Act of 2003 and the Nursing Act of 2005. Policies were also initiated by the Department of Health in relation to the recruitment, deployment and retention, the working and living conditions of the medical staff as well as the administration of health institutions.

As illustrated in the table below, the increasing allocation for health in the national budget since the AHS was adopted is an indication of the political will of the South African government to comply with its provisions.

⁷⁵ AU, *Africa Health Strategy 2007-2015*, adopted during the Third Session of the Conference of Ministers of Health, Johannesburg, South Africa, 9-13 April 2007, CAMH/MIN/5 (III).

⁷⁶ *Idem*, para 3.1.

⁷⁷ *Idem* para 3.2.

⁷⁸ AU, *Africa Health Strategy 2007-2015*, op cit para 4.1.6.



Allocation for Health in the National Budget (TABLE 11)⁷⁹

Financial Year	2004-2005 TOTAL: R 150291025	2005-2006 TOTAL: R 221405750	2006-2007 TOTAL:R 260025660	2007-2008 TOTAL:	2008-2009 TOTAL: R 345307566	2009-2010 TOTAL: 399643150
Total Budget for the Department of Health	8787865	9825230	11289990		15100845	17058094
Strategic Health Programmes	1629430	1772930			3713085	
Health Service Delivery	7039719	7855490	2105200		9052457	4692328
			8907550			9898865

Source: Appropriation Acts no. 15 of 2004, no. 4 of 2005, no. 07 of 2006, no.9 of 2008 and no. 16 of 2009.

However, the budget allocation for health remains less than the 15% target. In terms of percentage, it has been decreasing and the allocation for 2009-2010 is even less than what it was during 2008-2009.

The allocation for medical research is also less than 2% of national health expenditure. Support is provided for the Pharmaceutical Manufacturing Plan and traditional medicine, but there is inequality in service delivery between urban and rural areas with a chronic shortage of trained and motivated staff. Rural clinics and hospitals are under equipped. Lack of incentives has forced many medical staff to relocate to urban areas or leave the country.

In 2008, medical staff marched to the Union Building, demanding improvement in their working conditions and remunerations. Community participation or involvement, which is critical to the success of any plan or strategy, needs to be strengthened.

The implementation of the AHS is primarily the responsibility of the government through its Department of Health. However, there should be a coordinated effort with other departments, international agencies, and CSOs in order for the strategy to succeed.

In their Commentary on the AHS, representatives of several African CSOs commended the African governments for their commitment to a vision of a “prosperous Africa free of its heavy burden of disease, disability and premature death.” However, they warned that they would not go back or remain silent, but would be watching them and hold them to their promises.⁸⁰

1.3 Popularisation of the AHS

Despite the fact that it was adopted in Johannesburg, South Africa, the government through its Department of Health hardly refers to it. A number of medical doctors, nurses and pharmacists in the Province of Gauteng, which has Johannesburg and Pretoria as its main cities and is home to the largest number of medical staff in the country, admitted that they had not even heard about the AHS.

Lecturers and students interviewed on 10th April at the faculties of medicine of the University of Pretoria and the former Medical University of South Africa (MEDUNSA) too were ignorant of AHS.

Most *inyanga* (medical healers in the Zulu language), who met during a conference held in Durban on 15th April 2010, revealed that they were not aware of any African strategy for health.

⁷⁹ There has been a net increase the appropriation for health in the national budget since the adoption of the AHS. This is mostly in response to needs for health at the national level with the shortage of medical staff and the fight against HIV and AIDS. It does not mean necessarily that SA was acting in line with the AHS.

⁸⁰ Civil Society Commentary on the Africa Health Strategy 2007-2015 at <http://www.pambazyka.org/auonitor/images/uploads/final-cso-communicue-on-AU-ministerial-April-2007.pdf> (accessed on 20 April 2010).

1.4 Factors impeding compliance with the AHS

These factors include lack of sufficient financial resources to implement the AHS, shortage of medical staff, and little community participation. CSOs have failed in their promise to hold the government accountable.

1.5 Overall assessment of South Africa's compliance with the AHS

The South African health system has gradually become one of the best in Africa. It however remains inaccessible to the poor majority. As stressed earlier, shortage in the number of well-trained and experienced medical staff remains one of the most critical challenges to be addressed by the government in its efforts to implement the AHS.

2.0 Abuja Call for Accelerated Action towards Universal Access to HIV and AIDS, Tuberculosis and Malaria Services in Africa by 2010⁸¹

2.1 Objectives

The Abuja Call was made by AU Heads of State and Government during their meeting in Abuja, Nigeria, from 2nd -4th May 2006 to review the progress made in implementing the Abuja Declaration and Plan of Action on Roll Back Malaria (RBM) of 2000, and the Abuja Declaration and Plan of Action on HIV and AIDS, Tuberculosis and Other Infectious Diseases (ORID) of 2001. The theme of the meeting was "Universal Access to HIV and AIDS, Tuberculosis and Malaria Services by a United Africa by 2010".

AU Heads of State and Government held that they still considered AIDS, Tuberculosis and Malaria as "a State of Emergency in our continent" and resolved to "intensify the fight against HIV and AIDS, TB and Malaria and to achieve the targets adopted by the Summit and other internationally agreed goals on health".⁸² They therefore individually and collectively rededicated themselves to the following:

1. Leadership at the national, regional and continental levels in the fight against HIV and AIDS, TB and Malaria;
2. Mobilisation of local and international resources for sustainable and predictable financing of the fight, including the implementation of the Abuja Declaration Call for 15% of the National Budget to Health;
3. Protection of human rights of those infected and affected by HIV and AIDS, TB and malaria, particularly women, youth, children and other marginalised and vulnerable people;
4. Poverty reduction, health and development requiring that HIV and AIDS, TB and Malaria programmes be integrated into Poverty Reduction Strategies and country programmes to ensure access to adequate nutrition and food security;
5. Strengthening health systems for scaling-up and accelerating universal access to prevention, treatment, care and support for HIV and AIDS, TB and Malaria;
6. Prevention, treatment, care and support;
7. Access to affordable medicines and technologies to ensure the availability of medicines and commodities at affordable prices as well as technologies for the treatment, care and prevention of HIV and AIDS, TB and Malaria including vaccines, medicines and Anti-Retrovirus Therapy (ART);
8. Research and development;
9. Partnerships;
10. Monitoring, evaluation and reporting.

AU leaders then requested Ministries of Health, national AIDS Councils or their equivalent and Ministries of Finance and Economic Planning to coordinate the realization of a multi-sectoral and

⁸¹ AU, *Abuja Call for Accelerated Action Towards Universal Access to HIV and AIDS, Tuberculosis and Malaria Services in Africa*, adopted during the Special Summit of African Union on HIV and AIDS, Tuberculosis and Malaria (ATM), Abuja, Nigeria, 2-4 May 2006, Sp/Assembly/ATM/2(1) Rev.3.

⁸² AU, *Abuja Call for Accelerated Action Towards Universal Access to HIV and AIDS, Tuberculosis and Malaria Services in Africa*, op cit.



integrated approach to disease control, in collaboration with other sectors, including the involvement of the community in the planning and implementation.

2.2 South Africa's compliance with the Abuja Call

The budgetary allocation for health and anti-HIV and AIDS campaign is on the increase. More people have access to ART and HIV counselling and testing with the President in the lead.

Today, South Africa has probably the most comprehensive and best funded programme to fight HIV and AIDS on the continent. According to CSAR, between 4.5 and 6.3 million South Africans were infected with HIV and AIDS when the call was made from Abuja.⁸³

By mid 2009 South Africa had an estimated 5.21million people living with HIV. The pandemic has now stabilised and the number of new infections declined.

While the HIV pandemic contributed to a severe outbreak of TB, Malaria persisted in the country. South Africa has a National Tuberculosis Control Programme and a National TB Crisis Management Plan aimed at eradicating TB or reducing it substantially. The most affected parts are the Eastern Cape, Kwa Zulu-Natal, Gauteng, and Western Cape.⁸⁴

The goal of the programme is to ensure that every TB patient is supported during the six months TB treatment period to ensure that they are treated.⁸⁵ On the other hand, the prevalence of malaria substantially decreased due to indoor residual spraying using DDT.⁸⁶ The number of malaria cases and deaths dropped dramatically.

The South African government should be commended for all these efforts and the results achieved in the fight against HIV and AIDS, TB and Malaria. There are several pieces of legislation programmes and policies in place to fight these diseases.

South Africa heard the Abuja Call. However, "universal access to HIV and AIDS, TB and Malaria services" is still far from being achieved. Reports and data from the Department of Health show that TB still prevails and Malaria persists.

2.3 Popularisation of the Abuja Call

Many South Africans are actively involved in the campaign against HIV and AIDS. Many do so with little reference to the Abuja Call which rarely features in the public discourse and is ignored even by CSOs, medical staff and persons infected or affected by HIV.

2.4 Factors impeding compliance with the Abuja Call

The fight against HIV and AIDs was earlier undermined by the denial by the government. When the Abuja Call came, the situation had already changed and the government should be commended for its new commitment to fight infectious diseases.

2.5 Overall assessment of South Africa's compliance with the Abuja Call

Since the Abuja Call came in 2006, South Africa has done exceptionally well. Its comprehensive HIV and AIDS plan is one of the best in the world. It combines awareness, treatment and home-based care.⁸⁷

⁸³ APRM CRR op cit para 781.

⁸⁴ South Africa Yearbook 2006/07 op cit 57.

⁸⁵ Idem.

⁸⁶ Idem.

⁸⁷ South Africa Yearbook 2006/07 op cit 58.

Independent and official Reports from the Department of Health indicate that the HIV and AIDS pandemic has stabilised. TB and malaria cases have declined. However, the government must continually review its programmes and policies while investing in poverty alleviation to ensure a better and healthier life for the people of South Africa.

3.0 Maputo Plan of Action for the Operationalisation of the Continental Sexual and Reproductive Health and Rights (SRHR) Policy Framework 2007-2010

3.1 Objectives

To achieve the Millennium Development Goals (MDGs), the 2nd Ordinary Session of the Conference of African Ministers of Health meeting in Gaborone, Botswana, in October 2005 adopted the Continental Policy Framework on Sexual Reproductive Health and Rights. The adoption was endorsed by AU Heads of State and Government in January 2006.

Following this endorsement, the Ministers of Health met in Maputo, Mozambique, from 18th to 22nd September 2006 and adopted the Maputo Plan of Action for the Operationalisation of the Continental Sexual and Reproductive Health and Rights Policy Framework.

The Maputo Plan of Action (MPA) aims at helping Africa achieve universal access to comprehensive SRH services by 2015. It is based on nine action areas, namely;

1. Integration of SRH services into PHC;
2. Repositioning family planning;
3. Developing and promoting youth-friendly services;
4. Safe abortion;
5. Quality safe motherhood;
6. Resource mobilisation;
7. Commodity security;
8. Monitoring; and
9. Evaluation.

The MPA takes into account several elements of SRHR, namely;

1. Adolescent sexual and reproductive health;
2. Safe motherhood and newborn care;
3. Abortion care;
4. Family planning;
5. Prevention and management of sexually transmitted infections including HIV and AIDS;
6. Prevention and management of infertility;
7. Prevention and management of cancers of the reproductive system;
8. Mid-life concerns of men and women;
9. Health development;
10. Reduction of gender-based violence;
11. Interpersonal communication and counselling; and
12. Health education.

This is a comprehensive plan that actually touches on many sectors of health.

3.2 South Africa's compliance with the MPA

South Africa has invested heavily and made tremendous progress in complying with the MPA. Elaborate policies and programmes and budgetary allocation for health are clear indicators of the operationalisation of this plan.

However, the AHS target of 15% of the national budget allocated for health has not been attained. The MPA is yet to be implemented fully in South Africa due to financial constraints.



3.3 Popularisation of the MPA

Despite calls for public involvement and contribution of all stakeholders, the MPA is not well known. Many even in the medical sector do not know about it.

3.4 Factors impeding compliance with the MPA

Lack of; political will, financial resources, public involvement and well-trained medical staff, are some of the factors impeding compliance with the MPA.

3.5 Overall assessment of South Africa's compliance with the MPA

South Africa has been implementing the MPA even without referring to it. However, there are areas which are not sufficiently addressed. There is a need for further action by the government to come close to the goal of the MPA. However, it is worth stressing that this goal cannot be achieved overnight or in the specified timeframe.

Action Required:

a. By the Government:

1. Stop the brain drain eating up the health sector
2. Increase budgetary allocation for the health sector
3. Train and retain more medical personnel

b. By Civil Society Organisations:

1. Popularise health discourse
2. Sustain educational campaigns on HIV and AIDS, TB, malaria and other infectious diseases

CHAPTER 7 CONCLUSION

This report deals with South Africa's compliance with 12 selected AU instruments. Eight of these 12 instruments are treaties while four are strategies, resolutions or plans of action. While treaties are legally binding on States Parties, resolutions are not.

Seven of the treaties are already in force. Two await the required instruments of ratification to become effective and have not yet been signed or ratified by South Africa.

The AU instruments monitored were regrouped under several headings which related to human rights and governance, women's rights, children and youth rights, agriculture, conservation of nature and natural resources, and health. Each instrument was analysed starting with its legal status and/or its objectives. The Report also considered the popularisation of each instrument and the factors impeding South Africa's compliance.

The audit of compliance clearly indicates that South Africa has made significant strides to comply with the selected AU instruments, though much remains to be done. While commending South Africa for progress made, the report also identifies gaps and makes recommendations.

South Africa has played an important role in regional and international politics since the end of Apartheid. It is one of the strongest democracies and economies in Africa. To retain its leadership role, the country is required to lead by example and deliver on its commitments within the AU. South Africa cannot retain that leadership if it fails to comply with the AU instruments that it freely adopted.

It should also regularly review its legislation, policies and programmes to ensure their compliance with these instruments. Furthermore, accountability and popular participation are the founding principles of any democratic government. The government should be reminded that it is accountable to the people and must deliver on the commitments made on their behalf on the international scene so as not to lose its legitimacy and credibility.

There is a moral and political duty for leaders to keep to their promises whether they were embodied in legally binding instruments or not. No legislation, policy, programme, or development strategy can succeed without the involvement of the people and all stakeholders. All the AU instruments monitored relate to human rights' as enshrined in the ACHPR. The enforcement of these rights, especially socioeconomic rights, requires resource mobilisation by the government that should also invest in development and poverty reduction.

Full compliance with the 12 selected AU instruments and any other international instrument would require some coordination at the governmental level and some follow-up to keep the government constantly aware of its commitments under international and especially African instruments. Subsequently, a clear follow-up mechanism is needed for all AU instruments. African history is littered with treaties, declarations, resolutions, "calls", "strategies", and "plans of actions" adopted by African leaders but which remained dead.

Critical follow-up is important for instruments such as the Abuja Call, CAADP, AHS, and MPA that set some time-limits for their objectives to be achieved. 2010 is the time-limit that African leaders set to ensure "universal access to HIV and AIDS, TB and Malaria services" (Abuja Call) while 2015 is meant to "reduce hunger and poverty by half" (CAADP), and ensure "universal access to essential healthcare" (AHS) and to "comprehensive SRH services" (MPA).

When they meet in 2010, African leaders should take stock of these instruments and reflect on the way forward. The African people are entitled to knowing progress their leaders make in light of the commitments and promises made within selected AU instruments.

Should they be prepared to admit failure or unexpectedly claim success, back home, they would have to re-examine or review their legislation, policies, actions, plans, programmes and strategies in order to comply and deliver on their promises.

This report will hopefully enlighten the people of south Africa and provide some insights to the government in so far as compliance with these key instruments is concerned.



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APPENDICES

APPENDIX 1: A NOTE ON METHODOLOGY

This report is the first concerted national effort towards a review and audit of national performance against 14 carefully selected AU protocols and charters. The analysis on which this report is based focuses on selected 14 policy frameworks and human rights instruments of the African Union. Combined, these frameworks and instruments offer huge promise for reversing decades of injustice, marginalisation, exclusion and poverty in Africa. They form the basis for a continental bill of rights for all citizens and peoples of Africa.

This performance is being monitored alongside nine African Member States namely: Cameroon, Mozambique, Kenya, Egypt, Algeria, Nigeria, Senegal, Ghana and Rwanda. The selection of the countries for review in 2010 was based on criteria that ensured geographical, political, economic and linguistic diversity.

This study was completed over a period between September 2009 and June 2010. In September, a Pan Africa consortium of thirteen organisations came together to agree on the research protocol for the study, select the review countries and the management of the State of the Union project.

Between March and June 2010, a country researcher reviewed secondary official and unofficial documents and interviewed key stakeholders. A draft report was subjected to a validation workshop and criticism from those that participated in the research. This report is based on the corrective comments and suggestions made by colleagues. The host organisation provided guidance, research supervision and institutional support.

Where the report cites non-ratification, this does not imply that national laws, policies and processes are not in compliance with the AU Standard being assessed. Indeed, in some cases, we found that national policies and processes were compliant and even succeeded the continental standard. In other cases we have found that despite ratification, the practise is still below the expectations set out in the frameworks and instruments.

While all efforts have been made to ensure the accuracy of our findings, a report of this nature will be likely to include omissions, errors or differences of perceptions from those held by the stakeholders it addresses. If the report generates debate and the sharing of new information, it will have served its purpose.

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It is expected that the State of the Union project will annually capture the performance of African Member States to popularise, implement and ensure the realisation of these commitments in the lives of their citizens. An update on progress against the recommendations made in the report will be released publicly nationally and continentally before the January 2011 African Union Summit.

From these findings, it will be possible to make some broader generalisation of findings and recommendations for African Union organs and Member States during AU Summits. It is hoped that it will stimulate dialogue and discussion as well accelerating concerted efforts towards monitoring and raising awareness both within the Government, the African Union and the wider general public.

We welcome your thoughts on this report and the project as a whole. Please write to info@stateoftheunionafrica.net



Country researcher Andre Mangu and Ministry of Justice representative p



Country researcher Andre Mangu and Ministry of Justice representatives during report validation

Produced by the State of the Union project, this report is one of ten country studies that assess the performance of Member States against key governance, economic, social, civil and political policy standards and rights instruments. The State of the Union project tracks and engages Governments and the African Union on their commitments by managing in-country research, community hearings and national consultations.

The following organizations manage the project; Collective League of Associations for the Defence of Human Rights, The Institute for Democratic Governance, Southern Africa Trust, Fahamu, Citizen Participation on the African Union, AfriMAP, the Africa Governance Monitoring and Advocacy Project, Open Society Initiative, Civil Society Learning and Capacity Building Centre, the Al-Ahram Centre for Political and Strategic Studies, Information and Documentation Centre for Woman and Child's Rights, African Forum for Defence of Human Rights, Centre for Advanced Social Science and the Citizens Governance Initiatives and Oxfam International.

Reports for Algeria, Cameroon, Egypt, Ghana, Kenya, Mozambique, Rwanda and South Africa and the Pan African Continental report can be downloaded free from www.stateoftheunionafrica.net

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