



# APRM

African Peer Review  
Mechanism

## SOUTH AFRICA

SECOND-GENERATION  
COUNTRY REVIEW  
REPORT







**APRM**  
African Peer Review  
Mechanism

# AFRICAN PEER REVIEW MECHANISM

**SECOND-GENERATION  
COUNTRY REVIEW REPORT**



FEBRUARY 2022

An Institution of the



# FOREWORD



*H.E. Cyril Matamela Ramaphosa*

It is with great pleasure that I present the second APRM Country Review Report for South Africa (Review Report), together with its accompanying National Programme of Action.

Since the conclusion of the Review Report coincided with South Africa's Chairship of the African Peer Review (APR) Forum, I'm presenting this foreword in my dual role as President of the Republic of South Africa, and as Chairperson of the APR Forum.

At the outset, let me acknowledge the dedication and leadership of the South African National APRM structures which were led by the APRM Focal Point and Minister for the Public Service and Administration, Hon. Ayanda Dlodlo as well as the Deputy Minister for the Public Service and Administration, Hon. Dr Chana Pilane-Majake; South Africa's APRM National Governing Council (NGC) under the leadership of Chairperson Thulani Tshefuta and Deputy Chairperson Magdalene Moonsamy; and the sterling work of the National Secretariat led by Dr Patrick Sokhela.

Together this dynamic leadership has ensured that South Africa completed its second-generation report as one of the first five countries on the Continent to have done so, thus ensuring that South Africa remains at the forefront of the APRM's good governance in the continent. I also acknowledge the professionalism, integrity and personal commitment from the Lead Panel Member for South Africa, Bishop Dinis Sengulane, who so ably represented the APR Panel of Eminent Persons, and the eminent country review team that he led; supported by the Continental Secretariat's assigned officials under the leadership of Prof Eddy Maloka.

In 2022 South Africa was reviewed on democracy and political governance, economic governance and management, corporate governance, socio-economic development and state resilience. The Review Report was subsequently presented to the APR Forum on the 4<sup>th</sup> February 2022. South Africa received favourable reviews for, among others, the rule of law, oversight bodies like our Chapter 9 institutions, the advancement of women's rights, strong refugee protection and our extensive social welfare net.



South Africa was also cited for its strong corporate governance, open budget processes and for the proliferation of corporate social responsibility initiatives. We were also praised for the evolution of our electoral system through the introduction of independent candidature for 2021 local government elections.

With regards to management of the COVID-19 pandemic, South Africa was congratulated for demonstrating resilience and global leadership. The APRM Review Mission further commended South Africa for publicising its detection of the Omicron variant late in 2021, “despite the risks to its economy”.

Nonetheless, the Review Report also found several areas of concern. These include rising inequality and unemployment, corruption, incidents of xenophobia and poor service delivery. It recommended that government develop a barometer to measure inequality and tools to measure the efficacy of transformative programmes such as broad-based black economic empowerment, employment equity and land reform.

As a country, we have taken these recommendations on board, as the Review Report serves as an important knowledge base and foundation for improvement of governance, especially through the implementation of interventions that are summarised in the National Programme of Action (NPOA), which the Cabinet endorsed on the 22nd June 2022.

Through this Review Report, the African Peer Review Mechanism has indeed answered the call for working with Member States to help identify and tackle governance challenges as a foundation for socio-economic development and implementing of Agenda 2063, our continental blueprint for development. As the APRM marks its 20th anniversary in 2023, we look forward to the celebrations, and it is indeed an anniversary of which we can all be proud.

May I aptly conclude with a quote from ‘The President’s Desk’ newsletter dated Monday, 07 February 2022, which was addressed to South Africans, after our 4th February 2022 APR Forum peer review, which is titled: ‘Good Governance Is Essential for Peace and Prosperity’

“Just as South Africa’s fortunes are inextricably tied to those of the continent, we are also inevitably affected by political, economic and other forms of instability in Africa. This makes our participation in the African Peer Review Mechanism all the more critical. We share a responsibility, alongside our sister countries, to strengthen good governance in Africa. After all, good governance brings investment, development, peace, progress and, ultimately, shared prosperity”.

With best regards,

## **H.E. President Cyril Matamela Ramaphosa**

President of the Republic of South Africa

Chairperson, African Peer Review Forum (2020-2022)

# COUNTRIES PARTICIPATING IN THE AFRICAN PEER REVIEW MECHANISM AND COMPOSITION OF THE PANEL OF EMINENT PERSONS

## Countries participating in the APRM

As of January 2022, the countries participating in the APRM are:

*Algeria, Angola, Benin, Botswana, Burkina Faso, Cameroon, Chad, Democratic Republic of Congo, Republic of Congo, Côte d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Ethiopia, Gabon, The Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritius, Mauritania, Mozambique, Namibia, Niger, Nigeria, Rwanda, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.*

## Composition of the Panel of Eminent Persons of APRM

Bishop Dinis Sengulane (Mozambique), representing Southern Africa (*Member and Lead Panel Member for the South African Second-Generation Review*)

Amb. Ombeni Yohana Sefue (Tanzania), representing Eastern Africa (*Chairperson*)

Dr. Ali Abderahman Hagggar (Chad), representing Central Africa (*Vice-Chairperson*)

Amb. Mona Omar Attia (Egypt), representing North Africa (*Member*)

Ms. Fatima Zohra Karaja (Algeria), representing North Africa (*Member*)

Dr. Ousmane M. Diallo (Mali), representing West Africa (*Member*)

Dr. Honore Mabonda, (Republic of Congo), representing Central Africa (*Member*)

Dr. Inonge Mbikusita-Lewanika (Zambia), representing Southern Africa (*Member*)

Dr. Abdoulie Janneh (Republic of The Gambia), representing West Africa (*Member*)

## Continental Secretariat of the APRM

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# ACKNOWLEDGEMENTS

The APR Panel of Eminent Persons welcomes readers to the APRM Second-Generation Country Review Report of South Africa. The Panel expresses its gratitude to the President of the Republic of South Africa and the Chairperson of the APR Forum of Heads of State and Government, H.E. Cyril Ramaphosa, for his leadership of the Mechanism and for his support of the second peer review of South Africa.

The Panel congratulates the South African APRM national structures including the APRM Focal Point and the Minister of Public Service and Administration, Hon. Ayanda Dlodlo as well as Deputy Minister for Public Service and Administration, Hon. Dr. Chana Pilane-Majake and South Africa's APRM National Governing Council (NGC) under the leadership of Chairperson Thulani Tshefuta and Deputy Chairperson Magdalene Moonsamy, as well as the APRM National Secretariat led by Dr. Patrick Sokhela for producing a Country Self-Assessment Report (CSAR) of excellent quality, which provided a balanced view of governance in South Africa. The CSAR formed a solid foundation for this second-generation country review report.

The Panel and its Country Review Mission are grateful to the Government and People of the Republic of South Africa for their warm welcome and hospitality, and for the facilities and resources put at the disposal of the review mission. The Panel congratulates the Government and People of South Africa for sharing the information used in this report and for the excellent spirit of professionalism and cooperation during the review process.





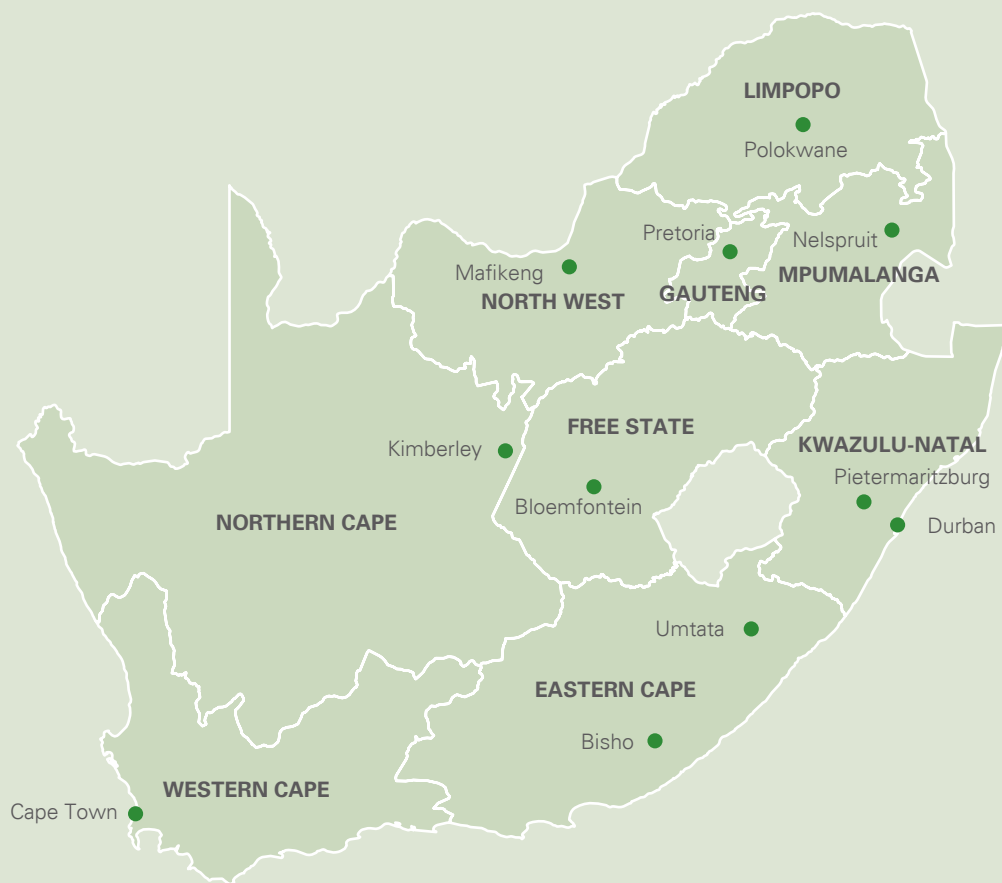
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# MAP OF THE REPUBLIC OF SOUTH AFRICA



Source: Statistics South Africa



# COUNTRY FACT SHEET<sup>1</sup>

**Land surface area:** 1 220 813 km<sup>2</sup>

**Key economic sectors:**

Mining, transport, energy, manufacturing, tourism and agriculture.

**Population**

**Total:** 59.62 million

**Male:** 29.12 million (48.9%)

**Female:** 30.5 million (51.1%)

**Official languages**

English

isiZulu

isiXhosa

isiNdebele

Afrikaans

Siswati

Sepedi

Sesotho

Setswana

Tshivenda

Xitsonga

**Currency:** Rand (ZAR) – 100 cents equal one rand.

**Time:** GMT +2 hours.

**Government:** Constitutional multiparty democracy, with three spheres – local, provincial and national government.

**Capitals**

Pretoria (administrative)

Cape Town (legislative)

Bloemfontein (judicial) The Constitutional Court is located in Johannesburg

**Provinces:** Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga Northern Cape, North West and Western Cape

**Transportation:** Excellent roads, rail and air facilities (both domestic and international). Public transport systems in major cities include the Gautrain between Johannesburg and Pretoria, and the Bus Rapid Transport System in major cities.

**Telecommunications:** World-class infrastructure. Internet and WiFi access is widely available. The five mobile (cellular) networks are Vodacom, MTN, Cell C, Telkom Mobile and Virgin Mobile.

**Health:** Top-quality public and private healthcare is available throughout the country. Malaria precautions are necessary in some areas.

<sup>1</sup> Source: South African Government (<https://www.gov.za/about-sa/south-africa-glance>)





# EXECUTIVE SUMMARY

## 1. HISTORICAL BACKGROUND AND THE APM PROCESS IN SOUTH AFRICA

### Historical Background

- i. South Africa went through a protracted and bloody struggle for democracy during which generations of the majority of South Africans suffered from severe injustices and oppression from colonialism and apartheid rule that lasted for 342 years, until 1994.
- ii. The country's first democratic elections on 27 April 1994 paved the way for the transition from the race-based oligarchic rule, in which the white minority was the primary beneficiary, to a system of democratic governance with strong emphasis on the sovereignty of the people. This was not achieved without difficulties. The peaceful transition, always overshadowed by the prospect of civil war, was the culmination of a long process to transform the State. The advent 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.



- iii. Though post-apartheid South Africa has a vibrant political democracy, it is still a democracy under severe socio-economic distress. The end of apartheid did not end racial divisions and racism, nor did it solve the economic and social problems that have continued to beset South Africa's thriving democracy since 1994. The racist policies implemented by the successive governments in the twentieth century had severely impoverished and dispossessed the black majority, leaving them with less than 30 per cent of the land, much of it barren and unproductive. Unable to develop such lands, the poor began to flock to cities following the disbandment of homelands and the lifting of the ban on freedom of movement. This urban migration, in turn, led to the growth of large informal settlements and encampments, particularly in key urban centres such as Johannesburg and Cape Town. Most of those living in these settlements as well as a large percentage of the adult black population nationwide cannot find work in the formal sector of the economy. This bleak situation is worsened by the fact that start-ups cannot thrive in the informal business sector that are considered hostile for subsistence start-ups.
- iv. This has led to widespread poverty, dichotomisation of the economy, poor living conditions and an increase in crime. South Africa's per capita crime rate, overall, exceeds that of many other countries. The government has acknowledged the seriousness of the problem, but has not been able to get under control the wave of crime against persons and property that is fuelled, among other things, by the high levels of inequality and poverty.

### **The APRM and its Implementation in South Africa**

- v. The APRM is an African-owned and African-led platform for self-assessment, peer-learning, and experience-sharing in democracy and good governance, in compliance with democratic principles, human rights, rule of law, and the acceleration of political, social and economic integration in Africa.
- vi. The primary purpose of the APRM is to promote policies, standards and practices that lead to political stability, high economic growth, sustainable development and accelerated regional and continental economic integration, using the codes and standards defined in the Declaration on Democracy, Political, Economic and Corporate Governance and the African Charter on Democracy, Elections and Governance (ACDEG).
- vii. The governance review of the APRM is conducted using the values, codes, and norms defined by the Abuja Declaration on Democracy, Political, Economic and Corporate Governance adopted on 9 March 2003 in Abuja, Nigeria. In 2021, the APRM approved a revised Questionnaire that includes State Resilience as



a thematic area. APRM structures in South Africa then agreed to include State Resilience as a theme to be reviewed in the second-generation review. With that in mind, this report addresses the following five areas of governance:

- Democratic and Political Governance;
  - Economic Management and Governance;
  - Corporate Governance;
  - Socio-economic Development; and
  - State Resilience.
- viii. South Africa is to be commended for its leadership role in the development of the NEPAD vision, which subsequently led to the establishment of the APRM programme on good governance in March 2003. From 2003, South Africa steadily implemented the APRM review, completing its First Self-Assessment Country Report in 2006, hosted a review mission from 9 to 25 July 2006, and completed its first peer review in Accra, Ghana on 1 July 2007. South Africa has produced three progress reports based on the recommendations of the first Country Review Report. Its final progress report was tabled at the APR Forum in 2014.
- ix. In December 2018, Cabinet initiated the second-generation APRM process in South Africa by establishing an inter-ministerial committee. The country also renewed its APRM National Structures by establishing a new APRM National Governing Council (NGC) under the leadership of Chairperson Thulani Tshefuta.
- x. Over a period of 17 months from July 2020, South Africa's APRM NGC conducted a country self-assessment and submitted its report to the APRM Panel of Eminent Persons and APRM Continental Secretariat in early December 2021. This was followed by a Country Review Mission to South Africa later that month.

### **The Country Review Mission**

- xi. The Country Review Mission to South Africa took place from 7 to 21 December 2021. The Lead Panel Member for South Africa, Bishop Dinis Sengulane, led a nineteen-member review team consisting of governance experts from 14 African countries.
- xii. During the Country Review Mission, the team met with national, provincial and local government officials as well as with civil society and private sector representatives. It also held working sessions on good governance practices

with the Deputy Speaker of the National Assembly, Hon. S.L Tsenoli, who was accompanied by MPs from the National Assembly. The Mission also met with the deputy Judge President of the Gauteng High Court, Hon Roland Sullivan and with members of the national executive including the Deputy Minister of Public Service and Administration, Hon. Dr Chana Pilane-Majake.

- xiii. The Review Mission held stakeholder meetings in all the nine provinces of the country. These stakeholders included MECs, MMCs, mayors, and members of provincial and local councils in all the nine provinces, representatives from Chapter 9 State institutions, Civil Society, and the private sector in Pretoria and all the provinces of South Africa.
- xiv. The South Africa Second-Generation Country Review Report is accompanied by a costed National Plan of Action (NPoA) that addresses the governance challenges highlighted in the Report. The NPoA is consistent both with the Medium-Term Strategic Framework 2019-2024 and the National Development Plan. Responsibility for its implementation rests with competent agencies.



## 2. DEMOCRACY AND POLITICAL GOVERNANCE

- xv. South Africa became independent with the hope of becoming a vibrant multi-cultural, multi-national, multi-racial democratic republic. To achieve this, the new leaders drew up a forward-looking and ambitious Constitution with liberal provisions for a Bill of Rights and the institutions popularly known as the Chapter 9 Institutions (The Public Protector, the South African Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General, and the Electoral Commission), which are independent and subject only to the constitution and the law.
- xvi. South Africa is facing a number of serious challenges, one of which is the growing erosion of trust in government and State institutions. This is partly because of the unethical behaviour common in public administrative services and in SOEs. The public is also dissatisfied with government's handling of migrants and refugees in South Africa. South Africa is a political and economic leader both in the SADC region and the continent. Despite its economic challenges, other Africans see the country as a land of refuge and opportunity. For this reason, there is an influx of African nationals with talents and skills that are contributing positively to the development of the country. The third major challenge that has led to loss of faith in State institutions is poor service delivery. Stakeholders constantly complained to the CRM about the poor quality of, and lack of access to services, especially in the provinces. This is mostly the result of the weaknesses or shortcomings of government structures at the local level, where the population regularly interfaces with public structures for much needed services.
- xvii. South Africa has a progressive constitution that protects democracy and the rule of law. The country's multi-party system allows for free competition among political parties and interest groups. The African National Congress, which led the liberation struggle against white minority rule, has governed the country since 1994, winning a significant majority of the vote in all elections. But of late, viable opposition parties have emerged and are increasingly participating in elections, giving South Africans alternative policy choices. Increasingly opposition parties are being represented at all levels of governance in the country.
- xviii. However, there are some limitations in the current democratic system in South Africa. First, elected officials are not directly accountable to the electorate even though there are forums in which legislators can engage with the electorate

at national and local levels. Worse still, these officials tend to be more loyal to their party leaders than to the electorate. This has led some to prefer independent candidates as decided by the Constitutional Court. The CRM observed that during the 2021 local elections, special interest groups came together and backed independent candidates who had ditched mainstream political parties, and provided them with platforms to run for the elections. This is a clear indication that South Africa's constitutional democracy is evolving in response to the popular will of the citizens.

- xix. Another obstacle to self-emancipation, particularly for the poor, those living in rural areas and even for most South Africans, is access to justice. The CRM mission noted that many South Africans are unable to get a fair trial or make appropriate use of the justice system due to lack of knowledge of the system, lack of financial resources since the formal justice system is very costly and beyond the reach of the poor, and corruption in the system. Racism was also identified as a major problem in South Africa's justice system since there is a general perception that it is dominated by judges and lawyers who are still influenced by the racist practices of apartheid. One of the efforts made by the government to address this challenge is the provision of free legal services for indigents through a government funded institution called Legal Aid South Africa. Unfortunately, despite concerted efforts by the government, access to justice remains a major challenge, particularly for marginalised and vulnerable groups like women and people living with disabilities in the country.
- xx. South Africa's 1996 Constitution (amended through 2012) makes provision, among others, for an elaborate Bill of Rights, and guarantees access to justice, the right to free trial and equality before the law. To implement these important constitutional provisions, the South African government has established courts and quasi-judicial mechanisms like specialised commissions (for instance, Commission on Gender Equality, Human Rights Commission) and law enforcement agencies like the South African Police Service.
- xxi. However, access to these institutions and services is still constrained by several factors. First, South Africans lament about corruption in the police service, and stakeholders in some provinces suggested that the justice system is mostly tilted towards the wealthy and powerful, especially as the police most often does not follow up complaints against the rich and powerful in the country. Thus, the poverty level among a majority of the people constrains their ability to afford legal services where and when desperately needed. Efforts by the South African government to provide legal aid are laudable, but there are concerns that services of Legal Aid South Africa are not accessible to people





outside the main towns, and rural residents are not aware of their existence. Also, administrative inefficiency in many lower courts affects citizen's access to justice. Indeed, some courts have huge backlogs of cases, and incidents of missing documents in courts sometimes compound this situation.

- xxii. The South African Constitution establishes a firm foundation for the separation of powers and makes provision for checks and balances between the three branches of government — the Legislative (Parliament), the Executive and the Judiciary. Parliament has the constitutional authority to pass laws and exercise oversight over the executive. Despite its clear constitutional authority as laid out in Chapter 4 of the Constitution, which provides for an independent, robust, and effective parliament, stakeholders indicated that, in practice, parliament is not fully independent of the executive and has not been exercising its constitutional oversight powers effectively.
- xxiii. The CRM noted that the president who is elected by the parliament after a nationwide election of members of parliament also appoints nearly all ministers from the parliament. This fusion with a dominant party in power for over two decades, and a party system in which the leader of the ruling party is also head of the executive branch of government, means that party leaders have great control over members of parliament from their parties. Under such an arrangement, members of parliament tend to support party political positions to stay in the good graces of their party leaders. MPs therefore are generally more loyal to their political party rather than to constitutional principles in crucial matters of parliamentary oversight over executive institutions.
- xxiv. Civil society in South Africa seems to be fully aware of the separate roles of each branch of government. Thus, expectations for a more robust parliament are increasing in the light of emerging challenges in the country. South Africans look to the parliament as much as they look to the executive. Stakeholders therefore suggested that a more empowered parliament would be needed for the executive to function more effectively and with the celerity the public expects of it.
- xxv. The CRM noted that racism and xenophobia, particularly against black Africans, is a potential conflict issue. Despite numerous efforts at racial integration, South Africa continues to experience direct and subtle institutional racism, mostly against the majority black population, in educational institutions and in white-collar employment. This is a potential threat to the stability of the country. It has resulted in internal uprisings, and strained relationships between South Africa and other African countries whose nationals are targeted in racist attacks in the country.

- xxvi. The government has made efforts to address this xenophobia and racism by strengthening laws and policies and by promoting dialogue on social cohesion in communities. The government and civil society organisations have also conducted a series of community education and sensitisation programs and dialogues on integration and social cohesion.
- xxvii. However, South African citizens have continued to harbour resentment towards foreign nationals in the country. Most of them are far more resentful of fellow Africans from the continent than they are of the structural and subtle racial disparities within their own society. They even accuse their government of giving favourable treatment to foreign nationals, of providing them with better incentives to establish businesses, and for making it easier for a foreigner than a local to gain employment. Also, some populist politicians galvanise the masses by blaming foreigners for the increase in crime and poverty in the country. This has led to incidents of hate speech against immigrants and the occasional use of derogatory terms in describing migrants, despite their contributions to the socio-economic development of the country. Stakeholders noted that hate speech and verbal xenophobic attacks increase during the electoral period when populist politicians use anti-foreigner sentiments to stir the public and mobilize voters. The campaign promises made by a few politicians to rid the country of foreigners if elected often resonate with locals who see foreigners as being responsible for their unemployment and poverty, and for crime in the country
- xxviii. In 2019, the South African government adopted a “National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance”. Under this Plan, the government decided to set up a legal and policy framework to prevent racism and xenophobia, particularly in areas such as immigration policy, policing and administration of justice, human rights training for government officials, and the promotion of the benefits of cultural and social diversities. The CRM commends this effort to fight racism and xenophobia and implores the government to ensure that all actions in the plan are implemented in a timely manner.
- xxix. With regard to freedom of religion, the South African Constitution provides that everyone has the right to freedom of conscience, religion, thought, belief, and opinion. The government does not require religious groups to register; however, registered groups receive tax-exempt status. The rights to freedom of religion and freedom of expression are enshrined in the Constitution of South Africa. However, concerns have been raised about freedom of the media, freedom of expression and censorship in the country.



- xxx. Poor public service performance at all levels is a cog in the wheels of progress, and an obstacle to the rapid economic growth and development of the country, which is the perennial goal of all political leadership, and the surest way to address unemployment, poverty, and inequality. The CRM found that the weakest link in the public service is at the local government level where most of the population interface directly with government to access basic services. The capacity of municipalities is a critical component of State capacity. In the absence of this the aspiration of South Africa to become a developmental State will not materialise. The poor performance of local government in meeting minimum operational and financial management standards undermines basic service delivery, more equitable spatial development and fiscal sustainability.
- xxxi. The municipal government, as the Constitution stipulates, has its own distinctive features. Its administrative structure is not as complex as those of provincial or national government, but it has its peculiarities that often confound the uninitiated in the intricacies of municipal lore and service demands. Though there are universal management systems, processes, regulations, and procedures which apply across levels of government, they can only be effective if the operators understand them and can adapt their implementation to their environment. Thus, it is important for South Africa to embrace the idea that there is a municipal government service with distinct characteristics, which managers who want to succeed in local public service delivery must master.
- xxxii. The South African government has made significant gains in promoting the rights of women. The country acceded to a wide range of international conventions and protocols on the advancement and protection of women's rights. Also, the government established a national gender machinery to promote gender equality and equity in all spheres of life. The institutional mechanism is made up of various structures comprising the State and civil society. The Gender Machinery as well as the Commission for Gender Equality have been acclaimed as key achievements displaying the Government's deep commitment to curbing and ending abuse against vulnerable groups. Although these mechanisms are in place, South Africa is still facing significant and increasing problems with violence against women. It is even said that the statistics quoted are often considered 'non statistics' because of under-reporting.
- xxxiii. The CRM learnt that despite provisions for the protection of the rights of refugees in the Constitution through the Bill of Rights, refugees, illegal immigrants, and undocumented persons continue to experience difficulties in

accessing rights, like the right to adequate housing, the right to work, the right to education, the right to health care and the right to social security. Refugees, illegal immigrants and undocumented persons encounter many challenges in securing or renewing their residential status due to the recent closure of refugee reception centres in major cities, and the delays in finalising asylum applications. The CRM noted that the long administrative asylum process can result in an individual holding asylum-seeker status for more than 10 years without being given the opportunity to apply for permanent residency as stipulated in Section 24 of the Refugees Act which states that, a recognised refugee can apply for permanent residence only after ten years of continuous residence in South Africa from the date he or she was recognised as a refugee. Children born in South Africa to refugees, illegal migrants and undocumented persons are denied access to documentation (including birth certificates), a situation that affects their access to healthcare and education since they are often not allowed to register in schools for lack of study permits.

xxxiv. The Panel therefore recommends that the Government should strengthen the lower courts with requisite resources and enhanced capacity to accentuate their efficiency at the local level. The government should also set up more courts to reduce pressure on existing ones. Also, the judiciary should be empowered and given the resources needed to fight corruption in the judiciary, particularly in the lower and the high courts, and ensure that these courts are staffed with competent and credible judges. In addition, the Parliament should devise open and transparent mechanisms to monitor and report the Executive's response and implementation of parliamentary resolutions, particularly those endorsing reports of Chapter 9 institutions like the Auditor General and the Public Protector. The Government should also consider passing the prevention and combating of hate crimes and hate speech bill to discourage incitement against minority groups and foreigners. The Provincial Governments should set up a Department of Local Government Service Matters in the Office of the Premier to produce a Scheme of Service for the evolution of a distinct and professional corps of municipal managers. Overall, the Government should prioritise and resource more local and community-oriented initiatives to target the fundamental causes of sexual abuse, including through social programmes to help rehabilitate offenders. Finally, the Government should explore the possibility of amending both the Immigration Act 13 of 2002 and the Refugees Act 130 of 1998 to accommodate the children of refugees and undocumented persons to accord them their fundamental human rights.



### 3. ECONOMIC GOVERNANCE AND MANAGEMENT

xxxv. The South African economy had a chequered decade before 1994 as most of the years had recorded no or negative growth. Indeed, the growth rate between 1984 and 1993 was 1%. Thus, as the 27 April 1994 general elections approached, there were high expectations for a marked increase in the quality of life post-apartheid. Certainly, the wide gap between black and white subjective well-being somewhat contracted. South Africa experienced relatively high and consistent economic growth that moved from 2.9% between 1994 and 2003 to 3.4% between 2004 and 2013, which helped to reduce poverty. This growth, however, dropped significantly between 2014 and 2019, hovering around 0.1% to 1.8% before the Covid-19 pandemic led to a sharp -7.0% drop in 2020. The envisaged improvements between 2020 and 2021 were undermined by the looting and violence that occurred mainly in KwaZulu-Natal and Gauteng in July 2021. Indeed, after almost three decades since apartheid ended, expectations have been dampened as South Africa remains the most unequal country in the world by any measure and the apartheid spatial divide continues to dominate the landscape of income and wealth.

xxxvi. The 2021 CSAR noted that the country recently launched a National Development Plan (Vision 2030), which contains a comprehensive framework to achieve targets in the long-run. Specifically, the long-term plan is directed towards achieving inclusive growth, economic prosperity and promotion of quality life. Additionally, the plan is expected to address the high rate of unemployment, inequality and poverty in the country. It has the following development targets: economic growth of 5.4%, lower unemployment rate of 6%, high investment, lower inequality with a 0.60 Gini coefficient and absence



of food poverty by 2030. The long-term plan was supported by the Medium-Term Strategic Framework (2019-2024). This medium-term plan is structured to achieve at least 50% of the targets in the long-term plan. The plan further highlights the features of the South Africa economy, which include low or fragile growth, middle-income trap, lack of competition, unemployable job seekers, and low domestic savings, leading to reliance on foreign capital inflows and poor skills profiles. These issues are historical and the overarching goal of the plan is to address the challenges in absolute terms.

- xxxvii. However, the growth of real output and income per person from 1994 to 2020 in South Africa is divided into two distinct periods: before and after the global financial crisis (GFC) of 2008-2009. The country has struggled to achieve the pre-crisis figures. The situation was made worse in 2020 when the country was hit by the negative impact of the Covid-19 pandemic. As output growth declined, the growth of income per person declined even faster, resulting in a significant drop in the standard of living. Additionally, the structural change exacerbated the already serious economic challenges.
- xxxviii. The structure of the economy has also changed significantly. The primary and secondary sectors have been outpaced by the tertiary sector, meaning that there is an uptick in “jobless growth”. There was a structural problem in the country even before the pandemic: the primary and secondary sectors that were supposed to deliver broad-based growth were already being overtaken by the exceptional growth of the tertiary sector. The larger share of the population is unskilled and hence does not possess the required skills to benefit from the burgeoning tertiary sector. Worse still, the shift to the tertiary, especially the finance and communication sectors, has not generated the jobs needed to address the structural problem of unemployment in the country.
- xxxix. In addition to output decline, especially after the GFC, investment and consumer spending also deteriorated. An analysis of the distribution of consumer spending per capita in the recent Living Conditions Survey 2014/15 in the 2018 World Bank report on Overcoming Poverty and Inequality in South Africa shows that the country had a Gini coefficient of 0.63 in 2015, the highest in the world. This has remained stubbornly significant since 1994. South Africa has a low-growth trap with slight reduction in poverty levels but growing inequality. After the GFC, the poverty headcount ratio to national poverty lines climbed from 53.2% in 2010 to 55.5% in 2014. In absolute term, 30.3 million people were below poverty lines in 2014.



- xi. Another challenge the country is facing is growing unemployment, especially youth unemployment. The fragile growth recorded after political emancipation failed to absorb people into the production process. Although, the unemployment rate was declining before the GFC, post-GFC indicated an upward trend until 2020. The South Africa Quarterly Labour Force Survey noted that in the third quarter of 2021 unemployment rose to 34.9%. Between 2011 and 2020, South Africa experienced a marginal decline in the unemployment rate. This shows that there is an inherent structural problem that the country has not been able to address. The youth unemployment rate rose from 49.8% in 2011 to 57.5% in 2019. Factoring the pandemic challenge into the unemployment dynamics, the figure is reported to have reached 66.5% in the third quarter of 2021. This further implies that three out of every five youth are unemployed, resulting in the pockets of conflict witnessed in the country.
- xli. The CRM noted that South Africa is concerned about the poor performance of the development plans it has adopted since political emancipation. To address this shortcoming, it undertook a holistic assessment of the drags to the attainment of set targets. Following this assessment, it was noted that implementation modalities were not given the desired level of attention during formulation of the NDP, which may explain why the plan has not been very successful. Indeed, one of the main problems identified was lack of a detailed and robust implementation mechanism for the NDP. After adoption, this Plan received broad stakeholder and societal support. Unfortunately, it did not achieve the intended social impact because of lack of a robust implementation mechanism.
- xlii. The CRM also noted during discussions with stakeholders in the provinces that poor outcomes are often the combined result of factors such as lack of skills, disregard for rules and regulations during recruitment into the public sector and lack of accountability of public officials. These factors have led to wide-spread human capacity shortcomings, and have hampered the ability of State institutions to deliver on set goals and targets.
- xliii. As stated in the CSAR, South Africa has a constitutional obligation to consult all key stakeholders. In this regard, there are mechanisms and processes in place to ensure continuous public and community engagement, especially during formulation of IDPs. These stakeholders' forums include the izimbizo where the executive interacts with communities on services and development issues, ward committees, Thusong Service Centres previously known as Multi-Purpose Community Centres, and community development workers. South Africa is committed to ensuring that public policies follow a highly

consultative decision-making process. This is grounded in the “Batho Pele” (people first) principle - consultation - which lays emphasis on citizen and community engagement. As part of this process, the parliament, provincial legislatures and local municipalities always consult the population, the relevant interested groups, civil society organisations and government agencies before any decision is made.

- xliv. The first progress report stated that although public consultation had increased from 1994, it was still inadequate. There are a number of institutions that promote public participation in public policy. One of such is the South African National Civic Organisation, which encourages its local structures to participate in hearings for integrated development plans and in ward committee processes. Also, Sector Education and Training Authorities (SETAs) for skills development and the Presidential Working Groups were strengthened to promote participatory democracy. These interface regularly with organised sectors.
- xlv. However, civil society organisations have raised concerns about their inadequate and limited involvement in policy implementation. Though their participation in decision-making has increased dramatically since the country’s political transition, their views and concerns are not taken into account during the implementation phase. The CRM noted that funding for civil society has been a major challenge, especially as those that have a significant grassroots impact are often not supported financially by the government. This lack of funding is hampering their ability to properly monitor implementation of government programmes.
- xlvi. Concerning the management of public funds, the South African government has, since 1994, implemented many policies and adopted legal instruments to develop and guarantee a sound public finance management system. These instruments include the Public Finance Management Act, the Municipal Finance Management Act and the Public Service Act. The government also launched Operation Clean Audit 2014. Through this instrument, accounting officers in municipalities and provincial departments are required to include integrated risk management, functioning of audit committees, internal audit units, audit management, and the Financial Capacity Building Model in their performance contracts. As a result of these, South Africa was ranked first in the 2010 Open Budget Index (OBI), after scoring 92 out of 100 points, and second-best in the 2012 OBI (90 out of 100 points).





- xlvi. Despite these efforts, the country is still experiencing poor financial management and a systemic financial haemorrhage. The Auditor-General's Report and other special reports have highlighted shortcomings in finance management, finance controls, fraud prevention and legislative compliance that have resulted in material and financial losses in some entities. The annual reports of the Auditor General of South Africa show that government financial systems are weak. This is compounded by the inability of the office of the AGSA to enforce its recommendations. This has led citizens to lose trust in government since some public officials are seen as being protected. To effectively combat corrupt practices and strengthen the authority of the AGSA, the weaknesses identified in the system must be addressed decisively. The Government has informed the Panel that it is envisaged that the new powers of the AGSA will address these weaknesses.
- xlviii. The CRM noted that the Public Service Commission (PSC), which exercises oversight for the Public Service, and monitors, evaluates, and investigates public administration practices, indicated that it had received a large volume of reports about fraud and corruption and had processed about 70% of all reported cases. Most of these reports were primarily related to anomalies in the public sector procurement process, especially in municipalities. However, the capacity of PSC and the relevant public institutions to investigate alleged fraud and corruption by government officials is limited. This lack of capacity has undermined government's fight against corruption.
- xlix. During engagement with stakeholders, it was revealed that though corruption was rampant and endemic in the country, procurement was seen as the sector most prone to the scourge. Though the Government had adopted a series of initiatives to address the flaws in the procurement process, stakeholders identified the absence of adequate ethics training as reason for the vice that is also being nurtured by the lack of proper functional audits and by the organisational, social, and political environment. Overall, it was acknowledged that South Africa has a robust anti-corruption legal framework, but the laws are not being adequately enforced. Lack of accountability has also exacerbated corruption and compounded the triple challenge of unemployment, poverty, and inequality.
- I. South Africa, which has the largest and most sophisticated economy in the southern region, played a leading role in establishing several regional entities. The SADC originated from the South African Development Coordinating Conference (SADCC). Its specific aim was not necessarily regional integration as currently conceived, but rather to reduce economic dependence on

apartheid South Africa. In anticipation of the dismantling of the apartheid system and the country's democratic transition, the authorities transformed SADCC to SADC in 1992. Following that transformation, the newly democratic Republic of South Africa joined SADC in 1994. Some of its declared aims after the transformation included establishing a free trade area by 2008, a customs union in 2010, a common market in 2015, a monetary union in 2016, and the introduction of a single currency in 2018.

- li. Unfortunately, though it has ambitious goals, objectives and targets, implementation has been less than impressive. The trend in intra-regional trade between South Africa and the southern African countries suggests that the Tripartite Initiative (consisting of SADC, the EAC, and COMESA) that was launched in South Africa in 2011 has not achieved significant success. This means that while South Africa's economic links with traditional developed countries remain important, its prospects for regenerated growth and development will increasingly depend on diversifying and strengthening its economic links with the dynamic economies of the South, particularly those of Southern Africa. The lack of success implies that the South African economy is still heavily dependent on commodities.
- lii. After apartheid, there was an optimistic belief that the end of sanctions against South Africa would result in a boom in foreign investment, but that is yet to materialise. Some argue this is due to a lack of skilled labour. Apart from a few instances where there were significant transactions (typically mergers and acquisitions) and disinvestments during apartheid, investment flows have not changed significantly in percentage terms since the 1970s.
- liii. More specifically, investment is hampered by legal uncertainties that discourage foreign investors, despite the promulgation of the Protection of Investment Act in December 2015, which strengthened legal guarantees for foreign investors. However, it is projected that South Africa may struggle to attract the level of FDI needs to meet its post-COVID recovery needs. It is even suggested that the country may fall into recession and be downgraded to junk status by international credit rating agencies. As of now, foreign direct investment flows are concentrated in the mining sector. If this continues, only part of the economy will be developed while the other sectors will stagnate or experience slower growth.
- liv. South Africa is signatory to many regional and multilateral trade agreements. These include: the Southern African Customs Union (SACU), which encourages duty-free trade between South Africa and the other four countries (Botswana,



Lesotho, Namibia, and eSwatini), the Southern African Development Community (SADC) Free Trade Agreement, which as of 2012 allows duty-free trade among 12 of the 15 members, and the European Union-South African Trade and Development Cooperation Agreement that entered into force in 2000, and has a progressive Free Trade Agreement (FTA) that has become the cornerstone of the regional trading landscape. South Africa has also negotiated agreements with the European Free Trade Association, the United Kingdom, and Mercosur. In addition, South Africa, through SADC, has finalised negotiations on Phase I of the Tripartite Free Trade Agreement, which creates a free trade area between the SADC, the East Africa Community (EAC), and the Common Market of Eastern and Southern Africa (COMESA). South Africa is also a member of the newly launched African Continental Free Trade Area (AfCFTA).

- iv. Trade between the country and the rest of the world has indeed been very dynamic. The country has diversified export products made up of raw materials, intermediate products, which accounted for 63% of total exports in 2019, and other natural resources. It exports to countries such as China, Germany, the United States, and the United Kingdom. Currently, the main export products are gold, bituminous coal, and iron ore.
- lvi. However, the CRM noted that, according to the UNCTAD report on Trade Misinvoicing in Primary Commodities in Developing Countries: The Cases of Chile, Cote d'Ivoire, Nigeria, South Africa and Zambia published in 2016, there is relatively little mention of gold in South Africa's export data, in spite of the fact that the country's trading partners report substantial amounts of gold imports from South Africa. This suggests that there is a considerable amount of trade underinvoicing. Trade misinvoicing, it has been noted, accounts for a substantial share of capital flight from developing and emerging countries. The role of transnational corporations, particularly those in extractive industries, in fuelling the outflow of unrecorded capital from these countries in the form of tax evasion and profit shifting has received greater attention recently.
- lvii. The report noted a massive discrepancy between the amount in the country's official gold export statistics and those reported by its trading partners. The total misinvoicing of gold exports to South Africa's leading trading partners was estimated at \$113.6 billion within a 15-year period. The report further noted that export underinvoicing was mainly due to smuggling in the gold sector and not necessarily to underreporting of the actual value of gold exports. This may suggest that virtually all gold exported by South Africa leaves the country unreported.

- lviii. Regarding investment, the CRM noted that foreign direct investment (FDI) has declined recently. FDI flows to South Africa have historically been uneven. Net FDI inflows as a share of GDP started improving from 1994 and peaked at 5.4% in 2001. Subsequently, these inflows dropped sharply from 2008, and further decelerated from \$4.6 billion in 2019 to \$2.5 billion in 2020, in line with the global reduction in FDI inflows.
- lix. The Panel calls on the government to adopt a bottom-up approach to development policy design and implementation. It also calls for the strengthening of institutional capacity to increase citizen involvement in economic policy formulation, adoption, implementation and evaluation. Government should also ensure an even-handed prosecution of all instances of corruption through the establishment of an overarching body that will also make a nationwide re-orientation and life style audit system a priority. Last, but not the least, the country needs to sign onto the Extractive Industries Transparency Initiative and implement an appropriate regulatory policy to address trade misinvoicing, profit shifting, smuggling, and tax evasion.



## 4. CORPORATE GOVERNANCE

- ix. Most economies in Africa rely heavily on agriculture, mining and other extractive industries that can have adverse effects on the environment. There is therefore a need to examine the impact that such activities can have on the environment, the economy, history and social life of their host communities. As good corporate citizens, responsible business organisations often carry out social investment projects, and integrate local small businesses into their value chains. By so doing, they positively impact the host communities and contribute to their economic growth and development. This is particularly relevant since Corporate Governance also means leadership, sustainability and corporate citizenship.
- xi. The South African Constitution is the supreme law, and all laws, including the common law regulating companies in particular, derive their force from it and are subject to constitutional oversight. Companies Act 71 of 2008 as amended in 2011 and 2021 (in process), is the primary company law in South Africa. The country was one of the first outside of the United Kingdom to introduce a code of corporate governance. The Institute of Directors South Africa ('IoDSA'), an industry body representing directors, convened a committee under the leadership of Mervyn King, a former High Court judge to compile the first Code of Corporate Practices and Conduct, which was first released in 1994. The Code has since been reviewed three times, leading to the current version King IV Report on Corporate Governance for South Africa 2016 ('King IV'). Certain recommended practices in the King Code are incorporated into the Johannesburg Stock Exchange (JSE) Listing Requirements, making it mandatory for JSE-listed companies to comply with them, with the rest of the King Code's recommendations to be implemented on an 'apply and explain' basis.
- xii. South Africa has been a consistent leader in implementing domestic, sub regional and continental Corporate Governance principles, commendable practices, international standards and codes, including the principles of Corporate Governance designed by the Organisation for Economic Cooperation and Development (OECD) and Commonwealth Association. It has also built on the governance principles of the 1994 (King I), 2002 (King II), and 2009 (King III) and a fourth revision (King IV) in 2016 as well as the inauguration of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, better known as the Zondo Commission or State Capture Commission, established in January 2018 to investigate allegations of state capture, corruption, and fraud in the public

sector in South Africa. This shows that efforts are being made to promote good governance and curb corruption.

- lxiii. However, despite the progress made to stabilise the economy and improve economic growth since 1994, including after the global financial crisis of 2008/2009, South Africa has remained a country of imbalances, disparities, distortions and paradoxes. Because of sluggish economic growth and the global Covid-19 pandemic, South Africa hit its lowest global competitiveness ranking, falling by three notches to 59th out of 63, according to the latest 2020 IMD World Competitiveness Ranking. In the Ease of Doing Business, South Africa ranked 84th out of 190 economies, according to the latest World Bank annual ratings. South Africa's position dropped to 84 in 2019 from 82 in 2018 and a commendable 32 in 2008, averaging 56.83 from 2008 until 2019.
- lxiv. For this reason, this Country Review Mission (CRM) focuses on five key issues that are considered critical to enable South Africa to (a) leverage investments and the leadership position attained in corporate governance within South Africa, the SADC region and continentally, (b) explore avenues to transmit practices into higher impact on South Africa's macro socio-economic development, and (c) expand the diversity of stakeholders involved in corporate governance, so that South Africa can optimise possible systemic outcomes. The five key issues identified are:
- *Regulatory Frameworks for Inclusive Oversight and Supervision:* South Africa's rankings in competitiveness, ease of doing business, gross domestic product, and performance of State-owned enterprises and State-owned companies, municipalities and local governments have boosted public interest and increased regulatory scrutiny of corporate governance practices. Today, there are more and more calls for innovative partnerships to boost the role of listed companies, the chamber of commerce, trade groups and associations, the director institute and its affiliates, the stock exchange and regulatory agencies, to make corporate governance work for the South African economy, especially through involving the informal economy in corporate governance.
  - *Improving Accountability and Performance of SOEs:* King IV has supplementary codes of the 17 principles for other organisational types including Municipalities, Non-Profit Organisations, SME and SOEs. However, systemic inefficiencies continue to prevent South Africa from having high performing and value adding SOEs even though there are frameworks and strong oversight Chapter 9 Institutions. Many South African listed and public organisations have been producing Annual Integrated Reports for over six years. Conceptual and operational



independence and autonomy of key institutions is not in doubt. However, there are increasing expectations for accountability and turnaround in the performance of SOEs, municipalities, local government councils and related agencies. Thus, there is need for improved accountability of SOEs.

- *Practical Ethics and Corporate Governance Continuous learning and Mentorship across Sectors:* CRM findings indicated broad awareness and knowledge of the King IV principles and guidelines, as well as their attendant training requirements. However, this awareness and knowledge needs to be translated into actual boardroom operations and decision-making processes. Again, the current socio-economic situation appears to indicate that King IV has not appreciated aggregate governance performance outcomes sufficiently, meaning that there is need to adequately review and upgrade existing supervisory frameworks to promote ethics within the corporate governance architecture.
- *Rescoping Shareholders of State-Owned Enterprises:* The Department of Public Enterprises has oversight responsibility for only seven of the approximately 700 SOEs that exist at the national, provincial, and local levels. In the current arrangement the Department of Public Enterprises is the shareholder representative of the South African Government with oversight responsibility for State-owned enterprises in key sectors. The other companies are not directly controlled by the Department of Public Enterprises, but by various other departments, with the Minister of Public Enterprises as the representative for the government. The findings of the Zondo Commission of Enquiry into allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State raised several corporate governance red flags and have led to the need to rescope the definition of 'Shareholder' of State-Owned Enterprises.
- *Role of Listed Companies in Socio-economic Development:* South Africa is a pioneer in Public – Private – Partnership (PPP) arrangements on the continent and is home to many Multinational Enterprises (MNEs). Because of the current socio-economic situation in the country, and to reverse the socio-economic downturn that is affecting the country's image globally, there is a need for innovation in PPP to address socio-economic challenges. JSE listed entities can partner with the South African government to extend the combined requirements of International Integrated Reporting (IIR), King IV and related requirements for the establishment of Social and Ethics Committees to extend the benefits of PPP to enhanced Listed Entities' Partnership in Socio-economic Development with their host communities in South Africa's Provinces and Municipalities, as well as host communities of their International Subsidiaries, given RSA's MTSP 2019 – 2024 Pillar 7.

## 5. SOCIO-ECONOMIC DEVELOPMENT

- lxv. South Africa has made significant gains in Socio-economic Development (SED) since the previous review, including setting up the National Governing Council (NGC) to monitor and follow up the APRM National Programme of Action. The NGC was officially approved by the Cabinet on 27 May 2020 as well as a National Coordinating Mechanism (NCM) for national engagements and reporting on Agenda 2030 for Sustainable Development and Agenda 2063 for “the Africa we want”.
- lxvi. Progress has also been made to promote gender equality in empowerment initiatives to increase women participation in the public sector and in parliament from 33% in 2004 to 44% in 2022. With Statistics South Africa, the country has also developed a transparent integrated tool to measure and assess progress in the implementation of the National Development Plan and the SDGs.
- lxvii. Nevertheless, the APRM Country Self-Assessment Report (CSAR 2021), the three different progress reports, and consultations at the Provincial levels, suggest that some underlying challenges persist in the quest for sustainable socio-economic development. These challenges have been identified and prioritised under the four broad APRM objectives in the SED-thematic area.
- lxviii. The issues identified are the need: (1) for multi-dimensional capacity building to implement socio-economic development programmes; (2) to accelerate land reform; (3) for a sustainable model for social-assistance; (4) to develop mechanisms to promote broad-based participation at local and provincial levels; (5) to strengthen civil society and private sector participation in formulation, design, and implementation of development strategy, especially at local level, (6) for socio-economic emancipation; and (7) to mainstream gender and issues of disability into government programmes at all levels.
- lxix. One of the key recommendations of the 2007CRM was that the Government of South Africa should implement a “National School Nutrition Programme, including social mobilisation for food gardens”. The Government has acted on this and other relevant recommendations relating to socio-economic development to lay a sustainable foundation for its long-term social assistance programmes. It has increased school feeding schemes with the implementation of the National School Nutrition Programme, which now serves as the main source of nutritious food for more than 9 million learners.
- lxx. Another key recommendation was measurement of poverty. The gaps identified in the previous poverty measurement contained in the 2007 CRM have been corrected with the new multi-dimensional poverty measure that





has assisted South Africa to measure poverty in a more comprehensive manner and not just in monetary terms. There have also been other notable advances in the delivery of certain social services such as potable water, sanitation, healthcare, especially HIV/AIDSs diagnosis and ARV programmes, and a reduction in maternal and infant mortality.

- lxxi. However, and despite this commitment and determination to deal with the socio-economic issues facing the country, it may take longer than expected for South Africa to develop a sustainable and equitable social protection programme that can adequately address issues of land reform, poverty, inequality, unemployment, and gender-based violence in a way that would result in sustainable socio-economic development. Conditions similar to those in the period prior to the base country review still persist in South Africa's socio-economic reality today, while a few have regressed notably. For example, while the conditions of the pre-2007 period depicted high levels of poverty, inequality, and unemployment due to the legacy of apartheid, the current conditions of poverty, unemployment and inequality are caused by "poor governance, corruption, slow growth, and lack of requisite capacity, among other factors". Weak institutional capacity has thus hampered the drive to eradicate poverty, create jobs for young people, and reduce inequality, especially as South Africa remains one of the most unequal societies on earth.
- lxxii. Given the legacy of apartheid, land reform is a topical issue in South Africa. The land question is also related to the poverty of many black people in South Africa. This was noted by President Cyril Ramaphosa<sup>2</sup> "*By (previously) depriving our people of their right to own and work the land on which they depend for sustenance and livelihood, this great injustice effectively 'engineered the poverty of Black South Africans'.*" According to the land audit report 72% of land is owned by the minority white population, Coloured own 15%, Indians 5%, Africans 4%, other 3%, and co-owners 1%. The need for urgent, equitable and sustainable land reform in South Africa remains critical to realising the NDP and achieving other socio-economic development objectives.
- lxxiii. The 2021 CSAR as well as CRM consultations suggest that the current capacity gaps are similar to those in the period before the base country review in 2007. For example, while the conditions of the latter period depicted poor and inadequate institutional and human technical capacities due to the history of apartheid and differential education systems for whites and blacks, the current conditions have been caused by "*a lack of ability to create and lead a capable state and to select and develop the right technical skills and*

2 <https://www.globalcitizen.org/en/content/black-farmers-south-africa-land-reform-farming/>

*capabilities to government functionaries due to cadre deployment policy and a leadership gap*". All these shortcomings have a similar effect on the delivery of sustainable socio-economic services to all South Africans, especially the vulnerable. The Minister of Public Service and Administration recently revealed that a significant number of senior managers in public service positions are not qualified. Capacity gaps have thus led to poor administration at various levels of government and to the collapse of service delivery in some municipalities. This has often led to violent uprisings. There is therefore a need for South Africa to develop and implement a multi-dimensional capacity framework to improve institutional, human and technical skills, and to boost the transformational and operational capacities of government as a whole.

- lxxiv. Social protection is aimed at protecting citizens from socio-economic risks and hardships in a way that can pull them out of the poverty trap. Such protection can also prevent or reduce generational poverty by addressing issues that lead to poverty and inequality. However, the 2007 CRR (par. 747) noted that South African communities need to be empowered to avoid the risks of a social dependence syndrome. The second generation CSAR (2021) corroborates this finding by suggesting that social protection in SA is now unsustainable amid persistent inequalities and deepening poverty levels. It is thus suggested that the South African Government review the current social protection model to gauge its efficacy and ability to reduce the risks of creating a dependency syndrome. The government should also develop a sustainable funding and resource mobilisation model for social protection programmes.
- lxxv. The Government has made considerable efforts to address the gaps in mechanisms to promote, extend and encourage stakeholder participation in socio-economic development. However, these initiatives have gained traction and prominence at the national, rather than local authority levels where they are needed more. The government is thus encouraged to urgently lead social cohesion/contract discussions at provincial and local authority levels to enhance engagement with citizens. Mismatching budget allocations with planning leads to poor service delivery outcomes. The government and provinces need to ensure proper budget allocation and accurate financial planning.
- lxxvi. The inability of the government to create sustainable jobs has remained a challenge for the country since the base countries review in 2006 according to the country review report (CRR, 2007:273). The country self-assessment report (2021, p. 52) acknowledges that unemployment has been worsened by the COVID-19 pandemic, although the unemployment rate has been a major concern for decades. According to the report, unemployment increased



considerably from 23.3 percent in 2009 to 34.6 percent in 2020. Although, the overall unemployment rate is disturbing, the situation is far worse among black African youth and women, especially those aged 15 to 24 years, who accounted for 64.4 percent of total unemployed people.

Ixxvii. The CRM noted that the creation of sustainable jobs, especially for the youth and women, is the surest way to eradicate poverty. The same sentiment was echoed in the first CRR (2007, p. 241). The South African Government has developed various policies and interventions to deal with poverty and unemployment and these included policies such as the RDP, IRDP, GEAR and AsgiSA among others, but the implementation of these policies has not yielded the anticipated results.

Ixxviii. The 2021 country self-assessment report acknowledges various initiatives and policy interventions by the government to address inequality. This acknowledgement aligns with those of previous reports. On page 42, it indicates that: “Despite, government effort to address poverty and economic despair, there is more that needs to be done to the inherited history of financial oppression and inequality ... today, South Africa is the most unequal society in the world...” The report further suggested that inequality remains one of the unfortunate reminders of the apartheid regime, which must be tackled with concerted regulatory and legislative reforms. Although, the robustness of current policies and initiatives cannot be questioned, securing competent and diligent people to implement the policies is crucial and urgent.

Ixxix. The Panel calls on the South African Government to develop a home-grown barometer to measure inequality. With this, it would be easy to identify sources of inequality and its intensity. It would also facilitate diagnoses of inequality through a modular approach. The Panel also calls on the Government to develop a quantitative tool to measure the efficiency of empowerment instruments, such as the BBBEE, Employment equity, CGS, IFSNP, land restitution etc. – [National planning commission, the presidency].

## 6. STATE RESILIENCE

- lxxx. South Africa has medium to high levels of disaster risk, of which natural hazards (droughts, wildfires, storms, sinkholes, floods, and tropical cyclones) and biological hazards (disease outbreaks) are the most predominant. These hazards are expected to increase in frequency and intensity in the future as a result of climate change. The country's frequent and increasing levels of disaster risk due to its exposure to several hazards have caused significant social and economic losses, and created conditions for vulnerability in many communities, especially in poor urban and rural settlements, with potential cross-boundary risks and humanitarian assistance obligations in times of emergency.
- lxxxi. Nearly seventy per cent of South Africa's surface area is vulnerable to wildfire risk. Grassland and savannah areas, which cover almost 40% of the eastern half of the country, are at highest risk. High fuel loads, due to an increase in alien invasive species, have exacerbated the intensity and heat of fires, making them difficult to control. More than two million hectares of grazing land were consumed by fire across South Africa between 2020 and 2021. There is also an increasing risk of fires in informal settlements, which are expected to double in the next decade.
- lxxxii. As stated in the CSAR, South Africa's Medium Term Strategic Framework (MTSF) 2019-2024 is an important guiding document which needs to be implemented expeditiously. The core priorities outlined in the Framework include: (i) a capable, ethical and developmental state; (ii) economic transformation and job creation; (iii) education, skills and health; (iv) consolidating the social wage through reliable and quality basic services; (v) spatial integration, human settlements and local government; (vi) social cohesion and safe communities; and (vii) a better Africa and world. Achieving a capable State implies that South Africa must invest in resilience to growing risks, because such risks have the potential not only to undermine the goal of achieving a capable state, but also the viability and sustainability of the State itself. In a globalising world, building resilience within the broader context of a "better Africa and the world" is key to achieving the Capable State. Though its efforts to address global and regional issues are commendable, the country still needs to strengthen its capabilities to the rising disaster risks.
- lxxxiii. The CRM found that South Africa has many early warning institutions such as the South African Weather Service (SAWS), the Council for Scientific and Industrial Research (CSIR), the South African National Space Agency



(SANSa), the South African Environmental Observation Network (SAEON), the South African Risk and Vulnerability Atlas (SARVA), the Applied Centre for Climate and Earth Systems Science (ACCESS), the South African Spatial Data Infrastructure (SASDI), the South African Earth Observation System of Systems (SAEOSS) – all of which contribute to in-depth understanding of hazard, vulnerability, and exposure in the country.

lxxxiv. In addition, the country has academic institutions that provide scientific information to the structures involved in disaster management. However, despite the country's strong research capacity that generates technical and scientific data on the most recurrent hazards, the CRM found that their data is often fragmented and outdated. Many risk information management platforms are not operational. Remarkably, there is no central repository to store information on hazard events and risks.

lxxxv. South Africa has also shown a strong commitment to disaster management at global, continental, and regional levels over the years. The adoption of the Kyoto Protocol (1997) in 2002, the Montreal Protocol on Substances that Deplete the Ozone Layer of 16 September (1987) in September 1997; the Hyogo Framework for Action: Building Resilience of Nations and Communities 2005-2015; the Sendai Framework for Disaster Risk Reduction (SFDRR) 2015-2030; the United Nations Framework Convention on Climate Change and recently; the Paris Agreement (2015); Sustainable Development Goals; and Agenda 2063: The Africa We Want, are just some of the agreements that the country has joined as part of its commitment to address challenges facing Africa and the world.

lxxxvi. Such commitment translated into the adoption of the Disaster Management Act No. 57 of 2002 (DMA) and the National Disaster Management Policy Framework (NDMF), 2005, which are the main policy frameworks for disaster management in South Africa. They have been instrumental in the government's approach to disaster management over the past 20 years. But, though these frameworks have provided a solid foundation for the implementation and integration of Disaster Management at all levels of government, the CRM noted that the efficacy of these structures is severely hampered by lack of financial and human resources, especially at sub-national levels. The CRM noted many instances where public officials and political decision makers failed to participate in Disaster Risk Reduction (DRR) governance structures. Currently, one of the main challenges is the political turnover in leadership at the provincial and municipality levels, which has a serious implication for disaster management implementation. The tendency by some leaders to not

prioritize disaster management has resulted in deficiencies in integrated DRR planning in some provinces and municipalities.

- lxxxvii. The CRM also noted that the DMA focuses mostly on natural disasters to the detriment of other disasters like pandemics and the accidents in the mining sector. This is a major weakness that needs to be addressed by broadening the scope of the current Disaster Management Act.
- lxxxviii. The CRM found that placing the NDMC under the Department of Cooperative Governance and Traditional Affairs has limited its potential for action since there is no effective oversight. The CRM strongly encourages the Government to appropriately place the NDMC within an administrative structure that is answerable to the highest political office, such as the Office of the President or Deputy President, as is the case in other countries on the continent.
- lxxxix. Water scarcity is a major challenge in South Africa, which is mainly due to the country's low average annual precipitation and the unevenness of surface and groundwater distribution. This inherent natural phenomenon has resulted in unequal access to and control over water, with poor people typically not having access to potable water. Many rural and suburban South Africans still do not have access to running water in their homes, especially during periods of drought.
- xc. The CRM also found that some provinces and municipalities do not comply with DMA requirements to put contingency plans in place and have not fully implemented them. Also, they have not been submitting annual risk assessments which are needed by the DMA to make provision for these types of risks. Local and provincial governments are required to give feedback annually on a variety of issues relating to vulnerability assessment. In the same vein, there is little compliance with the National Disaster Management Framework, which requires post-disaster reviews and reports after significant events. What is certainly required therefore is stringent enforcement of legislation.
- xc. South Africa is party to global and continental disaster risk reduction frameworks that call for significant investment in financial, infrastructural and capacity development in order to achieve progress in disaster management. While the Hyogo Framework for Action (2005-2015) focuses on "Building the Resilience of Communities and Nations to Disasters", its successor, the Sendai Framework for Disaster Risk Reduction, 2015-2030 (SFDRR) advocates for "Investing in Disaster Risk Reduction for Resilience". More recently, the Paris agreement called for substantial reduction of greenhouse gas emissions to achieve a climate neutral world by mid-century.



- xcii. The CRM 2007 CRR provided an overview of the socio-economic vulnerability of the population more than a decade after the country's political emancipation to democratic rule. The report highlighted a number of cross-cutting issues worth discussing in the context of State resilience to shocks and disasters, including extreme capacity constraints and poor service delivery as well as poverty and inequality. The dimensions and extent of disaster vulnerability, the adequacy of policy interventions and the contribution of human action to disasters require huge investments to reduce the vulnerability of the country, communities, and citizens.
- xciii. From the analysis of the annual reports of the National Disaster Management Centre (NDMC), the CRM noted the predominance of the traditional models. South Africa remains more focused on the traditional approach (reactive) to disaster funding mostly targeting emergency to address disaster-related issues. There is need for a paradigm shift from reactive to the proactive investment approach to financing and resilience.
- xciv. As Africa's most industrialised nation, South Africa is the world's 8th-largest emitter of greenhouse gases mainly due its State-owned utility Eskom Holding, which relies on coal for 80% of its power output. The South African government acknowledged the need for transition from coal to clean energy technologies to generate electricity. Despite the commitment to the global climate agenda, more concerted efforts are still needed to transition from coal to clean energy.
- xcv. The CRM found that one of the major constraints in the current disaster management structure is lack of funding for disaster risk reduction, coupled with the delays in or even the unavailability of government support. In addition, the country's overall funding approach has been more reactive than proactive. Also, despite their availability, South Africa has not been able to integrate innovative and sustainable disaster risk financing mechanisms such as the Forecast-based Financing (FbF) and the African Risk Capacity into its disaster management.
- xcvi. Although the South African Government provided considerable support to organisations in the form of tax relief, disaster relief funds, emergency procurement, wage support and funding to small businesses, these efforts have been undermined by allegations of widespread corruption and mismanagement, especially in the procurement and supply of Personal Protective Equipment (PPE). Reports about lack of accountability and allegations of misappropriation of financial resources allocated for Covid-19 relief and other disasters are currently under investigation by the National Treasury.

- xcvii. The CRM found that South Africa’s early warning system is mainly managed by functional entities that do not have interoperable situation rooms for national, provincial, and municipal level emergencies. This often hampers speedy early actions and preparedness. Even where warning is issued in a timely manner, there are still barriers that prevent communities from effectively responding. While disaster response policies in South Africa are well articulated, the response to disasters is mainly characterised by start-stop-start-stop practices.
- xcviii. The African Peer Review Panel urges the government to review the National Disaster Management Act of 2002 in the light of lessons learnt from Covid-19, and grant stronger powers to the NDMC, which should be located in the Presidency, to address the operational and functional challenges in the implementation of the Act. South Africa will require significant investment to expedite the country’s transition from coal to clean energy and limit its greenhouse gas emissions as required by the Paris Agreement (2015). It should also implement the Forecast-based Financing (FbF) tool, which is an innovative, sustainable and efficient disaster funding mechanism, and focus investments more on preparedness than on disaster response. The Panel urges the Government to establish a disaster recovery facility to rebuild the resilience of communities affected by disasters, strengthen their capacities to withstand future shocks and disasters, and establish a Multi-Hazard Early Warning System Programme with interconnected situation rooms across provinces, the SADC Humanitarian and Emergency Operation Centre as well as the AU continental Multi-Hazard Early Warning Situation Room. Finally, in light of the nationwide consultations, the Panel urges the South African Government to improve dialogue and cooperation among scientific and technological communities and policymakers, and to enforce compliance by provincial and municipal governments with risk assessment processes.





# COMMENDABLE PRACTICES, CROSS-CUTTING ISSUES AND CONCLUSION

## Commendable Practices

xcix. South Africa has many commendable governance and socio-economic development policies and practices. The following 15 Commendable Practices have been identified in the five thematic areas of the report. These are:

- *Legal and Policy Framework for the Prevention of Racism and Xenophobia:* In March 2019, the South African government adopted the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance. This was an important step in the fight against racist and xenophobic violence in the country. The adoption of a full plan demonstrates, first, that the government has recognised that racism and xenophobia are serious threats to internal peace, and second, that there is a need for a more systematic and sustained effort to combat racism and xenophobia and the violence and human rights abuses associated with them. The government intends to implement this plan for five years (2019 to 2024) with the aim of raising public awareness about anti-racism and social cohesion, and increase anti-discrimination efforts towards greater equality. The NAP requires a whole-of-government approach to achieve its goal of ending xenophobia and achieving greater equality and justice.
- *South Africa's Chapter 9 Institutions:* Chapter 9 of the Constitution of South Africa creates six institutions: (a) The Public Protector; (b) The South African Human Rights Commission; (c) the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; (d) The Commission for Gender Equality; (e) The Auditor-General; and (f) The Electoral Commission. These institutions are independent, and subject only to the Constitution and the law. They must be impartial and exercise their powers and perform their functions without fear, favour or prejudice. These institutions have so far justified the confidence of the framers of the constitution by standing as bulwarks against the erosion of democratic rights and values in South Africa.
- *Policies and Measures to Curb Sexual Violence:* The Government of South Africa has put in place extensive policies and measures to both curb and eliminate sexual offences against women, children and persons living with disabilities in compliance with international laws and efforts. Investments have also been made to bring these initiatives from policy to action. For instance, the 16 Days of Activism for No Violence Against Women and Children Campaign, the 365 Days National Action Plan to eradicate violence and the popularisation of 'Project

Ndabezitha' against domestic violence cases are all part of direct efforts and drive by Government to effectively implement the Domestic Violence Act of 2007 and Children's Act of 1993. The campaigns have not only served to heighten awareness, they have also empowered communities with knowledge to act to prevent abuse.

- *The Open Budget Process:* The Open Budget Process provides government officials, legislators, development practitioners, civil society organisations, journalists, and researchers with an independent, comparative measure of government budget transparency in countries around the world. The International Budget Partnership (IBP) undertook this initiative because of the urgent need to improve budget transparency. The Survey report suggests reforms that countries can adopt to improve budget transparency, increase public participation, and strengthen institutions of accountability. The South African budget reform programme that was started in the early 1990s continues to lead in the world with respect to budget openness and transparency. In 2008, South Africa ranked second in the world, after the United Kingdom. Amongst the top performing countries, only South Africa and New Zealand were once again part of the top performers in 2017 and the two countries ranked in joint-first place during the 2020 survey.
- *Consideration of the Impact of FDI Policy on National Development:* The South African Government considers Foreign Direct Investment (FDI) as most useful when it achieves specific national policy aims, which according to the National Development Plan, include fighting rampant unemployment, creating inclusive growth, and accelerating progress. A key element in the Competition Amendment Act is the provision for the President to determine what constitutes national security interests that a foreign investment could potentially threaten. Public interest considerations such as the need to protect jobs, promote localisation, amongst other considerations, are increasingly serving as the basis for the approval or rejection of foreign investment in the country.
- *Promoting an Enabling Environment and Effective Regulatory Framework for Business:* The Strategic Plan of the Department of Small Business Development 2020-2025 (DSBD), amongst others, specifically provides for a township and rural entrepreneurship programme to formalise the informal businesses of micro enterprises and turn them into more productive ventures. The Plan also provides for the facilitation of the banking of unbanked spazas and builds a database for future government planning and support. Cabinet adopted the National Informal Business Upliftment Strategy (NIBUS) and Implementation Framework (2014/2015) in 2014, which forms one of the policy and strategic focuses of



the DSBD. The Department reported in 2018/19 that 430 informal businesses had been supported during the year by its Enterprise Development Division (now Department of Small Business Development) through the Black Business Supplier Development Programme.

- *Alignment of Corporate Social Responsibility Initiatives:* The Enterprise Investment Programme (EIP) that was launched in 2008 under the Department of Trade and Industry (DTI) acts as an incentive grant comprised of the Manufacturing Investment Programme and the Tourism Support Programme and is accessible to both local and foreign owned entities intending to implement Corporate Social Responsibility (CSR) initiatives. Between 2008 and 2021, reports from the Annual Small Business Summit highlighted a significant increase in CSR programmes for local communities and in the integration of SMEs into economic and technological value chains of major corporations.
- *The National Development Plan and PPP Arrangements:* South Africa's National Development Plan, Vision 2030 contains a unified vision of South Africa's national development goals and priority areas of action. In many sectors such as education, this vision is premised on strong private-public partnerships. In this regard, the NDP calls for 'partnerships across society working together towards a common purpose' and 'a virtuous cycle of building trust and engaging in discussion to confront the most pressing challenges – one that takes a long-term view'. A number of tax incentives encourage businesses to invest and expand production, improve the country's competitiveness as an investment destination, and reduce the appeal of base erosion and profit shifting. There are also allowances to increase investment in development of new business, for Research and Development in new technologies and to increase investment in critical areas.
- *South Africa's Expanded Social Assistance Benefits:* South Africa has adopted a number of policies and strategies to enhance the lives of its people with, in particular, the social assistance programme and its benefits in the form of grants. These include the Old Age Pension, the Child Support Grant, the Social Relief of Distress, the Care Dependency Grant, the Grant In Aid, the War Veteran's Grant, the Foster Child Grant, and the Disability Grant. A report by the World Bank in 2021 highlights that: "the grant system has established effective delivery systems that identify beneficiaries and include registration, payment, and grievance redressal processes which can be scaled up rapidly during crises such as the COVID pandemic," while noting that social assistance programme account for 3.3% of GDP and 15.4% of total government spending, which is relatively higher than the average of other middle income countries, and that "South Africa spends five times more than its peers on social pensions."

- *Broad-based participation mechanisms and dialogues:* South Africa has some notable broad-based participation mechanisms, among which are the Izimbizo which was highlighted as a best practice in the 2007 APRM Country review report, the National Coordinating Mechanism (NCM) and the SDGs Tracker e-Platform. The Imbizo is a public participation government initiative, which consists of face-to-face interaction and engagement between senior government officials from all spheres of government and the public. The National Coordinating Mechanism (NCM) is led by the National Planning Commission at the Presidency, and is dedicated to encouraging consultations with different national and international stakeholders to ensure proper implementation of South Africa's NDP. The SDGs tracker e-Platform was initiated by Statistics SA in December 2019 to track performance and raise awareness among citizens and policymakers on the sustainable development goals (SDGs).
- *Private Sector alignment with Community Initiatives:* Leading private sector companies in South Africa including Anglo-American, Sishen and Investec align their corporate social programmes with the National Development plan and dedicate funds for community-based initiatives, with a special focus on education, youth employment, climate change and gender empowerment. One example was where businesses worked with NEDLAC in KwaZulu-Natal to support community efforts to address skills gap challenges. In Durban, the city is developing training programs in three districts on the skills necessary to drive the 4th industrial revolution and the blue and green economies. The choice of programmes is determined to align to the comparative advantages present in each district and focuses on building entrepreneurship, with plans to ultimately set up a community college in each district.
- *Using risk knowledge to improve resilience of Municipalities:* South Africa's Green Book is an online planning tool that provides quantitative scientific evidence on the likely impacts that climate change and urbanisation will have on South Africa's cities and towns, and presents various adaptation actions that can be implemented by local governments to support climate resilient development. The tool provides a composite risk profile for each municipality and its settlements in South Africa, detailing vulnerability profiling, population projections, exposure to climate hazards, and the impacts of climatic changes on key resources.
- *Post-disaster needs assessments in the Western Cape Province:* The value of post-disaster reviews is underlined by the Western Cape's Disaster Management Framework whose aim is to maximise the benefits of lessons learned through routine comprehensive reviews after all significant events that are classified as disasters, with the findings used to update Disaster Risk Management plans in



the Province. The Province has made it mandatory to conduct post-disaster needs assessment for every disaster.

- *South Africa brings relief to Cyclone Idai victims:* South Africa participated in efforts to find and rescue the missing and to bring aid to victims in Mozambique and Zimbabwe during Cyclones Idai and Kenneth. The country mobilised financial and other aid, and provided technical support through the South African National Defence Force (SANDF) and South African NGOs such as Rescue South Africa that operated jointly with the United Nations Agencies and volunteers.
- *The Government's Response to COVID-19:* Shortly after the onset of the COVID-19 pandemic, the South African Government made provisions for tax relief, release of disaster relief funds, emergency procurement, wage support through the Unemployment Insurance Fund (UIF), and funding to small businesses, especially those in the tourism sector. As noted by the Lead Panel Member for South Africa during the Country Review Mission in December 2021, South Africa has demonstrated resilience and global leadership during the pandemic through its National Command Council decisions as well as its world-renowned medical and scientific capabilities, including detection of the beta and omicron COVID-19 variants. The swift decision to publicise the findings on the variants to the global community despite the risks to the South African economy, including its tourism sector, is commendable.

## Cross-cutting Issues

- c. Since the end of apartheid in 1994, South Africa has made progress in socio-economic development, addressed challenges in each of the five thematic areas as well as challenges that impact negatively on more than one thematic area. These persistent and recurring challenges are of a cross-cutting nature. These are discussed in chapter seven of the report and include (i) Gender-Based Violence, Corruption, and Implementation of Policies.
- ci. *Gender-Based Violence:* Gender based violence presents immense multi-dimensional challenges from socio-cultural, legal, security, economic and public health perspectives. Persistent and pervasive norms that encourage violence against women and girls continue largely unchecked. 51% of women in SA say they have experienced GBV, with 76% of men saying they have perpetrated GBV at one stage in their lives (2010 Gauteng sample). A similar study revealed that one in five women report that they have experienced violence at the hands of a partner. In 2019/20, 53 293 sexual offences were reported at an average of 146 per day, up from 52 420 in 2018/19. Most of

these were cases of rape. The police recorded 42 289 rapes in 2019/20, up from 41 583 in 2018/19, an average of 116 rapes each day (SAPS Crime Stats). In 2019/20, a total of 2 695 women were murdered in South Africa. This means a woman is murdered every three hours.

- cii. Femicide is five times higher in South Africa than the global average, with South Africa having the fourth-highest female interpersonal violence death rate out of the 183 countries listed by WHO in 2016. The CRM identified deeply rooted cultural discrimination practices against women as one of the major cause of continuous gender inequality in South Africa. The CRM further identified the persistent violence against women to be deeply rooted in broken social structures.
- ciii. The South African government has adopted many laws and mechanisms to address violence against women. In 2009 the Government established specialised courts dedicated to sexual offences. These courts were intended to prevent secondary trauma for victims of sexual offences and to improve conviction rates and a speedy delivery of justice. The mandate of the Domestic Violence Court was also expanded to cover matters of individuals in a full range of partnerships including co-habiting regardless of the duration along with marriages. This was done to ensure more inclusiveness and allow people who experience abuse from partners to easily have access to legal recourse.
- civ. The limited socio-economic opportunity available to women also has a significant impact on their vulnerability to Gender-Based Violence. A study by the University of Stellenbosch (2020) estimates that around 38% of households are headed by women and these households are approximately 40% poorer than those headed by men. An “Analysis of The Phenomenon of GBV and Femicide 2020” revealed that the prevalence of physical and sexual violence in the country decreased with the higher wealth quintiles. Black women are therefore disproportionately more likely to experience gender-based violence because of limited economic opportunities that limit their access to other basic human rights.
- cv. The APR Panel urges the Government of South Africa to (i) implement its own policies on gender mainstreaming including gender budgeting at all levels to ensure sufficient resources to deal with GBV, and (ii) improve capacity of law enforcement officers and other stakeholders to deal with GBV.
- cvi. *Corruption*: A study by Corruption Watch in 2020 confirmed that almost 33, 000 whistle-blower reports of graft-related complaints were received between 2012 and 2020, of which 16% (857) contained allegations of corruption within the local government administrative arm of government.



- cvii. The aggregated data suggests that 28% of the reported cases were related to bribery, while procurement irregularities came second at 24%. Employment irregularities, abuse of power and embezzlement accounted for 11%, 9%, and 8% respectively.
- cviii. The APR Panel therefore recommends that the State should improve its institutional capability and competence through reorganization of the State Investigation Unit (SIU), which is the main organ responsible for collecting the hard evidence needed for prosecution. In addition, the Panel recommends that the vacancies at the National Prosecution Authority (NPA) be filled to strengthen the institution with competent professionals who can effectively and expeditiously prosecute suspects. Although, the country has mechanisms to protect whistle-blowers, the recent attacks and assassination of whistle-blowers show that a lot more needs to be done to ensure that State witnesses are well-protected. More importantly, the Panel urges the government to urgently implement the report by the Zondo commission of enquiry.
- cix. *Implementation of Policies:* South Africa's long-term development goals are articulated in the National Development Plan (NDP) 2030, which presents the overarching vision of the country to achieve sustainable political, social and economic development. The NDP 2030 is implemented through the Medium-Term Strategic Frameworks (MTSF), and the current 2019-2024 period has clearly-defined implementation plans for each of the seven priority areas to address the triple challenges of poverty, inequality and unemployment. In addition to the NDP and MTSF, each department has an array of legislation, strategies and policy frameworks that govern and regulate their respective sectors. In spite of comprehensive legislation, strong institutional frameworks and well-defined strategies, the CRM observed that there are serious challenges and obstacles to effective policy implementation in all sectors.
- cx. These challenges and obstacles often result in poor performance by SOEs, poor service delivery at municipal levels, weak administration, financial mismanagement, and corruption, all of which lead to failed development outcomes, and erode public trust and confidence. The CRM identified three main factors that contribute to weak implementation: (1) weak capacity to implement policy; (2) noncompliance with legislation and regulations; and (3) non-enforcement of recommendations by oversight and supervisory bodies.
- cxi. The APR Panel calls on the Department of Planning, Monitoring and Evaluation to (i) conduct a staff capacity audit for middle to senior management level staff, up to director level, in all Government departments at the national,

provincial and municipal levels to determine baseline skills, in collaboration with the National School of Government (NSG), the Public Service Sector Education and Training Authority (PSETA), and The Local Government Sector Education and Training Authority (LGSETA); (ii) address the skills gaps using multiple approaches including short exchange programs, structured coaching, training and re-assignments with support of applicable professional services firms and associations in audit, finance, performance management, project management, change communication, change management, coaching, etc and implement change management strategies for priority sectors; and (iii) build a database of required competencies at key levels within the public service, to serve as a benchmark for hiring across the public service in national, provincial and municipal levels with standardised processes for recruitment and promotions.

## Conclusion

- cxii. The APR Panel is confident that South Africa has all the policies, tools, capacities and political support necessary to improve governance and contribute to the successful implementation of the National Development Plan and of the AU Agenda 2063, Africa's long term socio-economic development plan.
- cxiii. The APR Panel commends South Africa for its leadership role as one of the founding nations of the NEPAD vision that led to the establishment of the APRM programme on good governance in March 2003, and for its dynamism in being the fifth AU Member State to have completed two APRM governance reviews. Finally, it is also grateful to the Government and People of the Republic of South Africa for their warm welcome and hospitality and for the facilities and resources placed at the disposal of the review mission.







# CHAPTER ONE

## 1. THE APRM IN SOUTH AFRICA

1. This Chapter briefly introduces South Africa's APRM second-generation review and presents a historical background, followed by a brief outline of the APRM process in South Africa from accession to the start of the APRM second-generation review in 2021.

### 1.1 Brief Historical Background<sup>3</sup>

2. South Africa went through a protracted and bloody struggle for democracy during which generations of the vast majority of the population suffered severely from deprivation and oppression under the colonial and apartheid rule that lasted for 342 years. It is for this reason that the country cherishes its freedom. Following its emancipation, the country adopted the Constitution of the Republic of South Africa in 1996.

3 This section is based on the Historical Overview in the first APRM Country Review Report (2006)



3. The South African Constitution has been hailed as one of the most progressive in the world. Its vision for the country is progressive, non-racist, non-sexist and human rights-based. The Bill of Rights contained in it protects human dignity, human security, freedom, equality and justice. Given the country's dark history, the drafters of the Constitution opted for a cooperative State with three spheres of government and a 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.
4. The country's first democratic elections on 27 April 1994 paved the way for the country to 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 strong emphasis on the sovereignty of the people. This progress was not achieved without difficulty. The peaceful transition, always overshadowed by the prospect of civil war, was the beginning of a far reaching transformation of the State. The advent of popular participation made it possible for civil society organisations (CSOs), including the media, to play an important role in pressing for reform.
5. Though post-apartheid South Africa has a vibrant political democracy, it is still a democracy under severe socio-economic distress. The end of apartheid did not necessarily lead to the end of racial divisions and racism, nor did it solve the economic and social problems that have beset South Africa's thriving democracy since 1994. Discriminatory policies that had been implemented by successive governments throughout the 20th century had severely impoverished and disposed the black majority, leaving them with less than 30 per cent of the country's land, much of it of poor quality. Unable to sustainably develop agriculture on the land allotted to them, the poor began to flock to the cities, especially after the disbandment of homelands and the lifting of the ban on movement. Urban migration, in turn, exacerbated the problem of informal settlements known as squatters, and led to the growth of large encampments, particularly in Johannesburg and Cape Town. Most people in these settlements and a large portion of the adult black population nationwide today cannot find work in the formal sector of the economy.
6. This has led to widespread poverty, dichotomisation of the economy, appalling living conditions, increased crime and violent uprisings. South Africa's per capita crime rate, overall, has exceeded that of many other countries in recent years. The government has acknowledged the gravity of the problem but has not been able to end the crime against persons and property that is fuelled in large part, by the high levels of poverty.



## 1.2 The APRM and its Implementation

7. The APRM is an African-owned and African-led platform for self-assessment, peer-learning, and experience-sharing in democracy and good governance, in full respect for democratic principles, human rights, the rule of law, the acceleration of political, social and economic integration in Africa.
8. The primary purpose of the APRM is to promote policies, standards and practices that can lead to political stability, high economic growth, sustainable development and accelerated regional and continental economic integration, based on the codes and standards defined by the Declaration on Democracy, Political, Economic and Corporate Governance and the African Charter on Democracy, Elections and Governance (ACDEG); and
9. The Expanded Mandate includes two January 2017 decisions including Assembly/AU/Dec.631 (XXVIII) for tracking the implementation, monitoring and evaluation of key governance areas on the continent, and for APRM to provide support to Member States in the field of Rating Agencies, Assembly/AU/Dec. 686 (XXX) of Jan 2018 for APRM to position itself as an early warning tool for conflict prevention on the continent, in the context of harmony and synergy between the APRM, APSA and AGA, and Assembly/AU/Dec.720(XXXII) of Feb 2019 requesting the Africa Governance Report be developed by the APRM in collaboration with AGA for presentation every 2 years, and also requested the APRM to assist States in developing national governance reports.



10. The APRM's governance review is conducted in relation to the values, codes, and norms that are enshrined in the Abuja Declaration on Democracy, Political, Economic and Corporate Governance adopted on 9 March 2003 in Abuja, Nigeria. In 2021, the APRM approved a revised Questionnaire that includes State Resilience as a thematic area. APRM structures in South Africa then agreed to include State Resilience as a theme to be reviewed in the second generation review. With that in mind, this report addresses the following five areas of governance:
- Democratic and Political Governance
  - Economic Management and Governance
  - Corporate Governance;
  - Socio-economic Development; and
  - State Resilience

### Stages of the APRM Process

11. In line with the Base Document, the APRM process has five stages, as follows:
12. *Stage One* is the preparatory process, both at the APRM Secretariat and national levels. Under the direction of the APRM Panel, the Secretariat sends a questionnaire on the five thematic areas of the APRM to countries to be reviewed. The country then, conducts a self-assessment using the questionnaire. This can be done with the assistance, if necessary, of the APR Secretariat and/or relevant Partner Institutions. After completing the self-assessment, the country draws up a preliminary programme of action, building on existing policies, programmes and projects. Both the CSAR and the preliminary programme of action are submitted to the APRM Secretariat which, during the same period, would have developed a background document on the country through desk research on the country's governance and development status. This research covers five thematic areas.
13. *Stage Two* is the Country Review Visit. Under the leadership of the APR Panel, the CRM visits the country concerned and carries out wide consultations with the Government, officials, political parties, parliamentarians and representatives of civil society organisations including the media, academia, trade unions as well as business and professional bodies to:
- get the opinions of the different stakeholders on governance in the country;
  - clarify the issues identified in the Issues Paper that were not taken into account in the preliminary programme of action of the country; and,



- build consensus on how these issues can be addressed.
14. It should be stressed that during the mission, the country under review acts as a facilitator to enable the Review Team to efficiently carry out its work. In this regard, it helps the CRM to have access to all sources of information and to the various stakeholders. This is laid out in the technical review mission's MOU and agreed on in the Report signed between the parties (APRM-Government).
  15. *During Stage Three*, the CRM report is prepared on the basis of the CSAR, the background document, questions prepared by the APRM Secretariat, and information from official and non-official sources during the consultations organised with all stakeholders during the review mission.
  16. The draft report:
    - Examines, where applicable, political, economic, corporate governance and socio-economic development commitments, taken from the preliminary programme of action;
    - Identifies all persisting weaknesses;
    - Recommends other actions for integration into the final programme of action.
  17. The draft report is then examined by the Panel whose members are the official authors before it is discussed with the Government concerned to ensure accuracy of the information in it. It is at this point that that the government can react to the CRM's findings and express its own views on the shortcomings identified. The reactions of the Government are appended to the Team's Report, taking into account the conclusions and recommendations of the preliminary report, in conjunction with the finalised National Programme of Action.
  18. *The Fourth Stage* begins when the Team's final report and the country's final Programme of Action are sent to the APRM Secretariat. The latter then submits the reports to the APR Forum of participating Heads of State Summit and to the Government under review, for consideration and formulation of actions deemed necessary, in accordance with the mandate of the APR Forum. If the country shows a demonstrable will to rectify the identified shortcomings, participating governments may offer to provide assistance as well as urge donor governments and agencies to come to the assistance of the country reviewed.
  19. *The Fifth Stage* is the final stage of the APRM process. Six months after the report has been considered by the Heads of State and Government of the participating member countries, it is formally and publicly tabled in key sub-regional and regional entities 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 (ECOSOC) of the AU.

20. This report is in the third stage of the APRM process in South Africa. It contains the CRM findings as well as recommendations formulated by the Panel.

### **APRM Implementation in South Africa**

21. South Africa is to be commended for its leading role as one of the founding nations of the NEPAD vision that led to the establishment of the APRM programme on good governance in March 2003. From 2003, South Africa steadily implemented APRM, completing its First Self-Assessment Country Report in 2006, hosting a review mission from 9 to 25 July 2006, and completing its first peer review in Accra, Ghana on the 1 July 2007. South Africa has produced three progress reports based on the recommendations of the first Country Review Report. Its last progress report was tabled at the APR Forum in 2014.
22. In December 2018, Cabinet initiated the second-generation APRM process in South Africa by establishing an inter-ministerial committee and renewing the country's APRM National Structures by setting up a new APRM National Governing Council (NGC) under the leadership of Chairperson, Mr Thulani Tshefuta.
23. Over a period of 17 months, from July 2020, the APRM NGC conducted a country self-assessment report which was submitted to the APRM Panel of Eminent Persons and APRM Continental Secretariat in early December 2021. This was followed by a Country Review Mission to South Africa later that month.



## The Country Review Mission

24. The Country Review Mission to South Africa took place from 7 to 21 December 2021. The Lead Panel Member for South Africa, Bishop Dinis Sengulane, led a twenty two-member review team consisting of governance experts from 14 African countries. The African experts are listed below:

For the APRM Secretariat:

- Mr. Dalmar Jama, Coordinator, South Africa Country Review Mission; Ms. Delice Zakeyo, Researcher (DPG); Ms. Rutendo Nazare, Researcher (DPG); Ms. Ejigayhu Tefera, Researcher (EGM); Mr Hugues Mabwanga Manzila, Researcher (CG); Mr Sampson Osei, Researcher (CG); Ms Sara Hamouda, Researcher (SED); Dr Valery Yao Yao, Researcher (SR); Ms. Nomfanelo Mhambi, Mission Logistics and Administration Officer; as well as Ms Yonela Tom and Mr. Thivhulawi Netshivhale from the APRM Communications Unit.

For Strategic Partners:

- Mr Kai Gatkuoth (State Resilience Team Leader), Technical Coordinator, Disaster Risk Reduction, African Union Commission

For Independent Experts of the APRM Secretariat:

- Democracy and Political Governance (DPG): Prof. Alex Gboyega (Team Leader) and Dr. Ibrahim Al-bakri Nyei;
- Economic Governance and Management (EGM): Prof. Mutiu Abimbola Oyinlola (Team Leader) and Dr Anthony Barclay;
- Corporate Governance (CG): Dr Lucy Surhyel Newman (Team Leader) and Dr Mkhululi Sibindi;
- Socio-Economic Development (SED): Dr Vivian Atud (Team Leader) and Prof Adewale Aregbeshola; and
- State Resilience (SR): Ms Tega Shivute.

25. During the Country Review Mission, the team met with national, provincial and local government officials as well as with civil society and private sector representatives. It also held working sessions on good governance with the Deputy Speaker of the National Assembly, Hon. S.L Tsenoli, who was accompanied by MPs from the National Assembly. The Review Mission also met with the deputy Judge President of the Gauteng High Court, Hon Roland Sullivan and members of the national executive including the Deputy Minister at the Department of Public Service and Administration, Hon. Dr. Chana Pilane-Majake.

26. The Review Mission met with stakeholders in all the nine regions of the country. These included MECs, MMCs, mayors, and members of provincial and local councils in all the nine provinces, as well as representatives from Chapter 9 State institutions, civil society, and the private sector in Pretoria and all the provinces of South Africa.
27. The South African Second-Generation Country Review Report will be submitted to the APR Forum of Heads of State and Government meeting in February 2022, and will be accompanied by a costed National Plan of Action (NPOA) that addresses the governance challenges highlighted in the South Africa Country Review Report. Implementation of this NPOA will be entrusted to institutions including government, CSO and private sector bodies and associations. This plan will also be harmonised with the National Development Plan.







# CHAPTER TWO

## 2. DEMOCRACY AND GOOD POLITICAL GOVERNANCE

### 2.1 Overview

28. In 1994, South Africa became independent with the hope of becoming a vibrant multi-cultural, multi-national, multi-racial democratic republic. Because of this vision, the new leaders drew up a forward-looking and ambitious Constitution with liberal provisions, including a Bill of Rights and the Chapter 9 Institutions (The Public Protector, the South African Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General, the Electoral Commission), which are independent and subject only to the constitution and the law. The constitution further stipulates that these institutions must be impartial and exercise their powers without fear, favour, or prejudice, and that other State organs should assist and protect the independence, impartiality, dignity, and effectiveness of these institutions.



29. The framers of the constitution envisaged the liberal democratic Republic in South Africa as an evolving endeavour. Efforts to create this State have met with challenges that the successive Governments since independence have tried to overcome, with varying degrees of success. One of these challenges is the growing erosion of trust in the State and its institutions because of the perceived unethical behaviour and of government institutions and SOEs, and of their inability to deliver much needed services. This was highlighted in the Zondo Commission Report whose release fuelled popular disenchantment with State institutions, even though it also affirmed the strengths of the Chapter 9 institutions. The strengths highlighted in the report should give hope to South Africans that the current governance challenges are remediable if there is focus, dedication and the political will to implement the reforms necessary to curb abuses and revamp failing institutions.
30. Another point of contention between the State and the population is the handling of migrants and refugees. South Africa is a leader in the SADC region and the continent. Despite its economic challenges, other Africans see the country as a land of refuge and opportunity, and most arrive with talents and skills that contribute positively to the development of the country. It is in the interest of South Africa, which remains a regional and continental leader not to create a negative image of the country by showing hostility towards other African foreigners through hate speech or by holding them responsible for all the ills in their society. South Africa should also not be seen as turning its back on the citizens of neighbouring countries with which it has shared common experiences in the struggle for liberation, and from which it had received support and encouragement. Given what the CRM learnt about the attitude of the political leaders, there is a dual problem of socialisation and management. The political leadership has a duty to foster a more tolerant attitude towards refugees and migrants through massive reorientation of South Africans. The managerial problem concerns developing coherent immigration policy which modulates the inflow of refugees and migrants into South Africa humanely, responsibly, and effectively to ensure that those refugees and migrants that qualify reside in South Africa peacefully and safely. South Africa's APRM NGC plans to hold an international conference to explore this subject and to advise the government on appropriate policies. This, hopefully, will help to tackle the vexatious periodic xenophobia that South Africa experiences to the detriment of its continental and global standing.
31. The third major challenge is poor service delivery, which has also led to distrust in State institutions. In the provinces, stakeholders repeatedly complained



about the quality of service delivery and even of lack of access to services. This inadequate performance is primarily the result of weakness or inability of local governments to deliver on their mandates. This is all the more serious as it is at local level that most people need the State for essential services. To regain trust, government needs to urgently revamp and empower local government structures.

32. In the following sections of this Chapter, we will examine some of the main nation-building problems that South Africa has faced, the degrees of success in addressing them and the areas in need of reevaluation and reform.

## 2.2 Standards and Codes

**Table 2.1** Democracy and Political Governance Standards and Codes

No.	Standard	Ratification Status	Date
1.	International Convention on the Elimination of All Forms of Racial Discrimination (1965)	Ratified	1998
2.	Charter of the United Nations (1945)	Ratified	1945
3.	Convention on the Rights of the Child (1989)	Ratified	1995
4.	The Geneva Conventions of 1949	Ratified	1952
5.	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977	Ratified	1995
6.	Convention on the Elimination of All Forms of Discrimination against Women (1979)	Ratified	1995
7.	The African Charter on Human and Peoples Rights (1981)	Ratified	1996
8.	International Convention on Civil and Political rights (1966)	Ratified	1998
9.	First Optional Protocol to the International Covenant on Civil and Political Rights (1966)	Ratified	2002
10.	Second Optional Protocol to the International Covenant on Civil and Political Rights with the abolition of death penalty (1966)	Ratified	2002
11.	International Convention on Economic, Social and Cultural Rights (1966)	Ratified	2015
12.	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	Ratified	1998
13.	Convention Relating to the Status of Refugees (1951)	Ratified	1996
14.	Protocol relating to the Status of Refugees (1967)	Ratified	1996
15.	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	Ratified	2005

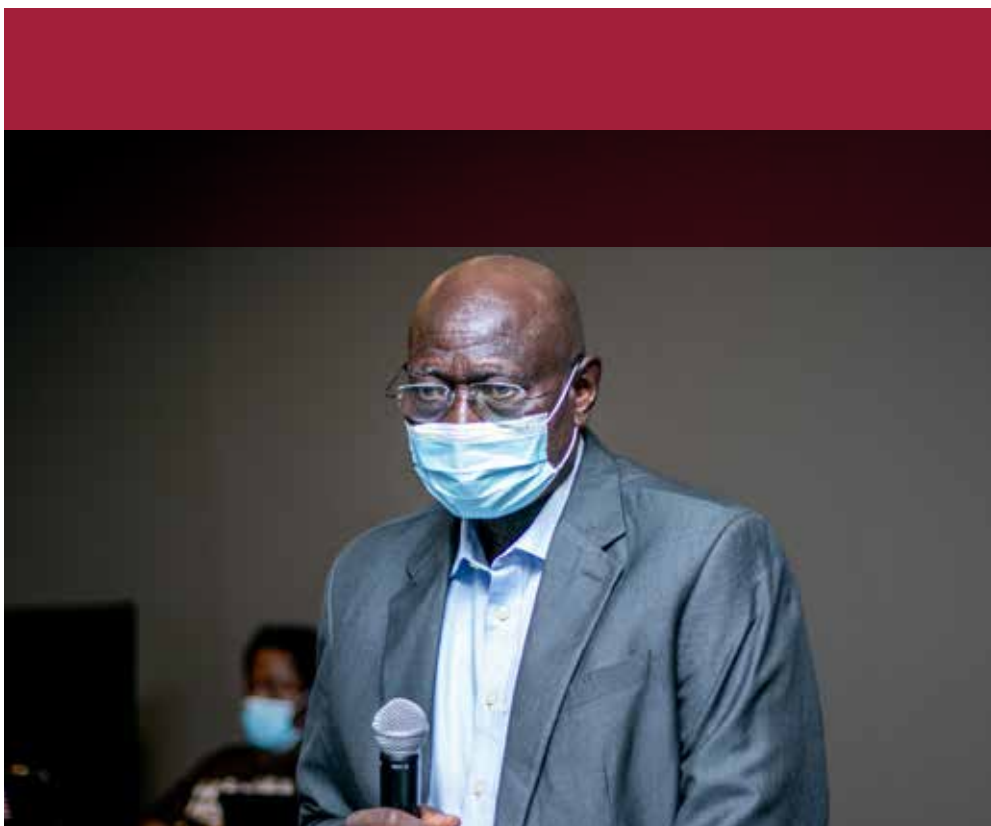
No.	Standard	Ratification Status	Date
16.	Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict	Ratified	2009
17.	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)	Ratified	2003
18.	African Youth Charter (2006)	Ratified	2009
19.	African Charter on the Rights and welfare of the Child (1990)	Ratified	1999
20.	Protocol to the African Charter on Human and Peoples’ Rights of women in Africa (2003)	Ratified	2005
21.	The African Charter on Democracy, Elections and Governance (2007)	Ratified	2010
22.	African Charter on Statistics (2009)	No Action Taken	No Action Taken
23.	Charter for the Public service in Africa (2001)	Ratified	2014
24.	Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002)	Ratified	2019
25.	International Convention on the Protection of the Rights of All Migrant Workers Members of their Families (1990)	No Action taken	No Action taken
26.	OAU Refugee Convention of 1969	Ratified	1995
27.	Protocol to the AU Convention on the Prevention and Combating of Terrorism (2004)	Ratified	2002
28.	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009)	No Action Taken	No Action Taken
29.	African Convention on the Conservation of Nature and Natural Resources (1968)	Ratified	2016
30.	Bamako Convention on the Ban of the Import into Africa and Control of Trans-boundary Movement and Management of Hazardous Wastes within Africa (1991)	Ratified	1998



33. The Republic of South Africa has ratified most of the international and regional standards and codes as reflected in Table 1 above. However, it has not paid attention to significant standards such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009) and the African Charter on Statistics (2009). The government of South Africa may need to pay attention to these codes considering the number of migrants in South Africa.
34. Non-ratification of these standards and codes puts the rights and interests of affected refugees, internally displaced persons, and migrant workers in jeopardy and beyond legal redress.

### **iii. Recommendations**

35. The African Peer Review (APR) Panel calls on South Africa to expeditiously ratify outstanding standards and codes on refugees, internally displaced persons, and migrant workers



## 2.3 Assessment of Performance on the Objectives of the African Peer Review Mechanism (APRM)

### OBJECTIVE ONE

### Constitutional Democracy and the Rule of Law

#### i. Evolution Political Representation

36. South Africa has a progressive constitution that promotes democracy and the rule of law. The country's multi-party system allows for free competition for power amongst political parties and various interest groups. The African National Congress which led the liberation struggle against the white minority has governed since 1994, winning significant majorities in every election. But recently, and thanks to the dynamism of the political system, the credibility of the Independent Electoral Commission, and the commitment of the government to comply with the constitutional principles of competitive democracy and free and fair election, a viable opposition has emerged. New political parties are now participating freely in elections, and giving South Africans alternative policy choices. This has also led to a steady increase in the representation of opposition parties in all spheres of governance in the country.
37. The CRM observed that, apart from concerns about the system of proportional representation, South Africans are relatively satisfied with their current political system.
38. It also noted concerns about the limited opportunities for political participation despite the existence of many political parties. Stakeholders suggested that parties have been captured by elite factions, and that candidate selection for national and provincial elections are not open for competitive selection, but are largely determined by leaders of the parties.
39. The issue with political representation concerns the election of members of parliament and members of provincial legislatures. Under the current electoral system, these are elected based on proportional representation or through the party lists system. Numerous accounts, including the first APRM CRM Report of 2007 and the recent CSAR of 2021 identified limitations in this system — the lack of direct accountability of the elected towards the electorate, and the tendency for elected representatives to be more loyal to party leaders than to the electorate.
40. Stakeholders in the provinces confirmed to the CRM that they are unable to directly hold MPs and members of provincial legislatures accountable and cannot change them when they perform poorly since they are chosen by their parties. However, it was noted that there are many local forums for engaging



with legislators at both the national and local levels. Parliamentary sessions are open to the public and broadcast on various channels including social media, and citizens can submit proposals to parliament.

41. However, this is not enough for the accountability relationship desired by citizens. Stakeholders indicated that most South Africans prefer direct election of candidates from political parties and even independents with no political parties to parliament.
42. The CRM observed that in recent local elections, special interest groups and social movements have backed independents and people who had left mainstream parties, and provided them with platforms to contest elections.
43. It also noted that a petition filed by the New Nation Movement saying that the Electoral Act 73 of 1998 is unconstitutional since it does not allow adult citizens to independently seek election to parliament and provincial legislatures except through membership of a political party was successful before the Constitutional Court. This ruling will pave the way for independent candidates to contest future elections. The CRM saw that this landmark ruling — despite the challenges it may bring to the Independent Electoral Commission, as it has additional logistical implications and perhaps will require an entire overhaul of the electoral system — is an indication that South Africa’s constitutional democracy is evolving in response to the popular call of the citizens.
44. The CRM understood that parliament has not contested the ruling of the Constitutional Court. The Deputy-Speaker of parliament, Hon. Lechesa Tsenoli assured the CRM that Parliament had no intention of questioning a decision by the Constitutional Court. However, stakeholders do not appear to know where parliament stands in implementation of this decision. But the CRM notes that the 24-month period given by the Constitutional Court for Parliament to carry out this reform will elapse in June 2022.
45. Given the sensitivity of this matter and the structural reforms this would require including civic education for citizens to understand the new system of representation that will follow from this reform, it is advisable that parliament acts faster to effect the changes.
46. This ruling by the Constitutional Court has now laid to rest an issue that has dogged South Africa’s system of representation and constitutional democracy for many years. The other major issue under this thematic area, which stakeholders in nearly all provinces identified as an obstacle to South Africa’s system of constitutional democracy and rule of law, was access to justice. This had also been raised during the first CRM of 2007.

## Access to Justice

47. The APRM CRM of 2007 identified access to justice as a challenge for most South Africans, particularly the poor and those living in rural areas. The mission noted that many South Africans are unable to get a fair trial or make appropriate use of the justice system due to lack of knowledge of the system, lack of financial resources as the formal justice system is mostly costly for the poor, and corruption within the system. Racism was also identified as a major problem in South Africa's justice system due to the system being dominated by white judges and lawyers accustomed to the divisive practices of apartheid.
48. The report had recommended a transformation of the justice system to include more people of black and coloured descent in line with the racial demographic of the country without compromising competence and capability, and that government ensures appropriate and adequate legal services to the rural areas.
49. Reports on the implementation of the recommendations of the CRM suggest that a lot of institutional changes have taken place over the years to improve access to justice in the country. Some include the establishment of more courts, particularly magistrate courts, in rural areas, and the establishment of Small Claims Courts in many areas for the poor that lack easy access to civil justice. These courts allow people to file civil claims to the value of R15 000 without the need for legal representation. By the time the third report on the implementation of the recommendations was published in 2014, the government had established 247 of such courts. Additional efforts have been made to improve representation of Africans in the judiciary. According to the third report, there were 243 indigenous African judges on various courts and these judges spoke various African languages, thereby making it possible for parties appearing before courts to speak in their native languages. Other institutional avenues through which South Africans can access justice include the Office of the Public Protector, Commission on Gender Equality, and the South African Human Rights Commission.
50. The CSAR of 2021 confirmed these developments and highlighted further progress in improving access to justice. The CSAR further notes that the government continues to provide free legal services for indigents through a government funded institution called Legal Aid South Africa. However, the CSAR notes that access to justice remains a major challenge, particularly for marginalised and vulnerable groups like women and people living with disabilities in the country despite these developments.





## ii. Findings of the CRM

### Access to Justice

51. South Africa's Constitution provides for an elaborate Bill of Rights for the individual which guarantees the right to justice, free trial and equality before the law, among others. To facilitate this process, the South African government has established numerous institutions — courts and quasi-judicial mechanism like specialised commissions (for instance the Commission on Gender Equality and the Human Rights Commission) as well as law enforcement agencies like the South African Police Service.
52. The CRM notes that the structure of the South African judiciary gives room for people from all levels and walks of life to access the various courts and seek relief where needed. There are magistrate courts at the lowest level that deal with criminal and civil cases of amounts less than R100 000. These courts are at both the district and regional levels. There are also Small Claims Courts and Equality Courts at the community levels existing alongside the magistrate courts, and these courts do not require legal representation, but individuals can represent themselves and seek redress.
53. The CRM observed that these lower courts are crucial to strengthening the rule of law, as most participants spoke only of these courts, which are closer to them and have jurisdiction over matters that are of interest to them. For instance, not much was heard of the Constitutional Court. Instead, complaints about access to justice or corruption were mainly against these lower courts. Given their proximity to the population, strengthening these courts with resources and trained and credible staff will greatly improve public confidence and boost the rule of law in general.
54. Decisions of the magistrate court can be appealed at the high court. The high court also hears matters not within the jurisdiction of the magistrate court, for instance criminal and civil cases involving amounts of more than R100 000. There are 14 high courts in the country with each province having at least one high court. Stakeholders lament the challenges of accessing the high court, particularly in rural areas as nearly all the high courts are in major urban towns and are very costly to access.
55. Those not satisfied with the rulings of the high court can appeal to the Supreme Court which hears and rules on appeals against the decisions of high courts in the country. The highest court in the country is the Constitutional Court which hears all cases involving constitutional matters, and disputes between the various spheres of government and organs of the State. The Constitutional

Court is the only organ that determines whether an act committed by any public official (including the President), or agency is constitutional or not.

56. The rulings of the Constitutional Court, which plays a crucial role in strengthening democracy and the rule of law, are binding. Stakeholders indicated that one of the greatest tests to ever confront the Constitutional Court was the attempt by a former president to defy a court's ruling that required him to appear before the Commission of Inquiry into State Capture. In this case, the court asserted its authority by holding the former president in contempt and sentencing him to prison. This was the first time the Constitutional Court had rendered a judgement involving a prison sentence in South Africa. The subsequent detention of the former president on orders of the Constitutional Court demonstrated the independence and power of the South African judiciary in dispensing the rule of law regardless of the social and political standing of the respondent.
57. The CRM noticed that notwithstanding these efforts, the reach of these institutions and services remains constrained by several factors that affect their ability to deliver. First, South Africans complained about corruption in the police service. Indeed, stakeholders in some provinces even suggested that the justice system favours mostly wealthy and influential people since most of the time the police does not take complaints filed against the rich and influential members of the society seriously.
58. The CRM notes that other factors that limit access to justice for most South Africans, as gathered during public consultations include, poverty which constrains the ability of the majority to pay for legal services. Efforts by the South African government to provide legal aid are laudable but there are concerns that offices of Legal Aid South Africa are not accessible to people outside of the main towns, and rural residents are not aware of their existence and operations.
59. The CRM also gathered that administrative inefficiency at many lower courts affects citizen's access to justice. As a result of administrative inefficiency, some courts have huge backlogs of cases and incidents of missing documents in courts sometimes compound this situation. Participants pointed out that crowded and mismanaged courtrooms usually cause delays and frustrate citizen's efforts at seeking justice in most instances.



### iii. Recommendations

60. The African Peer Review (APR) Panel urges the Government to:

- Provide more legal education and assistance to people at the local level, particularly vulnerable groups such as women and people with disability to facilitate their access to legal aid;
- Strengthen the lower courts with more personnel and resources commensurate with the demand placed on them at the local level, and create more courts in congested areas to reduce pressure on existing ones; and
- Deal expeditiously with allegations of corruption in the judiciary, particularly in the lower and the high courts, and ensure that these courts are staffed with competent and credible judges.



**OBJECTIVE TWO**

**The Separation of Powers**

**i. Evolution of the Issue**

**Independence of the Judiciary**

61. The South African Constitution of 1996 (with amendments through 2012) establishes a firm foundation for the separation of powers, with checks and balances between the three branches of government — the Legislative (Parliament), the Executive and the Judiciary. The judiciary is hailed as asserting its role and demonstrating its independence more effectively within the system of checks and balances. The CRM observed that the establishment of the Office of the Chief Justice, in 2010, as an independent national department to cater to the judiciary has been a commendable effort in strengthening the institutional independence of the judiciary and separating its administrative functions from the executive.
62. However, stakeholders informed the CRM that despite the independence of the judiciary in exercising its functions, there have been concerns over the role of the Department of Justice and Constitutional Development in appointing some judicial officers and in establishing magistrate courts. While the Department of Justice appoint court officers as part of its legal mandate, stakeholders suggested to the CRM that all matters of judicial services should be the sole prerogative of the judiciary, and all administrative issues including appointment of court officials and establishment of magistrate courts should be removed from the Department of Justice and assigned to the Office of the Chief Justice and the Judicial Service Commission.
63. Nonetheless, South Africans expressed confidence in the judiciary and its independence. The judiciary in South Africa, therefore, enjoys full independence from any undue influence from any of the other two branches of government.

**Parliamentary Independence and Oversight of the Executive**

64. Parliament has constitutional authority to make laws and exercise oversight powers over the executive. Despite its clear constitutional authority, stakeholders attending the CRM consultations suggested that parliament is not fully independent of the executive and has not over the years exercised its constitutional oversight more effectively. This, therefore, has been identified by the CRM as the main issue for the separation of powers and checks and balances needed to strengthen democratic governance in South Africa.



65. The powers of the Parliament of South Africa are clearly laid out in Chapter 4 of the Constitution which envisages an independent, robust, and effective parliament for the exercise of legislative powers. The parliament has two houses: (1) the National Assembly, to represent the people, pass legislation and oversee executive actions for accountability, and (2) the National Council of Provinces, which represents the provinces to ensure that provincial interests are considered in the national sphere of government.
66. The APRM CRM of 2007 noted that *“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...been hesitant to criticise the executive.”* It was then observed that the parliament’s inability to effectively exercise its oversight powers was because of its focus on passing new legislation and repealing Apartheid era legislation coupled with the lack of capacity among newly elected members for parliamentary duties. The CRM then recommended that the national stakeholders take deliberate efforts to strengthen the institutional capacity of parliament to enable it to discharge its powers granted under the constitution.
67. None of the three reports on the implementation of the recommendations of the 2007 CRM commented on efforts made so far to strengthen parliament’s effectiveness in exercising its functions. The South Africa APRM Country Self-Assessment Report (CSAR) of 2021 indicates that despite some progress toward democratic development in South Africa, the parliament is not yet as powerful as it should be, and due to the dominance of one party, the parliament “is in effect a rubber stamp of the Executive arm of government”.
68. The CSAR however noted that in recent years, the increase in the number of opposition MPs is changing political dynamics in parliament. For instance, according to the CSAR, the official opposition succeeded in making parliament to take three different votes of no confidence in a former president who was accused of corruption and abuse of office between 2015 and 2017. Even though the votes were unsuccessful, the fact that the opposition succeeded in ensuring that the votes were taken was an indication of the growing power of parliament in holding the executive to account due to growing multi-party representation within parliament.
69. Even though the ruling party voted against the removal of the President during the normal parliamentary processes, it however chose to recall the President using its own internal mechanism. This move by the party demonstrates in

many ways the influence and extra powers of political parties in South Africa over their members, and how the ruling party has proven to be more powerful than the parliament in holding the presidency accountable.

**ii. Findings of the CRM**

**Parliamentary Independence and Oversight of the Executive**

70. The Constitution of South Africa clearly defines distinct parameters for the exercise of power by the parliament and the executive. But this is somewhat fuzzy due to members of the executive — , deputy president, ministers, and deputy ministers — serving concomitantly as members of parliament. The president who is elected by the parliament after nationwide election of the members of parliament also appoints nearly all ministers from parliament. This fusion, in the context of South Africa’s politics with a dominant party in power for over two decades and a party system in which the leader of the ruling party is also head of the executive branch of government, means party leaders do have greater control over members of parliament from their parties. Under such arrangement, members are expected to support party political positions in parliament to remain in good standing with their party leaders.
71. Thus, according to stakeholders who participated in CRM consultations, MPs in most cases demonstrate more loyalty to party over constitutional principles in crucial matters of parliamentary oversight over executive institutions. For instance, stakeholders mentioned that during the Fifth Parliament, the National Assembly failed on numerous occasions to question the sitting President and hold him accountable for issues raised in the Public Protector’s report regarding misuse of public funds in carrying out non-security upgrades at his home. By failing to hold the president to account even after the Public Protector had released such a report accusing the president, stakeholders suggested that the National Assembly had also undermined the authority and relevance of the Public Protector. In some cases, opposition members had to seek redress from the Constitutional Court against the leadership of the National Assembly in efforts to compel the National Assembly to exercise its oversight functions.
72. The CRM noted that the role of parliamentary committees in asserting the authority of parliament and using the report of the Public Protector on ‘State Capture’ to hold the executive to account during the fifth parliament was highly commendable. The work of various portfolio committees that examined various sections of the report which culminated in the establishment of the Commission of Inquiry into State Capture did much to restore public confidence in parliament as much as it did to prove the relevance of the Office of the Public Protector to the fight against corruption.



73. The CRM believes that the submission of the Judicial Commission of Inquiry into State Capture Report (the Zondo Commission Report) provides further opportunities for the parliament to restore faith in South Africa's political institutions and reclaim the respect and confidence of the people by expeditiously implementing the recommendations of the Commission that require legislative intervention.
74. Stakeholders suggested that weak parliamentary oversight is a function of South Africa's electoral system of proportional representation in which members of parliament are elected through their parties. Under this system, voters only elect the political party during national assembly elections and parties are apportioned parliamentary seats based on their share of the vote. The parties then appoint MPs from lists submitted to the Independent Electoral Commission. Naturally, individuals chosen through this system would owe more loyalty to the parties that nominated them and not any other group of citizens or constituencies.
75. South Africans attending the CRM meetings in the provinces raised concerns about the perceived prevalence of corruption in the public service, particularly in the executive branch of government. The CRM noted that there are numerous institutions of government meant to fight corruption and promote democracy. These institutions, collectively named 'Chapter 9' institutions include the Auditor General and the Public Protector. While South Africans expressed confidence in the work they do, they were concerned that reports by these institutions and recommendations therein are not being utilised to the fullest in fighting corruption and strengthening democracy. Many suggested that corruption remains prevalent in the public service, despite the hard work done by these institutions, due to the failure of parliament to play its role in ensuring that crucial recommendations, including those of the Auditor General are implemented by the executive, even though in most instances parliament does endorse the recommendations in its resolutions.
76. An important observation is that South Africans in civil society seem to be fully aware of the separate roles of each branch of government. Thus, expectations for a more robust parliament are increasing in the light of emerging challenges in the country. The role of parliament, for instance, in looking into issues of Covid-19 related procurement corruption, and in making appropriate legislation for the implementation of reforms to address poverty as more South Africans become unemployed due to the knock-on effects of the pandemic on the economy, has become even more crucial. On these matters, South Africans look to parliament as much as they look to the executive. But to make these possible, as participants suggested, a competent and credible parliament would

be needed for the executive to function even more effectively and with the integrity the public expects of it.

### iii. Recommendations

77. The African Peer Review (APR) Panel recommends that:

- The Government should train people appointed to specific oversight committees in the legal and technical functions of those committees to enable them to effectively discharge the responsibilities of those committees;
- The Parliament should devise open and transparent mechanisms to monitor and report the Executive's response and implementation of parliamentary resolutions, particularly those endorsing reports of Chapter 9 institutions like the Auditor General and the Public Protector.





## OBJECTIVE THREE

## Prevention and reduction of intra and inter-state conflicts

### i. Evolution of the Issue

78. South Africa has been a relatively peaceful society since the end of Apartheid and the armed struggle for liberation in 1994. Nonetheless, the absence of the repressive Apartheid security forces and the general silencing of guns have not led to a completely violence-free society. The Country Review Mission of 2007 identified violence and crime as main issues with potential to cause internal conflicts in the country. It notes that these are caused largely by poverty and social inequality. The report also identified racism and xenophobia, particularly against black Africans, as a potential conflict issue. This issue remains a present threat to stability of South Africa, and though it has not always caused internal violent disputes, it has often led to rupturing South Africa's relationship with other African countries whose nationals have become targets of racist attacks in South Africa.

### **Racism and Xenophobia against black African immigrants**

79. The APRM Country Review Mission of 2007 noted that Africans from other countries are migrating to South Africa to pursue better opportunities or to escape violence and economic hardship in their own countries. Their presence in South Africa, either as illegal migrants, refugees, or legal migrants and expatriate workers, was causing resentment among the majority black South Africans already struggling with the conditions of poverty and social inequality left behind by Apartheid.
80. As the situation of poverty and inequality deepened in South Africa, locals increasingly grew wary of the presence of the migrants from other African countries, and accused migrants of providing cheap labour, taking over jobs meant for nationals, peddling drugs, and committing crimes in their communities.
81. Those perceptions were already breeding tensions in some communities as identified by the CRM of 2007. The CRM also noted that residues of racism were still prevalent in South African society and the lack of opportunities, poverty and poor social services in the majority black communities have not helped matters. More importantly, it was observed that policies that subtly denied certain people opportunities based on their race were evidence of residual racism in South Africa, and the prevalence of such legacy could lead to social tensions and conflict.

82. The first country review report (2007) thus recommended that the South African government, particularly the Department of Home Affairs, Department of Education, and civil society organisations, should implement a robust program of civic education against xenophobia, address lingering vestiges of racism, and deal with the problems of refugees in more enlightened and structured way that recognises their fundamental human rights in light of international conventions.
83. Not long after the findings and recommendations of the APRM on racism and xenophobia in the country, incidents of xenophobic attacks and killings escalated into a nationwide conflict. In May 2008, locals in Johannesburg and the settlement of Alexandra (Gauteng Province) launched xenophobic attacks against foreign nationals living in those areas. The attacks quickly spread to the seven other provinces. These nationwide attacks led to 62 deaths (including 21 South Africans) and the displacement of 50 000 foreigners. An additional 40 000 foreigners were forced to flee the country. The attacks continued throughout the year, and between June and November 2008, an additional 30 deaths from xenophobic violence were reported. The South African government's approach to the violence was criticised by national and international civil society organisations for allowing the situation to escalate and not doing enough to bring to justice those responsible for the crimes and for not providing enough protection for the internally displaced foreigners who were exposed to further attacks.
84. After the 2008 attacks, other sporadic outbreaks of widespread xenophobic attacks continued to take place in South Africa. For instance in Durban in 2015, the killing of foreign truck drivers in 2018, and nationwide attack against foreigners in 2019. The September 2019 attacks took place in Johannesburg, Pretoria, Durban, Alexandra, and other surrounding townships. During the September 2019 incidents, 12 people were killed and thousands others injured and displaced.
85. Similarly, despite numerous efforts at racial integration, South Africa continues to suffer incidents of direct and subtle institutional racism, mostly against the majority black population, in educational institutions and in white-collar employment. The prevalence of this vice and xenophobia is pointed out in the various reports on the implementation of the National Programme of Action.
86. According to the implementation reports, the government has attempted to address issues of xenophobia and racism by strengthening laws, policies, and promoting dialogue on social cohesions in communities. Both the government and civil society organisations have over the years, deepened efforts at



organising more community education and sensitisation programmes and dialogues on integration and social cohesion. For instance, one report specifically lauded the South African Human Rights Commission’s program on “Rolling Back Xenophobia” and the community dialogue on nation building and social cohesion organised by the Department of Arts and Culture, and anti-xenophobia education campaigns in secondary schools as major efforts in addressing the crisis.

87. Some of the notable policy and legislative instruments against racism and xenophobia listed in the reports are the revision of the Refugees Act of 1998 and the establishment of a Refugees Appeal Board. The government also strengthened institutions to implement some crucial legislation against racism and xenophobia, such as the Promotion of Equality and Prevention of Unfair Discrimination Act (ACT 4 of 2000), the Employment Equity Act (Act 55 of 1998), and the establishment of Equality Courts across the country.
88. Notwithstanding these efforts, the 2021 Country Self-Assessment Report identified racism and xenophobia as major issues in the country. According to the report, since 2008 more than 400 foreigners from other African countries have been killed and more than 100 000 have been displaced in xenophobic attacks in South Africa. Even though these incidents take place in many parts of the country, the report specifically identifies Western Cape, Gauteng, and KwaZulu-Natal provinces as places with the highest recorded incidences of xenophobic violence. Specialised investigations by the government and research by think tanks have nearly unanimously identified poverty, influx of illegal migrants, lack of skills among South Africans to compete in the labour market, and the availability of foreigners to provide cheap labour, as well as lack of job opportunities mainly among black South Africans as the major triggers of xenophobia against foreign black residents in South Africa.
89. Attacks against foreign nationals do not only threaten peace and stability of South Africa, they also risk sparking inter-State conflict with other nations whose nationals are being targeted. As was seen in 2019, Nigerians took retaliatory actions against South Africans living in Nigeria after the 2019 xenophobic violence in South Africa that affected several Nigerians.

## **ii. Findings of the CRM**

90. During nationwide consultations with stakeholders, the CRM observed that average South African citizens continue to harbour resentment against foreign nationals residing in the country. It was noted during consultations that while racism remains a factor, most South Africans seem far more resentful of other

Africans than they are of the structural and subtle racial divides in their society. For instance, xenophobic resentments were implicitly expressed during consultations with South Africans in the provinces. These come in the form of accusations against their government for favouring foreign nationals over locals, and allegedly providing better incentives for foreigners to establish businesses than they do for nationals, and for allegedly making it easier for a foreigner to gain employment than a local.

91. A few of civil society representatives also accused the government of corrupt practices in the management of public housing programs and medical services as factors fuelling xenophobic attacks in some communities. According to participants, locals without good housing facilities are resentful of seeing foreign nationals in public housing facilities, which they might have obtained through collusion with allegedly corrupt civil servants. However, some participants noted that most public housing facilities occupied by foreign nationals are either sold or rented out to them by locals who acquired the facilities from the government under the various housing schemes available only to nationals.
92. The role of politicians in inciting xenophobic and racist attacks cannot also be underemphasized. High-ranking politicians have blamed foreigners for the increasing rate of crime and poverty in the country. This has prompted numerous hate speeches against immigrants and derogatory terms describing migrants, despite their contributions to the socio-economic development of the country. Stakeholders noted that incidents of hate speech and statements that incite xenophobic attacks increase during periods of elections. Statements against foreigners in South Africa are now populist attempts to appeal to public sentiments in efforts to mobilise votes. During campaign periods, they make promises to send away foreigners if they are elected, and this ploy resonates well with locals who already see foreigners as the cause of their unemployment, poverty, and crime in the country.
93. During the 2019 national election campaign, the two main political parties issued policy statements targeting immigrants in the country. During a rally of his party, the leader of the ruling African National Congress and the South African President, promised to end foreign businesses operating in the townships and rural areas that do not have business permits, and during the same period the secretary general of the ruling party accused foreigners of perpetrating crimes in South Africa, an allegation that was buttressed by the Premier of Gauteng Province. Similarly, the main opposition Democratic Alliance issued a policy statement promising to deal with immigration, which it identified as a major problem.



94. It was also reported that during the local elections of 2021, some politicians, notably the leader of the Patriotic Alliance political party, accused white businesses of looking for slaves among foreigners to provide cheap labour in the country. He reportedly promised to arrest and deport all illegal migrants in administrative areas controlled by his party.
95. Other notable statements made by politicians with potential for xenophobic violence include those by the late King of the Zulu Nation, who in 2015 called on foreigners to leave the country, a statement by a former minister of health that foreigners were putting strain on South Africa's health system, and repeated public statements by a former mayor of Johannesburg from 2016 to 2019 that foreigners were responsible for the rising crime and other ills in the city.
96. According to civil society representatives, while public statements against migrants are mostly about illegal migrants, most South Africans, including law enforcement officers, are unable to tell the difference between legal and undocumented migrants. Politicians attempt therefore, to separate skilled, legal migrants from undocumented migrants make no impact in curtailing the general resentment against migrants of all categories.
97. The CRM therefore observed that the scapegoating of foreigners (legal and undocumented migrants alike) for nearly all of South Africa's ills by politicians is undermining government efforts and civil society organisations' sensitisation campaigns against xenophobia.
98. The CRM noted that the South African government, in 2019, adopted a "National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance" which calls on the government to create a legal and policy framework for the prevention of racism and xenophobia, particularly in areas such as immigration policy, policing and administration of justice, human rights training for government officials, and the promotion of the benefits of cultural and social diversities. This is summarised in Commendable Practice 2.1.
99. The CRM sees this move by the Government as a commendable effort against the scourge of racism and xenophobia, and implores the government to ensure that all action points laid out in the plan are implemented swiftly and decisively.

## Commendable Practices 2.1: Legal and Policy Framework for the Prevention of Racism and Xenophobia

In March 2019, the South African government adopted the National Action Plan to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance. This was an important step in the fight against racist and xenophobic violence in the country. The adoption of a full plan demonstrates, first, that the government has recognised that racism and xenophobia are serious threats to internal peace, and second, that there is a need for a more systematic and sustained effort to combat racism and xenophobia as well as the violence and human rights abuses associated with them. The government intends to implement this plan for five years (2019 to 2024) with the aims of raising public awareness on the importance of anti-racism and social cohesion and increasing anti-discrimination efforts towards greater equality. The government also hopes to improve access to justice and better protection for victims of racist and xenophobic attacks through the implementation of the plan. Unlike many other government plans, the NAP requires a whole-of-government approach to reach its goals of ending xenophobia and achieving greater equality and justice. Thus, all government departments have been given responsibilities in promoting and implementing the NAP. The CRM notes that pledges against racism and xenophobia that are meant to elicit personal support and commitment from South Africans in the implementation of the NAP are important steps in social mobilisation and cohesion. It is thus important that the pledges be widely promoted and taught in all places of learning.

Anti-Racism Pledge: *“I pledge to: Take on racism, Learn about racism, Talk about it, Speak out against it, and Act to stop it”.*

Anti-Xenophobia Pledge: *“I pledge to: Reject all violence and discrimination against people from other countries. We are one people, we will not be divided. I will act to Stop Xenophobia”.*

The CRM notes that the development of the plan with the participation of civil society and other national stakeholders was an important step in ensuring support from all sectors of the society for the plan. The efforts of local civil society organisations in promoting its objectives, particularly in sensitising communities against racism and xenophobia are quite noteworthy. The CRM calls on all stakeholders to vigorously implement this plan and to systematically monitor and report on its achievements, outcomes, and challenges periodically.



100. The CRM also noted that as the Covid-19 pandemic ravages the South African economy and unemployment rises, there is a likelihood that crime will increase, especially in large urban areas, and this may lead to more resentment against foreign nationals. Poverty and inequality are already manifesting themselves in the forms of riots and protests against the State. In July 2021, the arrest of a former President led to major riots in the provinces of KwaZulu Natal and Gauteng, claiming more than 200 lives and causing damage to properties estimated at around 4 billion USD. These areas are already hotbeds of anti-immigrant attacks.
101. Furthermore, South Africans that attended the CRM meetings suggested that the current educational system is not in line with the changing developments in the labour markets. As such, they claim that foreigners with the appropriate training for the job market are mostly preferred over South Africans with a similar level of education. There were also concerns that many South Africans do not have adequate knowledge on the processes of establishing a business and accessing credit, thus their ability to engage more productively in the economy as foreigners are doing in the small and medium enterprise sector is largely limited. The CRM notes that these sentiments, coupled with historical grievances among black South Africans and ongoing disenchantment with the State because of poor service delivery, are key drivers of xenophobia against foreign nationals in the country.
102. On the positive side, the CRM was informed by the APRM National Governing Council for South Africa of its intention to host a major conference on the management of immigration in the near future, which will help formulate a coherent policy on the management of African migrants in South Africa.

### **iii. Recommendations**

103. The African Peer Review (APR) Panel recommends that:
- Government should step up efforts at civic education to promote integration, social cohesion, and unity among South Africans of all races and foreigners residing in South Africa;
  - Government should pass the Prevention and Combating of Hate Crimes and Hate Speech Bill to discourage incitement against minorities and foreigners;
  - Political parties should commit to communicating their policies on immigration and border control in a professional and humanistic manner that highlights the positive contributions of migrants and the competitive advantages that comes with diversity.

**OBJECTIVE FOUR**

**Promotion and protection of civil and political rights**

**i. Evolution of the Issue**

104. The South African Constitution makes provision for the Bill of Rights which enshrines the rights of all people in South Africa and affirms the democratic values of human dignity, equality, and freedom<sup>4</sup>. The Bill of Rights applies to all laws, and binds the legislature, the executive, the judiciary, and all organs of State.

**ii. Findings of the CRM**

105. With regard to freedom of religion, the South African Constitution establishes that everyone has the right to freedom of conscience, religion, thought, belief, and opinion.<sup>5</sup> The government does not require religious groups to register; however, registered groups receive tax-exempt status. The right to freedom of religion is enshrined in the Constitution of South Africa. Section 31 protects the right of persons belonging to a religious community to practice their religion together with other members of that community and form voluntary religious associations.

106. Regarding Freedom of Association, the Constitution stipulates that everyone has the right to freedom of association. South Africans are free to join any association of their choice including political parties, trade unions, etc. This is evident in the many political parties being formed in South Africa, as well as in people’s participation in various trade unions.

107. As for Freedom of expression and media freedom, the constitution provides that everyone has the right to freedom of expression, which includes freedom of the press and other media.<sup>6</sup> However, there have been concerns raised about media freedom, freedom of expression and censorship in South Africa.<sup>7</sup> The role of the South African Broadcasting Corporation (SABC) as the country’s public broadcaster is to provide a platform and a voice to all in the country and to participate in South Africa’s democracy. But it has come under extreme scrutiny, with the parliamentary ad hoc committee on the SABC Board Inquiry making several findings against the SABC Board, the Minister of Communications, and others. In 2016, the SCA handed down a judgment in

4 South Africa Constitution, Article 7 (1)

5 South African constitution, Chapter 2, Article 15 (1)

6 South African Constitution, Article 16, (1) (a)

7 South Africa Human Rights Commission 2017. Civil and Political Rights Report 2016/2017





relation to the incident at the 2015 State of the Nation Address (SONA) where a telecommunications signal jamming device (signal jammer) was used, and the broadcast feed cut to prevent journalists from showing the scenes of grave disorder in Parliament. The SCA found that the State Security Agency's use of a signal jammer was unconstitutional and unlawful, and that it was unconstitutional for Parliament to censor the broadcast feed.

### Access to Justice in South Africa

108. Section 34 of the South African Constitution provides that *"everyone has a right to have any dispute that can be resolved by the application of the law decided in a fair public hearing before a court or where appropriate, another independent and impartial tribunal or forum"*. The Constitution provides for the Constitutional Court, Supreme Court, High Court, Magistrate Court, Small Claims Court and Equality.<sup>8</sup> Further, Legal Aid South Africa is a State funded institution that provides free legal services and assistance to those who cannot afford private lawyers. Legal Aid SA currently has 134 offices which include regional offices, justice centres and satellite offices serviced by 2 751 officials.<sup>9</sup> In addition to their own officials, Legal Aid SA can make use of other lawyers to assist members of the public free of charge. Moreover, universities throughout the country have Law Clinics that are like private law firms and provide legal advice and services to members of the community who cannot afford private lawyers for free. Qualified lawyers employed by law clinics supervise law students in providing legal services. Chapter 9 of the Constitution of South Africa provides for six institutions that also facilitate access to justice. This is summarised in Commendable Practice 2.2.
109. Overcrowding and poor conditions have been reported in correctional centres. The South African Human Rights Commission has highlighted the urgent need to address overcrowding in correctional centres across the country and to increase efforts to guarantee the rights of detainees to be treated humanely and with dignity. It has been reported that the number of awaiting trial prisoners or remand detainees is extremely high, often because of the actions of SAPS (who arrest large numbers of people unnecessarily), the notoriously slow and inefficient criminal justice system, bottlenecks in the parole process, mandatory minimum sentencing, and the increase in life sentences.

8 Human Rights Commission. 2021. Access to Justice. <https://www.sahrc.org.za/home/21/files/FINAL%20Access%20to%20Justice%20Educational%20Booklet.pdf>

9 Legal Aid South Africa Integrated Annual Report 2016/2017

## Commendable Practices 2.2: South Africa's Chapter 9 Institutions

Chapter 9 of the Constitution of South Africa creates six institutions: (a) The Public Protector; (b) The South African Human Rights Commission; (c) the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; (d) The Commission for Gender Equality; (e) The Auditor-General; and (f) The Electoral Commission, all of which are independent according to the Constitution. Regarding their special status, the Constitution states as follows:

- (1) These institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice;
- (2) Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions;
- (3) No person or organ of state may interfere with the functioning of these institutions;
- (4) These institutions are accountable to the National Assembly and must report on their activities and the performance of their functions to the Assembly at least once a year.

There can be no unambiguous statement of constitutional entrenchment of principles and institutions than this, and the institutions have so far justified the confidence of the framers of the constitution that they would stand as bulwarks against the erosion of democratic rights and values in South Africa

*Source: CRM compilation*

### Access to information in South Africa

110. The Constitution of South Africa Section 32(1) provides that everyone has the right of access to records or/and information held by the State or another person that is required for the exercise or protection of any rights. Section 32(2) provides for the enactment of national legislation to give effect to this fundamental right. The Promotion of Access to Information Act (PAIA), 2000 (Act No. 2 of 2000) is the national legislation contemplated in section 32(2) of the Constitution.



111. It has been noted that despite the progressive and expansive content of PAIA, there are several aspects of it that present serious barriers to the full realisation of the right to access to information. Firstly, PAIA provides only a limited right of access to information since it reduces access to records only, leaving out all other types of information that are not contained in a record. This is in direct contradiction to Section 32 of the right of access as contained in the Constitution, which states that, ‘everyone has the right of access to any information’ (held by either public or private bodies).<sup>10</sup>
112. Secondly, Section 27 of PAIA, state that ‘if an information officer fails to give the decision on a request for access within the prescribed 30-day period, then such a request is deemed a refusal’. This allows holders of information the option of simply ignoring certain requests and gives the lie to one of the main objectives of PAIA which is “to promote transparency, accountability and effective governance of all public and private bodies”.
113. Thirdly, the PAIA sets out several grounds for the refusal of a request for access to records in both public and private bodies. One of those grounds for refusal prescribes the ‘mandatory protection of commercial information of third party’ (Sections 36 and 64). This provision has the potential to prevent access on the grounds of ‘commercial confidentiality’, to information emanating from the privatisation and/or corporatisation initiatives of the government that fundamentally affect the realisation of certain socio-economic rights.

### iii. Recommendations

114. The African Peer Review (APR) Panel recommends:
- That the Government of South Africa appoint a regulator to monitor compliance with the PAIA.



<sup>10</sup> McKinley, D. T. 2015. The State of Access to Information in South Africa

**OBJECTIVE FIVE**

**Ensuring accountable, efficient and effective public service delivery at the national and decentralized levels**

**i. Evolution of the Issue**

**Strengthening municipal authorities for more effective service delivery**

115. After independence, the challenge that the new national leadership faced regarding ensuring accountable, efficient, and effective public service delivery at the national and decentralised levels was twofold: (a) transforming the fragmented system of public administration into a cohesive national system through re-engineering its procedures, mechanisms, processes, rules, principles and orientation; and (b) assuring that the transformed service had a steady intake of suitably qualified, highly motivated and ethically minded personnel to drive the service delivery functions of the public administration.
116. Viewed through the lenses of exigency, the Government prioritised transforming the service and ensuring it had qualified staff at the national level through a series of White Papers, legislations and systems engineering including the following: White Papers on the Transformation of the Public Service (1995 and 1997), the Public Service Act of 1994, the Skills Development Act of 1998, the Public Finance Management Act of 1999. It also adopted participatory planning and implementation frameworks to involve more citizens in development planning and management and monitoring such as the National Spatial Development Perspective (NSDP), and the Provincial Growth and Development Strategies (PGDS). Through the Performance Development Management Systems (PDMS), the Government aimed to enhance human resource management and skills, while the South African Management Development Institute (SAMDI) focused on improving development management practices. At sub-national level, the Municipal Financial Management Act of 2003 was pivotal as it tried to modernise and make transparent the budget, accounting, and financial management practices of local governments, and the Department of Provincial and Local Government (DPLG) introduced Project Consolidate to build the internal capacity of local governments<sup>11</sup>.
117. The 2007 CRM found that despite the commitment to harmonize the public service and improve its capacity, the constitutional three spheres of government have made things difficult, inhibiting dynamic movement of skilled personnel across jurisdictions to enhance performance. Most of the

11 CRR South Africa, 2007 p. 128



reforms in development planning and skills enhancement focused on national and provincial services, leaving out local government services, leaving a gap at the local level that has created wide disparities in service delivery capacities. The report also highlighted a gap between councillors and local government officials on the one hand, and between citizens and communities on the other, which could have been bridged by a few intermediary development-oriented non-governmental organisations. Those that exist are poorly resourced and have had a limited impact on the relationship between local governments and their communities.

118. The CRM also found that national affirmative action that focused on making institutions in the public and private sector broadly representative of the country's ethnic demographics aggravated the dire human resources scarcity in national and provincial governments. Companies in the private sector offered huge incentives to attract staff from the public service to meet their Black Economic Empowerment (BEE) compliance targets. The CRM, therefore, recommends among others that the Government should create conditions that will facilitate recruitment and retention of qualified talent into the public service based on criteria which, besides skills and competencies, should include patriotism, and vocational devotion to public service.
119. Although the Government's reforms before and after the APRM Review of 2007 showed that enhancing service delivery capacity of the public service at the national, provincial, and local government levels was of paramount importance for achieving the domestic, continental, and global aspirations of the country's leaders, the implementation reports of the NPoA did not reflect this perspective. The *First Report on the Implementation of South Africa's Programme of Action 2009* listed the priorities identified by the CRM in the CRR as follows:
- Civil society structures seek increased opportunities to contribute to and participate in the delivery and monitoring of public services;
  - Racism, sexism, marginalisation, 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 violence and acute social inequities;
  - Corruption undermines national integrity;
  - Violence and crime, against women and children, and ensuring the active engagement of all communities in the fight against crime and violence;
  - Marginalised and vulnerable groups experience difficulties making use of the institutions of justice.

120. Thus, the First Report did not specifically highlight efforts at ensuring accountable, efficient, and effective public service delivery at the national and decentralised levels as a priority focus. However, under the cross-cutting issues section of the Report, the NGC reported mostly pre-CRR reforms and the minister's directive in 2007 to the DPLG to develop a White Paper on Provincial Government and revise 1998 White Paper on Local Government.
121. Similarly, the *Second Report on the Implementation of South Africa's Programme of Action 2010* did not report on the implementation of policies to strengthen service delivery capacities of the public service at the national, provincial, and local government levels. But the Report mentioned that after the 2009 elections, the new Government restructured the machinery of government by creating new ministries and departments at the national level including the Ministry in the Presidency responsible for Performance, Monitoring, Evaluation as well as Administration in the Presidency, and the Ministry for Cooperative Governance and Traditional Affairs (which replaced the DPLG) because of the Government's enhanced focus on strengthening sub-national governance capacities.
122. Furthermore, the Government introduced performance management agreements which all ministers signed with the President while they in turn signed collaborative Delivery Agreements with each other and with relevant provincial executive authorities on specific delivery targets. The President also signed intergovernmental Delivery Protocols with all Provincial Premiers. These measures indicated that the Government had started to prioritise public service capacity for service delivery issues, and had identified intergovernmental collaboration as key to their resolution.
123. In 2010, the President accepted the Nhlapo Commission Report, which ascertained rightful traditional rulers and their proper designation as kings or principal traditional leaders, as well as formalised their involvement in governance. Another major outcome of the traditional leaders' enquiry was that Government recognised the traditional leadership and institutions of the Khoi-San communities and has backed it up with legislation since 2019.
124. The *APRM Close-Out and Review Report: Final Document 2016* observed that uneven capacities leading to unequal performances in service delivery was an emergent issue demanding attention from Government going forward. In the words of that Report, "*The performance of government and the quality of its capacity it has, is an emerging issue. Despite performance management systems in place there needs to be a sufficiently uncompromising system*

*of consequences for poor performance. There are recurring debates on how to address this and these include the need to shift the culture of the public sector towards one of greater accountability, linked to greater sanctions for poor performance and unethical conduct.”*

125. *South Africa’s Second-Generation Country Self-Assessment Report (Technical Report on Thematic Area 1: Democracy and Political Governance 2021)* notes that the public service reforms of the last two decades or more have led to improvements in service delivery at the national, provincial, and local government levels. The Presidency, the National Treasury, the Department of Public Service and Administration (DPSA), the Public Service Commission, the Department of Performance Monitoring and Evaluation (DPME) lead these reforms. However, the report also acknowledges that the public service “continues to experience several challenges, especially relating to public service delivery.”<sup>12</sup>

## **ii. Findings of the CRM**

126. Poor performance in the public service, the organ that drives government policy, will have profound consequences for the sustainable economic and socio-economic wellbeing of the people. Performance challenges hinder progress towards the developmental State and the efforts of its political leadership to achieve rapid economic growth, and address unemployment, poverty, and inequality<sup>13</sup>.
127. The CRM found that the weakest link in the public service is at the local government level where the population interfaces directly with government for basic services. In a presentation to the CRM on 13 December 2021 on “Current Issues of Local Government in South Africa,” the Deputy Minister of Cooperative Governance, Ms Thembi Nkadimeng, confirmed the inadequate state of governance at the local level. She disclosed that based on assessments using the criteria of political, governance, administrative, financial management and service delivery capacities, only sixteen of South Africa’s 257 municipalities were in a “stable” condition, and twelve of these were in the Western Cape Province. Four Provinces (Gauteng, KwaZulu-Natal, Mpumalanga, and Northern Cape) had one each, while the remaining four (Eastern Cape, Free State, Limpopo, and North West) did not have any stable municipality. Sixty-four of the municipalities were “dysfunctional,” 111 were “medium risk,” and sixty-six were “low risk.”

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12 P. 96

13 South Africa, The Presidency, National Planning Commission, Anchor Paper: South Africa as a Democratic Developmental State, 2021 p. 7

128. Operating under enabling constitutional provisions, the Ministry of Cooperative Governance and Traditional Affairs (COGTA) and the National Treasury have intervened in all sixty-four dysfunctional municipalities, having developed municipal support plans which they are implementing in collaboration with the South African Local Government Association, and national sector departments<sup>14</sup>. COGTA also plans to deploy local government experts and apply the provisions of the National Capacity Building Framework to assist the dysfunctional municipalities.
129. The CRM commends the Government for taking urgent measures to revamp management in the weakest municipalities. The capacity of municipalities is a critical component of State capacity without which the aspiration of South Africa to become a developmental State will not materialise. The CRM agrees with the National Planning Commission that *“if State capability is poor, then even the best-designed policies and interventions will not succeed. Private sector and international investor confidence will remain low. There will be misdirection of public funds and/or anaemic delivery of critical public programmes. The poor performance of local government in meeting minimum operational and financial management standards undermines basic service delivery, more equitable spatial development and fiscal sustainability”*<sup>15</sup>.
130. However, the CRM thinks that the emergency measures dictated by the massive performance challenges of the municipalities require a much deeper focus on the personnel situation of the municipalities. Structures and management systems matter to the performance of organisations, but so also do the people who work in them and fulfil their purposes. As the Association of Public Servants noted in 2015, *“South Africa does not have enough qualified and experienced public servants that are necessary to turn government plans, particularly at local government level, into action.”*<sup>16</sup> The quality of staff, their ethical orientation, commitment, zeal for public service, professionalism, compensation, and the safeguards provided them against arbitrary disciplinary consequences of doing their jobs appropriately are some of the success factors that can ensure satisfactory organisational performance. All of these important measures are largely lacking at the local authority levels.

14 Section 139 of the Constitution empowers Provincial Executives to intervene when municipal authorities do not perform satisfactorily

15 South Africa, The Presidency, National Planning Commission, Economic Progress Towards the National Development Plan’s Vision 2030, Recommendations for Course Correction December 2020 (Executive Summary p. 22)

16 Association of Public Servants, “The Challenge of Service Delivery in Africa: A Public Servants Association Perspective” November 2015 p. 3 accessed at Microsoft Word - PSA\_ServiceDelivery on 20 December 2021





131. Municipal government is distinct as the Constitution stipulates. It is not as complex as provincial or national government, but it has its peculiarities that often confound the uninitiated in the intricacies of municipal lore and service demands. While there are universal management systems, processes, regulations, and procedures that apply across levels of government, they are most effective where the stakeholders understand and can adapt them to the environment in which they operate. Thus, it is important that South Africa embrace the idea that there is a *municipal government service* with distinct characteristics which managers who want to succeed in local public service delivery must master. Such managers are currently not available in sufficient numbers to turnaround the deficiencies in municipalities' management scores on the assessment scale of COGTA to ensure sound service delivery at the local government level anytime soon.
132. The CRM notes that most of the defaulting municipalities are those in the rural communities where services are most lacking and the needs most urgent. These municipalities have remained so for a long time partly because they do not, or are unable to, comply with the high standards of administrative performance set by the national government, which in turn is unable to enforce adherence to those performance standards, since the affected municipalities are in remote areas and thus out of reach. These deficiencies, which lasted till 2019, were the result of the inability of regulators to enforce compliance. Rural municipalities are also the most dependent on grants – up to seventy per cent – even though because of lack of capacity they cannot sometimes utilise all the grants available to them to provide services.<sup>17</sup> Therefore, new ways must be devised to enable such municipalities to attract and retain qualified staff capable of efficiently and effectively managing local resources for service delivery, while also complying with the standards stipulated by various regulatory authorities.
133. The CRM thinks that a way towards resolving this issue is to set to up a Department of Local Service Matters in the Office of the Premier to perform the following functions:
- Design a scheme of service for municipalities;
  - Develop regulations for recruitment, promotion, and discipline of municipal staff;
  - Process complaints from aggrieved senior management staff of municipal authorities on recruitment, appointment, promotion, and discipline;

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17 Ibid, p. 1

- Monitor and assess performance of municipal managers, using criteria determined by COGTA and National Treasury;
- Promote staff development by granting scholarships for training programmes, exchanging of staff between provincial and municipal services through transfers, internships, attachments, etc., to enhance the competencies of municipal managers;
- Perform any other functions devolved to the department by the Provincial Government.

134. The CRM also noted that the training needs of the municipal authorities are so critical that they should receive special attention from the National School of Government (NSG). The NSG should design management courses tailored to the requirements of the Scheme of Service of municipal authorities to ensure focused training programmes that will produce a corps of professional municipal managers.

### iii. Recommendations

135. The African Peer Review (APR) Panel recommends that:

- The Provincial Governments set up a Department of Local Government Service Matters in the Office of the Premier to produce of a Scheme of Service for the emergence of a distinct and professional corps of municipal managers;
- The National School of Government should prepare and teach courses tailored to the Scheme of Service of Municipal Authorities.



## OBJECTIVE SIX

## Promotion and protection of the rights of women

### i. Evolution of the Issue

#### Gender-Based Violence

136. Though South Africa has many laws and mechanisms to address violence against women, gender-based violence is still widespread in the country. One in five (21%) of partnered women has experienced physical violence by a partner. In 2018 Statistics South Africa estimated that women and girls are the primary victims in 68.5% of reported sexual offenses cases. Further, in 2019 it was reported that in every 26 seconds a woman in South Africa is raped. According to Statistics SA, several studies have found that physical and sexual violence is higher amongst people in lower income brackets. This makes gender-based violence an economic problem with serious impacts, especially given the rate of inequality in the country. This section focuses on government efforts to deal with the various and related aspects of gender-based violence since 2007. The first South African Country Review Report, three National Plans of Action Implementation Reports, and the Close-out Report will be used to analyse how these issues have been addressed during this period.

#### *Assessment of Efforts to Fully Implement Policies and Laws on Women's Rights*

137. According to the 2007 CRR, the South African government had made significant strides in promoting the rights of women. The country 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. Further, Section 9 of the country's Constitution guarantees the right to equality and non-discrimination based on gender, pregnancy, and marital status. The constitution also provides for the right to make decisions concerning reproduction and the right to the security and control over one's body.

138. To address the issue, Government established a national gender machinery to promote gender equality and equity in all spheres of life. The institutional machinery is made up of various structures comprising the State and civil society. Key is the central role of the Office in the Presidency on the Status of Women, Gender focal points in key government departments, and the Commission on 'Gender Equality'. Notably, the Government also put in place

programmes and institutions such as the Anti-rape Strategy, Interdepartmental Domestic Violence Programme, and the Victim Empowerment Programme.

139. The 2nd Implementation Report of 2010 on the National Plan of Action noted that the establishment of the National Policy Framework on Gender Equality had led to the development of entities in every sphere of government to ensure gender mainstreaming and the promotion of gender equality. Also noted were Government and civil society efforts in continuing the implementation of measures aimed at eliminating violence against women and children. These measures at the time of reporting included initiatives such as the 16 Days of Activism for No Violence Against Women and Children Campaign, 365 Days National Action Plan to eradicate violence, popularisation of “Project Ndabezitha”, which is a mechanism for integrated management of domestic violence cases.
140. The Second Implementation Report of 2010 noted that the Government had introduced and spearheaded the implementation of the first phase of the National Register for Sex Offenders in June 2009, as part of efforts to improve services for the victims of sexual violence. The National Register was established by an Act of Parliament in 2007. In September 2010, the Government announced that the national register of sexual offenders had been put in place and contained the names of nearly 600 people who had abused children and mentally disabled patients. It noted that the second phase of the register would deal with the capturing of past convictions and was in the process of being implemented. The register has proven to be an important instrument that gives employers in the public or private sectors including schools, pre-schools, and hospitals a means to conduct background checks on people being hired to see if they are fit to work with children or persons living with mental disabilities. The National Register for Sex Offenders is even more helpful when used in conjunction with the Child Protection Register, which seeks to protect children and those vulnerable from past offenders through a clearance system.
141. Furthermore, to effectively address violence against women the third Implementation Report of 2014 stated that the “National Council Against Gender-Based Violence” had been established during the respective reporting period. The objective of the Government was to trigger a high-level multi-sectoral national response to the scourge of gender-based violence. The Council is comprised of several organisations that include government, religious and traditional leaders, women movements, academia, and civil society. The responsibilities of the Council include advising government on



policy and intervention programmes and strengthening national partnerships in the fight against gender-based violence.

142. During the same reporting period, the Government also took further steps to establish the Inter-Ministerial Committee on Violence Against Women and Children, which is comprised of Ministers of Women, Children and People with Disabilities, Justice and Constitutional Development, Health, Home Affairs, Police and Basic Education. The objective of the Council is to investigate the causes of violence in general, and in particular, violence against women and children and to develop a comprehensive strategy to deal with the scourge of violence against women and children.
143. The third Implementation Report of 2014 also highlighted significant progress made by the Ministry of Women, Children and Persons with Disabilities since it was established. The Ministry had entered into bilateral agreements with other Government departments such as Agriculture, Tourism, Energy, etc. to ensure coordinated support for women participation in the mainstream economy. In terms of policy, the Ministry had developed the Women Empowerment and Gender Equality Bill that was gazetted in September 2012. The aim of the policy was also to strengthen the fight against violence and crimes directed at women.
144. The third report acknowledged that the Government had enacted legislation to provide better protections for women and children. It however noted and emphasised that there was a need for a strong shift from policy to action towards stronger prevention and early intervention to support women and children.
145. The close-out Report of 2016 in summation noted that focus on violence and crime, particularly against women, children, senior citizens, and people with disabilities had grown during the reporting period. This was because many interventions had been put in place by Government and civil society. Also highlighted was the development of the National Register for Sex Offenders that was first rolled-out in 2009 in phases, which supports policing and the identification of sex offenders. The report highlighted that post 2016, numerous murders and cases showed that there was still need for more targeted improvement in this area. Hence, it was advised that this issue be retained in the revised NPoA. Noted in the report was that, like *“other sub-themes, the issue of monitoring, evaluation and consistent improvement of interventions made, remains a challenge and needs to be attended to “to improve the impact of interventions dealing with crime and violence”* (p. 34 and 35).

*Access to Justice for Victims of Gender-Based Violence*

146. Access to justice for victims of gender-based violence is essential and the South African Government has made efforts to facilitate it nation-wide. The 2009 first implementation report highlighted the establishment of specialised courts dedicated to sexual offences. These courts were intended to prevent secondary trauma for victims of sexual offences and improve conviction rates and a speedy delivery of justice. In addition to the establishment of Specialised Sexual Offences Courts, the Sexual Offences Act and the Children’s Act were amended in 2007 and 2008 respectively to strengthen the fight against abuse of women and children.
147. The first Implementation Report of 2009 also outlined the extension of the mandate of the Domestic Violence Court to cover matters of individuals involved in relationships that have similar characteristics to marriages regardless of their duration and nature. This was done to ensure more inclusiveness and allow people who experience abuse from their partners to easily access to legal recourse.
148. The third Implementation Report of 2014 indicated that fifty percent of sexual offences courts would be established by end of November 2013. At that time, it was noted that 22 of the sexual offences’ courts had been established (p. 90). The report also highlighted efforts that had been made by the Government to improve access to justice for poor at the basic and more direct level. The report highlighted that access to justice in the country is improved by the proximity of the courts and other justice facilities in the townships and villages where most of the population resides.
149. The report noted an increase in the awareness and use of Equality Courts, which focus on the enforcement of equality principles as enshrined in the Constitution with the aim to undo the colonial and apartheid legacy of entrenched racial and gender inequality regarding access to justice and other essential services. The use of these courts, instead of the ordinary justice system that has unaffordable, lengthy, and cumbersome procedures, brought the judicial system closer to communities. The third Implementation Report of 2014 also noted that the DoJCD has a programme to extend these services to townships and rural areas. Further outlined was the establishment of 23 additional Small Claims Courts in different provinces to enable people to institute civil claims to the value of R12 000, without the need for legal representation. This brought the number of the courts to 247 at the end of March 2012. In 2012, the courts that were established in the traditionally black areas and villages as branches of the main courts in towns were rehabilitated and empowered with additional



jurisdiction and capacity to function as full-service courts. Twenty-four of the 90 branch courts were identified for upgrading into full-service courts by 2014. By 2014, 15 of the 24 courts had already been converted into full-service court, a 62.5% accomplishment.

### *Conviction Rates and Law Enforcement*

150. The first Implementation Report of 2009 noted 713 sector policing initiatives had been undertaken to reduce crime and violence, and to strengthen anti-crime strategies, especially those committed against women and children. Additionally, the Interdepartmental Management Team (IDMT) that addresses key pillars of gender-based violence initiated a process for implementing sexual offences training for police and court services. They also established reference teams for the development and monitoring of its implementation.
151. Further, the 2014 third Implementation Report outlined the Family Violence Child Protection and an effort to address gender-based violence. Nationally, the Government had planned to establish 176 Family Violence Child Protection and Sexual Offences Units, attached to all police clusters in the South African Police Service (SAPS). However, only 15 were established. In support of the investigation of such crimes, over 2000 Forensic Social Workers were appointed to deal with crimes against children for a swifter and more accessible provision of expert evidence in court.<sup>18</sup>
152. With the re-establishment of Family Violence Child Protection and Sexual Offences Unit, it was reported in 2014 that there had been a marked increase in conviction rates for offences related to gender-based violence and child abuse. This has resulted in a combined 36 225 years of general imprisonments, 695 of which have been life sentences.<sup>19</sup> Commendable Practice 2.3 summarises the extensive policies and measures put in place to curb sexual violence in South Africa.
153. The 2016 Close out report noted that the re-establishment of the Family Violence Child Protection and Sexual Offences Units within the police force in 2010 is amongst the initiatives whose impact needs to be evaluated. The Close out report also outlined that the 2011/12 (SAPS) National Crime Statistics Report indicated that the level of violent crime had decreased during the 2009 -2011, 2012-2013 and 2014-2015 periods, though it had witnessed an increase after 2015.

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18 Pg. 38 APRM 3rd Implementation Report (2014)

19 Ibid, p. 119

### Commendable Practice 2.3: Policies and Measures to Curb Sexual Violence

The Government of South Africa has put in place extensive policies and measures to curb and eliminate sexual offences against women, children and persons living with disabilities in compliance with international laws and efforts. Investments have also been made to bring these initiatives from policy to action. For instance, the 16 Days of Activism for No Violence Against Women and Children Campaign, the 365 Days National Action Plan to eradicate violence and the popularisation of 'Project Ndabezitha' against domestic violence cases are all part of direct efforts and drive by Government to effectively implement the Domestic Violence Act of 2007 and the Children's Act of 1993.

Further, the central Government has collaborated strongly with Premiers in the different Provinces working with traditional leaders in partnership with NGOs for greater impact. The national campaigns and initiatives have enjoyed various partnerships including with the United Nations offices in South Africa such as UN Women to not only sensitise communities but to actively mobilise all sectors of society up to the local and community levels to put an end to the cycle of violence.

The campaigns heighten awareness and empower communities with knowledge to act to prevent abuse. Despite restrained economic conditions, the Government's deep commitment to safer communities and the welfare of vulnerable segments of society has seen the allocation of millions of Rands to NGOs fighting against gender-based violence. In spite of the challenges encountered over the years, the Government has built a solid basis for improvements while continuing to place high priority on the security of women, children and persons living with disabilities.

*Source: CRM compilation*

#### *Representation of Women in Political and Decision-making Positions*

154. According to the 2007 Country Review Report, although a legislative framework exists for the protection and promotion of women's rights, with some women in positions of responsibility in both the parliament and the executive arms of the government, the involvement of women in decision-making bodies is still low and their abuse is still rampant. Gender equity and equality are therefore still a concern.





155. The report noted that while it is 'true that women's views can now be heard and considered in society, women still remain vulnerable in several ways. The majority of women lack access to economic opportunities and social amenities. The OSW lacks the capacity to perform its functions efficiently and effectively.
156. The second implementation Report of 2010 highlighted Government efforts to comply with domestic and international obligations to promote gender political representation. South Africa ratified the 2008 SADC Protocol on Gender and Development, which required a 50/50 representation of women in political leadership by 2015. The report notes that the Government put in place initiatives to reach its 50% minimum target representation of women such as the Public Service Gender Equity Strategy. Between 2004 and 2009, women's representation in Parliament increased considerably from 27.8% to 44.0%. Further, women's representation in Cabinet increased from 27% in 1994, to 41% in 2009. Additionally, five of the nine provincial Premiers are women. Similarly, women's representation in provincial legislatures has increased considerably from 24% in 1994, to 50% in 2009.

### *Economic Opportunities and Gender Based Violence*

157. Gender-based violence, according to Statistics South Africa, is more prevalent amongst poorer women. Higher income has been noted to result in lower rates of abuse. The 2007 first Country Review of South Africa noted that government efforts to empower women extend also to the economic domain. It was reported that women empowerment programmes including employment opportunities through affirmative action, preferential procurement strategies and economic empowerment had increased access to services and representation of women in decision making positions and business. However, efforts to promote the rights of women are not without challenges.
158. According to the first Country Review of 2007, 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 were yet to benefit from various government programmes for women empowerment and gender equality. The report noted that greater participation of women in the private sector needs to be further promoted and encouraged.
159. Consultations with stakeholders showed 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 when they are the victim. When such cases are reported to the police, the latter tends to be lenient towards the perpetrator of violence.

160. According to the first implementation report in 2009, inequality in the country remained high between population groups especially between whites and black Africans as well as individual population groups and the impact is more severely felt by Black Africans.
161. The second Implementation Report of 2010 noted a persistence of race and gender disparity in remuneration (p. 58). It also indicated that these disparities also exist in employment equity targets in the public and private sectors. In the public sector, concerted efforts to ensure compliance with employment equity targets have generally resulted in an improvement across all levels over the years. For example, the Public Service had witnessed a steady increase of women in senior management positions (levels 13 to 16) over time: 30% in December 2005, 34.8% in March 2009 and 36.0% in March 2010. Although targets were yet to be met, in particular at the Senior Management Service (SMS) level and for people with disabilities, there was notable improvement and it was indicated that government would continue to set progressively higher targets to demonstrate commitment to the recruitment and retention of women, Blacks, and people with disability, to the levels of middle and senior management (p. 19).
162. The 2014 third Implementation Report highlighted that the number of women in executive positions in the public sector, unlike in the private sector, had grown, reflecting the commitment to the empowerment of women. Overall, the aggregate growth of women in leadership positions has slowed since 2010 due to reduced transformative gains in the private sector (p. 133).

## **ii. Findings of the Country Review Mission**

163. The Government has put strong mechanisms in place to implement policies and legislation to secure and protect the rights of women, children and persons living with disabilities. The Gender Machinery and the Commission for Gender Equality have been acclaimed as key achievements that showcase Government's determination to curb and end abuse of vulnerable groups. Although these mechanisms are in place, South Africa still faces significant and increasing problems with violence against women.

164. Substantive advancements have been made towards a constitutional framework and domestic policies that are transformational, progressive, and empowering. Yet, South Africa still faces inordinately high levels of gender-based violence, such that the statistics often quoted are considered 'non statistics' because of the prevalence of under-reporting. The statistical measures are considered as broad indicators of the pattern of gender-based violence and not necessarily as definitive' (Meyiwa and Williamson et. Al, 2017). The prevalence of physical violence is greater among less educated women than those with secondary or higher education (StatsSA- Crimes Against Women in South Africa 2020). According to the 2009 first NPoA implementation report, this segment of women is less likely to report cases because of socio-economic imperatives. It is also reported that women often face exploitation in the labour market. This form of financial deprivation is a significant economic challenge in South Africa with negative repercussions for child education and social well-being. In 2015, women earned 23% less than men, and it was estimated that men earned a median income of R3500.00 per month while women earned R2700.00 per month.
165. South Africa has also registered greater gender parity in decision making positions. Women have been included successfully into politics as highlighted by the 2007 first Country Review Report and the NPoA implementation reports. Despite such opportunities, female elected representatives are expected to promote party positions rather than personal and community positions on gender equality, meaning that they have few opportunities to champion the rights of women as a key issue in its own right. Despite a high-level of commitment from government at all levels, women's collective social and economic positions have worsened over the last decade and gender-based violence levels remain high due to slow economic growth and lack of opportunities. This reflects the analysis by the South African government that having women in power has not made a significant impact on decreasing the rate of gender-based violence or in tackling issues that affect them because of the broader macro-economic challenges.
166. The South African Women in Dialogue's (SAWID) report of 2020 highlights that the poor in the country *"among whom women are over-represented due to poverty's feminisation, bear the brunt of the pandemic's negative impact"*. A study by the University of Stellenbosch (2020) estimates that around 38% of households are headed by women and these households are approximately 40% poorer than those headed by men. An Analysis of *"The Phenomenon of GBV And Femicide 2020"* reveals that the prevalence of physical and sexual

violence decreased with the wealth quintile. Therefore, as highlighted above, women with fewer economic opportunities are often grossly violated. Further, the unemployment rate among working-age women was higher among black African women at 41.0% in 2019 compared to 8.2% among white women, 22.4% among Indian/Asian women and 29.9% among coloured women. Based on these statistics, black women are therefore more likely to experience gender-based violence because of limited economic opportunities. This highlights the far-reaching implications of limited economic prospects that relegates black women to the category of low or non-income earners.

167. Several studies have found that women with violent or controlling male partners are at a higher risk of HIV and AIDS infection (Dunkle and Harlow 2004). Hence, women in lower income brackets are more likely to experience gender-based violence, with coloured and black women also at a higher risk of contracting HIV and Aids from abusive partners. Wabiri and Taffa (2013) also suggested that economic dependence is the principal cause of the disproportionate burden of HIV and AIDS among the poor and vulnerable in South Africa.
168. To overcome the challenges of limited jobs, the South Africa Government has put in place several institutional and policy arrangements to expand economic opportunities through Small to Medium Enterprises (SME). Despite these noble efforts, South Africa has the highest start-up SME failure rates (Mazanai and Fatoki 2012). Women entrepreneurs do not enjoy the same opportunities as men in accessing start-up capital due to discriminatory practices embedded in lending models. This includes the difficulty women face in venturing into non-traditional industries, where barriers to entry are among the highest.
169. Several key issues were raised during stakeholder consultations as follows:
  - According to the Government of KwaZulu-Natal, for instance, the rate of arrests in cases related to gender-based violence reports is currently at around 25%. Efforts are being made to develop innovative policies and mechanisms that can be implemented to increase the rate of arrests and prosecution. The current situation calls into question the effectiveness of Sexual Violence Courts, and policing action, as the rate of arrests is still similar to that of 2007;
  - It is also alleged that only 50% of victims of GBV receive psychosocial support;
  - Organisations working to help curb gender violence outlined that amongst the factors that contributed most to women staying in abusive relationships



was the absence of financial independence. This echoes research and trends identified over the years;

- Inadequate funding for gender-based violence organisations and programmes in poor areas of South Africa has resulted in lower levels of investments in areas that are more needy, which further disadvantages women of less or no economic means.

### iii. Recommendations

170. The African Peer Review (APR) Panel recommends that the government should:

- Prioritise and fund more local and community-oriented initiatives to target the causes and actual sources of sexual abuse, including through social programmes to help socialise offenders;
- Mainstream inter-departmental programmes, for instance with the Department of Social Development, which aims to empower communities through awareness and prevention of sexual abuse;
- Scale up investments in social empowerment programmes on the rights of women and children, as well as policies to encourage an increase in the average level of education for women in rural areas and impoverished communities.



**OBJECTIVE  
EIGHT**

**Promotion and protection of the rights of  
vulnerable groups**

**i. Evolution of the Issue**

171. Considering that South Africa is an economic powerhouse in the southern Africa Region, it has witnessed an influx of immigrants from neighbouring countries, across the continent and the world. However, it is faced with numerous problems of refugees, illegal immigrants and undocumented persons. According to UNHCR, South Africa Multi-Country Office, out of the 253 156 people seeking refuge in the country, 31% are refugees and 69% asylum seekers<sup>20</sup>. It further notes that these immigrants are mostly from Ethiopia, the Democratic Republic of Congo, Somalia, Bangladesh, Zimbabwe, Congo, Burundi, Pakistan, Nigeria, Uganda, India, Cameroon, Eritrea, Ghana, Kenya, and Rwanda. Immigrants from Europe and the Americas are also notable in some sectors of the economy.
172. South Africa has ratified many international and regional instruments that protect and promote the rights of refugees, illegal immigrants and undocumented persons such as the Convention relating to the Status of Refugees 1951, the Protocol relating to the Status of Refugees 1967 and the OAU Convention of 1969. At the National level, it has enacted Refugees Act No 130 of 1998, and Immigration Act 13 of 2002. It has also established the Refugees Appeal Board and a Standing Committee for Refugees Affairs to address matters related to the appeal of refugee application rejection. South Africa has also set up four Refugee Reception Centres: Desmond Tutu Refugee Reception Centre, Musina Refugee Reception Centre, Durban Refugee Reception Centre, and Port Elizabeth Refugee Reception Centre. However, despite the existence of legislation and mechanisms to protect and promote the rights of refugees, illegal immigrants and undocumented persons, the country still faces a recurrence of xenophobic attacks due to the tensions between foreigners and citizens that arise because of the competition for scarce resources in the country.
173. The challenge of refugees, illegal and undocumented persons has been reported since the first APRM governance assessment conducted in 2007. Despite the ratification of international instruments protecting the rights of refugees in the country (CRR 2007, par. 268), the protection of the rights of refugees, illegal immigrants and undocumented migrants remains a cause for concern in the country (CRR 2007, par. 3.21).

20 UNHCR Refugee Data Finder for years until 2021, UNHCR planning figures (COMPASS) otherwise



174. The CRR 2007 (par. 269) notes that the country has approximately 142 000 registered refugees, and 115 pending applications. Many of the refugees come from Burundi, Cote D' Ivoire, Democratic Republic of Congo and Zimbabwe.
175. The report mentions efforts by the South African Government to accommodate refugees. These include granting of asylum by the Department of Home Affairs and the setting up of a National Immigration Branch that includes a refugee affairs section and a counter Xenophobia and Counter Corruption Unit that works to prevent abuse of refugees and asylum seekers (CRR 2007 par. 270). In addition, South Africa has been accommodating refugees at reception centres where they are either documented or deported. Humanitarian assistance is also provided to deserving cases at the same centres. Despite the tremendous effort by the South African Government, the refugee determination process was reported to be facing serious challenges, due to incidence of bribery and extortion involving the police (CRR 2007, par. 270).
176. However, the CRR 2007 (Par. 272) noted an increase in refugee cases and the pressure on infrastructural and social services which resulted in the rise in tensions between migrants and citizens due to the shortage of resources.
177. To address the highlighted issues, the CRR 2007 (par. 276) made the following recommendations: (a) seek ways to mitigate the push factors from neighbouring countries to reduce the influx of refugees as well as displaced and undocumented persons and, (b) address issues of excessive use of violence and corruption by security forces in handling refugees.
178. An examination of progress reports submitted by South Africa since 2009 show that efforts have been made to implement the recommendations, even though much still needs to be done. For example, in its first Progress report covering the period of 2007-2008, South Africa indicated that it had ratified the Protocol on the Facilitation of the Movement of Persons (SADC) on 4 February 2008 (Progress Report 2009 p.6). The objective of the protocol as stated in Article 2 is *“to develop policies aimed at the progressive elimination of obstacles to the movement of persons of the region generally into and within the territories of the State Parties”*.
179. The second Progress report covering the period January 2009 to November 2010 noted that the then President of South Africa had acknowledged the growing tensions between migrants and citizen in the country that had led to xenophobic attacks, and that the Government had made several efforts to address these attacks by: (a) reviewing its immigration policy focusing on the definition of refugees and asylum seekers in the Refugee Act of 1998;

(b) addressing the delegation of powers and the establishment of refugee reception centres; (c) dissolving the Standing Committee for Refugee Affairs and Refugee Appeals Board in favour of a new Refugee Appeals Authority; (d) clarifying and revising procedures to determine the refugee status; (e) developing a communication strategy and identifying key messages for encouraging mutual respect between foreign nationals and citizens; (f) Piloting a project on xenophobia in secondary schools around the Gauteng province; (g) establishing a special unit to specifically deal with issues of xenophobia giving practical effect to the Immigration Act of 2002, which aims, amongst others, to establish a new system of immigration control that ensures prevention of xenophobia; (h) developing a strategy for local integration of refugees and asylum seekers to promote and facilitate the full integration of refugees into the local communities, education institutions and the labour market; and (i) convening a special Summit to discuss xenophobia in order to capture all perspectives with a view to formulate the country's strategy as directed by the NGC (Progress Report 2010 pp. 53-54)

180. In addition, the third Progress Report covering the period October 2010 to January 2013 revealed that the government had acknowledged the persistence of xenophobia. The xenophobic attacks started in Alexandra in May 2008, and later spread to other areas in and around Johannesburg, including Cleveland, Diepsloot, Hillbrow, Tembisa, Primrose, Ivory Park and Thokoza. Reports of xenophobic violence were also widespread in other provinces such as Kwazulu-Natal, Mpumalanga, and the Western Cape (Progress Report 2013 p. 108). In response to the attacks the Government developed various mechanisms including: (a) review and strengthening of the campaign of the South African Human Rights Commission on "Rolling Back Xenophobia; (b) education and awareness within South Africa to combat xenophobic tendencies/attitudes and actions, carried out by Civil Society, NGOs and churches; (c) the Department of Arts and Culture hosted about 49 community dialogues across the country to encourage nation building, social cohesion and the fight against xenophobia and racism in communities. However, the third Progress report noted that despite the Government's increased efforts to accommodate refugees and immigrants as well as to protect South Africa's borders and points-of entry, challenges remain. The government realised that no migration policy or strategy aimed at alleviating xenophobic tensions can work if the national borders are porous and people can come and go as they please. It further realised that lack of border control leads to abuse, corruption and heightens the vulnerability of people who reside in the country illegally.





181. The APRM Close Out Report 2016 (p. 74) and the Country Self-Assessment report (CSAR, 2021) highlighted that Xenophobia occurred in 2009 and 2015, but that it was resolved through state interventions and civil society organisations. However, many of the challenges raised in the CRR 2007 keep recurring despite the various efforts by the government to address them. The CSAR 2021 (p. 15) highlighted the following challenges: (a) The current legislation governing the movement of foreigners in and out of South Africa does not entitle the children of illegal foreigners and undocumented migrants to permanent residency or citizenship resulting in them being denied access to basic human rights or services such as education, (b) Despite constitutional guarantees, the rights of migrants are not adequately protected in South Africa as they face discrimination, prejudice and physical violence resulting from xenophobia (CSAR 2021, p. 16), (c) children of refugees and asylum seekers are often removed from school or not admitted at all because they cannot produce a study permit, even though they may have asylum or refugee papers (CSAR 2021, pg. 16), (d) rights violations and lack of medical facilities have allegedly contributed to the deaths and illness of several detainees at Lindela Repatriation Centre (CSAR 2021, p. 134). In efforts to resolve the issue, the CSAR 2021 (p.134) notes that as for the 2019/20 financial year, the Department of Home Affairs in collaboration with the United Nations High Commissioner for Refugees (UNHCR) reviewed over 153 000 appeal cases, established an asylum appeal management programme, training and equipment, and technical support by the UNHCR. In addition, the Parliament’s Home Affairs portfolio committee intervened to repatriate undocumented immigrants to their home countries, and established measures to reintegrate refugees into their host communities, and immigrants displaced due to xenophobic violence in the affected areas (CSAR 2021 p. 134).



**ii. Findings of the Country Review Mission**

182. The CRM learnt that despite provisions in the Bill of Rights for the protection of their rights, refugees, illegal immigrants, and undocumented persons experience difficulties in accessing and enjoying these rights, which include the right to have access to housing, the right to work, the right to education, the right to healthcare and the right to social security. This problem has been noted repeatedly in the APRM governance assessment reports of South Africa since 2007.
183. Regarding access to papers, refugees, illegal immigrants and undocumented persons face problems securing or renewing their permits due to the recent closure of refugee reception Centres in major cities, and the delays in the asylum process. The CRM noted that the long administrative asylum-seeking process could result in an individual holding asylum-seeker status for more than 10 years without the opportunity to gain permanent residency as stipulated by Section 24 of the Refugees Act.
184. As for the right to education, the CRM learnt that children born in South Africa to refugees, illegal migrants and undocumented persons are denied access to documentation (including birth certificates) and, as a result, do not have access to healthcare services and learning institutions. These children are not allowed in schools due to lack of study permits. Participants noted that birth registration of these children should not be determined by the parents' status as it deprives the children of the right to fundamental human rights from birth. Further, the CRM learnt that children with asylum documents are prevented from studying at some schools because of unclear guidelines on what constitutes a legal document for refugees to access to learning institutions. A report by Scalabrini<sup>21</sup> revealed that 82% of refugee children in Limpopo were undocumented, 39% of the children born in South Africa to foreign parents did not have a birth certificate, 40% of all children were considered 'at risk' of statelessness.
185. With regard to access to health care, refugees, illegal migrants, and undocumented migrants have difficulties receiving care since they cannot show proof of their legal residential status. The CRM learnt that although the Constitution, the National Health Act, and the Refugees Act spell out the right of refugees and migrants to healthcare, the Immigration Act sort of muddies the waters as it states that staff at clinics and hospitals must determine the

21 Scalabrini, 2019. A comparative report of foreign children placed in child and youth care centres in Gauteng, Limpopo, and Western Cape provinces of South Africa.



legal status of patients before providing care except in an emergency. They are also expected to pay consultation and treatment fees, because of their refugee and illegal migrant status.

186. The CRM also learnt that access to employment is a challenge for refugees, illegal migrants, and undocumented persons. Due to exclusion from economic mainframe, they end up competing for the scarce low-end jobs with citizens, which results in diminished salaries and deplorable working conditions. This has been witnessed in the unskilled labour sector such as construction, mining, security, and farm work, where refugees in South Africa often work for very low wages. Furthermore, the CRM learnt that some employers do not recognise asylum documents, which makes things difficult even for documented refugees.
187. The CRM noted that the competition for scarce resources and jobs in South Africa has led to a rise in tensions in the township communities. The participants complained that the small enterprises in their communities operating as SPAZA shops are mainly owned by foreigners, yet it is difficult for citizens to establish and operate similar businesses. This is because, according to them, foreign owned Spaza shops are not regulated as strictly as those owned by nationals, putting nationals at a competitive disadvantage. This tension has resulted in the recurrence of xenophobic attacks in Township Communities where businesses owned by foreigners have been looted and destroyed.
188. The CRM learnt that in 2009 South Africa tried to accommodate illegal migrants by granting special permits to economic migrants from Lesotho and Zimbabwe to work and live in the country. For Lesotho, they were granted the Lesotho Special Permit and for Zimbabwe, it was initially the Dispensation Zimbabwe Project, which was later renewed to the Zimbabwe Special Permit, and renewed in 2017 as the Zimbabwe Exemption Permit. However, in 2021, the government announced that this type of permit would expire in December 2021 and would no longer be renewed. The holders of this permit were given a grace period of one year till December 2022 to apply for other mainstream permits. The decision further stated that unsuccessful applicants for mainstream permits would have to leave South Africa or face deportation. The CRM noted the challenge it might bring to the South Africa government as this approach may anger the teeming number of illegal immigrants in the country.

### iii. Recommendations

189. The African Peer Review (APR) Panel recommends that the Government should:

- Explore the possibility of amending both the Immigration Act 13 of 2002 and the Refugees Act 130 of 1998 to accommodate the children of refugees and undocumented persons and provide them with basic human rights;
- Establish a national register of children of refugees and undocumented persons to assist with providing them with requisite socio-economic services;
- Seek ways of mitigating the push factors from neighbouring countries to reduce the influx of refugees, displaced and undocumented persons and;
- Address the issues of excessive use of violence and corruption by security forces in handling refugees.





# CHAPTER THREE

## 3. ECONOMIC GOVERNANCE AND MANAGEMENT

### 3.1 Overview

190. According to the APRM's foundational document, the Declaration on Democracy, Political and Economic Governance, good economic governance and management is a prerequisite for addressing the triple challenges of poverty, unemployment, and inequality through promotion of economic growth. APRM participating Member States firmly believe therefore that market efficiency, fiscal prudence, and good public finance management are critical aspects of enhancing sustainable economic development. This chapter focuses on issues related to economic governance and management in South Africa.



191. The South African economy had a chequered decade before 1994 as most of the years recorded no or negative growth. Indeed, the growth rate between 1984 and 1993 averaged 1%. Thus, as the 27 April 1994 elections approached, there were high expectations for a marked increase in the quality of life in the post-apartheid era. Indeed, the wide disparity in subjective well-being between blacks and whites somewhat contracted. South Africa experienced relatively high and consistent economic growth, moving from 2.9% in 1994-2003 to 3.4% in 2004-2013, which supported poverty reduction. The trend was however reversed between 2014 and 2019, with the growth rate hovering between 0.1% and 1.8%, before the Covid-19 pandemic led to a further drop to -7.0% in 2020. Nonetheless, after almost three decades from the end of apartheid, hope for a more progressive society has been dampened as South Africa remains among the most unequal country in the world, and the apartheid spatial divide continues to dominate the landscape of income and wealth.
192. The challenges of inequality, poverty and unemployment that South Africa has always faced have increased in the almost three decades post-apartheid despite the many policies, programmes and strategies. The government of South Africa has an elaborate planning space, which is underpinned by the National Development Plan whose objective is to eliminate poverty and reduce inequality by 2030. To make the plan more inclusive, the Integrated Development Plan that directly involves the Provinces and Municipalities was also introduced. The emergence of the COVID-19 pandemic also led to the establishment of the Economic Recovery Plan. These efforts are directed towards stimulating the economy over the medium to long term. These plans however have had mixed results.
193. Despite the elaborate plans and strategies, the enduring high unemployment and debilitating poverty challenges remain. The CSAR 2021 and the country review mission consultations and engagements with critical stakeholders across the provinces and municipalities suggested that South Africa is on a trajectory that must be urgently reversed. The fault lines highlighted in the country review report of 2007 continued to widen over the years despite the country's efforts at addressing them. The CSAR 2021 emphasised these challenges, which are broadly classified as weak growth and lack of accountability. The Country Review Mission has identified and prioritised these challenges under each of the six objectives in this chapter as listed below:



- **Institutional capacity to achieve a broad-based inclusive economy:** The capacity of institutions in South Africa to transform economic policies into positive outcomes has been under serious challenge over the years. This challenge has led to fragile growth that does not create jobs for the huge unemployed population in the country (especially the youth), thus sustaining the economic disparities in a non-inclusive nation.
- **Inadequate public consultation and poor monitoring:** South Africa has been implementing the participatory policy-making approach since 1994, taking into consideration local needs through consultations. Government introduced the District Development Model which was set up to improve Cooperative Governance to build a capable and ethical developmental State that can foster collaborative planning among the three branches of government and State entities, with the overall goal of improving service delivery and development outcomes. At the core of this approach is a technically driven consultative process within government and with communities and stakeholders. However, the extent of public consultations in the design, implementation and monitoring of projects has not been up to expectations, and has resulted in a system with no grassroots-driven projects.
- **Public Finance Management Capacity:** The public service has manifested weaknesses in its ability to deliver basic services to the population. One of these is the quality of management of public funds. Since 1994, the South African government has set up many structures and legislative frameworks to develop and guarantee sound public finance management. These include the Public Finance Management Act (PFMA), the Municipality Financial Management Act (MFMA) and the Public Service Management Framework. However, the economy is constantly plagued by an acute lack of capacity, particularly the financial expertise to manage social programmes, social support spending, and to facilitate service delivery at the provincial, municipal and local levels. The provinces and municipalities have their constitutional roles, which are mainly anchored on the delivery of services, and on performing functions that are central to Government's overarching objectives of redistribution and poverty-alleviation. Revenue raised by the national government is divided equitably between the national, provincial and local spheres, in proportion to their fiscal capacity and functional competencies. However, the country continues to find evidence of serious weaknesses in financial management leading to a systemic financial haemorrhage.

- **Corruption in the Public Sector:** Low product and market diversification and low value addition have been persistent features of the South African economy. To overcome these challenges, the Government of South Africa has adopted an export-oriented economic policy and is playing a leadership role in Africa’s regional and continental economic integration agenda. The economic position of South Africa in SADC makes it the most developed and advanced economy in the region and a leader on the continent. The economic benefits from regional integration include increased market size, improved intra-regional trade and investment flows, and increased transfer of technology and experience.
- **Deepening South Africa’s intra-regional trade:** The acceleration and deepening of regional integration, particularly monetary, trade, and investment integration, is considered critical to regional development. The role of Regional Economic Communities is, in general, to pursue, support and nurture the integration of its member States in these areas, among others. The Southern Africa Development Community is considered pivotal to the regional integration process in southern Africa. However, trade between South Africa and the other southern African countries suggests that the Tripartite Initiative (consisting of SADC, the EAC and COMESA) that was launched in South Africa in 2011 has not had significant success.
- **Enhancing the Trade and Investment Space:** South Africa is one of the largest economies in Africa and the most industrialised on the continent. The country continues to experience unemployment, inequality and poverty. Addressing these challenges requires, among other things, robust and quality economic growth and sustainable development, which are prerequisites for the attraction of foreign direct investment (FDI). Unfortunately, the country has been experiencing a decline in FDI inflows, which can be attributed to low reinvested earnings and reduced borrowing. There is therefore a need for further reforms and policy consistency to reverse dwindling investment in the country.

194. These issues are critical to good economic governance and management in South Africa today, and cut across thematic areas. In the rest of this chapter, each of the above issues will be considered against a four-level analytical framework. Section one describes each of the issues briefly, section two traces the evolution of each of the issues all the way from CRR 2007 to the CSAR 2021, section three summarises the findings of the CRM, while section four presents the recommendations of the APR Panel.





## 3.2 Standards and Codes

### i. Evolution of the Issue

195. Standards and Codes are set guidelines and principles that have been approved by African countries, individually or collectively, with regard to “how” they govern themselves and manage their societies, economies and socio-economic development. These are sets of agreed standards and codes of practice which APRM seeks to use in helping African countries including South Africa to achieve its fundamental objectives, including good economic governance and management.
196. South Africa is a party to a number of international treaties and other standards and codes relating to economic governance and management. The Department of International Relations and Cooperation (DIRCO) serves as a central depository for all Standards and Codes that have been adopted and are being implemented.
197. The South Africa’s Second-Generation Country Self-Assessment Report (CSAR) reported that South Africa has both signed and ratified most of the relevant international standards and codes. The second CSAR reacted in part to questions raised in the first CSAR why South Africa had not signed and ratified some standards and codes. It explained that the South African government was reluctant to join the Extractive Industry Transparency International (EITI) initiative for two main reasons. First, it argued that key northern states were also yet to join the initiative, and that current membership consisted mainly of developing countries from the global South. Second, it argued that it already has measures in place to ensure transparency in the extractives industry, and therefore does not see a compelling reason for joining the EITI.
198. However, the report did not give any reason why other standards and codes had not been signed or ratified. These include the AU African Charter on Statistics (2000), the AU Abuja Treaty establishing the African Economic Community (AEC) (1994), and the SADC Protocol on Industry (2019). Also, the report did not discuss the enforcement mechanisms and reporting structures for the standards and codes that have been ratified. Progress on some specific guidelines identified in the first CSRA was also not discussed.
199. However, the 2021 CSR noted that it will be beneficial for South Africa to join the EITI, as corrupt deals leading to the illicit diversion of extractive revenues are likely to take place at the contract negotiation phase, an area over which South Africa’s domestic mechanism to safeguard extractive revenues from abuse may struggle to exert control. An issue that came up during the first review

relating to standards and codes was that while South Africa is a signatory to a number of a number of international standards and codes, the level of compliance was not documented. Furthermore, none of the three progress reports submitted to the APR Forum indicated if any of the recommendations emanating from the 2007 review had been acted upon.

**ii. Findings of the CRM**

**Standards and codes not ratified/signed**

200. The CSAR noted that out of the 19 standards and codes relevant to the EGM thematic area as listed in the 2012 APRM Country Self-Assessment Questionnaire, South Africa has signed, ratified, or adopted 16. The CRT also confirmed that South Africa has not yet signed the African Charter on Statistics, the Extractive Industries Transparency Initiative (EITI) and the Stolen Assets Recovery Initiative.

**Inadequate justification for standards and codes not ratified/signed**

201. The first Country Review Report (CRR) in 2007 did not respond to the suggestion that the Country Self-Assessment Report should indicate why the country had not signed or approved certain protocols or codes, and indicate what could be done to remedy the situation. This recommendation was not adequately followed.

202. However, the Second-Generation Country Self-Assessment Report (CSAR) reported that South Africa has signed and ratified most of the relevant international standards and codes. The second CSAR yielded in part to comments raised in the first CSAR by explaining why it had not signed or ratified. These reasons are mentioned above under 197.

203. The problem however, persists as there are still standards and codes that have inexplicably not been signed or ratified. For example, no reason was given why South Africa has not signed the AU African Charter on Statistics (2000), the AU Abuja Treaty establishing the African Economic Community (AEC) (1994), and the SADC Protocol on Industry (2019). Also, the report did not discuss the enforcement mechanisms and reporting structures for the standards and codes that have been ratified. Progress on some specific guidelines identified in the first CSAR was also not discussed.

204. Meanwhile, the 2021 CSAR noted that it will be beneficial for South Africa to join EITI, as corrupt deals leading to the illicit diversion of extractive revenues are likely to take place at the contract negotiation phase, an area over which South Africa’s domestic mechanism to safeguard extractive revenues from abuse may struggle to exert control.



### Inadequately documented Level of Compliance

205. The 2007 CRR noted that South Africa's level of adherence to the standard and codes that the country had signed, ratified and adopted was not well documented. This was further noted by the second-generation CRR. The CSAR indicated the level of compliance with some of the standards that do not need ratification, but which are accepted as best practices. These are: the Insurance Core Principles and Methodology (2003), International Standards on Auditing, Core Principles for Effective Banking Supervision (2006), Core Principles for Systemically Important Payment Systems (2001), Guidelines for Public Debt Management (2003) and Revised Code of Good Practices on Fiscal Transparency (2007). But the CRR did not establish the extent to which the codes and standards had been translated into policy, legislations and specific actions.

### iii. Recommendations

206. The African Peer Review (APR) Panel urges the:

- Monitoring of compliance with internationally agreed standards and codes of practice under the Economic Governance and Management theme [*Ministry of Justices and Correctional Services*];
- Adoption of the African Charter on Statistics [*Statistics South Africa*];
- Accession to the Extractives Industry Transparency Initiative [*Department of International Relations and Cooperation*].



### 3.3 Assessment of Performance on the Objectives of the African Peer Review Mechanism (APRM)

#### OBJECTIVE ONE

#### Design and implement economic policies for sustainable development

##### i. Evolution of the Issue

##### **Institutional capacity to achieve a broad-based inclusive economy**

207. The institutional capacity in South Africa rested on the ability of the country to deploy and explore its economic policies to address low and unstable growth, inaccurate projections and structural challenges to improve monitoring and evaluation of performance with an overarching goal of achieving a more inclusive South Africa. The 2007 base review identified macroeconomic stability as a key feature of the South African economy following emancipation from apartheid in 1994. To bridge the wellbeing gap, the government embarked on social spending by increasing tax relief to put the economy on a sustainable growth path. More so, there was a decline in government deficit and inflationary pressure was addressed. However, the unstable exchange rate and weak economic growth were identified as fundamental issues. Specifically, growth was weak due to its inability to create job opportunities for the huge unemployed population in the country. The ambitious economic growth projection of 6% annually has so far remained a mirage.
208. The base review also indicated efforts to increase investment and economic growth through resource mobilisation, expansion of domestic saving, improving capital formation and minimisation of capital flight. Also, the wide inequality in assets and income witnessed in the country was attributed to bifurcation of the economy into developed (dominated by few) and underdeveloped (dominated by largest share of the population). Efforts to address this fundamental problem have consistently proved abortive due to limited institutional capacity that is anchored on inadequate skills and sub-optimal resource management. Skittish investors have further been unnerved by unrelenting skill shortages, misguided policies, and overregulation.
209. Furthermore, the base review acknowledged exemplary behaviour in the conduct of economic policies, which elevated the country to a group of emerging markets. Due to the growing unemployment and poverty - the key driver of non-inclusiveness-, government introduced the Accelerated and Shared Growth Initiative for South Africa (AsgiSA) to facilitate economic growth and reduce unemployment and poverty by 50%. In addition, the Broad-Based



Black Economic Empowerment programme introduced to address inequality has failed to capture a large share of the most disadvantaged group. This was due to lack of information, ineffectiveness of monitoring mechanisms, delay in payment, nepotism and favouritism. Hence, the attainment of an inclusive country through these policies and plans remains elusive.

210. After the base review, South Africa introduced several initiatives to address blockages to service delivery which include Free Services, Expanded Public Works Programme, Integrated Rural Development Programme, and the Municipal Infrastructure Grant. Also, the country introduced a National Capacity Building Framework in 2008. Another critical issue identified in the country is unemployment. Since the country has limited employment opportunities, it introduced the Expanded Public Works Programme to create job opportunities with the aim of reducing unemployment by 50% in 2014. In the second progress report in 2010, the issue of unemployment reoccurred. A different approach was deployed to address the alarming rate of unemployment especially the astronomical increase in youth unemployment. Specifically, Industrial Policy Action Plan II was launched in 2010 aimed at promoting industrialisation and enhancing the growth of priority local sectors. Another initiative was the Community Works programme. In sum, all the reports acknowledged endemic structural deficiencies

### **Non-Inclusive Growth**

211. The 2007 Country Review Report (2007 CRR) pointed out the challenges of non-inclusive and broad-based growth in the country. Broad-based inclusive growth is required to address structural shortcomings in the country. More importantly is the limited capacity of institutions to harness the various economic plans, policies and strategies to address the structural issues such as the fragile economic growth and unemployment that have stubbornly hindered the attainment of an inclusive economy.

### **Fragile economic growth**

212. The 2007 CRR acknowledged improvement in the macroeconomic management of the country. Specifically, the country maintained a low inflation rate, low long-term interest rates, and a reduction in the budget deficit. Despite the impressive macroeconomic performance, the CRR reported an un-inclusive and a low broad-based growth. Specifically, growth had been relatively high before global financial crisis though below the yearly 6% target. The growth challenge in the country started after the GFC when the country entered into recession in 2009.

213. Given the long intervals between the 2007 CRR, the progress reports and the 2021 Country Self-Assessment Report (CSAR 2021), the country was expected to have witnessed significant improvement. However, the 2021 CSAR still expressed serious concern about the fragile growth of the South African economy. Despite a relatively stable macroeconomic policy, the 2021 CSAR noted that South Africa's economic growth has been highly unstable in the last one and a half decades. The economy slipped into the worst recession in the country's history as the growth rate fell to -7% in 2020, a clear manifestation of an economy with a weak base. However, the economy is recovering slowly as it recorded a 1.2% growth rate in the second quarter of 2021.
214. Additionally, the country witnessed a slight improvement in economic growth in the first and second quarters of 2021, as compared to the huge decline experienced in 2020. There are also economic growth projections of 3.3%, 2.2%, and 1.2% for 2021, 2022, and 2023, respectively. However, the looting of stocks and properties, as well as the aggravated violence that occurred in July 2021 will most likely undermine the attainment of these projections. The country does not have strong broad-based growth that can create enough jobs for the citizens. The infrastructure and human capital needed to support strong and sustainable economic growth is very weak. Specifically, the generation and supply of power remains a major challenge to economic development as load shedding continues to impose running and economic costs (from business losses). The education system that is expected to generate and augment requisite skills is also underperforming because of poor infrastructure and maladministration. The 2021 CSAR explained that the high unemployment rate in the country was due to poor design of the education system. The education system faces deteriorating infrastructure, high population density in classrooms and low educational outcomes.
215. However, the informal sector is playing a significant role in the economy. Specifically, informal employment accounts for 30% of non-agriculture jobs with close to five million employment opportunities. Efforts by government to integrate the sector into the formal economy through the National Informal Business Upliftment Strategy (2014) proved abortive as business owners refused to migrate to the formal sector. This was attributed to strict regulations and high taxes. In addition, given the role of women in South Africa's economy, key economic policies do not capture gender inclusiveness. Specifically, women contribute about 35%-45% of GDP, and they render the largest share of unpaid work despite using large time allocation in the country.



216. The country also deployed sectoral and microeconomic policies in primary and secondary sectors as noted in 2014 APRM National Programme for Action. However, there is a huge structural shift to the tertiary sector that requires high skills. This further aggravates the unemployment rate (due to a skills mismatch). More so, the overdependence on the extractive sector compounded the unemployment problem in the country. The target of Industrial Policy Action Plans remains unachievable as projected manufacturing jobs declined. Although the 2021 CSAR acknowledged the adoption of the New Growth Path (2010) and the National Development Plan (2012) after the first review in 2007, the economic targets in these plans are yet to be achieved due to weak macroeconomic fundamentals in the country.
217. The 2021 CSAR noted that the country recently launched the National Development Plan (Vision 2030), which lays out a comprehensively framework to achieve targets in the long-run. Specifically, the long-term plan is directed towards achieving inclusive growth, economic prosperity and promotion of quality life. Additionally, the plan is expected to address the high unemployment, inequality and poverty rates in the country. It set the following targets: economic growth of 5.4%, lower unemployment rate by 6%, high investment, lower inequality with 0.60 Gini coefficient and absence of food poverty by 2030. The long-term plan was supported by the Medium-Term Strategic Framework (2019-2024). This medium-term plan is structured to achieve at least 50% of the targets in the long-term plan. However, these projections were constrained by the emergence of COVID-19 and other inherent structural deficiencies. Explicitly, the pandemic has worsened the socio-economic indicators highlighted in the previous plans. The total unemployment and youth unemployment soared to 34.4% and 60%, respectively and poverty and inequality increased in the second quarter of 2021. Given these challenges, the government introduced the Economic Reconstruction and Recovery Plan (ERRP) to protect lives, provide assistance to vulnerable households and build a strong and resilient economy. The ERRP was supported with Operation Vulindlela to significantly address worsened structural factors.
218. From the foregoing, a broad-based inclusive growth remained elusive in the period between the base review in 2007 and the second generation CSAR of 2021.

## Rising Unemployment

219. In the first review of 2007 (base review), high unemployment was identified as the main problem the country faced. This was considered to be the result of 'jobless growth'. Despite the moderate growth, many new entrants in the labour market could not be absorbed. The base review also noted that AsgiSA was initiated to propel job creation for millions of unemployed people, but there were limitations to this policy initiative. Furthermore, the high inequality in the country was attributed to the ineffectiveness of Broad-Based Black Economic Empowerment (BBBEE) due to poor skills and fiduciary risks. These weaknesses have hindered employment and entrepreneurship growth.
220. Furthermore, the first progress report acknowledged the issue of growing unemployment in South Africa. In 2008, little progress was made in job creation. During the period, informal employment declined by 100,000 while formal sector registered employment of 24,000. The government also introduced the Expanded Public Works Programme (EPWP) which achieved more than its target of creating one million jobs. Unfortunately, this progress was reversed due to the increase in job losses after the global financial crisis. The first report indicated the dedication of government to reduce unemployment by 50% in 2014.
221. The second progress report also highlighted the issue of unemployment. In 2012, the unemployment rate stood at 25.3%. The report showed slight improvement in employment. During the period, employment decreased by 1.4% in the formal sector while informal employment increased by 5.7%. More so, the report noted the growing concern about skyrocketing youth unemployment in the country. To address this, government proposed a youth employment subsidy in the 2010 budget. Also, the Industrial Policy Action Plan (IPAP) was launched to complement government's effort towards reducing unemployment. Four areas were identified: capital and transport equipment and metal fabrication, automotive and components, plastic fabrication and pharmaceuticals and forestry, pulp, paper and furniture. The plan also made provision for huge funding for these priority sectors. However, this initiative created relatively few job for the unemployed population. In addition, the Community Works Programme was launched to support the country's drive towards job creation. The implementation of the Expanded Public Works Programme was also introduced to complement the existing efforts to reduce unemployment. The Programme has as objective to train, educate and develop capacity of the large unskilled population. Also, State and non-State organs were expected to create jobs. The subsequent phases were expected to achieve 4.5 million jobs in 2013/14.





222. In the third progress report, unemployment was stable at 24.9% in 2011. The report further confirmed the high unemployment and inequality among the citizens in South Africa. According to the report, the total rate of unemployment increased to 29.8% in 2012. This was expected to significantly drop in subsequent years. In post 2012 and coupled with the negative effects of the pandemic, government introduced the National Development Plan (Vision 2030), the Medium-Term Strategy Framework (2019-2024), and the Economic Reconstruction and recovery Plan. However, the CSAR revealed that not much progress has been made. Specifically, the total unemployment stood at 34.4% in the second quarter of 2021 and youth unemployment was 60% in the first quarter of 2021. In addition, employment intensity has followed a downward trend in the last 8 years. In addition, 2014 APRM national programme of Action identified South Africa as a country with high competitive advantage in the primary and secondary sectors. According to the report, these sectors have the potential for job creation and labour absorption.
223. However, evidence showed a huge shift to the tertiary sector which requires high skills and experience. A larger proportion of the population does not possess the skills required to drive service sector intensity, which explains the high unemployment rate in the country. More so, there is huge reliance on the extractive sector that is capital intensive and a disincentive for labour. This has further aggravated the unemployment problem in the country. Additionally, human capital is largely dwindling in the country. The annual industrial policy action plan introduced with special focus in the manufacturing sector was projected to create additional 350,000 specialised skills by 2020. Unfortunately, the sector consistently shed jobs and has not been absorbing new entrants in notable numbers. From the reports, structural unemployment remains a critical challenge in South Africa.

## ii. Findings of the CRM

224. This section provides evidence from the various engagements and interactions of the country review mission (CRM) with stakeholders from the national, provincial and municipality levels. The key focus of the engagements is understanding the reason for the absence of palpable impact of the various excellent policies, plans, and strategies aimed at addressing, at least, the perennial challenges of unemployment, poverty and inequality. The rest of the section provides evidence of fragility of the economy and the various manifestations of the failure of the institutions and the capacity to implement policies to address challenges and achieve an inclusive society.

225. The Government of South Africa has many plans with clear strategies to successfully implement them. The first of such plans in the post-apartheid era was the Reconstruction and Development Programme (RDP). The programme included the use of fiscal policy, specifically social wage<sup>22</sup> to support redistributive measures towards reducing poverty and inequality. In 2012, the National Development Plan: Vision 2030 (NDP) was adopted. This is South Africa's long-term plan for achieving inclusive growth, prosperity and improvements in the quality of life for the country's citizens. The future of the citizens of South Africa is anchored on this plan as the main priorities are reduction in unemployment, poverty and inequality. To ease implementation of the plan, the government established the Medium-Term Strategic Framework, 2014-19, which was the first five-year building block of the plan. This was followed by the 2019-2024 and 2024-2029 planning cycles. However, the plan was reviewed in 2020 by the National Planning Commission to assess the progress made regarding the critical targets since its adoption.
226. The NDP noted that South Africa needs an economy that is more inclusive, more dynamic and in which the dividends of growth are shared equitably. The goal is that by 2030, the economy should be close to full employment, should equip people with the required skills, ensure a diverse and growth-enhancing production ownership structure, and provide the resources for human and physical capital investment.
227. The plan further highlights the features of the South Africa economy, which includes low or fragile growth, middle-income trap, lack of competition, unemployable job seekers, and low savings. This has led to greater reliance on foreign capital inflows and a poor skills profile. These issues are historical and the overarching goal of the plan is to address the challenges.
228. Focus of the plan is to systematically address the root causes of the problems through enhanced human capital, improved productive capacity and infrastructure to raise exports and thus increase investment in the country. Doing so would improve productivity in the country, allow the economy to grow faster, raise employment, augment incomes and ensure a better standard of living.
229. An examination of the various indicators of the economy from 1994 till the time of the implementation of the plan suggests a sub-optimal success rate in many aspects of the economy.

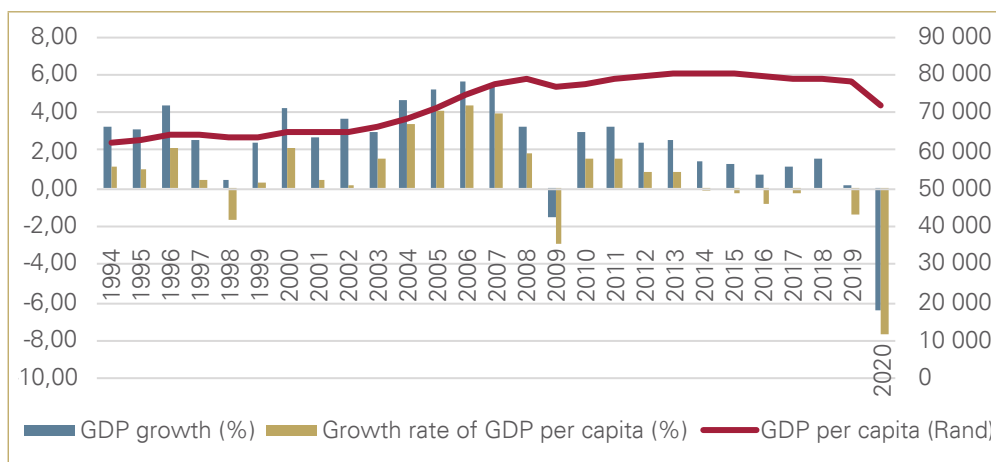
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22 Social wage refers to the government's investment in education, health services, social development including social assistance to vulnerable households and individuals as well as contributory social security, public transport, housing, and local amenities.



230. Figure 3.1 presents the trend in the growth rate of real output and income per person from 1994 to 2020. The indicators depict the wellbeing of the country and its citizenry. The trend clearly highlights two distinct periods: the pre- and post-GFC periods. The period before the global financial crisis of 2008-2009 shows that the indicators trended largely upwards (except in 1998) and peaked just before the crisis, indicating a largely prospering country. Afterwards, the trend started dropping. Income per person remained unstable while the output growth rate declined consistently. The bad situation was made worse in 2020 when the country started experiencing the negative impact of the COVID-19 pandemic. As output declined consistently, income per person declined even faster, indicating a significant drop in the standard of living. Additionally, the structural change further worsened the economic challenges.

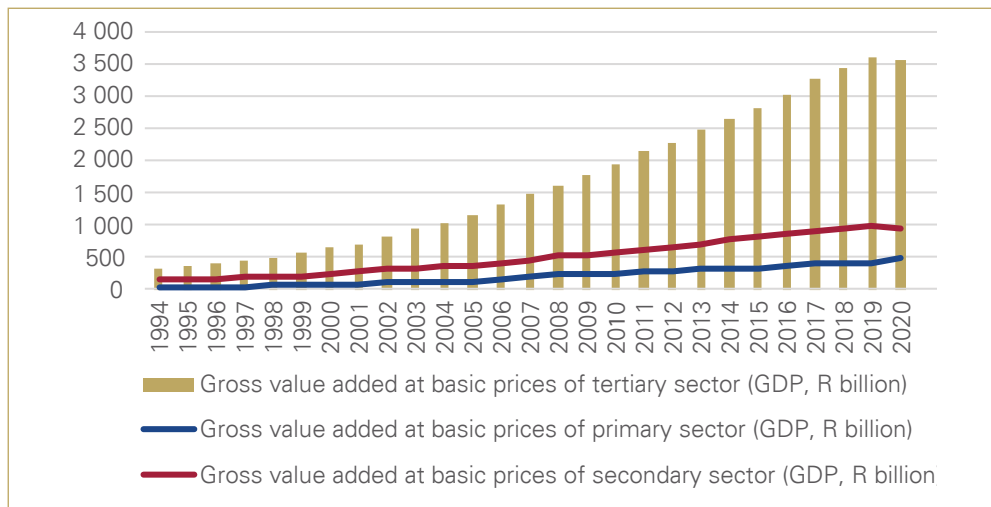
231. **Figure 3.1** Real GDP growth rate and GDP per capita, 1994-2020



Source: Reserve Bank of South Africa and World Bank Development Indicators, 2021

Figure 3.2 shows the trend of sectoral GDP between 1994 and 2020. The primary and secondary sectors were outpaced by the tertiary sector, which signifies increasing “jobless growth”. There was a structural problem in the country before the pandemic; the primary and secondary sectors that were supposed to deliver broad-based growth had been overtaken by the exceptional growth of the tertiary sector. The larger share of the population is unskilled and thus does not possess the skills needed to benefit from the burgeoning tertiary sector. More so, the shift to the tertiary (especially financial and community sectors) did not generate the number of jobs needed to address the structural problem in the country.

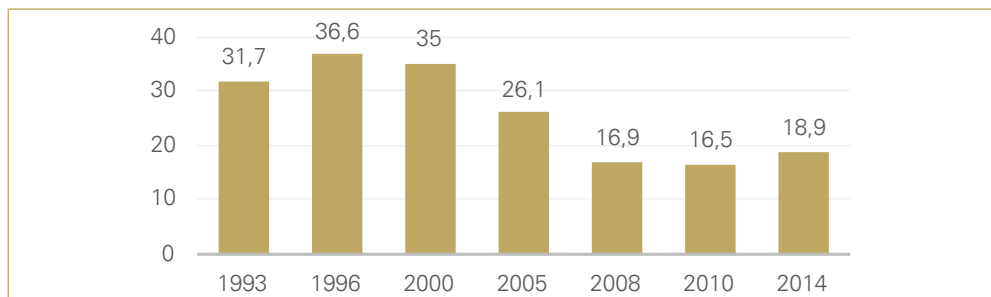
**Figure 3.2** GDP across the sectors, 1994-2020



Source: Reserve Bank of South Africa, 2021

- 232. According to the Africa Growth Initiative, South Africa is characterised by a low-growth trap with a slight reduction in poverty levels but growing inequality, although poverty levels fell from 1996 to 2005 as presented in figures 3.3 and 3.4.
- 233. After the GFC, the poverty headcount ratio at national poverty lines climbed from 53.2% in 2010 to 55.5% in 2014. In absolute terms, 30.3 million people were below the poverty line as of 2014. Given the unstable growth and the COVID-19 pandemic, the poverty headcount ratio is expected to have increased tremendously. The revision of the rate used for the poverty line at national level indicates the present situation and the endemic nature of poverty in the country. Certainly, the NDP was developed at the right time to grapple with the emerging fallouts of the GFC.

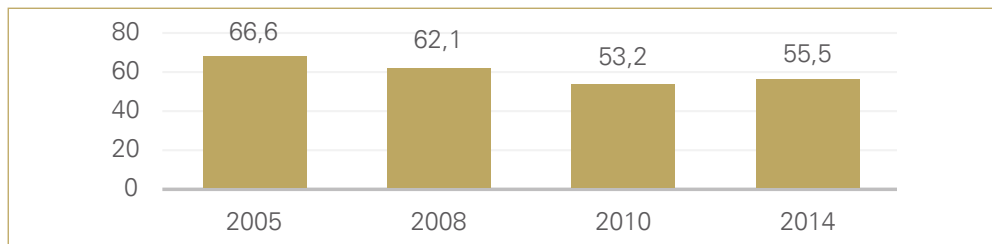
**Figure 3.3** Poverty headcount ratio at \$1.90 per day (2011 PPP) (% of population)



Source: World Bank Development Indicators, 2020



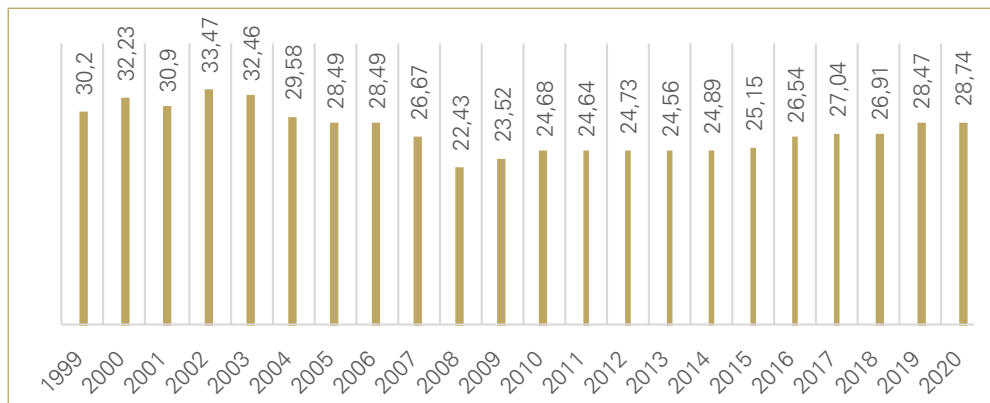
**Figure 3.4** Poverty headcount ratio at national poverty lines (% of population)



Source: World Bank Development Indicators, 2020

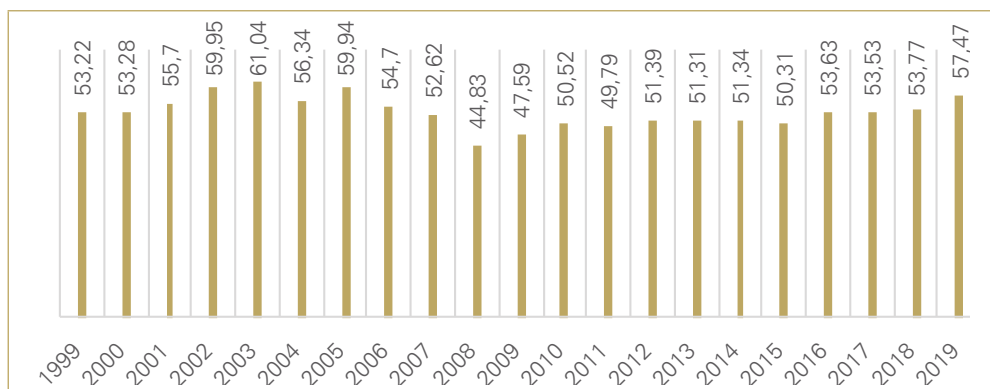
234. The growing unemployment, especially youth unemployment shows the structural challenge facing the country. The fragile growth failed to absorb people into the production process. Figures 3.5 and 3.6 depict the pattern of aggregate and youth unemployment rates. The unemployment rate was declining before the GFC but post-GFC experienced an uptick in unemployment till 2020. This was projected to worsen further in 2021 due to the adverse effects of the COVID-19 pandemic. For instance, the unemployment rate increased from 22.4% in 2008 to 28.7% in 2020. The South Africa Quarterly Labour Force Survey noted that in the third quarter of 2021, unemployment rose to 34.9%. Between 2011 and 2020, South Africa experienced a marginal decline in the unemployment rate between 2013 and 2018. This suggests inherent structural problems the country has not been able to address. With the pandemic, the unemployment rate may be aggravated. Another growing concern is the alarming youth unemployment as it markedly increased between 2011 and 2019. Youth unemployment rose from 49.8% in 2011 to 57.5% in 2019. Factoring the pandemic challenge into the equation, the figure is reported to have reached 66.5% in the third quarter of 2021. This further implies that more than half of the youth population is unemployed, which may explain in part, the pockets of conflict witnessed in the country.

**Figure 3.5** Unemployment Rate (%), 1999-2020



Source: World Bank Indicators, 2021

**Figure 3.6** Youth unemployment rate (%), 1999-2019



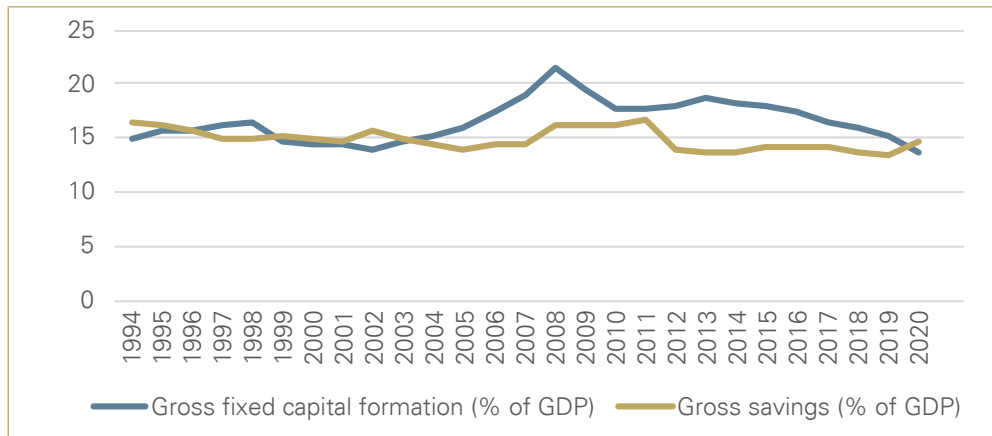
Source: World Bank Development Indicators, 2021

235. In the same manner as the output growth rate, figure 3.7 shows that since 1994, investment in South Africa, measured by gross fixed capital formation, was divided into two parts, pre- and post-GFC. The 2020 pandemic exacerbated the already dire situation. This suggests that the acquisition of productive assets had reduced substantially since 2009. It was also observed that household consumer spending had fallen consistently over the period and sharply after the financial crisis (see appendix 1). An analysis of the distribution of consumer spending per capita in the recent Living Conditions Survey 2014/15 as contained in a 2018 World Bank report on Overcoming Poverty and Inequality in South Africa had found that the country’s Gini coefficient had increased since 1994 and reached the highest in the world at 0.63 in 2015. High inequality is sustained by a legacy of exclusion and the nature of economic



growth, which appears not to be pro-poor, and may not be able to generate sufficient jobs. Inequality in levels of wealth generation and accumulation is even higher, and intergenerational mobility is low, meaning inequalities are passed down from one generation to the other with little change. The report also noted that consumer spending by the very poor, that is, the bottom 10%, grew at a slower pace than the rest of the population between 2006 and 2015. Other economic indicators follow a similar pattern.

**Figure 3.7** Gross fixed capital formation and Gross Savings, 1994-2020



Source: Reserve Bank of South Africa , 2021

236. In sum, the CRM noted that South Africa has made significant efforts in terms of development plans, policies and frameworks to address the perennial challenges of economic conflagration and improve the wellbeing of its citizens since 1994. However, little progress has been made in the last decade. A vast majority of the population continues to live below the poverty line despite various interventions. It is also noteworthy that structural challenges and weak growth have undermined progress in reducing poverty, which has been exacerbated by the COVID-19 pandemic. The progress in household welfare has been severely constrained by rising unemployment, which reached an unprecedented 34.9% in the third quarter of 2021 coupled, with being one of the most unequal societies in the world.

237. The CRM observed that South Africa was concerned about the poor performance of its plans and initiatives directed towards addressing fundamental challenges, and therefore undertook an assessment to better appreciate the drags to the attainment of set targets. It is noted that during formulation of the NDP, the issue of implementation was given ample attention. However, this has not translated into a positive experience. A major issue identified was that the

NDP did not have a detailed and robust implementation plan. Although, some success has been achieved, this has largely been due to the broad stakeholder and societal support which it garnered after its adoption. However, this did not translate into robust implementation and the envisaged broad social impact of the Plan therefore became elusive.

238. Frameworks such as the Integrated Development Plan, which involves Provincial and Municipal authorities, are at the core of the desired transformation of the economy through the aforementioned plans and policies. A major challenge has been the inability of various actors of society to place the broader national interest before their own sectoral interests, and the lack of trust between government, business and labour.
239. The CRM also noted during the stakeholders' engagements in the provinces that the main reason for the poor outcomes is a combination of factors such as skills deficiency, non-adherence to rules and regulations in the staff recruitment process into the public sector and unaccountability of public officials. A combination of these factors has transformed into wide-spread human capacity constraints in the public service, thus hampering the ability of institutional capacity to deliver on predetermined targets and goals.

### iii. Recommendations

240. The African Peer Review (APR) Panel recommends that government should:
- Overhaul the National School of Government towards building public sector capacity to implement the government's development agenda [*Department of National School of Government*];
  - Institutionalise target delivery performance assessment for all public office holders [*Presidency, Department of Public Service and Administration*];
  - Adopt a bottom-up approach to the design of development plans and the establishment of implementation frameworks [*Department of Public Service and Administration, National Planning Commission*].





**OBJECTIVE TWO****Encourage ownership and participation of key stakeholders in policy formulation and implementation****i. Evolution of the Issue**

241. Facilitating the participation of key stakeholders in the formulation and implementation of economic policies, especially sustainable development strategies, and the multiple programs to implement these strategies, is an important way for government to achieve good governance.
242. Ensuring citizen participation in the decision-making process with the goal of greater democracy, participation and empowerment is critical. In this context, South Africa has moved towards participatory policy-making since 1994, taking into consideration local needs so that the policy making process has become an interactive process.
243. As stated in the CSAR, South Africa has constitutional provisions that require consultation with all key stakeholders. In this regard, there are mechanisms and processes in place to ensure continuous public and community engagement. These include mandatory community consultations in formulating IDPs such as the *izimbizo* where the executives interact with communities around issues of services and development, ward committees, *Thusong* Service Centres previously known as Multi-Purpose Community Centres and Community Development Workers. South Africa is committed to ensuring that public policies are developed through a highly consultative decision-making process. This is grounded in the “Batho Pele” (“people first”) principle, consultation, which lays emphasis on citizen and community engagement. In the South African context, public consultation is the process in which the parliamentary and provincial legislatures and local municipalities consult the citizens, the affected or interested groups, civil society organisations and government agencies before a decision is made. The process of drafting the National Development Plan 2030 is a vivid example of how key institutions and stakeholders are identified and invited to participate in drafting and formulating development, economic, and social policies.

**Increased commitment to public consultation in the post-1994 period**

244. The first progress report stated that there were improved avenues available to communities and civil society for engaging with Government after 1994. The first democratically elected government in South Africa in 1994 was committed to creating an inclusive economy for the development and progress of all

South Africans. This was reflected in the constitution which is very assertive about representative and participatory public democracy.

245. The post-1994 paradigm shift to citizen participation in public administration and management placed great emphasis on co-production and co-creation of service delivery and decision-making in all policy-making processes. It emphasised citizen involvement in the initiation, planning, design, implementation, execution and monitoring of policies and programmes of government.
246. The second generation CSAR noted that South Africa had established the National Economic Development and Labour Council (NEDLAC) in 1995 to ensure that economic decision-making in South Africa followed a democratic process. This was based on the understanding that economic decision-making should be a democratic process and not a process undertaken solely by government, but that it should involve the very persons and institutions it would affect. Basically, organised business, organised labour, civil society and the government are the constituencies allowed to participate in the workings of NEDLAC and to table issues for consideration by the Council.

### **Inadequate public consultation and monitoring**

247. The first progress report stated that although public consultation has increased since the beginning of democracy in South Africa, it remains inadequate. There are a number of institutions that promote public participation in public policy-making. These include the South African National Civic Organisation (SANCO) which encourages its local structures to participate in IDP hearings and ward committee's processes. Others, including NEDLAC and the Sector Education and Training Authorities (SETAs) for skills development, were strengthened to promote participatory democracy. This also includes Presidential Working Groups in which organised sectors interface regularly with the Executive. However, the report established that there are still challenges, particularly in relation to the quality of operation of these institutions.
248. The first progress report indicated the number of Mayoral and Premiers' *izimbizo* that had been held, the number of issues raised and resolved, the number of *Thusong* Service Centres established, and the number of Community Development Workers (CDWs) trained, among others to evaluate the extent of public consultation in South Africa. Information about this is not provided in the second and third progress reports, making it difficult for progress evaluation. More so, the institutions for promoting public consultations as well as the challenges facing them in carrying out duties effectively are hardly



mentioned in the second and third reports as well as the second generation CSAR. This makes it difficult to track the progress and evaluate the extent of public participation in public policy in South Africa.

249. While it did not follow up on existing institutions and indicators, the second generation CSAR identified some new measures, challenges and explanation for some situations about the status of public participation in public policies in South Africa. For example, the report identified that government had introduced the District Development Model (DDM). The core objective of the DDM is to foster *“collaborative planning at district and metropolitan level together by all of government, on the basis of a detailed, technically driven consultative process within government and with communities and stakeholders”* with the aim of creating a unified One Plan for all district and metros in South Africa. The challenge, identified as lack of *“standardised or systematic approach on how to develop evidenced-based policies in South Africa,”* led government to introduce the Socio-economic Impact Assessment System (SEIAS) in 2015 as a regulatory mechanism for the policy management process in South Africa which *“codifies policy-making practices and entrenches evidence-based policy-making”*.

### **High consultation with Global Economic Bodies**

250. The democratic government of South Africa has historically recognised the value of outside economic expertise, and this has often been reflected in the type, or rather ideological alignment of the economic policies introduced by the government. This is evident as early as 1996, when the South African government adopted *“a Washington consensus approach of low fiscal debt”* as the cornerstone of its Growth, Employment and Redistribution (GEAR) programme. The second generation CSAR identified the following issues of South Africa’s consultation with external bodies in policy making processes.
251. The IMF, World Bank and other major global economic bodies continue to play an important role in the economic policy formulation of South Africa, whether it is through loan agreements, direct assistance in economic policymaking or economic analyses. Since 2000, the IMF has provided extensive support to policy programmes across sub-Saharan Africa aimed at securing macroeconomic stability to enhance economic growth and reduce poverty.
252. The authors of the National Policy Development Framework 2020 note that certain government departments do not consult external stakeholders but develop policies independently whereas others rely on the assistance and expertise of academia and consultants. Neither of these options is regarded as

best practice. On this basis, these researchers recommend that policy-making in South Africa adopt a “context-specific blending” of both these approaches.

253. For the most part, this mixed approach of relying on outside expertise and advice alongside domestic principles and understanding has been successful. By 2007, South Africa was given investment grade by major credit rating agencies and became a continental example of progressive economic development. This has changed since 2017.

**ii. Findings of the CRM**

254. The CRM visited the National Planning Commission whose mandate is to rally the nation around a common set of objectives and priorities to drive development by consulting with and drawing on the views, skills and expertise of multiple stakeholders. During the consultation, the process of development policy formulation and the extent of stakeholders’ involvement was explained.
255. However, during the field visits to the provinces, civil society organization representatives raised concerns with regard to their involvement in the implementation of policies. They indicated that their involvement at the stage of policy implementation is limited. It was stated that although the involvement of CSOs has increased dramatically since the advent of democracy, their views and concerns are not reflected in the implementation phase. The CRM notes that funding for civil society has been a challenge as the relevant ones that are making an impact at grassroots level are often not supported financially, thereby weakening their efficiency, especially in monitoring the implementation of government programmes.
256. Additionally, research suggests that most of the programmes failed due to insufficient monitoring and evaluation (M&E) by the Department of Social Development in the country as a result of limited traceable link between civil society and government. This Department is expected to identify any obstacle to the achievement of the programme’s target, and to suggest ways to overcome them. However, the role of the department is not apparent due to poor outcomes and the collapse of many funded community projects aimed at addressing socio-economic challenges in the country. A survey carried out by Dipela and Mohapi (2021) indicates that monitoring and evaluation systems are unproductive, a situation that is made worse by skills deficiencies, lack of clarity, absence of a template for monitoring projects, lack of training of M&E officials, the disconnect between training and challenges in the field, and a huge workload.



257. The CRM observed an absence of institutional processes and forums for the various stakeholder categories to participate in the implementation of economic policy in the country, in the public and private sectors and in civil society.

### iii. Recommendations

258. The African Peer Review (APR) Panel recommends that efforts should be made to:

- Assess and identify the active civil society organisations in the provinces and local authorities. *[Department of Social development].*
- Establish a mechanism to improve CSOs engagement in the policy implementation phase of economic policy to promote accountability and transparency *[Department of Social development];*
- Strengthen the capacity of government institutions to increase citizen involvement in economic policy formulation, adoption, implementation and evaluation. *[National Planning Commission].*



**OBJECTIVE  
THREE**

**Promote sound public finance management**

**i. Evolution of the Issue**

**Public Finance Management Capacity**

259. The challenges in the public service, as demonstrated by the inadequate delivery of basic services to the population, is a manifestation of underlying issues, chief among them being the quality of public funds management. Public Financial Management (PFM) deals with the collection of revenue by government and its expenditure in a manner that maximises value for money. Since 1994, the South African government has implemented projects and legislative frameworks to develop and guarantee the maintenance of sound public finance management. These were reinforced by the Public Finance Management Act (PFMA), the Municipal Finance Management Act (MFMA) and the Public Service Management Framework. These initiatives have significantly improved PFM since 1994.
260. However, the economy is continuously plagued by an acute lack of capacity, particularly financial expertise for managing social programme spending and facilitating the delivery of services at the provincial, municipal and local levels. Also, through the Government Communication and Information System (GCIS), the government established a customer-service scheme called the Batho Pele (People First), which requires that citizens be consulted about the level and quality of the public services they receive.
261. The South Africa Country Review Report (CRR) of 2007 showed that the government had instituted many initiatives to improve local government capacity, including Project Consolidate. However, to date, this 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. The 2007 CRR also reported that in terms of fiscal decentralisation, the government had developed the required legislation and regulation to enhance the quality of financial management in local and provincial governments. Despite this, it is widely agreed that South Africa’s biggest problems in fiscal management are poor control and lack of transparency and accountability at sub-national levels.
262. The first progress report noted that the South African economy was facing challenges because of underdeveloped capacity and skills in public expenditure management. This often resulted in poor audit outcomes of some public and private entities.



263. The second progress report indicated that to boost capacity and skills in public finance management, the South African government launched *Operation Clean Audit 2014* through which municipalities and provincial departments accounting officers were expected to include integrated risk management, functioning of audit committees and internal audit units in their performance contracts, audit management and the implementation of the Financial Capacity Building Model. As a result of these, South Africa was ranked first in the 2010 Open Budget Index (OBI), after scoring 92 out of a possible 100 points, and second-best in the 2012 OBI (90 out of 100 points). The index measures the ability of a country to release meaningful budget information, making it easy for the public and oversight institutions to hold government accountable, and to have meaningful input into decisions about how to use public resources. To institutionalise these capacity and skills improvement measures and address the public expenditure management gaps, the Public Administration Leadership and Management Academy (PALAMA) designed a training programme for public servants to improve service delivery.
264. The third progress report also highlighted the strategic interventions by the National Treasury (NT), the Auditor-General of South Africa (AGSA) and the PALAMA in building sound financial management capacity in the public sector and in improving audit outcomes in the three spheres of government. Nevertheless, pertaining to economic governance and management, the report acknowledged that the country had continued to be confronted with acute lack of capacity.
265. The 2011/2012 Audit showed that the country had made progress as the number of entities and departments reporting clean audits as a key indicator of sound public finance management had increased year-on-year, even though at a slow pace. The report further affirmed the country's efforts over the years to improve the efficiency, the developmental orientation, the transparency and inclusiveness of the budget process. However, certain gaps remained: the absence of a legal requirement for the publication of contingent liabilities between spheres of government, guarantees and extra-budgetary activities remained a major gap in South Africa's transparency requirements, legislation aimed at empowering and enabling Parliament and provincial legislatures to amend budgets was still not available, and lack of legal instruments to police the requirements for executive transparency requirements.
266. Furthermore, the close-out report indicated that the South African government has made improvement as shown in the three reports: The strategic interventions by National Treasury (NT), the Auditor-General of South Africa

(AGSA) and the Public Administration Leadership and Management Academy (PALAMA, now the National School of Government) have boosted sound financial management in the public sector and improved audit outcomes in the three spheres of government. The audit outcomes generally reflected progress but at a slow pace as the number of entities and departments reporting clean audits as a key indicator of sound public finance management remain anaemic.

267. The report also noted that despite South Africa's continuous display of a sound and open budget system as 'best practice', the country is still faced with certain challenges. These include lack of adherence to the two key legislative instruments that govern financial management – the PFMA for national and provincial government and the MFMA for local government.
268. The CSAR reported that the South African economy is facing challenges in adopting and implementing a viable medium-term fiscal framework, and this has impacted economic growth and job creation. Social and economic inclusion increases when GDP growth is supported by a sound social policy framework, infrastructure development, sound industrial policy, small and medium enterprises promotion policies and redistributive measures that reduce inequalities.
269. The report showed that savings and investment have been declining over the years as South Africa's national savings rate (gross savings as % of GDP) for 2018 was 14.4%, a decline from 16.3% in 2017, while household and government savings declined from 1.6% to 1.4% and 0.2% to 0%, respectively. The fixed capital formation has also been declining with the ratio of gross fixed capital formation to GDP rising from 15.2% in 1994 to a peak of 23.5% in 2008 but declined to 19.2% by 2012. Also, since 2014, gross fixed capital formation by private business enterprises has been falling, from ZAR 405.8 billion in 2014 to ZAR 389 billion in 2017. These indicators are indicative of poor public finance management. This is further demonstrated by escalating government debt, a deepening deficit, declining investment and fluctuating savings rates between 2008 and now (2022), despite increasing tax revenues over the same period.
270. Also, despite the high tax-to-GDP recorded in South Africa, the country has a narrow and declining tax base due to the number of individuals who were assessed for personal income tax, and a huge number of people on social support. The tax base shrunk by about 18.2% between 2014 and 2017 mainly due to the rise in unemployment and income stagnation, and the fall in companies' income tax.





271. In terms of contribution, three million South Africans account for 97% of the country's personal income tax collected in 2019, whilst 26 million receive government social grant. In addition, only 24% of companies that submitted tax returns were profitable in the period for which they submitted tax returns during the 2019 fiscal year. This shows that the tax net has not been widened enough.
272. Generally, the South African economy is constantly being overwhelmed by a severe 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 country's biggest problem in fiscal management involves insufficient control of decentralised expenditure, transparency and accountability at the sub-national levels. Capacity and skills deficits have resulted in under-spending of the budget, especially in the lower spheres of government. These capacity deficits are related to financing/ expenditure control, tracking and monitoring, particularly at municipal level.

## **ii. Findings of the CRM**

273. Public finance is a fundamental source for funding government activities, public works and general service delivery. A critical part of public finance is the budget. The budget is used to transform government policies and programmes into concrete actions through provision of quality service to the people. The management of public finances through the budget must be based on proper strategic planning, financial planning and management, auditing, debt management, revenue management and expenditure management. As shown in Commendable Practice 3.1, South Africa at the national level has a well-managed open budget process. However, it is recommended that South Africa do more work on public participation and improving the engagement between the Executive and members of the public. In addition, more work needs to go into improving transparency and participation at the Local Government level where key basic services that affect the well-being of people, including children are delivered. The remainder of this objective will focus on bolstering public financial management at the local government level, where the need is most urgent.

### Commendable Practices 3.1: The Open Budget Process

The Open Budget Survey provides government officials, legislators, development practitioners, civil society organisations, journalists, and researchers with an independent and comparative measure of government budget transparency in countries around the world. The Survey suggests reforms that countries might adopt to improve budget transparency, increase public participation, and strengthen institutions of accountability.

The International Budget Partnership (IBP) undertook this initiative because of the far-reaching implications of improving budget transparency. The provision of timely, useful, and accessible information is a first step towards greater accountability. It allows civil society, journalists, legislatures, and supreme audit institutions (SAIs) to take action to promote effective budget oversight.

Greater public participation throughout the budget process can improve the credibility of policy choices and the effectiveness of government interventions. As of 2008, South Africa was the only African country among the only five countries of the 85 surveyed that made extensive information publicly available as required by generally accepted good public financial management practices. Indeed, South Africa was ranked second in the world, after the United Kingdom. The other countries were France, New Zealand, and the United States. Amongst this set of countries, only South Africa and New Zealand were once again, among the top performers in 2017. The latest release of the Open Budget Index in 2020 places South Africa in joint-first place ranking with New Zealand.

The South African budget reform programme that was started in the early 1990s continues to lead in the world with respect to budget openness and transparency.

*Source: IBP and CRM compilation*

274. The management of public finances in South Africa is governed by the Constitution and specific regulations. At the national and provincial levels, public finance management is governed by the Public Finance Management Act (PFMA) of 1999 (Act No. 1 of 1999 as amended by Act No. 29 of 1999), by the Treasury Regulations and various briefing and instructions notes issued by National Treasury. At the municipal level, the primary legislation is the Municipal Finance Management Act and other related regulations. The CRM



notes that the legal regimes, which apply to the broad sense of government including State owned enterprises, regulatory or service-delivery agencies, and municipal entities, helped to improve Public Finance Management Systems in the South African Public Service.

275. The 1996 Constitution of the Republic of South Africa restructured South Africa as a non-racial federal polity comprised of a national government, nine provincial authorities, and over 700 municipalities. The Constitution specifically created a Financial and Fiscal Commission to recommend a new system of intergovernmental grants designed to ameliorate vertical fiscal imbalances and deliver horizontal equity to governments at all levels. The municipalities were restructured and rationalised, reducing their number to 257. The goal was to ensure greater stability in municipal finances in the longer term, as less viable local authorities are phased out.
276. The provinces and municipalities have their constitutional roles, which are mainly anchored on the delivery of many of the services and functions central to Government's overarching objectives of redistribution and poverty-alleviation. Provinces are responsible for school education, primary and specialised healthcare, social security grants and welfare services. They are also responsible for delivering services in the areas of agriculture, provincial roads and housing. Municipalities are responsible for household infrastructure. This includes access to roads and streets, street lights, refuse collection and basic services like water and electricity. However, provinces and municipalities have limited capacity to generate their own funds. This requires that nationally raised revenue be divided equitably between the national, provincial and local spheres, in proportion to their fiscal capacity and functional competencies. The division of revenue between spheres is determined by Cabinet annually through the Division of Revenue Act, and is informed by the recommendations of the Budget Council, the Budget Forum, and the Ministers' Committee. Over the medium-term expenditure framework (MTEF) period, after budgeting for debt-service costs, the contingency reserve and provisional allocations, 48.7% of nationally raised funds are allocated to national government, 41.9% to provinces and 9.4% to local government.
277. The CRM noted that allocations through the intergovernmental fiscal system provide higher per capita allocations to rural provinces and municipalities. Government is developing indicators focused specifically on rural areas for the provincial equitable share formula to strengthen the equity of intergovernmental transfers.

278. The National Treasury continues to expand the tools available for provinces and municipalities to improve spending and to build operational and technical capacity. The National Treasury and the Government Technical Advisory Centre in 2020 trained provincial officials to conduct spending reviews towards addressing inefficiency and improving financial management. The Government Technical Advisory Centre and provincial treasuries assessed programme relevance, effectiveness and efficiency to improve value for money in selected provincial departments in 2021. On its part, the National government provided a range of capacity-building grants and programmes for local government, which are actually under review for implementation in 2022/23. In addition, the government has also developed in the provinces the Infrastructure Delivery Management System. The system will help build infrastructure units with qualified staff and institutionalise best practices. This system will be cascaded to the municipalities to build capacity, reduce the reporting burden and standardise the system across spheres.
279. The CRM observes that many municipalities have reported a poor financial situation. However, this is mainly due to weak financial management, though it was also exacerbated by COVID-19. It was noted that the poor situation is a fallout of the decision to withhold or reallocate transfers from provinces or municipalities where spending of allocated funds does not comply with grant conditions. For example, in 2019/20, the National Treasury withheld six conditional grants from four provinces, pending the resolution of outstanding problems, and stopped one conditional grant from one province, which was then reallocated to another province.
280. In March 2020, the National Treasury stopped grants to 47 municipalities for the same reasons, and then reallocated them to municipalities that had fast-tracked projects and shown an ability to spend their allocations. In February 2020, the National Treasury placed Nelson Mandela Bay Municipality under intervention, as authorised by the Constitution, due to persistent non-compliance and mismanagement of funds. The National Treasury will stop all transfers to this municipality until its finances have been stabilised. The provincial treasury and department of cooperative governance are managing this intervention.
281. The supreme audit institution in South Africa has been effective in delivering its assigned mandate. The mandate is dictated by the Constitution which empowers the Auditor General to, inter alia: “... *audit and report on the accounts, financial statements and financial management of all national and provincial state departments and administrations; all municipalities; and any*



*other institution or accounting entity required by national legislation to be audited by the Auditor-General*" [Section 188(1)]. In the course of delivering its mandate, the AG's office has operated independently such that South Africa has been ranked as one of the only two countries of the 118 countries that scored 10 and were assessed to have very high independence<sup>23</sup>.

282. The Auditor-General's report on local government finances in 2017/18 noted that about 47 per cent of municipalities had incurred a deficit, and that total deficits had grown from R669 million in 2017/18 to R2.3 billion in 2018/19. The report for 2019/20 noted a net improvement in the audit outcomes in the national and provincial government. The report highlighted the good practices that had led to the observed improved outcomes. They were as follows:

- Accounting officers and authorities and senior management were committed to, and got directly involved in ensuring that internal control processes were improved and our recommendations were implemented. There was also stability in these key positions;
- Internal controls had improved; this included implementation of preventative controls;
- Accounting officers and authorities, executive authorities, internal audit and audit committees provided oversight, monitoring and assurance.

283. The CRM noted that despite all these efforts, the country continue to find evidence of serious weaknesses in financial management leading to a systemic financial haemorrhage. Some lapses were noted. First, a large number of poor-quality financial statements had been submitted for auditing. Secondly, some entities had received a disclaimed opinion. This is the worst audit opinion an audited entity can receive, as it means that they could not provide the Auditor-General with evidence for most of the amounts and disclosures in their financial statements. For two consecutive years, that is 2019/20-2020/21, 12 entities received disclaimed opinions, including the South African Nuclear Energy Corporation, the National Skills Fund, four technical and vocational education and training colleges, and both the Free State and North West development corporations. Indeed, government had to intervene in the financial management of North West province in which five national departments took responsibility for delivering the mandates of their provincial counterparts. In addition, there were cases of unauthorised expenditure, which in 2020/21 amounted to R3.21 billion. Box 3.1 presents the interventions in the North West Province.

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23 <https://openknowledge.worldbank.org/handle/10986/36001>

### Box 3.1 Progress in improving financial management in the North West province

The 2020 Budget reported on government’s intervention in the North West province, in which five national departments took responsibility for delivering the mandates of their provincial counterparts. The intervention was in three phases: the first phase aimed to stabilise the province’s finances, the second aimed to strengthen supply chain management and the third monitored ongoing implementation. Following successful completion of the first and second phases, the audit results for 2019/20 showed a turnaround after five years of decline and stagnation. The province reported a decrease in annual irregular expenditure from R4.7 billion in 2018/19 to R3.5 billion in 2019/20. Departments that were placed under intervention as reported in the 2020 Budget show lower irregular and wasteful spending. The National Treasury has conducted training and built capacity across departments to strengthen supply chain management. Irregular project management units and outsourcing arrangements have been terminated. Investigating authorities, including the National Prosecuting Authority, are looking into over 50 criminal cases and attempting to recover funds related to financial mismanagement. Provincial departments have been reconfigured in line with their mandates. Several senior personnel, including the director-general, and the heads of the health, social development, and agriculture and rural development departments have left their posts. New leadership is expected to be in place by the start of 2021/22. The national departments involved will recommend to the National Council of Provinces that the intervention ends by March 2021. The National Treasury and relevant national departments will continue to monitor developments in their provincial counterparts and provide support where needed.

*Source: <http://www.treasury.gov.za/documents/national%20budget/2021/review/Chapter%206.pdf>, National Treasury*

284. The CRM notes that the weaknesses in financial management, controls, fraud prevention and legislative compliance, as evidenced by the audit outcomes and the special reports, resulted in material and financial losses at some entities. The AGSA’s office is empowered to report on material irregularities and to take action if accounting officers and authorities do not deal with them appropriately. The AGSA was dealing with 121 material irregularities of an

estimated total financial loss of R11.9 billion at various stages in the process as at 15 October 2021. The report noted that the material irregularities occurred in simple areas that require basic disciplines and implementation of processes to obtain value for money spent and to prevent corruption.

285. Beside the mandate of making the audit report public, the AGSA is also expected to submit an audit report to any legislature that has a direct interest in the audit. However, there has not been a commensurate prosecution of reported corruption cases. The AGSA has no legal authority to prosecute or dispense disciplinary action. The Public institution empowered by the constitution to prosecute offenders is the National Prosecuting Authority (NPA). Section 179(2) of the Constitution expressly empowers the NPA to start criminal proceedings on behalf of the State and to carry out any related and necessary action.
286. Indeed, the NPA reported an increase of 17.8% in the number of persons convicted of either public and/or private sector corruption in its 2019/20 annual report. During the current reporting period, a 94% conviction rate was obtained through the finalisation of 422 cases with a verdict, and the sentencing of 416 persons. The Public protector also reported that the number of complaints finalised in the 2020/21 financial year is lower than in previous years but noted that the municipalities remained the institutions with the most complaints.
287. The CRM noted that although the AGSA's annual reports offer distressing insights into weak governmental financial systems, the lack of power and authority of the office to enforce its recommendations is a major challenge. This shortcoming can lead citizens to lose trust in the government if some public officials are seen as protected. For an effective fight against corrupt practices and for the AGSA office to be seen as effective, the reported cases should be pursued through the justice system to appropriately punish whoever is responsible for the wrongdoing.

### iii. Recommendations

288. The African Peer Review (APR) Panel recommends that:
- The Office of the Public Protector, National Prosecuting Authority, and the Auditor General should synergise to prosecute corruption cases [*Presidency*];
  - The Constitution should be amended to empower the Office of the Auditor General of South Africa to also prosecute cases of malfeasance [*Parliament*].

**OBJECTIVE FOUR** | **Fight corruption and money laundering**

**i. Evolution of the Issue**

**Corruption in the Public Sector**

289. The 2007 CRR report acknowledged some concern about corruption and its debilitating effects on service delivery and the fight against poverty. Nevertheless, South Africa has a comparatively lower corruption level than many other African countries. For example, the Corruption Perception Index (CPI) rankings for South Africa from 2007 to 2020 show that the country was ranked 64 in 2011 and 69 in 2020 out of 178 countries listed. In addition, the 2007 report noted that different agencies contributed to reporting corruption cases in South Africa – civil society uncovered 18% of the cases, the official process was responsible for 60%, and the media uncovered 9% of the known corruption cases.
290. The national government has adopted a series of legislative instruments to combat and prevent corruption. In addition, the government has adopted international audit standards, signed protocols against corruption, and ratified international conventions against corruption.
291. The first CRR document of 2007 revealed that to address the systemic lapses that make corruption possible, the South African government adopted some key pieces of legislation. These include the protected disclosure act of 2000, the promotion of access to information Act of 2000, the financial intelligence centre act (FICA) of 2001, the promotion of administrative justice act of 2000, and the prevention and combating of corrupt activities act of 2004. The country has also created an institutional framework at national and provincial levels to complement the South African Police Service (SAPS), including the Public Protector, the National Prosecuting Authority (NPA), the Special Investigating Unit, the PSC, the Financial Intelligence Centre, and the Auditor-General. The CRR also showed that South Africa is a signatory to other regional and global instruments such as the SADC’s Protocol Against Corruption (2001), the African Union (AU) Convention on Preventing and Combating Corruption, the UN Convention Against Corruption (2003), and is a member of the Financial Action Task Force (FATF).
292. The first CRR document noted that South Africa has a comprehensive legal structure to combat money laundering. The legal instruments include the Prevention of Organised Crime Act (POCA) and the FICA. Unfortunately, the country is challenged with capacity issues leading to the inefficient





implementation of the new system. However, many of these measures are new and have not been fully implemented yet. The CRR indicated that the main challenge confronting the anti-money laundering framework is the shortage of skilled and experienced human resources needed to investigate and prosecute offenders and execute various aspects of the legislation in accounting institutions.

293. While the three progress reports and close-out report provided a brief discussion on this issue, the 2021 CSAR noted that public procurement is prone to corruption, and that bribery thrives at the central government level. As a result, the country recently proposed a Public Procurement Bill in 2020 to create a single regulatory framework to address the deep fragmentation of procurement laws and to improve the effectiveness of regulation and oversight. In addition, new legislations, such as the Public Finance Management Act (PFMA) and the Municipal Finance Management Act (MFMA), were adopted to modernise financial management and enhance accountability.
294. Also, several anti-corruption and anti-money laundering measures have been instituted in South Africa; however, corruption remains endemic. This is primarily because most of these measures are new and have not been fully explored yet. All sectors need to increase training on anti-corruption and anti-money laundering. Also, there is a misunderstanding of the difference between corruption and misallocation of funds. This situation can be seen at the provincial and municipal levels of government. A significant issue in the fight against corruption is the lack of adequate capacity to handle reported cases expeditiously at all levels of government. Also, institutional capacity and policy implementation are significant challenges against the fight against corruption and money laundering in South Africa.
295. The 2021 CSAR noted that illicit flows due to money laundering have not been quantified, and statistics on money laundering is haphazard. However, it has been estimated that South Africa loses anywhere between USD 10 billion and USD 25 billion a year in illicit financial flows. This is through several forms of money laundering, including corrupt deals in real estate, tax evasion, drug trafficking, and embezzlement.
296. The South African Revenue Service (SARS) established an independent division known as the Directorate for Priority Crime Investigation or the Hawks in July 2009. The Financial and Asset Forfeiture Investigative Unit (FAFI) is a component of the Hawks. It is responsible for conducting investigations into possible money laundering offences that may be added to criminal charges,

lifestyle audits, and suspicious transaction reports (STRs). Its work is informed by a guiding document, standard operating procedure, and investigations strategy.

297. In addition, the report also observed that conviction rates following the establishment of the Financial and Asset Forfeiture Investigative Unit (FAFI) remain low. During the 2015/16 financial year, for example, 31 cases and 103 STRs were submitted to FAFI. Of the 31 cases, two were closed with no prospects of prosecution, and 29 were still being investigated in 2020. Of the 103 STRs, only eight were closed, with one successful conviction.

**Table 3.2** South Africa’s Corruption Perception Index Ranking 2012-2020

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020
Ranking	43	42	44	44	45	43	43	44	44

Source: Transparency International (<https://www.transparency.org/en/cpi/2020/index/nzl>)

298. Table 3.1 shows South Africa’s corruption perception index (CPI) ranking between 2012 and 2020. South Africa’s CPI ranking hovered between 42 and 45 among 180 countries, which is indeed moderate. However, an increase in CPI has been experienced in recent years, as the CPI of South Africa moved from 43 between 2017 and 2018 to 44 between 2019 and 2020. The rising corruption perception in South Africa shows that there is a relative increase in the level of corruption, and that efforts should be intensified to ensure that policies and programmes to combat corruption and money laundering are implemented effectively in South Africa.

**ii. Findings of the CRM**

299. The CRM interactions with stakeholders, including government officials from several agencies, and relevant reports revealed that corruption is an increasing threat to economic growth, equality, and development in South Africa. Not only does it deprive the government of critically needed resources, it also adversely impacts business operations and service delivery in the public and private sectors. Further, it undermines effective governance and, ultimately, societal wellbeing.

300. The CRM noted that the Public Service Commission (PSC) that has custodial oversight responsibilities for the Public Service, and monitors, evaluates, and investigates public administration practices, reported that the commission had received a huge number of cases relating to fraud and corruption in the financial year 2012/2013 and that the number had continued to increase



during the 2017/18 to 2019/20 period. The PSC has completed about 70% of all reported cases. In addition, the PSC is also the control room for the National Anti-Corruption Hotline (NACH) for the Public Service. The hotline was established and revamped to enhance reporting of cases. Indeed, this has yielded the desired results. There was an increase in corruption reports to the NACH in the 2017/2018-2020/2021 financial years with a surge in the 2019/2020 financial year. This surge can be attributed to a large volume of calls from members of the public with allegations of social grant fraud. Overall, reported cases are primarily associated with public sector procurement which continues to spread, especially in municipalities. However, the capacity of PSC and the respective public sector institutions to deal with investigations of reported cases of fraud and corruption by government officials is limited. As a result of lack of capacity, the effectiveness of the commission and government in the fight against corruption in its entirety is undermined.

301. The CRM notes that the government of South Africa seems to be confronting the issue of corruption head-on by recognising its severity and endemic nature in the country. Indeed, the ills and challenges South Africa has been facing for decades are sustained by the debilitating effect of corruption in the system as it undermines democracy and impacts negatively on service delivery, human and socio-economic development, job creation, and public trust in government, as well as investor confidence in the country.
302. A significant recent effort in the fight against corruption is the development of a National Anti-Corruption Strategy (NACS) in line with the vision of the National Development Plan 2030 of a corruption-free South Africa and a society in which fundamental values, such as integrity, transparency, and accountability guide the actions and behaviour of its citizens. The National Development Plan indicates that the vision for 2030 is *“a South Africa which has zero-tolerance for corruption and in which an empowered citizenry has the confidence and knowledge to hold public and private officials to account and in which leaders hold themselves to high ethical standards and act with integrity”*.
303. This NACS provides a framework and action plan for the country as a whole for the period of 2020-2030 and seeks to create a society in which the government’s administrative and procurement processes are reinforced to allow greater monitoring, accountability, and transparency. The country hopes to achieve this goal by encouraging the public and whistleblowers to report corruption, thereby enshrining a culture of zero tolerance towards corruption in every sector, and full accountability for those involved in corruption.

304. Findings from CRM consultations and information gleaned from the background documents on corruption revealed that while corruption was evident and endemic in the country, procurement was seen as the area most prone to the scourge. Again, as in the general context, the Government adopted a series of initiatives to address the flaws identified in the procurement system. It is worth noting that the stakeholders during the CRM engagements alluded to moral deficit and degeneration as the cause of the problem that has blossomed into cupidity, nurtured by the lack of lifestyle audit systems and shaped by organisational, social, and political contexts. Overall, while it was acknowledged that South Africa has a robust anti-corruption legislative framework, the laws are not adequately enforced, and lack of accountability has exacerbated corruption and compounded the triple challenge of unemployment, poverty, and inequality.

### iii. Recommendations

305. The African Peer Review (APR) Panel recommends that Government should:
- Enhance the capacity of other critical Chapter 9 institutions, the National Prosecuting Authority and other organs in the criminal justice system through appointment of competent and skilled people [*Government of South Africa*];
  - Ensure the establishment of an overarching body (National Anti-Corruption Commission) of the National Anti-Corruption Strategy [*Government of South Africa*];
  - Institute a nationwide re-orientation and life style audit system [*National Anti-Corruption Commission*].



## OBJECTIVE FIVE

## Accelerate and deepen regional monetary, trade and investment integration

### i. Evolution of the Issue

#### Deepening South Africa's intra-regional trade

306. Accelerating and deepening regional integration, particularly monetary, trade, and investment integration, is considered critical to regional development. The role of RECs, in general, is to pursue, support and nurture the integration of its member States, especially in these areas. The Southern Africa Development Community (SADC) is one of the RECs and is considered pivotal to the regional integration process in southern Africa. South Africa is a highly influential member of SADC.
307. Background papers with information from South African Government policy documents and international development-oriented studies on South Africa by the World Bank Group, attest to South Africa's important role in regional integration. The base Country Review Report of South Africa, 2007 also highlighted this, and confirmed the importance of accelerating and deepening regional integration especially with respect to harmonising monetary, trade, and investment policies.
308. Recognition of the importance of regional integration and its potential to contribute to economic growth and development has increased. Many African governments now recognize that a regional integration pathway to growth and development can be facilitated through policies and mechanisms that promote trade and investment. This pathway would ultimately lead to the development of a monetary arrangement that would be beneficial to all member States and help them to address critical factors that constrain growth and development. Thus, regional integration has been identified as a strategic component of most national development plans. This is the reason they have been participating in the planning, organising, and implementation of entities generally referred to as regional integration arrangements (RIA).
309. This is why South Africa, which is the largest and most developed economy in the region, played a leading role in establishing several regional entities. The SADC originated from the South African Development Coordinating Conference (SADCC). Its specific aim was not necessarily regional integration as currently conceived, but rather to reduce economic dependence on apartheid South Africa. In anticipation of the dismantling of the apartheid system and the country's democratic transition, the authorities transformed SADCC to SADC in 1992. Following that transformation, South Africa joined

the SADC in 1994. Later, the SADC underwent reforms that culminated in 2001. As part of this reform, the Regional Indicative Strategic Development Plan (RISDP) was formulated in 2003. The RISDP contained the agenda of the SADC, which among other things, was to promote sustainable and equitable economic growth and socio-economic development through an efficient production system, deeper cooperation and integration, and good governance. The RISDP was thus regarded as the roadmap for SADC integration. Some of its declared aims included establishing a free trade area by 2008, a customs union in 2010, a common market in 2015, a monetary union in 2016, and a single currency in 2018. Most of these timelines have been missed, but the potency of the RIA cannot be questioned. While the RISDP was not legally binding, it had political support from the member States.

310. Unfortunately, though the RISDP has ambitious goals, objectives, and targets, its implementation has been less than impressive, especially in the monetary, trade, and investment areas. The poor collaborative implementation of relevant plans and strategies is still a problem that needs to be addressed, not by South Africa alone, which has a profound interest in regional integration, but by all the States involved.
311. Findings from the progress reports and related documents suggest that achieving the objective of accelerating and deepening regional monetary, trade, and investment integration is, at best, a work in progress. These reports, however, took note of the COVID-19 pandemic and considered the measures taken to mitigate current and emerging challenges without straying too far from the goal of accelerating and deepening regional monetary, trade and investment integration.
312. In furtherance of South Africa's desire to demonstrate its commitment to the objective, it has fully supported the revised and updated RISDP covering 2020-2030. In this plan, accelerating and deepening regional integration in the monetary, trade, and investment domains remain a top priority.

**South Africa plays a leading role in Southern African Regional Economic Communities (RECs)**

313. South Africa has the largest economy in SADC and is a high performer in trade and macroeconomic integration. It is also a leader in productivity and infrastructure development. South Africa is the SADC's most diversified country with an export basket of more than 100 products. Apart from South Africa, the countries in the region do not manufacture goods demanded by others, leading to little regional complementarity, which has translated into weak linkages and low stimulus for industrialisation. The long-term development and sustainability of the economy are inextricably linked to



the economic growth, progress, and stability of other Member States of the SADC.

314. As a leading member of the SACU grouping, South Africa commands policy direction and fiscal and monetary decisions in the union. Also, with its role in the global space, the country has become prominent on the continent.
315. The economic benefits from regional integration include increased market size, improved intra-regional trade and investment flows, and increased transfer of technology and experience. In addition, as the most developed country in the region, South Africa can extend its market to the other 12 signatories of the free trade agreement.

## **ii. Findings of the CRM**

316. These findings are derived from the CRM interactions with key stakeholders in South Africa through their verbal presentation and written documentation. In addition, the information is bolstered by evidence-based analytical studies from reputable independent organisations that tend to corroborate the reports of the South African authorities and their development partners.
317. The CRM therefore found that, in general, plans, programs, and activities relevant to the acceleration and deepening of regional integration in the monetary, trade, and investment areas are considered as works in progress, though the works are hampered by poor implementation. Also, many stakeholders noted that within South Africa, the July riots and the COVID-19 restrictions may have temporarily contributed to implementation delays at the national level.
318. That notwithstanding, it is noteworthy that South Africa exerts substantial influence in SADC. At the national level, it is reported that besides signing and ratifying the SADC Trade Protocol, South Africa initiated measures to address the trade imbalance, which was in the country's favour. For example, it extended tariff preferences to member countries, giving them duty-free privileges. The SADC Trade Protocol is intended to contribute to sustainable economic growth through various industrialisation schemes.
319. Progress was also observed in macroeconomic convergence, which among other things, calls for deeper monetary policy cooperation. The objective of this cooperation is to achieve a single-digit inflation rate, lower budget deficits, and a gradual interconnection of payment and clearing systems. In pursuit of these outcomes, South Africa was reported to have been involved with SADC's Committee of Central Banks Governors. The intent was to achieve closer financial/monetary cooperation and management in the region.

320. South Africa also played a leading role in formulating the SADC’s Industrialisation Strategy and Roadmap (2015 – 2063). According to reports, this strategy, approved in April 2015, is intended to promote industry-oriented investment, strengthen competitiveness, and deepen regional integration that includes structural transformation with a significant impact on the monetary, trade, and investment areas. In addition, the country also helped in the formulation of the Protocol on Industry. This protocol was signed in 2019 and is intended to promote the development of diversified and globally competitive regional and national industrial bases. Ultimately, it is expected to boost investment in South Africa and in other member States.
321. In terms of trade facilitation, a simplified trade regime (STR) was finalised following the 2007 base report. This trade regime is intended to reduce barriers to trade by simplifying customs procedures and processes.
322. The CRM noted that having a robust monitoring system to follow up the multiple interventions would make it possible to determine the impact of regional integration. Unfortunately, the CRM was unable to ascertain the existence of such a monitoring mechanism.
323. As to the way forward, a new RISDP has been prepared that covers 2020 to 2030. It has a particular focus on economic governance and management. This confirms the view above that the objective of accelerating and deepening regional integration in monetary, trade, and investment is a work in progress.
324. Figure 3.8 shows the trends in intra-regional trade between South Africa and countries in the Southern African region from 2000 to 2020. It shows that intra-regional trade in the sub-region has not increased substantially in the last two decades. South Africa’s imports from countries within the region have always stood at less than 10% of the total South African exports (to the world), while its exports have been less than 20% of total exports to the world. As the regional imports of South Africa peaked at 9.84% of total imports in 2001, exports topped off at 19.99 percent in 2015. The trend shows that intra-regional exports as a ratio of total exports have declined considerably since 2015, while intra-regional imports as a ratio of total imports fell after 2016. This decline was confirmed by the absolute intra-regional imports and export values, revealing that intra-regional imports and exports have declined since 2013.





**Figure 3.8** Trends in South Africa’s intra-regional trade



Source: IMF’s Direction of Trade Statistics

325. The trend in intra-regional trade between South Africa and southern African countries shows that the Tripartite Initiative (consisting of the SADC, the EAC, and COMESA) that was launched in South Africa in 2011 has not had significant success. This is because the South African economy is still heavily dependent on commodities. Diversification to manufactured exports, which is still limited, would certainly lead to an increase in South Africa’s intra-regional trade.

**High volume of informal cross-border trade resulting in under-estimation of South Africa’s trade and revenue values**

326. There is a lack of accurate and up-to-date information on cross-border trade into and out of South Africa. Those involved in informal cross-border trade (ICBT) do not submit tax returns at the end of each financial year. Their transactions are therefore not included in national accounts. Generally, ICBT is conducted by small-scale quasi-professional traders, including women, who use various means to move small quantities of goods across national borders. In South Africa, ICBT benefits wholesalers from whom foreign SADC traders purchase their goods and support, especially its transport and hospitality industries.

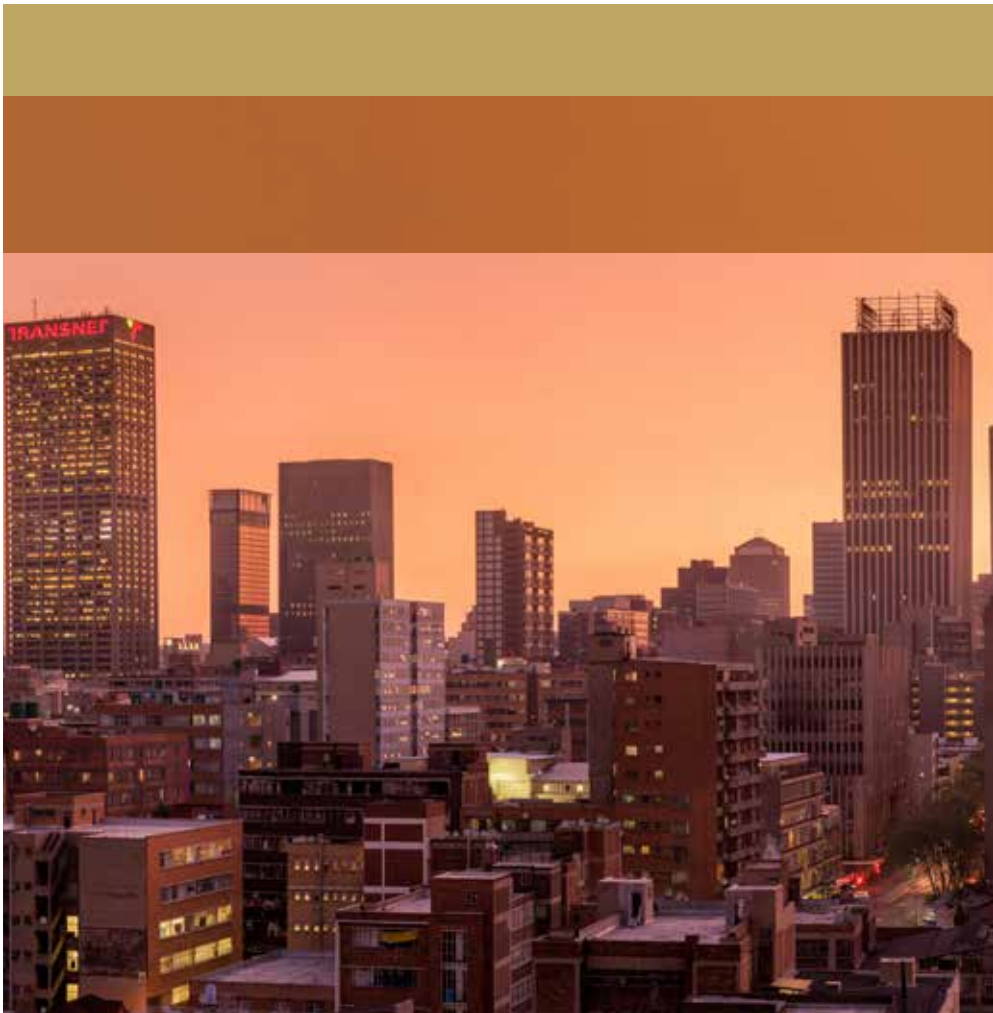
327. Two factors drive this ICBT. First, SMME traders engage in this trade to counter the widespread unemployment and the shortages of essential goods in the region. In South Africa, as in other SADC countries, high unemployment has contributed to the rise of this sector. Second, ICBT secures employment for many people, making it a key instrument in poverty reduction and income generation.



### iii. Recommendations

328. The African Peer Review (APR) Panel recommends that the government should:

- Develop and apply a robust monitoring mechanism to gauge the actual status of the implementation of regional integration [*Department of Trade, Industry and Competition*];
- Register more informal cross-border traders under the proposed Continental Simplified Trade Regime in the AfCFTA [*Department of Trade, Industry and Competition*].



**OBJECTIVE SIX****Develop and implement trade and investment policies that promote economic growth****i. Evolution of the Issue**

329. Although South Africa has one of the largest economies in Africa and is the most industrialised on the continent, it still needs to accelerate trade and investment. The country is currently facing serious unemployment, inequality, and poverty challenges. Overcoming these challenges will require, among other things, robust and quality economic growth and sustainable development. Productive trade and investment are vital to the process of growth and development. However, trade and investment need an enabling environment. Recent upheavals in the country, notably the July 2021 riots, increase in the crime rate, and the COVID-19 restriction have not been conducive to trade and investment.
330. Many visitors to South Africa often say it is the gateway to the African continent. The country has great potential for investment, a world-class infrastructure, an efficient financial system, an independent judiciary, a free press, and great economic interconnection with the rest of the continent. The country has also receives large volumes of foreign capital and foreign currency through exports.
331. South Africa ranks as one of the leading destinations of foreign direct investment (FDI) globally because of its openness. This can be seen in the continuous, long-term growth of inward FDI. The country has a small, open economy that is generally dependent on international trade. Currently, its economy accounts for around 0.6% of global GDP and is heavily dependent on imports to satisfy consumer demand, and on exports to support production and employment.
332. Noteworthy, however, is that intra-regional trade is low relative to other global regions. For example, in Europe and Asia, intraregional trade stood at over 50%, whereas intra-African trade was at 17% in 2017, increasing from 9% in 2000. This expansion was supported by increased mineral commodity exports, notably platinum, metals, coal, metallic ores, and aluminium, among others. In addition, robust macroeconomic conditions and institutions and the establishment of RTAs and SADC and EAC played an important role in expanding trade.

## Diversification of the South African Economy

333. Over the last decade, the importance of building trade and investment relations with the new poles of economic growth in the world, that is, developing countries, has become even more compelling. Accordingly, the aim is to diversify South Africa's trade and investment relations to take advantage of the global South's rapid and dynamic economic growth.
334. It is stated in the third progress report that diversification of the South African economy from its heavy dependence on commodity exports to manufactured exports is crucial to respond to the current global economic development. Also crucial is enhancing regional integration and investments that translates into new economic infrastructure to facilitate intra-African trade. For these reasons, South Africa is playing a prominent role in strengthening trade and economic integration in Africa. Hence, the Tripartite Initiative, made up of the SADC, the EAC, and COMESA were launched in South Africa in 2011. Such efforts suggest that while South Africa's economic links with traditional developed countries remain important, its prospects for regenerated growth and development will increasingly depend on diversifying and strengthening its economic links with dynamic economies of the South, particularly those of Southern Africa.
335. Since the advent of democracy, the country has become more open and thus more vulnerable to global economic shifts and shocks. Despite the diversification achievements realised through the National Industrial Policy Framework (NIPF) launched as far back as 2007 and the accompanying Industrial Policy Action Plan (IPAP), the impact has not been notable. The CRM recalls that the IPAP included measures to facilitate diversification and build production capacities. These measures initially led to an expansion in exports, though the level contracted subsequently. Also, exports have grown at a much slower pace than in the rest of the world. Further, the South African economy has underperformed against the economies of middle-income and sub-Saharan peer countries. As mentioned earlier, South Africa's export basket structure is still dominated by commodity products.
336. The Trade, Development and Cooperation Agreement (TDCA) with the EU has greatly improved bilateral economic relations, especially after the 2007 automotive deal. As South Africa's largest trade and investment partner, relations with the EU remain important.



## Deteriorating Trade and Investment Space

337. South Africa ranks as one of the leading destinations for foreign direct investment (FDI) globally because of its openness. This can be seen in the continuous, long-term growth of inward FDI. It has been estimated that the ratio of FDI to GDP in South Africa is approximately between 38% and 42%. Foreign companies have invested mostly in the formal sectors, and are the most prominent players in the mining, automotive industry, and information technology sectors. There is no information on the steps taken to promote investment in the country.
338. Because of the constant unemployment challenges South Africa is facing, there is need for more industries to provide necessary jobs and economic opportunities to many segments of the population. To bring in new capabilities, foreign direct investment is required. After apartheid, there was the optimistic belief that the end of sanctions against South Africa would lead to a boom in foreign investment. Unfortunately, this is yet to materialise. Some argue that this is due to a lack of skilled labour. Though there were a few significant transactions (typically mergers and acquisitions) and disinvestments during apartheid, investment flows have not shifted significantly in percentage terms since the 1970s.
339. Investors are also worried about the lack of clarity concerning policy consistency, land expropriation without compensations, and other structural reforms that have sent mixed signals. In addition, the investment potential is hampered by legal uncertainties, which discourage foreign investors, despite the promulgation of the Protection of Investment Act in December 2015, which reinforces legal guarantees for foreign investors. However, it is projected that South Africa may struggle to attract the level of investment needed to meet its post-COVID-19 recovery needs in the current pandemic context, may fall into recession, and be downgraded to junk status by international credit rating agencies, resulting in even lower ability to attract FDI.
340. The decline in FDI can be attributed to low reinvested earnings and reduced borrowing. However, the CRM noted that other possible drivers of the recent decline in FDI inflows were the blockages in the country's investment policies, which need to be lifted through further reforms and policy adaptations. As reported by the CSAR, the authorities have recognised the need for further improvements of the Foreign Investment Act. Key areas where changes are expected include easing FDI procedures and making them more transparent, better investment tracking and rehabilitation, including better investor dispute procedures.

341. The CSAR did not clearly state the level of foreign investment in the economy and how they actualise the potential to attract foreign investors. Also, the CSAR did not indicate the protection measures or steps taken to protect domestic investors, or the level of contribution of domestic investor to the development of the economy. The CSAR further failed to indicate the level of accessibility of financial institutions for the growth of the local private sector.
342. It noted that FDI inflows are concentrated in the mining sector, which can lead to only part of the economy being developed while the other sectors virtually stagnate or experience slower growth. The CRM noted that, years after the transition to democratic rule, the performance of the South African economy continued to be good, resulting in substantial growth and development to the point that it was classified as an emerging market economy. Over time, however, the situation deteriorated as unemployment and poverty rose. Even so, South Africa continued to be rated economically and industrially more advanced than most African countries.
343. Despite this performance, the current exogenous and endogenous shocks and the poor investment environment have decelerated inward FDI flows. These shocks included the adverse conditions on international markets that caused high inflation at the national level, and the recent drop in agricultural production that affected manufactured goods.
344. Currently, the major destabilising shocks are the July 2021 riots, increasing crime rates, and Covid restrictions. These shocks have created a generally unfavourable environment for investment and trade.

## ii. Findings of the CRM

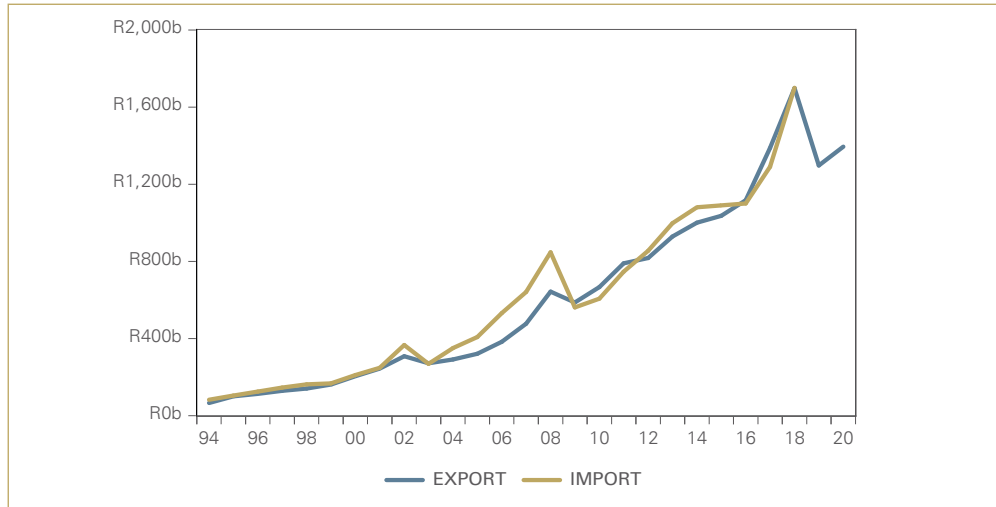
345. South Africa is a member of several regional and multilateral trade agreements. These include the Southern African Customs Union for duty-free trade between South Africa and the other four countries (Botswana, Lesotho, Namibia, and eSwatini), the Southern African Development Community (SADC) Free Trade Agreement, which as of 2012, allows duty-free trade among 12 of the 15 members, and the European Union-South African Trade and Development Cooperation Agreement that came into effect in 2000 and has as a progressive Free Trade Agreement (FTA) that has become the cornerstone of the regional trading landscape. South Africa has also negotiated agreements with the European Free Trade Association, the United Kingdom, and Mercosur. In addition, South Africa, through the SADC, has finalised negotiations on Phase I of the Tripartite Free Trade Agreement, which links SADC, the East Africa Community (EAC), and the Common Market of Eastern and Southern Africa (COMESA) into a free trade area. South Africa is also a member of the newly launched African Continental Free Trade Area (AfCFTA).



346. Notably, the CRM observes that AfCFTA can mitigate many critical demand-side constraints to trade, such as those interlinked with market size. That, notwithstanding, there must be stringent domestic measures to address supply-side constraints, including strengthening productive capacity and enhancing trade facilitation.
347. The Panel welcomed Government’s efforts to strengthen national capacity to intervene in the economy and address structural challenges through policy interventions in general, but mainly as they relate to ensuring more elaborative support for inclusive industrialisation through manufacturing as indicated in its 25 Year Review Document.
348. The Department of Trade, Industry, and Competition (the DTIC) is empowered to regulate, prohibit, or ration imports to South Africa in the national interests, though most goods can be imported into South Africa without any restrictions.
349. As a matter of government policy, the South African government aims to open its market further to increase trade and boost the competitiveness of domestic industries. The CRM observed that despite the significant depreciation of the Rand, weaker global demand, low commodity prices, and adverse climatic conditions, the importation and exportation of goods continued to grow. This is illustrated in figure 3.9, which shows a steady increase in foreign trade, except for 2008-2009 and 2020 periods when it declined. This trade peaked at R3.4trillion in 2018. The trajectory shows a quick rebound in exports after the COVID-19 pandemic in 2020, which indicates a resumption of growth in exports to the rest of the world.



**Figure 3.9** Growth of South Africa’s exports and imports 1994-2020



Source: World Bank Development Indicators, 2020

350. The country’s trade with the rest of the world has been impressive. South Africa has a diversified export basket, including natural resources. It exports to countries like China, Germany, the United States, and the United Kingdom. The country exports mostly raw materials and intermediate products, constituting 63% of the total exports in 2019. Currently, the main export products are Gold, Bituminous coal, and iron ore.
351. However, the CRM observes that, according to the UNCTAD report on Trade Mis-invoicing in Primary Commodities in Developing Countries: The Cases of Chile, Cote d’Ivoire, Nigeria, South Africa and Zambia,<sup>24</sup> published in 2016, relatively little gold appears in South Africa’s export data compared to the substantial amounts of gold imports from South Africa recorded by the trading partners. This suggests a considerable element of trade underinvoicing. Research has indicated that trade mis-invoicing plays a significant role in capital flight from developing and emerging countries. (Ndikumana et al., 2015)<sup>25</sup> as a substantial share of capital flight from developing and emerging countries. The

24 Misinvoicing is a “form of customs and/or tax fraud involving exporters and importers deliberately misreporting the value, quantity, or nature of goods or services in a commercial transaction” ( Maya Forstater, *Illicit Financial Flows, Trade Misinvoicing and Multinational Tax Avoidance: The Same or Different?* Center for Global Development, 2018).

25 Ndikumana, L., Boyce, J. K. and Ndiaye, A. S. (2015). Capital flight from Africa: Measurement and drivers. In S. I. Ajayi and L. Ndikumana (Eds.), *Capital Flight from Africa: Causes, Effects and Policy Issues* (pp. 15-54). Oxford: Oxford University Press

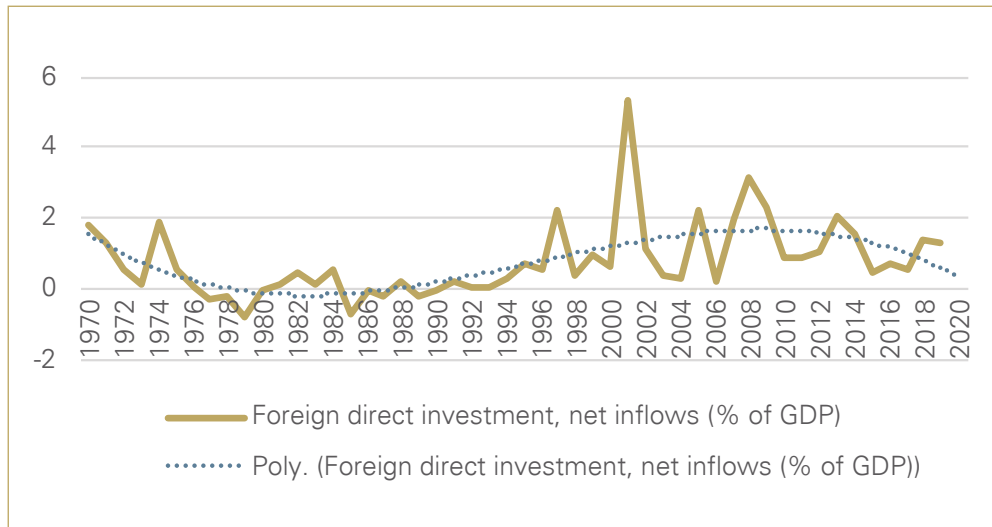




role of transnational corporations, especially the extractive industries, in the outflow of unrecorded capital from these countries in the form of tax evasion and profit shifting has received increased attention recently.

352. The report noted that the most striking feature of the gold sector in South Africa is the massive discrepancy between the amount recorded in the country's official trade statistics and the data in its trading partners' records. The total mis-invoicing of gold exports to South Africa's leading trading partners was estimated at \$113.6 billion within a 15-year period. The report further noted that export under-invoicing was mainly due to smuggling activities in the gold sector and not necessarily due to underreporting of the actual value of gold exports. This suggests that virtually all gold exported by South Africa leaves the country unreported.
353. As regards investment, South Africa has many attractive assets for investors, such as a large population, a diversified, productive and advanced economy, abundant natural resources, a transparent legal system, and political stability. However, the country suffers from a high crime rate, increasing social unrest (strikes and demonstrations), high levels of corruption, and structural issues in power supply and logistics. Investors are also worried about the lack of clarity concerning the policy of land expropriation without compensations, and other structural reforms.
354. In addition, the investment potential is hampered by legal uncertainties, which discourage foreign investors, despite the promulgation of the Protection of Investment Act in December 2015, which reinforces legal guarantees for foreign investors. The government is, however, working to make South Africa a more attractive destination for foreign investment with the InvestSA, a division of the Department of Trade and Industry which is currently rolling out several single-window mechanisms to coordinate and support initiatives by assisting with the permit approval, licensing and registration processes in South Africa to make the country more investor-friendly. The CRM noted a recent decline in foreign direct investment (FDI), as illustrated in figure 3.10.

**Figure 3.10** Trends in South Africa’s Foreign Direct Investments (FDIs)



Source: World Bank Development Indicators, 2020

355. Prior to 1994, net inflows of FDI as a share of GDP were recovering from a decline and continued to increase, peaking at 5.4% in 2001. Subsequently, FDI inflows dwindled markedly from 2008. The inflows fell from \$4.6 billion in 2019 to \$2.5 billion in 2020, in line with the global reduction of FDI inflows. Box 3.2 presents key global metrics that affect the investment climate.

### Box 3.2 – Key Global Metrics affecting Investment Climate

Measure	Year	Index/Rank	Sourced Website
TI Corruption Perception Index	2020	69 of 175	<a href="http://www.transparency.org/research/cpi/overview">http://www.transparency.org/research/cpi/overview</a>
World Bank’s Doing Business Report	2019	84 of 190	<a href="http://www.doingbusiness.org/en/rankings">http://www.doingbusiness.org/en/rankings</a>
Global Innovation Index	2020	60 of 131	<a href="https://www.globalinnovationindex.org/analysis-indicator">https://www.globalinnovationindex.org/analysis-indicator</a>
World Bank GNI per capita	2019	US\$6,040	<a href="http://data.worldbank.org/indicator/NY.GNP.PCAP.CD">http://data.worldbank.org/indicator/NY.GNP.PCAP.CD</a>

Source: 2021 Investment Climate Statements: South Africa (<https://www.state.gov/reports/2021-investment-climate-statements/south/Africa/>)



356. The enabling legislative instruments are the Investment Promotion Act 2015 and the Competition Amendment Act of 2018. South Africa provides active support for investors by granting a wide range of incentives, including a comprehensive suite of tax incentives for investment in Special Economic Zones (SEZs). However, the foreign investment regime in South Africa seeks to balance the benefits of FDI against its costs to the economy, and this is illustrated in Commendable Practice 3.2.

### Commendable Practices 3.2: Consideration of the Impact of FDI Policy on National Development

The South African Government considers Foreign Direct Investment (FDI) as most useful when it achieves specific national policy aims, which according to the National Development Plan, include fighting widespread unemployment, creating inclusive growth, and accelerating progress.

Public interest considerations such as the need to protect jobs, promote localisation, amongst others, are increasingly serving as the basis for the approval or rejection of foreign investment in the country. A key element in the Competition Amendment Act is the provision for the President to determine what constitutes national security interests that a foreign investment could potentially threaten. However, this discretion tends to create uncertainty.

*Source: The South African Institute of International Affairs (SAIIA) 8 March 8 2014*

357. Overall, the CRM noted that the country has a comprehensive Export Promotion Strategy called the Integrated National Export Strategy (INES) or "EXPORT 2030". As stated in the INES, *"the strategy aims to increase South Africa's capacity for exporting diversified and value-added goods and services to various global markets."* In addition, *"it aims to strengthen the country's export performance by improving the trade and business environment as well as the competitiveness of companies and sectors."* This strategy is promising. Still, its practical implementation is crucial to realising anticipated tangible outcomes

### iii. Recommendations

358. The African Peer Review (APR) Panel recommends Government should:

- Sign onto the Extractive Industries Transparency Initiative [*Government of South Africa*];
- Provide clarity and policy consistency on the issue of land expropriation without compensations, and other structural reforms [*Department of Trade, Industry and Competition*];
- Develop appropriate regulatory instruments to address trade misinvoicing, profit shifting, smuggling, and tax evasion [*Department of Trade, Industry and Competition*];
- Reinvigorate the Government's efforts to identify and diversify ways to develop a robust manufacturing sector and build a supply chain strong enough to withstand internationally induced slippages, blockages, and other impediments [*Department of Trade, Industry and Competition*].





# CHAPTER FOUR

## 4. CORPORATE GOVERNANCE

### 4.1 Overview

359. According to the APRM, Corporate Governance (CG) involves all aspects that govern a company's relations with shareholders and other stakeholders. The APRM's Objectives, Standards, Criteria and Indicators document notes:

Corporate Governance is concerned with the ethical principles, values and practices that create a balance between economic and social goals and between 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. (p. 20)



360. The overall objective of Corporate Governance is therefore, to closely align 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).

### **Evolution of Corporate Governance Africa**

361. In Africa, Corporate Governance has evolved from a narrow definition as a system by which companies are governed, directed and controlled in order to meet organisational goals, to one that lays emphasis on leadership, sustainability and good corporate citizenship (King III, September 2009). There is also mounting evidence that the adoption of good Corporate Governance practices across all sectors combined with good governance in the other areas covered by the APRM, leads to improved sustainable financial and non-financial performance not just within organisations, but also for the country as a whole. This is the rationale for the standards, codes and objectives adopted to guide Corporate Governance reform in Africa, under the APRM, which seeks to attain 5 objectives namely:

1. Promoting an Enabling Environment and Effective Regulatory Framework for Business organisations and other entities;
2. Ensuring Effective Leadership and Accountability of Organisations;
3. Ensuring Ethical Conduct within Organisations;
4. Ensuring that Organisations Treat Stakeholders Fairly and Equitably;
5. Ensuring that Organizations Act as Good Corporate Citizens.

### **Highlights of South Africa's Journey from 1994 to 2021**

362. This Second-Generation Country Review Mission (CRM) for South Africa coincided with a very challenging time in human history, given the socio-economic decline driven mainly by exogenous factors, including the impact of the COVID 19 pandemic. The CRM therefore presents a unique opportunity to recall that in 1994, South Africans voted a new democratic government into office, ushering in a new era defined by the shared vision of a free, non-racial and equal society with aspirations to build a people-system that would expand the frontiers of human freedom and fulfilment, focus on healing the wounds of the past by leveraging on inclusiveness, rule of law and innovation in frameworks aimed at building a strong economy that would provide leadership in Africa. Since then, democratic South Africa has been increasingly influential



internationally, strengthening the Southern Africa Development Community (SADC) and the African Union (AU).<sup>26</sup>

363. Also worthy of note is that South Africa joined the BRICS nations (Brazil, Russia, India, China, South Africa), a powerful bloc of emerging economies in December 2010. In addition, South Africa is one of the founding Member States of the African Peer Review Mechanism (APRM) and was among the first countries to be peer-reviewed. Since the first CRR was produced in 2007 after the review mission of 2006, South Africa has produced three (3) progress reports based on the recommendations of the first CRR, the Close-Out Report, and the second-generation CSAR of November 2021, heralding the APRM Second-Generation Country Review Process.

### **Evolution of Corporate Governance in South Africa**

364. In terms of Corporate Governance, the year 1994 is important in South Africa's Corporate Governance trajectory, because it was the year that the King I Report was published. Since then, South Africa has made substantial progress in implementing corporate governance standards and codes. It has adopted the Principles of Corporate Governance designed by the Organisation for Economic Cooperation and Development (OECD) and Commonwealth associations, building on the governance principles of the 1994 (King I), 2002 (King II), and 2009 (King III) and a fourth revision (King IV) in 2016. In January 2018, South Africa also established the Zondo Commission, a judicial commission of enquiry set up to investigate allegations of State capture, corruption and fraud in the public sector, including organs of State in South Africa. The Zondo Commission's recommendations include the establishment of an independent anti-corruption agency. All of these demonstrate South Africa's concerted efforts to promote good governance and address corruption.

### *Dynamism of South Africa's Companies Act and the King Reports*

365. South Africa has also demonstrated leadership in updating applicable codes and laws to address situations as they arise. For instance, concerns were raised about the level of adherence to the King Reports by some South African companies operating at home and in the rest of Africa. Consequently, in recognition of the adoption of the Companies Act, 2008, the King III Report [2009] focused on the importance of annually reporting in an integrative manner, putting financial results in a more robust perspective. The Companies Act No 73 of 2008 as amended in 2011 reflected those required enhancements. The King III Report was then followed in 2016 by the King IV Report, which proposed that organisations operate in the triple context of the economy, society and

<sup>26</sup> Republic of South Africa (2020), Towards a 25 Year Review: 1994 – 2019.

the environment, and adopt the principles of ethical leadership, organisation in society, corporate citizenship, sustainable development, stakeholder inclusivity, integrated thinking and integrated reporting as foundation stones.

366. These foundational laws and codes recognised the three paradigm shifts in the corporate world: from financial capitalism to inclusive capitalism, from short term capital markets to long term sustainable capital markets, and from siloed reporting to integrated reporting.<sup>27</sup> The most recent King IV is significant, as it underscores various developments in corporate governance locally and internationally, as well as promotes ethical culture, good performance, effective control, and legitimacy as the four principles of good governance. Furthermore, King IV also has supplementary codes for Municipalities, Non-Profit Organisations, Retirement Funds, Small and Medium Enterprises, and State Owned Enterprises.
367. Integrated reporting (IR) is common among domestic companies in South Africa. Many listed and public organisations have produced integrated reports regularly for many years. Companies listed on the JSE released their first integrated reports in 2010/2011. Today, it is a common practice that has spread to the public and non-profit sectors.<sup>28</sup> South Africa has made huge investments to create specialised mechanisms and ensure their independence and positioning through applicable laws. These mechanisms include the Financial Sector Conduct Authority (FSCA), the National Conduct Regulator (NCR) and the Financial Sector Regulation Act N.9 of 2017, the Securities Services Act 36 of 2004, as well as the Financial Markets Act 19 of 2012, among others.

### *South Africa's Public Sector Challenge*

368. State-owned enterprises play a significant role in the South African economy. In key sectors such as electricity, transport (air, rail, freight, and pipelines), and telecommunications, SOEs play a leading role, often defined by law, and limited competition is allowed in some sectors (telecommunications and air). There are approximately 700 SOEs at the national, provincial, and local levels. The IMF estimates that the debt of the SOEs account for 13.5% of the overall national debt. Many of the current State-owned firms were established during the apartheid era to counter the impact of international sanctions against the country. In 2015 and 2016, senior government leaders discussed allowing

27 Republic of South Africa (October 2021). Country Review Report – Thematic Area: Corporate Governance (CRR) for the APRM Country Review Mission.

28 Roberts, L.G. (July 2017). Integrated Reporting: The South African Experience, Retrieved December 29, 2021 from <https://www.cpajournal.com/2017/07/28/integrated-reporting-south-african-experience>.





private-sector investment into some of the sectors in which more than 700 state-owned enterprises dominate. A recent report of a presidential review commission on SOEs, called for the nationalisation of SOEs.<sup>29</sup> However, no concrete action has been taken on the proposition yet. Therefore, SOEs and Municipalities appear to remain a major source of administrative challenge in South Africa, with rising disenchantment about the deplorable quality of service rendered to the people.

### *Corporate Governance Trajectory from first to second Generation Country Review Missions*

369. The National Plan of Action (NPOA) was developed following the Base Review of 2007 which highlighted the following: (a) company legislation is not transformative and needs to be reviewed, (b) corruption undermines national integrity, (c) there are blockages to service delivery, (d) unemployment, (e) inadequate public consultation, education and feedback in policy making, (f) underdeveloped capacity and skills in public expenditure management and monitoring, (g) key institutions and certain social groups are underdeveloped and need to become more effective, (h) governance in civil society needs development, (i) civil society structures need increased opportunities to contribute and participate in the delivery and monitoring of public services, (j) consumers and shareholders fail to assert their rights, are ill-informed and inactive, (k) there is need to build capacity to implement the programs of the developmental State;<sup>30</sup>
370. South Africa has made significant improvements in Corporate Governance and this has been positively impacting both the public and private sectors, since the 2007 CRR was published.<sup>31</sup> According to the MTSF (2019 - 2024), the seven (7) priorities are a deliberate approach to ensure that there is no gap between what comes out of the Second-Generation Review Process and the primary implementation platform of the government, which in essence is the MTSF 2019-2024 and the resulting Annual Performance Plans of the respective departments, with respective key performance indicators. This was visible to the CRM as reflected in the templates used for provincial presentations to the APRM.

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29 Department of Public Enterprises (2017)

30 Republic of South Africa [November 30, 2021]. Report of the APRM 2nd Generation Country Review Process for the Period 01, April 2014 to 30, November 2021.

31 Enterprises University of Pretoria. (October 2021). Technical Research Support in the Corporate Governance Thematic Area to the APRM National Governing Council (NGC) of South Africa

371. According to the Country Self-Assessment Report (CSAR, 2021) the evolution of issues from the First-Generation Review to the Country Review Report (2007), showed that:

- South Africa has made concerted progress towards entrenching good corporate governance in line with King IV, since the first Country Review;
- improvements are however, required to adopt new approaches that are capable of adding value and addressing the triple challenges of poverty, inequality, and unemployment;
- a renewed focus on corporate governance and support for NPOs, SMMEs, and the informal sector is needed;
- there is need to address non-compliance with the vast array of corporate governance mechanisms that have been established, with little to no consequence in management;
- there is low capacity and competence within the accountable entities in the public and private sector; and
- a concerted effort is still required to expand and empower corporate governance principles in South Africa.<sup>32</sup>

372. The general context is that:

- There is perceived lack of effective consequence management for misconduct and poor performance.
- The governance architecture of State-Owned Enterprises (SoEs) remains weak, as is evidenced by a regression in audit outcomes, allegations of wide-scale corruption, and their often extremely precarious financial situations;
- Corruption, real and perceived, has hampered the country's capacity to deliver services, despite the comprehensive architecture in place to prevent and combat graft;
- Poor service delivery, lack of accountability, unethical and corrupt practices, and the poor governance of State-owned companies have aggravated the erosion of public confidence and trust in the State.<sup>33</sup>

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32 Enterprises University of Pretoria. (October 2021). Technical Research Support in the Corporate Governance Thematic Area to the APRM National Governing Council (NGC) of South Africa

33 Ncholo, P., 2000. Reforming the public service in South Africa: A policy framework. Public administration and development, 20(2), pp.87-102



373. Furthermore:

- Trends in South Africa's deterioration in Ease of Doing Business in an era of the African Continental Free Trade Area [AfCFTA];
- Declining Competitiveness Ranking for South Africa;
- Declining National Gross Domestic Product (GDP) output;
- Worrisome state of the Provinces and Local Governments;
- Rising total unemployment and high youth unemployment amidst security and other socio – economic problems exasperated by the COVID-19 Pandemic.

374. Many factors contained in this overview tend to place Corporate Governance at the centre of issues dominating the agenda for South Africa. It is therefore within this context and with a focus on the five key issues listed in the executive summary section on corporate governance and other findings of CRM, that the APR Panel here-in presents the chapter on Corporate Governance in South Africa.

## **4.2 Standards and Codes**

375. The APRM Base Questionnaire identified relevant Standard and Codes in an effort to realise the five objectives within the Corporate Governance thematic area, along with associated questions and indicators. In 2007, the Base Review listed all the eight Standards and Codes, but did not provide specific information on the date of their ratification or adoption. Table 4.1 provides all the relevant standards and codes and their level of implementation, based on the CSAR of 2021.

### **i. Evolution of the Issue**

#### **Implementation, Monitoring and Evaluation of Corporate Governance Standards and Codes**

376. The CRM confirmed that South Africa is the first country in the world to adopt the International Financial Reporting Standards (IFRS) for SMEs, which was issued by the International Accounting Standard Board (IASB) on 9 July 2009. The original text of the IFRS for SMMEs was adopted without any change in 2009. When an auditor issues an audit report on an entity applying the new South African standard, the audit report identifies the International Financial Reporting Standard for Small and Medium-sized Entities as the accounting framework. All entities that fall within the scope of IFRS for SMMEs (i.e., entities that are not publicly accountable) are required to use the new standard.

377. The CRM also confirmed that South Africa, in alignment with implementation, monitoring and evaluation of Industrial and Environmental Safety and Hygiene requirements, has always enjoyed a strong relationship with the ILO and is a signatory to the Labour Inspection Convention of 1947 (No.81), through the Department of Employment and Labour (IES: Health and Safety). In South Africa, occupational safety and health, a tripartite arrangement, in line with the International Labour Organisation Convention C144 - Tripartite Consultation Convention (1976, No. 144), adopts a process in which employers, employee representatives and government contribute to decisions that affect the occupational safety and health policy, laws, regulations, and their implementation.

In line with the above, Table 4.1 depicts the standards and codes that are specific to corporate governance, with details on the status of ratification and adoption.

**Table 4.1** Status of Implementation of Corporate Governance Standards and Codes

Standards and Codes	Ratified	Enacted	Reservation
Worst Forms of Child Labour Convention (1999) ILO No 182	7 Jun 2000	In force	Minimum age specified: 15 years
Minimum Age Convention (1973) ILO No 138	30 Mar 2000	In force	
Discrimination (Employment and Occupation) Convention (1958) ILO No 111	05 Mar 1997	In force	
Abolition of Forced Labour Convention (1957) ILO No 105	05 Mar 2000	In force	
Equal Remuneration Convention (1951) ILO No 100	30 Mar 2000	In force	
Right to Organize and Collective Bargaining Convention (1949) ILO No 98	19 Feb 1996	In force	
Freedom of Association and Protection of the Right to Organize Convention (1948) ILO no 87	19 Feb 1996	In force	
Forced Labour Convention (1930) ILO no 29	05 Mar 1997	In force	
Labour Inspection Convention, 1947 (No. 81)	20 Jun 2013		
Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	18 Feb 2003		



Standards and Codes	Ratified	Enacted	Reservation
Unemployment Convention, 1919 (No. 2)	20 Feb 1924		
Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	30 Mar 1926		
Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)	28 Dec 1932		
Workmen's Compensation (Occupational Diseases), 1934 (No. 42)	26 Feb 1952		Convention Revised
Night Work (Women) Convention, 1919 (No. 4)	1 Nov 1921	Not in force	Abrogated Convention - By decision of the International Labour Conference (ILC) at its 106th Session (2017)
Night Work (Women) Convention (Revised), 1934 (No. 41)	28 May 1935	Not in force	Abrogated Convention - By decision of the ILC at its 106th Session (2017)
Night Work (Women) Convention (Revised), 1948 (No. 89)	02 Mar 1950	In force	
Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)	21 Feb 1933	Not in force	
Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63)	08 Aug 1939	In force	Excluding Parts II and IV
Final Articles Revision Convention, 1946 (No. 80)	19 Jul 1947	In force	
Final Articles Revision Convention, 1961 (No. 116)	09 Aug 1963	In force	
Occupational Safety and Health Convention, 1981 (No. 155)	18 Feb 2003	In force	
Safety and Health in Mines Convention, 1995 (No. 176)	09 Jun 2000	In force	

Standards and Codes	Ratified	Enacted	Reservation
Maritime Labour Convention, 2006 (MLC, 2006)	20 Jun 2013	In force	In accordance with Standard A4.5 (2) and (10), the Government has specified the following branches of social security: sickness benefit, unemployment benefit, employment injury benefit and maternity benefit.
Amendments of 2014 to the MLC, 2006	18 Jan 2017	In force	
Amendments of 2016 to the MLC, 2006	08 Jan 2019	In force	
Amendments of 2018 to the MLC, 2006	26 Dec 2020	In force	
Work in Fishing Convention, 2007 (No. 188)	20 Jun 2013	In force	
Domestic Workers Convention, 2011 (No. 189)	20 Jun 2013	In force	
Underground Work (Women) Convention, 1935 (No. 45)	n/a	In force	

**Table 4.2** Standards that do not need ratification

Standard and Codes	Adopted	Note
International Standards in Auditing - The Handbook of International Quality Control, Auditing, Review, Other Assurance and Related Services Pronouncements (2010) International Federation of Accountants (IFAC)	Adopted in 2013 as per the Independent Regulatory Body for Auditors on 16 October 2013 (IRBA, 2013)	
International Financial Reporting Standards (IFRS) (2001) IASB (and updates to 2010)	Adopted in 2004 as per Preface to Statements of Generally Accepted Accounting Practice as distributed by SAICA (UNCTAD, 2007)	



Standard and Codes	Adopted	Note
International Financial Reporting Standards (IFRS) for SMEs (2009)	Adopted in August 2009 as per the Accounting Practices Board of the South African Institute (IAS Plus, 2009)	South Africa became the first country in the world to adopt the IFRS for SMEs, which was issued by the IASB on 9 July 2009.
International Integrated Reporting (IIR) Standards	Integrated reporting in South Africa began with the King Code of Governance for South Africa 2009 (King III)	Companies listed on the JSE released their first integrated reports in 2010/2011.

### Monitoring and Enforcement of Compliance with Standards and Codes

378. The CSAR observed that the inspection and enforcement system of corporate governance in South Africa follows the lead provided by the Labour Inspection Convention, 1947 (No. 81), which is complemented by the Protocol of 1995, which extends its scope of application to the non-commercial services sector (public service and State-run enterprises).
379. The certification to Occupational Safety and Health (OSH) management systems is voluntary in South Africa. There are ISO 17021-1, OHSAS 18001 and ISO 45001 certification bodies. There are currently 14 certification bodies that are accredited by the South African National Accreditation System (SANAS) under the voluntary scheme of occupational health and safety management systems. Five of these are accredited for ISO 45001:2018, 2 for ISO 45001:2018 and OHSAS 18001, 1 for OHSAS 18001, and 6 for Occupational Health and Safety Management Systems. Apart from companies in the iron and steel sector, which were directed by the DEL to implement OHSAS 18001, implementation of OSHM systems is voluntary. There are many other certification organisations that are not certified or registered with SANAS (DoL and IOL, 2021).
380. Voluntary standards that enterprises have adopted are ISO 17021-1, OHSAS 18001 and ISO 45001. The South African Bureau of Standards (SABS) has a mandate to develop South African National Standards (SANS). The SABS has adopted the international ISO 45001 standard, which is called SANS/ISO 45001. SANS/ISO 45001 provides a framework to increase safety, reduce workplace risks and enhance health and well-being at work. It thus enables organisations to proactively improve their OSH performance. SANS/ISO 45001 was published in March 2018. An organisation that wants to confirm its competence as a certification Conformity Assessment Body (CAB) can

approach SANAS and be assessed. Upon satisfaction with the competence of the certification body, SANAS issues the certification body (organisation) with a certificate of accreditation, confirming competence. Organisations that previously implemented OHSAS 18001, had until September 2021 to migrate to SANS/ISO 45001 (DoL & IOL, 2021).

## ii. Findings of the CRM

381. The CRM observed that the standards and codes that had been ratified and domesticated did not appear to have sufficient monitoring and evaluation in terms of supervisory oversight for status reporting, updates on the progress of implementation, impact of implementation and observed or emerging challenges, as well as mitigation interventions. During the stakeholder engagement sessions, the CRM also observed that State and non-State actors as well as the private sector and some not-for-profit entities are very much aware of the international treaties and protocols as well as their ratifications. Nevertheless, they appeared not to know much about their level of implementation.

## iii. Recommendations

382. The African Peer Review (APR) Panel recommends that the Government of South Africa should:

- Maintain its current exemplary compliance with international standards and codes;
- Ensure optimal awareness of existing codes and standards by applicable institutions; ensure effective monitoring oversight of implementation and reporting, and deploy stringent remedial action for non-compliance *[All Supervising Ministries and the Office of the Attorney General]*;





## 4.3 Assessment of Performance on African Peer Review Mechanism (APRM) Objectives

### OBJECTIVE ONE

### Promoting an Enabling Environment and Effective Regulatory Framework for Business organisations and other entities

#### i. Evolution of the Issue

##### Introduction

383. This objective focuses on the legal and administrative measures that are in place to facilitate economic activities, advocacy and service delivery; for example, incorporation laws, laws and regulations governing different types of organisations, permits and licenses, registration of property, protection of investors, enforcement of contracts, as well as closing of businesses. Specifically, the objective addresses the effectiveness of both government authorities and self-regulatory authorities in implementation, delivery of services, regulation, monitoring and supervision, the independence, capacity and efficiency of the judiciary in the enforcement of laws and regulations relating to organisations, and the availability of skilled professionals in areas relevant to corporate governance.

##### *Legal Environment and Company Formation*

384. The South African Constitution is the supreme law, and all laws, including the common law regulating companies, derive their force from it and are subject to constitutional control. Companies Act 71 of 2008 is the primary source of company law in South Africa. It provides for the incorporation, registration, organisation and management of companies, the capitalisation of profit companies, and the registration of offices of foreign companies carrying on business within the Republic. This Act recognises two types of companies: profit companies and non-profit companies. Non-profit companies are companies limited by guarantee as defined by section 21 of the Companies Act 2008. Profit Companies are categorised as companies without restrictions on the transferability of their shares and that do not prohibit offers to the public; for example, larger public companies and companies that have restrictions on the transferability of their shares and prohibit offers to the public, like smaller private companies. They may take one of four different forms including: a personal liability company, a State-owned company, a public company and a private company.

385. A profit company may be a private company (whose securities may not be offered to the public), a State-owned company, a personal liability company or a public company. There is a wide variety of commercial and non-commercial State-Owned Enterprises (SOEs) and derivatives of such entities. The SOEs are mostly established by provisions of the Public Finance Management Act, 1 of 1999. Schedule 1 makes provision for 9 constitutional institutions, Schedule 2 of the Act provides for the establishment of 21 major public entities, Schedule 3, Part A provides for 155 national public entities, Schedule 3 Part B lists 21 national government businesses, Part C of the schedule provides the names of 56 provincial public entities, and part D of the schedule lists 19 provincial government enterprises.
386. The Local Government: Municipal Finance Management Act 56 of 2003 provides for the establishment of municipal entities and their financial governance. Unfortunately, their audits are not contained in all the Auditor General’s provincial reports as some of them are audited by private auditors. Each public company is constituted in accordance with the Companies Act and its constitutive document, and the memorandum of incorporation (MOI), which establishes the company’s capacity, legal powers and governance. Listed companies in South Africa operate within a robust and flexible governance framework comprising statutes, regulations, common law, and both international and South African codes of best practice.<sup>34</sup>

### *Categories of Organisations*

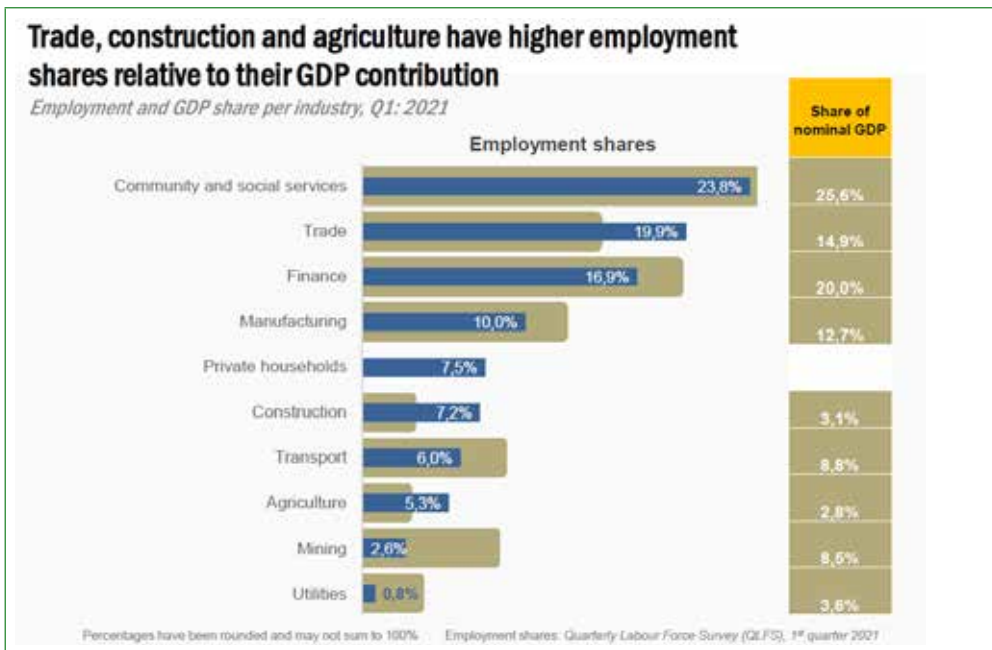
387. Existing Business Categories in the private sector, the public sector and the non-profit sector include limited liability companies, joint ventures, personal liability companies, partnerships and sole proprietorships. Although various structures for doing business are available to investors who wish to establish a corporate presence in South Africa, the most common form of structure used is a limited liability company, which is governed by Companies Act 71, 2008. The most common type of limited liability company is the private company (as opposed to a State-owned entity or a public company). The Companies and Intellectual Property Commission (CIPC), is the custodian of the company registration process in South Africa. An investor may either incorporate a new limited liability company with the CIPC or may purchase a ‘shelf company’ that has been discontinued by the original owner(s).

<sup>34</sup> Republic of South Africa [November 30, 2021]. Report of the APRM 2nd Generation Country Review Process for the Period 01, April 2014 to 30, November 2021.



## The Private Sector

**Figure 4.1** Employment and GDP Share per Industry – Q1, 2021<sup>35</sup>



Source: Adapted from Statistics South Africa (2020)

## The Public Sector

388. Public companies whose securities are listed on the Johannesburg Stock Exchange (JSE), South Africa’s main securities exchange, must adhere to various requirements as stipulated by the Listings Requirements of the JSE (the Listings Requirements). Given the high levels of public interest in these companies, the Companies Act and the Listings Requirements together impose a demanding accountability and transparency. Listed companies in South Africa operate within a robust and flexible governance framework comprising statutes, regulations, common law, and both international and South African codes of best practice.
389. The DPE has oversight responsibility in full or in part for six of the approximately 700 SOEs that exist at the national, provincial, and local levels: Alexkor (diamonds), Denel (military equipment), Eskom (power generation), Transnet (railway transport and pipelines) South African Express, South African Forestry

<sup>35</sup> Republic of South Africa [November 30, 2021]. Report of the APRM 2nd Generation Country Review Process for the Period 01, April 2014 to 30, November 2021.

Company (SAFCOL) (forestry), and South African Broadcasting Corporation. The mandate of SOEs is derived from a combination of its enabling legislation, the MOI and the Strategic Intent Statement that are cascaded into the Shareholder’s Compact and Corporate Plan. The DPE’s logical planning framework was consequently developed to assist SOEs within the DPE portfolio, to comply with the PFMA and Companies Act prescripts and timelines as well as government’s national objectives as espoused in the National Development Plan and the MTSF.

### *The Non-Profit Sector*

390. Non-profit organisations are defined in Non-Profit Organisations Act 71 of 1997 (NPO Act) as ‘non-profit organisation’, which include a trust, company or other association of persons established for a public purpose, and the income and property of which are not distributable to its members or office bearers except as reasonable compensation for services rendered. Statistics SA (StatsSA) uses the terminology of ‘Non-Profit institutions’ (NPIs) as a caption for those organisations. The working definition adopted by StatsSA of NPIs is: “Organisations not-for-profit and non-profit distributing, institutionally separate from government, self-governing, and non-compulsory”. The majority of registered NPOs (2015/2016 period) are classified under Social Services (48%), followed by Development and Housing (18%), Religion (15%), Education and Research (6%) and Culture and Recreation (6%) and Health (3%) (ETDP SETA, 2019, pp. 13-14).
391. In a report to the Parliamentary Standing Committee on Social Development in May 2020, it was indicated that there were 228 822 Non-Profit Organisations (NPOs) registered in South Africa as at 2020, of which 58.44% were non-compliant with the relevant legislation.<sup>36</sup> It is worthy of note that the first CRR (2007) highlighted a renewed focus on corporate governance and support for NPOs, as well as instilling such aspects within the SMME and informal sectors as possible enhancers of compliance. Also of concern were matters of funding, monitoring and evaluation of NPOs, the funding process for social welfare and community development services, as well as the monitoring, supervision and assistance provided to NPOs.<sup>37</sup>

36 Republic of South Africa [November 30, 2021]. Report of the APRM 2nd Generation Country Review Process for the Period 01, April 2014 to 30, November 2021.

37 Republic of South Africa [October 2021]. Country Review Report – Thematic Area: Corporate Governance [CRR] for the APRM Country Review Mission



### *The Informal Sector*

392. The enterprise-based definition of the informal sector as described by the International Conference of Labour Statisticians (ICLS) refers to production and employment within unincorporated, small or unregistered enterprises. Informal employment (worker-based definition) refers to all workers not covered or insufficiently covered by formal arrangements through their work, including: (a) own-account workers and employers in informal sector enterprise, (b) employees who do not have labour rights (such as not receiving social insurance through their job or the right to vacation or sick leave, whether they work in informal or formal enterprises or households, and (c) unpaid workers, including family workers, own use producers, volunteers and trainees. Statistics South Africa applies the above ICLS norms, and defines the South African informal sector according to two elements namely establishments with fewer than five employees and employers who are own-account workers and persons that are unpaid in their household business, who are not registered for either income tax or value-added tax. Commendable Practice box 4.1 presents the promising outcomes.
393. The Department of Small Business Development 2020-2025 (DSBD) reported in 2018/19 that 430 informal businesses were supported during the year by its Enterprise Development Division (now Department of Small Business Development) through the Black Business Supplier Development Programme.



### Commendable Practices 4.1: Promoting an Enabling Environment and Effective Regulatory Framework for Business

The Strategic Plan of the Department of Small Business Development 2020-2025 (DSBD), amongst others, specifically provide for a township and rural entrepreneurship programme aimed at formalising the informal businesses, especially micro enterprises, into more productive ventures. The Plan also provides for the facilitation of the banking of unbanked spazas and to build a database for future government planning and support. Cabinet adopted the National Informal Business Upliftment Strategy (NIBUS) and Implementation Framework (2014/2015) in 2014, which forms one of the policy and strategic focuses of the DSBD. The Department reported in 2018/19 that 430 informal businesses had been supported during the year by its Enterprise Development Division (now Department of Small Business Development) through the Black Business Supplier Development Programme.

In the context of doing business, a series of structural frameworks such as The Strategic Plan of the Department of Small Business Development 2020-2025 (DSBD), the National Informal Business Upliftment Strategy (NIBUS) and the Implementation Framework (2014/2015) are aimed at providing mechanism to develop an institutionalised approach of registering SMMEs and providing them with necessary support to increase their business ventures. This is a substantial effort towards integrating small enterprises into the mainstream economy.

*Source: Department of Trade and Industry (DTI, 2020) and CRM*

394. Co-operatives may not form part of the informal sector, but they are also quite distinct from corporations and companies established under the Companies Act of 2008. Co-operatives are subject to the conditions set out in Co-operatives Act 14 of 2005. A co-operative is defined as an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise organised and operated on co-operative principles. These principles, as defined in the Act, include the internationally accepted principles of co-operation, exemplified by the principles adopted by the International Co-operative Alliance, including voluntary and open membership, democratic member control, member economic participation, autonomy and independence, education, training and information, co-operation among co-operatives, and concern for community.



### *Resolution of Business Disputes*

395. South Africa has a number of judicial and regulatory agencies to resolve commercial or business disputes. The country also has a well-developed court system to prosecute corporate infringements and strong Chapter 9 Institutions that are independent. These include: the Public Protector, the South African Human Rights Commission (SAHRC), the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission), the Commission for Gender Equality (CGE), Auditor-General, the Independent Electoral Commission (IEC), and an Independent Authority to Regulate Broadcasting.

### *South Africa's Approach to Corporate Governance*

396. South Africa is one of the first countries outside of the United Kingdom to introduce a code of corporate governance. The Institute of Directors South Africa ('IoDSA'), an industry body representing directors, established a committee under the leadership of Mervyn King, a former High Court judge to compile the first Code of Corporate Practices and Conduct, which was first released in 1994. The Code has since been reviewed three times, leading to the current version (King IV Report, 2016) on Corporate Governance for South Africa.

397. Certain recommended practices in the King Code are incorporated into the Listings Requirements, making it mandatory for JSE-listed companies to comply with them, with the outstanding the King Code's recommendations to be implemented on an 'apply and explain' basis. King IV has 17 Principles anchored on (a) leadership, ethics and corporate citizenship, (b) strategy, performance and reporting, (c) governing structures and delegation, (d) governance functional areas, and (e) stakeholder relationships. One of the innovations of King IV to make it easier for application for various organisations was the translation of the 17 Principles into supplementary codes for municipalities, non-profit organisations, retirement funds, small and medium enterprises, as well as State owned enterprises.

### *Sources of Funding*

398. Private sector organisations derive funding from multiple sources, which include retained earnings, financial intermediaries and the capital market, in the case of listed companies. State owned entities, government businesses and other parastatals have various sources of capital that include savings from sales and the capital market, in which case, the South African Government is the guarantor of borrowings. In terms of not-for-profit and informal

organisations, source of revenue varies widely and includes own savings, member contributions, donations and in some instances, funding.

399. The CRM’s review of Objective One will assess the state of promotion, the operating environment and effectiveness of regulatory framework for the private, public and non-profit sector organisations. These tools are nuanced with the aim of system improvement to exceed past achievements, and to optimise the gains of applicable investments made from 1994 to date. The review examines the potency of the Constitution as the main regulatory instrument, and other multi-layered legal frameworks, codes and strong Chapter 9 Institutions.

### **Inclusive Corporate Governance for Growth and Socio – Economic Impact**

400. Currently, there are growing needs to “build back better”. That is, there is an urgent need to rejuvenate the economy in a way that does not only respond to immediate recovery from the problems of the COVID-19 pandemic, but also reassures a sound pathway to redirect the economic trajectory towards sustained growth in an environmentally friendly manner and within the purview of shared prosperity.<sup>38</sup> South Africa is presently a mixed economy and the second largest in Africa after Nigeria. The country has experienced persistent challenges, as epitomised by the COVID-19 pandemic, which have exacerbated the historical legacies of unemployment, poverty and inequality. Over the years, from 1994, apartheid spatial planning has not been optimally reversed through integrated developmental approaches. Although, the country has experienced mixed fortunes in the global competitiveness ranking, recent experiences have reignited optimism for impressive performance and capability to attract inflow of FDI. However, the country’s global competitiveness ranking requires improvement in order for the country to bolster its attractiveness to foreign capital and to develop domestic entrepreneurial capabilities. Leveraging corporate governance instruments and frameworks would help boost business prospects and ultimately, sustainable prosperity.

#### *South Africa in AfCFTA*

401. The African Continental Free Trade Area (AfCFTA) was founded in 2018, with trade expected to start by 1 January 2021. It was created by the African Continental Free Trade Agreement among 54 member countries of the 55 African Union. The free-trade area is the largest in the world considering the

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38 World Economic Forum (2021). Global Competitiveness Report Special Edition 2020: How Countries are Performing on the Road to Recovery. Retrieved December 28, 2021 from <https://www.weforum.org/reports/the-global-competitiveness-report-2020/digest>





number of participating countries since the formation of the World Trade Organization<sup>39</sup>. As a member of the AU, South Africa endorsed the AfCFTA negotiations when launched during the 24th AU Assembly in June 2015, in South Africa. The AfCFTA is the first of its kind since the General Agreement on Trade and Tariffs (GATT).

402. When it becomes fully functional, the AfCFTA will boast a combined GDP of US\$2.1 trillion. The FTA is expected to leverage the huge continental population of 1.26 billion people to achieve an estimated growth rate of between 1% and 3%, grow employment by at least 1.2% to catapult Africa into the stream of third largest economy after China and India. The AfCFTA provides South Africa, which is the most diversified and most industrialised economy in Africa, with an opportunity to realise improved growth through exports to the continental market. The FTA provides South Africa with a unique opportunity to position itself prominently within Africa and the world at large.<sup>40</sup>

### *The NDP 2030 Review Report*

403. The National Development Plan: Vision 2030 (NDP) is South Africa's long-term plan for achieving inclusive growth, prosperity and improvements in the quality of life for the country's citizens. It embodies the letter and spirit of the Constitution and serves as an action plan for securing the future of all South Africans. The NDP 2030's key priorities are the reduction of unemployment, poverty and inequality. The review noted that the NDP had not spelt out an implementation plan with sufficient rigour and detail, beyond the broad approach it outlined. It also indicated that although the NDP received broad stakeholder and societal support after its adoption, there was no robust implementation, and the envisaged broad social compact behind the plan did not emerge. The review report identified the following issues, which are linkable to corporate governance, as challenges to the targets envisioned in the NDP:

- Unemployment, poverty and inequality remain entrenched with limited inclusivity, which is undermining social cohesion;
- The private sector is largely withdrawn and appears to lack investment confidence and expansion-inclined initiative;

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39 Wikipedia (2021). African Continental Free Trade Area. Retrieved December 20, 2021 from [https://en.wikipedia.org/wiki/African\\_Continental\\_Free\\_Trade\\_Area](https://en.wikipedia.org/wiki/African_Continental_Free_Trade_Area)

40 Institute for Global Dialogue (2021). South African Trade and the African Continental Free Trade Agreement (AfCFTA). Retrieved December 20, 2021 from <https://www.igd.org.za/infocus/12122-south-african-trade-and-the-african-continental-free-trade-agreement-afcfta>

- State-Owned Enterprises (SOEs) exert regressive pressure on the economy, instead of contributing to driving growth and transformation;
- Corruption has become systemic and pervasive in the public and the private sectors.<sup>41</sup>

404. To date, South Africa remains a country of imbalances, and inequalities. Despite the impressive gains achieved in stabilising the economy, and the higher rates of economic growth that have been consistently realised since 1994, 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. The situation has been exacerbated by the COVID-19 pandemic, which has resulted in large-scale job losses.<sup>42</sup>
405. Therefore, in view of South Africa’s deterioration in Ease of Doing Business in an era of the African Continental Free Trade Area [AfCFTA], declining national Gross Domestic Product (GDP) outcomes, reduced Global Competitiveness Ranking, worrisome state of the Provinces and Local Governments administration, this Second-Generation Review of South Africa regarding Objective One, sought to identify the turnaround strategies required in the private, public and non-profit sectors, leveraging existing corporate governance codes and standards.

## ii. Findings of the CRM

### **Inclusive Corporate Governance for Growth and Socio – Economic Impact**

#### *Institutional Arrangements and Frameworks*

406. In terms of institutional arrangements and legal frameworks, South Africa has made substantial 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. Building on the governance principles of the King I - IV reports, progress has been made to promote good governance and to curb cases of corruption.
407. Companies Act No. 73 of 2008 as amended in 2011 also provides for a Financial Reporting Standards Council to advise on requirements for financial records keeping and reporting by companies. This Act even addresses the shortcomings in the Close Corporations Act of 1984 by providing for a harmonious regime of business incorporation and regulation. The Department of Trade, Industry and Competition has recently held a briefing on the Draft

41 Republic of South Africa National Planning Commission (2020). A Review of the National Development Plan 2030: Advancing Implementation Towards a more Capable Nation.

42 Republic of South Africa [October 2021]. Country Review Report – Thematic Area: Corporate Governance [CRR] for the APRM Country Review Mission.



Companies Amendment Bill, 2021, which was published for public comment on Friday 1 October 2021. This follows the publication of the earlier version of the bill on 21 September 2018. The 2021 revision was aimed at addressing the administrative bottlenecks identified during the implementation of the Act since May 2011. The 2021 version is also a redrafted bill with significant amendments. The amendments in the 2021 bill are aimed at achieving three policy objectives:

- I. Improving ease of doing business;
- II. Providing for greater transparency on wage ratios at firm level and;
- III. Addressing true or beneficial ownership of companies, to check money laundering.

### *South Africa's Outstanding Corporate Governance and Business Outcomes*

408. The CRM's review identified some outstanding issues that were listed in the 2007 Baseline Review and as reflected in the National Plan of Action (NPOA), as well as subsequent findings of the TRI in October 2021. Some of these issues include:
- a. Governance in civil society needs development;
  - b. The need to address the triple challenges of poverty, inequality, and unemployment
  - c. A renewed focus on corporate governance and support for NPOs, as well as instilling such aspects within the SMME and informal sectors;
  - d. Lack of a drive to address non-compliance with the vast array of corporate governance enablers, and impotence of regulatory mechanism to stimulate compliance and consequence management;
  - e. Lower than expected or accepted levels of governance skills and knowledge within the accountable entities and within public and private entities;
  - f. Lack of concerted effort to expand and empower corporate governance principles in South Africa;<sup>43</sup>
  - g. The need to revise the Programme of Action (NPOA) for South Africa to include dedicated monitoring of progress in implementing Codes of Good Practice and track its impact on economic development and transformation;<sup>44</sup>

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43 Enterprises University of Pretoria. (October 2021). Technical Research Support in the Corporate Governance Thematic Area to the APRM National Governing Council (NGC) of South Africa

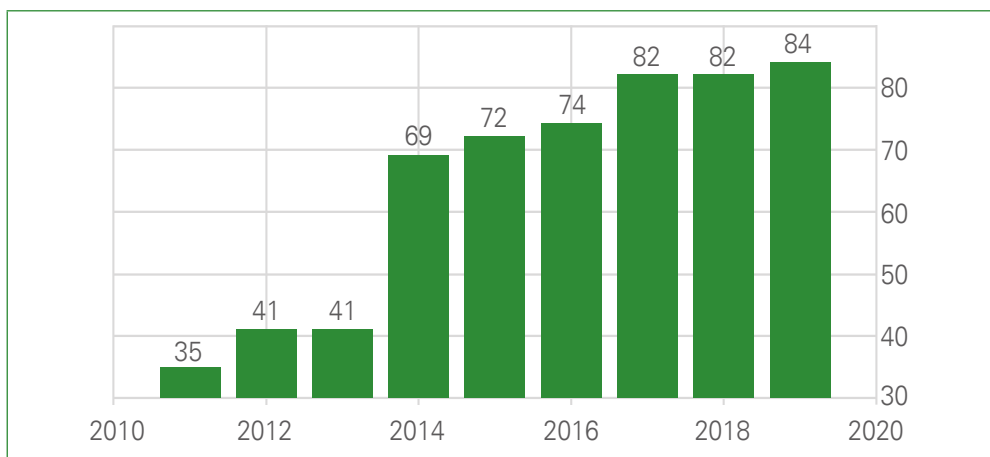
44 Republic of South Africa [October 2021]. Country Review Report – Thematic Area: Corporate Governance [CRR] for the APRM Country Review Mission.

h. Inadequate adherence to the King Reports by some South African companies operating in the rest of Africa as, Multinational Enterprises [MNEs].

*South Africa’s ranking in Ease of Doing Business and Gross Domestic Product*

409. South Africa is ranked 84 among 190 economies in the Ease of Doing Business, according to the latest World Bank annual ratings. Figure 4.1 below, shows that South Africa dropped to 84 in 2019 from 82 in 2018. Historically, Ease of Doing Business in South Africa averaged 56.83, from 2008 until 2019, reaching an all-time low of 84 in 2019 and a record high of 32 in 2008, just before the global financial crisis.

**Figure 4.2** Ease of Doing Business in South Africa – 2010 to 2020<sup>45</sup>

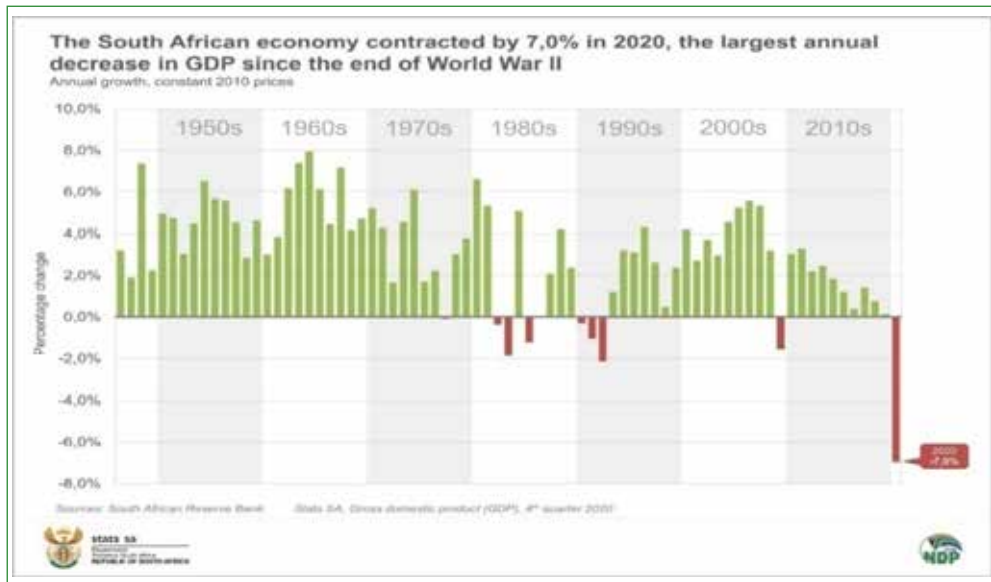


Source: World Bank Database

45 The World Bank Trading Economics (2021). Ease of Doing Business in South Africa. Retrieved December 12, 2021 from <https://tradingeconomics.com/south-africa/ease-of-doing-business#>



**Figure 4.3** South Africa’s GDP Per Capita – 1946 to 2020 (Seventy-Four Years)<sup>46</sup>



Source: Adapted from Statistics South Africa (2021)

410. Figure 4.3 shows a fifty year trend in South Africa’s GDP per Capita, from 1946 to 2020. The positive impact of the birth of the new South Africa after the apartheid era in 1994, until the global financial challenges of 2008/2009 and the more recent impact of COVID-19 pandemic are clearly visible.

**Figure 4.4** South Africa’s Overall Sectoral GDP – 2019 and 2020

Sector	2019					2020				
	Q1	Q2	Q3	Q4	Year*	Q1	Q2	Q3	Q4	Year*
Primary Sector	-12.3	11.7	-5.7	-0.4	-3.1	-10.5	-55.7	165.0	0.5	-5.5
Agriculture	-16.8	-4.9	-4.5	-7.6	-6.9	38.8	22.0	20.1	5.9	13.1
Mining	-10.8	17.4	-6.1	1.8	-1.9	-22.1	-70.8	271.2	-1.4	-10.9
Secondary Sector	-8.0	1.3	-5.0	-2.9	-1.4	-7.5	-71.9	158.1	16.9	-12.5
Manufacturing	-8.8	2.1	-4.4	-1.8	-0.8	-8.2	-74.7	212.9	21.1	-11.6
Construction Sector	-5.3	-2.4	-6.9	-5.9	-3.3	-5.9	-76.8	73.6	11.2	-20.3
Tertiary Sector	-0.4	2.9	0.9	-1.0	1.2	1.4	-42.4	37.8	3.3	-5.4

46 Department of Statistics South Africa (2021). GDP: Quantifying SA’s Economic Performance in 2020. Retrieved December 20, 2021 from <http://www.statssa.gov.za/?p=14074>

Sector	2019					2020				
	Q1	Q2	Q3	Q4	Year*	Q1	Q2	Q3	Q4	Year*
Non-primary sector**	-2.1	2.5	-0.4	-1.4	0.6	-0.6	-49.9	55.5	6.0	-6.9
Non-agricultural sector**	-2.8	3.7	-0.8	-1.1	0.4	-2.5	-51.8	66.0	5.4	-7.2
<b>Total</b>	<b>-3.2</b>	<b>3.3</b>	<b>-0.8</b>	<b>-1.4</b>	<b>0.2</b>	<b>-1.8</b>	<b>-51.7</b>	<b>67.3</b>	<b>6.3</b>	<b>-7.0</b>

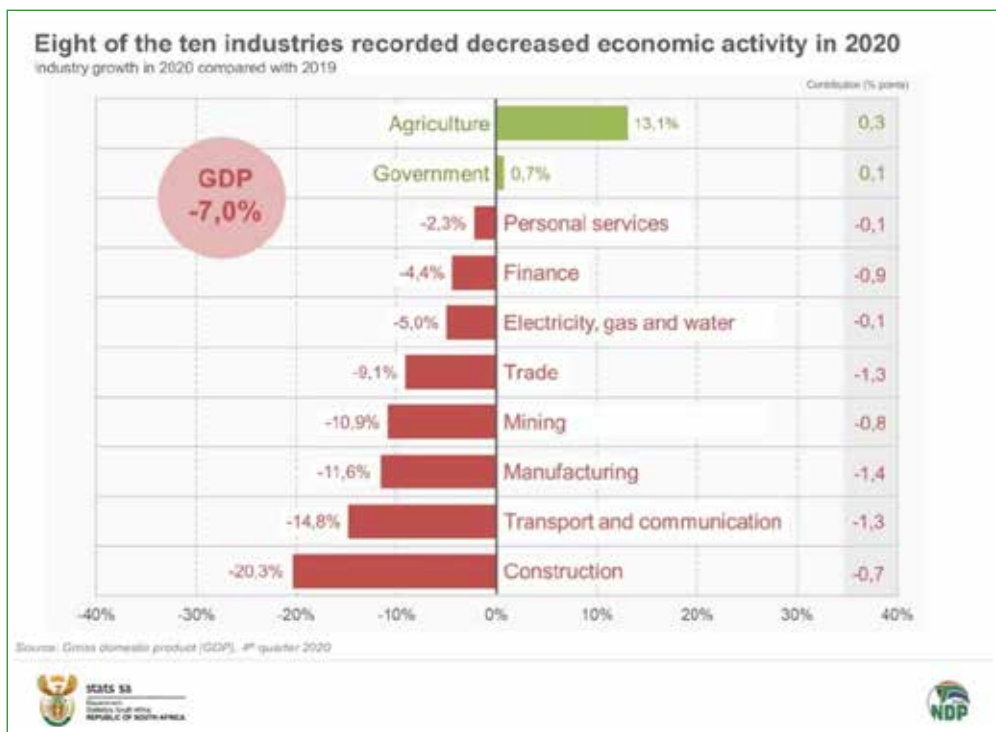
\* Percent change over one year

\*\* The non-primary sector represents total GVA excluding agriculture and mining

\*\*\* The non-agricultural sector represents total GVA excluding agriculture

Source: Adapted from Statistics South Africa (2021)

**Figure 4.5** Growth Components of South Africa’s Real GDP 2020



Source: Adapted from Statistics South Africa (2021)



411. Figure 4.5 further shows that despite the impact of the pandemic on economic growth, there was one shining star in 2020. Agriculture escaped the effects of the pandemic relatively unscathed, expanding production by 13.1% in 2020. The government investment visibility also grew marginally during the year, up by 0.7%. All other industries experienced a downturn. The construction industry, already in deep trouble before the pandemic, contracted by 20.3%. This marks the industry's fourth consecutive year of economic decline.<sup>47</sup>

### *The South African Chamber of Commerce and Industry (SACCI)*

412. The CRM observed that the SACCI, with its almost 50 constituent chambers is a lifeline for business people. Presently, it has a pool of 20,000 small businesses through the regional chambers (19 paid up), 29 paid up corporate members together with 8 national associations (56 Constituent Members). The Durban Chamber, which is the largest Chamber within SACCI, has about 3,000 member companies. It is currently the oldest metropolitan chamber in Africa, dating back to 1856. It operates as a Non-Profit Company under Companies Act 71 of 2008, with a proud legacy of being the oldest and largest metropolitan Chamber in Africa.
413. SACCI does not directly interfere with provincial and municipal issues, as these are the domain of the member chambers. The CRM is of the view that the SACCI, as an umbrella body, has great potential to drive the organisation of the informal sector, working with other Chambers in the Provinces, Cooperatives, Trade Groups and Associations as members and affiliates of SACCI. Aggregated data, governance skills transfer, advocacy and governance resource portal for members can be substantial. This is even more important since unlike most of the world's poor countries, South Africa does not have a thriving informal economy, as reflected in the reality that only 15% of South African jobs are in the informal sector, compared with around half in Brazil and India, and nearly three-quarters in Indonesia. South Africa's informal sector consists of a multitude of industries and trades, including but not limited to spaza shops, fast food outlets, bakeries, shebeens and taverns, backroom rentals, hawkers, taxis, mechanics and panel beaters, hair salons, stylists, barbers, and many more. Informal economic activities are also not physically restricted to townships and rural areas.

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47 Department of Statistics South Africa (2021). GDP: Quantifying SA's Economic Performance in 2020. Retrieved December 20, 2021 from <http://www.statssa.gov.za/?p=14074>

*The Broad-Based Black Economic Empowerment [B-BBEE] Initiative*

414. The primary law governing broad-based black economic empowerment (B-BBEE) in South Africa is the Broad-Based Black Economic Empowerment Act, no 53 of 2003 as amended by the Broad-Based Black Economic Empowerment Amendment Act, no 46 of 2013 (B-BBEE Act) and the regulations promulgated under it (B-BBEE Regulations). The B-BBEE Act provides the framework for the implementation of B-BBEE initiatives, structures, programs and transactions and is also the primary legislation under which the Minister of Trade and Industry published the Codes of Good Practice for B- BBEE (2007) as amended by the Amended Codes of Good Practice for B-BBEE, 2015 (B-BBEE Codes). In addition to the B-BBEE Act and the B-BBEE Codes, there are a number of sector-specific charters, which have been promulgated and implemented to drive BBBEE initiative. For example, the Broad-Based Socio- Economic Empowerment Charter for the Mining and Minerals Industry, 2018 applies to B-BBEE in the mining sector and the Information and Communication Technology Charter, which finds application in the information, communications and technology sector of the South African business market. Compliance with B-BBEE in South Africa is not required by law, but instead, it incentivises companies to work towards achieving a higher B-BBEE rating level in order to remain competitive in the South African market.
415. As indicated in the executive summary, the CRM has identified optimal inclusion of the informal sector in corporate governance, performance improvement in the public sector and governance of the non-profit sector as key issues. Doing this could extend South Africa’s investments in standards and codes, strong institutional arrangements and legal frameworks and allow South Africa to optimise benefits from years of continental leadership in advocacy of best practice governance codes. This thinking underpins the recommendation for Objective One.

**iii. Recommendations**

416. The African Peer Review (APR) Panel recommends that the Government of South Africa should:
- Complete the Companies Act 2008 amendment of 2021 and pass it into Law [*Ministry for Justice, Parliament*];
  - Consider the possibility of improving the inherent weaknesses in King IV reporting guidelines in the proposed new edition since the King IV Report (2016) is not sufficient to take RSA out of its current challenges.





- Consider recommendations to improve King 4 reporting standards. Requirements for a King V: (a) incorporate the full provisions of Companies Act 2008, (amendment 2021) on-going, (b) move from Principles and Practice Guidance to a Case-Based and Outcome-Based Framework in a simpler and more easily understandable format, (c) create a supplement for Non Profit Organisations, (d) recognise additional stakeholders in 'moderation of corporate governance practices' as 'quasi regulators' by moral suasion being - Listed and major Non-listed Companies, Chambers of Commerce and Industries, IoD South Africa, the JSE, and Industry Regulators.
- Mandate the additional organisations that have been named 'quasi regulators' to (1) deepen and extend current CG practices into supply and distribution chains of the Listed and Major Non-Listed firms, (2) organise the informal sector, leveraging trade groups, cooperatives and chambers of commerce and industry as practice deepening platforms, and (3) use moral suasion, peer mentoring and professional networking to deepen application of the new recommendations and deploy case-based principles for broad based emergence of good practices.
- Consider the potential spin-off contributions of the SACCI and its component chambers as a self-regulating network of businesses that can in addition adopt current mandates, support and mentor Cooperatives and Trade Groups for CG capacity.



**OBJECTIVE TWO**

**Ensuring Effective Leadership and Accountability of Organisations**

**i. Evolution of the Issue**

**Introduction**

417. This objective focuses on assessing the mechanisms available and practices adopted to improve the effectiveness of leadership and accountability in all the types of organisations listed under Objective One above. Bodies responsible for exercising leadership in a particular organisation vary widely, including Boards of Directors, Boards of Governors, Trustees, and Management Committees, amongst others. It may be difficult to assess whether leadership in a particular organisation is effective or not, but it is essential to evaluate the level of compliance with pre-established corporate governance frameworks and regulatory instruments that are designed to assist leaders in becoming more effective. This specific objective, therefore, seeks to gauge the implementation of the available rules in South African organisations as its primary focus.
418. The accountability of a management team to the elected board and the accountability of the elected board to the shareholders and regulatory agencies of the State are central to the quality of governance. The principles of corporate governance require managers to identify and articulate their responsibilities and their relationships, consider who is responsible for what, to whom, and when. It is also important to improve knowledge of stakeholders on the relationship that exists between stakeholders and those entrusted to manage resources, and deliver required outcomes. The administration of entities should be characterised by openness and transparency in their relations with members. This requirement translates specifically into an obligation for elected directors and custodians of public/corporate assets. It is incumbent on company directors to guarantee stakeholder confidence in the decision-making processes.<sup>48</sup>
419. Companies Act No.71 of 2008, effective as of 2011, codifies the application of International Financial Reporting Standard (IFRS) as issued by the International Accounting Standard Board (IASB) and approved by the Financial Reporting Standards Council (FRSC) for listed companies, and prescribes either IFRS or IFRS for Small- and Medium-sized Entities (SMEs) for different types of companies based on a public interest scoring system. The act also amends

48 Manzila, H. [October, 2021]. Background Paper on Corporate Governance – Republic of South Africa, Being a Background Paper by the African Peer Review Mechanism [APRM]



Close Corporations Act 69 of 1984 (as amended) to provide for a consistent and harmonious regime of business incorporation and regulation.

### *Auditor Independence and the Audit Committee*

420. King III proposed that the audit committee be responsible for recommending the appointment of the external auditor and overseeing the external audit process. King IV acknowledged the need to assess and confirm the external auditor's independence but does not specifically address audit firm rotation and suggests that the audit committee should oversee auditor independence. This aligns with the publication of the rule by the Independent Regulatory Board for Auditors (IRBA) that the number of years for which the audit firm has served a company be disclosed in the auditor's report. In addition, the audit committee is charged with the responsibility to disclose any significant audit matters considered and how the committee has addressed the matters. In terms of the auditing standards, the auditor is required to address all key audit matters, among other issues, in order to provide the user of the annual financial statements with some context when they assess the statements.
421. The Public Finance Management Act 1999 (PFMA), Parliamentary oversight, Standing Committee on Public Accounts, and Guideline for Legislative Oversight through Annual Reports in 2005, among others, feature prominently in South Africa's Governance System. Figure 4.6 presents supervisory bodies that exercise oversight over a State entity such as a national or provincial department. These functions support the accounting officer to achieve good governance, and also stipulate the principles of good governance by which they must all abide.

### **Improving the Accountability of SOEs**

422. For the sake of effective leadership, the business of the board of SOEs or SOCs, is placed under a statutory fiduciary duty, care and skill so as to act prominently in the best interests of the organisation, in compliance with section 76 of the Companies Act and section 50 of the PFMA. The board is also expected to apply the voluntary recommended practices from the King IV Report on Corporate Governance for South Africa (2016), which is published by the Institute of Directors Southern Africa, in order to achieve sound corporate governance. Due to the unique nature and structure of SOEs there is a sector-specific supplementary appendage dedicated to their needs. This additional guideline provides distinct recommended practices in chapter 16 of the King IV Report. The current structure of an SOEs is unique because the State is the sole shareholder, and the State therefore formulates the recommended practices tailored to the specifics of the organisation:

- SOEs and public companies are characterised by distinct features of accountability;
  - The boards of SOEs are accountable to the minister under whose portfolio they fall. SOEs previously fell under the control of the Minister of Finance but this has changed as they now fall under the portfolio of the Minister of Public Enterprises;
  - The distinct challenge facing the accountability of SOEs is that the Minister, rather than various shareholders, is now required to supervise the accountability of the board and ensure compliance under section 63 of the PFMA;
  - This challenge is completely unique to the nature and structure of the SOE and not comparable to the ownership structures of private or public companies with numerous shareholders.
423. The presence of numerous shareholders works well for the enforcement of accountability for the boards of private and public companies. If the board fails to perform, the shareholders may demand accountability at annual general meetings. The seriousness of the gravamen may even precipitate divestment from the business or serious punitive actions against the Board. The shareholders have the leverage to vote against board decisions to increase the remuneration of the directors. Through this shareholder mechanism, the accountability of the boards of private and public companies is easily enforced. Directors who take decisions in breach of their statutory duties are often swiftly reprimanded through shareholder pressure and activism (Nel, Scholtz, and Engelbrecht 2020)<sup>49</sup>.
424. In the second Progress Report of 2011, it was indicated that Integrated Reporting (IR) is common among domestic companies in South Africa, with many listed and public organisations having produced integrated reports for over six years. The advent of the IR as the popular form of corporate reporting in South Africa has significantly enhanced both internal and external benefits for the companies that have adopted it, and the approach has also benefitted stakeholders.
425. One of the most notable benefits is the improvement in internal integration and management. Through the mechanism, companies have a better understanding of business value drivers, a more insightful risk analysis,

49 Nel, G., Scholtz, H. and Engelbrecht, W., 2020. Relationship between online corporate governance and transparency disclosures and board composition: evidence from JSE listed companies. *Journal of African Business*, pp.1-22



improved strategic resource allocation mechanism and reduced departmental and functional siloing. This corporate reporting mechanism propelled South Africa to the rank of number one in the world in auditing and reporting standards in the World Economic Forum's Global Competitiveness Report 2016/17, for the seventh consecutive year.

426. Section 159 of the Companies Act of 2008 complements the PDA and provides safeguards to company stakeholders, including shareholders, directors, and employees, who make good faith disclosures of specific wrongful or unlawful acts by a company, director or prescribed officers. Whistle-blowers are immune from civil, criminal, or administrative liability and have qualified privilege in relation to the disclosure.

## **ii. Findings of the CRM**

### **Improving the Accountability of SOEs**

427. Findings from the First-Generation CRM suggested that, in order to enhance accountability and intensify the fight against corruption on all levels, municipalities need support in the development of fraud prevention mechanisms and anti-corruption strategies. This support should have a specific focus on the risk areas identified, namely employment practices, procurement procedures, financial controls and allocation of subsidised houses.
428. Findings from this Second-Generation CRM indicate that SOEs have an important role to play in the South African economy. Unfortunately, over the past three years, many entities have exhibited poor governance that is underpinned by maladministration, inadequate planning, poor execution, and inadequate financial management control, which has resulted in numerous failures that have culminated in bailouts that have exceeded R187 billion. These cases of dishonesty have created instability of boards/executive management, and led to court cases. The worst is that the South African public has lost confidence in SOEs, and this dubiety reflects badly on the government as a whole.
429. A regular monitoring of the implementation of the national anti-corruption framework was undertaken in 2019 by the National Anti-Corruption Forum and the Anti-Corruption Coordinating Committee. The main aim of this mechanism was to enhance effective leadership and accountability in organisations. In furtherance of this effort, a continuous process of National ethics campaign in government, civil society and business, targets on monitoring and evaluating the level of ethical awareness and accountability conduct within private and public sectors in South Africa was initiated in 2019.

*Recent Findings on Accountability in the Private, Public and Non-Profit Sectors*

430. On the issue of independence of auditors and the audit committee, King III recommended that the audit committee be responsible for proposing appointments of external auditors and overseeing the external audit process. Overall, there have been developments in the assessment of the auditor’s independence as well as the implementation of audit firm rotation in certain jurisdictions. As noted previously, the Companies Act of 2008, effective as of 2011, codifies the application of IFRS as issued by the IASB and approved by the Financial Reporting Standards Council (FRSC) for listed companies, and prescribes either IFRS or IFRS for Small- and Medium-sized Entities (SMEs) for different types of companies based on a public interest scoring system.
431. The Financial Services Board was created in 1990 under the Financial Services Board Act to regulate non-bank financial services companies. As such, it has broad authority over the Johannesburg Stock Exchange (JSE), pension funds, and insurance companies, among others. The JSE, however, is a self-regulatory body that establishes its own reporting requirements for listed companies. The JSE requires all publicly listed companies to prepare annual financial statements in accordance with IFRS. In addition, the Financial Markets Act of 2012 also stipulates additional disclosure requirements for listed companies, focusing on the company’s compliance with standards of corporate governance. This is encapsulated in the King IV Report (2016) on Corporate Governance for South Africa.
432. Auditors in South Africa are subject to oversight by the Independent Regulatory Board for Auditors (IRBA) in accordance with the Auditing Profession Act of 2005. Only individuals that are recognised as Chartered Accountant by virtue of their membership in the South African Institute of Chartered Accountants (SAICA) in accordance with Chartered Accountants Designation Act No. 67 of 1993, are eligible to register as Registered Auditors (RAs) with the IRBA, subject to the IRBA’s additional requirements, including the completion of an Audit Development Program (ADP) and provisions for continuing professional development (CPD).
433. The Institute of Directors South Africa (IoDSA) plays a critical role in the Corporate Governance landscape in South Africa and has produced the King Code Series of Corporate Governance, under the leadership of Prof. Mervyn King. These codes are an African innovation and have significantly contributed to Corporate Governance practices on the African continent and beyond. As an institution, it is a non-profit organisation that is unique in that it represents directors, professionals, business leaders and those charged with governance duties in their individual capacities in southern Africa.



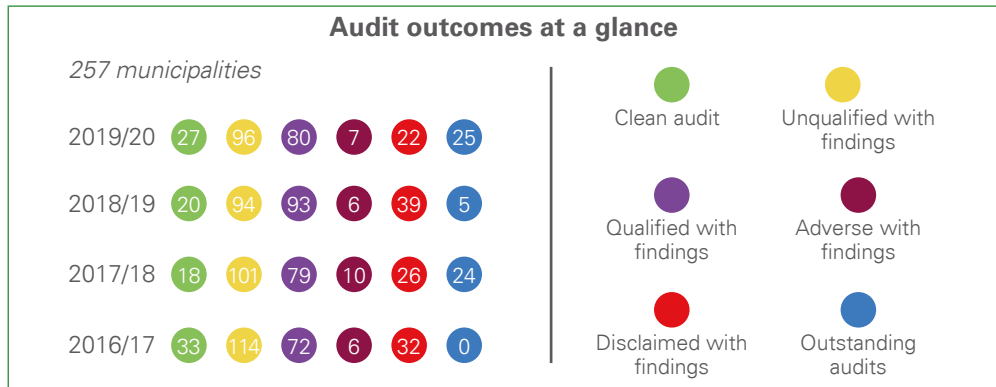
434. However, the recent hearings from the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State (Zondo Commission), have highlighted the underperformance of many SOEs. The boards of the South African Airways (SAA), Eskom Holdings and Transnet have come under scrutiny as a result of criticisms about their maladministration by the Zondo Commission. Every director and the Board of an SOE are under a statutory fiduciary duty and a duty of care and skill to always act in the best interests of the SOE. This is in accordance with Section 76 of the Companies Act and Section 50 of the PFMA. The unique challenge inhibiting accountability of SOEs is that the Minister, and not various shareholders, is required to supervise the accountability of the board and ensure compliance as stipulated under Section 63 of the PFMA. This needs to change.
435. For non-profit organisations, the provisions of the Companies Act of 2008 and provisions of section 21 apply to annual audits and follow up processes. It is therefore of great concern, that in a report to the Parliamentary Standing Committee on Social Development in May 2020, it was indicated that there were 228 822 Non-Profit Organisations (NPOs) registered in South Africa in 2020, of which 58.44% were non-compliant with the relevant legislation.<sup>50</sup> This also needs to change.
436. According to the MTSF (2019 - 2024), the seven (7) priorities are a deliberate approach to ensure that there is no gap between the findings of the Second-generation CRR, and the primary implementation platform of the government, which in essence is the MTSF 2019-2024 and the resulting Annual Performance Plans of the respective departments, with respective key performance indicators. This was visible to the CRM in the templates used for provincial presentations to the APRM, thus it was possible to see harmony in performance reporting, which is commendable and should be sustained.
437. Figure 4.6 shows that in the 2019/20 Audit, only 11% municipalities received clean audits. As illustrated in the Figure, 37% received unqualified audits, 31% received qualified audits, 3% received adverse opinions, while 9% bagged disclaimed opinions. Public Sector Annual reports give the Parliament the right to assess the performance of a public institution in accordance with the requirements of section 92(3)(b) of the Constitution. However, given that 22 Municipalities received disclaimed audit, while 25 have outstanding audits, the supervisory role of the Parliament may be hindered by the enormity of this

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<sup>50</sup> Republic of South Africa [November 30, 2021]. Report of the APRM 2nd Generation Country Review Process for the Period 01, April 2014 to 30, November 2021.

challenge, coupled with the other critical legislative roles performed by the institution. The findings lead to questions of: (a), wilful fraud facilitating culture or (b), capacity challenges of accountable officers and leaders, or (c), lack of requisite task-related tools. Given the present state of the macro economy, this also needs to change.

**Figure 4.6** Trend in Local Government audit outcomes for 2016/17 to 2019/20<sup>51</sup>



Source: Auditor-General South Africa

**iii. Recommendations**

438. The African Peer Review (APR) Panel recommends that the Government of South Africa should:

- Ensure stringent compliance with the Companies Act of 2008 and subsequent amendments that provide for the appointment of Directors, the performance of annual audits, board evaluation, and implementation of governance standards and codes;
- Review the mandates of 700 SOEs to ensure alignment, while eliminating duplication or overlaps, for efficiency;
- Consider the possibility of rearrangements to change the Oversight Framework for SOEs by requiring all SOEs to report to a single Regulator. The Department of Public Enterprises can be upgraded to such independence, in order to effectively play this role in a more apolitical manner [Parliament];
- In the interim, upgrade Regulatory Oversight and Enforcement of existing fiduciary frameworks to invoke the powers of Chapter 9 Institutions as applicable.

51 Parliamentary Monitoring (2021) State of Local Governments. Retrieved December 29, 2021 from <https://pmg.org.za/blog/StateofLocalGovernment>





**i. Evolution of Issue****Introduction**

439. This objective focuses on the ethical behaviour of organisations both internally and externally. It considers the development of codes of ethics and other practices to promote ethical behaviour such as whistle blowing regulations. The objective also focuses on the role of professional bodies in promoting ethical standards, the role of and challenges faced by the media in reporting unethical conduct, the level of ethical and unethical behaviour in organisations and regulations surrounding organisations making political donations
440. The principles of corporate governance require those involved to identify and articulate their responsibilities and their relationships, consider who is responsible for what, to whom, and when, knowledge and relationships that exist between stakeholders and those entrusted with managing resources, and deliver required outcomes. Effective corporate governance is more than just putting in place structures such as committees and reporting mechanisms to achieve desired results. Rather, it requires a strong commitment by all participants to effectively implement all elements of corporate governance ethically. An effective framework is very much people-oriented, involving the company management, a greater emphasis on corporate values and ethical conduct, risk management, relationships with clients and quality service delivery.<sup>52</sup>

**Supervisory Framework on Ethics**

441. The Base Review of 2007 listed some concerns that informed the NPoA. One of the issues, as applicable to ethical conduct within organisations, was corruption, which was said to undermine both national integrity and efforts to enhance service delivery. The MTSF 2019 – 2024, which is the reference point for the implementation of the NPoA with its seven priority points, has as Priority 1 - Capable, Ethical and Developmental State. All levels of The State are expected to report their performances along these seven priority areas, over the course of the MTSF 2019 – 2023.

<sup>52</sup> Manzila, H. [October, 2021]. Background Paper on Corporate Governance – Republic of South Africa. Being a Background Paper by the African Peer Review Mechanism [APRM]

### *Integrated thinking and the Integrated Report*

442. In addition to the adoption of King IV on integrated reporting, the RSA has, in furtherance of its efforts to promote ethics, enshrined the independence of its Chapter 9 Institutions in the Constitution. The Auditing and Accounting space in South Africa is very active and rich in terms of diversity of oversight professional bodies. The Auditing Profession Act 26 of 2005 provides *“for the establishment of the Independent Regulatory Board for Auditors; to provide for the education, training and professional development of registered auditors, and to provide for the accreditation of professional bodies. Its functions also include the provision of platforms for the registration of auditors; to regulate the conduct of registered auditors; to repeal an Act; and to provide for matters connected therewith.”* The Independent Regulatory Board for Auditors (IRBA) is the statutory body that supervises public accountancy in South Africa.
443. King III introduced the concept of triple bottom line reporting, where profit, planet and people were taken into consideration when reporting on performance. Financial performance in the short term needed to be balanced by the impacts and effects on the environment and society within which the organisation was operating. King III required that the Board ensures the integrity of the company’s Integrated Report. The King IV Report on Corporate Governance for South Africa emphasised that it is the responsibility of the governing body (the board) of any organisation to ensure effective leadership that is based on an ethical foundation. The King IV report went even further, indicating that corporate governance is the exercise of ethical and effective leadership by the governing body, especially towards the achievement of an ethical culture, good performance, effective control, and legitimacy. The King IV report, views ethics as *“considering what is good and right for the self and the other and can be expressed in terms of the golden rule, namely, to treat others as you would like to be treated yourself. In the context of organisations, ethics refers to ethical values, applied to decision making, conduct, and the relationship between the organisation, its stakeholders and the broader society”*<sup>53</sup>.

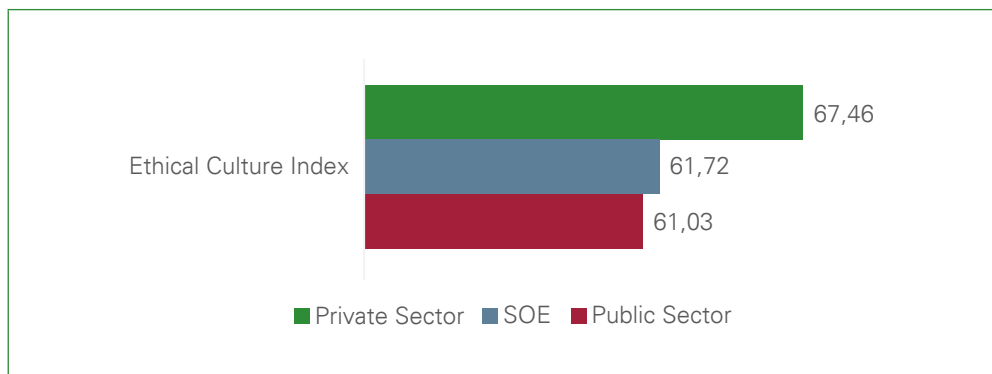
### *Emerging Issues in South Africa’s Private and Public Entities*

444. The findings of a study by the Ethics Institute (TEI) South Africa show that there is a strong correlation between the operational, strategic and financial failures of organisations and their ethical failures (figure 4.2)

53 Institute of Directors South Africa (2016). King IV Report. Retrieved December 18, 2021 from [https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA\\_King\\_IV\\_Report\\_-\\_WebVersion.pdf](https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA_King_IV_Report_-_WebVersion.pdf)



**Figure 4.7** Comparison of the Ethical Culture across the Private, SOE, and Public Sector



Source: Vorster and Konstantinopoulos (2020)<sup>54</sup>

445. In view of the information in figure 4.7, there seems to be an emerging correlation between the ethical culture index and the cases emanating with corporate scandals in the private, public and state-owned enterprises.
446. In recent years, major State-owned Enterprises<sup>55</sup> and even some private sector organisations<sup>56</sup> have been embroiled in ethical failures, usually from a governance of ethics standpoint, and have been implicated in State-capture, wasteful expenditure, employee intimidation, procurement fraud, employee and leadership challenges, and the inability to meet the core mandates for which they were initially formed. It is interesting then that ethics risk is still viewed as different from strategic, operational and financial risk. The Zondo Commission’s findings, the KPMG South Africa creative-accounting and Digital Vibes cases, among others, also highlighted the importance of ethics and corporate governance in South Africa.
447. The Social and Ethics Committee was first introduced in the 2008 Companies Act. Details about its mandate, membership and powers were provided in the Companies Regulations (2011). On 1 May 2012, it became mandatory for certain categories of companies to have a Social and Ethics Committee (SEC). The publication of the King IV Report on Corporate Governance for South Africa in 2016 (King IV) had a major impact on the evolution of the SEC. King IV recommendations regarding the role, responsibilities, and membership of the SEC went beyond the statutory prescriptions for the SEC. While the statutory

54 Voster, P. and Konstantinopoulos, N., 2020. Ethical Failure to Blame for the Poor State of State-Owned Enterprises (SOEs)

55 South African Airways (SAA), PRASA, Transnet, Eskom, Denel, the SABC and many others.

56 Example, accounting malpractice by the local unit of KPMG ; Digital Vibes scandal ;

mandate is compliance-focused, the King IV recommendations on the mandate of SEC are governance focused. King IV is aligned to Companies Act 2008 as amended in 2011, with specifics on expectations of ethical conduct.

448. Furthermore, King IV also recommended that the social and ethics performance of all organisations be governed, and not only those of companies mandated by the Companies Act and Regulations. Organisations thus faced - and often still are facing – the challenge of reconciling the statutory view of the SEC with the King IV view of the SEC. What is unique about the SEC is that it is a statutory committee required by legislation in South Africa. Thus, the statutory nature of the governance structure, rather than the social and ethics mandate of the committee, is unique in the world.
449. Sadly, although the SEC was introduced approximately 8 years ago, there is scant information about its nature, effectiveness, and perceived impact. In 2019, the Institute of Directors South Africa (IoDSA) approached The Ethics Institute (TEI) to collaborate with and endorse the establishment of a Social and Ethics Committee Forum. One of the first projects undertaken by the Forum was to conduct a Social and Ethics Committee trends survey. The purpose of this survey was to collect representative data on the SEC that can be used as a baseline for analysing its trends over time. So far, there have been two surveys – 2020 and 2021.<sup>57</sup>

## ii. Findings of the CRM

### Supervisory Framework on Ethics

450. The CRM noted that, in recent years, too much emphasis has been placed on the form rather than the substance of corporate governance in both the public and private sectors. Effective corporate governance is more than just putting in place structures, such as committees and reporting mechanisms, to achieve desired results. Rather, it requires a strong commitment by all participants to effectively and ethically implement all elements of corporate governance. An effective framework is very much people-oriented, involving the company management, a greater emphasis on corporate values and ethical conduct, risk management, relationships with clients and quality service delivery.

<sup>57</sup> Institute of Directors South Africa (2020). Guidance for Social and Ethics Committee: Social and Ethics Committee Trends Survey 2020. Retrieved December 19, 2021 from [https://www.tei.org.za/wp-content/uploads/2020/11/SOCIAL\\_AND\\_ETHICS\\_COMMITTEE\\_TRENDS\\_SURVEY\\_REPORT\\_2020.pdf](https://www.tei.org.za/wp-content/uploads/2020/11/SOCIAL_AND_ETHICS_COMMITTEE_TRENDS_SURVEY_REPORT_2020.pdf)



### *Whistle-blowing, Political Party Funding and Parliamentary Independence*

451. The CRM confirms that under Protected Disclosures Act 26 of 2000 (PDA), employees who make disclosures of unlawful or irregular conduct by employers or fellow employees are protected against victimisation or any 'occupational detriment' (such as dismissal, demotion or harassment). Section 159 of the Companies Act of 2008, which is intended to complement the PDA, provides safeguards to company stakeholders, including shareholders, directors, and employees who make good faith disclosures of specific wrongful or unlawful acts by a company, director or prescribed officers. Whistle-blowers are immune from civil, criminal, or administrative liability and have qualified privilege in relation to the disclosure.
452. The dangers with private individuals or companies funding political parties with the primary aim of influencing policy were debated many times in Parliament. These debates led to the adoption of Political Party Funding Act 6 of 2018, which requires that any funding within a prescribed limit must be declared to the National Assembly by the recipient political party.
453. Parliament's powers in the national sphere of government are defined by section 44 of the Constitution, which entrusts parliament with legislative authority over matters affecting national, provincial and local government issues, subject to specific conditions as identified in section 44(2). To enable Parliament to exercise its powers effectively, the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 was passed. Thus, the status of Parliament is safeguarded.

### *Improving Supervision and Compliance Enforcement*

454. The CRM observed that despite the existence of well-articulated Acts and Codes, there is a challenge of inadequate supervision and compliance enforcement, especially in the State-owned companies and the public sector. In addition to the Companies Act, the enabling instrument governing SOEs is the handbook for the appointment of persons to boards of State and State-controlled institutions, issued by the Department of Public Service and Administration (DPSA). This handbook requires that those responsible for conducting the appointment process must be familiar with the statutory requirements that govern appointments to boards. The handbook, however, represents a stand-alone practical document which is not provided for in any formal framework, regulation or legislation, and few SOEs are aware of its existence (CDN, 2016).

### *The Enforceable Accountability of SOEs*

455. Currently, there is a Shareholder Management Bill that had to be presented to Parliament in 2021 for consideration. The purpose of the Bill is to develop a framework to improve the accountability of all State-Owned Enterprises, including SOEs, to the state. This Bill has been delayed for over three years and the urgency of its statutory enactment has become undeniable, given the recent hearings of the Zondo Commission. The current administration also appointed members of the Presidential State-Owned Enterprises Council on 11 June 2020 to assist the State to effectively reposition State-Owned Enterprises, including SOCs. However, the CRM’s perception of the Council is that its effectiveness is yet to be seen. This also brought up concerns about inappropriate criteria for appointments, assessment and non-removal of poorly performing directors and the need for stricter adherence to the competency-based criteria for appointments. These shortcomings were cited at various engagements.

### **iii. Recommendations**

456. The African Peer Review (APR) Panel recommends that the Government of South Africa should:

- Develop a strong Supervisory Framework that (a) ensures all entities comply with the provisions of the Company Act No. 71 of 2008 on publication of annual accounts, (b) annual meetings are convened within stipulated deadlines in law, and (c) related follow up actions as voted for at Annual General Meetings of all registered entities in the private, public and non-profit sectors of the economy are implemented [*The National Assembly, Provincial Legislatures, Independent Regulatory Board for Auditors (IRBA), the Regulatory Agencies and Shareholder Associations*];
- Ensure that remedial actions available to the Auditor General, following the amended Public Audit Amendment Act 5 of 2018, are supported by the relevant judicial authorities to facilitate prosecutions in confirmed cases of mistrust and embezzlement of public funds;
- Promote collaboration between the Institute of Directors South Africa, The Ethics Institute of South Africa and the South African Chamber of Commerce and Industry and the Business Schools of South African Universities offering Corporate Governance Trainings and Networks to develop a robust Case-Based Practice reformatory Training Curriculum on (a) Ethical Culture, (b) Ethics in Governance, (c) ethical leadership and (d) assessing ethical culture, etc., which is applicable to the private, public and non-profit sectors respectively. Then have those as a standardised curriculum for delivery nationwide, via a training of trainers model.



**OBJECTIVE FOUR****Ensuring that Organisations Treat Stakeholders Fairly and Equitably****i. Evolution of Issue****Introduction**

457. This objective focuses on the effectiveness of the laws and regulations that are in place to protect the interests of an organisation's stakeholders. Stakeholders include shareholders, employees, customers, suppliers, creditors, the community, the future generation and any other person with an interest in the organisation. Although, there are mechanisms in place in many African countries to protect the interests of many of these stakeholders, these have not always been effective. Objective 5 deals with activities that go beyond the established norms of good corporate citizenship.

*Emerging Thoughts on Stakeholder Engagement*

458. In corporate governance, debate on the corporate governance architecture and sustainable development subject is premised on two conceptual frameworks: the shareholder model and the stakeholder model. For instance, the shareholder model describes the corporate governance approach through the formal system of accountability of senior management to shareholders. In the stakeholder model, corporate governance can be used to underpin the network of informal and formal relationship involving the firm and various stakeholders.

459. The stakeholder model provides a much broader view on the nexus between corporate governance and Sustainable Development Goals (SDG's). According to Freeman, and Dmytriyev (2017)<sup>58</sup>, in the stakeholder model, the firm is not responsible to its shareholders only. It is also responsible to a large number of direct and indirect stakeholders. These stakeholders might include direct stakeholders such as employees, suppliers, customers, creditors, and indirect stakeholders such as social constituents, including community members, social interest, environmental management protocols and interests, as well as local and national governments.

460. Nevertheless, the challenge with the traditional stakeholder model of the firm is that it is complicated, and almost impossible to ensure that firm fulfils these objectives. Therefore, in this regard, the potential consequences of corporate governance implementation might result in poor corporate function

58 Freeman, R.E. and Dmytriyev, S., 2017. Corporate social responsibility and stakeholder theory: Learning from each other. *Symphonya. Emerging Issues in Management*, (1), pp.7-15

and poor economic performance. In this context, corporate governance proffers a sustainable solution that prompts firm level investments as well as encourages active co-operation amongst stakeholders in socio-economic development initiatives such as job creation, wealth creation and optimisation, and the sustainability of financially stable enterprises (OECD 2019)<sup>59</sup>.

461. The Shareholder Management Bill (The Bill) was presented to the Parliament of South Africa in 2021 for consideration. Its purpose is to create a framework to improve the accountability of all State-Owned Enterprises, including SOCs, to the State. The Bill views the business affairs of a company as requiring intervention that ensures it is managed by or under the direction of the board, which has the authority to exercise all the powers and perform all the functions of the company, except where the Companies Act of 2008 or the company's MOI provides otherwise. Under this arrangement, shareholders still retain ultimate authority with regard to specific and reserved matters including the right to reconstitute the board. The Companies Act therefore entrusts the board with absolute statutory authority without waiting for the shareholders to delegate it in matters that pertain to the business of conducting the company's affairs. This power may only be exercised collectively through a majority vote without any specific delegation from the board or individual directors (Mans-Kemp and van Zyl 2021)<sup>60</sup>.

### Re-Scoping the Shareholders of SOEs

462. It may be recalled that the South Africa's NPoA (2008) listed issues that should be addressed to ensure that stakeholders are treated fairly and equally as: (a) inadequate public consultation, education and feedback in policy making, (b) consumers and shareholders do not assert their rights, are ill-informed and inactive, and (c) the need to build capacity to implement the programs of the developmental State.<sup>61</sup>
463. South Africa's MTSF 2019 - 2024 serves as the reference point for the implementation of the NPoA and broadly guides the verification of progress made in the journey of tackling issues arising from APRM Second-Generation Review Process in South Africa. According to the MTSF (2019 - 2024), the seven priorities are a deliberate approach to ensure that there is no gap

59 OECD, O., 2019. The OECD principles of corporate governance. Contaduría y Administración, (216).

60 Mans-Kemp, N. and van Zyl, M., 2021. Reflecting on the changing landscape of shareholder activism in South Africa. South African Journal of Economic and Management Sciences, 24(1), p.3711.

61 Republic of South Africa [November 30, 2021]. Report of the APRM 2nd Generation Country Review Process for the Period 01, April 2014 to 30, November 2021.





between what comes out of the Second-Generation Review Process and the primary implementation platform of the government, which in essence is the MTSF 2019-2024 and the resulting Annual Performance Plans of the respective departments, as also observed by the CRM.

464. In furtherance of this, the TRI having considered evolution of issues from the First-Generation Review to just preceding the Second-Generation Review reported that as of October 2021 South Africa has made steady progress towards entrenching good corporate governance in line with King IV since the First Country Review. Areas that require improvement need innovative ways of addressing the triple challenges of poverty, inequality, and unemployment. The TRI concluded therefore, that it is apparent that a concerted effort is still required to expand and entrench corporate governance principles in all sectors in the country.<sup>62</sup>

### *The Position of Companies Act No.71 of 2008 on Stakeholders*

465. According to the provisions of Companies Act No. 71 of 2008, certain companies are required to appoint a Social and Ethics Committee (SEC) as a committee of the board. Even if the SEC is not required as per the Companies Act, King IV recommends the establishments of the SEC as best practice for all companies. It should be noted that the composition requirement is somewhat stricter than the requirement of the Companies Act in that King IV requires that a majority of the members should be nonexecutive directors. King IV expands the role of the SEC beyond what is outlined in the Companies Act 2008 by including the oversight of ethics in its mandate, which is not expressly covered in the Companies Act of 2008. The Social and Ethics Committee should ensure, monitor and report in respect of company ethics, responsible corporate citizenship, sustainable development and stakeholder inclusivity.

### *The Position of King IV Report on Stakeholders*

466. Following the publication of the King IV report, certain companies are required to appoint a Social and Ethics Committee (SEC)<sup>63</sup>. King IV recommends the establishments of the SEC as best practice for all companies even if the SEC is not required under the Companies Act to do so. Quite notably, the composition requirements are somewhat stricter than those under the Companies Act in that King IV<sup>64</sup> requires that a majority of the members should be nonexecutive

62 Enterprises University of Pretoria. (October 2021). Technical Research Support in the Corporate Governance Thematic Area to the APRM National Governing Council (NGC) of South Africa.

63 Social Ethics Committee in South Africa

64 King IV Report

directors. By including the oversight of ethics in its mandate, which is not expressly covered in the Companies Act, King IV expands the role of the SEC beyond what is outlined in the Companies Act. The role of the social and ethics committee is to evaluate, monitor and report on company ethics, responsible corporate citizenship, sustainable development and stakeholder inclusivity.

467. The Board’s responsibility is to make sure that it provides strategic direction and embraces necessary policy to promote proper management of stakeholder relationships. King IV proposes a number of specific measures for companies to ensure effective engagement with shareholders, including steps to ensure that the company encourages shareholders to attend general meetings. Attendance of these meetings by the chair of the Board and the chairs of respective Board committees as well as their active participation in meetings ensures active participation by stakeholders. To augment the King IV report in South Africa a series of legal instruments also provide a framework on how corporations should treat stakeholders fairly and equitably.
468. Section 195 of the Constitution<sup>65</sup> provides for the promotion of an efficient and economic system, and the effective use of resources to sustainably generate value. It requires that services be provided impartially, fairly, equitably and without favour, and that the public administration needs to be accountable. The amended Public Finance Management Act (PFMA) of 1999, which relates to the Municipal Finance management Act, promotes good governance in that its objectives are to secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local spheres of government.
469. Companies Act 71 of 2008<sup>66</sup> which states that the law should “provide for the incorporation, registration, organisation and management of companies, the capitalisation of profit companies, and the registration of offices of foreign companies carrying out business within the republic”. The Consumer Protection Bill was approved by Parliament in 2008 and was signed into law by the President. The Act seeks to promote the rights of consumers when interacting with suppliers, and recognises the role of civil society and NGOs in protecting consumers from any harm or opportunistic behaviour from suppliers/sales agents, and promotes consumer rights.

65 South African Constitution

66 The Companies Act



470. For example, consumer education campaigns were launched countrywide in 2009 following the first CRR, to create awareness on consumer rights as contained in the Act before its implementation. The CRM also noticed that the NGC had a Communications Thematic Area, in addition to the APRM's five thematic area for the second Review Mission, to broaden stakeholder engagement in the review processes, and to improve the outcome of the review exercise.
471. In addition and as part of the implementation of the Companies Act of 2008, shareholder companies were identified to drive shareholder activism. The DTI<sup>67</sup> was also called upon to continue with the communication exercise using dedicated hotlines through which consumers could report incidents of unfair treatment by corporations.

## **ii. Findings of the CRM**

### **Re-Scoping the Shareholders of SOEs**

472. The CRM observed that South Africa's NPOA 2008 listed issues pertinent to ensuring that stakeholders are treated fairly and equally as earlier expressed, and it has applicable legal provisions to address issues applicable to stakeholder engagement and activism. The adoption of King IV by various organs in South Africa, including the JSE, is a commendable practice.
473. However, the CRM observed that the Department of Public Enterprises (DPE) is the shareholder representative of the South African Government with oversight responsibility for seven State-owned enterprises in key sectors. Some companies are not directly controlled by the Department of Public Enterprises, but by other departments. This may trigger incoherence in the design and implementation of supervisory instruments across SOEs.
474. It must be noted that State-owned enterprises play a significant role in the South African economy. In key sectors such as electricity, transport (air, rail, freight, and pipelines), and telecommunications, SOEs play a leading role, often defined by law, although limited competition is allowed in some sectors (telecommunications and air). The government's involvement in these sectors often competes with and discourages foreign investment. As noted previously, many of the current State-owned firms were established during the apartheid era to counter the impact of international sanctions against the country. In 2015 and 2016, senior government leaders discussed allowing private-sector investment into some of the more than 700 State-owned enterprises and

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67 Department of Trade and Industry

recently released a report of a presidential review commission on SOE, which called for nationalization of SOEs, But no concrete action has yet been taken on the topic<sup>68</sup>

475. The CRM observes that given the milestone relevance of this Second-Generation Peer Review, South Africa may need to redefine the Stakeholders of SOEs in order to place accountability for performance in the hands of South African Citizens. South Africa needs to have a serious national dialogue on the mandate alignment, structure and oversight relationships of SOEs, to boost optimal service, national pride and revenue benefits.
476. To benchmark global practices, the APR Panel will like South Africa to emulate the Malaysian best practices of restructuring and managing Government-Linked Companies (GLCs), otherwise known as State Owned Enterprises. These are companies in which the Malaysian government has a controlling stake. They all underwent major transformations from 2004 to turn weak operational and financial performances into high performing entities, critical for the country’s prosperity. The program was successfully executed and has enabled the companies to become profitable, dynamic, performance-oriented, and well-governed. The World Bank Group Research and Knowledge Hub in Kuala Lumpur, is helping Malaysia to share its successful development experience globally.<sup>69</sup>

**iii. Recommendations**

477. The African Peer Review (APR) Panel recommends that the Government of South Africa should:
- Redefine the ‘Shareholder’ component of State-Owned Enterprises to improve accountability, professionalism and efficiency [*Department of Public Enterprises and Ministry of Trade and Industry*];
  - Allocate ownership shares of SOEs to individuals, and transfer supervisory roles to members of the public that double as owners and supervisors of the enterprises [*The parliament, the presidency*].

68 Department of Public Enterprises

69 The World Bank Blog (2016). Transforming state-owned enterprises: What other countries can learn from Malaysia. Retrieved December 20, 2021 from <https://blogs.worldbank.org/eastasiapacific/transforming-state-owned-enterprises-what-other-countries-can-learn-from-Malaysia>



**OBJECTIVE FIVE****Ensuring that Organizations Act as Good Corporate Citizens****i. Evolution of the Issue****Introduction**

478. An organisation is, in addition to being an economic entity, also a corporate citizen of a country. As such, it has a moral and social standing within the society with all the attendant responsibilities. Consequently, when making decisions, an organisation should consider their impact on its internal and external stakeholders and on the environment and society. This objective focuses on how organisations fulfil these obligations. Good corporate citizenship is synonymous with corporate responsibility.

*What Good Corporate Citizenship Entails*

479. Being a good corporate citizen means being guided by strong moral and ethical standards in daily interactions with customers, shareholders and employees. It includes carefully balancing shareholders' needs with those of the community, while always considering the environmental impact of its business operations. Thus, in this instance, corporate entities must endeavour to act as good corporate citizens through Corporate Social Investment (CSI) initiatives that include externalities of economic, technological and human capital development in respective communities such as provincial and municipal localities (Roberts 2017)<sup>70</sup>.

480. In Corporate Governance, Corporate Social Investment (CSI) is defined as a form of corporate social responsibility (CSR), which is a company's overarching approach or strategy for improving the social, environmental and economic well-being of their host community or society at large. In particular, corporate social investment involves strategic and sustainable initiatives that target societal development through knowledge, technological and economic spill-overs in host societies. Thus, Corporate Social Investment is a conduit for delivering economic development in host societies. The Corporate Social Responsibility (CSR) strategy includes implementation of strategies by firms to positively impact the host communities. Therefore, the overriding motive behind the adoption and implementation of CSR strategy is for corporations to pursue other pro-social objectives over and above the theory of profit making (Ackers 2017)<sup>71</sup>.

70 Roberts, L.G., 2017. Integrated reporting: The South African experience. The CPA Journal, 87(7), pp.10-13

71 Ackers, B., 2017. Independent corporate social responsibility assurance: a response to soft laws, or influenced by company size and industry sector? International Journal of Disclosure and Governance, 14(4), pp.278-298

481. Furthermore, King IV report<sup>72</sup> observes that good corporate citizenship is informed by the legislative strategy in the Companies Act that places emphasis on the role of the company in society and its duty to behave as a responsible citizen. The Board is expected to take ultimate responsibility for this duty and incorporate it into all the strategies, plans, processes and performance of the company. It is vital for the Board to understand its obligation in respect of the provisions of the Code that specifically prohibit this obligation from being delegated or outsourced.

### **Enhanced Listed Entities' Partnership in Socio-economic Development**

482. In the first CRR, the APR Panel recommended the development of compliance monitoring systems and mechanisms that ensure that corporate entities act as good citizens in South Africa. Like many other States in developing countries, the South African government is promoting efficiency and effectiveness of the collaboration between the public sector and other sectors such as private and not-for-profit organisations. To this end, the NDP calls for collective and coordinated action across the full sector – government, NGOs, business, organised labour, and development partners - to achieve the forty-year development agenda. The State resorted to Public-Private Partnerships (PPPs) as a strategy to address the country's persistent socio-economic, political, fiscal and societal problems. PPPs in South Africa play a vital role as service delivery mechanisms by facilitating rapid infrastructure delivery under the Accelerated and Shared Growth Initiative for South Africa (Asgi-SA).

#### *South Africa's PPP Leadership in Africa*

483. South Africa's adoption of Public-Private Partnerships (PPPs) as a way of dealing with the persistent socio-economic, political, fiscal and societal challenges has given PPPs in South Africa a central role in service delivery. This approach enables efficient infrastructure delivery as set out under the <sup>73</sup>(Asgi-SA) policy.

484. The legal provisions to ensure that corporations act as good citizens are included in a series of legislative instruments. Firstly, the BEE Act 53 of 2003, which was amended through the B-BBEE Act 46 of 2013 and Government's Amended Black Economic Empowerment Codes of Good Practice, aim to address inequities resulting from the systematic exclusion of black people from meaningful participation in the economy (South Africa Constitution 2013). The criteria for assessment are:

72 King IV Report on Corporate Governance

73 Accelerated and Shared Growth Initiative for South Africa



- Ownership – percentage of shares owned by black people in the business;
- Management Control – number of black directors, blacks in top management and black employees;
- Skills development – the amount spent in the training of black employees in the company;
- Enterprise and Supplier development – suppliers and their scores as well as funds committed to developing other black owned enterprises, both suppliers and non-suppliers;
- Socio-economic Development (SED) – the company’s contribution to charitable organisations or social enterprises.

485. Non-Governmental Organisations (NGOs) in South Africa continue to play an important role in development. They advocate for policy change and are often the vehicle for community participation in policy and political processes. Where governments lack capacity, NGOs provide services and are well placed, given their freedom to innovate, to test new approaches to persistent social and economic challenges. Many non-governmental organisations continue to play critical roles in the socio-economic development of South Africa.

#### *Trajectory from 1st Generation Review*

486. It may be recalled that the Base Review of 2007 flagged that: (a) key institutions and certain social groups are underdeveloped and need to become more effective, (b) governance in civil society needs development, and that (c) civil society structures need to seek increased opportunities to contribute and participate in the delivery and monitoring of public services. The TRI review also reported that: (1) there are areas where improvement is required as well as areas where new and fresh approaches will add to initiatives aimed at addressing the triple challenges of poverty, inequality, and unemployment, and (2) that a renewed focus on corporate governance and support for NPO’s as well as instilling such aspects within the SMME and informal sectors are in urgent demand. The situation also includes the reality that matters of funding, monitoring and evaluation of NPOs, the funding process for social welfare and community development services, as well as the monitoring, supervision and assistance provided to NPOs need urgent attention.<sup>74</sup>

487. Generally speaking, the first-generation CRR paid great attention to economic investment, corporate social responsibility, job creation and promotion of codes of good business in the private sector. Responding to the concerns that

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74 Republic of South Africa [October 2021]. Country Review Report – Thematic Area: Corporate Governance [CRR] for the APRM Country Review Mission

were raised on the economic investment and social corporate responsibility sectors, the Department of Trade and Industry (DTI)<sup>75</sup> launched the Enterprise Investment Programme (EIP) in July 2008<sup>76</sup>. The EIP is an incentive grant that encompasses the Manufacturing Investment Programme and Tourism Support Programme. The incentive is available to both local and foreign owned entities intending to carry out projects in South Africa in the corporate social responsibility sectors. A number of Public-Private Partnerships were concluded during the period under review through the EIP programme. Consequently, a Small Business Summit was held in Pietermaritzburg in 2008. The Summit highlighted efforts made by the government to build partnerships for improved service delivery in support of enterprise development and to identify further areas of partnership.

### Commendable Practice 4.2: Alignment of Corporate Social Responsibility Initiatives

The Department of Trade and Industry (DTI)'s Enterprise Investment Programme (EIP) was launched in July 2008. The EIP is an incentive grant that encompasses the Manufacturing Investment Programme and the Tourism Support Programme. The incentive is accessible to both local and foreign owned entities intending to implement CSR initiatives. In this initiative, a number of Public-Private Partnerships have been concluded over the past years. For instance, in the period between 2008 and 2021, reports from Annual Small Business Summit suggest a significant increase in CSR initiatives that include the local communities and the integration of SMEs in economic and technological externalities.

There is a significant rise in CSR initiatives and strategies from the Public and Private Enterprise of South Africa. Focus of funding is on increased economic social responsibility, increased ecological responsibility, and increased philanthropic responsibility and ethical responsibility. These activities are also critical for firm level competitiveness as they increase both tangible and intangible assets like goodwill, skills competencies, and reduce transaction costs. Therefore, such competencies enhance firm level growth and performance that has a causative impact on economic growth, development and societal well-being.

*Source: Department of Trade and Industry (DTI), CRM*

<sup>75</sup> Department of Trade and Industry (DTI)

<sup>76</sup> Enterprise Investment Programme





## ii. Findings of the CRM

### Enhanced Listed Entities' Partnership in Socio-economic Development

488. In the first Generation CRR, a recommendation was made for increased integration of national development imperative into planning conduct of companies (CRM, 2007: 44)<sup>77</sup>. In 2007, the CRR<sup>78</sup> called for the development of compliance monitoring systems and mechanisms that could enhance and ensure that corporate entities act as good citizens in South Africa. Thus, this mechanism is informed by the theoretical underpinnings of the King IV report and legal instruments, which include:

- Section 195 of the Constitution;
- Based Black Economic Empowerment Act 53 of 2003 (B-BBEE Act) as amended by B-BBEE Act 46 of 2013;
- Public Finance Management Act, (PFMA) 1 of 1999 (as amended);
- Companies Act 71 of 2008.

489. Furthermore, the second and third progress reports, suggest that other regulatory instruments should be amended to provide institutional coordination to enhance monitoring and evaluation of corporate social investment initiatives in local communities.

490. During the second Review Mission, it was observed that corporate entities are increasingly aligning with the requirements of good citizenship through enhanced CSI strategies such as economic responsibility, environmental responsibility, as well as social and philanthropic responsibility. These reviews also indicated the existence of the foundation for good corporate governance in the private and public sector in South Africa. All that is needed now is to optimise it in a manner that will enable it to deliver socio-economic benefits to host communities at home and abroad and in communities that host South African entities.

### *Expanding the Corporate Citizenship Stakeholder Base*

491. The CRM observed that South Africa has many best practices, including the commendable practice of aligning PPP to NDP tax incentives to encourage good corporate citizenship by registered entities, its adoption of the King IV Principles which have high content on good corporate citizenship, the JSE's adoption of the International Integrated Reporting Standard as a Listing

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<sup>77</sup> Country Review Mission

<sup>78</sup> African Peer Review Mechanism

Requirement, among others. The country should therefore be proud of its achievements on these challenging targets. This progress was further illustrated during the CRM’s engagement with the University of Stellenbosch Business School (USB) from which the CRM gained insights into the country’s innovative approaches, especially through such platforms as the USB’s Small Business Academy, African Centre for Development Finance and the Centre for Corporate Governance. This shows that business schools in major South African universities can partner with the Government via the Department of Ministry of Trade, Industry and Competition, the Department for Public Enterprises, the Department of Cooperative Government and the National Planning Commission, for desirable outcomes for South Africa.

### Commendable Practice 4.3: The National Development Plan and PPP Arrangements

The Republic of South Africa’s National Development Plan 2030 provides a unified vision of South Africa’s national development goals and prioritised areas of action. In many sectors such as education, this vision is premised on strong private-public partnerships: the NDP calls for “partnerships across society working together towards a common purpose” and “a virtuous cycle of building trust and engaging in discussion to confront the most pressing challenges – one that takes a long-term view”. The NDP also calls for the adoption of a more systemic approach to collaboration in order to ensure alignment with, and attainment of, the country’s overarching priorities.

There are a number of tax incentives in the economy of South Africa, which include reduced corporate income tax rate to encourage businesses to invest and expand production, improve the country’s competitiveness as an investment destination, and reduce the appeal of base erosion and profit shifting. There are also allowances to (a) increase investment in development of new business, (b) research and development of new technologies, production techniques, (c) strategic industrial policy incentive to increase investment in critical areas, etc.

*Source: Republic of South Africa. National Development Plan 2030. Our Future-make it work and CRM.*

492. On the other hand, there are also examples of very poor governance, which should be formally and conclusively addressed, because the country is now in a very challenging situation and the need to meet the growing needs of the people is becoming urgent. While there have been observable commitments



to good corporate citizenship by many participants in the private sector, others appear to have a bad reputation in terms of good corporate citizenship, and are thus a cause for concern. All the entities listed on the JSE need to be mobilised to positively impact their communities in partnership with the communities, the NPOs, the Government and Media.

493. The CRM also observed that while the King IV Code has adopted the concept of Integrated Reporting and thinking, it does not provide guidance to companies on the Integrated Reporting disclosure requirements. The introductory sections of the Code make reference to the IIRC Integrated Reporting Framework and the need for companies to embrace the principles and the disclosure elements of the framework. The individual outcome disclosure requirements, however, do not make a direct link to the disclosure in the Integrated Report. Often, reference is made to the organisation's report and external reporting. It appears that the objective of making the Code applicable to different types of companies, private and public, large and small, for profit and NGOs, has impacted on the ability to make direct reference to the companies' report as the primary means of disclosure.
494. The CRM also observed that South Africa has a unique opportunity to enhance the PPP Concept, the JSE's adoption of the International Integrated Reporting Framework for listed entities as a Listing Requirement, as well as the application of King IV as a corporate governance framework for JSE Listed Entities, could enrich the PPP Concept into enhancing JSE Listed Entities' partnership in socio-economic development in South Africa, as well as exporting such partnership thinking to their international subsidiaries in other African countries, to promote the country's Priorities 2, 3, 6 and 7 of the MTSF 2019 – 2023.
495. The future MTSF should therefore include activities aimed at strengthening the corporate governance monitoring and evaluation instruments towards successfully implementing the recommendations and aspirations of the NDP 2030.<sup>79</sup> The JSE and the Department of Planning, Monitoring and Evaluation (DPME) will need to collaboratively leverage this opportunity. Consequently, the JSE needs to, in addition to market regulation, provide a higher level of supervision and monitoring to ensure that listed entities comply with the full requirements of International Integrated Reporting, in terms of Environment, Social and Governance Compliance and the requirements for the establishment of Social and Ethics Committees. The enforcement of the law is a vital

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<sup>79</sup> Republic of South Africa [October 2021]. Country Self-Assessment Report – Thematic Area: Corporate Governance [CRR] for the APRM Country Review Mission.

component of any regulatory system, given that without the rule of law and compliance to promote social stability and legal certainty, firms are less likely to make the required investments in collaboration with host communities, relevant NGOs, and regulators or to assume the inherent risk-return trade-offs that form the basis of market and socio-economic development.

496. With the extensive use of PPP for socio-economic development through the incentive system initiated by the government, and within the purview of applicable frameworks as listed in the good corporate citizenship objective section, the country can now boast of a competitive advantage in addressing unemployment, the skills gap, and inequality by increasing commitment for SCI initiatives. The socio-economic challenges of abject poverty, inequality in access to basic social amenities, hunger, and the scourge of pandemics such as COVID-19, HIV/AIDS, malaria and tuberculosis that affect many African communities can also be addressed through this initiative.

### iii. Recommendations

497. The African Peer Review (APR) Panel recommends that the Government of South Africa should:
- Ask the JSE and JSE Listed Entities to adopt the combined requirements of International Integrated Reporting (IIR), King IV and related requirements for establishment of Social and Ethics Committees so as to extend the benefits of PPP into enhancing Listed Entities' Partnership in Socio-economic Development with host communities [*Department of Cooperative Governance*];
  - Request the JSE to closely monitor compliance of all JSE Listed Entities with the requirements of the International Integrated Reporting Standards, especially as applicable to Sustainability Reporting and Corporate Social Investments in key sectors of their host communities in South Africa and International Subsidiary locations [*JSE and Accounting Firms supporting Listed Entities in South Africa and the Department of Planning, Monitoring and Evaluation*].





# CHAPTER FIVE

## 5. SOCIO-ECONOMIC DEVELOPMENT

### 5.1 Overview

498. Sustainable Socio-economic Development (SED) is considered as the ultimate goal of all the tools and processes of the APRM. According to the 2003 Declaration on Democracy, Political, Economic and Corporate Governance, the most urgent challenges facing Africa are *“the eradication of poverty and the fostering of socio-economic development”, which are possible only through “the promotion of democracy, good governance, peace and security; the development of human and physical resources; gender equality; openness to international trade and investment; allocation of appropriate funds to social sector; and new partnerships between governments and the private sector, and with civil society.”* This long list of “means” are in fact “ends” in themselves that fall under any of the four major thematic areas of the APRM that are discussed in the other chapters: democracy and political governance (DPG), economic governance and management (EGM), corporate governance (CG),



and State resilience (SR). In other words, the socio-economic development thematic area is effectively about fostering human development in the broadest sense of the term through national governance policies and practices in all aspects of political, economic and corporate activity that comply with the expectations and obligations contained in APRM-recognised standards and codes.

499. Attainment of SED objectives in South Africa would mean, among others, a steady enhancement in the quality of the country’s human resources through the provision of better education and training, improved health care, gender equality, and full and effective integration of women in political and socio-economic life. Furthermore, the SED thematic area deals with the evil of pervasive violence against women and children and more generally a continuous improvement in the well-being and standard of living of the people as measured by income, health, education, environment and freedoms. It thus logically follows that the SED is the fourth APRM thematic area with a number of specific objectives: (i) to promote and accelerate broad-based sustainable socio-economic development, (ii) to encourage broad-based participation in development, (iii) to tackle poverty, unemployment and inequality, and (iv) to support progress towards gender equality, particularly equal access to education for girls at all levels.
500. In South Africa’s first APRM country review report completed in 2007, the APR Panel considered the state of socio-economic development in South Africa systematically and exhaustively, identified its strengths as well as weaknesses, and made a host of recommendations that ultimately became part of South Africa’s agreed National Programme of Action. South Africa reported actions it had taken over the years on those recommendations in three different progress reports. Finally, in preparation for the second-generation review, South Africa submitted a CSAR (2021) in which its policies and practices on socio-economic development issues were highlighted comprehensively. During its mission in December 2021, the CRM found, that South Africa had made significant strides in this thematic area since the previous review, the most notable being: the government’s political initiative to develop and implement an innovative national public policy through the National Development Plan (NDP), the Medium Term Strategic Framework (MTSF) 2019-2024) among others. These mechanisms had improved access to basic education: the number of Grade R learners aged 5 to 6 had increased from 87.2% and 95.9% respectively in 2014 to 88% and 96.6% in 2018. Near universal enrolment was achieved, with school attendance by children aged 7 to 15 at about 99%. The National



School Nutrition Programme provided 9 million learners with nutritious food. The Funza Lushaka Programme for teacher development had supported 120 511 teachers at a cost of R7.2 billion. Health status indicators had improved in all demographic segments. Maternal, infant and under 5 mortality rates had dropped significantly: the maternal mortality ratio decreased from 176 per 100 000 between 2008 and 2010 to 138 per 100 000 between 2014 and 2016. Overall, the total life expectancy of South Africans had increased from 54 years in 2005 to 64.2 years in 2018, a net gain of 10 years. Access to primary healthcare services had expanded. The number of people receiving primary healthcare services (headcount) had increased from 67 million in 1998 to 128 million in 2018. The number of people receiving anti-retroviral therapy (ART) in the public health sector had grown exponentially, from 45 500 in 2004, when the treatment was first added to the country's response to HIV/AIDS, to over 4.7 million people in 2019. This contributed to the increased longevity of people living with AIDS. Over the last 25 years, 3.2 million houses have been delivered through government's subsidy programme and 1.1 million serviced sites to those who do not qualify for the subsidy. Over 14 million people have received aid from the State housing programme and have been provided with better quality accommodation and an asset. Government has expanded access to the social wage in poor communities, including free electricity, water and sanitation and refuse removal. A total of 14.35 million South African households had access to piped water in 2017. About 13.3 million households had access to basic sanitation. From 1994 to March 2019, over 7.6 million households were connected to the national grid and over 173 752 households have been electrified through non-grid technology since 2001, when the non-grid programme started. The percentage of households with refuse removed once per week increased from 56.1% in 2002 to 65.9% in 2017, while the percentage of households with own or communal dumps, or no facilities have decreased substantially over the past 20 years.

501. Social protection has cushioned the poor, and redistributive policies have expanded access to opportunities. Access to social assistance, in the form of various grants, were extended to 27.6 million beneficiaries by 2021. To facilitate technical skills training, inculcate patriotism, and promote service to communities, the government and the National Youth Development Agency (NYDA) conceptualised and implemented the National Youth Service (NYS) Programme in partnership with civil society organisations. Between 2016/17 and 2018/19, the programme reached more than 127 000 young people. The government has implemented many employment programmes primarily targeting youths. These include: the Community Works Programme (CWP), the

Expanded Public Works Programme (EPWP), the National Rural Youth Service Corps, youth cooperatives and youth entrepreneurs (e.g. NYDA funded), skills training, for example, learnership programs funded by the Sector Education and Training Authority (SETAs), the Jobs Fund, the Employment Tax Incentive (ETI), and the, and Youth Employment Service (YES).

502. In terms of land redistribution, between April 1994 and March 2018, 4 903 030 hectares were redistributed to 306 610 beneficiaries (less than 10 percent), 35 615 of them young people and 775 people with disabilities. Multidimensional poverty, measured in terms of composite indicators for health, education, standard of living and economic activity declined significantly from 17.9% of the population in 2001 to 7% in 2016 (StatsSA, 2017).
503. At the same time, the 2021 CSAR and consultations with the members of public revealed that South Africa is still facing a number of challenges in this area, both old and new. The CRM has identified and prioritised these challenges and put them under the four main objectives of the SED thematic area: promotion of broad-based socio-economic development, promotion of broad-based participation in development, reduction of poverty, unemployment and inequality, and progress towards gender equality, in particular equal access to education for girls at all levels. Each of the four sections prioritises two to three key issues. The sub-sections then examine the evolution of the issue and the findings from this review mission, and make recommendations for incorporation into the NPoA.
504. Under Objective One: promotion of broad-based socio-economic development, the issues identified are: (1) the need for multi-dimensional capacity to implement socio-economic development programmes, (2) need to accelerate land reform, and the (3) need for sustainable model for social-assistance. Under Objective Two, the key issues identified are: (1) augmentation of mechanisms to promote broad-based participation at local and provincial levels, (2) civil society and private sector participation in formulation, design, and implementation of development strategy need to strengthen especially at local level. Under Objective Three, poverty, unemployment and inequality, the issue identified is reduction of poverty, unemployment and inequality through socio-economic emancipation, and under Objective Four: progress towards gender equality, in particular equal access to education for girls at all levels, the issue identified is mainstreaming gender and issues of disability into all government programmes at all levels.





505. These issues, which are critical to the state of socio-economic development in South Africa today, also cut across the objectives of the thematic area as articulated in the APRM Objectives, Standards, Criteria and Indicators document, which has been very useful in the preparation of this report. In the rest of this chapter, each of the above issues under each objective will be considered against a four-level analytical framework. Section one describes each of the issues briefly, section two traces the evolution of each of the issues all the way from CRR 2007 to today, section three summarises the findings of the CRM, while section four presents the recommendations of the APR Panel.

## **5.2 Standards and Codes**

### **i. Evolution of the Issue**

506. The APRM CRR in 2007 showed that South Africa had ratified almost all the standards and codes related to SED. The CRR recommended that SA should adopt the International Covenant on Economic, Social and Cultural Rights, which was the only important outstanding convention under SED to be ratified by the country. According to the CSAR, 2021 South Africa ratified the International Covenant on Economic, Social and Cultural Rights in 2015; however the country still needs to report on the progress made in domesticating this convention. Out of the ILO conventions and protocols that were added to standards and codes in the CSAR questionnaire, South Africa has ratified 27, of which 24 are in force, and no convention has been denounced, though 2 instruments have been abrogated.

### **ii. Findings of the CRM**

#### **Constitutive Act of the African Union (2000)**

507. As noted in the 2007 CRR, 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, under 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. The CSAR, 2021, notes that Cyril Ramaphosa, the current president of South Africa is equally the president of the AU.

**African Charter on the Rights and Welfare of the Child (ACRWC) (2001);**

508. 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 had affected them and that children had not been 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.
509. Further evidence of compliance can be seen in the provision of free healthcare for children under 6 years 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, especially in the rural areas and inadequate transport system present enormous obstacles. The 2007 CRR identified that though the rights of children to education and access to food were protected in the Constitution and other mechanisms such as school nutritional programmes, challenges including access to funding remained. According to the 2021 CSAR South Africa has expanded its school nutrition programme to now benefit over 9 million children.

**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)**

510. South Africa ratified the ACHPR on 9 July 1996. The Constitution clearly guarantees all South Africans equal protection and benefit of the law. Compliance with this Charter is generally observed through South Africa’s rights-based agenda.

**NEPAD Framework Document (2001)**

511. The strategic framework document for the New Partnership for Africa’s Development (NEPAD) arose 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, South Africa 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, Thabo Mbeki, 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).

512. Concerning infrastructure 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 in the Information Society Partnership for Africa's Development and is, among others, 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.
513. 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. South Africa was also one of the first countries to accede to the APRM in March 2003. South Africa has established a national APRM secretariat with structures in all nine provinces to promote participation in all provinces.

### **African Charter on Popular Participation in Development (1990)**

514. 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 a 27-year imprisonment. It has made popular grassroots participation in policy making and programme implementation a cornerstone of true democracy. The Charter calls for the liberalisation 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 has been carrying out extensive consultation with all stakeholders through NEDLAC, where all stakeholders are represented. The CRM noted that in some provinces, the processes and mechanisms to promote participation of other stakeholders in socio-economic development were ineffective and needed to be strengthened.

### **United Nations Millennium Declaration (2000)**

515. In September 2000, South Africa was one of the 189 countries that had signed the Millennium Declaration and accepted 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 is the lead agency responsible for managing the process. Later, South Africa also signed onto the 2030 Sustainable Development Agenda (SDGs) which is built on the outcomes and lessons learnt from MDGs. The Government adopted 2030 Vision for sustainable Development, and the National Planning Commission is leading efforts to follow-up on South Africa's national development vision. The government adopted Vision 2014, which is South Africa's direct response to addressing the development challenges set out in the Declaration.

### **World Summit on Sustainable Development (2002)**

516. 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). South Africa has ratified and domesticated all the SDGs and their indicators. The CRM noted that South Africa has developed a commendable system to track progress of the SDGS, African Agenda 2063 and its NDP.

### **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1980)**

517. 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. 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).



518. 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 also established and managed to achieve gender parity in primary and secondary schools. However, women are still underrepresented in the mathematics and science fields, which might have hindered their employability in related economic sectors.
519. 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.
520. Free healthcare is currently provided for all pregnant women and children under 6 years, and primary healthcare has been extended to all South African residents. Nonetheless, there are still obstacles to women's ability to access healthcare. 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. GBV remains a key challenge in South Africa and other forms of gender inequality persist in education, employment, and other critical sectors of the economy.

### **UN Declaration on the Right to Development (1996)**

521. 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.

### **World Summit on Social Development Plan of Action (1995)**

522. 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. Although COVID-19 exposed more vulnerable people in South Africa to socio-economic maladies, the government responded with a grant to support the unemployed. However, more needs to be done and the CRM found that social protection models are currently unsustainable and need to move away from welfare system towards inclusive empowerment.

### **Management Act (NEMA) of 1998**

523. South Africa enacted the National Environmental Management Act (NEMA) in 1998. It provides for the assessment of the environmental consequences of policies, plans and programmes. South Africa has also put in place the following: the White Paper on Environmental Management Policy (1998), the Integrated Sustainable Rural Development Strategy (2000), the National Environmental Management Biodiversity Act of 2004, the National Environmental Management Protected Areas Act of 2003, the Regional Agricultural Policy (1998), the Provincial Agricultural Bills (1999), the White Paper on Land Policy (1997) and the White Paper on Energy Policy (1998), to name but a few. As mentioned, there is sufficient evidence of the political will to comply with the enabling instruments, but full implementation of these policies and programmes is hampered by capacity constraints.

### **International Covenant on Economic, Social and Cultural Rights**

524. The 2007 CRR recommended that South Africa should ratify the International Covenant on Economic, Social and Cultural Rights. This was ratified at the International Convention on Economic, Social and Cultural Rights (ICESCR) in January 2015. As required by the ICESCR, the South African government submitted its initial report to the United Nations Committee on Economic, Social and Cultural Rights (CESCR) in April 2017. As this treaty is important for enforcing the rights of those living in poverty, it has relevance to most communities in South Africa that do not have access to some of the most basic human rights. It was thus critical that South African Civil Society advance the call for the State to ratify the ICESCR and its Optional Protocol.

525. South Africa has ratified various ILO Fundamental Conventions to promote socio-economic development. 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 population be well informed about the instruments that South Africa has acceded to. Moreover, people are more likely to comprehend and appreciate the usefulness of these conventions if they are translated into a language they can understand. When international and regional standards and codes are adopted and/or ratified, it is important that they be translated into the 11 official languages and further explained to communities through a mass/grassroots communication exercise.

526. It was underscored in meetings with stakeholders that sometimes, there is poor interpretation of the law, 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 can understand. Efforts are being made in schools to educate students about their rights, but this has limited impact if their mothers are uninformed about their rights.
527. 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 SDGs.

### **iii. Recommendations**

528. The Panel acknowledges that South Africa is exemplary in its compliance with international standards and codes. However, the government should make effort to ratify the following conventions and protocol that are enablers of sustainable socio-economic development: C102, C183, C180, C159 and P089.
529. The African Peer Review (APR) Panel recommends that the government should:
- 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*];
  - Pass bills such as the Biodiversity and Domestic Violence Bills, among many others [*Government, private sector, civil society*].

### 5.3 Assessment of Performance on African Peer Review Mechanism (APRM) Objectives

#### OBJECTIVE ONE

#### Promote and accelerate broad-based sustainable socio-economic development

##### i. Evolution of the Issue

##### The need for multi-dimensional capacity to implement socio-economic development programmes

530. One of the key issues identified in relation to the promotion of broad-based socio-economic development in South Africa is that of capacity gaps in institutional capacities to plan, coordinate, mentor, monitor and evaluate the performance of programmes. The second type of capacity gap identified in the previous CSAR reports, progress reports and also in the MTSF is that of human capacity (technical skills) especially at local government level to champion socio-economic development. The subject of capacity building has been high on the agenda of discussions on the different facades and aspects of Africa’s development. Capacity is still the missing link for the continent to successfully meet its socio-economic transformation targets<sup>80</sup>. According to the UNDP, decades of experimenting with development models have confirmed the value of local ownership and capacity. It further argues that while financial resources are vital, they cannot replace human capacity. Strong locally generated and sustained capacity is essential to the success of any development endeavour. Without it, the integrity of development achievements can be compromised and progress can remain rootless and illusory, separated from the capacities that already exist and vulnerable to the increasingly severe and complex challenges facing the world today<sup>81</sup>. According to Matta (2005), hundreds of billions of dollars have been spent to end poverty, disease and underdevelopment with very little success due to lack of capacity.<sup>82</sup> Therefore, for South Africa to realise its socio-economic development agenda, there is a need to identify and develop different capacities and skills sets that would enable the nation to realise its MTSF, NDP, AU Agenda 2063 and the SDGs.

80 ACBF 25th Anniversary and 3rd Pan-African Capacity Development Forum: <https://www.acbf-pact.org/what-we-do/success-stories/acbf-25th-anniversary-and-3rd-pan-african-capacity-development-forum>

81 Capacity Development: A UNDP Primer (2009) online at [http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/capacity-development-a-undp-primer/CDG\\_PrimerReport\\_final\\_web.pdf](http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/capacity-development-a-undp-primer/CDG_PrimerReport_final_web.pdf)

82 Matta, N 2005. Unleashing Implementation Capacity in Developing Countries. In Robert H. Schaffer et. al. “Rapid Results: How 100 – days Projects Build the Capacity for Large Scale Change. PP 9-1 – 9-13. [www.RapidResults.org](http://www.RapidResults.org)





531. Since the transition to democracy in 1994, building both State and individual capacities to deliver basic services has been a priority of the South African Government. Paragraph 7 of the 2007 CRR 2007 identifies skills development as one of the key requirements to enable South Africa to meet the socio-economic challenges facing the country. The CRR puts the gap in capacity this way *“there is a gap in institutional capacity (in terms of coordination, mentoring, monitoring and execution) and human capacity (in terms of the required development management and technical skills)”* (CRR, 2007, par. 748). Another dimension of the inadequate capacity to deliver sustainable socio-economic development that was identified in the first CRR was that of service delivery capacity at local levels. Based on these weaknesses, the CRM highlighted the need to address institutional and human capacity challenges through a comprehensive capacity building and skills development policy to ensure that the human and institutional dimensions of self-sustaining development are strengthened. There was a further recommendation for the acceleration of the process of building local government capacity, and in the process, ensure consolidation and facilitate the transfer of requisite skills in project management, monitoring and evaluation as required for effective service delivery.
532. Among other considerations, the South African government responded to this call for institutional and human capacity development with various interventions. The National School of Government is responsible for creating a capable and ethical State through various courses and skills programmes. Also, the SA government, through its first five-year integrated development framework (2014-2019) in outcome 5, which indicates on skills development and outcome 9, local government, developed the following interventions to improve both institutional and human capital skills for effective and efficient socio-economic development in South Africa: (1) the establishment of the Quality Council for Trades and Occupations ([link is external](#)), (2) the rationalisation of the Sector Educating and Training Authority, (3) the establishment of a consolidated national qualifications framework, (4) the shift of the National Skills Development Strategy (NSDS) from being a targets-driven strategy to an outcomes-driven strategy, and (5) the institution of Back-to-Basics, which is a programme to build and strengthen the capability and accountability of municipalities.
533. However, and despite this commitment and determination, it will take a while for South Africa to have the type of institutional and human capital technical skills it requires for development. The first country review report (pages 241

and 242) further identifies “*deficiency in state organisation capacity and leadership*” as one of the constraints to socio-economic development. The first progress report (2009, p. 22) confirms that skills inadequacies are a major handicap to service delivery in various public institutions: “*The Report also found that challenges of service provision arise not fundamentally from a shortage of people, but from problems of skills and systems to deploy its human and financial resources*”. The 2021 CSAR as well as CRM consultations in the various regions suggest that the current capacity gaps are similar to those in the period prior to the base country review (2007) socio-economic. For example, while the conditions of the latter period depicted poor and inadequate institutional and human technical capacities due to the history of apartheid and differential education systems for whites and blacks, the current conditions are the result of “*a lack of ability to create and lead a capable State and to select and develop the right technical skills for service delivery, especially at local level due to cadre deployment policy and a leadership gap*”. Both of these have a similar effect on the delivery of sustainable socio-economic services to all South Africans, especially the vulnerable. This has led to the collapse of service delivery in certain municipalities and a rise in public demonstrations and strikes.

## Land Reform

534. The land reform debate stirs emotions within the South African economy. The inequality created by the 1913 Land Act that stripped most of the population of land is yet to be fully addressed. There are three dimensions of land reform in South Africa: restitution, redistribution, and tenure reform. South Africa made the ambitious goal of redistributing 30% of agricultural land to the previously disadvantaged population, but the target has not been met. Increased calls for land reform from all sectors resulted in the call and debate to amend section 25 of the constitution to allow for land repossession without compensation. The proposed bill failed to gain traction in parliament in 2021 and all stakeholders have gone back to rethink possible workable options for sustainable land reform.
535. With increasing unemployment and the need for black South Africans to have access to land both for subsistence and commercial farming, the pressure on the State to speed up land reform remains high. This has elevated the issue of land in the political and social discourse to unprecedented heights. The Land Audit reveals that Whites own 72% of the total 37 031 283 ha in farm and agricultural holdings, followed by Coloured at 15%, Indians at 5%, Africans at 4%, other at 3%, and co-owners at 1%. In this sense, there is a need to revisit



new creative approaches and to renew commitment towards addressing the land reform challenges in South Africa as a way to correct the injustices of the past and promote peace and security in the land.

536. As elaborated in paragraph 853 of the 2007 CRR, the issue of land reform remains a major challenge and a cause for concern to most stakeholders. All stakeholders in South Africa are calling for accelerated land reform. The 2007 CRM also noted that the “willing seller willing buyer” policy for land reform has not been successful. According to the second progress report (2009), the challenge of land reform is that the pace has been too slow. The second progress report (2010, page 48) acknowledges that: *“The 1913 Land Act13 created imbalances in land ownership that are still visible in modern day South Africa”*. The report further documents efforts made by the government to redress inequality through the promulgation of Restitution of Land Rights Act of 1994, which provides for the *“establishment of a Commission for the Restitution of Land Rights (CRLR) and a Land Claims Court to facilitate its implementation”*. Although, these legislative and political interventions were aimed at fast-tracking land restitution, the entire process has recorded anaemic progress. In 1994, government set itself a target to transfer 30% of the total productive land by 2014. This was not achieved.
537. To date 8.4 million hectares of land have been acquired for land reform purposes: 4.9 million hectares through the land redistribution and tenure programme, and 3.5 million hectares through the land restitution programme. This equates to 10% of total agricultural land (Second Progress Report, 2019, Par. 40-51). Efforts to address equitable land redistribution have been elevated to the highest level of government, with an inter-ministerial committee (IMC) on land reform, chaired by the Deputy President, established to coordinate and implement measures to accelerate the redistribution of land. In addition, a 10-person Presidential advisory panel, representing all sectors, has been appointed to suggest models for government to implement a fair and equitable land reform process that redresses the injustices of the past, increases agricultural output, promotes economic growth and protects food security.
538. The land question is also related to the poverty of a majority of black people in South Africa. This was noted by President Cyril Ramaphosa<sup>83</sup>: *“By (previously) depriving our people of their right to own and work the land on which they depend for sustenance and livelihood, this great injustice effectively ‘engineered the poverty of Black South Africans”*. On 20 December 2017, the ANC-led government announced at the 54th national Conference that it

83 <https://www.globalcitizen.org/en/content/black-farmers-south-africa-land-reform-farming/>

will seek to amend Section 25 of the South African Constitution regarding property rights to implement land expropriation without compensation. In February 2018, the Parliament of South Africa passed a widely supported motion to review the property ownership clause of the Constitution to allow for the expropriation of land in the public interest without compensation. This motion was widely supported by the ANC and other political parties with the main opposition to the motion being the DA and other White minority parties. The proposed bill tabled by the ANC following the motion to amend section 25 of the constitution failed to get the required number of votes. Opposition parties have indicated that this is not the end, given that the issue of land reform has continued to dominate public and private discourse in South Africa over the past years, and there is a need for a sustainable, effective model of land reform that will result in an improved livelihood for the majority of the previously disadvantaged people and deal with the injustices of the past.

### **A Sustainable Model for Social Assistance**

539. Since 1994, South Africa has been confronted with a large number of socio-economic issues including access to basic services such as water, electricity, housing, social protection for the poor and the vulnerable, among others. The Republic of South Africa is lauded for having one of the best constitutions in Africa. Following its emancipation in 1994, South Africa started formulating comprehensive socio-economic policies to address the existing disparities and ensure sustainable socio-economic development for all South Africans. The Constitution<sup>84</sup> makes provisions for socio-economic rights for the people of the country. This includes rights to have access to housing, healthcare, water, and social security (the status of which is explored further in this section).

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84 Constitution of the Republic of South Africa, <https://www.justice.gov.za/legislation/constitution/saconstitution-web-eng.pdf>



## Commendable Practice 5.1: South Africa's Expanded Social Assistance Benefits

South Africa has adopted a number of policies and strategies to improve the lives of its people with, in particular, the social assistance programme and its benefits in the form of grants. These include:

- the Old Age Pension;
- Child Support Grant;
- Social Relief of Distress;
- the Care Dependency Grant;
- the Grant In Aid;
- the War Veteran's Grant;
- the Foster Child Grant; and
- the Disability Grant.

A report by the World Bank and Government of South Africa in 2021 highlights that: *"the grant system has established effective delivery systems that identify beneficiaries and include registration, payment, and grievance redressal processes which can be scaled up rapidly during crises such as the COVID pandemic."*

The World Bank further observes that the social assistance programme is *"accounting for 3.3% of GDP and 15.4% of total government spending, [and] the cost of South Africa's social assistance system is relatively high compared to the average of other upper middle-income countries (UMICs). With 51% of its spending going to the Older Persons Grant, South Africa spends five times more than its peers on social pensions."*

The report observed that the social pension schemes have been designed to compensate for the lack of adequate contributory pension schemes in South Africa, and help to meet the needs of different types of households. These laudable social protection measures provide a cushion for citizens and help reduce vulnerability and inequality.

*Source: World Bank and the Government of South Africa.*

540. The Department of Social Development has the legislative mandate to ensure the right of access to appropriate social assistance to those that are unable to support themselves and their dependants. The NDP has prioritised social protection as a critical intervention to improve the quality of life of South Africans by eradicating abject poverty, reducing inequalities and addressing unemployment. The distortions of colonialism, together with race and gender exploitations under apartheid, trapped the majority of black African people in poverty. The provision of essential basic services and benefits to black people was either non-existent or inequitable, with people in rural areas, the former homelands, and informal and peri-urban areas particularly deprived. The denial of essential services such as water, electricity, transport, waged income, food, quality education and health care trapped people in intergenerational poverty. It is also noted in the NDP that social protection measures have transformative potential because as individuals and households improve their conditions, they are better able to influence change of oppressive power relations and make choices that generate social and economic developmental impacts.
541. Although there has been an economic down-turn that was exacerbated by the Covid19 Pandemic, the Republic of South Africa put in place buffers to offset costs for individuals and companies. This includes the Special COVID-19 Social Relief of Distress grant which pays R350 per month to individuals who have successfully applied. Although these interventions have been able to reduce the negative effects of the pandemic on the people, the social system will be threatened if long-term growth does not occur, and this may impact the grant system. Annual Growth (GDP) dropped from 0.153 in 2019 to -6.96 in 2020.<sup>85</sup> The current decline in growth and competing needs for government resources have precipitated an increase in fiscal deficit, thereby necessitating a call for a sustainable social protection model.
542. Social protection is aimed at protecting citizens from socio-economic risks that could plunge them into the poverty trap. The system intends to lift people out of generational poverty cycles by dealing with issues of poverty and inequality. However, the 2007 CRR (par. 747) noted that South African communities need to be empowered to avoid the risks of a social dependence syndrome. The second generation CSAR (2021), just like the other progress reports, indicated that social protection in SA is now unsustainable and inequalities persist.
543. The second progress report noted that 'social wage' has been used as a redistributive mechanism of the government budget deliberately, and it is aimed at improving the lives of the poor and reducing their cost of living. This has been achieved through, among others, free primary health care, no-fee

85 <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=ZA>



paying schools, old age and child support grants, housing, and free basic services (water, electricity and sanitation) to poor households. Although these policies and interventions have resulted in notable gains in poverty reduction since 1994, the country continues to face the challenge of high poverty, high inequality and high unemployment.

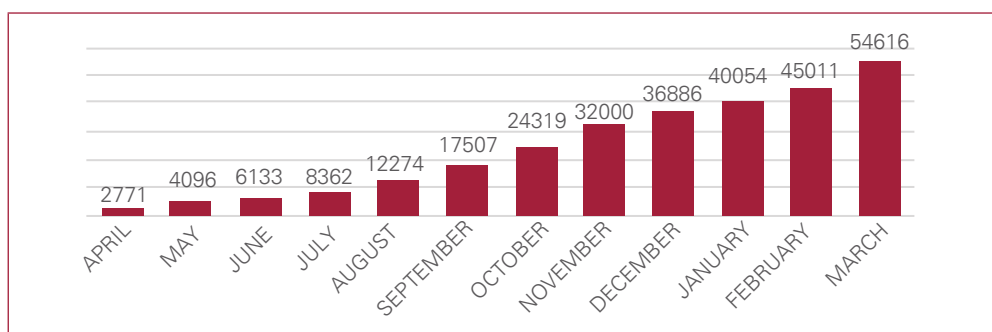
544. The CSAR further noted that the percentage of individuals that benefited from social grants consistently increased from 12.8% in 2003 to 30.8% in 2017. Simultaneously, the percentage of households that received at least one grant increased from 30.8% to 43.8% over the same period. More than one-third of black individuals (33.8%) received a social grant, compared to 29.3% of Coloured individuals, and 14.5% of Indian/Asian individuals. By comparison, only 6.1% of the White population received grants.

## ii. Findings of the CRM

### The need for multi-dimensional capacity to implement socio-economic development programmes

545. The CRM commends the seriousness with which South Africa is dealing with the institutional and human technical capacity challenges at all levels of government. The government of South Africa, through its national development plan (Ch 13), is committed to capacity development to improve sustainable socio-economic development. This is further highlighted in the first and second medium term strategic development frameworks. The National School of Government together with other institutions of higher learning, SALGA and LGSETA are all working to ensure continuous capacity development for public servants. Figure 5.1 presents enrolment figures for the NSG from April 2020 to March 2021.

**Figure 5.1** Cumulative online enrolments for the period 1 April 2020 to 31 March 2021 at the National School of Government -South Africa



Source: National School of Government, 2021.

546. The newly signed National Implementation Framework towards the Professionalisation of the Public Service,<sup>86</sup> among other legislative frameworks, gives guidelines on the implementation of institutional and technical capacities in all levels of the South African government to deal with capacity challenges and build a capable State.
547. According to a report from the National School of Government, (1) there is an increase in demand for various courses by government officials, and (2) due to the COVID-19 pandemic, there was an uptick in online courses from 2 771 in April 2020 to 54 616 in March 2021 over a twelve-month period.
548. The MTSF 2019 to 2024 stresses on the aspiration of a capable, ethical and developmental State capable of achieving sustainable socio-economic development. However, this CRM found, through various consultations, that capacity issues persist at all levels of government in South Africa and this is impacting negatively on service delivery. For example, in the North West Province, it was pointed out that local government participation in integrated planning is ineffective and inefficient due to lack of capacity in Integrated Development Planning (IDP) where most members need more experience or training. Furthermore, lack of coordination, monitoring and evaluation are also identified as posing serious challenges. It was further highlighted that many municipalities do not comply with the NDP and that there is a likelihood that if the trend is not reversed, the 2030 targets will not be met.

### Land Reform

549. There is sufficient evidence that the Government of South Africa has demonstrated the requisite political will, the determination and regulatory capacity to address the land issue in a sustainable manner. Among the practical steps taken by the Government of South Africa are its two land audits of 2014 and 2017 to assess who owns South Africa's land. An understanding of the current land ownership pattern will assist the government in its efforts to renew its current land reform programmes. According to the land audit, 72% of land is owned by the minority white population, Coloured own 15%, Indians 5%, Africans 4%, other 3%, and co-owners 1%.
550. Between 1994 and 2016, the South African government spent more than R60 billion on land reform projects. In terms of land redistribution, between April 1994 and March 2018, a total of 4 903 030 hectares were redistributed, benefiting 306 610 people (less than 10 percent), of whom 35 615 were

86 [https://www.thensg.gov.za/wp-content/uploads/2021/01/Nat\\_Gov\\_Gazette\\_24\\_December\\_2020.pdf](https://www.thensg.gov.za/wp-content/uploads/2021/01/Nat_Gov_Gazette_24_December_2020.pdf)





youth and 775 people with disabilities. Despite this huge investment and commitment to land reform, challenges remain.

551. However, both the 2021 CSAR and the CRM consultations on the ground show that the land issue remains a major source of community strife and uncertainty, and that there are calls for bold land reform approaches, especially among many marginalised communities. The CSAR also noted that the slow pace of land reform and the worsening socio-economic situation among the poor is a cause for concern. The increase, in informal settlements and illegal land occupations especially in urban areas remain a challenge as migration to cities in search of a better life is on the rise in South Africa.
552. A key recommendation of the 2007 CSAR related to land is for Government to speed up land reform to address imbalances in the economy and also to seek innovative and creative ways to ensure that a majority of the poor gets access to land for livelihood and sustenance. According to a report by the NPC, 2021 on the review of the NDP<sup>87</sup> *“the slow pace of land reform is associated with challenges in ownership, transfer, value and pricing and the administration, the continuous challenges are manifestation of the structural challenge relating to weaknesses in land administration systems, inadequate decentralisation of decision making or local of government capacity, legal and administrative challenges such as burden of proof for restitution, price setting and multiple claims”*. There is a lack of support services for new emerging farmers and insufficient incentives by government to encourage the private sector to provide these services. Government has not made progress in developing the agricultural value chains identified in the NDP, specifically the labour-intensive value chain and export-intensive value chain. Water licensing and pricing remain a challenge, in particular, for emerging farmers.
553. CRM consultations show that most of the concerns identified by the 2021 CSAR and the NPC review are indeed well-founded. The lesson from South Africa’s experience is also quite clear: while the development and adoption of sound policies is critical, an even greater challenge often lies with implementation. For example, despite its good intentions, the Government has underperformed in implementing land reform under the current land reform policies. As a result, the implementation of the Land reform remains very costly, inefficient and benefits only a few.
554. CRM consultations with a range of stakeholders have led to corroboration with the 2021 CSAR conclusion that one of the main challenges for South Africa

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87 <https://www.nationalplanningcommission.org.za/assets/Documents/NDP%20REVIEW.pdf>

is the inability of the land policy to effectively address the land question, the injustices of the past, the poverty of the majority of black people that is directly linked to the land question in most cases, and issues of access to land for other disadvantaged groups including people living with disabilities, women, and the youths.

555. In all the consultations held, land was seen as a critical factor for South Africa to redress the injustices of the past and gain rapid socio-economic development, as well as environmental sustainability. A key finding of the CRM is that the incompetence of some government officials, nepotism, and corruption are some of the factors that have stalled the current land reform initiatives.

### **A Sustainable Model for Social Assistance**

556. The CRM observed that South Africa has an unsustainable social programme. It is noted that social protection is a critical intervention to improve the quality of life of South Africans by eradicating poverty, reducing inequalities and addressing unemployment. However, the growth in demand for social protection is creating a dependency syndrome. The CRM also noted how other social issues especially in mining communities around the North West province are related to grants-dependency syndrome. The proliferation of children headed households and growing teenage pregnancy in the Rustenburg area is a cause for concern. A study by a civil society organisation in the area on 8 000 young girls in Rustenburg aged between 10 and 16, found that 5 000 of them were pregnant. Most of these children are on grants and the babies they deliver are also dependent on grants creating a worrying cycle of grant dependence syndrome.

557. The CRM noted, especially from its consultations in the provinces that more than 50% of the population was on one form of grant or another. There was consensus from stakeholders across the provinces that “they are trapped in these grants”. Despite the important role of social protection, there was agreement from stakeholders across the provinces that what South Africans mostly need is empowerment not just grants and the social protection in their current form are creating perpetual helplessness rather than paving a way for economic liberation.

### **iii. Recommendations**

558. Based on the above analysis and findings, the APR Panel recommends that the Government should:



### **On the need for multi-dimensional capacity to implement socio-economic development programmes**

- Consider expanding its current capacity development framework to include the following four dimensions of Capacities: operational capacities, change and transformational capacities, composite capacities and critical technical capacities to implement socio economic development programmes [The presidency, NEDLAC, SALGA];
- Conduct a detailed capacity needs assessment for the delivery of sustainable socio-economic development at all levels of government including capacity required to deliver the MTSF 2019-2024;
- Consider regular monitoring of performance of public servants with an effective consequence management framework and plan;
- Consider updating some of the skills programmes at the national school of government to deal with new developmental challenges posed by Covid-19.

### **On land Reform**

- Speed up land reform by strengthening the implementation mechanisms of existing land reform initiatives;
- Consider a more appropriate bill to be tabled in parliament to allow for effective and efficient land reform; and
- Explore options to get a broad-based participation of all stakeholders in future land reform policies.

### **On Sustainable model for social-assistance**

- Review the current social protection model to incorporate empowerment components and strive towards reducing dependency syndrome;
- Conduct a study to understand the detailed unintended consequences of the growing demand for social grants;
- Develop a sustainable funding and resource mobilisation model for social protection programmes.

**OBJECTIVE TWO**

**Encourage and accelerate broad-based participation in socio-economic development**

**i. Evolution of the Issue**

**Stakeholder participation**

- 559. This section focuses on issues related to the mechanisms that have been put in place to promote, extend, and encourage stakeholder participation in broad-based sustainable socio-economic development in South Africa. It further highlights progress made to involve the private sector and civil society in the design, formulation and implementation of development policies and strategies. Given the history of South Africa and the transition to democracy in 1994, the democratic government has put in place legislations and other guidelines to ensure broad-based participation of the private sector and civil society in socio-economic development.
- 560. The Constitution of South Africa requires broad-based participation in socio-economic development. In respect of this, the government of South Africa has put in place various instruments and structures to promote broad-based participation in socio-economic development. For example, national and local social dialogue forums to promote participation in development, government outreach programmes such as “*izimbizo*”, community radio stations to reach out to communities and engage communities and improve the role of the media, among other initiatives. Despite the legislative frameworks and initiatives, Socio-economic gaps still exist and will be examined further in this section.
- 561. Following the transition to democracy in 1994, the SA constitution guaranteed broad-based participation in socio-economic development in South Africa. This was further strengthened by various legislations such as the NEDLAC Act 1994, among others. However, the government structure and relations with non-State actors is still influenced by the legacy of apartheid. The Apartheid regime imposed a spatial segregation system underpinned by racial discrimination in favour of the white minority. With the fall of apartheid in 1992, the coalition government adopted a new constitution in 1996 to tackle the impact of these institutional and human segregation policies to improve co-existence amongst South Africans.
- 562. Public participation in municipal government is guided by the Constitution and laws like the Local Government: Municipal Structures Act No. 117 of 1998 (RSA, 1998b) and the Municipal Finance Management Act No. 56 of 2003



(MFMA) (RSA, 2003). These legislations guarantee the institutional interest of stakeholders and ensure that the voice of citizens is considered in the functioning of municipalities. They were adopted to ensure that municipalities create channels for citizens and interest groups to communicate on subjects of concern and utilise frameworks like ward meetings, consultative gatherings and Izimbizo<sup>88</sup> (open hearings).

563. The NEDLAC Act 1994 established the National Economic Development and Labour Council (NEDLAC). The council has representatives from organised business, organised labour, organised community organisations and the State. The council seeks to promote participation in economic development of all stakeholders and promote social justice.
564. The 2007 CRR of and the other progress reports acknowledged further progress on the promotion of broad-based participation in decision making in South Africa, especially through empowering civil society and NGOs to engage in development processes. For example, according to the first progress report in 2009<sup>89</sup>, processes around the development of IDPs also provided a platform for engagement of communities and civil society. The adoption of integrated development plans (IDP's) improved remarkably from 52% in 2005 to 100% for 2008/9. However, there are still challenges in the quality of these plans. The progress report also noted an improvement in the effectiveness of government outreach system. It was reported that: *"A total of 597 Mayoral and 23 Premiers' izimbizo were held in the past year. Presidential izimbizo have been held with approximately 791 issues raised, of which 359 (45%) have been resolved fully and ward committees have been established in 96% of wards"*.
565. South Africa has some of the most vibrant SCOs on the continent and they are highly proactive regarding communities' challenges and needs. However, the 2021 CSAR acknowledged *"weakness of institutional mechanisms put in place to encourage broad-based participation besides necessity of enhancing the government's communication strategy with citizens and non-state actors"*. The 2009 APRM progress report also noted a weakness in strengthening community and African radio stations. Community and African radio stations are a key communication avenue to encourage broad-based participation in socio-economic development.

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88 Izimbizo is a Zulu term that historically referred to public meetings called by the Zulu kings

89 1st report on the implementation of South Africa's APRM Programme of Action 2009.pdf

**ii. Findings of the CRM**

**Stakeholder Participation: Lack of inclusiveness in decision-making process on socio-economic strategies**

566. The CRM noted great progress regarding the adoption of various mechanisms and platforms to encourage broad-based participation on the national government level. Various provinces have functional Integrated Development Plan (IDP) and mayoral forums. The premier and presidential imbizo are forums to enhance broad-based participation in socio-economic development. However, there are still challenges with the effectiveness of these forums. There was agreement among stakeholders that many IDP forums are dysfunctional because the composition of these forums in many municipalities is not representative of the key stakeholders. In the North West Province for instance, stakeholders gave the example of nepotism in the composition of IDPs with relatives of municipal officials appointed to IDPs. Similar sentiment was expressed in other provinces. The government’s own report stated that only 25% of the departments that participated in the study had public participation guidelines/policies in place<sup>90</sup>.
567. Despite these challenges, the government has made strides in promoting public participation in socio-economic development. For instance, amongst the visible institutional mechanism set to follow-up on the governance self-assessment process is the APRM National Governance Council (NGC). The NGC was officially approved by the Cabinet on 27 May 2020. It comprises the 3 spheres of government, civil society groups, the private sector and labour, in line with the APRM principle of broad-based participation<sup>91</sup>. The NGC adopted the South African charter to ensure its proper governance. Some ministries are taking part in the APRM NGC including the Minister for Cooperative Governance and Traditional Affairs, the Minister in the Presidency, the Minister of International Relations and Cooperation, the Minister of Finance, and the Minister for the Public Service and Administration.
568. The NGC plays a crucial role in supporting the NDP and addressing the country’s long-lasting triple challenges of poverty, unemployment, and inequality. Most importantly, the APRM governance assessment urged a large number of non-State actors like civil society, in partnership with the academia, to express their views on governance challenges. For instance, in 2021, the SAIIA conducted a national exercise in which over 150 young people came

90 [http://www.psc.gov.za/documents/2009/Report\\_Assess.pdf](http://www.psc.gov.za/documents/2009/Report_Assess.pdf)

91 <https://www.gov.za/speeches/minister-senzo-mchunu-adoption-charter-south-african-peer-review-mechanism-national>.



together to compile a report on the views of South African youth on the state and future of governance.<sup>92</sup>

569. The CRM noted the establishment of the National Coordinating Mechanism (NCM) for national engagements and reporting on agendas 2030 for Sustainable Development and Agenda 2063 “*Africa we want*”, and the Southern African Development Community’s Regional Indicative Strategic Development Plan, in alignment with the NDP (VNR, 2019). Five groups of key stakeholders are included in the national coordination mechanism: (i) the national government, (ii) provincial governments, (iii) Parliament, to ensure legislative oversight, (iv) civil society, the private sector and academia, and (v) The United Nations, the AU, SADC and development partners, to generate resources to support the programme and get information on lessons learned from international experience.
570. The CRM noted that South Africa’s first Voluntary National Report (VNR) on SDGs and Agenda 2063 offered a great opportunity for a broad-based discussion with the private sector, UN organs and academic institutions.<sup>93</sup> Civil society organs were also given a chance during the presentation of the VNR 2019 at the High-Level Political Forum - United Nations to express their concerns and views about the youth demand in the country and cross-cutting challenges, for example, violence against women, and lack of youth engagement in decision making.
571. The CRM applauded the efforts of municipalities like Western Cape (Cape Town), Eastern Cape (Buffalo city), KwaZulu-Natal and Mpumalanga to harmonize their integrated development plans with the seven pillars of the 2030 National Development Plan, SDGs, and Agenda 2063. It was also noted that the majority of municipalities are functioning well and need further financial and institutional training to implement these plans.

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92 <https://saiaa.org.za/research/youth-submission-to-the-aprm-in-south-africa/>.

93 South Africa VNR 2019, [https://sustainabledevelopment.un.org/content/documents/23402RSA\\_Voluntary\\_National\\_Review\\_Report\\_\\_9\\_July\\_2019.pdf](https://sustainabledevelopment.un.org/content/documents/23402RSA_Voluntary_National_Review_Report__9_July_2019.pdf).

## Commendable Practice 5.2: Broad-based participation mechanisms and dialogues

South Africa has some notable broad-based participation mechanisms such as the Imbizo, which was highlighted as a best practice in the 2007 CRR, the National Coordinating Mechanism (NCM), and the SDGs Tracker e-Platform.

The Imbizo is a public participation government initiative, which consists of face-to-face interaction and engagement between senior government officials from all spheres of government (national, provincial and local) and the public. Imbizos give the government the opportunity to communicate its programme of action and progress in implementation, and allow local communities to voice their concerns on the quality of governance and service delivery.

The National Coordinating Mechanism (NCM) is led by the National Planning Commission at the Presidency and is intended to encourage consultations with different national and international stakeholders to ensure proper implementation of South Africa's NDP. This assists in ensuring alignment with other international and continental visions while ensuring proper policy coherence at the government level.

The SDGs tracker e-platform was initiated by Statistics SA in December 2019 to track performance and raise awareness among citizens and policymakers on the sustainable development goals (SDGs). The e-platform helps to identify gaps in SDG attainment, with the ultimate goal of detecting areas where greater action is needed. The Goal Tracker also enables SDG data to be accessible and publicly available in an interactive format for any user or researcher.

*Source: 2007 APRM Report and 2021 CRM compilation.*

572. The CRM noted that provinces and local municipalities are struggling with institutional fragilities, including weak structures, corruption, a trust deficit, mismanagement of resources and lack of proper communication with citizens alongside inadequate service delivery. According to the results of the 7th South African Citizen Satisfaction Index (SA-CSI), citizens' satisfaction and trust in their local municipality has remained extremely low, with none of the major metros meeting their residents' expectations of service delivery. In Buffalo City for instance, a diagnostic assessment was conducted by the government, which revealed an urgent need for enhancing trust in political and government





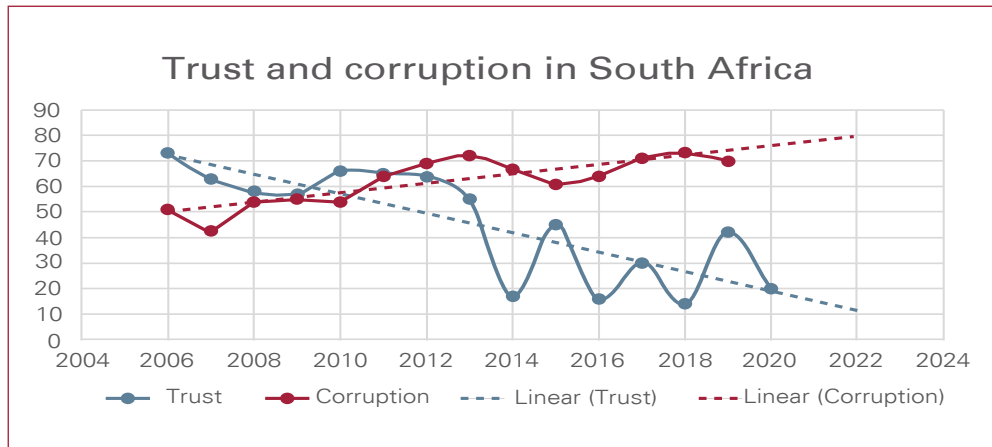
institutions to implement development programs and strengthen social cohesion amongst communities. The demographic trend is quite alarming as most youth migrate to other provinces especially with the current challenges of the COVID-19 crisis and lack of jobs.

573. The CRM noted that, while the *“Imbizo initiative”* encourages a participatory budgeting approach as anchored by the decentralised NP system to allow citizen to engage and interact with the government structures, its efficient implementation has been questioned. Research and interaction at the consultation forums showed that citizens are not strongly engaged in these processes, and the level of engagement varies from one municipality to the other. Van Donk (2014, p.2) notes that *“currently, the approach to participation could be described as ‘compliance driven’ with integrated development planning and other processes designed to meet the needs of legislation and no more. Mismatching between budget expenditures and plans has also been noted and requires corrective measures by provinces”*.
574. The CRM noted progress in some provinces in social relief and intervention packages to the most vulnerable groups such as in Cape Town, Mafikeng and Buffalo City. Further, innovative digital facilities have been adopted to enhance public service delivery in some provinces. In response to COVID-19, the Western Cape Province developed a special website to present the province’s response to COVID-19 to raise citizens’ awareness<sup>94</sup>. However, efforts are still needed to apply digitalisation, and to facilitate access to technology at affordable prices. The speed with which government acts will determine the country’s ability to remain competitive economically and socially in Internet connectivity and penetration rates.
575. The CRM noted that the SA Presidency has regularly organised, since December 2015, the Speakers’ Forum, as the representative body of the South African legislative sector. The move to establish an independent high-level panel of eminent South Africans is aimed at assessing the content and implementation of legislation passed since 1994 in relation to its effectiveness and possible unintended consequences. The Panel’s mandate is to review legislation, assess implementation, identify gaps, and propose possible revision.

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94 <https://coronavirus.westerncape.gov.za/>.

**Figure 5.2** Trust and corruption in South Africa



576. The CRM noted the widespread skills gap in the provinces. A recent skills transfer assessment report identified key gaps in the skills development vision as follows<sup>95</sup>: (1) huge service delivery and backlog challenges, in the areas of housing, water and sanitation, (2) poor communication and accountability relationships with communities, (3) challenges with the political-administrative interface, (4) corruption, mismanagement and fraud, (6) poor municipal financial management, for example, negative audit opinions, (7) number of (violent) service delivery protests, (8) weak civil society formations, (9) intra- and inter-political party issues that negatively affect governance and delivery, and insufficient municipal capacity due to scarce requisite skills.
577. The CRM noted that positive efforts are exerted in Mpumalanga and Kwazulu-Natal to boost the national plans. For instance, the Province of Mpumalanga already set optimistic economic plans to boost transformation in different sectors, including spatial planning, water, infrastructure, digitalisation, and human settlements, while developing a youth employment program. In Kwazulu-Natal, the province, in partnership with the civil society, is conducting revision of skills to address mismatch between market needs and education outcomes. The city is developing training programs in three districts, which focus on ability to drive 4th industrial revolution skills, and on skills required for the green and ocean economy, and to develop the comparative advantages of each district, and promote entrepreneurship.

95 Final Report-Skills Transfer in Municipalities in South Africa (LGSETA funded project) , available at [https://cdn.lgseta.co.za/resources/performance\\_monitoring\\_and\\_reporting\\_documents/Skills%20Transfer%20in%20Municipalities.pdf](https://cdn.lgseta.co.za/resources/performance_monitoring_and_reporting_documents/Skills%20Transfer%20in%20Municipalities.pdf). (Accessed 5 August 2021)



578. The CRM noted that South Africa provides access to information as required by the ATI Act of 2000. The access to information law (ATI) provides for free access to official records for citizens. The law has been amended various times to align it with various global and continental agendas. This Act is intended to: (i) implement the constitutional right of access to any information held by the State or by another person that is needed for the exercise or protection of any rights, and (ii) provide for matters connected. The latest amendment of this Act was in 2019, which was aimed at ensuring that information on the private funding of political parties and independent candidates can be recorded, preserved, and made available, and matters connected therewith<sup>96</sup>.

### **Insufficient role of the private sector in promoting socio-economic development**

579. The CRM noted that South Africa has one of the strongest economies on the continent. Yet, inequality remains a serious challenge to South Africa's sustainable socio-economic development. The private sector has a significant role to play especially as 70% of the economy is dominated by the private sector and corporations. While the National Development Plan urged for stronger public-private partnerships to encourage the normative notion of private sector participation in socio-economic programs, persistent challenges like access to education, healthcare, water, sanitation, unemployment and acute skills shortages persist.

580. The CRM noted that some private sector corporations and companies, such as Anglo-American SA, Sishen and Voorspoed are trying to play a community role alongside their business activities. For example, Anglo-American SA is seeking to align its Sustainable Mining Plan with SDGs, with 33 of the SDG targets mapped to business activities that will deliver action on the goals (education, healthcare, environment, clean water, and IT). The Sustainable Mining Plan targets certain KPIs to be achieved. Thus, many corporations are beginning to incorporate SDGs KPIs into their plan. As many citizens in South Africa revealed, they cannot see the benefit of such a sector, but Anglo-American has evidently begun accountability-based dialogues to address this issue.

581. Sishen aims to ensure that its non-mining land is utilised optimally to benefit the mining and surrounding communities. In implementing the land management plan, Sishen sets key objectives in collaboration with the municipality to: (i) collaborate with local farmers and neighbours on farming practices, (ii) incorporate socio-economic development initiatives onto existing land, (iii) rehabilitate mine-affected land and use it to generate increased biodiversity

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96 <https://www.gov.za/documents/promotion-access-information-amendment-act-31-2019-english-afrikaans-3-jun-2020-0000>.

and/or economic value, (iv) educate and raise awareness around conservation, (vi) Develop a nature reserve as a destination, offering a variety of recreational and learning experiences.

582. Anglo-American and Voorspoed’s Social and Labour Plan also make significant contributions to healthcare and the well-being of the community they operate in (SDG 3). For instance, the CRM was informed that Anglo-American supports HIV broad testing on its staff in coordination with UN specialised organs, while Voorspoed aims to strengthen communities of the Free State Province and develop a working partnership with the Department of Health by providing mobile clinics. In addition to these collaborative efforts, Investec and other financial companies (shareholders of Invictus Education Group) are implementing strategies to create opportunities, through education and apprenticeship programs to equip and enable young people in their communities to become active economic participants.
583. The adoption of Agenda 2030 and SDGs was also a key driver for the private sector in South Africa to be more engaged in socio-economic planning and implementation. Further, the private sector and CSOs, in collaboration with the UN Global Compact in South Africa submitted a contribution to the country’s VNR 2019 to identify their role in achieving SDGs.
584. The GCNSA launched an Insights survey for completion by private sector and sustainability leaders and began qualitative interviews with voluntary review champions. The survey focused on the awareness of business groups of SDGs and their significance for the private sector to play an active role in the social and economic plans.<sup>97</sup> Although many companies recognised SDGs and the need to integrate them into their strategic planning, only 10% of companies surveyed reported that they had integrated action on the SDGs into performance management (UNGCN, 2019).
585. The CRM noted that civil society is also actively involved in socio-economic and broad-based development policies especially in provinces like Western Cape, Gauteng and KwaZulu-Natal. However, more support is required to facilitate their involvement in these engagements. The NDP highlights active citizenry as one of its core pillars. Active citizenship is one of the key roles of civil society. One of the institutional mechanisms that have been set up by the State to empower civil society is the National Development Agency (NDA). The NDA was established primarily to grant funds to civil society and community-based organisations to meet the development needs of communities. Ten

97 Source: Global Compact Network South Africa Insights Survey 2019



years on, the NDA is still committed to its mandate, which is clearly articulated in the National Development Agency Act of 1998.<sup>98</sup> However, capacity and skills challenges have been identified as major hindrance to realising the set objectives.

### Commendable Practice 5.3: Private Sector alignment with Community Initiatives

The leading private sector companies in South Africa such as Anglo-American, Sishen and Investec are making efforts to align their corporate social programmes with the National Development plan, and have dedicated funds for community-based initiatives, with a special focus on education, youth employment, climate change and gender empowerment.

An example of such programmes is in Kwa-Zulu Natal, where working through NEDLAC, the private sector is supporting community efforts to address skills gap challenges. NEDLAC is leading efforts with different stakeholders in civil society to address the mismatch between the skills produced in academic institutions and those required by the labour market. In Durban, the city is developing training programs in three districts with a focus on the skills necessary to drive the 4th industrial revolution and the blue and green economies. The programmes are designed based on the comparative advantages of each district, and focus on building entrepreneurship, with plans to have a community college in each district.

*Source: CRM from stakeholder meetings*

586. Many national and international CSOs are very active in localising SDGs by linking municipalities with local people through various development programs. They are also engaging and lobbying for implementation of development and humanitarian programs.<sup>99</sup> Civil society organisations have pushed for the implementation of critical socio-economic rights, such as the right to housing, healthcare, food, and social welfare, which have not been fully realised. Trade unions have also been quite active to ensure, through public campaigns, the adoption, and entrenchment of basic employee rights, including the right to strike, and minimum safety and working conditions for those in formal employment. The trade union movement played an instrumental role in securing the adoption of a minimum wage – even if the agreed minimum wage of R20 an hour is low.

98 Enhancing Civil Society Participation in the South African Development Agenda: The Role of Civil Society Organisations, 2018, <https://www.nda.org.za/assets/resources/CF824421-4FA0-41EE-AB694DB10CD0384A/NDATheRoleofCSOs.pdf>

99 [https://www.gppi.net/media/KAS\\_CS0\\_2016\\_Localizing\\_SDGs.pdf](https://www.gppi.net/media/KAS_CS0_2016_Localizing_SDGs.pdf).

587. Local civil society organisations have also been holding mining companies to account for failure to implement promises to build low-cost houses and to boost local economic development and rehabilitate the environment in return for lucrative mining licenses. In 2016, civil society organisations, faith-based organisations and community organisations launched a series of protests against Lonmin’s failure to keep its promise to build low-cost houses, and to boost local economic development and environmental rehabilitation.
588. South Africa’s civil society has also provided public services in most instances to make up for the public service delivery shortcomings the country. The Johannesburg Child Welfare, the National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) and Cotlands, for instance, provide essential basic services, where the State is absent. Other organs focus on educating citizens, strengthening institutions, and addressing violence, xenophobia, and racism in the communities. Other CSOs have also advocated for climate change policies, partnerships, children, and gender balance alongside youth empowerment.
589. During the presentation of South Africa’s first voluntary national reporting (VNR) at the United Nations High-Level Political Forum on Sustainable Development in New York (2019), a slot was given to CSOs representatives to express their opinions on the state of violence and other pertinent issues that are derailing South Africa’s national development plan and SDGs. This was a recognition of the importance of CSOs in the country and globally.
590. Private companies have a significant influence on investments to boost the economy and create jobs. Investec, for instance, adopted a framework to create sustained long-term wealth, contribute to society, macro-economic stability, and protect the environment. This approach focuses on three dimensions: people, planet, and profit. The Investec model focuses on how the financial services sector can advance the SDGs to build a more resilient and inclusive world. Investec in partnership with various stakeholders are striving towards preserving the ‘Wild Economy’ by focusing on major sectors of GDP for SA. For instance, the tourism industry, which is worth over R130 billion to the South African economy each year is targeted to combine impact on sustainable communities, education levels, and life on land. Further, it is also intended to support youth employment. As one of the first signatories to the Youth Employment Service (YES) initiative in South Africa, the organisation had as objective to place at least 1 200 youth with 11 partners during the 2021 financial year.



591. Some private companies like Old Mutual, a financial assets management company, assist with various social programs especially in education to drive responsible investment and provide equal opportunities for south African children to get access to quality education. The Old Mutual Education Flagship Project (OMEFP), a national education initiative, started in 2013, with plans to invest R350 million over seven years in under-resourced schools in key provinces. The primary goal of the project was to increase the number of learners in the supported schools who pass matric with Mathematics and Physical Sciences. This would lead to an increase in the number of students who access university education, resulting in enhancement of professional skills in the economy.
592. The CRM observed the powerful presence of business groups in some provinces, but with limited socio-economic visibility. It is proposed that these business outfits partner with the National Youth Development Agency as a key player in promoting youth engagement and empowerment in the development process. Essentially because, youth remain frustrated and angry over lack of access to jobs and training opportunities that could improve their employability (SAIIA, 2021).

### **iii. Recommendations**

593. Based on the above analysis and findings, the APR Panel urges South Africa to:
- Call for urgent social cohesion/contract dialogue at provincial level to enhance communication with community representatives;
  - Enhance capacity building and technical support on monitoring and evaluation of socio-economic issues with the support of the African Union, and other partners;
  - Encourage peer-learning with other African countries on critical issues like public service delivery, combating corruption, code of conduct, integrity, transparency, and sound policy;
  - Address the mismatch between budget allocations/expenditures and planning because it contributes to failure of service delivery. The government and provinces need to ensure proper budget allocation, strategic planning and financial forecasting assessment;
  - Enhance official registration of CSOs and non-profit organs synergizing efforts for development programs;
  - Address the issues of access to funds for civil society and NGOs.

**OBJECTIVE  
THREE**

**Poverty, unemployment, and inequality**

**i. Evolution of the Issue**

**Socio-economic Emancipation**

594. The goal here is to examine the policy interventions and progress made by the government to reduce poverty through job creation and to redress the inequalities of the past through equal access to opportunities and resources, especially for the previously disadvantaged South Africans. This objective examines the multi-dimensional correlation between access to employment and productive assets and poverty. The main issues from the previous review, progress and close-out reports centre on socio-economic emancipation and capacity to drive implementation of strategies to address inequality, create jobs, and ultimately alleviate poverty.
595. Unemployment has been identified as the strongest underlying determinant of both the depth and prevalence of poverty (ILO, 2020). Although, unemployment may assume different dimensions such as structural, cyclical, and frictional, the South African reality suggests that almost all the unemployment dimensions are prevalent in South Africa. For instance, South Africa has experienced structural unemployment because of the mismatch between available skills and job requirements. This form of unemployment has been furthered by technological shifts within the economy. The country has also experienced cyclical unemployment because of weak growth and seasonality of several economic activities.
596. According to the World Bank (2021), *“...High inequality is perpetuated by a legacy of exclusion and the nature of economic growth, which is not pro-poor and does not generate sufficient jobs. Inequality in wealth is even higher, and intergenerational mobility is low, meaning inequalities are passed down from generation to generation with little change over time”*. It is evident from this citation that unemployment is the major source of poverty and inequality in South Africa. Inequality was institutionalised through differential policies for different races during apartheid, and reversing this legacy is still an uphill task for South Africa. It is therefore important to understand efforts that have been made by the government to address unemployment since the transition to democracy.
597. The APRM Close-Out Report on South Africa examines developments from the first country review in 2007, through all the progress reports generated





thereafter. The Report was “intended to avoid fragmentation and to look at APRM implementation through the prism of continuity and integration” (APRM Second-Generation Country Review Report (p. 9). It emphasised the importance of socio-economic emancipation of the people.

598. Socio-economic emancipation has many different dimensions. The concept is a composite of various measurable indicators of human livelihood such as standard of living, source of income and economic status. It also touches on human development initiatives like capacity building and skills development that drive sustainable employment, access to decent income, decent livelihood and eradication of all forms and depths of poverty. It is also important to note that socio-economic emancipation includes equal and equitable opportunity for everyone, irrespective of race, gender, sexual orientation, culture, or any other discriminatory profiling.
599. The Minister of Public Service and Administration of South Africa and the APRM Focal Point in the Preface and Overview of the APRM Second Generation review Report acknowledged that: “Given our particular history, the indivisibility and interrelatedness between political and civil rights, on the one hand, and socio-economic rights, on the other, cannot be denied. Without socio-economic rights, political and civil rights cannot exist in a meaningful way and vice versa”. This means that political emancipation alone will not be an adequate measure of liberation without socio-economic emancipation. In the paragraphs below, we will look at each of the prerequisites for socio-economic emancipation.



*Access to employment opportunities*

600. The inability of government and the private sector to create sustainable jobs and employment opportunities has remained a challenge for the country since the base countries review in 2007. This report had noted that:

*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...severe financial hardship, and deepening poverty, an unbearable level of indebtedness, homelessness and housing stress...without a doubt, structural unemployment is a danger to a nation.*

601. Although, the danger of unemployment was clearly articulated in the country review report, the incidence and prevalence of unemployment in the country continued unabated. The 2007 Review Report further noted that:

*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. The likelihood of being employed in South Africa is still heavily influenced by race, geographic location, gender and levels of skill (CRR, 2007, p. 274).*

602. The first progress report (2009, p. 28) further observed that:

*...young people continue to have difficulty in accessing employment despite the economy's growth. Of concern is the fact that 25% of employed youth are in elementary sectors, unskilled occupations, including domestic workers.*

603. The same sentiment is expressed in the second progress report (2010) where it was acknowledged that “Unemployment remains one of the challenges facing South Africa”.

604. The third progress report (2014, p. 55) also buttresses “the unrelenting need to create employment,” while the close-out report of 2020 (p. 42) suggests that:

*South Africa's reports on the implementation of the program of action acknowledged the persistent challenge of unemployment in the country.*



*During the reporting periods, unemployment was hovering at around 25% but the situation has grown worse in 2019 as unemployment sits roughly at 29%.*

605. The 2021 CSAR (p. 52) also acknowledged that unemployment has been worsened by the COVID-19 pandemic. According to the report, unemployment rose sharply from 23.3 percent in 2009 to 34.6 percent in 2020. Although, the overall unemployment rate has been high, the situation is particularly dire amongst black African youth and women, especially young people in the 15 to 24 years age bracket, who accounted for 64.4 percent of total unemployed population.

### *Poverty eradication*

606. The creation of sustainable jobs, especially for the youth and women, is a catalyst to eradicate poverty. The same sentiment was echoed in the first CRR (p. 241), where it was acknowledged that: *“it is clear that South Africa fully recognises the need to promote sustainable development and reduce poverty”*. The document further identified policy initiatives to drive economic growth, expand the economy’s absorptive capacity, and ultimately eradicate poverty through employment. Policies such as the RDP, IRDP, GEAR and AsgiSA were identified as the main economic policy drives. The bedrock of these policy initiatives was a social assistance-based approach and development approach. While the former centres on creating safety nets through financial support for the weak and vulnerable, the development approach focuses on job creation through growth and expanded industrialisation.

607. The first progress report (2009, p. xi) focused on the expansion and strengthening of the social safety net through cash transfers in the form of old age pensions, disability, child support and foster care grants and grants in aid to stem poverty and advance socio-economic development. More importantly, the report indicated that a consensus had been reached at the Policy Dialogue on the Poverty Line consultative forum organized by the National Labour and Economic Development Institute (NALEDI) in 2007 to establish a poverty barometer to capture the actual depth and prevalence of poverty. Various other acknowledgements of the need to wage a decisive war against poverty were documented on pages 15 and 21 of the report.

608. The second progress report (2010, p. 18) builds on the work done in finalising the definitions and measurements of poverty. The report also indicated that another safety net in the form of a Social Assistance Programme has been initiated to cushion the effects of poverty on the most vulnerable and the weak. *“Targeted beneficiaries are women, children, youth, people with disabilities, the*

*aged, the chronically ill, the unemployed, working poor, rural areas, townships, informal settlements and inner cities*". The third progress report (2014, p. 28) acknowledges that the government should be commended for tremendous efforts made to alleviate extreme poverty through *"income transfers, poverty supporting programmes and through access to basic services, healthcare and education"*. On the same page, the report acknowledged that the triple and cyclical challenge of poverty, unemployment and inequality remain stubbornly conspicuous.

609. The Close-out Report, with a deep documentation of other previous interventions, clearly indicates the need to arrest lingering lack of socio-economic emancipation of the disadvantaged groups, especially through job creation, poverty alleviation, and amelioration of inequality. The report contained specific interventions and progress made by the government to alleviate (and ultimately eradicate) poverty, especially 'intergenerational transmission' of poverty (p. 64). Some of the specific intervention deployed by the government include: *"...providing employment, housing, water and electricity, access to free public health and access to free universal primary education"*. The introduction of "Integrated Food Security and Nutrition Program" was also noted for its targeted agricultural benefits towards poverty alleviation. The strategic importance of the Child Support Grant (CSG) as the dominant anti-poverty initiative of government in the body of the social grant system in support of the poor people is both notable and highly commendable.

### *Amelioration of inequality*

610. Inequality continues to dominate policy interventions of the government as the country remains one of the most unequal societies on earth. Inequality in South Africa has mutated from race and gender to now include other forms such as class and location inequality, among others. The 2007 CRR identified lack of capacity to deliver basic services at local government levels, and lack of effective monitoring capacity to ensure that BEE does not end up enriching a few political elites rather than promoting equitable empowerment of the black majority as some of the drivers of socio-economic challenges.
611. The report pointed out that access to productive assets, such as land is critical to addressing inequality, and indicated that the government needs a *"change of track"* on matters of land reform. It was stated categorically on page 265 that *"...the struggle against apartheid was a struggle for land...land was the most important asset someone could have, the very essence of life"*.



612. The first progress report (p. 21) acknowledged the continued need and urgency to address inequality, especially racial inequality. The report acknowledged that inequality: "...continues to remain high between population groups especially between whites and black Africans as well as individual population groups and the impact is more severely felt by black Africans". The report also observed a correlation between educational qualification and income level, which tilts in favour of the white racial group. The report further suggested that promotion of access to quality education, especially among the historically disadvantaged racial group, would pull many black people out of poverty as their income level would improve, widening the support base. Various measures to fund education and promote equal access to quality education were documented in the report. Some of the strategic interventions by government, essentially through policies, were documented in the report as well. For instance, the second progress report (2010, p. 35) suggests that:

*Government has also prioritised the revitalisation and development of rural areas. In this regard, land is seen as being central to poverty alleviation, job creation, food security and entrepreneurship. This outlook links to the development of a Comprehensive Rural Development Strategy (CRDS) that is indicative of its commitment to prioritizing disadvantaged rural nodes.*

613. The third progress report (2014, p. 103) began by acknowledging that: "... government recognizes that poverty and inequality remain high..." The report also echoed government's efforts toward ensuring a more equitable distribution of benefits accruing from economic growth to address inequality in a sustainable and notable way, especially by speeding up growth, improving health profiles and skills base, eradicating racism and reducing crime and corruption. Although the income level has grown notably since 1994, it has not necessarily reduced inequality as the country remains the most unequal society globally as measured through the Gini-coefficient (p. 105).

614. The close-out report pointed out that inequality in the country goes far beyond poverty and unemployment, suggesting that the problem is structural and therefore, systemic. As a baseline approach to address inequality, the report identified the need to reduce the number of households with a basic income lower than R419 per person from 39% to zero by 2030, and to increase employment from 13 million to 24 million during the same period. The architect of inequality in the country was encapsulated in the report (p. 65) as follows:

*The undeserved poverty of the poor vis-à-vis the undeserved wealth of the rich and is therefore about the social injustice in situations in which systemic*

*factors enable a small minority of the population to accumulate power and wealth by exploiting a large part of the population and depriving it of property, labour power and opportunities*

615. Although admission was made of the State’s inability to tame the greed of the capitalist few, guided approaches towards stemming the widening “wealth gap” between the minority whites and majority blacks, as well as between the minority elite blacks and the multitude blacks were identified. One of these was the need to rebalance the power relationship between government and corporations. The report referred to the “Fees Must Fall” protest as revolt against inequality.
616. The 2021 CSAR acknowledges various initiatives and policy interventions by the government to address inequality, which is synoptic of the reviews presented in the earlier reports. Of note, according to the, is the fact that: *“Despite, government effort to address poverty and economic despair, there is more that needs to be done to the inherited history of financial oppression and inequality...today, South Africa is the most unequal society in the world...”*(p. 42). The report further suggests that inequality remains one of the unpleasant reminders of the apartheid era, which must be tackled with concerted regulatory and legislative reforms.
617. The APRM Second-Generation Country Review Process and the Resulting Draft National Plan of Action (2021) buttresses the facts contained in the CSAR, by acknowledging various efforts that have been made by the government to address inequality through growth and robust safety-net redistributive approaches. The report identified various skills-driven divides at Provincial and other spheres of the State as a major source of inequality:
618. *“The interprovincial disparities in South Africa’s socio-economic governance landscape are serious and have implications for the rural – urban divide and implications for employment and unemployment as well as levels of poverty. This has not been captured in the three (progress) reports yet more focus and efforts to curb interprovincial disparities is needed if the country is to have huge impact on poverty, unemployment and inequality”* (p. 39). Although, government efforts towards reduction of the level and depth of inequality through income redistribution and poverty alleviation have been meaningful, *“escaping poverty remains particularly challenging for South Africans living in rural areas...”*
619. *Capacity building and skills development* – In other sections of this report, we discussed capacity building and skills development from the perspective of



capacity of the State to deliver sustainable socio-economic development. In this section the focus will be on the progress made by the State to develop the capacity of citizens to accelerate growth and deal with unemployment, poverty and inequality. Without the appropriate skills and competencies, dealing with unemployment becomes a challenge as South Africa needs skilled people to either add value to companies or create jobs through entrepreneurship.

620. The Skills Development Act (SDA), among other policy and legislative frameworks, seeks to provide opportunities for new entrants to the labour market to gain work experience, employ persons who find it difficult to be employed, encourage workers to participate in learning programmes, improve the employment prospects of persons previously disadvantaged (HDSA) by unfair discrimination, and redress those disadvantages through training and education. The Act further focuses on ensuring the quality of learning in and for the workplace, assist work-seekers to find work, retrenched workers to re-enter the labour market and employers to find qualified employees. The rate of young people not in employment, education or training (NEET) is high, at 29 per cent for men and 34.2 per cent for women aged 15 to 24 years (ILO, 2019). South Africa also has a severe qualifications mismatch: in 2018, over a half (52 per cent) of all South Africans worked in an occupation for which they did not have the right qualification (OECD 2019b). To deal with these challenges, the NDP 2030 set ambitious goals for all levels of education, from early childhood to tertiary education. For instance, its aim is to increase the enrolment rate in universities by 70 per cent, moving from 950,000 students in 2010 to 1.62 million by 2030 (ibid., p. 319). Alongside an expanded early childhood education provision and improved teacher training, the NDP 2030 also has development targets for vocational education and artisanal training. As a long-term goal, NDP 2030 has targeted raising the participation rate in vocational colleges to 25% of all post-secondary education, amounting to a more than fourfold increase in learners from 300 000 in 2012 to 1.25 million by 2030 (National Planning Commission, (2012, p. 321), training 30 000 artisans annually, and increasing Community Education and Training (CET) of learners to 1 million by 2030.
621. The National Skills Development Plan (NSDP) 2030 launched in 2019 is a landmark for education and TVET reform. Its central mission is to *“improve access to occupations in high demand and priority skills to support economic growth, employment creation and social development”* (DHET, 2019a, p. 5). Despite these policies and strategies for skills development, various issues related to skills development persist. For example, challenges with access

and affordability of quality education at various levels persist. Work-based learning such as internships, apprenticeships and other skills development programmes are considered insufficient. Education funding seems to be inadequate especially to assist previously disadvantaged students to access specialised training and apprenticeship. The ILO notes that South Africa still lacks various critical skills including green skills, technical engineering and ICT skills, among others.<sup>100</sup> Evidence of lack of managerial and financial skills is also documented in the progress reports and in the 2021 CSAR.

622. Similar information on lack of critical skills was contained in the second progress report (p. 31), and in the third progress report (p. 54), where it was acknowledged that: *“To a large extent, South Africa suffers from structural unemployment resulting from a mismatch between workers skills and the skills needed for available jobs due to factors like the inappropriate quality of education”*. The close-out report (p. 24) and various other sections of the 2021 CSAR (p. 29 and 61), stated expressly that: *“The inability of the economy to create jobs coupled with the high-level entry requirements and the skills mismatch are some of the reasons advanced for the persisting structural unemployment”*. From the foregoing, it becomes evident that skills shortage is caused by the inability of the State to take a bold step in driving a national specialised skills development agenda in a decisive manner, in areas that are critical to economic development.

## ii. Findings of the CRM

### Socio-economic emancipation

623. Socio-economic emancipation, especially access to employment opportunities, was a common topic among participants during the consultations. They constantly suggested that government needs to do more to advance the socio-economic emancipation of the people, especially by creating decent and sustainable jobs for the historically disadvantaged people.

#### *Access to employment opportunity*

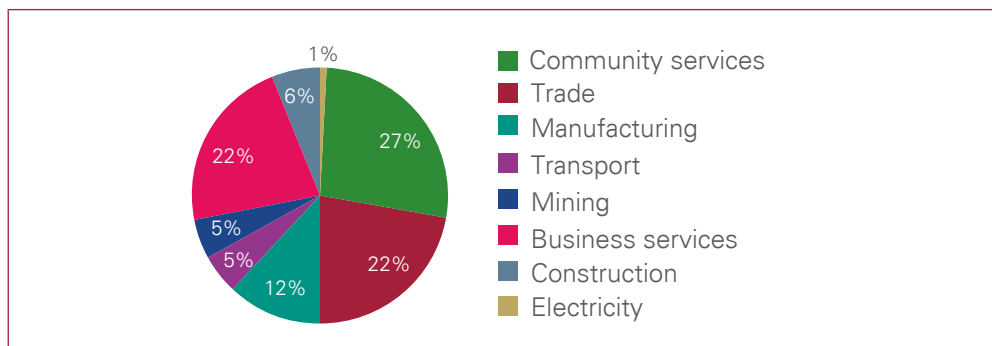
624. In South Africa, Access to employment into the public administration was deemed to be on an equitable, representative and progressive basis. This is evident in the size of the contribution of community services sector, being the highest (27%) employer. However, most of these jobs are not sustainable and are funded by the government.

100 [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---ifp\\_skills/documents/genericdocument/wcms\\_742215.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/genericdocument/wcms_742215.pdf)





**Figure 5.3** Contribution of different sectors of the South African Economy to Employment, 2017. (Stats SA, 2018)



625. Generically, the importance of an economic sector is seen best through its contribution to the GDP of the country, as well as its contribution to job creation. The top three sectors that contribute to employment in South Africa are: community services (27%), business services (22%) and trade (22%). There is potential for South Africa to improve employment through expanding some critical sectors by enhancing mineral beneficiation, and expansion of manufacturing capacity, among others. In order for the majority of the unemployed South Africans to participate in the economy, there is a need for skills development and strategic re-evaluation of the manufacturing sector.
626. Furthermore, youth unemployment is a serious cause for concern, especially because the population of South Africa is predominantly made up of young people. According to StatSA (2021), young people aged between 18 and 34 make up about a third of South African population. However, this group has been hit harder than any other age group in terms of unemployment. Although, youth unemployment hovered around 54.21% from 2013 until 2021, it recorded a minimal decrease to 48.80% in 2014, before jumping to a record 64.40% in the second quarter of 2021. Of particular worry is the high unemployment rate amongst university graduates, which is estimated to have reached 9.3%. Given the extent of State resources and social capital committed to producing university graduates, unemployment of people with such skills and competences has to be arrested as a matter of utmost urgency.
627. StatSA (2021) further suggests that: *“The lack of economic opportunities for South African youth explains why many are still reliant on government for support in the form of social welfare”*. This is simply unsustainable and could

potentially lead to uprisings against the State. It is particularly concerning because unemployment of enlightened youth can result in questions about the State's legitimacy and various kinds of socio-economic upheavals.

628. Another important reason why youth unemployment must be tackled seriously is because dependent age groups in the country (0-15 years and those older than 60 years) account for about 38% of the population. If the unemployed youth are added to this group, all the dependents will be supported by less than 36% of the total population that is employed. The reduced number of employed people, especially if the emigration of skilled workers continues at the current rate, will lead not only to decreased tax revenue but also to unsustainable pressure on the social protection system as more and more people will clamour for the social safety net.
629. It must be acknowledged that the economy has not grown enough over the past years to absorb the demands of labour market. For instance, the economy grew by 0.8% and 0.2% in 2018 and 2019 respectively, while it contracted by more than 7% in 2020 due to the COVID-19 pandemic (World Bank, 2021). However, it was understood from the consultations that the few available job opportunities were being allocated to party cronies, family members and friends even in the absence of qualification or capability. The CRM was informed of nepotism, favouritism, and abuse of power and privileges by the political elites at provincial and local government levels. Although, considerable efforts have been made to redress ethnic and racial discrimination against specific groups of people, the recent trend has been a repeat of pre-independence practices where employment into public administration is determined by race rather than by competence and capability.
630. It must be admitted that unemployment is a critical socio-economic challenge for the government. However, structural unemployment is a serious cause for concern. Though the economy has not grown enough to create jobs that could meet national labour market demand over the past years, a number of structural vacancies continue to grow in some critical economic sectors. Opinions expressed at the consultation forums suggest a mismatch between skills that are being produced by the academic institutions and the skills that are required in the labour market. There may be a need to revisit national skills production priorities, especially in the modern economic environment that is driven by knowledge and specialised skills.
631. It also emerged from consultations that there is limited access to productive assets, such as land and capital to boost the socio-economic emancipation of



the vulnerable members of the society. Lack of access to productive land is one of the major challenges that have confronted the democratic leaders. This challenge has been exacerbated by the unwillingness of the minority whites to relinquish the land they forcefully expropriated from the historical owners through displacement. It was also indicated that the “willing seller, willing buyer” policy, which is meant to encourage the current occupiers to relinquish portions of the productive land, has faltered because of their unwillingness to relinquish the lands. Although, forceful expropriation may not be advisable, a more robust and targeted approach that is measurable, guided and strategic has to be adopted. Asset convertibility, price control and a nuanced tenure system may be considered as an alternative, but this requires firm commitment and determination.

### *Poverty eradication*

632. More importantly, eradication of poverty through equal access to opportunities and developmental assets is important. Poverty remains one of the most crucial challenges in South Africa. The incidence, prevalence and depth of poverty have received extensive policy attention since political independence in South Africa. Various policies have been implemented and a series of regulatory instruments have been deployed to tackle poverty since 1994. More importantly, growth-inductive policies have been adopted to drive growth and tackle poverty concomitantly over the past decades. It must be acknowledged that the economy recorded substantial and commendable growth during the 2000s. However, this growth failed to create jobs in a way that could alleviate poverty.
633. Weak transmission between policy initiatives and implementation: the country is commended for the quality and breadth of the policies that have been adopted to eradicate extreme poverty, especially by reducing unemployment, and redressing inequality. However, there are notable inadequacies in the potency of these policies, and their measurable impacts on the livelihood of the most vulnerable members of the society have been negligible. For instance, the Reconstruction and Development Programme (RDP) that was adopted in 1994 was meant to accelerate South Africa’s transition to a sustainable economy that prioritises the social wellbeing of the previously disadvantaged portion of the population. The policy failed to rebalance economic opportunities and promote the socio-economic emancipation of the people. Even the Growth, Employment and Redistribution (GEAR) strategy of 1996, which was an extension of the RDP, failed to grow the economy sustainably in a way that could increase equitable employment opportunities.

More notably, the Accelerated and Shared Growth Initiative for South Africa (ASGISA) that replaced GEAR in 2006 did not do enough to alleviate extreme poverty, especially because the envisaged growth could not be realised. In summary, lack of fluidity in translating developmental policies into practical realities, especially because of anaemic policy implementation, has been criticised as a major political weakness. In essence, there is a notable level of inequitable access to basic fundamental necessities of life, such as access and affordability of basic education, primary healthcare, reasonable and affordable standard of living, as well as equitable job and economic opportunities, aspects that can pull people out of abject poverty.

634. *Education* – government must be commended for the Early Childhood Development (ECD) initiative, especially the interventions that target nutrition and health support in schools. However, access to education remains uneven between the urban rich and the rural poor. In fact, some educational facilities in poor urban communities are just as poorly resourced as those in the rural areas with overcrowded classrooms, poor learning facilities and dilapidated infrastructure. Further observations were made that basic education schools do not receive free books and stationeries, regardless of the poverty level of the communities. More importantly, schools have to be built closer to the communities as more than 62 percent of children walk to school (General Household survey, 2019). Observations from the consultations indicate that a large number of public schools operate in informal structures, while most children walk to school under extremely risky conditions. In KwaZulu-Natal, it was reported that some pupils had been swept away by storm waters, and many others continue to learn in classrooms that expose them to thunderstorms.
635. Access to healthcare and affordability of primary healthcare are increasingly challenging, as suggested in the consultative forums. Although, considerable efforts that are backed by strong development policies have been made by the government to improve access, affordability and availability of primary healthcare facilities, these efforts are facing serious challenges as frustration grows about the deplorable state of most rural healthcare facilities. Even in the urban areas, access to healthcare is influenced by personal income and social status. It is also noteworthy that even affluent groups are often not able to easily access to healthcare because of stringent rules set by medical providers. To liberalise access to healthcare across the country, guided and financially strategic efforts should be channelled towards the establishment and implementation of the proposed National Health Insurance (NHI) in a professional, prudent, and expeditious manner.



## *Water and sanitation*

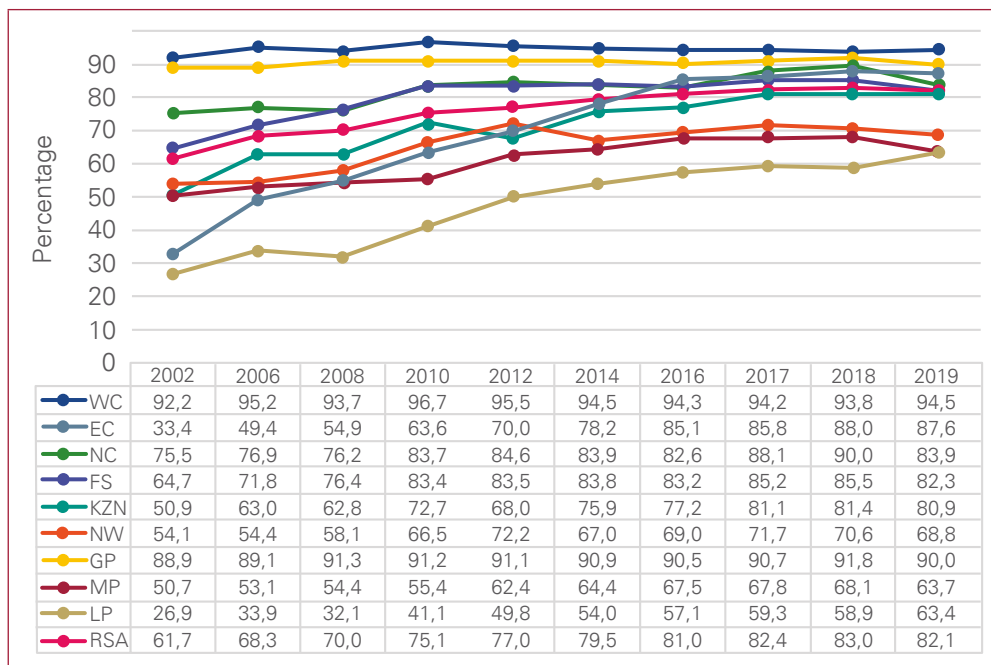
636. Potable water is important for human existence. The quality of, and accessibility to water are major determinants of quality of life and human dignity. More importantly, “water is life and important to our health, hygiene and sanitation” (Development Bank of Southern Africa, 2021). Being a largely water-scarce country, South Africa is prone to sporadic draughts. For instance, the City of Cape Town, the capital city of Western Cape Province, announced in 2017 that the dam level could fall below 13.5% (fondly referred to as Day Zero). The same possibility of palpable draught was announced by the Nelson Mandela Bay in Eastern Cape sometime in June, 2021. The Gauteng Province and almost all Provinces across the country have faced similar water shortages over decades. Urgent interventions are therefore needed to prevent a possible draught disaster in the country.
637. Access to water and sanitation is treated in the constitution of the Republic under Schedule 4: “Functional Areas of Concurrent National and Provincial Legislative Competence” (1996, p. 137). This constitutional provision states that: “*Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems*” are shared responsibilities between the National and Provincial tiers of government. Given the inherent complexity in apportioning authority and responsibility in these shared essential amenities, access and administration of water and provision of decent sanitation have suffered extensively over the years.
638. Water and sanitation are central to socio-economic emancipation, especially of the most vulnerable groups and those in the rural areas. The strategic importance of this resource possibly prompted the DBSA (2021) to suggest that: “*To promote socio-economic development, especially in rural areas, we must improve our supply, distribution and management of water and sanitation*”. Though the South African government must be applauded for its notable efforts in improving access to water supply for the people, the achievement thus far has been modest. Water supply has been so poor that desperate communities such as the Makhanda in Eastern Cape, Hammanskraal and Helen Joseph Hospital in Gauteng, among other places have been forced to seek assistance from non-for-profit organisations such as the Gift of the Givers.
639. Although, access to potable water for households is crucial, the importance of water supply to farmlands is also central to crop production and food security in the country. Given the strategic importance of food exports from

South Africa to the neighbouring countries, attention is required to devise a sustainable approach to water generation, distribution and management. The conservative approach adopted in Western Cape may provide a temporary reprieve, but a more strategic approach, such as seawater distillation systems should be considered as a matter of utmost urgency.

640. Sanitation plays a crucial role in reducing exposure, prevalence and spread of communicable diseases. Providing adequate and decent sanitation would go a long way to reduce healthcare expenditure on cure and rehabilitation, as well as improve work hours and productivity. Access to proper sanitation remains a big challenge in South Africa, especially in public schools. For instance, the Department of Basic Education banned the use of pit toilets in schools in 2013. However, more than 3, 000 public basic schools still use pit toilets as at 2020 (National Education Infrastructure Management System – NEIMS, 2020). The Report further suggests that Eastern Cape tops the list with 1243 schools relying only on pit toilets, closely followed by KwaZulu-Natal with 1099, and Limpopo with 472. Efforts made in eliminating pit toilets in Gauteng, Northern Cape and Western Cape should be applauded. This said, it is important to eliminate pit toilets in schools to eradicate avoidable sanitation-related children deaths in schools across the country.
641. At household level, access to improved sanitation was notable between 2002 and 2019 nationwide, according to the General Household Survey (2019). In specific, access to decent sanitation improved from 67.1% of the population in 2002 to 82.1% in 2019, which is highly commendable. The Provincial improvement in household sanitation is depicted in Figure 5.4 below:



**Figure 5.4** Percentage of Households that have access to improved sanitation per Province, 2002 to 2019



642. While Western Cape, Gauteng, Eastern Cape and KwaZulu-Natal have made considerable improvement, the same cannot be said about Limpopo Province. The National Household Survey (2019, p. 42) suggests that less than 27% of people in the Limpopo Province have access to “any type of flush toilet”, meaning that more than 70% of people in Limpopo use pit latrines of which almost 38% do not have ventilation pipes. The contagion of health hazards posed by this poor sanitation could increase frequency of visits to healthcare facilities and may ultimately overwhelm the healthcare facilities in the provinces.

643. *Mitigation of inequality:* Findings from the consultations show that the historically favoured groups are now subjected to the same treatment that has always been experienced by the disadvantaged people. The Bill of Rights (Chapter 2 of the Constitution) and the various policies and Acts of Parliament such as the Employment Equity Acts, the Broad Based Black Economic Empowerment, Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 and other related legislations are against all forms of racial discrimination.

644. However, some racial groups continue to feel highly marginalised and sometimes “unwanted” in the country. A number of civil society organisations buttressed this point during regional visits and various consultations. Another factor that is found to seriously hinder socio-economic emancipation is weak appetite for progressive capacity building. A targeted approach towards capacity building, reprioritisation of skills through redirection of academic curriculums, and funding strategies were proposed during the consultative forums as possible solutions to structural unemployment.
645. The lack of economic opportunities also cascades down to limited access to basic living conditions. In most rural and some excluded communities in urban areas, a large number of people do not have access to proper sanitation, water, electricity, healthcare, and drainage. Even housing is a big challenge for a considerable percentage of families. The General Household Survey (2019) suggests that slightly more than 81% of South Africans have access to decent (formal) dwelling, while less than 13% live in temporary dwellings and 5.1% live in traditional houses. Specifically, more than 95% of people in Limpopo Province lived in formal dwellings, followed by Mpumalanga (about 90 percent).
646. However, almost 19 percent of people in both Gauteng and Western Cape live in informal dwellings (called shacks). This is a particularly disturbing statistic given that Gauteng and Western Cape account for almost 38 percent of the country’s population. As such, 38 percent of total population without a formal dwelling (19 percent in Gauteng and 19 percent in Western Cape) suggest that 22.4 million (out of 59.3 million) people lived in informal dwellings. A substantial number of the informal dwellings are derelict constructions characterised by overcrowded dwellers with limited access to basic services. This possibly explains why Gauteng alone has as many as 625 documented informal settlements, while Western Cape records as many as 189 informal dwellings. There is thus a need to unlock the blockages that hinder service delivery in an equitable, efficient and progressive basis.
647. Another important finding was the allocation of industrial clusters in areas that are not easily accessible to the poor or unskilled workers. Although, these industrial zones/clusters provide synergistic advantages to the firms that locate there, they create a series of problems, both socio-economic and environmental, to the host communities. In most cases, industries are clustered in specific urban locations, which cause congestion and worsen the urban sprawl. Urban sprawls normally trigger massive influxes of new residents who contribute to increasing spatial footprint of planned settlement.





To address this, policies should be promulgated to attract investments into the rural areas. By attracting investments into rural areas, the role of traditional leaders in preserving culture and traditions would be strengthened, which may help to restore traditional dwellings, cultural identities, ethics, and norms.

648. More importantly, attracting investments into rural areas would have the following benefits:
649. Reduce rural urban migration: people will have reasons to remain in their original dwellings, as their means of livelihood would be domiciled in their traditional dwellings if industries were located in those areas.
650. Highly standardised facilities, such as healthcare, sanitation and schools would be provided in the rural areas to cater for the need of the rural areas. This will reduce urban congestion and create an impetus for evenly distributed resources and facilities across the country. More importantly, this will help remove the stigma of “ruralness” from communities that had been considered underdeveloped.
651. This approach would reduce pressure on the transportation system if suitable housing facilities are provided close to the industries.

### **iii. Recommendations**

652. The African Peer Review (APR) Panel recommends that efforts should be made to:
- Invest urgently in seawater distillation systems in the form of reverse osmosis and distillation to avert possible draught;
  - Attract investment by reducing the cost of doing business in areas like power, water and road network and to widen the corporate tax base [*national planning commission, NEDLAC, department of trade and industry, department of labour, ESKOM, department of water resources*];
  - Tailor university and other tertiary education and training to national needs. Aggressive implementation of related policies to facilitate knowledge production, skills development and capacity building to augment efficiency of service delivery at Municipal and local authorities [*the presidency, department of higher education and training*];
  - Reduce the knowledge gap in the economy through the establishment of specialised bodies, such as a training institute for civil servants, and a management development institute, etc. [*National government, department of public service and administration, department of higher education and training, NEDLAC*];

- Aggressively promote skills production through relevant-on-the-job trainings and create incentives for doing so *[Municipal and Local authorities];*
- In-source specialised jobs, such as engineering, architectural, accounting, auditing, financial management and tax administration to improve internal capacity and to augment accountability at Provincial and Local authorities *[Provincial and Local authorities];*
- Revise the industrial cluster policy and embrace an equitable distribution of industries, especially to the rural areas *[National, provincial and local authorities];*
- Speedily develop rural areas to avoid aggressive rural-urban migration and to avoid possibility of ghost towns *[National, Provincial and Local authorities];*
- Develop a home-grown barometer to measure inequality by identifying sources of inequality in South Africa, their intensity and diagnose inequality through a modular approach *[National planning commission, the presidency];*
- Develop a quantitative tool to measure the efficiency of instruments of transformation, such as the BBBEE, employment equity, CGS, IFSNP, land restitution, etc. *[National planning commission, the presidency];*
- Reduce personal income tax to improve domestic savings and alleviate household poverty.



**OBJECTIVE FOUR****Progress towards gender equality, particularly equal access to education for girls at all levels as well as issues of disability<sup>101</sup>****i. Evolution of the Issue****Mainstream Gender and Issues of Disability into all Socio-economic Development Programmes and Projects**

653. The issue of gender has been considered extensively under democracy and political governance in Chapter 2. This chapter discusses gender from the perspective of socio-economic development. The National Development Plan (NDP) states that South Africa needs to build a more equitable society where opportunity is not defined by race, gender, class or religion. The South African Constitution, chapter 2 protects the rights of all South Africans irrespective of race, gender, religion etc. Section 9 states in clause (3) *The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth* (Constitution, Act 108:7). South Africa continues to experience challenges with the management of gender and disability. The culture of male dominance and misogyny, and the lack of awareness about the various forms of disability have resulted in communities where women and the disabled are marginalised.

*Gender Inequality*

654. One of the major challenges the world continues to grapple with is gender inequality and the lack of gender economic empowerment. Many countries have implemented initiatives to try and achieve gender parity and empower both women and girls.
655. The South African government has, over the years, taken steps to redress gender inequality by adopting a series of national and international protocols and legislations. The 1954 Women's Charter, adopted by the Federation of South African Women, was one of the earliest initiatives to promote gender and racial equality in South Africa. This was followed by the democratic constitution adopted in 1996, the Promotion of Equality and Prevention of Unfair Discrimination Act, The National Development Plan (NDP) 2030, which is closely aligned with the UN 2030 Agenda for Sustainable Development,

101 For the South Africa Second Generation Review, issues of disability have been added to Objective Four.

and The Public Sector 8-Principle Plan for Heads of Department on Women’s Empowerment and Gender Equality, among others.

656. The African Union Agenda 2063, established in 2013, envisages that goals and developments should be achieved in the next 50 years, and includes aspirations for, among others, women to reach improved levels of equality and empowerment in all available spheres. The South African government has integrated both the SDGs and the African Agenda 2063 into its National Development Plan.
657. The Amended SADC Protocol on Gender and Development deals with the empowerment of women, the role of women in the economy through equitable access to resources, and access to and control of resources.
658. The African Union Strategy for Gender Equality & Women’s Empowerment 2018-2028 sets forth a plan to realise Aspiration 6 of the African Union’s Agenda 2063: *“An Africa where development is people driven, relying upon the potential offered by people, especially its women and youth and caring for children,”* and the principles enshrined in Article 4 (l) of the AU’s Constitutive Act, *“the promotion of gender equality as well as other key continental and global commitments”*.
659. Following the adoption of these protocols and national laws to promote gender equality, various actions have been taken by the SA government to make gender equality a reality. For example, targets were set at 30% representation of women in senior management service positions, in line with the then SADC target of 30% women in political and decision-making positions. Furthermore, the 2013 Women’s Empowerment and Gender Equality Bill (WEGE) adopted by the National Assembly in 2014 sets out ambitious targets for women in society. WEGE places gender equality and transformation at the centre of transformation. It advocates for a paradigm shift in terms of resource allocation and the treatment of people, especially women. This is a shift from the business-as-usual principle.
660. Despite these legislative strides, women, and African women in particular, still do not enjoy equal rights in relation to their male counterparts. The ownership of property, availability of jobs, education, career choices, and economic empowerment opportunities are still not equally accessible to women. The poverty gap (the distance away from the poverty line) is larger for female-headed households compared to households headed by males. Differences between women and men, as well as between boy and girl children, mean that more complex and nuanced policy interventions are necessary to address



these varying needs, depending on other variables such as financial and human resource capacity.

661. The 2007 CRR observed that despite the existence of laws to protect gender equity in South Africa, women are still very much underrepresented at that local level and in the private sector. The CSAR identified deeply-rooted cultural practices that foster discrimination against women as some of the major causes of gender inequality in South Africa.
662. The South African government has committed, through its national development plan (NDP), to build a more equitable society where opportunity is not predicated on race, gender, class or religion. However, a gender analysis of the NDP by the national planning commission found that some issues are not sufficiently covered in the NDP.<sup>102</sup> The Beijing+25 progress report on South Africa acknowledges that the country's progress towards women's empowerment has been limited on the economic side. Access to education by young girls and women has improved substantially over time. According to another report by Statistics South Africa,<sup>103</sup> there is now gender parity (GPR) amongst those who are functionally literate, from 0.95 in 2002, to 0.99 (zero, no gender equality to one full gender equality) in 2019, indicating that more women are now literate. According to unemployment figures from the QLFS released by Stats SA, in the first quarter of 2021 unemployment rates for men and women stood at 31.4% and 34.0% respectively. Of these, black African women were the most vulnerable with an unemployment rate of 38.3%. Disparities by gender and occupation show that women accounted for 31.2% of those occupying managerial occupations. In addition, more women (56.2%) than men tended to be discouraged from participating in the labour market. In the first and second quarters of 2021, more than four in every ten young women were not in employment, education or training.

### *People with Disabilities*

663. According to Statistics South Africa,<sup>104</sup> the disability prevalence rate is 7.5%. Disability is more prevalent among women compared to men (8.3% and 6.5% respectively). Persons with disabilities increase with age. More than half (53.2%) of persons aged 85 and above reported having a disability.

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102 [https://www.nationalplanningcommission.org.za/assets/Documents/Technical%20Paper%20on%20Women%20and%20Gender%20for%20the%20NDP%20Review\\_03%20March%202021.pdf](https://www.nationalplanningcommission.org.za/assets/Documents/Technical%20Paper%20on%20Women%20and%20Gender%20for%20the%20NDP%20Review_03%20March%202021.pdf)

103 <http://www.statssa.gov.za/?p=14559>.

104 <http://www.statssa.gov.za/?p=3180>

664. The prevalence of a specific type of disability shows that 11% of persons aged five years and older had seeing difficulties, 4.2% had cognitive difficulties (remembering/concentrating), 3.6% had hearing difficulties, and about 2% had communication, self-care and walking difficulties. Persons with severe disabilities continue to experience difficulty in accessing education and employment.
665. According to the Human Rights Commission (HRC),<sup>105</sup> in South Africa, people with disabilities face multiple forms of discrimination in various social spheres, including access to healthcare services, employment and education. The HRC further notes that progress made by the South African government on matters pertaining to disability and the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) has been slow. There are calls for the government to implement the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA).
666. The South African government, through its various polices including Employment Equity Act, BBBEE, PEPUDA among others, continues to commit to ensuring that the rights of people with disability are protected. However, the CRR pointed out that progress in this area has been slow and there is a need to deal with various challenges impacting the implementation of legislations aimed at protecting people with disability. Currently, between 500 000 and 600 000 children with disabilities are out of school and this is worrying as their rights to education are being violated.

## ii. Findings of the CRM

### *Gender Inequality*

667. The CRM has observed that South Africa has taken appreciable steps towards the implementation of the recommendations of the 2007 CRR. There has been increased recognition by the Government and civil society of the need to implement policies that meet the services needs of women and redress social injustices towards them. The Commission for Gender Equality, a Chapter 9 institution, recently developed a Gender Responsive Budgeting Framework<sup>106</sup> to ensure that gender issues are mainstreamed into all levels of planning, implementing, monitoring and evaluation of government programmes in all departments.

105 <https://www.sahrc.org.za/home/21/files/RESEARCH%20BRIEF%20ON%20DISABILITY%20AND%20EQUALITY%20IN%20SOUTH%20AFRICA%202013%20to%202017.pdf>

106 <https://cge.org.za/wp-content/uploads/2021/07/CGE-Gender-Responsive-Budgeting-Framework.pdf>



668. Various legal frameworks have been put in place to promote and enforce gender equality, such as the Constitution, Promotion of Equality and Unfair Discrimination Act No. 4 of 2000, Employment Equity Act No 55 of 1998, Labour Relations Act No. 66 of 1995, Domestic Violence Act No. 116 of 1998, the Maintenance Act No. 99 of 1998, Criminal Law (Sexual Offences and Related Matters) Amendment Act No 32 of 2007, Protection from Harassment Act No 17 of 2011, Children’s Act No 38 of 2005, Older Persons Act 13 of 2006 and the Prevention and Combating of Trafficking in Persons Act No 7 of 2013.
669. The national women’s machinery (Department of Women, Youths and People With Disabilities) is a national government ministry with a mandate to accelerate socio-economic transformation and the implementation of the empowerment and participation of women, youth and persons with disabilities through oversight, monitoring, evaluation and influencing policy. Through the implementation of government policies, women participation has increased in all levels of the public and private sectors. For example, women MPs increased from 33% in 2004 to 46% in 2019. However, women participation in top management in the private sector remained at only 24% in 2020.
670. The CRM noted that gender inequality and discrimination against women is on the rise, and this was also the consensus among stakeholders in the provinces. In the North West for example, community members told the CRM that many women remain in abusive relationships because of poverty. This reason amplifies the complexity of gender inequality and its link to the feminisation of poverty in South Africa. The CRM also found that most initiatives to deal with gender inequality at national level are not implemented in provinces and municipalities.

### *People with Disabilities*

671. The CRM further noted in the provinces that the targets for empowering people with disabilities according to the NDP are not being met. It was also a consensus that issues of disability are not being mainstreamed into government programmes and projects in the provinces and municipalities. For example, there was no sign language interpreter in any of the provincial meetings and none of the documents circulated were in Braille so that blind people could read.

### iii. Recommendations

672. Based on the analysis and findings, the Panel recommends that the Government should:

- Develop and implement of a Gender Culture Transformation Framework in government and private sector, with concerted efforts and dedication to engender gender neutral leadership;
- Increase the cost/ consequences of gender discrimination to send a strong message to society;
- Implement policies on gender mainstreaming and gender responsive budgeting, already developed, in government institutions;
- Increase the capability and capacity of law enforcement officer on gender issues;
- Implement policies aimed at protecting people with disability in line with the NDP;
- Include conditional grants or budget allocations to provinces and municipalities for projects and programmes that mainstream issues of disability;
- Improve educational infrastructure to accommodate children with disability including ECD centres for the disabled.







# CHAPTER SIX

## 6. STATE RESILIENCE TO SHOCKS AND DISASTERS

### 6.1 Overview: Resilience and risk in a fast-changing world and in the South African context

673. Rising disaster and climate risks are hallmarks of change underpinning modernity and postmodern society today. The 2021 global risk report lists extreme weather events, failure of climate action, anthropogenic environmental damage, digital divides, cyber-security risk, infectious diseases, and weapons of mass destruction, as the most dominant high impact risks the world will witness over the next decade.<sup>107</sup> These threaten not only the ability of a State to function; they also threaten its very existence. Yet, responses to the risks by States are still influenced by old models that are no longer consistent with modern day realities of crises and risks characterising.<sup>108</sup>

107 World Economic Forum (2021): Global Risk Report

108 Beck (1992). Risk Society: Towards a modernity.



674. Today's societies are witnessing what Beck (1992) calls the 'risk society/ industrial society or reflexive modernity'. The risk society or industrial society is concerned with generating wealth. But in the process of generating wealth, it creates risk instead. Consequently, the risk subconsciously overtakes wealth and threatens the modernity itself<sup>109</sup>.
675. The modernity process has both positive and negative consequences. Advancements in science and technology have led to improved standards of living, as fewer people are now living in poverty than they were several decades ago. The contemporary world has also experienced sustained improved life expectancy and economic development. However, as people develop and technology advances, societies are becoming interdependent and interconnected, which has created new challenges, of which the maze of global supply chain management has been conspicuous.
676. With interconnectedness of development processes and societies, risk has become systemic and multidimensional. Systemic risks transcend borders, and their contagion effects have had a far-reaching impact across sectors and communities. Even the notion that one State must be capable of responding to disaster risks and uncertainties has been challenged by recent disasters, including the COVID-19 pandemic that has affected the entire world.
677. Recently there has been an increase in the frequency and intensity of hazards, particularly weather-related hazards. Infectious diseases and pests have also increased exponentially. The COVID-19 pandemic has highlighted the fact that States must put in place robust national, supranational and multi-dimensional mechanisms to manage current and future risks and disasters. Existing policies and institutional arrangements are just starting points to build States' resilience to shocks and disasters.
678. South Africa's Medium Term Strategic Framework (MTSF) 2019-2024 is an important guiding document whose implementation has to be expedited. The Framework aims to achieve a more capable State, driving a strong and inclusive economy while building and strengthening the people of South Africa. The Framework outlines important priorities: (i) a capable, ethical and developmental State, (ii) economic transformation and job creation, (iii) education, skills and health, (iv) consolidation of the social wage through reliable and quality basic services, (v) spatial integration, human settlements and local government, (vi) social cohesion and safe communities, and (vii) a better Africa and world. Achieving a capable State implies that South Africa

<sup>109</sup> Beck (1992). Risk Society: Towards a modernity



must invest in resilience to growing risks that have potential to undermine not only the objective of achieving a capable state but also the viability of the state itself. In a globalising world, building resilience within the broader context of “better Africa and the world” is key to achieving a capable State.

679. Over the years, South Africa has shown a strong and unprecedented commitment to addressing issues pertaining to disaster management at global, continental and regional levels. The adoption of the Kyoto Protocol (1997) in 2002, the Montreal Protocol on Substances that Deplete the Ozone Layer of 16 September (1987) in September 1997, the Hyogo Framework for Action: Building Resilience of Nations and Communities 2005-2015, the Sendai Framework for Disaster Risk Reduction (SFDRR) 2015-2030, the United Nations Framework Convention on Climate Change and Paris Agreement, Sustainable Development Goals and Agenda 2063: The Africa We Want, are some of the country’s demonstration of commitments to addressing challenges facing Africa and the world.
680. Though its efforts to address global and regional issues are commendable, the country still needs to strengthen its capabilities to the rising disaster risks. South Africa is vulnerable to a variety of hazards, most notably droughts, wildfires, storms and floods, which are the most widespread and impactful and have already caused significant social and economic losses. These hazards are expected to increase in frequency and intensity in the future as a result of climate change. In the month of January 2021 alone, Tropical Storm Eloise displaced 3 200 people in the KwaZulu-Natal, Mpumalanga and Limpopo provinces. In the same year, flooding was reported in May and November in several regions in the country. South Africa also experienced widespread wildfires that destroyed more than two million hectares in the Free State, North West, Northern Cape and Eastern Cape in 2021. Cape Town also recorded the highest number of informal settlement fires in the Western Cape Province in 2021, with a total of 1 978 fires reported, in addition to the fire that gutted the Parliament buildings in Cape Town in January 2022. These hazards are becoming a regular occurrence, and the frequency is posing serious challenges for the country.
681. Certain hazards have a domino and/or cascading effect, compounding loss and damage. In South Africa, this is particularly important when it comes to drought conditions and wildfire. The 2017 Knysna wildfire disaster exposed the country’s vulnerability to fires associated with drought, heat waves, low atmospheric humidity and strong winds. Rising temperatures have extended the fire season and increased the number of high and extreme fire danger

days. Extreme rainfall and flooding which are on the rise, have potential domino effects on risk of sinkholes, landslides and acid mine drainage, the latter being a growing concern in the country.

682. Drought was the hazard most classified and declared as a disaster by The Department of Cooperative Governance and Traditional Affairs (COGTA) between 2016/17 and 2020/21 in particular at the provincial levels in Eastern, Northern and Western Cape. The 2015/16 drought is estimated to have reduced GDP by nearly 1.5% and employment by about 1.3%. Droughts affect agricultural production and can undermine the food security of the country and of the regions it exports to. Droughts also compromise water supplies, which may negatively affect agricultural communities and employment.
683. Nearly 70% of South Africa's surface area is subject to a significant level of wildfire risk. Grasslands and savannahs, which cover almost 40% of the eastern half of the country, were at highest risk. High fuel loads, due to an increase in alien invasive species have exacerbated the intensity and heat of fires, making it more difficult to control. More than two million hectares of grazing land were burnt in fires in South Africa between 2020 and 2021. There is also an increasing risk of fires in informal settlements, which are expected to double in the next decade. The poor and vulnerable in society tend to live in informal settlements and are at high risk of fire outbreak that may not only exacerbate their economic misfortune but may also result in loss of life.
684. Tropical Cyclones Dineo (2017), Desmond (2019), Idai (2019), Kenneth (2019) and Eloise (2021) are some of the major storms that have caused severe damage. Storms and extreme rainfall have affected roads and transport systems, the availability of electricity, sewage and storm systems, and have contaminated water resources (including groundwater). Flooding can also be compounded by poor drainage infrastructure and poor drainage maintenance.
685. Biological hazards have also become prevalent in the Country. South Africa has had a number of disease outbreaks such as cholera in 2000, 2001, 2003, 2004, and 2008. Other disease outbreaks have included Listeriosis, Diphtheria, and Measles which were all contained. For the agriculture sector, disease outbreaks also pose a risk to production. Pests such as Fall Armyworm are a threat to maize production, and Foot and Mouth disease, a risk for animal husbandry.
686. Geological hazards pose greater danger to certain areas in South Africa. Some areas are under-laid by dolomite rocks that are susceptible to sinkholes, which occur when parts of the ground surface suddenly collapse, and can cause



fatalities, injury or structural damage. Mpumalanga, Limpopo, North West and Northern Cape Provinces are more susceptible to sinkholes. The main triggering activities for sinkholes are (i) the ingress of water from leaking water-bearing services, (ii) poorly managed surface water drainage, and (iii) groundwater level drawdown. There have been 39 fatalities as a result of sinkholes over the last 50 years. While this is not a high probability hazard, as South Africa is a water-scarce country, increased demand for water can lead to increased groundwater abstraction that could trigger this hazard. South Africa's topography is also susceptible to landslides due to the steep terrain and seismicity. Landslide occurrences have been under-reported and have not been fully identified and inventoried. Landslide occurrences are often associated with severe, high intensity rainfall events that result in damage to infrastructure.

687. South Africa as an industrial nation is also susceptible to industrial hazards. Although the country has not witnessed major industrial disasters in recent years, it has an opportunity to learn from recent events such as in Lebanon, oil spills in Mauritius Lagoon and the Gulf of Mexico. As witnessed in Lebanon, that single disaster is threatening the very existence of the State as it struggles to get loans to finance its reconstructions.
688. To address these challenges, South Africa has made commendable efforts, particularly in the policy fronts. The National Disaster Management Centre (NDMC) is at forefront of policy development and coordination and performs oversight roles over policy implementation. However, more efforts are required to translate existing policy instruments into action, which is required to build State resilience to shocks and disasters.
689. The CRM has identified and prioritised the following issues under the four objectives in this chapter as listed below:
690. **The extent of South Africa's risk knowledge:** South Africa has medium to high levels of disaster risk, of which droughts, wildfires, storms, and floods are the most predominant, with the potential to cause significant social and economic losses and heighten the vulnerability of many communities. South Africa boasts several institutions such as the South African Weather Service (SAWS), the Council for Scientific and Industrial Research (CSIR), the South African National Space Agency (SANSA), the South African Environmental Observation Network (SAEON), the South African Risk and Vulnerability Atlas (SARVA), the Applied Centre for Climate and Earth Systems Science (ACCESS), the South African Spatial Data Infrastructure (SASDI), and the South African

Earth Observation System of Systems (SAEOSS), which contribute to the understanding of hazard, vulnerability, and exposure in the country. Linked to these instruments are the academic institutions that contribute to bridging the gap within and between the communities of practice in disaster management. While South Africa has strong research capacity that generates technical and scientific data on the most recurrent hazards, the CRM found that the information is often fragmented and outdated. Many existing NDMC risk information management platforms are not operational. Remarkably, there is no central repository to store information on natural hazard events and risks.

691. **The State of South Africa’s risk governance and resilience to shocks and disasters:** South Africa’s frequent and increasing levels of disaster risk due to the country’s exposure to several hazards create conditions for vulnerability in the poor settlements in urban and rural areas, with potential cross-boundary risks and humanitarian assistance obligations in times of emergency. South Africa’s Disaster Management Act No. 57 of 2002 (DMA) is a unique policy and legislation relevant to disaster risk reduction (DRR) in line with its disaster risk profile. The subsequent establishment and integration of the National Disaster Management Centre (NDMC) into all spheres of government through a decentralised approach, even before the Hyogo Framework for Action (HFA) as the global blueprint for disaster risk reduction efforts between 2005 and 2015, is commendable. South Africa’s commitment and participation in regional initiatives, driven by the acknowledgement that disastrous events are not always constrained by national boundaries and that measures taken in South Africa, may increase vulnerability or reduce risk in neighbouring countries, is also laudable. However, in the implementation of the Act, tracking and monitoring disaster management performance shows little efforts by provincial governments, except the Western Cape Province, to develop integrated development plans, implement them and carry out post-event assessments. The unequal access to and control over resources such as water and energy are some of the major challenges that South Africa is currently facing. The review of National Disaster Management Act, 2002 with emphasis on the status and location of the National Disaster Management Centre is recommended.
692. **South Africa’s investment in resilience to shocks and disasters:** South Africa is party to global and continental disaster risk reduction frameworks, especially the Sendai Framework for Disaster Risk Reduction, 2015-2030 (SFDRR) and the Paris Agreement, which urge countries to invest in financial, infrastructure, and capacity development to build the resilience of communities and nations to disasters. Schedule 4A of the Constitution of the Republic of



South Africa lists disaster management as a functional area of concurrent national and provincial legislative competence with a requirement for local municipalities to establish capacity for the development and coordination of a disaster management plan and to implement a disaster management function for the municipality. However, lack of financial resources for development and the poor socio-economic conditions affecting disaster-prone communities often leads to repeat disasters affecting the same communities (for instance, repeat fires or floods affecting communities living in informal settlements). An analysis of the current funding structure highlights the lack of funding for disaster risk reduction, coupled with the late, untimely, and sometimes unavailability of government support. In addition, the country's overall funding approach has been more reactive than proactive. Importantly, disaster risk reduction is not always accorded the priority it deserves, especially at the provincial level, as a means to invest in protecting the gains of development against damage. In addition, despite their availability, South Africa has not been able to integrate innovative and sustainable disaster risk financing mechanisms such as the Forecast-based Financing (FbF) and the African Risk Capacity in its disaster management.

693. **South Africa's capacity for preparedness, response and building back better in recovery, rehabilitation and reconstruction:** South Africa has advanced policies and guidelines on emergency preparedness at national and local levels. Though such plans exist, disaster responses in the country are characterised by delays. There are some structural challenges that put preferences on response rather than preparedness. The CRM found that, in some provinces, annual disaster management funds that should have gone to preparedness and building capacities for responses were diverted to other activities, as some officials are quoted as saying: "there was no declaration of state of disaster". This could be a gross misunderstanding of disaster risk management function. Such habitual preference of waiting for disaster to occur has been described in some provinces as dysfunctional in a sense that states seem to be comfortable paying for responders to go to offices every day waiting for a disaster for example, fire to occur to fight the fire, rather than engaging in daily tasks that address fire causation, exposure and vulnerability. Further constraining preparedness, South Africa's early warning system is mainly managed at functional entities, and they are characterised by the lack of interoperable situation rooms between national, provincial, and municipal levels. This often hampers speedy early actions and preparedness. Even where warning is issued in a timely manner, there are still barriers that affect utilisation of the warning by communities for effective response. While

disaster response policies in South Africa are well articulated, the response to disasters is mainly characterised by start-stop-start-stop practices. To enhance State preparedness, response and recovery efforts, South Africa needs to consider reviewing institutional setting for the Disaster Management Centre/ Agency, further review the National Disaster Management Act of 2002 to give stronger legislative powers to the Agency, establish a multi-hazard early warning systems programme with interconnected situation rooms across the country, and provide adequate budgetary allocations to disaster risk reduction and resilience building.

## 6.2 Standards and Codes

### i. Evolution of the Issue

694. State Resilience to Shocks and Disasters (SRSD) was included as the fifth thematic area in the APRM Base Questionnaire in 2020 and approved by the APR Forum of Heads of State and Government at their 30th virtual Meeting on 25 March 2021. South Africa’s 2007 CRR therefore did not cover the standards and codes on State Resilience to Shocks and Disasters.

695. Over the years, South Africa has shown a strong and steady commitment to addressing issues pertaining to disaster management at global, continental and regional levels. The adoption of the Kyoto Protocol (1997) in 2002, the Montreal Protocol on Substances that Deplete the Ozone Layer of 16 September (1987) in September 1997, the signing of the United Nations Framework Convention on Climate Change (April 2016), are the country’s demonstration of commitment.

696. According to the 2021 Country Self-Assessment, South Africa has ratified the African and international standards and codes presented in Table 6.1.

**Table 6.1** Ratification of Standards and Codes related to State Resilience

Standards and Codes	Adopted/ Signed (Include Date)	Ratified	Enacted	Date last reported	Reservations/ Notes
The UN framework Convention on Climate Change	April 2016			September 2021	Next Report due in 2022
Kyoto Protocol (1997)	July 2002			August 2018	





Standards and Codes	Adopted/ Signed (Include Date)	Ratified	Enacted	Date last reported	Reservations/ Notes
The Montreal Protocol on Substances that Deplete the Ozone Layer of 16 September (1987)	September 1997				Next Report due in 2022
The African Charter on Rights and Welfare of the Child	1997			Report in response to list of issues presented in 2018	
African Charter on Human and Peoples' Rights 1991	July 1996			2015	
The 2004 African Union Regional Strategy for Disaster Risk Reduction	2004				
The African Union Convention on Protection of Returnees, IDPs and Refugees (2009)	-				
The Hyogo Framework for Action on Disaster Risk Reduction (HFA 2005).	2005				
Sendai Framework for Disaster Risk Reduction 2015-2030	2015				
Programme of Action for the implementation of the Sendai Framework 2015-2030	2015				

**ii. Findings of the CRM**

- 697. Disaster management is critical to the development of the State as highlighted in South Africa’s Medium Term Strategic Framework (MTSF) 2019-2024. In the implementation of the country’s disaster management agenda, consistent efforts have been made by the Government to ensure that relevant laws are passed to translate international commitments into national laws. South Africa took the lead with the adoption and implementation of the Disaster Management Act even before the Hyogo Framework for Action (HFA) to integrate resilience building into national policy. Other efforts include the adoption of the Kyoto Protocol (1997) in 2002, the Montreal Protocol on Substances that Deplete the Ozone Layer of 16 September (1987) in September 1997, the United Nations’ Framework Convention on Climate Change and recently, the Paris Agreement (2015).
- 698. South Africa participated and led the development of the 2004 African Union Regional Strategy for Disaster Risk Reduction as well as the Programme of Action (PoA) for the implementation of the Sendai Framework 2015-2030.
- 699. These commitments aim to achieve the substantial reduction of disaster risk and losses in lives, livelihoods and health and in the economic, physical, social, cultural and environmental assets of persons, businesses, communities and countries.
- 700. Despite this commitment, progress has been slow in South Africa’s implementation of climate change related principles, especially given that the country features among the world’s largest emitter of greenhouse gases mainly due its State-owned utility, Eskom Holding, which relies on coal for 80% of its power output. As will be seen later in this Report, the country has also made minimum efforts to support funding to the victims of recurrent disasters through a guided disaster recovery strategy. To close the gap, the Government is urged to ratify the African Union Convention on Protection of Returnees, IDPs and Refugees (2009).



## 6.3 Assessment of Performance on African Peer Review Mechanism (APRM) Objectives

### OBJECTIVE ONE

### Enhancing disaster risk knowledge for resilience to shocks and disasters

#### i. Evolution of the Issue

##### The Extent of South Africa's risk knowledge

701. The Sendai Framework for Disaster Risk Reduction (SFDRR), which strives to ensure continuity with the achievements recorded under the United Nations (UN) International Decade for Natural Disaster Reduction (IDNDR) and the Hyogo Framework for Action (HFA), introduced a few innovations, including the guiding principles as well as four priorities for action.
702. Understanding disaster risk features prominently as the first priority and requires that major hazards and threats be identified, characterised and analysed according to their geographic reach, magnitude, intensity, frequency, probability, including possible cascading events, to understand potential future threats. Risk assessments and hazard maps (dynamic and multi-hazard, where possible) are examples of tools that are used to identify people, communities, assets that could be affected by hazards, and can also give a quantification of exposed services such as hospitals and critical infrastructure like electricity, water, etc.
703. Comprehensive information management on all the dimensions of disaster risk, including hazards, exposure, vulnerability and coping capacity, and capturing relevant data and indicators are important components in understanding risk. Information management systems, databases and platforms capture, store and analyse information to inform decision makers in planning, preparedness and response. For example, systematically accounting for disaster losses, numbers of affected people, internally displaced people including their long-term implications, is useful in improving long term resilience. Additionally, investments in research, availability and accessibility of data, and the transformation of data and scientific information into usable information for decision-making are important to leverage preparedness, response, recovery, rehabilitation and mitigation.
704. The SFDRR further emphasises the understanding of vulnerability and the strengthening of capacities of vulnerable people and communities to withstand shocks and hazards. The South African Disaster Risk Management Plan for the Agriculture sector (2012) defines vulnerability as “the degree to which a

population or an individual is unable to anticipate, cope with, resist and recover from the impacts of disasters". Vulnerability reduction is defined as "steps taken to reduce people's exposure to hazards and increase their capacity to survive and recover from disasters." From the ongoing, vulnerability factors such as age, gender, disability, income level and geographic location should be taken into consideration in understanding disaster risk and resilience.

705. Resilience therefore places a stronger focus on entire systems and their combined capacity to function and change in the face of hazards, stresses or disturbances. Improving resilience means strengthening the capacity of a system or community to tolerate, absorb or withstand shocks without collapsing into a qualitatively different state, or to withstand shock and to rebuild when necessary. These systems can be production systems, health systems, social protection systems, supply chains or human settlements, etc. that should ideally be able to withstand shocks. The Sendai Framework also emphasises integrating resilience into planning, meaning that vulnerabilities should be taken into consideration *ex ante* to reduce exposure of a community or asset to a given threat. Integrating disaster risk management into planning can also help to mitigate risks through the use of spatial and land use planning, as well as enforcement of codes and regulations. It is important to note that ecosystems also play important roles in determining State resilience.
706. Although South Africa has made progress in disaster risk management, the 2007 Country Review Report and the subsequent Progress Reports did not address the issue of risk.

## ii. Findings of the CRM

### The Extent of South Africa's risk knowledge

#### *Generation of data on natural hazards*

707. Over the past decade, there has been an increase in the number of initiatives, organisations, networks and research institutions that are contributing to the understanding of disaster risk, vulnerability and exposure in South Africa. Geospatial data, maps and atlases have presented visualisations of climate risks and natural hazards. These are important resources for project planning for adequate preparedness and response to projected climate change and natural hazard risks. Available climate and disaster risk assessments by provincial and municipal governments have, to a certain extent, identified risks and vulnerabilities in the different sectors.

708. Scientific institutions in South Africa are at the forefront of generating geospatial data, maps and atlases that, for example, map flood prone areas for land use planning. Institutions such as the South African Environmental Observation Network (SAEON) collect, store, and assess long-term geospatial data on significant environmental changes, to enable formulation of adaptive and mitigating management policies and practices. The South African Risk and Vulnerability Atlas (SARVA) is an open science portal that provides access to data, dashboards, infographics and maps covering a wide range of natural and anthropogenic hazards (including climate change, biodiversity loss, and epidemics). Established in 2011, the Applied Centre for Climate and Earth Systems Science (ACCESS) is a consortium of agencies, research councils, research programmes, universities and research groups that deliver a range of outputs around seven themes: (a) weather and climate variability, (b) climate change impacts and adaptation, (c) water resource dynamics, (d) ecosystems and livelihoods, (e) land cover and change, (f) marine and coastal, and (g) biogeochemistry and earth systems modelling. The South African National Space Agency (SANSA), which was officially established in December 2010, has provided earth observation imagery for South Africa and SADC at large. The South African Spatial Data Infrastructure (SASDI), established in 2003, facilitates the capture, management, and maintenance of spatial information to support spatial planning. The South African Earth Observation System of Systems (SAEOSS) also gives access to earth observations datasets.
709. The CRM observed some of these maps on the Local Government Climate Change Support Programme website,<sup>110</sup> and can confirm that they show climate vulnerabilities in each province. The Council for Scientific and Industrial Research (CSIR) is another organisation whose work supports municipalities to identify the likely impacts of climate change on their cities, and help then to reduce their exposure to hazards. In addition, significant progress was made during 2016/2017 regarding the development of the first African-based Earth System Model, the Variable-resolution Earth System Model (VRESM) at CSIR, and its application to the study of climate change in Africa and the Southern Ocean. The Council for Geoscience (formerly Geological Survey of South Africa) has presented information on Geological hazards such as earthquakes, sinkholes and geochemical hazards.
710. The South African Weather Service (SAWS) is the main institution that monitors and disseminates meteorological hazard data in the country. It plays a central role in early warning for meteorological and natural hazards.

110 <https://letsrespondtoolkit.org/municipalities/eastern-cape/>

The institution also generates and disseminates information on other hazards such as the fire danger index and marine forecasting for waves, winds, tides etc. Its weather radar system and the Meteosat weather satellite inform the South African Flash Flood Guidance (SAFFG) system, which models the likely hydrological response of small river basins to rainfall. They also provide surface observations, satellite images, storm trackers and climate-related services, such as drought monitoring. SAWS is also a Regional Specialised Meteorological Centre (RSMC). It participates in the two World Meteorological Organisation (WMO) sanctioned programmes of Severe Weather Forecasting and the Southern Africa Regional Flash Flood Guiding System.

711. In addition to the scientific institutions above, there are a few academic institutions that play an important role in risk knowledge and understanding of vulnerabilities in the country. Perhaps the most well-known is the African Centre for Disaster Studies (ACDS) in North-West University, which produces research on disaster risk reduction in Southern Africa and offers training at the masters and PhD levels in the area of disaster risk reduction. Also, the North-West University signed a five-year Memorandum of Understanding with COGTA for the publication of the *Jàmbá* where twenty-six articles were published between 1 April 2020 and 31 March 2021 on risk and vulnerability. There is a similar undertaking between the University of Pretoria and the South African Weather Service for collaboration in Atmospheric Sciences through exchange of scientists, and of meteorological, scientific, and technical information. The University of Cape Town's Climate System Analysis Group (CSAG) is another research Centre that produces research to support responses to climate variability and change. They played a pivotal role in the development of the CORDEX System, which coordinates the science and application of regional climate downscaling<sup>111</sup> and provides accurate projections of localised extreme events with much greater detail. The Global Change Institute at the University of Witwatersrand is another research platform that fosters informed action for adaptation and innovation in the rapidly changing southern African region. In the same vein, the African Risk Capacity (ARC) conducts research and development to generate knowledge and scientific solutions that can assist farmers in their decision making for effective and efficient production.
712. There is systematic collection of data on mining accidents in the country, as mandated by the Mine Health and Safety Act of 1996 (Act 29 of 1996) to improve the safety of workers in South African mines. The Department of Mineral Resources and Energy (DMRE) collects mining statistics on a monthly

<sup>111</sup> <https://cordex.org/about/what-is-regional-downscaling/>



basis, including data on overall fatalities per month, mining accident fatalities by region, analysis of fatalities by commodity (for instance gold [AU], platinum [PT], coal [CL]), fatalities by classification, for example, fatality by fall of ground or machinery accidents, and mine injuries. These data are captured and stored in the South African Mines Reportable Accidents Statistical System or SAMRASS database.

713. The CRM found that the country has a wide range of academic institutions, government agencies and scientific organisations that generate high-quality scientific and spatial data to describe and characterise hazards in the country. The country has launched eight satellites, the 2nd highest number of satellites launched on the African continent after Egypt, via its National Space Agency, SANSA.
714. With regard to disasters such as the COVID-19 pandemic, strong scientific and technical capacity was observed through its available surveillance system, especially at the National Institute for Communicable Diseases (NICD) that collects epidemiological data, and disseminates the data to relevant stakeholders on a daily basis. The NICD plays a vital role in the early detection, containment and response to threats of infectious disease in South Africa, the Southern African Development Community (SADC) and Africa. Most notably, the Network for Genomics Surveillance in South Africa (NGS-SA) was instrumental in detecting and alerting the global community to the Omicron Variant on 24 November 2021. It continues to monitor and assess the evolution of SARS-CoV-2.
715. While South Africa has strong research capacity that generates technical and scientific data that characterises hazards (risk information and data exist), the CRM found that the information is often fragmented, outdated and and/or paper based. Many existing NDMC risk information management platforms are not operational or updated. Remarkably, there is no central repository to store information on natural hazard events and risk. The CRM noted that the NDMC developed the Disaster Atlas and the National Disaster Management Information System (NDMIS) as a repository for Disaster Management information. However, the NDMIS is not yet operational.
716. There is no national-level database that shows loss and damage for a given disaster in South Africa, so data is unavailable<sup>112</sup> for SDG Indicator 13.1.1 on the *“Number of deaths, missing persons and directly affected persons attributed*

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112 StatsSA. 2019. Sustainable Development Goals (SDGs) Country Report - 2019 South Africa. [http://www.statssa.gov.za/MDG/SDGs\\_Country\\_Report\\_2019\\_South\\_Africa.pdf](http://www.statssa.gov.za/MDG/SDGs_Country_Report_2019_South_Africa.pdf)

*to disasters per 100,000 population*". The availability of the information on loss and damage would prove useful as recovery/rehabilitation costs of previous events would give a measure or benchmark of impact and reflect the reactive costs of disasters. There are indicators from provincial disaster management centres annual reports that show the number of people affected by disaster and per province. However, these data is not collected, organised and tabulated at the national level. The NDMC Annual Report 2020/2021 indicated that there is a GIS service<sup>113</sup> that shows real time severe weather warnings issued by SAWS in South Africa. However, at the time of writing this report, this website was not operational. This was also the case for the Fire Danger Index web service, which is yet to go operational.

717. The Disaster Management Act of 2002 requires the NDMC to "act as a repository of, and conduit for, information concerning disasters and disaster management, and, must (a) collect information on all aspects of disasters and disaster management, (b) process and analyse such information, and (c) develop and maintain the electronic database envisaged, and take steps to disseminate such information, especially to communities that are vulnerable to disasters". While these data are available, for example, for COVID-19 related data, they do not exist for other declared disasters such as storms, droughts and floods.

#### *Understanding disaster risk in South Africa*

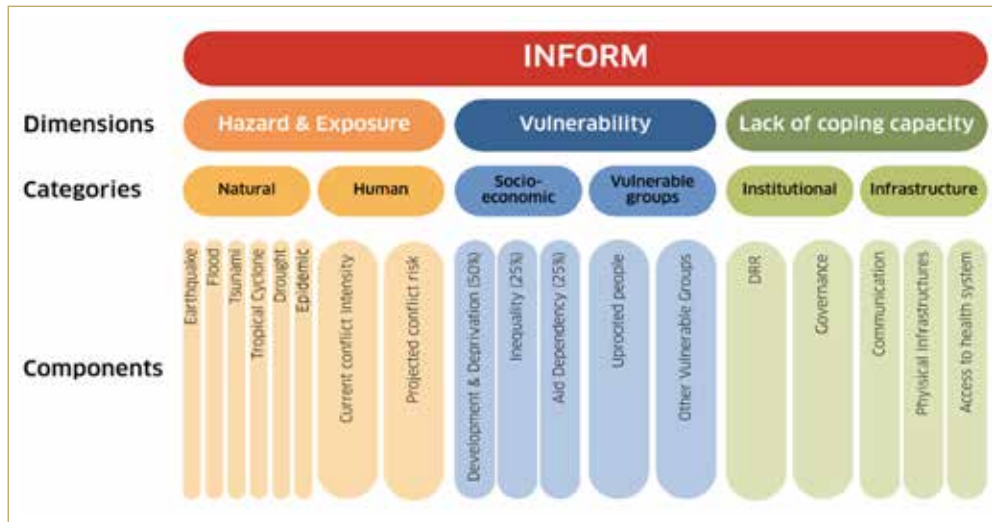
718. Using data from 2015 to 2021, the INFORM country risk profile classifies South Africa as medium risk, with medium to low vulnerability, and medium to high hazard and exposure . The vulnerability score is a composite of socio-economic indicators such as malnutrition rates, food availability and utilisation, and food access, amongst others. Figure 6.1 presents South Africa's risk profile, a reflection of the country's risk and exposure to hazards and its ability to cope with those identified disasters.

<sup>113</sup> <https://gis-portal.ndmc.gov.za/portal/home/%20index.html>





**Figure 6.1** INFORM Risk Model



Source: Inform Risk Index, DRMKC-INFORM

**Table 6.1** INFORM Country Risk Profile for South Africa 2015-2021

Year	Inform Risk	Country Rank	Hazard and Exposure	Vulnerability	Lack of Coping Capacity
2015	4.2	71	4.3	3.7	4.8
2016	4.3	71	4.3	3.7	4.8
2017	4.3	66	4.5	4	4.4
2018	4.3	67	5	3.8	4.3
2019	4.7	55	5	4.6	4.4
2020	4.8	55	5.9	4.6	4.2
2021	4.5	61	4	4.2	4.5

Source: Inform Risk Index, DRMKC-INFORM

### Risk assessment

719. Disaster risk assessment is usually the first step in planning an effective disaster risk management program. There are various national frameworks as well as sector-specific and hazard-specific risk plans that guide assessment of vulnerability. The DMA requires that national and provincial disaster management centres determine levels of risk and assess the vulnerability of communities and households to disasters that may occur, and develop prevention and mitigation plans. The policy framework for disaster risk

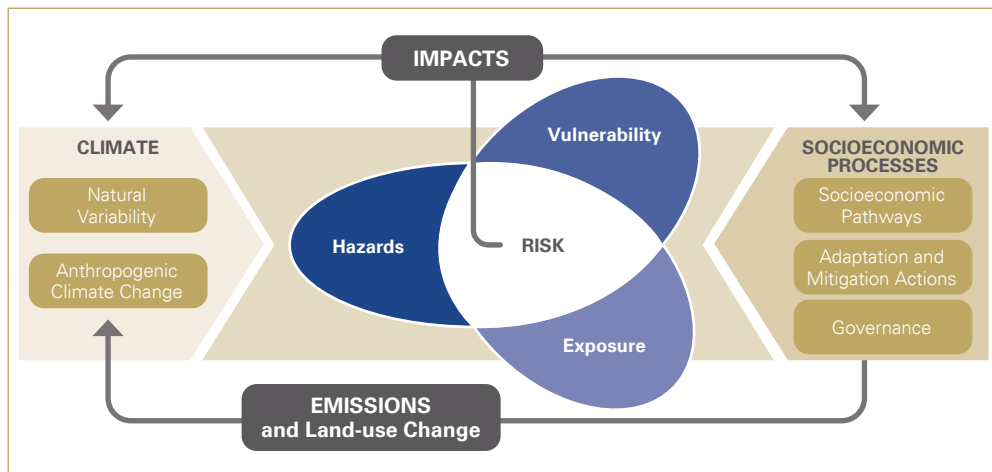
management in South Africa (2005) also emphasises the identification of hazards and vulnerabilities as part of the second key performance area. The CRM noted that the satisfaction guidelines published by CoGTA on the conduct of comprehensive risk assessment, identification, and prioritisation (2016),<sup>114</sup> provide pivotal information that can enable provincial and municipal governments to understand and analyse risk in their respective areas.

720. The CRM found that the most systematic overview of vulnerability to some climatological and meteorological hazards such as drought, storms, flood events, veld fires, amongst others, which are the most frequently reported hazards in the country, is done by provincial governments. Most provincial governments have climate change response and adaptation strategies that conduct sectoral risks and vulnerabilities analysis and propose strategies to mitigate them. Certain provincial governments have gone a step further and developed sector specific vulnerability assessments. The Western Cape has a comprehensive and documented reporting on vulnerability in different sectors. The agriculture sector was the in the province to benefit from a sectoral climate change response framework and plan, especially because it was identified as one of the sectors that are highly vulnerable to hazards. The sector-specific vulnerability analysis identifies vulnerable industries such as dairy farming, intensive animal production (chicken, pigs), and product storage, and vulnerable farmers.
721. At the national level, South Africa's Third National Communication (TNC) provides an overview of the most significant climate change risks and vulnerabilities for agriculture, water resources, forestry, terrestrial ecosystems, coastal zone, health, urban and rural settlements, and disaster risk management. Such assessments are closely aligned with the Intergovernmental Panel on Climate Change (IPCC) Framework as depicted in Figure 6.2.

114 [https://www.gov.za/sites/default/files/gcis\\_document/201611/40393gon1363.pdf](https://www.gov.za/sites/default/files/gcis_document/201611/40393gon1363.pdf)



**Figure 6.2** The core aspects underlying the IPCC framework concept of risk



Source: IPCC. *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate*

722. Assessing vulnerability in towns, cities and municipalities in South Africa is an important component for resilience, given the country’s growing population (population growth between 1994 and 2016 increased from 40 million to 56.6 million people), rapid urbanization, growing urban sprawl, and already stressed infrastructure that is mixed with the country’s history of social and spatial inequalities. The CSIR’s Green Book is one such tool employed by municipalities to respond to growth pressures and climate change by providing current and future (2050) risk and vulnerability profiles for the metropolitan areas. One of its key features is the range of planning and design actions it proposes to reduce exposure and to build long-term resilience. However, it is unclear the extent to which such information and tools are implemented and mainstreamed into all urban land use planning, integrated development planning processes, and disaster risk management. Commendable Practice 6.1 summarised the major component of the Green Book.

### Commendable Practice 6.1: Practice in using risk knowledge to improve resilience of Municipalities

South Africa’s Green Book is an online planning tool that provides quantitative scientific evidence on the likely impacts that climate change and urbanisation will have on South Africa’s cities and towns. The Book also presents various adaptation actions that can be implemented by local governments to support climate resilient development. The tool provides a composite risk profile for each municipality and its settlements in South Africa, detailing vulnerability profiling, population projections, exposure to climate hazards, and the impacts of climatic changes on key resources. The Green Book is a multi-stakeholder initiative by CSIR, the National Disaster Management Centre (NDMC), and it is co-developed with universities, government departments, NGOs and other peer groups.

*Source: CRM compilation*

723. Remarkably, Gauteng’s Overarching Climate Change Response Strategy and Action Plan (2020) assesses vulnerability in its eleven response programmes: (1) Natural Resources, (2) Agriculture and Agro-Processing, (3) Disaster Risk Reduction and Management, (4) Water Security, (5) Commercial and Institutional Buildings, (6) Human Settlements, (7) Energy Supply, (8) Industry and Mining, (9) Transport, (10) Waste Management, and (11) Health. Their strategy goes a step further by highlighting the vulnerability of the urban poor to disasters, particularly those living in informal settlements. It also takes into consideration factors such as access to basic services, transport, communication, social capital and education that are considered important in understanding vulnerability in the province. The vulnerability index developed under their Human Settlements Response Programme includes other dimensions of vulnerability such as poverty, age, housing, access to services, communication and coping capacity. The Region’s Response Programme for Disaster Risk Reduction and Management looks at disaster-related vulnerability that includes low-lying structures, extended supply lines, insufficient flood or drought management / handling capacity, etc.
724. Similarly, the City of Cape Town through its Resilience Strategy (2019) has developed a vulnerability index for each ward in the city that gives data-driven insights into ward-level determinants of vulnerability to shocks and stresses. This is done mainly for the purpose of improving planning and resource



allocation. The strategy also takes into account vulnerabilities of residents in informal settlements. In addition, the City also has a Municipal Disaster Risk Management Plan (2015), which sets forth institutional arrangements for disaster prevention and has a comprehensive disaster risk and vulnerability assessment that is broken down by hazard type (storm, drought, wildfire etc.) and category (hydro-meteorological, geological etc.). It further gives a vulnerability rating, and highlights the regions/areas where the hazards occur.

725. The systematic assessment of risk, vulnerability and exposure to natural hazards is not comprehensive. The CRM saw vulnerability assessment at differing levels of detail. Certain assessments have developed indices to understand vulnerability, while others take a broader view of vulnerability in a given province or municipality. Vulnerability to other natural shocks, such as in the case of drought assessment for example, is the natural hazard that is most frequently declared as a disaster in the country by the NDMC. In specific, the assessment that covers a national drought risk profile that integrates hazard, exposure and vulnerability with risk for irrigated and rain-fed agriculture separately is lacking at the sub-national scale. Furthermore, a comprehensive drought risk assessment that also considers socio-ecological vulnerability is missing.

### iii. Recommendations

726. The African Peer Review (APR) Panel recommends that the government should:

- Maintain and update disaster information management platforms with all relevant indicators, including estimation of losses and quantitative extent of damage [*CoGTA, NDMC*];
- Conduct systematic risk and vulnerability assessment across sectors [*National and local Governments*];
- Improve dialogue and cooperation among scientific and technological communities and policymakers to facilitate effective decision-making [*Presidency, CoGTA, Department of Public Service and Administration, National Planning Commission*];
- Enhance usability and application of scientific data for use by relevant decision-makers in the provincial and municipal planning process [*NDMC*].

**OBJECTIVE TWO**

**Governing disaster risk and resilience to shocks and disasters**

**i. Evolution of the Issue**

**State of South Africa’s risk governance and resilience to shocks and disasters**

- 727. The transition from the Hyogo Framework for Action (HFA) 2005-2015 to the Sendai Framework for Disaster Risk Reduction (SFDRR) 2015-2030 led to notable improvements in the global agenda for disaster management. The SFDRR calls upon States and stakeholders to strengthen disaster risk governance at the national, regional and global levels with clear vision, plans, competence, guidance and coordination within and across sectors. It also calls for the participation of relevant stakeholders. Pivotal to the implementation of the SFDRR is the establishment and strengthening of institutional, legal and policy arrangements as the main vehicles and support systems to facilitate the risk management process - in managing and reducing the identified and potential disaster risks.
- 728. Disaster risk governance refers to the way in which public authorities, civil servants, media, the private sector, and civil society operate at community, regional and national levels to manage and reduce disaster and climate related risks.
- 729. South Africa’s increasing disaster risk due to the country’s exposure to hazards like drought, cyclones, severe storms, extensive coastline and proximity to shipping routes and shared borders with six southern African neighbours create conditions for vulnerability for poor settlements in urban and rural areas. Shared borders also have potential for cross-boundary risks and humanitarian assistance obligations in times of emergency.<sup>115</sup>Awareness about these challenges has led to growing political, public and industry concerns about the need for action, particularly during Government and municipal planning.
- 730. In its consistent efforts to accommodate the international disaster risk reduction frameworks, South Africa adopted Disaster Management Act No. 57 of 2002 (DMA), a unique model of disaster management policy and legislation, including other laws relevant to disaster risk reduction (DRR) in line with its disaster risk profile.

<sup>115</sup> South Africa Disaster Management framework, 2005



731. Apart from the mention of the DMA as the main legislative framework in South Africa, the focus of the discussion in the 2021 CSAR in Chapter 6 that is dedicated to State Resilience and Preparedness solely provided a detailed discussion of the country's Covid-19 efforts.
732. The lack of any substantial information in the CSAR on the country's efforts in managing the most frequent disasters as well as a comprehensive account of South Africa's undertaking in the area of disaster management appears to have downplayed the issue of DRR within the framework of the Country review mission. It also constitutes one of the concerning omissions identified in the CSAR. Accordingly, the findings will largely depend on consultations and available sources.

## ii. Findings of the CRM

### State of South Africa's risk governance and resilience to shocks and disasters

#### *South Africa's institutional framework for Disaster Management*

733. South Africa's Disaster Management efforts is built on the development of both a Green Paper (1998) and a White Paper on Disaster Management (1999). These led to the adoption of Disaster Management Act No. 57 of 2002, and the 2005 National Disaster Management Policy Framework (NDMF) as the main policy frameworks for disaster management in South Africa. These set of policy instruments played a role in the decision of the country to overhaul its approach to disaster management.
734. The main thrust of the Act and the National Disaster Management Framework revolves around the creation of appropriate institutional arrangements for disaster management that are based on the understanding that disaster management cannot be achieved without the establishment of enabling structures to support its myriad of actions.
735. The Intergovernmental Committee on Disaster Management (ICDM) is the highest organ of the DMA. This committee comprises Cabinet members involved in disaster management, the Members of the Executive Councils (MECs) of each province involved in disaster management, and members of municipal councils, selected by the South African Local Government Association (SALGA). The ICDM also comprises the Departments of Agriculture and Land Affairs, Defence, Education, Environmental Affairs and Tourism, Foreign Affairs, Health, Home Affairs, Housing, Minerals and Energy, Public Works, Safety and Security, Social Development, Transport and Water Affairs and Forestry, National Treasury, Provincial and Local Governments, and the Presidency.

736. In addition to the ICDM, the DMA established disaster management centres within each sphere of governance such as the National Disaster Management Centre (NDMC) at the national and provincial levels. The NDMC, which is tasked with guiding and developing frameworks for government's disaster risk management policy and legislation, facilitating and monitoring their implementation, and facilitating and guiding cross-functional and multidisciplinary disaster risk management activities among the various organs of state, sits under the auspices of the Department of Co-operative Government and Traditional Affairs (CoGTA).
737. The key organs of the NDMC are advisory forums. These forums serve as institutional spaces for consultation and coordination between State officials from all three spheres of government and a potential long list of disaster management role-players in civil society, including representatives of organised business, the Chamber of Mines, organised labour, the insurance industry, organised agriculture, traditional leaders, religious and welfare organisations. The forum also includes medical, paramedical and hospital organisations, the disaster management profession, relevant non-governmental and inter-governmental organisations and relief agencies, statutory bodies regulating safety standards in particular industries, institutions of higher education or institutions that can provide scientific and technological advice, as well as disaster management experts.
738. The participation of various government departments in the ICDM attests to the institutional determination to ensure robust participation of all stakeholders in decision-making for the development and adoption of integrated disaster risk management policy.

*Legislation dealing with specific types of disasters*

739. There are some legislative instruments that deal explicitly with specific hazards, including:
- **The Drought Management Plan (2005):** South Africa's Drought Management Plan focuses on four areas: (i) institutional arrangements, (ii) integrated institutional capacity, (iii) disaster risk assessment and reduction planning, and (iv) response and recovery. The plan proposes a number of specific actions, including creating and maintaining an information management system, monitoring and evaluation, conducting research (including research specifically about climate change), giving technical assistance to provincial agricultural departments' drought assessments, implementing early warning systems, incorporating drought into disaster





risk reduction programs, procuring funds from the national treasury, and encouraging participation in disaster risk and drought reduction programs at all levels of government;

- **The Conservation of Agricultural Resources Act (1983) (CARA):** This legislation allows for the Minister responsible for agriculture to determine control measures, issue directions, and establish schemes that may pertain to various forms of DRR or emergency relief;
- **The Environmental Management Act (1998):** provides a framework for environmental management in South Africa. It requires that an environmental impact assessment (EIA) be carried out prior to the commencement of certain listed activities. The EIA procedure requires that the potential consequences for, and impacts on, the environment of certain activities must be considered, investigated and reported;
- **The National Water Act (1988)** aims to reduce degradation of water resources, promotes dam safety, and speaks to the management of floods and droughts. It regulates Government waterworks such as water storage dams, water transfer schemes and flood attenuation works. The construction of such infrastructure must be preceded by an environmental impact assessment (EIA);
- **The National Environmental Management (1998)** legislates the duty of care and remediation in the event of environmental damage;
- **The National Veld and Forest Fire Act, 1998** and the Fire Brigade Services Act, (1987): The objective of the Acts, which are administered by the Department of Agriculture, Forestry and Fisheries, is to prevent and combat “veld fires” (including veld, forest or mountain fires) throughout the country;
- **The Safety at Sports and Recreational Events Act of 2010:** This Act, which deals primarily with measures to ensure the safety and security of people attending large-scale sporting or recreational events and the role-players who are responsible for this, was adopted after the Ellis Park tragedy in which 43 people lost their lives in a stampede at a sporting event;
- **The Environmental management and environmental impact assessment:** National Environmental Management Act 107 of 1998 (NEMA) provides a framework for environmental management in South Africa. In pursuance of the goal of integrated environmental management,

it requires that an EIA be carried out prior to the commencement of certain listed activities (S 24, NEMA);

- **Water Resources:** Water use in South Africa is regulated by two primary legal instruments: National Water Resources Act 36 of 1998 (NWA), which regulates the use of water resources (rivers, springs, canals, wetlands, dams, surface water, estuaries, and aquifers), and Water Services Act 108 of 1997, which deals with the provision of potable water;
- **Land use planning laws:** Land use planning in South Africa is still largely governed by legislation dating from the mid-1980s, especially Development Facilitation Act 67 of 1995 (DFA) and National Building Regulations and Building Standards Act 103 of 1977.

*Decentralisation of disaster risk in South Africa*

740. The passing of South Africa’s Disaster Management Act No. 57 of 2002 and the National Disaster Management Policy Framework of 2005 translated South Africa’s commitment to integrate disaster risk reduction into all spheres of government through a decentralised approach, even before the Hyogo Framework for Action (HFA) as the global blueprint for disaster risk reduction efforts between 2005 and 2015. Table 6.2 depicts the structure of disaster management within the three spheres of government in South Africa.



**Table 6.2** Establishment of Disaster Management within the three spheres of government

National sphere	<p><b>Inter-governmental Committee on Disaster Management (ICDM) A political forum set up by the President comprising –</b></p> <ul style="list-style-type: none"> <li>• National Ministers holding the following portfolios: <ul style="list-style-type: none"> <li>- Agriculture and Land Affairs</li> <li>- Defence</li> <li>- Education</li> <li>- Environmental Affairs and Tourism</li> <li>- National Treasury</li> <li>- Foreign Affairs</li> <li>- Health</li> <li>- Home Affairs</li> <li>- Housing</li> <li>- Provincial and Local Government</li> <li>- Public Works</li> <li>- Safety and Security</li> <li>- Social Development ; and</li> <li>- Water Affairs and Forestry.</li> </ul> </li> <li>• A Member of the Executive Council (MEC) of each province, who is selected by the Premier of the province concerned and is involved in either disaster management or the administration of other national legislation aimed at dealing with an occurrence defined as a disaster.</li> <li>• Organised local government is represented on the ICDM by members of municipal councils who are selected by the South African Local Government Association (SALGA).</li> <li>• The ICDM is chaired by the Cabinet member designated by the President to administer the Act – namely, the Minister for Provincial and Local Government.</li> </ul>	(Section 4)
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National sphere	<p><b>National Disaster Management Advisory Forum (NDMAF)</b></p> <ul style="list-style-type: none"> <li>• A forum comprising national and provincial officials whose Ministers are members of the ICDM, municipal officials selected by SALGA, disaster management experts and other relevant non-governmental and international organisations and relief agencies, appointed by the Minister.</li> </ul>	(Section 5)
	<p><b>National Disaster Management Centre (NDMC)</b></p> <ul style="list-style-type: none"> <li>• Comprising the Head of the Centre, appointed by the Minister and officials employed in the Department.</li> </ul>	(Section 8(1)) (Sections 10 and 13)
Provincial sphere	<p><b>Provincial Disaster Management Centres (PDMC)</b></p> <ul style="list-style-type: none"> <li>• Controlled by the Head of the Centre who is appointed by the MEC</li> </ul>	(Section 29)
	<p><b>Provincial Disaster Management Advisory Forum (PDMAF)</b></p> <ul style="list-style-type: none"> <li>• A forum established by the MEC responsible for disaster management, comprising provincial officials, the heads of the respective municipal disaster management centres, representatives of organised local government in the province, and other relevant role players.</li> </ul>	(Section 37(1))
Municipal sphere	<p><b>Municipal Disaster Management Centres (MDMC)</b></p> <p>Each metropolitan and each district municipality must establish a disaster management centre for its municipal area.</p>	(Section 43)
	<p><b>Municipal Disaster Management Advisory Forum (MDMAF)</b></p> <ul style="list-style-type: none"> <li>• A forum established by a metropolitan or district municipality, comprising the head of the municipal disaster management centre in the municipality, senior officials and other relevant role players.</li> </ul>	(Section 51)

Source: Adapted from UNISDR (2005).

741. As described above, in addition to its national structures, the Act makes provision for the establishment of Provincial Disaster Management Centres (PDMC) and Provincial Disaster Management Advisory Forum (PDMAF) at the provincial level as well as Municipal Disaster Management Centres (MDMC) and Municipal Disaster Management Advisory Forum (MDMAF) at the municipal level.



### *Effectiveness of existing structures*

742. Taking further the need to implement the disaster management agenda, most provinces have developed their Spatial Development Frameworks that incorporate disaster risk reduction and climate change adaptation responses within all spatial planning and land use management dimensions.
743. However, although these institutional arrangements present a solid foundation for the implementation and integration of Disaster Management at all levels of government, the CRM noted that the efficacy of these structures is currently severely hampered by lack of financial and human resources, especially at sub-national levels.
744. Notably, during nationwide consultations, stakeholders informed the CRM that the key disaster management structures in the three spheres of governance as described in Table 5.2 are not always operational or do not function adequately. Furthermore, not all relevant national departments have implemented the required disaster risk management activities.
745. In terms of community participation in disaster management, the CRM noted many instances where there was lack of participation in DRR governance structures by public officials and political decision makers. Currently, one of the main challenges is the political turnover in leadership at the provincial and municipality levels, which has an important implication for disaster management policy implementation. Some leaders tend to accord less priority to disaster management, and this results in deficiencies in integrated DRR planning in some provinces and municipalities.
746. The CRM further noted with dismay that the focus of the DMA rests mostly on natural disasters with little regard to other disasters such as pandemics and the frequent disasters in the mining sector. Such a narrow scope is a major challenge that calls for the broadening of the reach of the current Act.
747. Nonetheless, the CRM commends the South African approach to disaster management as enshrined in the DMA, especially the participation of key ministries in the disaster governance structures at national, district and municipal levels. However, as disaster management is by nature multisectoral and multi-layered, efforts should be made by the Government to ensure disaster risk management is truly incorporated/ mainstreamed into their day-to-day work and planning.

*Status and placement of the National Disaster Management Centre*

748. The presence and frequency of hazards and the vulnerabilities associated with them are reason enough to reform and improve the functioning of the Disaster Management Centre. The CRM found that embedding the NDMC within the Department of Cooperative Governance and Traditional Affairs limits its potential for action, owing to lack of effective oversight. The CRM strongly encourages the Government of South Africa to appropriately place the NDMC within the administrative structure of Government such as the Office of the President or Deputy President, as is the case in other countries on the continent.
749. In terms of status, disaster management as a function of the State should be granted the status of Special Agency with technical and financial autonomy. In many African countries and in most advanced economies, the issue of terrorism has become a major governance and development challenge that an advanced economy such as South Africa cannot possibly ignore. In accordance with the above, as the government reviews the DMA, particular emphasis should be placed on extending the scope of the DMA to terrorism and other areas of interest. The NDMC will then develop special technical capabilities and expertise to provide effective assistance in the prevention of hazards, and for swift response in times of emergency.

*Improving Water Resource Governance in South Africa*

750. Water is scarce in South Africa because of its low average annual precipitation, and the uneven distribution of surface and groundwater as a result of climate and geography. It is worthy of note that only 8.6% of rainfall converts to useable runoff, one of the lowest proportions in the world. Millions of rural and suburban South Africans still do not have access to running water in their homes. Rural women have to walk long distances to collect domestic water from rivers or water points. However, water scarcity in South Africa is to a large extent attributable to physical causes, and these are exacerbated by the impact of global climate change, climate variability and increasing demand for available water resources<sup>116</sup>. The extreme nature of this scarcity possibly explains why South Africa is ranked the 30th driest country in the world<sup>117</sup>.

116 Helen and Suzman Foundation. 2020. <https://hsf.org.za/publications/hsf-briefs/water-scarcity-in-south-africa-a-result-of-physical-or-economic-factors>.

117 Department of Communication and Information System (2020), URL: <https://www.gov.za/about-government/government-programmes/national-water-security-2015>.



751. There is unequal access to and control over water, and poor people typically do not have easy access to it. This lack of access leads them to drink water of low quality, especially during periods of drought. The same holds true for productive water use, for example, for cropping where drought in the past has threatened crop production and led to the death of animals. This even led to suicides among commercial farmers, especially in the Northern Cape and the Western Cape in 2017.
752. Furthermore, it is worthy of note that a significant number of people suffer from life-threatening water-related diseases. The lack of unhindered access to clean water, especially as treated or packaged water is very costly, has led them to drink low quality water, especially during periods of drought. The same holds true for productive water use, for example for cropping as explained in the previous paragraph.
753. The persistent water scarcity poses the fundamental question of the relevance of water policies and effective implementation. A review of existing policies with an emphasis on water coordination as a means to empower communities on conservation management, can aid in lessening the mismanagement or misuse of water.

#### *Monitoring and evaluation*

754. The CRM found that there is inadequate performance and compliance in some provinces and municipalities to the challenge of ensuring that contingency plans are in place and fully implemented. Specifically, annual risk assessments are not always submitted as prescribed by the DMA, which makes provision for these types of assessments and requires that local and provincial governments give feedback annually on a variety of issues relating to vulnerability assessment. In the same vein, there is little compliance with the National Disaster Management Framework, which requires post-disasters reviews and reviews on other significant events. There is therefore a need to enforce existing legislations to ensure strict compliance with policies and procedures.
755. Overall, tracking and monitoring disaster management performance at the provincial level is still at an early stage. The exception is the Western Cape Province which has developed and implemented integrated development plans, and has completed post-event assessments, as illustrated in Commendable Practice 6.2.

## Commendable Practice 6.2: The conduct of post-disaster needs assessments in the Western Cape Province

The Sendai Framework (UNISDR, 2015) emphasises that post-disaster reviews are necessary for understanding risk, as well as for strengthening preparedness, response and recovery – to ‘build back better’. Such requirement was translated into national law embedded in the DMA that requires post-event reviews after disasters and significant events.

The value of post-disaster reviews is underlined by the Western Cape’s Disaster Management Framework. This stresses that “to maximise the benefits of lessons learned, comprehensive reviews must be conducted routinely after all significant events and events classified as disasters. The findings of such reviews will directly influence the review and updating of DRM plans in the province” (Province of the Western Cape, 2007). Accordingly, as a core principle of disaster management, the Western Cape Province has consistently demonstrated its high level of compliance, making it mandatory to undertake and conduct post-disaster needs assessment for every disaster in the province.

Source: Reliefweb. 2019. <https://reliefweb.int/report/zimbabwe/sa-brings-relief-cyclone-idai-victims>. Access on 22 December 2021.

### *Mechanisms to coordinate sustainable responses with international organisations at the national level (Regional co-operation)*

756. The CRM commends South Africa’s commitment and participation in regional initiatives, driven by the acknowledgement that disastrous events are not always constrained by national boundaries, and that measures taken in South Africa may increase vulnerability or reduce risk in neighbouring countries.
757. At the regional level, South Africa participated in processes aimed at strengthening partnerships to mitigate shocks, infectious diseases outbreaks and disasters. As the economic powerhouse of SADC, South Africa contributed to the establishment of the Southern African Development Community’s Climate Change Strategy and Action Plan (2015, CCSAP), which emphasises the need for enhanced climate change adaptation responses in Africa due to the wide range of pressing vulnerabilities. The country also coordinates regional and national climate change responses in Africa, and works with its SADC neighbours to ‘climate proof’ SADC’s policies, strategies and protocols. SADC established a Disaster Risk Reduction Unit responsible for coordinating regional preparedness and response programmes for trans-boundary hazards and disasters, which was spearheaded by South Africa. Commendable Practice 6.3, summarises South Africa’s relief efforts following Cyclone Idai.





## Commendable Practice 6.3: South Africa brings relief to Cyclone Idai victims

South Africa's efforts to find and rescue the missing and bring aid to those in need in Mozambique and Zimbabwe were commendable during Cyclones Idai and Kenneth. As a result of the South African Government's call for solidarity, the country mobilised financial aid, clothes, water purifiers, non-perishable food items and blankets that were handed over to Beira in Mozambique and the Chimanimani District in eastern Zimbabwe. South Africa also provided technical support through the South African National Defence Force (SANDF), and the South African NGOs, Rescue South Africa that operated jointly with the United Nations Agencies and volunteers.

Using its air platforms, the SANDF engaged in multilateral efforts to provide lifesaving and sustenance supplies to areas cut off by the devastating cyclone. The SANDF was critical to all agencies operating in the area in that it provided airlifts to assist in most low-lying areas, including Beira in Mozambique, which saw entire villages submerged under water, with the death toll rising and many people unaccounted for.

*Source: CRM compilation*

758. On 6 April 2020, the SADC Council of Ministers adopted guidelines to harmonize and facilitate the movement of critical goods and services within the community during the COVID-19 pandemic.
759. Other initiatives include the SADC Regional Platform for Disaster Risk Reduction, the SADC Regional Resilience Framework (2020) 2020–2030, the 2004 Africa Regional Strategy for Disaster Risk Reduction, the African Union Convention on Protection of Returnees, IDPs and Refugees (2009) and the Pact on Security, Stability and Development in the Great Lakes Region (2006), to which South Africa is a party.

### iii. Recommendations

760. The African Peer Review (APR) Panel recommends that SA should:
- Review the National Disaster Management Act of 2002 in light of lessons learnt from the Covid-19 pandemic, grant stronger powers to the NDMC and locate it in the Presidency [*CoGTA, Parliament*];
  - Address the issue of water and energy scarcity [*National and provincial Governments*];
  - Expedite the country's transition from coal to clean energy and limit its greenhouse gas emission [*Ministry of Environment, Forestry and Fisheries, Ministry of Planning, Ministry of Finance*];
  - Build organisational capacity in national and local authorities, NGOs and environmental agencies [*CoGTA*].

**OBJECTIVE  
THREE**

**Investing in resilience to shocks and disasters**

**i. Evolution of the Issue**

**Investment in resilience to shocks and disasters**

- 761. South Africa is party to global and continental disaster risk reduction frameworks, which hold that without purposeful investment in financial, infrastructural and capacity development, there will be insufficient capability to achieve progress in disaster management. More specifically, the Paris agreement (2015) calls for substantial reduction of greenhouse gas emissions to achieve a climate neutral world by the mid-century. Linked to the Paris Agreement are the Hyogo Framework for Action (2005–2015) that focuses on “*Building the Resilience of Communities and Nations to Disasters*” and recently, the Sendai Framework for Disaster Risk Reduction, 2015-2030 (SFDRR) that advocates “*Investing in Disaster Risk Reduction for Resilience*”.
- 762. A key requirement of disaster financing is mainstreaming disaster management into the development planning process. It should not only focus on allocating resources for implementation of disaster risk reduction policies, programmes, laws and regulations, it should also encourage the proactive approach of ensuring that each planned programme, activity and project, reduces the existing disaster risks and minimises their potential to contribute to new risks.
- 763. South Africa has its own approach to disaster risk financing, whose focus is mainly on disaster response. The effective use of relevant disaster funding mechanisms such as Forecast-based Financing (FbF) and Disaster Risk Financing and Insurance Program (DRFIP) are central to successful disaster management. While FbF involves getting humanitarian funding to communities before a disaster strikes, the Disaster Risk Financing and Insurance Program (DRFIP) helps countries to ensure that their populations are financially protected in the event of a disaster. The African Risk Capacity (ARC) is an African-owned disaster risk financing facility that provides resources to participating governments immediately after a disaster has occurred.
- 764. South Africa’s membership in the ARC, which would provide many small farm holders and commercial farmers with access to funding, deserves careful consideration in the report. Data from StatSA, (2020) shows that agriculture contributed around 2.4 percent to the GDP of South Africa in 2020. The extent to which the government is able to utilise risk transfer as leverage in the form of subsidies, especially to farmers during adverse circumstances, is of particular interest to this review.



765. In South Africa, most of the exclusion settlements built during the Apartheid era, were in disaster-prone areas. In these areas and in megacities, the existing infrastructure<sup>118</sup> has aged, and urgently needs rehabilitation and upgrading. This would provide the opportunity to implement a national Urban Renewal Programme (URP) encompassing comprehensive risk assessments of vulnerability to technological hazards, as well as environmental and meteorological hazards. The successful implementation of the URP would depend largely on mobilisation and improved coordination of public investment as well as successful leveraging of private and parastatal investment<sup>119</sup>.
766. Finally, like all countries in the world, South Africa continues to suffer from socio-economic challenges precipitated by the Covid-19 pandemic. While the swift response to avert the catastrophic effects of the pandemic on households and livelihoods should be commended, the narrow focus of the funding only on the immediate effects is concerning. It would be expedient to broaden the response to incorporate human and system renewal and rejuvenation into the planning. The ability of the system as a whole, and of the human agents, to rebalance and recuperate from the devastations of the pandemic will depend heavily on adequate and accurate planning, and the adequacy of resources channelled towards recovery. The need for community mobilisation will also be critical as social capital is largely indispensable to the “build back better” hypothesis after major disasters like the pandemic.
767. The 2007 Country Review Report provides an overview of the socio-economic vulnerability of the population a decade after the country’s political emancipation. The report underscores a number of cross-cutting issues in the context of State resilience to shocks and disasters, including extreme capacity constraints and poor service delivery as well as poverty and inequality. The dimensions and extent of disaster vulnerability, the adequacy of policy interventions and the contribution of human action to disasters are discussed at length in the report. The need for substantial investments to reduce the vulnerability of the country, communities, and citizens is also highlighted.
768. As indicated in the 2021 CSAR, South Africa’s current National Development Planning Agenda is intended to address most of the vulnerabilities under the 6 priority areas outlined in the Medium-term Strategic Framework (2019-2024).

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118 National Disaster Management Centre, Annual Report 2019 – 2020. Available at <https://www.ndmc.gov.za/AnnualReports/NDMC%20Annual%20Report%202019-2020.pdf>

119 University of Stellenbosch. National Urban Renewal Programme: Implementation framework. Available at <http://www.stellenboschheritage.co.za/wp-content/uploads/National-Urban-Renewal-Programme.pdf>

769. South Africa’s pre-pandemic debt-to-GDP ratio for FY2020/2021 was already high at 79.3%. It is understood that national and local government budgets have been constrained, especially in the wake of the severe economic contraction precipitated by the COVID-19 pandemic. In 2020, the International Monetary Fund (IMF) approved a R70 billion loan (US\$4.3 billion) for South Africa to help the country manage the immediate fallouts from the pandemic. Although, this funding was essential in the response approach of the government to the disaster, it signals the fragility of the State to withstand major outbreaks. To that extent, it has been demonstrated that DRR will continue to be a major cause for concern in South Africa.

## ii. Findings of the CRM

### Investment in resilience to shocks and disasters

#### *South Africa’s current disaster management funding structure*

770. Schedule 4A of the Constitution of the Republic of South Africa lists disaster management as a functional area of concurrent national and provincial legislative competence. Section 43(3) of Disaster Management Act 57 of 2002 stipulates that a local municipality must establish capacity for the development and coordination of a disaster management plan and the implementation of a disaster management function for the municipality.
771. Table 6.3 shows funding for disaster management that is channelled to the district municipalities. An analysis of Annual reports published by the National Disaster Management Centre (NDMC) shows that South Africa has traditionally adopted a reactive approach, which focuses mostly on provision of funding for post-disaster recovery and rehabilitation as directed by the Disaster Management Act, 2002.



**Table 6.3** Funding arrangements for disaster risk management of municipalities

Activity	Funding sources	Funding mechanism
<b>Start-up activities</b>	National government	Conditional grant for local government – district and metropolitan municipalities, where necessary
<b>On-going DRM operations</b>	New assignment to local government	Increase in the (institutional) component of the equitable share of local government
<b>Disaster risk reduction</b>	Districts municipalities	Own budget – can be augmented by application for funding to the NDMC for special national priority risk reduction projects
	Low-capacity, resource-poor municipalities <sup>1</sup>	Additional funding provided by the NDMC
<b>Response, recovery, rehabilitation and reconstruction</b>	Local government	Access to central contingency fund once threshold is exceeded
		Conditional grant, i.e. Municipal Infrastructure Grant (MIG)
<b>Education, training and capacity building programmes</b>	Local government	Own budgets and reimbursement through SETAs
		Public awareness programmes and research activities can be funded by private sector, research foundations, NGOs and donor funding
Notes:1 Low-capacity, resource-poor municipalities identified through creation of a composite index that takes into account the operating income of municipalities and their capacity classification as determined by the National Treasury.		

772. A lack of financial resources for development and the poor socio-economic conditions affecting disaster-prone communities often lead to a spiral of same disasters affecting the same communities (for example, repeat fires or floods affecting communities living in informal settlements). Scarce financial resources mean that disaster risk reduction is not always accorded the priority it deserves as a means to invest in protecting the gains of development against damage. Efforts are currently being made to obtain regular budgeted funding for disaster risk reduction. In addition, each department at each level of government is required, under the Disaster Management Act of 2002, to incorporate a disaster risk reduction component into each development programme that it undertakes, and to make provision for necessary budget allocations as may be deemed necessary.

773. An analysis of the current funding structure highlights lack of funding for disaster risk reduction as a major constraint and underscores the urgency to move from disaster response to risk reduction. This current funding model for disaster risk within the Government as well as the private sector does not optimally make provision for the dynamic risk profile of South Africa and its diverse public financial management system. It is therefore important, as the current funding mechanism is inadequate and ineffective, to explore feasible alternative funding mechanisms for disasters in South Africa, which may include risk sharing and public-private partnerships.
774. Through the analysis of the annual reports of the National Disaster Management Centre (NDMC), the CRM noted the predominance of traditional models. South Africa remains more focused on the traditional approach (reactive) to disaster in which funding is mostly channelled, on an ad hoc basis, to combat an emergency or to mitigate disaster-related issues. A paradigm shift from reactive to the proactive investment approach to financing and resilience is urgently needed.
775. As opposed to the prescription of the DMA, available reports and consultations confirm the lack of effective monitoring and supervision to ensure that funds are used for their intended purposes. There were also complaints about the long process of releasing disaster relief funds.

*The Disaster Management capacity divide*

776. It was understood through consultations in Gauteng and in all the other provinces that funding allocated to disaster management in South Africa is skewed towards the three major provinces of Gauteng, Western Cape and KwaZulu-Natal-Natal, and this finds expression in the number and quality of human resources, equipment and response capacities in these provinces.
777. As a result, local governments and municipalities are challenged with funding disaster risk reduction while focusing on their mandate of basic service delivery and expansion of delivery networks. This leads to complaints about inadequacy of disaster-related funding in the so called 'small' provinces and municipalities such as the Eastern Cape, Northern Cape and Mpumanlanga.
778. A critical analysis of the country's risk profile shows that disasters disproportionately affect certain segments of society. Consultations further buttressed the need for more investment in infrastructure in historically disadvantaged black areas that were built during Apartheid in disaster-prone areas. In most cases, the infrastructure is old and sometimes unserviceable simply because they have not been upgraded by successive governments,



even after the political emancipation. With the proportion of South Africans living in towns or cities projected to reach at least 68% over the next decade, many urban-based municipalities are likely to experience serious challenges in promoting economic development and addressing poverty.

779. South Western Townships, commonly known as Soweto, and Alexandra (in the City of Johannesburg), Mitchell's Plain, Khayelitsha and Langa (in the City of Cape Town), Inanda and KwaMashu (in the eThekweni Municipality), Mdantsane (in the Buffalo City Municipality, East London), Motherwell (in the Nelson Mandela Bay, Port Elizabeth) and Galeshewe (in the Sol Plaatje Municipality, Kimberley), are areas where public and private interventions are urgently needed. Consultations further confirmed that some disaster interventions were made impossible due to inaccessibility of those areas to Disaster Management teams as a result of open sewage, surface water drainage, and entangled electricity cables that sometimes dangle across the access roads.

#### *Urban renewal efforts in South Africa: achievements and challenges*

780. Throughout the world, urban renewal is a key component of urban policy, planning, and practice. Since the country's political emancipation in 1994, cities have been actively pursuing urban renewal projects after decades of neglect and decay, unjust and inadequate planning practices, and poor decision-making and leadership. Although, notable achievements have been documented in this renewal effort, a lot more is still required to prevent heavy losses in the event of disaster.
781. South Africa is one of the few areas in the world where, in the apartheid period, exclusion was engineered by design. Areas excluded from central administrative planning, such as old formal townships and informal settlements, are characterised by high levels of poverty and crime, high levels of unemployment, social frustration and alienation. In addition, most of these exclusion settlements were built in disaster-prone areas. Some parts of Alexandra Township in Johannesburg are built in unsafe floodplains that are prone to recurrent flooding. Besides, as a result of a variety of factors including urban migration in these areas and in major cities such as Johannesburg and Pretoria, there is seriously decaying infrastructure that urgently needs rehabilitation and upgrading.
782. The main issue of urban renewal in South Africa, especially in places like Khayelitsha has been the difficult choice between relation and redevelopment. Additionally, funding has been identified as one of the critical issues preventing

the full actualisation of the project. The success of the URP implementation will largely depend on improved coordination of public, private, and parastatal investment<sup>120</sup>.

*Access to innovative and sustainable disaster risk financing mechanisms*

783. In addition to traditional government support, there are other relevant disaster funding mechanisms such as the Forecast-based Financing (FbF). Forecast-based financing is a way of getting humanitarian funding to communities before a disaster strikes. It uses weather forecasts and risk analysis to activate the release of funding ahead of extreme weather events. The overall goal is to prevent natural hazards from becoming disasters so as to reduce human suffering<sup>121</sup>. In light of the various sources and consultations undertaken in all provinces, the CRM noted the unavailability of such financing mechanism in South Africa. As a common practice, funding is released only after the occurrence of the disaster.
784. The Disaster Risk Financing and Insurance Program (DRFIP) helps countries ensure that the population is financially protected in the event of a disaster. Through funding and expertise, the DRFI supports countries to develop and implement tailored financial protection strategies that increase the ability of national and local governments, homeowners, businesses, commercial farmers, and low-income populations to respond more quickly and resiliently to disasters.
785. Although, South Africa has a very strong insurance culture from a private sector, there are many gaps when it comes to disaster financing. The approach is that no single financial plan is enough. It is best when the country has a mix of funding mechanisms. South Africa is yet to accede to the continent-wide disaster management instrument, the ARC. The non-membership in this important instrument is a major loss of opportunity for many small farm holders and commercial farmers with limited access to funding, especially those that are vulnerable to risks and disasters.

120 University of Stellenbosch. National Urban Renewal Programme: Implementation framework. Available at <http://www.stellenboschheritage.co.za/wp-content/uploads/National-Urban-Renewal-Programme.pdf>

121 International Federation of the Red Cross (IFRC). 2021. Early warning, early action. Available at <https://www.ifrc.org/early-warning-early-action>





### *Investment in higher (tertiary) education for disaster knowledge*

786. In terms of tertiary education, there is the expectation that higher education systems have capacity to keep pace with societal change. The focus on Disaster Risk Reduction in South Africa is evident. Currently, DRR courses are available in a few universities. South Africa hosts the African Centre for Disaster Studies (ACDS) at the Northwest University, a centre that aims to address research as well as training and education needs in disaster risk within southern Africa and the wider African continent. Stellenbosch University and the University of South Africa are the leading academic institutions offering qualifications in DRR. These academic institutions facilitate information sharing, and strengthen public education in shocks, infectious diseases and disasters.
787. South Africa is to be commended for hosting the Periperi U Secretariat,<sup>122</sup> a capacity-building model underpinned by the assumption that Higher Education Institutions play a vital role in building skilful human capital in disaster risk reduction. From 2011 to 2017, Periperi U investments in skilled human capital reached more than 6 300 people. This was through 18 DRM-related academic programmes and 20 modules that reached 3 500 students, 87 DRM-related short courses that reached nearly 2 800 practitioners, as well as 217 staff from the participating universities. These academic institutions facilitate information sharing and strengthen public education in shocks, infectious diseases and disasters.

### *Mainstreaming disaster management into the development planning process*

788. Mainstreaming disaster management into the development agenda of the country generally builds on the experiences of the developed world that have improved design, construction, and regulatory compliance to significantly reduce loss of life from an array of disasters. In South Africa, the compliance and enforcement processes of the National Building Regulations of South Africa are administered by the National Regulator for Compulsory Specifications (NRCS) as set by the National Building Regulations and Building Standards Act<sup>123</sup> 103 of 1977. This Act was adopted to provide uniformity in the law relating to the erection of buildings in the areas of jurisdiction of local

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122 Periperi U is an Africa-rooted and -led initiative that began in 2006 in five Universities in Algeria, Ethiopia, Ghana, South Africa and Tanzania. It aims to advance risk education in Africa by mobilising university talent across regions, disciplines and language groupings. Available at [http://www.riskreductionafrica.org/assets/files/PPU%20brochureWEB1\\_Oct17.pdf](http://www.riskreductionafrica.org/assets/files/PPU%20brochureWEB1_Oct17.pdf)

123 <https://www.gov.za/documents/national-building-regulations-and-building-standards-act-16-apr-2015-1302>

authorities, by prescribing building standards, and standards for other related works.

789. Infrastructure projects are implemented using national building codes developed by the South African Bureau of Standards (SABS), which usually reflect the country's risk profile even though some lessons can be drawn from international best practices.
790. Owing to the frequent collapse of buildings in the country, which is not necessarily related to disaster, but which nonetheless causes disasters, statutory building institutions need to pay special attention to the enforcement processes.

#### *Climate change and biodiversity loss in South Africa*

791. There is water scarcity in South Africa mostly because of its highly variable climate and low run-off, one of the lowest in the world<sup>124</sup> due to its low average annual precipitation and the uneven distribution of surface and groundwater (demand-driven water scarcity, climate-driven water scarcity, and pollution-driven water scarcity). Some of the areas with acute water shortages are the Western Cape, Eastern Cape and the Northern Cape provinces.
792. The country's vulnerability to drought due to excessive reliance on traditional surface water resources may culminate in the exposure of millions of rural and suburban dwellers to poor water supplies for household use and consumption. It is also important to note that water scarcity may threaten food security and obstruct economic activities in manufacturing, retail, wholesale and all the nerve centres of the economy.

#### *Invasive alien plants (IAPs)*

793. South Africa is home to thousands of foreign plant species, commonly called invasive alien plants species (IAPS), introduced in the country about four centuries ago, most of which have been able to survive under South African conditions with adverse impact on the biodiversity. According to the Southern African Plant Invaders Atlas, over 10 million hectares of pristine South African environment has been invaded and affected by IAPs, equivalent to 12.2% of South Africa's total land area (121 909 000ha). IAPs are a major threat to biodiversity (as they put South Africa's diverse indigenous plant species at risk, affect water availability while depreciating water quality and the quality of soil nutrients, and even cause environmental pollution), human livelihoods and economic development.

124 National Climate Change Response White Paper, 2012.



794. The country's efforts to reduce the impact of these plant species using mechanical (by physically destroying or removing alien plants), chemical (by using herbicides to kill alien plants), or biological (by introducing host-specific natural enemies that attack the alien plants) control measures are costly to the country. Additionally, these species cost South Africans in lost agricultural productivity, and they also put pressure on scarce resources that are channelled towards environmental risk management.
795. The Paris Agreement, which is a legally binding international treaty on climate change, was adopted by 196 Parties at COP 21 in Paris on 12 December 2015, and it requires countries to submit their plans for climate action, commonly known as nationally determined contributions (NDCs), a series of actions they intend to undertake in order to build resilience to adapt to the impacts of rising temperatures. South Africa has not fared well in this area and concerted effort is required to ensure compliance.
796. The country articulated its short, medium and long-term vision for an environmentally sustainable, climate-change resilient, low-carbon economy and just society through various policy documents such as the National Strategy for Sustainable Development and Action Plan (2011-2014), the New Growth Path (2010), the National Development Plan (2011) as well as several sector policies and strategies, including the Integrated Resource Plan for Electricity: 2010–2030 (2011), the Industrial Policy Action Plan (2010), National Biodiversity Strategies and Action Plans and the National Climate Change Response White Paper (2012). However, despite this commitment, the cost of renewable energy technologies remains high as a result of limited innovation and investment by both government and the private sector<sup>125</sup>.
797. In the implementation of the Paris Agreement, South Africa deposited its first NDC with the United Nations Framework Convention on Climate Change (UNFCCC) in October 2015, committing to keeping national greenhouse gas emissions within a range from 389 Mt CO<sub>2</sub>-eq for 2025 and 2050. While South Africa has accessed about USD 2 billion a year in 2018 and 2019, the draft updated NDC proposes access to four-fold of the amount on an annual basis by 2030 to meet adaptation and mitigation needs.
798. In order to enhance energy security, South Africa should endeavour to drive the low emission financing agenda, including the development of a green investment plan of as much as \$500 million (R7.3 billion) annually, representing

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125 De Jongh, Ghoorah and Makina. 2014. South African renewable energy investment barriers: An investor perspective. [https://www.researchgate.net/publication/279023607\\_South\\_African\\_renewable\\_energy\\_investment\\_barriers\\_An\\_investor\\_perspective](https://www.researchgate.net/publication/279023607_South_African_renewable_energy_investment_barriers_An_investor_perspective)

a fraction of what is projected, to fund its energy transition away from coal. The allocation of at least \$200 million (R2.9 billion) would come from the Climate Investment Funds, including a \$1 million grant to draft the plan. The South African Renewable Energy programme (REI4P) has been financed by both the public and private sectors thus far, and there may be need to seek external funding support to catalyse the process.

### Commendable Practice 6.4: The Government’s Response to COVID-19

The South African Government provided the most effective support to organisations, including tax relief, the release of disaster relief funds, emergency procurement, wage support through the Unemployment Insurance Fund (UIF), and funding to small businesses, which exceeded R3 billion for industrial funding to address the situation of vulnerable organisations, and another R200 million to the tourism sector.

As noted by the Lead Panel Member for South Africa during the Second Generation Country Review Mission in December 2021, South Africa has also demonstrated resilience and global leadership during the ongoing pandemic through its National Command Council decisions as well as its world-renowned medical and scientific capabilities. Using these national resources, South Africa was able to detect the beta and omicron COVID-19 variants in October 2020 and November 2021 respectively, followed by the swift decisions by both the Government and scientific communities to publicise the findings to the global community, despite the risks to the South African economy, including its tourism sector.

*Source: CRM compilation*

799. The South African Government has responded well to the COVID-19 pandemic, as has its scientific and medical community, as illustrated in Commendable Practice 6.4. However, South Africa’s efforts are also faced with allegations of widespread corruption and mismanagement, especially in the procurement and supply of Personal Protective Equipment (PPE). Allegations of lack of accountability, misappropriation of financial resources allocated to management of COVID-19, and other disasters are currently under investigation by the National Treasury.



### iii. Recommendations

800. The African Peer Review (APR) Panel recommends that SA should:

- Implement innovative, sustainable and efficient disaster funding mechanisms such as Forecast-based Financing (FbF) with investments focused more on preparedness than on disaster response [COGTA, Ministry of Finance];
- Sign the treaty of accession with the African Risk Capacity to unlock additional funding to support communities and businesses in their effort to ensure food security in the event of disaster occurrence through the payout [Parliament, CSOs]; and
- As a matter of urgency, invest to expedite the country's transition from coal to clean energy and limit its greenhouse gas emission in line with the Paris Agreement (2015) [COGTA, Ministry of Finance].



**OBJECTIVE FOUR**

**Preparedness, response and building back better in recovery, rehabilitation, and reconstruction**

**i. Evolution of the Issue**

**South Africa’s capacity for preparedness, response and building back better in recovery, rehabilitation and reconstruction**

801. Preparedness against potential hazards and early warning systems are intertwined and highly interdependent. Early warning systems ensure that people are prepared and ready to act in the event of a disaster. Early warning and preparedness are indispensable measures that governments have to implement to achieve substantial reduction in disaster losses. Combined with anticipatory actions, preparedness can significantly contribute to successful responses and building back better in recovery, rehabilitation and reconstruction. If there are no early warning systems, adequate preparedness and timely responses are bound to fail. However, the existence of an early warning system does not necessary guarantee successful preparedness and organised responses. They may fail if they are unable to trigger preparedness.<sup>126</sup> The entire continuum from prevention, early warning system, preparedness and response to recovery are indispensable as failure of any one of the components in the continuum will lead to the failure of all.
802. This complex relationship can be daunting in that it is difficult to delineate boundaries and intersections where each of these concepts begins or ends. In addition, advancements in Disaster Risk Management have introduced new jargons that may inadvertently create misunderstanding and confusion about the actions that ought to be taken. These concepts, by way of introduction, are clarified below to aid understanding of this report.
803. **Multi-hazard Early Warning Systems:** Emerging from multiplicity of hazards amid uncertain futures and in light of increasing number of hazard-based early warning systems, recent years have witnessed the dominant use and application of ‘Multi-Hazard Early Warning Systems (MHEWS), and Impact-based Multi-Hazard Early Warning Systems’. As the name suggests, MHEWS cover several hazards categories, from hydrological, meteorological, social hazards to socio-technical hazards, epidemics, pests and diseases, among others. MHEWS represent a significant innovation towards ensuring better coordination of early warning and early actions by different sectors

126 AU (2021): Africa Institutional Framework for Multi-Hazard Early Warning System and Early Action



in centralised or interoperable institutional arrangements, and in a way that increases efficiency and consistency of warnings.<sup>127</sup> Cumulative experiences in early warning systems over the years have bred new concepts such as impact-based early warning and end-to-end and people centred early warning systems. This new concept tied together four components: (i) risk knowledge, (ii) hazard detection, monitoring, analysis and forecast, (iii) timely and accurate dissemination and communications including last mile connectivity, and (iv) preparedness. These four interrelated components need to be coordinated within and across sectors and at multiple levels for the system to work effectively. There is also a need for a feedback mechanism for continuous improvement. Failure in one component or a lack of coordination across them could lead to the failure of the whole system.

804. **Preparedness:** the old concept of preparedness was characterized by 'being ready to respond' to a disaster. In being ready to respond, training of responders and pre-positioning of supplies and equipment to the areas that may be potentially affected were some of the important actions. Though these actions still form part of preparedness today, they are viewed as reactive and inadequate in a fast-changing disaster risk context in the contemporary global experience. The severity of hazards and frequency of occurrence, amid uncertainties in models override the conceptualisation of 'being disaster ready'. In recent years, climate change and uncertainties in hazard monitoring and forecasting capacities mean that hazards can hit with little or no warning and, at worst, can even hit and render inoperative the "prepositioned supplies and equipment", or sometimes, conditions can be so severe that the rescue operations are unattainable. Cognizance of the gaps, new concepts within preparedness space emerged. Chief among them is an increasing use of "*anticipatory actions*", "*a set of actions that should be undertaken to prevent or mitigate potential disaster impacts before a shock or before acute impacts are felt.*"<sup>128</sup> Other terms that are interchangeably used with anticipatory actions are early actions and forecast-based actions. The added value of anticipatory action to preparedness is that resources are deployed to cushion communities from the impact of impending disaster and pre-emptive actions are also undertaken to avoid or lessen the impacts of the potential hazards or disaster. When anticipatory actions are undertaken and a disaster ensues, response becomes swifter and more organised, further reducing loss of life, livelihood, and environment, and protecting development gains.

127 UNDRR (2017). Disaster Risk Reduction Terminologies.

128 IFRC (2021): World Disaster Report 2020.

805. **Response:** The typical response phase starts when the hazard strikes and results in a disaster. Experts describe activities at this stage as response to a desperate situation, requiring urgent support. These are situations in which no human being would wish to find themselves. Rescue operations, finding and burying victims of fatalities, providing shelter and other basic services to alleviate human suffering, amongst others, characterise this phase. Depending on the magnitude of a disaster, response may last days, weeks, months or even years, especially in case of protracted and complex humanitarian emergencies. This phase precedes the recovery and reconstruction phase.
806. **Recovery:** Recovery phases commences as soon as the active disaster response phase is concluded. It may start on the same day the disaster hits with activities such as clean-up operations. Following the adoption of the Sendai Framework for Disaster Risk Reduction, the concept of recovery was reviewed. The term recovery is now redefined as the *“restoration or improvement of livelihoods and health, as well as economic, physical, social, cultural and environmental assets, systems and activities, of a disaster-affected community or society, aligning with the principles of sustainable development and ‘build back better’, to avoid or reduce future disaster risk”*<sup>129</sup>.
807. Overall, South African constitutional provisions on disaster management are explicit. Section 37 (a) and (b) of the Constitution clarifies that a state of emergency may be declared when (a) the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency, and (b) when the declaration is necessary to restore peace and order.<sup>130</sup> “Emergency preparedness, rapid and effective response to disasters and post-disaster recovery and rehabilitation” are some of the key components of disaster management in South Africa.<sup>131</sup> Section 17 (e) of the South Africa Disaster Management Act considers early warning systems as a component of the Disaster Management Information System and in Section 25 (f), Section 38 (f), Section 39 (f), Section 52 (f) and Section 53 (f) under the preparation of disaster management plan, calls upon organs of the State, provinces and municipalities to develop early warning mechanisms and procedures for risks that are peculiar to their respective functional areas.

129 UNDRR (2017): Disaster Risk Reduction Terminologies.

130 Republic of South Africa (1996): Statutes of the Republic of South Africa – Constitutional Law: Constitution of the Republic of South Africa Act, No. 108 of 1996.

131 Republic of South Africa (2002): Disaster Management Act 2002.





## ii. Findings of the CRM

### South Africa's capacity for preparedness, response and building back better in recovery, rehabilitation and reconstruction

#### *Operational and effective Multi-Hazard Early Warning Systems*

808. The South Africa Weather Services (SAWS) provides regular warning services on weather related hazards on a 24-hour basis. Other sectors such as the Department of Water Affairs and South Africa Water Research Commission also provide warnings on flash flooding. South Africa is also a member of the Tsunami Warning network. The country's alignment with a global network on early warning for possible Tsunami is a laudable initiative because it enables the country to receive alerts internationally, and also enables the country to share information with other countries within the network.
809. South Africa does not have a centralised multi-hazard early warning system in place. However, efforts towards developing a comprehensive early warning mechanism are well underway, and are commendable. In the absence of a centralised multi-hazard early warning mechanism, South Africa has established an Early Warning Technical Task Team, which is composed of different sectors. The technical team meets quarterly to evaluate events and related developments.
810. There is a quarterly forum in place to discuss seasonal forecasts and actions to be taken. While this is important, it cannot replace a 24/7 multi-hazard early warning system, which is highly recommended for the country.
811. Provinces and municipalities also have similar teams. Some provinces have advanced early warning systems and related situation rooms. Other provinces and municipalities do not have early warning situation rooms. However, some have TV screens that monitor warnings, mainly from SAWS. The most advanced province is KwaZulu-Natal Province, which has a functional centre but is still in process to establish a state-of-the-art situation room. The province was in an advanced stage in procuring state-of-the-art equipment and technology. The envisaged system is expected to be interoperational with the national disaster management situation room and South Africa Weather Services, among others.
812. Even where warning is issued in a timely manner, there are still barriers that affect utilisation of the warning by communities. These include lack of finances and other resources required to use early warning information for early action. Some provinces do not have the capacity to translate warnings to actions.

The CRM found that a key barrier cited by communities, particularly at the local level, is difficulty in interpreting warnings. This is a general phenomenon characterising divides between science and communities, not only in South Africa, but globally.

813. SAWS could leverage its experience in aviation meteorology in which the forecast is specific and contextual, for example, to inform pilots of the weather conditions on the routes and advise them on what actions to take or provide them with alternative routes for the flight.
814. The insurance sector is largely seen as a leader in translating early warning information into action. When the SAWS issues a warning, insurance companies inform their clients on actions to take. For example, in case of hailstorms, car insurance companies would advise their clients to take their cars under a roof to avoid damage. Similarly, insurance facilities for farmers would also advise farmers on specific actions to take to avoid losses.
815. Though this is effective for the insured and the privileged, it does not work for the uninsured and the most vulnerable segments of the society. South African citizens living in hazard-prone areas will continue to experience disasters if this gap is not addressed.

*Functional emergency preparedness to multiple hazards and disasters*

816. South Africa has advanced policies and guidelines on emergency preparedness spanning national to local levels. Even though such plans exist, disaster responses in the country are characterised by delays. There are some structural challenges that put preferences on response rather than preparedness.
817. Equally, some provinces and municipalities do not have preparedness plans and equipment. In the Free State, five of its municipalities do not possess fire fighting vehicles. However, some provinces, such as the Western Cape, own sophisticated and advanced technologies and facilities, including aircrafts and advanced fire-fighting equipment with millions of Rands in their coffers. This not only exposes the challenges in equitable resources allocation, it also highlights the inequalities in South Africa.
818. There is a general lack of state-of-the-art disaster operation centres across the country, albeit a handful DOs in some provinces and national level. The National DO does not operate 24-hourly unless there is an active national disaster. With climate hazards becoming increasingly less predictable, such arrangements may breed late response.



## *Response to disasters in South Africa*

819. Response plans are well developed in South Africa. However, the key challenge remains the timing of actual responses to disasters, which are often hampered by delays due to structural and bureaucratic processes and weak due diligence. While such due diligence is necessary to ensure proper accountability of resources, they do, inadvertently, create conditions that undermine ability to respond in a timely manner to save life and mitigate losses from disaster impacts.
820. Response to disasters in South Africa is, to large extent, dependent on the police and this is because of its definition as militaristic in nature. While the role of the police is key in disaster preparedness, response reconstruction, this should not be seen as an excuse to deprive disaster management operation centres the capabilities they need to prevent, prepare, respond and recover from disaster.
821. South Africa took the lead in categorising the COVID-19 pandemic as a national disaster to unlock resources from State agencies to respond to the pandemic. Other countries had to grapple with interpretation of laws and how to deal with the enormous challenge created by the COVID-19 pandemic, which took days or weeks to declare an emergency.
822. Following declaration of a state of national disaster as per the South Africa Disaster Management Act of 2002, a National COVID-19 Council was established. This was necessary to respond to the magnitude of such a disaster. However, this was seen as counterproductive to create new institutions since the country had invested for years in disaster management institutions such as the South Africa National Platform for Disaster Risk Management. While the intention of establishing the National Platform was to coordinate disaster management functions, the COVID-19 pandemic exposed major institutional weakness in the platform. This approach clearly indicates that existing capability is deficient in coordinating a disaster and crisis of such magnitude. As such, there was a need to establish the right forum with appropriate level of leadership and resources.
823. The establishment of a new “right forum and decisive leadership” for a new disaster as in the case of the COVID-19 pandemic should not be replicated in response to future disasters. Creating new structures for every disaster erodes institutional memory and undermines sustainability. There would have been no harm if the existing National Platform was restructured and armed with the right mandate and decisive leadership. In so doing, such a platform

would continue to learn from every disaster to improve and prepare for future disasters, which would be better than ad hoc committees that are dissolved after a disaster is over.

824. Though the country's response to COVID-19 disaster was swift, the response was mired in controversies. Misappropriation of disaster funds that were allocated for responding and mitigating the impacts of the pandemic was a huge setback in the fight against the pandemic in South Africa. Nonetheless, the ongoing investigation is a right step in the right direction.
825. In-depth review of impacts of the COVID-19 pandemic highlighted how societies are vulnerable to systemic risks and the domino effects of disaster risks across sectors. The pandemic was interspersed with other social disruptions, further creating hybrid crises. To respond to the protests and vandalism in July 2021 that was triggered by underlying socio-economic challenges, measures to mitigate the spread of the pandemic created unintended consequences that led to loss of lives. Conversely, the looting that occurred during the uprising was mainly caused by poverty, hunger, and possibly, anger with the State. Notably, the link between COVID-19 and the looting spree aggravated violence under the guise of protests. All of these created worrisome conditions for the unchecked spread of the pandemic. It could thus be suggested that poverty is a clear driver of how disasters could trigger existing vulnerabilities, and compound crises.
826. More importantly, the pandemic brought to the fore a bitter reality of the extent of general discontentment, and possibly desperation of the people to escape the shackles of social maladies precipitated by the pandemic. As such, the COVID-19 pandemic could be regarded as a multi-dimensional disaster that required a more guided and robust strategy. The pandemic brought to the fore 10 key governance challenges facing Africa: (1) lack of a sound health policy, because most of the policies are haphazard and they are not based on reliable data, (2) healthcare is neither affordable nor accessible to most people in Africa, (3) most African countries are unprepared for future pandemics, (4) in sub-Saharan Africa, being out of school means being out of learning, (5) women and girls bear the greater brunt of COVID-19, (6) the COVID-19 pandemic has further shrunk the civic space and media freedom, (7) social recovery without wider social safety nets, (8) no economic transformation without access to energy, sanitation and basic necessities of life, (9) no digital economy without fixing the digital divide, (10), no integrated economy without adequate intercontinental transport networks.<sup>132</sup>

132 Mo Ibrahim Foundation



827. In summary, while disaster response policies in South Africa are well articulated, the response to disasters is mainly characterised by start-stop-start-stop practices. Available data shows lack of implementation of disaster risk management continuum, from prevention and mitigation, preparedness and response to recovery.

### *Build Back Better in Response, Recovery and Rehabilitation*

828. The absence of an up-to-date national database for disaster losses poses a key challenge in understanding recovery and building back better processes in South Africa. The National Disaster Management Centre had created an online database, which had not been updated since 2014. The country relies heavily on international databases such as EM-DAT. This has to change in order to foster the development of local capacity.

829. The analysis of the EM-DAT data for South Africa during the past 10 years shows that the country recorded a number of disasters, with cumulative human and economic impacts spanning hundreds of mortalities (and about 3.75 million people affected) and over USD\$3.68 billion in economic losses. Despite being grossly underreported, the economic losses from disasters would have contributed meaningfully to pull a large portion of the population, especially among the most vulnerable in the country out of abject poverty. In specific, the financial loss could have moved more than 20 million South Africans out of poverty.<sup>133</sup>

830. There are significant gaps in the EM-DAT database. The criteria adopted in determining what constitutes a disaster do not align with national requirements. The database also only recorded limited disaster events and the related impacts are usually underestimated. However, in the absence of a comprehensive national disaster database, EM-DAT became the most relevant database available.

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133 The Independent (2021): This is how South Africa can eliminate poverty in three years

**Table 6.4** Disasters and impact in South Africa

Year	Disaster Type	Total Deaths	Total Affected	Total Damages ('000 US\$)
2011	Flood	40	200 321	242 773
	Storm	5	3 550	11 506
	Storm	1	2 773	
2012	Storm		1 350	
	Flood	13	125 000	225 451
2013	Storm	3	2 870	
2014	Flood	32	7 185	92 926
	Earthquake	1	2 002	
2015	Drought		2,700,000	272,988
2016	Extreme temperature	11	20	
	Flood	6	600	107 835
	Flood	7	6 900	194 103
2017	Storm	9	6 918	298 807
	Storm	11	518	337,874
	Drought			1 267 028
	Flood	3	200	
	Wildfire	9	5 500	443 460
2019	Flood	73	1 000	50 617
	Flood	10		
	Flood	13		
	Storm	4	20	
	Drought		750 000	136 665
	Flood	2	3 500	
2020	Storm	10	210	
	Flood	3	200	
2021	Storm	4	3 200	
	Flood	31	400	



831. In the CEIC international database, the number of South Africans displaced by disasters since 2008 is estimated at 9 000 internally displaced persons per annum. There is no data on how many of these have returned to rebuild their lives and how many have migrated to other towns and cities permanently.
832. Further compounding the difficulty in tracing recovery from disasters is the lack of a national database for tracking recovery programmes. Even the international databases are silent on questions like “where did the millions of people displaced by disasters go to”? If they have returned to their homes or been assisted to rebuild their lives, how many of those had built back better?
833. Tracing recovery and return of people affected by disasters is key to building their resilience against future shocks. In the absence of robust rehabilitation and recovery programmes, the newly displaced people would be forced to move to other cities and towns, and possibly settle there for marginal livelihoods. This may further predispose them to future shocks and disasters. Such populations could live in perpetual poverty, get involved in crimes or other desperate activities to earn any form of livelihood.
834. Provinces such as KwaZulu-Natal with better data collection capacity have recorded a worrying number of disaster events. In the 2020/2021 financial year alone, the province recorded 2 924 disaster events and over 40 000 people were adversely affected, with 91 fatalities. The provincial report rebuilt a home for one of the families affected. There is insufficient clarity on what recovery actions were undertaken by the provincial government in rebuilding the rest of the affected communities better, and in a more resilient manner.

### iii. Recommendations

835. The African Peer Review (APR) Panel recommends that South Africa should:
- As a matter of urgency, centralise the disaster management function to expedite responses, and develop long-term recovery and reconstruction programmes [*Presidency, Parliament, CoGTA*];
  - Review the National Disaster Management Act of 2002 to give stronger legislative powers to the Agency to manage, lead disaster management and coordinate disaster responses, preparedness, recovery, reconstruction and rehabilitation [*Presidency, Parliament, CoGTA*];
  - Establish a multi-hazard early warning system with interconnected situation rooms across the different offices of the Disaster Management Agency, and enhance coordination with the SADC Humanitarian and Emergency

Operation Centre as well as the AU continental Multi-Hazard Early Warning Situation Room [CoGTA, SADC and NDMC];

- Provide adequate budgetary allocations to disaster risk reduction and resilience building, with funds given to financing coping capacities, addressing vulnerabilities financially, as well as capacitating the Disaster Management Agency [Presidency, CoGTA, Department of Finance]; and
- Increase budget allocation for a disaster recovery facility to rebuild resilience of communities affected by disasters, including their capacities to withstand future shocks and disasters [Department of Finance, Parliament and CoGTA].







# CHAPTER SEVEN

## 7. CROSS-CUTTING ISSUES AND GENERAL CONCLUSION

### 7.1 Overview

836. This chapter highlights the persistent and recurring cross-cutting challenges that are relevant to some or all the five APRM thematic areas discussed in the five thematic chapters.

### 7.2 Cross-cutting Issues

837. Three Cross-cutting Issues have been identified:

- Gender-Based Violence;
- Corruption; and
- Implementation of Policies



### 7.2.1 Gender-Based Violence

838. One of the main social ills in South Africa today is the prevalence of gender-based violence. Gender based violence presents immense multi-dimensional challenges from socio-cultural, through to legal, security, economic and public health. Persistent and pervasive norms that encourage violence against women and girls continue largely unchecked. Evidence suggests that 51% of women in SA have experienced GBV, with 76% of men saying they've perpetrated GBV at one stage in their lives (2010 Gauteng sample). A similar study revealed that one in five women reported violence experience at the hands of their partners. In 2019/20, 53 293 sexual offences were reported, an average of 146 per day, up from 52 420 in 2018/19. Most of these reported abuses were cases of rape. Of these reported cases, the police recorded 42 289 rapes in 2019/20, up from 41 583 in 2018/19, an average of 116 rapes each day (SAPS Crime Stats). In 2019/20, a total of 2 695 women were murdered in South Africa. This means a woman is murdered every three hours.
839. Femicide is five times higher in South Africa than the global average, with South Africa having the fourth-highest female interpersonal violence death rate out of the 183 countries listed by the WHO in 2016. The CRM identified deeply rooted cultural discrimination practices against women as one of the major causes of continuous gender inequality in South Africa. The CRM further identified the persistent violence against women to be deeply rooted in broken social structures.

#### Progress

840. The South African government has pledged, through its national development plan (NDP, 2030), to build a more equitable society where opportunity is not defined by race, gender, class or religion. However, a gender analysis of the NDP by the national planning commission found that some issues are not sufficiently covered in the NDP.
841. The South African government has made progress in establishing numerous laws and mechanisms directed at addressing violence against women. Notwithstanding these advances, gender-based violence is still a widespread social problem in the country. In 2009, the Government established specialised courts dedicated to sexual offences. These courts were intended to prevent secondary trauma for victims of sexual offences and improve conviction rates, coupled with the drive towards expediting and expedite delivery of justice. The mandate of the Domestic Violence Court was also expanded to cover matters of individuals in a full range of partnerships including co-habiting



regardless of the duration of marriages. This was done to ensure a more robust inclusiveness, and to allow people who experience abuse from partners to easily have access to legal recourse.

842. The limited socio-economic opportunities available to women also have a significant effect on their vulnerability to gender-based violence. A study by the University of Stellenbosch (2020) estimates that around 38% of households are headed by women and these households are approximately 40% poorer than those headed by men. An “Analysis of the Phenomenon of GBV and Femicide 2020” revealed that the prevalence of physical and sexual violence in the country decreased with the higher wealth quintiles. This highlights the reality that women with few economic opportunities are often grossly violated. Further, the unemployment rate among women that are eligible for employment was higher among black African women at 41% in 2019 compared to 8.2% among white women, 22.4% among Indian/Asian women, and 29.9% among coloured women. Based on this statistics, black women are therefore disproportionately more vulnerable to gender-based violence because of their exclusion from economic opportunities and the frequent violation of their fundamental human rights.

843. The APR Panel recommends that the Government of South Africa should:

- Implement its own policies on gender mainstreaming, including gender budgeting at all levels to ensure sufficient resources to deal with GBV;
- Improve capacity of law enforcement officers and other stakeholders to deal with GBV cases and to expedite the adjudication process.

### **7.2.2 Corruption**

844. Corruption, as a complex, social, political and economic phenomenon, is prevalent in both developed and developing countries, with proven potential to hinder the rule of law, disintegrate administrative systems, and debilitate regulatory institutions. Graft generally undermines the functioning of democratic institutions, erodes the stability of macroeconomic fundamentals, and corrodes social capital between the government and the people, and can therefore precipitate socio-economic and political instabilities. Documented evidence from Corruption Watch (2020) suggests that corruption can take many forms, including abuse of political power, bribery, embezzlement of funds, malicious interference with the regulatory and judicial systems, and subversion of professional ethics and norms.

845. A study by Corruption Watch in 2020 confirms that almost 33 000 whistle-blower reports of graft-related complaints were received between 2012 and 2020, of which 16% (857) contained allegations of corruption within the local government administrative arm of government. The Gauteng Province topped the list of reported cases (42%), followed by KwaZulu-Natal (10%), while Western Cape stood at 9%. Limpopo, Mpumalanga, and North West each recorded 8%. The aggregated data suggests that 28% of the reported cases were related to bribery, while procurement irregularities were the second highest case (24%). Employment irregularities, abuse of power and embezzlement accounted for 11%, 9%, and 8% respectively. The report further suggests that corruption within the police service is proportionally related to their increased visibilities. While cases of graft have increased over the past years, the tragic assassination of a senior employee in the Gauteng Health Department (Babita Deokaran) was a culmination of widespread COVID-19 procurement anomalies in the Province and the country at large.
846. The CRM found, through the consultative forums, that corrupt practices are perceived to be rampant on three major counts. First, there was a general understanding that the ruling party lacks the willingness, capability and competence to tackle corruption in a significant manner. The deep involvement of top party leaders, especially at Provincial and Local authority levels in graft, especially in the form of procurement anomalies, makes it almost impossible for the government to tackle corruption, despite a series of promises that have been made to fight graft. Second, there is a general perception that the current administration may not be able to achieve much because of the strong influence of corrupt top leaders both in the political parties and in government. Third, the ruling party is evidently divided along ethical lines. There is a general perception that the allies of the current President are in agreement to root-out corruption and are determined to restore past glory to the ruling party. However, the fact that some of the corrupt officials are also serving in the administration renders the fight to eradicate corruption problematic.
847. The APR Panel therefore recommends that the State should improve its institutional capability and competence through restructuring of the State Investigation Unit (SIU), which is the main organ in charge of collecting the hard evidence needed for prosecution. In addition, the Panel recommends that the vacancies at the National Prosecution Authority (NPA) be filled to strengthen the institution with competent members willing to effectively prosecute suspects without delay. Although, the country is deemed appropriately positioned to protect whistle-blowers, recent attacks and assassination of whistle-blowers



are ugly reminders that a lot more needs to be done to ensure that State witnesses are well-protected. More importantly, the Panel recommends that the report of the Zondo commission of enquiry be implemented with utmost urgency, and with all the seriousness that anti-graft interventions require.

### 7.2.3 Implementation of Policies

848. South Africa's long-term development goals are articulated in the National Development Plan (NDP) 2030, which presents the overarching vision of the country to achieve sustainable political, social and economic development. The NDP 2030 is implemented through the Medium-Term Strategic Frameworks (MTSF), the current period being 2019-2024. It has clearly defined implementation plans for each of the seven priority areas to address the triple challenges of poverty, inequality and unemployment. In addition to the NDP and MTSF, each department has an array of legislation, strategies and policy frameworks that govern and regulate their respective sectors. In spite of comprehensive legislation, strong institutional frameworks and well-defined strategies, the CRM observed that there are serious challenges and obstacles to effective policy implementation in all sectors.
849. This manifests in a myriad of ways, such as poor performance by SOEs in service delivery at municipal levels, weak administration, financial mismanagement and corruption, all of which have led to unrealised development outcomes that have eroded public trust and confidence in government. The CRM has identified the three main contributing factors of weak implementation to be (1) weak capacity to implement policy, (2) noncompliance with legislation and regulations, and (3) non-enforcement of recommendations by oversight and supervisory bodies. Corruption and financial mismanagement in both public and private spheres is also an inhibiting factor to democratic system efficiency.

### Optimise the Institutional Capacity to Implement

850. South Africa has made progress in areas such as access to education, provision of potable water, rural-urban electrification, and delivery of public housing for the most vulnerable. But acute challenges still remain in many other areas, namely stubbornly high unemployment, low public security and safety, growing informal settlements and persisting spatial inequalities, unequal public education and health systems. These are in large part, ascribed to the historical injustices of the apartheid era. Although, the post-apartheid democracy has implemented a series of reforms to address these challenges, there seem to be systemic obstacles hampering them from achieving their objectives. The CRM identified weak capacity, especially at local government

level, as a contributing factor to poor policy and program implementation. Local municipalities lack the requisite skills, especially in critical areas like procurement and supply chain management, engineering, urban planning, and financial management. Many service delivery challenges are technically difficult to resolve without improving the skills of management teams; the paucity of such skills at local level makes it difficult to strategically address service delivery challenges. Various national policies are underpinned by the presumption that municipalities will play a central role in driving social and economic development at the local government level. However, it appears that inadequate capacity at this critical tier of government is hindering the realisation of those laudable objectives.

851. Although, performance management systems have been initiated to track quality of work by public officials, this system has generally not led to significant improvement in accountability. The Auditor General of South Africa (AGSA) states that municipalities are dependent on external consultants for financial reporting because their own finance employees lack the skills required to prepare financial statements. The AGSA decried a particularly disturbing increase in the appointment of unqualified technical staff in municipalities: *“156 municipalities (78%) appointed financial reporting consultants, an increase from 124 municipalities (62%)”*<sup>134</sup>. Key technical positions are also left vacant for extended periods because the preferred candidates cannot be found. Some of the critical areas that require a boost in capacity are procurement and supply chain management, which are most prone to graft and impropriety, with a “high occurrence of irregular expenditure”. In addition to this, the challenge in capacity is evident in other sectors such as healthcare, and public security and safety. The Office of Health Standards Compliance (OHSC) inspection report in 2018/19 concluded that management competencies are poor or lacking in the health sector. During the CRM visits to the Provinces, a theme that came up consistently was that staffing patterns at municipalities are pervaded by cadre deployment, nepotism and favouritism. There was a general perception that jobs at municipalities are reserved for the loyalists of political parties, their families and close allies.
852. It is however, noteworthy that many initiatives have been launched over the years to address issues of capacity to improve efficiencies in the public service. Some of these initiatives are service improvement initiatives such as the Batho Pele service ethos, the Khawuleza improvement model, and the establishment of South African Management Development Institute (SAMDI) in 1999. These

134 Auditor General of South Africa. 2019/20. Consolidated General Report on the local government audit outcomes <https://www.agsa.co.za/Portals/0/Reports/MFMA/201920/2019%20-%202020%20MFMA%20Consolidated%20GR.pdf>



initiatives also include the establishment of Local Government Management Improvement Model (LGMIM), the Public Administration Leadership and Management Academy (PALAMA) launched in 2004, a predecessor to the current National School of Government, the Public Service Sector Education and Training Authority (PSETA), and The Local Government Sector Education and Training Authority (LGSETA), which facilitates training and upgrading of the skills of local government civil servants. The Department of Cooperative Governance and Traditional Affairs (COGTA) also has a technical Support Services program with the aim of enhancing the capabilities of municipalities to improve infrastructure planning, service delivery, as well as operations and maintenance. Despite the existence of these strategic mechanisms and tools, municipalities and local authorities still find it difficult to deliver the required outcomes, simply because of the need to boost professionalism in the public service, and the tendency to place the interest of political parties above those of the population.

### **Better Regulation and Oversight of Compliance and Remedial Management**

853. Another challenge for policy implementation is non-compliance with regulations, which seems to be systemic across sectors. There are several examples of this. Overall, findings from the Department of Planning, Monitoring and Evaluation's (DPME) State of Management Practices in Municipalities for the financial year 2016/17 indicated that municipalities consistently fail to comply with regulatory frameworks. Indeed, the non-compliance with supply chain management legislation was central to irregular expenditure, which amounted to R40 434 million (89% of overall irregular expenditure) in municipalities in 2016/17<sup>135</sup>. Overall, mismanagement affects the socio-economic sustainability of municipalities. As a result, many municipalities cannot fully finance their operations, maintain and invest in, and grow their infrastructure assets - an important consideration in the face of growing natural hazard risks.
854. The Office of Health Standards Compliance (OHSC), points out that out of 730 public sector health establishments inspected, only 19% were compliant with required norms and standards<sup>136</sup> in 2018/2019. In addition, inspection showed that only 16% of the inspected health establishments achieved the required performance of 100% on non-negotiable vital measures.<sup>137</sup>

135 Auditor General of South Africa. 2016/17. Section 9.1 Irregular expenditure caused by weaknesses in supply chain management. General report on the national and provincial audit outcomes for 2016-17 <https://www.agsa.co.za/Portals/0/Reports/PFMA/201617/GR/09.1%20irregular%20expenditure.pdf>

136 The Office of Health Standards Compliance (OHSC). 2018/19. Annual Report [https://static.png.org.za/OHSC\\_Annual\\_Report\\_201819.pdf](https://static.png.org.za/OHSC_Annual_Report_201819.pdf)

137 The Office of Health Standards Compliance (OHSC). 2019/20. Annual Inspection Report 2019/20. <https://ohsc.org.za/wp-content/uploads/Annual-Inspection-Report-2019-20.pdf>

855. Similar findings were echoed by the Office of the Public Protector’s 2020/21 Report on the Provision and Administration of Health Services at Public Hospitals in the Province of KwaZulu-Natal.<sup>138</sup> This means that patients that visit the majority of healthcare facilities do not receive adequate care, which is problematic for a country with a heavy burden of communicable and non-communicable disease. Similarly, non-compliance with established procedure was found in the area of water supply and provision of sanitation. Poor water quality has been documented across many municipalities, simply because they compromise established standards. In some instances, local governments have been found to discharge poorly treated or untreated wastewater into river systems, which is against regulations. Data from the Department of Water and Sanitation’s (DWS) Integrated Regulatory Information System (IRIS) Dashboard<sup>139</sup> shows that 75% of 910 municipal wastewater treatment plants had less than 50% effluent compliance in 2020. These are just a few glaring examples of non-compliance with standardised procedure, which in turn hamper the achievement of state targets.

### Oversight

856. Oversight entails reviewing, monitoring, inspecting, and examining whether established programmes and systems are operating optimally in accordance with laws and procedures to improve the efficiency and effectiveness of operations of a system or an operation. There are a number of mechanisms and institutions in the country whose mandates are to monitor and provide oversight over different aspects of the public and private sectors. These are: The Parliament, the National Treasury, the Auditor-General, the Public Protector, the Department of Planning, Monitoring and Evaluation (DPME), the Public Service Commission (PSC), the Department of Public Service Administration (DPSA), the Department of Cooperative Governance and Traditional Affairs (COGTA), and all the Chapter 9 institutions. Although, these institutions investigate cases of graft and related crimes, recommendations from investigations and reports generated are largely non-consequential. Apart from lack of prosecution or poor consequence management, there are suspicions that culprits are often rewarded through political elevations and party redeployment to higher public offices. This was most notable at national level.

138 Office of the Public Protector 2020/2021 [http://www.pprotect.org/sites/default/files/legislation\\_report/KZN%20Health%20-Systemic%20Investigation%20Final.pdf](http://www.pprotect.org/sites/default/files/legislation_report/KZN%20Health%20-Systemic%20Investigation%20Final.pdf)

139 Department of Water and Sanitation. <http://ws.dwa.gov.za/IRIS/myriver.aspx?c2VvcD0xJnNob3dfYWxsPTE=>





857. The CRM appreciates the scale and complexity of the challenges that the country faces and the future challenges of a growing population, increased urbanisation, climate change, and increasing natural hazard risks. The country is operating in a difficult macro-economic environment with continued socio-economic fallouts from COVID-19. Improving policy implementation and consequence management in all tiers of government, and economic sectors may help improve the efficiency of the State, restore social trust between the political elites and the people, and enhance quality of service delivery in all spheres of government. It though recognised that it would be a herculean task to surmount these challenges but spirited political will and strengthened State capacity would help to ease the task.

858. The APR Panel recommends that the Department of Planning, Monitoring and Evaluation (DPME):

- Conduct a staff capacity audit for middle to senior management level up to director level in all Government Departments at the National, Provincial and Municipalities levels to determine baseline skills, in collaboration with the South African National School of Government (NSG ), the Public Service Sector Education and Training Authority (PSETA), and The Local Government Sector Education and Training Authority (LGSETA).
- Address the skill gaps using multiple approaches, including short exchange programmes, structured coaching, training and re-assignment with support of applicable professional services, firms and associations in Audit, Finance, Procurement and supply chain management, performance management, project management, change communication, change management, coaching, amongst others, and
- Build a database of required competencies at key levels within the public service, to serve as a benchmark for hiring across the public service, including national, provincial and municipal levels with standardised processes for recruitment and promotions.

### 7.3 General Conclusion

859. The APR Panel is confident that South Africa has all the tools, capacities and political support necessary to implement the NPoA in order to improve governance and contribute towards successful implementation of the National Development Plan and the AU Agenda 2063, Africa’s long term plan for socio-economic development.
860. The APR Panel commends South Africa for its leading role as one of the founding nations of the NEPAD vision, which led to the establishment of the APRM programme on good governance in March 2003. The Panel is also grateful to the Government and People of the Republic of South Africa for their warm welcome and hospitality, and for the facilities and resources placed at the disposal of the review mission. The country is also applauded for continuing its leadership role as the fifth AU Member State to have completed two APRM governance reviews.





# ANNEXE ONE

## STATEMENT OF ACKNOWLEDGEMENT BY THE GOVERNMENT OF SOUTH AFRICA

1. The endorsement by the Cabinet of the Country's Self-Assessment Report (CSAR) on 8 December 2021 signalled South Africa's renewal of its commitment to the ideals of the APRM, thus opening itself to the process of peer learning and sharing with its counterparts. This is in line with the purpose of the APRM as outlined in Article 3 (1) of the APRM Statute (2020) which states that: "The APRM shall serve as an African-owned and African-led platform for self-assessment, peer-learning, and experience-sharing in democracy and good governance, in full respect for democratic principles, human rights, rule of law, the acceleration of political, social and economic integration in Africa"



2. A thorough reading of the Country Review Report (CRR) clearly shows a substantive convergence between the CSAR and CRR reports, which indicate that the observations and findings of the Country Review Mission (CRM) largely align with what the CSAR had highlighted. The recommendations of the APR Panel thus largely fall within the purview of what the South Africa's Medium Term Strategic Framework is already entrusted with. South Africa consequently welcomes the draft report, subject to the final technical edits and statistical validation, in line with the applicable Articles of the APRM Statute.
3. South Africa thus remains committed to its journey of continual improvement by building on the baseline set out in the CSAR of 2006 and the Base Review Report of 2007, and to align implementation of the recommendations within its key planning and development frameworks. This will help in building complementarity with other laws and policies implemented by the government when reporting in terms of other planning and development frameworks and thus reflect the interrelatedness of South Africa's progress reports in response to continental and international obligations.
4. The National Plan of Action (NPoA) will accordingly fall within the ambit of the deliverables in the Medium Term Strategic Framework, albeit with the requisite alignments. Consequently, the NPoA will be implemented in accordance with the due processes which are guided, among others, by the country's constitutional values of accountability, the rule of law and the supremacy of the Constitution.
5. Chapter 14 of the 25 Year South African Government Review (1994 – 2019) is titled: "Building a Better Africa and the World" and it specifically alludes to South Africa's adoption of the 'African Agenda' with a dual focus on strengthening institutional frameworks that support the renewal process and developing this policy agenda through instruments such as the New Partnership for Africa's Development (NEPAD) and the APRM.
6. South Africa thus remains committed to the ideals of the APRM and wishes to express its gratitude to the APRM community at large, particularly: The APRM Forum Heads of State and Government for their support, The APR Panel of Eminent Persons for the professional manner in which they have discharged their duties, Bishop Dinis Sengulane for the exemplary manner in which he led the CRM in South Africa, and The APRM Continental Secretariat, led by Prof Eddy Maloka, for their technical support and coordination with the National APRM Structures through the deployment of the Country Coordinator for South Africa, Mr Dalmar Jama.





# ANNEXE TWO

## HIGH LEVEL SUMMARY OF THE NATIONAL PLAN OF ACTION (NPoA) 2022-2025

ARISING FROM THE 2<sup>ND</sup> GENERATION COUNTRY REVIEW OF SOUTH AFRICA AT THE 31<sup>ST</sup> SUMMIT OF THE APR FORUM OF HEADS OF STATE AND GOVERNMENT HELD ON THE 4<sup>TH</sup> FEBRUARY 2022

### 1. RECAP ON THE COUNTRY SELF-ASSESSMENT REPORT METHODOLOGY

In line with the methodology of the Country Self-Assessment Report, the NPoA will be a continuation of the previous reporting, accompanied by adaptations and alignments, which will be further complemented and tracked through a stronger focus on research analytics that is informed by credible and verifiable sources.



The focus of the high level summation that follows is thus on the *big picture issues in line with the summation* of the newsletter “From the President’s Desk” of the 07<sup>th</sup> February 2022, in order to ensure that the focus of the NPoA remains pitched to the level of the Heads of State and Government.

*Nonetheless, all the detailed issues arising from the Country Self-Assessment Report, 2021 and the Country Review Report, 2022 will still be tracked in line with the methodology highlighted above.*

## 2. THEMATIC AREAS ILLUSTRATION OF THE NPOA

### 2.1 DEMOCRACY AND POLITICAL GOVERNANCE

#### 2.1.1 Anchor Issues:

- a. Promoting the rule of law, re-inforcing accountability and combating corruption.

#### 2.1.2 Lead Departments:

- a. The Presidency.
- b. Department of Justice and Constitutional Development.
- c. Department of Police.

#### 2.1.3 Source Documents to anchor South Africa’s response to the issues raised include:

- a. **Zondo Commission Report** - Parts 1, 2, 3 and 4 as published, as well as the Final Report due by mid-June 2022; and
- b. **The Presidency response** to be submitted to Parliament by mid- October 2022.
- c. **National Anti-Corruption Strategy (NACS)** – A nationwide intervention framework adopted by the Cabinet on the 18th November 2020.

#### 2.1.4 Monitoring and Reporting on the Implementation of the Interventions

The National Secretariat will be responsible for monitoring and reporting in line with the 2nd Generation Country-Self Assessment methodology and as per Article 19.1 (5) and (9) of the National Governing Council (NGC) Charter.



## 2.1.5 The Role of the NGC

In line with its functions, as per Article 19 of the APRM Statute and Article 17 of the NGC Charter, the NGC will regularly undertake complementary interventions as part of its Advocacy Role.

The Advocacy Role will be inclusive of all issues raised in the Country Self-Assessment Report and the Country Review Report that re-inforce the crucial role of accountability and the rule of law in promoting good governance by public officials.

For example, the electoral reforms that were triggered by the Constitutional Court judgment that declared that “the Electoral Act, 73 of 1998 is unconstitutional to the extent that it requires that adult citizens may be elected to the National Assembly and Provincial Legislatures only through their membership of political parties” (Constitutional Court of South Africa Case, CCT

110/19 - 11 June 2020) - are also critical in reinforcing accountability by public officials. This judgment seeks to ensure that public officials are directly accountable to the citizens rather than to their political parties.

## 2.1.6 The Role of the National Focal Point

As the APRM Personal Representative of the President, the National Focal Point will, with the support of the National Secretariat, among others liaise with the relevant Ministers and Organs of State on the implementation and reporting on specific interventions arising from the 2nd Generation Country Review; in line with Article 18 of the APRM Statute and Article 9 of the NGC Charter.

## 2.2 ECONOMIC GOVERNANCE AND MANAGEMENT

### 2.2.1 Anchor Issue:

- a. Addressing structural challenges in the economy.

### 2.2.2 Associated Anchor Issues:

- a. **Combating of corruption.**
- b. **Promotion of economic policies and programmes** that enhance economic growth and development.
- c. **Professionalising the public service,** including the improving/ upscaling the skills of the public servants.

### 2.2.3 Lead Departments:

- a. The Presidency.
- b. National Planning Commission.
- c. Departments from the Economic Cluster.
- d. National School of Government.

### 2.2.4 Source documents to anchor South Africa's response to the issues raised include:

- a. **Zondo Commission Reports** - Parts 1, 2, 3 and 4 as published, as well the Final Report due by mid-June 2022.
- b. **The Presidency response** to be submitted to Parliament by mid- October 2022.
- c. **The United Nations Sustainable Development Cooperation Framework (UNSDCF) 2020-2025** on the implementation of the SDGs.
- d. **Reconstruction and Recovery Strategy** announced in the State of the Nation Address in 2021.
- e. **Policies and strategies** that promote growth and recovery.
- f. **Draft Professionalisation Framework** which is envisaged for adoption by the Cabinet during the first quarter of the financial year 2022-23.

### 2.2.5 Monitoring and reporting on the Implementation of the Interventions

The National Secretariat will be responsible for monitoring and reporting inline with the 2<sup>nd</sup> Generation Country-Self Assessment methodology and as per Article 19.1 (5) and (9) of the NGC Charter.

### 2.2.6 The Role of the NGC

In line with its functions, as per Article 19 of the APRM Statute and Article 17 of the NGC Charter, the NGC will regularly undertake complementary interventions as part of its Advocacy Role.

The Advocacy Role will be inclusive of all issues raised in the Country Self-Assessment Report and the Country Review Report, including the promotion of interventions that seek to fundamentally alter the trajectory of the economy.



## 2.2.7 The Role of the National Focal Point

As the APRM Personal Representative of the President, the National Focal Point will, with the support of the National Secretariat, among others liaise with the relevant Ministers and Organs of State on the implementation and reporting on specific interventions arising from the 2<sup>nd</sup> Generation Country Review; in line with Article 18 of the APRM Statute and Article 9 of the NGC Charter.

## 2.3 CORPORATE GOVERNANCE

### 2.3.1 Anchor Issue:

- a. Combating corruption to re-inforce good governance.

### 2.3.2 Source Documents to anchor South Africa's response to the issues raised:

- a. **Zondo Commission Report** – Parts 1, 2, 3 and 4 as published, as well the Final Report due by mid-June 2022; and
- b. **The Presidency response** to be submitted to Parliament by mid- October 2022.
- c. **The Presidency led initiatives** to reform and streamline the governance of State Owned Enterprises.

### 2.3.3 Monitoring and Reporting on the Implementation of the Interventions

The National Secretariat will be responsible for monitoring and reporting in line with the 2<sup>nd</sup> Generation Country-Self Assessment methodology and as per Article 19.1 (5) and (9) of the NGC Charter.

### 2.3.4 The Role of the NGC

In line with its functions, as per Article 19 of the APRM Statute and Article 17 of the NGC Charter, the NGC will regularly undertake complementary interventions as part of its Advocacy Role.

The Advocacy Role will be inclusive of all issues raised in the Country Self-Assessment Report and the Country Review Report.

### **2.3.5 The Role of the National Focal Point**

As the APRM Personal Representative of the President, the National Focal Point will, with the support of the National Secretariat, among others liaise with the relevant Ministers and Organs of State on the implementation and reporting on specific interventions arising from the 2<sup>nd</sup> Generation Country Review; in line with Article 18 of the APRM Statute and Article 9 of the NGC Charter.

## **2.4 SOCIO-ECONOMIC DEVELOPMENT AND MANAGEMENT**

### **2.4.1 Anchor Issue:**

- a. Addressing South Africa's challenges of inequality, poverty and unemployment.

### **2.4.2 Lead Departments:**

- a. National Planning Commission.
- b. The Presidency.
- c. Department of Social Development.
- d. Department of Employment and Labour.

### **2.4.3 Source Documents to anchor South Africa's response to the issues raised:**

- a. The United Nations Sustainable Development Cooperation Framework (UNSDCF) 2020-2025 on the implementation of the SDGs.
- b. Reconstruction and Recovery Strategy announced in the State of the Nation Address in 2021.
- c. Policies and programmes that seek to enhance social security.
- d. Policies and programmes that seek to promote employment and safeguard labour rights.

### **2.4.4 Monitoring and Reporting on the Implementation of the Interventions**

The National Secretariat will be responsible for monitoring and reporting in line with the 2<sup>nd</sup> Generation Country-Self Assessment methodology and as per Article 19.1 (5) and (9) of the NGC Charter.

## 2.4.5 The Role of the NGC

In line with its functions, as per Article 19 of the APRM Statute and Article 17 of the NGC Charter, the NGC will regularly undertake complementary interventions as part of its Advocacy Role.

The Advocacy Role will be inclusive of all issues raised in the Country Self-Assessment Report and the Country Review Report.

## 2.4.6 The Role of the National Focal Point

As the APRM Personal Representative of the President, the National Focal Point will, with the support of the National Secretariat, among others liaise with the relevant Ministers and Organs of State on the implementation and reporting on specific interventions arising from the 2<sup>nd</sup> Generation Country Review; in line with Article 18 of the APRM Statute and Article 9 of the NGC Charter.

The recommended development of the “home-grown barometer to measure inequality” and a “tool to measure efficacy of the transformation interventions” is one of the issues to be addressed through Minister to Minister liaison.

## 2.5 STATE RESILIENCE AND PREPAREDNESS

### 2.5.1 Anchor Issue:

- a. Reforming of the Disaster Resilience Governance.

### 2.5.2 Associated Anchor Issue:

- a. Developing effective architecture to manage and combat climate change.

### 2.5.3 Lead departments:

- a. Departments of Cooperative Governance and Traditional Affairs.
- b. Department of Forestry, Fisheries and the Environment.
- c. Department of Mineral Resources and Energy.

### 2.5.4 Source Documents to anchor South Africa’s response to the issues raised:

- a. **Reform initiatives on Disaster Resilience Governance** in response to the Country Review Recommendations.
- b. **Policies and programmes** that seek to strengthen the capacity and capability of the local sphere of government.

- c. **Revised nationally determined contribution (NDC) strategy** adopted by the Cabinet in 2021 and the implementation of the associated legislation.
- d. **Policies and programmes** that seek to facilitate a just transition to a clean energy future.

## 2.5.5 Monitoring and Reporting on the Implementation of the Interventions

The National Secretariat will be responsible for monitoring and reporting in line with the 2<sup>nd</sup> Generation Country-Self Assessment methodology and as per Article 19.1 (5) and (9) of the NGC Charter.

## 2.5.6 The Role of the NGC

In line with its functions, as per Article 19 of the APRM Statute and Article 17 of the NGC Charter, the NGC will regularly undertake complementary interventions as part of its Advocacy Role.

The Advocacy Role will be inclusive of all issues raised in the Country Self-Assessment Report and the Country Review Report.

## 2.5.7 The Role of the National Focal Point

As the APRM Personal Representative of the President, the National Focal Point will, with the support of the National Secretariat, among others liaise with the relevant Ministers and Organs of State on the implementation and reporting on specific interventions arising from the 2nd Generation Country Review; in line with Article 18 of the APRM Statute and Article 9 of the NGC Charter.

The recommended reforms of the Disaster Resilience Governance is one of the issues to be addressed through Minister to Minister liaison.

## 2.6 CROSS-CUTTING ISSUES

### 2.6.1 Anchor Issue:

- a. Combating Gender- Based Violence.

### 2.6.2 Associated Anchor Issues:

- a. **Strengthening the capacity and effectiveness of the justice system** to respond to the issue of the Gender-Based Violence; and effective implementation of policies.
- b. **Combating Racism, Xenophobia** and related Issues.

### 2.6.3 Lead departments:

- a. The Presidency.
- b. Department of Justice and Constitutional Development.
- c. Department of Police.
- d. National Prosecuting Authority.

### 2.6.4 Source Documents to anchor South Africa's response to the issues raised:

- a. **National Strategic Plan** including the implementation of the associated legislation, such as the three pieces of legislation recently signed into law by the President.
- b. **National policies on gender and disability** main-streaming and the implementation of the associated legislation.
- c. **National Action Plan** to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerances.
- d. **Capacity building interventions** that seek to improve access to justice.

### 2.6.5 Monitoring and Reporting on the Implementation of the Interventions

The National Secretariat will be responsible for monitoring and reporting in line with the 2nd Generation Country-Self Assessment methodology and as per Article 19.1 (5) and (9) of the NGC Charter.

### 2.6.6 The Role of the NGC

In line with its functions, as per Article 19 of the APRM Statute and Article 17 of the NGC Charter, the NGC will regularly undertake complementary interventions as part of its Advocacy Role.

The Advocacy Role will be inclusive of all issues raised in the Country Self-Assessment Report and the Country Review Report.

### 2.6.7 The Role of the National Focal Point

As the APRM Personal Representative of the President, the National Focal Point will, with the support of the National Secretariat, among others liaise with the relevant Ministers and Organs of State on the implementation and reporting on specific interventions arising from the 2<sup>nd</sup> Generation Country Review; in line with Article 18 of the APRM Statute and Article 9 of the NGC Charter.

### **3. COMPLEMENTARITY OF GOVERNMENT PROGRAMMES TO RESPOND TO THE 2ND GENERATION COUNTRY REVIEW RECOMMENDATIONS**

The Open Government Partnership (OGP) National Action Plan (NAP) 2023-2026 will also respond to some of the issues recommended by the APRM 2<sup>nd</sup> Generation Country Review, especially on issues of combating corruption and improving access to justice by the vulnerable groups.

In essence, the OGP NAP 2023-2026 and the subsequent plans will serve as a mechanism to implement the APRM National Plans of Action.

#### **3.1 Other complementary governance programmes**

Other programmes under the ambit of the National Focal Point will be managed in line with the complementarity principle, and brought to the attention of the National Governing Council, in line with the expanded mandate of the APRM.







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