EFFECTIVE OVERSIGHT –
THE KEY TOWARDS EXCELLENCE
IN PUBLIC ADMINISTRATION
VISION

A champion of public administration excellence in democratic governance in South Africa.

MISSION

To promote the constitutionally enshrined democratic principles and values of the Public Service by investigation, research, monitoring, evaluating, communicating and reporting on public administration.
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FROM THE DESK OF THE CHAIRPERSON

Mr Ben Mthembu
Chairperson: Public Service Commission

Welcome to the 7th edition of the Public Service Commission (PSC) Magazine, PSC News. In this edition, we explore the effectiveness of various oversight institutions created by the Constitution to promote excellence in good governance in South Africa. It is in this context that the theme for this edition of the PSC News is titled: “Effective oversight – the key towards excellence in public administration”.

Since the dawn of our democracy in 1994, government has made significant strides in improving the lives and living conditions of South Africa’s historically oppressed majority. The oversight role of Parliament over the Executive and Administration branches of the state to facilitate transparent and effective policy formulation and implementation has been strengthened over the years. Institutions such as the PSC, Public Protector and Auditor-General of South Africa (AGSA), to mention but a few, were subsequently established by the South African Constitution to assist Parliament in its oversight role. Parliamentary oversight ensures that the Executive and Administrative apparatuses of the state are accountable to the Legislature and institutions supporting it through formal reporting on service delivery and the utilisation of state resources.

The PSC derives its mandate from sections 195 and 196 of the Constitution, which vests it with custodial oversight responsibilities for the performance of the Public Service. Over the years, the PSC, as a knowledge-based organisation has produced a body of work that has contributed towards accountability and excellence in public administration. To this end, the PSC has been requested on a number of occasions by the Executive and other stakeholders to brief and provide advice on various aspects of public administration, which in some instances informed government policy.

The collective work of Institutions Supporting Democracy is key towards safeguarding our democracy. In this regard, the establishment of the Office on Institutions Supporting Democracy in August 2010, which is mandated to enhance the capacity of the National Assembly to, amongst others, facilitate and co-ordinate all interactions between Parliament and Institutions Supporting Democracy, is a positive development which the PSC applauds. Accordingly, the PSC has participated in the Forum of Institutions Supporting Democracy and our collective participation will contribute towards effective oversight. Furthermore, in an effort to improve efficacy of relations between the PSC and other Chapter 9 Institutions, a memorandum of understanding (MoU) between the PSC, AGSA and Public Protector had been concluded and I am confident that our relationships will strengthen efficiency and effectiveness in the Public Service.

I hope that readers will enjoy this edition of the PSC News and use it to communicate with the PSC on numerous issues that will help us accelerate service delivery in the Public Service.
The South African Government introduced various oversight mechanisms to intensify the fight against fraud and corruption in the country. Despite the introduction of these mechanisms, the scourge of fraud and corruption still remains a challenge which needs to be aggressively addressed by all sectors in South Africa. Chapter 9 of the Constitution has established institutions such as the Public Protector, Auditor-General of South Africa and the South African Human Rights Commission to safeguard our democracy.

The PSC, on the other hand, is an institution established in terms of Chapter 10 of the Constitution to promote and maintain the democratic values and principles governing public administration. Accordingly, the PSC has played a key role in public administration investigations, the promotion of a high standard of ethical conduct amongst public servants and the prevention and combating corruption in the Public Service. It is against this background that the theme for this 7th edition of the PSC News is “Effective oversight – the key towards excellence in public administration”.

In this edition of the PSC News, we take a closer look at the importance of openness, transparency and accountability in the Public Service. The article by Dr Dovhani Mamphiswana, Deputy Director-General: Integrity and Anti-Corruption in the Office of the Public Service Commission (OPSC), attempts to highlight how the PSC’s oversight role contributes towards good governance in the public administration.

The second article by Professor Ben Turok, Co-Chairperson of the Joint Committee on Ethics and Members’ Interests in Parliament of the Republic of South Africa analyses the importance of integrity in Parliament. This article looks at the various legislative oversight mechanisms introduced by Parliament to make Public Service institutions and officials accountable to the citizenry.

As the Supreme Audit Institutions (SAI) of South Africa, the Auditor-General of South Africa (AGSA) exists to strengthen our country’s democracy by enabling oversight, accountability and governance in the public sector through auditing, thereby building public confidence. The article by Mr Terrence Nomembe, the Auditor-General, highlights the contribution made by the AGSA towards effective oversight in South Africa.

Institutions Supporting Democracy have an obligation to ensure that government’s oversight mechanisms are properly developed and implemented. In an attempt to highlight various overseeing mechanisms used by some of the Chapter 9 Institutions, Mr Kayum Ahmed, Chief Executive Officer of the South African Human Rights Commission (SAHRC), points out the meaningful impact the SAHRC makes in ensuring everyone’s rights and equal justice. Likewise, Adv Pheagane Solomon Moreroa, Chief Executive Officer of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission), scrutinises the role of the CRL Rights Commission in ensuring the protection and promotion of the cultural, religious and linguistic rights of all communities in South Africa. Mr Mosotho Moepya, Chief Electoral Officer of the Independent Electoral Commission (IEC) of South Africa, looks at how the IEC is playing a key role in ensuring free and fair elections in South Africa.

In conclusion, Adv Nonkosi Cetywayo, Director: Office on Institutions Supporting Democracy (IOSD), examines the challenges faced by the Institutions Supporting Democracy in fulfilling their constitutional mandates.

We hope that readers will find this edition of the PSC News more useful and reader-friendly. On that note, we encourage all South Africans to use the available tools to report any acts of fraud and corruption in the Public Service to the National Anti-Corruption Hotline at 0800 701 701.

Happy reading, till next time!
All over the world, good governance is a cornerstone of sustainable service delivery. Where there is no good government there cannot be good governance and there cannot be effective service delivery. Central to good governance is citizens’ active participation in processes such as planning, budgeting, implementation monitoring and evaluation of programmes and projects that are intended to improve their living conditions. Post 1994 democratic elections, the South African Government introduced the White Paper on Transforming Public Service Delivery, also known as Batho Pele. Undoubtedly, Batho Pele was as a strategy to put in place Public Service fit for the democratic order which was people-centred and sustainable service delivery oriented. The White Paper contains eight (8) principles and one of them is openness and transparency. This paper will present the importance of openness, transparency and accountability in the Public Service.

Openness and transparency conceptualised
According to the Batho Pele Framework, government departments should exercise the principle of openness and transparency by ensuring that citizens are told how national and provincial departments are run, how much they cost and who is in charge. It is therefore imperative for departments to put adequate and relevant systems in place that will allow citizens to understand the operations of the respective departments and Public Service in general. It is important for public servants to understand the implications of applying the principle of openness and transparency in the sense that such practice will mean that departments must also put in place corrective measures. This means that if the departments promised to service the community in a particular way and fails to do so, there must be a system to correct that and to communicate such measure to the citizens. It is hoped that citizens would have confidence in the Public Service that is willing to be open and accountable to the citizens as service users and customers of government. Openness and transparency in the Public Service would mean that government is committed to partnership and collaboration with citizens as service users. Citizens are not only regarded as service users, but also as key stakeholders in the planning, designing and implementation of government programmes. When there is strategic partnership and collaboration with citizens, there can be evidence-based planning in the Public Service. Accordingly, section 195 (1) (g) of the Constitution specifically states that “transparency must be fostered by providing the public with timely, accessible and accurate information”.

The dynamics of transparency in the Public Service
The practice of the principle of openness and transparency in the Public Service serves as an accountability measure by the departments to the citizens. The principle of openness and transparency demands the respective departments to inform citizens as service users of the following information about themselves:

- Who we are;
- What we do;
- Who is in charge;
- Our standards – and how we met them;

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It is hoped that informed and empowered citizens will be effective service users and consumers of government services. It is also hoped that with the information available, citizens will be able to make necessary choices about the services and influence, where possible, the direction of the respective departments with regard to the strategies applied to render services and new programmes that can be introduced to strengthen sustainable service delivery. With the information made available to them, informed and empowered citizens are likely to know the strengths and weaknesses of the departments that provide their services and as such would appreciate the challenges thereof. Informed and empowered service users are also in a good position to escalate the matter to the necessary authority if they are of the view that services provided were not up to the set standards. Service users who know who is in charge of a department in the form of Executing Authority (Minister or Member of Executive Council i.e. MEC) and Accounting Authority (Head of Department, i.e. HoD) are likely to take up the matter with such authorities if not satisfied with the services rendered. In instances where service users are informed as a result of the departments’ state of openness and transparency there is a high likelihood of accountability.

Challenges in implementing openness, transparency and accountability in the Public Service

Openness and transparency comes with responsibility on the part of the departments. This means that departments would have to strive to meet their own set standards and be accountable where they fail to meet such standards. It is hoped that with such amount of practice, departments would surely be accountable to the citizens and there would be a better space for public participation. As stated earlier in this article, active public participation would deepen evidence-based planning which is key in the Public Service fit for good governance.

It is also important to note that openness, transparency and accountability would only be realised if departments appreciate the eight (8) Batho Pele principles as contained in the Batho Pele Framework. Departments cannot afford to implement these principles in a selective manner.

The principles are interrelated and interdependent. In departments or state institutions where openness and transparency is applied there will be consultation with citizens as service users, and service users will be treated with courtesy and adequate information will be made available so that citizens can have access to the services they deserve. Furthermore, departments that are open and transparent would meet their set service standard and if not, they would apply redress mechanism and as a result citizens would appreciate value for money in the Public Service. Citizens, as service users, need to see a great deal of commitment from government officials as agents of change to apply and implement the principles in their effort not only to transform the Public Service, but to deliver quality and competent services as they should.

The results of the focused assessment studies conducted by the PSC on the implementation of the Batho Pele principles in the Public Service were not satisfactory. The findings have continued to show that there are gaps in the respective departments with regard to the implementation of these principles. It appears that senior management does not regard the implementation of the principles as a strategic and management issue. Inadequate budgets and capacity are allocated to the implementation of the Batho Pele principles in a strategic and integrated manner. Such implementation is not mainstreamed in the planning and execution of departments’ programmes and projects. It is therefore imperative that senior management in the Public Service is held accountable by ensuring that the Batho Pele principles are central in the performance agreements and during performance reviews. It is hoped that such practice will compel senior managers to regard these principles as strategic and management issues. Such practice will further deepen openness, transparency and accountability in the Public Service.

Conclusion

For a Public Service fit for the future to be realised, attitudes in the Public Service will have to change through development of effective management. It will also be imperative that adequate systems are put in place to grow and nurture relevant human capital that is integrity-driven and fit for the Public Service. It is hoped that by strengthening values and ethics in the Public Service, the capability of the state to deliver sustainable services will be realised.
INTEGRITY IN THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

Prof Ben Turok MP
Co-Chairperson of the Joint Committee on Ethics and Members’ Interests in Parliament of the Republic of South Africa

In one of the most serious instances of Parliamentary corruption, the United Kingdom (UK) House of Lords\(^4\) suspended two of its members in 2009 for being involved in attempts to amend legislation on behalf of business clients in return for payments of 120,000 pounds (over R1 million). This was the first such suspension in 350 years.

This case came following the House of Commons exposure of fraudulent claims for allowances by dozens of Members of Parliament (MP’s) including the former and present Prime Ministers. Our own Travelgate\(^5\) cases were equally painful and similarly undermined the reputation of our Parliament.

What is curious about these events is that the politicians concerned were punished, but the officials got off scot-free. Yet they facilitated corruption and should be held equally accountable.

Thus far our Committee on Ethics and Members Interests in Parliament has not investigated the conduct of officials in Parliament or indeed in the Public Service as we believe that it goes beyond our mandate. However, this may be questioned since our principle objective is advocating and promoting integrity in our system.

I recall the above cases to remind us of the importance of promoting integrity in our public institutions, especially those responsible for our legislation. That integrity cannot be taken for granted and the ethical principles of these institutions have to be continuously re-examined and reinforced as there are many temptations for self-serving actions in public life.

However, in the work of the Joint Committee on Ethics and Members’ Interests, which serves both houses in our Parliament, we have to avoid the temptation to be seen to be moralising on the one hand or punitive on the other. We are neither a disciplinary committee nor a forum for passing judgments on individual members’ behaviour as though we are superior moral beings. Rather it is our task to help members obey the rules of Parliament and encourage them to conduct their affairs in a manner which will keep them out of difficulty. We wish to constantly reinforce public trust and confidence in our Parliament and indeed in the system as a whole.

One of our tasks is to help Parliament identify more clearly the ethical principles on which our democratic Parliament was founded in 1994 since we can find no documents doing this other than the Constitution. The Ethics Committee does have the powers to be used as a last resort. These powers are in Rule 32 of the Joint Rules of Parliament (4th edition) and in sections 18 and 19 of the Code of Conduct of our Committee\(^6\), which allow for various penalties such as fines, salary reductions or suspensions. But we have neither the capability nor the desire to act as an inspectorate.

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\(^4\) The British Telegraph Group in 2009, United Kingdom (UK) House of Lords
\(^5\) Parliament of the Republic of South Africa, Travelgate vouchers
\(^6\) Rule 32 of the Joint Rules of Parliament (4th edition) and in sections 18 and 19 of the Code of Conduct of our Committee
To this end, the Code of Conduct in the Joint Rules of Parliament (4th edition), March 2008 requires some updating and clarification.

The Committee seems to have three broad areas of responsibility:

1. It aims to uphold and advance the ethical principles underpinning our democracy and its Parliament and “develops standards of ethical conduct” to this end;
2. It promotes integrity in compliance with the rules on Members’ Interests, and should base its findings on the spirit as well as the letter of our rules; and
3. It encourages proper conduct with respect to Parliamentary allowances for members.

All these measures protect the good public image of Parliament.

The Register of Members’ Interests refers to the compulsory annual declaration by members of their assets, which seems to be operating satisfactorily at present.

However three problems seem to be evident:

(a) The fact that members do not declare an interest in a company because it is dormant and they have had no reward therefrom. We need to be more diligent in recording this to avoid unnecessary suspicion;
(b) That members do not appreciate that the term “registrable interests” in the Code of Conduct includes “the financial interests of that member’s spouse, dependent child and permanent companion” (p110); and
(c) The member must declare any personal or private financial or business interests they have, including that of “any spouse, permanent companion or business partner” in a matter before a committee of Parliament (12a).

It should be noted that “remuneration” includes “benefits in cash or in kind” (p110).

We all appreciate that the public image of Parliament and government is a sensitive matter and requires constant attention since it can be easily undermined by poor compliance with the ethical conduct laid down for members. But it is also true that there may be collusion by Parliamentary and Public Service officials who may escape unscathed. Yet the giver of benefits has to be as compliant with the rules as the receiver and there can be no excuse on the grounds of surrendering to the higher status of MPs.

The Committee will have the responsibility to ensure that the system of allowances is observed with the intended integrity. The Houses of Parliament in the UK have taken severe measures to overcome past lapses. In this respect, good sense suggests that it is better to admit to failures or weaknesses in the system and work to remedy deficiencies than pretend that everything is operating perfectly.

Some areas pertaining to the ethical conduct of members remain vague, particularly with respect to the extent of their participation in income generation outside of Parliament. It is common practice for MP’s who are practicing professionals, such as doctors or lawyers, to continue in their practices on a part-time basis so that they have a source of income should they...
leave Parliament at the end of their term. They have to declare their incomes, but there is some scope for concealment, especially if they use family trusts to do so.

Members may not accept any employment from the state, but they or their spouses may work as consultants and this may constitute a conflict of interest. The case of participating in tenders for government business may require declaration as there is considerable public disquiet about government tenders in general.

Members may accept gifts from donors, which must be declared, but there seems to be no upper limit on the value of these gifts. It is essential that sponsorships, gifts and benefits, including travel benefits, are not solicited, particularly where this leads to conflicts of interest.

Members’ relations with public servants and business in a commercial context may lead to conflicts of interest and this needs further study.

The requirement to declare the financial interests of spouses, permanent companions or business partners, has caused much concern on the grounds that it violates the rights of such persons. Yet the rules are explicit and are clearly the result of long experience that it is easy for members to evade disclosure should this rule not be observed.

On all these matters, the Ethics Committee may investigate complaints and impose sanctions, but this is always a last resort. The most appropriate course for the Committee is to follow the route of the PSC (Overview, June 2010, p. 29) which aims to “raise awareness” on proper conduct and to constantly help members to act in a way that “avoids potential conflicts of interest”9. Prevention is better than cure. Perhaps we can assist members to interpret the rules where there is a lack of clarity or ambiguity.

We should seek the full cooperation of our officials in Parliament and the Public Service in general, to assist in maintaining the highest ethical principles and practices in the national interest. This may require that we work on an audit of past problems and create a policy framework to guide future interventions.

There can be no doubt that misconduct and fraud have crept into our state system to a serious extent. This has to be brought under control before it creates paralysis. The Minister of Finance has repeatedly drawn our attention to the scourge of tender manipulation and kickbacks in the Public Service. This requires close co-operation between all agencies of the state to bring it under control.

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9 Public Service Commission. 2010. Overview, p. 29. The aim is to “raise awareness” on proper conduct and to constantly help members to act in a way that “avoids potential conflicts of interest”
In this article, the Auditor-General of South Africa (AGSA) shares its experiences in building the necessary professional and institutional competence and credibility to fulfill its mandate effectively and efficiently, thereby making its contribution to excellence in public administration.

**Introduction**

Supreme Audit Institutions (SAIs) play a vital role in facilitating governments’ accountability to legislatures and the public for their stewardship of public funds, and helping to ensure the transparency of government operations. SAIs are also uniquely suited to provide independent views on the efficiency and effectiveness of public sector management and reporting.

The AGSA has a constitutional mandate and, as the SAI of South Africa, exists to strengthen our country’s democracy by enabling oversight, accountability and governance in the public sector through auditing, thereby building public confidence.

This is the mission of the AGSA and presents it with the privilege and opportunity to facilitate the realisation of effective public administration in our country.

However, to be able to fulfil this function and ensure the credibility of its contribution to the South African democracy, the AGSA realises that it can only earn trust if the institution itself is objectively judged as being credible and competent. As with any other SAI, it is therefore incumbent on the AGSA to ensure that it builds the necessary capacity in order to optimally fulfil its role.

Over the last two decades, the predominant capacity building focus of the AGSA has been on developing professional capacity that delivers simple, clear, relevant and objective reports, as well as its capacity to engage the external environment so that its messages are understood and acted upon.

The AGSA’s capacity building process includes:

- Understanding of the expectations of all its stakeholders in relation to its audit mandate and the relationship it has with each one of them;
- Assessing its existing level of capacity to respond to such expectations, identified needs and strategic position;
- Determining the resources needed for the additional capacity it seeks to build;

The AGSA’s contribution to effective oversight in South Africa

**UN recognises the value of independent Auditors-General**

Independence is an essential requirement for Supreme Audit Institutions (SAIs) to fulfil their role objectively and effectively. The value of independence has been a fundamental principle of the International Organisation of Supreme Audit Institutions (INTOSAI) since 1977.

In December 2011 a momentous milestone was achieved when the United Nations General Assembly adopted a Resolution entitled “Promoting the efficiency, accountability, effectiveness and transparency of public administration by strengthening Supreme Audit Institutions (SAIs)”.

The AGSA mandate conforms to the principles that define SAI independence. These principles are consistent with the provisions of the South African Constitution and the Public Audit Act that governs the legal standing and administration of the AGSA.
• Implementing a strategy to develop this increased capacity without disrupting its continuing outputs;
• Evaluating the impact achieved; and
• Sustaining the changes and refining its strategy to build on what has been achieved.

Professional capacity
There are at least three challenging aspects to the professionalising of an institution such as the AGSA. The first is to have appropriate auditing methods, guidance and manuals that are supported by the necessary policies and procedures. The second aspect relates to having professional staff with appropriate knowledge and skills, and the third aspect is adherence to the highest possible standards of work.

• Audit methodology
The AGSA has incrementally improved its audit methodology, progressing from a reasonably elementary and generic audit methodology to a methodology that caters for the needs of the South African public sector while at the same adhering to international auditing standards. The development of a world-class South African public audit manual is the tangible outcome of this process.

The improvements to its audit methodology were complemented by the introduction of appropriate audit technology, firstly in the form of elementary audit planning tools. This was followed by the use of complete audit software that enables efficient and cost-effective audits in compliance with the required international standards. In addition, an audit management information system platform has been introduced to enable efficient trend reporting and analysis.

• Learning and development
The AGSA believes in unleashing the potential of its human capital. When the AGSA started escalating its learning and development initiatives in the 1990s, the first step was to increase its training in basic auditing skills, with an emphasis on strengthening the core skills and later adding specialised skills. However, the challenge of increasing the professionally qualified staff in the AGSA needed to be resolved. This gave rise to an important period in the history of human capital management at the AGSA. At the time there were few professionally qualified staff members on the payroll and few professional bodies that would consider accrediting the training and development of AGSA staff in pursuit of a professional qualification. Collaboration with the principal professional body in South Africa, the SA Institute of Chartered Accountants (SAICA), resulted in accreditation of the AGSA as a SAICA-approved training institution in December 1999. Collaboration with another professional body, the SA Institute of Government Auditors (SAIGA), resulted in a proper; nationally accredited qualification that enabled incumbent staff to be recognised in respect of their existing qualifications and experience. Various internal learning and development support programmes, coupled with continuing close co-operation with these and other professional bodies such as the Association of Chartered Certified Accountants (ACCA), Certified Information Systems Auditors (CISA), etc. ensured that the AGSA’s trainee auditor scheme continues to go from strength to strength.

• Quality assurance
The AGSA conduct audits in accordance with its mandate and applicable professional standards. A third important element of professionalisation relates to ensuring that the work of its staff meet the required standards consistently across all business units. To this end, the AGSA has established a dedicated quality control monitoring process to determine whether its audits meet international auditing standards. The credibility of this quality control process is enhanced by the involvement of an external review entity, namely the Independent Regulatory Board for Auditors (IRBA), which performs engagement reviews and independently pronounces on the status of the AGSA’s adherence to quality assurance standards.

Simplicity, clarity and relevance of messages
In terms of its mandate, the AGSA reports on audit results. Another way in which the AGSA supports effective oversight in the South African public sector is to produce reports that are as simple, clear and relevant as possible to ensure ease of use of these documents. The easier it is for the AGSA’s stakeholders to understand its audit
reports, the easier it will be for them to address the audit findings. Being able to take action in response to audit findings is critical for progress in the transformation of public finance and performance management in the country, as well as moving all entities in the public sector towards clean administration. Clean administration, in turn, is a prerequisite for effective service delivery and for ensuring the growth and continued strengthening of the South African democracy.

The principle underpinning simple, clear and relevant messages in all of the AGSA’s communication with stakeholders is the approach of root cause analysis – the ability to identify core successes and shortcomings and to define what should be done to sustain good practices and rectify the audit findings and by whom – in simple language that is easy to understand.

Visibility of AGSA leadership

The AGSA enables those charged with public sector governance to discharge their responsibilities in responding to audit findings and recommendations and taking appropriate corrective actions. The AGSA’s goal of leadership visibility ties in with the goal of simplicity of its reports in that it communicates the audit results through visibility. AGSA leaders continuously interact with its stakeholders, as it believes that its contribution to accountability and good governance will depend not only on the quality of its audits, but also on the extent to which the AGSA succeeds in sharing its insight with those in charge of public resources so that they are enabled to take the necessary corrective action.

The AGSA interacts with key identified stakeholders in all three spheres of government. Interaction focuses mainly on meaningful engagements with political leaders on a quarterly basis to share the AGSA’s assessments of identified risks and during which it invites commitments to address the stumbling blocks in the way of clean audits. The AGSA seeks a commitment from the legislative authorities, to oversee the corrective action taken by those in charge of public resources. Experience has taught us that when the country’s political leadership sets the right tone and acts on the AGSA’s audit findings and recommendations, the results are consistently proving to be positive.

Conclusion

Professionalisation and organisational capacity is a long and never-ending process for which institution-specific solutions have to be found. Building institutional capacity is a continuous and systematic process. There will always be challenges that the AGSA will have to address as part of its continued endeavours to build a model institution on whose work the South African citizens can rely.

The AGSA has found that interaction with those charged with governance and the public through the media is one of the most effective ways to increase its relevance. The AGSA therefore remains firmly committed to strengthening the accountability, integrity and transparency of government. In this way, it supports its democracy in accordance with its mandate and makes a difference to the lives of citizens.
THE ROLE OF THE SAHRC IN ENSURING EFFECTIVE OVERSIGHT IN SOUTH AFRICA

Mr Kayum Ahmed
Chief Executive Officer of the South African Human Rights Commission

In order to ensure effective oversight of government, the institutions responsible for overseeing government must themselves be effective and efficient. Consequently, institutions with oversight responsibility and institutions supporting democracy, such as the South African Human Rights Commission (SAHRC), have an obligation to not only oversee government, but also to ensure that its internal oversight mechanisms are properly developed and implemented.

Two years ago, at the end of the 2009/10 financial year, the SAHRC only managed to achieve 52% of its strategic objectives. One year later, the Commission improved its performance to 67%. Following the implementation of a significant rethinking exercise, which included the development of a new strategic plan, a major restructuring exercise and the implementation of a strong performance management culture, the Commission has been able to fulfil 89% of its strategic objectives at the end of the 2011/12 financial year.

As the Commission progresses towards achieving 100% of its strategic objectives, the next step is to build on its performance-driven culture and cultivate an impact-driven approach to its work. The Commission wants to, for example, build on its ability to write reports on government’s realisation of economic and social rights, by ensuring that government actually implements the recommendations made in the Commission’s reports. Its aim is to ensure that the process of oversight does not simply end with the publishing of a report, but moves towards monitoring and tracking the implementation of the report.

Furthermore, the Commission does not simply want to host public hearings across the country, but would want to ensure that those hearings have a meaningful impact on communities and that communities are empowered to engage with their respective municipalities on service delivery issues. It is therefore not enough that the Commission is able to fulfil 100% of its strategic objectives. It also wants to ensure that in the fulfilment of those objectives, it has a meaningful impact on the lives of South Africans.

As the Commission moves towards an impact-driven approach to its work, it has been forced to ask some difficult questions, not only of itself, but also of the society within which it operates: in a country with sufficient resources and one of the most progressive constitutions in the world, why does government continue to build toilets without enclosures, fail to provide quality education and remain unsuccessful in reducing the infant mortality rate? South Africa appears to have all the ingredients for a successful, vibrant democracy built on principles of human rights and justice, but it seems to continuously fall short. What has gone wrong and how can the Commission contribute to fixing things?

Many have argued that South Africa’s current challenges centre on the lack of sufficient leadership. Plato’s famous work, The Republic, written around 380 BCE, raises critical questions about what constitutes the legitimacy to rule. Plato asks the following question: “Who then are those whom we shall compel to be guardians? Surely

10 The Republic, written around 380 BCE.
they will be the men who are wisest about affairs of State, and by whom the State is best administered…”

Plato’s argument that the wisest among us should lead forms the basis of contemporary views on political leadership and what constitutes the ideal State. However, we have also become acutely aware of the failure of leadership – particularly those leaders who claim to be the wisest among us.

Consequently, Karl Popper, in *The Paradoxes of Sovereignty* (1945)¹¹, suggests that Plato asks the wrong question. He argues that the question about who should rule should be replaced by: “How can we organise political institutions that bad or incompetent rulers can be prevented from doing too much damage?”

During March 2012, I accompanied our Human Rights Commissioners to Rammalotsi in the Free State and Makhaza in the Western Cape; two communities where the SAHRC had made findings against municipalities for building toilets without enclosures. The Commission discovered that despite the progress that had been made to enclose open toilets in these areas following its findings against the respective municipalities, residents continued to face a number of challenges.

Disabled residents were unable to access the toilets, women and young girls were afraid to use these toilets after dark, and deaf residents indicated that they were unable to communicate with each other after dark since there were no lights in and around the toilets. While the Commission acknowledges the fact that government has taken its recommendations seriously and has worked towards ensuring adequate sanitation in Rammalotsi and Makhaza, government’s inability to fully realise the rights of the poorest and marginalised members of society, particularly women and the disabled, remain a serious concern for the Commission.

It also appears that government has sufficient money and resources to effectively deal with the access to water and sanitation challenges in South Africa based on the Commission’s reading of the Department of Performance Monitoring and Evaluation’s report on sanitation developed in February 2012¹² at the request of the Commission. The problem appears to centre on how resources are co-ordinated at national and provincial level as well as poor management at the municipal level. Failure to sufficiently consult with residents before decisions are taken on their behalf has been consistently cited as a problem faced by communities. The lack of public consultation speaks to government’s disregard for its citizens’ views on important decision-making processes that directly affect them. This is further exacerbated by government’s inability to effectively co-ordinate the provision of basic services across the country.

While the Commission has provided a public platform for discussion and debate on access to water and sanitation and will continue to do so throughout the 2012/13 financial year culminating in a public hearing in March 2013, it is ultimately up to government to effect drastic changes in the way it engages with communities and co-ordinates the provision of basic services.

Returning to the questions posed by Plato and Popper, it seems that South Africa requires both decisive, enlightened leadership and strong, efficient institutions to hold leaders accountable. The SAHRC aims to be one of those strong, efficient institutions. I will be the first to acknowledge that the Commission has a long way to go before it can be fully effective. However, it is growing stronger by the day so that it can ensure that government fulfils its constitutional obligations and begins to embody the leadership expectations of its citizens.

¹² Department of Performance Monitoring and Evaluation’s Report on Sanitation developed in February 2012
The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission), hereafter the Commission, assumed its first term of office in 2004 and its second term in 2009. Established in terms of Chapter 9 of the Constitution of the Republic of South Africa (Act 108 of 1996), it is the last of the State Institutions Supporting Constitutional Democracy to come into being after the Office of the Public Protector, the SAHRC, the CGE, the AGSA and the IEC.

The CRL Rights Commission welcomes the support and working relationship existing between the Department of Co-operative Governance and Traditional Affairs and the supportive oversight exercised by the Parliamentary Portfolio Committee, together with the Office of the Institutions Supporting Democracy. Thus the constitutional mandate of the CRL Rights Commission aims to make the national motto, “!ke e:/xarra //ke”, effective and creates opportunities to give expression to the Cultural Charter for Africa (1976); the Convention on the Protection and Promotion of the Diversity of Cultural Expression (2005) and the Convention for the Safeguarding of the Intangible Cultural Heritage (2003).

Hence the vision and mission of the CRL Rights Commission “A United South African Nation that protects and promotes the cultural, religious and linguistic rights of all its diverse communities”. The provisions of Chapter 9 of the Constitution of the Republic of South Africa, Act 108 of 1996, clearly states that the CRL Rights Commission is independent and subject to the constitution and the law and that it must be impartial and exercise its powers and perform its functions without fear, favour or prejudice.

In understanding the oversight role of the CRL Rights Commission, there is a need to define the word oversight in the South African context. Oversight is a constitutionally mandated function of legislative organs of the state and Chapter 9 Institutions to scrutinise and oversee executive action and any organ of the state. It follows that oversight entails the informal and formal, watchful, strategic and structured scrutiny exercised by legislatures in respect of the implementation of laws, the application of the budget, and the strict observance of statutes and the Constitution. The CRL Rights Commission, in ensuring effective, sound public administration by various organs of the state, is informed by the functions of a human rights based oversight, meaning that at the core of oversight, the rights of the cultural, religious and linguistic communities are protected and promoted.

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14 Organization of African Unity meeting in its Thirteenth Ordinary Session, in Port Louis, Mauritius: Cultural Charter for Africa (1976)
language communities are protected and prevented from unconstitutional conduct on the part of the organ of the state; cultural, religious and language policies that are drafted, debated and legislated by various Portfolio Committees at the National Assembly with the active and full participation of the communities are complied with; and public trust and confidence are instilled in the operations of organs of state in policy and legislative formulation.

The constitutional mandate of the CRL Rights Commission in supporting effective oversight in the Public Service administration of South Africa

It is imperative to note that several constitutional provisions refer directly and indirectly to oversight and accountability by the National Assembly and the constitutional structures that it encompasses. Section 41(2) states that an Act of Parliament of the Republic of South Africa must establish or provide for structures and institutions to promote and facilitate intergovernmental.

In terms of the principal legislation of the CRL Rights Commission, Act 19 of 2002, the Commission may make appropriate arrangements with another constitutional institution or an organ of the state to assist the Commission in the performance of any of its functions in so far as such institution or organ has the power to assist the Commission.

The annual activities, challenges, success and reports from the CRL Rights Commission directed to the National Assembly must be contextualised as enhancing the Commission’s oversight functions so as to improve effective public administration.

Setting the scene and a conducive environment for the CRL Rights Commission to contribute towards sound oversight within the public administration system, in 2007, the Parliamentary Ad Hoc Committee on the review of the Chapter 9 and other related institutions submitted that it is imperative for the National Assembly to put in place processes in order to allow the reports of the Chapter 9 Institutions, including the CRL Rights Commission, to be referred to various Portfolio Committees for consideration and oversight function. The CRL Rights Commission is empowered to formulate recommendations on issues concerning cultural, religious and language rights and in practice it submits them to various organs of the state for consideration and implementation.

The monitoring role of the CRL Rights Commission further fulfils its oversight function on constitutional issues with various organs of the state and realises the co-operation with an approach to offer adequate, sound public administration and public participation in the new democratic South Africa.

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17 Section 41(2) Act of Parliament of the Republic of South Africa
18 Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, Act No.19 of 2002
Mr Mosotho Moepya
Chief Electoral Officer of the Independent Electoral Commission of South Africa

The Independent Electoral Commission (IEC) is one of the Institutions Supporting Constitutional Democracy which are established in terms of Chapter 9 of the Constitution. Collectively these institutions are independent and subject only to the Constitution and the law. They are accountable to the National Assembly.

Section 190 of the Constitution specifically entrusts the IEC with the following functions:

“(a) Manage elections of national, provincial and municipal legislative bodies in accordance with national legislation;
(b) Ensure that those elections are free and fair; and
(c) Declare the results of those elections within a period that must be prescribed by national legislation and that is as short as reasonably possible.”

The Electoral Commission Act (Act 51 of 1996) elaborates on these functions. While many of these functions are administrative, some of them can be understood to form part of an “oversight” role. In particular this oversight role can be said to relate to the following functions outlined in the Act:

- Ensuring that any election is free and fair;
- Promoting conditions conducive to free and fair elections;
- Compiling and maintaining a voters’ roll;
- Establishing and maintaining liaison and co-operation with parties;
- Reviewing electoral legislation and proposed electoral legislation; and
- Promoting voter education.

The Commission achieves these functions by putting in place several measures. These measures include the regular meetings of Party Liaison Committees; liaison with various stakeholders to ensure the accuracy of the voters’ roll, conducting civic and voter education programmes and proposing legislative amendments.

**Party Liaison Committees**

The Party Liaison Committees (PLCs) are established for the National Assembly, the Provincial Legislatures and Municipal Councils (i.e., all spheres of government in the Republic of South Africa). The PLCs consist of no more than two representatives from each registered party represented in that relevant sphere of government and one each for independent candidates. Regulations further give the Commission the discretion to co-opt additional members to the PLC structures.

Regulations prescribe that from the date of promulgation of an election until the date of the election, any registered party which, or independent candidate who has complied with the requirements for contesting that election shall be entitled to representation on the relevant PLC. The Commission, through its administration, convenes and chairs all the PLCs. The primary function of the PLCs is to serve as a vehicle for the consultation and co-operation between the Commission and the parties on all matters, with a view to the attainment of free and fair electoral outcomes. The PLCs meet on an ongoing basis, but more regularly closer to and during elections.
The Commission consults with the PLCs on an ongoing basis on all legislation that it intends to review and makes recommendations in connection therewith. As a result of these consultations, parties obtain a first-hand understanding of the objects of electoral legislation throughout its drafting process until it is finalised into law. The prospects of enforcing such legislation as well as applying it uniformly are greatly enhanced. Very often, once consulted, parties take it upon themselves to increase awareness among their constituencies. Thus, all legislation submitted to the National Assembly has already been canvassed by PLC members representing parties in the National Assembly.

In South Africa, the demarcation of political boundaries (i.e., provincial, municipal and ward) is a responsibility of another body – the Municipal Demarcation Board (MDB). The delimitation of electoral boundaries within political boundaries (i.e., voting districts) is the responsibility of the Commission. To avoid boundary disputes being brought to the centre of the election management process, the PLCs are consulted on timetables and policy positions that will be observed in the delimitation process. Each of the voting districts used in general elections is individually signed-off by PLCs operating in the municipal sphere of government. Since 1999, when South Africa implemented its voting district-based voters’ roll, there has never been a contested voting district boundary as parties would have been thoroughly consulted.

In any electoral contest, there are deep-seated reservations about the security and integrity of results processes and results computing systems irrespective of the nature and maturity of the democracy in the affected country. Emerging democracies are even more susceptible to these reservations. The Commission has, since inception, accepted that unless this matter is addressed openly and transparently, the integrity of elections will always be at stake. Results systems have always been developed by the Commission, with parties provided an opportunity to ensure that such results systems do, in fact, what they are meant to do. This was initially done by parties’ Information Technology Auditors at great cost to the party. However, since they could not find anything untoward with the Commission’s systems, parties have placed reliance on an election results certificate issued in any event, by the Commission’s own independent auditors for this purpose. The latter has increased party confidence in the Commission’s results processes. At the height of an election period (especially during heated party campaigning periods), there are often issues that arise between parties and/or the Commission, which have the potential to spark conflict, or have already resulted in conflict. South Africa’s experience, as borne out by its complimentary conflict management programme, has provided evidence on the efficacy of the PLCs as a good conflict preventative measure and attributed the decline in serious electoral conflicts to the PLCs.

Through the vehicle of the PLCs, the Commission ensures that elections are free and fair and that conditions are conducive for the holding of elections.

**Voters’ roll**

The founding provisions of the Constitution provide for a common South African citizenship that provides rights and privileges as it does duties and responsibilities. The constitutional framework as it relates to elections is expanded upon in the Bill of Rights, which enshrines universal adult suffrage. This means that all adult citizens enjoy voting rights and in this way substance is given to the content of the national common voters’ roll.

The Electoral Commission Act¹⁹ and the Electoral Act establish a regime that defines the composition and compilation of the national common voters’ roll. This results in a physical document that does not include the names of all adult citizens, but only of those who have successfully applied to be included. On a monthly basis, the Commission runs the voters’ roll against the National Population Register²⁰ to ensure that the voters’ roll is accurate and up to date.

The accuracy of the voters’ roll is often the cause of conflict during disputed elections in other countries. By paying particular care to this aspect of elections, the Commission not only ensures that all eligible South

²⁰ National Population Register.
Africans are able to cast their votes, but that parties are assured of the integrity of the election outcomes.

**Civic and voter education programmes**
The aims of the Commission’s civic and voter education programmes are to promote a culture of democracy and human rights by creating and emphasising awareness of civic responsibilities. These programmes also promote and increase the voters’ knowledge and understanding of the electoral processes; to empower target groups and communities where voter turnout has been historically low, to participate fully in electoral processes and to decrease the number of spoilt ballots.

Through these programmes, for example, a Braille ballot template was developed. The aim of the template was to facilitate the equitable participation of visually impaired persons in the voting process and promote the right to a secret ballot for all. South Africa is a signatory to the United Nations Convention on People with Disabilities. The template has been acknowledged as a positive development and a laudable achievement, and has achieved a regional benchmark in catering for the needs of visually impaired people in elections. More South Africans are made aware of their rights and how to exercise their rights in respect of voting as a result of the Commission’s civic and voter education programmes. An active citizenry is key to keeping elected representatives accountable. By promoting an active citizenry, the Commission supports the creation of a climate where oversight is possible at various levels.

**Legislative amendments**
To keep legislation current and in keeping with developments concerning electoral democracy, the Commission, acting in terms of Section 5 of the Electoral Commission Act, (Act 51 of 1996)\(^1\), regularly conducts reviews of election legislation. In this way, all electoral stakeholders are assured of on-going improvements to the electoral process.

**Conclusion**
While “oversight” is often seen in an adversarial context, with the emphasis placed on the role of legislature as it relates to holding the executive accountable, this is not universally the case. In South Africa, Chapter 9 Institutions such as the Electoral Commission play an important role in overseeing the effective management of processes that result in the improvement of the quality of lives of citizens, but also in the promotion of constitutional democracy. Through the practices and processes outlined above, the Commission conducts free and fair elections of which the results have been universally accepted. Representatives elected in this fashion can be held accountable by an informed electorate.

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\(^1\) Section 5 of the Electoral Commission Act, Act No. 51 of 1996 – G 17478
THE ROLE OF THE OISD IN ENSURING EFFECTIVE OVERSIGHT IN SOUTH AFRICA

Adv Nonkosi Cetywayo
Director: Office on Institutions Supporting Democracy

The Office on Institutions Supporting Democracy (OISD) was formally established in August 2010, pursuant to a resolution of the National Assembly. The mandate of the OISD is to enhance the capacity of the National Assembly to perform its functions of oversight, accountability and support relevant to Institutions Supporting Democracy (ISDs) and to facilitate and co-ordinate all interaction between the Parliament and ISDs. The Office was established to, amongst other things, achieve the following strategic objectives:

- Continuously improve the relationship between Parliament and the ISDs;
- Ensure improved efficiency and effectiveness of the ISDs and increase their impact and influence in Parliament;
- Ensure that Parliament enhances the level of support to the ISDs in furthering their constitutional mandates;
- Ensure improved institutional governance within the ISDs by, amongst other things, facilitating the process to clarify lines of authority between ISD Chairpersons, Chief Executive Officers and Commissioners and developing a code of conduct for these institutions; and
- Ensure and facilitate an improved and structured oversight role of Parliament.

It is envisaged that the fulfillment of the strategic objectives of the OISD will assist in enhancing the collective strength of the Office. The OISD’s Strategic Objectives include ensuring improved efficiency and effectiveness of ISDs and increasing their impact and influence in Parliament. The Office, amongst other things, processes Special Reports received from the ISDs to ensure that they are tabled and considered by Parliament. The Office also follows up on adopted resolutions of the National Assembly to ensure that they are fully observed.

The work of the OISD

The OISD is tasked and mandated mainly to assist and protect the ISDs to ensure their independence, impartiality, dignity and effectiveness in carrying out their respective duties and functions. Below are some of the tasks that the OISD has undertaken towards the fulfillment of its mandate:

Commission for Gender Equality (CGE)

The OISD provided assistance to the CGE when in a report submitted to Parliament it transpired that there was maladministration and mismanagement of funds within the Commission. The Office further reviewed the investigations and outcomes so as to assist the Commission in any other matters of urgency. The OISD provided support in the establishment of an Ad Hoc Committee on the filling of vacancies in the CGE.

Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CLR Commission)

In a meeting between the OISD and the CRL Commission on 1 November 2010, it transpired that the Commission was in a financial crisis, so much so that it could no longer perform any work. This included their inability to implement resolutions of the National Community Council, which is a body that determines the agenda of the Commission. Against this background the OISD, through the Office of the Deputy Speaker, appealed to the Minister of Co-operative Governance and Traditional Affairs for urgent intervention on the Commission’s
financial challenges. As a result of this request and intervention by the Department, the Commission received additional funding (R3 million) from the Department of Co-operative Governance and Traditional Affairs to continue effectively in its functions.

**Public Service Commission**

In 2011, OISD met with the PSC, where a number of issues were discussed. It transpired that there were three vacancies for Commissioners at the head office and three at the North West, Gauteng and Western Cape provinces. Some of these positions have been vacant since 2008.

The OISD initiated a process to facilitate the filling of these vacancies. Letters were written to the Presidency as well as to the relevant provinces. As a result of this intervention, the Presidency wrote to the Speaker of Parliament of the Republic of South Africa to request the NA to start the process to fill the vacancies, as is required by law.

**Fiscal and Financial Commission**

On 11 October 2010, representatives from the OISD met with a delegation from the Fiscal and Financial Commission (FFC). The meeting was convened by the OISD to discuss three matters: issues arising from the 2009/10 Annual Report of the FFC; legislative amendment proposals submitted by the former Chairperson of the FFC; and straightening of the relationship between Parliament and the FFC.

The issues arising from the FFC Annual Report were captured in a discussion document prepared by the OISD. The issues emanated from the exchange of information between the OISD and the FFC as part of analysing the annual report with the view to brief the Presiding Officers. The discussion points revolve around the kind of support the FFC expected to receive from Parliament. At the conclusion of the meeting, it was agreed that the leadership of the FFC will meet in November 2009 to discuss a number of issues raised in the meeting with the OISD after which a comprehensive report would be generated and submitted to Parliament.

**Independent Electoral Commission**

In the middle of February 2011, the Chairperson of the Independent IEC wrote to advise the Speaker of Parliament that the terms of office for four IEC Commissioners would expire in October 2011. The Office of the Speaker instructed the OISD to facilitate the process of filling the vacancies at the IEC. In the past, the Department of Home Affairs would fund the Panel. However, opposition parties have since complained that the funding of the panel by a government department created an appearance of impropriety in that the IEC is an independent institution. To address the dilemma, the OISD prepared a submission to the Presiding Officers to request a policy determination regarding the funding of the panel by Parliament. The request was approved and Parliament funded the Panel which initiated the process of filling the vacancies.

**Contribution of OISD towards oversight in the Public Service**

The OISD has been hands-on in some issues relating to the CGE, PanSALB, National Youth Development Agency, SAHRC, and the FFC. The Office has had a relatively productive outcome with the ISD’s after it engaged with them in a workshop it conducted in 2011. The purpose of the workshop was to facilitate reflections and discussions amongst all ISDs on the findings and recommendations of the Ad Hoc Committee, as contained in the final report.

Furthermore, the workshop was conducted to establish a more efficient and effective mechanism to improve accountability and oversight of these ISDs to Parliament. In that workshop, it was discovered that there were issues that called for immediate attention relating to some of the ISDs, which had an adverse effect on their functions and how they discharged their mandate/duties. Among those matters were issues around appointment procedures, relationship between ISDs and Parliament, institutional governance, accessibility and financial matters. All such matters are related to the efficiency and effectiveness of these institutions.
Conclusion
The OISD is of the view that by pro-actively involving itself in matters related to the ISDs, by co-ordinating the communication between Parliament and the ISDs, and by consistently working towards increasing the impact and influence of the ISDs within Parliament, it will contribute towards the increased efficiency and effectiveness of the ISDs. The work that they do by way of their Special Reports, for example, will then indeed complement the oversight work that Parliament performs. Thus the work of the Office is geared towards equipping Parliament to better understand the challenges faced by South Africans in areas affecting democracy.

PUBLIC SERVICE COMMISSION PROVINCIAL OFFICES

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<tr>
<th>Eastern Cape</th>
<th>Northern Cape</th>
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<tbody>
<tr>
<td>91 Alexandra Road</td>
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<td>Kirk Patrick Building</td>
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<tr>
<td>St Andrew Street</td>
<td>40 Schoeman Street</td>
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<td>Bloemfontein, 9301</td>
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<td>35 Pritchard Street</td>
<td>University Drive</td>
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<td>Johannesburg, 2001</td>
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<td>Pietermaritzburg, 3201</td>
<td>Cape Town, 8001</td>
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<th>Mpumalanga</th>
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