

SYNOPSIS ON
AFRICAN CHARTER ON VALUES AND PRICIPLES OF
PUBLIC ADMINISTRATION

A synopsis of the African Charter on Values and Principles of Public Service and Administration

Background and Context

1. Over the past few years, the momentum to sustain collective efforts and support national public administration reform agenda culminated in the establishment of the Pan-African Conference of Ministers for Public/ Civil Service. Since its inception, the Ministerial Conference demonstrated a commitment to move beyond the passive exchange of information towards establishing practices, codes and standards for public administration in Africa. Ministers at the preceding Pan-African conferences recognised that the establishment of basic frameworks for public administration would be central to enhance the overall effectiveness of the state in sustainable development.
2. The commitment to work as a collective to enhance governance and public administration effectiveness across Africa is reflected in the numerous historical exchange initiatives across the continent. The second Pan-African Conference of Ministers for Public/Civil Service, organised with the support of the Department of Economic and Social Affairs of the United Nations (UNDESA) and held in Rabat (Morocco) from the 13th to 15th December 1998, was a landmark event for African public administration as it set the foundation for establishing a Charter for the Public Service in Africa. The African Public Service Charter was formally adopted at the 3rd Pan-African Conference of Ministers for Public/Civil Service (5-6 February 2001, Windhoek, Namibia). In keeping with the recommendations of the conference, a Ministerial working group, supported by a secretariat, was established to draft a Charter for the African Public Service.

South Africa's Role and Input to the Charter Development Processes

3. The adoption of the Charter by the 16th Ordinary Session of the Assembly of the African Union, held on 31 January 2011 in Addis Ababa, was a culmination of the efforts of African Public Service Ministers during South Africa's lead as Chairperson and Algeria as Champion for the Charter to develop and agree on a broad framework of reforming the continent's public services and to confront many service delivery-related challenges. With a view to align the African Charter with South Africa's policy prescripts, a deliberate effort was made to as much as possible infuse Batho Pele Principles into the Charter.
4. In these premises, the ratified Charter is and will remain a living testimony to South Africa's prolific role in shaping the edifice of this enduring Ministerial platform from a mere information and experience exchange construct to a programmatically focused implementation outfit. This radical re-engineering augurs well for the transformation of the African Public Service.

5. Central to efforts of review and updating of the Charter was a focus on and commitment to a consultative process as the mainstay approach. It is within this consultative framework that South Africa facilitated and convened the Southern African Development Community (SADC) expert seminar on the Charter on 5-6 July 2007. The expert seminar was intended to achieve the objective of developing a framework and articulating practical strategies for the review and implementation of the Charter.

The Substantive Components of the African Charter

6. The African Charter on Values and Principles of Public Administration is defined in the following seven broad Chapters
 - 6.1. CHAPTER I: DEFINITIONS, OBJECTIVES AND PRINCIPLES
 - 6.2. CHAPTER II: DUTIES OF THE PUBLIC SERVICE AND ADMINISTRATION
 - 6.3. CHAPTER III: CODE OF CONDUCT FOR PUBLIC SERVICE AGENTS
 - 6.4. CHAPTER IV: RIGHTS OF PUBLIC SERVICE AGENTS
 - 6.5. CHAPTER V: MANAGEMENT AND DEVELOPMENT OF HUMAN RESOURCES
 - 6.6. CHAPTER VI: MECHANISMS FOR APPLICATION
 - 6.7. CHAPTER VII: FINAL CLAUSES

African Union Ratification Processes

7. The 16th Ordinary Session of the Assembly of the African Union ratified the African Charter on Values and Principles of Public Administration. This was the most fitting platform for the adoption of the Charter as the focus of the Summit was on Shared Values.
8. The Assembly emphasised the importance of the Charter in the on-going collective efforts "by Member States to improve public service delivery, combat corruption, protect the rights of citizens as users of public service as well as promote good governance and sustainable development on the Continent". The Assembly then called on all Member States to take the necessary measures, as soon as possible, to sign and ratify the Charter.
9. Earlier in July 2010, the African Union (AU) Heads of State and Government Summit held in Kampala, Uganda had declared this period a decade of shared values among African countries. Central to the theme of shared values is the quest for a framework to guide the transformation of the African Public Service for efficient and effective service delivery to populations. This is where the African Public Service Charter on Principles and Values comes in handy.
10. In this respect the Assembly welcomed the efforts deployed by the Conference of African Ministers of Public Service to promote and implement African Union Vision on Public Service in the Continent. The AU appealed to Member States to be more

committed in the implementation of this programme that will drive the long-term strategy of African Ministers of Public Service in Africa for sustainable development.

11. The ratification and subsequent implementation of the African Charter by member states will go a long way to augment efforts towards the realization of the African Union decade of shared values. More importantly, the ratification of the African Charter will crown South Africa's immense contribution to the Continental Governance and Public Administration programme.

African Union Member States' Accession Status

12. Currently, 19 countries have signed the Charter as follows; Kenya, Mozambique, Namibia, Togo, Zambia, Angola, Benin, Burundi, Cote D'Ivoire, Republic of Congo, The Gambia, Ghana, Guinea Bissau, Guinea Conakry, Mauritius, Nigeria, Sahrawi Arab Democratic Republic, Senegal and Sierra Leone.
13. So far only 3 member states have ratified the Charter; namely Kenya, Namibia and Mauritius. The AU rules require 15 member states to accede to the Charter before it can assume the status of an AU instrument that has a binding force.
14. During the 7th Conference, and in subsequent Ministerial Bureau meetings, the AU Commissioner for Political Affairs made a passionate plea to member states to sign and ratify the Charter in order for the instrument to come into force.

South Africa's Accession Process

15. South Africa has not yet ratified the Charter but requisite processes to do so are in the pipeline. The Charter was submitted to Department of Justice and Constitutional Development for scrutiny and advice. Both the State Law Adviser and the Department of International Relations and Cooperation (DIRCO) have reviewed and given the green light for accession processes to unfold.
16. The Charter was presented to the Governance and Administration (G&A) Cluster for consideration and approval. The cluster approved the Charter for presentation to the Cabinet.
17. **Cabinet has approved the tabling of the Charter to Parliament for ratification.**
18. Once Parliamentary approval has been granted, a Presidential minute will be obtained on which basis DIRCO will prepare an **Accession Instrument** to be lodged with the African Union. The Parliamentary approval will also obligate South Africa to implement and domesticate the African Charter.



AFRICAN CHARTER ON VALUES AND PRINCIPLES OF PUBLIC ADMINISTRATION

DRAFT AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION

PREAMBLE

We, the Member States of the African Union (AU);

Reiterating our political commitment to strengthen professionalism and ethics in public service in Africa;

Determined to promote the values and principles of democracy, good governance, human rights and the right to development;

Cognisant of the mandate of the Public Service and Administration to protect the fundamental values of public service and promote an administrative culture based on respect for the rights of the user;

Committed to promoting the values and principles governing the organisation of Public Service and Administration;

Conscious of the need to maintain legitimacy of the public service and adapt African public services to evolving needs on the continent;

Reaffirming our collective desire to strive tirelessly for the modernisation, improvement and entrenchment of new values of governance in public service;

Guided by our common desire to strengthen and consolidate public service with a view to promoting integration and sustainable development on the continent;

Committed to promoting a Public Service and Administration that uses the optimum conditions of equity and efficiency;

Desirous of ensuring effective application of the Charter, taking into account conditions unique to member states;

Recalling Executive Council decision number Ex.CL/Dec.243 (VIII).

Have agreed as follows:

CHAPTER I

DEFINITIONS, OBJECTIVES AND PRINCIPLES

Article I

Definitions

In this Charter and unless otherwise stated, the following expressions shall have the following meaning:

Administration: Any institution or organisation at the continental, regional, national and sub-national levels that applies the public policies or undertakes public service duties;

Assembly: The Assembly of Heads of State and Government of the African Union;

AU: The African Union;

Charter: The African Charter on Values and Principles of the Public Service and administration;

Commission: The Secretariat of the African Union;

Conference of States Parties: Member States that have ratified this Charter;

Constitutive Act: The Constitutive Act of the African Union;

Executive Council: The Council of Ministers of the African Union;

Member States: The Member States of the African Union;

Public Service: Any service or public-interest activity that is under the authority of the administration.

Public Service Agent: Any worker or employee of the state or of its institutions, including those who were selected, appointed or elected to carry out activities in the name or on behalf of the State, at all levels of its structures.

Public Service Ethics: Accountability standards by which the work, behaviour and actions of Public Service Agents are scrutinized.

Regional Economic Communities: The African Union's regional integration blocs.

State Party: Any Member State of the African Union that has ratified or acceded to this charter and deposited the instruments of ratification at the Commission of the African Union.

User: Any juristic or natural person who calls on the public service for a service.

Article 2 Objectives

The objectives of this Charter are to:

1. Promote the principles and values contained herein.
2. Ensure quality and innovative service delivery that meets the requirements of all users.

3. Encourage the efforts of Member States in modernising administration and strengthening capacity for the improvement of public service.
4. Encourage citizens and users of Public services to actively and effectively participate in public administration processes.
5. Promote the moral values inherent in the activities of Public Service Agents with a view to ensuring transparent service delivery.
6. Improve the working conditions of Public Service Agents and ensure the protection of their rights.
7. Encourage the harmonisation of policies and procedures related to Public Service and Administration among Member States with the aim of promoting regional and continental integration.
8. Promote equality between men and women as well as equality within Public Service and Administration structures.
9. Strengthen cooperation among Member States, Regional Economic Communities and the International Community for the improvement of public service and administration.
10. Encourage the exchange of experiences and best practices in order to create a data base of information within the Member States.

Article 3

Principles

The Member States agree to implement the Charter in accordance with the following principles:

1. Equality of all users of Public Service and Administration.
2. The prohibition of all forms of discrimination on any basis, including place of origin, race, gender, disability, religion, ethnicity, political opinion, membership in a trade union or any other lawful organization.
3. Impartiality, fairness and due process in the delivery of public services.
4. Continuity of public services under all circumstances.
5. Adaptability of public services to the needs of users.

CHAPTER II

DUTIES OF THE PUBLIC SERVICE AND ADMINISTRATION

Article 4

Respect for Human Rights and Legality

1. The Public Service and Administration and its agents shall respect the human rights, dignity and integrity of all users.
2. Public services must be delivered in accordance with national laws, regulations and policies.

3. Decisions of the Public Service and Administration shall conform to existing national laws and regulatory frameworks.

Article 5

Access to Public Service

1. State Parties shall entrench into their national laws and regulations the principles of equal access and non-discrimination.
2. Public Service and Administration shall be organized to ensure and facilitate easy access to adequate services.
3. Public Service and Administration shall be organised in a manner which ensures that services are delivered closer to users.
4. Public Service and Administration shall be participatory in order to ensure the effective involvement of all stakeholders including Civil Society in the planning and delivery of services.

Article 6

Access to Information

1. Public Service and Administration shall make available to users information on procedures and formalities pertaining to public service delivery.
2. Public Service and Administration shall inform users of all decisions made concerning them, the reasons behind

those decisions, as well as the mechanisms available for appeal.

3. Public Service and Administration shall establish effective communication systems and processes to inform the public about service delivery, to enhance access to information by users, as well as to receive their feedback and inputs.
4. Public Service and Administration shall ensure that administrative procedures and documents are presented in a user-friendly and simplified manner.

Article 7 **Efficient and Quality Service**

1. Public services shall be delivered in the most effective, efficient and economical manner, consistent with the highest possible standards.
2. Public Service and Administration shall establish appropriate mechanisms to periodically monitor and evaluate the effectiveness of public service delivery.
3. Public Service and Administration shall set and respect time-frames for public service delivery.
4. Public Service and Administration shall ensure that its services are adapted to the evolving needs of users.

5. Public Service and Administration shall take the necessary steps to create and maintain trust among public service agents and users.

Article 8

Modernization of the Public Service and Administration

1. Public Service and Administration shall facilitate the introduction of modern and innovative procedures and systems for the delivery of its services.
2. Public Service and Administration shall ensure that modern technologies are used to support and improve the delivery of services.
3. Public Service and Administration shall simplify its procedures and ease formalities related to access and delivery of services.

CHAPTER III

CODE OF CONDUCT FOR PUBLIC SERVICE AGENTS

Article 9

Professionalism

1. Public Service Agents shall demonstrate professionalism, transparency and impartiality in the performance of their duties.
2. Public Service Agents shall demonstrate excellence and innovation in their performance of duties.

3. Public Service Agents shall be required to perform their professional duties and show courtesy, integrity and neutrality in dealing with users.
4. Public Service Agents shall act responsibly and in accordance with the national laws and regulations.

Article 10

Ethical Behaviour

1. Public Service Agents shall demonstrate integrity and respect all rules, values and established codes of conduct in the performance of their duties.
2. Public Service Agents shall not solicit, accept, or receive directly or indirectly any payment, gift, donation, or reward in kind or cash, for services rendered.
3. Public Service Agents shall on no account use their positions for political or personal gains. In all circumstances, they shall act with impartiality and loyalty.

Article 11

Incompatibilities and conflict of Interest

1. Public Service Agents shall not participate in making decisions or intervene in situations in which they have vested interests in order not to compromise their impartiality or cast doubt over the image of the administration.
2. States Parties shall clearly stipulate norms of incompatibility and conflicts of interest in national laws.

Article 13

Declaration of Assets

Public Service Agents shall declare their assets and income at the beginning, during and at the end of their service as prescribed in national laws and regulations.

CHAPTER IV

RIGHTS OF PUBLIC SERVICE AGENTS

Article 14

Equality of Public Service Agents

1. The Public Service and Administration shall promote equality among its agents.
2. Public Service and Administration shall not encourage or perpetuate discrimination based on origin, race, gender, disability, religion, ethnicity, political opinion or any other consideration.

Article 15

Freedom of Expression and Association

1. Public Service Agents shall have freedom of expression giving due consideration to their status as public servants.
2. Public Service Agents shall have the right to create or belong to associations, trade unions or any other group to promote and protect their rights in accordance with national laws.

3. Without prejudice to national laws, membership or non-membership in a political party shall, in no way affect the career of a public servant.
4. Public Service Agents shall have the right to engage in collective bargaining, or take industrial action having due regard to national laws and regulations.
5. Representatives of trade unions shall be protected against discriminatory practices and any form of punishment on account of their trade union activities.
6. Public Service and Administration shall promote an enabling environment which enhances dialogue and consultation.
7. Procedures and mechanisms to resolve disputes shall be clearly stipulated in national laws and regulations.

Article 16

Working Conditions

1. Public Service and Administration shall provide a working environment that guarantees the safety of its agents.
2. Public Service and Administration shall protect its agents against all forms of threats, insults, harassment or aggression.
3. Public Service and Administration shall protect its agents against all forms of sexual harassment in the performance of their duties.

Article 17 Remuneration

Public Service Agents shall have the right, within a coherent and harmonized pay system, to a just and equitable remuneration which corresponds to their qualifications, responsibilities, performance and tenure.

Article 18 Social Rights

Public Service Agents shall have the right to leave, social security and retirement benefits.

CHAPTER V MANAGEMENT AND DEVELOPMENT OF HUMAN RESOURCES

Article 19 Recruitment

1. Public Service and Administration shall endeavour to establish a human resource policy framework and plan for effective and efficient operation.
2. The recruitment of Public Service Agents shall be based on the principle of merit, equality and non-discrimination.
3. Without prejudice to any provision of this Charter, State Parties shall adopt legislative, executive and administrative measures that guarantee the right to employment of women, ethnic minorities, and people with disabilities, marginalised and vulnerable social groups.

4. State Parties shall adopt procedures for selection and recruitment into the Public Service and Administration that shall be based on principles of competition, merit, equity and transparency.

Article 20

Performance Management of Public Service Agents

1. State Parties shall institute a performance culture within the Public Service and Administration.
2. Public Service Agents shall undergo a process of performance management based on clear and measurable criteria.
3. State Parties shall carry out continuous monitoring and evaluation to assess the performance of Public Service Agents in order to determine their promotional requirements, development needs, levels of efficiency and productivity.

Article 21

Capacity Development

1. State Parties shall undertake a systematic, comprehensive and evidence-based capacity development programmes to strengthen the effectiveness and efficiency of Public Service and Administration.
2. State Parties shall collaborate with Management Development and Research Institutions as well as

leveraging knowledge networks to strengthen capacities of public service agents.

3. State Parties shall provide working tools and create conducive working environment for the application of new knowledge within the limits of available resources.
4. State Parties shall put in place mechanisms and processes for the exchange of expertise, knowledge, information, technology and best practices in capacity enhancement of Public Service and Administration.

Article 22

Mobility

1. Public Service and Administration shall adopt the principle of 'mobility' in the management of the career of its agents.
2. Mobility shall take into account the service requirements and needs of Public Service Agents.

CHAPTER VI

MECHANISMS FOR APPLICATION

Article 23

Mechanisms for Application

To give effect to the commitments contained in this Charter, the following actions shall be undertaken:

1. Individual State Party Level

State Parties commit themselves to implement the objectives, apply the principles and respect the commitments enshrined in this Charter as follows:

- a) State Parties shall adopt executive, legislative, and administrative instruments to align their national laws and regulations to this Charter;
- b) State Parties shall take all necessary measures to ensure broader dissemination of the Charter;
- c) State Parties shall demonstrate political will as a necessary condition for the achievement of objectives outlined in the Charter;
- d) State Parties shall integrate commitments, values and principles of the Charter in national policies and strategies;
- e) State Parties shall take the necessary steps to develop cooperation and share experiences in the area of public service and administration consistent with the objectives, values and principles of the Charter.

2. Commission Level

1. At Continental Level

With a view to ensuring and facilitating the implementation of this Charter, the Commission shall:

- a). Ensure that a Conference of State Parties is established.
- b). Develop guidelines on the implementation of the Charter in partnership with the Conference of State Parties.
- c). Establish, in consultation with the Conference of Parties, a Secretariat to coordinate and undertake the

implementation of duties, obligations and responsibilities enshrined in this Charter.

d). Facilitate the creation of conditions for good governance and the delivery of quality public services on the continent through the harmonisation of policies and laws of State Parties.

e). Assist State Parties to implement the Charter and coordinate the evaluation of its implementation.

f). Mobilise necessary resources to support State Parties to strengthen their capacity for the implementation of this Charter.

g). Establish the required mechanisms and create capacities for the implementation of this Charter.

h). Undertake periodic review of the Charter and make recommendations to the Policy Organs of the African Union.

2. At Regional Level

In accordance with their constitutive instruments, the RECs shall:

a) Encourage their Member States to ratify and implement this Charter;

b) Integrate and take into account the objectives, principles and values of this Charter in the drafting and adoption of their legal instruments.

Article 24 Reporting and Follow-Up Mechanisms

1. State Parties shall submit every two years, from the date the Charter comes into force, a report to the Commission on the legislative or other relevant measures taken with a view to giving effect to the principles and commitments of the Charter.
2. A copy of the report shall be submitted to the relevant organs of the African Union for appropriate action within their respective mandates.
3. The Commission shall prepare and submit to the Assembly, through the Executive Council and the Conference of States Parties a synthesized report on the implementation of the Charter.
4. The Assembly shall take appropriate measures aimed at addressing issues raised in the report.

Article 25

Recognition and Award System

1. State Parties shall institutionalize a transparent and impartial system for recognizing outstanding performance, creativity and innovation in Public Service and Administration.
2. The Conference of State Parties shall promote mechanisms to support activities for the improvement of Public Service and Administration.
3. The Commission shall promote innovative experiences and institute a system of awards for Innovation in Public Service and Administration.

CHAPTER VII

FINAL CLAUSES

Article 26 Cautionary Clauses

1. No clause contained herein shall affect more favourable legislation on public service and administration or better laws on rights and obligations contained in national legislation of State Parties or in other national, regional or international instruments.
2. In the event of a contradiction between two or more provisions of this Charter, the interpretation that shall prevail is that which favors the rights and legitimate interests of public service users.

Article 27 Interpretation

The African Court of Justice and Human Rights shall be seized with matters of interpretation arising from the application or implementation of this Charter. Pending the establishment of the Court, such matters shall be submitted to the Assembly.

Article 28 Settlement of Disputes

1. Any dispute or differences arising between the States Parties with regard to the interpretation or application of this Charter shall be settled amicably through direct consultations between the States Parties concerned. In the event of failure to settle the dispute or differences, either State may refer the dispute to the African Court of Justice and Human Rights.

2. Until such time as and when the latter shall have been established, the dispute or differences shall be submitted to the Conference of the States Parties, which will decide by consensus or, failing which, by a two-third (2/3) majority of the States Parties present and voting.

Article 29

Signature, Ratification and Accession

1. This Charter shall be open for signature, ratification and accession by all Member States, in accordance with their respective constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Chairperson of the Commission.

Article 30

Entry into Force

1. This Charter shall enter into force thirty (30) days after the deposit of the instruments of ratification by fifteen (15) Member States.
2. For each Member State that accedes to this Charter after its entry into force, the Charter shall become effective on the date the State deposits its instrument of accession with the Chairperson of the Commission.
3. The Chairperson of the Commission shall notify Member States of the entry into force of this Charter.

Article 31

Amendment and Revision

1. Any State Party may submit proposals for amendment or revision of this Charter;

2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission who shall transmit copies thereof to the State Parties within thirty (30) days following the date of receipt of such proposals.
3. The Assembly shall, on the recommendation of the Executive Council, consider such proposals within one (1) year following the notification of State Parties, in keeping with the provisions of paragraph 2 of this Article.
4. Amendments or revision shall be adopted by the Assembly and then submitted for ratification by all Member States in accordance with their respective constitutional procedures. Such amendments or revision shall become effective following the deposit of instruments of ratification by fifteen (15) States Parties.

Article 32 Depository

This Charter, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) texts being equally authentic, shall be deposited with the Chairperson of the Commission who shall transmit certified copies thereof to each signatory State and notify them of the dates of the deposit of the instruments of ratification or accession.

Article 33 Registration of the Charter

This Charter shall, after due ratification, be registered with the Secretariat of the United Nations through the Commission of the African Union in conformity with Article 102 of the Charter of the United Nations.

Article 34 Reservations

State Parties shall not make or enter reservations to this Charter that is incompatible with the object and purpose of this Charter.

**ADOPTED BY THE ORDINARY SESSION OF THE
ASSEMBLY, HELD IN,**



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

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Date: 26 September 2011

Mr. Themba James Maseko
Director-General
Department of Public Service and Administration
Private Bag 916
PRETORIA
0001

Dear Mr Maseko

**CHARTER ON VALUES AND PRINCIPLES OF PUBLIC SERVICE AND
ADMINISTRATION: YOUR ELECTRONIC MAIL DATED 27 MAY 2011**

1. We have scrutinised the draft "Charter on Values and Principles of Public Service and Administration" (the "Charter") in terms of paragraph 5.20(a) of the *Manual on Executive Acts of the President of the Republic of South Africa* and with reference to the *Constitutional Handbook for Members of the Executive*, the Constitution of the Republic of South Africa, 1996 (the "Constitution"), and other relevant legislation and applicable international instruments. We have not made

amendments to the Charter since it has been adopted and the Republic seeks only to ratify it.

Summary of Charter and Comments

Ad Preamble

2. The preamble emphasizes political commitment to strengthening professionalism and ethics of public service and also the promotion of values and principles of democracy, good governance, human rights and the right to development.

3. We bring to the attention of the Department the provisions of section 1 of the Constitution which provides for the values upon which the Republic of South Africa is based, which section provides as follows:

“The Republic of South Africa is one, sovereign, **democratic state** founded on the following values:

- (a) **Human dignity, the achievement of equality** and the advancement of **human rights** and freedoms.
- (b) Non-racialism and non sexism.
- (c) Supremacy of the constitution and the rule of law.
- (d) ...”

It is clear from the above that both the Constitution and the Charter have values such as democracy and human rights in common. Further that the Charter aims at achieving good governance which forms part of the rule of law which our Constitution has as its core value. The Preamble is in our opinion not only consistent with our domestic law but also based on the values enshrined in our Constitution.

Ad Article 1

4. Article 1 of the Charter defines certain terms and phrases that are used in the Charter. This Article is in our view in order.

Ad Article 2

5. This Article lays down the objectives of the Charter as follows:

- a. Promote the principles and values contained herein.
- b. Ensure quality and innovative service delivery that meets the requirements of all users.
- c. Encourage the efforts of Member States in modernising administration and strengthening capacity for the improvement of public service.
- d. Encourage citizens and users of Public services to actively and effectively participate in public administration processes.
- e. Promote the moral values inherent in the activities of Public Service Agents with a view to ensuring transparent service delivery.
- f. Improve the working conditions of Public Service Agents and ensure the protection of their rights.
- g. Encourage the harmonisation of policies and procedures related to Public Service and Administration among Member States with the aim of promoting regional and continental integration.

- h. Promote equality between men and women as well as equality within Public Service and Administration structures.
- i. Strengthen cooperation among Member States, Regional Economic Communities and the International Community for the improvement of public service and administration.
- j. Encourage the exchange of experiences and best practices in order to create a data base of information within the Member States.

The Charter has as its objective to encourage citizens and users of public services to actively and effectively participate in public administration processes. In our law, principles 3 and 6 of the ***Batho Pele Principles*** provide as follows:

“3. Increasing access

One of the prime aims of *Batho Pele* is to provide a framework for making decisions about delivering public services to the many South Africans who do not have access to them. *Batho Pele* also aims to rectify the inequalities in the distribution of existing services. Examples of initiatives by government to improve access to services include such platforms as the Gateway, Multi-Purpose Community Centres and Call Centres.

Access to information and services empowers citizens and creates value for money, quality services. It reduces unnecessary expenditure for the citizens.

6. Openness and transparency

A key aspect of openness and transparency is that the public should know more about the way national, provincial and local government institutions operate, how well they utilise the resources they consume, and who is in charge. It is anticipated that the public will take advantage of this principle

and make suggestions for improvement of service delivery mechanisms, and to even make government employees accountable and responsible by raising queries with them."

Both the Charter and the *Batho Pele* document aim at allowing the users of public service access to the service so that they can effectively participate in the public administration processes.

6. The Article also provides for the promotion of equality between men and women. Our Constitution provides for the right to equality in section 9(3) which provides as follows:

"(3) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth." (Our emphasis).

Both documents encourage gender equality. The long title to the **Public Service Act, 1994 (Act No. 103 of 1994)** provides as follows:

"To provide for the organisation and administration of the public service of the Republic, the regulation of the conditions of employment, **terms of office, discipline, retirement and discharge of members of the public service**, and matters connected therewith." (Our emphasis).

The long title to the Public Service Act complements Article 2(6) of the Charter. We are of the opinion that the Article is in order.

Ad Article 4

7. This Article deals with respect for human rights and legality. It provides that public service must be delivered in accordance with national laws, regulations

and policies. This Article enforces respect for the domestic law of member states, which means that public service in the Republic of South Africa, for example, must be rendered in accordance with laws such as the Public Service Act, Public Service Regulations and relevant policy documents. We are of the opinion that this Article is in order in that it promotes respect for domestic law.

Ad Article 5

8. This Article provides that State Parties shall entrench into their domestic law principles of equal access and non discrimination. These principles of non discrimination are enshrined in section 9(3) of our Constitution, as discussed above. This Article is in order.

Ad Article 6

9. The Article provides that Public Service and Administration shall make available to users information on procedures and formalities pertaining to public service. In our law access to information is constitutionalised. Section 32 of the Constitution provides as follows:

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

10. It is important to note that our law does not provide for an unlimited right of access to information. Certain information may be withheld or prohibited from being accessed by third parties. The right to access to information is enshrined in section 32 of our Constitution and the **Promotion of Access to information Act**,

2000 (Act No. 2 of 2000) ("PAIA") gives effect to this right by also indicating certain information that is protected from access.

11. PAIA makes a distinction between records in possession of a public body (Part 2) and those in possession of a private body (Part 3). Regarding public bodies, the following grounds are used for denying access to information and such information may not be granted by a public body:

- a. Personal information about a third party who is a natural person, including a deceased individual;
- b. information relating to certain records of South African Revenue Service;
- c. commercial information of third party;
- d. confidential information, and protection of certain other confidential information, of third party;
- e. safety of individuals, and protection of property;
- f. police dockets in bail proceedings, and protection of law enforcement and legal proceedings;
- g. records privileged from production in legal proceedings;
- h. security and international relations of Republic;
- i. economic interests and financial welfare of Republic and commercial activities of public bodies;
- j. protection of research information of third party, and protection of research information of public body;
- k. operations of public bodies; and
- l. manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources

12. The Article further provides that Public Service and Administration shall inform users of all decisions made concerning them, the reasons behind those

decisions, as well as mechanisms available for appeal. Our law makes provision for this process in section 33 of the Constitution which provides as follows:

"33. Just administrative action.—(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

(3) National legislation must be enacted to give effect to these rights, and must—

(a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;

(b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and

(c) promote an efficient administration."

13. Section 5 of the **Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)** ("PAJA") provides the following with regard to reasons for administrative action:

"5. Reasons for administrative action.—(1) Any person whose rights have been materially and adversely affected by administrative action and who has not been given reasons for the action may, within 90 days after the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action, request that the administrator concerned furnish written reasons for the action.

(2) The administrator to whom the request is made must, within 90 days after receiving the request, give that person adequate reasons in writing for the administrative action.

(3) If an administrator fails to furnish adequate reasons for an administrative action it must, subject to subsection (4) and in the absence of proof to the contrary, be presumed in any proceedings for judicial review that the administrative action was taken without good reason.

(4) (a) An administrator may depart from the requirement to furnish adequate reasons if it is reasonable and justifiable in the circumstances, and must forthwith inform the person making the request of such departure.

(b) In determining whether a departure as contemplated in paragraph (a) is reasonable and justifiable, an administrator must take into account all relevant factors, including—

- (i) the objects of the empowering provision;
- (ii) the nature, purpose and likely effect of the administrative action concerned;
- (iii) the nature and the extent of the departure;
- (iv) the relation between the departure and its purpose;
- (v) the importance of the purpose of the departure; and
- (vi) the need to promote an efficient administration and good governance.

(5) Where an administrator is empowered by any empowering provision to follow a procedure which is fair but different from the provisions of subsection (2), the administrator may act in accordance with that different procedure.

(6) (a) In order to promote an efficient administration, the Minister may, at the request of an administrator, by notice in the *Gazette* publish a list specifying any administrative action or a group or class of administrative actions in respect of which the administrator concerned will

automatically furnish reasons to a person whose rights are adversely affected by such actions, without such person having to request reasons in terms of this section.

(b) The Minister must, within 14 days after the receipt of a request referred to in paragraph (a) and at the cost of the relevant administrator, publish such list, as contemplated in that paragraph.”

Ad Article 7

14. This Article deals with efficient and quality service and states that public service shall be delivered in the most effective and efficient manner consistent with the highest possible standards. This Article is consistent with principle 8 of the *Batho Pele Principles* which provides as follows:

“8. Value for money

Many improvements that the public would like to see often require no additional resources and can sometimes even reduce costs. Failure to give a member of the public a simple, satisfactory explanation to an enquiry may for example, result in an incorrectly completed application form, which will cost time to rectify.”

Ad Article 8

15. This Article provides that Public Service and Administration shall facilitate the introduction of modern procedures and systems for delivery of services. It further states that Public Service and Administration shall simplify procedures and ease formalities related to access and delivery of service. This Article is in order.

CHAPTER III

CODE OF CONDUCT FOR PUBLIC SERVICE

Ad Article 9

16. The Article provides that Public Service Agents and Administration shall demonstrate professionalism, transparency and impartiality in performance of their duties. It further states that Public Service Agents shall show courtesy, integrity and neutrality in dealing with users.

Ad Article 10

17. This Article states that Public Service Agents shall demonstrate integrity and respect of rules and codes of conduct and also that they shall not solicit, accept or receive any payment for services rendered. They shall not use their positions for political or personal gain.

Ad Article 11

18. Article 11 deals with conflict of interest and it provides that State Parties shall stipulate norms of incompatibility and conflict of interest in their domestic laws. In our law the Public Service Act provides the following with regard to other remunerative work outside the public service:

"30. Other remunerative work by employees.—(1) No employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the relevant department, except with the written permission of the executive authority of the department.

(2) For the purposes of subsection (1) the executive authority shall at least take into account whether or not the outside work could reasonably be expected to interfere with or impede the effective or efficient performance of the employee's functions in the department or constitute a contravention of the code of conduct contemplated in section 41(1)(b)(v).

(3) (a) The executive authority shall decide whether or not to grant permission, contemplated in subsection (1), within 30 days after the receipt of the request from the employee in question.

(b) If the executive authority fails to make a decision within the 30 day period, it would be deemed that such permission was given."

It is clear that our domestic law does comply with the Charter in that section 30 of the Public Service Act seeks to deal with the situation where an employee of the Public Service gets remuneration outside public service and it states that such remunerative work must be conducted with written permission. This Article is in order.

Ad Article 12

19. State Parties are, in terms of this Article, encouraged to enact laws dealing with the fight against corruption. The **Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004)** provides as follows in its long title:

"To provide for the **strengthening of measures to prevent and combat corruption and corrupt activities; to provide for the offence of corruption and offences relating to corrupt activities**; to provide for investigative measures in respect of corruption and related corrupt activities; to provide for the establishment and endorsement of a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts; to place a duty on certain persons holding a position of authority to report certain corrupt

transactions; to provide for extraterritorial jurisdiction in respect of the offence of corruption and offences relating to corrupt activities; and to provide for matters connected therewith." (Our emphasis.).

The preamble to the same Act provides as follows;

"AND WHEREAS the United Nations has adopted various resolutions condemning all corrupt practices, and urged member states to take effective and concrete action to combat all forms of corruption and related corrupt practices;

AND WHEREAS the *Southern African Development Community Protocol against Corruption*, adopted on 14 August 2001 in Malawi, reaffirmed the need to eliminate the scourges of corruption through the adoption of effective preventive and deterrent measures and by strictly enforcing legislation against all types of corruption;

AND WHEREAS the Republic of South Africa desires to be in compliance with and to become Party to the *United Nations Convention against Corruption* adopted by the General Assembly of the United Nations on 31 October 2003;" (Our emphasis.).

It is clear that the Republic of South Africa regards the eradication of corruption as a priority, is a member of international bodies that prioritises the eradication of corruption, and is a signatory to international treaties and Protocols that deals with the eradication of corruption. This Article is in order.

Ad Article 13

20. This Article provides that Public Service Agents shall declare assets and income at the beginning and at the end of their service as prescribed in national legislation. This Article is in order.

CHAPTER IV RIGHTS OF PUBLIC SERVICE AGENTS

Ad Article 14

21. This Article discourages Public Service and Administration from practices that are discriminatory based on origin, race, gender, disability, ethnicity, political opinion or any other consideration. In our law this is covered under section 9 of the Constitution and national legislation in the form of **Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000)**, deals specifically with the issue of discrimination. Its preamble provides as follows:

"To give effect to section 9 read with item 23 (1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996, so as to prevent and prohibit unfair discrimination and harassment; to promote equality and eliminate unfair discrimination; to prevent and prohibit hate speech; and to provide for matters connected therewith."

Our domestic law is consistent with the provisions of Article 14 of the Charter and we are therefore of the opinion that this Article is in order.

Ad Article 15

22. The Article states that Public Service Agents shall have freedom of expression giving due consideration to their status as public servants. They shall also have a right to belong to associations and trade unions. Our domestic law has enshrined the rights raised in this Article. Freedom of expression is provided for in section 16 of the Constitution which provides as follows:

"16. Freedom of expression.—(1) Everyone has the right to freedom of expression, which includes—

- (a) freedom of the press and other media;
- (b) freedom to receive or impart information or ideas;
- (c) freedom of artistic creativity; and
- (d) academic freedom and freedom of scientific research.

(2) The right in subsection (1) does not extend to—

- (a) propaganda for war;
- (b) incitement of imminent violence; or
- (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm."

23. Labour rights are provided for in section 23 of the Constitution, which section provides as follows:

"23. Labour relations.—(1) Everyone has the right to fair labour practices.

(2) Every worker has the right—

- (a) to form and join a trade union;
- (b) to participate in the activities and programmes of a trade union; and
- (c) to strike.

(3) Every employer has the right—

- (a) to form and join an employers' organisation; and
- (b) to participate in the activities and programmes of an employers' organisation.

(4) Every trade union and every employers' organisation has the right—

- (a) to determine its own administration, programmes and activities;
- (b) to organise; and
- (c) to form and join a federation.

(5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36 (1).

(6) National legislation may recognise union security arrangements contained in collective agreements. To the extent that the legislation may limit a right in this Chapter, the limitation must comply with section 36 (1).” (Our emphasis.).

Section 5 of the **Labour Relations Act, 1995 (Act No. 66 of 1995)** (LRA) provides the following with regard to freedom of association in the workplace:

“4. Employees’ right to freedom of association.—(1) Every *employee* has the right—

- (a) to participate in forming a *trade union* or federation of *trade unions*; and
- (b) to join a *trade union*, subject to its constitution.

(2) Every member of a *trade union* has the right, subject to the constitution of that *trade union*—

- (a) to participate in its lawful activities;
- (b) to participate in the election of any of its *office-bearers, officials* or *trade union representatives*; and

- (c) to stand for election and be eligible for appointment as an *office-bearer* or *official* and, if elected or appointed, to hold office; and
- (d) to stand for election and be eligible for appointment as a *trade union representative* and, if elected or appointed, to carry out the functions of a *trade union representative* in terms of *this Act* or any *collective agreement*.

(3) Every member of a *trade union* that is a member of a federation of *trade unions* has the right, subject to the constitution of that federation—

- (a) to participate in its lawful activities;
- (b) to participate in the election of any of its *office-bearers* or *officials*; and
- (c) to stand for election and be eligible for appointment as an *office-bearer* or *official* and, if elected or appointed, to hold office.”.

24. We bring to the attention of the Department that the rights quoted above are not absolute and are subject to the limitation clause in section 36 of the Constitution, which section provides as follows:

“36. Limitation of rights.—(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

- (a) the nature of the right;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relation between the limitation and its purpose; and
- (e) less restrictive means to achieve the purpose.

(2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.”

Ad Article 16

25. The Article provides that the Public Service and Administration of State Parties shall provide a working environment that guarantees the safety of its agents and also that agents shall be protected from all forms of sexual harassment in performance of their duties. The Article is in order.

Ad Article 17

26. The Article guarantees the right of Public Service Agents to just and equitable remuneration which corresponds to their qualifications, responsibilities, performance and tenure. This Article is in order.

Ad Article 18

27. In terms of this Article, Public Service Agents shall have a right to leave, social security and retirement benefits. The Article is in order and is in line with our national legislation in relation to basic conditions of employment, pensions, etc.

The **Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997)** provides the following in its long title:

“To give effect to the right to fair labour practices referred to in section 23 (1) of the Constitution by establishing and **making provision for the regulation of basic conditions of employment**; and thereby to comply with the obligations of the Republic as a member state of the International Labour Organisation; and to provide for matters connected therewith.”
(Our emphasis.).

CHAPTER V

MANAGEMENT AND DEVELOPMENT OF HUMAN RESOURCES

Ad Article 19

28. The Article demands that recruitment of Public Service Agents must be based on merit, equality and non discrimination. The State Parties are urged to adopt legislative, executive and administrative measures that guarantee the right of employment of women, ethnic minorities and people with disabilities and marginalised and vulnerable social groups.

29. Section 2 of the **Employment Equity Act, 1998 (Act No. 55 of 1998)** provides as follows with regard to the purpose of the Act:

"2. Purpose of this Act.—The purpose of this Act is to achieve equity in the workplace by—

- (a) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
- (b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce."

It is important to note that "designated groups" under the Employment Equity Act is defined as follows:

"“designated groups” means black people, women and people with disabilities;"

30. We are therefore of the opinion that our domestic law, in the form of Employment Equity Act, does comply with the demands of the Charter in general and the Article in particular. Furthermore, the fact that a government department has been established in the Republic of South Africa with the specific responsibility of overseeing all processes and initiatives in relation to the promotion of women, children and people with disabilities, shows the commitment of this country towards the promotion of equal opportunities to these designated groups, as required by Article 19 of the Charter. We therefore deem this Article to be in order.

Ad Article 20

31. The Article provides that the performance management system of the Public Service and Administration shall be based on clear and measurable criteria and State Parties shall carry out continuous monitoring and evaluation to assess the performance of Public Service Agents. This Article is in order.

Ad Article 21

32. The Article requires State Parties to develop programmes to strengthen the effectiveness of Public Service and Administration, to collaborate with Management Development and Research Institutions in order to strengthen capacity of Public Service Agents and to provide working tools and create a conducive working environment for the application of new knowledge within the limits of available resources. This Article is in order.

Ad Article 22

33. The Article provides that Public Service and Administration shall adopt mobility in the management of career of its agents. This Article is in order.

CHAPTER VI

MECHANISMS FOR APPLICATION

Ad Article 23

34. This Article deals with commitments by State Parties, the Commission and the Regions. The Parties commit to implementing the Charter's objectives by adopting legislative measures in their respective territories and also by cooperating and sharing experience, knowledge, information and technology and best practices in capacity enhancement of Public Service and Administration.

The Article further states that at continental level, the Commission shall establish a conference of State Parties, implement duties, obligations and responsibilities enshrined in the Charter, assist State Parties in the implementation of the Charter, mobilise the necessary resources to support State Parties and undertake periodic review of the Charter.

35. At Regional level, the Charter provides that the REC's shall encourage Member States to ratify and implement the Charter and to integrate and take into account the objectives of the Charter in the drafting of their legal instruments. This Article is in order.

Ad Article 24

36. The Article requires the State Parties to submit, every two years, a report to the Commission on legislative and other measures taken with a view to giving effect to the Principles of the Charter. This Article is in order.

Ad Article 25

37. The Article provides for a transparent and impartial system of recognising outstanding performance in the Public Service and Administration, this practice shall take the form of awards. This Article is in order.

CHAPTER VII FINAL CLAUSES

Ad Article 26-34

38. These Articles are general articles of an international agreement and they conform to the generally accepted standards of international agreements. These Articles are, in our opinion, in order.

Ad General

39. The Department's attention is drawn to the provisions of section 231 of the Constitution which provides as follows:

"231.(1) The negotiating and signing of all international agreements is the responsibility of the national executive.

(2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).

(3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either

ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.

(4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

(5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect."

40. We now turn to the relevant provisions of section 231 of the Constitution which we have quoted in full above. The Department's attention is also brought to section 231(3) which deals with international agreements of a technical, administrative or executive nature.

41. Technical, administrative and executive agreements are agreements which—

- a. are departmental specific;
- b. have no major political or other significance; or
- c. have no financial consequences and do not affect domestic law.

These agreements flow from the everyday activities of government departments and are often drafted in a simplified form.

42. However, this Charter is neither technical nor administrative. Its contents are not specific to the Department only and it is of major significance to the

Republic. It, however, binds the Republic of South Africa only after it has been approved by resolution of both Houses of Parliament. Therefore, this Agreement falls within the scope of section 231(2) of the Constitution.

43. Subject to our foregoing remarks and the redrafted MOU, no provision of the Charter is, as far as we could ascertain, in conflict with the domestic law of the Republic of South Africa.

Yours sincerely



PHUTI SETATI / YOLANDE VAN ASWEGEN
For the CHIEF STATE LAW ADVISER



International relations & cooperation

**Department
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REPUBLIC OF SOUTH AFRICA**

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30/38
RO 373/2011

Mlulami Singapi
Route NAA13

DRAFT AFRICAN CHARTER ON VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION

1. Your request of 4 November 2011 for a legal opinion on the draft "African Charter on Values and Principles of Public Service and Administration" (hereinafter "the Charter") bears reference. You have requested that we comment on its compatibility with international law and South Africa's international obligations.
2. We have studied the Agreement and comment as follows:
 - 2.1 We have proposed some minor typographical amendments in ink directly on the text.
 - 2.2 We have noted that we have done an earlier opinion on the question of the authority of the Minister of DPSA to sign the Charter (Opinion No 132 of 13 May 2011). However, we have no record that the Charter has been certified by us in order to obtain Presidential approval by means of a Presidents Minute for the Minister to sign.
 - 2.3 We confirm that this agreement falls under Section 231(2) of the Constitution of the Republic of South Africa, and consequently that it must be approved by Parliament for South Africa to ratify it.
 - 2.4 Consequently, a distinction should be drawn between obtaining approval for the signature of the Charter and its ratification.
3. Approval for signature of the Charter:
 - 3.1 As regards the procedures for obtaining approval for signing of the Charter, Section 231(1) of the Constitution provides that the responsibility to negotiate and sign international agreements is that of the national executive, which, in terms of Section 85 of the Constitution, consists of the President, Deputy President and Cabinet. Authority for a

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member of the national executive to sign an international agreement is obtained by means of a President's Minute, to be signed by the President and the relevant Minister.

- 3.2 In order to facilitate this process, we await two copies of the President's Minute, an Explanatory Memorandum setting out the purpose of the Charter and the intended date of signature, and two copies of the finally agreed text of the Charter in folder Z137, in order for us to certify it. These documents must then be submitted to the Presidency for the President's approval.

4. Approval by Parliament for Ratification/Accession:

- 4.1 It should also be pointed out that it is not necessary for the Charter to be signed in order for it to be ratified/acceded to. Approval for ratification/accession must be obtained from Parliament: both the National Assembly and National Council of Provinces must approve it by resolution as provided for in Section 231(2).
- 4.2 As regards the distinction between ratification and accession, Article 30 provides that the first fifteen instruments to be deposited with the Chairperson of the AU Commission, will be instruments of ratification, and the Charter will enter into force 30 days after the depositing of fifteen instruments of ratification. After entry into force, States that wish to become party to it, will deposit instruments of accession.
- 4.3 Whether South Africa will ratify or accede, will not have an effect on the Parliamentary approval process. To obtain Parliamentary approval, the relevant line function Department (DPSA) must do a Cabinet Memorandum, for approval by Cabinet, after which Parliament must be approached through the Department's Parliamentary official to put the matter on the agenda of the National Assembly and the National Council of Provinces. Once approval has been obtained by means of a resolution of both Houses, DIRCO can draft an Instrument of Ratification/Accession and deposit it with the Chairperson of the AU Commission through the Embassy in Addis Ababa.
- 4.4 We enclose a booklet called "Practical Guide and Procedures for the Conclusion of Agreements" that provides in detail for the procedures to be followed.
5. We trust that the above remarks will be of assistance.

Andre Stemmet
SENIOR STATE LAW ADVISER (INTERNATIONAL LAW)

14 November 2011
PRETORIA



International relations & cooperation

Department
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File: 30/38

Ref: RO 132/2011

Attention: MF Rampola
Directorate: AU
Route: NAA203

DRAFT AFRICAN CHARTER ON THE VALUES AND PRINCIPLES OF PUBLIC SERVICE AND ADMINISTRATION

1. Your request for legal advice received on 11 May 2011, under reference Governance/AU/Public Service Charter, refers.
2. We have taken note of the fact that there are no comments made by the State Law Advisers at the Department of Justice and Constitutional Development in the form of a legal opinion as required by the process. We, therefore, request the line function Department to get the legal opinion from the Department of Justice and Constitutional Development as soon as possible.
3. The specific question on which advice is sought reads *"Dirco is hereby requested to urgently advise if the Minister of DPSS (or his representative, DG) should be granted permission to sign."* Please be advised of the provisions of Section 231(1) of the Constitution of the Republic of South Africa, 1996, which state that "the negotiating and signing of all international agreements is the responsibility of the national executive." This therefore means that the President of the Republic of South Africa as Head of the National Executive must, with the concurrence of the relevant Minister, approve the signing of the finally agreed upon text of the Charter on behalf of the Government of the Republic of South Africa. The President's approval needs to be obtained before the Charter can be signed. Only the Cabinet Minister or the Deputy President or the President (not the Director General or the Deputy Minister) can sign an international agreement like this Charter and there is a need for Presidential approval even if the President is the one who is going to sign. In order to obtain Presidential approval, the Charter has to be certified by this Office. The documentation required for certification consists of:
 - two copies of the President's Minute;
 - two copies of the Explanatory Memorandum setting out the purpose of the Charter and proposed date of signature;
 - two copies of the finally agreed upon text of the Charter;

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- two copies of the legal opinions from the State Law Advisers at the Department of Justice and Constitutional Development and this Office;
 - completed certification checklist (attached herewith); and
 - all documentation in folder Z137.
6. Subject to our comments, the aforementioned Charter is in our opinion consistent with international law and not in conflict with South Africa's international obligations.
 7. This Charter falls under the purview of section 231(2) of the Constitution which requires Parliamentary approval to be binding on the Republic. The approval in terms of Section 231(2) of the Constitution is a prerequisite for ratification.
 8. In order to facilitate the process of Parliamentary approval the line function department has to submit the signed Charter to Cabinet for consent by way of a Cabinet memorandum. This legal opinion and the legal opinion from the Department of Justice must accompany the Cabinet Memorandum. This Charter can only be submitted to Parliament for approval once Cabinet has consented to such submission.
 9. We trust that our comments will be of assistance to you.


Adv TE Joyini
PRINCIPAL STATE LAW ADVISER (IL)

13 May 2011
PRETORIA