

APRM COUNTRY REVIEW REPORT NO. 4

AFRICAN PEER REVIEW MECHANISM



COUNTRY REVIEW REPORT

REPUBLIC OF SOUTH AFRICA



MAY 2007

COUNTRIES PARTICIPATING IN THE AFRICAN PEER REVIEW MECHANISM (APRM) AND PANEL OF EMINENT PERSONS

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ACKNOWLEDGEMENTS

The APR Panel of Eminent Persons is proud to present the Country Review Report on South Africa. This Report is the fourth of its kind, and follows the reports on Ghana, Rwanda and Kenya.

It is commendable that although South Africa was the eighth country in which the review process was inaugurated, it is the fourth to reach this stage, thus overtaking some of its peers. The APR Panel therefore expresses its appreciation for the efforts South Africa has made to adhere to the recommended timelines for the country review process. In this respect, the APR Panel commends His Excellency President Thabo Mbeki, for his commitment to the New Partnership for Africa's Development (NEPAD) and APRM processes at both national and continental level. The APR Panel wishes to put on record its appreciation of President Mbeki's tireless commitment to promoting peace and security on the continent and the key role played by South Africa in hosting the NEPAD and APR Secretariats.

Prof. Adebayo Adedeji, Commander of the Order of the Federal Republic (CFR) of Nigeria, led the South African peer review process with the diligence and dedication that have distinguished his career to date. The high esteem with which he is regarded by many, both on the continent and internationally, facilitated the assembly of a team of personalities, each eminent in their own right and with enviable credentials and glowing track records, to undertake the review of South Africa. The team included Prof. Amos Sawyer, former President of the Interim Government of Liberia; Dr Babacar Ndiaye, former President of the African Development Bank (AfDB); Prof. Peter Anyang' Nyong'o, former Minister of Planning and National Development, Kenya; Prof. Mbaya Kankwenda, former United Nations Development Programme Resident Representative in many countries; and Professors Francis Chigunta, Julia Duany, Adebayo Ogunlesi and Roland Ubogu. The APR Panel acknowledges the invaluable contribution made by each of these distinguished persons.

The APR Panel also thanks the indefatigable South African APRM Focal Point and Chairperson of the South Africa APRM National Governing Council (NGC), Honourable Geraldine Fraser-Moleketi and her staff, as well as the members of the NGC, chairpersons and members of the APRM Provincial Governing Councils, community development workers and all stakeholders in South Africa for their tireless effort in ensuring such rapid progress in making preparations for the review process.

Special mention must also be made of the contribution made by designated strategic partners of the APRM: the AfDB, the UNDP's Regional Bureau for Africa, and the United Nations Economic Commission for Africa (UNECA), who have continued to provide support to the APRM in various ways since its inception. This support could not have been sustained without the personal commitment espoused by their respective heads: Messrs Donald Kaberuka, Gilbert Fossoun Hounbo and Abdoulie Janneh. Representatives of these institutions participated in the Country Review Mission (CRM) and made valuable contributions to the finalisation of the Report. In this regard, the APR Panel expresses its appreciation to Mr Charles Muthuthi (AfDB), Prof. Ahmed Mohiddin (UNDP), and Dr Bartholomew Armah, Dr Kojo Busia and Prof. Emmanuel Nnadozie, all of UNECA.

The APR Panel acknowledges the constant support provided by the APR Secretariat under the leadership of the Executive Director, Dr Bernard Kouassi. The following APR Secretariat staff provided backstopping assistance to the South African country review process and participated in the finalisation of the Report: Afeikhena Jerome, Evelynne Change, Nana Boateng, Eunice Kamwendo-Chintedza, Dalmar Jama, Ferdinand Katendeko, Rachel Mukamunana and Owusu Attah.

Finally, the APR Panel is grateful to all those who took the initiative in explaining and popularising the APRM in South Africa. In this respect, mention should be made of the role played by the South African media, non-governmental organisations and various civil society organisations. South Africa is indeed fortunate to have a vibrant civil society, which is fundamental to the functioning of a young democracy.

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POLITICAL MAP OF SOUTH AFRICA



Source: Statistics South Africa.

COUNTRY FACT SHEET

Location:	Southern Africa, at the southern tip of the African continent. Border countries: Botswana 1840 km, Lesotho 909 km, Mozambique 491 km, Namibia 967 km, Swaziland 430 km, Zimbabwe 225 km	
Area:	Total: 1 219 912 sq. km Land: 1 219 912 sq. km	
Population:	47 370 900 (July 2006 estimate) Female (51 per cent); male (49 per cent) African 79.5 per cent; white 9.2 per cent; coloured 8.8 per cent; Indian/Asian 2.5 per cent	
Capitals:	Cape Town (legislative); Pretoria (administrative) and Bloemfontein (judicial)	
Land use:	Arable land: 12.1 per cent; permanent crops: 0.79 per cent; others: 87.11 per cent (2005)	
Independence:	31 May 1910 (from the United Kingdom); South Africa became a republic in 1961 following a referendum in October 1960.	
Constitution:	10 December 1996; certified by the Constitutional Court on 4 December 1996; signed by the then President Nelson Mandela on 10 December 1996; entered into force on 3 February 1997.	
Legal system:	Based on Roman-Dutch law and the 1996 Constitution.	
Political governance:	Elections: The President is elected by the National Assembly for a five-year term and is eligible for a second term. Elections were last held on 24 April 2004; the next one is to be held in April 2009. Head of State: President Thabo Mbeki, elected first in 1999 and re-elected in 2004.	
Electoral system:	List system with proportional representation based on universal adult suffrage.	
Macroeconomic indicators:	Total GDP:	R1560 billion at current prices (2005/06)
	GDP per capita:	R33.253 at current prices (2005/06)
	Real GDP growth:	4.9 per cent (2005/06)
	Inflation Consumer Price Index:	4 per cent annual average (2005/06)
	Unemployment rate:	26.7 per cent in September 2005
	Budget deficit:	0.5 per cent of GDP (2005/06)

Trade:	<p><i>Main imports:</i> Machinery, transport equipment, manufactured goods, chemicals, oil</p> <p><i>Main exports:</i> Gold, diamond, metal, metal products, foods, pulp, paper</p> <p><i>Major export partners:</i> UK 10.9 per cent, USA 9.3 per cent, Japan 8.5 per cent, Germany 6.4 per cent, China 5.3 per cent, Italy 4.5 per cent (2005)</p> <p><i>Major import partners:</i> Germany 15.2 per cent, USA 7.1 per cent, UK 7 per cent, China 7 per cent, Saudi Arabia 6 per cent, Japan 6 per cent, Iran 5.4 per cent and France 4.4 per cent (2005)</p>
External debt:	US\$53.091 million (Q1/2006)
Exchange rate:	Rand per US\$ = 7.51 (October 2006); 6.3593 (2005); 6.4597 (2004); 7.5648 (2003); 10.5407 (2002); 8.6092 (2001)

Sources: Statistics South Africa and South African Reserve Bank.

SOCIAL INDICATORS

Human Development Index	0.653 (2004)
Human Development Index ranking	121/177 (2004)
Life expectancy at birth	47 years (2004)
Adult literacy rate (percentage for 15 years and above)	82.4 per cent (2004)
Gross enrolment rate (combined)	77 (2004)
Population with sustained access to improved water source	88 per cent (2004)
Total births per woman (2000-2005)	2.8 children (2005)
Health expenditure (percentage of GDP)	5.2 per cent (2003)
HIV prevalence (percentage for 15 to 49 years of age)	18.8 per cent (2005)
Infant mortality rate (per 1000 live births)	53 (2003)
Under 5 infant mortality rate (per 1000 live births)	67 (2004)
Maternal mortality rate (per 100 000 live births)	150 (2004)

Source: UNDP Human Development Report, 2006. *Beyond Scarcity: Power, Poverty and the Global Water Crisis*. New York: United Nations Development Programme.

PROVINCIAL STATISTICAL DATA

Province and Capital	Population (Mid-Year estimate 2006)	Area (Square Km)	GDP per Region and as a % of Total National GDP (2004)	Per Capita GDP	Unemployment Rate (% 2005)	% of Persons Attending an Educational Institution between 7 and 15 years (2005)	% Persons Benefiting from Social Welfare (12 months prior to survey) (2005)	% of Households Connected to the Main Electricity Supply (2005)	% of Households with Piped Water (2005)
Western Cape <i>Cape Town</i>	4 745 500 (10.0%)	129 370 (10.6%)	R119.41 bn (14.4%)	R42 884	18.9	98.2	10.9	99.2	92.0
Eastern Cape <i>Bisho</i>	7 051 500 (14.6%)	169 580 (13.9%)	R112.91 bn (8.1%)	R16 038	29.9	97.4	18.3	66.7	41.6
KwaZulu-Natal <i>Ulundi/ Pietermaritzburg</i>	9 731 800 (20.5%)	92 100 (7.6%)	R231.62 bn (16.7%)	R24 004	32.8	97.7	15.4	72.3	62.1
Northern Cape <i>Kimberley</i>	910 100 (1.9%)	361 830 (29.7%)	R30.09 bn (2.2%)	R33 430	24.7	96.3	12.3	88.3	86.8
Free State <i>Bloemfontein</i>	2 958 800 (6.2%)	129 480 (10.6%)	R75.89 bn (5.5%)	R25 704	30.2	97.5	14.0	88.7	88.7
North-West <i>Mafikeng</i>	3 858 200 (8.1%)	116 320 (9.5%)	R87.13 bn (6.3%)	R16 523	27.4	97.6	13.5	84.6	60.5
Gauteng <i>Johannesburg</i>	9 211 200 (19.4%)	17 010 (1.4%)	R462.04 bn (33.3%)	R51 224	22.8	98.5	7.6	82.7	89.1
Mpumalanga <i>Nelspruit</i>	3 252 500 (6.9%)	79 490 (6.5%)	R94.45 bn (6.8%)	R29 332	26.9	97.8	16.2	82.1	67.1
Limpopo <i>Polokwane</i>	5 670 800 (12.0%)	123 910 (10.2%)	R93.19 bn (6.7%)	R16 523	30.1	99.0	18.6	82.4	36.4

Source: Compiled from data provided by Statistics South Africa.

ABBREVIATIONS AND ACRONYMS

ABEHE	Association for Black Empowerment in Higher Education
ABET	Adult Basic Education and Training
ACHPR	African Charter on Human and People's Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AfDB	African Development Bank
AGM	Annual General Meeting
AICC	African Institute of Corporate Citizenship
AIDS	Acquired Immune Deficiency Syndrome
AltX	Alternative Exchange
ANC	African National Congress
APA	Auditing Profession Act
APR	African Peer Review
APRM	African Peer Review Mechanism
ASB	Accounting Standards Board
ASEAN	Association of Southeast Asian Nations
AsgiSA	Accelerated and Shared Growth Initiative for South Africa
AU	African Union
B-BBEE	Broad-Based Black Economic Empowerment
BEE	Black Economic Empowerment
BER	Bureau for Economic Research
BESA	Bond Exchange of South Africa
BPI	Bribe Payers Index
BUSA	Business Unity South Africa
CA	Chartered Accountant
CAFCOM	Consumer Affairs Committee
CAFSA	Charities AIDS Foundation Southern Africa
CBO	Community-Based Organisation
CCBG	Committee of Central Bank Governors
CCMA	Commission for Conciliation, Mediation and Arbitration
CDW	Community Development Worker
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEO	Chief Executive Officer
CFR	Commander of the Order of the Federal Republic (Nigeria)
CIPRO	Companies and Intellectual Property Registration Office
CMA	Common Monetary Area
CODESA	Convention for a Democratic South Africa
COSATU	Congress of South African Trade Unions
CPI	Consumer Price Index
CPIX	Consumer Price Index excluding interest rates on mortgage bonds
CPPP	Community Public-Private Partnership

CRM	Country Review Mission
CSAR	Country Self-Assessment Report
CSI	Corporate Social Investment
CSM	Country Support Mission
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
CSSDCA	Conference on Security, Stability, Development and Cooperation in Africa
DBSA	Development Bank of Southern Africa
DCM	Development Capital Market
DEAT	Department of Environment and Tourism
DFI	Development Finance Institution
DPLG	Department of Provincial and Local Government
DPSA	Department of Public Service and Administration
DTI	Department of Trade and Industry
EASSy	Eastern Africa Submarine Cable System
ECA	Environment Conservation Act
ECSAFA	Eastern, Central and Southern African Federation of Accountants
ECOSOCC	Economic, Social and Cultural Council
EEA	Employment Equity Act
EIA	Environmental Impact Assessment
EPWP	Expanded Public Works Programme
ESAAMLG	Eastern and Southern African Anti-Money Laundering Group
EU	European Union
FATF	Financial Action Task Force
FBO	Faith-Based Organisation
FDI	Foreign Direct Investment
FET	Further Education and Training
FFC	Financial and Fiscal Commission
FICA	Financial Intelligence Centre Act
FIFA	Fédération Internationale de Football Association
FRC	Financial Reporting Council
FSB	Financial Services Board
GAAP	Generally Accepted Accounting Principles
GAMAP	Generally Accepted Municipal Accounting Practice
GCIS	Government Communication and Information System
GDDS	General Data Dissemination Standards
GDP	Gross Domestic Product
GEAR	Growth, Employment and Redistribution
GIR	Gross International Reserves
GNI	Gross National Income
GRAP	Generally Recognised Accounting Practice
GRI	Global Reporting Initiative
HIV	Human Immunodeficiency Virus

HSGIC	Heads of State and Government Implementation Committee
HSRC	Human Sciences Research Council
IAIS	International Association of Insurance Supervisors
IAS	International Accounting Standards
IASB	International Accounting Standards Board
ICD	Independent Complaints Directorate
ICT	Information and Communication Technology
IDASA	Institute for Democracy in South Africa
IDC	Industrial Development Corporation
IDP	Integrated Development Planning
IEC	Independent Electoral Commission
IERI	Institute for Economic Research on Innovation
IFP	Inkatha Freedom Party
IFRS	International Financial Reporting Standards
IJR	Institute for Justice and Reconciliation
IKS	Indigenous Knowledge System
ILO	International Labour Organisation
IMF	International Monetary Fund
IMFO	Institute for Municipal Finance Officers
IoD	Institute of Directors
IOSCO	International Organisation of Securities Commissions
IPO	Initial Public Offering
IRBA	Independent Regulatory Board of Auditors
JIPSA	Joint Initiative on Priority Skills Acquisition
JSC	Judicial Services Commission
JSE	JSE Securities Exchange (formerly the Johannesburg Stock Exchange)
LGBTIs	Lesbian, Gay, Bisexual, Trans-gendered and Inter-sex People
MCB	Ministerial Committee on the Budget
MDG	Millennium Development Goal
MEC	Member of the Executive Council
MFMA	Municipal Finance Management Act
MINMEC	Ministers and Members of the Executive Councils of Provinces
MNC	Multinational Company
MOU	Memorandum of Understanding
MPC	Monetary Policy Committee
MPCC	Multi-Purpose Community Centre
MPs	Members of Parliament
MRC	Medical Research Council of South Africa
MTEC	Medium-Term Expenditure Committee
MTEF	Medium-Term Expenditure Framework
NACTU	National Council of Trade Unions
NAMAC	National Manufacturing Advice Centre
NBI	National Business Initiative
NCOP	National Council of Provinces

NCPS	National Crime Prevention Strategy
NDA	National Development Agency
NEDLAC	National Economic Development and Labour Council
NEF	National Empowerment Fund
NEMA	National Environmental Management Act
NEPAD	New Partnership for Africa's Development
NGC	National Governing Council
NGO	Non-Governmental Organisation
NISSC	National Intersectoral Steering Committee
NP	National Party
NPA	National Prosecuting Authority
NPOA	National Programme of Action
NPS	National Payment System
NSDP	National Spatial Development Perspective
NSF	National Skills Fund
NWC	National Women's Coalition
OAU	Organisation of African Unity
ODAC	Open Democracy Advice Centre
OECD	Organisation for Economic Cooperation and Development
ORC	Office on the Rights of the Child
OSCI	Objectives, Standards, Criteria and Indicators (of the APRM)
OSW	Office in the Presidency on the Status of Women
PAAB	Public Accountants' and Auditors' Board
PAC	Pan Africanist Congress of Azania
PAIA	Promotion of Access to Information Act
PES	Provincial Equitable Share
PFMA	Public Finance Management Act
PGA	Professional Golfers Association of America
PGC	Provincial Governing Council
PGDS	Provincial Growth and Development Strategy
PMDS	Performance Management Development Systems
POCA	Prevention of Organised Crime Act
PPP	Public-Private Partnership
PSC	Public Service Commission
PTA	Parent-Teacher Association
RDP	Reconstruction and Development Programme
RISDP	Regional Indicative Strategic Development Plan
ROSC	Report on the Observance of Standards and Codes
SACC	South African Council of Churches
SACP	South African Communist Party
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAFEX	South African Futures Exchange
SAGDA	South African Graduate Development Association

SAHRC	South African Human Rights Commission
SAICA	South African Institute of Chartered Accountants
SAIIA	South African Institute for International Affairs
SAMDI	South African Management Development Institute
SAMOS	South African Multiple Option Settlement
SANCO	South African National Civic Organisation
SANGOCO	South African National NGO Coalition
SAPS	South African Police Service
SARB	South African Reserve Bank
SARPN	Southern African Regional Poverty Network
SARS	South African Revenue Service
SASCO	South African Students Congress
SASIX	South African Social Investment Exchange
SATAWU	South African Transport and Allied Workers Union
SAYC	South African Youth Council
SCOPA	Standing Committee on Public Accounts
SDI	Spatial Development Initiative
SEC	Securities and Exchange Commission
SEDA	Small Enterprise Development Agency
SETA	Sector Education and Training Authority
SME	Small and Medium Enterprise
SMME	Small, Medium and Micro-Enterprise
SOE	State-Owned Enterprise
SRI	Socially Responsible Investment
SRP	Securities Regulation Panel
SSA	Securities Services Act
StatsSA	Statistics South Africa
STD	Sexually Transmitted Disease
STRATE	Share Transactions Totally Electronic
TBL	Triple Bottom Line
TDCA	Trade, Development and Cooperation Agreement
TEUP	Thuthuka Education Upliftment Project
TRC	Truth and Reconciliation Commission
TSA	Technical Support Agency
UK	United Kingdom
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV and AIDS
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
USA	United States of America
VCM	Venture Capital Market
WHO	World Health Organisation
WSSD	World Summit on Sustainable Development
WTO	World Trade Organisation

SOUTH AFRICAN ACTS REFERRED TO

Adult Basic Education and Training Act, Act 52 of 2000
Auditing Profession Act, Act 26 of 2005
Bantu Authorities Act, Act 68 of 1951
Basic Conditions of Employment Act, Act 75 of 1997
Basic Conditions of Employment Amendment Act, Act 11 of 2002
Biodiversity Act (see National Environmental Management)
Broad-Based Black Economic Empowerment Act, Act 53 of 2003
Choice on Termination of Pregnancy Act, Act 92 of 1996
Choice on Termination of Pregnancy Amendment Act, Act 38 of 2004
Close Corporations Act, Act 69 of 1984
Close Corporations Amendment Act, Act 25 of 2005
Collective Investment Schemes Act, Act 45 of 2002
Commission on Gender Equality Act, Act 39 of 1996
Communal Land Rights Act, Act 11 of 2004
Companies Act, Act 61 of 1973
Companies Amendment Act, Act 20 of 2004
Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993
Competition Act, Act 89 of 1998
Competition Amendment Act, Act 35 of 1999
Conciliation Act, Act 28 of 1956
Constitution of the Republic of South Africa, Act 108 of 1996
Consumer Protection Bill
Cooperatives Act, Act 14 of 2005
Credit Agreements Act, Act 75 of 1980
Criminal Law Amendment Act, Act 105 of 1997
Criminal Procedure Second Amendment Act, Act 62 of 2001
Development Land and Trust Act, Act 18 of 1936
Domestic Violence Act, Act 116 of 1998
Employment Equity Act, Act 55 of 1998
Environment Conservation Act, Act 73 of 1989
Environment Conservation Amendment Act, Act 50 of 2003
Executive Members' Ethics Act, Act 82 of 1998
Financial Intelligence Centre Act, Act 38 of 2001
Foreign Military Assistance Act, Act 15 of 1998
Further Education and Training Act, Act 98 of 1998
Insider Trading Act, Act 135 of 1998
Insolvency Act, Act 24 of 1936
Insolvency Amendment Act, Act 33 of 2002
Intellectual Property Laws Rationalisation Act, Act 107 of 1996
Judicial Service Commission Act, Act 9 of 1994
Labour Relations Act, Act 28 of 1956
Labour Relations Act, Act 66 of 1995
Labour Relations Amendment Act, Act 12 of 2002

Local Government: Municipal Electoral Act, Act 27 of 2000
 Local Government: Municipal Finance Management Act, Act 56 of 2003
 Local Government: Municipal Structures Act, Act 117 of 1998
 Local Government: Municipal Structures Amendment Act, Act 33 of 2000
 Local Government: Municipal Systems Act, Act 32 of 2000
 Local Government: Municipal Systems Amendment Act, Act 44 of 2003
 Long-Term Insurance Act, Act 52 of 1998
 Maintenance Act, Act 99 of 1998
 Mine Health and Safety Act, Act 29 of 1996
 Municipal Electoral Act (see Local Government
 Municipal Finance Management Act (see Local Government)
 Municipal Structures Act (see Local Government)
 Municipal Systems Act (see Local Government
 National Credit Act, Act 34 of 2005
 National Environmental Management Act, Act 107 of 1998
 National Environmental Management: Biodiversity Act, Act 10 of 2004
 National Environmental Management: Protected Areas Act, Act 57 of 2003
 National Environmental Management: Protected Areas Amendment Act, Act 31 of 2004
 National Health Act, Act 61 of 2003
 National Land Transport Transition Act, Act 22 of 2000
 National Land Transport Transition Amendment Act, Act 31 of 2001
 Occupational Health and Safety Act, Act 85 of 1993
 Powers, Privileges and Immunities of Parliaments and Provincial Legislatures Act, Act 4 of 2004
 Prevention and Combating of Corrupt Activities Act, Act 12 of 2004
 Prevention of Organised Crime Act, Act 121 of 1998
 Promotion of Access to Information Act, Act 2 of 2000
 Promotion of Access to Information Amendment Act, Act 54 of 2002
 Promotion of Administrative Justice Act, Act 3 of 2000
 Promotion of Equality and Prevention of Unfair Discrimination Act, Act 4 of 2000
 Protected Areas Act (see National Environmental Management)
 Protected Disclosures Act, Act 26 of 2000
 Protection of Constitutional Democracy Against Terrorism and Related Activities Act, Act 33 of 2004
 Public Finance Management Act, Act 1 of 1999
 Public Finance Management Amendment Act, Act 29 of 1999
 Public Funding of Represented Political Parties Act, Act 103 of 1997
 Public Protector Act, Act 23 of 1994
 Public Protector Amendment Act, Act 22 of 2003
 Public Service Act, Act 103 of 1994
 Public Service Amendment Act, Act 13 of 1996
 Public Service Laws Amendment Act, Act 47 of 1997
 Public Service Laws Amendment Act, Act 86 of 1998
 Recognition of Customary Marriages Act, Act 120 of 1998
 Refugees Act, Act 130 of 1998
 Securities Services Act, Act 36 of 2004

Sexual Offences Act, Act 23 of 1957
Short-Term Insurance Act, Act 53 of 1998
Skills Development Act, Act 97 of 1998
Skills Development Amendment Act, Act 31 of 2003
South Africa Act of 1909
South African Schools Act, Act 84 of 1996
South African Banks Act, Act 94 of 1990
South African Citizenship Act, Act 88 of 1995
South African Citizenship Amendment Act, Act 17 of 2004
South African Reserve Bank Act, Act 90 of 1989
South African Reserve Bank Amendment Act, Act 39 of 1997
South African Revenue Service Act, Act 34 of 1997
South African Revenue Service Amendment Act, Act 46 of 2002
Traditional Leadership and Governance Framework Act, Act 41 of 2003
Unemployment Insurance Act, Act 63 of 2001
Witness Protection Act, Act 112 of 1998

EXECUTIVE SUMMARY

1. THE APRM PROCESS

1.1 The Evolution of the APRM Process

- 1.1 In recognition of the imperatives of good governance for development, the Sixth Summit of the Heads of State and Government Implementation Committee (HSGIC) of the New Partnership for Africa's Development (NEPAD), held in March 2003 in Abuja, Nigeria, adopted the Memorandum of Understanding (MOU) on the African Peer Review Mechanism (APRM). The Mechanism, which is turning out to be the most innovative aspect of NEPAD, is an instrument voluntarily acceded to by member states of the African Union (AU) as a self-monitoring initiative for good governance.
- 1.2 The mandate of the APRM is to ensure that the policies and practices of participating countries conform to the values, principles, codes and standards enshrined in the Declaration on Democracy, Political, Economic and Corporate Governance. This commonly agreed-to instrument for self-monitoring has at its epicentre the dissemination of best practices and the rectification of underlying deficiencies in governance and socio-economic development processes among AU member states. The framework is aimed at encouraging and building responsible leadership through a self-assessment process, constructive peer dialogue, and sharing of information and common experiences in order to reinforce successful and exemplary practices among African countries.
- 1.3 The APRM is open to all AU member states. Currently, 26 countries have voluntarily acceded to it, representing 652.7 million (about 74 per cent) of the total African population of 886.0 million. Accession entails undertaking to submit to periodic peer reviews and to facilitate such reviews. It includes commitment to implementing the National Programme of Action (NPOA) arising from the peer review, and operationalising the agreed parameters for good governance across the four thematic areas.
- 1.4 Since its inception in 2003, the APR Panel has launched reviews in 13 countries¹ and peer reviews have been finalised for three of these countries (Ghana, Kenya and Rwanda). South Africa and Algeria are the fourth and fifth countries respectively to field a Country Review Mission (CRM).

1.2 South Africa and the APRM

- 1.5 South Africa was one of the first countries to accede to the APRM in March 2003 in Abuja, Nigeria. Subsequently, the country appointed Hon. Geraldine

¹ These are: Algeria, Benin, Burkina Faso, Ghana, Kenya, Lesotho, Mauritius, Mozambique, Nigeria, Rwanda, South Africa, Tanzania and Uganda.

Fraser-Moleketi, the Minister for Public Service and Administration, as the National Focal Point to map out a strategy for managing the APRM process in South Africa.

- 1.6 The APRM National Governing Council (NGC) organised a number of workshops and sensitisation activities to create awareness and outline modalities for participation. This preparatory process for the official launch of the review came to a climax when the first-ever National Consultative Conference on the APRM was held in Gauteng on 28-29 September 2005. About 350 delegates comprising representatives from a cross-section of South Africa's stakeholders and civil society organisations (CSOs) attended. His Excellency President Thabo Mbeki inaugurated a 15-member NGC comprising state and non-state representatives to preside over the APRM process in South Africa.
- 1.7 Several innovations that characterised the official launch of the APRM in South Africa are noteworthy. They included the establishment of Provincial Governing Councils (PGCs) in all of the country's nine provinces, simplification of the questionnaire and its translation into the country's 11 official languages, as well as a wide media and information dissemination strategy that included road shows, newsletters, call-ins and the dedication of a song to the APRM.
- 1.8 An APRM Country Support Mission (CSM) visited South Africa between November and December 2005 to assess the processes and mechanisms established to undertake the country's self-assessment and draft NPOA. One of the key outcomes of the CSM was the expansion of the NGC from 15 members to 29.
- 1.9 In preparation for the self-assessment exercise, the NGC established a research subcommittee comprising seven of its members. In addition, the NGC selected four technical support agencies to facilitate analysis of the self-assessment submissions. The Human Sciences Research Council (HSRC) and the Auditor-General were charged with quality control.
- 1.10 Following the preparation of the draft Country Self-Assessment Report (CSAR), South Africa organised a series of seminars to discuss it. Validation workshops were subsequently held at national and provincial levels.
- 1.11 South Africa submitted its final CSAR and draft NPOA to the APR Secretariat in June 2006 and this paved the way for the fielding of the CRM. In the interim, the APR Secretariat, in consultation with partner institutions, had also prepared background papers on South Africa in the four assessment areas. The three documents – the CSAR, draft NPOA and background papers – were used to develop an Issues Paper.
- 1.12 The CRM was fielded in the period 9-25 July 2006. Its main purpose was to explore further the salient issues identified in the Issues Paper and the CSAR, and to discuss the draft NPOA.

1.3 Country Review Mission

- 1.13 The CRM was led by Prof. Adebayo Adedeji, Commander of the Order of the Federal Republic (CFR) of Nigeria, and comprised 22 members from 13 African nationalities. It included selected high-level, independent experts in the four APRM thematic areas, experts from the strategic partner institutions – African Development Bank (AfDB), United Nations Economic Commission for Africa (UNECA) and United Nations Development Programme (UNDP) – as well as officials of the APR Secretariat.
- 1.14 The CRM formally began its work on 12 July 2006, with a launch attended by His Excellency President Thabo Mbeki. Thereafter, the CRM interacted with various stakeholders, including the NGC, PGCs, Cabinet Ministers, members of the Executive Councils (MECs), CSOs such as trade unions, women's groups, youth groups, faith-based organisations (FBOs), non-governmental organisations (NGOs), media, academia and political parties. It also held meetings with key government departments, the Auditor-General, South African Reserve Bank (SARB) and the JSE Securities Exchange (JSE).
- 1.15 The CRM further undertook visits to seven of South Africa's provinces, including a site visit of Lindela Repatriation Centre. As the CSM had already visited two provinces in December 2005, all nine provinces of South Africa were therefore duly covered.
- 1.16 The visits and interaction with various stakeholders furnished the CRM with a good understanding of South Africa's performance in the four thematic areas of the APRM. Stakeholders were encouraged to propose viable solutions to the challenges identified, so as to foster and strengthen good governance and sustainable development in the country.

2. THE TRANSITION TO DEMOCRATIC SOUTH AFRICA: AN OVERVIEW

- 2.1 Following the un-banning of the African National Congress (ANC) and the release of Nelson Mandela from prison in February 1990, several events took place that culminated in the first non-racial democratic elections in South Africa in 1994. Consequently, the institutionalised system of racism gave way to majority rule and a system of governance that is non-racial, non-sexist, democratic and fully committed to human rights and human security. Not only has South Africa undergone a profound political transition, but it has also achieved a near miracle in re-energising the inherited apartheid economy that had been badly hurt by sanctions, declining growth rates, a heavy debt burden and perennial economic instability.
- 2.2 The democratisation of the country that began in the early 1990s has been accompanied by a mixture of political and economic stability, due largely to the popular legitimacy of the government, prudent macroeconomic management and a supportive international environment. From a human

security perspective, the government's success in meeting the basic needs of the people – education, healthcare, piped water, electricity and housing – is unprecedented. No nation has moved with such speed from being for years a pariah state to becoming a much renowned one; from economic isolation to economic integration with the international community; and from being a global polecat to becoming the global favourite. Indeed, the successful bid to host the FIFA World Cup Soccer event in 2010, the first time on African soil, is testimony to the positive light in which the rest of the world views post-apartheid South Africa. Moreover, in October 2006 the UN General Assembly elected South Africa, together with Belgium, Indonesia and Italy, to serve as non-permanent members of the Security Council for two-year terms starting from 1 January 2007.

- 2.3 It must be acknowledged, however, that contemporary South Africa remains a country of imbalances, disparities, distortions and a number of paradoxes. The legacy of apartheid continues to manifest itself in many fields of human and social endeavour. For example, despite the impressive gains achieved in stabilising the economy and the higher rates of economic growth that have been consistently realised since 1994, the economy still manifests imbalances between the rates of savings and investment; between exports and imports, thus becoming heavily dependent on imports for consumption purposes; between economic diversification and self-reliance on the one hand and monoculturalism on the other; and between the wealth and quality of life of the people in South Africa's "first economy" and the poverty and lack of economic empowerment of people living in the "second economy". High levels of structural unemployment have brought into focus the lack of balance between people's socio-economic rights and their day-to-day reality.
- 2.4 There are many paradoxes as well, first and foremost being the vicious twist of fate that, just as the country's first multiracial government was being put in place to redress the evils of apartheid, the HIV pandemic was reaching a critical mass. Ever since, the severity of the epidemic continues to impose a drag on poverty alleviation and puts at risk the virility of emerging South Africa. Indeed, there is widespread demand by stakeholders for the imperative of focusing more strongly, under the leadership of the government, on confronting the challenge posed by HIV and AIDS.
- 2.5 South Africa's 1996 Constitution, which has received universal acclaim, is being challenged. Race relations remain brittle and sensitive in places, as minorities fear that the government is not doing enough to assure the cultural, educational and language rights guaranteed by the Constitution. The Truth and Reconciliation Commission (TRC) of 1996-2003 was intended to free the country from the accumulated pain spanning three centuries and to fashion innovative ways of managing diversity, yet many people felt let down and disappointed by the outcome, especially in the implementation of its findings. Managing diversities is indeed a challenge that must be accorded priority. There is an asymmetry between legislation and implementation, and between policy formulation and operationalising such policies.

- 2.6 These imbalances and paradoxes are merely illustrative. There are many more in all sectors, all signifying the tremendous challenges that still lie ahead. Fortunately, the achievement over the past 16 years (1990-2006) shows that the people of South Africa and their government are non-conformists and are strongly committed to transformation. If the analyses in this Report throw some light on these imbalances and paradoxes, and stakeholders led by the government implement the recommendations and the NPOA emerging from the Review, a brighter future awaits South Africa.

3. SUMMARY OF FINDINGS IN KEY THEMATIC AREAS

3.1 Democracy and Political Governance

- 3.1 South Africa has waged a protracted and bloody struggle for democracy. Emerging from the subjugation by colonial and apartheid powers that lasted for 342 years, the country held its first non-racial democratic elections in 1994. This marked the transition from minority white rule to a system of majority democratic governance, with strong emphasis on the sovereignty of the people. This leap was not achieved without compromise. The peaceful transition, always shadowed by the prospect of civil war, was the beginning of a profound process of transformation of the state.
- 3.2 Within only 12 years, South Africans have managed to leap across the deep divide of an oppressive racist state to a modern constitutional democracy. Since 1994, the country has made undeniable progress in a number of critical areas. On the political front, democratic institutions are well established. The “reinvention” of government that is continuing through the creation of new spheres of government, both provincial and local, has changed the environment for governance and service delivery. Nevertheless, five legacies of the apartheid era have persisted: a dualistic polity; pervasive poverty; large-scale structural unemployment; inequitable distribution of wealth and income; and a high incidence of crime.
- 3.3 The general consensus is that the oppressive political and governance institutions established by the system of apartheid cannot be reformed but must be transformed. This transformation can only be led by an appropriately activist state dedicated to correcting imbalances and ensuring justice for all. The resurgence of popular participation has made it possible for CSOs, including the media, to play an important role in maintaining the momentum for reform and transformation, as dictated by the Constitution.
- 3.4 The South African Constitution has been hailed as one of the most progressive in the world. Its vision for the country is one of a progressive, non-racist, non-sexist and human rights-based society. The Constitution has thus become the bedrock of the country’s governance and development, supported by well-established democratic institutions and a very vibrant media and civil society. However, the context within which constitutional governance arrangements have been crafted needs to be kept in mind. At the time of its design, it was

more of a contract among previously suspicious parties for whom trust was a scarce commodity rather than a covenant born from shared mutual experiences and values. Hence, negotiations on the making of the Constitution were very tense and what eventually emerged was a contract both in the construction of the state and in the forging of a nation.

- 3.5 It is therefore not surprising that the South African Constitution entrenches a comprehensive set of inalienable rights. Given the country's bitter and bloody experience, the makers of the Constitution avoided the path of low-intensity democracy and opted for a cooperative state with three spheres of government and separation of powers between the executive, legislature and judiciary. The judiciary is empowered to uphold the Constitution, and both the parliament and the executive are required to uphold the authority of the judiciary. Although the country has introduced an innovative notion of decentralisation, the concept of co-operative government faces a number of challenges, including lack of capacity at local government level.
- 3.6 South Africa has signed, ratified and acceded to most international treaties, most of which have been domesticated in the Constitution. Nonetheless, efforts have to be made to ensure that the codes and standards the country has committed to are effectively implemented.
- 3.7 Unlike most African countries, South Africa has a democratic multi-party political system that is based on proportional representation at national and provincial levels, and a combination of proportional representation and ward representation at local levels. Although questions have been raised regarding the effectiveness of proportional representation in the electoral process, it is widely accepted that this is the only viable way of institutionalising representative pluralist democracy in the new South Africa. However, the main challenge of proportional representation, as practised in South Africa, relates to the manner in which members of parliament (MPs) maintain linkages with the electorate.
- 3.8 Contestations or clarifications on matters relating to the Constitution are formally conducted and resolved in a Constitutional Court. The Independent Electoral Commission (IEC), a constitutionally established independent organ that has been mandated to ensure the conduct of free and fair elections, has so far performed its assigned constitutional role creditably.
- 3.9 The CRM found that the practice of floor-crossing was a major concern to both the electorate and the opposition parties. It is seen as having the potential to undermine democracy and good governance in South Africa. However, the public funding of political parties is less contentious than floor-crossing.
- 3.10 Internally, South Africa has competently managed potential conflicts since the end of apartheid in 1994 through a spirit of reconciliation and accommodation cultivated in the governance system and civil society. However, deeply entrenched socio-economic inequalities, coupled with competition among the citizenry for state resources, constitute potential sources of social conflict.

Also, the issue of ex-combatants who have sunk into poverty needs to be addressed, as the social and security implications of this situation cannot be overemphasised. Access to land possession and usage also remains a potentially explosive issue in South Africa.

- 3.11 At regional level, South Africa has since 1994 played a prominent role in conflict prevention and peace-making operations in African countries such as Burundi, Côte d'Ivoire, the Democratic Republic of Congo and Sudan. It has also acted decisively to combat alleged mercenary activities by its nationals. The security forces operate under rigorous political oversight as provided by the Constitution.
- 3.12 The South African Constitution recognises traditional leadership and makes provision for the House of Traditional Leaders. A notable practice by the legislature is that of bringing the parliament to the people. This is an initiative whereby the national and provincial MPs meet rural people at grassroots level to discuss their needs and aspirations. However, this is an informal arrangement.
- 3.13 Lack of access to justice was a major issue among stakeholders. They pointed out that the alarming level of crime across South Africa, in both urban and rural areas, is an example of lack of protection of their human and civil rights.
- 3.14 To ensure an effective and efficient civil service, South Africa encourages interactions between its public servants and the people they serve and to whom they are accountable, through initiatives such as *Izimbizo* (public participation and interaction), *Batho Pele* (people first) and multi-purpose community centres. However, the civil service experiences a serious skills shortage, a legacy of the apartheid regime. This phenomenon is exacerbated by disparities in working conditions between the public and private sectors, which leads the latter to attract the best skilled employees at the expense of the former.
- 3.15 South Africa faces challenges of corruption and money laundering. Commendably, it has put in place pieces of legislation and institutions to curb the vice of corruption at all levels. These measures have yielded tangible results, though corruption still remains a problem due to capacity constraints.
- 3.16 In the area of gender, South Africa has made significant strides in promoting the rights of women. Currently the Deputy President is a woman, while women constitute 45 per cent of Ministers and Deputy Ministers and 33 per cent of MPs, including the Speaker and the Deputy Speaker. At provincial level, women constitute 35 per cent of the permanent members of the National Council of Provinces (NCOP), 32 per cent of the members of provincial legislatures, and 44 per cent of Premiers. Approximately 40 per cent of all local government councillors, 15 per cent of judges, 35 per cent of magistrates and 53 per cent of public servants are women. The representation of women in the private sector and state-owned enterprises (SOEs) is, however, very low. Female unemployment (31.7 per cent) is also higher than male unemployment

(22.6 per cent). Finally, the labour force participation rate for females is 49.9 per cent as against 63.7 per cent for males.

3.17 There is also concern about persisting violence against women, which requires immediate action. Estimates of the extent of violence vary as there is widespread underreporting. However, statistics from the South African Police Service (SAPS) indicate that there were:

- 54 293 rapes in 2001/02;
- 52 425 rapes in 2002/03;
- 52 733 rapes in 2003/04;
- 55 114 rapes in 2004/05; and
- 54 926 rapes in 2005/06.

3.18 Abuses against women are not only sexual in nature, but also psychological and economic. According to numerous official and unofficial reports, violence against women is at the root of the HIV and AIDS pandemic. The breakdown in social structure resulting from the apartheid policies of the past continues to exacerbate discrimination against women.

3.19 Although the rights of children and young people are provided for in the Constitution, a great deal still needs to be done to promote and protect these rights. As the CSAR frankly admits and the stakeholders validated during their interactions with the CRM, there are quite a number of defects and gaps in the implementation of these rights, such as:

- Child abuse by parents;
- Inadequate opportunities for early child development;
- Non-registration at birth of many children who consequently are likely to lose access to services to which they are constitutionally entitled;
- Violence against schoolchildren, particularly girls;
- Child trafficking, child prostitution, drug addiction and sex tourism, especially involving the girl child;
- Child-headed families who receive no special training and treatment; and
- Orphans who, though provided some grant, are not assisted in acquiring skills so that they can be gainfully engaged and become self-reliant.

3.20 There is indeed an urgent need for the government not only to send robust, unequivocal signals that the society will not accept violence against children, but also to back these up with action. A holistic approach must be adopted to bring about the end of violence against children – not only physical violence, but also psychological abuse, discrimination, maltreatment and neglect.

3.21 South Africa also faces the major problem of vulnerable people, such as refugees, displaced and undocumented persons. Xenophobic tendencies

towards these groups prevail despite the fact that the country has signed and ratified relevant regional conventions.

- 3.22 It is evident that South Africa has made significant gains in the sphere of democracy and governance. For democracy to become sustainable, however, it must also be pluralistic. Among other things, this requires establishing and strengthening the rules that will sustain multi-partyism in the political system and governance process.
- 3.23 As the dominant political party, the ANC has a specific responsibility to adopt an orientation and put in place the necessary political machinery that will nurture citizens capable of sustaining democracy and political governance through bottom-up decision-making processes.
- 3.24 The APR Panel therefore recommends that the ANC should intensify current initiatives in the direction of bottom-up decision-making processes. The country also needs to review the issue of floor-crossing, which is perceived as undermining the emergence of pluralistic democracy.

3.2 Economic Governance and Management

- 3.25 With a gross domestic product (GDP) of US\$239 510 billion in 2005, South Africa has the largest and most sophisticated economy in Africa. The country accounts for about 35 per cent of the total GDP of sub-Saharan Africa, and its economy is three times that of its closest rival, Nigeria. The country exerts major influence on total output, trade and investment flows to the African continent. South Africa represents only 3 per cent of the continent's surface area, yet accounts for approximately 40 per cent of all industrial output, over half of all generated electricity and 45 per cent of mineral production in Africa.
- 3.26 By way of background, South Africa had experienced more than two decades of economic stagnation due to, inter alia, global economic sanctions. When the new government took over in 1994, the economy was characterised by the following:
- Negative growth leading to contraction of the economy and wealth of the nation;
 - A reduction in the average income of South Africans since the 1980s due to more than a decade of declining growth in per capita terms;
 - A total of almost R50 billion total net capital outflows in the period from 1985 to mid-1994;
 - A budget deficit equal to 9.5 per cent of the GDP, including the debt of the so-called independent homelands run up by the apartheid government in the fiscal year 1993/94;
 - US\$25 billion in deficit in the net open-forward position of the SARB; and
 - Public sector debt equal to 64 per cent of the GDP.

- 3.27 During the past 12 years, South Africa has made measurable progress in addressing the challenges in economic governance and management. The new government has pursued policies that have restored and maintained macroeconomic stability after decades of isolation and economic sanctions. Inflationary pressures have also been contained, while budget deficits have been reduced through robust measures for mobilising revenue.
- 3.28 Since the new government took over, the macroeconomic situation in South Africa has changed considerably:
- Inflation has been reduced to 4 per cent if one uses the Consumer Price Index excluding interest rates on mortgage bonds (CPIX), or less than 1 per cent if one uses the Consumer Price Index (CPI).
 - The country has experienced the longest period of continuous growth since the GDP was properly recorded in the 1940s.
 - The net open forward position of the SARB rose to US\$4.7 billion in surplus by the end of 2003 (currently net reserves exceed US\$20 billion).
 - Public sector debt has come down to less than 50 per cent of the GDP.
- 3.29 Improved economic performance, coupled with the advent of democratic, people-centred governance, has enabled hitherto unfathomable improvement in people's material and social conditions. The widespread availability of social services and grants has resulted in the reduction of absolute poverty.
- 3.30 Heightened fiscal discipline has been an integral part of the stabilisation effort. The government has sought to maintain a competitive tax regime; increase social spending at a measured and sustainable pace; and introduce greater transparency and accountability into the budget process at all levels of government.
- 3.31 Improved macroeconomic conditions have contributed to a more positive sovereign rating of South Africa. In 2005, three major international agencies – Moody's, Standard & Poor's, and Fitch Ratings – upgraded South Africa's sovereign credit ratings. A better performance in economic growth, stronger external balance sheet, entrenched macroeconomic stability, increased public investment and transparent political environment were among the reasons cited for the upgrades.
- 3.32 South Africa has also acceded to and ratified all the economic governance and management standards and codes as listed in the APRM Questionnaire. However, the APR Panel could not ascertain the extent of implementation of and compliance with these standards and codes.
- 3.33 South Africa's budgeting process is commendable. It benefits from heavy involvement of the Cabinet and other key stakeholders throughout the process, which is fielded a year in advance. One key result from the highly consultative budgeting process has been the predictability of the budget and policy direction by the government, which is good for investment planning.

- 3.34 Although South Africa has healthy foreign reserves, the limited capacity of the public sector to absorb the revenue build-up has resulted in an accumulation of unspent funds. Commendably, the government has established several initiatives and institutions to address the capacity constraints confronting the country.
- 3.35 However, there are several remaining challenges. Despite an impressive economic performance, South Africa is still confronted with sharp asset and income inequalities typified by the dual nature of its economy. Experience has shown that unqualified reliance on market forces and macroeconomic management alone cannot ameliorate poverty and unemployment.
- 3.36 While real economic growth in South Africa has been consistently positive, it has not been associated with significant job creation. Notwithstanding improvements in macroeconomic indicators and the positive growth in GDP achieved annually since 1994, the rate has consistently fallen below the 6+ per cent target. Because of this, structural unemployment has persisted and many would-be entrants to the labour market remain barred from the workforce. The official unemployment rate stood at 26.7 per cent in September 2005, roughly the same level as in 1994. Recent figures (StatsSA, 2006) show a marginal drop in unemployment of about 0.9 per cent over the past year, which is encouraging. However, more needs to be done in order to reduce the level substantially.
- 3.37 The government has attempted to reduce these inequalities through the broad-based black economic empowerment (B-BBEE) programme and other equity-enhancing initiatives, but even here more needs to be done. While there are several initiatives for improving access to credit, small, medium and micro-enterprises (SMMEs) continue to experience credit and other constraints. Consequently, South Africa continues to be characterised by sharp economic dualism – a sophisticated industrial economy alongside an underdeveloped, informal, low productivity economy.
- 3.38 Against this backdrop, the government has initiated the Accelerated and Shared Growth Initiative for South Africa (AsgiSA) that seeks to unlock some binding constraints to broad-based economic development. The expectation is that growth will be raised to 6 per cent per annum and above by 2010 and thereby benefit the majority of the citizenry through more employment opportunities and a reduction in poverty.
- 3.39 There is concern that parliamentary oversight over the budgeting process in South Africa has generally been weak. Submissions by the Auditor-General also indicate that a reasonable number of governments (national, provincial and local) do not meet the deadlines for filing required disclosures, financial statements and performance reports, albeit due to capacity constraints.
- 3.40 There is, however, consensus among stakeholders that South Africa has put in place a sound framework for managing public finance and that such management has improved since 1994. The government has also instituted

several initiatives to improve local government capacity, including the establishment of Project Consolidate.

- 3.41 However, the acute shortage of skills, especially financial expertise, is affecting the government's capacity to manage programme spending and social service delivery. The government developed several initiatives and institutions for addressing the capacity constraints confronting the country, including the Joint Initiative on Priority Skills Acquisition (JIPSA). However, the Panel notes that such programmes are not necessarily linked to employment opportunities, resulting in frustration among beneficiaries.
- 3.42 Contractors charged with implementing learnership programmes tend to abandon them midway, thus leaving participants short of the requisite skills for employment or sustaining small businesses. Moreover, the skills imparted tend to be so narrowly based that beneficiaries are vulnerable to changes in the economic climate.
- 3.43 The perceived effectiveness of the government's HIV and AIDS policies is mixed, even though the CSAR acknowledges that the negative economic impact of HIV and AIDS on South Africa's economic growth is significant.
- 3.44 Challenges in the areas of corruption and money laundering exist in South Africa to varying degrees. Commendably, the government continues to make efforts to curb these malpractices. The Protected Disclosures Act of 2000, the Promotion of Access to Information Act (PAIA) of 2000, the Financial Intelligence Centre Act of 2001, and the Prevention and Combating of Corrupt Activities Act of 2004 are some of the pieces of legislations that have recently been enacted to curb corruption.
- 3.45 There are also some challenges in promoting regional integration. Concerns have been raised about rules of the origin of products within the Southern African Development Community (SADC) Trade Protocol that continue to protect South African producers from competitors in other SADC countries. To redress trade imbalances, South Africa has extended tariff preferences to SADC countries since January 2006, so that all imports from SADC countries will have duty-free status. Further concerns have been raised with regard to the residue of exchange controls that have not been lifted.
- 3.46 Ultimately, achieving the national objective of broad-based growth and development will invariably require policy measures for tackling the pervasive distortions in all factor markets. The unfinished agenda of structural reforms leaves South Africa at a disadvantage in an increasingly competitive global environment.
- 3.47 The Panel recommends that South Africa should intensify the process of deconstructing the institutional framework on which apartheid was based, so as to create an environment in which extreme income inequality and pervasive poverty can be reduced. The authorities also need to strengthen parliamentary oversight, particularly over the budgeting process. Immediate and definitive

action needs to be taken to increase capacity and skills development in the area of public finance management, particularly at the provincial and municipal levels.

3.3 Corporate Governance

- 3.48 The corporate sector has been crucial in the development of South Africa, particularly in the light of the political transformation that has been taking place since 1994. Private and state-owned corporations produce the bulk of South Africa's output and exports; manage most of its capital stock; are central to the allocation of investment; and are responsible for virtually all of the country's savings. Over the last 12 years, corporations have mobilised more than three-quarters of South Africa's domestic savings; allocated and planned 85 per cent of all investment; and currently own and manage three-quarters of the country's capital stock.
- 3.49 South Africa has a high-quality physical and economic infrastructure, a growing manufacturing sector, and growth potential in tourism and the service industry. It also has a highly sophisticated banking system that ranks with the best in the world, having been rated tenth globally.
- 3.50 The country has made tremendous progress in implementing corporate governance standards and codes. Amongst others, it has adopted the Principles of Corporate Governance designed by the Organisation for Economic Cooperation and Development (OECD) and Commonwealth associations. A key development in corporate governance in South Africa has been the promulgation of the King I and II Reports. The King II Report, in particular, has played a pivotal role in promoting corporate integrity through its influence on legislative reforms and regulatory measures, JSE listing requirements, banking sector regulations and the public sector.
- 3.51 The regulatory framework for economic activity in the country is adequate and supported by a wide variety of regulatory oversight institutions and professional bodies. Many stakeholders, however, agree that the Companies Act of 1973 is outdated and in need of amendment. Concerns have also been raised about delays in business registration and commercial dispute resolution.
- 3.52 Changes have been made to legislation, regulations, listing rules and accounting standards to bring them in line with international norms. As a result, South Africa currently rates among the best performers in corporate governance in emerging markets. There are, however, mixed views on the adequacy of the labour regime and its impact on production and the creation of jobs. The private sector stated that the labour laws were restrictive and constrained job creation, while the labour unions viewed them as "ideal" when measured against the historical legacy of South Africa.
- 3.53 The state owns a number of enterprises, some of which are doing very well and leading the drive in investments in the rest of Africa. The government's

strategy for SOEs includes commercialisation, restructuring, and partial privatisation. Only one SOE, Telkom, is publicly listed.

- 3.54 Constraints to growth cited by the corporate sector include: the complex regulatory environment; inflexible labour laws; red tape; capacity and skills shortages; the high rate of mortality due principally to HIV and AIDS; crime; insecurity; and corruption.
- 3.55 South Africa has a good framework for the protection of human and labour rights. Most businesses adhere to human rights and other labour codes, although some stakeholders allege instances of abuse in labour-intensive industries such as textiles and farms. The growing practice of casualisation in sectors such as retailing and mining is also of concern.
- 3.56 Corporate social responsibility (CSR) projects in communities are driven by legislation for black economic empowerment (BEE) and skills development, as well as by voluntary projects in the area of HIV and AIDS. Triple bottom line (TBL) reporting, as championed by the King II Report and Global Reporting Initiative (GRI), has transformed the way non-financial information is being disclosed by both private and public sector enterprises.
- 3.57 The government has also provided an appropriate legislative framework for environmental protection. Current challenges to the environment include rapid urbanisation, congestion of roads, air pollution and spillages of untreated sewerage. Nevertheless, there are few accountability mechanisms for non-financial reporting and readership of sustainability reports is low. Concerns have also been raised about the level of adherence to the King II Report by some South African companies operating in the rest of Africa.
- 3.58 South Africa has taken steps to reform its laws to ensure full participation of historically disadvantaged groups in business. Most notable of these reforms are the B-BBEE strategies, related codes and sectoral charters, and various microfinance schemes. It has been estimated that the thriving black middle class emerging from BEE, and particularly those who earn at least R154 000 a year, has grown by 368 per cent between 1998 and 2004. Although the numbers benefiting from the BEE programme are still relatively small and the productive side of the economy still lags behind the demand side, BEE is nevertheless impacting favourably on the growth rate of the economy. The most fundamental challenge faced by South Africa is how to design a corporate governance system that works for its dual economy and, in the long run, succeeds in bridging the gap between the first and second economies.
- 3.59 South Africa is generally an open economy that is resistant to insider trading. However, it has experienced a few notable scandals that have been attributed to self-dealing and poor oversight by corporate boards. Successful prosecution for insider trading remains low.
- 3.60 South Africa recently passed the Auditing Profession Act of 2005 that seeks to improve the integrity of financial reporting. Public sector accountability has

been enhanced by the strengthening of financial reporting and accountability through the Public Finance Management Act of 1999, the Municipal Finance Management Act of 2003, and Treasury Regulations.

- 3.61 The legislative framework protecting shareholder rights in South Africa is adequate in many respects. There is, however, a palpable lack of shareholder activism and adequate monitoring of companies by asset managers on behalf of minority shareholders. Mechanisms for protecting the rights of other stakeholders exist, such as constitutionally protected access to information and the Consumer Protection Bill.
- 3.62 The legislative framework requires disclosure of material information that would enable investors to make informed decisions under the PAIA. The Companies Act of 1973 provides for disclosure of information by directors. Despite such commendable legislation, there are some concerns regarding government agencies' compliance with the disclosure provisions of the PAIA.
- 3.63 Accounting and auditing standards followed in the country are consistent with international standards. Through its highly developed professional bodies and firms, South Africa also plays an important role in international standard-setting bodies.
- 3.64 Some stakeholders are concerned that the plethora of oversight institutions, particularly in financial services supervision, may lead to compliance and enforcement pitfalls due to multiple reporting obligations. There may be a need to consolidate some of the reporting obligations.
- 3.65 The following were cited as constraints to growth in South Africa: access to infrastructure in rural areas, including water and sanitation; red tape; trade liberalisation policies; skills shortages; HIV and AIDS; crime; corruption; and high costs of certain inputs such as telecommunications and logistics.
- 3.66 In the recent past, South Africa has not attracted as much foreign direct investment (FDI) as anticipated, although it is an outward investor. Heightened FDI flows will facilitate the country's attainment of an economic growth rate of 6 per cent or more that is needed to reduce unemployment and poverty. Also, some have argued that further liberalisation of foreign exchange controls will send a positive signal to foreign investors about the growing robustness of South Africa's economy.
- 3.67 The APR Panel recommends that the government of South Africa, in consultation with stakeholders, should continue the process of reforming the corporate governance sector in order to promote accelerated growth for employment creation and poverty reduction.

3.4 Socio-Economic Development

3.68 The new democratic South Africa faced daunting socio-economic development challenges in the early 1990s as a result of decades of oppression and severe social deprivation by the minority white-dominated, apartheid government. These challenges included the following:

- The housing backlog was estimated between 1.4 and 3 million.
- People living in shacks numbered between 5 and 7.7 million.
- Sixty per cent of the population had no access to clean water.
- Some 20 million people did not have access to adequate sanitation.
- There were 17 fragmented Departments of Education, with a disproportionately high allocation of resources to white schools.
- There was only 70 per cent secondary school enrolment.

3.69 In order to enhance socio-economic development, the new administration had to embark on numerous governance reforms; undertake measures for redistributing wealth; and enact various policies that would ultimately serve to enhance the standard of living of all South Africans.

3.70 In the early 1990s, the ANC designed the Reconstruction and Development Programme (RDP) to address the socio-economic needs of the majority of South Africans. The RDP addressed the structural inheritances of the past, including mass poverty, a high unemployment rate, huge social service backlogs, economic stagnation and severe socio-economic inequalities.

3.71 Of more immediate concern, however, was the macroeconomic instability and the government adopted the Growth, Employment and Redistribution (GEAR) Strategy. It achieved notable success in terms of reducing fiscal deficit and controlling inflation, but targets for job growth and investments were not met. Moreover, widespread poverty and inequality persisted despite the growing economy.

3.72 To face squarely the challenges of poverty, structural unemployment, and skewed income and wealth distribution, a new national development framework – AsgiSA – has been designed ten years after the adoption of GEAR. It improves on GEAR by focusing on identified development sectors and eliminating binding constraints to growth and development.

3.73 Although the outcomes of South Africa's socio-economic policies have been mixed, there is no doubt that significant improvements have been made in the provision of basic services. By 2005:

- Approximately 2.4 million housing subsidies had been approved.
- Some 1.74 million housing units had been built for the poor.
- About 3.5 million homes had been electrified, which translates into over 435 000 homes per annum.

- About 91 per cent of the entire population had access to an improved water supply.
 - Basic sanitation infrastructure had been provided to over 8.2 million people.
 - An integrated education system had been created, even though there is a clear need for greater resource allocation and capacity building in poor areas.
 - Nutrition programmes had been established to improve the wellbeing of children from poor backgrounds.
 - Secondary school enrolment had reached 89 per cent, while primary school enrolment was estimated at 104 per cent.
 - More than 10.5 million people had access to social assistance grants.
 - The cumulative total of land claims settled as at 31 December 2005 stood at 68 719. The cumulative total for the beneficiaries for the same period was 939 737. Land restored totalled 1 006 959 hectares.
 - The overall routine immunisation coverage for South Africa stood at 82 per cent.
 - A total of over 1200 new clinics were built. A further 252 clinics benefited from major upgrading, such as the building of new maternity units, and 2298 received new equipment and/or had minor upgrading. Over 113 visiting points were built. Altogether 7200 new permanent posts for nursing staff, 3800 cleaning staff and security posts, and 19 900 temporary construction jobs were created.
- 3.74 South Africa has adopted and/or ratified nearly all the prescribed codes for socio-economic development in the APRM Questionnaire. Notwithstanding capacity challenges, the country is making an effort to implement them fully. The principle of adopting a rights-based development approach, as enshrined in the Constitution, is perceived by South Africans as critical to meeting their socio-economic development goals.
- 3.75 The country should be commended for being financially self-reliant in that it funds 99.6 per cent of its development expenditures. However, self-reliance in development and self-sustaining development also rely on institutional capacity (in terms of, for instance, coordination, mentoring, monitoring and execution) and human capacity (in terms of the required development management and technical skills). South Africa is lacking in these areas.
- 3.76 South Africa's policies for meeting socio-economic development objectives include a social security system and some social assistance grants. According to the Development Bank of Southern Africa (DBSA), over 10 million impoverished people received social grants as of 2006. While the social assistance programme is recognised as an effective redistributive measure, there are serious concerns about its sustainability in the context of the rapidly growing number of recipients over the past five years.

- 3.77 The APR Panel believes that there is a real danger of a large percentage of the South African population becoming dependent on grants. Other concerns include the lack of proper targeting, sound administration of grants and long-term impact.
- 3.78 Despite tremendous progress, many inherited socio-economic inequalities have remained. Moreover, there is no nationally accepted definition of poverty. South Africa has not built the Millennium Development Goals (MDGs) explicitly into its planning framework in terms of the alignment and harmonisation of programmes. This is evident in the 2005 MDG Progress Report of South Africa, which admits its shortcoming in terms of lacking coherent time-series data to show progress in achieving the goals.
- 3.79 The government has put in a great deal of effort in delivering social services in education and health, including HIV and AIDS. However, in most cases, challenges still remain and are even growing, which makes it difficult for the country to tackle the critical mass of social development issues with the needed level of effectiveness and efficiency.
- 3.80 Although South Africa has made great strides in widening educational opportunities to previously disadvantaged groups, mainly black South Africans, there are some concerns. The Constitution provides a right to education, while the South African Schools Act of 1996 provides for compulsory attendance of all primary learners 7 to 15 years of age. However, more effort is needed in the implementation of the Act to improve education in the country. Although HIV and AIDS are emerging as a major cause of mortality and morbidity, some role-players feel there is an ambivalent attitude towards the pandemic among politicians and policy-makers.
- 3.81 The government of South Africa has done very well in social service delivery (water, electricity and housing) and in some cases has exceeded the set targets during the past 12 years. Stakeholders stressed that the government has the right policies and programmes in place. In particular, they applauded the “indigent policy” that has allowed mass access to basic services within such a short period. However, much more needs to be done to ensure effective service delivery, particularly in sanitation and rural electrification. In addition, women and youth lack access to credit in spite of the microfinance schemes currently in existence.
- 3.82 Access to land remains a major problem, as restitution and redistribution of land have been slow in taking off and have thus far minimally contributed to building the assets or capabilities of the poor, especially in rural areas where effective land use could contribute to sustainable livelihoods.
- 3.83 South Africa has made significant progress in terms of promoting gender equality and the participation of women in decision-making positions, except in the private sector where women are still underrepresented. However, there is a very high level of gender-based violence against women in South African society.

- 3.84 There have been concerted efforts to promote participation by all stakeholders in the socio-economic development process. The mechanisms that have been put in place are adequate for addressing the issue of broad-based participation of all stakeholders in this process.
- 3.85 There is concern about some constraints to broad-based participation in decision making in South Africa. Despite the government's efforts, a number of critical segments of the society are still unable, or are less able, to participate fully in the development process. These segments include rural communities, women, youth, and persons with disabilities.
- 3.86 Collaborative and constructive partnerships between the government at all levels and critical segments of civil society appear to be characterised by mutual suspicion in South Africa, the media in particular. The APR Panel recommends that South Africa should embark on a rigorous transformation process to accelerate socio-economic development in order to achieve sustainable development and the alleviation of poverty.

3.5 Cross-Cutting Issues

- 3.87 Some areas with deficiencies or shortcomings in the South African system are recurrent and/or interrelated. They necessitate a holistic approach because of the wider impact they have on the quality of governance in all areas. These include the following:

- Unemployment;
- Capacity constraints and poor service delivery;
- Poverty and inequality;
- Land reform;
- Violence against women;
- Violence against children;
- HIV and AIDS pandemic;
- Corruption;
- Crime;
- Racism and xenophobia; and
- Managing diversity.

These challenges are briefly elucidated below.

3.5.1 Unemployment

- 3.88 At the root of poverty lies large-scale structural unemployment. The personal, social and political costs of unemployment are huge, with the impact magnifying with the duration of unemployment. While cyclical unemployment causes tremendous hardship, this is manageable as it is a short-run

phenomenon. Structural unemployment, however, has a devastating impact over the long term, which can lead to systemic collapse if allowed to get out of control and last for too long. Consequences at household level include: severe financial hardship; deepening poverty; unbearable level of indebtedness; homelessness; housing stress; family tensions and breakdown; boredom; alienation; shame and stigma; increased social isolation; crime; erosion of confidence and self-esteem; atrophy of work skills; and ill-health.

- 3.89 Large “armies” of unemployed people pose a danger to political stability and democracy. This is why even the most developed countries are ultrasensitive about unemployment and will do anything to put their citizens to work once the threshold is reached.
- 3.90 Despite the government’s efforts to provide employment opportunities, South Africa still has an unsustainably high level of structural unemployment. Paradoxical as it may seem, there has been a steady increase in the levels of unemployment in the country despite a modest increase in job creation during the past decade. Unemployment has climbed inexorably, reaching 28.2 per cent of the country’s economically active population by September 2005. The likelihood of being employed in South Africa is still heavily influenced by a person’s race, geographic location, gender, and levels of skill.
- 3.91 If the unemployment problem had been mainly cyclical, macroeconomic policies would have provided a relief during these past 12 years. Because it is structural, however, it requires a totally different approach to reorientate South Africa progressively into a development state. As discussed in this report, AsgiSA provides a way out as a first step, provided of course, that the Treasury and the SARB create the necessary enabling environment for the effective and efficient operationalisation of the new paradigm. As AsgiSA’s focus is on the micro-economy, it is imperative that the macroeconomic policy framework be orientated to provide the required enabling environment for its successful take-off.
- 3.92 Social security in South Africa is also based on European post-World War II models, where unemployment is primarily short term and therefore cyclical. In South Africa, unemployment is not cyclical but structural and constitutes a long-term challenge calling for the deconstruction of the inherited apartheid economy and the democratisation of the development process.
- 3.93 Pervasive poverty is the inevitable outcome of pervasive unemployment. Eliminating the current nexus of poverty and unemployment therefore requires a refocus on a holistic, human-centred development paradigm. A country cannot become eligible to join the league of rich nations on the basis of having a monocultural economy and the capacity to do more of the same. Rather, a country’s qualification for eligibility must be its continuous move into ever higher value-added and diversified production systems that have high productivity and more competitiveness. They should engage all people, particularly the labour force, through the process of democratising development and popular participation.

3.5.2 Capacity Constraints and Poor Service Delivery

- 3.94 A recurrent theme in meetings with stakeholders and in the CSAR is the problem of capacity, especially at provincial and local levels. South Africa also suffers from skills shortages. There is a dearth of versatile and experienced managers and professionals across all sectors of the economy.
- 3.95 Lack of capacity is a major constraint on ongoing efforts to improve the quality of governance in all spheres and deliver services at optimal levels in the light of the socio-economic challenges.
- 3.96 The situation is further compounded by the uncomfortably large emigration of experienced skilled professionals and the historical context of South Africa. Efforts to mainstream historically disadvantaged populations must be accompanied by aggressive skills development programmes for previously marginalised populations. The country may consider innovative approaches to ensure the availability of appropriate capacity, especially in municipalities. The authorities are urged to consider developing a unified civil service, hiring outside expertise and encouraging the return of erstwhile skilled workers (especially in municipalities) who have emigrated.

3.5.3 Poverty and Inequality

- 3.97 With the demise of apartheid in 1994, the expectations of and aspirations for improvements in livelihoods among ordinary South Africans have risen phenomenally. However, despite South Africa's status as a middle-income country, poverty and inequality are still widespread and manifest themselves in high rates of unemployment, land hunger and lack of access to basic human needs. In both urban and rural areas, the majority of the population continues to experience conditions of severe deprivation and squalor.
- 3.98 A significant number of South African households continue to be poor, or are vulnerable to being poor. Poverty is perceived by poor South Africans to include: alienation from the community; food insecurity; crowded homes; use of unsafe and inefficient forms of energy; lack of jobs that are adequately paid and/or secure; and fragmentation of the family. Women, children, the elderly and persons with disabilities bear the brunt of poverty.
- 3.99 In addition, the distribution of income and wealth in South Africa is among the most unequal in the world and many households still have insufficient access to education, healthcare, energy and clean water despite concrete progress made in redressing the inherited backlog since 1994. Furthermore, fuelled by high levels of unemployment, poverty provides the bedrock for HIV and AIDS. It also poses a threat to democracy.
- 3.100 South Africa still has a long distance to traverse on the transformation front, but the vision, will and resources are there to move the process forward. Poverty is not just about the income poor. It is about people's lost creativity

and potential to contribute to society. It is about the denial of access to opportunities and choices to lead a decent life, achieve a better standard of living, greater freedom, dignity and self-respect – things that matter most for human existence. While a great deal has been achieved in the first decade of freedom, the next decade should begin to make an all-round difference in the quality of life of the country's majority.

- 3.101 Addressing the challenges posed by poverty alleviation and eradication goes beyond slogans and mere wishing, to setting actual target dates nationally or internationally. It will come about only through fully implementing concrete policies and programmes that are basically transformative and developmental. It is only these kinds of programmes that will ensure the elimination of the economic, political and social structures that reproduce poverty, and will secure the fundamental objectives of democratising the development process and mobilisation of the people.

3.5.4 Land Reform

- 3.102 Land is crucial to the pursuit of development strategy in Africa. It can play a major role in addressing issues of unemployment and poverty. It is the single most important factor in social, political and economic empowerment. Above all, it has a central role to play in wealth and income redistribution. The linkages with conflict can also not be ignored – although curiously so – given the long history of land grievances in virtually every modern revolution.
- 3.103 The South African government has committed itself to land reform. However, distributing 30 per cent of commercial farmland by 2014 is a huge task. This is especially so because the state is not playing a proactive role in land redistribution. At present, it remains unclear whether current policies (especially the principle of “willing seller, willing buyer”) will enable the government to meet its targets. A year after the 2005 Land Summit, the land issue presents a mixed picture of progress and stagnation.
- 3.104 Current attempts at reform have so far distributed only 3 to 4 per cent of the targeted 30 per cent. Thus far, delivery has averaged 0.38 million hectares a year. If the current pace is maintained, the 30 per cent target will be reached in 54 years' time. Delivery would have to be increased fivefold to meet the 2014 target.
- 3.105 There are signs of growing impatience and calls for the matter to be tackled more expeditiously. Current land reform has been criticised both by farmers' groups and by landless workers. The latter allege that the pace of change has not been fast enough, while the former allege racist treatment and express concerns that a situation similar to what has happened in Zimbabwe may develop. During the CRM's interactions with stakeholders, most were uncomfortable with the “willing seller, willing buyer” principle.

- 3.106 What also appears to be missing from the current land reform is a realignment of land policy with agricultural policy. The government seems not to have taken seriously the importance of post-settlement support for people moving back onto land, who often lack skills, capital and access to markets. It is highly unlikely that private sector-led initiatives (e.g. reliance on the benevolence of white farmers to teach black farmers) can address this problem.
- 3.107 A major predicament is that the economic environment in which land reform beneficiaries have to work remains difficult. The new South African government has not done much to promote rural development. In particular, infrastructure is a serious problem, alongside the provision of extension services and research advice. Not surprisingly, many commercial farms that have been handed over have failed.
- 3.108 However, it should be noted that land reform is complicated. While the government intends to achieve success in land redistribution, it is also keen to maintain continuity in production. This is particularly the case in provinces like Limpopo, which are heavily dependent on agriculture. Following liberalisation in the mid-1990s, productivity in the agricultural sector rose substantially. Though primary agriculture contributed only 2.6 per cent of South Africa's GDP in 2005, it accounted for 8 per cent of the country's exports and employed 9 per cent of all formal employees. The Panel is of the view that greater flexibility in land acquisition options and decentralised community-driven initiatives will be positive steps in land reform in South Africa.

3.5.5 Violence Against Women

- 3.109 Violence against women is a serious human rights issue with significant social and economic implications for fighting poverty. It continues to be one of the most prominent features of post-apartheid South Africa and is currently deep-rooted in South African society. It encompasses a wide range of abuses, ranging from physical, sexual and psychological violence occurring in the family and general community.
- 3.110 Estimates of the extent of violence vary and statistics for women abuse are notoriously difficult to establish largely because of underreporting.
- 3.111 The South African government has expressed a commitment to eradicate gender violence. A more proactive, coordinated and system-wide response is urgently needed to address this problem.

3.5.6 Violence Against Children

- 3.112 Violence against children in South Africa is relatively high. The available evidence indicates that children suffer mostly from poverty, hunger, lack of decent shelter, destitution, illiteracy and exposure to numerous diseases. They also suffer many forms of abuse. The commonest forms of child abuse in

South Africa include: economic exploitation, especially child labour; drug abuse; child sale, trafficking and abduction; sexual exploitation; and sexual abuse.

- 3.113 Violence against children, especially girls, is a major challenge in some schools. South African girls continue to be raped, sexually abused, sexually harassed and assaulted at school by male classmates and teachers. For many girls, violence and abuse are an inevitable part of the school environment. Although girls in South Africa have better access to school than many of their counterparts in other sub-Saharan African states, they are confronted with sexual violence and harassment in schools. Although some schools try hard to respond to the problem of violence, too often school officials have concealed sexual violence and delayed disciplinary action against the perpetrators of such violence at great cost to the victims.
- 3.114 The situation of children in South Africa has been worsened by the apparent decline of social support institutions, such as the family. Through interactions with stakeholders in the areas visited, the CRM noted that social support institutions for children were under serious stress, with serious consequences for the proper development of young people. The CRM was informed that many families were increasingly characterised by the inability of parents to fend for their children. This often leads to various psychological pressures and, increasingly, domestic violence, drunkenness and child abuse. The pervasive violent behaviour of adults has aggravated violence among children and youth. Not only has parental leadership failed, the overall societal leadership is also far from being inspiring to children.
- 3.115 At present, it appears that little or nothing is being done to rebuild disintegrating social support institutions in South Africa, including the family, school, kinship structures and public institutions, by introducing new forms of effective socialisation and social control. In the absence of such control, children and young people are generally alienated from mainstream society and tend to end up in the streets where they create their own social worlds and fashion new social orders and identities. This situation points to the growing problematic transition of children to youth in South Africa, which is an indication of the poor socialisation of South African youth.
- 3.116 The issues of children and youth are complex and dealt with in different focus areas by a multiplicity of government institutions, NGOs, faith-based organisations (FBOs) and cooperating partners. The government has recognised the need for developing a comprehensive legislative and regulatory framework so that all institutions dealing with child and youth issues relate their programmes and activities to the government's overall intentions for child and youth development, as contained in its policy documents.
- 3.117 At present, however, there is a lack of comprehensive and disaggregated data on children in South Africa, making it difficult to design appropriate interventions. Moreover, some legal and policy gaps still exist.

- 3.118 Concerted efforts need to be made to prevent schools from becoming “turfs” for gangs and places for drug trafficking. Parents must work closely with schools and the police to reinstate discipline and turn these institutions into places where boys and girls feel protected.

3.5.7 HIV and AIDS Pandemic

- 3.119 South Africa is currently experiencing one of the most severe HIV epidemics in the world. By the end of 2005, according to UNAIDS estimates, there were 5.3 million people living with HIV in South Africa. This puts South Africa in second place after India in the number of people infected with HIV in the world.
- 3.120 Much of the reporting on AIDS in South Africa has centred on the perceived ambivalent attitude of politicians towards the pandemic. Far less has been said about the tremendous efforts being made by local, provincial and national government agencies and a myriad NGOs to combat AIDS by creating awareness around the disease, promoting behavioural change and providing medical, social and economic assistance to those affected and/or infected by the epidemic.
- 3.121 It is welcome news that appropriate steps are being taken to introduce renewed vigour in the response to HIV and AIDS prevention and treatment in South Africa by redressing prevailing dysfunctions, scaling up national response and strengthening communication.
- 3.122 In the meeting with the Deputy President, the CRM was assured that as part of enhanced government policy:
- Antiretroviral drugs will henceforth constitute the centrepiece of the government’s treatment response to HIV and AIDS.
 - Targets will be set for dramatically expanding the availability of the drugs through the public health system.
 - The cooperation between the government and AIDS activist groups will be strengthened.
- 3.123 This shift will no doubt reassure not only South Africans generally, but also the international community. The Panel welcomes this development and hopes it will be extended to cover expansion in HIV testing and cut the rate of new infections.
- 3.124 Efforts to mitigate the impact of this pandemic should also reinforce other health initiatives, including the curtailment of malaria and the spread of other infectious diseases such as drug-resistant tuberculosis, which is linked to HIV and AIDS and afflicts coastal provinces with a higher humidity.

3.5.8 Corruption

- 3.125 Compared with other African countries, South Africa is at a lower rung of the corruption ladder. There is, however, growing concern about increasing levels of corruption, especially in provinces and municipalities, and the debilitating effects this could have on service delivery and poverty. Moreover, Transparency International's 2006 Bribe Payers Index (BPI), the most comprehensive survey of its kind looking at perceptions about the propensity of companies (from 30 leading exporting countries) to bribe abroad, ranked South Africa in 24th place or the seventh-most corrupt. In this survey, more than 11 000 businesspeople in 125 countries were asked to share their perceptions of how companies headquartered in 30 of the world's leading exporting countries conduct their businesses overseas.
- 3.126 The presence in South Africa of no fewer than 12 agencies that have anticorruption as part of their mandate is proof that there is strong political will to tackle corruption. Nonetheless, the sheer number of agencies makes an integrated national approach to the problem difficult. Top anticorruption bodies such as the Public Protector, the Auditor-General and the National Prosecuting Authority are perceived by some stakeholders as being not impartial. Many anticorruption bodies also face capacity constraints. These include the Public Protector, the Commercial Crime Unit and the parliament's Ethics Committee, which are saddled with critical oversight and anticorruption roles.
- 3.127 The authorities may consider requiring local companies operating elsewhere on the continent to observe South Africa's corporate governance standards in their operations.

3.5.9 Crime

- 3.128 Crime is one of the most difficult of the many challenges facing South Africa in the post-apartheid era. The country's crime rates are among the highest in the world among countries submitting reliable statistics to Interpol. No South African is insulated from the effects of crime. Apart from the pain and loss suffered by victims, there are also direct costs, such as resources diverted to protection efforts, insurance, health and medical costs. Crime generally creates an environment non-conducive to productive activities. The widespread emigration of South African professionals in recent years is partly attributable to their desire to escape a high crime environment. All of these factors could discourage investment and stifle long-term growth in South Africa.
- 3.129 Though declining somewhat according to recent crime statistics released in September 2006, levels of violent crime in South Africa are still very high. Despite the recorded reduction in rapes (1.4 per cent), murder (0.3 per cent) and robbery with aggravating circumstances (5.6 per cent), estimates of the average daily crime rate are as follows:

- Murder 50 per day;
- Rape 150 per day;
- Robbery 204 per day;
- Burglary 719 per day;
- Theft of motor vehicles 235 per day; and
- Cash in transit heists 1 per day.

3.130 There are several explanations for the high level of crime, including poverty, unemployment, increased consumerism and related expectations, the operation of syndicates and gangs, and drug abuse.

3.131 There also appears to be a link between South Africa's political history and high levels of crime. For decades, families suffered "institutional violence" by mass removals and the migrant labour policies of apartheid. Political violence compounded the disruption of family life and the resultant weakening of the family unit and thus parental control. This may have exacerbated crime, especially among the youth.

3.132 The problem of crime demands an integrated approach that tackles both the criminal justice system and economic, human and moral development simultaneously.

3.5.10 Racism and Xenophobia

3.133 Vestiges of racism still remain in South African society as a legacy of several decades of apartheid rule. Without a doubt, racism was the hallmark of the system of governance and the defining feature in the social relationships between the government of the day and the people, as well as among the people themselves during apartheid. Twelve years on, a number of South Africans are still being reminded of the legacy of that past through the ongoing manifestation of thoughts and deeds premised on the belief that one race is inherently superior to another.

3.134 This legacy has also impacted on how South Africans view and treat foreign immigrants within their borders. Xenophobia against other Africans is of serious concern and should be nipped in the bud.

3.5.11 Managing Diversity

3.135 An enduring characteristic of South African society is its ethnic and racial diversity. Diversity offers both challenges and opportunities for South Africa's development process. Vibrant economies such as the USA have thrived on the diverse racial and cultural strengths and capacities of their immigrants. However, diversity can also be a source of racial and ethnic tensions which, if not appropriately managed, can explode into conflict, social unrest and economic decline.

- 3.136 Exploiting the full potential of diversity requires effective management at several levels. The Constitution of South Africa provides a comprehensive legal framework for securing and protecting the political, economic and sociocultural rights of the country's diverse citizenry. It is on this framework that institutions for promoting and safeguarding diversity must be built. These institutions must be anchored on the goal of nurturing and celebrating diversity, while at the same time attenuating and pre-empting the antagonisms and conflicts that tend to follow in its wake.
- 3.137 The widespread acceptance of the results of the 1994 elections and the Constitution in 1996 are two instances where the country has successfully managed diversity. South Africa must accord high priority to improving its race and ethnic relations by shaping the attitudes and values of its citizenry, especially through the educational system. Beyond this, existing measures for addressing inequalities in social services and economic assets (particularly land) must be underpinned by the overriding objective of securing and sustaining the peaceful cohabitation of diverse races and ethnic groups.

3.6 Best Practices

- 3.138 The APR Panel recognised some of the remarkable feats by South Africans on the global stage. For example, a total of six South Africans have been awarded Nobel prizes in various categories, the highest number on the continent. A South African was the first person to perform a human heart transplant, a South African actress was also the first from the continent to win an Oscar, and a South African motion picture recently achieved the same feat. The TRC achieved great success and has been emulated by a number of countries on the continent and worldwide.
- 3.139 More significantly, the APR Panel identified 18 best practices worthy of emulation. They are highlighted below for peer learning.

Democracy and Political Governance

- i. Co-operative government, a process of institutionalised contestation to be undertaken sympathetically and productively as a generalised means of first resort in resolving conflicts, especially those of a jurisdictional nature;
- ii. Popular participatory governance through *Imbizo*, which constitutes face-to-face interaction and engagement between senior government officials from all spheres (national, provincial and local) and the public;
- iii. "Taking the Parliament to the People", an outreach programme whereby the parliament and provincial legislatures interact at grassroots level with members of communities and listen to their concerns, needs and aspirations;

- iv. *Batho Pele*, which is essentially a Citizen's Charter based on the traditional Sesotho adage meaning "people first". It ensures that people are sufficiently informed about governance processes, the functions of various ministries and departments, those in charge, and what to expect from them; and
- v. Multi-purpose community centres as one-stop, integrated community development centres designed to provide information and a wide range of services to communities in an integrated and coordinated way.

Economic Governance and Management

- vi. The budget formulation process, which is highly consultative and ensures that the budget and, therefore, policy are highly predictable. The government has consistently maintained strong budget discipline; and
- vii. The South African Revenue Service (SARS) which, over time, has been able to implement fundamental tax policy reforms that have improved the culture of tax compliance and contributed to SARS's success in consistently exceeding its revenue target. Consequently, South Africa has an impressive tax revenue to GDP ratio of over 26 per cent.

Corporate Governance

- viii. The JSE, a world-class exchange ranked 16th in the world in terms of market capitalisation;
- ix. A number of the country's SOEs are very competitive and receive no fiscal transfers from the government. On the contrary, they pay taxes and offer dividends;
- x. The JSE and triple bottom line reporting, a Socially Responsible Investment Index inspired by the Dow Jones Sustainable Group Index and the FTSE4Good Index in the UK, launched by the JSE in 2004;
- xi. The Mzansi Account for the un-banked, which represents the first major initiative to cater for the under-banked and un-banked populations of South Africa. Mzansi customers can also set up debit orders and do third-party payments on their cellphones;
- xii. The Financial Sector Charter, the response of the financial sector to the imperatives of BEE. Under the Charter, financial institutions have committed themselves to actively promoting a transformed, vibrant and globally competitive financial sector that reflects the demographics of South Africa and contributes to the establishment of an equitable society by effectively providing accessible financial services to black people and directing investment to targeted sectors of the economy;

- xiii. The King I and II Reports, which are home-grown to South Africa and have been accepted by many countries in Africa and worldwide as being very comprehensive; and
- xiv. Regulation of the auditing profession.

Socio-Economic Development

- xv. As regards self-reliance in funding development programmes, South Africa's self-funding amounts to 99.6 per cent of its development expenditures;
- xvi. South Africa has made tremendous progress in supplying electricity to a large segment of the population who previously had no access. The government has far exceeded its target of providing 2.5 million homes with electricity by 2000, reaching over 4 million households;
- xvii. The Constitution of South Africa seeks to protect socio-economic rights. This constitutional guarantee means that the country has a progressive social agenda that is being realised through rights-based provision; and
- xviii. In 2005, the first woman Deputy President was appointed in South Africa. Women constitute 45 per cent of Ministers and Deputy Ministers and 33 per cent of MPs, including the Speaker and Deputy Speaker. At the provincial level, women constitute 35 per cent of the permanent members of the NCOP, 32 per cent of members of provincial legislatures and 44 per cent of Premiers. Some 40 per cent of all local government councillors are women, as well as 14 per cent of judges, 35 per cent of magistrates and 53 per cent of public servants. In the foreign service, 24 per cent of ambassadors and high commissioners are women. Some 24 per cent of SOEs' board members are women and they also comprise 25 per cent of senior management.

3.7 Conclusion

- 3.140 A holistic package of strategies, policies, programmes and plans, if fully targeted at the major strengths and challenges identified in the review process, will help embed governance and development in South Africa. These strengths and weaknesses are highlighted below.

Strengths

- One of the most progressive Constitutions in the world, which guarantees both civil and socio-economic rights;
- Existence of a political environment conducive to political debate, dialogue and contestation;

- Significant progress made in signing, ratifying and implementing international standards and codes;
- First-world economic and physical infrastructure;
- The largest and most sophisticated economy in Africa;
- Sound, transparent and predictable economic policies;
- Strong public financial management system;
- Being well-positioned technologically to be able to compete in the global market;
- Ranking among the best performers in corporate governance in emerging markets;
- A robust legal system that ensures lawful protection of property rights and intellectual property rights;
- An adequate regulatory framework for economic activity in the country, supported by a wide variety of regulatory institutions;
- A good framework for the protection of human rights and labour rights;
- Existence of credible institutions such as the Public Investment Corporation, the Industrial Development Corporation (IDC), a number of well-known multinational institutions and world-class universities;
- Self-sufficiency in development financing; and
- Strong representation of women in the public sector.

Key Challenges

- Race relations remain brittle and sensitive. South Africans from different racial groups still hold widely divergent views on key policy questions and the nature of problems confronting the country.
- Minorities fear that the government is not doing enough to assure the cultural, education and language rights guaranteed by the Constitution.
- Current trends in BEE are a cause for concern. While South Africa also needed black billionaire role models, BEE has to be broadened and deepened beyond the enrichment of a few individuals. Moreover, the speed with which politicians transform themselves into businesspeople is a matter of concern.
- While expenditure on education has risen significantly, currently standing at about 6 per cent of GDP, this is not mirrored in the results. The education system is failing to provide school-leavers adequately with the

skills and competencies they need to contribute more constructively to the economy.

- The environment in some schools is quite disabling, given their high levels of indiscipline and criminality. At the tertiary level, drop-out rates are unsustainable, ranging from 26 to 61 per cent at some universities in 2004.
- The conversion of democratic ideals into practice still constitutes a problem. Ordinary South Africans have insufficient contact with their political representatives, which points in part to the shortcomings of unbridled proportional representation at national and provincial levels.
- The legacy and distortions of apartheid are still pervasive and costly, as reflected in entrenched socio-economic inequalities, pervasive poverty and high unemployment levels. Discrimination in the provision of education and training opportunities in the past meant that generations of black South Africans were prevented from acquiring the skills that would enable them to pursue productive employment opportunities. Manifold imbalances, disparities, distortions and paradoxes still persist.
- A critical shortage of skills exists, resulting in weak implementation capacity, especially at local government level.
- South Africa has the second highest HIV infection rate in the world.
- Women are underrepresented in the private sector.
- The levels of violent crime are unacceptably high.
- Levels of gender-based violence and violence against children are high.
- High levels of xenophobic tendencies, especially against foreigners from other African countries, exist.
- Some beneficiaries of the apartheid policy are reluctant to contribute to reconstruction and development.

3.141 South Africa needs transformation of both the economic base and social structure of society by maximising its strengths and taking necessary correction measures to remove or ameliorate its weaknesses. This will create an environment in which the majority of people will participate fully in development and benefit correspondingly and equitably from the dividends of development. This is the only way in which the country can truly emerge as a Rainbow Nation. All stakeholders, led by the government, are urged to work together in implementing the recommendations and the National Programme of Action that have emerged from this review.

CHAPTER ONE

1. INTRODUCTION

“The mandate of the African Peer Review Mechanism is to ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance. The APRM is the mutually agreed-to instrument for self-monitoring by the participating governments.”

NEPAD/HSGIC/03-2003/APRM/MOU/Annexe II

1.1 The Evolution of the African Peer Review Mechanism

- (i) The APRM is an instrument voluntarily acceded to by member states of the African Union (AU) as a self-monitoring mechanism for African states. Its primary purpose is to foster the adoption of policies, standards and practices that lead to human security and political stability, high economic growth, sustainable development, and accelerated sub-regional and continental economic integration.
- (ii) Peer review is the systematic examination and assessment of the performance of a state by other participating states. It is conducted on a non-adversarial basis and relies heavily on mutual trust and shared confidence among the states involved in the process. The APRM seeks to improve the performance of countries through sharing experiences, reinforcing successful and best practices, identifying deficiencies and assessing the need for capacity building.
- (iii) Assessment under the APRM is conducted within the framework of agreed values, codes and standards as contained in the Declaration on Democracy, Political, Economic and Corporate Governance. The APRM measures a country's performance in four substantive thematic areas:
 - Democracy and Political Governance;
 - Economic Governance and Management;
 - Corporate Governance; and
 - Socio-Economic Development.
- (iv) The APRM is open to all member states of the AU. Thus far, 26 member countries have voluntarily acceded (Table 1.1). Accession entails undertaking to submit to periodic peer reviews and facilitating such reviews. It also includes committing to the implementation of the National Programme of Action (NPOA) arising from the review and the operationalisation of the agreed parameters for good governance across the four thematic areas.

Table 1.1: Countries that have joined the APRM between 2003 and April 2007

Country	Region
Central Africa (4)	Cameroon, Gabon, Republic of Congo, Rwanda
East Africa (4)	Ethiopia, Kenya, Tanzania, Uganda
North Africa (3)	Algeria, Egypt, Sudan
Southern Africa (7)	Angola, Lesotho, Malawi, Mauritius, Mozambique, South Africa, Zambia
West Africa (8)	Benin, Burkina Faso, Ghana, Mali, Nigeria, São Tomé and Príncipe, Senegal, Sierra Leone

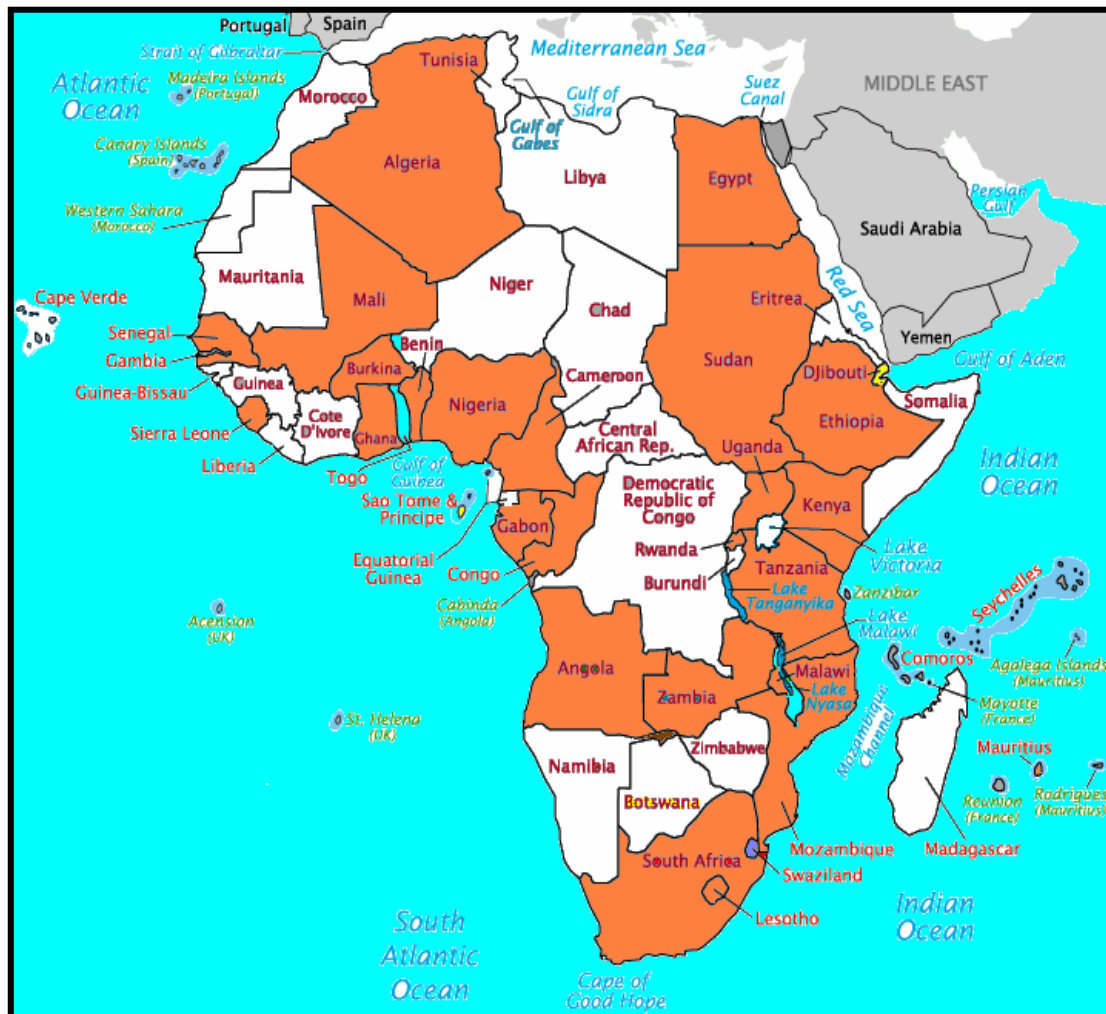
Source: APR Secretariat, April 2007.

- (v) The membership of the APRM represents 652.7 million out of the total African population of 886.0 million, i.e. 74 per cent. Figure 1.1 shows the APRM's coverage in Africa.
- (vi) Since its inception, the APR Panel has launched reviews in 13 countries (by order of their launch): Ghana, Rwanda, Mauritius, Kenya, Uganda, Nigeria, Algeria, South Africa, Benin, Burkina Faso, Tanzania, Mozambique and Lesotho. Of these, three reviews have been completed and peer reviewed by the APR Forum.
- (vii) Ghana was reviewed at the Fourth APR Forum meeting held in Khartoum, Sudan on 22 January 2006. Kenya and Rwanda were peer reviewed at the Fifth APR Forum meeting held in Banjul, The Gambia on 30 June 2006. South Africa becomes the fourth country to field a Country Review Mission (CRM).

1.2 The APRM Process

The APRM process consists of five stages, which are outlined in the APRM Base Document as follows:

- (i) **Stage One** entails a country's establishment of structures for managing the process at national level. These include the designation of a Focal Point and the establishment of a National Governing Council (NGC) or a National Commission. The country is then required to undertake a comprehensive national self-assessment involving all key stakeholders and grassroots constituencies. The findings of the assessment have to be validated nationally and a Country Self-Assessment Report (CSAR) is submitted to the APR Panel.
- (ii) On the basis of these findings the country prepares a draft NPOA, which must reflect input by the broad civil society. It is submitted to the Panel as an integral part of the CSAR.

Figure 1.1: APRM Geographical Coverage

Source: APR Secretariat, April 2007.

- (iii) According to the APRM Base Document, “the primary purpose of the NPOA is to guide and mobilise the country’s effort in implementing the necessary changes to improve its state of governance and socio-economic development. In addition, the NPOA is the key input delivered by the country into the peer review. It serves to present and clarify the country’s priorities; the activities undertaken to prepare and participate in the APRM; the nature of the national consultations; as well as to explain explicitly the responsibility of the various stakeholders in the government, civil society and private sector in implementing the programme”.
- (iv) As the country prepares its CSAR, including the NPOA, the APR Secretariat prepares a comprehensive background document on the country. The preparation of the document draws on up-to-date information from national, sub-regional, regional and international sources.

- (v) Based on the CSAR, NPOA and background document, the APR Secretariat develops an “Issues Paper” outlining the key issues on which the review process will focus. This Paper is informed by five main considerations:
- Critical issues that are addressed in the CSAR but need reinforcement;
 - Issues that have been understated or inadequately addressed;
 - Issues identified in the past but which continue to have serious problems with implementation;
 - Issues missed completely by the CSAR; and
 - Areas of discrepancy or divergence (as is evident from cross-checking with the background paper).
- (vi) **Stage Two** is the fielding of the CRM under the leadership of the APR Panel. The CRM must carry out the widest possible consultations with all stakeholders: the government, judiciary, political parties, national assemblies, civil society organisations (CSOs), the media, women, youth, people with disabilities, trade unions, religious bodies, professional bodies, corporate entities and organisations (both private, public and informal), academia and research institutions. The main objectives are to:
- Learn about the different stakeholders’ perspectives on governance in the country, and
 - Clarify the issues identified in the Issues Paper and build consensus on how the different issues should be tackled.
- (vii) **Stage Three** sees the drafting of the CRM’s report. It is informed by the CSAR and NPOA, the background document and Issues Paper prepared by the APR Secretariat, as well as by the information made available to the CRM during the wide-ranging consultations with all stakeholders in the course of the country review visit. The draft report also:
- Considers the applicable political, economic, corporate governance and socio-economic development commitments made in the preliminary NPOA;
 - Identifies any remaining weaknesses; and
 - Recommends further actions to be included in the final NPOA.
- (viii) The draft report has to be clear on the specific actions required in instances where unresolved issues are identified. The report is first discussed with the government concerned to verify the accuracy of the information. The government is given an opportunity to respond to the CRM’s findings and put forward its own view on how the shortcomings could be rectified. These responses are appended to the CRM’s report. At this stage, the country finalises its NPOA, taking into account the conclusions and recommendations of the draft report.

- (ix) **Stage Four** begins when the APR Panel Member leading the country's peer review process submits the final report, with the country's final NPOA, to the APR Panel. On its approval, the report is submitted to the APR Forum for presentation and peer review and, subsequently, for implementation according to the APR Forum's mandate. If the country shows a demonstrable will to rectify identified shortcomings, it will be incumbent on participating governments to provide assistance to the extent they can and to urge development partners and agencies to come to the assistance of that country.
- (x) **Stage Five** is the final stage of the APRM process. It entails the formal publication and tabling of the country review report after it has been considered by the APR Forum. Key regional and sub-regional structures such as the regional economic community to which the country belongs, the Pan-African Parliament, the African Commission on Human and Peoples' Rights, the Peace and Security Council, and the Economic, Social and Cultural Council (ECOSOCC) of the AU should have the report tabled before them.
- (xi) The timeline for the process is expected to vary considerably among countries, depending on each country's specificities. The anticipated duration of each peer review from the onset of Stage One to the end of Stage Four is 9 to 12 months.

1.3 APRM Principles

- (i) A number of essential factors and principles underpin the effectiveness of the APRM. These include: national ownership and leadership by the participating country; inclusiveness and broad-based participation; accountability; technical competence; credibility; and freedom from manipulation.
- (ii) To ensure that these principles are operationalised, rules and procedures have been developed to guide all stakeholders in the conduct of the review process. These include the APRM Base Documents; the "Guidelines for Countries to Prepare for and to Participate in the APRM" (Country Guidelines) and the standard questionnaire for APRM assessment that is sent to all countries.

1.4 Key Objectives of the APRM Focus Areas

The key objectives for each of the four thematic areas are listed below.

Democracy and Political Governance

1. Preventing and reducing intra- and inter-country conflicts;
2. Fostering constitutional democracy, i.e. periodic political competition and opportunity for choice, the rule of law, a Bill of Rights and the supremacy of the Constitution are firmly established in the Constitution;

3. Promoting and protecting economic, social, cultural, civil and political rights as enshrined in all African and international human rights instruments;
4. Upholding the separation of powers, including protecting the independence of the judiciary and of an effective parliament;
5. Ensuring accountable and efficient public officeholders and civil servants;
6. Fighting corruption in the political sphere;
7. Promoting and protecting the rights of women;
8. Promoting and protecting the rights of children and young persons; and
9. Promoting and protecting the rights of vulnerable groups, including displaced persons and refugees.

Economic Governance and Management Objectives

1. Promoting macroeconomic policies that support sustainable development;
2. Implementing transparent, predictable and credible state economic policies;
3. Promoting sound public finance management;
4. Fighting corruption and money laundering; and
5. Accelerating regional integration by participating in the harmonisation of monetary, trade and investment policies among the participating states.

Corporate Governance Objectives

1. Providing an enabling environment and effective regulatory framework for economic activities;
2. Ensuring that corporations act as good corporate citizens with regard to human rights, social responsibility and environmental sustainability;
3. Promoting the adoption of codes of good business ethics in achieving the objectives of the organisation;
4. Ensuring that corporations treat all their stakeholders (shareholders, employees, communities, suppliers and customers) in a fair and just manner; and
5. Making provision for the accountability of corporations and directors.

Socio-Economic Development Objectives

1. Promoting self-reliance in development and building capacity for self-sustaining development;
2. Accelerating socio-economic development to achieve sustainable development and the eradication of poverty;
3. Strengthening policies, delivery mechanisms and outputs in key social development areas (including education for all and combating HIV, AIDS and other communicable diseases);
4. Ensuring affordable access to water, energy, finance (including microfinance), markets, and information and communication technology (ICT) to all citizens, especially the rural poor;
5. Ensuring progress towards gender equality, particularly equal access to education for girls at all levels; and
6. Encouraging broad-based participation in development by all stakeholders at all levels.

1.5 Implementation of the APRM Process in South Africa

- (i) South Africa was one of the first countries to accede to the APRM in Abuja, Nigeria in March 2003. Subsequently, the country appointed Honourable Geraldine Fraser-Moleketi, Minister for Public Service and Administration, as the National APRM Focal Point.
- (ii) South Africa formed an interdepartmental committee and established an interim secretariat located in the Department of Public Service and Administration (DPSA). These structures were to assist the Focal Point in putting in place the necessary mechanisms for overseeing the implementation of the APRM process in the country.
- (iii) Upon her appointment as Focal Point, Hon. Fraser-Moleketi organised a number of workshops and sensitisation activities to create awareness and outline modalities for participation in the process. The country's approach to the APRM is informed by the following strategic objectives:
 - Establishing benchmarks for the peer review process, considering that it is not a “one shot in the arm” affair but entails periodic peer reviews to determine the progress being made;
 - Strengthening national mechanisms for assessing, among other things, the performance of the government as well as that of other stakeholders;
 - Building and popularising a broader sense of ownership for the people's contract; and

- Supporting the building of African-based experience and knowledge systems.
- (iv) The preparatory process for the official launching of the review came to a climax when the first-ever National Consultative Conference on the APRM was held on 28-29 September 2005. It was attended by about 350 delegates, comprising representatives from the government (national, provincial and municipal), academia, constitutional bodies and civil society structures. His Excellency President Thabo Mbeki inaugurated a 15-member NGC during the conference.
- (v) The following sectors were represented on the NGC:
- Business Unity South Africa (BUSA);
 - Disabled People South Africa;
 - South African National NGO Coalition (SANGOCO);
 - South African Youth Council (SAYC);
 - South African Council of Churches (SACC);
 - South African Transport and Allied Workers Union (SATAWU) – Congress of South African Trade Unions (Cosatu) representative;
 - Arts and Culture;
 - South African National Civic Organisation (SANCO);
 - National Women’s Coalition (NWC); and
 - National Council of Trade Unions (NACTU).
- (vi) In addition, the NGC included five Ministers:
- Minister of Finance;
 - Minister of Trade and Industry;
 - Minister of Justice and Constitutional Development;
 - Minister in the Presidency; and
 - Minister of Public Service and Administration (the Focal Point Minister who was also designated chairperson).
- (vii) In order to make the national structure more representative it was decided that each member (except the chairperson) would have an “alternate”. Both groups were nonetheless expected to participate in all meetings. The alternates were drawn from the same stakeholder groups as the main members. In line with the desire to decentralise governance and management to local levels, provincial Focal Points were also identified. These were mainly members of the Executive Councils (MECs) in the provinces, and in each province a Provincial Governing Council (PGC) was established. South Africa became the first country so far where national APRM structures were replicated at provincial level.

1.6 Country Support Mission

- (i) Once the structures at national and provincial levels had been established, the APR Panel's Country Support Mission (CSM) to South Africa took place on 9-11 November 2005. The purpose was to assess the structures and mechanisms the country had put in place to undertake its self-assessment and, subsequently, to draft its NPOA. The CSM was also to conclude negotiations with the government and sign the Memorandum of Understanding (MOU) on the Technical Assessment and the CRM.
- (ii) Deliberations during the CSM focused on the following:
 - The national structures, in particular the NGC, which segments of civil society argued was not representative enough and was overly dominated by the government;
 - The role of the parliament, as it had decided to undertake a parallel assessment process of its own, which could potentially undermine the national process;
 - The use of technical research institutions to safeguard the technical soundness and credibility of the report; and
 - Sensitisation and mobilisation of the public.
- (iii) The country readily accepted the proposal to expand the membership of the NGC so as to render it more inclusive. It was therefore agreed to make the alternate 14 members full members of the Council. This brought the membership to 29.
- (iv) The role of the parliament was extensively discussed. It was imperative that the parliament should participate fully in the APRM as one of the key stakeholders. However, its contribution had to be part of the same national process. If seen as a parallel or competing process, it could undermine the entire APRM exercise.
- (v) The CSM emphasised the importance of anchoring the APRM process on a sound technical footing through the use of technically competent and experienced research institutions. This would safeguard the credibility of the report. It would also ensure sustainability and institutional memory, since it is envisaged that there would be a number of follow-up reviews to monitor the progress being made. At the time, however, the use of such research institutions was not readily accepted.
- (vi) To gauge the measure of preparedness at provincial level, it was agreed to field the CSM to two of the nine provinces (Limpopo and the Eastern Cape) in order to assess the viability of the structures at this level.
- (vii) Accordingly, the CSM was fielded to the two provinces from 4-7 December 2005, being tasked to:

- Capture perspectives and witness firsthand the engagement and involvement of the broad spectrum of South African society in the APRM;
 - Observe the PGCs at work;
 - Observe how the community development workers (CDWs) were implementing the questionnaire at local level;
 - Conclude discussions with the national Focal Point and NGC on remaining matters such as the technical research strategy and the role of the parliament;
 - Ensure continuity and the smooth implementation of the APRM process from inception to completion; and
 - Continue to sensitise stakeholders on the APRM process.
- (viii) Overall, the follow-up mission was very useful, providing the opportunity for further interactions with various stakeholders at provincial level. Evidently, significant effort had been made in the provinces in terms of sensitising various stakeholder groups. There was a great deal of awareness and the process seemed well organised. The parliament also agreed to have its contribution integrated into the national process.
- (ix) The CRM offered suggestions on how to mobilise and strengthen the consultation and self-assessment processes. In particular, it reiterated the use of technical research institutions to anchor the national self-assessment exercise. Meanwhile, the MOU for conducting the review had been signed on 17 November 2005.

1.7 Methodology Used to Prepare the Country Self-Assessment Report

- (i) Towards the end of 2005, the NGC established a research subcommittee consisting of seven members. Three were from the government and four from civil society, in addition to the Secretariat's research committee. Other subcommittees of the NGC were organised along the four thematic areas of the APRM.
- (ii) About 190 institutions involved in research and advocacy were invited to apply for accreditation as research partners. Fifteen institutions met the criteria and were accordingly accredited. These institutions were to take part in the analysis of submissions and the development of the CSAR. Ultimately, four of these institutions tendered to compile the CSAR as technical support agencies for each thematic area:
1. Institute for Democracy in South Africa (IDASA) – Democracy and Political Governance;
 2. South African Institute for International Affairs (SAIIA) – Economic Governance and Management;

3. African Institute of Corporate Citizenship (AICC) – Corporate Governance; and
 4. Institute for Economic Research on Innovation (IERI) – Socio-Economic Development.
- (iii) To enhance the credibility of the process and ensure a high-quality report-writing process, the research subcommittee agreed to appoint the Human Sciences Research Council (HSRC) and the Auditor-General to assist with quality control.
 - (iv) Following the compilation of the thematic technical reports, research seminars were held on 4-7 April 2006 to review these reports. The draft technical reports and additional inputs were then used to compile the CSAR and draft the initial NPOA. The draft NPOA was prioritised, refined and costed by a committee consisting of representatives from the government, NGC and the Technical Support Agencies (TSAs).
 - (v) The second national consultative workshop for the presentation of the draft CSAR was held on 4-5 May 2006 and was attended by about 1700 people from all walks of life. Validation workshops were also held at provincial level.
 - (vi) Some concerns have been raised about the approach used by the NGC in consolidating the CSAR. These are summarised below.
 - The reluctance to engage technical institutions at the beginning of the self-assessment process led some stakeholders to suspect that the NGC wanted to manipulate the process and its outcome. This sentiment has lingered among segments of stakeholders, including civil society, academia and the media. This has been the case despite the involvement of technical institutions later in the process and the subjection of the CSAR, as reported above, to validation at both national and provincial levels.
 - The finalisation of the CSAR after its validation by the APR Secretariat further fuelled apprehension and suspicion in this regard. Individuals and stakeholders have suggested that some of the initial submissions were dropped altogether, or received insufficient consideration, or were omitted from the draft NPOA.
 - While critics generally admit that the quality control agencies (the Auditor-General and the HSRC) have been thorough in undertaking their assignments, it has also been argued that their focus was more on verifying the numbers of submission and how they were treated than on exercising external substantive quality control.
 - (vii) In discussions with the NGC, it was maintained that the CSAR had been consolidated based on extensive deliberations and consensus building among the members of the NGC and thus reflected the viewpoints in the various submissions. Furthermore, validation workshops had been held where the report was tested and amendments were made as necessary, based on stakeholders' responses.

- (viii) There is no doubt that the experiences of this first-ever national self-assessment in South Africa will enable the NGC to improve on future preparations. Having said this, the NGC must be commended for subjecting the process to broad-based consultations within extensive grassroots stakeholder reach, such as setting up call centres where people could learn about APRM (Box 1.1). The NGC also put out tapes, CDs and two songs to popularise the APRM. According to the South African authorities, over 5 million people were involved in the self-assessment process and about 6000 submissions were received by the Focal Point and the NGC. The national validation workshop held in Kliptown, Soweto on 4-5 May 2006 attracted over 1700 people. Similar validation workshops were held in all provinces.

Box 1.1: Innovations in the Implementation of the APRM in South Africa

APR PGCs: These were established in all nine provinces of South Africa. Provinces were encouraged to establish PGCs in accordance with their specific provincial context, provided the core APRM principles were adhered to. The composition of the PGC was therefore adapted to the local context to be representative and inclusive. The PGCs were required to align their activities with the NGC so as to ensure consistency. They were also encouraged to set up provincial secretariats to assist the PGCs. Provinces carried some of the costs associated with the implementation of the APRM. Furthermore, in all provinces, the PGCs hosted and interacted with the CRM to outline their methodological approach. All the provinces produced provincial APRM self-assessment reports, which were forwarded to the APRM's NGC and made available to the CRM. On the whole, the concept of the PGC – a novel initiative by South Africa – is lauded for the way it broadened awareness of and participation in the APRM.

Broad sensitisation and mobilisation of stakeholders at grassroots level: This was undertaken, including training targeted at agents who would be charged with implementation of the process (government officials, civil society members and CDWs); use of a government call centre to provide information on the APRM (calls from landlines were free); and a proactive media and communication strategy utilising, inter alia, radio jingles, television adverts, print media, outdoor radio broadcast events and advertising the APRM on payslips for national and provincial departments. An APRM website (www.aprm.org.za) was also set up. In addition, South Africa recorded two songs on the APRM that are available on CD. This massive sensitisation campaign brought the APRM to millions of people.

Simplification of the questionnaire: Like Ghana, Rwanda and Kenya that have undergone the entire APRM review process, it is noteworthy that South Africa simplified the 88-page APRM questionnaire and translated it into the 11 official languages. The questionnaire was also copied on CDs and distributed to provinces for use by stakeholders. As a result, a large number of people were able to contribute to the process.

Timeline for the process: South Africa adhered rigorously to the recommended timelines for the process agreed upon during the CSM. This was greatly aided by the government's allocation of sufficient resources to execute the process.

Source: Africa's submission on the national process and CRM validation, July 2006.

- (ix) Of course, the primary purpose of the CRM is first to validate the national self-assessment and second, to receive additional information, viewpoints (including dissensions, disagreements and amendments/modifications to the CSAR) and additional insights and suggestions for improving governance and development from the thousands of people representing the stakeholders with whom interactions took place. This APR Panel Country Review Report on South Africa has therefore benefited tremendously from all these inputs in reaching the different conclusions and recommendations contained herein. It is this report that will constitute the basic document for the peer review of South Africa to be undertaken by the APR Forum of Heads of State and the governments of participating countries.
- (x) A holistic package of strategies, policies, programmes and plans, if fully implemented, will increasingly provide space to the people while safeguarding the integrity of the polity. It will facilitate the development of the holistic cultures and values needed to emerge as a Rainbow society. Without a doubt, peer review offers the opportunity for developing these holistic cultures and values. One should, however, remain conscious of the fact that this long-term objective cannot be achieved mechanically or overnight. It will take time, patience and persistence if we are not to do more harm than good in our effort to improve the political, social and economic order. This field is surrounded by essential complexity of an organised kind. It is thus difficult to acquire, all at once, full knowledge that will make the mastery of events easy. The APRM therefore aims to use what knowledge it can acquire – not to shape the future mechanically, but rather to foster the culture of good governance in all four thematic areas by providing an appropriate environment.

1.8 Country Review Mission

- (i) South Africa submitted its CSAR and draft NPOA to the APR Panel in June 2006. This paved the way for the fielding of the CRM on 9-25 July 2006. It was led by Prof. Adebayo Adedeji, Commander of the Order of the Federal Republic (CFR) of Nigeria and Member of the African Peer Review Mechanism's Panel of Eminent Persons (APR Panel).
- (ii) The review team was composed of independent experts in the four APRM thematic areas; experts from the strategic partner institutions – African Development Bank (AfDB), United Nations Economic Commission for Africa (UNECA) and the United Nations Development Programme (UNDP) Regional Bureau for Africa – as well as selected members of the APR Secretariat, as indicated on the following pages.

1. Independent Technical Consultants

Democracy and Political Governance

- Prof. Amos Sawyer (Former President, Interim Government of Liberia and Co-Director, Workshop on Political Theory, Indiana University, USA)
- Prof. Peter Anyang' Nyong'o (Former Minister of Planning and National Development and National APRM Focal Point in Kenya. Currently a Member of Parliament in Kenya)

Economic Governance and Management

- Prof. Roland Ubogu (Former Chief Economist, AfDB, and Professor of Economics, University of Lagos, Nigeria)

Corporate Governance

- Dr Babacar Ndiaye (Former President of the AfDB)
- Prof. Adebayo Ogunesi, (Head of the Global Investment Division, Credit-Suisse First Boston, New York, USA)

Socio-Economic Development

- Prof. Mbaya Kankwenda (Former UNDP Resident Representative in Nigeria)
- Dr Francis Chigunta (Lecturer in Development Studies and Environment, Department of Development Studies, University of Zambia)
- Prof. Julia Duany (Professor of Political Science, Indiana University, USA, and Makerere University, Uganda)

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 - Mr Dalmar Jama (Research Analyst: Corporate Governance);
 - Ms Eunice Kamwendo (Research Analyst: Economic Governance and Management);
 - Mr Ferdinand Katendeko (Research Analyst: Democracy and Political Governance); and
 - Ms Rachel Mukamunana (Research Analyst: Democracy and Political Governance).
- (iii) The 22-member team are nationals of 13 member states of the AU: Côte d'Ivoire, Democratic Republic of Congo, Ghana, Kenya, Liberia, Malawi, Nigeria, Rwanda, Senegal, Somalia, Sudan, Uganda and Zambia.

1.9 Activities Undertaken During the CRM

- (i) The CRM was facilitated by the national Focal Point, South Africa's NGC and the national APR Secretariat.
- (ii) The CRM formally began on 12 July 2006 with a launch attended by His Excellency President Thabo Mbeki. The CSAR, with the NPOA, was ceremonially handed over by the President to the leader of the CRM.
- (iii) The CRM met with key government departments in the thematic clusters. It also interacted with various institutions with a bearing on governance, such as the Constitutional Court, the Auditor-General, the South African Reserve Bank (SARB) and the JSE Securities Exchange (JSE). In addition, the CRM held discussions with the leadership of stakeholder groups, such as women's groups, FBOs and political parties.
- (iv) The CRM proceeded to visit various provinces in South Africa, starting in Gauteng on 14 July 2006. The CRM then visited Bloemfontein in the Free State (the judicial capital of South Africa) and Cape Town in the Western Cape (the parliamentary capital). It also spent time in KwaZulu-Natal, Mpumalanga, North-West and the Northern Cape; the Eastern Cape and

Limpopo had been covered during the CSM. A site visit was made to the Lindela Repatriation Centre.

- (v) The provincial visits allowed the CRM to interact with key stakeholders on the issues that emerged from the CSAR and NPOA. In each province, sessions were held with the provincial government and legislature. In addition, the CRM met with stakeholder groups such as women's groups, the youth, people with disabilities, the elderly, non-governmental organisations (NGOs), academia, the media, small businesses, FBOs, trade unions, private sector companies, community-based organisations (CBOs), professional bodies, social service institutions and traditional leaders to understand their perspectives on governance and development in South Africa.
- (vi) Finally, the CRM returned to Gauteng for wrap-up sessions with civil society groups and the NGC.
- (vii) In all, the visits to all the provinces were very useful in providing the CRM with a clear picture of the state of governance on the ground. It benefited enormously from these visits that brought out the various perceptions of South Africans on how the nation is performing in the four thematic areas. At all interactions with stakeholders at provincial and national level, it was made abundantly clear that the exercise was not limited to the government and the public sector, but was a holistic review of South Africa as a nation. While the government – at national, provincial and local levels – is no doubt a key strategic player, it is not the sole player. All stakeholders have their respective parts to play. Consequently, the CRM was able to encourage stakeholders to come up with viable solutions to the identified problems and to consider what they themselves could do to foster development and the reduction of poverty.

1.10 Structure of the Report

- (i) The report is structured in seven chapters. This introductory chapter is followed by Chapter Two, which provides an overview of South Africa as a backdrop to the report.
- (ii) Chapters Three to Six evaluate developments and remaining challenges in the four APRM focus areas (Democracy and Political Governance; Economic Governance and Management; Corporate Governance; and Socio-Economic Development) respectively. Each of these chapters has two sections: the first analyses the codes and standards of the APRM, while the second assesses the APRM's objectives for that thematic area. Each section begins with a summary of the CSAR, followed by the findings of the CRM and, finally, the APR Panel's recommendations on the identified challenges. Effort has also been made to highlight areas of best practice in boxes.
- (iii) Chapter Seven discusses the cross-cutting issues considered critical due to their wider impact on governance and thus require holistic, immediate and urgent attention. These salient issues are the following:

1. Unemployment;
 2. Capacity constraints and poor service delivery;
 3. Poverty and inequality;
 4. Land reform;
 5. Violence against women;
 6. Violence against children;
 7. HIV and AIDS pandemic;
 8. Crime;
 9. Corruption;
 10. Racism and xenophobia; and
 11. Managing diversity.
- (iv) Finally, the NPOA received from South Africa and the comments of the government are annexed to the report, as mandated by the APRM rules.

CHAPTER TWO

2. BACKGROUND

2.1 Overview

1. South Africa has waged a protracted and bloody struggle for democracy. Generations of the vast majority of South Africans have suffered severely from deprivation and subjugation as a result of the colonial and apartheid rule that lasted for 342 years. Therefore, it is to be expected that the country will cherish dearly its freedom and, like a good farmer, tender most carefully the democratic plant that was planted ten years ago following the adoption of the Constitution of the Republic of South Africa in 1996.
2. The South African Constitution has been hailed as one of the most progressive in the world. Its vision for the country is one of a progressive, non-racist, non-sexist and human rights-based society. The Bill of Rights provides for a society based on human dignity, human security, freedom, equality and justice. Given the country's long suffering and bitter experience, the makers of the Constitution avoided the path of low-intensity democracy. Rather, it opted for a cooperative state with three spheres of government and separation of powers between the executive, the legislature and the judiciary. The judiciary is empowered to uphold the Constitution, and both the parliament and the executive are required to uphold the authority of the judiciary.²
3. The country's first democratic elections on 27 April 1994 paved the way for the transition from the race-based system of oligarchic rule – in which the white minority were the primary beneficiaries – to a system of democratic governance with a strong emphasis on the sovereignty of the people. This leap of faith was not achieved without compromise. The peaceful transition, always shadowed by the prospect of civil war, was the beginning of a profound process of transformation of the state. The resurgence of popular participation made it possible for civil society organisations (CSOs), including the media, to play an important role in maintaining the momentum for reform.
4. In 12 short years, South Africans have managed to leap across the deep divide of an oppressive racist state to become a modern constitutional democracy. Since 1994, the country has made undeniable progress in a number of critical areas. On the political front, democratic institutions are well established.

² This is aptly demonstrated by the Constitutional Court ruling in August 2006 which struck down pro-abortion legislation by a majority of 8 to 3, upholding the application by Doctors for Life that South Africa's Parliament and the nine provinces had failed to provide "a meaningful opportunity" for the public to participate in the democratic process in passing these Bills. Judge Sandile Ngcobo, in a 117-page ruling indicated that the Court found that the nation's Parliament had not allowed enough public participation before adopting the legislation. The Parliament now has 18 months to obtain public input and re-approve the bills.

5. The “reinvention” of government that is continuing through the creation of new spheres of government (both provincial and local) has changed the environment for governance and service delivery. On the economic front, the government has pursued policies that have restored and maintained macroeconomic stability in the context of a difficult global environment. Nevertheless, five legacies of the apartheid era have persisted: a dualistic polity, poverty, unemployment, the inequitable distribution of wealth and income, and a high incidence of crime.
6. While post-apartheid South Africa is imbued with a vibrant political democracy, it is nevertheless a democracy under severe socio-economic stress. The repudiation of apartheid has not meant the end of racial divisions and racism, nor has it signalled the end of the economic and social problems that have increasingly bedevilled South Africa’s thriving democracy since 1994. Racially discriminatory policies enforced by successive governments throughout the 20th century left the black majority of the population poor and dispossessed, owning only about 13 per cent of the country’s land, most of which is of poor quality. Unable to achieve sustainable agricultural development, the poor began to flock to cities with the disbandment of homelands and the dawn of freedom of movement. Urban migration, in turn, has exacerbated the problem of squatters. Consequently, enormous squatter encampments have developed, particularly in and around Johannesburg and Cape Town. Most of these squatters, as well as nearly one half of the adult African population nationwide, cannot find work within the formal sector of the economy.
7. The results are widespread poverty, dichotomisation of the economy, appalling living conditions and an increasing incidence of crime. South Africa’s per capita crime rate, overall, has exceeded that of almost any other country in recent years. The government has acknowledged the seriousness of the problem but has not been able to end the wave of crime against persons and property that is fuelled, among other things, by high levels of poverty.
8. This chapter presents a brief historical background and describes the state of contemporary South Africa. It serves as an analytical backdrop for the next four chapters in which the four thematic areas of the APRM are appraised.

2.2 Brief Political History

9. History has a compelling significance in South Africa, as the country’s contemporary problems have deep historical roots. The country’s political history can be categorised into four major epochs of varying duration.

2.2.1 Colonisation

10. The long history of colonial settlements and conquest of South Africa commenced in 1652 with the landing of a Dutch expedition led by Jan van Riebeeck at the Cape of Good Hope (the area now known as Cape Town) on

behalf of the Dutch East India Company. This company required the establishment of a replenishment station that would aid its business forays to Asia, particularly Indonesia. The success of the settlement at the Cape of Good Hope required the subjugation of the local inhabitants and this proceeded apace during the period of Dutch East Indian rule.

11. Subsequent British colonial administrations were no less forceful in their oppression of the people to secure access to the country's wealth of minerals and land. In 1795, a British expedition ousted the Dutch and the Cape fell under British control. By 1870, white people had made their presence felt as far north as the Limpopo River, having defeated many of the farming communities in a series of separate campaigns. They assumed ownership of much of the best land in the territories of the Ciskei, Natal, the Orange Free State and the Transvaal.
12. British politicians then sought to amalgamate all territories occupied by the British and Afrikaners (the Dutch) in South Africa into a self-governing, white-controlled country under the Crown. In 1910, the Union of South Africa, with dominion status within the British Commonwealth, was established under the South Africa Act passed by the British parliament in 1909. This included the Cape of Good Hope, Natal, the Orange Free State and the Transvaal as provinces. The Act served as the Constitution of the Union of South Africa until 1961. Although the country was formally ruled by a Governor-General representing the Crown, its government was granted almost total independence in internal affairs.

2.2.2 Apartheid Rule (1948-1989)

13. While segregation and inequality between races had existed as a matter of custom and practice in South Africa, they were enshrined in law with the assumption of office by the Afrikaner National Party (NP) in 1948. At the heart of the NP's legislative agenda was apartheid, an Afrikaans word for "separateness" – a doctrine of white supremacy promoted as a programme of separate development. Once in power, the NP extended and legalised white economic exploitation, political domination and social privilege. These tenets were reinforced with a harsh and intrusive security system, separate and unequal education, job discrimination and residential segregation.
14. Beginning in the 1950s, the government divided the black population into ethnic groups and assigned each group to a so-called homeland, also referred to as a Bantustan. Ten of these territories were eventually established: Bophuthatswana, Ciskei, Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa, Qwaqwa, Transkei and Venda. The Development Land and Trust Act of 1936 had augmented the amount of land black people could own from 7 to 13 per cent, and these areas became the basis for the Bantustans.
15. South Africa became a Republic following a national referendum among the country's white voters on 5 October 1960. It left the Commonwealth of

Nations on 31 May 1961. The 1961 Constitution maintained white political domination through an electoral system that denied Africans, coloureds and Asians the right to vote for national officeholders. The apartheid system was thus consolidated. Indeed, beginning from 1951, the Bantu Authorities Act had restricted black political participation to the homelands.

16. Apartheid policies did not go unchallenged. There was measured resistance, which intensified over time. In 1912, the South African Native National Congress was founded by a group of urban black people and traditional leaders who opposed the policies of the government of the Union of South Africa, especially laws that appropriated African land. In 1923, the organisation was renamed the African National Congress (ANC). At first, its main agenda was to secure voting rights for black people in the Cape Province. For nearly 50 years, it pursued a policy of peaceful protests and petitions. Although the membership of the ANC was largely black, it was a multiracial organisation with white and Asian members, some of whom assumed leadership positions.
17. Over time, the organisation became increasingly militant, though its aims were still reformist rather than revolutionary, seeking to change the existing system. In 1955, the ANC brought together nearly 3000 delegates of all races in a conference in Kliptown in the then Transvaal to adopt the Freedom Charter. This remarkable document, which affirms that South Africa belongs to its entire people, remains to this day the clearest statement of the guiding principles of the ANC.
18. In 1961, the ANC organised Umkhonto we Sizwe (Zulu for “Spear of the Nation”) to conduct an armed struggle against the regime. The then South African government, concerned with the potential of Umkhonto to cause increased unrest, enacted new legislation that gave the police broad powers of arrest without warrant. In July 1963, police raided Umkhonto’s secret headquarters in the Johannesburg suburb of Rivonia and arrested most of its leadership. Nelson Mandela, who was already in prison at the time, was put on trial with the other Umkhonto leaders, all of whom were sentenced to life imprisonment. With the imprisonment of the nationalist leadership and the earlier banning of the ANC and the Pan-Africanist Congress of Azania (PAC), South Africa entered a decade of enforced calm until the Soweto Riots of 16 June 1976. Thousands of black high school students demonstrated against a government ruling that required certain high school subjects to be taught in Afrikaans, which was seen then as the language of oppression. At least 575 people were killed, and rioting and confrontation between police and students spread throughout the country. This led to a new phase in the liberation process in which black youth became deeply involved. Many left the country to join the liberation movements abroad while others continued to work within the country with the underground resistance movement.
19. In the course of the long and arduous struggle for majority rule, South African liberation movements received assistance from the United Nations (UN) and from governments and peoples in all regions of the world. On 6 November

1962, the UN General Assembly passed Resolution 1761, condemning South African apartheid policies. In August 1963, the UN Security Council imposed a voluntary arms embargo against South Africa. Following the Soweto uprising in 1976 and its brutal suppression by the apartheid regime, the arms embargo was made mandatory by the UN Security Council on 4 November 1977 and South Africa became increasingly isolated internationally. Numerous international conferences were held, including the World Conference Against Racism in 1978 and 1983, in which South Africa's policies were condemned.

20. The continent of Africa was united against apartheid and stood firmly with the oppressed. A number of African countries contributed materially and morally to the resistance movement in South Africa, including serving as sanctuary to members of the liberation movements.

2.2.3 The Transition: War and Peace (1989-1994)

21. In 1989, F.W. de Klerk succeeded P.W. Botha as head of the NP and later that year as President of South Africa. Soon after assuming office, De Klerk permitted large multiracial crowds in Cape Town and Johannesburg to march against apartheid. He subsequently met with prominent black leaders, including Archbishop Desmond Tutu, and ordered the release of many black political prisoners. The ban on anti-apartheid organisations, including the ANC, was also lifted.
22. With the release of Nelson Mandela from prison in February 1990, serious negotiations began over the transition to a post-apartheid South Africa. Amid claims and counterclaims of sabotage and brutality, delegations from 19 governmental and political organisations took part in the Convention for a Democratic South Africa (Codesa), which launched formal constitutional negotiations on 20 December 1991.
23. Negotiations were suspended several times following escalating violence. Despite this, a draft Constitution emerged and was published on 26 July 1993. Inevitably, it made concessions on all sides – a federal system of regional legislatures, equal voting rights regardless of race, and a bicameral legislature. Undeterred by the storm of protests that followed, and with a new sense of urgency, negotiators tried to accelerate the process and set the date for nationwide elections no later than 27 April 1994. The country appeared poised for violence-wracked balloting when De Klerk imposed a state of emergency in Natal and KwaZulu on 31 March 1994, deploying 3000 South African Defence Force troops to allow residents of the area to defy the Inkatha Freedom Party (IFP) election boycott and go to the polls. IFP leader Mangosuthu Buthelezi, under intense pressure from trusted local and international figures, only agreed to allow the IFP to be placed on the ballot a few days to the elections.
24. The elections finally took place on schedule, beginning on 26 April 1994 when a few “exceptional” votes were cast by voters who were disabled or living

outside South Africa. During the next two days, more than 22 million voters stood in line for hours at some 9000 polling places to exercise their newly won right to vote. Balloting was extended through 29 April. For days after the elections, tensions remained palpably high and some accusations of election fraud surfaced, especially in Natal. This prompted the Independent Electoral Commission (IEC) to bring together party leaders to negotiate agreements over disputed results.

2.2.4 Democratic Transition (1994 to date)

25. South Africa's first truly non-racial democratic election launched the process of democratic governance. The official results, released on 6 May 1994, gave the ANC 62.6 per cent of the vote, just short of the two-thirds majority that would have given it the power to write the new Constitution on its own without negotiating with other parties. The NP won a surprising 20.4 per cent of the votes because of substantial support from coloured and Asian voters who feared ANC domination, whereas the IFP garnered 10.5 per cent of total vote cast. In all, seven political parties won seats in the National Assembly, while three parties won the 5 per cent of votes necessary to participate in the Cabinet of the coalition government.
26. The National Assembly in Cape Town unanimously elected Nelson Mandela as President on 9 May 1994. His two Deputy Presidents, former ANC Chairperson Thabo Mbeki and former President De Klerk,³ stood with Mandela when he was inaugurated on 10 May 1994 at an epoch-making event in Pretoria witnessed by representatives of 140 countries. Mandela's inaugural address stressed the need for reconciliation, both within South Africa and with other countries, and he reaffirmed his determination to forge a peaceful non-racial society.
27. Nelson Mandela was succeeded by Thabo Mbeki in 1999. President Thabo Mbeki has already served his first term in office and will complete his second term in 2009. During his tenure as President, Nelson Mandela focused enormous attention upon reconciliation and national unity, espousing what the veteran cleric and Nobel Peace Prize winner, the Rev. Desmond Tutu, termed "the Rainbow Nation".
28. While still continuing Mandela's agenda of reconciliation and national unity, Thabo Mbeki has been preoccupied mainly with service delivery and consolidating the gains of democracy. Under the current administration, South Africa has become not just a peacekeeper and peacemaker in Africa but, more importantly, also a promoter of democratic values, principles and norms globally. The country has become active in the African Union (AU) – the successor to the Organisation of African Unity (OAU) – and the Non-Aligned Movement, and has helped broker peace agreements in strife-torn Burundi, Côte d'Ivoire and the Democratic Republic of Congo, amongst others. Thus,

³ The Government of National Unity subsequently experienced political strains resulting in the withdrawal of the then Deputy President, F.W. de Klerk.

while the country has been painstakingly consolidating its own democracy at home, it has also actively engaged in promoting democracy and peace in the rest of Africa and also on the global stage.

29. Some old political wounds still fester. After the second Mbeki electoral victory, two members of the IFP who were picked for Cabinet positions did not turn up to be sworn in. The Alliance partners, the Congress of South African Trade Unions (Cosatu) and the South African Communist Party (SACP), are increasingly becoming very vocal in criticising public policies.

2.3 Milestones in Democratic South Africa

30. South Africa's democratic transition is considered one of the miracles of the 20th century. The seemingly intractable conflict between the apartheid state and the liberation movements ended in a political settlement that refuted the claims of history. No nation has moved from pariah to an admired status quite so dramatically, from economic isolation to economic integration so quickly, and from global polecat to global favourite so emotionally.
31. Upon assuming power in 1994, the challenges facing the newly elected democratic regime were immense. At the core was the debilitating crisis that underpinned the economy following two decades of steady decline and became more potent and manifest after the 1973 oil shocks. The crisis was evident in very low gross domestic product (GDP) growth rates that plummeted from a 5.5 per cent average during the 1960s to 1.8 per cent in the 1980s, before eventually plunging to -1.1 per cent in the early 1990s. The cumulative results were low rates of investment, spiralling inflation and chronic problems with balance of payments. Although the external shocks of the 1970s exacerbated South Africa's economic stagnation, the most devastating effect was its institutionalised inhuman apartheid system of governance, which was roundly rejected by the civilised world.
32. Apartheid policies created several distortions in the economy, including exclusions from the formal, "first" economy, the education and skills deficit of the majority of the population, the racially biased distribution of wealth, services and infrastructure, and worsening poverty among the vast majority of the South African population. The logic of apartheid policy was that black people were destined only for menial jobs and cheap labour, a practice that resulted in the deliberate denial of opportunities for decent education and skills development. The infamous system of Bantu education stripped black people of their dignity and also crippled any efforts at self-development. It created a society in which the vast majority of citizens simply did not have the skills to advance beyond a subsistence economic level. To compound the economic disempowerment of the country's majority, successive apartheid governments directed practically all available public resources towards meeting the needs of white people, who constituted less than 10 per cent of the country's population. For decades, the social infrastructure of black communities was neglected, resulting in miserable living conditions for millions. Without even

the most basic social services such as adequate transport, healthcare, shelter, energy and water, black South Africans were severely disempowered.

33. The vast discrepancies in wealth creation and distribution, as well as the inequality in race and class terms, compelled the post-apartheid government to seek ways to find common ground to reconcile its domestic commitments while returning South Africa to the global economy and ethical values. It is only in so doing that everyone, regardless of race, colour, creed or gender, would enjoy the benefits of the democratic dividend. Fortunately the country did not shy away from these daunting challenges.
34. In navigating the transition from apartheid to democracy, the government of South Africa has made impressive gains in stabilising the economy and laying a firm and robust foundation for higher economic growth and a broad-based improvement in living standards. The economy continues to perform well, relative to other emerging markets, and has demonstrated considerable resilience during the last 12 years.
35. The rates of economic growth, albeit modest, have more than doubled since the end of apartheid, and inflation has been brought down to low and predictable levels. The favourable developments are the results of disciplined macroeconomic policies, diversification of the economy's productive base and an opening up of the economy to foreign trade. In the process, the delivery of basic social services has been greatly improved and important gains in welfare have been achieved.
36. On the political front, South Africa has made impressive strides since 1994 towards building and strengthening a democratic society and improving the quality of life of its entire people based on the principles of equity, non-racialism and non-sexism. A significant milestone in the democratisation of South Africa was the exemplary Constitution-making process, which in 1996 produced a document that has evoked worldwide admiration. So too have been the elections subsequent to 1994 – all conducted peacefully with high levels of participation, compared with the norm in most democracies, and accepted by all as free and fair in their conduct and results.
37. The country has also set up a robust constitutional and legislative framework. This has meant the adoption of new laws and policies to the extent that since 1994, over 800 Acts or amendments to existing legislation aimed at transforming South African society have been adopted.
38. Against this background, not only has South Africa undergone a profound political transition since 1994 but, equally important, the country has made progress in the domain of the economy. The democratisation that began in the early 1990s has been accompanied by an admixture of political and economic stability due largely to the popular legitimacy of the new government and prudent macroeconomic management.

39. From the onset, the government placed emphasis on meeting basic needs through programmes for socio-economic development, such as the provision of housing, piped water, electricity, education and healthcare, as well as social grants for those in need. The impact of these programmes is seen in the increased proportion of South Africans who now have access to basic services. This has been achieved despite a substantial increase in the number of households, which is growing almost three times faster than the population.
40. As the country currently presents a dynamic fusion of cultures and opportunities, due recognition must be accorded to the several remarkable feats performed by South Africans from different races and all walks of life who have continued to make their mark globally (see Box 2.1).
41. In overcoming a divided past, the country has learnt new ways of managing diversity. It has relentlessly pursued the strategy of seeking enduring, consensus-driven solutions to ease the accumulated pain and fury of generations. To help set the country free from pain, uncertainty and division, South Africa established a Truth and Reconciliation Commission (TRC) in 1996, headed by Archbishop Desmond Tutu, as a crucial component of the transition to democracy.
42. The hearings made international news and many sessions were broadcasted on national television. While the public acknowledgement of past violations was perhaps the TRC's greatest success, it inculcated a commitment to accountability and transparency in South Africa's public life, at the same time helping to heal wounds inflicted by the inhumanity of the apartheid era.
43. The TRC was not without problems, especially in the implementation of its findings. The Institute for Justice and Reconciliation (IJR) organised a Conference on "The TRC: Ten Years on" in April 2006. Participants included victims, perpetrators, civil society, government representatives and members of the TRC. According to the conference proceedings, a common refrain was anger that high-profile alleged perpetrators continued to live with impunity and material prosperity, while victims of the apartheid era continued to suffer the traumas of poverty and exclusion from a society they helped construct.⁴
44. A great deal of attention was also given to the matter of inadequate monetary compensation for victims of gross human rights abuses. Regarding financial reparations, out of 22 000 individuals or surviving families who appeared before the Commission, 19 000 were identified as needing urgent reparation assistance. As a final reparation, the government is providing a one-off grant of R30 000 to individuals or survivors, instead of the TRC's recommendation of R136 000 per individual in annual instalments over a six-year period.

⁴ A succinct account of the proceedings of the Conference can be found in Villa-Vicencio, C. 2006. "The TRC's Agenda of Incomplete Business", *Focus*, 43: 16-18.

Box 2.1: Some Remarkable Feats by South Africans

A. Nobel Peace Prize Winners

- Chief Albert Luthuli, 1960
- Archbishop Desmond Tutu, 1984
- Nelson Mandela and F.W. de Klerk, 1993

B. Prize for Literature

- Nadine Gordimer, 1991
- J.M. Coetzee, 1993

C. Nobel Prize for Physiology and Medicine

- Max Theiler, 1951 for his ground-breaking work on yellow fever

D. Special Recognition

- At the age of 28, Mark Shuttleworth, entrepreneur in information and communication technology (ICT), became Africa's first astronaut in 2002.
- Test pilot Mike Melvill flew the first privately financed space mission in 2004.

E. Medicine

- Dr Christiaan Barnard was the first person to perform a human heart transplant on 3 December 1967 in Cape Town.
- Dr Percy Amoils, an ophthalmologist, invented the Amoils Cryo Pencil in 1965 used worldwide for cataract extraction and renal detachment. He also pioneered cryosurgery for gynaecology and lung, heart, mouth, liver and prostate surgery.

F. Music – Grammy Awards

- Miriam Makeba, 1967 and 2002
- Ladysmith Black Mambazo, 1987 and 2005

G. Film – Oscar Awards

- Charlize Theron won the 2004 Oscar for Best Actress as well as the Golden Globe Award for her performance in "Monster".
- "Tsotsi" won an Oscar for the best foreign language film in 2006.

H. Sport

- The Springboks won the Rugby World Cup in 1995.
- The national soccer team, Bafana Bafana, won the African Cup of Nations in 1996.
- Roland Mark Schoeman won a gold medal at the 2004 Summer Olympics in Athens in the 4 x 100 m freestyle, a silver medal in the 100 m freestyle event and a bronze in the 50 m freestyle. In December 2005, he turned down a R40 million (US\$5.9 million) contract to swim for Qatar and stated reasons of national pride.
- Oscar Pistorius, a double amputee, at 20 years of age is the world record holder in the 100 m, 200 m and 400 m events.
- Gary Player, the world's golfing ambassador, has had 163 international tournament wins. He is 63 wins ahead of Jack Nicklaus, whom many consider to be the greatest golfer of all time.
- Ernie Els is the best-known South African golfer on the circuit of the Professional Golfers' Association of America (PGA), number two golfer in the world and one of four South Africans to have won a major championship. Ernie won the US Open twice, in 1994 and 1997.

Source: Compiled by the APRM CRM from existing records, July 2006.

Table 2.1: Truth and Reconciliation Commissions Instituted in Africa

Country	Date of Commission	Mandate	Composition and Whether the Report was Publicly Issued
Zimbabwe	1985	In the face of widespread demands from civil society, the ZANU-PF government set up the Chihambakwe Commission of Inquiry to investigate the killing of an estimated 1500 political dissidents and other civilians in Matabeleland in 1983.	The Commission was presided over by a Zimbabwean lawyer, Simplicius Chihambakwe. The report was issued promptly by the Commission, but it has not been made public to date by the government.
Uganda	1986	The Commission was set up in May 1986 by President Yoweri Museveni to investigate human rights violations committed under the governments of Milton Obote and Idi Amin between 9 October 1962 and 25 January 1986.	Supreme Court Justice Arthur Oder presided over the six-member Commission. It published its findings in 1994.
Chad	1991-1992	The Commission was established on 29 December 1990 to investigate crimes committed during the eight-year rule of Hissein Habre.	The Commission, chaired by Chad's Chief Prosecutor Mahamat Hassan Abakar, published its findings in May 1992.
South Africa	1995-2000	The TRC was set up by the South African parliament to investigate human rights violations during the apartheid era between 1960 and 1994.	Anglican Archbishop Desmond Tutu chaired the 17-member body. The Commission's report was presented to President Mandela in October 1998 and is available online through links on the Commission's website.
Nigeria	1999-2001	On 4 June 1999, President Olusegun Obasanjo appointed a Commission to investigate human rights abuses committed from 1 January 1994 until his taking office on 29 May 1999. In formally inaugurating the Commission on 14 June, he extended the inquiry further into the past, to 31 December 1983, when the then President Shehu Shagari was deposed in a military coup.	The eight-member Commission was chaired by retired Supreme Court Judge, Justice Chukwudifu Oputa. The report has not been made public.

Country	Date of Commission	Mandate	Composition and Whether the Report was Publicly Issued
Sierra Leone	2000	The Commission was mandated to produce a report on human rights violations since the beginning of the conflict in 1991, and to issue recommendations to facilitate reconciliation and prevent a repetition of past violations.	The final report of the Commission was transmitted to the President of Sierra Leone on 5 October 2004 and presented to the UN Security Council on 27 October 2004.
Ghana	2002	The Commission was to establish an accurate and complete historical record of human rights violations and abuses related to the killing, abduction, disappearance, detention, torture, ill treatment, and seizure of properties within the period of 6 March 1957 to 6 January 1993.	A nine-member Commission was chaired by retired Supreme Court Justice K.E. Amua-Sekyi.
Liberia	2006	Liberia's Truth and Reconciliation Commission (TRC) was launched by President Ellen Johnson-Sirleaf on 22 June 2006. The TRC's two-year mandate is to investigate human rights abuses that occurred between 1979 and 2003.	Commission ongoing

Source: APRM CRM compilation from existing records, July 2006.

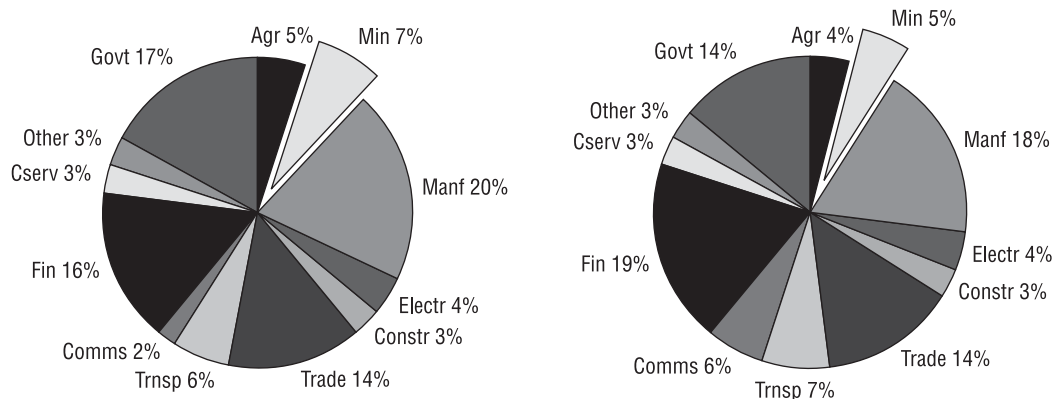
45. The state was also criticised for failing to address community reparations as recommended by the TRC. The Commission had recommended that businesses and other apartheid beneficiaries should pay a one-off wealth tax and that the country's inherited apartheid debt, which constituted about 20 per cent of the government's annual budget, should be restructured in order to free up resources for development and redistribution. Again, the government chose to ignore these recommendations. The need for public access to the TRC archive was highlighted as a priority concern on the TRC's unfinished agenda.
46. In all, the TRC is generally regarded as having been very successful. Due to the perceived success of this approach in dealing with human rights violations after a fundamental political change, other countries have instituted similar commissions, though not always with the same scope and intensity. Table 2.1 presents some of the truth commissions that have been instituted in Africa. The APR Panel recommends that the government revisit the findings with a view to engendering full reconciliation.
47. Over the past 12 years, South Africa has made quantitative and qualitative advances towards a truly democratic, non-sexist and non-racist society. The Constitution guarantees gender equality and is supported by laws whose objective is to empower women. Several advances have been made by the government in this respect. Gender policy is coordinated at the highest level (the Presidency) and several institutions have been established to promote women's rights.
48. South Africa has not only established itself as a respected partner and force to be reckoned with in the community of nations, but has also become a leading voice in the developing world for a more progressive, people-centred and multilateral rules-based global system. The country is a member of the Cairns Group, an informal association of 17 agricultural exporting members of the World Trade Organisation (WTO).⁵ It is also a member of the Group of 20, formed by developing countries after the failed WTO Cancún talks in 2003. Other members include Argentina, Brazil, Chile, China, India, Indonesia, Mexico and Nigeria. In addition, a trilateral trade pact between Brazil, India and South Africa has been signed with the intention of strengthening the position of developing countries at the WTO.
49. In its contribution to the development of the African continent, South Africa played a leading role in reconstituting the former OAU into the AU and in making it a more effective pan-African continental body. It played a significant role in crafting and promoting the New Partnership for Africa's Development (NEPAD), which was launched as the socio-economic programme of the AU Summit held in Durban, South Africa in July 2002. South Africa is currently host to the Pan-African Parliament, as well as the NEPAD and APR Secretariats.

⁵ This includes, amongst others, Argentina, Australia, Brazil, Canada, Chile, Indonesia and Malaysia. The WTO supports free and fair trade in agricultural markets and the lowering of agricultural tariffs by developed countries.

50. The country has also hosted a number of important multilateral conferences, such as the UN Conference on Trade and Development IX (1996), the Non-Aligned Movement (1998) and the Commonwealth (1999). It hosted the World Conference Against Racism (2001), the African Union Summit (2002) and the World Summit on Sustainable Development (2002). South Africa has been designated to host the FIFA Soccer World Cup in 2010, the first time the competition will be held in Africa since its inception.

2.4 Overview of the Economy

51. With a GDP of US\$239.510 billion in 2005, South Africa accounts for about 35 per cent of the total GDP of sub-Saharan Africa. It is indeed one of the few African countries to have joined the group of upper middle-income countries. Its economy is by far the most sophisticated free-market economy on the African continent, exerting a major influence on the total output, trade and investment flows in Africa. The country represents only 3 per cent of the continent's surface area, yet accounts for approximately 40 per cent of all industrial output, 25 per cent of GDP, over half of generated electricity and 45 per cent of mineral production in Africa. Most of South Africa's economic activity occurs in the four main metropolitan areas: the Witwatersrand area surrounding Johannesburg in Gauteng, the Durban/Pinetown area in KwaZulu-Natal, and the Cape Peninsula and Port Elizabeth/Uitenhage areas, both in the Eastern Cape.
52. South Africa also dominates the southern African region, particularly in terms of GDP, trade and investment flows. It plays a vital role in regional economic institutions, such as the Southern African Customs Union (SACU) and the Southern African Development Community (SADC).
53. Figure 2.1 shows the sectoral composition of GDP in 1994 and 2004. As indicated, the mining sector accounted for about 5 per cent of GDP in 2004, down from 7 per cent a decade ago. The mining sector's performance overall has been below that of the total economy, a divergence that has widened in recent years. Whilst the sector is inherently volatile, its sub-sectors have performed very differently. The strong performance of platinum and coal has been substantially outweighed by the poor performance of gold, which has been in decline for a number of years.
54. South Africa has a broad and well-developed agricultural sector and is a net food exporter. Agricultural production, reflecting the sector's increased mechanisation and commercialisation, grew throughout the 20th century. As mining and manufacturing industries expanded at a faster rate, however, agriculture's share of GDP declined from about 20 per cent in the 1930s to approximately 12 per cent in the 1960s. It went from about 5 per cent in 1994 to 4 per cent a decade later in 2004.

Figure 2.1: Sectoral Contribution to the GDP, 1994 and 2004

Source: South African Treasury Department.

55. Although agriculture, and later mining, historically dominated the South African economy, manufacturing eventually became the most productive sector. It accounted for 20 per cent of GDP in 1994 and 18 per cent in 2004. The manufacturing sector is relatively diversified and dominated by heavy industries concentrated in urban areas, especially in the industrial region around Johannesburg. This region accounted for more than 50 per cent of industrial output in the early and mid-1990s. Other major industrial centres are Cape Town, Port Elizabeth, East London and Durban. Smaller, yet nonetheless important industrial concentrations are at Kimberley, Bloemfontein, Queenstown and Mossel Bay. Over time, the sector became increasingly capital intensive despite the availability of a large labour pool in South Africa. Massive extensions at Eskom, the government's power utility, as well as the establishment of Sasol's synthetic fuel plants and the Koeberg nuclear power station, represented significant capital intensification with only a minimum labour requirement. Furthermore, most private manufacturers began using machinery and technology to cut labour costs; to keep up with foreign producers; and to avoid confronting an increasingly militant, organised labour force.
56. On aggregate, South Africa is currently dominated by the services sector. Its banking regulations rank with the best in the world. This sector has long been rated among the top ten globally. There are 55 locally controlled banks, 12 foreign-controlled banks and five mutual banks. Some of the world's leading institutions have announced their intention to enter the local banking sector through mergers and acquisitions.
57. The JSE Securities Exchange (JSE) is the 16th largest exchange in the world by market capitalisation (R3.3 trillion as of September 2005) and the bond market offers First World size and liquidity. Its rules and their enforcement, automated trading, settlement, transfer and registration systems are based on global best practice and are equivalent to what is obtainable in the developed world.

58. With infrastructure at par with that of Europe, Japan and the United States of America (USA), South Africa has unrivalled opportunities in a region poised for integration into the global economy. With approximately 4.92 million installed telephones and 4.3 million installed exchange lines, representing 39 per cent of the total lines installed in Africa, South Africa ranked 23rd in telecommunications development in the world in 2005.
59. Impressive as the economic record sounds, concerns over slow growth and employment trends are widespread and growing. Although real GDP growth was 3.0 per cent in 2003, 4.5 per cent in 2004 and 4.9 per cent in 2005, this has been inadequate to make a dent in poverty. Unemployment climbed to 28.2 per cent of the country's economically active population by September 2005.

2.5 Overview of Corporate Governance

60. The corporate structure has changed irrevocably in South Africa in tandem with the profound transformation of the country's political landscape. Prior to the advent of democracy in 1994, six mining finance houses dominated the economy but currently, the mining finance house no longer exists. In addition, two of its widely imitated characteristics – diversified holdings and the entrenchment of control through pyramid structures – have fallen from favour. Conglomerates have been unbundled and elaborate control structures dismantled. At the same time, legislation, regulations, listing rules and accounting standards are converging to international norms to the extent that South Africa currently rates among the best performers in corporate governance in emerging markets.
61. Private and state-owned corporations produce the bulk of South Africa's output and exports. Over the last ten years, they have mobilised more than three-quarters of South Africa's domestic savings, allocated and planned 85 per cent of all investment, and currently own and manage three-quarters of the country's capital stock.
62. The corporate governance framework has undergone rapid transformation. An important milestone in the effort to establish robust corporate governance was the release of the Code of Corporate Practices and Conduct (the King I Report) in 1994 by the King Committee on Corporate Governance under the auspices of the Institute of Directors (IoD) in Southern Africa. Due to its broad coverage of the key elements of corporate governance, the King I Report was highly successful, despite its non-compulsory nature, in raising public awareness of the need for having an effective framework for corporate governance. To support the implementation of the King I Report, the JSE requested all listed companies to state in their annual reports their degree of compliance with the code.
63. Since the mid-1990s, a string of legislative steps have been taken to enact some of the vital recommendations contained in the King I Report. These

legislative changes were prompted in part by the reintegration of the South African economy into the global market through admission to the WTO in 1996. Against this backdrop, the King Committee revised the original code to enhance its relevance in the changing socio-economic environment. The King II Report was published in March 2002. It is applicable to all companies listed on the JSE, banks and financial institutions, as well as public sector entities. They are responsible for around one-third of South Africa's GDP. The code in the King II Report retains the basic format of the King I Report, but places greater emphasis on issues such as the responsibilities of the board of directors, the role of independent outside directors, separation of the roles of the chief executive officer (CEO) and board chairperson functions, the importance of ethical and environmental issues, corporate disclosure to stakeholders, and risk management.

64. Given that the code in the King II Report is non-compulsory, its effectiveness is complemented and bolstered by the listing requirements of the JSE and the Companies Act of 1973. This triad has earned South Africa the reputation as one of the leading emerging market economies in setting forth good corporate governance standards.
65. While a great deal of progress has been made in corporate governance generally, the areas of director independence, director disclosure and the market for corporate control have not moved as fast as others. A major factor has been opposition from among control blocs and family owners of mid-sized companies on the stock exchange. However, in all three areas progress is imminent.

2.6 Key Challenges in the Second Decade of Freedom

66. A great deal had been achieved during the past 12 years, as alluded to in various sections of the report. However, much remains to be done as the nation continues to face a number of challenges⁶ as it forges ahead in the second decade of freedom.⁷ Some of these have already been noted by the government. In fact, some of these challenges are shared with the rest of the world, especially developing countries, for instance high levels of poverty and unemployment, crime, HIV and AIDS, and land reform.
67. In parallel with the extraordinary political achievement represented by the relatively peaceful transition to democracy in 1994, a human catastrophe has been unfolding. In a particularly vicious twist of fate, just as South Africa's first multiracial government was starting to redress the evils of apartheid after many years of struggle, the HIV pandemic was reaching critical mass. The severity of the HIV and AIDS epidemic continues to pose a horrendous challenge.

⁶ These are elaborately discussed in Chapter 7 on cross-cutting issues.

⁷ In the government report on the ten-year review, for example, there was no sense of complacency on the part of the Presidency; rather, there was recognition that the government was faced with huge and difficult tasks, and that a major effort was needed to improve performance.

68. On the issue of land, South Africa has made little headway in redistributing ownership, even with the glaring evidence of what can happen if the status quo continues for too long. Other challenges that the country must tackle are the following:
- Race relations remain brittle and sensitive. South Africans from different racial groups hold widely divergent views on key policy questions and on the nature of the problems confronting the country. Many whites, coloureds and Indians feel alienated and marginalised. Some black people, on the other hand, feel that too little has changed, as many white people still have the best jobs and lifestyles, which does not reflect the grand vision of a new South Africa.
 - Some provisions of South Africa's excellent Constitution are not given adequate attention. Realising constitutional ideals remains a challenge. Minorities fear that the government is not doing enough to assure the cultural, education and language rights guaranteed by the Constitution.
 - Current trends in black economic empowerment (BEE) are a cause for concern. While South Africa also needed its black billionaires, BEE has to be broadened and deepened beyond the enrichment of a few individuals. Moreover, the speed with which politicians are becoming businesspeople seems odd.
 - While expenditure on education has risen significantly (currently standing at about 6 per cent of GDP), this is not mirrored in the results. The education system is failing to provide school-leavers with the skills and competencies they need to contribute more productively to the economy.
 - Converting democratic ideals into practice still constitutes a problem. Ordinary South Africans remain alienated from their political representatives, which points to the shortcomings of the adoption of unbridled proportional representation at the national and provincial levels.
 - Transforming the economy and integrating it into a globalising world has proved to be a complex process. It is a delicate balancing act between the imperatives of the core values of liberty, on the one hand, and those of social justice and equality on the other hand. The tension between these two values – the former inspiring liberal democratic views and the latter social democratic views – runs deeply through the society.
 - The legacy and distortions of the apartheid era are still pervasive and costly. The spatial dimension of apartheid meant that millions of South Africans were deliberately located miles away from the urban centres where the jobs were. This fostered the emergence of complex migrant worker systems and transport patterns that remain in place today. Discrimination in the provision of education and training opportunities meant that generations of black South Africans were prevented from acquiring skills that would make them eligible to pursue productive

employment opportunities. The relatively small subsistence agricultural sector, along with a stagnant informal sector, imply that South Africa is missing two standard labour “shock absorbers” that operate in other economies (especially in Africa) during periods of adjustment.

- The South African economy still confronts structural problems linked to its bifurcation, which President Mbeki refers to as a paradox of “Two Nations with Two Economies”; one nation being predominantly white and prosperous (the first economy) and the other being predominantly black and impoverished (the second economy). It is this structural bifurcation that presents an enormous challenge for South Africa’s development trajectory. Whereas the political vision of a Rainbow Nation has evolved relatively smoothly and with considerable success since 1994, the economy tends to reinforce the racial “apartness” of society “acquired during the segregationist and apartheid eras”.⁸
69. If South Africa is to make continued and sustained progress towards a united, non-racial, non-sexist and democratic society in its second decade of freedom, it needs a major intervention to reinforce the consolidation of democracy with measures aimed at integrating all of society into a growing economy from which all can benefit. This will require, among other things: identifying a grand vision uniting all and defining a shared approach by all segments of the Rainbow society, such that the individual and collective human potential of the nation can come to full fruition; managing diversity; reconstructing and democratising the economy in order to cope with the challenge of structural unemployment and pervasive poverty; and initiating a radical overhaul of the machinery of government, especially at local government level, to unlock current delivery logjams.

⁸ Butler, A. 2004. *Contemporary South Africa*. New York: Palgrave Macmillan, p. 30.

CHAPTER THREE

3. DEMOCRACY AND POLITICAL GOVERNANCE

3.1 Overview

70. Democracy and political governance constitute one of the major commitments of the New Partnership for Africa's Development (NEPAD). The overarching objectives of NEPAD are the promotion of human development and the reduction of poverty. The promotion of human development would require the mobilisation of human and material resources; and the establishment of various kinds of cooperation and partnership between governments, civil society and the private sector, and between the peoples, the government and various other organisations at both national and international levels. For all these things to begin to materialise, however, an initial environment of peace, security and stability is needed.
71. The key objective of democracy and political governance is to consolidate a constitutional political order in which democracy, respect for human rights, the rule of law, the separation of powers and an effective, responsive public service are entrenched to ensure sustainable development and a peaceful and stable society.
72. One cannot overstate the importance of the context within which constitutional governance arrangements have been crafted in South Africa. The ideology of apartheid and the oppressive institutions it established shaped the context and processes of Constitution-making. It required endless, detailed negotiations on virtually every principle and institution of post-apartheid constitutional governance. In this light, the South African Constitution is more of a contract among parties who in the past had little trust in each other, rather than a covenant born from shared experience. This negotiated contract literally becomes the sole document that binds multiple and diverse communities together, and is the basis for the legitimacy of their quest to evolve as a nation. Therefore, the South African Constitution is not only the most important document in the construction of the state, but also the most crucial instrument in forging a nation. This partially explains why the agreement on formal rules – and this is what the Constitution is essentially about – has become the most celebrated and sacred achievement of South Africans in post-apartheid South Africa. The very fact that an acceptable Constitution to all could be worked out should be a celebrated accomplishment not to be underestimated. It is indeed essential to bear in mind how fundamentally important the Constitution is to the country's citizens.
73. As most South Africans see it, the oppressive political and governance institutions established by the system of apartheid cannot be reformed; they must be transformed. This transformation can be led only by an appropriately activist state dedicated to correcting imbalances and ensuring justice for all.

The transformation also necessitates a commitment to measured, contextual and customised applications of governance processes that operate in circumstances bound to lead to controversy and disagreement. This is why the Constitution prescribes a process of institutionalised contestation known as co-operative government to be undertaken sympathetically and productively as a generalised means of first resort in resolving conflicts.

74. This indeed is the genius of the South African constitutional arrangements that should be communicated to other African states. In most African countries, there is a short supply of deliberative forums designed to enhance the understanding of diverse views and positions. In these countries, there is typically a rush to formulate legislation without adequate public discourse. This frequently produces dangerous consequences for the body politic and the political community as a whole. The need to build and sustain a sense of shared political community seems uppermost in South African political thinking at all times and is prioritised in most political decisions and actions. This creates the dilemma of the quest for establishing an activist state on the one hand, and meeting the demands for national cohesion and nation building on the other. This predicament is not uniquely South African; its uniqueness, however, is demonstrated by how South Africans have decided to address it.
75. Operating under the principle of co-operative government, South Africa has been making deliberate efforts to strengthen local governance. Since 1994, three Acts of parliament have been passed to achieve these objectives: the Municipal Systems Act of 2000, the Municipal Electoral Act of 2000 and the Municipal Structures Act of 1998. Laudable as such efforts are, direct intervention by central government to build local capacity poses certain dangers.
76. Experiences elsewhere have demonstrated that such intervention hardly ever comes to an end and often results in recentralisation. In a governmental system dominated by an organisation whose decision-making structures operate on principles of democratic centralism, due care must be taken to ensure that new institutions and structures of democratic governance do not ultimately establish only efficient top-down processes of service delivery. Democracy can be messy sometimes, especially the closer one gets to the grassroots and local community level. Initiatives to strengthen local capacity carry with them the risks of strengthening local “bosses”, accepting high levels of inefficiencies, legitimising exclusion of local minorities and ignoring, if not encouraging, perverse local cultural practices.
77. These are all serious concerns. Yet there is growing evidence that local capacity is hardly strengthened through hands-on implementation from the outside, including from national or central government. Best practices show that local people must first be vested with the legal authority and then entrusted with the responsibilities of local governance. They will make mistakes and act defiantly at times. Accordingly, they will need advice, including technical advice from outside, but it is only through their own

initiatives that they can develop the capacity for governance. Should they fail to learn and develop, then they face sanctions from the citizenry.

78. Section 40(1) of the Constitution notes that the government is constituted as national, provincial and local spheres of government that are distinctive, interdependent and interrelated. Section 41 further spells out the principles of co-operative government and intergovernmental relations. The CRM found that, even though in this constitutional arrangement local government is a distinct sphere of government, many stakeholders continue to perceive it as a passive and subordinate sphere of government. Downplaying the eminent role assigned to local government, even inadvertently, will be doing more harm than good in the South African context. It is, therefore, imperative that the nation should facilitate and even compel local units to behave and perform as governmental bodies vested with constitutional responsibilities. This is the only way that democracy can become truly effective at grassroots level and development from below can become a reality.
79. For democracy to be sustainable, it must also be pluralistic. Among other things, it requires establishing and strengthening the rules that will sustain multiparty systems. In South Africa's political system and governance process, the issue of floor-crossing could potentially undermine political pluralism and the consolidation of democracy. In principle, floor-crossing is not necessarily undemocratic in a governance system where individuals are elected by a direct vote on the basis of their merits and declared electoral promise. In a proportional representation system such as practised in South Africa, floor-crossing may diminish the potential for a strong, effective opposition to emerge and flourish. The adverse effects of floor-crossing on the long-term development, vitality, vibrancy and sustainability of constitutional democracy in a post-apartheid South Africa should therefore be assessed.
80. In the meantime, the African National Congress (ANC) as the dominant political party has a specific responsibility to adopt an orientation and put in place the necessary machinery for nurturing citizens who are capable of sustaining democracy and political governance through bottom-up decision-making processes. The model should encourage mobilisation for implementation regarding the dispensing of public goods and services at the grassroots and local levels, as well as the determination and production of public goods and services. The ANC should therefore intensify current initiatives in the direction of bottom-up decision-making processes.

3.2 Standards and Codes

i. Summary of the CSAR

Instruments Signed or Ratified by South Africa

81. According to the Country Self-Assessment Report (CSAR), South Africa has either signed or ratified most of the African and international codes and

standards. They include the following 26:

- i. Charter of the United Nations (ratified in 1945)
- ii. International Covenant on Civil and Political Rights (ratified in 1998)
- iii. International Covenant on Economic, Social and Cultural Rights (signed in 1994)
- iv. Optional Protocol to the International Covenant on Civil and Political Rights (acceded to in 2002)
- v. Convention on the Rights of the Child (ratified in 1995)
- vi. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (acceded to in 2003)
- vii. OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (acceded to in 1995)
- viii. African Charter on Human and People's Rights (ACHPR) (1981; acceded to in 1996).
- ix. African Charter on the Rights and Welfare of the Child (ACRWC) (1990; ratified in 2000)
- x. Protocol to the ACHPR on the Establishment of an African Court on Human and Peoples' Rights (1998; adopted in 1998)
- xi. Convention on the Prevention and Punishment of the Crime of Genocide (ratified in 1998)
- xii. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified in 1998)
- xiii. International Convention on the Elimination of All Forms of Racial Discrimination (ratified in 1998)
- xiv. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (ratified in 1995)
- xv. Convention on the Political Rights of Women (signed in 1998)
- xvi. Protocol to the ACHPR of Women in Africa (ratified in 2004)
- xvii. Convention Relating to the Status of Refugees (acceded to in 1996)
- xviii. Protocol Relating to the Status of Refugees (acceded to in 1996);
- xix. AU Convention on Preventing and Combating Corruption, Objectives 5 and 6 (ratified in 2005)
- xx. AU Peace and Security Protocol (ratified in 2003)
- xxi. AU Declaration on Democracy, Political, Economic and Corporate Governance (signature not necessary)
- xxii. Grand Bay Mauritius Declaration and Plan of Action for the Promotion and Protection of Human Rights, 1999 (signature not necessary)
- xxiii. Constitutive Act of the African Union (2000; ratified in 2001)
- xxiv. OAU Refugee Convention (1969; acceded to in 1995)
- xxv. NEPAD Framework Documents

- xxvi. Declaration on Framework for an OAU response to Unconstitutional Changes of Governments, 2000 (signature not necessary)

ii. Findings of the CRM

82. Although South Africa has acceded to the Convention on Socio-Economic and Cultural Rights, the parliament has confirmed that the country has not ratified it. In addition, South Africa has neither signed, nor ratified the Covenant on the Protection of Migrant Workers. The same applies to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Despite these shortfalls, there is evidence in its domestic statutes and Acts of parliament that South Africa is committed to adhering to international standards. The 1996 Constitution contains an expansive justiciable Bill of Rights protecting political, social and economic rights, thus affirming the country's commitment to the promotion and protection of rights. However, the domestication and implementation of some of these conventions, such as the Convention on the Rights of the Child, are still inadequate.
83. During stakeholders' consultations, it was evident that most South Africans were unaware of the conventions their country has acceded to. The general lack of awareness of these instruments may impact on the ability of the citizenry to exercise their rights and discharge their responsibilities in relevant domains. Awareness of and education programmes on all these instruments are essential.
84. During the Country Review Mission's (CRM) extensive discussions with various stakeholders, it was generally agreed that the parliament should play a proactive role in monitoring the domestication and compliance of the government with various international and regional instruments and standards.

iii. Recommendations

85. The APR Panel recommends that South Africa:
- Increase awareness and accessibility of various rights to the public. The "Know Your Rights Awareness Campaign" identified in the National Programme of Action (NPOA) is a commendable project. However, it needs to identify clearly the actors who will be involved, allocate the budget and set the timeframes for implementation. *[Government; relevant Chapter 9 institutions; civil society organisations]*
 - Consider the ratification of the three aforementioned conventions and protocols that have not yet been ratified. *[Government; parliament]*
 - Give the parliament, with the concurrence of all stakeholders, the responsibility of monitoring and domesticating all international and African codes. *[Government]*

3.3 Assessment of the Performance of APRM Objectives

Objective 1: Prevent and Reduce Intra- and Inter-Country Conflicts

i. Summary of the CSAR

Conflicts and Their Causes

86. Since 1994, when the apartheid regime was formally abolished and South Africa became one country and one nation under a single system of governance, the government has made tremendous progress in nurturing and maintaining peace and stability in the country. This has been achieved through courageous resolution to confront the past and overcome its pain in order to avoid future conflicts, using mechanisms such as the Truth and Reconciliation Commission (TRC). Since the adoption of constitutional democracy, South Africa has not experienced any internal conflicts. It is not in conflict with any other country and there is little potential for conflict in the future.
87. While the apartheid government destabilised the southern African region through the harassment of, and military incursions into neighbouring countries, the new democratic government of South Africa has deliberately and actively engaged itself in building peaceful relations, cooperation and partnerships with them through various programmes of regional economic growth and development. South Africa has also participated in peacekeeping missions in a number of war-torn African countries. However, some stakeholders view political conflicts and economic instability in other African countries as causing tension in South Africa due to strained relations between local communities and migrants seeking political and economic stability.
88. The democratic dispensation has facilitated the mitigation of the political and social conflicts that characterised colonialism and apartheid. However, it is also recognised that the realities of socio-economic inequality and unequal wealth distribution, coupled with the competition among communities and citizens for available state resources, constitute potential sources of social conflict in South Africa. Poverty is a pervasive factor among black South Africans. Women and children are the worst affected by poverty. If not appropriately and urgently addressed, protest against poor or uneven service deliveries could be a major problem in the future.
89. Crime remains a major problem in the country, and, in particular, the extreme use of violence. Men are the main perpetrators of violence and it also impacts heavily on women's freedom and quality of life. Violence against women and children is identified as a matter of serious concern. Thus, gender relations are one of the critical factors in analysing and addressing crime in South Africa.
90. Stakeholders mentioned the potential for conflict between traditional leaders and councillors. These persons work in close proximity, compete for the same

resources and may be affected by possible changes in cross-boundary municipalities. Furthermore, such conflicts could be fuelled by disparities in service delivery and levels of competence.

91. The government also acknowledges its vulnerability to organised crime such as human smuggling (women, children and migrants), drug trafficking and illicit arms trade at airports, harbours and borders. These exchanges could be potential sources of inter-state conflicts.
92. Although there have been sporadic expressions of dissatisfaction, as well as isolated election-related violence, stakeholders have generally accepted the legitimacy and integrity of the electoral processes and results. Thus, unlike in some other African countries, the performance of the governance system is not likely to be a source of conflict in South Africa.

Mechanisms for Preventing, Reducing and Managing Conflicts

93. South Africa has established a robust institutional framework and various mechanisms for the prevention, management and resolution of conflict. Internally, there are constitutionally created institutions that protect and promote democratic governance. They include: the South African Human Rights Commission (SAHRC); the Public Protector; Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; Commission for Gender Equality; the Auditor-General; and the Independent Electoral Commission (IEC).
94. The cumulative effects of these commissions have reinforced the struggles against racism and discrimination; strengthened gender equality and human rights; disciplined and moderated political discourse; and regulated the electoral democratic processes.
95. South Africa has played a major role in peacekeeping and conflict resolution efforts in the region and on the continent. It has participated in conflict resolution efforts and disarmament through diplomatic negotiations and peacekeeping missions in countries such as Burundi and the Democratic Republic of Congo. South African troops have also been involved in peacekeeping operations in the Darfur region in the Sudan. In addition to numerous instruments adopted and ratified for conflict prevention and management, the government of South Africa is an active member and strong supporter of regional organisations and initiatives such as the Southern African Development Community (SADC) and the African Union (AU). It is also one of the key architects of NEPAD, which seeks to promote peace, stability and sustainable economic growth and development in Africa. South African civil society organisations (CSOs) have developed links and partnerships with their African counterparts and have assisted them in many areas, especially in post-conflict peace dialogues and disaster management.

ii. Findings of the CRM

Intra-State Conflicts

96. South Africa has managed potential internal conflicts competently since the demise of apartheid in 1994. A spirit of reconciliation and accommodation has been cultivated in governance systems and within civil society. A political culture of dialogue and the accommodation of divergent views and perspectives under constitutional democracy has generally prevailed.
97. Nonetheless, emerging from centuries of colonialism and decades of apartheid, coupled with a long period of violent liberation struggles, post-1994 South Africa could be realistically described as a post-conflict country. Residues of racism still exist, and together with problems associated with pervasive poverty, deprivation and unequal access to basic social services, constitute potential for conflict. These challenges therefore need to be addressed.
98. Since 1994, the government has made a concerted effort to reintegrate ex-combatants into society. However, non-completion of the process poses some challenges. The end of apartheid divided former soldiers into “winners” and “losers”. The winners were those who pursued and acquired some level of education during their service in the liberation movements, while losers were those without education. Winners could further be divided into those who were integrated into the new army because they met the criteria, and those who sought alternative employment. The remainder of the ex-combatants have sunk into poverty and/or a life of crime. The social and security implications of this situation cannot be overemphasised.
99. Since 1994, South Africa has played a prominent role on the international scene, especially in the area of conflict prevention and peace-making operations. The government has shown a strong commitment to regional peace and security, and to the strengthening of regional bodies. This commitment is manifested in the number of peace deals the government has brokered, the troop missions deployed, and the financial and technical assistance provided to African peace and security operations.
100. The majority of stakeholders recognise the major strides the government has made since 1994 in ameliorating and improving the quality of life of the disadvantaged population. Various programmes such as social grants, housing, and broad-based black economic empowerment (B-BBEE) legislation are generally appreciated, although significant challenges remain in the battle against poverty and the legacy of inequality. Nonetheless, stakeholders generously agree that the government is doing its best to ensure that the socio-economic imbalances of the past are being addressed. However, as more is being done, more appears to be needed.
101. Moreover, stakeholders have raised a number of specific issues, such as the influx of illegal immigrants, the struggle for resources, and poor service delivery. The government acknowledges the need to address these issues in

order to prevent, or at least reduce, intra- and inter-state conflicts and to deepen democratic governance.

The Issue of Illegal Immigrants

102. Despite high levels of crime and socio-economic inequalities, South Africa's democratic governance system appears to be stable and secure. Its economy is also highly sophisticated and robust. Unsurprisingly, therefore, people from neighbouring countries and beyond are attracted to South Africa, primarily to better their own lives. These immigrants hope to take advantage of opportunities to be creative and productive in their chosen professions – opportunities that do not exist or are difficult to access in their own countries. Some come looking for employment, health treatment, or simply peace and security to escape the insecurity and violence of their countries of origin. South Africa thus is home to many refugees, economic immigrants and other undocumented persons.
103. Given the levels of unemployment, socio-economic inequalities and inadequacies in service delivery in South Africa, some stakeholders perceive the presence of immigrants as an additional problem in their own struggle for a better life. These perceptions have prompted social tension and the eruption of violence and crimes which, if not properly managed, may convert into major sources of internal strife and, possibly, potential sources of inter-state conflict. An atmosphere of xenophobia, particularly against black people coming from other African countries, seems to be emerging. However, some stakeholders in Soweto affirmed that South Africans generally welcome other Africans who seek economic opportunities in the country, especially when they bring needed skills and professional qualifications. They are, however, wary of those who come to be an economic and social burden on society. This appears to be the basic cause for the rising tide of xenophobia, which must be addressed.
104. In KwaZulu-Natal, the Western Cape and Northern Cape, stakeholders complained that women and children are being exploited and abused by immigrants who use them for prostitution and drug peddling. It must, however, be noted that there is no statistical evidence from the South African Police Service (SAPS) to support this claim. Furthermore, the tension between immigrants and locals is fuelled by the employment of immigrants as “cheap labour”. This has a devaluing impact on the overall wage level, thus undermining domestic labour negotiations and strategies. This has fanned general distrust of immigrants and a sense of xenophobia towards them. Paradoxically, it is primarily a black-on-black phenomenon and largely reflects the realities of the country's two economies and two labour markets. Not all Black and white South Africans compete in the same labour market.
105. The CRM undertook an extensive tour of the facilities of the Lindela Repatriation Centre, where illegal immigrants are kept in custody after apprehension by the police. They remain in custody while their cases are investigated and until their deportation. While the facilities at Lindela appear to be of acceptable standards, there were complaints from inmates about

overcrowding and incidences of physical abuse by the police. Accusations of human rights violations and lack of medical facilities, which have allegedly led to the deaths of some detainees, were also made.

Social and Economic Inequalities

106. Unequal access to wealth and wealth creation, coupled with stiff competition among communities and citizens for state resources, constitutes a great potential for intra-state social conflict. In South Africa, deep-rooted socio-economic inequalities between the various races are a legacy of the apartheid era. There are emerging widening and deepening socio-economic inequalities within the black communities, a post-1994 phenomenon and the consequence of the black economic empowerment (BEE) policy. As the government seeks to provide social services such as housing, health and education, a new source of conflict may arise between the people (particularly low-income earners) and government bureaucrats who manage these services. Because of the scarcity of resources, bureaucrats may be compelled to adopt a system of allocation that entails discretion with regard to the criteria for eligibility. These discretions may be abused, leading to incipient and creeping corruption.
107. Stakeholders are strongly opposed to such creeping corruption and feel betrayed, regarding corruption as a negation of democratic gains after a long period of struggle. They also fear that, if not addressed, creeping corruption may incrementally lead to conflict among the intended beneficiaries – between who are perceived to have obtained services by corrupt means and those who did not because they conformed to the rules.

The Land Issue: Ownership and Utilisation⁹

108. Access to land – possession and usage – remains a potentially explosive matter in South Africa. In 1994 the government, in its effort to correct the injustices of apartheid, reduce poverty and improve welfare, introduced the Land Reform Programme. It consisted of two prongs: land restitution (returning land or compensating for land lost during the apartheid era), and land redistribution (assisting disadvantaged people, particularly women, the poor, farm workers, labour tenants, and emergent and commercial farmers to purchase land with the help of a state grant for residential or commercial use).
109. The Land Reform Programme has been pursued in a considered, reasonable and largely market-oriented manner. It is firmly rooted in the constitutional settlement on property rights and in recognition of the need to right past wrongs without damaging future prospects. Various policy instruments such as the BEE and B-BBEE strategies are laying a foundation for redistribution and empowerment. Thus far, delivery has averaged 0.38 million hectares a year. If the current pace is maintained, the target of redistributing 30 per cent of white-owned agricultural land will be reached in 54 years' time, or delivery will have to be increased fivefold to meet the 2014 target.

⁹ More information about land issues is discussed in Chapter Five on socio-economic development.

110. The state's targets are unlikely to be met unless a comprehensive approach to address socio-economic inequalities (as elaborated in Chapter Six) is taken. There is also a need to address enduring attitudes of dependency on government handouts. If not checked, creeping dependency tends to put incremental pressure on service delivery, thereby further straining capacity for service delivery, given the scarcity of resources. Inability to deliver may lead to dissatisfaction and, ultimately, to disaffection with the governance system and the spirit of reconciliation. Not having delivered on its promises may undermine the programme's legitimacy and acceptability. Such a situation is replete with potential for social conflict. There are signs of growing impatience and calls for the matter to be tackled more expeditiously.

Gender Inequality and Violence Against Women

111. Violence against women is prevalent in South Africa. This adversely impacts on the freedom of women and the welfare of children. Rape and child abuse cases are high. In the course of its mission throughout the provinces, the CRM heard various stakeholders affirming that, although laws prohibiting violence (e.g. the Sexual Offences Act of 1957) are in place, their implementation has been a major problem.
112. Related to this is the deteriorating moral and social fabric within the South African society. Dysfunctional families and incoherent parental guidance contribute to the rise in the number of street children, delinquency, drug abuse and other related crimes.

Traditional Leaders and Local Councillors

113. The close working proximity between traditional leaders and local councillors, competition for the scarce resources and attention from the other spheres of governance, coupled with the possibilities of boundary changes, are likely to be potential sources of conflict. Although the basic problems may be due to misunderstanding, lack of capacity, professional and political competition at local level, as the fact that local and provincial governance structures are still evolving as well as emerging from the apartheid governance system, there is a need to address these potential sources of conflict.

Inter-State Conflict

114. There is general consensus among stakeholders that since 1994 South Africa has managed to establish friendly and peaceful relations with its neighbours. Unlike during apartheid, there is an environment of peace and stability in the region. The government has also been actively engaged in various efforts to prevent, mediate and resolve conflicts in other parts of Africa (in countries such as Burundi, Côte d'Ivoire, the Democratic Republic of Congo and Sudan). At international level, South Africa's contributions to the exploration of mutually acceptable and lasting solutions to the Palestine/Israel conflict are commended.

115. Mercenary activities are a source of instability across the continent. The South African government applies the regulations of the Foreign Military Assistance Act of 1998, which criminalises these activities. Yet South African security companies have been accused by the media and the press of organising mercenaries to destabilise some African countries. For example, following the failed coup in Equatorial Guinea in 2005, a number of South Africans were caught, tried and convicted.
116. Some stakeholders believe that those involved in mercenary activities are former demobilised white soldiers and security officers. Since 1994, there has been a proliferation of private security companies, some of which are used to recruit and train mercenaries.

iii. Recommendations

117. The APR Panel recommends that South Africa:
 - Devise a programme of partnership and collaboration with the private sector and CSOs to address fully and effectively the issues of social inequality, poverty and unemployment. This is important in ensuring that violent conflict is prevented. *[Civil society; Department of Justice and Constitutional Development; SAHRC]*
 - Deal systematically, deliberately and effectively with any lingering vestiges of racism. The policy and practice of the North-West of not doing anything without reaching out to everybody is worthy of emulation. *[Judiciary; SAHRC; Department of Education; provincial and local governments]*
 - Strengthen dialogues about democracy and service delivery through *Imbizo* (a forum for enhancing dialogue and interaction between the government and the people) at local government level and municipalities in order to avert possible conflict based on racism or competition over scarce resources, misunderstanding or political rivalry. *[Department of Home Affairs; judiciary; provincial and local governments; civil society]*
 - Find better-informed measures for combating the growing problem of xenophobia, such as programmes of civic education. *[Department of Home Affairs; Department of Education; civil society actors]*
 - Devise a more enlightened, comprehensive strategy for dealing with the issue of refugees. Promoting an environment of peace, stability and prosperity in the region is also likely to stabilise and regularise the movement of people. *[Department of Foreign Affairs; Department of Home Affairs; Department of Justice and Constitutional Development]*
 - Refocus the moral and social values of society that will help revive the moral and social fabric of South Africa in order to combat crime in general

and, in particular, violence against women and children. *[SAPS; Department of Home Affairs; Department of Justice and Constitutional Development; Office on the Status of Women (Presidency); and Department of Education]*

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

i. Summary of the CSAR

Democratic Governance and Competition for Political Power

118. South Africa has a democratic, multiparty political system with universal franchise for all citizens over the age of 18 and allows for free and fair elections. A combination of proportional and constituency representation is used. National and provincial electoral systems are based on proportional representation, while municipal elections combine proportional representation with ward representation. The system provides for a party list on which a registered party is allocated seats in the National Assembly in direct proportion to the electorate votes it gained. The absence of a minimum qualifying threshold for participation ensures that minority groups are also represented in the parliament. However, the general public has called for public debates and discussions on the review and assessment of the system.
119. The law permits party elected representatives to move from one party during certain specified periods between elections without losing their seats in the National Assembly and provincial legislatures. Some stakeholders, however – including certain political parties – strongly disagree with this practice and would like to see it reversed.
120. The IEC is a constitutionally established independent organ. It is mandated to ensure the conduct of free and fair elections, in particular that the counting of votes and declaration of results at the national, provincial and local spheres of governance are undertaken in a transparent way. The IEC also has the responsibility of allocating government funding to the political parties represented in the National Assembly and provincial legislatures. The funding derives from the Constitution with the intention of ensuring and promoting multiparty democracy in all three spheres of governance. The amount allocated is equity based, depending on the relative strength of the parties.

Supremacy of the Constitution and the Rule of Law

121. The Constitution of South Africa of 1996 provides the bedrock for the rule of law. Section 2 states that the Constitution is the supreme law of the Republic.

Laws, policies, practices or conduct inconsistent with the Constitution are invalid and the obligations imposed by it must be met.

122. The Constitution entrenches a comprehensive set of inalienable rights. These include the right to freedom of association; to demonstrate; to assemble; to picket and present petitions; to form a political party; to be treated with dignity and respect; to have equality before the law and equal protection and benefit; to be protected against discrimination; to freedom of religion, belief and opinion; and the right to language and culture.
123. The Constitution recognises traditional leadership and makes provision for a House of Traditional Leaders. The government does, however, acknowledge that the role of traditional leaders in strengthening South Africa's constitutional democracy and promoting local economic development needs to be clarified and enhanced.
124. Various institutions and mechanisms supportive of democratic governance are entrenched in the Constitution. These include the so-called Chapter 9 institutions intended to ensure that the economic, social, cultural, civil and political rights as enshrined in the Bill of Rights of the Constitution are promoted and protected. The advancement of women and gender equality through the establishment of the Commission for Gender Equality is a major contribution to the protection and promotion of the rights of women.

Decentralisation

125. South Africa has a hybrid system of government based on a strong unitary framework. The country has introduced an innovative notion of decentralisation appropriate to its socio-economic and political challenges. The constitutional concept of co-operative government implies not only decentralisation of the governance processes, but also cooperation among and between spheres of governance. This is intended to minimise conflicts and maximise cooperation and synergies in "mutual trust and good faith" between the spheres and levels of governance, so as to "provide effective, transparent, accountable and coherent government for the Republic as a whole" (Constitution, s41(1)(d)). All spheres and levels of governance are expected to interact with each other on the basis of cooperation, coordination, partnership, support and negotiation in order to respond to the needs of the people and meet service delivery priorities. Central to the notion of co-operative government is the operational principle that each sphere of governance performs its assigned functions in such a way that it does not interfere with the territorial domain, or functional or institutional integrity of the government in another sphere. Yet all are collectively committed to the preservation of peace, national unity, security and the welfare of all citizens.
126. The Constitution provides for concurrent powers, as between the national and provincial spheres of governance, and for these spheres to intervene in the jurisdiction of the third sphere, namely local government. It nonetheless exhorts for mutual respect and consultations, and provides procedures and

mechanisms for intergovernmental and judicial “checks and balances” in case of disputes. The Constitution stipulates that the different spheres of governance should utilise all available political means to solve their disputes before resorting to the courts.

127. Although there have been some successes in terms of service delivery and decision making, a major weakness has been the lack of capacity, resources and experience at local levels. The government has responded to these problems. Project Consolidate provides assistance to deficient municipalities on demand, or when such deficiencies have been independently identified and acknowledged by the municipalities concerned.

Civilian Oversight of Security Services

128. The security forces in South Africa operate under a rigorous political oversight as provided by Chapter 11 of the Constitution, which states that “national security must reflect the resolve of South Africans, as individuals and as a nation, to live as equals, to live in peace, to be free from fear and want, and to seek a better life” (s198(a)). It is made very clear that “national security is subject to the authority of parliament and the national executive” (s198(d)). In the constitutional democracy of South Africa, security forces are therefore accountable to the elected parliament and President, and indirectly to the people who elected the members of parliament (MPs) and the President. Moreover, the Constitution provides for the creation of several institutions and mechanisms mandated to oversee the accountability of the security services. These include the Independent Complaints Directorate (ICD), the Public Protector, and the Promotion of Access to Information Act (PAIA) of 2000.

ii. Findings of the CRM

Democratic Governance and Political Pluralism

129. As mentioned in the overview to this section, stakeholders have affirmed their acceptance of the constitutional democratic governance system of their country. They accept its legitimacy and assert ownership. There is no doubt that the Constitution is the supreme law in South Africa. The manner in which it was crafted has placed it at the very centre of the people’s concerns, hopes, aspirations, sense of security and sense of belonging in the political community. The ideology of apartheid, its oppressive institutions and the violent behaviour of those who implemented it have shaped the context of the constitution-making processes by the black political leaders. They were thus prepared to reconcile with the painful past and to compromise on issues they had held dearly for generations in order to create a new democratic non-racist, non-sexist nation for future generations.
130. In order to defend and promote the rights, rules and obligations to which all must subscribe in accordance with the mechanisms and procedures to be adopted by all spheres and levels of governance for the promotion and

protection of the common good, the Constitutional Court has been put in place where contestations, or clarifications, on these matters can be formally conducted and resolved. The fact that this kind of an elaborate Constitution could be crafted and accepted after the divisive, painful era of apartheid is something that needs to be saluted and celebrated. The fact that there is in South Africa a national enthusiasm of living by the Constitution, along with readiness to improve on it where necessary, is certainly admirable. Although evolving from particular historical circumstances and amidst the challenges confronting post-apartheid South African leaders, the constitutional innovative concept of co-operative government deserves to be known in the rest of Africa. Clearly, this qualifies as a best practice worthy of consideration and emulation in Africa.

Best Practice 1: Co-operative Government

The Constitution prescribes a process of institutionalised contestation known as co-operative government to be undertaken sympathetically and productively as a generalised means of first resort in resolving conflicts, especially those of a jurisdictional nature. In many a country, there is a paucity of deliberative forums or clusters of institutions designed to enhance and deepen awareness of how the different “tiers” of governance function, promote understanding and galvanise synergies of the various actors in the governance systems. Litigation and legislative enactments seem to take the better part of attempts to resolve conflicts, quite often jamming the ill-equipped judicial system and complicating its inbuilt structural inefficiencies, in the case of the former; or marginalising and alienating substantial segments of the population, in the case of the latter. The effect on the political system is almost always that of pitting the people awkwardly against their government. This innovation in South Africa means that not only is conflict resolution fast-tracked, but also that appropriate intergovernmental “checks and balances” are ensured, and consequently, accountability and transparency in governance.

Source: Constitution of South Africa of 1996; and APRM CRM compilation, July 2006.

Proportional Representation

131. Although questions have been raised about proportional representation in the electoral process, it is widely accepted that this was the only viable way of institutionalising representative pluralist democracy in the new South Africa. Were South Africa to adopt the first-past-the-post and constituency-based electoral system, such as is found in virtually all other African countries, the deep divisions of apartheid would have been more difficult to bridge; the ANC would have emerged as the dominant party, eclipsing all other voices from governing and representative institutions; and South African politics would have been more conflict prone. The proportional representation system allows even the smallest of parties a voice in both the parliament and legislature. “Voiceless” groups such as women and children can also be heard through proportional representation.

132. The CRM found widespread support among stakeholders for the electoral system of proportional representation. Undoubtedly, the system has achieved the objectives for which it was designed, including fair distribution of votes cast, fair representation of parties in the National Assembly, reconciliation and harmony, containment of conflict, and enhancement of women's participation in the democratic process. With regard to the last point, stakeholders pointed out that the proportional representation system was conducive to the promotion of gender equality and enhancement of women's participation and representation in the parliament. This was due in part to the deliberate party quotas adopted by parties themselves, as well as the commitment of the party leadership to gender parity.
133. However, the main challenge of the proportional representation system as practised in South Africa relates to the manner in which MPs maintain links with the electorate. Because the MPs are elected through a closed list, their election is dependent on the party bosses. The MPs are therefore beholden to the Party and its hierarchy rather than to constituents who elected them. This raises the issue of accountability. Although the problem has been somewhat mitigated by the creation of constituency offices, some stakeholders are still unhappy about the situation.
134. Some stakeholders also called for a reconsideration of the Van Zyl Slabbert Commission's recommendations to consider a hybrid party list with a district-based electoral system at all levels of government. Dr Frederick van Zyl Slabbert headed the Electoral Task Team commissioned in 2002 by President Thabo Mbeki to assess the South African electoral system and make recommendations for its improvement.

Floor-Crossing

135. A number of problems in the area of democratic governance are likely to undermine political pluralism and consolidation of democracy in South Africa, among which is the issue of "floor-crossing". The CRM noted the vigorous debate surrounding this issue in the course of its consultations with stakeholders throughout the country. It found that the legislation relating to floor-crossing was a major concern to both the electorates and the opposition political parties. They regarded it as a tendency likely to undermine democracy and good governance in South Africa. The Fourth Amendment Act in the Constitution permits two 15-day periods in every five-year parliamentary term, in which members of national, provincial and local assemblies may cross-over to other parties without losing their seats in the Assembly. In principle, floor-crossing in itself is not necessarily undemocratic in a governance system where individuals are elected by direct vote and on the basis of their merits and declared electoral promises. It allows for an expression of dissatisfaction with the policies of a particular party to which the individual may have been a member during the election period.
136. However, in the proportional representation system as practised in South Africa, floor-crossing further erodes the already weak link between MPs and

the electorate. Moreover, the experience in South Africa is that floor-crossing has strengthened the ruling party. Through floor-crossing the ANC has increased its seats in the parliament from 69.75 per cent in the 2004 elections to the current 73 per cent of seats. The danger of floor-crossing is that it reduces the opportunity for a strong opposition to emerge, thus undermining checks and balances and weakening the oversight responsibilities of the Assembly. This practice should be reviewed in the interest of promoting and consolidating democratic governance.

Funding of Political Parties

137. The Public Funding of Represented Political Parties Act of 1997 provides for the funding of represented political parties in the parliament on proportional basis. This gives those parties represented in the parliament some financial support, especially during election campaigns. The fees for registration for elections (R5000) and participation in elections (R150 000) required from parties by the IEC place a disproportionate burden on smaller parties.
138. Nonetheless, public funding is less contentious. It is private funding of parties that has drawn criticism among the public. In South Africa, political parties are allowed to raise money privately to meet their electoral campaign needs. However, there is no legislation regulating such funding. Lack of transparency in private funding has therefore become an issue, especially when related to the PAIA, and the right of citizens to know and consequently be able to judge party behaviour.
139. Some stakeholders have argued that unregulated private funding is the “legitimate” avenue by which the private sector, foreign governments and even organised criminals can exert influence over the political process and public policy. Non-disclosure due to the absence of regulation of private funding of political parties is likely to distort the institutionalisation of constitutional democracy in South Africa, as private interests compete for favours from the dominant or influential political parties. Equally serious are the related issues of corruption and the possibility of “state-capture”, as has happened elsewhere on the continent and beyond. More seriously for a new South Africa committed to the principles of constitutionalism, rule of law, accountability, transparency and conformity to internationally recognised standards and conventions, the non-disclosure of private funding to political parties contravenes the Memorandum of Understanding (MOU) of the AU’s Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA). The MOU commits acceding states to regulate and disclose political party finances.

The Rule of Law and Supremacy of the Constitution

140. The Constitution of the Republic of South Africa provides a firm legal and institutional anchor for the rule of law and democracy. It entrenches a comprehensive set of inalienable rights, including the right to freedom of association; to demonstrate and assemble; to form a political party; to expect

dignity and respect; to have equality before the law and equal protection and benefit; to be protected against discrimination; to enjoy freedom of religion, belief and opinion; and to have the right to language and culture.

141. To strengthen constitutional democracy, the Constitution provides for Chapter 9 institutions mandated to protect the rights of the people and provide them with the political space to form their government and keep it in check. These include the Public Protector, SAHRC, IEC and Auditor-General. When rules are contested, the Constitutional Court is there not only as an arbiter but also to clarify and even chart new paths along which the Constitution is to be interpreted. The fact that this kind of elaborate Constitution could be accepted after the divisive apartheid era is something that needs to be celebrated.

Decentralisation and Popular Participation

142. Decentralisation entails the devolution of governance processes and de-concentration of administrative responsibilities. It “rationalises” governance so as to make it relevant, effective and meaningful to different parts of the same country. Appropriately implemented decentralisation reduces pressure on the central government, allowing it to focus on major national issues. It reinvigorates and democratises traditional local governance institutions, thus promoting greater popular participation at grassroots levels. It encourages local initiatives and ownership in the conduct of affairs directly relevant to the people on the ground. It enhances the responsiveness of the government to the needs and wishes of the people throughout the country.
143. Because decentralisation delegates powers, authority and responsibilities and stimulates popular participation in public affairs at the lower levels of governance, it is a critical factor in the promotion of good governance. It also facilitates local recruitment of and training for political leadership and provides expertise and experience for public servants, thus contributing to the enhancement of the political and administrative capabilities for local governance structures. Creatively managed, decentralisation may provide opportunities for relevant modernisation of traditional institutions and leadership. Appropriately modernised traditional institutions may retain local talents and expertise and attract others from the urban areas. In this respect, rural areas could become new centres of creative and productive economic activities, thus relieving poverty, frustration and alienation, offering alternative attractive civic life and, in the process, providing training grounds for good governance.
144. South Africa is a unitary state with federal characteristics. The Constitution provides for three spheres of government: national, provincial and local, which are “distinctive, interdependent and interrelated”. It also provides for both exclusive and concurrent competencies that all spheres of government must assume. The Constitution assigns legislative authority of a province to the provincial legislature and the implementation of provincial legislation in a province as an exclusive provincial executive power (s104(1) and s125(5) of the Constitution). This also applies to local government, whereby the

executive and legislative authority of a municipality is vested in its municipal council (s151(2)). These constitutional arrangements imply more autonomy to provinces and municipalities and may be a source of contention between the three spheres of government.

145. The drafters of the Constitution foresaw this eventuality. Hence, co-operative government in Chapter 3 of the Constitution spells out the parameters of dispute resolution. An institutional and legal framework has been established to give effect to co-operative government in order to promote and facilitate relations between the spheres of government, and to ensure effective and efficient service delivery to the people of South Africa. It includes various committees, such as the Committee of Ministers and Members of the Executive Councils of Provinces (MINMEC).
146. The government has evoked the provisions of the 1996 Constitution to establish and institutionalise a new system of local government. The vision for the new system is based on a democratic and developmental local governance structure that would create and sustain humane, equitable and viable human settlements to remove the vestiges of spatial segregation that was the legacy of apartheid. The challenge of achieving institutional development and transformation and building democratic and participatory local government structures is a gigantic task. It is eminently an issue of capacity and resources.
147. Between 1998 and 2003, the government enacted legislation that entirely transformed the systems, institutions and processes of local government. Key among these was the Local Government: Municipal Structures Act of 1998, Local Government: Municipal Systems Act of 2000 and Local Government: Municipal Electoral Act of 2000. The Public Finance Management Act (PFMA) of 1999 was enacted to regulate financial management at national and provincial levels. The Local Government: Municipal Finance Management Act (MFMA) of 2003 was enacted to secure sound and sustainable management of financial affairs and other institutions in local government.
148. Co-operative government does, however, pose many challenges. While there have been successes in terms of service delivery and decision making, there were also shortfalls due to poor coordination among different departments and spheres of government. The lack of capacity, skills and resources is particularly acute at local government level and has had a negative impact on service delivery.
149. The government has put measures in place to bolster the capacity of decentralised institutions. Project Consolidate, a hands-on support programme from the national government to assist municipalities suffering capacity deficits, is a case in point. (See Objective 5 for more details.) Although decentralisation has been a challenging endeavour, it has enormously increased public participation in various spheres of government. The following are some of the institutions and mechanisms that have been established to ensure broader public participation and dissemination of knowledge and information about government service delivery:

- Ward committees, made up of not more than ten elected people representing diverse interests in the ward and chaired by a ward councillor. These are responsible for ensuring direct consultation with and participation of the citizenry in all government activities within the ward;
- Integrated Development Programme (IDP);
- Community development workers (CDWs);
- *Imbizo* and “citizen forums” bringing together citizens and leadership at all levels of government to deliberate public issues of concern. These gatherings create space for the public to voice concerns and grievances and to communicate wishes and aspirations.

Best Practice 2: Popular Participatory Governance through *Imbizo*

Imbizo is a public participation government initiative, which consists of a period of face-to-face interaction and engagement between senior government officials from all spheres of government (national, provincial and local) and the public. It gives the government the opportunity to communicate to the public its programme of action and how far it has been implemented, the challenges experienced, and areas that may need review. *Imbizo* also affords local communities the opportunity to voice their needs, concerns and grievances in the various areas of governance and service delivery. Thus, *Imbizo* is a forum for enhancing dialogue and interaction between the leadership and the governed (citizens). It gives a voice to the majority of people who were excluded from decision making by apartheid. As such, *Imbizo* gives effect to the ideals of participatory democracy.

There exist a Presidential *Imbizo* and other government-led *Imbizo*. During the Presidential *Imbizo*, the President visits communities and sees for himself some of the challenges that people are grappling with and the conditions under which they live. Similarly, communities are afforded the opportunity to air their concerns and communicate their suggestions and aspirations directly with the President and, in the President's presence, with the Premier, the members of the Executive Council (MECs), the mayors and local councils. In this way, *Imbizo* strengthens co-operative government and enables citizens to hold the three spheres of government accountable. Two *Imbizo* periods a year are held in South Africa.

Source: www.info.gov.za/issues/imbizo/index.htm, APRM CRM Compilation, July 2006.

Traditional Leaders and Local Government

150. The place given to traditional leaders in the democratic process is not only innovative but also respectful of South Africa's political heritage. The CRM found that the tensions and disagreements that surrounded the role and functions of traditional leaders in the governance system in South Africa are now being eased. Stakeholders cited the provisions of two legislations, namely the Traditional Leadership and Governance Framework Act of 2003 and the Communal Land Rights Act of 2004. Both Acts have clarified the role and functions and formalised the relationship between traditional leaders and the official governance structures in the country. There is widespread acceptance

that traditional leadership is not incompatible with modern governance structures. Stakeholders have accordingly called for traditional leaders to play a meaningful role in all spheres of the governance system in South Africa. Provincial legislators have enacted laws providing more space for participation by traditional leaders within the framework of provincial, district and local councils of chiefs. Most of these traditional houses are close to meeting the legislative requirement of having at least 30 per cent women as members.

151. The CRM found that, within the context of those provinces where they exist, there is a concerted effort by provincial governments to utilise the institution of traditional authorities as a unifying force and a source of nation building. For example, in KwaZulu-Natal, the CRM was informed that traditional leadership falls under the Provincial Department for Local Government and Traditional Affairs. This illustrates the important role assigned to traditional authorities, especially in rural areas where people rely heavily on traditional courts as a means of administering justice. The CRM also learnt that the provincial legislature in KwaZulu-Natal is considering legislation that would give more powers to the provincial, district and local houses of chiefs. This process of recognising and assigning roles to traditional leaders is under way in all the provinces that have traditional leaders within their boundaries.

iii. Recommendations

152. The APR Panel recommends that South Africa:
 - Address adverse effects of floor-crossing on the long-term development, vitality, vibrancy and sustainability of multiparty constitutional democracy in a post-apartheid South Africa. *[Parliament; political parties; Department of Justice and Constitutional Development]*
 - Find creative ways to make MPs more accountable to the electorate and less to the party hierarchy that determines the party list. The IEC may consider proposing a law-making, intra-party democracy an eligibility condition for party funding and for the process of compiling the list of candidates for elections. *[IEC; parliament; political parties; Department of Justice and Constitutional Development]*
 - In the light of experiences gained thus far, rethink and innovate the proportional representation system to ensure the development and consolidation of constitutional democracy is not hindered. In this regard, there is indeed a need for reconsideration of the Van Zyl Slabbert Commission's recommendations to combine party lists with a district-based electoral system at all levels of government. *[IEC; parliament; political parties; Department of Justice and Constitutional Development]*
 - Consider introducing a law on the modalities and disclosures of private funding to political parties. *[Parliament; Department of Justice and Constitutional Development]*

- Step up ongoing parliamentary review of Chapter 9 institutions to make them more efficient. [*Parliament; Chapter 9 institutions*]

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

i. Summary of the CSAR

Measures to Promote Rights

153. Affirming its commitment to the promotion and protection of economic, social, cultural, civil and political rights, South Africa has signed and ratified most African and international human rights instruments in addition to enshrining them in its Constitution. The Constitution contains an expansive justiciable Bill of Rights protecting political, social and economic rights.
154. The South African Constitution entrenches a Bill of Rights protecting political, social and economic rights such as the right to equality (s9); human dignity (s10); freedom and security (s12); freedom of religion, belief and opinion (s15); freedom of expression (s16); freedom of association (s18); freedom to make political choices (s19); freedom of movement and residence (s21); freedom of trade, occupation and profession (s22); and the right to fair labour practices (s23); property (s25); housing (s26); healthcare, food, water and social security (s27); education (s29); access to information (s32); access to courts (s34); and the rights of arrested, detained and accused persons (s35).
155. As mentioned, South Africa has acceded to, or ratified most of the African regional and international human rights instruments in the area of economic, social, cultural, civil and political rights.
156. South Africa has signed the Convention on Socio-Economic and Cultural Rights. However, the parliament confirmed that the country has not ratified it. It has neither signed nor ratified the Covenant on the Protection of Migrant Workers. The same applies to the Optional Protocol on Convention Against Torture, other Cruel Inhumane or Degrading Treatment or Punishment, which South Africa has not signed and ratified. There is also a call by women groups that the Beijing Plus Ten Progress Report should be aligned with policies and practices of CEDAW and other such human rights instruments.
157. In an attempt to domesticate these international standards and instruments, South Africa has adopted a comprehensive array of policies, laws and programmes. These include: the Labour Relations Act of 1995; Basic Conditions of Employment Act of 1997; Employment Equity Act (EEA) of 1998; Promotion of Equality and Prevention of Unfair Discrimination Act of 2000; Public Service Laws Amendment Act of 1997; Skills Development Act

of 1998; South African Schools Act of 1996; and Adult Basic Education and Training Act of 2000.

158. The Constitution further creates a number of independent institutions, known as Chapter 9 institutions, mandated to promote, monitor and protect the human and socio-economic rights of citizens. These institutions include the:
 - Commission on Gender Equality, established by sections 181 and 187 of the Constitution and the Commission on Gender Equality Act of 1996;
 - Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, established by sections 181 and 185 of the Constitution;
 - Public Protector, established by sections 181 and 182 of the Constitution and the Public Protector Act of 1994; and
 - South African Human Rights Commission established by sections 181 and 184 of the Constitution.
159. Despite the existence of laws and institutions to promote and protect people's rights, South Africa faces enormous constraints and challenges in implementing these rights. Apartheid's legacy of racial inequalities and economic disparities has ensured that the majority of the people, especially those in rural communities, are unable to exercise their constitutional rights, including accessing social services and justice. Other vulnerable groups, such as farm workers, face difficulties in accessing land and their constitutional socio-economic rights. Other challenges include the absence of resources, poor coordination by constitutional bodies, their limited capacity and weaknesses in monitoring and evaluation.
160. Equal access to education remains an unrealised expectation of many people. In addition, the quality and standard of education provided to disadvantaged people continue to be inadequate.

Equal Access to Justice

161. The CSAR notes that, in addition to guaranteeing equal protection before the law, the Constitution specifically guarantees the right of access to courts by all. The government has created a range of institutions and mechanisms for facilitating equal access to justice, including provision for alternative mechanisms for conflict resolution. Among these institutions and programmes are: legal aid providing legal assistance at the expense of the state especially to indigent people; a Rules Board of Courts that reviews the cost of judicial services to ensure affordability, simplicity, swiftness and fairness; and a Proximity of Courts programme that provides periodic courts to communities that have no access to courts due to the distances involved. The government is also making physical access possible to meet the needs of people with disabilities. The proposed restructuring of superior courts is aimed at reconfiguring the apartheid designation of courts and increasing access to justice.

162. To accelerate the administration of justice, the South African government has created special courts including sexual offences courts, family courts, labour courts and equality courts. Established in 2003, equality courts are aimed at eradicating the legacy of inequality and at the same time bringing justice to citizens. There are currently 220 equality courts across South Africa and the plan is to ensure that each magisterial district eventually has its own equality court. The equality courts have so far dealt with about 800 cases. The Justice College of South Africa has a professional development programme for magistrates and court officials, including interpreters, prosecutors and administrative staff.
163. Alternative dispute resolution mechanisms are referred to the Commission for Conciliation, Mediation and Arbitration (CCMA).
164. The CSAR acknowledges that despite all these commendable efforts access to justice for all South Africans remains a major challenge. Persons with knowledge and resources are better able to access their rights than the poor and those without formal education. Court administration suffers from capacity constraints, including backlogs of cases, undue delays in case processing, and inadequate security limiting access to courts. In addition, the limited supply of properly trained professionals for both the judiciary and legal professions remains a challenge. A cluster of government departments working in justice, crime, and security systems plans to do a comprehensive review of the entire criminal and civil justice system with a view to making recommendations for improvements.

ii. Findings of the CRM

Measures Undertaken to Promote Rights

165. South Africa is one of few countries in the world where the Constitution expressly requires that in interpreting and applying the provisions in the Bill of Rights, particular attention should be given to relevant international laws, and even that comparable foreign experiences on the subject under consideration can be referred to. The domestication of international instruments is an admirable sign that South Africa is, indeed, committed to protecting and promoting the rights of its citizens and other nationals within its borders.
166. Perhaps more than many countries in the world, South Africa has developed policies and instruments for regulating the promotion and protection of gender equality, employment equity, preferential procurement, labour relations, basic conditions of employment, access to information, and administrative justice. Similarly, it has policy and legislation aimed at fostering access to social services such as housing, water, health and education. These are no mean achievements by any international standards and should be so recognised, especially given the country's history.

167. Despite these formidable achievements, several challenges relating to the implementation of laws and policies remain. High levels of poverty and unemployment have meant that people's socio-economic rights are not being fulfilled. The realisation of socio-economic rights, for all the country's polity, is still a challenge.

Socio-Economic Rights

168. The CRM revealed that stakeholders held mixed views on the extent of the enjoyment of socio-economic rights in South Africa. One set of opinions was that these rights were being protected as a result of the Constitution, the Bill of Rights and the availability of legal services. Other stakeholders felt that socio-economic rights were not being sufficiently protected due to lack of access to housing, sanitation, water, and the persistence of unemployment and poverty.
169. In this context, it is important to make the distinction between constitutional provisions (rights and services the government is legally mandated to provide) and the objective realities (availability, accessibility and quality of the services to be provided). The former can be contested in the courts and may be resolved in favour of those eligible. The latter, however, depends on the availability of resources and the capacity to produce and deliver them.
170. There is a strong feeling among stakeholders across South Africa that the disparities between rich and poor and between rural and urban continue to determine access to social services. Those who reside in rural areas or townships within large metropolises tend to experience shortages the most and generally feel neglected by the government. For example, stakeholders in Mpumalanga, a small rural community in KwaZulu-Natal, townships around Cape Town and the Soweto township in Gauteng were the most vocal about being marginalised from the mainstream of society. Communities in these areas complained about lack of pipe-borne water, undue delays in delivery of houses, and inadequate sanitation services. They considered it unfair that their counterparts in urban centres and their suburbs are well serviced with all these amenities. While this general perception needs validating scientifically, it remains very strong across all the provinces and requires immediate attention.
171. Similarly, stakeholders hold the view that while services such as education and health are being provided, it is only the rich who benefit the most from better quality education and health facilities. In particular, the disparity in educational facilities has tended to exacerbate the illiteracy problem. For example, in KwaZulu-Natal, the CRM learnt that approximately 1.6 to 1.7 million people remain illiterate. Some 74 per cent of the poor reside in the heart of rural areas with very little or no access to basic infrastructure or services.¹⁰ To most of the stakeholders, this "denial" of access to educational and health facilities is tantamount to betrayal of the people by the government.

¹⁰ KwaZulu-Natal Provincial APRM Self-Assessment Report, 2006. Provided to the APRM's CRM.

172. In the predominantly rural and farming provinces such as Free State, Mpumalanga and KwaZulu-Natal, the hardship and poor working conditions of domestic and farm workers elicited the most vocal complaints about low incomes, little or no access to health facilities, and lack of job security due to frequent evictions from the farms. Most of these farm workers are “captives” of their farm employers and have little means of exercising their socio-economic rights. The situation is thus a clear denial of their socio-economic rights and needs to be addressed.

Crime

173. Stakeholders pointed out that the alarming rate of crime across South Africa, both in urban and rural areas, is an example of lack of protection of their human and civil rights. Criminal acts of burglary, violent robbery, serial killing, and rape were reported in most provinces. These crimes have bogged down the SAPS. The CRM heard that the cause of criminality in South Africa is deemed to rotate around unemployment, inequality of incomes and the apartheid legacy. In Cape Town, the CRM was informed that police services are concentrated in wealthy areas, thus leaving the poorer communities, mostly townships, largely unprotected. This has resulted in a complete imbalance in police services towards high-crime areas, especially in urban townships where drug trafficking and other violent crimes are committed. Even when these problems are reported to the police authorities, they do not react to emergency situations promptly. Many stakeholders are of the view that the police are negligent in protecting their rights and promoting justice by not solving crimes and arresting offenders.

Access to Justice

174. The CRM’s consultations with stakeholders revealed that although South Africa has acceded to various African and international human rights instruments, and has domesticated most of them in its laws, the situation on the ground does not fully reflect the impact that implementation of these instruments should have. The Bill of Rights provides for access to the courts, a fair trial, the right to appeal, the right to an interpreter during trial, the right to choose one’s legal counsel, and the right to have legal counsel provided by the state. Despite these guarantees, South Africa faces very serious obstacles in ensuring access to justice. Notably, the courts do not function properly in the rural communities where many people reside. Consequently, the majority of the poor have difficulty in enjoying their political and civil rights, including the right to fair justice, security and safety. The stakeholders explained that the lack of fair hearing and justice was attributable to corruption and the lingering apartheid legacy of white domination of the judicial system.
175. Access to justice in South Africa must be measured against these main criteria: knowledge of one’s rights, physical access to courts, the affordability of court procedures and legal services, openness of courts to hearing of certain types of cases, the cultural and linguistic appropriateness of the dispute resolution system, and the existence of rights enforcement mechanisms outside of the

courts. Of all these criteria, stakeholder consultations have indicated that the major barriers to access to justice in South Africa are poor people's inadequate knowledge of their rights and their inability to afford court procedures and legal services.

176. One of the prominent and persistent characteristics of South African society is the huge knowledge and skills gap that exists between the minority white population and the majority black population. Formal court proceedings tend to intimidate and thus inhibit the poor (who are mostly illiterate and rural based) to even contemplate access to courts, as well as having the courage and confidence to seek legal assistance. There is also a lack of appropriate, essential information.
177. Despite major efforts at institutional transformation, the perception of many people who appeared before the CRM is that the judicial system is still being dominated by white males, a feature that feeds into the popular perception that judges and magistrates are not impartial in the sense of being free from racial or gender bias. In consultations throughout the provinces, stakeholders alluded to a number of cases where white male judges and magistrates have been accused of allegedly wrongfully failing to convict persons charged with inter-race crimes or failing to impose adequate sentences because of the accused being a white rather than a black person. These perceptions further intimidate and alienate the majority of black people who are afraid of seeking justice, or are worried that they may not get a fair hearing from the courts.
178. The CRM also learnt that another key barrier to accessing justice in South Africa is the lack of resources, essentially financial, due to the high cost of legal services. It is estimated that the average South African household needs to save one week's salary to be able to afford a one-hour consultation with a lawyer.¹¹ For most poor black households, the cost is even higher. The reasons behind the high cost of legal services are inextricably linked to the dual nature of the economy, with a small rich population being served by a high proportion of trained legal professionals, while the majority of the poor population has no access to professional legal counsel.
179. Although state legal aid services have enhanced access to justice by the poor to a certain extent, it will not change the cost of legal services, especially the elite-based legal professional market often available to the rich. Although state-funded legal aid could only be accessed from lawyers in private practice, there has been a determined effort to diversify the source in which legal aid can also be obtained from justice centres staffed by state employees, civil society and university-based law clinics.¹² Yet lack of resources is only a part of the problem of lack of equal access to justice by the poor. Among the key factors mentioned by stakeholders are inefficiencies and chronic procedural delays that make it difficult for victims to obtain justice. These are also related

¹¹ Open Society Foundation of South Africa, 2005. *South Africa: Justice Sector and the Rule of Law*, pp. 29-30.

¹² Ibid.

to the lack of resources, manpower or professionalism among police and court staff. Other factors include the high rate of police fatalities, responsiveness of the police to crime as stated above, efficiency of police investigations, prosecution success rates, and corruption within the SAPS.

180. The issue of access to justice in South Africa is deep-rooted and complex. It is partly the legacy of apartheid, where wealth ownership and the creation of wealth were legally confined to white people and the law was used as the instrument of control, banishment and punishment of black people. Hence law as an instrument of social control, regulation and protection for the benefit of all is still suspect.

Alternative Dispute Resolution Mechanisms

181. Although the CSAR makes mention of the existence of an alternative mechanism for labour dispute resolution through the CCMA, the CRM did not get the opportunity to interact with this body. However, the issue of alternative dispute resolution for labour matters is also addressed under Objective 2 of the chapter on corporate governance. The CCMA is the main statutory body for dispute resolution established by section 112 of the Labour Relations Act of 1995. The functions of the CCMA include finding solutions to labour disputes through conciliation and arbitration, assisting in forming workplace forums, and providing advice and training to workers, registered trade unions and federations of employers on the most pressing labour relations issues, such as affirmative action, prevention of sexual harassment, disciplinary procedures, and collective bargaining.
182. The CRM met with councils of the house of traditional leaders in at least three provinces, who spoke eloquently about the need to encourage and standardise the role of traditional courts in the communities where they exist. The challenge, therefore, is how to integrate traditional legal systems founded on uncodified customs, conventions and norms with written constitutional principles of equality and non-discrimination, and come up with creative ways in which traditional courts can respond and adapt to the need for justice delivery to the poor and rural population in South Africa. This issue has moved beyond debate to a concrete policy based on the two recent legislation frameworks guiding the institution of traditional leadership and authorities.
183. Similarly, in KwaZulu-Natal, the provincial leadership expressed its profound commitment to transforming all existing traditional governance structures by aligning them with the new national legislation on traditional institutions and making them compatible with democratic principles and institutions in South Africa. The Speaker of the provincial legislature informed the CRM that the province is carefully studying proposals for integrating the traditional and modern justice sectors. It is exploring ways of harnessing the cultural and judiciary powers of traditional leaders for the purpose of promoting peace and unity within the province. In this regard, the provincial legislature was considering legislation that would give more powers to the provincial, district and local houses of traditional leaders. All these efforts are geared towards

legitimising the important role of traditional institutions, including the traditional courts.

iii. Recommendations

184. The APR Panel recommends that South Africa:

- Without prejudice to the standard and impartiality of the judicial system, transform the manpower profile as soon as possible to reflect the realities of contemporary South Africa. *[Department of Justice and Constitutional Development; Public Service and Administration; professional legal associations]*
- Provide appropriate and adequate legal services in the rural areas. *[Department of Justice and Constitutional Development; Legal Aid]*
- Modernise and, to the extent possible, integrate the traditional and modern justice systems where applicable. *[Department of Justice and Constitutional Development; houses of traditional leaders]*
- Address capacity constraints in lower courts that continue to undermine full application of the Bill of Rights in the cases brought before them. This calls for concerted efforts at building the capacity of the various levels of magistrates' courts. *[Government; judiciary]*

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

i. Summary of the CSAR

Separation and Balance of Powers

185. The separation of powers between the legislative, executive and judicial branches of the government is firmly established in the Constitution, in which the roles and functions of each branch are set out. The independent mandate and powers of the national parliament, consisting of the National Assembly and the National Council of Provinces (NCOP), are clearly defined in Chapter 4 of the Constitution, while the mandate and powers of the provincial legislatures are established by Chapter 6 and the independence and powers of the judiciary by Chapter 8.
186. There is general consensus among submissions that the post-apartheid constitutional and legislative infrastructure is in keeping with the principle of the separation of powers. South Africa's judiciary has maintained its high

standards while undergoing a fundamental transformation of both legal frameworks as well as its own composition. Still under way, the transformation process has led to improvements in racial terms but women remain seriously under-represented in the judiciary.

187. Independence of the legislative bodies has also been established and maintained by appropriate legislative measures. Since 1999, all 11 legislatures (two national and nine provincial) have shifted to the oversight functions of their legislative responsibilities. Although the parliament is empowered by the Constitution to amend money Bills, the appropriate legislation has yet to be put in place. A multiparty task team was appointed in 2002 to review, evaluate and make recommendations on the executive reporting practices, committee operations and legislative involvement in the budgeting processes. The team was expected to report by the end of 2006.
188. The capacity of the legislature to perform its oversight responsibilities is a major issue that needs to be addressed. This is due partly to lack of resources and the limited legislative experience of newly elected representatives, as well as the initial focus of the legislature in drafting new laws in order to abolish apartheid laws and create appropriate new ones. The legislature was therefore more preoccupied with enacting laws to improve the lives of people and less with checking the executive.

ii. Findings of the CRM

Separation of Powers in South Africa

189. Separation of powers is essentially about measures for and mechanisms of checks and balances calculated to inhibit the tendency for the excessive use of powers in a governance system. They are particularly intended to constrain the dominance of the executive over the other institutions, particularly the judicial and legislative powers. Checks and balances are usually inbuilt in a Constitution, such as the entrenchment of the principle of the separation of powers, the rule of law and due process of law, and an independent judiciary.
190. In South Africa, the principle of separation of powers between the legislature, executive and judicial branches of the government is uppermost in national policies and public debates. The independence of the judiciary is entrenched in section 165(2) of the Constitution, which states that “courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice”.
191. The independence of the parliament is enshrined in Chapter 4 of the Constitution, which establishes the mandate, composition and powers of the two Houses of Parliament: the National Assembly and the NCOP. The independence of the parliament is further protected in national legislation such as the Powers, Privileges and Immunities of Parliaments and Provincial Legislatures Act of 2004.

192. In cases of disputes between organs of state concerning constitutional status, powers or functions, there are various constitutional provisions aimed at resolving intergovernmental disputes. The Constitutional Court may, if the case is in the interest of the Constitution, hear and decide the constitutionality of such disputes.

Independence of the Judiciary

193. An independent judiciary is the cornerstone of the rule of law and due process of law. Moreover, it is designed to ensure that all public officials stand trials if their actions contravene the law. The independence of the judiciary means that judges and magistrates are secure in their positions and cannot be dismissed for taking a position against the executive or for making decisions that might indirectly have an adverse impact on the executive. Without independence, the judiciary is subject to the whims of political leaders and their changing priorities. When the judiciary is independent of other branches of government it can play an effective role in promoting good governance. Independence of the judiciary is generally an entrenched constitutional provision.
194. In South Africa, the judiciary is widely regarded as independent and free from executive domination and has gained international recognition for its judgments, which have seen laws rewritten and the government challenged. There also exist constitutional provisions aimed at promoting and safeguarding judicial independence. These include the protection from arbitrary removal from office, security of tenure, and a guarantee against the reduction of salaries.
195. Removal of judges from office is addressed in section 177 of the Constitution, which states that:
- (1) A judge may be removed from office only if –
 - (i) the Judicial Services Commission (JSC) finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct; and
 - (ii) the National Assembly calls for the judge to be removed, by a resolution adopted with a supporting vote of at least two-thirds of its members.
 - (2) The President must remove a judge from office upon adoption of a resolution calling for the judge to be removed.
 - (3) The President, on the advice of the JSC, may suspend a judge who is the subject of a procedure in terms of subsection (1).
196. Section 176 of the Constitution guarantees the tenure and remuneration of judges. All judges, except those of the Constitutional Court, hold office until discharged under the terms of an Act of parliament or at their retirement at the

age of 70. Constitutional Court judges hold office for a non-renewable term of 12 years, but also retire at the age of 70.

197. Despite the record of its independence, the South African judiciary still struggles with legacies from the past regime and the justice system, a former tool of oppression, remains ill-equipped to deliver justice to the majority of the population. One major challenge that has been clearly identified in the justice system and needs to be addressed is that the public still looks at the judiciary and legal profession as racist due to the dominance of white people. The transformation project, which would see the bench change to represent the country's demographics, needs to be fast-tracked. Indeed, the CRM was informed that the Cabinet is considering draft legislation aimed at fast-tracking the transformation of the bench.
198. The transformation project that the government is pursuing is worthy and needs to touch all sectors of society. However, care must be taken to ensure that judges are appointed legitimately and on merit to avoid a situation in which new appointees become loyal to those who have appointed them, hence undermining the independence of the judiciary.
199. In discussions stakeholders also expressed their fears that recent provisions in draft legislation tabled before the parliament (e.g. the Judicial Conduct Tribunals Bill, the Superior Courts Bill, the proposed amendments to the Judicial Service Commission Act of 1994 and the 14th Constitution Amendment Bill) could seriously threaten the independence and/or delivery of justice in the country. Their concerns relate to the powers given to the executive in the proposed Bills on matters such as the appointment of senior judges, and the management of the budget of the judiciary.
200. The CRM was informed that the government was drafting a White Paper on the transformation of the judiciary, which would take into account public debate on the Bills previously published. It is hoped that this White Paper will facilitate further discourse on substantive aspects relating to the transformation of the judiciary.
201. Capacity constraints at lower courts and the police could threaten delivery of justice to communities. The SAPS has been severely criticised for its inability to uphold the security and safety of people of South Africa. The government needs to address these issues.

Independent and Effective Parliament

202. The legislature is the main forum in which national politics is conducted. In a democracy, the legislature consists of the elected representatives of the people. In many African countries, some members are appointed by the executive or are constitutionally entitled to represent identified interests such as gender, disability and youth.

203. The legislature has two important functions. One, it enacts laws, rules and regulations, appropriates revenue, allocates resources and oversees public expenditure. Two, it provides a forum for the representatives of the people to articulate the needs, interests and aspirations of those who elected them, express their grievances and anxieties, demand rectification of wrongs done by the executive, debate public issues and policy options, and take decisions in the interests and welfare of all people in the country.
204. Section 55 of Chapter 4 of the Constitution firmly establishes the independent mandate and powers of the parliament. It is stipulated that the National Assembly must provide for mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it; and to maintain oversight of the exercise of national executive authority, including the implementation of legislation, and any organ of the state. The NCOP represents the provinces to ensure that provincial interests are taken into account in the national sphere of government.
205. Since 1994, the government has set up a robust constitutional and legislative framework to put into effect the new constitutional mandates and aspirations for a democratic South Africa. This has involved the adoption of new laws and policies. It is estimated that over 789 legislative Acts or Amendment Acts aimed at transforming the South African society from one characterised by apartheid laws, rules and regulations into the modern, democratic, non-racist and non-sexist nation have been adopted.
206. The Constitution of South Africa recognises 11 official languages. These are Sepedi, Sesotho, Setswana, isiSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu. It furthermore provides that the state must take practical steps and positive measures to elevate the status and advance the use of these indigenous languages in South Africa. To give effect to this constitutional provision, the legislature conducts parliamentary debates and other business in any of the 11 official languages. This is worthy of emulation by other African countries. The parliament has also over time devised innovative strategies for reaching the electorate, such as the Taking Parliament to the People Programme.
207. Much of the work of the parliament is managed through an extensive committee system. Committees are designed to improve the efficiency of the legislative process; to deepen and enhance the deliberative function of the parliament; and to maximise public participation in the legislative process through public hearings and submissions by the public or special interests. Most importantly, however, committees serve the role of strengthening the parliament's capacity to conduct effective oversight of the executive.
208. Despite the constitutional powers and mandate of the parliament and the committee system to strengthen the parliamentary oversight role, there are concerns that the parliament has not consistently exercised its functions and has, on certain controversial issues, such as the arms deal and HIV and AIDS, been hesitant to criticise the executive.

Best Practice 3: Taking the Parliament and Provincial Legislatures to the People Programme

The “Taking Parliament to the People Programme” underscores and promotes people participation in their governance. It is an outreach programme whereby the parliament and the provincial legislatures go to the grassroots level to interact with members of communities and listen to their concerns, needs and aspirations. It strengthens the parliament’s commitment as a people-centred institution that is responsive to the needs of the electorate in order to realise a better life for all South Africans. By visiting these rural communities, the parliament gives a voice to those who would not necessarily have the opportunity to address or discuss issues (in their home language) with their representatives. This creates a platform for people to engage with the government and the parliament on various issues of concern. During its interaction with the people, the parliament gains a deeper understanding of the issues confronting the area and the rest of the province. Through its oversight role, the parliament can help highlight and overcome the constraints faced by local people. The gathering gives the parliament and the local sphere of government the opportunity to enhance the spirit of governance. Finally, the parliament will be able to assess the impact of the legislation it has passed on the development and empowerment of people and their communities.

Source: www.parliament.gov.za, www.pmg.org.za, www.info.gov.za, APRM CRM compilation, July 2006.

209. Stakeholders mentioned during discussions that the proportional representation electoral system negatively impacts on the parliament’s oversight capabilities and independence. Since individual MPs are only indirectly accountable to the public, they are more likely to prioritise allegiance with the party that nominated them. This system implicitly enhances the power of the executive over the elected representatives.
210. It was further noted that the South African parliamentary system of government, where the executive is drawn from the legislature and the ruling party holds the majority seats, may sometimes obscure the separation of powers and reduce the autonomy of the parliament in its oversight exercise. Not only are Ministers playing an active role in the parliament as members, they are by virtue of their ministerial positions also exercising considerable influence on parliamentary affairs.
211. The oversight role of the parliament is limited by its rather low interaction with society, particularly in the work of the oversight committees. Minority parties complain of having ineffective voices in the National Assembly owing to proportional representation rules in parliamentary deliberations.

iii. Recommendations

212. The APR Panel recommends that South Africa:
 - Speed up the transformation of the judiciary based on the fundamental

constitutional principles of a non-racial, non-sexist society. *[Government; judiciary]*

- Ensure that the JSC promotes progressive and increased appointment of black people and women as magistrates and judges. Where rules are prohibitive to this development, they should be revised without compromising the integrity of the judicial system. *[JSC; Department of Justice and Constitutional Development]*
- Ensure that the proposed Amendments to the Judicial Service Commission Act of 1994 and the transformation of the judiciary do not jeopardise or undermine the independence of the judiciary. *[Department of Justice and Constitutional Development; JSC; parliament]*
- Strengthen the parliament to ensure its capacity to monitor the implementation of legislation it passes. Capacity constraints range from inadequate education, lack of information and knowledge of the legislators, to their capture or co-optation by the ruling party. *[Parliament; political parties; civil society]*

Objective 5: Ensure Accountable, Efficient, Effective Public Office-Holders and Civil Servants

i. Summary of the CSAR

Measures to Improve Public Service Institutions

213. Since the end of apartheid rule, the government has made systematic and deliberate efforts to put in place legislation and structures for strengthening and consolidating constitutional democracy, rules, procedures, mechanisms, processes, principles and codes of conduct to guide the performance and achievement of a transformed public service. The main objectives were to transform the public service away from the apartheid-oriented government machinery geared to serving the interests of the white minority towards serving the interests of all South African citizens.
214. As the leading government department in the transformation agenda, the Department of Public Service and Administration (DPSA) has undertaken a range of policy and legislative initiatives to give effect to the constitutional principles. These are the White Papers on the Transformation of the Public Service (1995 and 1997), the Public Service Act of 1994, the EEA of 1998 and the Skills Development Act of 1998. The government has also established modern planning, budgeting and management frameworks for resource allocation and financial accountability through the adoption of the PFMA and the MFMA. It has established participatory planning frameworks to enhance citizens' input into development planning and implementation, including the

National Spatial Development Perspective (NSDP), Provincial Growth and Development Strategies (PGDSs) and, at local level, Integrated Development Planning (IDP), all of which require active citizen participation. The government has a robust human resource management and skill development strategy through the Performance Management Development Systems (PMDS), which provides training in and evaluation of the performance of public servants, and the South African Management Development Institute (SAMDI), which assists in developing management practices. Recognising the weaknesses of local governments and also the discrepancies in their capacities to deliver services, the government came up with Project Consolidate, an effort led by the Department of Provincial and Local Government (DPLG) to improve service delivery in ailing municipalities.

215. In order to facilitate the growth of the economy the government promoted the strategy involving the private sector in a public-private partnership (PPP). However, as this strategic partnership entailed the combination of public and private assets, some stakeholders raised concerns about the restructuring of state assets and its implications for public accountability. This reflects the ongoing debate regarding the nature and structure of the national economy.
216. To underscore the importance of people's participation in development and the commitment to quality service delivery, the government initiated *Batho Pele*, which requires that all service delivery institutions and officials set and adhere to standards and practices when engaging with the public, and conduct their work in a professional, courteous and transparent manner. Another creative approach to promote citizens' participation and leadership accountability is the *Izimbizo* programme championed by the President, in which national, provincial and local government officials visit communities where they often face tough questioning by citizens. To improve access to services, the government has initiated various projects including multi-purpose community centres (MPCCs), shared service centres and one-stop shops, as well as the appointment of a national corps of CDWs to support the coordination of local development processes.

Best Practice 4: *Batho Pele*

A unique feature in the new South African governance system is the inauguration of *Batho Pele*. This is essentially a Citizen's Charter, based on the traditional Sesotho adage meaning "people first". The objectives of *Batho Pele* are to ensure that people are sufficiently informed about governance processes, the functions of the various ministries and departments, those in charge and what to expect from them; that the people are consulted; and that they have access to the necessary information regarding their citizenship entitlements and civic obligations. In the light of South Africa's previous system of governance and experience of legalised racism, *Batho Pele* is a deliberate measure for empowering all the people to participate effectively in public affairs and enjoy the benefits of citizenship, while ensuring transparency and accountability.

Source: www.dpsa.gov.za/batho-pele/index.asp, APRM CRM compilation, July 2006.

Best Practice 5: Multi-Purpose Community Centres

To meet the challenges of improved service delivery to the people, the government through Cabinet Memorandum No. 15 of 1999 implemented a bold initiative by establishing multi-purpose centres (MPCCs). The goal of an MPCC is to provide all South African citizens with access to information and services within five minutes of their place of residence.

An MPCC is a one-stop, integrated community development centre designed to provide information and a wide range of services to communities in an integrated and coordinated way. The National Intersectoral Steering Committee (NISSC), comprising 20 representatives from national government departments, parastatals, NGOs, research and tertiary institutions, the private sector and other stakeholders, coordinates and monitors the roll-out of the initiative. The NISSC is headed by an executive team that manages the MPCC project. The objective is to have an MPCC in each of the 43 districts and six metropolitan municipalities of the country.

Achievements to date include the buy-in by various stakeholders, the establishment of 14 MPCCs across the country, and a multitude of services made available to communities under one-stop shops.

Source: NICC MPCC Business Plan, Government Communication and Information System, November 2001 and CRM findings.

217. The CSAR admits that despite strong regulatory and administrative measures implementation and service delivery have both lagged behind, especially at provincial and local levels. Lack of capacity, experience and responsiveness of public officials are some of the main problems. Innovative initiatives like *Batho Pele* are still poorly understood and have not addressed the fundamental issues behind poor service delivery. Public participation is usually ad hoc with little information of public awareness. In addition, civil society has a limited capacity to engage.

ii. Findings of the CRM

Measures to Improve Public Service Institutions

218. The Constitution envisages a people-oriented public service that is professional, efficient and effective in the utilisation of resources, with high ethical standards. Public administration should be broadly representative of the South African people, non-sexist and based on fairness, transparency and objectivity in redressing past imbalances. It should respond to the needs of the people, encourage people to participate in public policy formulation and serve the people fairly, equitably and without any favouritism. Moreover, it should be development oriented. In addition, it is obvious that a major social and political transformation has taken place in South Africa since 1994. It is equally obvious that this transformation could not have taken place if the public service itself had not been transformed as well. South Africa is

constitutionally one nation, with one public service serving all citizens, irrespective of their race, religion or gender.

219. Nonetheless, the transition from the apartheid regime to the ANC-run administration faced many challenges, chief among which was the need to find public servants who believed in the transformation agenda as required by the Constitution of the new democratic South Africa. A further challenge was the new institutions that were to be put in place. For example, local governments in their present form only date back to 2000. The government has therefore been faced with a scarcity of human resources, low capacity in the delivery of services, as well as day-to-day administration and delivery midst a tremendous demand for administrative and social services. At local government level in particular, where councillors and civil servants interact with people more regularly, problems of accountability abound. Efficient delivery of social services is a Herculean task.
220. Ensuring accountable, efficient and effective public officeholders and civil servants is indeed a priority commitment of the government, as is demonstrated by the plethora of legislative and regulatory frameworks that have been put in place. Nevertheless, the challenge to create a “unified civil service” in the context of the constitutionalised “three spheres” of government has not been easy. This delineation of spheres of administration inhibits the dynamic use of scarce specialised skills, as each sphere of government tends to protect its own terrain. The crunch in capacity and the service delivery challenge are partly due to such constitutional/institutional arrangements.
221. Another issue directly linked to inadequate human resources and skilled civil service is the lack of harmonisation and professional mobility among the three spheres of government. While the civil service at national and provincial levels falls under the ambit of the DPSA, civil service at local government level falls under the authority of the DPLG. As such, most of the development planning frameworks aimed at upgrading the skills levels of civil servants at all levels appear to lack proper cohesion and coordination. This accounts for disparities in the quality of service delivery in South Africa.
222. Initiatives like Project Consolidate, an effort led by the DPLG to improve service delivery at ailing municipalities through providing hands-on support by national and provincial government, are critical in meeting capacity constraints. Ironically, however, they could contribute to dependency on the centre without giving the local sphere of government the opportunity to learn from its own mistakes. While hands-on measures like Project Consolidate are crucial, a long-term strategy for skills development and capacity building is needed. In this regard, the CRM was informed that plans are under way by the DPSA to draft a Bill for unifying the public service at all levels.
223. The CRM learnt that innovative participatory mechanisms like *Imbizo* have contributed to making public officials, from the President to Ministers on downwards, accountable to the people at grassroots level. It has provided public forums for discussing government policy, proposals, achievements and

failures. Having such space for public and citizen participation in the decision-making processes at provincial and local levels provides much comfort to the people that their concerns are being heard. However, consultations with representatives of Chapter 9 institutions and other stakeholders throughout the provinces revealed that despite mechanisms and provisions for public participation, many CSOs, especially at the rural grassroots level, feel marginalised and are not participating in the policy-making process.

224. The CRM observed that there appears to be a distinction between elite, urban-based CSOs (which have the resources and means to articulate their interests and advocate for changes at national level) on the one hand, and rural-based, community-based organisations (CBOs) (which often lack capacity to participate effectively in decision-making processes at local level), on the other hand. South Africa also has several mass movements in communities around issues regarding access to services. Examples are the Treatment Action Campaign, the Landless People's Movement and the Soweto Electricity Crisis Committee. However, these are essentially "protest movements" whose goals include influencing policy and campaigning around social justice issues. They have been successful at changing policy direction at macro-political level, but often relent after policies have changed.
225. What appears to be missing in the civil society sector in South Africa, but often found in many African countries, are "intermediary development-oriented" non-governmental organisations (NGOs) that are devoted entirely to service delivery or project implementation in partnership with CBOs and local government at grassroots level. These intermediary NGOs are usually sector specific (e.g. water, sanitation, electricity, housing) and provide training in different aspects of participatory development, not only in policy advocacy but also in project planning and implementation. They usually provide training to CBOs to make them effective partners in service delivery. Their main objective is voluntary contribution to development, often in strong partnership with local government.
226. In South Africa, the potentially powerful relationship between councillors and local government officials on the one hand, and citizens and communities on the other hand, is not being fully harnessed, partly due to the absence of development-oriented NGOs. The experience of other African countries has been that a genuine, mutually beneficial relationship between civil society (voluntary sector) and local government can turn the tense and often unproductive relationship into a productive, functional local government.
227. Through interactions with members of the National Governing Council (NGC) and civil society stakeholders in the provinces the CRM learnt that while such intermediary NGOs exist, they are quite small in number because funding remains a challenge for those who wish to take part in participatory development processes at the local level. Lack of domestic sources of funding has also affected the perceived independence of NGOs, which often depend on foreign funding. There is a perception, especially within the government, that

NGOs with external sources of funding often compromise their effectiveness, as they have to conform to the agenda of the donors.

228. Stakeholders have also stated that funding through the National Development Agency (NDA) – a government civil society funding mechanism – is often bureaucratic and slow in disbursement. The NDA has not been functioning optimally in terms of giving grants to CSOs and, in any event, NGOs receiving funds through them risk being perceived as co-opted. Stakeholders expressed preference for an independent foundation to fund activities of civil society in general, including development NGOs. The challenge of stimulating the growth and improving the capacity of intermediary NGOs to participate more effectively as partners with local government in service delivery hinges on resolving the dilemma of external versus internal sources of funding for CSOs.
229. Another plausible reason for the general lack of skills in the public sector is the recent rigorous enforcement of affirmative action programmes, mainly through BEE legislation. To meet their BEE compliance targets, most private sector employers are now inducing middle-level managers through high remuneration to leave the public service for the private sector, thus exacerbating the skills crisis in the government. This appears to make the government's goal of developing an efficient, competent and effective public service extremely challenging. Thus, despite legislation and initiatives to attract and retain skilled personnel in the public sector, other affirmative action policies for the private sector (such as BEE) are having the opposite effect of undermining public service human resource management and skills development.
230. In the municipalities there is an acute shortage of managerial staff capable of implementing projects. In the case of Gauteng, migration from other provinces is both a challenge and a positive input. Despite putting pressure on services and straining the pool of infrastructure, migrant labour provides skills and capabilities for various economic sectors in the province.
231. Related to the above is the issue of brain-drain as skilled labour is emigrating. The South African economy is therefore being depleted of skills, especially in the area of service delivery.
232. Although the government still faces enormous challenges in service delivery, it has taken bold initiatives to improve access to services. These include the *Batho Pele* charter, MPCCs, shared services centres and one-stop shops.

iii. Recommendations

233. The APR Panel recommends that South Africa:
 - Create the necessary incentives for attracting qualified talent to the public service. Attraction and recruitment to the public service must be based on different sets of criteria, including vocational devotion to public service,

patriotism, or some sort of bestowed honour and prestige by being a member of the public service. *[DPSA; government]*

- Step up strategies to attract back skilled labour that has emigrated. *[Government; DPSA]*
- Design a comprehensive strategy for skills development and retention in the public sector (including regulatory frameworks, remuneration systems, education and training) to make them effective. This is essential for the development of a professional and effective public service. *[DPSA; Public Service Commission; SAMDI]*
- Step up the competence and accountability of the public service at all levels. *[DPLG; all performance monitoring institutions, such as the Auditor-General and Public Protector]*
- Devise a strategy on how to encourage a philanthropic culture to assist the voluntary sector. The strategy should focus on providing incentives or stimulating the growth of a critical mass of service-oriented intermediary NGOs. *[Government; NGOs]*

Objective 6: Fighting Corruption in the Political Sphere

i. Summary of the CSAR

The State and Measures to Combat Corruption

234. The CSAR notes that the perception of corruption is actually worse than the reality on the ground. However, corruption in the political sphere is a challenge to all governments, including South Africa. In response to the problem of corruption in the public sector, the government has initiated a variety of anticorruption measures, culminating in the adoption of a comprehensive Public Service Anticorruption Strategy and the establishment of partnerships between the government, civil society and private sector. These partnerships have resulted in two National Anticorruption Summits (1999 and 2005) and the launch of a tri-partite National Anticorruption Forum in 2001.
235. In addition to the initiatives cited above, the establishment of an Independent Constitutional Office of the Director of Public Prosecutions,¹³ special investigative and prosecuting units (such as the Directorate of Special Operations, or “Scorpions”) and the Assets Forfeiture Unit has added new dimensions to the institutions of administration of law for combating

¹³ Constitution of the Republic of South Africa, 1996, section 179.

corruption and organised crime.¹⁴ The efficiency of revenue collection by the South African Revenue Service (SARS) and the oversight roles of the Auditor-General, the Standing Committee on Public Accounts (SCOPA) in the parliament and the independent office of the Public Protector contribute to ensuring that the public sector, including politicians, is held accountable. Several other anticorruption programmes such as the Inter-Ministerial Committee on Corruption (comprising the Ministers of Justice, Public Service and Administration, Safety and Security, and Justice and Constitutional Development), are mandated to consider proposals for the implementation of an anticorruption campaign at both the national and provincial levels.

236. The government has also instituted several other anticorruption legislative and regulatory frameworks, including the:

- Parliamentary Code of Ethics (1997), which protects legislators from conflicts of interest through a system of financial disclosure;
- Executive Members' Ethics Act of 1998;
- Code of Ethics (2000);
- Public Finance Management Act (PFMA) of 1999;
- Protected Disclosures Act of 2000;
- Financial Intelligence Centre Act (FICA) of 2001; and
- Prevention and Combating of Corrupt Activities Act of 2004.

237. The PAIA came into force in 2000 and the National Corruption Forum was established in June 2001. In January 2002, the Cabinet adopted the Public Service Anticorruption Strategy, a document proposing a holistic, integrated approach to fighting corruption, by utilising preventive and combating activities and consolidating the institutional and legislative capabilities of the government. These measures have yielded tangible results and have not spared even high-profile politicians and prominent persons.

238. Nonetheless, corruption is a problem of society and the effectiveness of anticorruption measures will much depend on the cooperation and confidence of the public. Some stakeholders have complained that whistleblowers are not adequately protected, particularly from physical harm.

ii. Findings of the CRM

Corruption and Measures to Combat It

239. The CRM noted during the review period that newspaper reportage, radio and television news and public debates were replete with reports of corruption in the government, public institutions and private sector. While such reportage

¹⁴ *Towards a Ten-Year Review*, pp. 52-53: The legislative framework for these specialist crime-fighting agencies includes the Prevention and Combating of Corrupt Activities Act of 2004, the Prevention of Organised Crime Act of 1998 and the Witness Protection Act of 1998.

improves awareness of the dangers of corruption, it is an indicator of the weakness in public institutions that are supposed to keep the vice at bay. Stakeholders throughout the provinces confirmed that the government's institutional measures taken against political corruption, together with free and vigilant media, have helped expose corruption and shame those involved.

240. However, one persistent corruption issue in the public's mind, which the CRM heard repeatedly, is the absence of regulation in South Africa requiring the disclosure of sources of private funding for political parties. This makes it very difficult to determine whether there are potential conflicts of interest. Another issue raised, although not with as much intensity, is the apparent lack of restrictions on public office-bearers who move almost immediately to the private sector without any cooling-off period. The CRM learnt that plans are afoot to introduce some restrictions later in 2006.
241. For post-apartheid South Africa, the issue of corruption is both challenging and urgent. The government appears to be convinced that public perception of corruption is greater than reality. Stakeholders, on the other hand, complain that the government is not very serious about combating corruption. For example, stakeholders' consultations revealed that there is tremendous concern for corruption at provincial and local levels, especially in the delivery of social services such as housing. For example, in a Gauteng provincial survey handed over to the CRM:
 - 63 per cent of respondents agreed with the statement that "there is lots of corruption in the Departments";
 - 51 per cent said municipality funds are not well managed;
 - 44 per cent said "bad performance of civil servants is not corrected";
 - 53 per cent agreed that officials involved in housing are corrupt;
 - 49 per cent agreed that processes for allocating houses are unfair;
 - 45 per cent agreed that the municipality is in touch with their needs; and
 - 43 per cent said the municipality is better now than ten years ago.
242. These statistics were corroborated by anecdotal evidence in the CRM's stakeholder consultations at Kliptown, Soweto. There was broad consensus among many speakers that corruption was the major cause of severe delays in housing delivery and that those with connections to local government officials were likely to receive housing faster. This perception was repeated across all the provinces visited by the CRM. Many people voiced their wishes that corruption should be addressed, especially in house allocation where nepotism, favouritism and bribery were seen to be the main criteria for allocation.
243. Before proceeding to recommendations, it is important to understand why it is indeed very important for South Africa to fight corruption:
 - It is a country in transition from apartheid – a system of governance based on racist exclusion, domination of the minority over the majority, enriching and favouring many white people and impoverishing the black

majority – to a non-racist, non-sexist constitutional democracy with common citizenship and citizenship entitlements. However, there is a scarcity of resources and competent, experienced personnel. Hence the pressure on service delivery and the possibility of corruption by those seeking the delivery of services and those providing the services.

- It is a society with pervasive poverty among the majority black people who for a very long time have been denied rights purely on racist grounds, but now have constitutionally mandated access to rights and opportunities that could enrich them, their families and friends. Thus there are many temptations for all people in positions of power or decision-making processes to become involved in corrupt practices.
- The new democratic system of governance needs to be systematically and purposefully built on the stipulated constitutional principles. There are also ethical values for guiding those in power and authority that need to be systematically monitored and strengthened. If not, cynicism and loss of legitimacy may creep in to undermine and eventually destroy the authenticity of the democratic system of governance.
- Pervasive poverty, deep and widening socio-economic inequalities often breed greed and insensitivity to principles and ethics.

iii. Recommendations

244. The APR Panel recommends that South Africa:

- Ensure that the independence and capacity of anticorruption institutions already put in place are promoted and strengthened. *[Anticorruption Unit; Department of Justice and Constitutional Development]*
- Rationalise and streamline the mandates and functions of various units dealing with corruption. *[Government; National Prosecuting Authority]*
- Encourage more vigilance and empowerment of local institutions in fighting corruption. *[Anticorruption Unit; Department of Home Affairs; Department of Justice and Constitutional Development; local government]*
- Engage with the media to conduct their reporting, discussions and debates on the issues of corruption based on factual, objective or verifiable sources of information. *[Government Communication and Information System]*
- Remain proactive by openly talking about corruption and its impact on society and the economy. *[Government; parliament]*
- Ensure that the movement or co-optation of civil servants from the public sector to the private sector is properly regulated so as not to become a potential source of corruption. *[Parliament; Anticorruption Unit; political parties]*

Objective 7: Promotion and Protection of the Rights of Women

i. Summary of the CSAR

Measures to Promote and Protect the Rights of Women

245. The South African government has made significant strides in promoting the rights of women. The country has acceded to a wide range of international conventions and protocols on the advancement and protection of women's rights, most notably the ACHPR, CEDAW and the Beijing Platform for Action of 1995. Section 9 of the Constitution guarantees the right to equality and non-discrimination on the basis of gender, pregnancy and marital status. The Constitution also provides for the right to make decisions concerning reproduction and the right to the security in and control over one's body (s12).
246. A wide range of national legislation enhances constitutional provisions on the promotion and protection of the rights of women:
 - Basic Conditions of Employment Act of 1997;
 - Broad-Based Black Economic Empowerment Act of 2003;
 - Domestic Violence Act of 1998;
 - Maintenance Act of 1998;
 - Recognition of Customary Marriages Act of 1998;
 - Choice on Termination of Pregnancy Act of 1996;
 - Employment Equity Act of 1998;
 - South African Citizenship Act of 1995;
 - Labour Relations Act of 1995;
 - Promotion of Equality and Prevention of Unfair Discrimination Act of 2000; and
 - White Paper on Affirmative Action (1998).
247. The government has established robust national gender machinery to promote gender equality in all spheres of life. It comprises various structures from the state as well as civil society, with the most important being the Office in the Presidency on the Status of Women (OSW), gender focal points in government departments, and the Commission on Gender Equality. There exists a wide range of programmes that target women and their most pressing issues, including programmes to provide women's healthcare and educational programmes to support female learners, especially in science and technology, as well as programmes for HIV and AIDS awareness.
248. Government efforts to empower women extend also to the economic domain. Women empowerment programmes including employment opportunities through affirmative action, preferential procurement strategies and economic

empowerment have increased access to services and representation of women in decision-making positions and business. The CSAR notes that women constitute 45 per cent of Ministers and Deputy Ministers, 33 per cent of MPs; 35 per cent of members of the NCOP; 32 per cent members of provincial legislatures; and four of the nine Premiers. In 2005, South Africa appointed its first woman Deputy President.

249. The government is aggressively combating violence against women with programmes and institutions such as the Anti-Rape Strategy, Interdepartmental Domestic Violence Programme and the Victim Empowerment Programme. Sexual offences courts and family courts have been established for cases of domestic violence, rape, assault and child abuse.
250. However, efforts to promote the rights of women are not without challenges. Women face high levels of unemployment, and those who do work are concentrated in underpaying occupations such as domestic work. Women also carry a disproportionate burden of unpaid labour, including caring for orphaned children and people infected with HIV and AIDS. Rural women are yet to benefit from various government programmes for women empowerment and gender equality.

ii. Findings of the CRM

251. South Africa's record in promoting and protecting the rights of women is most commendable. However, greater participation of women in the private sector needs to be further promoted and encouraged.
252. The CRM found that although a legislative framework exists for the protection and promotion of women's rights, and some women have been offered positions of responsibility in both the parliament and the executive arms of the government, the gender position of women in society is still low and their abuse is still persistent. It is true that women's views can now be heard and considered in society but they remain vulnerable and many lack access to economic opportunities and social amenities. The OSW lacks the capacity to perform its functions efficiently and effectively. Women continue to be abused by their husbands, particularly those living in mining areas, where the oppression is very acute. The CRM was informed that harassment rooted in the legacy of apartheid is still strong in some areas.
253. Some stakeholders informed the CRM that although women are now liberated, represented in many walks of life and no longer confined to the kitchen, there are still vestiges of men's traditional inclination to control and dominate.
254. The CRM was also informed that although the Constitution protects women's rights, some women lack the confidence to speak out when victimised. This is largely because most women, particularly in rural areas, are illiterate and are not fully aware of their rights. They fear to report cases of domestic violence

of which they are the victim. When such cases are reported to the police, the latter tends to be lenient towards the perpetrator of the violence.

iii. Recommendations

255. The APR Panel recommends that South Africa:

- Ensure the systematic and deliberate implementation of policies and laws on women's rights. *[Government; women's organisations]*
- Take more initiatives to promote the appointment of qualified women magistrates and judges. *[Judiciary; government]*
- Assign more policewomen to cases involving violence against women. *[Government; SAPS]*
- Modernise traditional political governance systems to conform to the constitutional requirements of a non-racist, non-sexist society. *[Government; traditional leadership structures]*

Objective 8: Promotion and Protection of the Rights of Children and Young Persons

i. Summary of the CSAR

256. South Africa ratified the Convention on the Rights of the Child on 16 June 1995, and the African Charter on the Rights and Welfare of the Child (ACRWC) on 7 January 2000. It has also ratified the Hague Convention on the Civil Aspects of International Child Abduction, and enacted national domesticating law to that effect.
257. The Constitution provides a strong foundation for the advancement and protection of the rights of children and young persons. Not only are persons under the age of 18 guaranteed most of the rights and freedoms enshrined in the Bill of Rights, but children also have special rights including: the right to legal representation at state expense (s35); family care or parental care; basic nutrition; shelter; basic healthcare services; social services; and protection from neglect, maltreatment, abuse, exploitative labour and detention (s28).
258. In South Africa, the youth have been in the mainstream of political movements since the 1976 Soweto students' uprisings against the apartheid regime. The then ANC President, Oliver Tambo referred to them as "the young lions of the struggle". In 1987, the South African Youth Congress was established. In 1994, the then Deputy President Thabo Mbeki convened and established a

National Youth Commission, with responsibility for making policy on critical issues affecting the youth.

259. As is the case with women, the government has given a great deal of deliberate and systematic attention to the welfare of children, as they too were victims of violence and suffering during the apartheid period.
260. The Office on the Rights of the Child (ORC) is situated within the Presidency and within each provincial Premier's Office. Similar bodies are expected to be established in the mayoral offices, with the objective to ensure child-centred approaches across all spheres and levels of governance by coordinating and advocating appropriate activities. In addition, there is a wide range of special programmes and facilities and various government initiatives that are supportive of the constitutional rights of young persons.
261. There are, however, some defects and gaps. The number of children held in detention continues to rise despite efforts to find alternative placement. There are also a number of street children who are not sheltered. Poverty and unemployment continue to be obstacles for many parents to cater for their children. Despite their constitutional rights children with disabilities enjoy little access to education. Similarly, although foreign children in South Africa are constitutionally guaranteed the same rights as the children of citizens, children of refugees and asylum seekers have little access to social workers.

ii. Findings of the CRM

262. The CRM learnt that although the rights of children and young people are provided for in the Constitution, a great deal still needs to be done in the promotion and protection of their rights. Some parents continue to abuse their children, often beating them severely in the name of "discipline". Although children have been given a hotline to the police, it is difficult to understand how that could be useful to a victimised and possibly traumatised child. Orphaned children are somewhat better treated through receiving government child grants.
263. Only those children who attend primary school receive free education. Early child development does not appear to be given priority. The government appears to have left young children's development to parents who are presumed able to provide for their children. The question is what happens to children of poor parents who are unable to afford good education for their young children.
264. The CRM also heard that some children are not registered like other citizens of South Africa and do not have birth certificates. They are thus unlikely to have access to services to which they are constitutionally entitled. Unattended and uncared for, some resort to drugs, while others roam the streets. Other abuses of children include child trafficking, which is a key issue in South Africa, child prostitution, drug addiction, and sex tourism, especially for the girl child.

265. A number of children are born to teenage urban girls who are unable to cater for them. The inability to sustain these children and the need to remain in urban areas and towns drive these young girls to relocate the children to their home villages. Village children are looked after by their elderly grandparents, whose support and care are often inadequate. Due to lack of sufficient care, these children often escape and return to the towns to do odd jobs, hard labour or engage in immoral behaviour. This is total denial of children's right to proper care, a matter which should be addressed with all urgency.
266. The children of refugees and undocumented persons suffer when security forces detain their parents. There does not appear to be a recognised system of taking into account the interests and rights of these unfortunate children, although the Constitution does provide for such rights and their protection. Young persons are particularly vulnerable to drugs, and the peddling of these lethal commodities is on the increase in South Africa. Globalisation and the increasingly open society expose South Africans, particularly black people, to undesirable foreign cultural practices and influences that are detrimental to the development of their own personalities and that of a peaceful, harmonious, prosperous South Africa.

iii. Recommendations

267. The APR Panel recommends that South Africa:
 - Improve the quality of education, especially for marginalised and disadvantaged children. *[Department of Education; Children's Rights Unit; Finance; parliament]*
 - Revisit the manner in which security forces deal with refugees and undocumented persons, and effectively implement policies on the care of children of refugees. *[Department of Home Affairs; Children's Rights Unit]*
 - Step up efforts at mitigating drug and human trafficking in view of their extremely negative impact on young persons. A public information campaign on the effects of drug abuse and trafficking should be systematically incorporated into school curricula and youth programmes. *[Department of Education; Children's Rights Unit; SAPS; Department of Justice and Constitutional Development; CSOs]*

Objective 9: Promotion and Protection of the Rights of Vulnerable Groups Including Displaced Persons and Refugees

i. Summary of the CSAR**Vulnerable Groups**

268. The term “vulnerable groups” refers to ethnic minorities; refugees; migrant workers; the aged; displaced persons; lesbian, gay, bisexual, trans-gendered and inter-sex people (LGBTIs); people living with HIV and AIDS; and children orphaned due to HIV and AIDS. Between 3 and 6 million South Africans are moderately or severely disabled.¹⁵ The country has acceded to a number of international conventions relating to the protection of vulnerable groups and people with disabilities, and the government has expedited the determination of refugees in the country. The international instruments include, among other things, the:
- Convention relating to the Status of Refugees;
 - Protocol relating to the Status of Refugees;
 - Declaration on the Rights of Disabled Persons; and
 - Organisation of African Unity’s (OAU) Refugee Convention of 1969.
269. The Constitution provides for the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (s181 and s185). Since 1994, refugees were regarded as any other immigrant aliens. In 1998, a new Refugees Act was enacted that adopted and adapted most of the important principles in international refugee law, in particular the Geneva Convention and its protocol¹⁶ and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.¹⁷ The enactment followed the country’s accession to the Geneva Convention on 12 January 1996 and the OAU Convention on 15 January 1996. South Africa has approximately 142 000 registered refugees and 115 000 pending applications. Many of the refugees come from Burundi, Côte d’Ivoire, the Democratic Republic of Congo, and Zimbabwe.
270. The Department of Home Affairs grants asylum to refugees in the country and has established a national immigration branch, which includes a refugees’ affairs section. South Africa has also established a Counter Xenophobia and Counter Corruption Unit that works to prevent abuse of refugees and asylum seekers.
271. In spite of these laws, the refugee determination process faces serious challenges. Reports of incidents of bribery and extortion involving the police, as well as false-arrests sometimes appear in the press. Some of these illegal practices are alleged in a study published by a United States-based human

¹⁵ Judi Hudson, 2005. *Concept Note: “Democracy and Vulnerable Groups”*, Centre for Policy Studies, October, p. 6.

¹⁶ Convention Relating to the Status of Refugees, 28 July 1951, entered into force on 22 April 1954; and Protocol Relating to the Status of Refugees, 1966, entered into force on 4 October 1967.

¹⁷ 10 September 1969, entered into force on 20 June 1974.

rights NGO, Human Rights Watch. Problems of discrimination, crime and xenophobic tendencies continue to trouble refugees.

ii. Findings of the CRM

272. South Africa is faced with a major problem of refugees, displaced people and undocumented persons. The approach so far has been to take refugees to reception centres; to confine undocumented persons to centres where they can be documented and/or deported; and to extend humanitarian help to deserving cases. The number of cases is on the rise and the pressure on infrastructural and social services is felt at many levels. Given the scarcity of resources, tensions arise between citizens and migrants who compete for access to the same resources and services.
273. However, the Constitution grants some social rights to refugees, including basic health services and primary education. The problem is the general lack of awareness at local government level of the rights of refugees. There also appears to be no effective plans for ensuring that services are extended to refugees.
274. The CRM was informed that the practice of denying some rights to foreigners, as well as suspicion towards non-South African people, is a legacy of the apartheid era. Obviously, the constitutional democracy of South Africa led by people who, when fighting for liberation and freedom were themselves once refugees and enjoyed the hospitality of other countries, should be more understanding and compassionate.
275. Stakeholders informed the CRM that although the foreigners are welcome, they should abide by South African laws if they are to stay in the country. They also admitted that some refugees bring with them skills and experiences that are useful and helpful to the South African economy and thus enrich the country.

iii. Recommendations

276. The APR Panel recommends that South Africa:
 - Strengthen anti-xenophobic institutions such as the Counter-Xenophobia and Counter-Corruption Unit. [*Counter-Xenophobia and Counter-Corruption Unit; parliament; judiciary*]
 - Capacitate institutions mandated to protect vulnerable groups, and use education and sensitisation campaigns to increase public awareness on rights of vulnerable groups and the need for tolerance. [*Department of Home Affairs; CSOs; SAPS*]
 - Seek ways and means of mitigating the “push factors” from neighbouring countries to reduce the influx of refugees, displaced and undocumented

persons. [*Presidency; Department of Foreign Affairs; Department of Home Affairs*]

- Address the issues of excessive use of violence and corruption by security forces in handling refugees. [*Department of Home Affairs; parliament; SAPS*]

CHAPTER FOUR

4. ECONOMIC GOVERNANCE AND MANAGEMENT

4.1 Overview

277. Following the transition to majority rule in April 1994, the new South African government inherited an economy that was well-developed, yet characterised by economic stagnation and sharp socio-economic inequalities. The economy was largely in disarray as a result of several years of economic sanctions, internal unrest, lack of investors' confidence, low productivity, and wide asset and income inequalities. Indeed, the apartheid system of government systematically excluded black South Africans from meaningful participation in the economy. Access to skills, self-employment and productive resources was racially restricted through deliberate government policies, beginning in the 1800s with the dispossession of land and continuing through the 20th century under apartheid.
278. The economic legacies of the past are: a long period of economic stagnation, unsustainable levels of inflation and budget deficits, a dualistic political economy, massive structural unemployment, endemic poverty, and a hostile global environment. In fact, when the new government took over in 1994, the economy was characterised by the following:
- There had been three years of negative growth – the economy and wealth of the nation were shrinking.
 - South Africa had experienced more than a decade of declining growth in per capita terms – the average income of South Africans had been falling since the 1980s.
 - From 1985 to mid-1994, total net capital outflows from South Africa amounted to almost R50 billion.
 - During the fiscal year 1993/94, the government had run up a budget deficit equal to 9.5 per cent of the gross domestic product (GDP), including the debt of the so-called independent homelands.
 - The net open forward position of the South African Reserve Bank (SARB) was US\$25 billion in deficit, whereas public sector debt equalled 64 per cent of GDP.
279. The key challenges to the new regime were: to reorientate the economy to meet the needs and aspirations of a new democratic dispensation; to undo the economic injustice of the apartheid era by addressing issues of asset and income inequality; and, in parallel, to create the economic stability and policy credibility needed to stimulate private sector investment and reintegrate the country into the global economy. During the past 12 years South Africa has made measurable progress in addressing these challenges. The macroeconomic situation in the country has changed considerably:

- Inflation has been reduced to 4 per cent if one uses the Consumer Price Index excluding interest rates on mortgage bonds (CPIX), or less than 1 per cent if one uses the Consumer Price Index (CPI).
 - The country has experienced the longest period of continuous growth since the GDP was properly recorded in the 1940s.
 - The net open forward position of the SARB rose to US\$4.7 billion in surplus by the end of 2003 (currently net reserves are over US\$20 billion).
 - Public sector debt has now dropped to less than 50 per cent of GDP.
280. The government has placed the need to address poverty and inequality firmly at the epicentre of its development agenda. This is reflected in the various development policy documents and strategies that have been initiated. In a broad sweep of events, the government adopted three main development strategies. The first of these was the Reconstruction and Development Programme (RDP) in 1994, which could be viewed as the cornerstone of the government's development policy during 1994-1996. The RDP sought to attain socio-economic growth and delivery of basic services, while at the same time addressing the legacy of apartheid through racial-targeted investments in healthcare, education and social security. It placed emphasis on people-centred, integrated and sustainable development that is democratic and participatory.
281. However, as a development policy document, the RDP had a number of shortcomings: it had some overambitious targets; it made no attempt to set priorities or assign responsibility for the implementation of each programme component; and it lacked mechanisms for ensuring interdepartmental coordination. Moreover, local government, which has been assigned constitutional responsibility for promoting socio-economic development, did not have adequate planning and implementation capacity. Despite these shortcomings, the RDP played a critical role in fostering a democratic culture and establishing the legitimacy of the African National Congress (ANC).
282. Although the government appeared to have been content with the RDP's broadly humanitarian thrusts, problems began to surface from 1995. The economy, in particular, was not growing at the envisaged rates. The sluggish economic performance in turn impacted negatively on the RDP, with achievements falling behind expectations. The welfare orientations of the programme also came under critical scrutiny as investors and international financial institutions began demanding greater clarity on national economic policy.
283. In response, the government introduced the Growth, Employment and Redistribution (GEAR) Strategy in 1996, which reflected the beginning of a significant shift in economic management. GEAR did not completely depart from earlier government policy but committed the government to accelerating aspects of existing policy through macroeconomic stabilisation.

284. However, many of the gains expected to result from the adoption of the measures did not materialise, as GEAR failed to attain many of its goals in an effective manner. Although changes in corporate tax levels, foreign exchange controls and interest rates have yielded some degree of increased investment, many of the strategy's long-term targets were not met. The anticipated 6 per cent growth rates in GDP have not been achieved, as the intrepid deficit reduction, through its associated demand compression, fostered a lower growth rate.
285. During the period under GEAR the economy grew by only 3.3 per cent and, by 1998, it was actually contracting at 0.3 per cent per annum, partly due to contagion from a global downturn in international financial markets. Similarly, exceptionally poor performance was recorded in the job market. Instead of achieving the creation of 200 000 jobs in the first 18 months of GEAR's existence, 80 000 jobs were in fact lost. By 1999, it was estimated that the economy had actually shed off some 500 000 jobs since 1994 and 350 000 since the inauguration of GEAR in 1996. Throughout this period, formal employment dropped. Similarly, investment rates were low and foreign direct investment (FDI) inflows disappointing. Thus, although GEAR helped ensure macroeconomic stability and thereby enhanced the government's international status, yielded tangible macro-stabilisation achievements and enhanced policy legitimacy, it did little to redress the sharp social economic inequalities in South Africa.
286. Notwithstanding these initiatives, rapid growth and job creation remained elusive. In response, the government initiated the Accelerated and Shared Growth Initiative for South Africa (AsgiSA) in 2005 to accelerate economic growth, job creation and skills development largely through prioritised expenditure on economic infrastructure, health and education. (AsgiSA is discussed in greater detail in Chapter Six.)
287. Undeniably, the government has restored and maintained macroeconomic stability after decades of isolation and economic sanctions. Inflationary pressures have generally been contained while budget deficits have been reduced through robust measures for revenue mobilisation. However, experience has shown that unqualified reliance on market forces and macroeconomic management does not necessarily ameliorate the poverty and unemployment situation. (These issues are explored in greater detail in Chapter Six.)
288. Heightened fiscal discipline has been integral to the stabilisation effort. The government has sought to maintain a competitive tax regime, increase social spending at a measured and sustainable pace, and introduce greater transparency and accountability into the budget process at all levels of government. By the 2002/03 fiscal year the public sector borrowing requirement had been lowered to around 1 per cent of GDP, from a peak of around 9 per cent in 1993/94. This effort involved major improvements in the efficiency of tax collection, facilitated by the creation of an independent revenue authority, the South African Revenue Service (SARS).

289. Undoubtedly, the success SARS has had in broadening the tax base through improvements in efficiency has made it possible to exceed its revenue targets. This strong performance has facilitated cuts in both personal and company income tax rates. The fiscal strategy has also rested on such initiatives as the Public Finance Management Act (PFMA) of 1999 and the Municipal Finance Management Act (MFMA) of 2003. These were designed to monitor and control spending better and to provide safeguards against waste in the government. In the process, important changes took place in the composition of government spending. A lower debt service burden and large cuts in defence spending freed resources that were reallocated to enhance the delivery of social services and upgrade the country's economic infrastructure.
290. South Africa's monetary indicators have also been favourable. Inflation is down to 4 per cent (based on the CPIX measure) and is comfortably within an inflation target range of 3 to 6 per cent, whereas net foreign reserves exceed US\$18 billion. The key challenge, however, is to translate macroeconomic stability into rapid growth and development that also benefits a broad section of the South African society.
291. Improved macroeconomic conditions have contributed to a more positive sovereign rating of South Africa. Several credit-rating agencies upgraded the country's ratings in 2005 and, in the process, reduced sovereign risk spreads to historic lows by decreasing the cost of capital to South African borrowers. In August 2005, Standard & Poor's upgraded South Africa's long-term sovereign borrowing in foreign currency from BBB to BBB+, which is equal to that of Poland and Thailand and a notch above Mexico's. In the rating for borrowing in local currency South Africa was upgraded from A to A+, citing the country's improved economic stability, reduced vulnerability to external shocks, moderate debt burden, and strong and stable political institutions. A rival international ratings agency, Fitch, had South Africa on a positive ratings watch at the time. Moody's, the third major ratings agency, upgraded South Africa's credit rating in January 2005, reflecting a strong track record of macroeconomic management and improved prospects of sustainable higher GDP growth rates. South Africa was also rated the most competitive economy in sub-Saharan Africa and the most attractive country in Africa to invest in by the World Economic Forum's 2004 Annual Global Competitiveness Index.
292. However, while real economic growth in South Africa has been consistently positive, it has remained well below the targeted 6 per cent real GDP growth rate which it is believed would extricate the bulk of the historically disadvantaged from the shackles of poverty. In 2005, South Africa experienced a GDP real growth rate of 4.9 per cent, its highest since the end of apartheid. In fact, by the third quarter of 2005, South Africa had experienced six years of uninterrupted economic growth. The relatively high growth was driven by strong domestic demand, with private consumption and investment spending supported by low interest rates and improved sentiment. Household consumption was also boosted by rising incomes and wealth effects from buoyant housing and stock prices. However, economic growth remained robust in the first two quarters of 2006, but showed some moderation

compared with 2005. An annualised growth rate of 4.2 per cent was recorded in the first quarter of 2006.

293. The distribution effects of growth have, however, been unsatisfactory. Unemployment has remained high and poses a significant challenge to social and economic policy. In 2004, the official rate of unemployment stood at 26 per cent of the labour force, excluding discouraged workers (i.e. job seekers who were pessimistic about finding a job and indicated they were not looking for a job during the four-week period preceding the employment survey). This is roughly the same level as in 1994. The unemployment rate was 40 per cent of the working age population, including discouraged job seekers. 2006 figures from Statistics South Africa (StatsSA) show a marginal drop in unemployment of about 0.9 per cent, which is encouraging. However, more needs to be done to reduce the levels substantially. Unemployment is particularly concentrated among historically disadvantaged groups and is higher among rural and female populations, the uneducated and the youth. Although higher employment growth has accompanied the increase in economic growth since 1994, it has not kept pace with growth in the potential labour force. During 1995-2003, employment increased by around 1.25 per cent annually, while the labour force grew by 4 per cent.
294. South Africa continues to be characterised by sharp economic dualism. A sophisticated industrial economy has developed alongside an underdeveloped "informal" economy. While much of the white population and emergent black middle class of about 13 per cent of the population benefit from a developed economy with an established infrastructure and an economic base that possesses great potential for further growth and development, large segments of the population that constitute the "second economy" continue to live in abject poverty. The large informal economy presents both untapped potential and a development challenge for South Africa.
295. Achieving the national objective of broad-based growth and development will invariably require policy measures for addressing pervasive distortions in all factor markets: for labour (as is evident in the scale and persistence of unemployment and inadequate investment in human capital); for capital (seen in the relatively low savings and investment rates and the limited and capital-intensive nature of FDI); and for land (due to the failure of land reform and rural development efforts to reverse policies that over decades have virtually eliminated the small farming sector). The unfinished agenda of structural reforms leaves South Africa at a disadvantage in an increasingly competitive global environment. Indeed, failure to deconstruct the institutional framework on which apartheid was based has perpetuated extreme income inequality and constrained poverty reduction.
296. In recognition of these challenges, the authorities have unveiled the ambitious AsgiSA, which elaborates a broad framework of further steps to be taken to accelerate growth and development and ensure that its benefits spill over to a broad section of society. The main focus of AsgiSA is to deal with a set of binding constraints (Box 4.1) that inhibit faster growth and development.

Box 4.1: The Accelerated and Shared Growth Initiative for South Africa

Although AsgiSA is still a work in progress, it has identified six key constraints to growth and is formulating proposals to address some of them:

- 1. Level and volatility of the exchange rate.** The volatility of the South African rand is thought to be deterring investment in tradable goods and services that are not commodity based. The rand has also been perceived in some official circles as overvalued, in the sense that economic resources have been diverted into narrow areas of investment.
- 2. Inadequate infrastructure and logistics.** The government plans to invest the equivalent of about 20 per cent of 2005 GDP over the next three years in transport, communications and power provision by public enterprises; housing and social institutions; and provincial projects in agriculture, mining and other areas.
- 3. Skills shortages.** Measures in this area include the Joint Initiative on Priority Skills Acquisition (JIPSA), which is a new committee with representatives from the government, business, labour and education, tasked with identifying and addressing urgent skills shortages. The immediate focus will be on the skills needed for infrastructure development, public service delivery, and sectors identified under AsgiSA as priorities (e.g. tourism).
- 4. Barriers to entry and competition.** Competition policy is being reviewed to find ways to reduce input costs and promote “downstream” sectors like metal fabrication, machinery and plastics. Discriminatory pricing practices that favour exports over domestic markets (the so-called import parity pricing) have been targeted. Duties on certain steel products, for example, have been removed to facilitate greater import competition.
- 5. Regulatory environment.** A current review includes plans to introduce one-stop shops for starting businesses, a system for analysing regulatory impact, and improved planning at provincial and local levels. The environmental impact assessment (EIA) system will also be reformed.
- 6. Capacity limitations within the government.** Project Consolidate aims to improve provincial and local administration, including through the deployment of skilled professionals where they are most needed. Development finance institutions (DFIs) will also be reviewed.

Other initiatives being considered under the AsgiSA framework include:

- *Sectoral investment and industrial strategies.* A number of sectors have been earmarked for special support, starting with outsourcing and tourism (together expected to create 500 000 jobs). Investment in research and development will also be supported.
- *“Second economy” interventions,* including support for SMEs and black economic empowerment (BEE) through, for example, preferential procurement, improved access to small-scale credit, and the provision of employment through the Expanded Public Works Programme (EPWP). The impact of labour laws on SMEs is also being reviewed.

Source: www.info.gov.za/asgisa.

297. The constraints identified are: threats to macro-stability, including currency volatility; inefficiencies in the national logistics system; shortage of skilled

labour; disjointed spatial settlement patterns and high levels of inequality; barriers to entry and competition in key sectors of the economy; the burden of the regulatory environment and the impact this has on small and medium enterprises (SMEs); and deficiencies in the organisation of capacity and strategic organisational leadership.

298. The proposals included in the initiative are:

- Increasing infrastructure spending by over R370 billion over the medium term expenditure period;
- Encouraging firms worldwide to outsource labour-intensive activities to South Africa to take advantage of lower labour costs;
- Articulating short and medium-term strategies for expediting skills development for the implementation of AsgiSA projects; and
- Reducing the size of the “second economy” by utilising targeted public expenditures to promote small business development; designing sector strategies informed by the development needs of the second economy; and reducing the regulatory burden, particularly on small enterprises.

299. Indeed, the turbulence (damaged confidence, slow recovery and threat to macroeconomic stability) that rocked international financial markets over the last few years has affected South Africa as well. Furthermore, the rapid spread of the HIV and AIDS pandemic in South Africa threatens the hard-won health and social service delivery gains of recent years, and poses an even more fundamental challenge to long-term poverty reduction.

300. In sum, 12 years into the post-apartheid era, the transition is far from over. What lies ahead is the daunting task of ensuring that South Africa’s rich natural and human resources are employed for the benefit of all, promoting sustainable livelihoods, improving social conditions and alleviating poverty. However, the progress made so far in macroeconomic governance has qualified South Africa to be classified as an emerging market economy. Egypt and South Africa are the only two African countries that have qualified to be listed in the exclusive league table of developing countries that are striving to move up the economic ladder.

4.2 Standards and Codes

i. Summary of the CSAR

301. The CSAR does not address in detail South Africa’s compliance with the standards and codes as requested in the APRM Questionnaire. Rather, there is a broad listing of all the adopted standards and codes in this thematic area in an appendix to the CSAR.

ii. Findings of the CRM

302. Discussions with the Department of Foreign Affairs indicated that South Africa has indeed acceded to and ratified all relevant standards and codes as listed in the APRM Questionnaire. These are the:

- NEPAD Framework Document of 2001 (a signature or ratification is not required as South Africa was one of the five initiating states of the New Partnership for Africa's Development);
- Constitutive Act of the African Union (2000; ratified on 23 April 2001);
- Code of Good Practices on Fiscal Transparency;
- Guidelines for Public Debt Management;
- Code of Good Practices on Transparency in Monetary and Financial Affairs;
- Principles for Payment Systems;
- African Union Conventions on Preventing and Combating Corruption (signed on 16 March 2004 and ratified on 11 November 2005);
- Abuja Treaty establishing the African Economic Community in 1991 (acceded to on 25 June 2001);
- Best Practices for Budget Transparency; and
- Relevant Treaties, Conventions and Protocols of Regional Economic Communities.

The codes below are also discussed more elaborately in Chapter Five:

- International Standards in Auditing;
- International Accounting Standards (IAS);
- Core Principles for Security and Insurance Supervision and Regulations;
- Core Principles for Effective Banking Supervision; and
- Principles of Corporate Governance (both national and international).

303. The CRM could not ascertain the extent of compliance with these standards and codes. The 2005 Article IV consultation with the International Monetary Fund (IMF), however, indicates that South Africa has completed reviews of the full range of standards and codes. By the end of April 2005, South Africa was one of only two IMF members to have completed Reports on the Observance of Standards and Codes (ROSCs) in each area endorsed by the IMF and World Bank as being important for their work. Five of these ROSCs have been published, covering data on transparency; anti-money laundering and combating the financing of terrorism; corporate governance; accountancy; and auditing.

General Data Dissemination Standards

304. South Africa subscribes to the General Data Dissemination Standards (GDDS) of the IMF and the United Nations' Fundamentals of Official Statistics. In its

assessment of South Africa's national accounts statistics in the context of the ROSCs, the IMF indicated that the country subscribes to the GDDS and publishes all data on the reserves template.

305. Economic data for South Africa are generally of good quality and are provided to the public in a timely manner. The key challenges are to improve the quality of labour market and real sector data, and to narrow the scope of unidentified transactions in balance of payments statistics. This would facilitate economic analysis and support policy design and implementation. Although the authorities have indicated that they plan to address weaknesses in labour market statistics, they also need to overcome capacity constraints.

iii. Recommendations

306. The APR Panel recommends that South Africa:
- Address weaknesses in labour market statistics and also overcome capacity constraints. *[StatsSA]*
 - Take measures to narrow the scope of unidentified transactions in the balance of payments statistics. *[SARB]*

4.3 Assessment of the Performance of APRM Objectives

Objective 1: Promote Macroeconomic Policies to Support Sustainable Development

i. Summary of the CSAR

307. The CSAR notes that South Africa has achieved macroeconomic stability without necessarily constraining government spending. It highlights the success of the South African government in achieving macroeconomic stability and reversing the negative growth trend inherited prior to the end of the apartheid regime in 1994. Indeed, South Africa has succeeded in reducing the budget deficit to GDP ratio, while at the same time increasing social spending and reducing the tax burden for a broad section of the society. The government's success in this area can be attributed to improved revenue collections, which have ensured increased social spending and, in parallel, provided tax relief for companies and individuals. Indeed, the CSAR praises SARS for consistently exceeding its revenue targets, although sceptics attribute this success to poor or deliberately conservative revenue forecasting.
308. Inflationary pressures have been contained. The SARB has also been largely successful in moderating inflationary pressures and reducing the volatility of

the South African rand through its inflation targeting policy. However, concerns have been raised about the volatility of the rand over time. Businesses note that the strengthening of the rand is undermining export competitiveness in manufacturing and job growth.

309. South Africa's economic growth has not, however, been associated with significant job growth. Notwithstanding improvements in the macroeconomic indicators, economic growth has been modest and hence unable to absorb many new entrants to the labour market. It is hoped that the country's new development paradigm, AsgiSA, will succeed in raising growth to at least 6 per cent per annum and ensure that its benefits are broad based and accrue to the majority of the citizenry through job creation for millions of unemployed.
310. Efforts are in place to increase investment and boost long-term economic growth and employment through robust mobilisation of domestic resources. Submissions acknowledged the efforts of the government to boost domestic savings, stimulate capital formation and control capital flight. These include changes in banking regulations, development of low-cost banking accounts, pension reforms and increased government capital expenditure. Appropriately channelled additional resources accruing from increased savings could promote investment and accelerate growth and employment.
311. South Africa is still confronted by sharp asset and income inequalities typified by the dualistic nature of its economy. The CSAR notes that South Africa has two economies: the first is developed, prosperous and male dominated; while the second is underdeveloped, survivalist and virtually de-linked from the growth opportunities generated by the first economy. The government's efforts to bridge the gap between the first and second economies through BEE initiatives have been faced with challenges ranging from poor skills to a general lack of access to credit within the second economy. These constraints constitute significant barriers to employment and entrepreneurship.
312. The broad-based BEE initiative aims to reduce race-based inequalities by integrating emerging "black" businesses into the value chain through: preferential procurement; financing; regulations using a balanced scorecard to measure progress in achieving BEE objectives; legislation for issuing guidelines and codes of good practice on BEE; the establishment of a Business Advisory Council to advise the President on the implementation of BEE; and partnerships with the private sector. However, the benefits of this programme have largely been concentrated among a few black people. While the CSAR acknowledges the existence of several initiatives to improve access to credit (e.g. Industrial Development Corporation, National Empowerment Fund, Khula Enterprise Finance Limited, Apex Fund etc.), small, medium and micro-enterprises (SMMEs) continue to experience credit constraints.
313. Capacity constraints and the legal and regulatory environment are of particular concern to businesses regardless of their size. Businesses cite skills shortages and overregulation, including the labour market, as constraints to competitiveness and employment growth. Consequently, they recommend the

introduction of regulatory impact assessments to build an empirical case for policy change in this area. Trade unions, however, are not convinced that current labour laws are overly stringent and inflexible. Both business and labour acknowledge the need to nurture and retain skills in the private and public sectors through capacity-building initiatives. Skills shortages tend to be most severe at the sub-national levels (provinces and municipalities) despite targeted interventions such as Project Consolidate.

314. The perceived effectiveness of the government's HIV and AIDS policies is mixed. The CSAR generally acknowledges that the potential economic impact of HIV and AIDS on South Africa's economic growth is significant. While some perceive that the actual impact will be mitigated by prevailing measures to address the pandemic, others are of the opinion that the government's interventions have failed to achieve the desired outcomes. The increase in the number of AIDS orphans is, however, of concern to most respondents.
315. Data on poverty are unsatisfactory. The CSAR raises concerns about: the availability of poverty-related data; the appropriateness of adopting a definition of unemployment that excludes discouraged workers; and the independence of StatsSA.

ii. Findings of the CRM

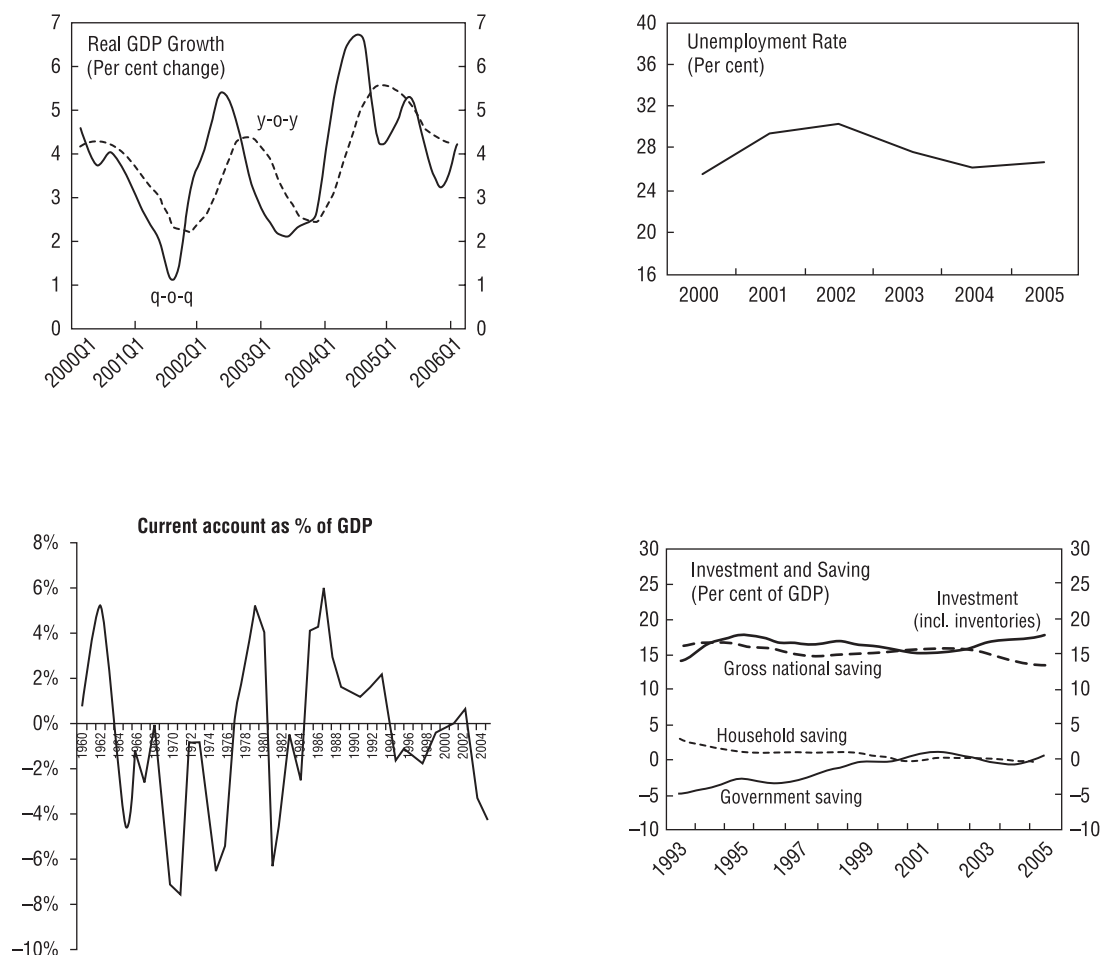
Macroeconomic Record

316. The CRM observed that economic policy has been conducted in an exemplary manner since 1994, with South Africa turning itself into one of the emerging markets with the lowest risk spreads.
317. By early 2006, the economy was experiencing an economic boom unprecedented in South Africa's history. The 2006 second quarter Economic Prospects of the Bureau for Economic Research (BER) pointed out some of the outstanding facts:
 - Real GDP growth had averaged 4.9 per cent in 2005, the fastest growth rate since the (short-lived) spurt of 1984.
 - The current business cycle upswing was running for a record 19 months.
 - Real household consumption expenditure grew by 6.9 per cent, the fastest annual growth rate since 1981.
 - 2004 and 2005 showed the lowest inflation rates recorded in 37 years.
 - Long-term interest rates registered a 35-year low of 7.3 per cent early in 2005.
 - The household debt ratio accelerated to a record high of 65.6 per cent at the end of 2005, while the household debt to service ratio remained close to a 25-year low at 7 per cent.
 - The budget deficit was estimated at 0.5 per cent of GDP for the fiscal year 2005/06, i.e. the lowest in 25 years.

- The gold price reached a 25-year high early in 2006.
 - The financial account of the balance of payments recorded an inflow of R98.4 billion, the largest ever – though, of course, this net capital inflow financed a large current account deficit of R64.4 billion, or 4.2 per cent of GDP. In the first quarter of 2006, the deficit hit 6.4 per cent of GDP, the highest since 1982.
318. To be added to this impressive list is the volume of international reserves that South Africa has accumulated in recent years. Between the end of 1996 and the end of 2005, gross international reserves (GIR) increased from US\$2.2 billion to US\$20.6 billion. By the end of May 2006, the GIR exceeded US\$24 billion. Figure 4.1 shows developments in some macroeconomic aggregates.
319. The CRM noted that the democratic elections in 1994 and the lifting of international economic sanctions against South Africa paved the way for broad liberalising reforms. An underlying principle for virtually all government policy is to bring the previously excluded black community into the mainstream economy through job creation and entrepreneurship. The overall results of reforms to date have been positive, with a stronger and stable macroeconomy, better integration into the global trading system, and some progress in redressing past injustices.
320. Despite these macroeconomic successes, several challenges remain in the area of macroeconomic management. While growth increased substantially over the past decade, it has not been sufficient to reduce unemployment and poverty significantly. Investment and production growth are still below the levels needed to boost jobs and reduce inequality. The distribution of income and wealth in South Africa is highly unequal.
321. Perhaps the major challenge confronting policy-makers in South Africa is the unemployment rate, which has grown inexorably and poses a significant social and economic policy challenge. Another serious challenge is the high level of crime, especially crime of a violent nature. The adverse effects of HIV and AIDS result in lower labour productivity, loss of labour, and higher production costs (including health costs). In recent surveys, a majority of firms in the mining, manufacturing and transport and storage sectors have reported such problems.
322. As mentioned earlier, the authorities have, in recognition of these constraints, launched AsgiSA, which aims to raise the rate of GDP growth to 4.5 per cent through 2009 and 6 per cent during 2010-2014, and to halve the rates of unemployment and poverty by 2014. This initiative seeks to achieve higher sustained economic growth; markedly reduce unemployment and poverty; and address other urgent social needs. The strategy is to remove the most binding constraints on growth while preserving macroeconomic and financial stability.
323. The authorities have begun to identify binding constraints on growth and design policy measures, as indicated in Figure 4.1. The government has

consulted with a range of stakeholders, including a panel of international experts, which will be providing backstopping advice over the next two years.

Figure 4.1: Main Macroeconomic Aggregates



Source: South African Treasury Department.

324. The APR Panel believes that the AsgiSA growth targets appear achievable at a general level, judging from the history of growth accelerations worldwide.
325. However, the Panel wishes to reiterate that despite the many strengths of the South African economy, there are several real, emerging and potential imbalances in the economy that constrain efforts at reducing poverty. Apart from the major disparity between rich and poor, there are also:
 - A chronic shortage of savings in the country. Gross domestic savings amount to only 14 per cent of GDP, whereas investment in the expansion of production capacity requires more than 20 per cent of GDP;

- A relatively high predisposition to consume (resulting in low savings and low investment ratios);
 - High propensity to import consumer goods in response to expansion in domestic demand, putting pressure on the balance of payments; and
 - A chronic shortage of skilled and professional workers, which places continuous excessive pressure on wages and salaries.
326. Macroeconomic policies such as fiscal and monetary measures at all time must take account of these imbalances to ensure sustainable development in the long run.

Monetary Policy Effectiveness

327. The mandate of the SARB, as the central bank of South Africa, is defined in the Constitution as the protection of the value of the currency in the interests of balanced and sustainable economic growth in the Republic. Deriving from this constitutional mandate, the Bank regards its primary goal in the South African economic system as “the achievement and maintenance of price stability”.¹⁸ This is currently interpreted as CPIX inflation (i.e. headline inflation less mortgage interest costs) being 3 to 6 per cent.
328. An interesting development in central banking in the past 20+ years has been the increasingly widespread adoption of the monetary policy framework known as *inflation targeting*. Over the past decade, variants of inflation targeting have proliferated, with newly industrialised and emerging market economies (e.g. Brazil, Chile, Israel, Korea, Mexico, South Africa, the Philippines and Thailand) being among the most enthusiastic initiates.¹⁹
329. A formal inflation targeting regime was announced in South Africa with the presentation of 2000/01 budget. A target range of 3 to 6 per cent was established for the annual average rate of CPIX inflation, starting in 2002. The choice of the target would be a prerogative of the National Treasury. An escape clause was introduced in the 2001 Medium-Term Budget Policy Statement, which allowed the SARB to define publicly the target as temporarily non-binding under special circumstances, such as supply shocks. A Monetary Policy Committee (MPC) would meet at the SARB every six weeks to assess monetary conditions and decide on the appropriate level of the repurchase interest rate (key policy rate). Several changes to the framework were subsequently made. The annual average target was replaced with a continuous year-on-year rolling target, still at 3 to 6 per cent. The escape clause was replaced with an explanation clause – the SARB would explain the reasons for deviations from the target and indicate by when the inflation rate

¹⁸ See www.reservebank.co.za.

¹⁹ Most recently, this policy framework was also adopted by several transition economies, notably the Czech Republic, Hungary and Poland. Central banks that have switched to inflation targeting have generally been pleased with the results obtained. The strongest evidence is that, thus far at least, none of the several dozen adopters of inflation targeting has abandoned the approach.

was expected to return within the target range. The frequency of the MPC meetings was reduced to four a year and subsequently increased to six a year.

330. Indeed, the most significant accomplishment of the SARB has been the containment of inflation at a relatively low level since 1994 and within the target range since September 2003. This does not imply that other functions are neglected. On the contrary, these remain crucial in the operations of the SARB. Despite some initial setbacks in late 2001 and during 2002, when inflation increased rapidly in reaction to the significant depreciation of the currency, the inflation targeting framework has served South Africa well. Having averaged 7.9 per cent between 2000 to 2002, inflation has been contained within the target range since September 2003. For the past two years inflation has averaged 4.0 per cent. Without getting into its merits and demerits, the inflation targeting framework has served as a good anchor for monetary policy in South Africa. It has led to better coordination of monetary policy and other economic policies than was the case in the past. The political commitment, as evident in the pursuance of prudent fiscal policies, has been crucial to the containment of inflation within the target band.
331. The CRM noted that despite positive developments in the inflation outcomes during the past years, the rate of increase in domestic demand was a cause for concern. In the last two years, household consumption expenditure has grown at annual real rates of almost 7 per cent. Retail sales continued to grow strongly and consumer confidence reached an all-time high by the end of 2005. This was fuelled by high rates of credit extension by the banking sector, which averaged over 20 per cent in 2005 and resulted in household debt rising to 66 per cent of disposable income in the first quarter of 2006. The strong growth in expenditure had little immediate impact on domestic inflation, although adverse price effects would be inevitable if these trends continued unabated.
332. Increases in domestic consumption expenditure, however, contributed to the progressive widening of the deficit on the current account of the balance of payments from 4.2 per cent of GDP in 2005 to 6.4 per cent in the first quarter of 2006. This development poses a potential threat to inflation through its possible impact on the exchange rate, should the deficit be regarded as unsustainable. Nevertheless, these deficits have so far been adequately financed by capital inflows. However, in response to these heightened risks and the deteriorating inflation outlook, the MPC took some pre-emptive actions. These saw the repurchasing rate increasing by 50 basis points to 7.5 per cent in June 2006, a further 50 basis points in August 2006 and by 50 basic points in October 2006.
333. The SARB published its new strategic framework and strategy for the National Payment System (NPS), known as Vision 2010, in April 2006. Vision 2010 provides strategic direction for the payment system and its bank and non-bank participants up to 2010. It identifies five major challenges for the payment system: accessibility; transparency; security; support for payments; clearing

- and settlement initiatives of the Southern African Development Community (SADC); and keeping abreast of international developments.
334. The monthly value of settlement in the South African Multiple Option Settlement (SAMOS) system amounted to R4.6 trillion in June 2006, or approximately R200 billion per day. This includes the settlement of transactions stemming from the equity and bond markets, as well as the rand leg of domestic foreign exchange transactions. Approximately 90 per cent of settlement through the SAMOS system is affected on a real-time basis during the day, while the remaining 10 per cent emanating from the retail batch environment is settled in the evening. An upgrade of the SAMOS system providing for the handling of dematerialised money market instruments was successfully implemented in June 2006.
 335. The SARB has continued to facilitate a low-cost payment solution for the different role-players in the low-income collection environment.
 336. The CRM sought to determine the extent to which the SARB's inflation targeting policy is aligned with the government's vision of achieving real growth rates of 6 to 8 per cent. It was unclear from the discussions whether the inflation target is consciously aligned with the policy priorities of the government as espoused in AsgiSA. What emerged was that the overriding concern of the SARB appears to be price stability as a precondition for growth. Currently, the fiscal and monetary policies do not appear to be working at cross-purposes, since considerable fiscal space has been created through a conservative fiscal policy stance and improved revenue collection.
 337. Furthermore, the limited capacity of the public sector to absorb the revenue build-up has resulted in an accumulation of unspent funds and redirected attention to improving absorptive capacity at the national and sub-national levels as opposed to generating additional resources. For instance, in the fiscal year 2005/06, the non-financial public sector recorded a cash surplus for the first time in history, amounting to 0.7 per cent of GDP. In addition, the deficit declined to 1 per cent of GDP, well below the projected deficit of 3.1 per cent of GDP.
 338. However, this favourable situation may change as inflationary pressures exert upward pressure on interest rates, as government spending on infrastructure and social services rises in response to the demands of AsgiSA, and as the capacity to absorb revenues improves. Indeed, there are indications of rising inflationary pressures fuelled in part by a depreciating rand and continued high levels of consumer expenditure. In response, the MPC increased the repurchase rate from 7.0 to 7.5 per cent per annum on 8 June 2006. This followed a period of 14 months during which the repurchase rate had been kept unchanged. This is the first increase in the benchmark rate since September 2002.
 339. Since its establishment, the SARB has always been privately owned. It has over 630 shareholders and its shares are traded on an Over-the-Counter Share

Transfer Facility Market coordinated within the Bank. However, the South African Reserve Bank Act of 1989 states that no individual shareholder may hold more than 10 000 shares of the total number of 2 000 000 issued shares. After allowing for payment of company tax on profits, transfers to reserves and dividend payments of not more than 10 cents per share to shareholders, the surplus of the SARB's earnings is paid to the government. Presumably these provisions ensure that the Bank's operations are not driven by a profit motive, but serve the best interests of all the people.

Budget Formulation and Fiscal Policy Effectiveness

340. The CRM noted with interest the budget formulation process in South Africa, which is very insightful. Within the context of budgetary discipline, budget prioritisation has progressively become more inclusive. Two key episodes in the role of the Cabinet in the annual budgetary process are the *lekgotlas*²⁰ held in January and July each year. All Cabinet Ministers, Deputy Ministers, Director-Generals and some Presidential Staff – a total of 80 to 90 people – attend these two or three-day retreats. The annual process starts with a request, early in the calendar year, by the Minister of Finance for the contributions of all Ministers to the budgetary priorities paper for the July *lekgotla*. This paper goes first to the Ministerial Committee on the Budget (MCB), chaired by the Minister of Finance. The other seven senior Cabinet Members making up this group, as well as heads of some of the big-spending departments (e.g. the Department of Education), are selected to represent the Cabinet and make decisions in the overall national rather than sectional or departmental interest. The President, who has his or her own economic adviser as well as a Policy Coordination and Advisory Services Unit, has input at all stages, especially during the drafting of the budgetary priorities paper.
341. The budgetary priorities paper is, in practice, an expression of priorities for the following MTEF round. It is finalised at a Cabinet meeting in June and discussed at the July *lekgotla*. Departments thereafter submit their detailed bids for the upcoming budget, plus their spending plans for the next two years. These plans are discussed first in the Medium-Term Expenditure Committee (MTEC). The MTEC's recommendations are reviewed by the MCB over the next few months and individual Ministers are called in to discuss issues arising from their bids. The MCB also reviews the macroeconomic framework and fiscal policy, including the division of revenue between the three spheres of government (national, provincial and local). Recommendations on this last issue are made by the independent Financial and Fiscal Commission (FFC). In late September, the MCB's proposals are considered by an "extended" Cabinet meeting (the normal Cabinet plus the nine provincial premiers) and, in October, by the Cabinet proper.

²⁰ These are meetings on budget preparation aimed at obtaining cooperation and consensus as outcomes.

Best Practice 6: The Budget Formulation Process

South Africa has one of the model Medium-Term Expenditure Framework (MTEF) processes, with heavy involvement throughout by the Cabinet and other key stakeholders. As a result the budget, and therefore policy, is highly predictable and the government has consistently maintained strong budgetary discipline. The two annual *lekgotlas* set the tone. The Cabinet in its various forms (regular, extended, and *lekgotla*) has at least eight meetings a year on budgetary matters. The MCB meets four or five times a year and is explicitly intended to serve as a substitute for the Cabinet, acting in collegial mode. Frequent meetings of Ministers further encourage collegiality, or at least collectivity, for other purposes. There are six Cabinet subcommittees that meet every two weeks, and the Cabinet itself meets in the intervening weeks. The President or his or her staff, or both, has the chance to be involved during all stages of the process. Working relationships between the President and the Minister of Finance are said to be close. The MTEF, which has reduced the significance of the annual budgeting process by putting it into a three-year context, has encouraged both longer-term thinking and planning, and some propensity to prioritise.

Source: www.pmg.org.za, www.gcis.gov.za, APRM CRM compilation, July 2006.

342. When the Minister of Finance submits the detailed budget to the Cabinet in November, he does so with the MCB's backing. Ministers who are dissatisfied with their allocations may raise objections at this late stage, but these rarely lead to significant changes. The budget is approved at the January *lekgotla*. A few last-minute changes can still be made before it is presented to the parliament in February. The Minister of Finance briefs the President two days before the budget is presented and also before the President's State of the Nation Address is finalised. The Cabinet receives the printed budget review a week before it is presented.
343. The January *lekgotla* also begins the process of planning priorities for the next MTEF round and the following year's budget. Clusters comprising Ministers from several departments aim to provide the first statements of medium-term priorities for the departments concerned. From the discussion at the *lekgotla* the President's staff writes up a government-wide statement of priorities. After reference to the clusters for approval, this statement informs the President's State of the Nation speech, given in February.
344. Normally, one adjustment budget is produced each year, seven or eight months into the fiscal year. This budget allows for supplementary appropriations (although only for unforeseen and/or unavoidable contingencies), for supplementary appropriations, and for the allocation of windfalls.
345. The CRM found that revenue collection improved due to increased efficiency in collection (due to investments in electronic filing modalities and increased personal visits) which, as noted above, increased the fiscal space for higher expenditure on social services without compromising total government expenditure. Improvements in revenue collection have effectively widened the tax base and made it possible for the government to: reduce taxes for low-

income earners and corporations; increase social service expenditure; and reduce fiscal deficits. However, the CRM also found that the government has not been able to utilise or absorb fully the additional resource flows resulting from improved revenue collection due to a lack of capacity in all three spheres of government.

346. The CRM noted that the success of revenue agencies in exceeding their targets can be attributed to challenges in forecasting. Specifically, revenue agencies have had trouble anticipating higher-than-expected GDP growth and accurately reflecting efficiency gains from tax collection in their forecasting models. Moreover, variations in absorptive capacity across government agencies create a situation where some agencies' budgets are considerably underspent while others run out of funds before the end of the financial year. The government proposes to implement an information system for capital expenditure management to address this problem. These efforts must be complemented by parallel initiatives to improve the absorptive capacity of government agencies.

Capacity Development and Retention

347. The government has developed several initiatives and institutions for addressing the capacity constraints confronting the country. These include JIPSA, the Sector Education and Training Authority (SETA), further education and training (FET) colleges, vocational training, adult basic education and training (ABET) and learnership programmes. The CRM, however, observed that such programmes are not directly linked to employment opportunities, which results in frustration among beneficiaries. Furthermore, some contractors charged with implementing learnership programmes abandon the programmes midway, thus leaving participants short of the requisite skills required for employment or sustaining a small business. Moreover, the skills imparted tend to be so narrowly based that beneficiaries are vulnerable to changes in the economic climate.

Broad-Based Black Economic Empowerment

348. The CRM noted that the benefits of the Broad-Based Black Economic Empowerment (B-BBEE) programmes are mainly concentrated among a minority of the historically disadvantaged. Implementation is hampered by: a general lack of information about the programmes; ineffectiveness of existing monitoring mechanisms in alerting officials to implementation bottlenecks, such as delays in payments to beneficiaries; and nepotism and favouritism when awarding contracts. The CRM was also alerted to conflict of interest that minimises the benefits of B-BBEE. Stakeholders are of the view that government officials are often given major ownership stakes in firms they previously had a responsibility to regulate, thus bringing in issues of corruption and conflict of interests.
349. It has been estimated that the thriving black middle class emerging from black economic empowerment (BEE), and particularly those who earn at least

R154 000 a year, grew by 368 per cent between 1998 and 2004. Although the numbers benefiting from the BEE programme are still relatively small and “production” still lags behind demand, BEE is nevertheless impacting favourably on the growth rate of the economy.

350. Some stakeholders informed the CRM of an emerging trend in which some government officials, immediately upon retirement or resignation, take up appointment with entities that benefited directly from their oversight role. This behaviour is tantamount to the abuse of official position. Further, in view of the apparently limited impact of B-BBEE on black economic empowerment, some have suggested that the programme is depriving the economy of much-needed funds for investment.
351. In the government’s response to concerns about BEE, it was indicated that prior to the release and adoption of the first phase of the Codes of Good Practice on B-BBEE by the Cabinet, BEE benefited the elites without being broad based. In fact, 70 per cent of BEE transaction deals concluded before the release of the draft codes in 2004 solely involved the top six BEE consortia and only 10 per cent involved broad-based groups. While the phenomenon of having fewer individuals benefiting from BEE deals is still prevalent in the South African economy, the trend is towards a drastic decline in such BEE transaction practices. The majority of BEE deals now involve broad-based schemes, black women, young people and new entrants, thus ensuring that the broader community is involved in BEE, particularly in the ownership component. The participation of black women as significant partners in BEE deals has increased steadily after the release of the draft codes, standing at 60 per cent of the deals concluded. There has been a marked increase in the participation of broad-based groups, especially employees (70 per cent), in BEE deals during 2005/06.
352. The Broad-Based Black Economic Empowerment Act of 2003 provides for the establishment of a national advisory council on BEE. The Black Economic Empowerment Advisory Council was established as a mechanism for providing guidance and overall monitoring on the state of BEE in the entire economy. It will make policy recommendations to deal with bottlenecks and address those areas that may contribute to unintended outcomes.
353. The Council’s functions, as set out in section 5 of the Act, include the power to: conduct research; request information from organs of state or private bodies; publish reports on BEE; establish subcommittees to deal with specific matters as and when required; co-opt experts to serve on or advise subcommittees and oversee the functions of the different sector Charter Councils. (These Councils are established through the sector transformation charters whose mandate it is to monitor and advise the government on BEE performance at sectoral level.) The BEE Advisory Council is to be established immediately once the codes of good practice are gazetted and adopted by the Cabinet, and it is anticipated to provide effective monitoring on BEE performance.

Quality and Coverage of Statistical Data

354. Interactions with StatsSA and stakeholders revealed that the quality of statistical data on core economic and social indicators such as real GDP growth, inflation, unemployment and interest rates is generally higher than for other indicators. This is consistent with the findings of the CSAR. Submissions by StatsSA reveal that data on the prevalence rates of HIV and AIDS are particularly difficult to compile, since medical officials do not always attribute the immediate cause of death to HIV and AIDS. This is because the proximate cause of an HIV-related death is invariably an opportunistic disease resulting from a compromised immune system. Data quality is also constrained by a general lack of skills in StatsSA.
355. Representatives from StatsSA unequivocally stated that there is no political interference in the production and dissemination of statistical data. They pointed out that while the Minister of Finance determines what data StatsSA can collect, it is the prerogative of StatsSA to determine how to collect such data and when to terminate collection of such data if it so chooses. The CRM had no evidence to contradict this assurance that StatsSA's independence, as guaranteed by the Constitution, has not been compromised.

iii. Recommendations

356. The APR Panel recommends that South Africa:

Monetary Policy Effectiveness

- Ensure consistency between the inflation target and AsgiSA's growth target. *[SARB]*
- Continue to reform the payments systems. *[SARB]*

Broad-Based Black Economic Empowerment

- Link skills development programmes to job creation. *[Government]*
- Strengthen monitoring and evaluation systems to assess the effectiveness of government programmes. *[Government]*
- Consider imposing restrictions on the professional activities of officials, public or private, after their resignation or retirement, especially where such activities or employment relate directly to entities over which they have had an oversight role in the past. *[Government]*

Quality and Coverage of Statistical Data

- Devote more resources to improving the quality of data on poverty, HIV and AIDS and labour statistics. *[StatsSA]*

Objective 2: Implement Sound Transparent and Predictable Government Economic Policies

i. Summary of the CSAR

357. The CSAR indicates that since 1994, the National Treasury has successfully implemented much-needed reforms to the fiscal system. The major features of these reforms were: the creation of a new intergovernmental fiscal relations system; multi-year budgeting through the MTEF; new budgeting formats focusing on spending analysis and service delivery information; and the introduction of the PFMA and MFMA. As a result of the above reforms, the quality of annual financial statements improved with implementation of the PFMA and the transition from a cash basis for accounting to the modified accrual basis. The majority of national and provincial departments now comply with the deadlines for submitting financial statements and tabling in the relevant legislature. Many local governments, however, still have problems complying with the deadlines. Implementation of the MFMA is intended to address the situation. The CSAR further notes that the Public Service Commission (PSC) has observed that the number of qualified audit reports in the public service is a matter of concern, which is indicative of the challenge for departments to comply with the PFMA.
358. The consultative process needs to be strengthened. The CSAR is critical of the quality and frequency of engagement by the citizenry, particularly at provincial and municipal levels. There is a concern that, in its current form, the consultative process does not allow for substantive input from a wide range of stakeholders.
359. The oversight role of the parliament needs to be strengthened. Several submissions in the CSAR urged the parliament to enact the necessary legislation to allow it to change line items in the budget.²¹ Currently, the parliament is limited in its oversight role because it is only allowed to vote yes or no to the entire budget without being able to modify line items or programmes. The CSAR also notes that national and provincial legislators fail to monitor and evaluate adequately public expenditure at the sub-national level or hold departments accountable for poor-quality activity reports. The CSAR observes that the implementation of policies at sub-national level is hampered by poor intergovernmental communication. It suggests that efficiency in the delivery of services to the community could be enhanced through improved coordination, oversight and intergovernmental communication.

²¹ See section 3.2.10 of the CSAR.

ii. Findings of the CRM

Financial Reporting

360. Submissions by the Auditor-General corroborate findings in the CSAR that a significant number of provincial and local governments do not meet the deadlines for filing required disclosures, financial statements and performance reports. The CRM observed that weaknesses in financial and audit reporting are attributable to capacity constraints, particularly at provincial and municipal levels. Meanwhile, the majority of social and infrastructure spending is undertaken at the sub-national levels. For instance, the Department of Health transfers 92 per cent of its programme budget to the provinces.
361. The CRM identified other related factors contributing to the relatively high number of qualified audit reports. Most departments are unable to keep pace with the rapidly changing guidelines that frame the reports. The problem is compounded by the limited capacity of these institutions.
362. Information provided by the government regarding the tabling of provincial annual reports shows that there was significant improvement in 2005/06, as reflected in Table 4.1.

Table 4.1: Tabling of Provincial Annual Reports, 2005/06

Tabling information	EC	FS	Gau	KZN	Lim	Mpu	NC	NW	WC	Total
Number of departments	13	12	13	16	13	12	13	12	13	117
Tabled timeously	13	12	12	16	10	10	12	10	13	108
Tabled late	n/a	n/a	1	n/a	3	2	1	n/a	n/a	6
Outstanding	n/a	n/a	n/a	n/a	n/a	n/a	n/a	2	n/a	3

Source: Department of Public Service and Administration, January 2007.

Stakeholder Consultations

363. The CRM identified gaps in stakeholder consultations, particularly at provincial and municipal levels. The mechanism for information dissemination tends to favour organised stakeholders and the elite. Several stakeholders indicated they were uninformed about dates and venues for scheduled public consultations. The CRM also notes a sense of apathy among stakeholders stemming from a feeling of exclusion from the benefits of social programmes. There is considerable room for improvement in stakeholder participation in the formulation of provincial and municipal development plans. Stakeholders expressed the concern that although they participate in the consultative process, they tend to be disconnected from the outputs of such processes. For

example, copies of provincial and municipal development plans are not widely disseminated in local languages. This constrains absorption of information among stakeholders about sub-national development strategies and, in turn, compromises effective stakeholder participation in the monitoring and evaluation of sub-national development plans and programmes.

Parliamentary Oversight

364. The CRM corroborated the CSAR's findings that parliamentary oversight has been weak. In the meeting with the national parliament and based on interactions with stakeholders, the CRM found that the ability of the parliament to examine the budget critically and offer an alternative framework is limited. The PFMA, enacted in 1999, provides a legislative framework for the performance of oversight in the area of budgeting. Although it increased the importance of committees as oversight bodies and thus created an enabling environment for more effective oversight, the capacity of the parliament and the provincial legislatures was not at a level that could take advantage of these changes. Additionally, while the PFMA outlined specific roles for the legislatures, these functions are not being effectively carried out due to limited staff and capacity. The CRM also noted that lack of resources was another constraint hindering the ability of the parliament to carry out its oversight function.
365. The CRM noted that although the Constitution empowers the parliament to amend money Bills (i.e. a Bill that appropriates money or imposes taxes, levies or duties), legislation stipulating how this should be done has not been enacted. Section 77 states that the parliament can amend money Bills, but only by way of a process provided for in national legislation: "An Act of parliament must provide for a procedure to amend money Bills before parliament." No such legislation has been enacted thus far and, as a result, the parliament cannot amend line items in a money Bill. It can either accept or reject it in its entirety. The inability of the parliament to amend money Bills, including the budget, considerably weakens the measure of parliamentary oversight.
366. The CRM was, however, impressed with oversight in KwaZulu-Natal. In deliberations with the provincial legislature, the team was informed that oversight is conducted against a set of performance criteria. Departments are expected to produce a strategic plan with measurable output/outcome indicators that are incorporated into the budgetary process. There are 14 portfolio committees whose main function is to monitor departments. These committees meet with every department once a month to scrutinise the budget and to establish whether they are meeting the expectations of the public. Moreover, the Standing Committee on Public Accounts (SCOPA) also scrutinises the report of the Auditor-General and the departments.

iii. Recommendations

367. The APR Panel recommends that South Africa:

Financial Reporting

- Stringently enforce penalties for late filing of financial statements. *[Government]*
- Step up efforts to strengthen the monitoring and evaluation capacities of local governments in order to facilitate effective use of public resources. *[National, provincial and local governments]*

Stakeholder Consultations

- Broaden outlets for disseminating information about stakeholder meetings at all spheres of government. *[National, provincial and local governments]*
- Make an effort to translate provincial and municipal development plans into local languages. *[Provincial and local governments]*

Parliamentary Oversight

- Expedite the enactment of legislation empowering it to amend line items of the money Bill. *[Parliament; government]*
- Strengthen the parliament to interrogate line items in the budget. *[Legislature; government]*
- Empower the parliament and the provincial legislature to effectively carry out their oversight function. *[Government]*

Objective 3: Enhance Sound Public-Finance Management

i. Summary of the CSAR

368. According to the CSAR, the government has implemented several structures and legislative frameworks since 1994 to improve and ensure the maintenance of sound public finance management. These are anchored by the PFMA and the MFMA. These two Acts regulate how government revenues and expenditures are to be managed at all levels of government. In addition, the Public Service Management Framework requires all provincial departments to formulate strategic plans 12 months prior to the beginning of the fiscal year. These plans must explicitly identify measurable outputs as well as the resources needed to deliver them. These initiatives have resulted in significant improvements in public finance management since 1994.
369. The economy, however, is continuously being plagued by an acute lack of capacity, especially financial expertise for managing social programme spending and facilitating the delivery of services at the provincial, municipal

and local (district) levels. The emigration of trained and experienced staff from the public service to the private sector and foreign destinations during the past 12 years has exacerbated the impact of skills shortages and made capacity building at all levels of government an imperative.

370. The government has developed a customer-service scheme known as *Batho Pele* (People First). The principle of this scheme requires that citizens should be consulted about the level and quality of the public services they receive, and told what level and quality of public services they will receive, so as to be aware of what to expect. People should be given full and accurate information concerning the public services they are entitled to receive. This vision is driven by the Government Communication and Information System (GCIS).
371. The CSAR noted that the government has instituted several initiatives to improve local government capacity, including Project Consolidate. As mentioned, this initiative seeks to enhance social service delivery at local government level by fielding in the required personnel wherever needed. However to date, it has not yielded the expected results because of the depth and pervasiveness of the problem of skills deficiency and the limitations of hands-on and top-down approaches to local government by the national government. (These were discussed extensively in the overview of Chapter Three.) Consequently, partly due to the failure of the approaches, it is now openly admitted that easing skills shortages may entail recruitment of foreign experts, bringing retirees back into public service and bringing South Africa in the diaspora back even for a short period while efforts continue to build local capacity.
372. On fiscal decentralisation, the much-needed legislation and regulation for improving the quality of financial management at local and provincial governments are in place. According to the CSAR, the various submissions widely agreed that the nation's biggest problem in fiscal management involves poor control, transparency and accountability at sub-national levels. Furthermore, the submissions made it clear that fiscal control, staff capacity and managerial performance issues are all intertwined.

ii. Findings of the CRM

373. Issues concerning public finance management across the three spheres of government (national, provincial and local) and the fiscal relations among them were a major preoccupation of stakeholders during the CRM's provincial visits. The key issues discussed were:
 - The process of preparing and implementing a predictable national budget within the MTEF;
 - The effectiveness of SARS in generating projected revenue and expenditure targeting, monitoring, reporting and auditing, and oversight functions of the legislature in fiscal operations;
 - Promotion of sound and effective public finance management; and

- The allocation of resources between national, provincial and local governments.
374. There is consensus among all stakeholders that the government has put in place a sound framework for public finance management, and that management of public finances has improved since 1994. An efficient agency for domestic revenue collection is in place. In the past four years, SARS has consistently exceeded its forecasted target due to greater efficiency in revenue collection. However, capacity and skills deficits have resulted in under-spending of the budget, especially in the lower spheres of government. There are problems with respect to financial/expenditure control, tracking and monitoring, particularly at municipal level.

Best Practice 7: South African Revenue Service

Despite the challenges in revenue projection noted in this chapter, SARS has been effective in consistently exceeding its revenue target. SARS was established by the South African Revenue Service Act of 1997. Unlike many revenue agencies worldwide, SARS is an administratively autonomous organ of the state; it is outside the public service but within the public administration. Thus, although South Africa's tax regime is set by the National Treasury, it is autonomously managed by SARS. The main functions of SARS are to: collect and administer all national taxes, duties and levies; collect revenue that may be imposed under any other legislation; provide protection against the illegal importation and exportation of goods; facilitate trade; and advise the Minister of Finance on all revenue matters. Due to efficiency gains in tax administration, SARS over time has been able to implement fundamental tax policy reforms that have improved the culture of tax compliance and contributed to SARS's success in consistently exceeding its revenue target. Consequently, the South African economy has an impressive tax revenue to GDP ratio of over 26 per cent.

Source: www.sars.gov.za, APRM CRM compilation, July 2006.

375. Stakeholders in both the public and private sectors feel proud and very satisfied that their government is in a position to finance its expenditure programmes from domestic resources without resorting to external borrowing. There is general consensus that South Africa has no serious constraint in funding a sustainable social and economic development agenda. The challenge is that of putting in place a development strategy that will squarely address issues of structural unemployment, underdevelopment, inequality, social service delivery and poverty. The CRM concurred with this view. Nevertheless, very low levels of domestic savings and investments, coupled with the high propensity to import consumer goods, weak inflows of FDI and low levels of fixed capital formation could probably and partially explain the slow growth in job creation in the economy.
376. The CRM lauds the South African government for initiating public service principles in government service, but is of the view that more needs to be done to improve compliance with these principles. For instance, stakeholder

consultations revealed a lack of compliance with *Batho Pele* principles despite the establishment of the Quality Assurance Unit of the PSC and the multi-purpose community centres (MPCCs). Stakeholders raised concerns about the nonchalant attitude of civil servants and poor compliance with the principle that citizens have to be given reasons when they are adversely affected by the government's decisions. A 2004 PSC study found that only 57 of the 115 provincial and national departments had service standards²² as required by *Batho Pele*. There is a need to evaluate and augment existing monitoring mechanisms for improving compliance. To this end, the introduction, particularly at sub-national level, of citizens' satisfaction surveys that rank institutional compliance with *Batho Pele* in a transparent way, should be seriously considered.

377. The CRM noted with satisfaction the shift by the national government to devolve greater autonomy to sub-national governments. One manifestation of this trend is fiscal decentralisation, operationalised through conditional and unconditional transfers from the centre to sub-national governments. The CSAR observes that there is a need to step up fiscal control, as well as transparency and accountability in the administration of funds at the sub-national levels. In addition to these issues, the CRM observed that the provinces are very dependent on the national government for their resources. Indeed, 97 per cent of provincial expenditure is financed by transfers from national government and almost 90 per cent is received by way of unconditional grants disbursed on the basis of the Provincial Equitable Share (PES) formula. Provinces raise roughly 1.3 per cent of their revenue from internal sources but account for 44 per cent of total government expenditure at all levels. The disproportionate dependence of the provinces on transfers implies that the volume of expenditure incurred by each province depends on the volume of transfers.
378. It implies that the national government has a significant influence on equity considerations in spending through the current structure of the PES formula. Moreover, the absence of a fixed formula for determining vertical resource flows from the centre to the sub-national governments potentially compromises the fiscal autonomy of these entities, since it leaves such decisions to the discretion of an external agent, the FFC. Section 220 of the Constitution mandates the FFC to make recommendations on the vertical division of nationally raised revenue among the three spheres of government and the horizontal allocation across sub-national governments. However, while the PES formula has been developed to guide horizontal allocations, no corresponding formula exists for vertical allocations. The FFC should consider the possibility of establishing a formula for the vertical allocation of resources. One possibility is to allocate a fixed percentage of revenues to the sub-national governments to strengthen the fiscal autonomy and predictability of sub-national resource inflows.

²² The service standard refers to the principle that citizens should be told what level and quality of public services they will receive so that they are aware of what to expect.

379. The formula for sectoral allocations of resources needs closer examination. The CRM noted the concerns raised by the FFC about the extent to which the weights applied to the seven components²³ of the formula appropriately reflects the changing priorities and composition of sub-national expenditure and input cost variations across provinces, municipalities and local governments. It is also worth noting that there is no correspondence between the criteria for resource allocation to the provinces and the uses to which such resources are put. For instance, even though education constitutes 41 per cent of the total unconditional provincial transfer, apparently due to its perceived priority, provinces are not required to spend 41 per cent of their resources on education, since the transfer is unconditional and thus fully fungible. The criteria for revenue allocation need to be more closely aligned with spending patterns and applied on a needs basis.
380. The CRM was pleased to learn that Chapter 13 of the Constitution addresses revenue sharing. Provincial and local governments are said to be protected from abuse under vertical revenue sharing by a list of ten criteria in section 214 of the Constitution as well as the Bill of Rights.
381. There are portfolio and standing committees at the national parliament and provincial legislatures with oversight functions to ensure accountability and proper use of government resources by the executive. There are physical oversight exercises by the legislature through visits to projects in order to verify project implementation by the executive. Departmental accounts are audited annually. By law:
- Departments submit financial statements within two months;
 - The Auditor-General must audit within two months (by end July); and
 - Departments must submit annual reports, including financial statements and audit reports, to the parliament before six months after the year end (municipalities do so within seven months).

iii. Recommendations

382. The APR Panel recommends that South Africa:

Capacity and Decentralisation

- Continue to improve capacity and skills development in the area of public finance management, particularly at the provincial and municipal levels. *[National, provincial and local governments]*
- Periodically undertake a national capacity and skills audit to determine the nature of the capacity constraint and types of skills shortage. *[DPSA]*

²³ The components are: education (41%); health (19%); welfare (18%); basic services (7%); economic activity (7%); institutional factors (5%) and infrastructure backlog (3%).

- Establish an effective supervisory framework for monitoring and evaluating service delivery, infrastructure and administrative capacity at the local and municipal levels of government. *[National, provincial and local governments]*

Oversight Role of the Parliament

- Enable members of parliament (MPs) and the provincial legislature to participate regularly in workshops, seminars, etc. relevant to their oversight function in order to enhance their capacity as watchdogs in all aspects of fiscal management. *[Parliament; provincial legislature]*

Fiscal Decentralisation

- Align provincial and local government resource allocations with sub-national and national development priorities. *[Government]*
- Orient monitoring and evaluation mechanisms for verifying alignment and include a component for alignment in the formula for horizontal resource allocation. *[Government]*
- Establish appropriate incentives for provincial and local governments to raise more of their own revenue and direct expenditure towards sustainable economic growth and development. *[Government]*

Objective 4: Fight Corruption and Money Laundering

i. Summary of the CSAR

383. The national government has introduced and promoted several pieces of legislation for preventing and combating corrupt practices. It has also adopted various international audit standards, signed protocols against corruption, and ratified various international conventions on preventing and combating corruption. Although there is some concern about the level of corruption and its debilitating effects on service delivery and the fight against poverty, South Africa has a relatively lower level of corruption compared with many other African countries. This, however, is no reason for complacency.
384. Some relevant pieces of legislation that were introduced and promoted include the Protected Disclosures Act of 2000; Promotion of Access to Information Act of 2000; Financial Intelligence Centre Act (FICA) of 2001; Promotion of Administrative Justice Act of 2000; and the Prevention and Combating of Corrupt Activities Act of 2004. The last Act is based on actual experiences of corruption and seeks to address the systemic lapses that make it possible.

385. South Africa has created institutional framework at national and provincial levels to complement the work of the South African Police Service (SAPS). These include: the Public Protector; National Prosecuting Authority (NPA); Special Investigating Unit; PSC; Financial Intelligence Centre; and the Auditor-General. Specialised commercial courts have been established to prosecute and try corrupt offenders. In addition, an Asset Register has been created for accounting officers to disclose their financial assets and interests.
386. South Africa's integrated approach to fighting corruption is anchored by the Public Service Anticorruption Strategy under the auspices of the Department of Public Service and Administration (DPSA). The government has made the fight against corruption a key priority of its governance and administration cluster.
387. South Africa is also a party to the SADC's Protocol Against Corruption (2001), a signatory to the African Union (AU) Convention on Preventing and Combating Corruption, the UN Convention Against Corruption (2003) and a member of the Financial Action Task Force (FATF).²⁴
388. Of the reported cases of corruption, civil society is responsible for uncovering 18 per cent of the cases in state structures; official process was responsible for 60 per cent; and the media uncovered 9 per cent that would have not been known because of the sensitivity of the cases.
389. A framework for combating money laundering is in place. The FICA of 2001, the Prevention of Organised Crime Act (POCA) of 1998, and the Protection of Constitutional Democracy Against Terrorism and Related Activities Act of 2004 constitute the main pillars on which the efforts of the government to combat money laundering rest.
390. South Africa has a comprehensive legal structure to combat money laundering. This was observed by the 2004 ROSC for the FATF; the 40 Recommendations for Anti-Money Laundering and 8 Special Recommendations for Combating the Financing of Terrorism prepared by the representatives of member jurisdictions of the FATF and the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG); and members of the FATF and ESAAMLG Secretariats.
391. Currently, the main statutes are the POCA and the FICA. The Financial Intelligence Centre and other supervisory and investigative bodies appear to be genuinely committed, although there are capacity issues to be dealt with to implement the new system efficiently. However, many of these measures are new and have not been fully put into effect yet. All sectors need to continue to increase their focus on and training in anti-money laundering issues.
392. The CSAR indicates that the real challenge confronting the South African anti-money laundering framework is the shortage of skilled and experienced

²⁴ As we go to press, we have learnt that South Africa formally acceded to the OECD Convention on Combating Bribery of Foreign Public Officials in International Transactions in April 2007.

manpower needed to investigate and prosecute offenders and execute various aspects of the legislation in accounting institutions.

ii. Findings of the CRM

393. During its discussions with stakeholders at national and provincial level, the CRM focused on stakeholders' perceptions of corruption within the economy and whether the government had put in place any framework to fight corruption and combat money laundering. Stakeholders were more interested in discussing corruption than money laundering because most of them were not aware of the existence of the latter.
394. There is misunderstanding about the difference between corruption and misallocation of funds at the provincial and municipal levels of government. As part of the effort to combat corruption, an anticorruption hotline has been established in the offices of all Premiers in all the provinces and there is some indication that offenders are being prosecuted and punished. The main challenge, however, is lack of adequate capacity to handle reported cases expeditiously at all levels of government.
395. It is gratifying to note that the executive fully understands the need for firm enforcement and implementation of laws and rules for the proper control of corruption, as well as the strengthening of existing institutions established to perform related tasks.

iii. Recommendations

396. The APR Panel recommends that South Africa:

Corruption

- In collaboration with civil society organisations (CSOs), undertake measures for strengthening the human capacity needed to investigate and prosecute cases of reported corruption. In the absence of domestic capacity, this could be achieved by specifically recruiting such personnel from outside South Africa in the short run while internal training programmes are being put in place to train locals. *[Government in collaboration with CSOs]*
- Take proper steps to enforce compliance with the code of conduct for National Assembly and permanent Council members, and the public service regulations that require Ministers, members of the Executive Council (MECs) and upper-level managers to declare their assets and financial interests. *[Government]*
- Publicise all cases of officials found guilty of corruption to serve as a deterrent to potential offenders. *[Government; media]*

Anti-Money Laundering

- Take proactive action to address the acute shortage of skilled and experienced personnel capable of investigating and prosecuting money-laundering offences, and rigorously implement and enforce the relevant laws. *[Government in collaboration with CSOs]*
- Strengthen the capacity of institutions responsible for reporting money-laundering activities to ensure that they are complying with their obligations as stipulated in the FICA. *[Government]*

<p>Objective 5: Accelerate Regional Integration by Participating in the Harmonisation of Monetary, Trade and Investment Policy</p>

i. Summary of the CSAR

397. The CSAR states that the Southern African Customs Union (SACU) and the SADC are of great importance for South Africa's relations with Africa. Apart from these two sub-regional institutions, South Africa has preferential trade agreements with the European Union (EU), the European Free Trade Association, and Mercosur. South Africa also belongs to the Indian Ocean Rim Association for Inter-Regional Cooperation.
398. South Africa has signed and ratified the SADC Trade Protocol, which aims to attain sustainable economic growth through industrialisation. The SADC's goals are to become a free trade area by 2008, a Customs Union by 2010 and a Common Market by 2015. As noted in the CSAR, significant political, economic and bureaucratic challenges confront the SADC in its attempt to reach these objectives.
399. Trade balances within the SADC have continued to remain in favour of South Africa, accounting for 50 per cent of intra-SADC exports and 10 per cent of its imports. To address the trade imbalance, South Africa extended tariff preferences to SADC countries since January 2006 so that all imports from these countries will have duty-free status. Concerns were raised about rules of origin of products within the SADC Trade Protocol that continue to help protect South African producers from competitors in other SADC countries.

ii. Findings of the CRM

400. Regional integration constituted a major aspect of deliberations during the CRM, both in the capital and the provinces. Stakeholders indicated that South Africa has been actively involved in regional integration initiatives within the region in the context of globalisation. Being the largest and most sophisticated economy in Africa, the country has quite naturally taken a leading role in these

initiatives. There is a relatively high degree of convergence among the economies of South Africa, Swaziland, Lesotho, Namibia and Botswana due to initiatives like SACU,²⁵ being the oldest customs union (formed in 1910), and the Common Monetary Area (CMA) agreement along with Lesotho, Swaziland and Namibia. The CRM noted in general that the CMA and SACU have encouraged stable macroeconomic conditions in member countries as well as enhanced welfare.

401. At a regional level, South Africa is also a member of the SADC, along with Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Swaziland, Tanzania, Zambia and Zimbabwe. Among other things the SADC seeks to deepen trade and economic and financial integration within the region, and the CRM acknowledges the progress made so far on several fronts, albeit at a slow pace. Through these groupings, South Africa has managed to maintain important trade and investment links in Africa. Over the last ten years, South Africa has been the single largest foreign direct investor on the continent.
402. South Africa has also been fully involved in the restructuring of the SADC to ensure that it delivers tangible benefits within the region and plays a useful role on the continent. Of particular importance is the 15-year Regional Indicative Strategic Development Plan (RISDP), which is aimed at operationalising the restructured SADC to address pressing development needs. The RISDP has been developed in line with NEPAD and is the regional expression of NEPAD's priorities and objectives, which will ensure that the SADC's development agenda works in tandem with that of the AU. One measure of the strong political and economic cooperation between South Africa and its SADC neighbours is that by 1999, South Africa had established residential missions in all SADC capitals.
403. South Africa, together with other SADC countries, is working towards the creation of a customs union that would ultimately lead to the establishment of the SADC Common Market by 2015. Towards this end, the region has established the following important targets: the formation of a free trade area by 2008; completion of negotiations of the SADC Customs Union by 2010; and completion of negotiations of the SADC Common Market by 2015.
404. Some stakeholders were concerned about the free trade agreement South Africa entered into with the EU in 2000. This development presents both opportunities and challenges for the southern Africa region, more especially SACU member countries. The Trade Development and Cooperation Agreement (TDCA) will open up the 25 EU economies to 95 per cent of South African goods over a ten-year period, while allowing up to 86 per cent of EU goods into South Africa's market over a 12-year period. South Africa on its part agreed to reduce import duties on EU goods from 10 to 4.3 per cent, while the EU lowered import duties on South African goods from 2.7 to 1.5 per cent. A general expectation of the TDCA was that fiscal revenue would decrease

²⁵ Currently, other member countries are Botswana, Lesotho, Namibia and Swaziland.

initially due to cuts in import duties. SACU countries, however, have seen an increase in their revenues on the back of the structure of the revenue-sharing formula, as well as the growth in the South African economy.

405. Macroeconomic convergence is key to the acceleration of regional integration within SADC countries. Substantial progress has been made towards this objective which, among other things, calls for attainment of deeper monetary policy cooperation in order to maintain economic stability within member countries, which is a necessary step for growth and faster integration. It is hoped that by 2008, member countries would have attained single-digit inflation rates; decreased budget deficits to less than 5 per cent of GDP; and achieved gradual interconnection of payments and clearing systems, among other things. To this end, South Africa has been actively involved in the SADC's Committee of Central Bank Governors (CCBG), a body established by the SADC Ministers of Finance in 1995 to achieve closer financial/monetary cooperation and integration within the SADC region. The body meets twice a year and is chaired by the SARB Governor. Through these meetings, SADC member countries have thus far managed to bring about closer cooperation in the areas of monetary policy and instruments which, inter alia, span the areas of bank supervision; money and capital markets; international financial relations; national payment systems; clearing and settlement systems; human resource development; and money laundering.
406. Greater regional integration calls for further reduction or removal of exchange controls. If left unchanged, exchange controls could deter investors and be a stumbling block in the way to smooth, effective cooperation among members. The CRM noted that although South Africa has made considerable progress in easing exchange controls, the process has stalled since 2004, the target year for the abolishment of all intra-regional exchange controls. To date, exchange controls are still being implemented to a large degree. This has resulted in low levels of FDI to the country, while direct investment by South African companies in the SADC region has been on the rise, tipping the scale in favour of South African investors.
407. Some stakeholders were, however, of the view that South Africa is still faced with the challenge of clarifying its position from that of a regional hegemony to one of partnering with all member states in achieving the region's common agenda. In order for regional integration to become a reality in southern Africa, South Africa needs to strike a good balance in this respect.
408. The challenge for South Africa in the coming years is that of ensuring effective implementation of the RISDP and further strengthening of the reorganised SADC. The country needs to find a more equitable trade structure to address the current imbalances of trade that are in its favour.
409. Stakeholders indicated that South Africa, together with other pivotal African states, has played a leading role in reconstituting the Organisation of African Unity into the AU. Since hosting the inaugural summit of the AU in July 2002, South Africa, in collaboration with other member countries, has been fully

engaged in operationalising AU organs and structures. To this end, the country has hosted the Pan-African Parliament since September 2004, while at the same time playing a pivotal role in the implementation of NEPAD and the APRM, as indicated in Box 4.2.

Box 4.2: The Role of South Africa in NEPAD and the APRM

South Africa has played a prominent, leading role in developing NEPAD and supporting its structures and processes. The President, as one of the five initiators of NEPAD, has actively participated in almost all the meetings of NEPAD's Heads of State and Government Implementation Committee (HSGIC). As Chairperson of the AU in 2002/03, the President was responsible for the overall roll-out of NEPAD as the socio-economic development programme of the AU and, as such, promoted it in all international forums, from the UN and the World Summit on Sustainable Development (WSSD) to the Association of Southeast Asian Nations (ASEAN).

South Africa has also been instrumental in the development of several generic NEPAD action plans and projects. Each government department has established a focal or coordinating point for NEPAD to ensure the synchronisation of their activities with the objectives of NEPAD.

The country has hosted the NEPAD Secretariat since its inception and has been the largest financial contributor to its budget to date. In addition, it seconded the Economic Advisor of the President to head the Secretariat for the first four years of its existence. It has also seconded a number of officials on a full-time basis to the Secretariat over time while still carrying the costs of these posts.

South Africa also hosts the APR Secretariat in Midrand and continues to play a leading role in the development and operationalisation of the APRM. However, clarity is needed on the legal status of these secretariats.

Source: www.nepad.org, APR Secretariat and CRM compilation, July 2006.

iii. Recommendations

410. The APR Panel recommends that South Africa:

- In collaboration with other SADC member countries, ensure effective implementation of the RISDP through support for monitoring and evaluation. *[Government in collaboration with other SADC countries]*
- In collaboration with SACU and SADC members, develop a framework for a more equitable trade structure to address the current imbalances of trade in favour of South Africa. *[Government; SACU and SADC member countries]*
- Expedite action on the removal of exchange controls in order to remove barriers to trade and economic integration. *[Treasury; SARB]*

CHAPTER FIVE

5. CORPORATE GOVERNANCE

“Corporate governance is concerned with the ethical principles, values and practices that facilitate holding the balance between economic and social goals and between the individual and communal goals. The aim is to align as nearly as possible the interests of individuals, corporations and society within a framework of sound governance and common good”.

*Objectives, Standards, Criteria and Indicators for the APRM,
6th Summit of the NEPAD HSGIC, 9 March 2003, Abuja, Nigeria*

5.1 Overview

411. Corporate governance in South Africa must be situated within the wider macroeconomic framework of the country. Occupying only 3 per cent of the continent’s surface area, the country produces 25 per cent of Africa’s gross domestic product (GDP), which reflects its status as an economic powerhouse in the region. South Africa also accounts for about 40 per cent of all industrial output and over half of all generated electricity. Its mining industry constitutes 45 per cent of all mineral production in Africa, with exports to as many as 87 countries. Gold, platinum, coal and diamonds dominate the export and revenue earnings.
412. Other strengths include an excellent physical and economic infrastructure, growing manufacturing sector and tremendous growth potential in tourism and the service industry. The country is also well positioned technologically to compete in the global market. Its communication system is well developed, with about 5 million installed telephones, 4 million installed exchange lines and 14 million mobile telephone users. The network is entirely digital and the main transmission media are microwave and fibre-optics. Internet access is widely available.
413. Private and state-owned corporations produce the bulk of South Africa’s goods and services, both for export and domestic consumption. They manage most of its capital stock, are central to the allocation of investment and are responsible for virtually all of the country’s savings. Over the last 12 years, corporations have mobilised more than 75 per cent of South Africa’s domestic savings, allocated and planned 85 per cent of all investment, and currently own and manage three-quarters of the capital stock. The corporate sector and corporate governance are inevitably crucial to South Africa’s development, particularly in the light of the political transformation that has been taking place since 1994.

414. Prior to the advent of democracy, the economy was dominated by six mining finance houses.²⁶ By 1994, five of these conglomerates controlled 84 per cent of the then Johannesburg Stock Exchange, with Anglo Gold alone accounting for 43 per cent of its market capitalisation (i.e. the value of all the shares). Currently, the mining finance house no longer exists. Attempts have also been made to unbundle conglomerates, pyramid schemes and other elaborate control structures. South African companies have been warmly welcomed into the international fold, accompanied by increased investment by multinational corporations in South Africa. By 2005, more than 600 American, 450 German and 200 British companies had a corporate presence in South Africa, together with other corporations from all continents.
415. In 2005, the World Federation of Exchanges ranked the JSE Securities Exchange (JSE) the 16th largest financial exchange in the world, with a domestic market capitalisation of about US\$550 billion. The JSE's market capitalisation stands at approximately 1.65 times the GDP (excluding cross-holdings), which is higher than comparable figures for developed countries such as the United Kingdom (UK), France, Germany and even the United States (USA). The JSE is ranked among the top ten performing stock exchanges in the world in local currency terms. It is ranked second globally for single stock futures.
416. South Africa has a highly sophisticated banking system ranking with the best in the world, having been rated tenth globally. Barclays Bank's acquisition in 2005 of ABSA, the country's largest consumer bank, provides good prospects for banking in Africa, as the merger is deemed to have created the leading bank on the continent.
417. South Africa's exports to the rest of Africa have grown exponentially during the past 12 years and currently exceed those of the USA and the European Union. This has been accompanied by the expansion of local companies investing in the region, in areas such as mining, construction, agriculture, tourism, hospitality, manufacturing, telecommunications, transport, oil and gas.
418. In tandem with these developments have been the changes made to legislation, regulations, listing rules and accounting standards to bring them in line with international norms, such that South Africa currently rates among the top performers in corporate governance in emerging markets.
419. Worthy of mention is the development of the King I and II Reports which, though home-grown in South Africa, have received international acclaim for their comprehensiveness and are widely used. The first report, published in 1994, made a significant contribution to corporate governance law reform and was aimed at boosting the competitiveness in South Africa's private sector following the country's reintegration into the global economy. The 2002 King

²⁶ Mining finance houses were holding companies characterised by a conglomerate structure with diversified holdings, and entrenched control through pyramid structures.

II Report has had great impact in enhancing corporate social responsibility (CSR). It forms the basis of the triple bottom line (TBL) concept, which requires companies to report on such matters as social transformation, ethics, environment and socially responsible investment.

420. In all, the regulatory framework for economic activity in South Africa is adequate. Many stakeholders, however, agreed that the Companies Act of 1973 that regulates business is outmoded and in need of major change. A Corporate Law Reform Project was initiated in 2002 and is ongoing. Amendments are also envisioned for bankruptcy and insolvency laws and legislation relating to technical standards and regulations. There are mixed views on the adequacy of labour laws. Some observers argued that they are overprotective and adversely impact on production, productivity and the creation of jobs. The challenge is to balance economic growth with adequate safeguards for workers, given the historical background of the country. The matter remains in public discourse.
421. South Africa has taken steps to reform its laws to ensure full participation in business by historically disadvantaged groups. Most notable of these reforms are the black economic empowerment (BEE) and broad-based black economic empowerment (B-BBEE) strategies, as well as related codes, sectoral charters and various microfinance schemes.
422. Despite efforts to enable the economically marginalised groups to enter the mainstream economy through institutional and legislative reform, South Africa continues to operate two economies – one advanced and sophisticated with first-class infrastructure and competitive industries, and the other informal and characterised by high levels of poverty and unemployment. Poverty among South Africa's disadvantaged populations is exacerbated by high HIV and AIDS rates. The high incidence of crime has been attributed to poverty and inequality and is a cause for concern to both domestic and foreign investors.
423. The fundamental challenge South Africa faces is how to design a corporate governance system that works for its dual economy and, in the long run, will succeed in bridging the gap between the first and second economies and ameliorate the plight of historically disadvantaged groups. The question is how the private sector can assist in tackling the social challenges of enhanced job creation. How can corporations juxtapose the shareholder wealth maximisation model with issues of CSR and investment? How can corporate governance be used as an instrument for wealth creation and redistribution and for addressing ingrained social inequalities? What kind of public-private partnerships (PPP) would be effective for dealing with these challenges?
424. In raising these questions, the progress and transformations South Africa has made in corporate governance are recognised. A great deal of goodwill and support is evident from private sector players such as Business Unity South Africa (BUSA), individual banks and mining companies through initiatives such as the Financial Sector and Mining Charters, the Mzansi Account for the un-banked, skills development measures, and PPPs in the development of

infrastructure. While these should continue, they need to be reinforced by all players to be able to confront the fundamental rift between the first and second economies.

5.2 Standards and Codes

i. Summary of the CSAR

425. The CSAR lists the eight corporate governance standards and codes contained in the APRM's Objectives, Standards, Criteria and Indicators (OSCI). It does not, however, provide specific information on the dates of their adoption or accession, except for the African Charter on Human and People's Rights (ACHPR), which South Africa ratified on 9 July 2006.

ii. Findings of the CRM

426. Due to this omission in the CSAR, the CRM interrogated government officials and other stakeholders on the status of implementation of the country's corporate governance standards and codes. These deliberations confirmed that South Africa has made tremendous progress in their implementation.

Principles of Corporate Governance

427. South Africa has adopted the principles of corporate governance designed by the Organisation for Economic Cooperation and Development (OECD) and Commonwealth associations. The Institute of Directors (IoD) launched an initiative led by Judge Mervyn King, which resulted in the development of the King I and II Reports on corporate governance. These reports recommend principle-based benchmarks, rather than legally binding prescriptions, for a modern code of corporate governance. The King II code has been incorporated into the requirements for companies listed on the JSE, which they have to comply with or provide an explanation for non-compliance. It is, however, voluntary for all companies not listed on the JSE. These codes also apply to the three spheres of government and all public entities, including state-owned enterprises (SOEs). South African companies operating outside of the country are expected to apply the standards of the King II code in their operations.
428. The CRM discussed extensively with several stakeholders – including Judge Mervyn King, the IoD, JSE, the South African Reserve Bank (SARB) and the business community – whether the requirements of the King II Report should be legislated. Caution was expressed about being too stringent in this matter, as it could place a compliance burden on companies without adding much value. Comparisons were made with the Sarbanes-Oxley Act of 2002 that regulates corporate governance, financial disclosure and public accounting in the USA. American companies have had to invest heavily in technology enabling them to comply with the US Securities and Exchange Commission (SEC) rules and regulations under the Act. For example, Open Pages, the leading provider of governance, risk and compliance management solutions

for Sarbanes-Oxley Compliance, projected that the average company spent between US\$100 000 and US\$1 million on compliance software in 2005.

429. Stakeholders were also concerned about overburdening small and medium enterprises (SMEs) with compliance costs if the code were to be legislated. For instance, it was observed that the 2006 report by the US Senate Committee on Small Businesses and Entrepreneurship found that compliance costs for the Sarbanes-Oxley measures were disproportionately higher for small businesses than for larger companies. Another reason given was that legislation may not necessarily forestall abuse and, in fact, runs the danger of taking a tick-box approach to compliance.
430. The CRM noted the reasons advanced for non-legislation of the King II Report, in particular the regulatory and compliance burden for SMEs. The CRM holds the view that, given the arguments against codifying corporate governance standards, it may be imprudent to legislate these codes wholesale. Nonetheless, the CRM is convinced that modalities should be found through existing and other legal frameworks to enhance corporate governance practices at enterprise level. For example, poor corporate governance in insurance companies has been blamed on the lack of supportive legislation. The CRM encourages dialogue and discourse among stakeholders so that consensus can emerge on the optimum level for legislation of the King Reports and other codes on corporate governance.
431. The CRM noted the concern raised in the CSAR that some South African companies operating elsewhere in Africa were not adhering to the King II code. Both the government and the business community were aware of certain instances where this has occurred, but do not condone this conduct. Modalities for managing the issue are being explored. This would entail, for example, ensuring that South African multinational companies (MNCs) comply with the new framework for corporate reporting under the Global Reporting Initiative (GRI), which fosters transparency and accountability of corporate activities beyond financial matters.

International Accounting Standards

432. Accounting standards were discussed at a meeting with the South African Institute of Chartered Accountants (SAICA). The CRM learnt that South Africa has adopted the International Accounting Standards (IAS) and that South African companies have been required to comply with the International Financial Reporting Standards (IFRS) since 1 January 2005. At the time of writing this Report, these standards did not yet have legal backing. However, the proposed Companies Amendment Bill will give legal backing to the IAS.
433. The CRM noted the concern expressed in the CSAR about the absence of effective mechanisms for regulatory enforcement. According to the 2003 Report on the Observance of Standards and Codes (ROSC) of the International Monetary Fund (IMF), this situation facilitated uncontrolled manipulation of accounting policies. According to the ROSC, many companies have highly

skilled accountants and auditors available to them who use sophisticated accounting manipulations that may not be evident from a reading of financial statements. As a result, non-compliance with established accounting standards takes place, even while giving the appearance of full compliance.

434. The CRM was informed that this shortfall necessitated the creation of the Monitoring Panel of Generally Accepted Accounting Principles (GAAP) by the JSE and SAICA as a private sector body to enforce accounting standards for listed companies. This body will be replaced by a Financial Reporting Council (FRC) that will give guidance on reporting standards once the new Companies Act is in place. Overall, the CRM is of the impression that current reforms to laws impacting on accounting, such as the proposed Companies Act and Auditing Profession Act (APA) of 2005, would improve disclosure and safeguard the integrity of the accounting and auditing professions.
435. The difficulty SMEs experienced in applying accounting standards at the same level as larger companies was raised in the discussions. The CRM learnt that, due to capacity constraints, there are challenges in implementing the Public Finance Management Act (PFMA) of 1999 and the Municipal Finance Management Act (MFMA) of 2003. Collaborative efforts are being made by the government, SAICA and other players to address the issue. The new Companies Act groups companies into public interest and limited public interest companies. SMEs would fall in the latter group and hence could be allowed to use simplified accounting standards.

International Standards on Auditing

436. The CRM was informed that South Africa has adopted international standards on auditing and developed a number of standards to complement these. The King II Report also recommends that interim financial statements be audited.
437. Worthy of note is the new APA signed into legislation by President Mbeki in January 2006. The Act is to be implemented in phases, the first of which came into effect on 1 April 2006. Its purpose is “to provide for the establishment of the Independent Regulatory Board for Auditors (IRBA); to provide for the education, training and professional development of registered auditors; to provide for the accreditation of professional bodies; to provide for the registration of auditors; to regulate the conduct of registered auditors ...”
438. The Act seeks to improve the integrity of South Africa’s financial sector and financial reporting by introducing a more comprehensive, modern legislative framework for overseeing and regulating the auditing profession. As noted earlier, there are also provisions in the proposed Companies Amendment Bill that entrench and safeguard the independence of auditors within the corporate environment, inter alia, by providing for the rotation of audit partners.

Core Principles of Effective Banking Supervision

439. Due to the global operations of the South African banking sector, the best international standards of banking regulation and supervision are employed. Corporate governance in South African banks is also sound, as evidenced by the report of the Myburgh Commission in 2003. The study by Judge Myburgh covered five of the country's largest banks (the Standard Bank Group; ABSA; the FirstRand Group, which includes First National Bank Limited; Investec; and the Nedbank Group) and found that these banks were committed to the highest standards of corporate governance. As a result, South African banks operate easily outside the country and, similarly, foreign banks are attracted to South Africa because of the good supervisory environment.
440. South Africa's commitment to maintaining high standards of governance in the banking sector also extends to cooperation with, and assistance to other bank supervisors in the Southern African Development Community (SADC). Matters of common interest include the harmonisation of supervisory and accounting practices, training of supervisors, development of technology-based systems and measures to combat money laundering.
441. The CRM met with the SARB about the progress being made with regard to South Africa's declared position to adopt the "International Convergence on Capital Measurements and Capital Standards: A Revised Framework", or Basel II, which was issued by the Basel Committee in June 2004. The CRM learnt that the announced implementation date for the country's banks was 1 January 2008. As regulator, the SARB will evaluate the impact of the new framework on capital requirements and risk management processes during a parallel run to be conducted for a year prior to implementation (commencing on 1 January 2007). Indications are that the country's main banks will be ready for implementation of the Basel II Accord by the due date. It was also acknowledged that aligning all banks to the Basel II framework would require significant investment, both in time and resources.

Core Principles of Securities Supervision and Regulations

442. The CRM met with the Financial Services Board (FSB), which is responsible for supervising financial services except banks. The CRM learnt that South Africa has adopted the 30 Core Principles of Securities Regulations of the International Organisation of Securities Commissions (IOSCO). These form the basis of the regulations designed by the FSB.
443. South Africa has adopted the Insurance Core Principles of the International Association of Insurance Supervisors (IAIS). The CRM was informed that the FSB undertook a self-assessment in February 2005 and found that the country "observed" or "largely observed" all but Principle 9 (which deals with corporate governance) and Principle 28 (which is concerned with anti-money laundering and combating financing of terrorism). These latter two principles were rated as "partly observed".

444. Partial observance of the corporate governance principles was ascribed to the lack of supporting legislation via the Companies Act of 1973, leading to reliance on administrative requirements alone. Although adherence to the King II Report is required by the Registrar of Insurance in terms of Directive No. 38 as a registration condition, this would only be monitored through on-site visits. It is neither legislation nor a regulation and is therefore not enforceable.
445. The FSB deals with anti-money laundering by requiring that information on the policies, procedures and records for the Financial Intelligence Centre Act (FICA) of 2001 be submitted in insurers' returns. However, the supportive Act passed in 2003 is still relatively new and the Financial Intelligence Centre charged with oversight of the implementation of legislation was established only in 2004. Furthermore, there is no dedicated staff at the FSB responsible for anti-money laundering legislation.
446. The Financial Intelligence Centre was established by the FICA of 2001. The Act states that the purpose of the Centre, together with the Money Laundering Advisory Council also established under the Act, is "to combat money laundering activities; to impose certain duties on institutions and other persons who might be used for money-laundering purposes; to amend the Prevention of Organised Crime Act of 1998 and the Promotion of Access to Information Act of 2000; and to provide for matters connected therewith."
447. The CRM learnt that Banks are doing well in implementing the "Know Your Customer" obligations in the fight against money laundering. The FSB felt there was room for improvement in the execution of anti-money laundering requirements in insurance companies, based on results of the aforementioned self-assessment on Principle 28 of the Insurance Core Principles.
448. South Africa is recognised as a strategic country in international finance. In 2003 it was welcomed as the first African country and the 30th member of the Financial Action Task Force (FATF), a group that deals with anti-money laundering and combating terrorist financing.

Labour Codes

449. The backdrop to South Africa's accession to a number of conventions of the International Labour Organisation (ILO) is the political history of the country, which is dotted with discrimination and abuse of certain categories of workers under the apartheid regime. Political unrest in the 1950s led to the amendment of the Conciliation Act of 1956 to have more control over the activities of, and the role played by black workers in the national economy. The establishment of the Wiehahn Commission in 1979 totally changed the outlook of the labour relations and labour laws of South Africa. One of the most profound recommendations made by the Commission was the extension of freedom of association to cover all persons, irrespective of race or gender. Thus, for the first time, trade unions representing black workers were able to make full use of the Labour Relations Act of 1956.

450. South Africa has signed all the fundamental conventions of the ILO and therefore recognises the following principles and rights of workers: freedom of association; the right to collective bargaining; elimination of all forms of forced or compulsory labour; the effective abolition of the worst forms of child labour; implementation of minimum ages of employment, as stipulated in ILO Conventions 182 and 138; and the elimination of discrimination in respect of employment and occupation.
451. South Africa has also signed the priority conventions of the ILO relating to such issues as: labour inspection in all workplaces; a labour inspection system in agriculture; tripartite consultation (member countries commit to operating procedures that promote effective consultations between representatives of the government, employers and workers on ILO-related matters); and Convention 122 of 1964, referred to as the Employment Policy Convention. The aims of the Convention are to stimulate economic development, raise the standards of living and overcome problems of unemployment and underemployment.
452. Following the advent of democracy in South Africa and the adoption of the Interim Constitution in 1994, it became evident that the Labour Relations Act of 1956 was in conflict with key clauses of the Interim Constitution. A Ministerial Legal Task Team was appointed to draw up new labour legislation, which resulted in the Labour Relations Act of 1995, later amended in 2002. Other legislation impacting on labour law includes: the Basic Conditions of Employment Act of 1997; Skills Development Act of 1998; Unemployment Insurance Act of 2001; Occupational Health and Safety Act of 1993; and the Compensation for Occupational Injuries and Diseases Act of 1993. The country has also instituted policies aiming at promoting equality and harmony on the labour front, such as the Employment Equity Act (EEA) of 1998, the Growth, Employment and Redistribution (GEAR) Strategy, and BEE models.

Codes on Industrial and Environmental Safety and Hygiene

453. From documents that are publicly available, the CRM learnt that South Africa is a signatory to several industrial and environmental safety and hygiene treaties. It has also promulgated domestic laws, such as the Mine Health and Safety Act of 1996 and National Environmental Management Act (NEMA) of 1998 to promote safety and hygiene, especially in the workplace.

Monitoring and Enforcement of Compliance of Codes and Standards

454. Implementation of codes and standards in South Africa is supported by a wide variety of oversight and regulatory institutions. These include the Ministry of Finance for financial regulation, the FSB in the non-banking financial sector and the SARB in the financial sector. Others are the Accounting Standards Board (ASB), the Registrar of Companies located at the Department of Trade and Industry (DTI), the JSE and the Securities Regulation Panel (SRP). There are also sector-specific regulators (for competition, gambling, etc.) whose oversight functions are targeted and serve a specific purpose. In addition, there

is a good number of self-regulatory and professional bodies, most of which adhere to high standards. As a result of the National Credit Act of 2005, the National Credit Regulator was established in June 2006 to oversee and regulate entities giving credit to more than 100 people per annum and charging interest on the credit extended.

455. Some stakeholders voiced their concern about overregulation, noting that the plethora of oversight institutions, particularly in financial services supervision, often led to compliance and enforcement pitfalls due to multiple reporting obligations. They observed that there may be a need to consolidate some of these obligations.
456. When the CRM raised the issue of a multi-sector regulator for South Africa, it was informed of discussions around the establishment of a single regulator for the financial services sector, encompassing the SARB's Banking Supervision Department and the FSB, but that the country had not yet decided to move in this direction. Some of the considerations herein relate to capacity constraints.

iii. Recommendations

457. The APR Panel recommends that South Africa:
- Take steps to oversee and enforce adherence to the King II Report and the GRI by South African companies operating elsewhere on the continent in all aspects of their operations. *[Government; oversight institutions; BUSA; companies operating in Africa]*
 - Enhance capacity at the provincial and municipal levels to comply with the requirements of the IAS, PFMA and MFMA. *[SAICA; IRBA; professional accounting bodies; government]*
 - Assist smaller banks in aligning with the Basel II framework. South Africa is also encouraged to continue the supportive role it is playing in southern Africa to inform and build capacity on Basel II issues. *[Government; SARB; banks]*
 - Enhance enforcement of the ILO codes through inspection and site visits, in particular in labour-intensive factories and on rural farms where these laws are often wantonly abused. *[Department of Labour; trade unions; civil society; employers]*
 - Step up surveillance, monitoring and enforcement roles in each of the mandates of oversight institutions. Greater coordination is needed among these institutions. *[Government; Ministry of Finance; SARB; oversight institutions]*
 - Continue discussions on the multi-sector regulator, in particular between the FSB and the SARB, to find modalities for further strengthening and

streamlining supervision of the financial services sector. *[Ministry of Finance; Treasury; SARB]*

5.3 Assessment of the Performance of APRM Objectives

Objective 1: To Promote an Enabling Environment and Effective Regulatory Framework for Economic Activities

i. Summary of the CSAR

Commercial Enterprises and the Economy

458. South Africa's well-developed economy includes large and well-established enterprises and conglomerates, a number of SMEs and a large number of micro-enterprises, the majority of which are survivalist. The CSAR notes that over 75 per cent of South Africa's production is generated by private business. SOEs account for approximately 25 per cent of capital stock in South Africa and generate a disproportionate 33 per cent of all savings.

Regulatory Framework

459. Key laws governing corporate affairs in South Africa are the Companies Act of 1973, Close Corporations Act of 1984 and Cooperatives Act of 2005. Other government legislation with a direct impact on corporate governance includes: the Labour Relations Act of 1995; Basic Conditions of Employment Act of 1997; National Environment Management Act of 1998; Insider Trading Act of 1998; Promotion of Access to Information Act of 2000; EEA of 1998; and Securities Services Act (SSA) of 2004.
460. In the public sector the PFMA of 1999, MFMA of 2003, Treasury Regulations and Companies Act of 1973 govern public sector reporting and accountability. The CSAR recognises that there is lack of clarity on the accountability mechanism for public bodies, particularly with regard to the parliament's oversight role.
461. The Broad-Based Black Economic Empowerment (B-BBEE) Act of 2003 aims at creating an enabling framework within which the government and business can contribute to BEE by, for example, publishing codes of good practice and entering into sectoral transformation charters.
462. The FICA is in place to counter money laundering and international crime. Laws for regulating specific sectors of the financial industry include: the South African Banks Act of 1990; Long-Term Insurance Act of 1998; Short-Term Insurance Act of 1998; and Collective Investment Schemes Act of 2002. The Auditing Industry is regulated by the APA of 2005.

463. The Competition Act of 1998 provides mechanisms for creating and regulating a fair business environment. Generally, consumers are protected under the Credit Agreements Act of 1980. South Africa has also updated its regulatory framework for technical and standards regulations and trade administration, especially for anti-dumping and tariff administration.
464. Overall, the regulatory framework is noted as being adequate, although a few problematic areas are currently under review. One of these is the Companies Act of 1973, which is seen as highly formalistic and imposes unnecessary compliance burdens on the investor. The CSAR also points out that the time it takes to register a company can be shortened. Other laws proposed for amendment include bankruptcy and insolvency laws and legislation relating to technical standards and regulation.
465. Another issue flagged in the CSAR concerning the regulatory framework relates to commercial dispute resolution. It is noted that the judicial system is highly burdened with criminal matters and consequently pays insufficient attention to civil matters.
466. The CSAR outlines the supervisory authorities responsible for oversight of the business environment in South Africa. It is further noted that the government and banking, insurance and financial sector regulators are generally considered effective. However, the CSAR observes that some self-regulatory bodies are primarily seen as mechanisms for lobbying for the government.

Banking System and Access to Finance

467. The banking sector is described in the CSAR as stable and sophisticated, with four large banks and smaller niche institutions supporting medium and large business with debt and equity financing options.

South Africa's Exchanges

468. The CSAR notes that the JSE is a large and very liquid stock market, ranked 16th in the world. A secondary board, the Alternative Exchange (AltX), lists smaller businesses, while a Socially Responsible Investment (SRI) Index highlights JSE-listed companies operating in the areas of socio-economic and sustainable development. The Report highlights the significant technological and cost-effective measures developed in the last ten years at the JSE, which can be described as a best practice in Africa. It notes that under JSE rules, companies are obligated to: disclose price-sensitive information in advisory and cautionary public trading statements; declare director interests; disclose related party transactions; and publish interim reports, quarterly results and annual financial statements.
469. No information is contained in the CSAR on the Bond Exchange of South Africa (BESA) or the South African Futures Exchange (SAFEX).

Infrastructure

470. The CSAR refers to international benchmarks indicating that the economic infrastructure in South Africa is “of reasonable quality”. It notes that a total 271 712 gigawatt hours of electricity were generated in the country in 2002, produced almost entirely from coal, and that South African electricity is low cost. The country has 20 796 km of rail track, 63 177 km of paved roads, three international airports, 4.844 million fixed telephone lines and 13.9 million mobile telephone users. Access to water is good in urban areas but lags behind in rural areas.

Small, Medium and Micro-Enterprises

471. The CSAR states that the national strategy for small, medium and micro-enterprises (SMMEs) has two objectives, namely to promote the growth of SMMEs so as to generate employment and promote income redistribution, and to redress the discrimination experienced by historically disadvantaged groups in accessing finance.
472. In this regard, the government introduced the Small and Medium Enterprise Development Programme to facilitate the entry of women in business. A National Strategy for the Development and Promotion of Small Business in South Africa has also been created to foster an enabling environment for small business. Key institutions for funding SMMEs are the Small Enterprise Development Agency (SEDA), Khula Enterprise Finance, the National Small Business Council and provincial SMME desks. The government has embarked on two funding initiatives: the South African Micro-Finance APEX Fund and Land Bank, both of which promote the agricultural sector and seek to ensure the equalisation of benefits to disadvantaged groups such as women and people with disabilities.

Investment Promotion

473. The CSAR notes the presence of several state-owned entities and development finance institutions (DFIs) that promote private sector growth, such as the Development Bank of Southern Africa (DBSA), Industrial Development Corporation (IDC), National Empowerment Fund (NEF) and Export Credit Insurance Corporation. It also refers to the National Industrial Participation Programme, which aims to raise investment levels and increase the export of South African goods and services. Sector-specific government investment programmes also exist.

State-Owned Enterprises

474. The CSAR refers generally to the government’s two-pronged approach to SOEs. It notes that, in some instances, the government has partially privatised SOEs, while in others the “corporatisation” of SOEs has been pursued. The goals of the government are to improve service delivery, accountability and efficiency in SOEs.

Women's Entrepreneurial Development

475. The government pursues its goals of supporting women in business through various strategies, including the National Research and Development Strategy. This strategy supports access to, and participation of women and historically disadvantaged communities in the science, engineering and technology fields. There is also government participation in the National Economic Development and Labour Council (NEDLAC), a forum for dialogue on socio-economic policy.

Constraints to Growth

476. The CSAR identifies factors that constrain growth: access to infrastructure in rural areas, including water and sanitation; bureaucratic red tape; policies for trade liberalisation; skills shortages; HIV and AIDS; corruption; and high costs of certain inputs, such as telecommunications and logistics. However, no analysis or contextualisation of these constraints is made in the CSAR.

ii. Findings of the CRM

Commercial Enterprises and the Economy

477. Enterprises in South Africa cover a wide variety of activities that can be clustered as follows: agriculture and agro-processing; construction; electrical, gas, steam and water; finance, insurance and business services; manufacturing; mining; catering and accommodation; communications; transport; storage; trade, and so on. Agriculture and mining are regarded as primary sectors. The finance, real estate and business services sector constitutes the largest portion of the economy (19.5 per cent), followed by manufacturing (16.4 per cent). The trade sector, including wholesale and retail trade, hotels and restaurants, provided the most employment opportunities, with over 3.02 million South Africans working in this industry in September 2005.²⁷
478. South Africa is a self-sufficient in food production and the agricultural sector has become a major exporter. International agro-processing industries with a recognised presence in the country include, for example, Cadbury, Schweppes Coca-Cola, Danone, HJ Heinz, Kellogg, McCain Foods, Minute Maid, Nestle, Parmalat, Pillsbury, Unilever and Virgin Cola.

Regulatory Framework

479. The legislative framework for commercial activity is largely adequate. The CRM confirmed that problematic areas noted in the CSAR (e.g. the revision of the Companies Act of 1973) are being addressed. In this context, a project to reform company laws was initiated in 2002 and is being implemented in two phases. The first phase relates to the amendment of corporate laws to be

²⁷ Source: Statistics South Africa (StatsSA). Statistical Release P0441, Third Quarter 2005, Table A; and Statistical Release P0210, Labour Force Survey, September 2005.

completed in 2006, while the second concerns the overhaul of the Close Corporations Act of 1984 to be passed in 2007. In short, the reforms aim to simplify the process of starting and maintaining a company, while at the same time providing for enhanced corporate governance. The CRM was informed that the first phase is at an advanced stage and relevant stakeholder groups, such as business and the IoD, have commented on the proposed amendments.

480. Both the background paper and the CSAR point to problems with the highly formalistic legislation for registering companies, which imposes unnecessary compliance burdens and lengthens the time it takes to register a business. The CSAR notes that the turnaround time is one week, while the background paper states that it can take up to six weeks. According to the 2006 edition of the World Bank's Doing Business survey, entrepreneurs can expect to go through nine steps to launch a business over 35 days on average, at a cost equal to 6.9 per cent of the gross national income (GNI) per capita in South Africa. This compares less favourably with an average 6.2 steps to launch a business over 16.6 days, at a cost of 5.3 per cent of GNI per capita in the OECD countries.
481. The Companies and Intellectual Property Registration Office (CIPRO), the agency under the DTI responsible for business registration, was of the view that its turnaround time in company registration has improved significantly. CIPRO maintained that it takes one day for close corporations and three days for public companies to register. This claim was disputed by stakeholders who cited delays in registration. The CRM was informed of "shelf registration" wherein an intermediary or third party registers a number of companies with the principal goal of selling them off to third parties. This practice had come about due to previous inordinate delays in registering a company. It is hoped that the new Companies Act will address these concerns.
482. The CRM interrogated the effectiveness of CIPRO's regulatory and oversight mandate. Information provided by the Office indicated that it is governed by the Acts under its administration, the most important being the Companies Act of 1973, Close Corporations Act of 1984, Cooperatives Act of 2005 and Intellectual Property Laws Rationalisation Act of 1996 for trademarks, patents, copyright and designs. CIPRO noted that the practice has been to accept all filing of documents in good faith, or the bona fides of the persons filing the documents. However, CIPRO has realised it should be more proactive in combating fraudulent filings and now plays a more active regulatory function in this regard. For example, the Compliance and Regulation Division has been set up to handle all fraudulent filings and actively investigate all transgressions of these Acts as per their mandate. Electronic interventions are used to tighten up on filing requirements and checks.
483. Stakeholders expressed mixed views on the adequacy of labour legislation. Those mostly from the private sector stated that labour laws are restrictive in some areas and have a broader impact on production, productivity, growth and job creation. Representatives of trade unions, however, were of the view that the current labour framework is ideal, especially when measured against the historical backdrop of South Africa. Also impacting on labour laws are the

BEE and B-BBEE strategies. All parties consulted supported these strategies but noted that they should be properly implemented to avoid abuse.

484. Several foreign companies complained that South Africa's immigration laws make it difficult for them to obtain work permits for their foreign employees. This called into question potential investors' ability to staff their operations with skills at a given time.
485. Stakeholders confirmed the concern expressed in the CSAR that the process of commercial dispute resolution is too long and costly. A number of alternative mechanisms for dispute resolution have been championed and instituted by business, and more recently the IoD. More work is still needed in this area to reduce backlogs and ensure justice.
486. Problems with the judicial system also extend to the prosecution of economic and white-collar crime, which is noted as ineffective due to inordinate delays. This has necessitated the establishment of self-help mechanisms by entities. For example, the JSE has a name-and-shame strategy for those found to engage in insider trading and other unethical practices. The FSB has also put in place an Appeals Tribunal to address matters within its jurisdiction.
487. Stakeholders pointed to the need to reform the bankruptcy and insolvency laws to allow for bankruptcy reorganisation.

Banking System

488. South Africa has a highly sophisticated banking sector, ranked among the best in the world. The Banking Supervision Department of the SARB supervises 34 locally controlled and eight foreign-controlled banks, 15 local branches of foreign banks, 61 representative offices of foreign banks and two registered mutual banks.
489. The CRM discussed access to banks in rural areas, high bank charges and the large percentage of the under-banked black population. These issues are further elaborated on in Objective 2.

South Africa's Exchanges

490. The JSE is licensed as an exchange under the SSA and provides a market for trading in equities, equity derivatives, agricultural products and interest rate products. Its main lines of business are listings, trading, clearing and settlement, technology and related services.
491. The JSE has a unitary board of 15 members, consisting of a majority of non-executive directors. In the interests of transparency, representatives from the FSB attend board meetings as observers. The JSE supports the principles of corporate governance enshrined in the King I and II Reports. In 2005, the JSE took the decision to adopt a corporate structure, although it has been operating in most respects as a de-facto corporate since its restructuring in 2000. In June 2006, the JSE listed on its own exchange.

492. The JSE ranks 16th in the world with a domestic market capitalisation of about US\$550 billion at the end of 2005. Commendably, the JSE has a parallel market for small, medium and growing companies, the AltX, which came into being in October 2003. Companies can join the AltX to issue new shares, raise funds, widen their investor base and have their shares traded on a regulated market. The AltX is designed to appeal to a diverse range of companies in all sectors, including young and fast-growing businesses, start-ups, management buy-outs and buy-ins, family-owned businesses, BEE companies and junior mining companies. In 2005 the JSE launched Yield-X, an entirely new market that provides a one-stop shop for a wide range of interest rate products. Table 5.1 compares the JSE main board and the AltX.

Table 5.1: Comparison between the JSE Main Board and the AltX

Listing Requirements	Main Board	AltX
Share capital	R25 million	R2 million
Profit history	3 years	None
Pre-tax profit	R8 million	n/a
Shareholder spread	20 per cent	10 per cent
Number of shareholders	500	100
Sponsor/designated adviser	Sponsor	Designated adviser
Publication in the press	Compulsory	Voluntary
Number of transactions	3	n/a
Special requirements	n/a	Appointment of financial directors
Annual listing fee	0.04 per cent of average market capitalisation with a minimum of R26 334 and a maximum of R121 700 (incl. VAT)	R20 000 maximum
Education requirements	n/a	All directors to attend the Directors' Induction Programme

Source: JSE Annual Report 2005. (n/a indicates "not applicable".)

493. To help focus the debate on CSR, as espoused by the King II Report, the JSE developed criteria for measuring the TBL performance of volunteering listed companies.
494. Consequently, in 2004, the JSE launched the SRI Index inspired by the Dow Jones Sustainable Group Index and the FTSE4Good Index in the UK. The SRI

not only encourages social responsibility but also allows investors to assess the behaviours of companies in which they invest. It may well lead to a premium rating for companies included in the Index.

495. In June 2006, the JSE launched the South African Social Investment Exchange (SASIX), which allows companies to assess the performance of their corporate and social investments with a social return. A first in Africa, SASIX builds on the experience of a similar initiative launched by the Brazilian Stock Exchange in 2003, as well as the growing global practice of performance-based social investment. SASIX will help investors understand exactly where their money is going and how it is making a difference, and will help instil a culture of accountability among beneficiary organisations.

Best Practice 8: JSE Securities Exchange

The JSE is a world-class exchange with simultaneous listing and trading through the London Stock Exchange. All settlements of JSE trades are guaranteed and take place electronically through STRATE (Share Transactions Totally Electronic). STRATE is a central securities depository that provides the means for the electronic settlement of all financial instruments in South Africa. The JSE has been able to maintain a zero-failed trade status (i.e. a 100 per cent success rate since the inception of STRATE in the main order book). The JSE has real-time market surveillance systems used to combat insider trading. All listed companies are required to comply with the IFRS and the King II Report requirements, which help boost investor confidence. The Alternative Exchange provides a platform for listing for smaller companies. Yield X provides a one-stop shop for interest rate products. The SRI and SASIX help companies assess their TBL activities.

Source: Compiled by the APRM CRM from the 2005 JSE Annual Report and stakeholder interactions, July 2006.

496. Despite its remarkable capitalisation and rankings, the JSE lags behind globally in terms of the number of listed companies. In Africa, for example, it trails behind the Cairo and Alexandria Exchanges. The number of companies listed on the main board has continued to decline – from a peak of 668 companies in 1998 to 426 in January 2004, and only 343 indicated in the 2005 Annual Report. The JSE has tried to attract more listings to both the main board and the AltX. The decline in the number of listed companies may be attributed to a number of factors:

- Corporate consolidation and the declining demand for new equity issues in the domestic market;
- More onerous listing requirements and the corporate governance rules of the JSE (for instance, there were 35 de-listings in 2005); and
- Low interest rates and the availability of financing from private equity firms, which encourages privately owned companies to opt for debt and private equity financing rather than equity financing from the JSE.

497. From an equities perspective, the year 2005 witnessed more listings and fewer de-listings than over the past six years – there were 19 new listings, which is two more than in 2004 and significantly more than in 2003. However, few companies used the JSE to raise capital for expansion or investment through initial public offerings (IPOs). The low IPO rate in South Africa contrasts with the situation in other emerging and developed markets. According to a survey by Ernst & Young, 29 countries (many of whom are emerging markets) raised more than US\$1 billion in IPOs in 2006. This is because JSE listings are led by AltX listings (small company listings and some companies moving from the main board to the AltX to attract attention), inward listings by foreign companies and unbundling. Nonetheless, the AltX has been more successful in attracting SMEs than its predecessors, the Development Capital Market (DCM) and Venture Capital Market (VCM), with 23 companies listed on the AltX as of August 2006. The JSE is also proving to be an attractive market for foreign companies. In 2005, Oando Plc of Nigeria and Tawana Resources from Australia opted to list.
498. Another challenge is that JSE-listed companies are still dominated by white-owned companies. The Presidential Black Business Working Group recently noted that despite the promulgation of the EEA and BEE programmes, a 2005 survey of the top 200 companies in South Africa indicated that only five firms had black ownership of 50 per cent or more. Together, all the black-owned companies constitute only 1.2 per cent of the JSE's total capitalisation. This is not surprising, given that the equity and empowerment strategies are fairly recent and their impact in terms of asset ownership will be gradual. More effort, however, needs to be applied to attain the goal of at least 30 per cent black ownership by the end of the second decade of democratic freedom.
499. International experience has shown that the two-tier stock exchange system with differentiated listing requirements is generally successful in attracting small enterprises and increasing access to equity for small firms. However, differentiated listing requirements in themselves may not be enough to attract investors. Marketing and showcasing small listed companies on the AltX would enhance the interest of companies and investors, as has been done on both the NASDAQ and the Alternative Market of the London Stock Exchange. Evidence shows that few of the companies on the AltX are monitored by stock-broking firms, as most of these firms tend to prefer larger market stocks that generate higher commission. Incentives, CSR and B-BBEE strategies may need to be explored to encourage broker involvement in the alternative market in general and black-owned firms in particular.
500. The JSE has made some effort in marketing AltX companies. Ten of the 23 listed companies were invited by the Investment Analysis Society of South Africa to make presentations on their operations to an audience including stockbrokers, individual private client investors and small institutions. These efforts must be stepped up if the AltX is to avoid the pitfalls of the DCM and VCM listings, which are not too successful in attracting large institutions (who prefer larger corporations) and small investors (who equate the DCM/VCM market with unmanageable risk). The recently introduced FTSE/AltX Index

enables investors to track the performance of the Exchange for the first time, and is also a step in the right direction.

501. The Bond Exchange of South Africa, formally registered as an exchange in 1996, previously traded as the Bond Market Association. BESA is a self-regulatory body licensed by the FSB. It regulates the market in fixed-income securities and associated derivative instruments. BESA offers a three-day rolling settlement using a bond-automated trading settlement system.
502. BESA lists over 375 bonds issued by the central and local government, public sector corporations and major companies. While South African government bonds account for most of BESA's new bond issues, the share of corporate bonds has steadily increased from less than 5 per cent in 2000 to 22 per cent in 2005. Government bonds are even more dominant in market-turnover terms, as the seven most liquid government bonds comprise almost 90 per cent of BESA's turnover, with total corporate debt comprising less than 3 per cent. BESA's market turnover declined from R11.67 billion in 2001 to R8.1 billion in 2005, mainly as a result of historically low interest rates and a more stable macroeconomic environment.
503. Bought out by the JSE in 2001, SAFEX consists of two divisions: Financial Derivatives and Agricultural Derivatives. Due to SAFEX, the JSE is ranked second globally for single stock futures.

Infrastructure

504. During the CRM, discussions on infrastructure focused on problems flagged in the CSAR regarding the facilitation of an enabling environment for economic activity. These include poor infrastructure in rural areas and its impact on market access, and the relatively high cost of using certain key infrastructure (e.g. telecommunications, ports and rail), which impacts on the cost of doing business.
505. The CRM was informed of various national initiatives to support development in rural areas, including the Accelerated and Shared Growth Initiative for South Africa (AsgiSA), Project Consolidate by the Department of Provincial and Local Government, and the Infrastructure Development Improvement Programme. (These are further elaborated on in the chapters on economic governance and socio-economic development.)
506. The CRM was informed that the government had approved high levels of investment for rail and port infrastructure development. It is also undertaking restructuring of state-owned port facilities to make them more efficient. Changes to be made include reforming tariffs to bring them in line with cost structures, separating cargo handling from the National Ports Development Corporation (the latter will be charged with maintaining and developing relevant infrastructure) and opening up port operations to the private sector by way of concession agreements. The vast majority of international trade enters and leaves South Africa through its commercial ports; hence the efficiency of

port infrastructure is a key determinant of the country's competitiveness. This has a direct impact on the creation of jobs and expansion of productive output.

507. The high cost of telecommunications was attributed to the high cost of linking up to global telecommunications networks. The CRM also noted that increased competition in the sector is contributing to reduction in user costs, as has been observed in other jurisdictions.

Small, Medium and Micro-Enterprises

508. The CSAR notes that the views of informal traders were not solicited during the assessment process. The CRM therefore interacted extensively with small, micro- and informal traders during the provincial consultations.
509. One of the issues that preoccupied the CRM is the coexistence of the second economy alongside the first. The CRM requested statistical data on the size and magnitude of these economies, government policy on the second economy and the steps being taken to bridge the gaps between the two.
510. Very little research has been done to estimate the size of the second economy, as it is difficult to measure. It is estimated that South Africa has about 22 million informal workers whose lives are characterised by acute poverty. Though the second economy is very large, its contribution to GDP is relatively low, estimated at just 4.6 per cent in 2004.
511. The Southern African Regional Poverty Network (SARPN) estimated that the average turnover of a business in the second economy was R68 930 in 2004 and that an average of 2.3 persons was employed in each business. The total number of informal outlets was estimated at 749 500, consisting of 261 000 hawkers, 127 600 spaza shops, 40 100 shebeens and 320 800 other outlets. Other statistics are that South Africans spent a staggering R51.7 billion in the second economy in 2004 – close to the combined turnover of R59 billion of South Africa's two largest chain stores. In the second economy, about R16.7 billion was spent on food and R15.9 billion on transport, mainly taxis.
512. President Thabo Mbeki has identified the integration of the second economy into the first as a key objective of government policy. Central to this strategy is AsgiSA. Skills development, procurement policy and asset ownership under this initiative will be a strategic vehicle for promoting economic transition and integrating the second economy into the first. AsgiSA also addresses specific issues relating to the development of SMMEs, such as barriers to entry and competition in certain economic sectors; the current regulatory environment and its effect on SMMEs; and problems with public sector organisations, capacity and strategic leadership and their effect on service delivery.
513. The CRM met with the Minister of Trade and Industry, the Deputy Minister, the Deputy Director-General and other officials from the DTI. It also interacted with DFIs (e.g. the IDC and DBSA) and SME support institutions such as the National Development Agency (NDA) and SEDA. The CRM

confirmed that the government has a number of initiatives for facilitating access to finance: agriculture (Land Bank); infrastructure (DBSA); community and industrial development (IDC); SMME wholesale finance (Khula); SMME non-financial support (SEDA); civil society organisations (CSOs), such as the NDA; BEE (NEF); and Youth (*Umsobomvu* Youth Fund).

514. The CRM noted that despite all the initiatives in place, women, youth, people with disabilities and SMMEs continue to experience problems with access to finance due to various institutional requirements, such as the development of a business plan. It was stated that the process of approving a business plan was also cumbersome and liable to abuse. Some stakeholders alleged that while their business proposals had been rejected, their ideas were used by other people to obtain financing. Everywhere stakeholders stated that more work had to be done with regard to information dissemination and capacity building. Stakeholders also expressed the desire for these institutions to decentralise their services to provincial and municipal areas. They observed that the DTI seemed to operate at arm's length from the organisations and there was not enough oversight of organisational performance.
515. Problems expressed by SMMEs include the lack of market access and entry to sectors historically dominated by white conglomerates. During the apartheid years, the ownership and activities of South African corporations were highly concentrated, a phenomenon due to the exclusions of the minority regime. Since the democratic dispensation in the post-apartheid era, South Africa has introduced a number of policy reforms such as trade liberalisation, BEE and new competition rules in an attempt to unbundle traditional conglomerates and empower previously marginalised black South Africans to venture into the corporate sector, albeit with marginal success. To a large extent, the economy still maintains its distinctive characteristics, including the very large, though reduced, conglomerates.
516. Because of high horizontal and vertical integration of businesses it is common practice for large South African businesses to control the value chain from manufacturing to retailing. Banks, for example, own insurance companies and the latter own the retail outlets whose space is occupied by supermarkets with ownership links to the banks. In such a business environment new entrants not only face very steep barriers to entry but SMMEs, in particular, find it difficult to maintain their competitiveness to survive. The CRM is of the view that the business sector needs to be transformed through policy to dismantle such linkages, so that certain sectors (e.g. retailing) have fewer barriers to entry by SMMEs. Only through such reforms can the economy create capacity to generate additional jobs and meet the ultimate objectives of BEE.
517. Some stakeholders cited the problem of cultural inhibition to entrepreneurial activity. The CRM was informed that, despite the ready availability of small business financing options in South Africa, many potential entrepreneurs are unwilling to venture into the business world due to a general lack of interest. For example, it was noted that greater effort should be made to teach farm entrepreneurs agricultural economics and farm management to ensure that

newly established farms do not become bankrupt due to mismanagement. The CRM believes that entrepreneurial inhibitions can only be countered through better education and skills development programmes.

518. The CRM raised the matter of the DTI's oversight role over agencies under its mandate. It learnt that the DTI upholds an agency management protocol, which includes appraisal of the organisations' five-year strategic plans, three-year business plans and annual operational plans. Emanating from consensus on the alignment of mandates and objectives to priorities of the DTI's business plan, annual shareholder compact agreements are entered into as a service level agreement between the DTI and the agencies. This is reinforced through the management of the reporting mechanism and appraisal process in line with the requirements for quarterly, mid-term and annual reporting and audits. The DTI noted that the agencies under its mandate have so far attained satisfactory compliance records with their reporting. The CRM is, however, of the view that given the degree of clientele dissatisfaction, in particular with regard to SME finance and support agencies, there is a need to re-examine the role and effectiveness of these agencies, as well as their relevance and adequacy in these changing economic times.
519. The CRM noted that there has been some effort by the government to address the above issue. In an attempt to consolidate microfinance support services, SEDA was formed through a merger of Ntsika Enterprise Promotion Agency, the National Manufacturing Advice Centre (NAMAC) and the Community Public-Private Partnership (CPPP) Programme, whose mandates had been non-financial support, technology, and rural or natural resource development respectively. SEDA's current focus is on facilitating start-ups, promoting growth and supporting turnaround. It is decentralising to the provinces and districts. The NDA, which targets the poorest of the poor in seeking to shift them from hopelessness to basic viability, is moving more towards a community-centred than an individual approach to be more effective. The CRM was informed that the Khula programme as conceived by the DTI is a wholesale financial institution intended to act through delivery channels, including commercial banks and retail financial intermediaries. Some of the problems cited could have been due to a lack of understanding of its role.
520. The CRM learnt that the National Credit Regulator was established under the DTI on 1 June 2006 and is responsible for the implementation, compliance monitoring and enforcement of the provisions of the National Credit Act of 2005. Among other things, these are to minimise reckless lending, establish a register of credit providers, and promote prudent and responsible management of credit information, including hand-up information to third parties such as credit bureaus. Provisions for the regulation of credit bureaus, as well as the establishment of a National Consumer Tribunal to protect consumer rights, became effective on 1 September 2006. The remainder of the National Credit Act will come into effect on 1 June 2007, including the provision of credit-related information such as an annual, free credit report to consumers to ensure transparency and accuracy in credit reporting.

521. From the foregoing, it would seem that the national approach to the second economy comprises a number of tailored interventions, each targeting specific aspects. This calls for greater coordination and a more holistic approach at the top to maximise effectiveness. The CRM is of the view that the DTI should undertake an assessment of the effectiveness of all SME support agencies within its mandate and consider facilitating a more hands-on role in small business financing.
522. The CRM is of the view that DTI should explore opportunities for forming joint ventures between black business and white entrepreneurs or foreign partners. Mentoring initiatives should be encouraged, whereby for instance a retired chief executive officer (CEO) could be attracted to provide managerial, administrative and technical assistance to the new entrepreneur. It must be possible to develop a synergetic, systematic business link between some firms in the first economy and some others in the second through subcontracting.
523. The CRM appreciates that some of the proposed initiatives are being explored under the new B-BBEE strategies. It is also encouraged by the DTI's Regional Industrial Development Strategy (2006), which refers to the development of business incubators such as the Innovation Hub in Pretoria where international and local businesses are assisted to develop their business in the research and technology sectors. However, this approach should be extended to the special economic zones and township-based businesses, and the incubator approach should be used to support second-economy enterprises.

Investment Promotion

524. Barclays Bank acquired 53.6 per cent of the shares of ABSA Bank on 27 July 2005 and the holding was increased to 56.6 per cent at the end of that year. The transaction was the largest single foreign direct investment (FDI) made in South Africa since 1994 and the largest investment of Barclays outside of the UK. Barclays and ABSA are working steadily to create the leading bank in sub-Saharan Africa. Apart from this transaction, South Africa has in the recent past not been attracting as much FDI, especially of the Greenfield variety, as anticipated. By contrast, it is an emerging outward investor, ranking among the top ten largest developing country investors in 2004. It must also be stated that the investment of South African companies elsewhere is not matched with similar investment in rural South Africa.
525. The CRM observed that increased FDI flows would facilitate attainment of the 6 per cent economic growth rate the country needs to reduce unemployment and poverty by half. Most stakeholders, however, agreed that although there is some easing of foreign exchange limits, further liberalisation of these controls could send a positive signal to foreign investors about the growing robustness of South Africa's economy.
526. The CRM was informed that South Africa supports the investment of its companies outside its borders, particularly in the rest of Africa. The foreign exchange thresholds for companies investing in Africa are more robust than

those investing elsewhere. Other factors that boost the investment of South African companies in Africa are: proximity; integrated business infrastructure; preferential trade agreements with many countries in the sub-region; the relative size of the various economies; and investment in infrastructure and mining by South African companies acting as a spur for trade in the region.

527. South Africa's SOEs, such as the DBSA, IDC, Eskom and Transnet, have become key links in the drive to invest on the rest of the continent, either in their own right or as levers for private sector development and investment. According to the IDC, its investment portfolio in the rest of Africa includes 33 approved projects in 11 countries, with several others forthcoming. The DBSA has infrastructure projects in the SADC region and the rest of Africa. These two institutions are repositories for information and research on the region. Transnet and its various divisions are active in the region, with Spoornet operating and managing rail links in 14 countries. Eskom is involved in the development of the power sector in the SADC and the rest of Africa. Other investments by public enterprises are in the energy, telecommunications, water, transport, tourism, financial services and agricultural sectors.

State-Owned Enterprises

528. A number of South African SOEs operate in sectors such as transport, defence, telecommunications, energy (oil, gas and electricity), agriculture, mining, DFIs, water and research, with an historical equity value of R145.4 billion.
529. Government ownership is dispersed among nine government ministries known as executive authorities. These are the Ministries of Public Enterprises, Telecommunications, Agriculture, Transport, Water Affairs, Defence, Trade and Industry, Minerals and Energy, and Finance.
530. The regulatory framework for SOEs includes the SOE Enabling Statute, the PFMA of 1999, the Companies Act of 1973 and Treasury Regulations. SOEs are encouraged to adhere to corporate governance codes such as the King I and II Reports. The Department of Public Enterprises has been developing codes of corporate governance and shareholder protocols for SOEs. Moreover, they are subject to parliamentary oversight via relevant portfolio committees.
531. South Africa has detailed the objectives and principles of restructuring in the "Policy Framework: An Accelerated Agenda Towards the Restructuring of State-Owned Enterprises", which was publicly launched on 10 August 2000. In the document it is argued that the country's SOE agenda defines a new way of restructuring SOEs in the developing world, providing a viable alternative to the "sell-off" strategy advocated previously by multi-lateral agencies. The aims of this strategy at the macro-level include:
- Improving efficiency and effectiveness at enterprise level;
 - Contributing to the macroeconomic health through attracting FDI;
 - Reducing borrowing requirements; and

- Helping to achieve social imperatives such as employment growth and wider economic participation by previously disadvantaged groups.

At the enterprise and sector level restructuring involves:

- Improving the efficiency and effectiveness of the entity;
- Accessing globally competitive technologies where appropriate;
- Mobilising private sector capital and expertise;
- Assisting in the creation of effective market structures in sectors currently dominated by SOEs; and
- Assisting in enhanced service delivery.

532. The CRM discussed matters relating to SOEs with the Minister of Finance, trade unions and broader civil society. It met with the IDC and DBSA, two state-owned DFIs. The CRM was informed that the issue of ownership by the state will be dealt with case by case.
533. Some of the SOEs (e.g. IDC, DBSA and Eskom) have been doing rather well and no fiscal transfers are made to them. On the contrary, they pay income tax and dividends. Some of the SOEs provide strategic services, such as rail transport, and there is need for caution as to how their restructuring should be approached. Trade unions, in particular, support the retaining of state control in areas of strategic interest or provision of basic services.
534. Only one SOE – Telkom (37 per cent government ownership) – is currently listed. Implicitly, listing will only be considered if there is need to raise capital or some other strategic interest. Additionally, the listing of Telkom led to massive job losses, which had its own fall-outs. The strategy of the Ministry of Public Enterprises is to balance wider ownership and participation in the South African economy that may result from privatisation with appropriate social plans for limiting the impact of any unavoidable job losses. A representative of the trade unions also noted how wary they are of privatisation because it leads to transfer of ownership into the hands of a few. The CRM was also informed that there had been some experimentation with transferring state ownership to certain social groups, but that this had not resulted in increased profitability or competitiveness of the transferred entity. Moreover, it was acknowledged that there were some unprofitable assets that were still with the state.
535. The SOE sector should be characterised by high levels of efficiency, which can only be achieved through proper strategic direction, appropriate capacity building, and promotion of enabling regulatory and competitive frameworks.
536. The CRM was impressed by South Africa's approach of seeking a viable alternative to SOEs rather than following the traditional sell-off strategy used by many African countries. It also noted the many SOEs in South Africa that are performing competitively and are worthy of emulation by other countries. However, the difficulties experienced by those SOEs that are not performing at optimal levels must be acknowledged and confronted.

Best Practice 9: State-Owned Enterprises

South Africa's SOEs are a vital part of its economic infrastructure. SOEs operate in the electricity, transport and landline telecommunications sectors and are responsible for a significant percentage of input costs to high-growth industries such as tourism, exports, and information and communication technology (ICT). Many SOEs are successful and require no fiscal transfers; in fact, they pay dividends and taxes to the government. For example, Transnet in the transport sector accounts for over 3 per cent of South Africa's GDP, and Eskom, which is involved in power generation and distribution, supplies over 94 per cent of South Africa's electricity, having revenues of over R30 billion a year and substantial profits. SOEs such as the IDC, Eskom, PetroSA, Transnet and South African Airways have also stepped up investment efforts in the rest of Africa in recent years.

Specialised SOEs such as the IDC are a vital part of South Africa's development efforts. The IDC, a DFI with R39 billion in capital and reserves, takes part in developing South Africa while creating more jobs. The aim is to create 52 000 jobs a year by 2011, double its current performance. This will advance the government's general target of halving unemployment by 2014. The IDC has stakes in many listed and unlisted companies in South Africa, with a portfolio of R26 billion, from which it earned R283 million in the 2005 fiscal year.

The success of South African SOEs is in part attributable to the government's strategy of partial privatisation, corporatisation and the articulation of a clear corporate governance framework for SOEs. SOEs operate within the ambit of various laws, including the SOE Enabling Statute, the PFMA of 1999, the Companies Act of 1973, and the Protocol on Corporate Governance in the Public Sector, which incorporates elements of the King II Report, including:

Composition of the board: The boards of SOEs should comprise both executive and non-executive directors, with a majority of non-executives. The maximum period of a director's appointment is set at three years. A unitary board structure, as opposed to a two-tier structure, is more appropriate for SOEs. The board should appraise a director's skills, experience and performance on an annual basis.

Committees: At a minimum, SOEs are directed to establish audit, remuneration and nomination committees.

Shareholder compact: The relationship between the SOE board and the government is governed by a shareholder compact. It sets specific objectives and performance targets to which all board members commit and includes possible remedial action in the case of non-performance. Moreover, the directors of wholly owned SOEs are expected to follow disclosure principles similar to those of private companies listed on the JSE. As a result, the SOE immediately informs the government of any information deemed to have a material effect on the value of the SOE.

Sources: Mawson, N. 2006. "IDC sets 52 000 jobs target for 2011", *Mining Weekly*, 29 June, www.miningweekly.co.za; IDC, 2005. Annual Report 2004-2005, *South African Year Book*, p. 269; South Africa, 2005. Investment Climate Statement, US State Department; and Department of Public Enterprises, 2002. Protocol on Corporate Governance in the Public Sector, September.

537. The CRM is of the view that South Africa's current strategy for SOEs, though commendable, should continue to be fine-tuned. The range of restructuring objectives, although reminiscent of the complex developmental terrain of SOE

operation, may result in a lack of focus, which has been the shortcoming of SOEs elsewhere. It will therefore be necessary to prioritise some objectives above others at sector or enterprise level, while ensuring that all objectives are realised at programme level. Furthermore, the country should be more open to traditional means of divesting state interest, in particular for non-performing SOEs. A prerequisite should be adequate engagement with social partners, including civil society, to explain the strategy adopted and its broad impact on national development, poverty reduction and job creation.

Women's Entrepreneurial Development

538. The CRM received documentation from the DTI confirming its commitment to address issues of gender equity and economic growth as part of its business mandate. Accordingly, the DTI is currently considering a strategic framework that would encompass the provision of business information, entrepreneurial education and training, financing, international trade development support, research and statistics on women entrepreneurship, in order to mainstream gender issues in corporate governance. The initiatives would focus on black women's business organisations and associations, women's cooperatives, and women in the informal sector.
539. Interactions with stakeholders indicated that women still experience hardship in accessing finance for economic activity. They are also poorly represented in corporate sector and management positions.

Constraints to Growth

540. The constraints to growth discussed by the CRM include a complex regulatory environment; inflexible labour laws; red tape; capacity and skills shortages; a high rate of mortality due mainly to three killer diseases (malaria, tuberculosis, and HIV and AIDS); crime; insecurity; and corruption.
541. In discussions with BUSA, the issues constraining growth were identified: education; infrastructure development; cost of doing business; labour issues; the creation of an environment of trust; and crime. Violent crime is of concern to both the private sector and the government. Private sector representatives informed the CRM that it was increasingly difficult to attract relevant skills from abroad due to apprehension around crime. The CRM was informed of the Business Against Crime Initiative that combats crime by installing closed-circuit monitors. The initiative is wholly supported by the private sector. Some stakeholders stated there was insufficient focus on white-collar crime, which is also prevalent.

iii. Recommendations

542. The APR Panel recommends that South Africa:
- Continue, in consultation with the stakeholders, the process of reforming corporate governance laws to align them with current international practice

and the democratic transformation of the country. *[Government; CIPRO; social partners]*

- Consider reforming labour laws to promote, inter alia, the creation of more jobs. CSOs should be engaged in and educated on the broader impact of reformed laws on the creation of jobs and poverty reduction. *[Government; Department of Labour; trade unions; private sector; civil society]*
- Re-examine avenues available for commercial dispute resolution to hasten efficiency in this area. Mechanisms for alternative dispute resolution and arbitration should be explored and supported. *[Government; judiciary; business community; relevant professional bodies and organisations]*
- Explore modalities for enterprise development, in particular among historically disadvantaged populations at community level, and provide the requisite support for capacity development in this regard. The regulatory framework should be reformed to be less burdensome for SME operators. *[Government; DTI; BUSA; social partners]*
- Continue to explore ways to encourage small entrepreneurs and partner them with established companies, such as by subcontracting, developing business hubs and incubators, employing mentoring programmes using retired entrepreneurs, and communicating this effectively to designated beneficiaries. *[Government; DTI; BUSA; social partners]*
- Continue efforts to promote and showcase small companies listed on the AltX. Brokerage firms should be encouraged to be involved in the AltX. *[JSE; DTI]*
- Review existing DFIs and support initiatives for SMEs to assess their efficiency and effectiveness. A holistic policy for development finance should be elaborated on and implemented. *[Treasury; DTI]*
- Continue to liberalise foreign exchange controls in order to encourage FDI. *[Government; Department of Finance; SARB; parliament]*
- In line with AsgiSA, step up current efforts to reduce logistical bottlenecks in infrastructure. The APR Panel encourages the formation of more PPPs in infrastructure development. *[Government; parliament; Department of Public Enterprises; private sector; DFIs]*
- Ensure that the second national telecommunications operator is in full operation in the short to medium term, in order to increase competition in the telecommunications sector and monitor the competitive environment to reduce high telecommunication costs. *[Government]*
- Encourage corporate South Africa to invest massively in rural South Africa to transform the second economy and promote employment in rural areas. Companies willing to embark on this venture should be provided

with the necessary incentives and logistics support. *[Corporate South Africa; parliament; government; provincial governments]*

- Require South African companies operating elsewhere on the continent to observe South Africa's corporate governance standards in their operations. They should be encouraged to undertake SRI programmes. *[Government; BUSA]*
- Continue to fine-tune current SOE strategy and engage adequately with social partners, including civil society, to explain the strategy adopted and broad impact it has on national development, poverty reduction and job creation. *[Government; Department of Public Enterprises; SOEs]*
- Engage with social partners to tackle the issue of crime resolutely. The APR Panel believes that this should be done in tandem with a call for moral regeneration and with the support of religious and cultural ethos. *[Government; judiciary; SAPS; Department of Home Affairs; business community; cultural and religious leaders; other social partners]*
- Step up skills development efforts to ensure the availability of adequate capacity at all levels. In the short to medium term, consideration may be given to the use of outside expertise to spur production. *[Government; social partners]*
- Step up efforts at gender empowerment and mainstreaming in the private sector through the B-BBEE codes, training, financing schemes, and so on. *[Government; private sector; social partners]*

Objective 2: To Ensure that Corporations Act as Good Corporate Citizens with regard to Human Rights, Social Responsibility and Environmental Sustainability

i. Summary of the CSAR

Historical Context

543. In 1994, the South African labour market was characterised by high levels of poverty, extremely low levels of remuneration, income inequality, low skill and education levels, antagonistic labour relations, insufficient protection of labour and people with disabilities, and the absence of a comprehensive social security network. Since then, many of this has changed for the better as South Africa has reformed its labour, human rights and environmental codes. It has provided empowerment programmes and skills development programmes for the historically disadvantaged groups, including black empowerment charters for each business sector.

Labour Relations

544. The CSAR notes that labour legislation includes laws promulgated under the Labour Relations Act of 1995. Codes of good practice have been developed, including a statutory code by NEDLAC, the body representing business, labour, civil society and the government. A non-statutory code of practice has been issued by the Commission for Conciliation, Mediation and Arbitration (CCMA).
545. Businesses are expected to resolve labour disputes internally. If these attempts fail, either party can take the matter to the CCMA. The CCMA held 153 570 hearings over 128 018 disputes during the 2004/05 fiscal year. Some 51 per cent of the hearings were for conciliation and 27 per cent for arbitration. The Labour Court is used as a last resort, although its rulings can be appealed to the High Court for industrial disputes.
546. Department of Labour inspectors are empowered to examine the workplace to enforce compliance with workplace safety and fairness regulations. Employers are required to address identified workplace issues and are subject to fines and court summons for violations. Inspectors have the statutory power to close down a business until the workplace regulation has been complied with.
547. In general, labour regulations are adequate in South Africa, with the following exceptions:
- Inadequacy of whistleblower legislation under the Protected Disclosures Act of 2000.
 - The EEA's provisions for gender equity are not followed, especially higher up the employment ladder of larger companies. In 2006, only 16.8 per cent of executive managers and 11.5 per cent of directors were women.
 - There are significant differences in remuneration. For example, the ratio of the earnings of CEOs of medium to large companies compared with those of employees earning a minimum wage rose from 35:1 in 1994 to 55:1 in 2004. Significant differences in wage rates also occur between men and women, unionised and non-unionised workers, and formal and informal sector workers. It was noted that many women work in the non-unionised and informal sectors.

Corporations and Communities

548. The CSAR notes that CSR projects in communities are driven by legislation in the areas of BEE and skills development, as well as voluntary projects for HIV and AIDS. Significant public-private initiatives include the Business Trust, National Business Initiative (NBI) and President's Business Working Group.
549. Companies listed on the JSE spent approximately R2.4 billion on corporate social investment (CSI) projects in 2005, with an equivalent amount of staff time. CSR projects are largely pursued in the mining and industrial sectors, with mining companies being active in mining communities. Partnerships

between business and other stakeholders are increasing, especially with regard to HIV and AIDS, health, skills development, job placements and housing.

550. The King II Report and the GRI encourage TBL reporting to reveal corporate track records relating to economic, social and environmental goals. In South Africa, however, sustainability reports incorporating such principles tend to be limited to MNCs. A bright spot in this regard is the newly established SRI at the JSE, which monitors the social, economic and environmental investments of companies listed on the Index.
551. The CSAR notes that stakeholders have called for municipalities to create and articulate clear strategies for poverty eradication and job creation as part of an integrated, beneficial investment approach that includes increasing CSI. Others call for South Africa to engage in an open, multi-stakeholder dialogue in order to define and articulate the meaning of CSR and investment, corporate governance and TBL reporting. There are also calls for additional research into the business case for CSR and SRI.
552. The CSAR raises concerns about the impact of current reporting and corporate governance standards on small, medium and micro-businesses. The ability and affordability of smaller enterprises to apply environmental standards and comply with regulatory legislation are also questioned.

Environmental Protection

553. Primary statutes governing the environment include the Constitution, NEMA and the Environment Conservation Act (ECA) of 1989. These regulate citizens' right of access to environmental goods and services, and provides for stakeholder consultation in setting corporate policy and management plans. The ECA regulates harmful environmental practices through environmental impact assessment (EIA) regulations that have been implemented since 1997. New EIA regulations are currently being developed to incorporate changes in environmental laws.
554. The CSAR notes that stakeholders are concerned about the effectiveness of environmental inspections. For the past two years, the Environmental Management Inspectorate of the Department of Environment and Tourism (DEAT) has dealt with cases of environmental non-compliance. National and provincial reports on the state of the environment have documented past and present corporate activities causing environmental degradation, such as the pollution of air, water and land by industries and mining. Provinces and national departments with functions impacting on the environment also submit annual reports on their environmental management plans or environmental implementation plans prepared in terms of NEMA. The quality of these provincial and national reports needs improvement.
555. The CSAR acknowledges the progress made in enforcing environmental rules, including the early success of the Environmental Management Inspectorate within the DEAT, known as the "Green Scorpions". The DEAT received 72

reports of environmental degradation and non-compliance with environmental requirements in the fiscal year 2005/06. Of these, 38 had been referred to the provinces for investigation and the remainder were investigated by the DEAT. Ten of the investigated cases resulted in compliance, seven resulted in legal action and two were successfully prosecuted. The CSAR does not indicate what progress has been made with the remaining 19 cases.

556. Current challenges to the environment include rapid urbanisation, congestion of roads, air pollution and spillages of untreated sewerage. Rapid urbanisation has resulted in an increased demand for land, which threatens biodiversity, especially the rare and endangered species inhabiting the wetlands and riverine systems.

Black Economic Empowerment

557. According to the CSAR, legislation on BEE is having a significant impact on the corporate sector. The structure and composition of boards of companies and their management are changing as a result of new legislation and social imperatives. There is also an impact in terms of ownership and control of equity. The CSAR highlights the following concerns raised by stakeholders with regard to the BEE framework: it benefits the elite without being broad based; it does not clearly address young people; it does not address conflicts of interest and corruption as a result of BEE; the issues of skills transfer to the historically disadvantaged and the out-migration of white skilled people are not studied adequately; and insufficient attention is given to the debt-based structure of BEE deals and their effect on corporate governance standards.
558. The CSAR discloses areas where consensus did not emerge, such as the views that weak monitoring reduces the effect of human rights and environmental legislation; companies are not held accountable for meeting targets for women and people with disabilities in corporate leadership and professional positions; there is undue emphasis on attracting black male professionals to high-level corporate jobs and a need for a broader-based programme that also prioritises women; flexibility in the economy is required given the development status of the country; and the labour market needs to offer greater protection to all employees.

ii. Findings of the CRM

Labour Relations

559. Based on deliberations during the mission, the CRM concluded that South Africa has a good framework for protecting its human rights and labour rights. Most businesses adhere to human rights and other labour codes, although some stakeholders mentioned instances of abuse in labour-intensive industries such as textiles and farms. The CRM also confirmed the challenge cited in the CSAR regarding the need for a proper system of whistleblower protection. It observed that while the Protected Disclosures Act of 2000 exists, South Africa

lacks a culture of whistleblower protection and such persons are often unfairly victimised despite their good intentions.

560. The CRM explored the issue raised in the CSAR of the large disparity in incomes between South African CEOs and senior management of companies and their employees. While many companies in South Africa have consistently paid large dividends to shareholders in recent years, many employees still earn relatively low wages. For example, in August 2006 a newspaper quoted a Cosatu official as disclosing that the CEO of a large food retailer is paid R57 million per annum, while some retail workers at minimum wage earn less than R1000 a month. It should be noted that minimum wages in the wholesale and retail sector are variable, with the lowest paid workers in the sector (working less than 27 hours a week) earning between R6.14 to R7.72 per hour in the current period.²⁸
561. The 1996 Report of the Presidential Commission on labour policy discloses the background to the present-day minimum wage policy in South Africa. The Report notes that, for a variety of reasons, it is difficult to make accurate and conclusive international comparisons of wages and productivity, and hence of unit labour costs. The available evidence does, however, suggest that the average unit labour costs in South Africa are higher than those in comparable middle-income developing countries. This would imply a reluctance to raise such costs, as it may impact on the competitiveness of the enterprise. The practice is to encourage collective bargaining between workers and industry.
562. The Report notes that the labour market policy should reinforce the national goals of enhancing employment and productivity, and tackling poverty and inequality. It observes that poverty cannot be eliminated when extremely low wages are paid or earnings inequalities are manifestly extreme. There may be trade-offs between promoting greater equity and industrial peace for those in employment and increasing access to employment by those without jobs. The CRM agrees that wages should be determined using a practical, incremental approach balancing the various goals of South Africa as a development state.
563. Trade union representatives emphasised that while job creation efforts should continue, the quality of jobs should be analysed and the low-wage conundrum addressed. Greater disclosure of executive remuneration, share options and other incentives is needed in companies' annual reports.

Corporations and Communities

564. Stakeholders acknowledged various instances of CSI in their communities. It was noted that the national government has supported many CSR initiatives through tax rebates to business. The development of B-BBEE charters was seen as contributing to the transformation of commerce and industry. Despite these notable efforts and the emphasis on CSR and the TBL, however, stakeholders reiterated that these initiatives do not significantly challenge the

²⁸ Source: *Government Gazette* 8413, Vol. 488, No. 28559, obtained from www.labour.gov.za.

rift between the first and second economies. They emphasised that corporate governance must address the burning issues of poverty alleviation and growing inequality. In this context, tackling unemployment should be at the forefront of CSR initiatives.

565. Stakeholders felt that CSR initiatives such as the Mzansi Account for the un-banked were generally positive developments. The CRM believes the Mzansi Account has helped to bring a banking and savings culture to many people.

Best Practice 10: The Mzansi Account for the Un-Banked

South Africa's four major banks (ABSA, First National Bank, Nedbank and Standard Bank) as well as the Post Bank offer the Mzansi Account, which represents the first major initiative to cater for the under-banked and un-banked populations of South Africa. These major banks were responding to voluntary obligations under the Financial Sector Charter. At the time of the launch of the Mzansi Account in October 2004, the Banking Association estimated that about 13 million South Africans were among the un-banked. By June 2006, over 3.3 million Mzansi bank accounts had been opened and other banking institutions had joined in offering these accounts.

The Mzansi Account has the following features:

- There are no management fees.
- One free cash deposit can be made per month.
- ATM transaction charges are the same regardless of the bank machine used (among the participating banks).
- Transactions are limited to deposits, withdrawals and debit card payments.

As of February 2006, FNB's Mzansi customers could also set up debit orders and do third-party payments on their cellphones.

Sources: www.southafrica.info; "FNB improves Mzansi service offerings", 28 February 2006, <http://mg.co.za>; Shezi, A, "Putting cash away may be consumers' saving grace", 12 July 2006, www.businessday.co.za.

566. Communities raised the issue that they would like to be involved and benefit from investments in their communities. They would like to participate in, for example, share ownership of companies such as mining entities in their locality. Corporations should be encouraged to source their supplies from the communities in which they operate and thus build the capacity of those involved in the supply chain. For example, vehicle manufacturing plants should not only provide contracts to local suppliers, but also develop training programmes for them. This would ensure that suppliers meet their standards, while also developing small businesses in the community and consequently contributing to closing the gap between the first and second economies.
567. The CRM was informed that the Medical Research Council of South Africa (MRC) introduced an indigenous knowledge systems (IKS) programme to learn from and provide entrepreneurial opportunities for the commercialisation

of drugs developed from the knowledge base of local communities. In 2005, the MRC estimated that over the next three years, the IKS programme would create 200 permanent jobs in local communities.²⁹

568. The issue of CSR for South African MNCs operating in the rest of Africa was also discussed. Stakeholders noted the need for a change in the mindset from a purely South African operation doing business in the rest of Africa, to that of a truly regional or sub-regional company. Stakeholders felt that the best South African corporate governance and labour practices should be implemented in other African countries.

Education and Skills Development

569. Different challenges in education and skills development were noted in the provinces. For example, in the Northern Cape, job opportunities have been limited to the mining and agricultural sectors. This has led to a mass exodus to Gauteng and the Western Cape where job opportunities are more readily available. To attract and retain people with the required skills, the Northern Cape has identified the need to develop the health sector in the province and provide funding for training programmes such as the Premier's Education Trust Fund.
570. Stakeholders acknowledged the positive role of the Services Sector Education and Training Authorities (SETAs) in training and developing employees with appropriate skills. It was also noted that many enterprises are training workers. Nevertheless, some felt that greater emphasis could be placed on developing specific skills relevant to particular industries through dedicated programmes.
571. The CRM was informed of stakeholders' concerns about the general lack of appropriate skills development programmes in many of the tertiary institutions in South Africa. They cited the example of a large industrial firm that imported hundreds, if not thousands, of highly skilled welders from abroad, as there were not enough welders in the country with the requisite skills, even with the high unemployment rate. This contrasts with the availability of many unemployed graduates, as evidenced by the emergence of the South African Graduate Development Association (SAGDA).
572. The CRM is of the view that businesses should help close the gap between their skills needs and the skills provided by tertiary institutions (e.g. colleges and universities) through internship, learnership and apprentice programmes. An example is the corporate funding of CIDA City College (Box 5.1).
573. Stakeholders in the Northern Cape cited successes with the government's Expanded Public Works Programme (EPWP), which has helped foster skills development for many people living in local municipalities and provided them with opportunities to bid for tenders. However, there are challenges in the implementation of the EPWP, including consumer satisfaction with the quality

²⁹ Source: The MRC's PowerPoint presentation on IKSs presented to the Parliament's Science and Technology Portfolio Committee on 14 June 2005, www.pmg.org.za.

of service rendered by some black contractors. Efforts should also be made to expand the programme to include more beneficiaries as contractors.

Box 5.1: Skills Development at CIDA City College

Stakeholders in Gauteng cited the example of corporate funding of CIDA City College as a good practice worthy of emulation in CSR and CSI activity.

CIDA is a registered, accredited, private, non-profit higher education institution offering a low-cost, high-quality, three-year Bachelor of Business Administration degree in the business and technology fields. The campus is located in the Johannesburg central business district and includes an R86 million building donated by Investec Bank. According to the CIDA website, over 1300 students are currently registered.

Under the CIDA City programme, businesses help fund students and courses are geared to provide them with skills relevant to the corporate sector. Corporate donations to CIDA City College are tax deductible in South Africa, the USA and the UK. Professionals from companies such as PricewaterhouseCoopers, Monitor Company, Gemini Consulting, Investment Solutions and Investec Bank lecture at the college. Members of the corporate sector help fund the college and its programmes, including Investec Bank, First National Bank, Dimension Data, Microsoft, McGrawHill, JP Morgan and Deutsche Bank. Some business partners provide students with internships and hire City College graduates. CIDA asks that its business partners sponsor a student's tuition (R7500 per year for three years) and/or a student's accommodation, food and transport (R7500 per year for three years), and/or formally mentor and guide a student.

CIDA City notes that its students are required to reciprocate by helping to operate and manage the college and also by returning to their rural schools and communities to teach what they have learnt. The students' reward for this activity is "changing the nation through skills transfer".

Source: www.cida.co.za and CSM stakeholder meeting in Gauteng.

574. Insufficient municipal development planning was also identified as a concern. In the Northern Cape, some towns were built around a single company or industry, such as agriculture or mining. These communities were vulnerable to downturns in those industries. The situation is being remedied by planners at the Department of Minerals and Energy, as the government is looking beyond just the mine, for example, when a mining town is established. However, more needs to be done in this regard. Pockets of high unemployment (up to 75 per cent) are the inevitable legacy in the Northern Cape and other provinces that have been the victims of the closure of railway and mining operations.
575. Provincial development plans were also criticised by some stakeholders and compared with the national government strategy and record. It was disclosed that the government has contributed to nodal developments in each province. For example, in the Northern Cape, it has focused on fostering development around two nodal points, Galeshewe and Kgalagadi. However, this has resulted in asymmetric development of the province, as the rest of the province has been relatively neglected. Even Kgalagadi has received far less attention

than Galeshewe. Stakeholders observed that all community stakeholders, including provincial governments, should foster economic development in as many communities as possible. For example, in Namaqualand, a coastal area bordering the Atlantic Ocean, fisheries and other development activities centred on the sea can be launched. Other areas could be Priestly, the poorest part of the Northern Cape, and Siyanda, where the private sector has already invested in tourism. A traditional leader noted that even in Kgalagadi itself more attention needs to be given to the development of rural roads.

Environmental Protection

576. The CRM noted that the government has provided the appropriate legislative framework for environmental protection. NEMA was cited as a good set of laws making provision for all the regulations coordinating national standards for emissions, effluence and pollution, among other things. The government has also made provision for registering and rehabilitating environmental degradation inherited from the past. New environmental safety regulations came into effect on 1 June 2006, helping to foster sustainable development in South Africa. However, the effectiveness of implementation, the enforcement of environmental standards and the capacity of inspectors were identified as challenges. It was further observed that regulators appeared to operate at arm's length from the industry.
577. The CRM was informed that the new environmental management inspectors (popularly known as "Green Scorpions") are starting to enforce environmental laws better, especially in Gauteng. Stakeholders recommended that more of these officials be introduced throughout the country.
578. Many environmental problems are a legacy of the pre-1994 government, when enforcement of environmental regulations was even weaker than at present. Nonetheless, various examples of present environmental degradation were cited, including mercury dumping in KwaZulu-Natal by a company that is no longer in business; asbestos contamination in the Northern Cape; groundwater contamination by a large company seemingly undeterred by environmental fines; and challenges in natural gas extraction in Potchefstroom in the North-West.
579. Some members of civil society noted that the problem lies in the bottom-line-first approach of business. Some companies appeared to be concentrating on short-term profits at the expense of long-term sustainability. It was further observed that more South Africans should be made aware of the potential for ecotourism, especially if environmental laws are vigorously applied. This is very important for tourism and for conserving the unique environment in South Africa.
580. A stakeholder representing organised business noted that South Africa has a good track record in the implementation of corporate policies. However, adherence to these policies was problematic due to the voluntary nature of the goals and the fact that many companies did not undergo a full rigorous audit

on their non-financial reporting. Furthermore, some companies hired casual temporary labour instead of full-time workers and this could go on for several years. He recommended that more companies undergo a full annual audit of their practices so that all stakeholders could ensure adherence to the highest corporate governance practices.

581. A member of the business community informed the CRM that the concept of TBL reporting had started in South Africa and that, in his view, South African companies were “ahead of the game” in this regard.
582. The CRM was notified that 16 member companies of the JSE have agreed to use the structure for TBL reporting, which includes elements of sustainability and community development. Moreover, a business representative noted that South African companies subscribe to the Global Compact, which sets high norms and standards for corporate governance, including how companies work with governments. BUSA, an umbrella body for business, is currently studying ways and means of implementing the Global Compact in South African MNCs. These rules seek to ensure that human rights, anticorruption mindsets and concern for the environment are embedded at member companies.

Best Practice 11: The JSE and Triple Bottom Line Reporting

A Socially Responsible Investment (SRI) Index inspired by the Dow Jones Sustainable Group Index and the FTSE4Good Index in the UK was launched by the JSE in 2004. The JSE developed criteria for measuring the TBL at listed companies that undertook assessment for the Index. The companies are asked to complete a questionnaire which, together with publicly available and any supplementary information, is used to assess and score the company on economic, social and environmental criteria.

The JSE does not release company-specific scores publicly and the SRI is used solely to showcase all companies that qualify for inclusion. However, there has been an evolution in terms of what the JSE has published on the SRI constituents. In the first year of the listing in 2004, the JSE did not publish any rankings on how companies performed relative to each other. In the second year, the 2005 Index constituents were announced by environmental classification (high, medium and low environmental impact categories), as well as in alphabetical order. In the third year, top performers in each environmental classification were announced.

In the third year of the SRI, more companies requesting evaluation passed the minimum criteria for listing on the Index. In 2004, 51 out of 74 companies made it into the Index; in 2005, 49 out of 58; and in 2006, 58 out of 62. Nicky Newton-King, Deputy CEO of the JSE, noted in a press release on the 2006 SRI that “we developed the Index with the clear intention to focus the debate on what the TBL means for business in South Africa, whilst recognising the efforts of those companies with good sustainability practices”.

In June 2006, the JSE launched SASIX, which will allow to evaluate their performance in their corporate and SRIs. South Africa is following the example of the Rio Exchange in Brazil in this respect. Business leaders who are promoting SASIX’s evaluation of CSR in South Africa hope it will help foster a culture of accountability.

Source: www.jse.org.za.

Black Economic Empowerment and Community Economic Development

583. The EEA was the main driver of social and economic transformation, including BEE, until the passing into law of the B-BBEE Act in January 2004. The Act had been overtly criticised, even at forums such as the Growth and Development Summit of June 2003, for the slow pace of implementing employment equity. Only a small black elite appeared to have benefited and the Department of Labour was insufficiently resourced to enforce compliance.
584. The B-BBEE Act of 2003 responds to some of the criticisms of many South Africans against the EEA. It is designed to guide the transformation process in South Africa to be more broad based. It aims for a higher economic growth rate and more equitable income distribution. It also caters for changes in ownership, management structure, skills development, market access and investment strategies designed to uplift previously disadvantaged populations (Indian, Coloured and Black people) in different business sectors. Corporate stakeholders informed the CRM that the B-BBEE Act came into being to define and pursue empowerment strategies better, with a view to bringing about improved grassroots involvement.
585. B-BBEE legislation obliges local and district municipalities, provinces and the national government to hire black-owned contractors as part of procurement rules. A points system is used to award contracts. Firms with a large number of people from previously disadvantaged communities, women and/or people with disabilities as employees, are awarded extra points.
586. Stakeholders noted that the private sector is still heavily dominated by white-owned business. The small black business elite are also out of touch with their communities. Furthermore, B-BBEE programmes seem not to have benefited women as much as they have men. Most rural communities are yet to see the benefits of BEE.
587. However, it has been estimated that the thriving black middle-class emerging from BEE, and particularly those earning at least R154 000 a year, has grown by 368 per cent between 1998 and 2004. Although the numbers benefiting from the BEE programme are still relatively small and the productive side of the economy still lags behind the demand side, BEE is nevertheless impacting favourably on the growth rate of the economy.
588. The CRM is of the opinion that it is imperative to redress the inequities of the past. While sectoral codes of good practice have been developed through the B-BBEE charters, it is important to ensure that the private sector complies with the spirit of the programme. Many sector charters are still not complete and it is too early to evaluate the success of the programme. One programme viewed positively by many stakeholders is the Financial Sector Charter.

Best Practice 12: The Financial Sector Charter

The Financial Sector Charter is the response of the financial sector to the imperatives of B-BBEE. Under the Charter, financial institutions have committed themselves to “*actively promoting a transformed, vibrant and globally competitive financial sector that reflects the demographics of South Africa, and contributes to the establishment of an equitable society by effectively providing accessible financial services to black people and by directing investment to targeted sectors of the economy*”.

The Charter came into force in January 2004 after agreement was reached with all stakeholders at the Financial Sector Summit hosted by NEDLAC, a multilateral social dialogue forum on social, economic and labour policy. Stakeholders in NEDLAC party to the Charter included the government, business, labour and community members. The Charter was signed on 20 August 2002 via a Summit Declaration on Transformation of the Financial Sector.

In 2005, financial institutions reached consensus on delivering the following results by 2008 to fulfil Charter commitments:

- Improving access to financial services for low-income communities;
- R42 billion commitment to increasing investment in low-income housing;
- R5 billion funding to small and medium black-owned enterprise;
- R1.5 billion commitment to agriculture;
- R25 billion funding of transformational infrastructure;
- Increasing funding for BEE transaction financing;
- Accelerating employment equity and skills development within the financial sector;
- Increasing procurement from BEE-accredited enterprises; and
- Achieving BEE ownership and control targets.

Source: <https://www.fscharter.co.za>.

iii. Recommendations

589. The APR Panel recommends that South Africa:

- Take steps to protect whistleblowers effectively. *[National Prosecuting Authority]*
- Make plans to provide for additional infrastructure in environmentally sensitive areas and for more effective urban land usage to prevent sprawl, sewage spillage and air pollution. *[Government]*
- Provide resources for capacity building and enforcement of environmental laws. Proper oversight of environmental performance reporting is recommended. *[DEAT; local authorities]*
- Evaluate SETAs and forge more partnerships with the private sector in skills development and job creation. *[Department of Trade and Industry; Department of Labour]*

- Enhance capacity building and promote awareness of the beneficial effects of entrepreneurship. Undertake training programmes for potential entrepreneurs in business planning and access to finance. [*Department of Trade and Industry; Department of Labour*]
- Spread the benefits of development to as many areas of the provinces as possible, outside the national nodes of development. [*Provincial planning authorities*]

Objective 3: To Promote Adoption of Codes of Good Business Ethics in Achieving the Objectives of the Corporation

i. Summary of the CSAR

Measures to Promote Ethics

590. The transition to democracy has been a strong catalyst for examining the governance arrangements in both the private and public sectors. The King II Report, in particular, has played a pivotal role in promoting corporate integrity in South Africa through its influence on legislative reforms and regulatory measures, JSE listing requirements and banking sector regulations. It also led to the update of the Protocol on Corporate Governance in the Public Sector.
591. While the King II Report is seen to provide a sound corporate governance structure for South Africa, concerns are raised in the CSAR that as a private sector initiative, its protagonists have their own vested interests. Closely related to this is the prescription versus non-prescription debate, particularly in respect of issues that are ethical in nature, and the proper integration of ethics management into existing business and management processes.

Promoting Integrity

592. Public sector integrity has been enhanced by strengthening financial reporting and accountability through the PFMA, MFMA, Treasury Regulations and the Code of Conduct for the Public Sector. The Department of Public Enterprises has also developed a policy framework for SOEs. Active ethics management is advanced by the National Public Sector Anticorruption Strategy that is implemented by various state organs such as the Scorpions, Public Protector and National Prosecuting Authority (NPA).
593. Professional and business bodies, such as SAICA, the Law Society of South Africa, BUSA and IoD play a key role in promoting codes of good business ethics among their members. In the non-governmental organisation (NGO) and not-for-profit sector, a code of ethics is in place that is promoted by the Charities AIDS Foundation Southern Africa (CAFSA).

594. The CSAR noted unethical practices in the interface between business, the government and political parties, particularly in public tendering systems.

Regulatory Framework

595. The FSB is responsible for enforcing the SSA, which consolidates provisions of the Insider Trading Act of 1998 and other legislation for financial markets. The CSAR notes that despite efforts since it was formed in 1999, the FSB has not been successful in prosecuting insider traders. There is a need to strengthen regulations for hostile takeovers significantly by reviewing the Securities Regulations Code that is overseen by the SRP, a regulatory body established in accordance with Chapter XVA of the Companies Act of 1973.
596. The CSAR notes that South Africa is fully committed to adhering to the IFRS. IRBA was established by the new Auditing Profession Act of 2005 to oversee the previously self-regulated auditing profession and legislation covering mandatory audit committees in public interest companies has been enacted.
597. The CSAR observes that South Africa is fully committed to adherence to IFRS and the Basel II standards for the banking sector. The country is a member of the FATF on money laundering, as well as the Eastern and Southern Africa Anti-Money Laundering Action Group (ESAAMLG). Legislation covering whistle-blowing and anticorruption is in force.
598. The CSAR, however, questions the effectiveness of the anticorruption efforts, particularly the inadequacy of reporting on whether commercial crimes (including money laundering) are being effectively prosecuted. The CSAR also raises the issue of uncertainty regarding the parliament's role and its effectiveness in ensuring that codes of conduct are adhered to in SOEs and Chapter 9 institutions.

Leadership, Organisation and Shareholders

599. The CSAR notes that director training is provided by the IoD. The B-BBEE charters have also begun to address the need for previously disadvantaged group representation at the board level.
600. Many companies are also addressing the need for more diversity and gender representation independent of BEE or B-BBEE-related programmes. The CSAR notes that an area requiring action is the low level of diversity and gender representation on many large and medium-sized companies' boards.
601. Poor shareholder activism is reported in the CSAR as being a major issue affecting corporate integrity in the country.
602. The CSAR deplores the fact that scanty information is available on the ethical conduct of South African companies operating abroad. The CSAR does, however, make a case for corporate governance-related support systems to guide South African companies operating abroad, particularly in fragile democracies. Also, the CSAR notes that the extraterritorial provisions in the

Prevention and Combating of Corrupt Activities Act of 2004 will have a negative effect on the competitiveness of South African corporations operating in Africa. The CSAR also raises matters that go beyond corporate governance, including ethical and conduct-related issues regarding South African troops deployed abroad as peacekeepers, and the country's military institutions.

ii. Findings of the CRM

Measures to Promote Ethics

603. The CRM concurred that post-1994 South Africa has taken great steps in putting in place the legal framework for improving corporations' adoption of good business ethics in achieving their objectives. These reforms emerged from the positive and influential role of the King II Report. The CRM also confirmed that various legislative instruments and mechanisms are in place to promote ethics. At the level of the state, the PFMA, MFMA and Treasury Regulations, over which the Auditor-General has oversight, enhance financial reporting and accountability. A policy framework for SOEs is in place, although parliamentary oversight over their compliance with codes of good business ethics needs to be enhanced. Within the non-profit and NGO sector, a code of ethics is championed by CAFSA. There is legislation for combating corruption, money laundering and insider trading. Other developments the CRM found are rules governing whistle-blowing, anticorruption measures (which have extraterritorial implications), and interim amendments to the Companies Act calling for mandatory audit committees in public interest companies and giving legal force to accounting standards and reporting.
604. On the whole, the CRM found that South Africa is an open economy that is more resistant to insider trading than some other advanced economies. Yet the country has had some notable scandals, including the R1 billion failure of the healthcare group, Macmed in 1999, the largest in South African history. Other examples include failures of the Regal Treasury Bank in 2001, Saambou Bank in 2002 and the collapse of Leisurennet in 2002, affecting 5000 employees and almost 1 million South Africans. Self-dealing, poor oversight by corporate boards and a weak regulatory environment were cited as the principal causes.
605. The CRM noted that efforts to strengthen the regulatory environment are ongoing. Insider trading is prohibited by the SSA, which came into effect on 1 February 2005. Importantly, the Act introduces stricter penalties of up to R50 million and/or ten years' imprisonment for various forms of market abuse. What now remains is, first, for the King II Report to inform the ongoing corporate law reforms so that the oversight role of corporate boards may be strengthened. Second, ongoing efforts to strengthen the oversight role of the various regulators need to be intensified, particularly those of the FSB as regards the non-banking financial services (other than medical schemes) and the SARB as regards the banking institutions, to stave off the recurrence of past scandals.

Best Practice 13: The King Reports

The King I and II Reports, home-grown to South Africa, have been accepted by many countries in Africa and worldwide as being very comprehensive, which is a remarkable achievement. These Reports will continue to influence corporate governance in South Africa, Africa and the world for many years to come.

The King II Report not only touches on the significant aspects of corporate governance (boards and directors; risk management; internal audits; integrated sustainability reporting; accounting and auditing; compliance and enforcement), but also establishes the nexus between economic, societal and environmental goals. It addresses such issues as social transformation, ethics, safety, health, environment and social responsibility in Africa. In the South African context, the code of the King II Report deals specifically with matters relating to employment equity and BEE. It emphasises the need for companies to move from the single to the triple bottom line, which embraces the economic, environmental and social aspects of a company's activities.

The King II Report has played a pivotal role in promoting corporate integrity in South Africa through its positive influence on legislative reforms and regulatory measures, JSE listing requirements and banking sector regulations. It has also led to the update of the Protocol on Corporate Governance in the Public Sector.

The King Reports introduce seven characteristics of good corporate governance: discipline; transparency; independence; accountability; corporate responsibility; fairness; and social responsibility.

Source: APRM CRM compilation from the King Reports and stakeholder interviews, July 2006.

606. The CRM found that successful prosecution for insider trading is low. In its first 29 months, the Insider Trading Directorate, a subcommittee of the FSB, investigated 124 cases. Ten of these led to a settlement with payment of a fine, six cases led to civil proceedings and one case was forwarded for criminal prosecution. Despite this shortfall in prosecutions, there are positive developments in strengthening the regulations. The Insider Trading Act of 1998 and the legislation governing the JSE have been consolidated into the SSA, which incorporates enhanced provisions that strengthen enforcement and sanctions for insider trading. Importantly, the SSA provisions prohibiting insider trading now cover market manipulation and abuse. These reforms are highly regarded internationally and are accompanied by an electronic system that regulates trade in the country. Known by the acronym STRATE, it is credited with clearly improving the integrity of the financial market system in South Africa.
607. The CRM found that “shareholder activism” may get a boost when locally listed companies introduce electronic voting systems at their annual meetings, instantly showing investor mood as resolutions are put to the vote. Electronic voting counts and displays result as the shareholders click a button, capturing the yes or no consensus as the votes mount up on the screen. As well as being an instant mood gauge, it also makes the process far quicker than manually registering attendees and tallying their votes by hand. Sanlam became the first

South African company to adopt e-voting when it tested the technology at its annual meeting in May 2006. Other JSE-listed companies that are assessing the technology include Anglo-Gold Ashanti, Gold Fields, Nedbank and Absa.³⁰ However, shareholder activism can only improve once institutional share-owners take seriously their ownership responsibilities to enforce the rules on breach of duties by directors and managers. A welcome development in this regard is the increasing engagement in corporate governance discourse in the public domain by fund managers in the private sector and the Public Investment Corporation, which manages civil servants' pension funds.

608. The CRM found that the Prevention and Combating of Corrupt Activities Act of 2004 is a useful instrument for addressing corruption. This Act has unbundled the crime of corruption by criminalising various specific activities in addition to the general crime of corruption. The CRM was informed of difficulties envisioned in enforcing and implementing the Act. For example, although the Act provides for the establishment and endorsement of a register for regulating the activities of the private sector, there is reluctance in this sector to use the register.
609. Although apprehensions exist that the extraterritorial provisions in the new Act against corruption may have a negative effect on the competitiveness of South African corporations operating in Africa, the CRM supports such provisions because the fight against corruption cannot be won without the observance of extraterritorial ethical codes by both domestic and international actors and relationships. Such provisions would considerably reduce corruption. The challenge is, first, the need to strengthen the modalities for enforcing the extraterritorial provisions and, second, the need to step up the prosecutions for corruption through better coordination of the agencies involved in enforcing anticorruption laws, namely the Office of the Auditor-General; Office of the Public Protector; Office of the Public Service Commission; Independent Complaints Directorate (ICD); South African Police Service (SAPS) Commercial Crime Unit; SAPS Anticorruption Unit; NPA; Directorate of Special Operations (Scorpions); Asset Forfeiture Unit; Special Investigating Unit; Department of Public Service and Administration (DPSA); National Intelligence Agency; South African Revenue Service (SARS) and the National Anticorruption Forum. Unless South Africa avoids dualism in the code of behaviour between its domestic companies and those operating elsewhere in Africa, it will not only fail in curtailing corruption at home, but its image and reputation abroad will also become tarnished, as indicated in the 2006 Bribe Payers Index (BPI) report of Transparency International, which ranked South African firms operating overseas as being the seventh worst in propensity to bribe when operating outside their country. Hence adherence to the code in the King II Report both at home and elsewhere by South African companies is imperative.

³⁰ *Business Day*, 20 July 2006, Johannesburg, <http://allafrica.com/stories/200607200257.html>.

Best Practice 14: Regulation of the Auditing Profession

The Auditing Profession Act (APA) of 2005 strengthens corporate governance by providing greater regulation of auditors through the IRBA, the newly established Independent Regulatory Board of Auditors. Auditors are now obliged to report to the IRBA any irregularities they come across when performing an audit. They may face a prison term of up to ten years for making a false report. The APA also calls for the rotation of auditors and provides mechanisms for strengthening the independence of auditors.

According to the National Treasury, the recently passed APA will:

- Enhance the integrity of the auditing profession in South Africa;
- Protect the public interest;
- Improve the independence and effectiveness of the IRBA while making it and independent auditors more accountable;
- Boost the independence of auditors; and
- Make the auditing profession more equitable and accessible for all South Africans.

The Act will attain its stated goals by:

- Allowing for the investigation of improper conduct and for disciplinary hearings;
- Providing standards for the qualification, competence, ethics and conduct of auditors; and
- Encouraging education and research into areas affecting the auditing profession, including participation in international professional activities.

Source: APA and stakeholder interactions during the APRM CRM, July 2006.

Corporate Social Responsibility for South African Companies Operating in Africa

610. The vast majority of the top 100 companies listed on the JSE have a clear Africa focus. Examples of leading MNCs based in South Africa are Standard Bank, which operates in 16 African countries; Shoprite Checkers, a food retailer operating in 14 countries; MTN, a telecommunications company in Cameroon, Nigeria, Rwanda, South Africa, Swaziland and Uganda; and SABMiller, a brewery company present in 13 African countries.
611. An example of typical CSR-related activity by South African MNCs is Shoprite Checkers in Zambia, where the company has been under pressure to source more of its goods locally. It has done so through business partnerships with Zambian small-scale horticultural farmers, under the Luangeni and Chamba Valley Projects. The horticultural producers are trained by the Ministry of Agriculture and private companies. However, this positive activity for the local community can be contrasted with a report that Shoprite does not address employee/stakeholder issues in the same manner as it does in South Africa. For example, Zambian employees are not covered by an Occupational

Safety Policy (as of 2004) and the collective agreement only briefly mentions medical regulation, protective clothing and accidents.

iii. Recommendations

612. The APR Panel recommends that South Africa:

- Maintain the integrity of the capital market by strengthening the capacity of the FSB to prosecute insider traders successfully. *[Government; FSB; DTI]*
- Strengthen regulations governing hostile takeovers by reviewing the Securities Regulations Code No. 36 of 2004. *[Government; DTI; SRP]*
- Improve oversight over the compliance of corporations with the codes of conduct of the King II Report to minimise major corporate failure and collapse. *[DTI; FSB; JSE]*
- Strengthen the fight against corruption by enforcing the provisions of the Prevention and Combating of Corrupt Activities Act of 2004 that require private companies to register their activities, as well as the Act's extraterritorial provisions; and step up prosecutions for corruption through better coordination of the government agencies involved. *[Government; relevant agencies; Public Service Commission]*
- Strengthen procurement tendering procedures and systems to eliminate unethical procurement practices in the interface between business, the government and political parties. *[Government; private sector; political parties]*
- Consider adding a clause setting a time period in which transitioning politicians and civil servants refrain from working in areas that might cause conflict of interest with regard to government contracts. *[DPSA]*
- Strengthen parliamentary oversight over codes of conduct for SOEs through capacity development initiatives. *[Parliament; SOEs; Department of Public Enterprises]*
- Improve information dissemination on the effectiveness of current anti-money laundering efforts. *[Government; Financial Intelligence Centre; SARB]*
- Continue to ensure increased levels of diversity and gender representation at board level in the corporate sector. *[DTI; Private Sector]*
- Require disclosure of companies' compliance with the King II Report's code of corporate practices and conduct in business operations abroad. *[JSE; government; BUSA, MNCs; FSB; SARB]*

Objective 4: To Ensure that Corporations Treat all Their Stakeholders in a Fair and Just Manner**i. Summary of the CSAR****Protecting Shareholders' Rights**

613. The CSAR notes that minority shareholder protection is provided for in the Companies Act of 1973, as well as in common law and the King II Report's voluntary codes that have been adopted as JSE listing requirements. These include the right to attend, vote and participate at meetings of shareholders, as well as the right to a share of the dividends and the proceeds from the sale of surplus assets. Furthermore, it is noted that the Minister of Trade and Industry has the power to appoint inspectors to protect shareholder rights, and the Specialised Commercial Crime Court Unit also has the power to provide civil and criminal remedies in cases of shareholder abuse.
614. In addition to the Companies Act, a number of statutes promote shareholder rights, including the Promotion of Access to Information Act (PAIA) of 2000 and the FICA of 2001. The B-BBEE Act of 2003 requires the broadening of shareholding among the previously disadvantaged population of South Africa, and also that women benefit from at least 40 per cent of the shareholding transactions made.
615. The CSAR notes that the government has strengthened financial reporting and accountability by SOEs through the PFMA and the MFMA by, inter alia, incorporating elements of the codes for corporate governance of the King II Report and updating the government's codes of conduct, including a Protocol on Corporate Governance in the Public Sector.
616. The CSAR discloses that the SRP was established in terms of the Companies Act of 1973 to regulate takeovers and mergers of businesses. Its mandate is to ensure fair and equal treatment of security holders in all transactions.
617. The CSAR observes that there is a palpable lack of shareholder activism and inadequate monitoring of companies by asset managers acting on behalf of minority shareholders. Most shareholders are represented by asset managers and pension fund trustees. Awareness and understanding of corporate governance in the broader community of shareholders need to be extended. Related issues include conflicts of interest, a lack of understanding of investor rights and inadequate resources for building shareholder awareness.
618. The effectiveness of existing shareholder remedies in South Africa was a matter of concern for stakeholders. Small shareholders often lack resources to approach a court for orders, an area that needs to be strengthened through the corporate law reform programme. Other stakeholders were concerned about

the communication and consultation process being used to make changes to the Companies Act and its provisions for shareholder rights.

Recognising the Rights of other Stakeholders

619. The CSAR notes that the Companies Act of 1973 does not explicitly cater for the rights of stakeholders other than shareholders. However, companies listed under the JSE Board are encouraged to interact with other stakeholders, and many stakeholder rights are provided for in specific legislation such as environmental, labour rights, human rights and consumer rights laws. This approach has been recommended in the 2004 government policy documents on the corporate law reform process.
620. The CSAR observes that the PAIA allows for such access as a constitutionally protected right. The Protected Disclosures Act of 2000 offers protection to whistleblowers. The CSAR notes that these two Acts have helped increase access to information and protect whistleblowers. However, stakeholders were concerned about the practical effectiveness of the legislation. The CSAR notes that there is limited case law in this area, and that a recent related case (*Davis v Clutchco*) has been interpreted in different ways by stakeholders.
621. Creditor protection is provided through common law provisions on contracts and the Companies Act of 1973. The CSAR discloses that the government is preparing to develop more explicit creditor rights through the forthcoming bankruptcy and insolvency legislation. The CSAR notes that the corporate law reform process has informed policy-makers that creditors in other countries have increasingly relied on contract laws to enforce their rights, and that company legislation should as a result be less creditor oriented.
622. The CSAR notes that the government encourages dialogue with stakeholders and this is legislated in areas such as collective bargaining with unions, workplace forums, in the Environmental Management Programme Reports and EIAs. An example is made of mining companies that are required to engage with all stakeholders, including the communities in which they operate. The government has also used the BEE sector charters to drive stakeholder engagement. For example, in the financial charter process, companies have been encouraged to create products that benefit the poor, who are often neglected by the corporate sector.
623. The CSAR reveals that community needs and business accountability to communities are not properly explored by the corporate sector. Furthermore, the voluntary nature of CSR-related activity is noted as a problem. Companies also rarely report such CSR-related activity, although it could have been done as part of their TBL reporting. The CSAR further notes that accountability mechanisms for non-financial reporting are rarely used in South Africa.
624. The codes for corporate governance of the King II Report advocate an inclusive approach to the recognition by business of the needs of stakeholders. The definition of stakeholders includes the community in which the company

operates, as well as the company's customers, employees and suppliers. All these groups need to be considered when developing the company's strategy. The CSAR notes that the JSE encourages listed companies to engage regularly with stakeholders and that its SRI provides clear details on stakeholder engagement.

625. The CSAR discloses that stakeholders voiced concerns about how the interests of the poor and marginalised are considered, especially in industries that do not require Environmental Management Programme Reports or EIAs. Some stakeholders believe there is lack of understanding in the business community of broad stakeholder issues, including stakeholder engagement and rights, and that few companies report in depth on their stakeholders or provide details of major conflicts or measures for resolving these issues. Other stakeholders noted that even in communities served by NGOs and non-profit organisations, there were concerns about holding these intermediaries accountable and whether issues important to the community were being heard through them.
626. Stakeholders observed that there are few accountability mechanisms for non-financial reporting and that readership of sustainability reports is low. The inability of stakeholders to enforce corporate commitments to voluntary mechanisms such as the UN Global Compact was also criticised. While noting the beneficial nature of CSR programmes, stakeholder-related legislation and voluntary mechanisms, stakeholders observed that these activities by their very nature do not address the fundamental divide between the formal and informal sectors of South African society.

ii. Findings of the CRM

Protecting Shareholders' Rights

627. The legislative framework protecting shareholder rights is adequate in several respects. The business sector, however, inherited many challenges from the apartheid era, including restricted access to the economy by previously disadvantaged people. The challenge for South African business is therefore to maintain and improve on corporate governance standards, while drawing the second economy into the mainstream. The education of future members of the business community has also not been neglected. It was observed that almost all universities currently have a corporate governance programme.
628. From a discussion with the JSE, the CRM confirmed that the Exchange has high listing standards for its 386 member companies, including listing rules mandating compliance with the standards of the King II Report. The JSE itself is audited and all members undergo two audits a year. The JSE's Surveillance Department closely examines capital adequacy standards for its member companies. The JSE has protected the interests of shareholders by helping with the development of South African laws, such as the legislation on insider trading. While there have been no prosecutions for insider trading thus far, a name-and-shame campaign has deterred many from the practice.

629. Representatives from the business and civil society groups noted that a key issue in corporate governance in the public sector is the strict accountability structures mandated by the PFMA's and the MFMA's rules for procurement. As a consequence, public institutions are finding it more difficult to attract outside directors for their boards of directors. This situation exacerbates the ever-present capacity and skills development challenges at municipalities and other public institutions. It was observed that outside directors can now be imprisoned under the PFMA and the MFMA. A business representative commented: "The problem is no one wants to sit on boards and audit committees – people want to add value but [are] not prepared to take the risk", adding that this problem illustrated the unintended consequences of well-meaning legislation. Judge Mervyn King, Chairperson of the King Committee responsible for the King II corporate governance standards, informed the CRM that in his opinion, "you can't legislate against dishonesty". A better approach would be that all boards of directors, in both the public and private sectors, should seek to be more transparent and disclose as much information as possible, such as information reported under the TBL approach.

Recognising the Rights of Other Stakeholders

630. As of July 2006, parts of the National Credit Act of 2005 came into force in South Africa. The Act aims to ensure that all companies that charge interest and provide goods or services on credit register with the National Credit Regulator and follow strict guidelines on lending practices to prevent reckless lending. The sanction for not registering is a 12-month jail sentence and a fine. Under the Act, credit providers are bound to check whether a prospective client is over-indebted. Failure to do so may mean that they will not have legal recourse to collecting any money owed. From September 2006, credit bureaus are also bound to give each South African one free credit report per year, with the aim of ensuring transparency and contributing to the accuracy of such reports. The Act also sets up a Credit Tribunal for adjudicating credit-related disputes. By July 2007, all sections of the Act will have come into force.
631. The CRM learnt that key legislation for personal and corporate insolvencies is the Companies Act of 1973, Close Corporations Act of 1984 and Insolvency Act of 1936. While there is no public official supervising insolvencies or performing the role of a regulator for insolvencies, the insolvency system is supervised in South Africa by the High Court, through the Master of the High Court. Personal as well as partnership bankruptcy is provided for under the Insolvency Act. Under the legislation, a creditor, a debtor or the debtor's agent can petition the court to declare a debtor bankrupt. The creditor votes for a trustee to administer the bankruptcy proceedings under oversight of the Master of the High Court. The trustee provides security for proper administration of the bankruptcy and this cost is part of the cost of the bankruptcy administration. The winding up of a company is provided for under the Companies and Close Corporations Acts. Liquidation of a company can be instigated by the company itself or its creditors through the High Court. The Court makes bankruptcy orders and oversees company liquidations. It appoints trustees, liquidators and judicial managers from the private sector and selects

liquidators from a panel of liquidators. A new member of the panel needs to work with a more experienced member for two years before acting as the sole liquidator.

632. The CRM learnt that the DTI is drafting a Consumer Protection Bill designed to address the following consumer-related issues:
- The lack of adequate disclosure available to the consumer;
 - Instances of misleading information in advertising and other corporate representations;
 - Quality and safety issues in goods and services and the lack of adequate product liability;
 - Unfair contractual terms and fraudulent schemes;
 - The invasion of consumer privacy;
 - The fragmented nature of legislation and inadequate consumer remedies and redress; and
 - Uncoordinated enforcement mechanisms.
633. The Consumer Protection Bill provides for the creation of a National Consumer Commission to regulate consumer protection activity, including the promotion of voluntary consumer codes, legislative reform and enforcement of consumer protection laws along with the existing Office of Consumer Protection and the Consumer Affairs Committee (CAFCOM). The Bill will also replace six existing Acts in full and two Acts in part.

iii. Recommendations

634. The APR Panel recommends that South Africa:
- Encourage minority shareholders to be fully aware of their rights and the need to monitor corporations actively. Shareholders should also consider pooling funds for a shareholders' association whose activities would include shareholder education. *[JSE; DTI]*
 - Include provision in the corporate law reforms for easing financial and legal constraints for shareholders seeking legal redress. *[DTI]*
 - Ensure that a wide segment of the population is consulted in the corporate law reform process. *[DTI]*
 - Raise awareness of the benefits of TBL reporting requirements in the corporate sector, while highlighting companies that do provide such reporting. *[Chambers of Commerce; JSE; BUSA; DTI]*
 - Embark on a national search for suitable outside directors for municipal and public agencies and organisations to ensure proper oversight of

budgets. The campaign should help counter apprehension of stringent MFMA rules. *[National & Provincial Departments of Local Government]*

- Enact the Consumer Protection Bill and assess whether legislation meets its consumer protection goals. *[DTI]*

Objective 5: To Provide for Accountability of Corporations, Directors and Officers

i. Summary of the CSAR

Timely and Accurate Disclosure

635. The CSAR observes that the South African legislative framework requires disclosure of material information so as to enable investors, shareholders and other relevant stakeholders to make informed decisions. The key legislation giving the public the right to access information under the custody of public bodies is the PAIA.
636. The country is currently at the implementation stage of accounting standards reforms that will apply to the national and provincial spheres of government and public entities under their ownership control. The CSAR contends that it will take time to fully implement expanded financial reporting requirements for concerned public entities covering the disclosure of both financial and non-financial information, as envisaged by the PFMA³¹ and the ASB.
637. Within the private sector, the Companies Act of 1973 mandates companies registered under the Act to provide shareholders with financial-related information, such as profit and loss and the state of affairs of the company. The Act mandates that the financial statements disclosures follow generally accepted accounting standards (known as “little GAAP”), which are based on general usage, rather than on formal statements. Conversely, JSE listing rules and the Accounting Practices Board require financial statements to comply with the disclosure requirements of the IFRS (“big GAAP”). Issues relating to the application of both sets of standards are discussed in the following section.
638. TBL reporting, as championed by the King II Report and the GRI, has transformed the way non-financial information is being disclosed by both private and public sector enterprises. To move forward the King II Report agenda, the JSE has launched the SRI Index to promote socially responsible investment practices.

³¹ The Public Finance Management Act, Act 1 of 1999, must be read together with the Public Finance Management Amendment Act, Act 29 of 1999. The two Acts do not make sense on their own, as the initial consolidated Bill had to be separated into two Bills for technical reasons to comply with the Constitution, which determines various procedures for the passage of Bills through the Parliament.

639. The CSAR notes that there are no material differences in disclosure requirements between South African and international accounting and auditing standards. As regards TBL reporting, the CSAR contends that disclosure by companies is strong in these areas: employment equity and transformation; ethics-related policies and practices; CSI; whistleblower hotlines; HIV and AIDS; health and safety policies and practices; as well as environmental management.
640. Conversely, the CSAR underscores that compliance-related challenges exist. First, in the area of TBL reporting, less frequently disclosed issues include: environmental accidents or fines; accounting for CSI; monitoring of resource utilisation; ISO 14001/9000 internal or external auditing; compliance with ethical standards; and discussion of targets and/or objectives. Second, divergences exist in reporting structures, which may present difficulties in ensuring that organisations report all relevant information in a consistent and comparable manner, making it hard to flag non-disclosure of material issues. Third, disclosure of executive pay, especially when share options are included, is inadequate given the increasingly large wage gaps between executives and the average workers. Lastly, research is required to properly define issues of materiality in disclosure requirements, particularly with respect to contingent liabilities and non-financial matters.

Accounting and Auditing Standards

641. South Africa's standard-setting body, the Accounting Practices Board, took a decision in 1993 to harmonise Statements of GAAP with the IAS. In February 2004, it issued the text of the IFRS without any amendments and therefore Statements of GAAP are the exact replica of the IFRS. Consequently, where an entity is preparing financial statements in terms of Statements of GAAP, it is in effect complying with the IFRS. Revised JSE listing requirements oblige listed companies to comply with the IFRS for financial periods commencing on or after 1 January 2005. Furthermore, the newly created IRBA requires auditors to apply the IAS when performing any assurance engagement. The CSAR concludes that there are no material differences between South African and international accounting and auditing standards.
642. Within the public sector, three sets of accounting standards are followed. First, SOEs apply the IFRS. Second, government ministries and departments and other agencies follow a modified cash-basis of accounting, referred to as the Generally Recognised Accounting Practice (GRAP). Third, municipalities prepare financial statements according to either the GRAP or the Generally Accepted Municipal Accounting Practice (GAMAP), issued by the Institute for Municipal Finance Officers (IMFO).
643. As noted earlier in this section, the country has started with a long process of implementing PFMA-related reforms of accounting standards applying to the national and provincial spheres of the government and related public entities.

644. The CSAR highlights a difference in the financial statements disclosure requirements of the Companies Act of 1973 compared with the JSE. The Act requires that financial statements of companies registered under it should comply with “little GAAP”, which is based on general usage, rather than on formal statements such as those issued by the accounting profession. By contrast, since October 2000, the JSE listing requirements have specified that financial statements need to comply with “big GAAP” and, as a consequence, with the IFRS. Given that the Companies Act requires only “little GAAP”, “big GAAP” lacks legal backing. Some experts propose that the Companies Act be modified to mandate “big GAAP”, while others suggest that accounting issues be treated in a separate Accounting and Financial Reporting Bill.
645. The CSAR notes the position by the International Accounting Standards Board (IASB) that separate accounting standards for “limited interest companies” such as SMMEs should be promulgated.
646. According to the CSAR, the audit profession is regulated by the APA as from 1 April 2006. This Act strengthens corporate governance by providing greater regulation of auditors through the newly established IRBA. Auditors are now obliged to report to the IRBA reportable irregularities they come across when performing an audit and can face a prison term of up to ten years for false reporting. The APA calls for the rotation of auditors and provides mechanisms for strengthening their independence.
647. The JSE and the FSB examine prospectuses and annual financial statements for listed companies. The JSE, in partnership with SAICA, has established a GAAP Monitoring Panel responsible for investigating any complaints received from members of the public or investors relating to the inappropriate treatment of transactions in financial statements. The results are reported to the JSE, which takes action against the company. The auditors of such listed companies are reported to the IRBA for follow-up. In addition, SAICA receives a report on its members who have been implicated by the investigation for disciplinary action.
648. The CSAR notes that there have been very few reported court cases against auditors, implying that they are either performing excellently or that legislative provisions are underutilised or ineffective, or both.
649. The CSAR asserts that the issues covered in this section are being reviewed in the ongoing corporate law reform process. An important outcome of the process will be the establishment of an FRC to provide guidance on reporting standards (in conformity with APA requirements). A Bill for this purpose is expected to be introduced in the parliament in 2006.

Corporate Guidance, Monitoring and Accountability

650. The CSAR notes that South Africa has adopted a unitary board structure with both executive and non-executive directors. Strengthened by the King II Report, the Companies Act of 1973 governs the interface between the

management, board and shareholders of companies. These provide for the proper exercise of directors' duties in accordance with the cardinal principles of corporate governance, such as discipline, transparency, independence, accountability, responsibility, fairness and social responsibility.

651. The Companies Act mandates that company directors present annual financial statements to shareholders during annual general meetings (AGMs), which should include discussion of the profit or loss and the state of affairs of the company. JSE listing rules further mandate listed companies to ensure that directors maintain full and effective control over their companies, including monitoring management's implementation of board strategies. The rules also recommend that boards should reserve specific powers for themselves and delegate others to management, while regularly monitoring implementation.
652. Common law prohibits directors from engaging in contractual interests with the companies in which they are board members, unless such transactions are approved at the AGM. The Companies Act also requires that directors declare their direct or indirect interests in full where they are materially affected.
653. The limited pool of competent directors in South Africa, in particular truly independent directors, means that a few individuals hold many directorships. The CSAR reports calls to limit the number of board appointments a non-executive director can hold. Additionally, concerns exist regarding related party transactions and the extent to which directors are accountable to all shareholders within conglomerate structures.
654. The lack of representation on boards (as well as in management) by black people, women and other disadvantaged groups, including people with disabilities, impacts negatively on their employment and income-generation opportunities. The CSAR raises the levels of compensation, independence, training and orientation of directors as areas of concern.
655. The CSAR highlights that shareholders in South Africa are lax in taking their ownership responsibilities seriously. According to the King II Report, the "inertia of shareowners and, more particularly, institutional share-owners, is largely responsible for the non-enforcement of the breach of duties by directors and managers".
656. The CSAR notes that within the provisions of the PFMA, the shareholder compacts between the state and members of the board of public enterprises are equivalent to a performance agreement and contain key performance measures and indicators. In addition, Treasury Regulations require that the boards of SOEs conclude compacts with the state as shareholder.
657. Concerns are raised by the CSAR about the use of "special purpose entities" or subsidiaries for disguising material information from shareholders; the ability of public bodies to implement the legislated reporting structures, especially for SOEs in municipal and local government; and the "double burden" imposed on public entities by the Companies Act of 1973 and the PFMA of 1999, as

the accountability structures for public entities require both parliamentary oversight and the consultation process for establishing shareholder compacts.

658. The CSAR raises concerns regarding the effective enforcement of sanctions for non-compliance with financial disclosure regulations, especially given the potential resource and capacity constraints within CIPRO. Other concerns include the ineffective and poor coordination of financial, microfinance, competition and company regulators that currently work in silos, raising questions about the effectiveness of the enforcement of sanctions; the void of effective monitoring measures; and the inexistence of legislation governing the disclosure of certain types of non-financial matters, such as environmental risks, gender issues, women in management, and anti-sexual harassment policies and practices.

ii. Findings of the CRM

Timely and Accurate Disclosure

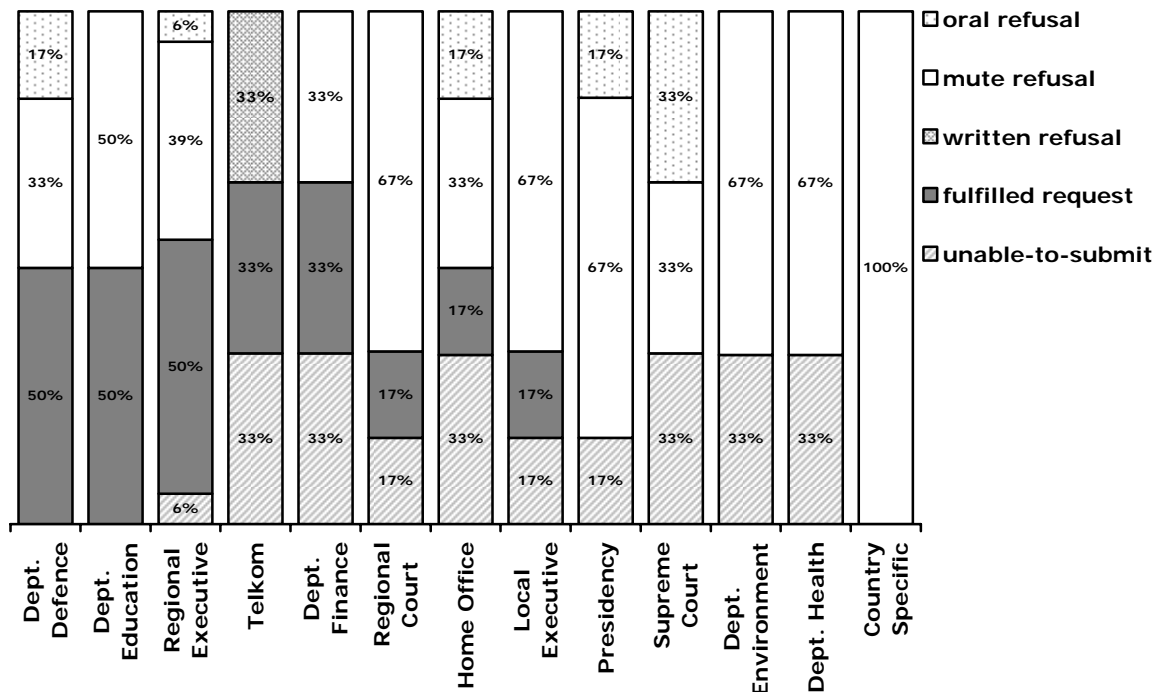
659. The PAIA of 2000 provides the legal basis for the citizenry's right of access to information held by public bodies in line with tenets of democratic governance.
660. It is believed that South Africa's legislation for the promotion of access to information is probably so far the only Act in the world that permits access to records held by both private and public bodies.
661. Despite this commendable legislation, certain concerns are not highlighted by the CSAR. In its report released in November 2004 (summarised in Figure 5.1), the Open Society Justice Initiative, in partnership with the Open Democracy Advice Centre (ODAC) in Cape Town, conducted a monitoring exercise on government agencies' compliance with the disclosure provisions of the PAIA. Ten seekers submitted 96 requests for information to 18 government institutions.³² The key outcome of the exercise was that "although none of the institutions surveyed in South Africa performed particularly well, their differences in performance were reinforced in follow-up interviews".³³
662. The survey found that government agencies that performed very well had made a serious commitment to implementing the PAIA. Conversely, the worst performers "possessed either non-functional systems or none whatsoever". The CRM concluded that although the PAIA is a good law, its implementation in practice is weak.
663. The CRM concluded that it is important that the government should develop a programme for monitoring the implementation of the PAIA. Importantly, government officials responsible for implementing the Act need ongoing

³² Access to Information in the Republic of South Africa: Results of the Open Society Justice Initiative Access to Information Monitoring Tool 2003, November 2004: www.justiceinitiative.org/db/.

³³ Ibid., p. 11.

training in its provisions. The capacity of government institutions to process requests for information needs to be improved. These efforts need to be supplemented by full political commitment to implement this legislation.

Figure 5.1: Performance of Government Agencies on the PAIA



Source: Open Society Justice Initiative Access to Information Monitoring Tool 2003.

664. Within the public sector, the PFMA is one of the most important pieces of legislation passed by the new government. The PFMA promotes the objective of good financial management in the public sector in order to maximise service delivery through the effective and efficient use of limited resources. Importantly, the Act establishes the ASB responsible for setting the accounting standards applicable in the public sector. The PFMA has expanded financial reporting requirements for SOEs. Boards of SOEs must now disclose both financial and non-financial information to shareholders.
665. The CRM noted a key strength in the governance arrangements of SOEs in that the PFMA provisions and Treasury Regulations both require boards of SOEs to conclude compacts with the state as shareholder. Such compacts translate into a performance agreement and contain key performance measures and indicators. It is important for the government to continue its commendable efforts to ensure that SOEs are managed professionally. Importantly, SOEs need to be transformed into becoming instruments for creating an environment in which business can flourish. To ensure that SOEs meet these challenges, the OECD's Working Group on Privatisation and Corporate Governance of State-Owned Enterprises has developed a set of guidelines, completed in 2005, which may be useful to inform government policy in this regard.

666. In the private sector, the Companies Act of 1973 provides for the disclosure of financial information by companies registered under the Act. The JSE listing rules require that financial statements of quoted companies comply with the IFRS disclosure standards. Since 2003, all companies listed on the JSE have to comply with the King II Report, which mandates disclosure of non-financial information. This code addresses core corporate governance issues, such as director independence and splitting CEO from chairperson positions, and also requires the use of GRI guidelines for disclosing social and environmental performance. The requirement to follow the King II Report placed the JSE at the forefront of stock exchanges worldwide in terms of promoting SRI criteria.
667. The CRM concurs with the CSAR that there is a need to strengthen the requirements to disclose executive pay. Understandably, the area of senior executive remuneration, especially that of granting of share options, stirs up public emotions, especially where such rewards provide executives with huge short-term benefits. There is also the issue of not-so-transparent pension and retirement packages for executives. Due to the negative perceptions and reality of these payments, the SEC in the USA under Chairperson Chris Cox voted unanimously to change the rules for reporting executive remuneration from 2007. Although the changes will not affect executive pay, they will result in more transparent disclosure thereof and hopefully indirectly limit excessive remuneration. The CRM is of the opinion that a similar approach will be of value to South Africa. It is understood from discussions with SAICA that the JSE is taking appropriate action.
668. The CRM concurs with the CSAR that there is a need to improve corporate disclosure requirements to eliminate divergence of reported information and ensure that organisations are reporting all relevant information in a consistent, comparable manner. The CRM concluded that non-compliance with disclosure requirements and weak enforcement by regulators appear to be the major concerns. Discussions with SAICA revealed that action is being taken to improve corporate reporting. A GAAP Monitoring Panel comprising the JSE and SAICA was established in 2002 and mandated to investigate any public reports of inappropriate disclosures by companies. The Panel will complement ongoing work of the JSE and the FSB regarding the examination of annual financial statements of listed companies. The Panel is said to be a stop-gap measure and will be replaced by an FRC for providing guidance on reporting standards as part of the ongoing corporate law reform process. The CRM agrees that these actions will remove financial disclosure concerns, provided the FRC, JSE and FSB have adequate capacity to conduct the investigations. Importantly, the enforcement power of the JSE needs to be increased.

Accounting and Auditing

669. The CRM concurs with the CSAR that accounting and auditing standards in the country are consistent with international standards. South Africa, through its highly developed professional bodies and firms, plays an important role in international standard-setting bodies.

670. Two concerns are, however, evident. First, there is no legal backing for “big GAAP”, as mandated by the JSE for listed corporations. The CRM understood that the current corporate law reform project will remove this shortcoming. Second, all companies listed on the JSE, including SMMEs listed on the AltX, are required to comply with “big GAAP” and, consequently, the IFRS. This creates financial reporting complexities for SMMEs. The CRM concurs with the IASB, as reported in the CSAR, that separate accounting standards for “limited interest companies” such as SMMEs need to be promulgated. The CRM understood that as part of the revision of the Companies Act, SMMEs will be exempted from following the IFRS.
671. To this end, the CRM would like to highlight the work done by the Eastern, Central and Southern African Federation of Accountants (ECSAFA), which has prepared an “Exposure Draft on ECSAFA Guidance on Financial Reporting for SMEs”. The document endeavours to reduce financial reporting complexities for SMEs by providing that they apply only certain sections of the IASB Framework for the Preparation and Presentation of Financial Statements (certain principles in IAS 1: Presentation of financial statements; IAS 7: Cash flow statements; and IAS 8: Accounting policies, changes in accounting estimates and errors). The Guide is intended to fill the void created by the absence of acceptable standards available from the IASB.

Box 5.2: Thuthuka Education Upliftment Project

Thuthuka (a Zulu verb meaning “to develop”) is the response by SAICA to the need to transform the CA profession and make its membership reflect the country’s demography in terms of race and gender. It does this by promoting chartered accountancy as a first-choice career among individuals from previously disadvantaged backgrounds and supporting them through SAICA’s holistic bursary schemes and learning experience.

The TEUP was first launched in May 2002 in the Eastern Cape, funded by the National Skills Fund (NSF) of the Department of Labour, and Fasset (the SETA for Finance, Accounting, Management Consulting and other Financial Services). It has programmes in six provinces with the support of the NSF, Fasset, the Department of Science and Technology, Emperor’s Palace and others, including members of the accounting profession.

The TEUP has recorded numerous achievements. In 2005 and 2006, students supported by the project achieved high pass rates in Grade 12, university and other tertiary education programmes. Because of its positive impact, the initial grant funding of R62 million has been swelled by a further R75 million from the NSF for the roll-out to Limpopo and KwaZulu-Natal, a further R50 million for the five-year roll-out in Gauteng, R25 million from the Department of Science and Technology, and over R20 million in support from Fasset for various programmes.

Source: www.saica.co.za.

672. The CRM found that South Africa has highly skilled accountants and auditors who provide services similar to those available in developed economies. The

major issue, however, is the chronic shortage of black chartered accountants (CAs) in the country, as was widely acknowledged by all stakeholders. By 2006, black accountants constituted less than 2.9 per cent of the accounting population. For example, in June 2006, only 717 of a total of 25 113 CAs were black. As a result, SAICA has introduced the Thuthuka Education Upliftment Project (TEUP), as described above in Box 5.2.

673. The Independent Regulatory Board of Auditors, which was formerly the Public Accountants' and Auditors' Board (PAAB), SAICA, the Association for the Advancement of Black Accountants of Southern Africa and other professional firms have taken steps to increase the number of black CAs. In tandem with these noble initiatives, the CRM is of the opinion that the current educational systems and paradigms need to be transformed to produce the required number of highly skilled black CAs faster, thereby ensuring the consistent growth of high-calibre accountants in the country. An accounting technician-type of qualification will also need to be promoted to provide accounting clerk and bookkeeper skills, as CA qualifications alone will not meet the needs of the country.
674. The CSAR raises a number of concerns about effective oversight of the enforcement of sanctions and non-compliance in disclosure requirements. First, it is concerned about the use of special purpose vehicles to disguise information from stakeholders. An issue related to this is that directors are not accountable to all shareholders in respect of party transactions within conglomerate structures. According to the April 2003 World Bank Accounting and Auditing ROSC for South Africa: "The absence of effective regulatory enforcement mechanisms facilitates uncontrolled manipulation of accounting policies and a mere appearance of compliance, rather than one of substance. Many companies have the availability of highly skilled accountants and auditors who seem to use sophisticated accounting manipulations that may not be evident from a reading of financial statements. As a result, in many cases non-compliance of the established accounting standards takes place, yet giving the appearance of full compliance." The course of the ROSC review revealed that many South African companies perform off-balance-sheet transactions using special purpose entities created at home and abroad, and that huge amounts of liabilities and risk exposures remain hidden from stakeholders. Second, the enforcement of sanctions for non-compliance with financial disclosure regulations is weak, especially because of resource and capacity constraints at CIPRO. Lastly, poor coordination among key actors in financial, microfinance, competition and company regulators is adversely affecting the effective enforcement of sanctions.
675. The CRM noted that steps are being taken to improve the existing mechanisms for enforcing compliance with accounting and auditing standards. In February 2004, the Accounting Practices Board took a decision to issue the text of the IFRS without any amendments. Companies are therefore mandated to comply with the IFRS. From 1 April 2006, the APA provided greater regulation of auditors through the newly established IRBA. This has given the statutory

regulator of the auditing profession a more effective governance structure and a broader mandate for efficient regulation.

676. The JSE and the FSB have stepped up their efforts to scrutinise the annual financial statements of listed companies. To complement this effort, the JSE, in partnership with SAICA, has established a GAAP Monitoring Panel for investigating complaints relating to inappropriate treatment of transactions in financial statements. Within the ongoing company law reform, an FRC will be established to provide guidance on reporting standards in conformity with the APA. There are also ongoing reforms to strengthen public sector accounting standards so as to improve reporting of SOEs and local authorities, including municipalities. These reform efforts are commendable and, after discussion with SAICA, the CRM concluded that they will go a long way in removing existing weaknesses.
677. The discussion with the SARB revealed that the banking sector regulator, the Registrar of Banks located in the SARB, has adequate capacity to conduct its work. The financial market sector (long and short-term insurance, collective investment schemes, pension and retirement funds, etc.) is supervised by the FSB, which is a self-financed, independent statutory body. The FSB, in turn, is accountable to the Minister of Finance.

Corporate Accountability

678. What remains is for the government to consolidate these gains by enacting amendments to the Companies Act. It is important to provide regulators with adequate capacity in order to ensure that established statutory requirements are properly reinforced. Coordination mechanisms across related regulators are required to reduce duplication of effort and ensure that scarce resources are used effectively and efficiently. This is expected to reduce opportunities for corporate failure by improving the quality of reporting and by minimising occurrences of undetected financial statements reflecting misrepresentation and departures from established accounting and auditing requirements.
679. The CRM concurs with the CSAR that the Companies Act provides the legal basis for company directors to present to shareholders, during AGMs, the audited financial statements covering the profit or loss and the state of affairs of the company. The CRM also agrees that JSE listing rules further mandate listed companies with ensuring that directors maintain full and effective control over their companies, including monitoring of management. Common law prohibits directors from having contractual interests in the companies of which they are board members. A concern raised in the CSAR is that the limited pool of competent directors, particularly truly independent ones, implies that a few individuals hold several directorships. This undermines independence and increases opportunities for conflict of interest of directors serving on multiple boards. The CRM, however, is of the opinion that calls for a ceiling on the number of board appointments a non-executive director should hold may not be a feasible proposition. Action should focus on increasing the capacity of regulators so they can step up their oversight of compliance with

the King II Report's code of conduct, as well as other legislation, particularly the proposed reforms to the Companies Act once the amendments are enacted by the parliament.

680. One area that the Code of Corporate Practices and Conduct, which enshrines the core principles in the King II Report, has influenced heavily is that of the board structure. Three important features are evident. First, the King II Report calls for a unitary board structure that has responsibility and is accountable for the performance and affairs of the company. Such a board structure is common within countries that follow the Commonwealth system of law. It requires a balance of executive and non-executive directors, with a majority of non-executive directors, preferably independent of management. Independence was given a wide definition, departing from the historically tight-knit nature of the South African business community, to emphasise the need for diversity, both in terms of gender and race. Second, the roles of chairperson and CEO must be separate from the position of chairperson being held by an independent non-executive director. Third, further guidelines are given for audits, remuneration and nomination committees whereby independent non-executive directors should be heavily involved. Independent evaluation of board committees is a requirement. The King II Report has made directors in the country carefully evaluate the implications of accepting invitations to serve as a director of a company because of concerns about their ability to fulfil its obligations.
681. During apartheid, SOEs that controlled the utilities, infrastructure, industries and other key strategic sectors of the economy were overtly politicised without serious attention being given to their governance arrangements. Hence, by 1994, when democracy was taking root, the country's SOEs were in a parlous state in tandem with an economy that was slowing down as a result of inward-looking economic policies informed by political isolation and the legacy of racial segregation.
682. The advent of the King I Report offered SOEs and other companies operating outside the public sector a new and efficient corporate governance framework which, though borrowed from international best practices, was adapted to local circumstances. The King II Report advanced lessons learnt from implementing the King I Report to bring to the fore public interest issues and investor rights and interests in the arena of the operational environment and business dealings of South Africa's corporations, including SOEs.
683. A more recent development on the SOE front has been the comprehensive revision of the regulations accompanying the PFMA of 1999 to conform to several requirements of the King II Report. The Protocol on Corporate Governance for SOEs was revised and the MFMA of 2003 was introduced. This Act contains extensive governance obligations on the part of officials and executives associated with municipal financial administration.
684. The landmark initiative that transformed accountability of directors in South Africa is the King I Report of 1994. Unlike the 1992 UK Cadbury Code, which only deals with the financial aspects of governance, the King I Report

viewed governance in a holistic manner and mandated company boards to deal with stakeholders linked to the company. The King I Report led to the enactment of the EEA, which legalised its affirmative action principles. The King II Report of 2002 moved the corporate governance agenda forward. A key distinguishing feature of this Report and its related code of corporate practices and conduct is that it approaches corporate governance from a principles perspective rather than rules-based approach and, consequently, defines corporate governance in broadly inclusive terms.

685. The CRM encountered divergent views on how the King II Report should be dealt with in South Africa's ongoing corporate law reform initiative. The draft Bill to be released for comment is expected to address the role of directors under company law. The King II Report's disclosure requirements are voluntary and although the JSE listing regulations require companies to comply, companies can refrain from doing so as long as appropriate reasons are given. One view, therefore, is that legal backing needs to be given to the King II Report's Code of Corporate Practices and Conduct. Opponents of this view argue that business is a difficult matter and because directors and others who run it cannot have the prescience to envisage what will happen from day to day, they need flexibility in the processes associated with administering their companies. They further argue that the rigidity of a statute not only introduces heavy compliance costs, but also does not make business sense. They refer to the USA, where corporate spending on compliance software may have been as high as US\$1.71 billion in 2005.
686. The CRM is of the view that the company law reform in South Africa should be informed by the King II Report and other best practices in corporate governance that are internationally available. This is important in an effort to restore investor confidence eroded by several both national and international corporate failures. However, the law reform project should take care of local contexts. It is important that ongoing consultations with stakeholders on company law reform should continue so that consensus can emerge to ensure that the law is practical from a business perspective and yet also strong enough to protect shareholders' rights. Irrespective of the final outcome of these consultations, the CRM acknowledges that the King II Report in its current self-regulatory form provides good guidance for both private companies and SOEs. It positions the country among the top-ranking emerging market economies that follow corporate governance codes. What is important, is the need for regulators to develop adequate institutional capacity for overseeing the implementation of the King I and II Reports and related codes.
687. A cross-cutting issue in the CSAR is that of gender mainstreaming and the low representation of women in the private sector. A report of the Employment Equity Commission in 2001 showed that women are inadequately represented across all sectors of the economy. Some 87 per cent of all top management positions are held by men, as well as 80 per cent of all senior management jobs. Women currently hold 37.6 per cent of all management and professional jobs combined, which includes the teaching and nursing professions. There are still many barriers preventing women from forging ahead in business. The

necessary education and skills are also lacking, which makes access to financial assistance problematic.

688. The CRM noted that although more needs to be done, corporations are striving hard to empower previously marginalised individuals, including women. This is evidenced by the disclosures corporations make in line with the TBL reporting requirements, for example, in the area of employment equity and transformation.

iii. Recommendations

689. The APR Panel recommends that South Africa:
- Develop a programme for monitoring implementation of the PAIA. This will entail providing government officials responsible for implementing the Act with ongoing training on its provisions; building the capacity of institutions that process requests for information by the public; and supplementing these efforts with full political commitment to implement the PAIA. *[Government agencies; Public Protector; National Archives; DPSA; South African Human Rights Commission]*
 - Develop more transparent disclosure rules for executive pay, especially with regard to executive share options grants and pension and retirement packages. The JSE should step up its oversight responsibilities to monitor compliance with such disclosure requirements. *[JSE; IoD]*
 - Enact amendments to the Companies Act to create an FRC for providing guidance on reporting standards. The Council, once created, should be given adequate capacity for ensuring proper enforcement of established statutory requirements. *[Government; CIPRO]*
 - Ensure that regulators such as the JSE, Registrar of Banks, FSB, CIPRO, etc. have the required capacity to effectively discharge their oversight responsibilities over company compliance with the King II Report's code of conduct as well as other legislation, particularly the proposed reformed Companies Act once amendments are enacted by the parliament. *[JSE; SARB; FSB; CIPRO]*
 - Improve coordination and effectiveness of financial, microfinance and company regulators that currently work in silos. *[SARB; DTI; Ministry of Finance; FSB]*
 - Ensure, within ongoing corporate law reforms, that SMMEs are not mandated to comply with the costly "big GAAP" requirement but rather apply simplified accounting standards. The work done by ECSAFA may be a useful guide for policy in this area. *[CIPRO]*
 - In tandem with ongoing initiatives by the IRBA and SAICA to increase the number of black CAs in the country, change the curricula in relevant

institutions to respond to the need for more qualified accountants, so that skilled accountants can be produced at various levels (CAs, accounts clerks, etc.) to meet the challenges of the country. [*Government; IRBA; SAICA; relevant professional accountancy bodies*]

- Maintain ongoing dialogue with stakeholders to determine the extent to which the company law reform in the country can be informed by the King II Report, so that consensus can emerge to ensure that the law is practical from a business perspective and yet strong enough to protect shareholders' rights. [*Government; social partners e.g. IoD, BUSA, SAICA, JSE*]
- Enhance compliance with disclosure of environmental accidents and audit results, ethical standards and accounting for CSI. Consider introducing legislation and effective monitoring measures for governing disclosure of issues such as women in management and anti-sexual harassment policies and practices. Building on efforts by the JSE, this may require developing further systems for collecting, analysing and disseminating information about the performance of large corporations in these areas, as well as appointing a government lead agency for corporate responsibility, whose mandate would include the enforcement of social reporting requirements. [*Government; DTI; JSE; IoD*]
- Improve disclosure requirements for contingent liabilities and non-financial matters in line with the IFRS. [*CIPRO; SARB; ASB; SAICA; JSE; IRBA*]
- Continue to train more potential directors to increase the pool of competent directors, particularly of black people, women and other disadvantaged groups. [*IoD*]
- Give "big GAAP" legal backing by amending the Companies Act. [*CIPRO*]
- Expedite work on updating the public sector accounting standards by revising the PFMA to enhance the accountability of SOEs. [*Government; SAICA; professional bodies for accountants*]
- Build the capacity of public bodies to implement the legislated reporting structures, especially for SOEs in municipal and local government structures, and eliminate the "double burden" imposed on public entities by the Companies Act and the PFMA. [*Government; SAICA; professional bodies for accountants; provincial and local government agencies*]
- Introduce effective monitoring measures and legislation governing the disclosure of certain types of non-financial matters, such as environmental risks, gender issues, women in management, and anti-sexual harassment policies and practices. [*IoD; JSE*]

CHAPTER SIX

6. SOCIO-ECONOMIC DEVELOPMENT

6.1 Overview

690. The prevailing socio-economic inequality in South Africa is a major legacy of the apartheid era. With a Gini coefficient of 0.58 South Africa continues to be one of the most unequal countries in the world. It is estimated that in 1989, 52.7 per cent of black South Africans were living below the poverty level, compared with only 1.6 per cent of white people. By 1993, towards the end of apartheid, the poorest 10 per cent of the population (overwhelmingly black) received a mere 1.1 per cent of the population's income, while the richest 10 per cent (overwhelmingly white) received 45 per cent.
691. The government that emerged from South Africa's first non-racial democratic elections of 1994 had no alternative but to confront the daunting socio-economic challenges. In Chapter Two of this report, five legacies of apartheid were discussed. Inevitably, the search for an appropriate socio-economic development paradigm that could address these legacies became a major preoccupation of the ANC-led government, even before the 1994 general elections. This search culminated in the Reconstruction and Development Programme (RDP) in 1994, which addressed the huge structural problems, including mass poverty, a dualistic polity, high unemployment rate, huge social service backlogs and severe socio-economic inequalities. These problems were the consequence of decades of oppression and severe social deprivation by the minority white-dominated apartheid government.
692. Apartheid South Africa, having gone through more than two decades of economic stagnation due, inter alia, to global economic sanctions, left behind strains of severe socio-economic inequalities. Of greater immediate concern was the macroeconomic instability, which involved a high inflation rate, huge balance of payments deficits, a heavy debt burden, currency volatility, and so on. By 1994, the situation was thus:
- The economy had experienced three years of negative growth rate – the economy and wealth of the nation were shrinking.
 - South Africa had experienced more than a decade of declining growth in per capita income – the average income of South Africans had been falling since the 1980s.
 - From 1985 to mid-1994, total net capital outflows from South Africa amounted to almost R50 billion.
 - During the fiscal year 1993/94, the government had run up a budget deficit equal to 9.5 per cent of the GDP, including the debt of the so-called independent homelands.

693. The new government had no alternative but to give priority to these macroeconomic challenges. It consequently opted for the Growth, Employment and Redistribution (GEAR) Strategy, whose primary objective was to bring about macroeconomic stability.
694. However, GEAR was adopted without popular consultation, as it was not referred to the National Economic Development and Labour Council (NEDLAC). Hence, there was some tension regarding its introduction. GEAR was also criticised by labour movements as focusing too much on economic growth and macroeconomic stability, without paying as much attention to social and human development concerns, such as poverty, unemployment, inequality, economic empowerment and gender mainstreaming.
695. The GEAR model aimed for the reduction of the fiscal deficit down to 3 per cent of GDP; government consumption down to 18.1 per cent of GDP; and Consumer Price Index (CPI) inflation down to 6 per cent per annum. All these targets were exceeded, with a 2.2 per cent deficit to GDP ratio, 18 per cent government consumption and a 5.4 per cent inflation rate, respectively.
696. To everyone's disappointment, targets for job growth and investment were not attained. The target for job growth was 2.9 per cent per year in formal non-agricultural employment. Since 1995, employment has grown at about 2.5 per cent per year, but more than half the new jobs have been in the informal sector. Investment performance was even more disappointing, particularly towards the late 1990s. Growth was also disappointing, averaging 2.6 per cent over the GEAR period instead of the projected 4.2 per cent.
697. This means that, despite sound fiscal and monetary policies in the past decade, the state of the South African economy has not significantly improved in terms of alleviating poverty and unemployment. Real per capita income decreased and past socio-economic inequalities have largely remained unchanged.
698. However, democratic South Africa inherited a solid economy and infrastructural base (mining, agriculture, industry, services and finance), which made it the dominant economic power in Africa. For instance, Gauteng, the smallest province in South Africa, is the fourth largest economy on the African continent, excluding South Africa (see Table 6.1).
699. At present, the greatest challenge to socio-economic policy in the new South Africa is the need to address poverty and unemployment, which has been compounded by both historical and contemporary factors. There is, therefore, the need for structural transformation of both the economic base and social structure of South African society. Growth alone does not make for modernisation and socio-economic transformation. As Joseph Schumpeter, a renowned Austrian economist once put it, "add successfully as many rail coaches as you like, you will never get a railway". To join the rich world means to acquire the ability to grow indefinitely not by doing more of the same, but moving continuously into ever higher value-added and diversified production systems.

Table 6.1: Gross Domestic Product (current prices), US\$ million

Countries	2001	2002	2003	2004
Algeria	54 855	55 914	68 019	84 649
Angola	8 936	10 835	13 825	19 493
Gauteng, South Africa	44 542	31 817	49 382	69 769
Egypt	97 686	87 851	82 924	78 796
Kenya	13 059	13 192	15 036	16 088
Libya	29 994	19 346	23 465	29 119
Morocco	33 901	36 093	43 813	50 031
Nigeria	48 000	46 711	58 294	72 053
Sudan	13 618	15 376	17 792	21 098
Tunisia	19 977	21 024	25 000	28 185
South Africa	118 479	110 518	165 434	212 777

Sources: StatsSA, GDP, 29 November 2005; World Bank, World Development Indicators (<http://devdata.worldbank.org/data-query/>); Currency Calculator (www.xrates.com).

700. Structural transformation in South Africa requires a deconstruction of the inherited apartheid economy to make way for the Constitution of a new indigenous socio-economic order based on the triple pillars of democratisation of the development process, national and collective self-reliance, and the restitution and development of an indigenous social democratic order.
701. This suggests that, although the importance of promoting growth in South Africa cannot be overstated, growth alone is insufficient to bring about the deconstruction of a colonial economy with dualistic characteristics. The inherent inequitable structures in such an economy inevitably result in the inequitable distribution of income and wealth.
702. It is obvious that the dichotomous relationship between growth and socio-economic development, now passé as it is, is a false one. Sustainable development is not possible in a country where large numbers of people are malnourished, disease-ridden and illiterate.
703. The capability of most people in a country to interact effectively is determined to a large extent by their state of nutrition, health and knowledge. For this reason, it is important to identify those who fail to benefit from growth. The poor benefit from growth whenever it raises the returns to the few assets they hold, such as unskilled labour and land. There is also a need to use the benefits of growth for social provision through strong state intervention.

704. The South African economy is currently at a crossroads where political choices have to be made regarding the creation of the necessary conditions not only to move the country to a high growth trajectory, but also to bring about sustainable human development. It has become clearer than ever before that this will not be possible without reducing the massive socio-economic inequalities prevalent in South African society.
705. The normalisation of South Africa's political and economic relations since the beginning of the 1990s has exposed the country's economy to the powerful influence of globalisation. As stressed in the RDP and later in GEAR, the belief was that given the right policy mix, this process would substantially reduce structural problems. However, the anticipated positive functional relationship has not held unequivocally for South Africa. The benefits of globalisation now seem to be largely confined to the modern economy and the trickle-down effect to the peripheral economy is yet to materialise.
706. Labour markets in South Africa are characterised by an oversupply of unskilled people and a great shortage of skilled workers in certain sectors. Many jobs have also been foreclosed due to sluggish growth and low levels of investment and productivity.
707. The absolute costs involved in meeting the basic needs of people are, however, not insurmountable. South Africa, with its large and sophisticated economy, is at an advantage relative to most African countries with small and weak economies. Hence, the recent search for a new paradigm that will address macroeconomic and development challenges – the Accelerated and Shared Growth Initiative for South Africa (AsgiSA).
708. As South Africa embarks on AsgiSA, the pace of transforming the country should be increased. If, by implementing the new initiative, the constraints that currently bind the push forward are removed, the production of public goods and services that provide employment and reduce poverty will be boosted.
709. Of all the major constraints present in the South African economy, a critical factor is the lack of human capacity (both in quality and quantity) in the private and public sectors. This is especially the case at the local government level, suggesting the need for strengthening capacity.
710. To address the current socio-economic inequalities, the economic empowerment of poverty-stricken population groups should also be high on the country's policy agenda. For the economy to move from the current low to a high-growth scenario, new innovative policy actions are required, with special attention to appropriate investment in human capital.
711. The overall conclusion is that higher, balanced and sustainable growth and development in South Africa will be difficult to achieve if the problems of poverty, unemployment, socio-economic inequities, low levels of savings and investments and abysmally low productivity, particularly in the second

economy, are not addressed. This is the context in which we examine socio-economic development in South Africa.

6.2 Standards and Codes

i. Summary of the CSAR

712. According to the CSAR, the standards and codes for socio-economic development that South Africa has adopted, signed or ratified are the:

- Constitutive Act of the African Union (2000);
- African Charter on the Rights and Welfare of the Child (ACRWC) (2001);
- African Charter on Human and People's Rights (ACHPR) (1983) and the Protocol to the ACHPR, including the Protocol on the Rights of Women in Africa (2004);
- NEPAD Framework Document (2001);
- African Charter on Popular Participation in Development (1990);
- United Nations Millennium Declaration (2000);
- World Summit on Sustainable Development (2002);
- Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) (1980);
- UN Declaration on the Right to Development (1996); and
- World Summit on Social Development Plan of Action (1995).

However, there is very little discussion on the extent of domestication of these standards and codes, as indicated in the APRM questionnaire.

ii. Findings of the CRM

713. The government has adopted, signed and ratified all the standards and codes listed in the APRM Questionnaire. However, the CRM established that South Africa is yet to ratify the International Covenant on Economic, Social and Cultural Rights, which the CRM has identified as important for South Africa's rights-based development agenda.

714. The CSAR contains a list of standards and codes in Appendix A. Whereas this list states whether and when they were ratified, it does not provide any information on steps taken to ensure compliance. Likewise, no information is given on the challenges experienced and steps taken to address shortfalls and capacity constraints, as well as progress in achieving standards or objectives in terms of appropriate result indicators, as required by the self-assessment questionnaire. The extent to which the standards and codes have been domesticated is therefore not clear. A brief discussion of compliance on each standard and code follows below.

Constitutive Act of the African Union

715. The highlight of the 2000 Organisation of African Unity (OAU) Assembly of Heads of State and Government in Lomé, Togo was the adoption of the Constitutive Act of the African Union, in terms of the Sirte Declaration of 9 September 1999. South Africa ratified this Act on 23 April 2001 with the OAU General Secretariat, becoming the 35th member state to do so. South Africa has participated in the development of the Rules of Procedure for the Assembly, and the same process has taken place at Southern African Development Community (SADC) level. South Africa hosted the first Summit of the African Union (AU) on 1-11 July 2002 in Durban. Apart from the significance of hosting the inaugural summit and playing host to 53 heads of state and government and their delegations, President Thabo Mbeki became the first Chairperson of the AU. In general, South Africa has maintained its dedication in the affairs of the AU.

African Charter on the Rights and Welfare of the Child

716. South Africa ratified the ACRWC in 1999. A committee was elected to monitor the process and the first meeting was held in April 2002. A Summit on the Rights of Children in South Africa was held between 27 May and 1 June 1992 in Somerset West, Western Cape. The Summit, at which the Children's Charter of South Africa was drawn up and adopted, was a momentous turning point in realising a culture of children's participation in child rights advocacy. The Summit brought together over 200 children aged 12 to 16 years, from 20 different regions all over South Africa. They discussed the problems they faced and spoke out on the continuing violations of human rights. They recognised that apartheid affected them and that children were not treated with respect and dignity. South Africa also ratified the Convention on the Rights of the Child on 16 June 1995. The first report was submitted on 4 December 1997.
717. Further evidence of compliance lies in the provision of free healthcare for children under 6 years of age and the establishment of a child support grant. Children with disabilities, teenage pregnancies and STD/HIV infection among adolescents have been identified as priorities in child health. However, the challenges remain substantial. Proximity to healthcare facilities and inadequate transport present enormous obstacles. In terms of education, this right is protected in the Constitution and other mechanisms, such as school nutritional programmes. However, access and funding remain critical challenges, as is explored in Objective 3.

African Charter on Human and People's Rights

718. South Africa ratified the ACHPR on 9 July 1996. The Constitution clearly guarantees all South Africans equal protection and benefit of the law. Compliance of this Charter is generally observed through South Africa's rights-based agenda discussed in the overview (section 6.1).

NEPAD Framework Document

719. The strategic framework document for the New Partnership for Africa's Development (NEPAD) arises from a mandate given by the OAU to the five initiating heads of state (Algeria, Egypt, Nigeria, Senegal and South Africa) to develop an integrated socio-economic development framework for Africa. The strategic framework document was formally adopted at the 37th Summit of the OAU in July 2001. As one of the five initiators of NEPAD, the President has actively participated in all meetings of NEPAD's Heads of State and Government Implementation Committee (HSGIC). As Chairperson of the AU in 2002/03, the President was responsible for the overall roll-out of NEPAD as the socio-economic development programme of the AU and, as such, promoted it in all international forums, from the UN and the World Summit on Sustainable Development (WSSD) to the Association of Southeast Asian Nations (ASEAN).
720. Concerning infrastructural projects, South Africa is one of 11 countries implementing the submarine cable project, known as the Eastern Africa Submarine Cable System (EASSy). The country is also represented on the Information Society Partnership for Africa's Development and, among other things, will be expected to play a role in NEPAD's e-schools initiative. A national NEPAD business group has been established, as well as a national NEPAD focal point for coordinating, monitoring and integrating NEPAD programmes and development plans at country level.
721. South Africa has hosted the NEPAD Secretariat since its inception and has been the largest financial contributor to its budget to date. In addition, it seconded the Economic Advisor of the President to head the Secretariat for the first four years of its existence, and over time has seconded a number of officials to the Secretariat on a full-time basis while still carrying the costs of these posts.
722. South Africa was also one of the first countries to accede to the APRM in March 2003.

African Charter for Popular Participation in Development and Transformation

723. This Charter emerged from a conference sponsored by the United Nations Economic Commission for Africa (UNECA) during the historic month of February 1990 when former President Mandela was released from his 27-year imprisonment. It has made popular grassroots participation in policy making and programme implementation the foundation for true democracy. The Charter also calls for an opening up of the political process to accommodate freedom of opinion; tolerate differences; accept consensus on issues; and ensure effective, broad-based participation in the development process. To this end, South Africa tries to ensure extensive consultation with all stakeholders through NEDLAC, where all stakeholders are represented. Other efforts in compliance of this Charter are captured in Objective 6 of this Report.

United Nations Millennium Declaration

724. In September 2000, South Africa was one of a total of 189 countries that signed the Millennium Declaration, thereby accepting the targets of the Millennium Development Goals (MDGs) for eradicating poverty and other sources of human deprivation, as well as for promoting sustainable development. In South Africa, the Department of Foreign Affairs is the official overseer of the MDG process, while Statistics South Africa (StatsSA) is the lead agency responsible for managing the process. Recently, the government adopted Vision 2014, which is South Africa's direct response to addressing the development challenges set out in the Declaration. An MDG progress report was published in 2005, stating that South Africa is on course in terms of meeting the MDG goals by 2015. More information on MDG achievements can be found in Objective 2 of this Report.

World Summit on Sustainable Development

725. At the WSSD, held in Johannesburg from 26 August to 4 September 2002, President Thabo Mbeki was elected President of the Summit. The WSSD called for a commitment to health and sustainable development, poverty reduction, gender equality, primary education, rural infrastructure, food security, drinking water, sanitation, and so on. The Summit also called for corporate environmental and social responsibility and improvement in environmental performance, using procedures for environmental impact assessments (EIAs).
726. South Africa has enacted the National Environmental Management Act (NEMA) of 1998 that provides for the assessment of the environmental consequences of policies, plans and programmes. South Africa has also put in place the following: White Paper on Environmental Management Policy (1998); Integrated Sustainable Rural Development Strategy (2000); National Environmental Management: Biodiversity Act of 2004; National Environmental Management: Protected Areas Act of 2003; Regional Agricultural Policy (1998); Provincial Agricultural Bills (1999); White Paper on Land Policy (1997) and White Paper on Energy Policy (1998), to name a few. As mentioned, there is sufficient evidence of the political will to comply, but full implementation of these policies and programmes are hampered by capacity constraints.

Convention on the Elimination of All Forms of Discrimination Against Women

727. South Africa ratified CEDAW (Beijing Platform of Action) on 15 December 1995 and submitted its initial report in 1997. The report detailed the key problems and issues encountered in relation to the different rights of women, and outlined the main legislative and policy measures taken by the government. The aim was to establish baseline information from which progress in eliminating discrimination against women in all spheres could be

measured in future.³⁴ The following articles are seen as most critical for eliminating discrimination against women in South Africa:

- Article 3 (advancement and development of women);
- Article 10 (education);
- Article 11 (equal opportunities in the workplace);
- Article 12 (healthcare); and
- Article 14 (rural women – Land Reform Programme).

728. In terms of reporting, South Africa has complied with the requisite periodic reports to the CEDAW Committee since 1997. The second report was submitted in January 2001 and the third report in January 2005. CEDAW requires full development and advancement of women in the political, social, economic and cultural fields. South Africa established a Portfolio Committee on the Quality of Life and Status of Women, which reviews the gender implications of various legislations. A Gender Equity Task Team was established and managed to achieve gender parity in primary and secondary schools. However, women are still underrepresented in the mathematics and science fields.
729. In the area of employment, a legislative framework for ensuring equal rights and protection at work has been established. A Directorate for Equal Opportunities has been created to address gender imbalances. Gender parity has been achieved in decision-making positions within the public sector. However, women continue to be underrepresented in senior management positions in the private sector.
730. Free healthcare is currently being provided for all pregnant women and children under 6 years of age, and primary healthcare has been extended to all South African residents. Nonetheless, there are still obstacles to women's ability to access healthcare facilities. South Africa has recognised that a key feature of poverty among rural women is lack of access to land. This is compounded by discriminatory social and cultural practices. The Land Reform Programme is the government's solution to the problem, but has so far been slow and ineffective where rural women are concerned.

United Nations Declaration on the Right to Development

731. South Africa adopted this Declaration in 1996, which states that "the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised". South Africa's efforts to comply with the Declaration are enshrined in the Constitution and the rights-based approach to development.

³⁴ Brand, D. & Bekker, G. 1998. Focus on the first CEDAW Report. *Economic and Social Rights in South Africa Review*, 1(3): 1-4, www.communitylawcentre.org.za.

World Summit on Social Development Plan of Action

732. South Africa has adopted the Plan of Action of the World Summit on Social Development, which calls for countries to address their social problems urgently, especially poverty, unemployment and social exclusion. South Africa is still grappling with social development problems, particularly poverty and unemployment. The government has established a system of social security grants and an Expanded Public Works Programme (EPWP) to assist with the problem of unemployment. However, more needs to be done.

General Observations

733. It was apparent during the stakeholder consultations that many South Africans are unaware of many of these conventions. The general lack of awareness has implications for citizens' ability to exercise these rights. For this reason, it is important that the populace be well informed about existing instruments that South Africa has acceded to. Moreover, people are more likely to comprehend and appreciate the usefulness of these conventions if they have been translated into a language they can understand. When international and regional standards and codes are adopted and/or ratified, it is therefore important that they be translated into the 11 official languages and further explained to communities.
734. It was underscored in meetings with stakeholders (e.g. the North-West provincial legislature) that there is poor interpretation of the law at times, even among those in the legal profession. It was noted that, in some cases, women are not educated about their rights. The provincial legislature would do well to follow through to make sure that women have the Bill of Rights in a language that they understand. Efforts are made in schools to educate students about their rights, but this has limited impact when their mothers are uninformed about their rights.
735. Domestication of these conventions is critical. In some respects, South Africa has demonstrated this by establishing policies, institutions, programmes and other mechanisms for ensuring the implementation of adopted or ratified codes. More could be done, however, particularly in terms of ensuring: the rights of children; meaningful participation in policy making and implementation; and the attainment of the MDGs.

iii. Recommendations

736. The APR Panel recommends that South Africa:
- Disseminate information and sensitise the public about codes, standards and national laws. *[Government; Public Education Unit]*
 - Translate these important documents into the country's local languages. *[Government; Public Education Unit]*

- Build capacity to ensure effective dissemination and awareness of legal instruments at local level. *[Government; Public Education Unit]*
- Ratify the International Covenant on Economic, Social and Cultural Rights. *[Government]*
- Pursue most vigorously the implementation of the codes and standards, including the passing of Bills such as the Biodiversity and Domestic Violence Bills, among many others. *[Government; private sector; civil society]*

6.3 Assessment of the Performance of APRM Objectives

Objective 1: To Promote Self-Reliance in Development and Building Capacity for Self-Sustaining Development

i. Summary of the CSAR

737. This objective is to be achieved through South Africa's ownership and funding of its development strategies and programmes.

Ownership of the National Development Programme

738. The CSAR emphasises that socio-economic development strategies and programmes are fully owned by South Africa both in their formulation and implementation. Inspired by the ruling party's RDP vision and the ultimate goals of meeting people's development needs, South Africa's socio-economic development programmes prioritise "the provision of basic services and opportunities for those most discriminated against under the apartheid regime, with a particular focus on improving the quality of life of women and children".
739. The CSAR further notes that the RDP ideals and aspirations have been incorporated in the new Constitution and in various policies and guidelines. It is in this context that the government adopted the GEAR Strategy in 1996 to redress the socio-economic challenges facing the majority of South Africans.
740. These objectives and strategies are translated into the planning and operational programmes of line ministries (departments) at national level as well as provincial and local levels. Integrated Development Planning (IDP) has been introduced at the local level as a system aimed at reversing the history of poor local planning and implementation capacity. Local government ownership of development planning and delivery capacity is considered crucial to the achievement of socio-economic development goals at grassroots level. This implies the need to enhance the operational capacity of local government.

741. According to the CSAR, ownership of national development programmes should not be limited to the three spheres of government (national, provincial and local), but broadened to include all stakeholders in society. This requires full participation of these segments in the formulation and implementation of socio-economic development strategies and programmes at all levels. The CSAR recognises that this is particularly so at local government level where informal development socialisation mechanisms, such as *Makgotla* and *Imbizo*, have allowed critical segments of civil society and the private sector to engage with government leaders, thus building consensual approaches.
742. However, the CSAR recognises certain weaknesses and concerns, particularly at national level. Criticisms have highlighted the fact that GEAR was formulated and adopted without the involvement and participation of civil society through its operational arm, NEDLAC. In the same vein, the soundness and responsiveness of GEAR were criticised by civil society, in particular by some labour movements, as being a version of the structural adjustment programme simply aimed at promoting growth and integration into the globalised world market.
743. Another concern identified by the CSAR is that consultation processes for people's ownership of their development programmes through the *Makgotla* and *Imbizo* mechanisms are not fully institutionalised. They cannot, therefore, respond to or replace the needed publication of government policies and programmes for broad-based discussion on choices and policy orientations. The CSAR notes that while the Constitution provides a high-level framework for the country's development, submissions from South Africans indicate a divergence of views on the roles of different sectors, organisations and institutions. Notably, there was no disagreement over the ideal of a non-racial, non-sexist, democratic and prosperous country. Differences emerged on the best approach to implementing programmes for attaining the shared vision.
744. The CSAR notes, however, a good track performance in efforts to deepen broad-based participation at the local level, thus building and strengthening ownership of development programmes and democratic values. In the same vein, the Report underlines women's particular role in the process.

Funding the National Development Programme

745. The CSAR underscores an important dimension of self-reliance and notes that national development programmes are largely internally funded from domestic resources, while external development aid represents a small percentage of the government's expenditure on development. The CSAR also points to the need for better education and information on sources of socio-economic development funding, as well as donors' assistance focus and its alignment with national development objectives. In this regard, there is need for clarity on the National Development Agency's (NDA) actual role in the mobilisation and coordination of donor resources.

746. While recognising the important role the post-apartheid government has played in achieving macroeconomic stability that has contributed to economic growth and financial self-reliance for socio-economic development programmes, the CSAR also points out some weaknesses and concerns in terms of poor participation of civil society organisations (CSOs) in implementing these programmes as partners. Reduced funding to CSOs and community-based organisations (CBOs) is also mentioned, together with the call for a thorough analysis of their financial relationship with both domestic and foreign donors.

ii. Findings of the CRM

747. The CRM is impressed with South Africa's prudent funding of the national development programme, which is almost exclusively locally financed.

Best Practice 15: Self-Reliance in Funding Development Programmes

The CRM commends the South African government and the country's overall leadership for their efforts in materialising the principles of socio-economic development ownership and self-reliance, particularly in the areas of ownership and funding. Unlike most African countries, South Africa's self-funding amounts to 99.6 per cent of its development expenditure. The country receives only 0.4 per cent from foreign donors.

Income tax constitutes South Africa's main source of revenue. Residents are taxed on their worldwide income and non-residents are taxed on income generated from South African sources. Companies are taxed at a rate of 29 per cent, and a secondary tax of 12.5 per cent is levied on all income distributed by way of dividends. In addition to income tax, there are capital gains tax (tax on disposal of assets), VAT (14 per cent on goods and services) and other duties such as customs, excise, estate and stamp duties. Generally, the South African Revenue Service (SARS) is fairly efficient and effective at mobilising revenue. The result is a self-reliant country that is able to take charge of its destiny and align resources with identified national priorities. This is a best practice that all African countries should strive to attain.

Sources: Country Self-Assessment Report; APRM CRM Findings; SARS, www.sars.gov.za.

748. A number of critical issues still need to be addressed in promoting national development in South Africa. In addition to the weaknesses indicated in the CSAR, the CRM noted gaps in institutional capacity (in terms of coordination, mentoring, monitoring and execution) and human capacity (in terms of required development management and technical skills). These gaps constitute the main impediments to self-reliance in the socio-economic development of the country. In this regard, the CRM observed that the legacy of the apartheid years still represents a development challenge that needs to be addressed from all perspectives to accelerate the process and deepen the culture of self-reliance.

749. Stakeholders underlined that self-sustaining development must be built from within through a genuinely self-reliant process involving all actors and beneficiaries. The government should no doubt foster the process by creating an enabling environment; empowering the people; producing needed technical assistance; and, above all, launching and sustaining a process of holistic human development. In this regard, South Africa's approach to self-reliance in development and self-sustaining development is considered a best practice. Communities also need to be empowered to avoid the risk of a social dependence syndrome. Since communities in South Africa, as indeed elsewhere in Africa, are still socially significant, they should be made to become economically significant.
750. Some challenges identified in the CSAR need to be addressed while existing solutions that are working need to be reinforced. These include: service delivery capacity at local government level; the effectiveness of BEE and its tendency to enrich a few elites rather than promote equitable empowerment of the black majority; discrepancies between the government's commitment to achieving critical development objectives; and concrete actions to materialise this commitment, including funding, which are entrusted to local governments.
751. The CRM noted that, in response to the challenges of service delivery, the government launched Project Consolidate, a local government support initiative. This initiative aims to address a fundamental problem of capacity within local government through direct intervention in areas of need, such as billing. However, Project Consolidate and its longer-term effects on capacity building pose challenges at the local level in terms of the provision of skills. (This has been discussed in Chapter Three.)
752. Self-reliance in development and sustainable development implies good management of resources, including environmental resources. The existence of a well-developed mining sector also requires that much emphasis be placed on developing a comprehensive environmental strategy aimed at protecting and regenerating natural and renewable environmental resources.
753. The cultural dimension of self-reliance and sustainable development is another important aspect of South Africa's efforts in post-apartheid socio-economic development. It is commendable that the government has established a Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. However, stakeholders at all levels of society have pointed to poor cultural governance in terms of incorporating generational African sociocultural values in a modern society.
754. Other critical dimensions regarding self-reliance that were identified in the APRM background documentation are not clearly highlighted in the CSAR. First, there is the matter of food security and rural development. In 1998, the Ministry of Agriculture estimated that 30 to 50 per cent of South Africans had insufficient food. Since then, the government has made some effort in this regard, but there continues to be endemic poverty and poor development in rural areas. Second, the promotion of small, medium and micro-enterprises

(SMMEs) is an important engine for growth and job creation. SMMEs contribute about 40 per cent³⁵ of the GDP and are thus an important sector for generating employment. Third, the matter of value-added industries and activities. The CRM believes there is a lack of clarity as to the nature and pattern of industrial development envisioned for the future. The CRM noted that democratic South Africa has inherited a solid economic infrastructural base for its socio-economic development that it will have to reconfigure, not only for market-oriented economic growth but, more importantly, also for the socio-economic needs of the large segments of its rural poor.

755. The operationalisation of South Africa's strategic approach to self-sustaining development must make a conscious effort to avoid duplication, incoherence and poor coordination. The multiplicity of development bodies that manage and allocate development resources more often than not leads to ineffectiveness and inefficiency. Lack of effective coordination of sectors, or between sectors and development areas, also constitutes a critical problem. Intersectoral linkages are essential for ordered development. The CRM is of the view that there should be an integrated approach that puts together and strengthens linkages among thematic areas; among objective-related policies, strategies, programmes, institutional and legal instruments within any thematic area; and among projects and other instruments within an identified issue. This need was generally recognised by stakeholders in the provinces.

iii. Recommendations

756. The APR Panel recommends that South Africa:
- Address the issue of institutional and human capacity weaknesses through a comprehensive capacity-building and skills development policy to ensure that the human and institutional dimensions of self-reliance and self-sustaining development are strengthened. *[Government; civil society; private sector]*
 - Accelerate the process of building local government capacity. In the process, ensure that Project Consolidate is fully effective and facilitates the transfer and/or building of requisite skills in project management, monitoring and evaluating as needed for effective service delivery. *[Government; civil society; private sector]*
 - Prioritise environmental protection in the light of the mining sector and high levels of rural poverty. *[Government; civil society]*
 - Vigorously improve integration and coordination of the planning and management of socio-economic development. Consider establishing a Ministry of Economic Development and Planning, as well as an Economic

³⁵ Department of Trade and Industry, 1998. *Financial Access for SMMEs: Towards a Comprehensive Strategy*. Draft discussion document. Pretoria: DTI.

Intelligence Commission to undertake these crucial tasks. *[Government; private sector]*

Objective 2: To Accelerate Socio-Economic Development to Achieve Sustainable Development and Poverty Eradication

i. Summary of the CSAR

Policies to Accelerate Socio-Economic Development

757. The CSAR identifies the key features of South Africa's development programme as human resource development, land reform, and the devolution of responsibility and resources to local government. A local government-based strategy anchored in the constitutional requirement for a consultative development process has been adopted. It also outlines the national development goals articulated by the President in 2006. They include meeting the MDGs, reducing inequalities, halving poverty and unemployment by 2014 and sustaining economic growth at about 6 per cent by 2010.
758. The CSAR outlines the set of socio-economic objectives on which the country had converged as of 2006: reduction in income and wealth inequality; reduction in unemployment and poverty; attainment of the MDGs; accelerated growth; and shared growth and improvement in the quality of life of South Africans. The CSAR further outlines a series of pro-poor interventions undertaken under the means-tested social assistance available for the poor, designed to address extreme poverty and hunger. The policies for meeting these targets include a social security system, unemployment insurance, road accident fund and worker's compensation. There are also social assistance grants, such as the Child Support Grant, Disability Grant and Old Age Pension Scheme. Other initiatives include the Integrated Nutrition and Food Security Programme, the EPWP, and the National School Nutrition Programme. The CSAR also outlines some challenges, such as persisting inequalities and the growing prevalence of HIV and AIDS and tuberculosis.
759. Submissions received from the self-assessment exercise reflected the general agreement that South Africa's social security system is one of the country's most successful poverty alleviation programmes. The CSAR also notes that despite some tangible achievements, demand far outstrips the scope of the public works and nutrition programmes. It questions whether they can bring about real and lasting change. The CSAR also admits that many local governments lack the capacity needed to meet their responsibilities, due in part to a widespread shortage of technical skills.
760. Concern has been expressed about the continued spate of corruption and fraud in the social security system. President Mbeki has alluded to the increasing fraud in the system and was quoted as stating in his 2005 State of the Nation

Address that the growth in certain grant beneficiary numbers was unsustainable.

Results Achieved by Development Policies and Mechanisms

761. The CSAR reports some ambiguity as far as results in terms of poverty are concerned, stemming from the lack of agreement or consensus on the definition of poverty. As a result, some stakeholders perceive poverty to be increasing, while others perceive it to be decreasing. While the CSAR lacks detailed information on the MDGs, it does indicate that South Africa's 2005 MDG Report shows appreciable positive improvements. However, there are growing concerns about the prevalence of tuberculosis and HIV and AIDS. The CSAR also notes that more needs to be done to ensure the continued empowerment of women and girls, especially as the unemployment rate is much higher for women (34.3 per cent) than men (25.7 per cent). A final result noted in the CSAR is that the percentage of households living in informal dwellings was 11.3 per cent in 2004.

ii. Findings of the CRM

Policies to Accelerate Socio-Economic Development

762. It is clear that South Africa fully recognises the need to promote sustainable development and reduce poverty. The country should be commended for the significant efforts it has made to address the devastating impact and legacy of apartheid. As indicated in the CSAR, South Africa has put in place numerous policies, measures and programmes for reducing poverty and promoting sustainable social and economic development at the national, provincial and local levels in accordance with the provisions of the Constitution, especially the Bill of Rights. Provincial governments have also developed Provincial Growth and Development Strategies (PDGSs) for dealing with the challenges of underdevelopment, poverty and unemployment.
763. The key programmes designed to bring about development and address the destructive legacy of apartheid, and which dovetail into thinking about the development state are the following:
- The RDP, which centres on meeting people's development needs and prioritises basic services and opportunities for those most discriminated against under the apartheid regime;
 - The GEAR Strategy introduced in 1996 to promote a stable macroeconomic environment as a necessary condition for sustainable interventions in promoting socio-economic development and pro-poor growth;
 - IDP, introduced to increase consultation and reverse the history of poor planning at local levels; and
 - AsgiSA, which attempts to respond to some of the weaknesses of GEAR by addressing employment and skills development.

764. Launched by President Thabo Mbeki in July 2005 and headed by the Deputy President's office, AsgiSA is South Africa's most recent and comprehensive growth and development programme. It aims to halve unemployment and poverty by 2014 by removing the crippling legacies of apartheid and the binding constraints on the economy. AsgiSA aims for a minimum economic growth rate of 6 per cent by 2010. An important principle of AsgiSA is that economic growth must be sustainable and be shared among all South Africans. It recognises that while the social grants programme has made radical inroads into reducing poverty and redistributing income, a full third of South Africa's people is yet to benefit from the country's new prosperity.
765. AsgiSA identifies six binding constraints to accelerated and shared growth:
 - Currency volatility;
 - Infrastructure inadequacy;
 - Skills shortages;
 - Lack of investment opportunities;
 - Barriers to investment;
 - Cumbersome regulatory environment; and
 - Deficiency in state organisation capacity and leadership.
766. It proposes to address these constraints through:
 - Making massive investments in infrastructure;
 - Targeting economic sectors with good growth potential;
 - Developing the skills of South Africans and harnessing those skills already there;
 - Building up small businesses to bridge the gap between the formal and informal economies;
 - Strengthening public administration; and
 - Creating a macroeconomic environment that is more conducive to economic growth.
767. The government plans to review progress in the implementation of AsgiSA regularly. The programme will also be reviewed by a team of economists and social scientists.
768. Under AsgiSA, the Joint Initiative on Priority Skills Acquisition (JIPSA) – a high-level task team led by the Deputy President that will identify urgent skills needs and advise on how they can be met – was launched in March 2006. Likewise, the Spatial Development Initiative (SDI) will focus on high-level support in areas where socio-economic conditions require concentrated government assistance and inherent economic potential exists. The SDI programmes will focus government attention across the various national, provincial and local government spheres to ensure that investments are fast-tracked and synergies between the various types of investment are maximised.

769. The CRM noted that South Africa has employed two approaches in response to poverty: a social assistance-based approach and a development approach. The social assistance, social security or social grant approach is centred on providing financial assistance to the poorest households. Social security plays a critical role in poverty alleviation and has become increasingly important for the following reasons: until recently, the advanced occupational insurance system was mainly limited to white people; poverty has grown and become more visible in recent years; and social change has reduced traditional support networks that provide a safety net.
770. During consultations, the CRM confirmed the divergent views of poverty as explained in the CSAR. Civil society's view of increasing poverty is explained by the massive loss of jobs due to the decline in the mining sector. The government maintains that the elaborate social grants programme, coupled with such initiatives such as the EPWP, has overcompensated for the job losses and resulted in a cumulative reduction of poverty at national level. The government, however, noted that the perception that poverty is more rampant in urban areas compared with rural areas should not be underestimated, as globalisation has also had an adverse effect on local manufacturing companies and subsequently on urban employment. Due to inadequate data on poverty, the CRM was unable to confirm the poverty trends.
771. The CRM confirmed research findings about the absence of a safety net for some South Africans who cannot find jobs within the informal sector. The Unemployment Insurance Fund, created in 1946, covers workers in the formal sector and provides benefits against loss of earnings through unemployment. As South Africa already has a large social transfer programme, the viable solution would be for the government to provide an enabling environment in which the informal sector can thrive and eventually integrate with the formal sector; intensify efforts at developing entrepreneurial skills; and promote employment opportunities that are labour-intensive and can take advantage of unskilled or low-skilled workers.
772. While social transfer programmes are recognised as effective redistributive measures, there are concerns about the sustainability of South Africa's programme in the context of the rapidly growing numbers of recipients over the past five years. According to the Development Bank of Southern Africa (DBSA), over 10 million impoverished people were receiving social grants as of March 2006. The CRM believes there is a real danger of the South African population becoming dependent on grants. Some stakeholders, especially in the Free State and Western Cape, shared this concern. Indeed, according to stakeholders in most provinces visited, the system has already created dependency, a situation that could be aggravated in the future. It was disclosed that the system creates perverse incentives, such as encouraging women to bear children in order to obtain child support grants. Other concerns regarding social security schemes include a lack of proper targeting, lack of sound administration of grants, and cumulative impact. All these make the sustainability of social grants questionable.

773. The CRM recognises that social grants are important as a short-term measure for alleviating severe poverty, particularly in the light of the legacy of apartheid. However, grants need to be accompanied by major empowerment measures that progressively enable beneficiaries of social grants to become self-reliant. If social grants (on South Africa's scale) continue for a long term, it will become a difficult political issue to deal with.
774. The development approach to poverty reduction is aimed at making support and resources available that will enable poor people to participate in income-generating projects. Hence the introduction of the Poverty Alleviation Fund in the National Treasury, to provide grants to government departments for use in anti-poverty development programmes. The development approach has certain challenges. The findings of the CRM tally with the parliamentary findings (submitted to the CSAR) that it takes a long time for government departments to utilise their allocations for development initiatives primarily because of a lack of experience and capacity to undertake poverty alleviation projects. As a result, projects are often hastily implemented and not well planned.
775. The CRM observed that agencies responsible for assisting with the identification of viable projects, funding and monitoring, such as the NDA, have significant capacity problems.
776. The CRM observed that the task of accelerating socio-economic development in South Africa to achieve sustainable development and poverty reduction faces several other challenges, especially the lack of a comprehensive and coherent development framework and strategy that emphasises the nexus of growth, employment and poverty reduction. This is especially urgent in the light of doubts about the sustainability of the social grants approach.
777. The relationship between growth and human development and growth and social development – in so far as it concerns unemployment, inequality and crime – is not well established in the national development agenda. There is also no clear pro-poor development policy and this is underscored by consensus on growth-driving sectors with corresponding policy designs and economic transformation. Admittedly, AsgiSA has been attempting to address these problems and, in what has been described as a pro-poor budget, the 2006/07 Budget lists education, health, social grants and crime as priorities. Furthermore, the strategy of poverty alleviation through social grants neglects the critical need for empowerment and a clear, sound policy on job creation, employment and skills development that goes beyond the EPWP. The EPWP, which aims to create jobs for at least 1 million people, was envisaged by the government as a short to medium-term solution, one that would never solve the structural unemployment problem. The missing gap, therefore, is a comprehensive approach to addressing unemployment in the long run.
778. South Africa's target of 6 per cent economic growth could ensure the achievement of the socio-economic development goals. While the CSAR is silent on the sectors that would bring about growth, the AsgiSA framework has identified priority growth sectors as business process outsourcing (e.g. call

centres and claims processing), tourism and bio-fuels. Additional priority sectors include: chemicals; metals and metallurgy; agriculture and agro-processing; creative industries; wood pulp and paper; clothing and textiles and consumer durable goods. During CRM consultations, stakeholders perceived the following as potential growth sectors: tourism, automobile production, wine and agriculture. The government would do well to consult more broadly and reach consensus on sectors that would create not only growth, but also “pro-poor” growth.

779. Overall, AsgiSA is a noteworthy improvement on GEAR. It acknowledges that increased employment and skills development are key mechanisms for attaining shared growth. However, South Africa would do well to revisit its national policies periodically, including AsgiSA, to deepen their alignment with poverty-reducing sectors and thus achieving the aspirations of the RDP.
780. It should be emphasised that some stakeholders in South Africa are apprehensive about AsgiSA. Trade unions, for instance, are concerned about the prioritisation of mining, heavy metals and chemicals. These sectors are capital intensive and therefore do not quite address poverty and structural problems in the economy. Stakeholders have raised a related concern about the general absence of a coherent strategy for dealing with inequality.
781. The CRM noted that South Africa has not built the MDGs explicitly into its planning in terms of the alignment of programmes, harmonisation around national processes, and predictability. This is evident in South Africa’s 2005 MDG Progress Report, which admits its shortcoming in terms of lacking coherent time-series data to show progress made in achieving the goals. The CRM suggests that South Africa can use the MDGs as a tool to fight poverty, achieve growth, and develop and implement focused national strategies for poverty reduction. The MDGs also facilitate socio-economic development through their requirement of consistent monitoring of various socio-economic indicators. The focus on MDGs should address critical areas such as: rural and urban productivity; health; education; gender equality; water and sanitation; environmental sustainability; and science, technology and innovation.
782. The CRM suggests that there is a need to merge parallel processes and build poverty alleviation efforts into national processes, especially national plans and the Medium-Term Expenditure Framework (MTEF). This requires building capacity in parliaments and the broader political system, as well as among civil society groups, to understand the nature of the choices to be made.
783. The enactment of policies for accelerating self-sustaining development is largely the work of the legislature. The legislature, especially at provincial level, does not seem to perform its constitutionally assigned role fully in dealing with the critical challenges of underdevelopment, poverty and unemployment. The legislative branch of the Republic – the National Assembly and the provincial legislatures in exercising their legislative mandates – has the power to pass or reject legislation; initiate or prepare legislation (except money Bills); ensure that the executive organs are

accountable; and maintain oversight over the executive and other organs of state in such areas of the economy as agriculture, education, housing, industrial promotion, regional planning and development, trade, urban and rural development, and welfare services. However, the CRM found that the legislature plays a limited role in charting the course for accelerated economic development. This is also a valid argument for the need of a legal framework that will enable the government to undertake its development function fully.

Results Achieved by Development Policies and Mechanisms: Millennium Development Goals

784. A progress report on the MDGs was published in 2005 and endorsed by StatsSA. This is the report on a set of goals initiated by the United Nations Development Programme (UNDP) and endorsed by several countries around the world. Their aim is to alleviate poverty and enhance human wellbeing, particularly for marginalised groups such as women, children and the rural poor. According to the report, South Africa is on course to meet all the MDG goals. This is no doubt a laudable ambition. Its realisation would necessitate the more than doubling of effort by the government and all other stakeholders during the next eight to nine years.
785. Concerning the first goal of halving extreme poverty and hunger, the challenges that should be addressed to meet the goal have already been discussed. With regard to the second and third goals, primary education and gender equality, tremendous progress has already been made. However, the government should give special and urgent attention to the few communities lacking access to education due to long distances between homes and schools. This was particularly evident in the Northern Cape. Table 6.2 provides statistical data on the MDGs. Under Objectives 3 and 4 of this chapter, more details are provided to give insight, progress information and perspectives.

iii. Recommendations

786. The APR Panel recommends that South Africa:
- Develop a long-term strategic plan that exploits the nexus of growth, employment, poverty reduction, income and wealth redistribution, and systematically reduces social grants while emphasising empowerment and considering sustainability issues. [*Government; NEDLAC; civil society*]
 - Fully integrate the MDGs in a national development strategy. They should be credibly costed, funded and implemented, preferably through the budget and expenditure framework. [*Government*]
 - Periodically review and evaluate existing programmes for their effectiveness in dealing with the problems they were meant to solve. Non-governmental stakeholders can take the lead in initiating, monitoring and evaluating the alignment. [*Government; NEDLAC; NGOs*]

Table 6.2: Millennium Development Goals Indicators

Goals	2000	2002	2003/04
EXTREME POVERTY: Halve the proportion of people living below the international poverty line by 2015	10.7% (under US\$1 a day) 34.1% (under US\$2 a day)	–	–
HUNGER: Halve the proportion of underweight among children under 5 years of age by 2015	11.1% of under-5-year-olds have hunger-related problems (1999)	–	–
UNIVERSAL PRIMARY EDUCATION: Achieve universal primary education by 2015	90.4% net enrolment rate	89.0% net enrolment rate	88.8% net enrolment rate
GENDER EQUALITY: Achieve equal access for boys and girls to primary and secondary schooling by 2015 Women's equal representation in national parliament	Gender parity index in primary school enrolment: 0.97 Gender parity index in secondary school enrolment: 1.10 Women in parliament: 29.8%	Gender parity index in primary school enrolment: 0.97 Gender parity index in secondary school enrolment: 1.08 Women in parliament: 29.8%	Gender parity index in primary school enrolment: 0.97 Gender parity index in secondary school enrolment: 1.07 Women in parliament: 29.8%
CHILD MORTALITY: Reduce under-5 mortality and infant mortality by two-thirds by 2015 (current levels)	63/1000 (under 5 years) 50/1000 (infants: 0-1 yr)	–	67/1000 (under 5 years) 54/1000 (infants: 0-1 yr)
MATERNAL HEALTH: Reduce maternal mortality ratio by 75% by 2015	230/100 000	–	–
COMBAT HIV AND AIDS, AND MALARIA: Stop and reverse the spread of HIV and AIDS, tuberculosis and malaria by 2015	HIV and AIDS: 15-49 years: n/a Tuberculosis death rate per 100 000 = 141.8	HIV and AIDS: 15-49 years: 20.9% Tuberculosis death rate per 100 000 = 111.3	HIV and AIDS: 15-49 years: 18.6% Tuberculosis death rate per 100 000 = 119.9
ENVIRONMENTAL SUSTAINABILITY: Reverse loss of environmental resources by 2015 <ul style="list-style-type: none"> Carbon dioxide emissions per capita (metric tons) Population with access to improved water source (%) Population with access to improved sanitation (%) 	7.16 – –	7.65 – –	7.78 Urban (99%) Rural (73%) Urban (79%) Rural (46%)

Source: United Nations Statistics Department. Millennium Development Goals Indicators. Updated July 2006. www.undg.org.

- Enhance the role and impact of the legislatures in addressing key development challenges. *[Government; civil society]*

Objective 3: To Strengthen Policies, Delivery Mechanisms and Outcomes in Key Social Development Areas, Including Education for all, Combating of HIV and AIDS and Other Communicable Diseases

i. Summary of the CSAR

Health and Education

787. According to the CSAR, transforming South Africa's racially split public and private healthcare systems has been a tough challenge. Quality healthcare remains out of reach for the majority of the population. South Africa has various policies, such as: the Health Policy Framework, which is the overarching policy for health reform and the delivery of accessible and affordable healthcare; the White Paper for the Transformation of the Health System in South Africa; and the National Health Act of 2003, which also pays special attention to healthcare for women and children. Free healthcare is provided for pregnant women and children up to 5 years of age. In order to increase accessibility and compensate for the scarcity of health professionals, physicians have compulsory community service; the government has established a programme of importing healthcare skills; traditional healers have been integrated into the mainstream healthcare system; and community healthcare workers and councillors are tasked to ensure that health services reach the most isolated parts of the country.
788. The CSAR mentions six pieces of legislation that are relevant to HIV and AIDS. They pertain to healthcare, employment equity and basic human rights. Other mechanisms and institutions include HIV and AIDS Care, Management and Treatment Plan, and an AIDS Council. According to the CSAR, 4.5 to 6.3 million South Africans are infected with HIV and AIDS. The pandemic has also contributed to a severe outbreak of tuberculosis, which has led to the establishment of a Tuberculosis Crisis Plan. A National Malaria Control Policy is in place to halve the burden of malaria by 2010. South Africa has managed to eradicate polio since 1989 and is in the process of being certified polio free.
789. The right to education is guaranteed by the South African Constitution. The CSAR states that South Africa is committed to free basic education and learners are obliged to be in school for at least nine years. The education budget has been increased quite significantly over the years. Current school funding norms and standards are based on the extent of financial need. Consequently, the poorest learners are receiving seven times more funding per capita than the wealthiest. The appropriateness of learner material in some

schools was raised in the CSAR, as well as the lack of learner support materials for learners with special educational needs. On the positive side, a school nutritional programme in every school across the country not only ensures that all children are well fed, but also provides a market for local food suppliers.

790. A National Plan for Higher Education is in place to transform higher education. It is complemented by bursaries to assist black South Africans to enter and complete university programmes. The CSAR notes that data on access to tertiary education reveals that black students now account for 72 per cent of all enrolments in tertiary education, while female students account for more than 50 per cent. The concern is that poor learners, particularly from black communities, are fairly absent in the fields of science, technology and engineering.

ii. Findings of the CRM

791. It is obvious that the government is the main actor in socio-economic development and has put a great deal of effort into delivering social development services in education, health, and the area of HIV and AIDS. In most cases, however, challenges still remain and are even growing, making it difficult for the country to tackle critical social development issues with a good level of effectiveness and efficiency.

Education

792. The CRM acknowledges the remarkable progress made in education, as outlined above. Relevant pieces of legislation are in place and the enrolment data showing gender parity is encouraging. South Africa has made great strides in widening educational opportunities to include previously disadvantaged groups, mainly black South Africans. Ultimately, the pursuit of education should serve to enlarge opportunities and empower people through skills development. However, the CRM noted that there are particular problems when it comes to the accessibility, costs and relevance of the education system.
793. Further investigation reveals that more effort is needed to:
- Increase access for underprivileged groups and learners with special needs;
 - Completely transform the existing disabling antisocial environment of schools, which are fast becoming breeding grounds for criminals and battlefields for many antisocial behaviours, including child abuse;
 - Boost pass rates, especially in mathematics and science;
 - Enhance affordability;
 - Strengthen accountability of schools, especially in rural areas; and
 - Increase access to higher education.

794. StatsSA's 2005 General Household Survey confirmed the finding that most primary learners do attend primary schools. Among the survey population group aged 7 to 15 years, only 2.1 per cent were not attending a school. This means about 98 per cent of that age group were enrolled in primary schools.
795. The enrolment data for primary education is clearly encouraging. The only concern here is that almost a third of the 2 per cent of learners who do not attend school stay away due to lack of funding. This is confirmed in the said Survey, which reports that among those aged 7 to 15 who are not attending school, 29.7 per cent cite reasons of having no money to pay school fees. Notably, South Africa does not have an explicit policy of universal free public education for all primary school learners. However, as stated by the Minister of Education during the CRM, in policy and practice, no child should be turned away from school due to lack of funding. According to the Department of Education, there are mechanisms in place to exempt under-resourced households from paying school fees. There are also over 9000 "no fee schools", which obtain that particular status by virtue of being in a community falling below a predetermined poverty index.
796. During provincial consultations, however, several stakeholders asserted that some schools have refused admission to children because of their inability to pay school fees. For a country whose development progress is being hindered by lack of skills, much more should be done to ensure that children and youth, regardless of financial status, are able to obtain at least a primary education.
797. To address this critical concern, many countries in Africa have established a policy of free primary education for all public schools. Stakeholder consultations in South Africa, however, revealed that some segments of the population would not favour such a policy, which they feel may compromise the quality of education in public schools. It is, therefore, important to establish that the preference for user fees comes from the members of society and not the government. The government, through an exemption policy, tries to ensure that all South Africans, regardless of their financial background, can attend primary school. Judging from the numbers that are not attending school due to financial constraints, it is clear that the exemption policy is not working effectively.
798. Since the policy of free primary education is not desirable for the said reasons of quality and some degree of exclusivity, the Department of Education urgently needs to address this problem by strengthening its monitoring of schools. It needs to establish a special monitoring unit at a decentralised level to ensure that no school is turning a child away due to lack of funding. It should even penalise schools that commit such acts that violate the Constitution. Clearly, some schools are not being held accountable by their communities or district and provincial authorities. This may be partly because they are not aware of the Education Complaints Office, or lack access to it. The relevant education authorities are also not doing their work well by not carefully monitoring schools within their jurisdictions and ensuring that these problems do not arise. The Department of Education needs to send a strong

message to schools that non-compliance of user-fee exemptions will not be tolerated.

799. Additionally, some schools also remain physically inaccessible to learners. This came out strongly in the North-West, where stakeholders noted that some learners have to walk about 10 km to school. There are also some farm schools in poor conditions and in dire need of rehabilitation. This calls for greater development spending in education for the construction of new schools, rehabilitation, provision of school buses, etc.
800. Secondary schooling is not given much attention in the CSAR. However, the figures from the 2005 General Household Survey are not very encouraging for higher age groups, presumably enrolled in secondary and tertiary institutions. Between the ages 16 and 20, about 29 per cent were not attending any educational institution. For the 21 to 25 age group, 3806 out of a total of 4611 (about 83 per cent) were not attending any educational institution.
801. In South Africa, the Further Education and Training Act of 1998, the Education White Paper on Further Education and Training, and the National Strategy for Further Education and Training provide the basis for the development of secondary schooling and training colleges. The higher female enrolment ratio compared to that of men in secondary schools is worthy of note. However, there are some gender disparities in subject choice. For instance, fewer females are enrolled for mathematics and science than males.
802. Funding of primary, secondary and tertiary education is still an area of concern. In primary schools, in particular, the bulk of resources from the central government is mainly used for salaries and recurrent costs at provincial and district levels. The Minister of Education informed the CRM that the government encourages provinces to use at least 15 per cent of the education budget for development expenditure. However, it was noted that not all provinces are conforming to this practice due to resource constraints. At tertiary level, bursaries are made available, but there are still many South African students unable to access a university due to lack of sufficient funding.
803. The CRM was impressed with the availability of higher educational institutions for adult education, but is of the opinion that more could be done by them to attract students. The 2005 General Household Survey indicates that 10 per cent of persons aged 20 years and above have no formal education and 88 per cent have not completed Grade 12. In particular, there is a need to address the high drop-out rate among students in tertiary education institutions. A large proportion of these students, especially black students, drop out every year, which represents a huge waste of resources. Box 6.1 presents some research findings on drop-out rates.
804. As indicated, efforts are being made by research institutions to investigate the causes of the high drop-out rates, which are causing massive financial losses to the state. Findings from the CRM consultations indicate that despite bursaries, students may not be able to absorb the costs of studying further. Financial

constraint is a reason propagated by the South African Students Congress (SASCO). A more compelling factor could be inadequate academic preparation, so that some students struggle to cope with the demands of higher learning. The consolidation of universities with technicons (which provide training for students who are unable to enrol at a university) means that the bar has been raised for technicons. Subsequently, not all students are able to cope with the higher standards of technicons. HIV and AIDS have also been put forward as a reason by some academics, who point to the pressure on students to drop out in order to head their families where both parents have died. The attrition rates of some universities are shown in Table 6.3 on the next page.

Box 6.1: Tertiary Education and Drop-Out Rates in South Africa

The Human Sciences Research Council (HSRC) of South Africa conducted a research project on the high levels of black drop-out rates in tertiary education institutions. They found that, in 2000, a total of 120 000 students had enrolled in the country's public higher education institutions. At the end of that year, 36 000 (or 30 per cent) had dropped out. A further 24 000 dropped out between their second and third years. Of the remaining 50 per cent, less than half graduated within the intended three years' duration. Of these, the vast majority were black students. In financial terms, the high drop-out rate among students translates into a loss of about R4.5 billion in subsidies allocated to these institutions by the state.

In order to understand the underlying reasons for the high drop-out rates among black students, the Association for Black Empowerment in Higher Education (ABEHE) and the HSRC have entered into a joint partnership on a research project entitled "Addressing the High Failure Rate of Black South African Students in Higher Education". ABEHE and the HSRC are committed to studying and developing a deeper understanding of higher education retention rates, failure rates, pass rates, graduation rates and drop-out rates. The ultimate objective of the collaboration is to move black students, who are impoverished by virtue of their socio-economic background and poor schooling, from the second economy into the first economy through targeted efforts aimed at removing the barriers to their success in higher education study.

Source: Human Sciences Research Council (HSRC). *Research Project on High Drop-Out Rate of Black Students*. Media Release, 8 February 2006, www.hsrc.ac.za.

805. There are also language barriers, as some courses are taught in a language some South Africans may not be conversant with. The issue of unemployment, which is a recurring theme in this Report, also has some roots in the school curriculum. The CRM confirmed that many young graduates cannot find jobs. Commendably, the government has realised that the curriculum needs to be revised to allow for entrepreneurship. To this end, vocational schools are being recapitalised. The government noted the lack of resilience in many institutions that resist these types of change.

Table 6.3: Attrition Rates in South Africa: Selected Universities

Universities	First-time undergraduates in 2000	Dropped out by 2004 (%)	Graduated by 2004 (%)	Not completed by 2004 (%)
Cape Town	3135	28	61	10
Free State	2035	38	46	16
North-West	971	61	27	13
Port Elizabeth	1172	37	49	13
Pretoria	4685	26	60	14
Rhodes	1340	31	67	2
Stellenbosch	3218	27	62	11
Western Cape	1979	48	36	16
Witwatersrand	2356	33	47	19

Source: *Mail and Guardian*, 2006. Shock Varsity Drop-Out Stats. 22 September.

806. The CRM observed that the Presidency has established a programme for graduate employment, with a target of establishing 400 centres of excellence in science and technology. Engineering, information and communication technology (ICT), mathematics, science, education, and health have been identified as priority subjects. Thirteen programmes have been rewritten and will be implemented in 2007. Clearly, the educational system needs to be contextualised to meet the skills demand from the labour market.
807. In general, the CRM commends South Africa for its efforts to broaden access to education for the majority of the population who were historically deprived of quality education. During the consultations, there was no major complaint about an insufficient number of teachers or qualified teachers. The key concerns pertained to access and affordability, despite pieces of legislation to make education compulsory and affordable. Alongside ongoing reforms to improve the relevance of the curriculum, the government, particularly at the provincial level, should take accountability measures seriously. The CRM suggests that provincial and district education officers should interact more often with schools, parent-teacher associations (PTAs) and communities to ensure that schools are not breaking the law by turning away learners who have inadequate financial resources.

Health

808. The CRM noted that South Africa has several health policies, programmes and institutions for promoting adequate healthcare for the population. It was informed by the Department of Health that the government has broadened

access to healthcare. There is a clinic in every community, and a programme for improving efficiency in the public health system is under way. The problem, according to the Department of Health, is about lack of proper training and regulation. In larger rural towns, decision making is extremely slow. Stakeholders agreed with this assertion and added that community clinics are unhygienic, poorly staffed and impose long waiting periods (sometimes days). Some clinic staff are discourteous to and unaccommodating of patients. Furthermore, community clinics are not always physically accessible. This came out particularly strongly in KwaZulu-Natal and the North-West. Stakeholders in the North-West added that three to four villages share one clinic among themselves.

809. Stakeholders voiced concerns about having to travel long distances to clinics and at times finding them closed as early as 14:00. Clearly, having one clinic catering for an entire community is inadequate. The community health policy is such that people should not have to walk more than 15 km to reach a clinic, which is still an overwhelming burden. The fact that ambulances are not readily available in rural communities compounds the problem. Some stakeholders claimed to have walked for several kilometres and sometimes directly to the clinic in order to request an ambulance.
810. The vast majority of South Africans do not have medical coverage. StatsSA estimated medical aid coverage at 14 per cent of the total population in 2005. South Africa has begun a debate on a national health insurance scheme, but this is at a preliminary stage. In the meantime, subsidised community clinics for primary healthcare are the only viable option. Nevertheless, the discontent with community clinics, as mentioned, cannot be ignored. The limited supply of drugs forces clinics to ration supplies to patients. It is therefore imperative that the Department of Health enhance community healthcare services. Stakeholders spoke positively of the “mobile clinics” that are able to penetrate the deep rural areas; however, they visit communities only once a month. Finally, the scarcity of health professionals resulting from the brain-drain came across quite strongly during the CRM. Efforts to mitigate these problems have been underlined in the CSAR’s findings. The additional finding from the field is that mid-level medical officers are being trained.
811. Although healthcare remains a tremendous challenge, the government has taken the right measures to establish community clinics in rural areas. There were no major complaints from stakeholders about the affordability of drugs and medical care. The complaints mainly centred on access, quality of service and professionalism of health providers. The government would do well to attend to these concerns.

HIV and AIDS

812. South Africa has one of the highest rates of HIV infection in the world. Table 6.4 presents estimated adult HIV prevalence rates in the country. (More data on HIV and AIDS in South Africa are provided in Chapter Seven.)

Table 6.4: Estimated Adult HIV Prevalence Rates, 2001-2006 (%)

Categories	2001	2002	2003	2004	2005	2006
Women 20-64 years	14.7	15.4	16.1	16.7	17.2	17.8
Men 20-64 years	14.3	15.0	15.6	16.3	16.9	17.5
Adults 20-64 years	14.5	15.2	15.9	16.5	17.1	17.7

Source: Statistics South Africa, 2006. *Mid-year population estimates, South Africa*. Pretoria: StatsSA.

813. According to the government, the general approach towards HIV and AIDS is multi-sectoral in nature and involves research to identify vaccines and offering education on prevention. The government has adopted the ABC approach: *Abstain, Be faithful, Condomise*. Non-governmental organisations (NGOs) in particular are said to make significant contributions in terms of home-based care. The CRM learnt that there are currently 158 points for antiretroviral treatment, which go hand in hand with the distribution of food parcels for persons living with HIV and AIDS. Community development workers (CDWs) go door to door to identify the needs of these persons, particularly children orphaned due to the pandemic.
814. Orphaned children are often neglected in these situations. Some stakeholders confirmed that the issue of orphans, particularly those orphaned due to HIV and AIDS deaths, is of critical concern. With the exception of a dependency grant, there is no specific programme exclusive to these children. Child grants are provided, but there are no complementary skills development programmes. This is particularly critical in child-headed families. In the course of the CRM, the Minister of Social Development (during a three-day conference to assist children made vulnerable by HIV and AIDS) acknowledged that many households are headed by children and that the fight against the discrimination and stigma attached to such vulnerable children needs to be intensified. The National Association of Child Care Workers has taken a lead role in providing children under 18 with emotional support, as well teaching them to cook and take care of their siblings.
815. It emerged during the CRM that HIV is still viewed by many as a “women’s problem”. In addition, there continues to be some denial that HIV and AIDS is real, even among high-ranking public officials. It is clear that an attitudinal change is imperative. The CRM suggests that the government, NGOs and civil society in general should intensify their awareness and prevention campaigns. In particular, HIV and AIDS should continue to remain high on the national agenda.

816. There continues to be a major problem of stigma. Many people, out of fear of social stigma, prefer not to disclose their HIV status until they are critically ill. Moreover, the CRM found that antiretroviral drugs are not always readily available in community clinics. Those people who can afford them prefer to go to pharmacies. The poorer groups reportedly tend to receive the drugs when their health is in a more critical condition. In other words, clinics tend to disburse medication according to the patients' CD4 (T-cell) count, which is a key measure of the health of the immune system. HIV tends to reduce these cells that fight against infection and thus weakens a person's immune system. A lower T-cell count is therefore indicative of the severity of the disease.
817. Additionally, many young people lack the requisite identification documents (such as birth certificates) and therefore cannot receive antiretroviral drugs. This particular situation is complicated by the finding that some people collect the drugs and sell them to others, hence the need for identity documents. The CRM notes that the government has extensive antiretroviral programmes, but they remain inadequate to meet the demands of the increasing numbers of those in need of treatment. Stakeholders also complained that the grant of R180 per month is withdrawn as soon as a person's health improves. Several stakeholders further expressed the need for decent homes for persons living with HIV and AIDS.
818. The pandemic of HIV and AIDS is complicated by the lack of reliable statistics. The Statistician-General confirmed that data collection in this sector remains a challenge. Causes of mortality are seldom attributed to HIV, as doctors are not mandated to put this on the death certificate. As such, the mortality rate for HIV-related deaths is often underestimated. This is a serious problem that needs to be addressed urgently. South Africa cannot afford to have questionable data on this pandemic, as it gives room for speculation and over- or underestimation of the pandemic. Indeed, medical practitioners should be mandated to indicate HIV as the main cause or contributing cause of a person's death. StatsSA has ranked tuberculosis, influenza and pneumonia as the leading causes of mortality in South Africa, but HIV and AIDS are strongly intertwined with all these diseases.
819. More collaborative efforts between the government, civil society and development partners are needed to tackle the HIV and AIDS pandemic. HIV workers at local level are asking for support, as they are able to reach areas that are often overlooked. These workers and CDWs should be utilised more effectively to care for persons living with HIV and AIDS.
820. There is a shift in government policy that will no doubt reassure not only South Africans generally, but also the international community. The CRM welcomes this development and hopes it will be extended to cover expansion in HIV testing and cut the rate of new infections.
821. Efforts to mitigate the impact of the pandemic should reinforce other health and development initiatives, notably the MDGs of eradicating extreme poverty; reducing the burden of disease; achieving universal primary

education; ensuring gender equality; protecting the environment; and developing a global partnership for development.

iii. Recommendations

822. The APR Panel recommends that South Africa:

- Enforce accountability measures between schools, the government and communities by establishing a monitoring unit within the Department of Education. This also requires that the inspectorate at district and provincial levels be improved. *[Government; PTAs; school governing boards; communities]*
- Develop a strategy for encouraging more, particularly female, enrolments in mathematics and science in secondary schools. *[Government]*
- Re-examine the cost of education to ensure wider and equitable access. *[Government; educational Institutions; civil society]*
- Legislate the current practice of allocating 15 per cent of educational funding to development expenditure. *[Government]*
- Continue the reform of the education system, focusing on an integrated, coherent system that produces graduates with appropriate livelihood and entrepreneurial skills. *[Government; educational institutions; academics]*
- Integrate skills training (such as carpentry and bricklaying) in primary and secondary schools. The Sector Education and Training Authorities (SETAs) must be strengthened in this regard. *[Government; educational institutions; academics]*
- Through partnerships establish community colleges with practical courses, such as project management, finance, engineering, etc. *[Government; private universities; NGOs]*
- Improve teacher training colleges in order to enhance the quality of education. *[Government; educational institutions]*
- Improve access to tertiary institutions, while ensuring that there are no language barriers and there are adequate bursaries to help curb the high rates of drop-outs. *[Government; educational institutions]*
- Develop close collaboration between the Departments of Health, Social Welfare and Education, especially to assist children with special needs. *[Government]*
- Establish a programme for rehabilitating farm schools. *[Government; civil society]*

- Intensify efforts to build more community clinics and increase the frequency of mobile clinic visits to at least two a month. *[Government]*
- Regulate community clinics with more rigour to ensure improved performance by health staff. Mechanisms can also be put in place for client feedback on the quality of services. *[NGOs; civil society; government]*
- Increase ambulance services to all communities. *[Government]*
- Empower health workers and CDWs to be more effective in assisting vulnerable groups and persons living with HIV and AIDS. *[Government]*
- Ensure that community clinics have an adequate supply of antiretroviral drugs. *[Government; NGOs; private sector]*
- Intensify awareness efforts to reduce the stigma attached to HIV and AIDS. This will help improve the quality of HIV statistics, as more people will feel comfortable disclosing their status. *[Government; NGOs; private sector]*
- Improve the reliability of HIV and AIDS data by mandating doctors to indicate HIV, where applicable, as an AIDS-related death. *[Government]*

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

i. Summary of the CSAR

Housing

823. According to the CSAR, access to housing is a basic right under the Constitution. As part of the national initiative, Vision 2014, the government has committed itself to eliminating informal settlements by 2014. Between 1994 and 2005, more than 1.8 million houses serving 7 million people were built and over 2.4 million housing subsidies were made available, with 49 per cent provided to women.
824. The government launched the Human Settlement Redevelopment Programme in 1999 to improve and develop urban environments. In recognition of the critical challenges faced in providing access to housing in South Africa, a Social Housing Policy has been adopted to ensure viable and robust housing developments.

Water

825. South Africa has provided a free basic water ration since 2001. In 1994, an estimated 15.9 out of 40.4 million people did not have access to basic water services. By 2005, 92 per cent of South Africans had access to an improved water supply. Successes in getting water to people were helped by the construction of new infrastructure. Water delivery is in the process of becoming a task led entirely by municipalities.
826. However, there is still much to be done to improve access to water. Many households still depend on unsafe sources such as dams, pools, stagnant water, rivers, streams and springs. The use of communal taps is high among African women users and results in valuable time lost in queues. Cost recovery for water has also been difficult to achieve.

Sanitation

827. In 1994, 20.4 million people in South Africa were without sanitation facilities. By 2005, basic sanitation infrastructure had been provided to over 8.2 million people. The Department of Water Affairs and Forestry spent R3.4 billion on sanitation infrastructure between 1994 and 2004. At its January 2006 meeting, the Cabinet resolved to eliminate the bucket system in South Africa by the end of 2007.
828. However, South Africa's progress with sanitation lags far behind water delivery. Sanitation conditions are worst in the Eastern Cape, followed by KwaZulu-Natal and Limpopo. Sanitation services for black South Africans are worse than for any of the other population groups. The widespread use of pit latrines spreads diseases unless they are converted into ventilated improved pits. Extensive lack of sanitation facilities also leads to the contamination of water sources, creating a further problem for safe water provision. Moves are under way to accelerate delivery, but massive backlogs and expanding demand have overwhelmed delivery plans. Institutional inefficiency is also proving to be an obstacle to improving results.

Electricity

829. The government provides a free monthly allocation of electricity for all South Africans. Since 1994, when around 34 per cent of households were without electricity, over 435 000 homes have been electrified each year. There was a significant increase in the use of electricity between 1996 and 2001.
830. The current major challenges include electrification of rural areas, illegal access to the electrical infrastructure, inaccuracies in municipal billing systems and the national electricity generation capacity that has reached its limit. While most of these challenges appear to be related to distribution, sustained economic growth will challenge electricity generation capacity in the medium to long term. Despite serious health hazards, the use of paraffin and wood has been on the increase.

Telecommunications

831. Between 1996 and 2001, access to telephones improved dramatically while the use of cellular phones soared. South Africa has developed multi-purpose community centres (MPCCs) and telecentres to increase access to ICT, especially for the vulnerable. In addition, a single legal framework has been established for regulation and policy around convergent technologies.
832. Infrastructure for ICT is very diverse and well developed, with extensive coverage in the urban formal economy, but a much lower and basic presence in the rural informal economy. Compounding the problem is the relatively high cost of ICT in South Africa, which perpetuates the marginalisation of the poor. Internet use appears to have stabilised at around 4 per cent of the population, which is low by international standards. Skills retention is a major challenge for ICT development. The CSAR recognises that there is also a need for research into the relationship between gender and use of ICT.

Land

833. South Africa's Land Reform Programme has three dimensions: restitution, redistribution, and tenure reform. Restitution is aimed at people or communities dispossessed of land as a result of racial discrimination and provides restoration of such land, compensation, or both. Land redistribution is designed to increase equity in land distribution; enhance income and food security; and strengthen employment and economic growth throughout South Africa. Tenure reform is focused on securing tenure in former homeland areas, former coloured areas, and in (formerly white) commercial farming areas. Gender considerations have been incorporated into the policies and programmes of all three elements.
834. Under restitution, approximately 69 000 claims were lodged between 1994 and 1998 and over 36 000 claims were settled by 2005. Land is redistributed for agricultural development, settlement or non-agricultural enterprises. The aim is to ensure that 30 per cent of agricultural land is held by previously disadvantaged people within 15 years. Progress in this direction has been slow, since only 3 per cent of the agricultural land has been redistributed so far. (More on the land issue in Chapter Seven.)

Finance

835. South Africa's micro-lending industry has grown from R1 billion in 1992 to R10 billion in 1999 and to R17 billion in 2005, which is just 5 per cent of the total South African credit industry. Despite its growth, the expansion of basic financial services remains a priority, as 11 million of South Africa's 27 million adults do not have access to a bank account. Microfinance needs seem greatest in house-based micro-enterprises that are integral to the survivalist strategies of the permanently unemployable, but submissions addressing access to finance for socio-economic development were scarce. The Mzansi Account initiative, launched in 2004 as part of the Financial Sector Charter process,

pools the resources of eight large private sector banks to create an accessible, basic financial services product for the poor. Given the heavy social challenges of the legacy of apartheid, there is still a long way to go.

ii. Findings of the CRM

836. The CRM observed that the government has done very well in social service delivery and in some cases exceeded the set targets during the past 12 years. In all the areas visited by the CRM, there was widespread appreciation of the government's efforts to provide people with access to basic social services. Stakeholders agreed that tremendous progress had been made in providing people with access to housing, water, sanitation and electricity.

Best Practice 16: Provision of Basic Needs in South Africa: The Case of Electricity

South Africa has made tremendous progress in supplying electricity to a large segment of the population that previously had no access to electricity. The government has far exceeded its target of providing 2.5 million homes with electricity by 2000, reaching over 4 million households. Since 1994, when about 34 per cent of households had no electricity, over 435 000 homes have been electrified each year. While some households still remain unserved, the great advances made in providing millions of households with electricity within a period of 12 years undoubtedly represent a best practice that can serve as a lesson to other African countries.

Source: Hemson, D. & Donovan, M. 2006. Putting numbers to the scorecard: Presidential targets and the state of delivery. In Buhlungu, S., Daniel, J., Southhall, R. & Lutchman, J. (Eds.), *South Africa 2005-2006: The State of the Nation*. Cape Town: HSRC, pp. 19-21.

837. The stakeholders stressed that the government has the right policies and programmes in place. In particular, they applauded the "indigent policy", which has allowed mass access to basic services within a short period of 12 years.
838. The CRM observed that there was a justifiably high level of pride among stakeholders about their government's service provision record. People were proud that they could own homes, access portable water and use electricity and improved, ventilated pit latrines. Stakeholders were also proud of their Constitution, which guarantees a minimum level of access to basic social services for all South Africans.
839. The impressive record of achievements in social provision within a short period of time points to significant progress made in the implementation of the social, economic and cultural rights enshrined in South Africa's Constitution. This is resulting in a generalised improvement in living standards in the country.

Best Practice 17: Provision of Socio-Economic Rights in South Africa

South Africa is reputed to have one of the most progressive constitutions in the world. Unlike most other constitutions in Africa, the South African Constitution seeks to protect its people's socio-economic rights. This constitutional guarantee for socio-economic rights means that South Africa has a progressive social agenda that is being realised through rights-based provision. Some socio-economic rights are as directly enforceable as fundamental first-generation rights, such as the freedom of assembly. South Africa has gone further in taking legislative and other measures (within the limits of available resources) to achieve progress in realising these rights enshrined in the Constitution. For instance, the South African Human Rights Commission (SAHRC), an institution established by the Constitution to support democracy, is empowered to monitor progress on the measures various organs of the state are taking to realise the rights in the Bill of Rights concerning water, social security, education and the environment (s184(3)). This is a best practice, worthy of emulation by other African countries.

Source: APRM CRM compilation, July 2006.

840. However, coming from a history of severe, racially inspired social segregation and deprivation before 1994, it is obvious that, despite the tremendous progress made in service provision at national level in the last 12 years, massive challenges still remain. In some places, especially in the former homelands, stakeholders raised some concerns about the availability and quality of services. The main challenges in these areas include a shortage of facilities in schools, clinics, hospitals, police stations and recreational centres.

Housing

841. There is strong commitment to tackle housing backlogs decisively and the various levels of South African government should be commended for that. For instance, Gauteng has a comprehensive community development programme involving investing R3 billion in 20 major townships to build better communities and upgrade local social and economic infrastructure, with social safety nets being a key component. However, according to stakeholders in KwaZulu-Natal, for example, community development programmes are often initiated in a "top-down" fashion with minimal participation from the community. According to the stakeholders, in many cases these top-down programmes are implemented by consultants, i.e. companies that have no stake in the welfare of the communities they purport to develop.
842. The CRM was informed of a growing housing backlog in nearly all the places visited. In Gauteng, for instance, the stakeholders stressed that increased migration and urbanisation have resulted in an insatiable demand for subsidised formal housing. With low levels of delivery, the backlogs may be growing even as delivery increases.
843. Based on discussions with stakeholders, the CRM noted that the main challenges in housing include accelerating housing provision to address the housing backlog, improving the quality of houses and acquiring land for

building new houses. To its credit, the government has started to explore innovative, creative ways aimed at enhancing housing provision.

Water

844. Affordability of basic social services, especially of water and electricity, was another source of concern. In rural areas, particularly KwaZulu-Natal and Mpumalanga, stakeholders complained about the affordability of water, as many providers are private companies. Some municipalities hire private companies to manage water provision without having strong and effective monitoring systems in place. In other cases, stakeholders complained about a lack of water facilities, which left women and girls to walk several kilometres to fetch water from rivers. Abuses from subcontracted private companies were voiced during CRM discussions with stakeholders in different provinces.

Sanitation

845. Sanitation was found to be lagging far behind water service delivery. This was acknowledged in the CSAR and confirmed by stakeholders. The encouraging finding was the aggressive policy the government has embarked on to eradicate the bucket system by end 2007. However, unregulated informal human settlement and migration patterns pose a serious challenge to attaining this goal. The government also explained that progress with sanitation lags behind water supply because it requires behavioural changes.
846. The field consultations confirmed the findings in the CSAR in terms of concerns about poor service delivery at local government level. Stakeholders complained that many municipalities lacked the capacity to implement social programmes effectively and efficiently.
847. An interesting observation was the changing perception of stakeholders towards the role of the government in service provision. The CRM noted that people were beginning to realise that the government was not the only solution and that there was a limit to what it could achieve. Many stakeholders expressed the view that they wanted to build a South Africa that was not dependent on welfare.

Electricity

848. Stakeholders brought to the CRM's attention the fact that electricity continues to be expensive despite the portion of free allocation. As the CSAR observes, this may explain the rise in the use of paraffin, wood and other primitive forms of energy. Significantly, the CRM observed that, over the past few years, South Africa has moved from being a country with an energy surplus to one approaching deficit. Discussions with stakeholders suggest a steady increase in the demand for electricity. Not surprisingly, there are concerns about the country's capacity to generate sufficient electricity. Commendably, the government is developing a comprehensive energy strategy for meeting the country's growing energy demands.

Microfinance

849. The general observation from the CRM's interactions with stakeholders is that women and youth face difficulties in accessing credit facilities. It was also noted that even where adequate banking facilities exist, as in the Western Cape and Gauteng, the utilisation of credit services among women and youth is very low. The main reasons cited include:
- Lack of access to information;
 - Lack of collateral;
 - Poor credit history (blacklisting by the Credit Bureau); and
 - Cumbersome banking procedures.
850. The CRM noted the paradoxical situation. As the CSAR indicates, South Africa has a well-developed financial sector. This suggests that more needs to be done to sensitise the microfinance sector, including initiatives like the Mzansi Account and the Umsobomvu Youth Fund, to the circumstances of women and youth.

Transport and Telecommunications

851. The CRM noted that the Department of Transport has various policies and programmes in place for public transportation. For instance, the principles of the National Land Transport Transition Act of 2000 spell out that public transportation must be affordable to the public and responsive to consumer needs. The Act also advocates service quality and consumer safety. However, information derived from stakeholders and CRM observations indicates that the implementation of this policy is poor and public transportation is not fully meeting the needs of the second economy.
852. The conspicuous lack of an adequate, efficient, reliable and safe public transportation system is deplorable in a country which, as mentioned, inherited a solid infrastructural base. Congestion on South African roads is increasing every year and thousands of motorists are affected daily, especially those utilising the Ben Schoeman highway between Pretoria and Johannesburg. There are also simply not enough metro-buses for the vast population relying on public transport to commute to work. Urban stakeholders were concerned about the unregulated public transport sector and lack of security. In the rural provinces, stakeholders noted the poor quality of public transport. There were too few buses in rural areas and these had no time schedule. Stakeholders in rural areas further expressed concern about the general lack of access to ICT. Specifically, they noted the lack of telephones, which would be highly useful in the rural areas.

Land

853. The issue of land reform remains the major challenge and source of concern to most stakeholders. There was widespread awareness of the need for accelerated land reform in all the places the CRM visited. The general

consensus was that land reform is progressing very slowly. To a certain extent, the seriousness of the land problem is reflected in the attacks against farmers.

854. The South African farming community has suffered intensified farm attacks for many years. While most victims were white farmers, attacks against black farmers and farm workers have also been recorded. The total number of ethno-European farmers in South Africa has been estimated at approximately 40 000 to 45 000, the majority of which are Afrikaners. Death tolls of up to 1700 have been cited in the media (July 2005). A report found that perpetrators tend to be young, unemployed black males.
855. During the discussions, many stakeholders acknowledged that the land issue was complex and required careful handling, especially political intervention. Several factors account for the slow pace of land reform in South Africa. During CRM interactions with stakeholders, most were uncomfortable with the current principle of “willing seller, willing buyer”.
856. The CRM was informed that the White Paper on South African Land Policy (1997) adopted the “willing seller, willing buyer” principle. Under this principle, the South African government does not have the right of first refusal. This means that no farmer is obliged to approach the government first to offer land for sale. The government simply has to find money and go to the open market like any ordinary buyer and purchase land when it is available for sale. The CRM feels that this policy has led to a situation where the government seems to have adopted a “hands-off approach” to land reform. Some concern was raised about corruption and other problems associated with the current principle.
857. During meetings, many stakeholders stressed the need for a “change of track” in land reform, asserting that the struggle against apartheid was a struggle for land. Many said that land was the most important asset someone could have – the very essence of life.
858. Admittedly, any ill-thought attempt to grab land in South Africa can adversely affect the thriving agricultural sector. The CRM feels there is a need for more effective and imaginative solutions to the land issue. As emphasised during consultations with stakeholders, attention should also be paid to capacitating black farmers.
859. Many stakeholders were concerned that the government was not providing adequate support to aspiring black farmers by way of capital and skills development. In view of the brutal suppression of black initiative, skill and capital during colonialism and apartheid, the CRM supports the view that more needs to be done to capacitate aspiring black farmers. (More detail on the land issue is given in Chapter Seven.)

iii. Recommendations

860. The APR Panel recommends that South Africa:

- Improve and strengthen service delivery capacity at municipal and district levels to ensure effective delivery of basic services to people. This can be done by improving Project Consolidate and strengthening public finance management systems at all levels of government. *[Government]*
- Fully implement the National Land Transport Transition Act of 2000 and the Rural Transport Strategy for South Africa. *[Government; private sector]*
- Promote a culture of paying for basic services such as water, electricity and sewage services among the people, especially those who can afford them, to ensure sustainable provision of these services and lessen dependence. *[Government; civil society]*
- Improve and strengthen information dissemination on available social and other services, especially through the use of CDWs, in order to increase utilisation of available services among ordinary people. *[Government; NGOs]*
- Step up rural development, both to improve rural livelihoods and stem the tide of rural-urban migration. *[Government]*
- Explore innovative and creative ways of accelerating land reform in order to redress the current imbalances in land ownership, and ensure its equitable distribution and the achievement of the 30 per cent delivery target. *[Government; CSOs]*

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

i. Summary of the CSAR

Progress Towards Gender Equality

861. According to the CSAR, the policies and mechanisms in place to promote gender equality include: the Constitution; Commission for Gender Equality; Women's Parliamentary Caucus; Joint Monitoring Committee on the Improvement of Quality of Life and Status for Women; Domestic Violence Act of 1998; and Choice on Termination of Pregnancy Act of 1996. Various gender forums exist within national and local government offices. There is also a Women's Development Foundation, which provides mentoring and support for women political leaders.
862. The CSAR states that South Africa has signed several international standards and codes, including the Convention Against All Forms of Discrimination

Against Women (CEDAW). Although women increasingly hold leadership positions in the public sector, their advancement to management positions still lags behind the private sector. South Africa intends to meet the goal of 50 per cent women in decision-making positions in public affairs as per the African Union's gender parity stipulation.

863. The CSAR notes that South Africa has attained gender parity in primary and secondary education. In 2003, about 53 per cent of students in higher education were female.

ii. Findings of the CRM

864. Clearly, South Africa has made significant progress in terms of promoting gender equality and the participation of women in decision-making positions. This is an issue of consensus among all stakeholders in South Africa, except perhaps in the private sector where women are still under-represented. Stakeholders noted that there are not many women contractors and not many women are involved in local government projects. The women tend to give the projects to their husbands instead of executing the projects themselves. There was some indication, particularly in the Western Cape, that women struggle to obtain mining permits. There is an association to assist women in mining, but it is reportedly weak and ineffective.

Best Practice 18: Promoting Gender Equality

In 2005, the first woman Deputy President was appointed in South Africa. Women constitute 45 per cent of Ministers and Deputy Ministers, and 33 per cent of the members of parliament, including the Speaker and Deputy Speaker. At provincial level, women constitute 35 per cent of the permanent members of the National Council of Provinces (NCOP), 32 per cent of members of provincial legislatures and 44 per cent of Premiers. Approximately 40 per cent of all local government councillors, 14 per cent of judges and 35 per cent of magistrates are women. Some 53 per cent of public servants are women. In the foreign service, 24 per cent are ambassadors and high commissioners. Some 24 per cent of the board members of SOEs are women and they also comprise 25 per cent of senior management positions.

Source: South African CSAR, 30 June 2006, page 53, para. 26.

865. The under-representation of women at local level and in the private sector also correlates with deeply rooted cultural discrimination against women despite efforts to promote gender equality at national level. As expressed in Chapter Three, the CRM is also concerned about the persisting violence against women, the underlying cause seemingly being the breakdown in social structure. In other words, many men were confined to the mines in the apartheid era, while women were able to obtain a basic education. Subsequently, the apartheid legacy leaves behind a social structure where

many women perform better in schools and are well integrated in the labour force. Men, on the other hand, have lacked the requisite support to deal with these changes. This has promoted extensive domestic violence in the country.

866. Social violence is also rooted in the years of oppression where peaceful protestations were not acknowledged as such and resulted in violent ramifications. For many young people in South Africa today, violence seems to be first resort for asserting oneself.
867. It came across quite clearly during the CRM that many cases of domestic violence go unreported or are struck off the court roll even when reported, because some women refuse to testify out of fear for their safety. Reportedly, police stations also present an intimidating environment that makes many women lose confidence. There is therefore a need for a more private way of reporting.
868. In the consultation with the House of Traditional Leaders in the North-West, the representatives emphasised that human rights are universal and full participation of women is required in all aspects of society. It was conveyed to the CRM that traditional leaders are currently undergoing training in issues pertaining to domestic violence. This was certainly an encouraging finding and a good practice worthy of emulation. The role of traditional leaders is crucial in promoting gender equality at the local level.
869. The CRM noted that violence starts early in schools. According to the government, safety officers are being placed in schools and there is ongoing public education to correct the mindset. There are specialised courts for dealing with violence against children and police are being sensitised on how to deal with these crimes.

iii. Recommendations

870. In addition to the recommendations made elsewhere in this Report on gender equality, especially in Chapter Three, the APR Panel recommends that South Africa:
 - Address the under-representation of women in the private sector through proactive measures, including information, education, mentoring and other empowerment measures. *[Government; private sector]*
 - Develop a fundamental change towards a more comprehensive, sustained approach to dealing with violence against women. This should be underscored by strong leadership at the topmost level of the government and at the provincial and local levels. *[Government; CSOs; traditional rulers]*
 - Continue to address the negative effects of persisting traditional patriarchal systems and the disintegrating social (family) structure in a more comprehensive manner. *[Presidency; CSOs]*

- Develop cultural dialogue to educate people about violence, raise awareness, form coalitions and massively mobilise various segments of the population against all forms of violence. *[Government; CSOs; traditional rulers]*
- Create and improve mechanisms for preventing, monitoring and responding to the abuse of women and children. These may be special courts, a hotline or special desks in police stations. All South Africans are required to unite in solidarity to challenge traditions, practices and laws that harm women and children. *[Government; traditional leaders; civil society]*
- Develop real-time communication capability to support dialogue, consensus building and action among the government, private and civil society sectors in understanding the Bill of Rights and the Employment Equity Act of 1998. *[Government; private sector; traditional leaders; civil society]*
- Better integrate gender equality into the curriculum, especially at the lower levels of education. *[Educational institutions; government; civil society]*

Objective 6: To Encourage Broad-based Participation in Development

i. Summary of the CSAR

Mechanisms to Promote Broad-Based Participation

871. The CSAR highlights mechanisms in place to promote participation by stakeholders in the socio-economic development process. The basic and guiding principle is that broad participation promotes popular respect for laws, government development plans and their ownership, democratic stability, a sense of common nationhood and equality, and building of social compacts.
872. Mechanisms that South Africa has put in place include consultative and popular participation processes of the *Imbizo* initiative, which allows people to engage and interact with government structures, particularly at local level; and agriculture, business, labour and other thematic advisory and working groups. The Growth and Development Summits are important instruments for promoting broad social participation and democratisation in socio-economic development at provincial level. At local level, participatory mechanisms include ward committees, community policing forums and MPCCs. Building social contacts through the Vuk'uzenzele mechanism is an important social participatory instrument. The IDP and the Rural Development Framework formulation and implementation processes imply participation by concerned people. Similarly, the 1994 Indigenous Knowledge System (IKS) Policy,

which acknowledges the value and contribution of indigenous knowledge to national development, implies participation of those concerned indigenous.

873. The CSAR emphasises, in particular, women's increasing role and active participation in the development socialisation process at the legislative as well as political policy-making levels in the country.
874. There are still challenges to overcome, especially with regard to raising the awareness of some segments of the population, including CSOs or CBOs who may not have the required capacity, education or information to participate fully in socio-economic development processes. This may necessitate a comprehensive and integrated popular education and information strategy to capacitate people for their active, effective participation in the socio-economic development process through the use of the 11 national languages so as to facilitate communication and participation. There is also a need for sectoral or thematic programmes to be coordinated, consistent and cohesive, and for capacitating civil society as the people's watchdog and active development player. Finally, strengthening government and civil society collaborative partnerships is crucial.

ii. Findings of the CRM

875. In terms of legal, policy and institutional steps taken to ensure broad-based participation in development by all stakeholders at all levels, it should be recognised that South Africa has made tremendous effort in this direction. Its civil society is one of the most vibrant in Africa and this critical segment plays an active role in democratisation as well as socio-economic development.
876. The CRM noted with appreciation South Africa's concerted effort to open discussions on most of the important development issues at all levels. People are able to voice their concerns and contribute to discussions on development issues. This was particularly evident to the CRM when it learnt about South Africa's preparation for the APR exercise. The preparations involved numerous *Imbizo* gatherings, thousands of submissions and huge participation at the CSAR validation meetings. Although the process was uneven in the provinces, the exercise was largely participatory. The participatory mechanisms put in place, albeit with some weaknesses, are adequate to address broad-based participation of all stakeholders in the socio-economic development process. However, these processes and the mechanisms involved need to be strengthened and, if possible, institutionalised.
877. With regard to political leadership, the CRM observed a very good sense and awareness of development responsibility, accountability and consensus building through regular outreach meetings and interaction with the population. In this respect, it is worth mentioning the existence of the House of Traditional Leaders at all levels as a recognised constitutional body, not only in deepening democracy, building peace and ensuring social harmony, but also in mobilising people for socio-economic development. The CRM meeting

with representatives of the House of Traditional Leaders in the North-West confirmed this political and social function. This may be considered a best practice, but the role of the House of Traditional Leaders has to be strengthened and properly integrated into the development agenda.

878. Another best practice with regard to broad-based participation is the event of 18 August 2006, when the Constitutional Court ruled against an amendment that approved the altering of a provincial boundary. The justices asserted that provincial boundaries cannot be altered without adequately involving the public in these decisions. The province in question had not held the requisite public hearings or invited written submissions. This case is indeed historical, as it clearly demonstrates the high regard and seriousness with which the issue of inclusiveness in decision-making processes is held.
879. There is some concern about constraints to broad-based participation in decision making in South Africa. Despite the government's efforts, a number of critical segments of society are still unable, or less able, to participate fully in the country's development process. This is particularly true of rural communities, women, youth, and people with disabilities. The CRM noted a gap in the government's communication strategy aimed at educating people about available policy frameworks, operational programmes, ways to access, benefit or contribute, and their rights and privileges.
880. The CRM believes this is an area in need of a clear, strong partnership between the government and civil society. Collaborative and constructive partnerships between the government at all levels and critical segments of civil society seem to suffer from mutual suspicion in South Africa, in particular with regard to the media. There is also a need for better coordination among government structures dealing with such participation.
881. The CRM rightly observed that socio-economic development is a process that should be democratised. Enlarging the social basis for development will promote the democratisation of the development processes. It implies full democratisation of the four dimensions of society: political, economic, social and cultural. This is the main requirement for constituting a fully democratic order in a country.
882. The CRM commends the government's leadership and encourages it to continue to enhance these good and best practices. The dynamism of South Africa's civil society is also crucial, both as a socio-economic player and as a people's watchdog for the transformation of society and the building of South Africa's future. The CRM encourages civil society and business to strengthen their participation in the development process and its democratisation.

iii. Recommendations

883. The APR Panel recommends that South Africa:

- Continue to strengthen and enhance the good and best practices of social dialogue and people's participation in the socio-economic development process. *[Government; private sector; civil society]*
- Given the challenges that lie ahead in the process of structural transformation, build confidence and enhance partnerships between the government and other development stakeholders. *[Government; private sector; civil society]*
- Enable civil society to build its own capacity from within the country and its own development activities. Where necessary, the government should render support through financial and institutional capacity building in social service delivery. *[Government; civil society]*
- Reflect adopted standards and codes in national or provincial legal frameworks and disseminate these widely in the national languages. *[National Assembly; provincial legislatures; government]*
- Foster political consensus building around development programmes and establish regular monitoring and reporting mechanisms within the country. *[Government; private sector; CSOs]*

CHAPTER SEVEN

7. CROSS-CUTTING ISSUES AND CONCLUSION

“It is expected that country efforts will be enhanced and strengthened by the APRM process and that, after the first review, countries will sustain their efforts to achieve the shared objectives identified in the APRM and their Programmes of Action. This will require updating these Programmes of Action on a regular basis based on self-monitoring results of their own progress and lessons learnt from sharing with other countries, which will be facilitated actively by the APRM ...”

NEPAD/HSGIC-03-2003/APRM Guideline/OSCI, Section 6.5

7.1 Overview

884. The preceding four chapters of this Report have appraised South Africa in the four thematic areas of the APRM, namely Democracy and political governance; Economic governance and management; Corporate governance; and Socio-economic development, based on the Country Self-Assessment Report (CSAR), the background information prepared by the APR Secretariat and the findings of the Country Review Mission (CRM). The recommendations of the Panel in each of the thematic areas have also been elaborated on.

885. The main objective of this last chapter is to identify some of the cross-cutting issues that have run through the Report. They cut across all four thematic areas and accordingly deserve a holistic approach in the search for solutions because of the wider impact they have on the quality of governance in all areas of activity. The key cross-cutting issues are:

- Unemployment;
- Capacity constraints and poor service delivery;
- Poverty and inequality;
- Land reform;
- Violence against women;
- Violence against children;
- HIV and AIDS pandemic;
- Corruption;
- Crime;
- Racism and xenophobia; and
- Managing diversity.

7.1.1 Unemployment

886. At the root of poverty lies large-scale structural unemployment. The personal, social and political costs of unemployment are huge and the impact magnifies over time with the duration of unemployment. While cyclical unemployment causes tremendous hardship, it is manageable as it is a short-run phenomenon. Structural unemployment, however, has a devastating impact in the long run and can lead to systemic collapse if allowed to get out of control. Consequences at household level include: severe financial hardship and deepening poverty; an unbearable level of indebtedness, homelessness and housing stress; the atrophying of work skills and ill-health; family tensions and breakdown; boredom; alienation; shame and stigma; increased social isolation; crime; and erosion of self-confidence and self-esteem. Without a doubt, structural unemployment is a danger to a nation. The potential to resort to crime, become infected with HIV and AIDS, or engage in violence, to name only a few consequences, is enormous.
887. Large armies of the unemployed pose a danger to political stability and democracy. This is why even the most developed countries are ultrasensitive to unemployment and will do anything to put their citizens to work once the threshold is reached. Poverty alleviation in the context of large-scale structural unemployment is an exercise in futility. It is too much of a burden for a poor, or even an emerging middle-income country to bear. It also does not address the loss of self esteem and persistent vulnerability of idle able-bodied men and women, boys and girls in their millions.
888. Despite government efforts to provide employment opportunities, South Africa still has an unsustainably high level of structural unemployment. Paradoxical as it may seem, there has been a steady increase in the levels of unemployment in South Africa despite a modest increase in job creation during the past decade. Unemployment has climbed inexorably, reaching 28.2 per cent of the country's economically active population by September 2005. The likelihood of being employed in South Africa is still heavily influenced by race, geographic location, gender and levels of skill.
889. Had unemployment been mainly cyclical in nature, macroeconomic policies would have provided relief during these past 12 years. Because it is structural, however, a totally different approach is required. As discussed in Chapters Four and Six, the Accelerated and Shared Growth Initiative for South Africa (AsgiSA) provides a way out as a start, provided of course that the Treasury and the South African Reserve Bank (SARB) put in place the necessary enabling environment for the effective and efficient operationalisation of the new paradigm. As AsgiSA's focus is on the micro-economy, it is imperative that the macroeconomic policy framework be orientated to provide the required enabling environment for its successful take-off.
890. Social security in South Africa is based on European post-World War II models, where unemployment is primarily short term and therefore cyclical. In South Africa, unemployment is not cyclical but structural. It constitutes a

long-term challenge calling for deconstruction of the inherited apartheid economy and democratisation of the development process.

891. Poverty is the inevitable consequence of pervasive unemployment. Eliminating the current nexus of poverty and unemployment therefore requires refocusing on a holistic, human-centred development paradigm. A country cannot become eligible to join the league of rich nations on the basis of having a monocultural economy and the capacity to do more of the same. Rather its qualification for eligibility must be its continuous move into ever higher value-added and diversified production systems that have high productivity, more competitiveness and engage all people, particularly the labour force, through the process of democratising the development process and popular participation.

7.1.2 Capacity Constraints and Poor Service Delivery

892. The term “skill” refers to a specific ability and is generally used where the ability is assumed to have been developed in some sense through training and experience.
893. South Africa suffers from a severe skills shortage. It is most acute at the provincial and local government levels, where delivery of basic goods and services is paramount. At a more general level, there is a shortage of versatile and experienced managers and professionals across all sectors of the economy.
894. Since 1994, a major new architecture of institutions for service delivery spanning the three spheres of government has been created. However, these state institutions need to be strengthened by addressing the skills constraint. It is generally agreed that the needs of local government are most critical, with most municipalities lacking the requisite capacity to perform their service-delivery functions.
895. There have been reported cases where certain provinces are unable to exhaust their budgets, yet continue to have housing backlogs. Sanitation and rural electrification are other areas where service delivery remains a challenge. In this context, Project Consolidate, initiated in 2004 as a national two-year programme of hands-on support and capacity building, has identified 136 municipalities in need of assistance. However, this cannot be a substitute for local capacity building.
896. As was argued in this Report, initiatives such as Project Consolidate should be temporary measures. The government should expedite action on the establishment of a single, unified public service to allow for the allocation of skills and human resources across the three spheres of government, in addition to intensifying other programmes on skills development.

7.1.3 Poverty and Inequality

897. With the demise of apartheid in 1994, expectations and aspirations for improvement in livelihoods among ordinary South Africans have been raised to phenomenal levels. Despite the status of a middle-income country, poverty and inequality are still widespread in South Africa and manifest themselves in high rates of unemployment, extreme land hunger and lack of access to basic human needs. In both urban and rural areas, the majority of the population continues to experience conditions of severe deprivation and squalor.
898. A significant number of South African households continue to be poor or vulnerable to being poor. Poor South Africans perceive poverty to include: alienation from the community; food insecurity; crowded homes; use of unsafe and inefficient forms of energy; lack of jobs that are adequately paid and/or secure; and fragmentation of the family. Women, children, the elderly and people with disabilities bear the brunt of poverty.
899. In addition, the distribution of income and wealth in South Africa is among the most unequal in the world. Many households still have unsatisfactory access to education, healthcare, energy and clean water despite concrete progress made in redressing the inherited backlog since 1994. Furthermore, fuelled by high levels of unemployment, poverty provides the bedrock for HIV and AIDS. It also poses a threat to democracy.
900. South Africa has a long distance to traverse on the transformation front, but the vision, will and resources are there to move the process forward. Poverty is not just about the income poor; it is also about people's lost creativity and potential to contribute to society. It is about the denial of access to opportunities and choices to lead a decent life; achieve a better standard of living; have more freedom, dignity and self-respect – things that matter most for human existence. While a great deal has been achieved in the first decade of freedom, the next decade should take the process to a much higher level that will bring about a significant difference in the quality of life of the country's majority.
901. Addressing the challenges posed by poverty alleviation and eradication goes beyond slogans and the expression of wishes through target dates being set nationally or internationally. It will only come about through concrete policies and programmes that are fully implemented. Such policies and programmes must be basically transformative and developmental. It is only these kinds of programmes that can ensure the elimination of the economic, political and social structures that reproduce poverty, and secure the fundamental objectives of the democratisation of the development process and the mobilisation of the people.

7.1.4 Land Reform

902. Land is crucial to the pursuit of development strategy in Africa. It can play a major role in addressing issues of unemployment and poverty. It is the single-most important factor in social, political and economic empowerment. Above all, it has a central role to play in wealth and income redistribution. While the assurance of stable access to land is clearly not a sufficient route out of poverty on its own, insufficient land to live on and cultivate, as well as insecure access or rights over land, are well-recognised factors in sustaining poverty and destabilising democracy. The links with conflict cannot be ignored – although curiously so, given the long history of land grievances in virtually every modern revolution.
903. Land in South Africa is an emotive and volatile issue. It is potentially explosive unless handled properly. Since coming to power in 1994, the government has pursued land reform in a considered, reasonable and largely market-oriented manner, firmly rooted in the constitutional settlement on property rights and in the recognition that the righting of past wrongs, while essential, should not be allowed to damage future prospects. In recent months, however, this perspective has been under increasing pressure. The government has committed itself to redistributing 30 per cent of commercial agricultural land to black owners by 2014. By December 2004, it had only transferred an area equal to 4.3 per cent of commercial agricultural land. This figure includes the transfer of state land and, if excluded, the percentage drops to 3.4.
904. The government's land reform policy has three components: restitution (returning land or providing compensation to those who were dispossessed under apartheid), redistribution (increasing black ownership of rural land) and tenure reform (improving the security of tenure of dwellers on rural and peri-urban land). Thus far, delivery has averaged 0.38 million hectares a year. At the current pace, the 30 per cent target will be reached in 54 years' time or delivery will have to be increased fivefold to meet the 2014 target.
905. There are signs of growing impatience and the government is under considerable and probably increasing pressure from many quarters over a likely failure to deliver on its land reform commitment. It would be churlish to upbraid the government for the slowness with which this is being achieved. Nonetheless, the causes of the slowness need to be addressed. In particular, attention needs to be focused on the unresolved policy contradictions arising from the dominance of land market promotion objectives over and above mass securitisation of tenure. In this regard, the authorities may need to depart from entrenched norms already known to have limited results.
906. The CRM trusts that all stakeholders, in view of the strategic, political and economic importance of credible land reform to the country's transformation, particularly the economic and social empowerment of the poor in rural areas, will give their full support and cooperation to the full realisation of this target.

7.1.5 Violence Against Women

907. Violence against women is a serious human rights issue with significant social and economic implications for the fight against poverty. It continues to be one of the most prominent features of post-apartheid South Africa. In a country where racial and gender equality are enshrined in the Constitution, and women occupy premier positions in both government and business, there remains a tragically high level of violence against women. Extremely high rates of rape and other forms of violent abuse of women have been documented in South Africa.
908. Estimates of the extent of violence vary and statistics for women abuse are notoriously difficult to establish, largely because of underreporting. Statistics from the South African Police Service (SAPS) indicate that there were:
- 54 293 rapes in 2001/02;
 - 52 425 rapes in 2002/03;
 - 52 733 rapes in 2003/04;
 - 55 114 rapes in 2004/05; and
 - 54 926 rapes in 2005/06.
909. The range of abuses that women experience is wide and includes physical, sexual, psychological and economic abuse, as well as stalking, forced isolation in the home and other controlling behaviours. Violence against women is a major contributory factor to the HIV and AIDS crisis, according to numerous reports by the United Nations and other governments. Women who are beaten by their husbands or partners, or are emotionally or financially dominated, are much more likely to be infected by HIV than those living in a non-violent household. Abused women have limited abilities to negotiate their sexual activity or safe sex practices. They are vulnerable to even more abuse if they are the first to learn of their infection status and have to tell their partners.
910. The problem of violence against women in South Africa is a complex one. It is both an individual and a social problem. It is embedded within, and emerges from, South Africa's history and the current unequal social, economic and cultural relations.
911. The roots of abuse lie in the patriarchal nature of society, which essentially views women as inferior to men. They are often perceived as men's possessions, not quite full adults and in need of being led and controlled. Alcohol abuse plays a role, as it is a source of conflict in relationships, exacerbates poverty and results in loss of self-control. Furthermore, violence is sustained between generations through children witnessing abuse of their mother. This is an important risk factor that contributes to becoming an abusive partner or an abused woman in the future.
912. The South African Constitution, particularly the Bill of Rights, contains clauses that safeguard and promote women's rights as human rights. There is

explicit reference to gender violence in section 12(1), protecting “the rights to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources”. In addition, the constitutional commitment is translated through the establishment of various gender organisations and structures, such as the Commission on Gender Equality, and through new legislation that aims to ensure that those constitutional rights are not infringed. Yet, women in South Africa complained that they still continue to face a system that is often hostile to their efforts to seek redress.

913. While some new, and progressive laws have been passed to mitigate the situation, such as the Domestic Violence Act of 1998, their enforcement leaves much to be desired. Moreover, there is no strong effort to force society to address the problem and empower women to speak out about gender violence. Vigorous enforcement would help move the problem out from the shadows of private lives into the public realm, where the government must acknowledge violence against women for what it is: a serious human rights issue with significant social and economic implications for fighting poverty.
914. The South African government has expressed a commitment at policy level to eradicate gender violence. Since 1994, the state has increasingly intervened in the problem of violence against women.³⁶ The country is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and also the Southern African Development Community (SADC) Declaration on the Prevention and Eradication of Violence Against Women and Children.
915. The National Crime Prevention Strategy (NCPS) of 1996 established that the fight against crimes of violence against women and children is a national priority (a status such crimes have continued to enjoy in subsequent national policing strategy documents). A number of legislative reforms have also been instituted: mandatory minimum sentences for certain rapes (Criminal Law Amendment Act of 1997); tightening bail conditions for those charged with rape (Criminal Procedure Second Amendment Act of 2001); and the Domestic Violence Act of 1998. The National Policy Guidelines for the Handling of Victims of Sexual Offences were finalised in 1998, and the Policy Framework and Strategy for Shelters for Victims of Domestic Violence in South Africa in 2003. Specialist facilities have been set up, such as family courts, specialist sexual offences courts and Thuthuzela Care Centres for victims of rape and abuse.
916. While the Domestic Violence Act of 1998 contains many laudable elements that could be held up as examples of good practice, it remains difficult to evaluate the effectiveness of the Act when it has not been implemented

³⁶ See, for example, Vetten, L. 2005. *Addressing Domestic Violence in South Africa: Reflections on Strategy and Practice*. Paper presented at the Expert Group Meeting on Violence against Women: Good Practices in Combating and Eliminating Violence Against Women. UN Division for the Advancement of Women in collaboration with the UN Office on Drugs and Crime, 17-20 May 2005, Vienna, Austria.

effectively and thus cannot routinely meet its purpose to provide the maximum protection of the law to victims of domestic violence. Oversight and accountability mechanisms have also not functioned as they should.

917. Perhaps, a more proactive, coordinated and system-wide response is what is urgently needed. Ending gender violence will require national leadership and commitment at every layer of society.

7.1.6 Violence Against Children

918. Levels of violence against children in South Africa are relatively high. The available evidence indicates that the majority of black South African children suffer from numerous socio-economic problems that negatively affect their growth and development. Children mostly suffer from poverty, hunger, lack of decent shelter, destitution, illiteracy and exposure to numerous epidemics. They also suffer many forms of abuse, including: economic exploitation, especially child labour; drug abuse; child sale, trafficking and abduction; sexual exploitation and sexual abuse.
919. The situation of children has been aggravated by the HIV and AIDS pandemic, which both infects and affects children. Nearly 90 000 children in South Africa are infected with HIV, but their plight so far has received only limited attention. The link between HIV and AIDS and poverty has worsened the problem, especially as it relates to orphans. Despite scanty data, the available evidence shows that the scale of the problem of orphans and vulnerable children in South Africa is reaching crisis proportions. It is estimated that over 1 million children in South Africa are orphans. These children are extremely vulnerable. Many suffer severe deprivation, quit school, fail to access training, fall prey to abuse and exploitation, and risk HIV infection more than other children. This is especially the case among street children.
920. Violence against children, especially girls, is of concern in South African schools. South African girls continue to be raped, sexually abused, sexually harassed and assaulted at school by male classmates and teachers. They are confronted with levels of sexual violence and harassment in schools that impede their access to education on equal terms with male learners. Although some schools try hard to respond to the problem of violence, too often school officials have concealed incidents of sexual violence and delayed disciplinary action against perpetrators of such violence at great cost to the victims.
921. The situation of children in South Africa has been worsened by the apparent decline of social support institutions such as the family. The pervasive violent behaviour of adults has aggravated violence among children and youth. Not only has parental leadership failed, the overall societal leadership is also far from being inspiring to children. Through interactions with stakeholders, the CRM noted that social support institutions for children were under severe stress, with serious consequences for the proper development of young people. The CRM was informed that many families were increasingly characterised by

the inability of parents to fend for their children, which often leads to various psychological pressures and, increasingly, domestic violence, drunkenness and child abuse.

922. Even the composition of households and families in many parts of South Africa seems to be changing as a result of rising adult mortality and morbidity due to the HIV and AIDS pandemic in a context of high poverty levels. This is reflected in the growing number of child-headed households. Children living without adult caregivers are extremely vulnerable to abuse and exploitation and lead lives of absolute poverty.
923. At present, it appears that little or nothing is being done to replace disintegrating social support institutions in South Africa, including the family, school, kinship structures and public institutions, with new forms of effective socialisation and social control. In the absence of such control, children and young people are generally alienated from mainstream society and frequently end up in the streets where they create their own social worlds and fashion new social orders and identities. This situation points to the growing problematic transition of children and youth in South Africa, an indication of their poor socialisation.
924. The issues of children and youth are complex and dealt with in different focus areas by a multiplicity of government institutions, non-governmental organisations (NGOs), faith-based organisations, and cooperating partners. The government has recognised the need to develop a comprehensive legislative and regulatory framework so that all institutions dealing with child and youth issues can relate their programmes and activities to the government's overall intentions on child and youth development as contained in the policy documents.
925. As noted in Chapter Six, South Africa has ratified the United Nations Convention on the Rights of the Child, as well as the African Charter on the Rights and Welfare of the Child (ACRWC). The former provides an opportunity for South Africa to review and enact legislation in line with today's economic, social and cultural challenges. One of the advantages of a Convention is that it provides a high degree of uniformity of law among the states adhering to it. Unfortunately this Report reveals that, in the last 12 years, there has been no serious attempt to review and enact laws that are in conformity with the Convention.
926. At present there is a lack of comprehensive and disaggregated data on children in South Africa, making it difficult to design appropriate interventions. Moreover, some legal and policy gaps still exist.

7.1.7 HIV and AIDS Pandemic

927. As has been repeatedly indicated in the Report, South Africa is currently experiencing one of the severest HIV epidemics in the world. According to

UNAIDS estimates, by the end of 2005 there were 5.3 million people living with HIV and AIDS in South Africa and almost 1000 AIDS deaths every day. This means that South Africa has the second highest number of people infected with HIV in the world after India. The epidemic in South Africa is also considered unstable, meaning it is still growing.

928. There are, however, conflicting statistics on the mortality rate due to the pandemic. It is estimated that around 336 000 South Africans died from AIDS between mid-2005 and mid-2006. The 2002 ASSA model of the Actuarial Society of South Africa calculates that 311 000 people died due to AIDS in 2004, comprising 44 per cent of all deaths. Among adults aged 15 to 49 years, 70 per cent of deaths were due to AIDS. UNAIDS/WHO estimated that AIDS claimed 320 000 lives in 2005, which is more than 800 every day.
929. South Africa has had a turbulent past and this history is relevant to the explosive spread of HIV. The most rapid increase in HIV prevalence in the country took place between 1993 and 2000, a period characterised by major political changes. Many people argue that the response to HIV and AIDS in South Africa has been hampered by “Aids denialism” – a minority scientific movement that refutes the orthodox idea that HIV causes AIDS. Other factors include stigmatisation and violence against women.
930. The high prevalence of HIV and AIDS in South Africa poses major challenges for both the government and civil society groups, which are doing their utmost to curb the spread of the disease and help those affected by it. An estimated 6 million South Africans are expected to die from AIDS-related diseases over the next ten years if the business-as-usual scenario prevails. Young people are the age group most severely affected by AIDS in South Africa, with the largest proportion of HIV infections in the country occurring among people between the ages of 25 and 29. Prevalence rates are up to 40 per cent among pregnant women in this age group.
931. Treatment is a key issue in managing the HIV and AIDS pandemic. The government approved plans to provide public access to antiretroviral drugs in November 2003, in the form of the Operational Plan for Comprehensive Care and Treatment for People Living with HIV and AIDS. Although the government aimed to place 381 177 people on state-funded antiretroviral drugs by 2005-2006, only 85 000 people were receiving treatment by September 2005. By end March 2006, a cumulative 130 000 patients were, or had been, under treatment under this programme. Given complementary efforts by the private sector, it is estimated that coverage of the public programme would have to increase to 250 000 patients to provide universal access to antiretroviral drugs.
932. Further, it is estimated that 50 000 children in South Africa were in need of antiretroviral drugs at the beginning of 2006, but that only around 10 000 were receiving them. UNAIDS estimated that at the end of 2005, children accounted for 8 per cent of those receiving antiretroviral drugs in South Africa.

933. Many children are infected with HIV in South Africa, but many more are suffering from the loss of their parents and family members due to AIDS. UNAIDS estimated that 1.2 million South African children were orphaned due to AIDS in 2005, compared with 780 000 in 2003. These children are likely to face poverty, poor health and lack of access to education.
934. Much of the reporting on AIDS in South Africa has centred on the perceived ambivalent attitude of politicians towards the pandemic. Far less has been said about the tremendous efforts being made by local, provincial and national government agencies, as well as a myriad NGOs, to combat AIDS by creating awareness around the disease, promoting behavioural change and providing medical, social and economic assistance to those affected and/or infected by the epidemic.
935. The HIV pandemic is no longer the sole problem of the individual countries concerned; it has become a global concern. Every affected country must move in tandem with the international community while, by the same token, the latter should recognise and respect the peculiarities and uniqueness of each country. Be that as it may, all efforts must be mobilised for South Africa to reduce significantly the population affected by HIV and AIDS as required under the Millennium Development Goals (MDGs).
936. It is welcome news that appropriate steps are being taken to bring about a change in the response to HIV and AIDS prevention and treatment in South Africa by redressing prevailing dysfunctions and scaling up the national response. The government, in partnership with civil society, has begun to send out uniform messages concerning the proper treatment of the disease. No one now denies that HIV and AIDS deserves to be a higher national priority and needs to be tackled with more high-level commitment and adequate resources.
937. In the meeting with the Deputy President, the CRM was assured that as part of enhanced government policy:
 - Antiretroviral drugs will henceforth constitute the centrepiece of the government's treatment response to HIV and AIDS.
 - Targets will be set for dramatically expanding the availability of the drug through the public health system.
 - The cooperation between the government and AIDS activist groups will be strengthened.
938. This shift will no doubt reassure not only South Africans generally, but also the international community. The APR Panel welcomes this development and hopes it will be extended to cover expansion in HIV testing and cutting the rate of new infections. Efforts to mitigate the impact of this pandemic should also reinforce other health initiatives, such as the curtailment of malaria and the spread of other infectious diseases. Paramount among these should be efforts to tackle the drug-resistant tuberculosis that is linked to HIV and AIDS and is prevalent in the coastal provinces with a relatively higher humidity.

7.1.8 Corruption

939. Compared with other African countries, South Africa is relatively at a lower rung of the corruption ladder. There is, however, growing concern about the increasing levels of corruption and the debilitating effects on service delivery and poverty, especially in the provinces and municipalities. Moreover, Transparency International's 2006 Bribe Payers Index (BPI), the most comprehensive survey of its kind which looks at the propensity of companies from 30 leading exporting countries to bribe abroad, ranked South Africa 24th or the seventh most corrupt. In this survey, more than 11 000 businesspeople in 125 countries were asked to share their perceptions of how companies headquartered in 30 of the world's leading exporting countries conduct their businesses overseas.
940. The preceding chapters of this report have pointed out the following areas that require attention if the fight against corruption is to achieve maximum success:
- Private funding of political parties;
 - Lack of legislation to regulate the transition of public sector employees to the private sector in areas where there could be a conflict of interest regulation;
 - Bribery of foreign public officials by South African businesspeople;
 - Improving the coordination and roles of the different anticorruption bodies;
 - Strengthening the capacity and independence of the anticorruption bodies; and
 - Promotion of the knowledge and application of key legislation in the anticorruption framework, particularly access to information and protection of whistleblowers.
941. South Africa has developed an advanced framework of law, strategy and institutions with a mandate to combat corruption. The country has enacted various pieces of legislation for preventing and combating corrupt practices. It has also adopted various international audit standards, signed protocols against corruption and ratified various international conventions on preventing and combating corruption.
942. Some of the pieces of legislation introduced and promoted include: the Protected Disclosures Act of 2000; Promotion of Access to Information Act of 2000; Financial Intelligence Centre Act of 2001; Promotion of Administrative Justice Act of 2000; and Prevention and Combating of Corrupt Activities Act of 2004. The latter Act is based on actual life experiences of corruption and seeks to address the systemic lapses that make it possible.³⁷
943. The CSAR notes that in response to the problem of corruption in the public sector, the government has initiated a variety of anticorruption measures, culminating in the adoption of a comprehensive Public Service Anticorruption

³⁷ As we go to press, it has been learnt that South Africa has now formally acceded to the OECD Convention on Combating Bribery of Foreign Officials in International Transactions (April 2007).

Strategy and the establishment of partnerships between the government, civil society and private sector. These partnerships have resulted in two National Anticorruption Summits (1999 and 2005) and the launch of a tri-partite National Anticorruption Forum in 2001. More recently (2007), the National Anticorruption Forum has set aside R3 million to launch an educational and awareness campaign that will target the business sector and bribery of foreign officials.

944. In addition to the National Anticorruption Forum, South Africa has 11 other organisations that have anticorruption as part of their mandate. The country has created institutional capacity at the national and provincial levels to complement the work of the police. These include the Public Protector, National Prosecuting Authority (NPA), Special Investigating Unit, Public Service Commission, Financial Intelligence Centre, and the Auditor-General. Specialised commercial courts have been established to prosecute and try corrupt offenders. In addition, an Asset Register has also been created for accounting officers to disclose their financial assets and interests.
945. Unlike several countries, the country lacks one supreme, independent corruption-fighting body, relying instead on improved coordination between several anticorruption institutions. National-level bodies are relatively effective compared with provincial and local oversight systems. Most provinces have experienced major corruption allegations and scandals, and there is weak reporting of corruption at municipal level by community and media organisations.
946. While the presence in South Africa of no less than 12 agencies that have anticorruption as part of their mandate is proof of the strong political will to tackle corruption, the sheer number of agencies makes an integrated national approach to the problem difficult. Top anticorruption bodies such as the Public Protector, Auditor-General and NPA are perceived by some stakeholders as not being impartial and independent. Many anticorruption bodies also face capacity constraints. These include the Public Protector, Commercial Crime Unit and the Parliament's Ethics Committee, which is saddled with critical oversight and anticorruption roles.
947. As recommended in the chapter on corporate governance, the authorities may consider requiring South African companies operating elsewhere on the continent to observe South Africa's corporate governance standards in their operations. They should, in addition, be encouraged to undertake socially responsible investment programmes.

7.1.9 Crime

948. Crime is a major problem in South Africa. According to a survey for the period 1998-2000 compiled by the United Nations Office on Drugs and Crime, South Africa ranked second for assault and murder (by all means) per capita. Other data rank South Africa second in the world for murders per capita, and

first for assaults and rapes. Nonetheless, according to official statistics, violent crimes such as murder and robberies have decreased in recent years, with the year 2004 seeing a drop of 4.6 per cent and 5.3 per cent for these two offences, respectively. As noted above, the rape rate has shown no signs of decreasing.

949. It must be noted, however, that the distinctive feature of crime in South Africa is not its volume, but its level of violence. Crime has had a pronounced effect on South African society. Beyond the pain and loss suffered by victims, crime also has direct costs, such as protection efforts and health costs, and generally creates an environment not conducive to productive activity. Moreover, the widespread emigration of South African professionals in recent years is partly attributable to their desire to escape a high crime environment. All these effects are likely to discourage investment and stifle long-term growth in South Africa.
950. There are several explanations for the high levels of crime, especially violent crime. Worldwide, crime is associated with urbanisation due to overcrowding, unemployment, inequality and increased consumer demands and expectations. In South Africa, there is also a causal link between the crime rate and the country's political history. The strategy of the liberation movement to use ungovernability against the apartheid regime to meet its objectives has had unintended consequences. The massive violence that was unleashed in black communities bred a culture of violent lawlessness and a distrust of authority. Since 1994, not much has been done to draw young South Africans back into a society governed by the rule of law.
951. For decades, families suffered from institutional violence through the disruption of their lives by mass removals and migrant labour policies. Political violence compounded the disruption of family life and the resultant weakening of the family unit, and thus parental control, which may have exacerbated crime especially among the youth. The effects of apartheid, coupled with years of political violence and continued exposure to violence in the home and in the neighbourhood, have produced a destructive culture such that some people quickly resort to violence as a means of resolving conflicts, whether in the domestic, social or work environment.
952. A major contributory factor to violent crime is the proliferation of firearms. South Africa is a heavily armed society. According to the SAPS Central Firearms Registry, 3.5 million South Africans legally possess some 4.2 million firearms, of which slightly more than half are handguns. It is estimated that an equal quantity of illegal firearms are circulating in the country despite the recent amnesty.
953. The government's recent widely publicised gun amnesty programme aimed at reducing the number of weapons in circulation. In addition, it adopted the National Crime Prevention Strategy (NCPS) in 1996, which sought to prevent crime through reinforcing community structures and helping individuals back into work. However, the government has been criticised for doing too little to stop crime. Some question the effectiveness of the SAPS.

954. The problem of crime demands an integrated approach that tackles the criminal justice system and economic and human development simultaneously. There is a need for the formulation of plans for short, medium and long-term solutions; a specific focus on crime in the spheres of development, education and social welfare; and integration and coordination of the activities of all the various state departments – criminal justice, education, health and social welfare, home affairs and the police.

7.1.10 Racism and Xenophobia

955. Without a doubt, racism was the hallmark of the system of governance and the defining feature in the social relationships that evolved between the government of the day and the people, as well as among the people themselves, during the apartheid era. Twelve years on, South Africans are reminded virtually on a daily basis, of both the legacy of that past, as well as the ongoing manifestation of thoughts and deeds premised on the belief that one race is inherently superior to another.
956. The search for a better life in the region has spawned new patterns of migration to South Africa. Despite the solidarity and comradeship between black South Africans and the rest of the people of sub-Saharan Africa during the decades of struggle against apartheid and for liberation, foreigners, mostly of African descent, are being subjected to brutality and detention. Xenophobia against other Africans is currently on the rise and should be nipped in the bud.
957. The authorities may wish to reconsider the current strategy of handling undocumented migrants. The Lindela Repatriation Centre outside Krugersdorp is not achieving its objectives of discouraging illegal migrants, as these people find their way back into the country soon after they have been deported. More so, a UN working group on arbitrary detention visited the centre in September 2005 at the invitation of the authorities. The group reminded South Africa of its international obligations to make provision for detainees' valid contestation of their detention.
958. The perceived devaluation of labour that comes as a result of migrant workers entering the South African market in unfair competition with South African workers accentuates conflict and xenophobia. The government should address this issue in policy and law.
959. To South Africa's credit, it must be stated that much effort has gone into fighting racism and making good on the constitutional guarantee of equality for all. In the realm of the criminal justice system, there is acceptance that just as the system was pivotal in maintaining apartheid, so too it must now become pivotal in attempts at transforming and reconstructing society. While much attention, including media attention, has focused on racism within the justice system, the focus has largely remained on the courts and police. The penal system has rarely been a focus – perhaps consistent with the current thinking

that once a person has been incarcerated, the adage “out of sight, out of mind” tends to apply.

960. Given the history of the penal system, a history of separateness, isolation, abuse and denial of the humanity of millions of citizens, it was important that measures be taken to transform it into an institution worthy of taking its place in a democratic landscape. Much work and effort have gone into that process and much success has been achieved under difficult circumstances. However, a great deal remains to be done.

7.1.11 Managing Diversity

961. An enduring characteristic of South African society is its ethnic and racial diversity. Diversity offers both challenges and opportunities for South Africa’s development process. Vibrant economies such as the USA have thrived on the diverse racial and cultural strengths and capacities of its immigrants. However, diversity can also be a source of racial and ethnic tensions which, if not appropriately managed, can explode into conflict, social unrest, political instability and economic decline.
962. Exploiting the full potential of diversity requires effective management at several levels. Managing diversity at the political level is required to ensure that various racial and ethnic groups are capable of articulating and expressing their political rights, including the right to vote. At the economic level, diversity must be managed to ensure equitable access to productive assets, credit and employment. At the social level, diversity management must aim to facilitate and create space for the expression of diverse sociocultural practices and norms of behaviour and for social interaction.
963. The Constitution of South Africa provides a comprehensive legal framework for securing and protecting the political, economic and sociocultural rights of its diverse citizenry. It is on this framework that institutions for promoting and safeguarding diversity must be built. These institutions must be anchored on the goal of nurturing and celebrating diversity, while at the same time attenuating and pre-empting the antagonisms and conflicts that tend to follow in its wake.
964. In this vein, institution building and development at all levels of interaction (political, economic and social) must be guided by the principle of diversity management. At the political level, South Africa has been fairly successful, through the practice of proportional representation, in allowing diverse groups space to exercise their political rights. However, more needs to be done at the economic and social levels of interaction. At the economic level, policies of broad-based economic empowerment have empowered only a small minority of non-white South Africans. Similarly, at the social level, disparate access to education, health and other social services by black people creates fertile ground for race-based tensions that could reverse the gains achieved in the post apartheid era.

965. The widespread acceptance of the results of the 1994 elections and the Constitution in 1996 are two instances where the country has successfully managed diversity. South Africa must accord high priority to improving race and ethnic relations by shaping the attitudes and values of its citizenry, especially through its educational system. Beyond this, existing measures for addressing inequalities in access to social services and economic assets, particularly land, must be underpinned by the overriding objective of securing and sustaining the peaceful cohabitation of diverse races and ethnic groups.

7.2 The Way Forward

966. South Africans can be proud of the gains and advances recorded since 1994. A great deal has been achieved and the country is rightly viewed as a success story and a sign of hope in Africa. This, however, should not lead to the premature conclusion that the country's process of democratic consolidation has been accomplished. The socio-economic and democratic future of the country depends on addressing a number of issues raised in this Report.
967. The APRM exercise has made an important contribution in identifying best practices and some of the challenges contemporary South Africa faces within the context of the objectives and programmes of the New Partnership for Africa's Development (NEPAD). The extensive work done in South Africa to promote the APRM's ideals, the programme for sensitising the people, the self-assessment process, the drafting of the NPOA, workshops and conferences have already provided a new initiative and inspired many people to work together to achieve the NEPAD/AU objectives. It is hoped that this momentum and enthusiasm will be retained in the ongoing process of implementation.
968. There is a need to institutionalise and internalise the peer review culture. The forum it provides all stakeholders to engage among themselves periodically on the state of South African union and its future directions can become a major catalyst for building the development state that the country seeks. The parliament is already setting the pace in this regard.
969. It must be realised that democracy and political governance, economic governance and management, corporate governance and socio-economic development are not a series of compartmentalised "shot-in-the-arm" affairs. The cross-cutting issues are also important. For these issues to advance in tandem, they require a holistic package of strategies, stratagems, policies and programmes centred on human development, providing more and more space to the people while safeguarding the integrity of the polity. The package must have the overarching objective of demonstrating that the people matter because they collectively embody national sovereignty.

7.3 South Africa's Programme of Action

970. The National Programme of Action (NPOA) is central to the African Peer Review Mechanism. It is a major output of the review process which, in itself, brings out the value-added elements of the APRM process in a country.
971. As indicated in the “Guidelines for Countries to Prepare for and Participate in the African Peer Review Mechanism”: “The primary purpose of the National Programme of Action is to guide and mobilise the country’s efforts in implementing the necessary changes to improve its state of governance and socio-economic development. In addition, the National Programme of Action is the key input delivered by the country into the peer review and it therefore serves to present and clarify the country’s priorities; the activities undertaken to prepare and participate in the APRM; the nature of the national consultations; as well as explicitly explain the responsibilities of various stakeholders in government, civil society and the private sector in implementing the Programme”.³⁸
972. In interactions with South Africa during the CRM, including follow-up meetings with the Focal Point and South African APRM National Governing Council (NGC), the Panel reiterated that the NPOA has to meet the required conditions, namely:
- It has been designed by all stakeholders in South Africa.
 - It covers the major gaps and deficiencies identified in the extensive APRM process.
 - It provides satisfactory indications of costs and time-frames.
 - It elaborates on monitoring and implementation responsibilities.
 - It represents a firm commitment from all stakeholders.
 - It is fully endorsed by the government, which unreservedly accepts its share of responsibility for implementing the programme.
973. The attached NPOA is the result of the exercise. There is a firm commitment from the government to proceed with its implementation. The Panel reiterates and underscores that the responsibility for implementing the NPOA remains vested in South Africa and its entire people. All stakeholders in the country, under the leadership of the APRM’s NGC, must share in the responsibility for implementing the ultimate programme of action that is born from this exercise.

³⁸ NEPAD/APRM/Panel3/guidelines/11-2003/Doc. 8, p. 10.

APPENDIX I

SOUTH AFRICA'S PROGRAMME OF ACTION



PROGRAMME OF ACTION TO IMPROVE GOVERNANCE IN SOUTH AFRICA



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PROGRAMME OF ACTION TO IMPROVE GOVERNANCE IN SOUTH AFRICA



1. Situation analysis: South Africa's principal governance challenges

Introduction:

The governance situation in South Africa is described in detail in its APRM Country Self-Assessment Report (CSAR).

In essence, the Report notes the progress that the country has made in moving from an oppressive and discriminatory system to one based on democracy and human rights, respect for the rule of law, the centrality of the Constitution as the supreme law of the land, and a government based on the will of the people.

The report also shows that South Africa faces critical governance challenges as it strives to prioritise the needs of the poor while ensuring sustainability of social development. The programme is a response to the following major problems identified in the CSAR and the APRM Country Review Report written by the Country Review Mission:

Democracy and Political Governance:

- Racism, sexism, marginalisation, crime, lack of awareness and poor access to information impair the full enjoyment of human rights
- Racism prevents many citizens from realising their human potential and contributes to unequal access to valued goods and services and reproduces acute social inequities
- Violence and crime in general and against women and children, in particular, as well as the need for active engagement of all communities in the fight against crime and violence
- Marginalised and vulnerable groups experience difficulties in making use of the institutions of justice
- Civil society structures seek increased opportunities to contribute to, and participate in the delivery and monitoring of public services
- Corruption undermines national integrity

**Economic
Governance and
Management:**

- Inadequate public consultation, education and feedback in policy making
- Underdeveloped capacity and skills in public expenditure management and monitoring
- Blockages to service delivery
- Lack of deeper economic integration within the SADC
- Unemployment

**Corporate
Governance:**

- Companies' legislation is not transformative and needs to be reviewed
- Key institutions and certain social groups are underdeveloped and need to become more effective
- Consumers and shareholders fail to assert their rights, are ill-informed and inactive
- Governance in civil society needs development

**Socio-Economic
Development:**

- No consensus amongst stakeholders on definitions and measurements of poverty
- The need for more effective land use that contributes to sustainable livelihoods, especially for the rural poor.
- The need to build capacity to implement the programmes of the developmental state
- Strategies for ensuring children's nutrition, health and development need improvement
- There are challenges of crime and violence, particularly against women and children
- An integrated and holistic approach to combating HIV and AIDS will be appropriately resourced
- An integrated and holistic approach to combating TB, malaria and other communicable diseases needs strengthening and deepening
- Without universal access to basic rights and services, citizens cannot participate in and benefit from socio-economic development
- Weaknesses in civil society reduce their participation in, and impact on socio-economic development processes and outcomes, and ensuring their increased contribution to South Africa's national development imperatives

Prioritisation:

The process of developing and compiling the CSAR identified many problems and as many suggestions and proposals for activities to be included in the Programme of Action. All the suggestions received during consultations and in submissions were consolidated into a comprehensive list used to inform the Programme.

The problems addressed by the Programme (listed above) were chosen from the extensive list on the basis of two criteria.

Criteria for selection: The problems to be addressed in this Programme of Action should be such that a discernable impact can be made through specific governance improvement interventions.

The intended results require public sector leadership in many instances, as well as collaborative partnerships that involve state bodies and civil society stakeholders to be achieved. In some instances civil society leadership and partnership is critical for successful implementation.

This Programme of Action (POA) is therefore cognisant of the roles and responsibilities of the public and private sectors, as well as organised labour and organisations in civil society, in the pursuit of South Africa's national development imperatives.

There is a clear intent in the POA to ensure that priority areas are addressed and to avoid the "shopping basket approach" to a POA that throws everything that the government currently does into a POA. The POA is not solely about the activities and programmes of government. It is about programmes and activities of the country as a whole. The various recommendations in the Country Report have therefore been prioritised for inclusion in the APRM POA.

The APRM POA is extensive and indicates specific areas which are also being addressed in the Government Programme of Action.

Some of the recommendations requiring government action relate to the state's processes and performance and are being addressed in the Government Programme of Action or in departmental strategic plans. Government's Medium-Term Strategic Framework covers the five-year term of office, while the Government POA is revised and updated on an annual basis. The Medium-Term Expenditure Framework (MTEF) and departmental strategic plans are formulated for implementation in three-year cycles. The APRM POA is also formulated for implementation over a three-year period.

2. Programme rationale

High-level principles: South Africa is committed to the creation of a united, socially cohesive, non-racial, non-sexist, democratic and prosperous society. Central to this commitment is protecting and advancing the fundamental human rights of all citizens.

This Programme of Action addresses the fundamental

challenges facing South African society: poverty, unemployment, crime and underdevelopment, as well as HIV and AIDS.

This Programme of Action contains activities that will promote participatory governance and support the achievement of national development imperatives.

This Programme of Action has to be consistent with Constitutional imperatives. Issues raised, for example with respect to traditional leaders and the role of Parliament with respect to the budget (beyond exercising its oversight role), fall outside the scope of this POA. The role of traditional leaders is currently being reviewed by Cabinet.

Issues of national importance in respect of foreign currency exchange regulations also fall outside of the scope of this POA.

Relationship to other programmes:

The APRM process has shown that there are many areas in need of attention that are already being addressed by the various stakeholders through their own and joint programmes.

This programme complements previous agreements and commitments made by the various parties in the past and the Programmes of Action of all three spheres of government.

Issues to note:

This programme also reflects our commitment to meeting our various international obligations with respect to a number of areas including human rights, corruption, human trafficking, labour relations and the environment.

It also reflects a renewed commitment to prior agreements such as those reached at the UN Conference on Women in Beijing in 1995, the 2003 National Growth and Development Summit, the World Summit on Sustainable Development, the World Conference Against Racism and the Millennium Development Goals.

This programme complements existing multi-sectoral programmes such as that of the National Anticorruption Forum. It also takes note of the various Presidential Working Groups and Advisory Councils which provide inputs to Government.

Programme character:

The programme seeks to avoid overambitious and unrealistic targets.

It is consciously designed to be Specific, Measurable, Achievable, Realistic and Time-bound (SMART). This will ensure that it has a significant impact on improving governance in South Africa.

It also takes account of the plethora of reporting requirements that are already in place, such as the Government's Programme of Action, the Government Wide Monitoring and Evaluation System, quarterly financial reports, annual reports and compliance to various statutory requirements.

This programme thus is not intended to improve governance by increasing general reporting responsibilities, but rather by addressing specific problems and issues and filling particular gaps.

The articulation of this POA is such that it allows for monitoring and evaluation of those critical issues the country has deemed to be of importance in the CSAR. Other issues of national importance identified in the CSAR but already addressed in the government's POA or in the strategic plans, programmes and activities of line departments can be found on the relevant government websites.

The rationale for this approach is that the POA of the government and of line departments are routinely monitored and the relevant reports will, where appropriate, be appended to the ARPM POA Reports.

3. Programme aims, objectives and results

Programme aims and objectives:

The aim of the programme is to address the problems listed in the situation analysis above.

The programme objective is to promote participatory governance. It seeks to achieve the following results:

Democracy and Political Governance:

- The human rights culture is strengthened nationally
- Racism is successfully combated, leading to the emergence of a truly non-racial society
- There are perceptible decreases in levels of crime and violence and in particular decreases in the levels of all forms of violence and crimes against women and children; and there are perceptible changes in the value systems of individuals and communities
- Access to justice is increased and improved
- Forums and mechanisms for social dialogue and participation in the provision and monitoring of public services are built and strengthened
- Decrease in levels of corruption and building national values and integrity in all three spheres of government and in all sectors of society

Economic Governance and Management:

- Processes for public participation in policy formulation and implementation are further improved
- Greater efficiency and effectiveness in public expenditure management and monitoring
- Service delivery is improved
- Unemployment is halved by 2014
- Harmonisation of economic policies and improved trade between member states

Corporate Governance:

- New companies legislation is adopted
- The capacity of institutions and systems to participate in improving corporate governance is built
- The consumer and shareholder activist movements are strengthened
- Corporate governance, accountability and transparency are built in the non-governmental sector, including in NGOs, CBOs, labour organisations and business
- The national development imperatives need to inform the planning and conduct of companies in the private sector

Socio-Economic Development:

- Definitions and measurement of poverty are agreed upon and applied
- Land reform contributes to sustainable livelihoods
- Improved effectiveness and efficiency of the education system at all levels
- Strategies and programmes to improve children's nutrition and ensure their healthy development are successfully implemented.
- An integrated and holistic approach to combating HIV and AIDS, as well as diseases such as TB and malaria and other communicable diseases
- Universal access to constitutionally mandated basic rights and services (including access to clean water, electricity sanitation, etc.) is provided
- Social capital is built at local levels, particularly in vulnerable and marginalised communities, and participation of civil society organisations in socio-economic development processes is improved.

4. Implementation approach

The strategic approach to be followed in each thematic area is in summary as follows:

Democracy and Good Political Governance:

The major issues the programme will address in this thematic area are human rights awareness, access to justice and public participation, crime and violence generally and in particular against women and children, and corruption in the various public and private institutions

in society. Projects to be put in place will include awareness campaigns, empowerment of vulnerable groups such as women, children, the disabled, refugees, farm workers and a project against human trafficking. In addition, there will be an initiative to identify and strengthen national and provincial anti-crime strategies currently under way, and identify and strengthen national and provincial crime strategies designed specifically to combat violence against women and children. It will also combat racism and improve access to justice through alternative dispute resolutions, court outreach and accessibility initiatives, while enhancing the effectiveness of traditional courts. Criminal review reform is also to be addressed along with the creation and strengthening of social dialogue forums. It further addresses the issue of community consultation forums such as Community Policing Forums that have to be strengthened and improved upon. Progress and results of the National Anticorruption Programme of the National Anticorruption Forum currently under implementation will be reported on. This will include progress in the strengthening of whistleblower protection measures. The programme will include national conversation on the role of the media led by the media itself.

**Economic
Governance and
Management:**

The Programme addresses five basic issues in this thematic area: popular participation in policy making; skills and capacity development; blockages to service delivery; unemployment; and lack of deeper economic integration within the SADC. The first area is addressed by improving the use made of existing strategies and structures to involve civil society and communities in both planning and assessing services. Skills and capacity will be built through training programmes, improving systems for capacity measurement and performance management. Project and financial management skills will be prioritised. Legislatures and local councils will be trained in the application of legislative sanctions and controls. This area will have a particular focus on women and their access to services. Corruption will be addressed as a major blockage to service delivery by working through the National Anticorruption Forum. Unemployment is to be targeted through ASGISA and local infrastructure development. There will be increased efforts at harmonising economic policies and improved trade between member states of SADC.

**Corporate
Governance:**

In this thematic area the Programme addresses company legislation reform, the effectiveness of key institutions, consumer rights and shareholder and stakeholder activism. It is essential in this regard to ensure that corporate South Africa becomes an active participant in efforts to meet national objectives around economic growth, job creation and poverty eradication, while

realising returns for shareholders. In the first area the priority is to accelerate the process of revising and adopting appropriate company law. The second area focuses on building the capacity of institutions and systems involved in corporate governance and ensuring the participation by communities and their structures, including women and other marginalised groups. The third area involves the scaling up of existing consumer education initiatives. The final area involves the provision of education and information to current and potential shareholders, as well as increasing the number of women in executive and other decision-making positions.

Socio-Economic Development:

In this area the Programme addresses issues of poverty, access to rural land and an increased pace of land reform, the quality, access and outcomes of the educational system at all levels, combating HIV and AIDS, TB, malaria and other communicable diseases; and access by all to basic rights and services, especially women, children and people with disabilities. The Programme seeks to ensure the creation and operation of a multi-sectoral, national barometer on poverty. It will target children's nutrition and development and include a holistic approach and multi-stakeholder efforts to combat diseases such as HIV and AIDS. With respect to the provision of basic services (water, electricity, sanitation), line departments have identified targets and goals within the context of the Constitution which speaks to the progressive realisation of socio-economic rights. With regard to access to basic services, the building of social capital and improved participation of civil society organisations will ensure that universal access to these basic services is achieved. Activities include a multi-sectoral civic education programme (lifelong permanent time frames), the appointment of an officer to play an ombudsperson-type role, creating service delivery innovation hubs targeting vulnerable people and marginalised groups, local, provincial and national consultative conferences on HIV and AIDS collaborative strategies and the awarding of cyclical grants for collaborative multi-sectoral thematically based national development research.

Planning approach:

After further consultation with stakeholders and government departments more detailed programme plans for each issue/result will be developed. In particular, detailed plans will be developed for each project listed in the Programme.

Progress in their implementation will be reported on biannually as required by the APRM.

5. Programme governance, management and institutional arrangements

Governance and oversight:	Governance and oversight of the Programme will be the responsibility of the National Governing Council (NGC). The NGC is chaired and convened by the APRM Focal Point, who is ultimately responsible for supervision of programme implementation, monitoring and evaluation.
Programme Management Unit:	Successful implementation of the APRM programme requires the creation of a Programme Management Unit. Its primary functions will be to coordinate, support, monitor and evaluate implementation by the various government and non-governmental agencies delegated with such responsibilities by the NGC. This Unit would be the institutional successor to the initial APRM implementation process and would provide the base, structure and institutional memory needed for its long-term success. The Programme Management Unit will be accountable to the APRM Focal Point.
Interim arrangements:	It is proposed that in order to facilitate continuity and knowledge retention, a component be established at the Department of Public Service and Administration to initiate the Programme's implementation.

6. Financing and resourcing

The approach:	The details provided below contain general estimates of implementation costs over three years (unless otherwise stipulated) and are not intended as detailed budgets. Government will budget for the projects through its Medium-Term Expenditure process. Other stakeholders will also contribute to the programme as they are able to do so.
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Thematic area	Democracy and Good Political governance
Major problems or issues to be addressed	Results to be achieved
Objective 2: Constitutional Democracy, including periodic political competition and opportunity for choice, rule of law, citizen rights and supremacy of the constitution	
Civil society structures seek increased opportunities to contribute to and participate in the delivery and monitoring of public services.	Forums and mechanisms for social dialogue and participation in the delivery and monitoring of public services are built and strengthened.
Objective 3: Promotion and protection of economic, social and cultural rights, civil and political rights as enshrined in African and international human rights instruments	
Racism, sexism, marginalisation, lack of awareness and poor access to information impair the full enjoyment of human rights.	The human rights culture is strengthened nationally.
Racism prevents many citizens from realising their human potential and contributes to violence and acute social inequities.	Racism is successfully combated, leading to the emergence of a truly non-racial society.
Objective 6: Fight corruption in the political sphere	
Corruption undermines national integrity.	Decreases in levels of corruption and building national values and integrity in all three spheres of government and in all sectors of society.
Objective 7: Promotion and protection of the rights of women	
Violence and crime, in particular against women and children, and ensuring the active engagement of all communities in the fight against crime and violence.	Decrease in levels of crime and in particular decreases in the levels of all forms of violence and crimes against women and children, and changes in the value systems of individuals and communities.
Marginalised and vulnerable groups experience difficulties making use of the institutions of justice.	Access to justice is increased and improved.
Subtotal for the Thematic area: R1.003 billion	

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OBJECTIVE 2: CONSTITUTIONAL DEMOCRACY, INCLUDING PERIODIC COMPETITION AND OPPORTUNITY FOR CHOICE, THE RULE OF LAW, CITIZENS' RIGHTS AND SUPREMACY OF THE CONSTITUTION									
Civil society structures seek increased opportunities to contribute to and participate in the delivery and monitoring of public services	Enhance and improve the effectiveness of national social dialogue forums	Improvements in the quality and quantity of agreements reached	G&A POA ³⁹ Public participation (Izimbizo)	Presidency DoL DPSA	Nedlac and Constituencies in Nedlac, Parliament, Provincial legislatures Department of Labour Civil society organisations	December 2009	Forums and mechanisms for participation in the delivery and monitoring of services are built and strengthened	R5 million per annum	NGC DoL Parliament DPSA Presidency
	Enhance and improve the effectiveness of local social dialogue forums	Increased participation in forums Improved forum functioning and impact measured	Presidential, Ministerial, Provincial Izimbizo and Imbizo Focus week Facilitation of public participation at the local government level (G&A)	DPLG	SALGA Presidency, SANCO Community organisations Local authorities	December 2009		R2 million per annum	NGC DPLG Presidency SALGA
	Enhance and improve the effectiveness of government	Increased frequency and number of interactions and		Presidency (GCIS)	CSOs Provinces DPLG	December 2009		R5 million per annum	NGC DPSA Presidency

³⁹ There are 5 Cabinet clusters and the Government's Programme of Action (POA) is closely aligned to each of these clusters. The clusters are: Governance and Administration (G&A), Economic Cluster, International Relations, Peace & Security (IRPS), Justice, Crime Prevention & Security (JCPS) and Social Cluster.

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	outreach systems and mechanisms	subsequent follow ups							GCIS DPLG
	Strengthen community radio stations and African language radio stations	Number of radio stations Compliance with their licensing requirements		Department of Communication	GCIS ICASA MDDA	December 2009		R10 million per annum	ICASA GCIS NGC
	National conversation on the role of the media in reporting, discussions and debates based on factual, objective and verifiable sources of information	Report released		SANEF	Media Development Agency CBOs Expert organisations GCIS	July 2008		R2 million	SANEF NACF GCIS NGC

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OBJECTIVE 3: TO PROMOTE AND PROTECT ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND CIVIL AND POLITICAL RIGHTS AS ENSHRINED IN AFRICAN AND OTHER INTERNATIONAL HUMAN RIGHTS INSTRUMENTS									
Racism, sexism, marginalisation, lack of awareness and poor access to information impair the full enjoyment of human rights	Know Your Rights awareness campaign	Increased knowledge of human rights Disseminate information with regard to adopted standards and codes in all languages		DOJ & CD	Human Rights Commission Civil society, esp. mass-based Disabled people Children's Rights organisations Women's organisations HRC and GCIS	Ongoing	The human rights culture is strengthened	R15 million per annum	DOJ & CD Presidency Human Rights Commission
	Special focus in the Know Your Rights campaign on literacy and empowering vulnerable groups such as women; farm workers, people with disabilities, children; refugees.	Increased knowledge of human rights amongst members of vulnerable groups		DoE	Department of Social Development DHA DoJ&CD DoL	Ongoing		R100 million per annum	DOJ & CD Presidency Human Rights Commission

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	Anti-Trafficking Project focusing on women and children and targeting perpetrators	Policy and legislation formulated Policy and legislation implemented	Strategy with capacity building, legislation, research and awareness and M&E developed	NPA SAPS DHA DSD DoL DOJ & CD UNODC	SAPS NPA DOJ (SALRC) Women's organisations International Partners	Ongoing		R5 million per annum	DOJ & CD SAPS NIA SASS DHA
	Promote traditional leadership and cultural practices	Increased involvement by traditional leaders and cultural practitioners in social processes	Implementation of the support programme for institution of traditional leaders (G&A)	DAC DPLG	Traditional structures and NGOs Houses of traditional leaders	Ongoing		R2.5 million per annum	Houses of traditional leaders DPLG NGC DAC
	Ensure strategic alignment between traditional leadership system and institutions within broader social system. Strengthen Heritage Council	Improved Heritage Council performance and project implementation		DPLG DAC	Heritage NGOs NGOs DST Houses of traditional leaders	Ongoing		R2.5 million per annum	National Heritage Council DPLG DAC

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	and its projects and Indigenous Knowledge Systems project								
Racism prevents many citizens from realising their human potential and contributes to violence and acute social inequities	<p>Initiate and strengthen the existing social campaigns aimed at combating racism in our communities</p> <p>Strengthening of Chapter 9 institutions dealing with racism</p> <p>Monitoring and strengthening of courts dealing with racism cases</p>	Reduction in racist incidences in general public and workplaces	<p>Intensify joint efforts among all South Africans to improve social cohesion (Social Cluster)</p> <p>Finalise the strategy and programmes to address matters of social cohesion (Social Cluster)</p>	Presidency DOJ & CD	<p>Chapter 9 institutions</p> <p>PSC</p> <p>DPSA</p> <p>Business</p> <p>Labour</p> <p>Civil society</p>	Ongoing	Racism is successfully combated, leading to the emergence of a truly non-racial society	R15 million per annum	<p>DOJ & CD</p> <p>Presidency</p> <p>Chapter 9 institutions</p> <p>PSC</p> <p>DPSA</p> <p>Business</p> <p>Labour</p> <p>Civil society</p>

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OBJECTIVE 6: FIGHTING CORRUPTION IN THE POLITICAL SPHERE									
Corruption undermines national integrity systems	Awareness raising with respect to anticorruption legislation, codes of conduct, enforcement and implementation in all sectors and across all spheres Review Protected Disclosures Act	Regular monitoring of progress and results of national anticorruption programme currently under implementation Strengthened whistleblower protection legislation	Implement all anticorruption initiatives (G&A) Fight corruption in public sector and society at large (JCPS)	NACF & DOJ	Business, labour and civil society organisations	Ongoing	Decreases in levels of corruption and building national values and integrity in all three spheres of government and in all sectors of society	R8 million per annum	NACF DOJ & CD DPSA PSC
OBJECTIVE 7: PROMOTION AND PROTECTION OF THE RIGHTS OF WOMEN									
Violence and crime, and in particular against women and children Active engagement of all communities in the fight	Identify and strengthen anti-crime and violence strategies currently under way in all three spheres of government	Reduction in crimes and violence in general and against women and children in particular Changes in the value systems of	JCPS Cluster projects Partnerships with organs of civil society and communities Establish liaison with communities	DOJ&CD	CJPS Cluster CGE SAPS NPA CSOs Business Against Crime Religious institutions	Ongoing	Decreases in crime and violence in general and crime and violence against women and children in particular	R25 million per annum	DOJ & CD SAPS

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against crime and violence	Identify and strengthen anti- crime and violence strategies in all three spheres of government specifically designed to combat violence against women and children	individuals and communities	and organs of civil society Implement Rural Safety Plans Improve the functioning and effectiveness of community policing forums (CPFs)		Community policing forums		Active engagement of communities and community- based organisations in the fight against crime		
Marginalised and vulnerable groups experience difficulties in making use of the institutions of justice	Alternative dispute resolution	Reduction in the number of children awaiting trial Reduction in the period for which children awaiting trial are held	Implement initiatives directed at preventing crimes against women and children (JCPS) Implementing and strengthening the victims' charter (JCPS)	DOJ & CD and DCS	Paralegal and human rights organisations Social cluster members Civic organisation	Ongoing	Access to justice is increased and improved	R4 million per annum	Presidency DOJ & CD
	Court outreach and accessibility initiatives	Improved access by the poor to the justice system		DOJ & CD	Human rights NGOs Chapter 9 institutions	Ongoing		R5 million per annum	DOJ & CD

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PROBLEMS ADDRESSED BY APRM OBJECTIVES	REQUIRED ACTION	MONITORABLE INDICATOR	ONGOING INITIATIVES INCLUDING CURRENT PROJECTS IN GOVERNMENT POA	IMPLEMENTING AGENCIES	KEY STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (US\$)	MONITORING AND EVALUATION AGENCIES
			Sustain dedicated courts (JCPS)		Crime and justice NGOs Disability sector OSDP				
	Bringing justice services closer to township and rural communities	Number of courts built and upgraded in rural areas and townships	Sustaining crime prevention in the 169 priority police station areas (JCPS)	DOJ & CD	JCPS Cluster Civil society stakeholders (role disputed) DPW	2009		R10 million per province + R10 million nationally = R100 million per annum	DOJ & CD
	Criminal justice review and reform	Improved system functioning Increased system throughput	JCPS transformation and modernisation projects Improving effectiveness of the criminal justice system (JCPS)	DOJ & CD	JCPS cluster members	December 2008		R7 million per annum	DOJ & CD
	Support programmes for victims of crime	Successful implementation of victim empowerment programmes	Implement victim support services programme (JCPS)	DOJ & CD	CJPS cluster CGE SAPS NPA and CSOs	Ongoing		R15 million per annum	DOJ & CD

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	Develop capacity of police force to handle cases of violence and abuse against vulnerable groups, including women, children, the aged, disabled and refugees	Effective handling of cases reported by vulnerable groups More female police officers assigned to sensitive cases	Implement initiatives directed at preventing crimes against women and children (JCPS)	Department of Safety and Security	DOJ & CD SAPS SAHC CGE	Ongoing		R20 million per annum	SAPS DOJ & CD NGC

Thematic area	Economic Governance and management	
Major problems or issues to be addressed	Results to be achieved	
Objective 1: Promote macro-economic policies that support development		
Blockages to service delivery	Service delivery is improved	
Unemployment	Unemployment is halved by 2014	
Objective 2: Implement sound transparent and predictable government economic policies		
Public consultation, education and feedback in policy making is inadequate	Processes for public participation in policy formulation and implementation are improved	
Objective 3: Promote sound public financial management		
Underdeveloped capacity and skills in public expenditure management	Greater efficiency and effectiveness in public expenditure management and monitoring	
Objective 5: Accelerate regional integration by participating in the harmonisation of monetary, trade and investment policies		
Lack of deeper economic integration within the SADC	Harmonisation of economic policies and improved trade between member states	
Subtotal for the Thematic Area: R1, 533.5 billion		
Note: The amount allocated to this Thematic Area does not include the R415.8 billion for Infrastructure Development for the period 2007-2010 and the additional funding granted by National Treasury of R1.7 billion for Industrial Development. The R1.3 billion allocated over a seven-year period for urban and rural nodes has been pro-rated to cover the three years.		

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ACTIVITIES BY APRM OBJECTIVES	REQUIRED ACTION	MONITORABLE INDICATOR	ONGOING INITIATIVES INCLUDING CURRENT PROJECTS IN GOVERNMENT POA	IMPLEMENTING AGENCIES	KEY STAKE- HOLDERS	TIMEFRAME	EXPECTED OUTPUT	ESTIMATED COST (ZAR)	MONITORING AND EVALUATION AGENCIES
OBJECTIVE 1: PROMOTE MACROECONOMIC POLICIES THAT SUPPORT SUSTAINABLE DEVELOPMENT									
Blockages to service delivery	Improve service delivery through partnerships	Increase the number of formal partnerships	Implementation of Batho Pele (G&A) Implement Service Delivery Plans and Standards (G&A)	DPSA	CBOs and local authorities Business All government departments	Ongoing	Service delivery is improved	R10 million per province + R10 million nationally = R100 million per annum	DPSA GICS DHA
	Combat corruption	Reduction in value of resources lost	Fight corruption in public sector and society at large (JCPS)	DPSA	NACF Department of Correctional Services	Ongoing		R5 million per annum	NACF DPSA PSC
	Prioritising disadvantaged urban and rural nodes	Increase in number of support services provided to priority nodes	Provision of Free Basic Service (Social Cluster)	DPLG	Presidential nodes	2011		Ongoing expenditure from current MTEF R186 million per annum ⁴⁰	Presidency DPLG
	Ensuring that	Vulnerable groups'	Implementation	DPLG	Women's sector	Ongoing		R10 million	DPLG

⁴⁰This is budget line item is derived from the R1.3 billion allocation for urban and rural nodes spread over 7 years. This programme commenced in 2001.

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	vulnerable groups, including women and the disabled, can access government services	access to and use of basic services	of Service Delivery Access Strategy (G&A)	DPSA OSW All government departments	Disability movement Children's rights movement			per province + R10 million nationally = R100 million per annum	Presidency
	Improve management skills and the capacity of local government authorities	Increase effective management of service delivery	Strengthen capacity of local government (G&A)	DPLG	SAMDI DPSA JIPSA Committee Business	Ongoing		R20 million per annum	DPLG DPSA
	Increased capacity to identify economic potential and poverty distribution per geographic area, and the interventions required	Relevant and aligned LED plans in place in the provincial and local government	Integrated Planning (G&A) Equity and Development (Economics Cluster) Comprehensive Anti-Poverty Strategy (Social Cluster)	Presidency DPLG dti Housing DLA DPW	Provincial governments Local governments NGOs	2008		R10 million	DSD DPLG Presidency dti

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Dealing with unemployment	Implementation of ASGI(SA) and the Industrial Policy Framework which is being finalised	Number of jobs created Reduction in the unemployment rate	Modelling and scenario planning for AsgiSA (Economics Cluster) Building a competitive and labour-absorbing economy through industrial policy (Economics Cluster)	dti DoL DPW Presidency StatsSA	Private sector Business representative structures Organised labour	2014	Unemployment is halved by 2014	Allocated out of dedicated funds ⁴¹	dti NT Presidency
	Enhance local infrastructure for local economic development	Proportion of budget allocated for local economic development	Massively increase public investment (Economics Cluster)	DoT Local authorities DPW	Organised labour and other GDS partners DTI DPLG	2014		Drawn from diverse departmental and SOE budgets ⁴²	dti NT

⁴¹ Departments are required to use existing budget allocations to meet the overall objectives of ASGISA through dedicated projects and programmes. National Treasury has nonetheless allocated an additional R1.7 billion to SOE for Industrial development.

⁴² The government's infrastructure budget for 2007-2010 MTEF is R415, 8 billion.

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		Proportion of local infrastructure investment that targets enterprise development	Ensure public investment programme benefits economy (Economics Cluster)		Treasury				
	Address the commitments made at the Growth and Development Summit and challenge to increase Gross Fixed Capital Formation, especially in industries with high levels of labour absorption	GDS agreements implemented Increased gross fixed capital formation	Building a competitive and labour-absorbing economy through industrial policy (Economics Cluster)	dti Treasury	GDS partners should be among lead agencies in this regard	2008		Allocated out of dedicated funds	DoL dti NT Presidency NEDLAC
	Review existing labour legislation	Labour review completed		DoL	Business, Labour	July 2007		Already allocated R2 million	DoL

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OBJECTIVE 2: IMPLEMENT SOUND, TRANSPARENT AND PREDICTABLE GOVERNMENT ECONOMIC POLICIES									
Public consultation, education and feedback in policy making is inadequate	Educating representative structures on how to participate in policy formulation	Number of civil society representatives trained in participation Number of structures that participate according to policy and guidelines	Facilitation of participation at the local government level (G&A)	NGO/ development hub	NGOs Business Labour CBOs Women's organisations Civics Civil society DPSA NDA Traditional leaders DPLG	2009	Processes for public participation in policy formulation and implementation are improved	R2 million per province + R2 million nationally = R20 million per annum	NGC
	Educating government structures on effective consultative policy making and monitoring implementation	Clear guidelines for procedures for public participation		SAMDI DPSA DPLG	Civil society organisations, Local councils Provincial government	2009		R2 million per province + R2 million nationally = R20 million per annum	DPSA DPLG Presidency

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	Strengthen participation in official statistics-gathering agencies through the use of research organisations to bolster needs analysis done in consultation, output and impact of policy.	Credible and accurate statistics data available		Stats SA	Civil society research institutions Higher education institutions	Ongoing		R2 million per province + R2 million nationally = R20 million	StatsSA NT
OBJECTIVE 3: PROMOTE SOUND PUBLIC FINANCE MANAGEMENT									
Underdeveloped capacity and skills in public expenditure management	Enhance Parliament and legislature oversight over the executive, state-owned enterprises, parastatals and quasi-state-owned enterprises	Enhanced research capacity Critical engagement with the executive and other stakeholders Systematic feedback to the constituencies		Legislatures PSC	All Chapter 9 and 10 institutions	2009	Greater efficiency and effectiveness in public expenditure management and monitoring	R2 million per province + R2 million nationally = R20 million	Parliament

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	Improved financial management	Reduction in the number of qualified audit reports		National Treasury Accountant-General	Auditor-General All government departments	2009	Greater efficiency and effectiveness in financial management	R2 million	AG NT
	Improved human resource management	Reduction of vacancy rates Adoption of credible organisational structures Training needs met	Development of HR practices for the single public service (G&A)	DPSA	SAMDI PSC	2009	Improved service delivery	Integrated into DPSA budget R2 million per annum	DPSA PSC
	Ensuring wage equity and representation of priority groups	Improved equity and eliminating wage gaps	Employment equity legislation (DoL) Development of appropriate and cost-effective remuneration and conditions of service	Department of Labour (DoL) DPSA	Organised labour Presidency Business	2009	Meet equity targets and retention of skilled staff from priority groups	Integrated into DPSA/ DoL budgets R 1.5 million per annum	DoL DPSA

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			dispensations for the public service (G&A)						
	Deal with the challenge of the capacity to translate strategies into programmes and implementable projects, and ensure that they are related directly to budgeting processes	Increased alignment of strategies with projects and budgets Increased awareness of policy cycles and budgeting processes	Implementation of the Public Service HRD Strategy (G&A)	DPSA Treasury	All government departments	2009	Improved planning and budgeting capacity	R2 million	DPSA NT
OBJECTIVE 5: ACCELERATE REGIONAL INTEGRATION BY PARTICIPATING IN THE HARMONISATION OF MONETARY, TRADE AND INVESTMENT POLICIES									
Lack of deeper integration within the SADC	Develop a framework for building productive supply capacity in the region	Promotion of an open cross-border investment regime Simplification and harmonisation of trade and customs Liberalising the services sector	Contribution towards the SADC Common Agenda (IRPS)	SADC Secretariat dti National Treasury	Business Labour SARS	Ongoing	Harmonisation of economic policies and improved trade between member states	R2 million per annum	dti NT

Thematic area	Corporate Governance	
Major problems or issues to be addressed	Results to be achieved	
Objective 1: Promote an enabling environment and effective regulatory framework for economic activities		
Companies' legislation is not transformative and needs to be reviewed	New companies legislation is adopted	
Objective 2: Ensure that corporations act as good corporate citizens with regard to human rights, social responsibility and environmental sustainability		
The national development imperatives need to inform the planning and conduct of companies in the private sector	Increased integration of the national development imperatives into the planning and conduct of companies in the private sector	
Objective 3: Promote adoption of codes of good business ethics in achieving the objectives of the corporation		
Key institutions and certain social groups are underdeveloped and need to become more effective	The capacity of institutions and systems to participate in improving corporate governance is built	
Consumers and shareholders fail to assert their rights, are ill-informed and inactive	The consumer and shareholder activist movements are strengthened	
Governance in civil society needs development	Corporate governance, accountability and transparency are built in the non-governmental sector, including in NGOs, CBOs, labour organisations and business.	
Subtotal for thematic area: R204 million		

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ACTIVITIES BY APM OBJECTIVES	REQUIRED ACTION	MONITORABLE INDICATOR	ONGOING INITIATIVES INCLUDING CURRENT PROJECTS IN GOVERNMENT POA	IMPLEMENTING AGENCIES	KEY STAKEHOLDERS	TIME FRAME	EXPECTED OUTPUT	ESTIMATED COST (ZAR)	MONITORING AND EVALUATION AGENCIES
OBJECTIVE 1: PROMOTE AN ENABLING ENVIRONMENT AND EFFECTIVE REGULATORY FRAMEWORK FOR ECONOMIC ACTIVITIES									
Companies' legislation is not transformative and needs to be reviewed	Accelerate reform of the Companies Act and enhance public participation in the process to empower vulnerable groups	New legislation approved by Parliament		BUSA dti Presidency Department of Labour	Business Labour Women's organisations Youth Chapter 9 institutions Chartered accountants' representative structure	2008	New companies' legislation is adopted	R5 million per annum	dti Presidency
	Develop compliance-monitoring mechanisms	Submission of reports according to a standard template	dti developing monitoring mechanisms	BUSA dti Presidency Department of Labour	Business Labour Women's organisations Youth Chapter 9 institutions Chartered accountants' representative structure	2009	Improved monitoring mechanism	R2 million per annum	Presidency NGC

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OBJECTIVE 2: ENSURE THAT CORPORATIONS ACT AS GOOD CORPORATE CITIZENS WITH REGARD TO HUMAN RIGHTS, SOCIAL RESPONSIBILITY AND ENVIRONMENTAL SUSTAINABILITY									
The national development imperatives need to inform the planning and conduct of companies in the private sector	<p>Accelerate levels of investment</p> <p>Increase levels of social investment</p> <p>Develop sustainable public-private partnerships</p> <p>Transform the second economy and promote employment in rural areas</p>	<p>Levels of investment are increased</p> <p>Social responsibility projects implemented</p> <p>Sustainable public-private partnerships implemented</p>		BUSA	dti Presidency DPW DME DPLG (AsgiSA)	Ongoing	Increased integration of the national development imperatives into the planning and conduct of companies in the private sector	Ongoing negotiations with the private sector	BUSA Presidency NGC

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	Promote corporate governance compliance for South African companies operating elsewhere								
OBJECTIVE 3: PROMOTE ADOPTION OF CODES OF BUSINESS ETHICS IN ACHIEVING OBJECTIVES OF THE CORPORATION									
Key institutions and certain social groups are under-developed and need to become more effective	Build technical, analytical and legal capabilities of chapter 9 institutions	Release of analytical reports that enhance government's performance		Parliament	Chapter 9 institutions DOJ & CD DPLG DHA	2008/9	The capacity of institutions and systems to participate in improving corporate governance is built	R2 million per institution = R12 million per annum	Parliament PSC Chapter 9 institutions
	Support women-led enterprises	Increased access to micro-financing, particularly for women-led enterprises	Improve access to finance for micro-enterprises (Economics Cluster)	dti Presidential Women's Working Group	Women's organisations	Ongoing	Increase in the number of strong women-led enterprises	R10 million per annum	Presidential Women's Working Group CGE DTI

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	Open a multi-stakeholder national consultative forum for discussions on the implementation of the King II	Effective co-ordinating structure and regular sectoral consultations		dti	Business and stakeholder organisations JSE Organised labour	Ongoing	Improved capacity of institutions to participate in corporate governance initiatives	R1 million per province + 1 Million nationally = R10 million per annum	Organised labour BUSA DTI
	Build CBO capacity to monitor environmental concerns through education and awareness	Capacity development programme Increased advocacy by CBOs		DEAT	Civil Society	Ongoing	Improved capacity to monitor environmental concerns	R4 million	DEAT
	Develop programmes to protect the environment in light of the mining	Programmes developed Programmes implemented and impact monitored		DEAT	Civil society	Ongoing	Enhanced awareness of environmental protection	R3 million per annum	DEAT

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	sector and high rural poverty								
	National ethics campaign in government, civil society and business	Adoption of a uniform approach of dealing with ethics	Implementation of anticorruption initiatives (G&A)	Civil Society PSC Business NACF	SAMDI DoJ & CD	Ongoing	Enhanced professional ethics in all sectors	R2 million per sector per annum	PSC NACF DPSA
OBJECTIVE 4: ENSURING THAT CORPORATIONS TREAT ALL THEIR STAKEHOLDERS (SHAREHOLDERS, EMPLOYEES, COMMUNITIES, SUPPLIERS AND CONSUMERS) IN A FAIR AND JUST MANNER									
Consumers and shareholders fail to assert their rights, are ill-informed and inactive	Consumer education campaign	Enhanced exercise of consumer rights		dti	CBO Consumer Rights Organisations	2009	Consumer and shareholder activist movements strengthened	R4 million per annum	dti
	Commission a guardian and champion for shareholder/stakeholder activism	Increased reporting on triple bottom line performance		Business	JSE	2008	Strengthened shareholder and stakeholder activist movement	R2 million	dti JSE Board of Directors

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	Increasing representation by HDIs (especially women and people with disabilities) in leadership positions	Higher rate of women representation in private sector executive positions	Employment equity legislation	OSDP/OSW	Women's' sector and organisations representing the disability sector	Ongoing	Increased number of HDIs in leadership positions	R2 million per annum	dti HRC
	Increasing workers' capacity to utilise maximally opportunities brought by democracy, especially in SETAs, Pension Fund Boards, NEDLAC, Workers' Forums, etc.	Increased participation of workers in skills development and training programmes Improved ability of workers to access benefits from relevant institutions	Ensure priority skills for the economy (Economics Cluster) Implement national skills development strategy (Social Cluster)	Organised labour	Nedlac DoL PFB	Ongoing Review by 2009	Increased participation by workers in corporate governance Improved participation in skills development training initiatives	Budgets to be accessed through SETAs (Note: R21.9 billion has been allocated over five years for national skills development strategy implementation ⁴³)	DoL Organised labour NEDLAC

⁴³ Not included in sub-total and total budget calculations for APRM POA

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	Education, training and advocacy campaigns in the areas of governance, accountability, transparency and ethics	Number of training events and people trained Increased representation of women and members of vulnerable groups in leadership positions and governance structures		NGO Sector including trade unions BUSA	NDA NACF DoL dti	2009 Ongoing	Corporate governance, accountability and transparency are built in the non-governmental sector, including in NGOs, CBOs, labour organisations and business	R10 million per annum	BUSA Organised Labour
	Accelerate levels of investment Increase levels of social investment Develop sustainable	Levels of investment are increased Social responsibility projects implemented Sustainable public-private	Second-economy interventions (Social Cluster) Extended public works Financing for rural and urban nodes	dti DPW Presidency DPLG DME	dti Presidency DPW DME DPLG BUSA	Ongoing	Increased integration of the national development imperatives into the planning and conduct of companies in the private sector	Ongoing negotiations with the private sector	BUSA Presidency dti

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	<p>public-private partnerships</p> <p>Transform the second economy and promote employment in rural areas</p> <p>Promote corporate governance compliance for South African companies operating elsewhere</p>	partnerships implemented	Rural transport development strategy						

Thematic area	Socio-Economic Development	
Major problems or issues to be addressed	Results to be achieved	
Objective 2: Accelerate socio-economic development to achieve sustainable development and poverty eradication		
No consensus amongst stakeholders on definitions and measurements of poverty	Definitions and measurements of poverty are agreed upon and applied	
Access to rural land	Land reform contributes to sustainable livelihoods	
Objective 3: Strengthen policies, delivery mechanisms and outcomes in key social areas including education and combating of HIV and AIDS and other communicable disease		
Quality, access and outcomes of educational system at all levels need to be improved	Improved effectiveness and efficiency of the education system at all levels	
Strategies for ensuring children's health and development need improvement	Strategies and programmes to improve children's nutrition and ensure their healthy development are successfully implemented	
An integrated and holistic approach to combating HIV and needs strengthening and deepening	Multi-sectoral, collaborative partnerships, strategies and programmes to reduce the prevalence of HIV and the impact of AIDS and other diseases are implemented	
An integrated and holistic approach to combating TB and malaria and other communicable diseases needs strengthening and deepening	Multi-sectoral, collaborative partnerships, strategies and programmes to reduce the prevalence and the impact of TB, malaria and other communicable diseases are implemented	
Objective 4: Ensuring affordable access to water, sanitation, energy, finance, markets, ICT, shelter and land to all citizens, especially the rural poor		
Without universal access to basic rights and services, citizens cannot participate in and benefit from socio-economic development	Universal access to constitutionally mandated basic rights and services is progressively realised	
Weaknesses in civil society reduce their participation in and impact on socio-economic development processes and outcomes, and ensuring their increased contribution to South Africa's national development imperatives	Social capital is built at local levels, particularly in vulnerable and marginalised communities, and participation of civil society organisations in socio-economic development processes is improved	
Subtotal of thematic area: R11.161 billion (excludes R13.5 billion dedicated to land restitution)		

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OBJECTIVE 2: ACCELERATE SOCIO-ECONOMIC DEVELOPMENT TO ACHIEVE SUSTAINABLE DEVELOPMENT AND POVERTY ERADICATION									
No consensus among stakeholders on definitions and measurements of poverty	Local, provincial and national consultative conferences on poverty definition and measurement	National poverty barometer as part of official statistics, with resolution at municipal level Improved system of identification, as well as targeting of vulnerable and marginalised groups	Comprehensive Anti-Poverty Strategy (Social Cluster) Comprehensive Social Security (Social Cluster)	DSD Presidency StatsSA Provincial and local government	Agencies and institutions from public, private and civil society sectors	March 2008	Consensus developed on definition and measures of poverty	Estimated R15 million	DSD StatsSA NGC Presidency
	Development of the poverty barometer	Established frameworks for the design and implementation of programmatic interventions		DSD Presidency StatsSA Provincial and local government	Agencies and institutions from public, private and civil society sectors	December 2007		Estimated R2 million	DSD Presidency
	Design and implementation of monitoring,	Establishment of an effective system of monitoring,		DSD Presidency StatsSA	Agencies and institutions from public, private and civil society sectors	December 2008		R4 million per province and nationally	Presidency StatsSA

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	evaluation and learning system	evaluation and learning system		Provincial and local government				= R40 million	
Access to rural land	Rapid implementation of land redistribution, restitution and tenure reform projects	Land reform implementation is speeded up to meet 2014 targets	Complete outstanding claims in land restitution (Social Cluster) Finalise review of land acquisition models (Social Cluster)	Department of Land Affairs and National and Provincial Departments of Agriculture	NGOs District municipalities	Ongoing	Land reform implementation contributes to sustainable rural livelihoods	R13.5 billion for restitution claims ⁴⁴ R1 billion annually to meet target of 30% of all agricultural land to be redistributed	DLA
OBJECTIVE 3: STRENGTHENING POLICIES, DELIVERY MECHANISMS AND OUTCOMES IN KEY SOCIAL DEVELOPMENT AREAS									
Quality, access and outcomes of educational system at all levels need to be improved	Develop a strategy to encourage more student, particularly female, enrolment in mathematics	Strategy developed to increase enrolment, particularly female in mathematics and science in	Broadening access and improving quality of education (Social Cluster)	Department of Education	Teacher training colleges Universities	December 2007	Improved effectiveness and efficiency of the education system at all levels	R2 million	DoE DST

⁴⁴This is the budget estimate for the settlement of all land claims and as such is not included in the sub-total for the thematic area.

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	and science in secondary schools	secondary schools							
	Education reform, with a focus on an integrated and coherent educational system and on producing graduates with livelihood and entrepreneurial skills	Education graduates with livelihood and entrepreneurial skills		Department of Education	Educational Institutions and Academics	December 2007	Increased throughput of graduates with entrepreneurial skills	R5 million	DoE HEI
	Strengthen the inspectorate at the district and provincial levels	Stronger oversight and monitoring over performance of schools, principals and teachers		Department of Education	Educational institutions Academics	December 2007	Enhanced oversight at provincial and district levels	R5 million	DoE
	Implementation of revised National Curriculum	Increased progression of learners through all Grades		DoE	Teacher unions South African Council for Educators School governing	Dec. 2014	Rapid progression of learners through all	R29 million per annum	Organised labour DoE

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	Statement from Grades 0-12				bodies Student bodies		grades		
	Increase student participation, particularly female, enrolment in mathematics and science in secondary schools	Learner enrolment, particularly female in mathematics and science in secondary schools increased		DoE DOST	Teacher unions South African Council for Educators School governing bodies Student bodies NGOs	March 2014	Increased throughput of female students, especially in mathematics and science	R4.5 million per annum	DoE DST
	Teacher training – implementation of the National Policy Framework for the Teacher Education	Increase in the number of suitably qualified educators		DoE	Teacher Unions South African Council for Educators School governing bodies Student bodies	Dec. 2014	Increased number of teachers qualified in maths and science	R27 million per annum	DoE Organised labour
	Refinement of Integrated Quality Management System	An improved system for providing regular, credible and up-to-date		DoE	Teacher Unions South African Council for Educators School Governing Bodies	Ongoing	Enhanced teacher assessment and whole school	R20 million per annum	DoE Organised labour

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	(IQMS), including teacher assessment, Whole School Evaluation (WSE) and Systemic Evaluation (SE)	information on performance of schools			Student bodies		evaluation systems		
	Recapitalisation of Further Education and Training Colleges	All FET colleges are adequately resourced		DoE NT	Teacher Unions South African Council for Educators School governing bodies Student bodies	March 2014	Enhanced functioning of Further Education and Training Colleges	R7 million per annum	DoE Organised labour
	Implementation of new FET programmes leading to National Certificate (Vocational)	Increase in the number of college graduates with entrepreneurial and vocational skills		DoE DoL	Teacher Unions South African Council for Educators School governing bodies Student bodies	Ongoing	Increased throughput of students with National Certificates on entrepreneurial skills	R4 million	DoE
	Assessment of the need for	Report on the need for the		DoE	Teacher Unions	March 2008	Establishment of community	R500 000	DoE

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	Community Colleges to meet the needs of school drop-outs	establishment of Community Colleges	Expand Access to ECD (Social Cluster)		South African Council for Educators School governing bodies Student bodies		colleges that cater for school drop-outs		
	Improved access and quality education for learners experiencing barriers to learning	Increased number of adequately resourced schools in line with approved norms and standards for resourcing inclusive education		DoE DoSD	Teacher Unions South African Council for Educators School governing bodies Student bodies	March 2014	Increased number of schools that cater for inclusive education (catering for all, including learners with special needs)	R23.5 million	DSD DoE
	Expansion of access to Early Childhood Development (ECD) opportunities, especially for poor communities	Increased registered and adequately resourced ECD sites		DoE DoSD	Teacher unions South African Council for Educators School governing bodies Student bodies	March 2014	Increased number of ECD sites	R2.5 million per annum	DoE DSD

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	Increased output from higher education	Increased suitably qualified higher education graduates with livelihood and entrepreneurial skills in line with Skills Development Framework		Higher education institutions	DoE DAC DoL	Ongoing	Increased throughput of graduates with scarce and entrepreneurial skills	R5 million per annum	DoE DAC DoL
Strategies for ensuring children's health and development need improvement	National School Nutrition Programme, including social mobilisation for food gardens implemented	Decreased levels of micronutrient deficiency	Improve Food Security (Social Cluster)	Departments of Education, Health and Social Development Department of Agriculture (national and provincial)	NGOs CBOs FBOs SGBs	Ongoing	Strategies and programmes to improve children's nutrition and ensure their healthy development successfully implemented	R20 million per annum	DSD DoE DoA
	Nutrition programmes implemented in pre-primary schools that cater for needy children	Reduced levels of malnutrition	Implement National School Nutrition programme (Social Cluster)				Increase in number of schools that implement nutrition programmes		

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	Community-based feeding scheme for disadvantaged children	Reduced numbers of children going to bed hungry	Social Mobilisation for food gardens (Social Cluster)				Reduced levels of malnutrition		
	Improved vaccination	100% vaccination and inoculation rates					Increased access to vaccination and inoculation		
<p>An integrated and holistic approach to combating HIV and AIDS</p> <p>An integrated and holistic approach to combating TB, malaria and other communicable diseases</p>	Local, provincial and national consultative conferences on public health, HIV and AIDS strategies, with an emphasis on implementation	A comprehensive HIV and AIDS and STI Strategic Plan for South Africa (2007-2011) is in place and being implemented	<p>Comprehensive health care (Social Cluster)</p> <p>Implementation of updated national comprehensive HIV and AIDS strategy (Social Cluster)</p>	DoH		End 2009	Multi-sectoral, collaborative partnerships, strategies and programmes to reduce the prevalence of HIV and the impact of AIDS, TB, malaria and other communicable diseases are implemented	<p>2007/8: R3.5 billion</p> <p>2008/9: R4 billion</p>	DoH SANAC

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	Establishment of an effective monitoring, evaluation and learning system for public health and HIV and AIDS programmes	A national monitoring and evaluation framework for the multi-sectoral HIV and AIDS strategy developed, accepted by all partners and implemented	Reduce malaria cases by 10%; Combating TB and multiple drug-resistant TB (Social Cluster)	DoH		June 2007	Improved monitoring and evaluation of the public health system including HIV and AIDS programmes	R2 million	DoH SANAC
	Establishment of an effective monitoring, evaluation and learning system for public health and TB, malaria and communicable diseases programmes	A national monitoring and evaluation framework for the multi-sectoral TB, malaria and other communicable diseases strategy developed, accepted by all partners and implemented		DoH	Government Private sector Civil society	June 2007	Improved monitoring and evaluation of TB, malaria and other communicable diseases	R 2 million	DoH SANEC

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OBJECTIVE 4: ENSURING AFFORDABLE ACCESS TO WATER, SANITATION, FINANCE (INCLUDING MICROFINANCE), MARKETS, ICT, SHELTER AND LAND TO ALL CITIZENS, ESPECIALLY THE POOR									
Without universal access to basic rights and services citizens cannot participate in and benefit from socio-economic development	Multi-sectoral. national civic education programme	Increase in the proportion of citizens who are informed and aware of their constitutional rights	Implementation of the government's comprehensive programme dealing with human settlement and social infrastructure	FFC DPSA GCIS Parliament Local government DWAF DPLG	Civil society Government State institutions, esp. DAC, Presidency, DSD, Health, DoE Cultural and religious institutions	Ongoing	Universal access to constitutionally mandated basic rights and services is provided	2006/7: R2 million 2007/8: R5 million 2008/9: R3 million	DWAF DSD
	Monitoring of current commitments with respect to: • Clean drinking water • Electricity • Sanitation	Enhanced service delivery with respect to: • Clean drinking water (2008) • Electricity (2012) • Sanitation (2010)		FFC DPSA GCIS Parliament Local government DWAF DPLG	Civil society Government State institutions, esp. DAC, Presidency, DSD, Health, DoE Cultural and religious institutions	Ongoing 2010 2012 2010	Meeting the targets in the provision of clean water, sanitation and electricity	R2.5 million per annum	DWAF DSD

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	Mechanisms for citizen complaints on service delivery, targeting vulnerable and marginalised groups, established	Government-citizen relations managed and monitored in a democratic and participatory manner	Integrated service delivery (G&A) e-Government service delivery projects (G&A – Citizens Relations Portal)	DPSA GCIS DPLG Parliament Local government DWAF	Civil society Government State institutions, esp. DAC, Presidency, DSD, Health, DoE, Housing Cultural and religious institutions	Ongoing	Improved public awareness and advocacy on citizen services	R7 million per annum	Presidency DPSA DPLG DWAF
	Extending usage of Thusong Community Centres as hubs for innovation in service delivery, targeting vulnerable people and marginalised groups	Increase in use of services by eligible citizens		FFC DPSA GCIS Parliament Local government DWAF DPLG	Civil society Government State institutions, esp. DAC, Presidency, DSD, Health, DoE Cultural and religious institutions	Ongoing	Increased access for vulnerable groups to service delivery points that are closer to where they live	R7 million per annum	GCIS DPSA
Weaknesses in civil society	A cyclical grant fund for	Enhanced quality and quantity of		Department of Social	Civil society Government	Ongoing	Social capital is built at local	R30 million per annum	DSD NGC

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reduce participation in and impact on socio-economic development processes and outcomes and ensuring increased contribution to South Africa's national development imperatives	collaborative multi-sectoral themes based on national development priorities	<p>social networks in communities</p> <p>More efficient and targeted funding of civil society</p> <p>Improved accountability of civil society organisations to local communities</p> <p>Good governance and management in civil society organisations</p> <p>Operationalisation of a development hub for civil society organisations</p>		Development	Donor-aid community NDA NGO sector		levels, particularly in vulnerable and marginalised communities and participation of civil society organisations in socio-economic development processes is improved		

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		Access, network, collaboration in approach and effect							
	Women's fund established for capacity building and empowerment	Women's Fund established and operational	Improve access to finance for micro-enterprises (Economics Cluster)	Presidency	National Treasury CGE NGO/CBO sector	2009	Improved capacity to participate in various government programmes	R1.5 million per annum	Presidency
	Streamline the National Arts Council and enhance its activities	Increase in the number and effectiveness of projects implemented		DAC	Arts and culture institutions and organisations	Ongoing	Effective and functional National Arts Council	R2 million per annum	DAC
Total POA Cost Estimate: R13, 901.5 billion									

APPENDIX II

COMMENTS FROM THE GOVERNMENT OF SOUTH AFRICA ON THE REPORT



APRM
African Peer Review Mechanism



SOUTH AFRICA'S RESPONSE TO THE APRM COUNTRY REVIEW REPORT NO. 4, THE COUNTRY REVIEW REPORT, REPUBLIC OF SOUTH AFRICA

2 May 2007

INTRODUCTION

1. The South African Government welcomes the final version of APRM Country Review Report No. 4, the Country Review Report, Republic of South Africa (hereinafter referred to as the Report) and commends the Country Review Mission for a positive Report. Members of the CRM worked tirelessly and engaged with South Africa in a constructive dialogue conducted in the true spirit of Peer Review.
2. This process and the lessons learnt are invaluable for strengthening the African Peer Review Mechanism in the future.
3. The Report acknowledges the huge strides made by South Africa in transforming the country into a vibrant democracy with one of the most progressive Constitutions in the world which guarantees civil and socio-economic rights.
4. The Report recognises South Africa's economic achievements over the last 12 years and the opportunities provided by the country's first world economic and physical infrastructure and the fact that it has the largest and most sophisticated economy in Africa. The existence of sound, transparent and predictable economic policies is commended and South Africa's technological positioning that enables it to compete in the global market is validated.
5. The Report notes that the country is ranked among the best performers in corporate governance in emerging markets, with a robust legal system which ensures lawful protection of property rights and intellectual property rights. The regulatory framework provides an enabling environment for economic activity in the country. Human and labour rights are protected while women are strongly represented in the public sector. Several credible institutions such as the Public Investment Corporation, the Industrial Development Corporation (IDC) exist alongside a number of well known multinational institutions and world class universities. Self-sufficiency in development financing has also been achieved.
6. The Report identified eighteen South African best practices worthy of emulation. They include Cooperative Governance, popular participatory governance practices, *Batho Pele*, Multi-Purpose Community Centres, the highly consultative Budget Formulation Process, achievements of the South African Revenue Services, the Johannesburg Securities Exchange, the JSE and Triple Bottom Line Reporting, the Mzansi Account for the un-banked, the Financial Service Charter, the King Reports, self-reliance in development funding, provision of basic needs and socio-economic rights and the successful promotion of gender equality in the public sphere.
7. The Report praised South Africa for methodological innovations developed in the course of implementing the APRM. These included shortening the questionnaire and its translation into all languages, inviting research

institutions to participate as partners, the validation process of the 2nd National Conference, involvement of civil society through the SA ECOSOC chapter, the establishment of Provincial Governing Councils, the role of Community Development Workers in enhancing popular participation in the APRM process, the use of outside broadcasts, the APRM song and blitzes in taxi ranks and major street corners to popularise the APRM process. To this we add the importance of using the Gender-Disability-Children-Youth sensitive lens in undertaking country reviews.

8. The Report points to major challenges which the country must address in order to maintain the momentum of post-Apartheid reconstruction, development and economic growth. Many of these challenges have been recognized in the *Discussion Document on Macro-Social Trends in South Africa*⁴⁵. This report depicts major trends that require attention and national effort, not only by government but by society as a whole. Effective partnerships to speedily improve the material and social conditions of all South Africans and to improve social cohesion are identified as critical. In line with the APRM Country Self-Assessment Report and the Report, emphasis is placed on the need to address the tension between a market-based economic system premised on tough competition, and the desire to build a caring egalitarian society. This challenge is not solely a matter of creating social values, but also impacts on public policy and the imperative of building a developmental state.
9. South Africa shares the view that the “primary purpose of the APRM is to foster the adoption of policies, and practices that lead to political stability, high economic growth, sustainable development and accelerated sub-regional and continental integration through sharing of experiences and reinforcement of successful and best practice”.

NATIONAL OWNERSHIP OF THE APRM

10. The notion of fostering the “adoption of policies and practices” points to the importance of dialogue in translating the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance (the Declaration) into a viable set of policies and practices for implementation based on the Review process. This process of dialogue must be duly diligent of national sovereignty and national ownership of the socio-economic developmental agenda as well as of measures already in place to implement the values, codes and standards contained in the Declaration.
11. The Memorandum of Understanding on the APRM “... commits participating Member States to, among others: contribute to funding the APRM, facilitate the development of the national Programme of Action, sharing best practices,

⁴⁵ *A Nation in the Making: A Discussion Document on Macro-Social Trends in South Africa*, The Presidency Republic of South Africa, 2006.

support each other in capacity building and exercise of constructive peer dialogue and persuasion”.

12. The essence of “constructive peer dialogue and persuasion” is that peers engage with the Country Self Assessment Report (CSAR) and the Programme of Action (POA), and agree on priorities based on the CSAR for inclusion into a POA.
13. The challenge of “constructive peer ... persuasion” is that it involves a delicate balance between respect for national integrity and sovereignty, alternate paths to socio-economic development, the Declaration and a country’s own chosen trajectory.
14. A peer review by definition also implies a collegial relationship where the peers agree to disagree in an atmosphere of mutual respect.
15. The South African Government is highly supportive of the African Peer Review Mechanism and believes it will play an important role in African development. The APRM is integral to the total work of the African Union and to the specific programmes of NEPAD. Indeed, Africa’s development is now primarily in the hands of Africa and the capacity must be built to ensure that this objective is achieved. This requires an independence of thought and a confidence in Africa’s capacity. The resources and support of the developed economies will be required as will more equitable multilateral trading and investment systems. However, in the partnerships that are built, Africa must participate as an equal.
16. The essential basis of this equality is that the prime definition of the problems to be solved and the solutions thereto must originate within the democratic structures of African Nations. This does not preclude advice and technical support from the world community but it does require a reflective process within African deliberative councils to reach uniquely African conclusions and solutions.
17. There are a number of important implications that emanate from this analytical starting point that underpin key aspects of the South African response. These include the importance of building reliable data to avoid the dangers of ideological constructs, the need for consistent characterisations of the state and democracy that are free from ideological or theoretical paradigms imported from different situations, the need for rigour in attributing causality and the imperative of a thorough consideration of country-specific historical legacies and their effects.
18. The political economy of each African country needs to be located within its own historical context in order to identify the extent of the obstacles to growth and development. The uncritical use of theoretical or policy positions that have essentially been developed in very different historical situations in the developed economies may undermine this approach.

19. South Africa's progress cannot easily be measured against current developments in other African economies or developed economies. The effects of an extensive colonisation by colonial powers and the deep-seated structural effects of that colonisation and its acute form in the Apartheid era have to be profoundly understood in order to measure the unprecedented changes that have been achieved in the last 12 years. However, it also follows that such deep structural problems cannot be resolved in a matter of one or two decades.

20. The Report endorses this overall approach and notes that:

The mandate of the APRM is to ensure that the policies and practices of participating countries conform to values, principles, codes and standards enshrined in the Declaration on Democracy, Political, Economic and Corporate Governance. This commonly agreed instrument for self-monitoring has at its epicentre the dissemination of best practices and rectification of underlying deficiencies in governance and socio-economic development processes among AU member States. The framework is aimed at encouraging and building responsible leadership through a self-assessment process, constructive peer dialogue and the sharing of information and common experiences in order to reinforce successful and exemplary practices among African countries.

21. A central question is: How is the mandate of the APRM realized in practice? South Africa understands that the values, principles, forms of governance, expressions of democracy, characterizations of the state and their formal constitutional expressions are country-specific and conjunctural. They emerge out of specific historical experiences, different forms of struggle and unique paths taken for socio-economic and political development. A country analysis has therefore to be a historically contingent analysis. It has to take into account the specificity of the pre-colonial, colonial and neo-colonial social formations from which the form of the nation state is derived. The organizational and institutional expressions of democracy and of the state will therefore naturally vary from country to country.
22. These varied expressions create challenges for the evaluation, measurement and benchmarking of one state against another. What forms of methodology are privileged and why? How are problematics arrived at? How is cause and effect assigned? How are issues, conceptions, programmes, practices and outcomes juxtaposed? How is data presented and weighted? How are the various ideological predispositions of different reviewers and authors expressed and mediated in the review process as writing itself is not a neutral endeavour? Embedded in discourse are ideological and value-laden propositions.
23. This raises a critical point that is integral to the whole APRM process: the evidential basis for assessments. South Africa believes that the process of interaction and consultation that occurred in the South African Review

provides an excellent start. The issue is therefore not one of process but of what statistics and analysis is used.

24. A key part of the NEPAD process is to build up reliable policy information in the form of vital statistics, financial accounting and national accounts. It is acknowledged that the reliability of statistics in Africa is low. South Africa recognizes that improvement is required in its statistical processes in a number of areas. These weaknesses stem from the deep structural problems. Certainly in South Africa there are very few reliable time series when it comes to statistics.
25. Statistical series often assume a momentum and life of their own. This makes them particularly susceptible to their articulation within specific constructs. The risk is that general perceptions, often essentially racist, about the hopelessness of the African situation are all too easily confirmed by statistical constructs that have a very tangential relationship to the actual universe.
26. The South African response to the Report is therefore informed by the following fundamental beliefs:
 - A profound support for the APRM and absolute commitment to its sustained success.
 - The starting point of analysis and evaluation must be the concrete historical situation a country finds itself in and not any external benchmark.
 - Policies and programmes must be measured against the founding charter of the AU and the specific programmes of NEPAD and not any specific economic model or theory.
 - One of the greatest challenges is to develop reliable statistics that reflect reality and avoid the citation of unreliable statistics.
 - The need to provide continuous constructive feedback in order to improve reviews in the future.

METHODOLOGICAL AND CONCEPTUAL ISSUES

27. Accordingly, in discussions with members of the APR Panel, South Africa raised a number of methodological and conceptual issues that found expression in the Report.
28. The first is to ensure that credible and legitimate data sets are used both in the Country Self-Assessment Report (CSAR) and in the Report.
29. The second associated methodological issue is the tendency to make broad sweeping claims which are not substantiated and are contradicted by data claims in other sections of the Report. The following are some examples:

- i. *Government has put in a lot of effort in delivering social services in education and health, including HIV/AIDS. However, in most cases, challenges still remain and are even growing...* (p. 18);
 - ii. *While post-apartheid South Africa is imbued with a vibrant political democracy, it is nevertheless a democracy under severe socio-economic stress* (paragraph 6); and
 - iii. *Paradoxical as it may seem, there has been a steady increase in the levels of unemployment in South Africa despite a modest increase in job creation during the past decade. Unemployment has climbed inexorably, reaching 28.2 per cent of the country's economically active population by September 2005. The likelihood of being employed in South Africa is still heavily influenced by race, geographic location, gender and levels of skill* (paragraph 888, p. 274).
30. There are methodological problems with the manner in which unemployment in South Africa is captured in the Report. Paragraph 6 of the Report notes that “Urban migration ... has exacerbated the problem of squatters. Consequently, enormous squatter encampments have developed, particularly in and around Johannesburg and Cape Town. Most of these squatters, as well as nearly one half of the adult African population nationwide, cannot find work within the formal sector of the economy”. Paragraph 3.91 states that “If the unemployment problem had been mainly cyclical, macroeconomic policies would have provided a relief during these past 12 years. Because it is structural, however, it requires a totally different approach to reorientate South Africa progressively into a development state (paragraph 3.91, p. 20). And paragraph 888 noted above reiterates the structural as opposed to the cyclical nature of unemployment in South Africa.
31. The examples cited above embody a number of methodological issues. Firstly, what is the base year that is being used to measure increases or even decreases in unemployment levels in South Africa? Secondly there is a contradictory set of claims in the sentence. On the one hand there is a claim that there has been “been a steady increase in levels of unemployment” and on the other hand a conclusion is drawn that the increase has been “inexorable”. Thirdly when does a steady increase in unemployment actually become an inexorable climb? Fourth how is the figure noting that “... nearly one half of the adult African population nationwide, cannot find work within the formal sector of the economy” arrived at? There are, therefore, issues of data, issues of emphases and issues of causality and conclusion that are all questionable.
32. Another example is found on p. 226 (paragraph 697):
- This means that, despite sound fiscal and monetary policies in the past decade, the state of the South African economy has not significantly improved in terms of poverty and unemployment reduction. Real per capita income decreased and past socio-economic inequalities have largely remained unchanged.*

Once again the conclusion is that “the state of the South African economy has not significantly improved in terms of alleviating poverty and unemployment...” (p. 226, paragraph 697). This is contradicted by another claim that “poverty has grown and become more visible in recent years” (p. 243, paragraph 769). All this despite data cited in the Report that shows huge increases in social expenditure, with 10 million South Africans now receiving various forms of social grants all aimed at poverty alleviation. So what is the Report telling the reader? Has poverty increased (over what time frame and using what measure?); has there been no significant improvement (suggesting that it may not actually have increased but it has not improved) or has the developmental state’s anti-poverty initiatives actually resulted in decreases in the levels of poverty as claimed in a number of recent academic studies?

33. Another example of the need for more sound evidential based conclusions is seen in the following example on education:

During provincial consultations, however, several stakeholders asserted that some schools have refused admission to children because of their inability to pay school fees. For a country whose development progress is being hindered by lack of skills, a lot more should be done to ensure that children and youth, regardless of financial status, are able to obtain a primary education. (p. 250, paragraph 796)

Certainly more needs to be done to integrate children and youth from impoverished backgrounds into the school system. But the above does not assist in any way. The reference to “several stakeholders” needs clarity – how many stakeholders? In how many provinces were these issues raised? The suggestion that “some schools have refused admission to children” also needs to be disaggregated. How many schools, which schools and how large is the problem – not just in terms of the number of schools but also the number of learners involved? Effective policy and strategic interventions to ensure inclusion and overcome forms of exclusion require adequate data. Anecdotes while important in terms of a first level alert are not sufficient to develop policy and interventions.

34. Another example of broad sweeping claims is to be found in paragraph 702 (p. 227) of the Report:

It is, therefore, obvious that the dichotomous relationship between growth and socio-economic development, now passé as it is, is a false one. Sustainable development is not possible in a country where most of the people are malnourished, disease-ridden and illiterate.

Is the Report suggesting that South Africa is a country where the majority of the people are malnourished, diseased and illiterate? Is it also suggested that the developmental state in South Africa is incapable of undertaking a programme of sustainable development designed to reduce socio-economic inequalities?

35. Thirdly scattered throughout the report are the problematic juxtaposition of causal relations. Why for example would the authors suggest that proportional representation leads to lack of accountability, or that floor-crossing poses a problem for democracy which must be tempered with increased pluralism (paragraphs 135 & 136, p. 85)? A textual reading of the Report also highlights instances of conflation where it is not readily apparent where the commentary of respondents ends and where the analysis of what is being said begins. This conflation of anecdote and analysis can pose concerns with respect to conclusions that are arrived at. How is the veracity and reliability of the claims by respondents verified and then used? Why are the claims of only some respondents included and others not?
36. Fourthly, the methodological starting point in line with the APRM mandate has to be the country's own unique socio-political economic and historical conjuncture. Despite the numerous references to the apartheid past in the text, *there appears to be an underestimation of the overriding legacy left by three and a half centuries of colonialism, racism, oppression and apartheid*. Of equal concern is the apparent underestimation of the full extent to which the developmental state in South Africa has in fact moved swiftly and decisively to improve the quality of life of the majority of citizens in a relatively short period of 12 years.
37. The APRM process must not be undermined by inconsistent methodological approaches that call into question the very philosophical underpinnings of the product and in so doing undermine the credibility of the peer Review process itself. Consistency of methodological approach can only enhance the efficacy of the Peer Review process.

HISTORICAL LEGACY AND THE DEVELOPMENTAL STATE
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38. The history of apartheid is the history of the white minority using state power and state repression to oppress, suppress and exploit the masses of the Black population of South Africa. Colonialism of a special type including white minority rule resulted in racial discrimination, racial segregation, concentration of wealth in the hands of the white minority, the concentration of the land mass and its surface and sub-surface riches in the hands of the white minority, occupational segregation and classification and unequal access to the labour market. Huge and glaring income disparities and immensely unequal access to the valued goods and services in South Africa were further consequences of the unique form which colonialism took. Any governance review of South Africa needs to at the very outset and throughout the review process foreground this history and legacy.
39. With respect to poverty, unemployment and inequality generally, the Report notes that “despite South Africa's status as a middle income country, poverty and inequality are still widespread and manifest themselves in high rates of unemployment, land hunger and lack of access to basic human needs. In both

urban and rural areas, the majority of South Africa's population continues to experience conditions of severe deprivation and squalor. A significant number of South African households continue to be poor, or are vulnerable to being poor". (p 21). Poverty under apartheid was hidden by the racial bifurcation of the nation state into "South Africa" and the Bantustans where the vast majority of the impoverished black people lived. Influx controls as well as residential segregation and migrant labour legislation ensured that white South Africa's rates of poverty were very low. An analysis of poverty in post 1994 South Africa has to be cognizant of this reality and of the reality of statistical manipulation of demographic data under apartheid.

40. Such an analysis also needs to continually emphasise that the first democratically elected government in the history of South Africa not only inherited this legacy but had a moral, political and constitutional obligation to deal in the most forceful way with the legacy. Such a review also needs to be fully seized of the reality that colonialism and apartheid had over three and a half centuries to entrench the legacy of monumental inequality which the United Nations described as "a crime against humanity". On the other hand, democracy in South Africa is only 12 years old and the developmental state has had less than a decade and a half to undertake wide ranging socio-political and economic transformation and deal with improving the quality of life of the vast majority of Black people in South Africa. Against this backdrop the socio-economic and political gains as well as the significant strides made in improving the quality of life of the vast majority of life is without precedent on the continent.
41. The measure of democracy and good governance in post apartheid South Africa is inseparable from the struggle to eradicate the legacy of apartheid and the continual struggle against racism, sexism and other forms of discrimination. Democracy in South Africa is about formal equality related to fundamental freedoms to worship, to free association and freedom of thought. But democracy and the developmental state must also address the history of systemic racial discrimination and provide an alternative that goes beyond a simple notion of protecting individual rights. Socio-economic rights, also, must be equally respected and furthered.
42. In the context of creating a better life for all South Africans, especially those who are the most marginalised and impoverished, promoting diversity and promoting social cohesion, the South African government has to intervene to promote real potential for equality. Within a democratic and developmental discourse, the state's commitment to equality of opportunity ensures that all members of society are provided with the opportunity to secure the valued goods and services free from discrimination. And that can only be done structurally, and with resolve.
43. Promoting equality of opportunity means engaging in transformation. It means the enactment of legislation to overcome barriers to labour market entry and to upward mobility for the historically disadvantaged masses of South Africa. It means implementing public policies aimed directly at poverty eradication and

the strengthening of the second economy – and raising the capacity of the state at all levels to boost delivery to the people of South Africa.

44. Though the Constitution does not use the word “transformation” the spirit and the intent of the Constitution compels the developmental state in South Africa to engage in transformation of society, the economy and the institutions of governance and administration. This is what a genuine commitment to diversity requires. This more profound conception of the intricate relationships between democracy, freedoms and the role of the state places a special onus on elected officials who have been given a mandate to eradicate the legacy of apartheid and transform the country into one that is non racist and non sexist.
45. In 1994 the first democratically elected government of South Africa consciously decided to eschew the minimalist state that was in vogue at the time and instead, consistent with its commitment to equality and social justice embraced the developmental state which has as its primary objectives, eradicating poverty and unemployment, closing the gaps between the first and second economies, dealing with underdevelopment while recognising that post apartheid South Africa would need to be integrated more fully into the global economy. Over the past 12 years South Africa has gone through an intensive period of socio-economic and political transformation.
46. Developmental states are conjunctural configurations whose routes and approaches are contingent on national history and the choices made by citizens and leaders. There are many examples of the developmental state, including Germany under the Marshall Plan, post-colonial Uganda, and the “Asian tigers” (South Korea, Singapore, Taiwan and Hong Kong). In a developmental state government leads a strong, concerted drive for economic growth, ensuring the mobilisation of national resources towards development goals.
47. A central task of developmental states in the contemporary period centres on wealth creation and distribution and social protection in an era of globalisation. It is crucial for the State to maintain or increase its expansionary fiscal and social protection strategies while maintaining the imperatives of managed liberalisation, increased openness to trade, investment, financial flows, exposure to capital mobility, conformity with international agreements that require the State to open its markets to foreign trade and the elimination of subsidies.
48. In the case of South Africa, there was a need to articulate and affirm a clear role for the developmental state in the fight to eradicate poverty, unemployment and underdevelopment. The developmental state, operating in an environment of democracy and political stability has to deal with market related and market induced inequalities, provide equality of opportunity to all citizens, work to develop social cohesion; promote peace and stability regionally and globally, promote sustainable growth and development, ensure ecological and environmental sustainability, and deal with the legacy of apartheid which included an economy in a shambles, a society racially polarized by apartheid and immense material deprivation of the majority of black people in South Africa. The South African developmental state also had

to usher in a democratic Constitution, create a climate of respect for human rights, overturn apartheid legislation, bring in new legislation that was in conformity with the Constitution and undertake a massive and continuous transformation project. These development goals of the state are informed by its ideological character which also informs the nature of the state-society relationship (the People's Contract). The ideological basis also gives state's institutional and administrative characteristics their coherence (the channels of political participation, the popular forms of participation and consultation, the separation of powers, the distribution and use of political power, the relations between and among Departments and the form of democracy and the party political system). In this sense South Africa sees a mutually reinforcing relationship between democracy and its institutional and administrative arrangements and the developmental state and its goals and objectives.

49. The achievements of the developmental state must be measured by its capacity to promote shared sustainable (employment generating) development and growth in an environment which respects and nurtures democracy and the institutions of democracy. In South Africa, the achievements of the developmental state must be measured against the legacy of apartheid which the first democratically elected government inherited in 1994. This legacy included immense material deprivation of the vast majority of South Africans, racialised poverty, racial segregation, a huge unequal division of land, wealth and income based on race, and legalised, institutionalised and systemic racial discrimination in all walks of life.
50. The ANC Government has committed itself to an ongoing transformation project of building a developmental state that promotes popular participation, accountability and an active informed and empowered citizenry while respecting and engendering a culture of human rights.
51. The particular form democracy takes in South Africa is characterised by citizen engagement (participatory democracy) and an active state (the developmental state) which encourages participation while simultaneously using state resources to promote social justice, the development of social and physical infrastructure and greater sharing of the fruits of economic growth in an environment of macro-economic and political stability. The Report points to co-operative governance as a best practice and notes that "*the makers of the constitution avoided the path of low-intensity democracy and opted for a cooperative state with three spheres of government and separation of powers between the executive, the legislature and the judiciary*" (p. 6 paragraph 3.5; p. 50, paragraph 2).
52. South Africa is a multi-party democratic state in which all the elements of formal democracy are enshrined in the highest law of the land – the Constitution, including the right to hold office, to vote, the enumeration of fundamental freedoms, the enumeration of basic rights, including social rights, the separation of powers, co-operative governance, respect for the rule of law and the holding of free and fair elections. The ruling party has political legitimacy and credibility because it is based on the will of the majority of the voters and it came to office through free and fair elections.

53. The Report points to a number of best practices that enhance popular participation in the democratic process beyond the casting of the ballot. These practices strengthen and embed democracy in the political culture of South Africa and include:
- *“Cooperative Governance, a process of institutionalised contestation to be undertaken sympathetically and productively as a generalised means of first resort in resolving conflicts, especially those of a jurisdictional nature;*
 - *Popular participatory governance through izimbizo, which constitute face-to-face interaction and engagement between senior government officials from all spheres of government – national, provincial, and local – and the public;*
 - *Taking the Parliament to the people, an outreach programme whereby the parliament and provincial legislatures go to the ground and interact with members of the communities and listen to their concerns, needs and aspirations;*
 - *Batho Pele, essentially a Citizens Charter, based on the traditional Sesotho adage, meaning ‘people first’. It ensures that the people are sufficiently informed about the governance processes, the functions of the various ministries and departments, those in charge and what to expect from them; and*
 - *Multi-Purpose Community Centres, is a one stop, integrated community development centre designed to provide information and a wide range of services to communities in an integrated and coordinated way.”*
54. In South Africa, politics is rooted in a *People’s Contract* (the Election Manifesto of the African National Congress) and is tested regularly through these forums of dialogue and engagement with the people in both the processes of governance and in the debate about South Africa’s national development objectives. Popular participation and citizen engagement is an ongoing and permanent feature of the political landscape in South Africa and they are actively encouraged.
55. Omano Edigheji⁴⁶ among others notes that the democratic developmental state embodies the principles (and practices) of electoral democracy and ensures citizen participation “... in the development and governance processes”. Edigheji also notes that the developmental state is one that “can also foster economic growth and development”, has clearly defined “socio-economic objectives that require state intervention” (including poverty reduction and eradication, social justice, reduction in income and asset gaps between rich and poor); and places a premium on “...its institutional and organisational ... structures that enable it to promote and achieve better economic performance.”⁴⁷

⁴⁶ Omano Edigheji, (May 2005), *A Democratic Developmental State in Africa? A concept paper*. Centre for Policy Studies, Research Report 2005.

⁴⁷ Ibid., pp. 6-7.

56. The developmental state is conjunctural. It is not an ideal typical construct that exists in the same form in different places in different time periods. It is historically contingent. A key feature of developmental states is that their accumulative and legitimisation functions are performed in tandem to simultaneously stimulate sustainable growth and reduce market generated inequalities. The developmental state is distinguished by its social objectives as well as the institutional arrangements that facilitate state intervention in the market (to deal with market generated inequalities), to utilise the country's resources for social and infrastructural growth and development.
57. In the case of the South African developmental state, the "autonomy" of the state from the major contending social classes in society derives from state-society relations embedded in a "People's Contract" that involves participation, dialogue, engagement and accountability by all the social forces in society.
58. There are examples of developmental states that are more authoritarian and less democratic but in the case of South Africa, popular participation, political inclusion and representation are essential to the theory and practice of the South African developmental state.
59. The developmental state is defined by its objectives and commitments. Its success has to be measured by the degree to which it has achieved its objectives and national development goals. The end goal of generating economic growth and promoting social development are normative ideals to which all developmental states aspire. The developmental state in form and function is not constitutive of the social formation as a whole. The state is a condensation of social forces that functions through a set of political and institutional arrangements that have a public purpose including shared sustainable employment generating growth.
60. South Africa contends that the apartheid state has been fundamentally transformed. Its balkanised apparatuses inherited from apartheid have been amalgamated into a new public service underpinned, by constitutional values and principles which include transparency and accountability, developmental orientation, equity and representivity. Similarly, key elements of the "strategic policy framework" identified by the Panel (as well as many others) including a People's Contract, economic empowerment, Batho Pele and popular participation are key practices of the South African developmental state.
61. The Report does acknowledge the tremendous strides made since 1994: "Improved economic performance, coupled with the advent of democratic, people-centred governance, has enabled hitherto unfathomable improvement in people's material and social conditions. The widespread availability of social services and grants has resulted in the reduction of absolute poverty" (p10, paragraph 3.29). This assessment points to a purposeful South African developmental state committed to social justice making demonstrable progress in the achievement of its goals.

62. The characterizations of the South African state, democracy, polity, economy and their institutional expressions are inconsistent across the Report. These are ideological constructs. There is no objective theory of knowledge or social science untainted by ideology. Characterisations of the state and its practices being “based on European post-World War II models” (paragraph 890, p. 274) as post-conflict (paragraph 97, p. 76) and developmental all carry with them ideological influences which are not always consistent with one another. It is also not evident how the conclusion can be drawn that “While post-apartheid South Africa is imbued with a vibrant political democracy, it is nevertheless a democracy under severe socio-economic stress” (paragraph 6, p. 51)
63. Sections of the Report were written by different authors and this approach has an impact on the Report. This is evident in the contradictory formulations on the same issue in different sections of the Report. These contradictory formulations are reflective of the differing ideological predispositions of the authors. As has been argued, Social Science is not a “neutral” science and embedded in analysis and in recommendations are value judgements informed by implicit and explicit ideologies. To suggest that social scientists are not value neutral is not at all to suggest that they are unprofessional or lack credibility.

MACRO-ECONOMIC POLICY AND DEVELOPMENT
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64. In December 1997 the 50th National Conference of the African National Congress held in Mafikeng adopted a definitive resolution on economic policy. This resolution included a clause that read:

Conference reaffirms that our macroeconomic framework policies must be directed to advancing the RDP [Reconstruction and Development Programme]. We are not pursuing macro balances for their own sake, but to create the conditions for sustainable growth, development and reconstruction. The strategy for Growth, Employment and Redistribution (GEAR) is aimed at giving effect to the realisation of the RDP through the maintenance of macro balances and elaborates a set of mutually reinforcing policy instruments.

65. The Report asserts that although GEAR “*did not completely depart from earlier government policy but committed government to accelerating aspects of existing policy through macro-economic stabilisation.*” (paragraph 283, p. 123) The Report goes on to state that “*many of the gains expected from the adoption of the measures did not materialize as GEAR failed to effectively attain many of its goals.*” (paragraph 284, p. 124)
66. Gear was announced to bring greater stability to investment decisions by reducing the budget deficit and inflation to more sustainable levels. It was expected that this would be good for economic growth, investment, employment and poverty reduction. This indeed has been the case. It may be true that Gear was optimistic *about when* its targets would be met, but it needs

to be recognized that the targets themselves were indicative. Macroeconomic forecasting for more than a one-year period cannot be absolutely precise. The value of such exercises is that the targets and logic of how the economic variables fit together portray a viable trajectory or path for the economy.

67. The Report's argument that while "*GEAR helped ensure macro-economic stability and thereby enhanced South Africa's international status*" while doing "*little to redress the sharp social economic inequalities in South Africa,*" is problematic. From 1996 to 2000, spending on public services fell by 4.5 per cent in real terms, but since 2000, public spending has increased by over 60 percent in real terms. The fiscal consolidation of the late 1990s has provided the resources to significantly accelerate the implementation of the RDP.
68. The Report goes on to argue that while "*Government has restored and maintained macro-economic stability...unqualified reliance on market forces and macroeconomic management does not necessarily ameliorate the poverty and unemployment situation.*" (paragraph 287, p. 124) This is a clear example of the methodological flaws of the Report and illustrates the ideological predispositions of a particular reviewer. It is not clear whose experience is being referred to here. Indeed even subjective analysis needs to conform to minimum standards of evidence. It is inappropriate to suggest that the South African Government has advocated an "*unqualified reliance on market forces*" because the country's markets are indeed regulated and systems are in place to address a variety of market externalities.
69. An honest appraisal of South Africa's socio-economic trajectory over the past decade would lead to the conclusion that the relationship between the RDP and GEAR has served South Africa well. The key measure is in the quantity and quality of public services South Africa has been able to render. There are no contradictions between GEAR and the RDP. Both programmes, macro-economic stabilization and socio-economic interventions are driven by the developmental state and are mutually reinforcing in their realization of the objectives of the developmental state. South Africa is acutely conscious that the most effective anti-poverty strategy is one that focuses on employment generating growth. The recommendation that South Africa "*Develop a long-term strategic plan that exploits the nexus of growth, employment, poverty reduction, income and wealth redistribution, and systematically reduces social grants while emphasising empowerment and considering sustainability issues,*" (paragraph 786, p. 246) is firmly in keeping with the current shared growth strategy under ASGISA.
70. The Report certainly takes cognisance of ASGISA. However, more recognition needs to be given that the emphasis on the growth targets in ASGISA were developed after a rigorous assessment of prevailing and future national, regional and global growth prospects over the next decade. The targets established are designed to enable the country to halve poverty and unemployment by 2014. In this sense, ASGISA is already designed to exploit

“the nexus of growth, employment, poverty reduction, income and wealth redistribution” (ibid).

71. The history of democratic South Africa is the history of transformation and socio-economic and political transformation. Since 1994 economic growth rates have soared, South Africa is in the longest period of sustained economic growth in its history, poverty levels have declined, the black middle strata has increased dramatically in size, government expenditure on education, health care, water, electrification and affordable housing, has increased. In all respects South Africa has, for the past 12 years already embarked on what the APR Panel has recommended – namely *“...a rigorous transformation process to accelerate socio-economic development in order to achieve sustainable development and the alleviation of poverty”* (paragraph 3.86, p. 19).
72. As the CSAR notes, South Africa’s developmental strategy is both informed and challenged by the legacy of apartheid and the forms of socio-economic inequalities it engendered. The Report therefore correctly identifies the racial legacy as among the key challenges confronting the country. However, to describe race relations as remaining brittle and sensitive (p. 4, paragraph 2.5, p. 31), contradicts the assertions made elsewhere of the need to remove the remaining “vestiges of racism.” (p. 27, paragraph 3.133, p. 80, paragraph 117) The Report states that:

“Race relations remain brittle and sensitive. South Africans from different racial groups hold widely divergent views on key policy questions and on the nature of the problems confronting the country. Many whites, coloureds and Indians feel alienated and marginalised. Some black people, on the other hand, feel that too little has changed, as many white people still have the best jobs and lifestyles, which does not reflect the grand vision of a new South Africa.” (paragraph 68, p. 67)

Apart from methodological issues relating to questions of how perceptions of marginalisation and alienation are measured, it is not clear what “some black people” and “many whites, coloureds and Indians” really mean. While some elements of the minorities fear that the Government is not doing enough to assure the cultural, education and language rights guaranteed by the Constitution, this is not a dominant trend or feature of democratic contestation. Moreover, the Report does note that a Chapter 9 Institution known as the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Commission) has been established to promote respect for and further the protection of the rights of cultural, religious and linguistic communities. The CRL Commission as a Chapter 9 Institution is an independent institution which is subject only to the Constitution and the law and therefore has the required mandate to deal with the fears of minorities in this regard.

73. The Report captures the current status and level of South Africa’s involvement in the regional economic integration agenda very well. As a key stakeholder in the process of economic development and integration, South Africa has

accepted the responsibility of driving economic integration in Southern Africa, as this is a central element of South Africa's economic and foreign policy. One of the main objectives for South Africa under the SADC Protocol on Trade is to liberalise trade in the region so that the economies of the region could benefit and grow. However, South Africa's approach to the region has always been more developmental than narrowly mercantilist. The economic strategy in the region is guided by the principle of asymmetry whereby bigger concessions in trade and economic dealings are extended to partners in the region. This strategy is also in line with the NEPAD framework and emphasises the importance of partnerships on the continent.

74. Overall there is general agreement with the broad recommendation in the Report that *"If South Africa is to make continued and sustained progress towards a united, non-racial, non-sexist and democratic society in its Second Decade of Freedom, it needs a major intervention: to reinforce the consolidation of democracy with measures aimed at integrating all of society into a growing economy.. This will require, among other things: identifying a grand vision uniting all and defining a shared approach by all segments of the Rainbow society, such that the individual and collective human potential of the nation can come to full fruition; managing diversity; reconstructing and democratising the economy in order to cope with the challenge of structural unemployment and pervasive poverty; and initiating a radical overhaul of the machinery of government, especially at local government level, to unlock current delivery logjams."* (paragraph 69, p. 68)
75. What is essential to reiterate is that the critical building blocks of just such an approach are already extant in current government policy, in the government Programme of Action and in the public articulation of this vision by the President of the country. The fight against poverty, unemployment and underdevelopment remain the three critical challenges in South Africa and this fight is intimately linked to nurturing the vision of a non-racial, non-sexist, prosperous and democratic South Africa in which the fruits of growth and prosperity are shared more equitably, and in which the gaps between the first and the second economies, and between rich and poor are narrowed. This is the transformative agenda of the developmental state embedded in the Constitution of South Africa.
76. The Report's concerns around black economic empowerment are noted. However to blame the implementation of BEE for problems "of the general lack of skills in the public sector" (paragraph 229, p. 109) is both simplistic and misleading. The Report notes that "the acute shortage of skills, especially of financial expertise, is affecting the government's capacity to manage programme spending and social service delivery." (paragraph 3.41, p. 12) Without denying the impact of skills shortages on service delivery the lack of capacity and attendant skills shortages need to be understood in their historical context. Education and human resources development under apartheid were guided by the principles of racial discrimination and ensuring a steady supply of cheap semi and unskilled black labour. Under apartheid there was occupational segregation based on race. "Bantu education" which was

singularly responsible for the “mis-education” and lack of skills and capacity development of the overwhelming majority of the Black population, and there was serious inequitable funding of education on the basis of race. It should be no surprise that the post-apartheid developmental state inherits a labour force that needs its skills and capacity enhanced. It is too simplistic to talk of skills shortages and capacity constraints in an historical vacuum and to argue that skills are developed overnight. In addition because of globalization the global division of labour has increased global mobility and voluntary migration of labour. In the search for sectoral global skills, developed nations are at an advantage and are able to “poach” valued skills from developing countries and thereby exacerbate skills shortages in the latter. South Africa is not immune to this poaching.

77. What is encouraging is that the Report also fully acknowledges the need for the development and implementation of Broad Based BEE in order to deracialise and grow the country’s economy. It also recognises the positive impact that BEE has had on the economy. The fundamental challenge of broadening BEE to ensure more than a handful of individuals are enriched is accepted, but it is important to note that there has been a movement away from a narrow approach focusing on ownership to include *inter alia* a greater emphasis on employment equity, support to small medium and micro businesses, procurement support and the need for corporate social investment programmes.

CONCEPTUAL ISSUES AND MATTERS OF FORMULATION

Political Governance and Democracy

The Truth and Reconciliation Commission

78. The Report notes on pp. 58-62 (paragraphs 41-46) a number of issues relating to the implementation of the TRC Recommendations. While there have been challenges in the implementation of the TRC findings, substantial progress has been made. The TRC Unit in the Department of Justice and Constitutional development is finalising a report on Government’s Progress in implementing the TRC Recommendations. The report will be tabled in Parliament in 2007. The approach taken was to ensure the twin objectives of reconciliation and post-apartheid community socio-economic development and not of individual forms of compensation.
79. The historical context and trajectory of local government transformation in South Africa, post-1994, is unique compared with other countries. Nowhere in the world has such an ambitious exercise of transforming over 1200 racially based local authorities to 283 inclusive, non-racial and democratic municipalities been undertaken within such a short time frame.
80. The Constitutional principle of cooperative governance lays the basis for hands-on engagement with, and support to, local government. This principle

allows for the active support, monitoring and intervention by national and provincial government in the affairs of local government. A preliminary assessment of this hands-on approach (2004–2006), has demonstrated great responsiveness from the private sector and key organs of state, a general appreciation from the municipalities targeted and the actual resolution of critical and tangible problems at a local level. These lessons led to a decision in January 2006 to mainstream this hands-on approach into the core business of national and provincial government to benefit all 283 municipalities over the next 5 years. A key aim is to ensure seamless and integrated government and service delivery.

81. Thus the hands-on support approach to local government is consistent with the principle of cooperative governance and the objective of establishing a developmental state in South Africa. It has also being recognized that this approach must impact on the way in which national and provincial government and the state in general, are configured and capacitated. Various assessments at national and provincial levels of government are pointing to key challenges of capacity strengthening and restructuring within and across all three spheres of government.

Top-down versus Community-driven service delivery

82. The Constitutional system of cooperative government entrenches the integrity and distinctiveness of the sphere of local government and in its inter-relationship with national and provincial government. Subsequent policy and legislation further define and clarify the nature of developmental local government. The unique and progressive elements of the local government system include the manner in which municipalities are legally defined to include communities, the mandatory requirements for integrated development planning and participation of communities in local governance, performance management and service delivery. Each of these legislative provisions is complemented by extensive programmes and appropriate instruments of fiscal and financial support to municipalities.
83. The implementation of key national service delivery programmes is also informed by the principle of cooperative governance. This principle has been further strengthened by framework legislation on Intergovernmental Relations. In terms of this legislation, intergovernmental structures are established across all three levels of government, which enables the provision of targeted support, monitoring and interactive dialogue on service delivery across government. All of this is further reinforced by the mandatory provision for municipalities to involve communities in key areas of service delivery and local governance.
84. Through various legislative provisions and programmatic support interventions, mechanisms for community participation are firmly in place and this finds principal expression through the establishment of ward committees. The objectives of these provisions and interventions are aimed at building inclusivity in local areas, strengthening the capability of communities and

stakeholders to monitor the performance of elected local representatives and also to build community and citizen capability to participate in matters of local governance, service delivery and development. The recently gazetted Performance Management regulations for all municipalities and also the recently adopted Local Government Anti-Corruption Strategy will both go a long way in addressing the concerns related to poor local governance and inadequate performance oversight measures. The latter strategy outlines key roles and responsibilities for local stakeholders and communities.

Local Government is not a passive, subordinate sphere of Government (p. 71, paragraph 78)

85. South Africa is a single sovereign unitary state comprised of three spheres of government, which are inter-dependent, interrelated and distinct. The principles of cooperative government further define key elements of the relationship between national, provincial and local government.
86. Chapter 3 of the Constitution spells out the status, objects, duties and broad architecture of local government in the overall system of government. Subsequent local government legislation and the local government transformation processes and interventions since 1994 in particular have sought to reinforce and mainstream the centrality and importance of the local sphere in the business of government as a whole. The latest example of this is the 5 Year Local Government Strategic Agenda that was adopted by the national Cabinet and Premiers of all provinces.
87. Therefore constitutionally, politically and based on the practical evidence of local government transformation in recent years, the trajectory of local government has been one of affirming, strengthening and mainstreaming its status and role in the overall system of government.
88. The APR Panel has appeared to have misread the relationship between the three spheres of government in South Africa. In particular the notion that local government is passive and subordinate is not borne out by the reality of governance in South Africa and is another example of the methodological problems of the report where assertions are made on the basis of an undefined number of respondents (many, some). The Report (paragraph 78, p. 71) notes that "...many stakeholders continue to perceive it [local government] as a passive and subordinate sphere of government." There also appears to be a fetishization of "the local" arising out of post-modernist conceptions of participatory democracy which lack an understanding of the relationship between a national vision and how it finds expression at the local level.
89. Paragraph 76 (p. 70) identifies a series of risks associated with strengthening local capacity, including "strengthening local bosses, accepting high levels of inefficiencies, legitimising exclusion of local minorities and ignoring, if not encouraging perverse local practices." This sentence along with the assertion that "Experiences elsewhere have demonstrated that direct intervention by the central government in building local capacity hardly ever comes to an end and

often ends up in recentralisation,” raise some profound and conceptual issues. Where are these experiences? Did they occur in similar constitutional contexts? How do we square off South Africa’s conception of cooperative governance with the Panel’s notion of a decision-making process that operates on the principles of “democratic centralism” (paragraph 76, p. 70)? It is not clear whether the Panel is referring to South Africa when it talks about democratic centralism or whether it is alerting South Africa to the dangers inherent in a system of democratic centralism.

Proportional Representation

90. The Report noted that “some stakeholders also called for a reconsideration of the van Zyl Slabbert Commission recommendations...” (paragraph 134, p. 85). On the basis of this, the APR recommends to South Africa that: “*In the light of experiences gained thus far, rethink and innovate the proportional representation system to ensure the development and consolidation of constitutional democracy is not hindered. In this regard, there is indeed a need for reconsideration of the Van Zyl Slabbert Commission’s recommendations to combine party lists with a district-based electoral system at all levels of government.*” (paragraph 152, p. 90) South Africa notes this, but the review is still under consideration on the premise that proportional representation itself is a form of democracy that lends itself to the representation of historically disadvantaged groups. There is nothing to suggest that it is less democratic than other systems of representation.

Crime

91. According to the Report, “*Stakeholders also pointed out that the alarming rate of crime across South Africa*”, (p. 95, paragraph 173). Although it is true that crime poses a serious challenge in South Africa, an impression should not be created that the Government is not taking steps to curb it. In addition to a number of current initiatives, the Justice, Crime Prevention and Safety (JCPS) Cluster and Government Communications are working with the private sector and other stakeholders to formulate a National Anti Crime Campaign focused on community mobilisation and improving popular partnership with the criminal justice system. Community police forums are expected to play a key role in this campaign which is aimed at strengthening society’s hand in the fight against crime.

Affirmative Action and Capacity Challenges

92. It is acknowledged that despite the progress made in strengthening institutions and regulatory frameworks, service delivery challenges remain. Capacity shortages are particularly apparent at local government level, but Project Consolidate is responding to these by strengthening the commitment of national and provincial government, as well as other public and private sector institutions, to support local government. While experts are deployed to local government to assist in addressing some of the backlogs, longer-term measures aimed at building capacity at local level are also being taken.

Accountability challenges at the local level are being addressed through a combination of capacity building for councillors and municipal managers and regulatory measures such as performance management systems for municipal managers.

93. South Africa disagrees with Report's contention that affirmative action is the cause of the skills shortages in the South African civil service. The paucity of education offered the majority of people in this country under apartheid is the primary cause of the dearth of skills. It is true in some instances that people have left the public service as they were at odds with the spirit of transformation in the country. Some may have left the country for the same reason, but those who remain are committed to creating a better life for all. It is true that many middle and senior managers leave the public service for the private sector (paragraph 229, p. 109); however, by the same token, thanks in part to the near market-related remuneration packages on offer, one quarter of new appointees to the Senior Management Service are from outside the public service. The Joint Initiative for Priority Skills Acquisition (JIPSA), spearheaded by the Deputy President, includes initiatives aimed at attracting back skilled people who have moved overseas.
94. Recently the Department of Public Service and Administration (DPSA) conducted a Personnel Expenditure Review, aimed at discerning trends and identifying needs regarding public service remuneration, and the need to recognise the contribution of professionals in the public service (doctors, nurses, engineers etc) was identified as critical to attracting and retaining these skills. The remuneration policy, which proposes dual career paths for certain professions, allows professionals to be paid management salaries without being managers. The APR Panel recommendation that South Africa should create the necessary incentives for attracting qualified talents to the public service is thus being addressed. However, it is acknowledged that that a comprehensive strategy for skills development and retention in the public sector, as recommended by the Panel, is required.

Batho Pele and Service Delivery Improvement and Integration

95. *Batho Pele* has been successful as the rallying point for service delivery improvements in the public service. Currently steps are being taken to cascade the precepts of *Batho Pele* to the local government level, as part of a broader initiative to establish a Single Public Service consisting of all three spheres of government. The aim of the Single Public Service is two-fold: to facilitate mobility of skills within national, provincial and local government; and to facilitate the integration of service delivery for citizen convenience. Good progress is being made, and the Constitution is not perceived as an obstacle. The *Batho Pele* initiative is being strengthened this year through a focus on the development of Service Delivery Improvement Plans by departments, which ought to help address the fundamental issues underlying poor service delivery.
96. South Africa is justly proud of its achievements in integrating service delivery, broadening access to services and increasing public participation in policy-

making and monitoring and evaluation of service delivery. These include the Multi-Purpose Community Centres, the Batho Pele Gateway portal, the Community Development Worker Programme and the Presidential Izimbizo Programme, amongst others. Public participation at the local level is effectively entrenched through the Integrated Development Plan (IDP) process, which develops a five-year strategic plan for each municipality. It is true that challenges have been experienced in the harmonisation of planning at local, provincial (Provincial Growth and Development Strategies) and national (National Spatial Development Perspective) levels, but this is being proactively addressed through a programme led by the Presidency.

Corruption

97. The Report identifies corruption as a cross-cutting issue and also deals with corruption in Chapter 7 where other cross-cutting issues are raised. This indeed makes sense as corruption is a thread found in all thematic areas. The APRM Secretariat may well consider amplifying the base questionnaire to deal with corruption in this manner rather than the current approach of disaggregating the corruption discussion. It may be that the questionnaire was intended to explore corruption in various sectors; it has successfully done so, but it may be advisable to present findings (whether self-assessment or country review processes) in future reviews in other countries and South Africa in the cross-cutting format.
98. The Report highlights the following as areas where attention needs to be given to fight corruption:
 - Private funding of political parties
 - Post-public sector employment regulation
 - Bribery of foreign public officials by South African business persons
 - Improving the coordination and roles of the different anti-corruption bodies
 - Strengthening the capacity and independence of the different anti-corruption bodies
 - Promotion of the knowledge and application of key legislation in the anti-corruption framework, particularly access to information and protection of whistleblowers. (paragraph 940, p. 284)
99. The above areas, with the exception of the bribery of foreign public officials are being addressed in the Public Service Anti-corruption Strategy, the resolutions of the 2nd National Anti-corruption Summit and the National Anti-corruption Programme. The issue of bribery of foreign public officials is a relatively newly emerging challenge.
100. The involvement of South African businesses in the bribery of foreign public officials did not emerge as an issue of major concern during the country self-assessment. The issue was highlighted 6 November 2006 when the Bribe Payers' Index of Transparency International was released. This does not detract, however, from the fact that the Prevention and Combating of Corrupt Activities Act of 2004 criminalises such practices where they exist.

101. The steps that have been taken to deal with the bribery of foreign officials are as follows:
- In January 2002 the Cabinet adopted the Public Service Anti-corruption Strategy that amongst other objectives required legislation to be developed that establish offences related to the bribery of public officials.
 - The adoption of the above strategy was followed by the tabling of draft legislation dealing with criminalising acts of corruption. This draft legislation evolved into the Prevention and Combating of Corrupt Activities Act of 2004.
 - Section 5 of the Prevention and Combating of Corrupt Activities Act of 2004 specifically criminalises acts involving the bribery of foreign officials.
 - In order to promote the understanding of the above legislation, the Government together with the Business and Civil Society sectors in the National Anti-corruption Forum has developed a guide on understanding the Act. This guide has a specific section dealing with bribery of foreign officials and is being used as an educational tool.
 - South Africa has acceded to the Working Group on Bribery and the OECD Convention on the Bribery of Foreign Officials in International Business Transactions. The legal process for accession has been completed. This process included a technical evaluation by the OECD of the legislative framework dealing with corruption.
102. The following additional steps have been taken in the current financial year:-
- The National Anti-corruption Forum has set aside R3 million to launch an educational and awareness campaign on South Africa's anti-corruption framework and this campaign will target the Business sector and bribery of foreign officials. This campaign commenced in the first quarter of 2007.
 - As part of the assessment of the impact of the national anti-corruption framework being undertaken at present, 2 000 businesses were surveyed during March 2007 to assess the impact of corruption in this sector, including doing business in other countries. This assessment should guide further steps to be taken to curb bribery of foreign officials.

Xenophobia and Racism

103. The Report refers to the "*brutality and detention*" of foreigners, particularly of African descent when they come to South Africa (p. 287, paragraph 956). The Report fails, however, to specify whether the reference is to foreigners who enter the country legally or illegally. In the case of illegal migrants, South African law enforcement agencies (like any law enforcement agency in any country) would be expected to detain them and subsequently deport them to their country of origin. The assertion that illegal immigrants are subjected to brutal and inhuman treatment is strongly disputed. During the visit of the CRM to the Lindela Repatriation Centre, it was clearly indicated that a system of 24-hour surveillance close circuit television has been installed covering the entire perimeter, grounds and buildings of the facility. Allegations of abuse and treatment can be dealt with by viewing the footage of the surveillance equipment.

104. The South African Government is a signatory to both the UN and OAU conventions on Refugees and allows all asylum seekers to remain in the country until their status is determined. None of these asylum seekers may be detained or deported.
105. South Africa shares the view that more needs to be done to fight xenophobia. The South African Government is committed to fighting and educating society against all forms of discrimination and prejudice.

Economic Governance and Management

The Role of Parliament in the Budgetary Process

106. Despite acknowledging as best practice a highly consultative budgetary process, the Report suggests that Parliament be given the right to play an even stronger role in the budget process, and offers “an alternative framework” in paragraph 364 on page 145. South Africa has chosen a constitutional system that separates the executive and the legislative processes, and South Africa’s Parliamentary system (even with proportional representation) is closer to a Westminster model (where the executive initiates legislation and proposes the budget) than the US system (where the legislature plays a strong role in legislation and the budget). Indeed during the Constitution drafting process, a conscious decision was taken to avoid mechanisms that would allow the budget to be blocked and undermine the national imperatives of the developmental state.
107. The role of Parliament in the budget process covers a wide area, of budget preparation, budget implementation and post-budget evaluation. While it may be acknowledged that Parliamentary oversight over the budget process is weak (3.39 in the Executive Summary, p. 11; paragraph 365, p. 145), the critical question is: What stops Parliament from exercising its current powers more vigorously?
108. The innovations introduced into the budgetary process provide Parliament with the opportunity to make meaningful *strategic* choices on the priorities informing a budget. South Africa’s highly transparent budgetary process includes the tabling of three year budgets (even though appropriation bills are for one year only), to enable Parliament to make recommendations on future budgets (by commenting on the two outer years when the three year budget is presented).
109. South Africa accepts that Parliament must be empowered to exercise its oversight function with respect to money bills. Parliamentary oversight is also important for the implementation of the budget, and that the executive provides quarterly financial reports during the financial year and annual reports within 6 to 7 months of the end of each financial year. It is for Parliament, to exercise such oversight functions, and to do so vigorously.
110. Many of the budget reforms undertaken by government have empowered Parliament to monitor the implementation of the budget, and to hold

government responsible for performance. South Africa is encouraged by the recognition that this is identified as a best-practice.

111. One of the successes of the budget reforms is that government departments and entities submit annual reports with audited financial statements within 7 months from the end of a financial year. Almost all departments comply with this provision. Where departments are late, or fail to submit, the legislature and executive have strong powers to enforce compliance and disciplinary and other sanctions against accounting officers who fail to comply.
112. South Africa does not have a fiscal management problem at an aggregate level (p. 147, paragraph 372). The fiscal aggregates are managed very well. Expenditure growth is tightly managed; hence we have not only reduced the deficit, but are projecting a surplus.
113. In terms of transparency and accountability, South Africa produces high quality budget documents and reports on actual revenue collection and expenditure every quarter with parliament holding hearings on the reports every time they are released. Service delivery information is regularly published in departmental annual reports and in publications such as the Inter Governmental Fiscal Review. All of these are tabled and discussed in parliament, and are also placed on government websites.
114. It is true that there are variations in performance. Provinces and national government are generally ahead of municipalities, perhaps only because they have not been through similar transformation processes. The Auditor General periodically unearths several financial management rather than fiscal management issues, which are published and publicly discussed.

Corporate Governance

Regional Integration

115. There have been a number of developments that have taken place since the CRM visit. These need to be taken into account when looking at the analysis and recommendations of the Report. The recent 2006 Extraordinary Summit of SADC which was held in Midrand in South Africa took a resolution to ensure effective implementation of Regional Indicative Strategic Development Plan (RISDP). The Summit also reaffirmed its commitment to regional economic development and underlined the need to mobilise resources in order to address issues of infrastructure, food security and other supply side challenges within the SADC region. The Summit noted that it is through the development of supportive infrastructure that regional trade potential can be harnessed to the benefit of the people of the region. The Summit thus recognised the need for complementary instruments and policies to support regional economic integration for achieving high and sustainable economic growth and development in order to eradicate poverty. The Summit urged Member States to formulate policies to forge convergence of the SADC economies, which forms the basis for real economic integration.

116. The statement that rules of origin continue to help protect SA producers (p. 154, paragraph 399) should be put in context. Rules of origin are certainly generic to most regional and free trade agreements. In general, the SADC rules of origin are very liberal compared to other free trade agreements in the world.
117. The Trade Development and Cooperation Agreement (TDCA) will come under review and Botswana, Lesotho, Namibia and Swaziland (BLNS) will participate in the review (pp. 155-56, paragraph 404) to ensure that concerns and needs for all key parties are taken into account in reviewing the new TDCA. The 2002 South African Customs Union (SACU) agreement ensures that no member state can negotiate a trade agreement without the consent of other member states. BLNS countries are de facto members and participate in the review of the TDCA as observers.
118. The impact of tariff reduction on fiscal revenue (p. 155, paragraph 404) has to be put in perspective. A general expectation is for fiscal revenue to decrease with tariff liberalization. The reality in SACU has been different for the BLNS countries as revenue has tended to increase due to the structure of the revenue sharing formula, accelerating imports at lower but non-zero rated level and due to the growth of the South African economy. Secondly, dumping is dealt with by International Trade Administration Commission of South Africa (ITAC) on a SACU wide basis. In future, this will become the responsibility of the SACU Tariff Board.
119. While South Africa has liberalized its economy (p. 156, paragraph 406), a balance needs to be struck between protection of key infant industries and an open economy to ensure ability of these industries to compete in the global economy. South Africa has met all its targets in terms of liberalization targets within the SADC region in terms of the Trade Protocol. South Africa always sees and operates as a partner in both the region and the continent with its African counterparts and ensures that its economic dominance is used to the benefit of all countries. This is clear in the role it assumes in representing the continent's interests in multilateral forums. It has also opened up its market within the SADC region to ensure that SADC member states are able to export to the South African economy thus enhancing their economic growth. It is not clear what is meant when saying that SA should align its trade policies with those of SADC countries (p. 156, paragraph 407.) South Africa's trade policies in any free trade agreement will always need to balance the specific to the needs of the SA economy with alignment of the other member states.
120. Regarding the trade imbalance with the region (p. 156, paragraph 408), it should be recognised that SA has completely liberalised tariffs on imports from SADC and that the capacity to supply the SA market competitively is the responsibility of the SADC countries. More than 50% of total SADC exports to SA take place in only three categories: minerals; fuels and oils; and precious stones.

Socio-Economic Development

121. Globally, but even more specifically in South Africa and on the continent, empirical evidence has demonstrated that on its own, economic growth is insufficient to eradicate poverty and effectively address challenges of gender imbalances and social cohesion. It is acknowledged that in and of itself, the South African Government's social transfer programme (p. 243, Paragraph 769 and 772) will be unable to address poverty in a developmental and sustainable manner. The empowerment of women, capacity building and partnerships with civil society are all critical elements of the construction of a developmental state. More targeted programmes for women's empowerment will help strengthen the current gains visible in progressive legislative and policy frameworks, as well as the prevailing momentum from pro-women campaigns. South Africa is acutely aware of the need to balance the immediate need for poverty alleviation with the long term goal of poverty eradication. With this in mind South Africa recognizes that the most effective poverty eradication campaign is an employment generating sustainable growth and redistribution strategy.
122. Chapter 6 of the Report refers to the fact that South Africa, even with the impressive progress made, continues to be characterized by gross social inequalities. It is in this context that the absence of a consensus on definitions and measurements of poverty, must catalyze a sense of urgency and pro-activity that binds all stakeholders through the Country Plan of Action.
123. The Report further notes that Government has put in a lot of effort in delivering social services in education and health, including HIV and AIDS. However, challenges still remain and are even growing, making it difficult for the country to tackle the critical mass of social development issues with the needed level of effectiveness and efficiency. It is acknowledged that much more needs to be done to ensure that:
- Women and youth gain greater access to credit through the micro-finance schemes currently in existence;
 - All sectors of society are empowered to participate in South Africa's development process. These include rural communities, women, youth, and the physically challenged;
 - Collaborative and constructive partnerships between government at all levels and critical segments of civil society are improved;
 - The public is sensitized to international and regional instruments affecting the social development sector and facilitate the implementation of all the codes and standards including the passing of relevant legislation;
 - Institutional and human capacity weaknesses are addressed through a comprehensive capacity building and skill development policy to ensure that the human and institutional dimensions of self-reliance and self-sustaining development are strengthened; and
 - The National Development Agency's (NDA) role in donor resources mobilisation and coordination, as well as capacity building is clarified.

HIV and AIDS

124. South Africa recognises the importance of structural factors that drive pandemic. Underdevelopment, poverty and associated challenges of literacy, poor access to basic services and information as well as poor health systems, are critical contributors to the progression to AIDS. Poverty as well as the low status of women are risk factors for both HIV infection and AIDS. South Africa recognises the importance of developing a comprehensive, holistic approach to the pandemic.
125. There is recognition in the Report that the impact of poverty exacerbates for HIV and AIDS. This theme needs to be reflected throughout the report. The relation between poverty and HIV and AIDS needs to be recognized. This position underscores the importance of dealing with the social determinants of diseases like HIV and AIDS and TB.
126. Paragraph 314 (p. 132) refers to the effectiveness of government policies and programmes. It needs to be acknowledged that the country has one of the most comprehensive plans to deal with HIV and AIDS. Underdevelopment affecting populations most at risk makes it difficult to realize the ambitious targets outlined in these policies and plans. The fundamental problem is not the inadequacy of these policies and programmes but the structural environment within which they are implemented. It is necessary to develop policies in order to deal with all factors that put South Africans at risk of HIV infections. The reference in paragraph 314 to an increase in the number of AIDS orphans is problematic in that there is no such thing as AIDS orphans and those orphans whose parents have died from AIDS ought not to be stigmatised by the use of such labels. It should also be noted that South Africa's social security system does discriminate against orphans on the basis of causality.
127. The provision of Anti-Retroviral treatment (ART) is an important element of this response, but it needs to be emphasized that the comprehensive response will only be sustainable if there is a decline in the rate of HIV infections. South Africa needs to systematically address all the drivers of the pandemic. The accelerated HIV and AIDS prevention strategy that seeks to improve on the "Abstain, Be-faithful and Condomise" messages, scale up health sector prevention programmes and develop community level capacities is absolutely critical. Prevention must remain at the heart of the national response to HIV and AIDS.
128. The national response to the provision of ART must be seen in the context of the need to deal with the socio-economic legacy of apartheid.
129. The need for stronger collaboration between government, civil society and development partners (p. 256, paragraph 819) is strongly endorsed.
130. Progress reporting on the expansion of access to ART needs to be in the context of a five-year programme that started in 2004. South Africa is now about mid-way in the implementation of the programme and there are

approximately 250,000 people on ART. Not all of the estimated people in need are known because of low testing rates due to stigma, as well as challenges with the health system.

131. The rate of the growth appears to be slower than it was in the period from 1990-2000 (p. 282, paragraph 929). All South Africans would like to see a complete reversal in the rate of growth.
132. Treatment is a vital element of South Africa's comprehensive response to the pandemic. It cannot however be seen as the main issue in managing HIV and AIDS (p. 282, paragraph 931). This would not constitute a sustainable and effective approach, critical and necessary as it is. Prevention remains pivotal to the national response to HIV and AIDS.

Education

133. A key challenge identified in the Report (pp. 31-32) is that "the education system fails to deliver the skills and competencies needed." There is indeed a skills shortage, but much of this was inherited from the deliberate underdevelopment of people under apartheid. A new National Curriculum has been developed, which does deliver the requisite skills and competencies, while Colleges have been recapitalised and offer high level, industry designed, skills programmes. While skills have been a problem, this matter is certainly receiving significant attention and resources.

<h2>CONCLUSION</h2>

134. In conclusion, South Africa would like to once again take this opportunity to thank the members of the Panel for their hard work and dedication. South Africa is heartened by the spirit of co-operation that is found throughout the Report. It is in the spirit of peer review that we engaged with the Report in the manner that we have.
135. The Report in its entirety allows for a full engagement on questions about the relationship between market driven globalisation and issues of the common good, democracy, democratic citizenship and environmental sustainability.
136. The articulation in the Report of the critical challenges facing South Africa is welcomed. South Africa agrees that the critical challenges we face include poverty, unemployment, underdevelopment, violence against women and children, sustaining current employment generating growth strategy, narrowing the gaps between the first and the second economies and narrowing the wealth, income and asset gaps between the poor and the wealthy.
137. South Africa is equally cognizant of the need to ensure that the Peer Review Process does lead to entrenching democracy, accountability, transparency, and good governance in South Africa, in the region and in the continent.

138. South Africa is equally conscious of the need to develop a progressive agenda for South Africa, Africa and globally. Such an agenda needs to be comprehensive and must include interventions in the socio-economic and political domains. It must be inclusive and address challenges faced by societies in the South, particularly in Africa as well as the North. It is an agenda that needs to be built on three fundamental pillars: Firstly, forging a people's contract between state and citizens. Secondly, a sustained re-entry of the state into social programmes and land reforms that positively impact on the socio-economic well being of people. Thirdly, economic reciprocity based on equitable trade and trading policies between and among nation states of the developing and developed world that redress the legacy of underdevelopment.
139. South Africa's approach to development is one which allows the state to play a developmental role in achieving economic and social justice development goals. This means that the developmental state has to play a more central role in social investment, in the strengthening of society's social infrastructure. The state must be active in the areas of land reform, social, economic and political transformation. The economic development models introduced after World War II, in Europe and Asia, quite clearly showed us that states should be proactive in creating and implementing economic programmes if they are to succeed in developing their economies.
140. Developmental states cannot shy away from the use of public funds to provide investment and other resources required by the economy to reach the required levels of development. Economic development models should not focus on fast economic growth as an end in itself, but rather the goal should be that of poverty eradication, and human and social development.
141. There must be a commitment to a people's contract. This means that progressives have to engage in a systematic and continuous manner with the masses. State and society are committed to the eradication of socio-economic injustices. A progressive agenda on development has to address the structural reproduction of race, gender, class and regional and global inequalities. It has to be firmly rooted in the traditions of social justice. In this sense democracy is an essential prerequisite for a robust developmental state.
142. The developmental state is not a neutral bystander which only observes the negative effects of market forces on countries, communities, families and individuals. The developmental state has an obligation to intervene and invest in social housing, anti-poverty programs, education, health and social welfare programmes.
143. Finally, South Africa is of the view that there is a need to continually strengthen the Peer Review Process and to develop common understandings and benchmarks, and ways of assessing and integrating information. The strengthening of the APRM is essential to the developmental trajectory of Africa and the emergence of a common set of objectives linked among other things to the eradication of poverty and underdevelopment and the creation of inclusive non-racist non-sexist democratic and prosperous societies and countries.